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Chairman of Committees:
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5. Braddon, The Right Honorable Sir Edward Nicholas Coventry, P.C.,
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10. Clarke, Matthew John, Esquire, M.P.
12. Crowder, The Honorable Frederick Thomas, M.P.
17. Fraser, The Honorable Simon, M.P.
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30. Isaacs, The Honorable Isaac Alfred, M.P.
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37. McMillan, William, Esquire, M.P.
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40. Peacock, The Honorable Alexander James, M.P.
41. Quick, John, Esquire, LL.D.
42. Reid, The Right Honorable George Houstoun, P.C., M.P.
43. Solomon, Vaiben Louis, Esquire, M.P.
44. Symon, Josiah Henry, Esquire, Q.C.
45. Trenwith, William Arthur, Esquire, M.P.
47. Venn, The Honorable Harry Whittal, M.P.
49. Wise, Bernhard Ringrose, Esquire.

Clerk:
E.G. BLACKMORE, Esquire, Clerk of the Legislative Council and Clerk of the Parliaments, South Australia.
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The Honorable Joseph Hector Carruthers, M.L.A. (Secretary for Lands).
William McMillan, Esquire, M.L.A.
William John Lyne, Esquire, M.L.A.
The Honorable James Nixon Brunker, M.L.A (Colonial Secretary).
The Honorable Richard Edward O'Connor Q.C., M.L.C.
The Honorable Sir Joseph Palmer Abbott, K.C.M.G. (Speaker, Legislative Assembly).
Bernhard Ringrose Wise, Esquire.
South Australia.
The Honorable Frederick William Holder, M.H.A. (Treasurer).
The Honorable John Alexander Cockburn, M.D., M.H.A. (Minister of Education).
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The Honorable Henry Dobson, M.H.A.
The Honorable Neil Elliott Lewis, M.H.A.
The Honorable Nicholas John Brown (Speaker, House of Assembly).
The Honorable Charles Henry Grant, M.L.C.
The Honorable Adye Douglas (President, Legislative Council).
The Honorable William Moore, M.L.C. (Chief Secretary).
Matthew John Clarke, Esquire, M.H.A.
The Honorable John Henry, M.H.A.
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The Honorable Sir Graham Berry, K.C.M.G.
The Honorable Simon Fraser, M.L.C.
The Honorable Sir William Austin Zeal, K.C.M.G. (President, Legislative Council).
Henry Bournes Higgins, Esquire, M.L.A.
Western Australia.
The Honorable Sir James George Lee Steere, Knight (Speaker Legislative Assembly).
George Leake, Esquire, M.L.A.
The Honorable John Winthrop Hackett, M.L.C.
Walter Hartwell James, Esq., M.L.A.
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The Honorable Frederick Thomas Crowder, M.L.C.
The Honorable Andrew Harriot Henning, M.L.C.
The Honorable Harry Whittal Venn, M.L.C.
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New clause 73A-(Enabling proceedings to be taken against the Commonwealth or any state), proposed by Mr. Glynn, 1653. Amendment by Mr. O'Connor, 1678; amendment agreed to, 1679. Clause, as amended, agreed to, 1679.

Clause 74-"The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appears from all judgments, decrees, orders, and sentences of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any state, whether any such court is a court of appeal or of original jurisdiction; and the judgment of the High Court in all such cases shall be final and conclusive. Until the Parliament otherwise provides, the conditions and restrictions on appeals to the Queen in Council from the Supreme Courts of the several states shall be applicable to appeals from them to the High Court." Amendment suggested by the Legislative Assembly of New South Wales to insert, after "jurisdiction" (lines 1-2), the words "where the parties consent," 322; amendment negatived, 331; amendment by Mr. Glynn for the omission of the words "with such exceptions, and," 331; negatived, 332; amendment by Mr. Symon for the insertion, after "state," of the words "or of any other court of any state from which an appeal now lies to the Queen in Council," 332; agreed to, 333; amendment suggested by the Legislative Councils of New South Wales and Victoria to omit the words "and the judgment of the High Court in all such cases shall be final and conclusive," negatived, 333; amendment by Sir George Turner to insert, after "conclusive," the words "saving in cases where an appeal may be allowed either by the Queen in Council or the High Court," 335; amendment on Sir George Turner's amendment, by Mr. Wise, to omit all the words after "saving," with a view to insert "any right which Her Majesty may be graciously pleased to exercise by virtue of Her Royal prerogative," 340; Mr. Wise's amendment agreed to," 347; Sir George Turner's amendment negatived, 347; clause, as amended, agreed to, 347; reconsidered, 1885; clause again reconsidered, 2276. Amendment by Sir George Turner to omit sub-section 2 (Inter-State Commission), 2276; negatived, 2285. Amendment by Mr. Holder to provide for appeals from Inter-State Commission "on questions of law only", 2285; agreed to 2286. Amendment by Sir Joseph Abbott for addition to clause of the words "saving any right that Her Majesty may be pleased to exercise by virtue of Her Royal prerogative," 2286;
amendment carried, 2323. Amendment by Mr. Glynn to enable High Court to hear any appeals allowed by the law of the state from the Supreme Court of the state, 2323; agreed to, 2325. Amendment by Mr. Symon for proviso that the right saved should only be that of granting special leave to appear, agreed to, 2325; clause again reconsidered, 2419; amendment by Mr. Symon for omission of words re exercise of Queen's prerogative, 2419; amendment withdrawn, 2422.

New clause 74A-(Pleas re laws being ultra vires), proposed by Mr. Gordon, 1679; negatived, 1690.

clause 75-(No appeals to the Queen in Council except on matters in which public interests are concerned), 347; amendment suggested by the Legislative Council of New South Wales in favour of allowing appeals, negatived, 348; clause agreed to, 348. Clause reconsidered, 2325. Amendment by Sir Joseph Abbott for omitting words providing that the Queen might only grant leave to appeal to the Queen in Council "in any matter in which the public interests of the Commonwealth, or of any state, or of any other part of Her Majesty's dominions are concerned," 2325; agreed to, 2326. Amendment by Mr. Symon for inserting in provision that the Queen might grant leave to appeal to the Queen in Council the words "in any matter not involving the interpretation of the Constitution of the Commonwealth or of a state," 2326.

Amendment by Mr. Barton on Mr. Symon's amendment to add the words "or in any matter involving the interests of any other part of Her Majesty's dominions," 2331. Mr. Barton's amendment agreed to, 2333. Mr. Symon's amendment, as amended, carried, 2335. Amendment by Mr. Symon prohibiting appeal to the Privy Council from the High Court in any matter which might have been taken direct to the Privy Council by way of appeal in the first instance, 2338; withdrawn 2338. Amendment by Mr. Symon prohibiting appellant to the High court from afterwards appealing to the Privy Council in the matter of the same appeal, 2338; withdrawn, 2341. Clause, as amended, carried, 2341. Clause reconsidered, 2415; clause struck out, and new clause proposed by Mr. Barton, 2415; amendment by Mr. Glynn on new clause, 2416; Mr. Glynn's amendment negatived, 2418; new clause agreed to, 2419; question by Mr. Glynn, 2438.

clause 76-(Jurisdiction of courts), agreed to, 348-9.

Clause 77-(Original jurisdiction of High Court), 349; sub-section 5, giving original jurisdiction to the High Court in cases "in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth," struck out, 349; clause, as amended, agreed to, 349; reconsidered, 1894.

Clause 78-(Number of Judges), formally amended and agreed to, 349-50.

Clause 79-(Trial of all indictable offences shall be by jury), 350; amendment suggested by House of Assembly of South Australia to omit the words "shall be by jury," 350; negatived, 353; amendment by Mr. Higgins for the insertion in the portion of the clause providing for every trial being held in the state in which the offence has been committed of the words "unless Parliament otherwise provides," 353; negatived, 354; clause, as amended, agreed to, 354; reconsidered, 1895.

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Clause 80-"No person holding any judicial office shall be appointed to or hold
the office of Governor-General, Lieutenant-Governor, Chief Executive Officer, or Administrator of the Government, or any other executive office." Amendment suggested by the Legislative Assemblies of New South Wales and Victoria for the omission of the clause, 355; discussed, 355; amendment by Mr. Holder for the omission of the words "No person holding any judicial," negatived, 369; amendment by Mr. Holder for the insertion, after "judicial," of the words "or parliamentary," 370; negatived, 375; clause agreed to, 375; reconsidered, 1895, 2341; amendment by Mr. Higgins for the insertion, after "judicial," of the words "or parliamentary," negatived, 2342; clause struck out, 2343.

Chapter IV.-Finance And Trade.

Clause 81-"All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Commonwealth in the manner and subject to the charges provided by this Constitution," 774. Statement by Mr. Reid in exposition of new clauses proposed by the Finance Committee in lieu of financial clauses in the Bill, 774; discussed 783, 834, 877. Amendment suggested by the Legislative Council of Tasmania to insert, after "revenue," the words "and moneys," 895; negatived, 900. Clause agreed to, 900.

Clause 82-(Consolidated Revenue Fund permanently charged with expenses of collection), 900; amendment suggested by Legislative Assembly of New South Wales to omit portion of clause providing that the revenue of the Commonwealth should in the first instance be applied to the payment of the expenditure of the Commonwealth, 900; amendment negatived, 901; clause agreed to, 901.

Clause 83-"No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law and by warrant countersigned by the Chief Officer of Audit of the Commonwealth," 901; amendment by Sir George Turner to omit all the words after "law," 901; amendment agreed to [incorrectly reported as negatived], 907; clause agreed to, 909; reconsidered, 1896; amendment by Mr. Barton (re expenditure before first appropriation), 1896; amendment amended and agreed to, 1899.

Clause 84-Paragraph 1-"The Parliament shall have the sole power and authority, subject to the provisions of this Constitution, to impose customs duties, to impose duties of excise, and to grant bounties upon the production or export of goods." Amendment by Mr. Barton to insert, at the beginning of the paragraph, the words "After uniform duties of customs have been imposed," agreed to, 909; amendment by Mr. Barton to substitute "exclusive" for "the sole," agreed to, 909; amendment suggested by the Legislative Assembly of Victoria to omit "and to grant bounties upon the production or export of goods," 910; negatived, 936; amendment by Sir George Turner for the addition to the paragraph of the words-"Provided that any state may grant bounties for the promotion of agricultural, horticultural, viticultural, or dairying industries, subject to the same being at any time annulled by the Parliament," 9

Paragraph 2-"But this exclusive power shall not come into force until uniform duties of customs have been imposed by the Parliament," 936; omitted, 938.
Paragraph 3—"Upon the imposition of uniform duties of customs all laws of the several states imposing duties of customs or duties of excise, and all such laws offering bounties upon the production or export of goods, shall cease to have effect," 940. Amendment suggested by the House of Assembly of South Australia, to insert, after "customs" where first occurring, the words "and excise," 940; negatived, 942; amendment suggested by the Legislative Assembly of Victoria for the omission, after "laws," of the words "offering bounties upon the production or export of goods," 943; negatived, 943. Paragraph agreed to, 943. Amendment by Mr. Barton for insertion of new paragraph, to follow paragraph 3:—"But all grants of and agreements for any such bounty made by or under the authority of the Government of any state after the 30th day of June, 1898, shall be taken to have been of no effect," 943. Amendment by Mr. Isaacs to insert, at the beginning of the proposed new paragraph, the words "The provisions of this section shall not apply to any grant of or agreement for any such bounty made by or under the authority of the Government of any state before the 30th day of June, 1898," 964. Mr. Isaacs' amendment agreed to, 964. New paragraph, as amended, agreed to, 964.

Paragraph 4—(Control and collection of duties of customs and excise, &c.), struck out, 965. New clause in substitution of paragraph 4 agreed to, 990. New clause reconsidered, 2343. Amendment by Sir George Turner to provide that the section should not apply to any bounty granted by a state "with the consent of the Governor-General in Council, or of the Parliament of the Commonwealth," 2343. Amendment by Mr. McMillan for the omission of the words "of the Governor-General in Council, or," 2348. Mr. McMillan's amendment withdrawn, 2352. Amendment by Sir John Downer to substitute, for the words after "consent," the words "of both Houses of Parliament expressed by resolutions," 2352. Sir John Downer's amendment negatived, 2359. Amendment by Mr. Higgins for addition to Sir George Turner's amendment of proviso "that the bounty or aid has not the effect of derogating from the freedom of trade or commerce among the several states," 2360; carried, 2369. Statement by Sir George Turner, 2363. Progress reported to enable an instruction to be given to the committee, 2364. Committee instructed that they have leave to reconsider immediately clause 86B, 2364. Motion by Sir John Downer for omission of all the words from the clause from "consent," and the substitution of the words "of both Houses of the Parliament expressed by resolutions," 2365; agreed to, 2365. Sir George Turner's amendment, as amended, agreed to, 2365. Paragraph 5—"This section shall not apply to bounties or aids to mining for gold, silver, or other metals," 965. Verbal amendments by Mr. O'Connor agreed to, 965. Amendment by Sir George Turner for the omission of all the words after "mining," 965; negatived, 968. Amendment by Sir George Turner for the addition of the words—"This section is not to apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth," 969. Amendment by Mr. Higgins to add the following proviso to Sir George Turner's amendment—"Provided that the bounty or aid has not the effect of derogating from freedom of
trade or commerce between the different states of the Commonwealth," 982. Amendment by Mr. Dobson for the omission from Sir George Turner's amendment of the words "or of the Governor-General in Council, or," 984. Mr. Dobson's amendment negatived, 985. Mr. Higgins' amendment negatived, 987. Sir George Turner's amendment negatived, 987. Clause, as amended, agreed to, 990.

Clause 85-(Transfer of officers to the Commonwealth), 990. Amendment suggested by the Parliament of Tasmania negatived, 990. Amendment proposed by Sir John Forrest agreed to, 991. Amendment suggested by the Legislative Council of South Australia re pensions, 992; negatived, 997. Clause, as amended, agreed to, 998; reconsidered, 1899; clause struck out, and new clause substituted, 1901.

Clause 86-(Transfer of lands, buildings, vessels, &c., to the Commonwealth), 998. Amendment suggested by the Legislative Assembly of Western Australia that only lands, buildings, &c., "exclusively" used in connexion with any department should be taken over by the Commonwealth, 998; amendment negatived, 1000. Amendment suggested by the House of Assembly of South Australia to provide that payments for lands, buildings, &c., taken over might be made by the assumption by the Commonwealth of an equivalent part of the public debt of the state, 1001; negatived, 1007; clause agreed to, 1007; reconsidered, 1901; clause struck out, and new clause substituted, 1901-6.

Clause 87-(Collection of existing duties of customs and excise), 1007; clause struck out, 1011.

Clause 88-(Uniform duties of customs), 1011; clause agreed to, 1014.

Clause 89-"So soon as uniform duties of customs have been imposed, trade and inter-course throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free," 1014. Amendment suggested by Legislative Assembly of Western Australia to substitute the words "between the states" for "throughout the Commonwealth," 1014; agreed to 1020. Amendment by Mr. Barton to add to the clause the words-"But goods imported into any state before uniform duties of customs have been imposed, and thence exported into another state within two years after the impostion of such duties, shall on arrival in the latter state be liable to the duty (if any) chargeable on the importation of such goods into the Commonwealth, less the duty (if any) which was paid in respect of the goods on their importation into the former state," 1020. Amendment by Mr. Holder for the insertion in Mr. Barton's amendment, after the word "state" where first occurring, of the words "either before or after the establishment of the Commonwealth," 1023; amendment withdrawn, 1030. Amendment by Mr. Holder for insertion in Mr. Barton's amendment, before the word "state," of the words" colony, province, or," 1030; agreed to, 1030. Amendment by Sir Philip Fysh for the addition to Mr. Barton's amendment of the following:-"And the full amount of duty chargeable on the importation of such goods under the Commonwealth Tariff shall be taken to have been collected in the state to which such goods have been so exported," 1030; withdrawn, 1031. Amendment by Mr. Henry to omit from Mr. Barton's amendment the word "two," with a view to substitute "one," 1035; negatived, 1035. Mr. Barton's amendment agreed to, 1036. Amendment suggested
by Legislative Assembly of Western Australia re permitting states to regulate the importation of opium or alcohol, 1036; negatived, 1036; clause, as amended, agreed to, 1036. Clause reconsidered, 2365; amendment by Mr. Isaacs for insertion, after "free," of the words "from taxation or restriction," 2365; negatived, 2367.

Clause 90-(Accounts to be kept until uniform duties of customs have been imposed), 1036. Amendment by Mr. Reid for substitution of new clause proposed by Finance Committee, 1037; Finance Committee's clause agreed to, 1039; clause reconsidered and amended, 1906, 2375; amendment by Sir Philip Fysh, 2375; amendment negatived, 2378; new clause agreed to, 2378.

Clause 91-(Expenditure of Commonwealth), 1039; struck out, 1041.

Clause 91A-(Application of net revenue from Customs and Excise), reconsidered, 2422; amendment by Mr. Barton for insertion, at commencement of clause, of the words "Until the imposition of uniform duties of customs, and for five years thereafter," 2424; agreed to, 2431; amendment by Mr. Brown agreed to, 2431.

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New clause 91A proposed by Sir Edward Braddon (re proportion of net revenue to be applied towards expenditure of Commonwealth), 2378; carried, 2379.

Clause 92-(Payment to each state for five years after uniform Tariff), 1041. Amendment by Mr. McMillan to substitute "three" for "five," 1043; negatived, 1048. Amendment by Mr. Reid to substitute clause proposed by Finance Committee, 1042; discussed, 1048, 1059; amendment agreed to, 1084.

Clause 93-(Distribution of surplus). Amendment by Mr. Barton to give effect to Finance Committee's proposal that, "after five years from the imposition of uniform duties of customs all surplus revenue over the expenditure of the Commonwealth shall be distributed month by month amongst the several states on the basis which the Parliament deems fair," 1085. Amendment by Mr. Symon to insert, before "five years," the words "not less than," 1085. Mr. Symon's amendment withdrawn, 1089. Mr. Barton's amendment carried, 1089. Amendment by Mr. Glynn for the addition to Mr. Barton's amendment of the words-"After the expiration of ten years from the imposition of uniform duties of customs, all surplus revenue or the expenditure of the Commonwealth shall be distributed from month to month among the several states, in proportion to the numbers of their people, as shown from time to time by the latest statistics of the "Commonwealth," 1090; amendment negatived, 1099; clause, as amended, agreed to, 1099; reconsidered, 2380; amendment by Mr. Glynn, 2380; negatived, 2381.

New clause proposed by Mr. Henry (to follow clause 93), enabling the Parliament to render financial aid to any state, 1100; negatived, 1122. Similar clause suggested by Parliament of Tasmania, negatived, 1653.

New clause proposed by Mr. Barton re customs duties in Western Australia, 1122. Amendment by Sir John Forrest, 1124; amendment withdrawn, 1140. Amendment by Sir George Turner, 1140, 1146; further amendment by Sir John Forrest, 1166; Sir John Forrest's amendment negatived, 1190; Sir George Turner's amendment withdrawn, 1191. Amendment by Mr. Deakin, 1191; discussed, 1202;
Mr. Deakin's amendment withdrawn, 1211; further amendment by Mr. Deakin, 1211. Amendment by Sir John Downer negatived, 1233. Amendment by Mr. Symon, 1234; negatived, 1238. Mr. Deakin's amendment carried, 1238. Amendment by Mr. Glynn for addition to Mr. Deakin's amendment to enable the Parliament after the expiration of one year from the adoption of uniform duties to repeal the provision, 1241; Mr. Glynn's amendment negatived, 1243; clause, as amended, carried, 1243; clause reconsidered and amended, 1911 again reconsidered, 2382; amendment by Mr. Holder prohibiting a lower duty being charged on goods originally imported from beyond the Commonwealth than that charged on similar goods not originally so imported, 2382; amendment agreed to, 2385.

New clause proposed by Mr. Isaacs (keeping accounts for first five years after uniform duties), 1244; negatived, 1247.

Clause 94-(Audit of accounts), agreed to, 1249.

Clause 95-(No derogation from freedom of trade), 1250. Amendment by Mr. Barton to strike out clause, with view of substituting a new clause, 1250; discussed, 1262. Amendment by Mr. Higgins to render invalid any law or regulation made "with a view of attracting trade to ports of one state as against ports of another," 1262, 1271; Mr. Higgins' amendment negatived, 1318. Amendment by Mr. Barton for the substitution of the following new clause (95A):-"The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof," 1319. Amendment by Sir John Downer for the omission from proposed new clause of the words "The Commonwealth shall not give preference," with the view of substituting "Preference shall not be given," 1335-7; clause 95 struck out, 1337; Sir John Downer's amendment negatived, 1348; amendment by Mr. Higgins for addition to Mr. Barton's proposed new clause for the purpose of prohibiting the making of "any law or regulation relating to railway rates with a view of attracting trade to ports of one state as against ports of another," 1348; Mr. Higgins' amendment carried, 1356; amendment by Mr. Reid to provide "That nothing in this Constitution shall be taken to interfere with the power of any state or authority constituted by a state to arrange rates upon lines of railway so as to secure payment of working expenses and interest on the cost of construction," 1357; Mr. Reid's amendment negatived, 1369; progress ordered to be reported with the view of obtaining an instruction to the committee, 1370; motion by Mr. Barton (in Convention) for an instruction to the committee enabling them to postpone the consideration of proposed new clause in substitution for clause 95 until after the consideration of another clause to be proposed in substitution for that clause, agreed to, 1370; motion by Mr. Barton (in committee) for postponement of further consideration of proposed new clause in substitution for clause 95 until after consideration of a new clause to be proposed by Sir George Turner, 1370; motion by Mr. Reid that the committee reconsider clause 95 as amended, 1371; Mr. Reid's motion withdrawn, 1371; Mr. Barton's motion agreed to, 1371; new clause (95B) proposed by Sir George Turner, to follow clause 94-"The Parliament may make laws to provide for the execution and
maintenance upon railways within the Commonwealth of the provisions of this
Constitution relating to trade and commerce, and to forbid such preferences or
discriminations as it may deem to be undue and unreasonable, or to be unjust to
any state," 1372; Sir George Turner's new
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clause carried, 1408; reconsidered, struck out, and new clause substituted, 2390;
motion by Mr. Barton for reconsideration of clause 95A as amended, agreed to,
1408; Mr. Higgins' amendment (re preferential railway rates) struck out, 1409; Mr.
Barton's proposed new clause (95A) further considered, 1410; amendment by Mr.
O'Connor for the addition of a proviso that "nothing in this Constitution shall be
agreed to, 1506; clause struck out, 2386; new clause substituted, 2386-90.
New clause (95c) proposed by Mr. Grant:-"Nothing in this Constitution shall
prevent the imposition of such railway rates by any state as may be necessary for
the development of its territory, if such rates apply equally to goods from other
states," 1506; amendment by Sir George Turner, for the insertion, after "may," of
the words "in the opinion of the Parliament," 1508; amendment by Mr. Holder, on
Sir George Turner's amendment, to substitute for "Parliament" "Inter-State
Commission," 1509; Mr. Holder's amendment agreed to, 1509; proposed new
clause, as amended, carried, 1510; clause struck out, 2392; new clause substituted,
2392-3.
New Clause (95D) proposed by Mr. Reid, providing that "due consideration
shall be given to the financial responsibility incurred in connexion with the
construction and working expenses of state railways," 1510; agreed to, 1512. Clause
reconsidered, 2390; incorporated in new clause (95B) proposed by Mr.
Barton, 2390; amendment by Mr. Glynn (for Mr. Higgins) re differential railway
rates, 2390; negatived, 2391; amendment by Sir George Turner for omission of
reference to Inter-State Commission with a view of substituting "the Parliament,"
2391, 2431; amendment negatived, 2392, 2434; new clause agreed to, 2392, 2434.
Clause 96."The Parliament may make laws constituting an Inter-State
Commission, to execute and maintain upon railways within the Commonwealth,
and upon rivers flowing through, in, or between two or more states, the provisions
of this Constitution relating to trade and commerce," 1523; amendment suggested
by House of Assembly of South Australia to omit "may make laws constituting,"
with a view of substituting shall constitute," 1512; amendment withdrawn, 1525;
amendment by Mr. Kingston to insert "There shall be" at beginning of clause,
1525; amendment agreed to, 1535; consequential amendment agreed to, 1535;
amendment by Dr. Quick, to strike out the words "upon railways," agreed to,
1536; amendment by Dr. Quick, to omit the words "and upon rivers flowing
through, in, or between, two or more states," agreed to, 1536; amendment by Mr.
Barton for the insertion, after "Constitution," of the words "and of any laws made
thereunder," agreed to, 1538; clause, as amended, agreed to, 1539. Clause
reconsidered, 2393; amendment by Sir George Turner for omitting, at
commencement of clause, the words "There shall be an Inter-State Commission,"
with a view of substituting "Parliament may constitute an Inter-State
Commission," 2394; amendment negatived, 2395; formal amendment by Mr.
Clause 97-(Powers of Commission), agreed to, 1539.

Clause 98-(Taking over public debts of states), 1540; amendment by Mr. Glynn re making the taking over of debts compulsory, 1541, 1573; amendment negatived, 1577; amendment by Mr. McMillan to provide that the Parliament "may" take over "all or any part of the debt of any state. subject to the consent of the state," 1577 amendment by Sir George Turner to omit "may," and substitute "shall," 1583; Sir George Turner's amendment carried, 1593; amendment by Sir George Turner rendering Parliament "liable for the public debts of the states existing at the establishment of the Commonwealth," 1593; amendment withdrawn, 1633; amendment by Sir George Turner to omit all the words in Mr. McMillan's amendment after the word "over," 1633; amendment negatived, 1641; Mr. McMillan's amendment, as amended, negatived, 1653; clause agreed to, 1653.

CHAPTER V.-THE STATES.

Clause 99-(Continuance of powers of Parliaments of the states), agreed to, 642.

Clause 100-(Validity of existing laws), agreed to, with verbal amendments, 642-3.

Clause 101-(Inconsistency of laws), agreed to, 643-4; reconsidered, 1911.

Clause 102-(Powers to be exercised by Governors of states). Amendment by Legislature of Tasmania, negatived, 644; clause agreed to, 644.

New clause 102A-(Re appointment of Governors of states), proposed by Sir John Forrest, 1702, 1706. Amendment by Dr. Cockburn, 1711; amendment negatived, 1717. New clause negatived, 1717.

Clause 103-(Saving of Constitutions), struck out, 644-5; new clause in substitution proposed by Mr. Barton, and agreed to, 645.

Clause 104-(Application of provisions referring to Governor), agreed to, 645-6; new clause suggested by the House of Assembly

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of South Australia, to follow clause 104 (rendering members of the Commonwealth Parliament incapable of sitting as members of state Parliaments), negatived, 646.

Clause 105-(Enabling a state to surrender any part of its territory to the Commonwealth). Verbal amendment suggested by the Parliament of Tasmania, negatived, 646; clause agreed to, 646.

Clause 106."After uniform duties of customs have been imposed, a state shall not levy any impost or charge on imports or exports, except such as may be necessary for executing the inspection laws of the state; and the net produce of all imposts and charges imposed by a state on imports or exports shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth," 646; amendment suggested by House of Assembly of South Australia to insert "and excise" after "customs," 646; negatived, 647; amendment suggested by Legislative Council of New South Wales to omit all the words after "state" (line 6), 647; negatived, 652; amendment by Mr. Glynn, for the insertion after "state" (line 6), of the following:-"Or by way of payment for services actually rendered in improvement or maintenance of ports
or harbors, or in aid of navigation," 652; Mr. Glynn's amendment withdrawn, 652; amendment by the Parliament of Tasmania to omit the clause, negatived, 652; clause agreed to, 652.

Clause 107-(Prohibiting a state from maintaining, without the consent of the Parliament of the Commonwealth, any military or naval force, and from taxing the property of the Commonwealth), 652; agreed to, 653.

Clause 108-"A state shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts," 653 amendment suggested by the Legislative Council of Tasmania to insert, after money, the words "unless the Parliament otherwise determines," negatived, 654; amendment suggested by the Legislative Assembly of New South Wales to omit "nor make anything but gold and silver coin a legal tender in payment of debts," and insert "unless the Parliament otherwise determines," negatived, 654; clause agreed to, 654.

Clause 109-"A state shall not make any law prohibiting the free exercise of any religion," 654. Amendment by Mr. Higgins to insert, after "not," the words "nor shall the Commonwealth," and after "religion" the words, "or imposing any religious test or observance," 656. Amendment by Sir Edward Braddon for the insertion of words enabling a state to prevent "the performance of any such religious rites as are of a cruel or demoralizing character, or contrary to the law of the Commonwealth," 657. Mr Higgins' amendment negatived 664. Sir Edward Braddon's amendment withdrawn, 664. Amendment suggested by the House of Assembly of Tasmania to add to the clause the words "Nor appropriate any portion of its revenues or property for the propagation or support of any religion," negatived, 664; clause struck out, 664.

New clause proposed by Mr. Higgins in lieu of clause 109 (re free exercise of religion), which had been struck out, 1769. Amendment by Mr. Symon, 1775; Mr. Symon's amendment negatived, 1779. Mr. Higgins' new clause carried, 1779.

Clause 110-"A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth, nor shall a state deny to any person within its jurisdiction the equal protection of the laws," 664. Amendments suggested by the Legislative Assembly of New South Wales, and the Legislative Council of Tasmania, to omit the words "make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth," 665; clause discussed, 665; agreed to 688. Amendment by Mr. Wise to insert the words "The citizens of each state" at commencement of the clause, 679; amendment. negatived, 685. Amendment by Mr. O'Connor to insert, after "not" (line 1), the words "deprive any person of life, liberty, or property without due process of law," 688; negativ ed, 690. Amendment by Mr. Glynn to insert, after "deny," the words "to the citizens of other states the privileges and immunities of its own citizens," negatived, 691; clause struck out, 691.

New clause proposed by Mr. Symon in lieu of clause 110 (re rights of citizens of states), which had been struck out, 1780. Amendment by Mr. Wise, 1785; amendment withdrawn, 1-88. Amendment by Dr. Quick, 1788 negatived, 1797. Amendment by Mr. O'Connor, 1797; withdrawn, 1802; proposed new clause agreed to in amended form, 1802; reconsidered, 2397; amendment by Mr Deakin,
agreed to, 2398.

Clause 111-(Recognition of Acts of state of various states), agreed to, 691.

Clause 112-(Protection of states from invasion and domestic violence), 691. Amendment by Mr. Gordon to substitute "attack" for invasion, 691. Amendment withdrawn, 692. Amendment suggested by the Legislative Council of Victoria enabling the Commonwealth to intervene for the protection of a state against domestic violence, when, "in the opinion of the Governor-General," the intervention is necessary for the preservation of the public peace, negatived, 692; clause agreed to, 692.

Clause 113-( Custody of offenders against laws of the Commonwealth) 692; agreed to with formal amendments, 693.

CHAPTER VI.-NEW STATES.

Clause 114-"The Parliament may from time to time admit to the Commonwealth any of the existing colonies of [name the existing colonies which have not adopted the Constitution], and may from time to time establish

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new states, and may, upon such admission or establishment, make or impose such terms and conditions, including the extent of re-presentation in either House of the Parliament, as it thinks fit," 694. Amendment suggested by the Parliament of Western Australia to omit the words "the Parliament" negatived, 694. Amendment suggested by the Parliament of Tasmania to substitute "shall" for "may" (line 1) negatived, 694. Amendment suggested by the Parliament of Tasmania for the insertion, after "Commonwealth," of the words "in accordance with the provisions of this Constitution," negatived, 694. Amendment suggested by the Parliaments of New South Wales and Western Australia, to omit all the words after "new states," 4694; negatived, 696. Amendment suggested by the House of Assembly of South Australia" to omit the words "including the extent of representation in either House of the Parliament," 696; negatived, 698; clause agreed to, 698.

Clause 115-"the Parliament may make such laws as it thinks fit for the provisional administration and government of any territory surrendered by any state to and accepted by the Commonwealth, or any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit," 698. Amendment by Mr. Barton to omit the word "provisional," agreed to, 698. Amendment suggested by the Legislative Council of New South Wales to omit the words "any territory surrendered by any state to and accepted by the Commonwealth, or," negatived, 698. Amendment suggested by the House of Assembly of South Australia to add to the clause the following words:-"No federal territory shall be alienated in fee simple, nor shall it be leased for a longer period than 50 years, except upon payment of a perpetual rent, which shall be subject to periodical appraisement at intervals of not more than ten years," 698. Amendment by Mr. Glynn to amend proposed amendment by omitting all the words after "fee simple," with a view to insert "except by way of exchange for other territory, nor
leased except in perpetuity at its fair annual rent, subject to periodic appraisement at intervals of not more than fourteen years, in a manner to be determined by Parliament," 698. Mr. Glynn's amendment negatived, 699. Amendment suggested by the House of Assembly of South Australia negatived, 699; clause, as amended, agreed to, 699.

Clause 116-(Alteration of limits of states), agreed to, 699.

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New clause 117A-(Re division of Queensland after adoption of Constitution by that colony), proposed by Mr. Walker, 1690; withdrawn, 1702; again proposed, 2398; negatived, 2400.

CHAPTER VII.-MISCELLANEOUS.

Clause 118-(Providing for seat of government of the Commonwealth being determined by the Parliament), 700. Amendment suggested by the Legislative Council of New South Wales to provide that the seat of government should be "in Sydney, in the colony of New South Wales," 700. Suggestion by Dr. Cockburn, that the words "seat of government of Australia" should be substituted for "seat of government of Commonwealth," 700. Amendment by Sir Edward Braddon to provide that the seat of government should be "in some suitable place in Tasmania," 702; Sir Edward Braddon's amendment negatived, 703. Amendment by Mr. Lyne to provide that the seat of government should be "in the colony of New South Wales," 704; Mr. Lyne's amendment withdrawn, 712; clause agreed to, 712; clause reconsidered, 1802. Amendment by Sir George Turner that seat of government "shall be within federal territory," 1802. Amendment by Mr. Lyne for the addition of the words "and within the colony of New South Wales," 1802. Mr. Lyne's amendment negatived, 1805. Amendment by Mr. Peacock for the addition of the words "and within the colony of Victoria," 1805; amendment negatived, 1810. Sir George Turner's amendment carried, 1815; clause, as amended, agreed to, 1816.

Clause 119-(Power to Her Majesty to authorize Governor-General to appoint deputies), agreed to, 712-13.

Clause 120-(Aborigines of Australia not to be counted in reckoning population), 713. Amendment suggested by the Parliament of New South Wales to insert the words "and aliens not naturalized," 713; amendment negatived, 714. Clause agreed to, 714.

CHAPTER VIII.-AMENDMENT OF THE CONSTITUTION.

Clause 121-(Mode of amending the Constitution)-

Paragraph 1-"The provisions of this Constitution shall not be altered, except in the following manner:" agreed to, 716.

Paragraph 2-"Any proposed law for the alteration thereof must be passed by an absolute majority of the Senate and of the House of Representatives, and shall thereupon be submitted in each state to the electors qualified to vote for the election of members of the House of Representatives, not less than two nor more than six calendar months after the passage through both Houses of the proposed law." Amendment suggested by Legislative Assembly of Victoria to omit "absolute," with a view of substituting other words, negatived, 716. Amendment
suggested by the Legislative Assembly of Victoria to omit "and," with a view of inserting the following words:-"or in case of difference between the two Houses be referred in manner provided by this Constitution to the direct determination of the people. If passed

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by a majority of the Senate and of the House of Representatives, the proposed law," 716; amendment negatived, 765. Amendment suggested by the Legislative Council of New South Wales for referring proposed amendments of the Constitution to the state Parliaments, negatived, 766. Paragraph 2 agreed to, 766.

Paragraph 3-"The vote shall be taken in such manner as the Parliament prescribes," agreed to, 766.

Paragraph 4-"And if a majority of the states and a majority of the electors voting approve the proposed law, it shall be presented to the Governor-General for the Queen's assent. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails," 766. Amendment suggested by the House of Assembly of South Australia to omit all the words after "Queen's assent," negatived, 766. Paragraph agreed to, 766.

Paragraph 5-"But an alteration by which the proportionate representation of any state in either House of the Parliament, or the minimum number of representatives of a state in the House of Representatives, is diminished shall not become law without the consent of the majority of the electors voting in that state," 766. Amendment by Mr. Higgins for the insertion, after "But," of the words "for a term of twenty years from the establishment of the Constitution," 769; amendment negatived, 770. Paragraph agreed to, 770. Amendment by Mr. Glynn for the addition to the clause of a proviso enabling a proposed law for the amendment of the Constitution passed in each of two successive sessions of Parliament with a periodical election of half the senators between, to be presented to the Governor-General for the Queen's assent, if passed by certain majorities, 771; negatived, 772. Clause agreed to, 772.

New clause 121A-(Re laws declared by the High Court to be *ultra vires* being subsequently referred to the electors), proposed by Mr,. Holder, 1717, 1723; withdrawn, 1732.

Schedule agreed to, 772.

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Drafting Committee's amendments-Copy of Bill as revised by Drafting
Committee presented by Mr. Barton, 2439; motion by Mr. Barton for an instruction to the committee of the whole" that they have leave to deal with the amendments of the Drafting Committee either by one resolution or by such resolutions as they see fit," agreed to, 2440; Drafting Committee's amendments considered in committee of the whole, and dealt with, 2440.

Motion by Mr. Barton-"That this Convention, having reconsidered the Constitution as framed prior to the adjournment from Adelaide to Sydney, together with the suggested amendments forwarded by the several Legislatures, now finally adopts the said Constitution, with the amendments agreed to, as shown by the report which has been this day finally adopted," 2464; agreed to, 2465.

Motion by Mr. Barton "That this Convention cordially invites the Prime Minister of each colony here represented to provide for the supply of copies of the Draft of the Commonwealth of Australia Constitution Bill, as now finally adopted by this Convention, to the electors of his colony," 2466; speeches by Sir Edward Braddon, 2478; Sir Richard Baker, 2480; Mr. Isaacs, 2486; Mr. Holder, 2493; Mr. Deakin, 2497; Mr. Symon, 2507; Mr. McMillan, 2509; Mr. Trenwith, 2511; Mr. Glynn, 2514; motion agreed to, 2516.

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amendments considered, 2440.

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On Mr. Deakin's amendment for the omission from clause 53-(Exclusive powers of the Parliament), of the first portion of sub-section 1, giving the Parliament exclusive powers to make laws with regard to "the affairs of the people of any race with respect to whom it is deemed necessary to make special laws," 255.

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OFFICIAL RECORD OF THE DEBATES
OF THE AUSTRALASIAN FEDERAL
CONVENTION (THIRD SESSION), HELD
AT PARLIAMENT HOUSE,
MELBOURNE, VICTORIA.
Thursday, 20th January, 1898.

Meeting of Convention - Petitions - Representation of Queensland - Suspension of Standing Orders - Official Record of Debates - Adjournment.

The members of the Convention met in the Legislative Assembly chamber of Parliament House, Melbourne, this day, at twelve noon, pursuant to the adjournment of the Convention at Sydney, on 24th September, 1897.

The PRESIDENT took the chair.

PETITIONS.

Mr. GLYNN (South Australia). -

I beg to present a petition from 1,643 electors of the Province of South Australia, praying that the Convention shall adopt the principle of the Hare-Spence method of voting in the elections for the Federal Parliament. The petition is respectfully worded, and contains a prayer. I move that it be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

TO THE AUSTRALASIAN FEDERAL CONVENTION.

The petition of the undersigned electors of the Province of South Australia humbly sheweth as follows:-

1. Your petitioners hold various opinions with regard to political questions generally, and adhere to various parties.

2. Your petitioners, while desirous of leaving undisturbed the rule of the majority, are anxious that the minority should not be absolutely silenced.

3. Your petitioners believe that under the ordinary methods of election by majorities the Senate in the Federal Parliament will be in special danger of being an Assembly not fairly or really representative of the electors.

4. Such danger will be greatly increased by the smallness, of the number to be elected from time to time, as compared with the very large number of the electors-

   Either party organization by the ticket system will secure to the major party (however small its majority) the entire representation, to the exclusion of the minority, (however large); or

   Multiplicity of candidates (through lack of organization) may give excessive representation to a minority and, even exclude the majority.
5. Your petitioners are convinced that the application of the Hare system of voting (similar to the system lately introduced in Tasmania) will insure that (as far as the number of representatives will allow) elected candidates will fairly and in due proportion represent all the electors.

Your petitioners therefore humbly pray that your House will, in framing the Constitution of Federated Australia, provide for the election - especially of senators - by means of the said Hare system.

And your petitioners as in duty bound will ever pray.

Mr. BARTON (New South Wales). -

I have to present a petition from Dr. Andrew Ross, of New South Wales, praying that certain provisions may be made in the Federal Constitution with a view to the prevention of the conferring of titles, and also to provide for impeachment in cases of corruption. I beg to move that the petition be received.

The motion was agreed to.

REPRESENTATION OF QUEENSLAND.

The PRESIDENT. -

I desire to acquaint the Convention that, in continuation of the correspondence with Queensland which took place during the session at Sydney, I addressed a letter to the Acting Premier of Queensland, and received from him a reply, both of which I will ask the Clerk to read, and I will then call on the leader of the Convention to move that it be recorded in the minutes.

The CLERK read the correspondence, as follows:-

FEDERAL CONVENTION, 1897.
(New South Wales.)
Parliament House,
Sydney, 24th September.

Sir,-Referring to previous correspondence re the subject of the adjournment of the Convention for the purpose of enabling Queensland to be represented thereat by representatives directly appointed by the electors of the colony, I have the honour to inform you that the Convention, at the instance of its leader, the Hon. E. Barton, this day unanimously adopted the following resolution:-

That this Convention desires to express its gratification at the announcement contained in the Hon. Sir Horace Tozer's communication, and its fervent hope that representatives of the people of Queensland will take part in its adjourned deliberations.

The Convention has now adjourned, and will re-assemble at twelve o'clock noon on Thursday, the 20th January, 1898, at Parliament House, Melbourne.
I have the Honour to be,

Sir,

Your obedient servant,

C. C. KINGSTON,

President Australasian Federal Convention.

The Hon. Sir H. Tozer,

Acting Premier of Queensland.

Chief Secretary's Office,

Brisbane, 29th September, 1897

Sir,-Referring to previous correspondence on the subject of the adjournment of the Federal Convention for the purpose of enabling this colony to be represented thereat, and especially to your letters of the 20th and 24th inst. respectively, communicating resolutions adopted by the Convention in favour of the proposed adjournment, I have the honour to express the gratification of this Government at the manner in which the resolution of the Legislative Assembly of Queensland conveyed in my telegram of the 17th inst. was received, and at the subsequent action of the Convention in regard to the adjournment of its meetings until the 20th of January next.

I have the honour to be, Sir,

Your most obedient humble servant,

HORACE TOZER.

The Right Hon. C.C. Kingston,

President of the Australasian Federal Convention, Adelaide.

Mr. BARTON (New South Wales). -

I beg to move that the correspondence be recorded in the minutes.

The motion was agreed to.

SUSPENSION OF STANDING ORDERS.

Mr. BARTON (New South Wales). -

I beg to move the suspension of the standing orders for the purpose of enabling a motion to be proposed, without notice, with regard to making an official record of the debates of the Convention.

The motion was agreed to.

OFFICIAL RECORD OF DEBATES.

Mr. BARTON (New South Wales) moved -

That an official record of the debates of this Convention be made by the Parliamentary Debates Staff of Victoria.

The motion was agreed to.

ADJOURNMENT.
Mr. BARTON (New South Wales). -

Honorable members will recollect that at the time we adjourned in Sydney the Convention, in committee, had proceeded with the discussion of the clauses of the Commonwealth of Australia Bill as far as the 70th clause, except that one or two of the clauses prior to that clause had been postponed, and that the latter half of clause 52, on which we were then engaged, had been postponed. The proceedings will be taken up, of course, at that part of clause 52, relating to the functions and powers of the Parliament, which we had reached when we adjourned in Sydney. It now becomes fit to inquire whether the Convention shall proceed with its work today, or whether it shall adjourn, as usual, till tomorrow. I have no particular opinion on the subject. I have every confidence that the work of the Convention will be assiduously pursued until it is concluded; but I am informed that the Convention is not fully constituted yet that the Premier of Tasmania and some other members from that colony have been detained on board ship by adverse weather. The representatives from Western Australia have only just arrived, and I dare say that my right Honorable friend (Sir John Forrest) is very anxious to know what the Finance Committee are doing. Therefore, I should really like to take the sense of the Convention as to whether we should adjourn or not. I will put myself in order by moving that the Convention do now adjourn. If the majority do not wish that it should adjourn, I shall be prepared to withdraw that motion. It is only proposed formally to ascertain the wishes of the Convention.

Sir GEORGE TURNER (Victoria). -

I beg to second the motion. As a rule, I would not be in favour of adjourning at this early stage of our proceedings; but seeing that some of the representatives are unavoidably absent, and remembering that the Convention in Sydney, because some of the Victorian representatives could not get there, kindly adjourned the first meeting, so that we might all be present before we commenced our work, I think it would come with a bad grace on our part were we to attempt to object to the adjournment of the Convention at the present time. I have, therefore, great pleasure in, seconding the motion proposed by the, leader of the Convention.

The motion was agreed to.

The Convention adjourned at nine minutes past twelve o'clock noon.
Friday 21st January, 1898.


The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITION.

Sir WILLIAM ZEAL (Victoria). -

I have the honour to present a petition from the executive officers of the Australasian National League, with reference to matters now being dealt with by the Convention. I beg to move that the petition be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:--

To the Right Honorable the President and Members of the Australasian Federal Convention, in session assembled:

The humble petition of the undersigned, the executive officers of the Australasian National League, humbly sheweth:

1. That your petitioners represent a large and influential body having a considerable membership in New South Wales, Victoria, and South Australia, who are deeply interested in the question of the federation of Australasia, now under consideration by the Convention.

2. That amongst the provisions of the Draft Constitution of the Commonwealth is one for the establishment in Australia of a Court of Appeal, the judgments of which shall as regards all cases between individuals, be absolutely final, and shall as regards matters affecting the proposed Commonwealth, or any constituent state, thereof, be also final, save in cases in, which Her Majesty the Queen shall be pleased to grant, special leave to appeal to Her Majesty.

3. That your petitioners are of opinion that there should be a Federal Court of Appeal; but humbly urge, that they ask not the concession of, a privilege but the maintenance of an important right, for the proposed extinction of which no adequate reason has been shown; which has not been withdrawn from their fellow subjects in Canada, and the abrogation of which right of appeal to the Privy Council would take away one of the highest privileges of a British subject. It would also seriously prejudice the material interests of Australia by depriving the British capitalist of his right
to appeal to his own courts in serious cases, and thus prevent the inflow of British capital, upon which the colonies largely depend for their development; and it would constitute a serious menace to the integrity of the empire by severing one of the strongest existing ties between the Australian colonies and the British Crown, besides making Australia almost the only, self-governing part of the empire in which such a right would not exist.

4. Your petitioners, therefore, humbly pray that such amendments may be made in the Commonwealth Bill during the present session of the Convention as will preserve to Australian and British litigants in the Australian courts the final right of appeal to her Majesty in Privy Council.

5. And your petitioners will ever pray.

STATISTICIANS' REPORTS

Mr. WISE (New South Wales). -

I would like to ask the leader of the Convention a question without notice. It is whether he could take steps to procure, and to have laid upon the table, the data upon which Mr. Coghlan has based his latest series of figures relating to federal finance? At the same time, I desire to call the honorable gentleman's attention to a letter by the Hon. Edward Pulsford, which appeared in the Sydney Morning Herald of Wednesday; and to, ask that copies of that letter be laid on the table. I have no doubt that it will prove, of the same advantage to the Convention as Mr. Pulsford's former letters did, in enabling honorable members to determine the value of Mr. Coghlan's figures.

Mr. BARTON (New South Wales). -

Of course I have no power to command the laying upon the table of any return or information. All that I can do is to recommend to the executive authorities of this or that colony that the information be given. I shall ask the Right Hon. the Premier of New South Wales to lay upon the table if he can obtain possession of them-the data upon which Mr. Coghlan has acted or written, and also the further paper by Mr. Pulsford to which the honorable member has referred. Of course, I cannot, conceal from myself that a controversy of this kind is one of extreme importance. The question of whether any gentleman in a public position who brings forward figures is a statistician or a mere arithmetician depends upon his data. I must confess, myself, that I place no confidence in any statements of the kind' that we are accustomed to receive from statisticians unless the basis of their authority is disclosed to the Convention.

Mr. SYMON. -

Supposing there is no basis?

Mr. BARTON. -
If we do not have the basis of a statement disclosed, the conclusions are no more than a sum in arithmetic of which we have not the preliminary figures.

Mr. MCMILLAN (New South Wales). -

If I am in order, I would also like to call the attention of the Premiers or Treasurers of the different colonies to the fact that, as far as I know, up to the present time, we have received no reliable statistics on all the salient matters relating to finance later than 30th June, 1896. It seems to me that, if we are to discuss federal finance early next week, we ought to have, some document laid on the table of the Convention bringing right up to the very latest date all the salient figures upon which we shall have to base our decisions.

PUBLIC DEBT.

Sir GEORGE TURNER (Victoria), pursuant to an order of the Convention (dated 26th March, 1896), laid on the table a return relating to the public debt of the various colonies.

The return was ordered to be printed.

POPULATION AND ELECTORS.

Sir GEORGE TURNER (Victoria) presented, pursuant to an order of the Convention (dated 6th September, 1897), an amended return showing the population and number of electors in each electoral district of New South Wales and Victoria.

The return was ordered to be printed.

DAYS OF MEETING.

Mr. HOLDER (South Australia). -

I desire to ask the leader of the Convention, without notice, whether it is proposed that we shall sit tomorrow?

Mr. BARTON (New South Wales). -

I shall not be favorable to any sitting on Saturdays until the urgency of any such proceeding is disclosed. I may say, while I am on my legs, that I think that during the first two weeks of the Convention it will not be necessary to sit at night and that I shall only suggest night sittings when I find that, it becomes a matter of urgency. I hope that we shall be able to conduct our business between half past ten o'clock in the morning and five or half-past, five o'clock in the afternoon.

FEDERAL FINANCE.

Dr. QUICK (Victoria) moved -

That a return be laid before this Convention showing according to the latest statistics, the annual expenditure of which each colony represented in the Convention will be relieved in respect of the following services and
works (with interest thereon at 3 per cent.), to be transferred to the Commonwealth:- (1) Customs and Excise department; (2) Postal, telegraphic, and telephonic services; (3) Naval and military defence; (4) Ocean beacons, buoys and ocean lighthouses and light-ships; (5) Astronomical and meteorological observations; (6) Quarantine; (7) Census and statistics; (8) Currency and coining (Mint); (9) Weights and measures; (10) Bankruptcy and insolvency; (11) Copyrights, patents, trade-marks; (12) Immigration and emigration; (13) External affairs (Agency-General departments).

He said-I have been induced to ask for this return on account of the vagueness of the table of returns in Mr. Coghlan's pamphlet, referred to by Mr. Wise. In one of his returns on page 2, in giving the expenditure of which each colony will be relieved after the transfer of services to the Federal Government, Mr. Coghlan states that the total amount will only be £958,500. He says that New South Wales will be relieved of £418,500; Victoria, of £307,500; South Australia, £41,500; Western Australia, of £158,000; Tasmania, of £33,000; making a total of £958,500. I have reason to believe that that return, which on the face of it does not show the data on which it is founded, is based merely upon the services which are to be transferred immediately upon the establishment of the Commonwealth, by section 59 of the Bill, and that it does not take into consideration the whole of the other services and departments and works enumerated in my motion. I agree with Mr. Wise that it is desirable that a return of this kind, showing such important results, ought to set forth the data on which it is founded; and therefore I have been induced to table this motion. The returns, I think, can be easily and promptly compiled. The information will, I have no doubt, be of great; use to honorable members during the sittings of the Convention.

The motion was agreed to.

INTERCOLONIAL FREE-TRADE.

Sir JOHN FORREST (Western Australia) presented "A Note on Intercolonial Free-trade in relation to Australian Federation as affecting Western Australia," by Mr. Edgar T. Owen, Government Actuary of Western Australia, and moved that it be printed.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

The CHAIRMAN (Sir RICHARD BAKER). - Before calling on any particular clause, I think it is my duty to point out to the committee certain
irregularities which have occurred. During our last sitting in Sydney the Drafting Committee was authorized, by a resolution of the Convention, to suggest drafting amendments in clauses which had been considered. Inadvertently, no doubt, they also suggested amendments in clauses which had not been considered, and the amendments were put, as every honorable member knows, in globo. They were not seen by me. They were not seen by any one in the Convention, so that the somewhat anomalous position now exists that we have made amendments in clauses which we have not considered. I do not say that they are of importance, but, inasmuch as it is contrary to practice and to standing orders to work backwards in a clause, these amendments, if they were taken as having been properly passed, would prevent us from considering prior amendments in clause 69, and in other clauses, which had been suggested by the Legislatures. I intend, therefore, with the consent of the committee, to ignore these amendments, and to ask the leader of the Convention to move them again.

Mr. BARTON. -

Hear, hear.

Discussion (adjourned from 24th September, 1897) was resumed on clause 52, setting out the powers of the Parliament.

The CHAIRMAN. -

When the Convention adjourned we had reached clause 52. Sub-sections (23) and (24) were amalgamated, and Mr. Howe was about to move a new sub-section. I will now call upon the honorable member to proceed with his proposal.

Mr. HOWE (South Australia). -

Sir Richard Baker, it is always a pleasure to respond to a call made by you, and with great respect I would again bring under the notice of the Convention the additional power which I desire to confer upon the Federal Parliament that is, the power to grant invalid and old-age pensions. My amendment will, I presume, come after subsection (24).

Mr. SYMON. -

Sub-sections (23) and (24) have been amalgamated.

Mr. HOWE. -

Then my sub-section will take the place of subsection (24). The amendment is to insert as a new sub-section.

Invalid and old-age pensions.

I have been long of opinion, after giving a good deal of thought to this question, that it could be more effectually dealt with by the Federal Parliament than by the Government of any individual Australian state. When we come to trace the history of this question we find that all the great philanthropists, and many leading statesmen, of the world are
endeavouring, by all the means in their power, to solve the problem of how best to provide for the deserving and aged poor. We know that some of the countries in the old world have already adopted legislation dealing with this question, and we know that others are on the eve of doing so. Australasia has not been altogether asleep with regard to this question. Several of these colonies have, from time to time, appointed commissions to inquire into the question, and the province which I have the Honour to belong has recently appointed a Royal commission to inquire into the subject. We are a little behind one part of Australasia. I refer to New Zealand. That country has already passed through one branch of her Legislature a measure dealing with the question. We are more favorably situated for legislation of this kind than many of the countries in the old world inasmuch as our poor are not so numerous in proportion to the population; neither is their misery so great. It therefore follows that this ulcer of our civilization will be more amenable to judicious treatment. I know this is not the time nor place to discuss in detail the various systems which have been adopted by some countries, or the systems which have been formulated on broad lines of thought; neither, indeed, is it the time nor place for me to enter into detail with regard to systems, although there are one or two which I prefer. But I cannot conceive of any country being better situated to pass legislation of this kind with a greater likelihood of success than our own country. Here we have an extensive continent, divided from the rest of the world by thousands of miles of ocean, where the workers must essentially be almost always Australians, whose interests will be mutually bound together by kindred ties, and must always remain so. Therefore, we have a better opportunity for legislature successfully on a question of this kind than they have even in some countries in which the system obtains, I am quite willing to admit that the question of old-age pensions is one of great magnitude; but, looking at our isolated position, no country is more favorably situated for carrying out such a system. It is admitted on all hands that the existing means adopted for dealing with this great ulcer of our civilization are altogether inadequate, and that it is imperative that some other system more in keeping with the times should be adopted. I hope when it is adopted that system will not take from the people their self-respect. There is no reason why those who receive pensions from the State should be looked upon with contumely. Does any one speak with scorn of those who at present are pensioners of the State-men who have given their best services to the country, who have neglected their own interests in rendering those services? Certainly not. Then why should not the humblest
worker in Australia, or in any other country, participate, perhaps in a more modest degree, in those privileges which at present exist? I know that when we review the industrial conditions obtaining at the present time, pervaded as these are with machinery the most efficient that the brain of man can devise, we find therein another reason why there is so much suffering, particularly among the aged, because all these factors tend to give the pride of place to youth and activity rather than to age and experience. I know there are records which prove conclusively that the virtue of thrift has been practised to a great extent by the people of Australia; the records of our financial institutions, savings banks, benefit and building societies, all show that that is the case. They show that the thrift practised by the people of Australia is unparalleled in the history of the world. But there is another side to this question, and a very gloomy and sorrowful side indeed. There are records of bankruptcy, of reckless, and in some instances corrupt, management, when the hard earnings of the people and the savings of a lifetime have been swept away-have melted away like snow before the noonday sun. Through this reckless and corrupt management men who thought they had provided for their old and declining age found themselves stranded on the cheerless shores of charity, and many of them have had to accept even amongst ourselves the pauper's lot. The pauper's lot in Australia or in any other country is to the deserving poor one of the saddest and darkest blots on our civilization. I know that we cannot speak with too much respect or praise of our benefit societies. I have been a subscribing member to those societies since I have attained manhood, and I claim to know a little of their inner working. So far as assistance in sickness or in case of accident is concerned they are unsurpassed; but as a means of providing for the aged poor, or providing for old age, they have not hitherto been a success. I claim to have read a great deal on this question, and to know something about the opinions of the workers of this country, and I have come to the conclusion that what is wanted is a national system, under which people who are subject to its laws shall run no risk of failure-so that those who subscribe to a certain fund should know that in their old and declining age they should not eat the bread of dependence. It is only a national system that can give such an assurance. We know that there are thousands and thousands who have attained the meridian of life, and that many have passed it. We know that many of these men have through various causes, and through no fault of their own, been unable to provide for their old age. That is a very serious thing indeed to them. They reason to themselves in this way:"Here have I given all my best services to the country; I have fulfilled all the obligations
of a citizen, a father, and a husband in an exemplary manner, and I see nothing in front of me in my old and declining days but charity." We all know that it is the fear of poverty that drives many excellent men almost to despair. The Right Honorable Mr. Chamberlain, in speaking on this subject, denounced the present system obtaining for the relief of the aged poor. He said that of all the workers of Great Britain one out of every two, if he has attained to the age of 65 years, has to seek parish relief. As he said-"This inadequate provision for old age is a disgrace to the nation, and a danger to all social order." I have given this subject considerable study, and I have come to the conclusion that any system to be effective must be compulsory. We are met sometimes by people who dearly love liberty-and no one loves liberty more than I do myself-who say that it would be an encroachment upon the liberty of the subject if we compelled people to contribute to an old-age pension fund. All direct taxation, however, is compulsory, and I presume direct taxation is necessary for the good government of the country. If that be the case, does it not follow that a compulsory contribution to an old-age pension fund is for the good government of the people? and, more than that, it will wipe away for ever the stigma of pauperism from the people of Australasia. I hope we shall be able to formulate a Bill-I have no doubt we shall-that will be acceptable to the people of Australia, and be adopted by them; but I hope that the Draft Constitution which will be submitted to the people will contain amongst its provisions the power which I respectfully wish to insert. I am sure that if it does contain such a provision the measure will not be the less acceptable to the people of Australasia.

Mr. TRENWITH (Victoria). -

I sympathize most heartily with the sentiment which has animated the honorable member (Mr. Howe) in introducing this proposal at this stage. I shall not attempt to discuss the desirability of old-age pensions further than to say that I think them extremely desirable. The question we have rather to consider is whether this power should be conceded to the Federal Parliament at this stage, and it seems to me extremely undesirable that it should. The honorable member has said that his colony, and some other colonies, are behind at least one colony of the Australasian group-New Zealand. New Zealand is actively engaged in considering this question, and Victoria recently appointed a commission to inquire into the matter, and it may happen that those colonies, or other colonies, may be prepared immediately to proceed with some effective scheme for the provision of old-age pensions. But if, as we all hope, federation is achieved as the result of this effort, and that power is handed over to the Federal Parliament, those colonies will be unable to move until they have converted such other
colonies as are not up to their standard on that point. Therefore, I think it extremely undesirable to put the provision suggested in the Constitution. It seems to me that it will be better to leave this matter as it is— a matter of domestic legislation—until under the powers of the Constitution the various states choose voluntarily subsequently to hand them over. Honorable members know that there is nothing to prevent the states at any subsequent stage from handing over by their own consent any subject which it seems to them can be better dealt with by the Federal Parliament than by the estate Parliaments. But in view of the position which this question has reached in the public mind— in view of the position which some of the states have taken up in reference to the question— it seems to me that it would impede rather than expedite the adoption of this principle if we were to put it in the Commonwealth Bill, because some of the opponents of the measure in the states may urge, and urge with effect, that the Federal Parliament would be dealing with this question, and therefore that we should not deal with it at this juncture. Not wishing to delay the business of the Convention, I shall refrain from saying more on this point. It is to me an extremely important point. It is one which might be discussed with very great interest, and with very great advantage if we had the time, but our object is rather to make a Constitution under which reforms of this character will be easily achieved than to discuss those reforms; and it seems to me that we shall be proceeding better— that we shall be conducing to a more speedy adoption in detail of this principle— if we leave it out of the Commonwealth Bill.

Dr. COCKBURN (South Australia).—

Had the honorable member who moved the insertion of this clause proposed to make it an exclusive power of the Commonwealth, then I think that the arguments used by the honorable member (Mr. Trenwith) would have applied; but I anticipate that he has no such intention, nor has any member of the Convention any intention to make this an exclusive power, but merely to make it one of the concurrent powers of the Commonwealth, under which the Commonwealth can act, at the same time not forbidding any individual state from acting.

Mr. HIGGINS.—

Would the honorable member give two pensions to the same person?

Dr. COCKBURN.—

Certainly not. I would simply leave it to the Commonwealth, at any time that the Federal Parliament thinks proper, to bring this power into operation. Of course it will not do so in the first instance, because at present the whole matter is in the experimental stage. But I see great
difficulties in the way of any individual colony establishing a permanent system of old-age pensions unless it is shared in by the whole of Australia, because it stands to reason that if any one colony makes specially good terms for the treatment of the declining years of its citizens, there is a danger of those advantages being shared in by those who did not contribute in any way to the curing of them; and I say that, although the Parliaments in the separate colonies will have to experiment in this direction individually, nothing great will ever be achieved until the matter is taken up by the Commonwealth; and, therefore, I think we should give power in this Constitution to the Commonwealth to adopt a system of old-age pensions just whenever the common sense of the Federal Parliament thinks it proper to do so—to leave it a concurrent power, not an exclusive power; and I, for one, will have the greatest possible pleasure in supporting my colleague in this matter. As both speakers have said, this is not the time to enter into the details of any scheme, or to discuss the merits of a scheme. I believe it will be quite unnecessary, because I think we all agree that it will be well that a system of old-age pensions should obtain everywhere, and, believing this, I ask that this Convention should give power to the Commonwealth Parliament to take steps in this direction whenever the time should appear to it proper to do so.

Mr. REID (New South Wales). -

On the merits of the matter I am with the honorable member (Mr. Trenwith) and therefore I wish to be understood as having said all that he said. As to the point raised by the honorable member (Dr. Cockburn), I should like to point out that he is under a misapprehension. Owing to the necessity for maintaining laws on the subjects specified in clause 52 until federal

Dr. COCKBURN. -

Not so far as they are not inconsistent.

Mr. REID. -

Then my honorable friend is landed in this extraordinary position, that he seriously proposes that we are to have two systems of old-age pensions, and that each is to prevail so long as it is not inconsistent with the other.

Dr. COCKBURN. -

No.

Mr. REID. -

That would be the effect of the legislation.

Dr. COCKBURN. -

As soon as individual colonies work out a successful scheme, the Federal
Parliament will adopt it, and then there will be one law—the federal law.

Mr. REID. -

That seems beautifully simple, but it really is not, I assure the honorable member. The sooner that honorable members realize this central fact that any one of the subjects specified in clause 52 is intended to be absolutely and exclusively within the province of the Federal Parliament the better. The structure of the clause is, as it is for the reason I have mentioned, that until there are some federal laws the state law must prevail to keep everything alive to keep the administration of these subjects alive. If the power were made exclusive honorable members will see what would happen. The moment the Federal Constitution was adopted and came into force all the state laws on these subjects would lapse, the subject would have passed away from the state into the province of the Federal Legislature. That would bring about a state of confusion which we and the draftsmen of this Bill were careful to avoid, so that the point put by my honorable friend (Dr. Cockburn) instead of making the proposition of the honorable member (Mr. Howe) more eligible really is rather against it.

Mr. MCMILLAN. -

It seems to me that the point we have to discuss is twofold; first, whether this is exclusively a power which should be given to the state Parliaments and not to the Central Parliament, and second, whether, even in the very nebulous and doctrinaire shape we may imagine, this is a power which ultimately, by the evolution of things, may be taken over by the Central Parliament. Is it wise, at the present stage, to put such a power in the Central Parliament? I hold that this is essentially a line of distinction between centralization and real federation, that this is essentially a matter, from my point of view, which should be absolutely left to the local Parliaments. On the very principle of federation why should the states in one part of Australia have to bear the pauperism of the states in another part? It seems to me that it is one of those things which might give an immense amount of trouble in placing this Constitution before the people of the different colonies. We want to retain our autonomy in all matters essentially of local significance.

Mr. WISE. -

I differ from my honorable colleagues in the representation of New South Wales in this matter, and on one ground only—that it appears to me impracticable to devise any scheme for giving old-age pensions within the limits of any single state. Constituted as Australia is, with a population moving about from one colony to another, no single state could safely offer
to the labouring population the inducement of a system of old-age pensions
with a certainty that its resources would not be used by those who had no
title by domicile or by having laboured in the state to the benefits of them.
New Zealand is slightly differently constituted, because there is not that
steady flow of population from New Zealand to elsewhere that there is in
these colonies. I think that there is a slight misunderstanding as to the
object of this clause. It is not the intention of those who are engaged in
framing a Constitution that all the powers and authorities conferred by
clause 52 shall be immediately exercised by the Federal Parliament. On the
contrary, we may expect that many of the powers and authorities conferred
by this clause will continue to be authorized by the states, as has been
happening in the United States, possibly for a century after the foundation
of the Commonwealth. Further, and I do not wish in any way to extend my
remarks, it seems to me that there is another consideration which ought to
weigh with us in considering this proposal. If it is carried, and if the
Federal Parliament should see fit to use the powers which would thus be
conferred, nothing would be more likely to stimulate a feeling of interest in
the continuance of the union than the fact that all the inhabitants of the
Commonwealth depended on its continuance for their support in indigence
and old age. It would strengthen the feeling in favour of the union, just as-if
without pedantry I may go back to an historical example-the foundation
of the National Debt strengthened the feeling in favour of William the
Third and the Hanoverian succession.

Mr. Reid. -
Then it might have averted the Civil War if they had had it in America.

Mr. Barton. -
If they had pensioned all the negroes.

Mr. Wise. -
It might. I am not dealing with this matter from interests which are
stronger than interests which arise from mere pecuniary advantages; and
the interests which occasioned the civil war were not those which would be
restrained by any consideration of £ s. d. At the same time, if we create in
the mind of every citizen of Australia a feeling that he has a living
pecuniary interest in the continuance of the Union, we do a great deal to
remove possible causes of difficulty and danger in the future. But my main
reason for supporting it is that I believe that it is utterly impracticable for
any colony, working by itself, to establish a system of old-age pensions.

Mr. Glynn. -
The representative of New South Wales (Mr. Wise) has pointed out the
chief difficulty which will operate in not allowing federal legislation upon
the subject of old-age pensions. I can, I think, speak with some knowledge
upon the matter, because I am a member of the commission which has been appointed in South Australia to deal with the whole subject. The great difficulty which will arise in formulating a scheme of national insurance is that the sphere of the operation of the business of the state would not be wide enough. Averages must be struck on a wide basis. In New Zealand they have found that they have had to abandon one class of State insurance—they have had no scheme of old-age pensions yet, but I refer to the industrial branch—because the limits of work were not wide enough to allow of any certainty between the premium paid and the business that would correspond to these payments. In Australia there is another difficulty which will be experienced, and

it is a difficulty which will not operate so much in any of the older countries of Europe. Our population is comparatively migratory in character. No system of old age pensions, no matter, what you might adopt, would be financially satisfactory, unless the benefits were postponed from periods varying from 40 to 60 years. In Germany 70 is the limit; in Denmark, I think, 65; in French schemes which have been tried and regarded as unworkable there was a limit of something like 70 years. In this country, owing to the migratory character of our population, federal provision should be made because otherwise, after the coming into operation of this system in a state—say South Australia—a man leaving would lose his grip upon the benefits that would accrue to him in going to another colony. From the purely actuarial point of view I should rather prefer a system of federal insurance than a system of pensions provided by particular states. Again, it has been said by Mr. Reid that we shall be in this matter interfering with the power of state legislation, because the Federal Parliament will, while it legislates, have exclusive power. I do not, however, think that this is the operation of the section under the heading of "the States" to which the right honorable gentleman has referred.

Mr. REID. -

What I say is that when the Federal Legislature Legislates upon any matter dealt with in this clause its legislation will take the place of the legislation of the states, so far as they are consistent.

Mr. GLYNN. -

I understand the position of the right honorable gentleman, but you cannot have inconsistent legislation which will endow the Federal Parliament with the power of giving old-age pensions. Moreover, I think the more efficient way is to give this power to the Federal Parliament, trusting in the united wisdom of those who represent the colonies in the Federal Parliament, and believing, that they will not pass any scheme if
after a little experience of the working of the Parliament they find that a scheme of the kind will be more effectively worked by the state Legislatures.

Mr. KINGSTON.

I shall be found supporting the representative of South Australia (Mr. Howe), and I trust that he will press the amendment to a division. I am fortified in the view I take by the reflection; that not only is the honorable member who has just sat down (Mr. Glynn) a member of the commission appointed in South Australia for the express purpose of considering this question, but Mr. Howe himself occupies a similar position, and the active interest he has shown in the subject, and the attention he has undoubtedly given to the consideration of it, and the ripe experience of both honorable members, entitles their view to receive the serious consideration of the Convention. We are much indebted to Mr. Howe for the mode in which he has brought the matter under our notice, appealing alike to our reason and to our sympathies. I cannot follow the objection which has been taken by some honorable members to the Amendment. It has been past to us that if we embody this power in clause 52 the effect will be to give exclusive jurisdiction to the Commonwealth Parliament. Is it to be believed that that will be the natural result? Certainly it would not. Section 52 is express in its terms, and is in contradistinction to section 53, which declares that the Commonwealth Parliament shall have exclusive jurisdiction in respect to certain specified matters. But we are not dealing with section 53, but with section 52, in regard to which the position is different altogether. Furthermore, by section 99 it is provided that all powers which, at the establishment of the Commonwealth are vested in the Parliaments of the several colonies are to continue, subject to the provision that where the federal legislation and the state legislation happen to clash, the federal legislation shall prevail. What, then, are we afraid of? All that is sought at the present moment is to give power to the Federal Parliament, if they see fit, to legislate upon this question. If they do not see fit to legislate for a time, the power which at present rests with the local legislatures will continue in full force and effect. And the result is that the gloomy predictions which are indulged in by some honorable members simply amount to this: That they are not prepared to trust the Federal Parliament in this matter. They consider that the probability is that the Federal Parliament will legislate in the matter. If the Federal Parliament, does not there can be no fear of the consequences. But it is feared that if they do legislate they will legislate in such a way as will be inimical to the best interests of the Federation and the
states. Sir, I have no such fear. I think that we are calling into existence a body which should command the full confidence and respect of this community. I am inclined to confer upon them the greatest powers. And if there were any comparison between the provincial Legislatures and the Federal Legislature, I should be inclined to say that the probability is that the wisest provision would be for legislation upon this subject to be carried into effect by the body having the widest representation, and not by the Parliament of any particular state. I do trust under these circumstances—especially when we have the recommendation of gentlemen whose special business it has been to inquire into this question, and when we are told by them that any attempt to deal with this question provincially gives rise to great difficulties which can be more satisfactorily obviated by the federal body—it being, I say, their conviction that federal legislation can best grapple with the question, I would ask this Convention to trust the Federal Parliament which it is proposed to call into existence in the sure and certain hope that in the exercise of their powers they will legislate wisely and well.

Mr. BARTON. -

As far as my humble judgment extends, I can scarcely conceive of a subject as little fitted for federal action as this question. It seems to me to have been a recognized thing from the beginning that matters of external consideration and matters of cs, the management of their industrial concerns, and the making of their labour laws, we should nevertheless say to them—"You may ruin half of your people by land laws, ruin half of them by sumptuary laws, and, nevertheless, we, when you have done your work of ruin, will take over your poor as a Commonwealth, and pay them a pension." The responsibility should be made to rest with the power; and while the power remains—as it ought to remain—with the various states in respect to their territory, their land, and their social and domestic concerns, the result of the exercise by them of that power should remain with those states.

Mr. HASSELL. -

I have great sympathy with the amendment which has been moved by Mr. Howe, and I hope that he will press it to a division. I wish to accord my support to him. I think this is a question of such importance that it should not be left to the local Parliaments, but should be dealt with by the Federal Legislature. Therefore it is that I support Mr. Howe's amendment.

Sir JOHN DOWNER. -

I am sure that we are all very much obliged to Mr. Howe for the manner in which he has brought this matter before the Convention, but it seems to me that we have sufficient controversial matters to deal with already without increasing the area of difference. I agree entirely with what Mr.
Trenwith has said. Whether this is a proper matter for federal legislation or not, every one will admit is doubtful. Certain gentlemen who have taken a considerable amount of trouble in the consideration of the matter, have come to one conclusion, and certain other gentlemen who have considered the subject come to another conclusion. It is, at all events, a highly debatable question, and, being a highly debatable question, would it not be better to leave it out of this Bill at the present time? The Bill gives power to the states to commit this jurisdiction to the Commonwealth whenever they think it is the proper matter for federal action. I have every sympathy with my honorable friend who has proposed this amendment, and every wish to support him, but I am at the same time exceedingly anxious that no fresh trouble should be added to the troubles which are already almost more than we can satisfactorily deal with; and I can conceive of no addition to the Bill which will be more fruitful of differences and of controversy than that which is proposed by Mr. Howe.

Mr. PEACOCK. -

I think that all of us will agree that the representative of South Australia (Mr. Howe) has brought this matter forward in a manner which commands our sympathy; and we shall agree also that this is a question in which the people outside, especially the working classes, take a great amount of interest. I agree with what has been said by Mr. Reid and by Mr. Trenwith, that it would be wrong on the part of people outside to form the opinion that there is no sympathy evinced in this matter on the part of the members of the Convention. I should regret very much if people thought that there was that lack of sympathy on the part of honorable members in connexion with the question. But, at the same time, I agree with Mr. Trenwith that if an amendment such as is proposed were carried, there would be the greatest difficulty in resisting other demands which would be made to engraft upon this Constitution propositions dealing with a variety of subjects which would very much increase the perplexity that already exists in preparing a satisfactory federal scheme. If it be right that the Federal Parliament should deal with the cases of those of our fellow citizens who have been so unfortunate as to grow old without providing themselves with sufficient means of subsistence, would it not, be equally right to include under this Constitution, to be dealt with by the Federal Parliament, matters relating to our sick and infirm? If because we are brothers of Australia, the poor in one part are to receive consideration from the Federal Parliament, would not that also apply to those who are in our different hospitals—our different benevolent institutions? And how will we be able, if this
amendment be carried, to resist an amendment moved by some other member of the Convention in the direction I have indicated? And if it be right in connexion with this matter, would it not be a debatable question as to whether we should not consider the whole question of empowering the Federal Parliament to determine the best form of education for our young children? If we carry this amendment we will be loading the Federal Constitution so heavily that it will cause a feeling outside, and particularly in our local Parliaments, that this Convention is attempting a system of unification rather than a system of federation? And if it be true, as has been stated-and I am not going to venture my opinion against the opinions of the legal members of the Convention-that the local Parliament will still be able to deal with this question, I will ask any of the practical politicians in this chamber and numbers of them have been connected with politics long before ever I thought of the subject—whenever the question comes up for consideration in the local Parliament, will it not be urged by those who are opposed to old age-pensions that the matter should be left to the Federal Parliament, with the result that nothing will be done, and thus great harm will ensue to a movement which it appears to me is not now in a practical way before the different colonies, and upon which we require further information? For these reasons I urge my honorable friend not to press his amendment to a division, as I believe he will thereby doing harm to a movement to which every one wishes success, no matter what his views on local politics may be, and which will better the unfortunate condition of those of our aged fellow colonists who, when distress comes on them, have no means of obtaining sustenance. If the amendment is pressed to a division, I shall be found opposing it, not because I have no sympathy with the feeling that has prompted it, but because I think we are loading the Federal Constitution too much, and that if we add this amendment, we cannot resist other amendments of a similar nature which may be proposed by other members of the Convention.

Mr. SYMON (South Australia).—

I rise to support the request that my honorable friend (Mr. Peacock) has addressed to my honorable friend (Mr. Howe)—not to press this amendment to a division. It is exceedingly undesirable that we should put on record either the carrying of this amendment or that we negative it. In either case our decision is liable to misapprehension. If we negative the amendment, that fact maybe used by the covert and sinister enemies of the federal cause in order to show that the Federal Parliament is not to be clothed with the power to do justice to those in distress and difficulty; and, on the other
hand, if we carry the amendment, we shall undoubtedly be withdrawing from the states a matter which is one of purely domestic or local concern, and one which, despite the remarks of my honorable friend (Mr. Wise) on the subject, the state Parliaments are much more competent to deal with than the Federal Parliament can possibly be. If there are difficulties in the way of dealing with this question in the local Parliaments—and that is the only question which Mr. Wise urged in support of the amendment—if there are difficulties in the way of local legislation, as undoubtedly there will be, in dealing with a complicated and troublesome subject of this sort, those difficulties will be tenfold in the Federal Parliament, which will not only have to deal with the subject as a large national question, but will also have to recognise diverging interests and diverging claims in the different colonies. I wish to add a few words in support of what Mr. Reid has said as to the effect of inserting these provisions in the Bill. I think it cannot be too emphatically declared and too constantly borne in mind that the moment the federal authority legislates the legislative provisions in this Bill are exclusive. They are either exclusive or concurrent. If they are concurrent it would be most mischievous to have the power to legislate in regard to old-age pensions exercised concurrently by the Federal Parliament and the Legislatures of the states. Look at the struggles there would be; look at the opportunities for corruption; look at the difficulties that might be occasioned in the state Legislatures in connexion with a matter of this sort, supposing there was already a system of state pensions, and it was sought also to introduce a system of national pensions. But if this power is exclusive, as I have no hesitation in affirming my own personal view that it is, you may have in one colony a system of state pensions prevailing on a fairly liberal scale, and your national and Federal Parliament introducing another system which the state may regard as parsimonious, and yet the federal legislation will wipe away the local legislation on the subject. Now, it is clear that the opportunities for difficulties to arise through the door being open for all manner of discontent and bitterness on this subject will be something we cannot exaggerate, and which we ought to do our very best to avoid. This being, therefore, as I believe, a matter of purely local concern, it ought to be left to the local Parliaments, and I emphatically agree with Mr. Peacock that we have no more right to introduce this question than we have to introduce the control of education, which we all agree should be left to the local Parliaments. No one can feel more deeply than I do the earnest and thorough manner in which Mr. Howe introduced this subject to the Convention. Our sympathies are with him. Our feeling is—and I think the fact ought to be
thoroughly well known—that this is a matter for domestic concern, just as all other similar matters are. Therefore, Mr. Howe will be acting wisely, and in that spirit which I am sure always influences him, and will promote the progress of our business, if he will withdraw his amendment, and not press it to a division.

Mr. LEAKE (Western Australia). -

In considering this amendment, the view that strikes me is that pensions may be of two kinds. There may be state pensions or there may be federal pensions; and, therefore, unless this provision is adopted, as proposed by Mr. Howe, what power will the Federal Parliament have to provide pensions for its Judges? I merely give that case as an illustration. Is it intended to deprive the Federal Parliament of the power to pension the civil servants of the Commonwealth?

Mr. GLYNN. -

This is altogether exclusive of that.

Mr. LEAKE. -

What power, without this provision, has the Federal Government to allow pensions?

Mr. GLYNN. -

Ample power.

Mr. LEAKE. -

Under what provisions?

Mr. GLYNN. -

Under its general control.

Mr. MCMILLAN. -

They are exclusively federal.

Mr. LEAKE. -

If that is so, my objection is met. As I understood the arguments of most honorable members, the intention was to place the civil servants of the state on a more favorable footing than the civil servants of the Federal Government; but if the Federal Government has the power to control this question of pensions, well and good, because I take it it was never intended that the civil servants of the Commonwealth should be deprived of a privilege which the civil servants of the state posses.

Mr. REID (New South Wales). -

I would not have again addressed myself to this question, but for the importance which it has assumed, especially in view of the haziness in some honorable members' minds as to the real scope of this clause 52. I cannot conceive how any honorable member of this Convention can fail to understand that all these powers in clause 52 are powers which are inserted there in order that the Federal Parliament, as soon as possible, shall, make
them exclusive powers of the Federation. Take the raising of customs, for example.

Mr. KINGSTON. -

Oh, that is expressly provided for.

Mr. REID. -

Indeed it is not in this clause.

Mr. KINGSTON. -

But there is express provision elsewhere in the Bill.

Mr. REID. -

Then take borrowing money on the public credit of the Commonwealth.

Mr. KINGSTON. -

That is as necessity arises.

Mr. REID. -

Take the postal, telegraphic, telephonic, and other like services. Take navigation and shipping; take the naturalization of aliens; take the waters of the Murray and the Darling.

Sir GEORGE TURNER. -

They say you won't let them take them.

Dr. COCKBURN. -

We will take them by-and-by.

Mr. REID. -

It is really almost startling to find that we have been on this Bill so long, and yet some honorable members do not see the foundation of the whole enterprise.

Dr. COCKBURN. -

That is what I am surprised at.

Mr. REID. -

And do honorable members seriously believe, seriously look forward to a vista of state and federal legislation on these 33 different subjects running concurrently? I could understand a lawyer enjoying such a prospect, but no other human being.

Dr. COCKBURN. -

Not necessarily, but not forbidden.

Mr. REID. -

And therefore they are matters of discretion?

Dr. COCKBURN. -

Yes.

Mr. REID. -

What an awful discretion! Now, turning away from that point to the
merits of this matter, there is no member of this Convention who sees more clearly than I do that there must be some system in each of these states of the nature of old-age pensions. From experience in New South Wales, I see that the state of things in the colonies has become such that some scheme of the kind will be absolutely necessary. There is, all through Australia, a displacement of men who have risen in years, which really leaves the old men of these colonies in a most humiliating position, and I, for one, have come to the point at which I emphatically believe in a system of old-age pensions in connexion with the different states. But do not let us forget that under the state arrangement of such matters there are scores of systems which can be carried out, but under the federal jurisdiction the source of the revenue for these old-age pensions will be strictly limited to Customs or direct taxation. There is no power in the Federal Parliament to carry out ideas which have been suggested with great force in the different colonies that these pensions should be derived by a certain system of licences on places of popular entertainment—taxes on admissions to theatres and race-courses. In our colony a select committee reported that the fund should be made—I am speaking from memory—by some charge on public amusements, race-courses, and so on, and taxes on various persons, licensed book-makers, for example.

An HONORABLE MEMBER. -

That is provincialism, purely.

Mr. REID. -

My honorable friend surely sees that the provincial Legislature having the command of all these sources of revenue for old-age pensions will be in a vastly better position for bringing them into effect than a body which is limited, as this federal power will be, to find the money for these old-age pensions out of its particular sources of revenue. I would not have spoken again but for the importance which this matter has assumed. I can see that there is no prospect of this amendment being withdrawn, and therefore I cordially agree with the other honorable members who wish it to be understood that, in voting as we intend to do, it is not because we have no wish to see the system of old-age pensions established here, but because we believe the states will have sources for establishing such a system infinitely better than those at the disposal of the Federal Parliament.

Mr. HOWE (South Australia). -

I do not rise for the purpose of closing this debate, but to thank honorable members, even those who have opposed the amendment, for the way in which they have discussed the matter. The Premier of New South Wales admits the desirability of—in fact, that he believes in-old-age pensions, but
he considers that the question should be left to each individual state. Now, I have given this subject a great deal of consideration. I would not have occupied the time of this Convention a moment if I could have brought my thoughts to run in the same groove as his. The more I think over the matter, the more I read of the subject, the more I am convinced that it is one for a Federated Australia—that it is a national question. Do we not hear the Premier of each of these colonies tell us at the public banquets given throughout the length and breadth of the land that we want to constitute Australia a nation? Now, I say that the poor of the nation belongs to the nation, and not to any individual parish or any individual province. You have admitted here that, within the four corners of this Bill, the Federal Parliament will have power to pension its officers in high positions, and that they will not, and that they shall not, contribute towards old-age pensions which are received from the nation, but under my proposal I wish to bring these humbler citizens within the scope of this Act. It is my desire that the workers of Australia—the workers of this nation that is going to be—shall be participators, though in a humbler manner, of the privileges enjoyed by those placed in high authority. Notwithstanding the arguments of honorable members who have taken objection to my motion, I am actuated by a desire to secure true federation. I preached federation long before it was a popular cause in this colony, and many years ago I travelled throughout the length and breadth of my constituency advocating it. I would, therefore, be the last to oppose any obstacle to its consummation. I have brought forward this amendment not to weaken federation, but to strengthen it. Here, in Australia, we have a great continent, divided from the rest of the world by thousands of miles of ocean, and how much more easy will it be for United Australia to undertake the administration of a pension fund than it is for countries in the old world—take, for example, the great German Empire—to do so. The people in those countries are not all on the same plane, as we are in Australia. Their populations are made up of people of different nationalities. Yet the wise and learned of the great nation of Germany—a country foremost amongst the great nations of the earth—have introduced a measure giving to their workers that which I seek to give to the workers of Australia. It is more difficult to administer a system like this in a country like Germany, where the people are not all of the same race, and do not all speak the same language, than it would be here, where we are bound together by ties of kindred, and where we have common mutual interests. The workers of this continent must for ages be a migratory class, they must go from one part of Australia to another to seek employment; but even if
they move from the Southern Sea to the Indian Ocean I want them all to be subject to the same law. But I do not want to pauperize them. My object is to wipe away pauperism altogether so far as the working and deserving poor of Australia are concerned. That will be done some day. All the philanthropists and the leading statesmen of the world recognise that fact, and why should we in Australia lag behind? Are we afraid to give power to the representatives who will be elected by the whole people of Australia to carry out the humane system of which I have been speaking? I see no reason why any impediment should be thrown in the way of my suggestion. We have not hesitated to federate the Postal departments of the various colonies. We say that every individual post-office throughout Federated Australia shall be subject to the control of the federal authority. Every one of these post-offices can be made an office of registration for the carrying out under the Federal Government of the scheme which I have proposed. So far as the remarks of the honorable and learned member (Mr. Barton) are concerned, I regret that his views should be such as he has expressed. He says that he does not wish to make this a national matter; that this is purely a provincial matter, and is a subject which should not be introduced here. That is the old cry. Leave the suffering and deserving poor to parish relief. That is what we want to abolish in Australia.

Mr. DEAKIN. -
That was not Mr. Barton's argument.

Mr. BARTON. -
I never said a word of the sort, nor a word that was like a word of the sort.

Mr. HOWE. -
Did I understand the honorable and learned member to ask why should one portion of Australia pay the cost of relieving the pauperism of another part?

Mr. BARTON. -
No, that was another honorable member's argument. What I said was this: That the states, by their social and domestic systems, might manufacture paupers and leave them for the Federation to pension.

Mr. HOWE. -
If we made it a national affair would not that be impossible?

Mr. BARTON. -
Not unless the federal authority takes over control of the land.

Mr. HOWE. -
I have already said that any system to be effective must be compulsory. If
I have anything to do in the framing of an old-age system by the Parliament of Federated Australia I shall insist upon every worker contributing to a certain fund. As I have already pointed out, the best of our citizens now try to make provision for a rainy day. Do not the records of our financial institutions show that this is so? Have not the workers of Australia been praised for the thrift which they have exercised? Certainly that is so. But, unfortunately, as I have already shown, failure often overtakes these institutions. They collapse, and the provision which the workers thought they had made for their declining days vanishes. No system but a national institution, through which they can contribute from year to year during a vigorous life, and thus make provision for the time when they will be incapable of longer supporting themselves will give security to the workers. I have been told by some honorable members that I am preaching socialism, but I love liberty as much as any man does, and I do not wish to deprive any individual of his liberty. But there are some things which a nation can achieve which cannot be successfully carried out by an individual or any section of the people, and this is one of them. I have been asked by the honorable and learned member (Mr. Symon), whose advice I very often follow, to withdraw this amendment. If I had not given to this subject the attention which I have devoted to it for a considerable time, I should accept his advice; but I had thought over the matter long and earnestly before I introduced it to the notice of the Convention at Adelaide. I again brought it forward during our sittings in Sydney; and now, for the third time, I ask honorable members to give the proposal their support. If I thought that the carrying of this motion would jeopardize federation, or hinder it at all, I should not persist in it. I believe, however, that the carrying of the amendment will be of assistance to federation. If we can tell the workers of this nation which we are about to build up that whatever they contribute to a pension fund will be available for their future support, that they need not fear bankruptcy or corrupt and reckless management, and that their independence will be secured from manhood to the day of their death, I think that that will strengthen the great cause for which we are working. I thank honorable members for the kind way in which they have dealt with the motion, whether they have spoken for or against it. Of course I value chiefly the proffered assistance of those who will be found voting with me when a division is called for. I have every desire to oblige my honorable and learned friend (Mr. Symon), but I honestly feel that I should be doing myself an injustice, and that the cause which I have so much at heart would be jeopardized if I withdrew the amendment. Consequently, whatever happens, I shall push the question to a division.
Mr. BARTON (New South Wales). -

I wish to occupy one or two minutes in relieving the Hon. Mr. Howe of a misapprehension which he has formed concerning my views upon this subject. I am not out of sympathy with the honorable member's amendment or with his proposal to establish state pensions. The question is one which has not reached the solving point with me. I am not quite sure whether it would not be an improvement to abolish poor-houses and destitute asylums, and spend the money which is at present devoted to their maintenance in the establishment of a system of state pensions. Some people may call this outdoor relief, others may think it a reward of toil; it does not matter in what way you phrase it. It may be that such a system would be a better system than that which we have now in the various colonies. All that I intended to say in my former remarks was that this was peculiarly a matter for each state to legislate upon; that as you left the land, which is really the source of every citizen's livelihood, in the hands of the several states, to establish a system of state pensions on behalf of the Federation would be to place in the hands of the states the manufacture of paupers, and to impose upon the Federation the responsibility of paying them pensions. I have not yet heard an answer to that argument. The honorable member (Mr. Howe) is always reasonable in all that he says, and has given us great assistance, sometimes sacrificing his own convictions to further the ends of federation; but I think that the advice of the honorable and learned member (Mr. Symon) is good advice. The rejection of the motion upon division will be read by those who do not look further than the bare print to mean that the Convention is against the consideration of the case of those who are left stranded after a life of toil.

Mr. SYMON. -

Against the principle. It will be supposed that the Convention is a conservative body which callously disregards the necessity for relieving human suffering.

Mr. HIGGINS. -

And it will be used against the cause of federation at the elections.

Mr. BARTON. -

When the question of federation comes to be put to a vote throughout Australia, this statement will be used as a strong lever against the acceptance of the Constitution.

Mr. KINGSTON. -
That is a strong reason for accepting the amendment.

**Mr. BARTON.** -

Nothing of the kind, unless we come to the conclusion that we are putting federation up to auction. If it is true that we want to popularize federation by adopting arguments and systems and propositions that are against our principles, then my honorable friend's suggestion is perfectly correct.

**An HONORABLE MEMBER.** -

We have to do what we believe is right.

**Mr. BARTON.** -

Yes, we have to do what we believe is right, without regard to the question of popularity one way or the other, and we are bound to act according to our own consciences. I take it we have no right, sitting as we do here, to gratuitously project a question upon the public in such a way that the decision, one way or another, will mean an attack upon the principles of federation from one section or another of its enemies. That is exactly the risk we are incurring. I am quite in sympathy with Mr. Howe, but I really do think that the advice that has been tendered to him is good advice. Knowing how strongly he is in favour of the consummation of federal union, I would put it to him again whether it would not be advisable not to run the risk of having this motion rejected, as it most certainly will be, and then having it said that those who reject it are against the principle which he advocates, when, as a matter of fact, the root of the principle, at any rate, is in the consciences and in the minds of all of us?

**Mr. DEAKIN.** -

In order that the issue may be placed clearly before those who criticise our action, it appears to be desirable to recall what has already been done. We must remark at the outset that the choice which is offered to us is, after all, largely a choice of procedure. It is not in the power of this Convention, while it allows clause 52 to remain as it stands, to altogether exclude from the purview of the Federal Parliament this question of old age pensions. That question can be remitted to the Federal Parliament at any time by any of the colonies which desire federal legislation from it.

**Mr. BARTON.** -

Under sub-section (35) of this clause?

**Dr. COCKBURN.** -

It can only be universal if every colony consents to it.

**Mr. BARTON.** -

That is so.

**Dr. COCKBURN.** -

And any one colony can stand out.
Mr. BARTON. - 

Under sub-section (35) it is not necessary for two colonies to agree. 

Mr. DEAKIN. - 

It only applies to those who concur. That is exactly the distinction I am going to draw. The issue between us is not as to the adoption of old-age pensions, but as to whether a majority in the Federal Parliament should be enabled to adopt a system of old-age pensions without the unanimous consent of the colonies, or whether it should only be enabled to adopt the system for those colonies which desire it. Our difference, therefore, is much smaller than represented. If a division is taken I shall be found supporting the federal view of this question, inasmuch as I have enough confidence in the judgment of the people of Australia to believe that those whom they will return will have ability enough to surmount the very many difficulties in the formulation of a just scheme. If we refuse to place in the hands of the Federal Parliament this power to legislate because of the intricacies of the question with which it will have to deal, or because there are possibilities that the power may be unwisely used, we shall have to strike out a great many more sub-clauses in clause 52. But since difference between us here is comparatively minor, and as it is capable of being misrepresented, the advice offered to Mr. Howe appears to us to be sound. If he is satisfied that he will be in a minority—and if one can judge from the addresses already delivered he will be in a comparatively small minority—he will not be helping the cause he has at heart by pushing his motion to a division at present. On the contrary, he will be simply placing certain members of the Convention in a position which will necessitate explanations on their part that can be of no advantage to federation or to the measure with which we are now dealing. Consequently, the honorable member might, at this stage at all events, reconsider his position. If he will do so an opportunity can be afforded and I have no doubt will be afforded, to him, if, after mature deliberation, he feels it necessary to go to a division at a later stage. In the meantime, he will have the advantage of further consideration, and will not be committed to one course or another. To take up, briefly, the challenge of the leader of the Convention, I would say that it does not appear to me that the argument which carries so much weight in his mind is one that is at all final on the question. I cannot conceive the possibility of any colony wilfully, or even with its own consent, manufacturing paupers of any kind, or pursuing a policy which could lead to that end. 

Mr. BARTON. -
I did not mean that.

Mr. DEAKIN. -

I can conceive what I would term a tory land policy which would have the indirect result of manufacturing paupers, and I can understand that such a policy, by manufacturing paupers, might indirectly cast its burden on the federal community.

Mr. KINGSTON. -

Not unless they choose to accept it.

Mr. SYMON. -

Try the single-tax policy.

Mr. DEAKIN. -

That might relieve it of a number of its paupers. I do not make that statement of the single tax as such, but a land tax might have that result. The leader of the Convention points to the divorce which exists between the Federal Parliament and the land as contrasted with the state Parliaments, and their relation to the land, but the difference is not so wide as his argument would imply. For, after all, there does rest dormant in this Constitution a power of direct federal taxation which can reach the land if it ever becomes necessary to do so. Consequently if it be found that by injudicious or injurious land systems this burden is being cast on the Federal Commonwealth, the Federal Commonwealth will fortunately have within its own power a means of remedying to some extent any such law, and of placing the burden where it ought to be placed-on the land.

Mr. BARTON. -

Would not that be the only rational thing for the Federal Parliament to do-to put on a land tax?

Mr. DEAKIN. -

Not necessarily, except in such extreme contingencies as the honorable member mentions, and even then I can see difficulties. The argument that affected me most, next to the argument of the leader of the Convention, was that used by Mr. Trenwith. Those who are in favour of old-age pensions cannot disguise from themselves the fact that the existence of such a power in the Federal Commonwealth would undoubtedly be an argument of considerable force that would be used in every colony against action on the part of that colony. Yet even this does not deter me, since it is so obviously a question which can in some of its aspects, at all events, be better dealt with on a national basis and in a federal way than by any single colony. I confess that in giving the vote I shall give, if this question goes to a division, I shall do so with some reluctance, because it may have the
effect of postponing temporarily, at all events, the adoption of this system in colonies that are prepared for it, until the bulk of the people were prepared for federal action. This does not seem to be a great difficulty, and having weighed it as well as I can, and appealed to Mr. Howe to postpone the idea of taking a division, I would say again that the choice offered to us is, or may be made, one of means. To put it frankly, it is a choice between giving the majority in the Federal Parliament power to impose old-age pensions against the will of some colony that does not desire them, and permitting old-age pensions to be established only in such colonies as may request the Federal Parliament to undertake that task for them. The issue is not whether there shall be old-age pensions, but whether the Federal Parliament shall have power to impose on any colony a scheme of which, as a colony, it may not approve.

An HONORABLE MEMBER. - Does the honorable member intend to vote for the motion if it goes to a division?

Mr. DEAKIN. -

Certainly; because this is distinctly a federal question, and that outweighs all other argument. The necessity of dealing with it implies the absolute necessity of dealing with it in a national way. I admit the immense difficulty. I agree with Mr. Wise that there will probably be a delay of many years before the Federal Parliament can attempt to legislate upon it. The proposal is novel to all of us, and naturally the Commonwealth would desire to see the effect of different systems tried in different colonies before attempting to select the best. In voting for this proposal I do so in reliance on the judgment and wisdom of the representatives of the federated people of Australia, confident that they will not leap the stile before they come to it, and that they will not attempt to deal with this question until they have obtained the experience necessary for guidance by studying the different state systems. But with that proviso it must be apparent to honorable members that this question cannot be finally and effectually dealt with except on a national basis. When the right time comes, and when the Federal Parliament finds itself fully equipped for its task, it will deal with the problem maturely, and ought to be able to equitably accomplish all that is desired.

Mr. MCMILLAN (New South Wales). -

I do not wish to take up the time of the Convention, but I must enter my protest against the mode of argument adopted on this question. It seems to me that we have to decide whether this is a matter for local supervision or for the supervision of the Federal Parliament; and for us to say that because there may be advantage taken of our action outside, or that it may be misapprehended, we intend to vote against our own principle is to my mind
a very unmoral thing to do. This is a very nebulous question at the present
time. It has never come to the forefront of practical
politics in any of the colonies, and it must, more or less, go through the
crucial test of large controversy under different conditions in different
colonies. I say again, as I said in a few words at the beginning, that it is to
me absolutely alien to the spirit of federation that the inhabitants of one
distant part, perhaps, of Australia should have to pay for the local
misgovernment and the pauperization of the people in another part of the
continent. Instead of this motion being, as has been put by some honorable
members, a great lever to carry this question before the populations of
Australia, it seems to me that if the new sub-section were inserted in the
Bill, I should be obliged on the public platform to say that it was a blow at
federation. The more we narrow this discussion down to the simple
question of the powers we would like to confer on the Federal Parliament
the better. We have nothing to do with the merits or demerits of pensions to
the aged poor. The honorable member was probably perfectly right in
digressing a little when submitting his amendment, but we have nothing to
do with the principle. The whole force of the argument is in favour of local
administration, and the common sense of honorable members should lead
them to exclude this question entirely from the powers to be conferred on
the Federal Parliament.

Mr. HOLDER (South Australia). -

I accept the challenge that has just been thrown down by the honorable
member. He says that we must determine this question on the issue of
whether or not it is a local or federal matter. I unhesitatingly declare that it
is essentially a federal matter. I will give my reasons. In these colonies, as
we all know, there are men who are in Victoria to-day who will be in South
Australia presently, and who many be in Queensland later on. These men
shift from state to state, and their case could not be dealt with by any sing

Mr. WISE. -

The wandering population cause a large part of the destitution.

Mr. HOLDER. -

That statement is perfectly correct. It would be impossible for South
Australia to establish a system of old-age pensions, because she would
never know for whom she would have to provide. Is she to provide for the
natives of that colony? Many of them might have spent their lives in New
South Wales. Is she to provide for those who are there to-day? Yesterday
they may have been in Western Australia, and to-morrow they may be in
Victoria. It will be impossible to deal with this question on narrow lines. I
agree with what Mr. McMillan has said as to honorable members voting,
no matter what the consequences may be, according to their conscientious convictions. I hope that they will do so; and I trust that we shall not see the honorable members who have to-day declared their adhesion to the principle of old-age pensions voting against the motion. I should be much inclined to doubt the sincerity of those honorable members who state that they favour old-age pensions if they voted against the motion, because the effect of their action would be to prevent the only effective means of introducing old-age pensions from being adopted. I would urge, therefore, apart from the ultimate consequences, that all those who are in favour of old-age pensions should vote for the motion.

Mr. TRENWITH (Victoria). -

I think it is scarcely necessary for me to say that I indorse the view held by Mr. Howe that it is desirable that those who have committed the offence of becoming old without becoming rich should have adequate provision made for the evening of their lives. I entirely dissent from and resent the expression of the honorable member (Mr. Holder), that any man who votes against this proposal is liable to be seriously doubted as to his views in favour of old-age pensions. We are here to consider, first of all, the adoption of a Constitution for the Federal Government of Australia, and we have been considering in connexion with that, how we can give a strong central government without infringing to too great an extent upon the powers of the respective states to deal with their own domestic affairs. We have spent the greatest part of our time in discussing what has been called state rights. I have said before, and repeat, that the best way to conserve state rights is to put nothing into the Constitution that is not absolutely necessary on national grounds, and to retain to the fullest possible extent the complete sovereignty of the states with reference to their own domestic affairs.

Mr. HOWE. -

This is a national affair.

Mr. TRENWITH. -

I have no hesitation in saying that I agree with the honorable member. I believe that ultimately this question must be made a federal question, but I think it extremely inexpedient to make it a federal question at this juncture. It has been said that the whole subject is in a nebulous condition. That is undoubtedly true. It has not even made its appearance in a nebulous form in some parts of Australasia. It has assumed a concrete shape in some of the colonies, and if it is put in this Constitution those who are opposed to the proposal, and there are some strong opponents, will have placed in their hands a good argument for delay. They will say-"Do not proceed with this
now, as there is power in the Federal Constitution to deal with the subject, and it can be much better dealt with federally than locally." I admit that, and I want my honorable friend to understand exactly my position. Even if it were in a nebulous condition in all the colonies, I, who hold it to be an extremely desirable principle, would favour its being placed in the Constitution; but I can see that instead of expediting the adoption of old-age pensions the placing of this proposal in the Constitution is calculated to retard it long beyond the existence of any person here. If it is left alone in its present condition, with the powers we have in this Constitution, it will be in the very near future adopted, I have no doubt, by some of the colonies. The honorable member (Mr. Howe) and the honorable member (Mr. Wise) were right in saying that the difficulty of administering the system locally will be found so great that the colonies that adopt it will agree to call upon the Federal Parliament to take it out of their hands.

Mr. Howe. -

That is the reason why I want to give them the power now.

Mr. Trenwith. -

They have the power in the Constitution as it is. We have been very careful to embody in this Constitution the most ample powers to the respective states to make federal questions what are now and what are to be in the near future domestic questions; so that, as their experience of federation increases, as they acquire greater knowledge of each other, and greater confidence in each other, it is to be reasonably assumed that they will hand over from time to time many subjects which they would be too jealous to hand over to the federal authority now. It seems to me this is one of those questions. As one who holds as strongly as the honorable member (Mr. Howe) or the honorable member (Mr. Kingston) that it should be a fundamental principle of every Government to provide for the old age and destitution of such citizens as may be left in that condition, I am afraid to put this proposal into the Bill, because I am confident that, instead of expediting it will retard the adoption of the principle. The Constitution for which the honorable member has been striving provides for a Parliament composed of representatives of the people in one branch in proportion to their number, and representatives of the states in another branch without regard to their number. Let us assume that this proposal were adopted, and that an immense majority of the people were in favour of old-age pensions. We shall have them struggling by means of the power in the Federal Constitution to achieve that end, and we shall have a very small minority resisting their desire; but if the question be left to the states, I venture to say, having heard the views of the Premier of
New South Wales, and knowing the views of many of the people there, that in that colony they will establish such a system at no very distant date. With reference to this colony, I know that there is a commission now in existence considering the question with a view to submitting a report to the next meeting of Parliament. I feel confident that at no very distant date this colony will adopt some form of old-age pensions. Having done so, and if they discover, as the honorable member (Mr. Howe) thinks they will, and as I think they will, that there are great difficulties in working out any system locally, surely that will be a great inducement to them to take advantage of sub-section (35), which provides that the Federal Parliament shall have power over-

Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any state or states, but so that the law shall extend only to the state or states by whose Parliament or Parliaments the matter was referred, and to such other states as may afterwards adopt the law.

We shall have one or more states agreeing to make this a federal matter, and we should achieve our object much more rapidly by that process than by adopting this proposal.

Mr. HOWE. -

Does the honorable member believe in a uniform system?

Mr. TRENWITH. -

I do.

Mr. HOWE. -

Then vote for my proposal.

Mr. TRENWITH. -

I have been labouring to very little advantage if I have not shown the honorable member that a uniform system is much more likely to be achieved by proceeding slowly than by carrying the proposal now before us, which would mean that we should have to wait until we convinced everybody of the advisability of adopting the system. If argument were wanted I would refer the honorable member to the friendly societies of which he speaks. There have been innumerable instances where friendly societies have worked into uniform action in exactly the way I have indicated the various colonies will work into uniform action by the adoption locally of this system. Friendly societies frequently adopt in their respective branches views that spread, until they call upon their central governing bodies to take charge of certain matters in accordance with the principles adopted in the smaller area. So this Commonwealth, if constituted, will, in some of its parts, I think, almost immediately adopt this principle. Then we should have one other state adopting the principle,
and later on another, so that having tried the proposal, having found out its advantages, and having discovered to the fullest extent the difficulty of working, they will call upon the Federal Parliament to assist them in giving effect to that principle which has had a trial, and which is gaining the confidence of the people by degrees. If we place this proposal in the Bill, when we come in this colony, as we shall very soon, to establish old-age pensions, we shall be confronted by our opponents with this strong argument which we shall have given them—that it is no use dealing with the question locally, as the Federal Parliament has power to deal with it, and probably will deal with it. We shall therefore be denied the opportunity of doing what we want to do locally until we shall have converted all the continent to our way of thinking. I prefer to do it tomorrow, or this year, or next year, rather than wait until we have converted the most conservative section in this colony to favour this most desirable institution.

Sir JOHN FORREST (Western Australia). -

I regret this matter has taken up so much time, but I wish to say a few words upon it. We appear to have made a bad beginning by discussing the question at such length. It seems strange that there should be so many advocates now for old-age pensions, when I was under the impression that the prevailing idea in the colonies was that the civil servants who had spent all their years until they had become old in the service of the country should receive no pensions. It seems that a newer light has been shed upon us, and not only are we desirous of pensioning those who have served the State—who have grown grey in its service—but we are also desirous of pensioning every one.

Mr. Howe. -

Only to keep him from starvation.

Sir JOHN FORREST. -

What about civil servants, who spend all their lives in the service of the State?

Mr. Wise. -

We tax the rest of the community to pay pensions to the civil servants.

Sir JOHN FORREST. -

I am of opinion that this question of old-age pensions has not yet become a very pressing one in Australasia, and I am very glad to be able to think that that is the case. There is no doubt, however, that, as time goes on, we shall have old and deserving poor here as they have in the older parts of the world. When that time does arrive I think it would be far better for us to allow the Federal Government to deal with this very great question rather
than that each state should deal with it in its own particular way. At any rate, I am of opinion we should give the Federal Government power to deal with the question in this Constitution. I see no reason why that power should be withheld. And, as to all the arguments of my honorable friend (Mr. Barton) and others, that we should be imposing upon a colony some obligations which it does not want, why, sir, this Federal Constitution throughout will have that effect. It will impose on colonies obligations which they do not want. We thoroughly understand that before we enter into a federation, and it will be no greater hardship for one colony to have imposed on it an obligation in regard to the aged poor than it will be to have placed on it an obligation in regard to any other matter. I think that the arguments used by my honorable friends (Mr. Holder and Mr. Howe) as to the migratory habits of the people are weighty. Take, for instance, the Colony which I represent, and to which hundreds of thousands of people have migrated recently. These persons may be old—certainly some of them are—and may require relief soon. They may have spent the best years of their lives in one of the other colonies, and have come to us perhaps in the decline of life. I do not presume for a minute that those who come to that far-off country to seek their fortunes will necessarily become a burden on the State; but still I think it is only right that this matter should be dealt with on an abroad basis—on a national basis—and that when it does become necessary to deal with it it should be dealt with as a whole, and not by the states in different ways. My reason for voting with my honorable friend (Mr. Howe) is because I believe that the work will be better done, and will be more likely to give satisfaction to the people of the whole of this continent. I do not believe in one colony doing the thing in one way, and another colony doing it in another way. I can see no reason why the Federal Parliament should not deal with the question just as effectively and quickly as a state Parliament. In fact, I think that the Federal Parliament will be able to deal with it in a far better and more just way, and for that reason, if it goes to a division, I shall vote with my honorable friend (Mr. Howe).

Mr. ISAACS. -

I must confess that I have been impressed, as the arguments have proceeded, with the strength of many of them on both sides. The first question I propose to myself in connexion with this matter is—Is it purely a state question, or is it a federal question, or may it be a federal question? I should say that if I were convinced at the outset that it is purely a state question, then, irrespective of every other consideration, it ought not to find...
a place in this clause. But I am not prepared to say that it is purely a state question. I have been very much impressed indeed by the strong arguments and weighty observations of many of my honorable friends on this question, and I am prepared to accept the position that it in all probability reaches far beyond the mere limits of any particular state; and if that position is true now in any degree, it will become increasingly true as the Commonwealth proceeds. The next question—and certainly that gave me reason for thought—was that put forward by one of my honorable colleagues, and supported by other members, that the insertion of this power may prejudicially affect the chance of the Bill being accepted. I, on full consideration, do not think that that is a correct argument, because it is not a proposal to ask the people to hand over to an independent body, once and for all, the power to legislate on this question. The people, when the Federal Parliament is constituted, will have the fullest control over their representatives, and they will have the power at any time of electing or refusing to elect any of their representatives on the question of old-age pensions as well as on any other question, and, therefore, the people maintain that control. It is merely a power given, and it is asking the people to insert in the Federal Constitution on this point, no more and no less than they will find in their state Constitutions at the present moment. Then it was urged that it would be depriving the states of the power because it would be an exclusive power. I do not quite follow that from a legal standpoint, although we must admit that it is true that if the Federation choose to exercise this power that power once exercised is paramount. That is true no more and no less of this particular subject than of all the other subjects included in clause 52, and, therefore, I do not give any undue weight to that. My honorable and learned friend, the leader of the Convention, did put a very important question, namely, that it was asking the Commonwealth as a Commonwealth to provide for the necessitous citizens of the state who had been rendered necessitous by the wrong policy of the states. Again, I answer to that there is no compulsion in the matter. It is a mere power to the Federation to do it if it thinks it just, and if it does not think it just it can refrain from doing it. It may say—"No, we will not remedy the mistakes of the states because the states alone are responsible for the misery into which their citizens have fallen," All I say to it is that that power may be exercised if the Federal Parliament thinks it just, and it may refrain from exercising it if it should be of the contrary opinion. Then my honorable friend (Mr. McMillan) said that it would be unjust for one distant part of the Commonwealth to support the poor and needy of another part. The same answer applies to that. If it is unjust, the Federal Parliament would refuse to do it. If the circumstances are such as
my honorable friend Mr. McMillan apprehends, we need never fear the exercise of the power; and it really seems to me that that and various arguments of a cognate nature would be more strictly applicable to the discussion of a Bill of such a character if it were before the Federal Parliament than to the discussion of the question here whether it is right to include a discretionary power in the Federal Constitution. My honorable friend (Mr. Trenwith), with the earnest advocacy for which he is notable, and moved no doubt by the intense sympathy he has for the working classes, not only of this colony but of the whole of the colonies, laid some very forcible arguments before the Convention, and expressed his great reluctance—which we know he feels—at having to vote against the amendment of my honorable friend (Mr. Howe). The strength of his argument, which he put with tremendous force, was that it might militate against the adoption of any scheme for old-age pensions in a particular colony.

Mr. HOWE. -
Remove that fear, and he will vote with me.

Mr. ISAACS. -
If I thought that the result feared would follow, I should perhaps vote differently from the way I intend to vote, but I do not think it is so, because it is optional with the state to adopt the law or not as it pleases. We, no doubt, will hear persons urge that it is a matter for federal concern if the Federal Parliament chooses to exercise it. Well, there is a limit to patience, and if it is found in a state that the Federal Parliament will not move in the matter, then the answer may be fairly given to that argument that it is time for the state to move for itself. I am not now advancing an argument in favour of the adoption, or against the adoption, of the principle of old-age pensions. It is merely an argument in favour of including a power in the Federal Constitution. This is a question which we know is coming to the front more and more every day; it is assuming an importance that is daily increasing, and I think we should be hurting the cause of federation if we said now, once and for all, with our necessarily imperfect information, that we should exclude it from the powers of the Federal Parliament. I do not consider that the clause which empowers the states to refer it to the Federal Parliament is sufficient, because a state or two or three states may be perfectly willing to say—"We will refer it to the Federal Parliament if the other states will do it," and one or two states by standing out may prevent a reference by the states willing to refer it. Therefore, I think, on the whole, that we should be doing wisely in voting for the motion.
Sir JOHN DOWNER. -

This discussion appears to me to be assuming an importance which justifies me in saying a word or two more. I think, with all respect to honorable members, that there is a certain amount of forgetfulness of what we are trying to do. We are not going in for a consolidated Government. I suppose if the Federal Government had time to do it it would be able to manage everything better than the local Governments. We are handing over to a Federal Government certain limited authorities in the easiest way, preserving to ourselves all the authorities which we think we can better exercise. If there was a proposal to take over any of the assets of any of the colonies, or of all the colonies, there would be vehement resistance. Where there is a proposal to hand over the liabilities, I suppose it is not wonderful that there is a great agreement of opinion. For my own part, I think, as was suggested to me by one honorable member here, if we carry this proposal the difficulty of the surplus will practically have vanished. We will have the cause of federation most materially assisted by halving a responsibility thrown on this new Government which will prevent any earthly chance of there being more than enough to meet it. I do ask honorable members, with all earnestness, to think a little before they come to the conclusion that it is necessary in this instance to depart from the ordinary Constitution of a Federation by throwing in to the jurisdiction of the Commonwealth that which has never been done in any other country; that it is quite a matter of discussion whether it should be done in any country in which the experts on both sides express entirely varying opinions. Why should we begin by loading this Constitution with a thing which would be highly proper if we were going in for a consolidated Government, but which, at all events in my humble opinion, is quite inconsistent with the preservation of the rights of the states, with what ought to accompany it afterwards, and that is a collateral responsibility? I can understand in a moment that every Government of a colony will say-"Certainly, take over the debts; there will be no difficulty about that." If they said, take over any item of our revenue-if it was suggested that any item of our revenue should be taken over-there would be an equal concurrence of opinion vehemently against it. I want to know from what point of view this can be called federal? We keep our property; we are left to the free exercise of our brains and bodies; there is no interference with the individual; state rights are to be preserved. Surely, collaterally with that, state rights ought to be preserved too. And because, from the fact that people go backwards and forwards across the border, and that as the result of careful investigation there are found to, be difficulties in arriving at provincial legislation in
regard to old-age pensions—which in themselves are capable of much discussion and difference of opinion—are we to remove from the backs of the states a responsibility legitimately falling upon them, and which, as my honorable friend (Mr. Barton) has said, may fall upon them as a result of their own local legislation?

Mr. HOWE. - Is not this question of as much importance as the question of weights and measures?

Sir JOHN DOWNER. - They should be uniform.

Mr. HOWE. - And the questions of banking and exchange?

Sir JOHN DOWNER. - They are scarcely in the same category. Those matters ought to be uniform.

Mr. SYMON. - Education is of much more importance.

Sir JOHN DOWNER. - Yes; of much more importance. I say that the only arguments which can be used in favour of this proposal must ultimately result in saying—"No federation at all but consolidation."

Mr. REID. - Why not take over State banking? We could pay, the old-age pensions out of the profits.

Sir JOHN DOWNER. - I, strong and sincere federationist as, I am, with very defined—many may think uncompromising—views as to state rights, am fair enough to recognise that rights and responsibilities are co-relative, and I entirely object to this proposal.

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

The committee divided—

Ayes ... ... ... 20
Noes ... ... ... 25

Majority against the amendment 5

AYES

Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Isaacs, I.A.
Briggs, H. James, W.H.
Cockburn, Dr. J.A. Kingston, C.C.
Crowder, F.T. Lyne, W.J.
Deakin, A. Quick, Dr. J.
Sub-section (25). - The service and, execution throughout the Commonwealth of the civil and criminal process and judgments of the courts of the states.

Amendment suggested by the Legislative Council of New South Wales—Omit "throughout the Commonwealth."

Mr. GLYNN. -
Looking at this matter hurriedly, I think it would be a mistake to strike out these words.

Mr. BARTON. -
We are all agreed.
The amendment was negatived. The sub-section was agreed to.
Sub-section (26) was agreed to.
Sub-section (27) was agreed to.
Sub-section (28), Influx of criminals.
After "criminals" insert "lunatics."
Amendment suggested by the Legislative Council of Tasmania-
After "criminals" insert "paupers and lunatics."

Mr. BARTON. -
I do not think it is necessary to add the words proposed. The words "influx of criminals" were inserted in the Bill in 1891 for a specific purpose, which it is not necessary to specify now, particularly as it is a purpose of which honorable members are well aware. Apart from that purpose, the result of the preceding sub-section dealing with "Immigration and emigration" covers everything.

Mr. WISE. -
Is there not power to deal with extradition? It seems to me that if there is no such power we are to say "Influx of criminals or extradition of criminals."

Mr. BARTON. -
The next sub-section will cover that.
The amendments were negatived, and the sub-section was agreed to.

Sub-section (29). - External affairs and treaties.
Amendment suggested by the Legislative Council of New South Wales-
Omit "and treaties."

Mr. BARTON. -
I propose to strike out the words "and treaties," in accordance with the suggestion of the Legislative Council of New South Wales.

Mr. GLYNN. -
I see an objection to striking out these words in reference to treaties. I am aware that similar words have been struck out in clause 7, but I doubt the policy of that. It may be wise to retain them.

The CHAIRMAN. -
We must be consistent.

Mr. GLYNN. -
I bow to your ruling, sir, but an opportunity for reconsidering the matter should be provided.
The amendment was agreed to.

Sub-section 30. - The relations of the Commonwealth to the islands of the Pacific.

Mr. BARTON. -
It has been suggested that this sub-section is embraced in the preceding one-"External affairs and treaties." That is arguable; it is quite possible that it may be true; but there are a very large number of people who look forward with interest to the Commonwealth undertaking, as far as it can as part of the British Empire, the regulation of the Pacific Islands. It may be, I
think, as there is a doubt as to whether the one thing is included in the other, and as there are a large number of people who are interested in this question, that it is better in deference to their views to leave the words as they are. As the subsection may do some good, and can do no harm, I think that the objection should not be pressed.

Mr. KINGSTON. - It is taken from the Federal Council Bill.

Mr. BARTON. - Yes.

Mr. SYMON. - To solve a doubt, it might be wise to say in the preceding sub-section- "External affairs, including the regulation of the islands of the Pacific."

Mr. BARTON. - I have no objection to that, except that I should prefer to say "relations with the islands of the Pacific." If we put some such words in, it gets rid of the difficulty. We might say-"External affairs, including the relations of the Commonwealth with the islands of the Pacific."

[The Chairman left the chair at one p.m. The committee resumed at two p.m.]

The CHAIRMAN. - When we adjourned for luncheon we were considering sub-section (30) of clause 52-the relations of the Commonwealth to the islands of the Pacific. Did I understand the Hon. Mr. Symon to move an amendment, or only to make a suggestion?

Mr. SYMON. - No amendment, but merely a suggestion as to a matter of drafting.

Mr. BARTON (New South Wales). - Perhaps the matter might be left in this way. I take it that we have omitted the words "and treaties" in sub-section (29). If it meet with the approbation of the Convention, this matter-which is really, I think my friend will agree with me, largely a matter of drafting-will be taken a note of, and as there will, no doubt, be some stage at which an adjournment will be made to enable us to make drafting amendments, I will see that this matter is considered with the others.

Mr. DEAKIN (Victoria). - I understand that the leader of the Convention will look at the words "and treaties," with the view to see how far, by omitting them, we would limit the powers of the Federal Parliament within the range of the powers that the Canadian Parliament already enjoys.
Sub-section (30) was agreed to.

Sub-section (31). - The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.

Amendment suggested by the Legislative Council of South Australia—Omit "river," insert "rivers."

The CHAIRMAN. -

There are several amendments in sub-section (31) suggested by the Parliament of South Australia, and all amendment suggested by the Parliament of Tasmania to strike out the sub-section altogether, and insert a new sub-section in lieu of it. I shall put the amendments in the order in which they come. The first amendment is to strike out the word "river," with the view of inserting "rivers."

Mr. GORDON (South Australia). -

I support this amendment of the Legislative Council of South Australia to strike out "river," with the view of inserting "rivers." Of course, that has a prospective meaning which is given to it by the subsequent amendments, and in discussing it I presume it will be competent to refer to what will follow if this amendment is agreed to.

The CHAIRMAN. -

We can take this as a test amendment.

Mr. GORDON. -

As a test amendment. The object sought to be gained by our amendments is that the rivers which run through contiguous states should be placed under federal control, not only in the interests of the co-riparian states themselves, but in the interests of the whole of Australia.

Mr. DEAKIN. -

What do you mean by rivers? Rivers and tributaries, or what?

Mr. GORDON. -

Well, there are two proposals to follow, one of which seeks to embrace all the principal tributaries, and the other to define the rivers placed under federal control, as the Murray, the Darling, the Murrumbidgee, and the Lachlan. Although I think that the whole of the tributaries should be included, if so large a scope to this amendment is objected to by New South Wales, I would be content to have it limited to the four great rivers which, by themselves or their continuations, run through New South Wales, Victoria, and South Australia, and then join the sea. I would not seek to make the scope of this subsection too inquisitorial, because there are many small tributaries which are not worth taking into account, but I would be satisfied with such a general control as would cover those four great channels, which form the water system of Australia. In asking the
Convention to agree to this proposal, it will be necessary for me to discuss some of the arguments for and against the proposal which were discussed at the Adelaide meeting. Those of us who agree with the view I am now endeavouring to support, met with two classes of opponents at the Adelaide sitting. There were, first of all, those opponents who were led by the Hon. Mr. Reid, and who laid down the proposition, as I understood them, that the only rivers over which any joint control could be properly exercised at all were those which run through coterminous states, and only so far as they run through coterminous states. That is to say, there should be only joint control by the colonies over those rivers on either side of which the banks belong to different colonies. I hope to be able to show that this notion is hopelessly behind any modern idea of the reciprocal obligations of civilized nations. If I may say so, with much respect, the importance of this matter has so grown on me, and I believe on other members of the Convention, that I am disposed to think that we have, perhaps not improperly, been giving much time to the discussion of more or less doctrinaire matters, which might be left, to reach a solvent point, to the formative genius of the Federal Parliament, when it does get to work—matters to which we might attach the motto solvitur ambulando; while we have left somewhat out of sight this great practical and vital matter to the interests of the whole of Australia. It has almost been as if two men, entering into a partnership, were first to discuss and come to some mutual decision on theological questions, and defer the consideration of questions as to how they should share the losses or divide the profits of their partnership. However, I hope that the Convention at this meeting will restore the balance of importance which I think the subject demands.

Mr. HIGGINS. - Is this clause required at all, having regard to sub-section (1)?

Mr. BARTON. - The honorable member wishes to say "rivers" instead of "river."

Mr. GORDON. - Yes, and it is my intention to add either the words "and their tributaries" after the word "Murray," or to define the four rivers which will come under the control of the Federal Parliament.

Mr. HIGGINS. - In the American Constitution subsection (1) gives control over all rivers to the federal authorities.

Mr. GORDON. - Yes; for the purposes of navigation and the prevention of obstruction; but
it does not as I read the cases-and, of course, I express my opinion with all deference to that of more able lawyers than myself-give to the Federal Parliament such a control as would lead to a fair apportionment of the waters of these rivers for the purposes of irrigation.

Mr. ISAACS. -

It gives powers to the Federal Congress to control the navigation of rivers which are navigable within more than one state.

Mr. GLYNN. -

But, a

Mr. HIGGINS. -

If by the use of water for irrigation purposes the navigation of the rivers was prevented, the Federal Government could interfere.

Mr. GORDON. -

I agree with the honorable member there. It is not intended in any proposition which I shall place before the Convention to promote irrigation at the expense of navigation. The honorable member (Mr. Glynn) has pointed out that, inasmuch as the Darling lies wholly within one state, it would not, as matters stand, come under the control of the federal authorities. The Darling is a stream which for geographical purposes has that name given to it for a portion of its course, but it forms part of a great system of water-courses. If any honorable member were to launch himself in a canoe at the head of either the Darling, the Murrumbidgee, the Lachlan, or the Murray, where would he find himself at the end of his journey? In South Australia.

Sir WILLIAM ZEAL. -

He would strike a snag.

Mr. GORDON. -

If the honorable member got into a canoe at the head of any of those rivers, and has not after a long political career lost the art of steering straight, he would at the end of his journey find himself at the mouth of the Murray, and in South Australia. All these rivers are part of one great system. I am now attempting to combat the proposition laid down by Mr. Reid that there should be no joint control over any river unless that river ran beyond the borders of any one colony. An expression to which I particularly take objection-and it is one which has been greatly used by the representatives of New South Wales-is that which terms such rivers "our rivers." Rivers which take their rise in New South Wales, but which run for huge distances through other colonies, cannot be described by the residents of New South Wales as "our rivers," using the term in the sense of exclusive and sole possession. They are no more the rivers of New
South Wales in that sense than the sun which warms them belongs to New South Wales, or the air which sweetens them is the air of New South Wales. When the right honorable and learned member (Mr. Reid) referred to the rivers which, though they have their rise in New South Wales, form a continuous channel through Victoria and South Australia, and there mingle their waters with the sea, as being exclusively the property of New South Wales, he used an expression which has happily now no sanction in the code of any great people, and the right honorable gentleman forgot how far the sentiment of the world in this respect has advanced. Every great river in Europe—the rivers of France, of Germany, of Austria, and of Russia—has been conceded to the common use of all the nations. These nations may be armed to the teeth against each other, and their frontiers may be constantly darkened by the clouds of threatened war; but any exclusive claim to the great waterways which run from country to country has long been abandoned. They recognise that these rivers are requisite to the maintenance and the sustenance of the people of the continent, and with one consent they have agreed that they shall be managed by independent control in the common interest.

Mr. HIGGINS. - And the tributaries too.

Mr. GORDON. - Is it not extraordinary that nations which are hereditary enemies—nations whose soil has too often been wetted with each other's blood—should concede this principle, and that it should be denied amongst us who, as the right honorable member (Sir John Forrest) said the other night, owe allegiance to one Crown, are one in race and nationality, are brothers dwelling in amity in a land which is ours from sea to sea? Is it not still more extraordinary that right should be denied at a time when we are sitting in solemn conclave engaged in making a compact which is to draw closer the ties which bind us? The ears of honorable members must still be filled with the "rustic cackle of their bourg." When they look at the proposition from a larger point of view they will agree that the proposition which I have advanced is one which is recognised by every civilized nation—even by those nations which are hereditary enemies.

Sir WILLIAM ZEAL. - Very poetical but not practicable.

Mr. GORDON. - Does the honorable member say that what is an accepted arrangement between countries like France, Austria, and Germany, is not practicable?

Sir WILLIAM ZEAL. - We are talking about the Murray and the Darling.
Mr. GORDON. -

The position is the same. The rivers in regard to which these arrangements have been made are rivers running through contiguous states. The Darling and the Murray also run through contiguous states. It appears to me that the cases are altogether parallel, though the rivers have different names. Of course I am bound to admit that the old lawyers—if those who take the opposite view from mine shelter themselves behind the reasoning of ancient lawyers—hold to the opposite contention. But theirs are reasons founded upon conquest, and are selfish, narrow, and long ago discredited.

Mr. BARTON. -

Are there any opinions by modern lawyers which support the contrary view?

Mr. GORDON. -

I think so. I shall submit the opinions of many eminent lawyers who are very much of the opposite way of thinking. It is only the opinions of the old lawyers that support the contention against which I am now arguing. It is too late for my honorable friends to shelter themselves behind parchment ghosts of this sort. Mr. Lawrence, an eminent authority, in his Principles of International Law, says that—"Usage has turned against this ancient rule in all civilizations." That is the rule of exclusive possession of a stream which runs from one country to another. The River St. Lawrence runs for most of its course through Canada. It drains twice as much of the water-collecting area of Canada as of America, and in 1824 the English Government set up this purely legal theory, to which the honorable and learned member (Mr. Barton) has referred, and claimed the exclusive right of control in regard to that part of the St. Lawrence which runs through the Dominion of Canada. In the dispute with the United States Government, however, that contention was afterwards abandoned by the British Government. The case, however, is one exactly in point now. The St. Lawrence runs for most of its course through Canada, but for part of its course through the United States, and it has been conceded by the British Government that the Americans have the right to free passage on and the free use of that stream throughout its entire course as well in American as in Canadian territory. This is the form in which the argument is put in that great discussion:

The purely legal rights of states should be subordinated to the general interests of mankind, and that the right of all the riparian inhabitants to the full use of the stream rested upon the same imperious want, the same inherent necessity, which they all had of participating in the flowing element. It was a right of nature.
Mr. BARTON. -
How much of the flowing element have you ever lost?

Mr. GORDON. -
The honorable and learned member might as well ask which of the other benefits that, according to his belief and ours, federation is to give us, have we already lost? We are seeking now to gain benefits. The honorable and learned member's interjection has not very much force. If this compact is made, it should be made upon lines which will leave no possibility of dispute or disquiet afterwards. Can the honorable and learned member say that if the Murray question is left unsettled there will be no possibility of disquiet, and a disquiet of the most serious nature? Another eminent constitutional writer, Mr. Wolseley, discussing the principle, says-

When a river rises within the bounds of one state and empties into the sea in another, the inhabitants of the lower state have a moral coequal claim to its use.

That is our case. This great river system has its rise in other colonies; but it flows through Victoria and South Australia, and Victoria and South Australia for that reason have a moral co-equal claim to the use of the water, and that use should be controlled in the interest of all the riparian co-proprietors. Mr. Wolseley continues-and this is the crux of the position-

Is such a nation-
The nation lower down the stream.
to be crippled in its resources and made to depend upon another's caprice for a great part of that which makes nations fulfil their vocations in the world?

Is Victoria relatively to New South Wales, and South Australia relatively to New South Wales and to Victoria, to be placed at their mercy or caprice for the enjoyment of that which was designed by Providence for the benefit of the whole continent? Can it be seriously contended as a matter of principle that New South Wales and Victoria can deduct so much water from these rivers as will leave them absolutely and only at a navigable point, and will allow South Australia to take nothing for the irrigation and fertilization of her land?

Sir WILLIAM ZEAL. -
That has not been attempted.

Mr. GORDON. -
It has not been attempted, but it has been threatened. The honorable member, with his knowledge of business, will see that that is not the point. If my honorable friend is going to enter into a contract he takes care to see that all the terms of it are clear, and beyond the possibility of dispute.
Sir WILLIAM ZEAL. -
And not one-sided.

Mr. GORDON. -
Yes. We wish the terms of this contract to be so clear that these principles shall be embraced in it beyond dispute.

Mr. HIGGINS. -
Suppose Victoria has made reservoirs and improvements which increase the volume of the Murray.

Sir WILLIAM ZEAL. -
The people of South Australia do not propose to pay for that.

Mr. GORDON. -
The honorable member has not yet heard the whole of my argument. I am willing that the Federal Parliament, in its proper quota of contribution, should repay any money which has been expended or in the meantime will be expended in improving these rivers.

Mr. SYMON. -
The honorable member does not wish to deprive Victoria of the benefit of these reservoirs.

Mr. GORDON. -
Not at all. This is the point as put by Mr. Wolseley: Is it right that these lower riparian states should be crippled in their resources and made to depend upon another's caprice for a great part of that which enables nations to fulfil their vocations in the world? If the contention that New South Wales and Victoria can deduct from the waters of these rivers so much as will leave them only at navigation point is upheld, we in South Australia shall not be able to take one drop for irrigation purposes. Another writer, Mr. Hall, expresses the opinion that-

The freedom of rivers to all the riparian inhabitants is a sentiment written in deep characters in the heart of man.

Mr. HIGGINS. -
Is Mr. Hall a lawyer or a poet?

Mr. GORDON. -
He is a lawyer; but occasionally even a lawyer has a vein of sentiment in his composition.

Mr. BARTON. -
It is when the lawyer is sentimental that he seems to suit the honorable member's purpose best.

Mr. GORDON. -
Well, this is a question of large fairness, into the consideration of which sentiment enters to a very great extent. It is not a matter to be decided upon
the narrow dictates of old legal maxims; it is not only a question of international law. It is a question of State policy and international law, and the sentiment of friendship is rep

Mr. BARTON. -
I quite agree. You would tomahawk everything old, even if it were right.

Mr. GORDON. -
I should be sorry to see the honorable member meet with that fate when he is a little older. I believe some nations have been in the habit not only of tomahawking but of eating their old people. The honorable member will admit that his interjection is scarcely an argument. Listen, now, to Mr. Henry Clay, the great American statesman and jurist, a man whose opinion, I think, even the honorable member will treat with respect. He says-

The principle of international co-riparian right should be regarded as the spontaneous homage of man to the paramount Lawgiver of the universe by delivering his great works from the artificial shackles and selfish contrivances by which they have been artificially and unjustly subjected.

Mr. Clay had a streak of poetry in him, but the statement I have read is a streak of the soundest political wisdom, and I shall be glad to hear the honorable member dispute it if he can. I challenge him to dispute it. I might go on and give the honorable member other quotations; but I think I have given him sufficient to keep him engaged for some time if he is to answer them. I do not like to detain the Convention too long by citing authorities. All the opinions I have quoted except in the St. Lawrence case, in which the principle I am contending for was upheld, are the profound judicial opinions of men who were no mere partisans-men who had studied the question in the light of international obligations, and who were free from that kind of bias which I regret to see in the eyes of Mr. Barton.

Mr. BARTON. -
I have not said a word.

Mr. GORDON. -
The honorable member conveys a good deal by shakes of the head, and interjections. When analyzed, these interjections do not mean much, but he intends them to mean a great deal. The honorable member and others have, I think, been rather led astray in this matter by the bald and erroneous statements of people, in New South Wales, who say that we want their rivers.

Mr. WALKER. -
You want the waters of the rivers.

Mr. GORDON. -
We do not want the waters of the rivers in an unfair sense. We only want such control as is conceded in every civilized country in the world, and surely, as has often been put to the Convention, we can trust ourselves. Surely we can trust the Federal Parliament, in which New South Wales will have by far the largest voting power. Even if it had not by far the largest voting power, the great principle of justice would demand that this concession should be made. Now, I am going to deal very briefly with the second class of objectors—with those who agreed with me in regard to the right to navigation and free passage, but said that the contention could not be carried to the extent of mutual use and control for the purposes of irrigation. I confess to have been unable to make any distinction at all. If those honorable members say that there shall be mutual control and use for the purposes of navigation, I cannot see on what principle they stop short and declare that there shall be no mutual control and use for the purposes of irrigation. What magic is there in the word "navigation"? Navigation is only a purpose of mankind. It is something mankind requires, to use Wolseley's words, to enable them to fulfil their vocation in the world. I contend that the rivers of the great water system of Australia are much more necessary to the people of Australia for irrigation than for navigation. It will help them more to fulfil their vocation as a nation to have a free use of these waters for irrigation than for navigation. As it has been put to me by an honorable member, you can always construct railways, and you can always provide coaches to travel in, but you cannot make rivers. I repeat that rivers are more necessary for the purposes of Australia for irrigation than for navigation. Both claims rest upon the same imperious want—the inherent necessity of mankind. I shall be interested to hear any honorable member attempt to make a distinction in principle, so far as the rivers which run through contiguous states are concerned, between the right of those states to a mutual control in regard to navigation and their right to a mutual control for the purposes of irrigation. Such a control as I am contending for should be granted, apart altogether from federation. I say, with much respect, that it is a blot on the history of the colonies that there has been no mutual arrangement by which, these great rivers could be controlled for irrigation as well as for navigation. I am not going into the history of that dispute, but I think it is a blot upon the colonies that an arrangement has not been made. And how imperative it is to make it now, when in the infancy of these states quarrels have arisen. What will happen when we number the population of Australia by millions, and when the population presses with infinitely greater force on the means of subsistence in the valleys of this water system? We know how large the and spaces of Australia are. If quarrels arise what can settle them? Nothing but war or
disruption. Only a few of us, I am afraid, have properly conceived the part which irrigation will play in the struggle of humanity in Australia. In time to come millions of people will, as they do in America and India, depend upon our irrigated land's for their means of livelihood. Is it just that the future of these riparian dwellers should be left to the caprice of the states above them? I appeal to Mr. Deakin, who has made a study of this question, and who knows the benefits which irrigation has conferred on both ancient and modern civilisations, to support me in saying that I am not overstating the importance of this question. It is not a local question at all. It is nothing less than a national question, and it is a national necessity that the problem should be solved. Article 2 of the irrigation law of Wyoming recites:-

Water being essential to industrial prosperity, of limited amount and easy of diversion from its natural channels, its control must be in the state; which, in providing for its use, shall equally guard all the interests involved.

Here again is a quotation which exactly describes my position. The water here is of limited quantity. It is easy of diversion. It could be diverted, and it has been threatened to be diverted, by colonies above us. This proposition states, and it is one to which we must all agree as a matter of principle, that in providing for the use of the water the interests of all involved shall be equally guarded. Can any one say that the interests of Victoria and of South Australia are not involved in the question of the use of the waters of these rivers? I should be surprised to hear any honorable member make that statement. If we all have an interest in the rivers, what is the objection to a joint control in the interests of all? In America, as I have no doubt it will be argued presently by some honorable member, the Federal Constitution did not provide for the control of the waters of the American states, but it is now a matter of general regret in America that no such provision was made. Mr. Kenny, who has written the leading book on irrigation laws of America-and is quite a modern book-says that in America the nation is regretting that the Constitution did not provide for the control by the federal authority of the river of America. He continues-

It seems strange that Congress should not have enacted uniform and explicit laws as to the disposal of the waters. If a uniform system had at first been adopted by the Government for the disposal of the waters of the natural streams flowing over the public domains, the difficult questions that now arise would have been avoided. The day is certainly fast approaching when the public will understand that irrigation is the concern not of the arid region only, but of the whole United States. Instead of a
narrow sectional question, irrigation is becoming more and more each year a broad national problem. It is the question of our water resources that is now of the most vital importance. In the course of a few years irrigation will be recognised as a national necessity.

If irrigation is a national necessity and a national problem-if it is now a matter of regret that the American Government did not take over the control of the public streams of America-would not the same regret and the same conditions exist here? Irrigation will be ten times more a national necessity here than it is in America, and the regret will be ten times greater if we miss this chance of settling the question, and the Constitution does not provide for the control of these water channels. And, after all, what are we asking for? We are only asking for the right that every riparian proprietor enjoys under British law-the right that the man above him shall neither injure the quality nor diminish the flow of any stream designed for their mutual benefit and enjoyment. That is a right that is founded deep in natural justice. It cannot be said that we are asking for anything extraordinary or making extreme demands upon our follow colonists when we simply seek for that right which every riparian proprietor under British law enjoys. The tendency of modern legislation is to go even further than the common law doctrine in declaring that there shall be no exclusive property in running streams. The tendency of modern legislation is to say that while the riparian proprietors should have their rights under the law there is a higher, a paramount right, the right of the people who are the dwellers on the banks of these streams. That is an extension of the doctrine of riparian rights that is being acted upon by many of the Governments of the United States. It cannot, therefore, be said that we are robbing New South Wales, or making extreme demands on the generosity of that colony, when we are only asking for that which every man in New South Wales enjoys-the right to have the stream which flows through his land undiminished in quantity and uninjured in quality. That is all we are asking for, and how can it be said that the demand is unreasonable? I cannot, for the life of me, understand how honorable members should say that our railways should be subject to a joint control, and deny that the rivers should be similarly dealt with. It is universally admitted that some control over our railways should be insisted upon, in order to prevent them from being used by one colony to the detriment and injury of another colony. Where is the argument against the same control being exercised over the rivers, seeing that they can equally be used to the detriment and the injury of other colonies? On the contrary, is not the argument much stronger for the control of the
rivers, which are the great natural channels, and which owe little or nothing to the hands of man. The railways are embraced within the delimitation of the state. They are put there at the expense of the state, and are the undisturbed property of the state. No such claim can be made to the rivers - those "channels of God," as old Kent calls them. It is conceded that there should be such a federal control of the railways as would prevent them from being used by one state to the injury of another, and that really gives away the argument so far as regards the rivers, which can be much more easily used to the injury and detriment of the other states. Now, to descend from principle to expediency, it appears to me that this great water system can best be administered and managed for the benefit of Australia by a scientific system of administration and control which should begin at its rise and extend its entire length. One does not want to be up in hydraulics or to be a conservator of water to know that detached systems of water conservation planned by different minds and carried out at various times cannot be so effective as those made on one scientific and continuous plan.

Mr. DEAKIN.

Hear, hear.

Mr. GORDON.

I am glad to have the honorable member's cheer because he is a student of the question. Such detached and haphazard schemes lead to dissipation and not to conservation of water. As a matter of expediency, I contend that what we are now seeking for will not be to the advantage of one colony but of all. I believe it will be under such a system of management that irrigation will be properly carried out. Those of us who have seen these immense floods which spread over the banks of the Darling and the Murray, scorning all the limitations of the New South Wales geographers, and which flow in a stream 50 miles broad, wasting all their fertilizing waters in the sea, are convinced that with a proper and scientific system of water conservation there will be sufficient water for the needs of a great part of Australia. I hope I have not detained the Convention too long in submitting these proposals, but I am deeply convinced of the vital importance of the question, and that we shall be truant to the solemn responsibilities we have undertaken if we do not settle this question now upon a basis which shall not only exclude the possibility of injustice, but which shall provide as far as possible for the just division of a bounty which Providence designed, not for any narrow portion of this great continent, but for the beautifying, the delight, and the support of it all.

Mr. DEAKIN (Victoria).

Without attempting to follow the honorable member (Mr. Gordon) through the many flights of oratory with which he has charmed us, and
with the breadth of criticism which he has offered on all the issues involved, I rise for

the purpose of submitting a few considerations, trusting that they will be of some service in the settlement of this issue. I propose to take advantage of this amendment to consider for a moment it is an inter-colonial traffic. The points of arrival and departure of the river traffic are very rarely in the same colony. The traffic of the Murray and its tributaries is therefore in its essence inter-colonial, and one would, therefore, suppose that it was properly open to, and required, federal control. The first broad question we have put is answered, since the facts of the case point naturally in the direction of the propriety of conferring upon the Federal Government, at all events, a power of control over what is practically the federal and inter-colonial navigation of the interior. That is prima facie a most reasonable demand, and would require to be rebutted by important considerations of expediency, if it were put aside. The next question is that, since the traffic is inter-colonial, and cannot be efficiently dealt with except by inter-colonial agreement or inter-colonial legislation-

Mr. MCMILLAN. -

Is it possible to define "navigable"?

Mr. DEAKIN. -

I think so. There is a great body of decisions in the United States, where the Federal Government have control of navigable streams, that settles by means of particular instances a certain number of principles which would allow of the determination of the question as to where a river begins and ceases to be navigable.

Mr. BARTON. -

It must also be remembered that there is a great quantity of water there.

Mr. REID. -

Are navigable rivers mentioned in the Constitution?

Mr. DEAKIN. -

No commerce is mentioned, and naturally that is only affected where the river is navigable. While it is perfectly true that the rivers which were in the mind's eye of the framers of the American Constitution were the noble streams of the eastern states, it is well to remember that federal laws now apply equally to all the rivers of the west in the great republic. There the physical conditions are similar to ours. There are immense areas of arid country with streams having an intermittent flow.

Mr. BARTON. -

The framers of the American Constitution had no thought of that when they passed the provision with regard to the regulation of commerce.
MR. DEAKIN. -

That is the case. It was then only necessary to consider the utilization of water for navigation, and the question of irrigation was not in view. We have now to deal with a different set of circumstances. But the word "navigable" is largely defined in various American decisions, and, therefore, it might if necessary be readily defined for the purposes of our Constitution. I was about to leave that branch of the subject with the simple statement that it seems natural, desirable, and proper that what is really inter-colonial intercourse upon our rivers should be under federal control. Another question was touched upon in one very important aspect by the honorable member (Mr. Gordon) in his finished and elaborate discourse. That was the relation which this traffic upon inter-colonial streams bears to the railways of the colonies. He only considered it in a single aspect. He said, if it would be undesirable in a federal state to permit a continuance of a war of railway rates, it would be equally undesirable to permit of a war of rates as to river-borne produce. But there is another consideration that has been pressed upon the consideration of the Finance Committee and the whole of this Convention by the evidence which the late Mr. Eddy gave before the Finance Committee in Adelaide. It would lead me too far afield to refer in detail to that evidence, but it will be found on pages 160-163 in the report of the proceedings of the Convention in Sydney. It was there published for the first time. Although Mr. Eddy hesitated to say that the Federal Government should seek to take entire control of the river-borne traffic, because it is in private hands, and that would mean a serious interference with private trade and business, yet all his arguments went to support the contention which he in one part of his evidence admits, that some control is decidedly necessary in the interests of the railways, and also in the national interests. He points out that railway rates in many parts of the interior are determined by river rates, and that those river rates are open to very great alterations which defeat all possible calculations by the railway authorities as to the returns in any given year from any given rates. He points out that it is undesirable that this state of things should continue either in the interests of railway traffic or national interests. He seemed to think, not only as a railway man but as a citizen of these colonies, that it is essential if railway charges are to be subject in any degree to federal control, if the rates of carriage are to be fixed in any way by federal authority, that the aim of such control would be incompletely fulfilled unless power of some kind were given over the charges upon traffic which passes in competition with the railways, not along other railways, but along the natural water-courses.
of the country. The State has spent large sums in keeping there water-course open for the longest possible period in each year. If the railway rates are to be in any degree subject to federal control while this disturbing element remains, it will be a task of almost insuperable difficulty to fix them in those regions.

Mr. FRASER. -

It will not be more difficult than at present.

Mr. DEAKIN. -

The honorable member knows the great advantage which the competing railway and river rates confer on growers of wool who can avail themselves of them. I can understand that it is an undesirable suggestion that there should be harmony between these rivals from the point of view of the producers. I only wish to point out that in addition to the many considerations so ably put by the honorable member (Mr. Gordon) one most important consideration is the effect of these water carriage rates upon the railway rates, and their effect upon the revenues of individual colonies or of the Federal Government. When we refer to the control of this great river system or any similar system in Australia for the purposes of navigation, we find ourselves confronted by the necessity, if the opportunities which these systems offer to us for the commerce of the interior are to be fully availed of, for constructing works upon those rivers which must far surpass the powers and resources of even the richest colony of the group. Many of these works must be undertaken outside the limits of any particular colony. Our rivers differ from the superb systems of the eastern states of America, inasmuch as they are often shallow and intermittent although liable to great floods. To secure a regular and even flow for the longest possible period during the year regulating works would be necessary which would extend from high up near the sources to their very mouths. In South Australia a proposition has been considered which would involve a very extensive deepening of the mouth of the River Murray that would

improve the navigation so far as it would tend to admit larger vessels into the river system, but it would also tend to injure navigation by diminishing the duration of the period within which navigation is possible, because it would make the escape of the waters of the river to the ocean freer, and would tend to empty the river at an earlier period than at present.

Mr. HOWE. -

We did not make that proposition.

Mr. DEAKIN. -

It has been proposed, and if the question of navigation is to be dealt with
it ought to be considered.

Mr. SYMON. -

If such a work were ever carried out it would have to be a federal matter.

Mr. DEAKIN. -

I am leading up to that. Whilst that work is desirable in the interests of navigation in one aspect it is not desirable in another aspect unless it is accompanied by additional works. The proposals which have been before the Government of New South Wales to deal with that great tributary of the Murray—the Darling—involving the construction of locks along that river—would have to be extended until they embraced the Murray itself. They would have to deal with the whole of the system from the mouth upwards so as to bring the river at proper intervals under the control of a system of works which, while allowing fuller access to navigation, would prevent the free escape of the waters to the sea. I merely mention this as an indication of the gigantic works which will be necessary. Not gigantic in cost in comparison with those undertaken in America at the head of the Mississippi and Missouri, but gigantic when viewed from the Australian standpoint; yet an expenditure which is absolutely necessary if that river and its tributaries are to be put to their best possible use for the purpose of developing the interior commerce of Australia. It would be equally necessary to cope in some way with the extraordinary floods to which this great system is liable. They can only be dealt with in the higher parts of the stream by a system of diversion or storage, or of diversion and storage, which might enable the level of the river to be maintained for a longer period than at present, regulating its flow, and at the same time affording an opportunity, during a season of plenty, to retain waters which would be of inexpressible value in seasons of dearth. If you once look at the question as I am asking the Convention to look at it, from the natural physical standpoint, the desirability of a federal control of what is practically federal commerce, by an expenditure upon works which must be federal to preserve navigation, you are brought face to face with the other question introduced by my honorable friend. This relates to the immense possibilities within the limits of the water supply which are afforded for the development of agriculture in the interior by means of irrigation. This was dwelt upon by the honorable member (Mr. Carruthers) in Adelaide with great force, with great effect, and with no whit of exaggeration. He detailed to us some of the brilliant results which had been achieved in the interior of New South Wales by the construction of simple dams or weirs for the preservation of part of the waters which now flow to waste. There is no doubt that in the future New South Wales and Victoria, in pursuance of their policy of development, are likely to increase the number and scale on
which such works are executed. Hence, the consideration of works for navigation has brought us face to face with the necessity from the irrigation stand-point of constructing other works on the same streams. Thus we find that the problem of irrigation becomes inextricably intertwined with the problem of navigation, and that the interests of one must be studied in connexion with the interests of the other. The interests of both can best be dealt with in common, and I venture to submit from the irrigation stand-point-the stand-point which impressed the honorable member (Mr. Carruthers) and other representatives of New South Wales-that we have yet to learn that these two interests are necessary antagonistic. We have yet to learn that it would not be possible, by a federal system dealing with this river from its source to its mouth, to provide as much navigation as would be required, consistent with what I, in common with the representatives for New South Wales, take to be the first consideration in connexion with the river, and that is the distribution of as much of its waters as can be regularly or periodically made available to increase cultivation and settlement on the soil. Why should not those interests go together? There is no insuperable obstacle to prevent their being dealt with jointly. It may be proved from the local point of view that they should be dealt with together, in order that the best results may be obtained from both. It may be that to some extent the construction of works on the lower part of the river would be of material advantage to the inhabitants of the remote interior, as far as they improve its navigability and means of communication which are offered from the sea into the heart of New South Wales. But putting speculation aside, the real difficulty of this question is that there are three parties at present interested, namely, New South Wales, Victoria, and South Australia.

Mr. GORDON. -
And all Australia through them.

Mr. DEAKIN. -
Indirectly and remotely, no doubt. The Victorian interest is limited, and owing to the physical circumstances of the case the Victorian attitude can be impartial in this matter, because any gain which we can share in must be general, whereas our own interests are pretty well protected by nature and our own past exertions. We need look forward with very little alarm to whatever course is pursued. The difficulty is that New South Wales contains the Darling, the Lachlan-the head and body of all these streams-the Lachlan, the Murrumbidgee, and the Darling.

Mr. REID. -
It holds the whole of them.
Mr. DEAKIN. -
I said the whole of them.

Mr. REID. -
No; the honorable member said the body of them.

Mr. GORDON. -
Some of the tributaries of the Darling are in Queensland.

Mr. DEAKIN. -
They are not worth mentioning; they are insignificant. New South Wales holds the whole of those streams, and her representatives are placed in the difficult position that they are asked to yield apparently all the concessions which are involved in the acceptance of the federal control of this great arterial river system. South Australia, on the other hand, which is naturally most urgent for the federal control of this river-any control, though partial only being better for them than the entire absence of authority, from which it at present suffers in respect of the streams beyond its borders-is in the position of practically making no concession and reaping an immense advantage. Naturally, as I pointed out to the honorable member before he spoke, his pleas, sound as they appear to me, are received with some questioning by the representatives of New South Wales when his request, although evidently federal in nature and object, appears to be all to the gain of his own colony, and all at the risk, for it is no more than a risk, of New South Wales. Victoria, as I say, is asked to risk comparatively little or nothing by placing these main streams under federal control, but New South Wales is certainly asked to risk something; and, as it was very fairly put at Adelaide, the representatives of that colony view with proper anxiety a request to transfer the absolute control of the main tributaries of a river which they undoubtedly at present possess-which, in fact, they possess under any and every circumstance unless they choose to yield to appeals which are made to them. They naturally look with some suspicion on a proposal even to share with South Australia the control of these tributaries within their own territory.

Mr. DOBSON. -
But do they possess them in law?

Mr. DEAKIN. -
Personally, I think so. If they do not I should like to see the law that could be enforced compelling them to give it up. For all practical purposes I think we may agree, however much we may differ as to the reading of their legal rights that the absolute control of the Darling is in the hands of New South Wales.
So as to make the River Murray run dry?

Mr. DEAKIN. -

Suppose that New South Wales did make the river run dry, how are you to prevent them? In what court are you to sue them, to what code will you appeal, or who will enforce the verdict? I do not know.

Mr. GORDON. -

That is the right of the strong man to knock down the little man.

Mr. DEAKIN. -

It may be the right of the strong, but it is a strong right as between different nations, which we practically are. We are independent of each other, and have no more power to enforce on New South Wales the execution of an unpalatable decree in regard to anything in her territory than we have to enforce it on Russia. That fact may just as well frankly be realized. The question is whether this matter cannot be laid before the representatives of New South Wales in such a form that they may see it to be consonant with their duty as representatives and the interests of their colony to consent to the placing of some power in this Bill with regard to the future control of this federal river-of the Murray system, with regard to navigation, and with regard to irrigation. Let us safeguard, if it can be done, any special rights which New South Wales may conceive that she possesses. The task, I admit, is difficult, but at the same time we have submitted tasks almost as difficult to the Drafting Committee, and if we thoroughly thrash out the main principles without going into the details of this question it may yet be possible to embody, either in this clause or, if necessary, in some more qualified clause which may be placed in another part of the Bill, a provision by which, when the opportunity arises, and when further information has been obtained, the complete federal control of this river system can pass to Federated Australia, when New South Wales, Victoria, and South Australia are satisfied that their interests are not to be prejudiced thereby.

Mr. HIGGINS. -

In view of the reasons given by Colonel Home in his report is not the New South Wales scheme for irrigation impossible?

Mr. DEAKIN. -

The report of Colonel Home is only known to me from a very brief newspaper extract, and I am not prepared to say yet whether the Government of New South Wales and their people are prepared to adopt that report without qualification or addition.

Mr. GORDON. -

It is confined to the Murrumbidgee only.

Mr. DEAKIN. -
I am not even aware of that. What I am submitting is that it appears to me that we are entitled to put to this Convention—that is really to the representatives of New South Wales—the great advantages of every kind likely to be reaped by federal river control—federal control of its trade as preventing competition with the railways, federal control of navigation as enabling us to develop it best, and federal control of the whole system for the purpose of irrigation. This should prove, as it seems to me probable, for the greater benefit of all parties concerned in New South Wales. South Australia is called upon practically to make no sacrifice, and would reap a gain which is, under natural circumstances and apart from state rights, certainly due to her. Victoria would yield something and gain something, and remain about where she is, but New South Wales would have to be satisfied that in yielding to federal control these tributaries which are now within her own control she would also gain. I have detained the committee longer than I proposed. The whole question appears to be the manner in which the representatives of New South Wales will regard this proposal. If they cannot see their way to safeguard the interests of their colony, if they cannot see their way with the information before them to accept this proposal at present, or some proposal of a similar nature, I would urge them to consider whether we could not place a separate clause in the Bill, having a contingent effect if necessary, so as to provide, on the people of New South Wales or their Government being satisfied that the schemes projected by the Federal Government would not be an injury to them, that it should be possible for the Federal Government to enter into the federal control of this great system. Some such federal control, I believe, would be an enormous enrichment to all Australia, and would foster the development of the interior.

Mr. MCMILLAN. -

Is the honorable member in favour of the amendment suggested by South Australia?

Mr. DEAKIN. -

I am in favour of it as far as making it apply to all rivers for navigation, as is proposed by the complete amendment; but as to irrigation, I am in favour of it only to the extent I have mentioned.

Mr. MCMILLAN. -

Does the honorable member consider that this sub-section gives absolutely to the Federal Government the ownership of the waters of the rivers?

Mr. DEAKIN. -

I have not considered all the proposals of the South Australian
Mr. REID. -
It takes the use of the waters without paying the expense.

Mr. BARTON. -
What is the difference between taking away some of our waters and taking away some of our land?

Mr. DEAKIN. -
Exactly.

Mr. KINGSTON. -
But it is not your water.

Mr. MCMILLAN. -
Do the words "the use of the waters thereof" mean the absolute ownership of them?

Mr. DEAKIN. -
I think that those are the widest possible words, and if they do not convey an absolute ownership confer all the practical title to them. I agree with the honorable member that these words imply most absolute control on the part of the Federal Government. The query put to me by one of the representatives of New South Wales is whether there should be any greater right in the Federal Government to take away her water than to take away her land. The scheme which I am suggesting is not met by that analogy, because water, unlike land, is not a fixed quantity. In Australia it is a very unfixed and indeterminate quantity indeed. It may be possible, by perfect regulation of the streams, to leave to New South Wales practically all the water which she now enjoys, or can enjoy, on an unimproved river, and yet by means of its improvement, while leaving her all that water, to give much greater security to navigation, and to provide a much larger quantity for irrigation lower down. By putting this river as a whole under federal control, it may he possible to satisfy New South Wales that, while she loses nothing, the community of South Australia and her own residents, as far as they are affected by navigation, will gain a great deal. I freely admit that-as it is New South Wales that is asked to make the sacrifice upon this subject-the request is one to which I, as a representative of Victoria, can make no reply. It must be answered by the representatives of New South Wales. But I am appealing to them to recognise the federal aspect of this question-to recognise that federal aspect as far as they possibly can in this Bill without jeopardizing the interests of their own colony; so that when at some future time, with more knowledge at their command, they, or the people of New South Wales, can be satisfied that this federal control can be handed over to the Federal Parliament without
serious loss to New South Wales, it may then be possible for the Federal Government to enter upon the control of this river scheme. That is what I am putting—no unreasonable demand, I think; but I feel that because New South Wales is the only colony that is asked to make a sacrifice in this matter, and is not yet prepared to make it, they should not shut the door on all future federal control of this great arterial system of Australia. It would be an immense gain to the continent as a whole if the river system could be federalized, if the federalizing of it could be effected without imperilling, the interests of New South Wales.

Mr. DOBSON. -

You speak of this water being in the legal possession of New South Wales. Can you point to any proclamation in which the Crown has given to one colony legal possession of a national river running through all Australia?

Mr. DEAKIN. -

I cannot; and I think I can with safety challenge the honorable member to cite authorities giving any right to any other colony to challenge it.

Mr. BARTON. -

We are granted territories within certain boundaries, and one of the boundaries is a river; and unless there is something to show to the contrary the water of that river is ours.

Mr. DEAKIN. -

So I should say, unless I can be shown instances where national riparian rights have been recognised between states in regard to a single stream.

Mr. DOBSON. -

I think you would have to show that the Crown granted to one colony the main artery flowing through three colonies. The onus lies upon you to show that.

Mr. DEAKIN. -

I confess to thinking that, in discussing the legal aspect, we should be opening up a question which, however interesting in itself from a professional point of view, we cannot pretend to settle authoritatively, and the discussion of which would lead to no practical gain. All we can do is to ask the representatives of New South Wales to consider this matter of river control in the most federal light, and to urge them to join with us in providing as far as possible, if not for the immediate, at all events for the contingent, federal control of, all the river systems of Australia whenever the Federal Parliament may deem that control necessary.

Mr. DOUGLAS. -

It seems to me that it is for the Federal

Mr. GLYNN. -
I think, from the private conversations which I have had with some members of the Convention that the representatives of South Australia may congratulate themselves upon the slight advance which has been made in the recognition of the justice of their claim since the suspension of our sittings in Sydney, and I think also that it only requires that our case shall be comprehensively stated from all points of view to induce a considerable number of the representatives of New South Wales to support us in our amendment, by means of which we wish to establish, the recognition of our equities-I am afraid to use the word "rights" to the rivers of the continent. It has been, I believe, the comparative ignorance that exists upon the decisive points of the question that has prevented the recognition of our claim hitherto, but there have been indications during the speech of my honorable colleague (Mr. Gordon) in the form of interjections by one or two members, which have suggested to me a few aspects, of this question upon which it would be judicious to say a few words. We had an interjection from the leader of the Convention (Mr. Barton) to the effect that none of the waters of the River Murray have yet been diverted by New South Wales, and we have had the suggestion made by some of the representatives of Victoria-I think by Mr. Higgins and Sir William Zeal-that by granting the rights South Australia asks for, you will be virtually taking away certain reservoirs constructed in Victoria, the assumption underlying the argument being that the waters of these reservoirs are feeders of the rivers.

I will endeavour to challenge the innuendos which are involved in these statements, and if, in doing so, I trespass upon the time of honorable members to a greater extent than would otherwise be the case, I do so from a sense of the importance of the question. I take a different view from some honorable members-a view which is somewhat suggested by the argument of Mr. Deakin as to the expediency of placing the rivers under federal control. I say that the result of so doing would be of great benefit in the extension of the economies which we wish to achieve by federation, and in the expansion of our commercial intercourse, which is also one of our primary objects. I will first of all say that river traffic, as against railway traffic, is by far the more preferable of the two, and our idea is that we ought to improve the opportunities of river traffic we have in Australia. Take, for instance, the statement of an expert, General Hamley, who in an article in the Contemporary Review for April, 1891, states-

Fifteen years ago it would scarcely have been disputed that canals must give place to railways. The teaching of to-day, is, however, quite different. There is a widespread belief that inland water carriage may compete
successfully with railways, and a general desire to bring the former mode of transit into more extensive use.

I might expand this point at considerable length, but I will content myself with quoting the evidence given by an expert before a canal committee of the House of Commons in England in 1883 upon the comparative merits of water as against railway conduit. In his evidence before that committee Mr. F.R. Condor stated that the cost of maintenance of works for equal volumes of traffic on canals is less than one-fourth the cost on railways, and the cost of conveyance of heavy material by canals is less than one-third that by railways. And he states that the economy of transport by canal is about 64 per cent. less than by rail. Now, these facts have been recognised widely in the old country, because we find an expenditure of from £10,000 to £11,000 a mile being spent upon the improvement of the canal systems even where there is railway competition. Coming to Australia, I will deal as far as possible with the arguments of the representatives of the opposing colonies, or of the colony of New South Wales, from these colonies own reports. Let me refer to a statement made by Mr. Gordon, a civil engineer whose name is well known to those who have looked into the matter. In his report to the provisional directors of the River Darling Navigation Company, about ten years ago, he stated-

Inland navigation, after having been for some time almost at a stand-still owing to the rapid extension of railways, has of late years exhibited a revival in England, and more especially on the continent, its numerous advantages, more especially the low cost of haulage and of maintenance, enabling it to contrast more favorably with railway traffic. When a river is canalized, and the navigation is independent of floods and drought, the one great advantage of railway communication-its regularity-disappears, while the capacity of the canal is much greater. The total cost of carriage on a canal or navigable river decreases in far greater ratio with the increase of traffic than does that by railway.

I think these few quotations ought to a large extent to support the position Mr. Deakin takes up, that it is to the interest of the colonies affected by the rivers, into which the rivers flow, or by whose territories the rivers pass, to improve these natural agencies of exchange, and to cooperate with us for the purpose. One of the first objects we have in view in this amendment is to improve these great water economies. Let us see what has been stated in New South Wales upon this point. Mr. McKinney, in a report to the Government in 1893, pointed out that the navigability of the rivers would be of enormous advantage to the State, and a great gain to New South Wales, because river traffic is cheaper for the public than railway traffic. Referring to the River Darling and the efforts of New South
Wales to imperil its trade by preferential rates—and I will particularly ask the attention of the committee to this point, as the New South Wales system of locking is a most anti-federal system—he says—

Additional railways are certain to be constructed in the course of time, but the experience of the world proves conclusively that they will not supersede water traffic. Economic results are often obtained by working the two systems together, but the iron road cannot destroy canal or river services where there is a level competition.

Following his argument still further, and supporting it by evidence, Mr. McKinney states that in England 4,000 miles of canals have been constructed, and in France upwards of 8,000 miles of canals; and that about £60,000,000 has been spent in improving the water carriage of France, with the result that France has been enabled after a certain number of years, through the profits arising, to throw open these modes of transit gratis to the public. Now, what is the position in England? The railway companies, finding that the canals are likely, by force of competition, to beat them, are endeavouring, as far as possible, to buy up the canals, and according to the evidence given before the committee to which I have referred, and to more recent publications—down to the year 1896—about one-third of the canals of England are now under the management of the railway companies. With what result? That the moment a railway company obtains possession of a competing canal, it at once doubles or trebles its rates. Now, that speaks very highly as to what may be the result of the improvement of our river traffic by a system of federal control. Let me now come to the policy suggested by Mr. McKinney to New South Wales as a complement to the navigation of the rivers by a system of locks. He states that—

A peculiar difficulty has, however, always attached to the navigable use of the Darling. Nature, indifferent to the political lines which might afterwards be drawn on the map of Australia, fixed the geographical course of the river in a way that distinctly favours Melbourne and Adelaide against Sydney as shipping ports for produce. Able railway management—

which we are challenging now by our policy—

has lately succeeded in securing about half the Darling trade for Sydney in spite of the geographical direction of the river; but politicians and merchants, as may easily be imagined, are not satisfied with half of the trade. Their ambition or interest is to bring all New South Wales produce to a New South Wales market or shipping port. To convert the Darling into a permanent road to Melbourne and Adelaide at the expense of this colony is an idea too benevolent for serious contemplation. What has been
considered for several years is the advisableness of canalizing the Darling, and of so administering the canalized river as to force the traffic to Sydney.

-a most anti-federal proposition. But it may be objected by New South Wales" We are not going to lock our rivers for your advantage." My answer is that in 1888 we in South Australia carried a motion in favour of a system of federal locking of rivers. I went over to see Sir Henry Parkes, who was then the Premier of New South Wales, being deputed to do so by the Government of South Australia, to ascertain if he would join with us in the federal looking of the rivers. Of course we know what the results of Sir Henry Parkes dicta on the question of joint action have been. The policy of New South Wales is simply to look the Darling and set up rights which will prevent the traffic going into its natural course to Victoria or South Australia, and thus arrive at the very reverse position of that, which we are endeavouring to reach by federation—the position which is the federal one on this question. The representatives of New South Wales inquire "What have we done?" Mr. Barton asked."Have we taken a single pint of your water up to the present?" Now, what is contemplated? The report from which I have quoted was furnished in 1893, so that the scheme has not had very much time to be carried out up to the present. We find from that report that the Government of New South Wales contemplate impounding the flood waters of the Darling in certain lakes, which have a storage capacity of 360,000 acres. I will point out what the effect of carrying out that scheme would be to South Australia and Victoria. The water that would be conserved in those lakes would be sufficient to keep up the flow of the river for about half the year.

Mr. HIGGINS. -
Scarcely.
Mr. GLYNN. -
I have it on an estimate made by Mr. Burchell, an officer of the Water Conservation department of South Australia and one of the best experts on this question, that that is so.

Mr. HIGGINS. -
You assume that it stays there all the seasons.

Mr. GLYNN. -
I think I shall be able to convince the honorable member, before I pass from this branch of the subject, that if you impound the flood waters of the Darling to the extent contemplated by New South Wales, you will destroy, for the greater part of the year, the navigability of the Murray, because a very high flood in the Darling means only a difference of 2 or 3 feet in the level of the Murray, and the Darling itself is kept up by the reflow into the

[P.48] starts here
river of the flood water from those lakes which they now seek to dam back. Their object, of course, is to use the water which has, up to the present, been the feeder of the river, but they will destroy the navigation of the Murray, for a part of the year, by pushing on their policy of irrigation. That will be done is further suggested by the fact that the amount of evaporation is about 5 or 6 feet per annum. So that, if you take into account the evaporation, and measure the quantity that will be impounded, the likelihood is that there will not be a single drop of reflow of the flood waters of the Darling after the project of New South Wales is carried out. That is one of the strongest objections that we, in South Australia, have to the contemplated policy of New South Wales. Then there is also in contemplation the conservation of water by reservoirs in Victoria—that is, of water from the rivers. The official reports state that there is an irrigable area for which works are contemplated of three and a half million acres in Victoria. The Victorian Government proposed to carry out water conservation and irrigation schemes which, had they been carried out—and it is only lately that they are beginning to find that those schemes cannot be carried out—would have taken a discharge equal to about 7 feet of depth on the Murray gauge at Overland Corner. In other words, that colony would divert an amount of water about double that which is required to keep up the navigation of the river. About eight out of ten of the schemes contemplated in Victoria in 1885 are for the diversion of water from the Murray. Mere pumping schemes we could not object to. For instance, Mildura where there is 10,000 to 12,000 acres under irrigation, generally takes the water when the river is in flood, and does not take more than one-eighth of the Murray's discharge at Morgan at summer level.

Mr. HIGGINS. - Does not that water get back into the Murray—a great deal of it?
Mr. GLYNN. - I do not think it does. However, we are not much, afraid of mere pumping schemes, but we are afraid of the effect that the carrying out of those storage schemes would have on the waters of the Murray. What would be the effect, independent of navigation, on South Australia of the carrying out of the water storage and irrigation schemes contemplated by New South Wales and Victoria? The mouth of the Murray has been mentioned. There are two or three lakes near the mouth of the Murray—the Alexandria and the Albert being the two principal ones—on the waters of which about one-third of a million of sheep depend. When the river goes down the waters of those lakes become brackish. The result of the diversion of water from the Murray will be to keep the mouth of that river
at a very low level, and, consequently, it will be injurious to the interests of
the owners

That in the opinion of this conference the commerce, population, and
wealth of Australia can be largely increased by rendering navigable and
otherwise utilizing the great waters of the interior, such as the Murray,
Edward, Murrumbidgee, and Darling, and that the obligation of carrying
into effect the necessary works to accomplish these objects devolves
primarily upon the respective Governments having jurisdiction over such
rivers.

That is a true and fair statement of the position assumed by us. I only ask
honorable members to act in the spirit of that conference, which very
largely reflected the commercial spirit of Victoria and South Australia at
the time. In 1887, the Water Supply Commissions of Victoria and New
South Wales, which had been appointed to consider the question of the
Murray waters, arrived at the conclusion that those two colonies should
divide between them the whole of the waters of the Murray, from its source
to the eastern boundary of South Australia.

Mr. LYNE. -

What commission was that?

Mr. GLYNN. -

There were two commissions—one appointed by Victoria and another by
New South Wales.

Mr. LYNE. -

They did not arrive at any such conclusion.

Mr. GLYNN. -

They did.

Mr. LYNE. -

I beg pardon; I was president of the New South Wales commission.

Mr. GLYNN. -

I challenge the honorable member; they did arrive at that conclusion.

There was a preliminary report or proposal in 1887, and South Australia
remonstrated against the tenor of that report through Sir John Downer, who
will be able to bear out my remarks. The minutes of that remonstrance and
the terms of the report may be found in the Blue-books, which are to be
seen in the Library.

Sir GEORGE TURNER. -

What was the purport of that report?

Mr. GLYNN. -

The two commissions were appointed to deal with the question of water
conservation. Their objects were more comprehensive than that of arriving at some common means of dividing the waters of the Murray, and I am only mentioning the fact that those commissions did arrive at that conclusion, and reported or suggested that it would be advisable-I am now quoting the tenor of the proposal-


to divide the whole of the waters of the Murray from its source to the eastern boundary of South Australia, and its tributaries as far as How long, between New South Wales and Victoria.

South Australia remonstrated against that, and as the result of that action

and New South Wales, we appointed a commission to consult with their commissions with the view of arriving at some common basis of federal action. The obstacle to anything being done was New South Wales. Victoria was exceedingly fair in the matter. Sir Henry Parkes was approached, and he played with the question by stating that nothing would be done while Mr. Deakin, then president of the Victorian commission, was absent in England. We were led to assume that when Mr. Deakin came back a joint meeting would be held; but in the meantime Sir Henry Parkes dissolved the New South Wales commission, so that the object of South Australia in appointing a Royal commission-to have a meeting of representatives of the three colonies-was frustrated. In every instance New South Wales endeavoured to frustrate joint action. That is borne out by the correspondence attached to the report of the South Australian commission.

Mr. REID. -

In other words, we have been slow to permit your interference with something that belongs to us.

Mr. GLYNN. -

I will deal with that point later on-as to whether the Murray belongs to New South Wales exclusively or not.

Mr. HIGGINS. -

Do the rain clouds belong to New South Wales?

Mr. SYMON. -

That is what it comes to.

Mr. KINGSTON. -

And the heavens above.

Mr. REID. -

Victoria would stick to the Yarra till her last gasp.

Mr. GLYNN. -

Apart from international law, New South Wales contends that her claim is based on Statute law. She claims under section 5 of the Constitution Act,
explained by 13 and 14 Vict., chapter 59, that the whole of the water-course of the Murray from its source to the eastern boundary of South Australia, "is and shall be within the territory of New South Wales." That is the basis of the claim of New South Wales. Then there is a letter from Sir Henry Parkes claiming complete control of the Murray, and objecting to South Australia even so using the waters of the Murray as to possibly interfere with the waters of the Darling higher up, or affect the normal level of the rivers. Sir Henry Parkes was not supported in that contention by his own press.

Mr. HIGGINS. -

What was his press?

Mr. GLYNN. -

I refer to the Sydney Morning Herald and the Sydney Daily Telegraph. I do not mean that these were his special organs, but I say that he was not supported by the two leading journals of New South Wales. The Herald was of opinion that it would be "a grave mistake to say the Murray is ours," while the Daily Telegraph said that "it was never intended to give New South Wales the absolute ownership of the waters of the Murray, and to deny all right of user in them to Victoria." If they look at the Constitution Act it will strike honorable members, and particularly legal members, that what is given to New South Wales is not the waters of the Murray, but the water-course. If the River Murray flowed right through the heart of Victoria, and did not touch New South Wales at all, the position would be that Victoria would own the water-course, so far as the colony could own anything which belongs to the Crown-because the bed of navigable rivers is held to be vested in the Crown, and can only be vested in the subject as a matter of temporary trust-and the granting of the water-course would not confer a grant of the waters, as against riparian owners or states lower down. Therefore this claim on the part of New South Wales as based upon the right to the water-course is unsound. It is held in international law that the right to the use of water depends not upon the right to the water-course, but upon the right to the banks of the stream.

Mr. LYNE. -

Is it not somewhere provided that New South Wales shall have the right to the water down to navigation level.

Mr. GLYNN. -

No. I do not think the honorable member can show me a single statement in the Constitution Act or in the amending Act which gives more than the water-course to New South Wales.
Mr. REID. -

You are speaking of the Murray, not of the Darling and the Murrumbidgee, whose banks belong to New South Wales.

Mr. GLYNN. -

The position is no stronger in international law in the case of the Darling. There must be a reasonable and usual flow of the river left for the riparian owners lower down.

Mr. REID. -

If there is any clear international law regulating these matters how is it that all the nations have had to agree by treaty as to the use of such rivers—take, for instance, the Rhine. In every case agreements as to the use of these rivers have been come to by treaty.

Mr. GLYNN. -

The honorable and learned member is a lawyer, and he is not such a political innocent as not to know that between states there is no such thing as law existing, except the right of the strongest.

Mr. REID. -

If you take it that way the question is settled, because we are stronger than you are.

Mr. GLYNN. -

There is such a thing as international comity, which between civilized states has within the last 100 years been held to be as obligatory as private law.

Mr. REID. -

Has it? In China we do not see much of that.

Mr. GLYNN. -

Among civilized states the obligations of international comity have been held to be binding in decency and conscience, so far as anything without a sanction can be binding.

Mr. REID. -

How does that proposition bear upon the proposal to federalize certain water in New South Wales, which is the proposal is not a proposal to recognise the comity of nations, or the morality of water-courses, but one to federalize certain rivers which are entirely within the territory of New South Wales.

Mr. GLYNN. -

I am glad that the honorable and learned member is making his speech now, because it gives me an opportunity of replying, which I should not otherwise have. But the honorable gentleman asked what has this to do with the question? We wish to apply the principle of international comity to the dealings of New South Wales with South Australia and Victoria. We
have rights which, with the sanction of private law behind them, would be enforced in a court of justice. We have a right to the flow into our territory of the waters not only of the Murray but of the Darling.

Mr. REID. -
And we are giving it to you now.

Mr. GLYNN. -
The right honorable member proposes to stop it.

Mr. REID. -
No.

Mr. GLYNN. -
Well, I suppose the Premier of New South Wales will follow the suggestions of Mr. McKinney, who, in 1893, reported upon a contemplated diversion of water by the impounding of the feeders of the Darling, which would interfere with and diminish the flow of the Murray. A matter that is lost right of in connexion with the Act amending the New South Wales Constitution Act, under which New South Wales makes its preposterous claim to the waters of the Murray-

Mr. REID. -
We make no claim to them; we have them.

Mr. GLYNN. -
Then the right honorable member wishes to exercise what is simply the right of the strongest. The New South Wales Constitution Act was amended, as is apparent from the terms

boundary of New South Wales, and therefore in the future there can be no question as to within which court an offender against the Customs Acts can be tried. I think, therefore, that the claim, so far as international comity and so far as statute rights are concerned, is an exceedingly weak one, and I challenge the representatives of New South Wales to show upon what principle, or by what analogy of private right or of public comity, they can justify their attempt to diminish the reasonable flow of the Darling into the Murray. The honorable member (Mr. Gordon) has very properly gone into the principle of international law, and upon that point I will not therefore touch; but we ought not to be behind the belligerent nations of Europe in this matter. In 1814 and 1815 the principles of international comity which ought to operate in these matters between nations, and by analogy between states, were put into operation for the first time, and the Elbe and the Rhine were placed under a system of joint control for the purposes of navigation and improvements in navigation. Then in 1828, as Mr. Gordon pointed out, a similar policy was extended to the relative claims of America and Great Britain to the River St. Lawrence. In 1856 and 1857 we find such an
uncivilized country as Turkey declaring the obligation in conscience of these very principles which we ask to be extended to the consideration of the Darling and the Murray question. I will quote the statement of the effect of the treaty given by Mr. Twiss in his work upon The Law of Nations considered as Independent Political Communities, and I lay emphasis upon the word "independent" because there is no sanction applying to these relations:-

The Treaty of Paris (30th March, 1856) has applied to the River Danube and its mouths the same principles of law which had been applied by the Christian Powers assembled at Vienna in 1815 to the rivers traversing or separating their respective territories, and has recorded that this arrangement with the Ottoman Porte forms part of the public law of Europe. The right of empire over any of the great arterial rivers of Europe has thus ceased to confer any exclusive privilege of navigation upon the nation which enjoys that right. On the contrary, each riverian state is under a conventional obligation to remove all obstacles to navigation which may arise in the bed of the river within its territory, and to maintain the banks and towing paths and other accessories to the navigation in such a condition as will best facilitate the circulation of the merchant vessels of all nations.

A joint commission was appointed to make regulations for navigation and river police, to remove impediments to navigation, to construct any necessary works throughout the whole course of the river, to maintain the mouths and the neighbouring parts of the sea in a navigable condition, and to levy with perfect equality on the flags of all nations dues towards expenses. These are principles in operation by treaty between the belligerent states of the old world upon which I think we should act.

Mr. REID. -

We all recognise them.

Mr. GLYNN. -

Well, I hope the right honorable member will show us how they can be put into practice, or why those obligations do not fasten upon colonies which are within lines of mutual sympathy which have been applied to the nations of Europe. If it be among the objects of federation to establish by the removal of all artificial obstacles to its natural flow perfect freedom of commerce between the colonies, and to improve by co-operation the great instruments and arteries of exchange, the federal control of the rivers must be one of its fundamental conditions. Without this federation you place it in the power of one colony, by adopting a policy directed to meet its own selfish ends, to deprive the other colonies of cheap water carriage, and thus to prevent the river-ways from being made, as they could be made without
much outlay, as mighty instruments in aid of production.

Mr. CARRUTHERS (New South Wales). -

Many of the arguments which have been urged in favour of the amendment totally ignore the one cardinal aspect of the case which presents itself to the colony of New South Wales, and that is that with our control of the water we have necessarily associated the control of the adjoining land. If you take away from the colony of New South Wales its right to control the waters of the Darling, of the Lachlan, and of the Murrumbidgee, you make our land asset worth practically 50 per cent. less. Navigation may present itself to the people of South Australia as the principal point to be considered with regard to these rivers, but what we have to consider in New South Wales is the creation of products. What is the use of leaving a splendid water-way for ships to ply upon if the people alongside that water-way are deprived of the means of using their land to the best of purposes—of employing it for the production of that which the ships are intended to carry? We have in New South Wales 220,000,000 acres of land, of which about 140,000,000 acres are dependent for their water supply upon the Murray and its tributaries. If you hand over to federal control the waters of this gigantic river system without taking over the control of the land and the liabilities which attach to it you leave a divided authority, with the result that neither the land nor the water can be used to the best purpose. I undertake to say that no member of the New South Wales representation could go back to his colony and persuade the people there that federation at the price of handing over the control of our great river system is a federation which could be accepted. We know that in these colonies, and more especially in the colony of New South Wales, with its great area of pastoral lands, one great requirement is the conservation of the water. Nature has been bountiful in providing water, but man has been improvident in its use. I pay little attention to the discussion today on the subject of irrigation, because irrigation is one of those things that may perhaps come in the distant future. At the present time it does not present its possibilities to my mind with any great force. But water conservation is a matter of a different character. We do not want the water of these great rivers for the purpose of diffusing it here and there to enable wheat and other crops to be grown. We want the water to carry on an industry that is to New South Wales of material importance—the pastoral industry—with some degree of certainty, and I say that we cannot do so if any other authority is to have the power of interfering with the use of that water. Then again many of the arguments used to-day are based on a mistaken idea of what these rivers are. When you quote to me
international law, when you quote authorities as to what is held to be good law as between the nations of Europe, I would say—"Give us the rivers of Europe in Australia and we shall be satisfied to have the laws of Europe; give us the rivers of America and we shall be satisfied to have the law of America." Unfortunately, the rivers of Australia are totally different in their character from the rivers of almost every country in the world. Go to many of the tributaries that have been spoken of to-day as if they were streams of running water, and I will undertake to say that all, or, at any rate, two-thirds, of the members of the Convention would cross those tributaries and not know that they were crossing a river at all. They would see simply a depression in the soil and not a drop of water there. That is the condition of many of the tributaries of the Murray, not for a quarter of the year, but for a great portion of it. We have these water-courses without the water. There is no such state of affairs in Europe or in America, where the streams are fed by snow or by a watershed, with a more bounteous rainfall than we enjoy. We have here a totally new state of affairs, and to cope with it we must have some new laws. Our laws spring from customs, from convenience, and from experience. We have a river system that

is totally different from that of other parts of the world. The law will spring up from the system itself. Here it is proposed to take the River Lachlan and to deal with it. Does Mr. Gordon know that a boat has never plied on the River Lachlan from the date of the discovery of the colonies up to the present time?

Mr. HIGGINS. -

Then this proposal would not affect you?

Mr. CARRUTHERS. -

The Lachlan is a stream which practically has no outlet excepting into the Murrumbidgee. It overflows on to a vast reed bed.

Mr. LYNE. -

They would have to cut a canal.

Mr. CARRUTHERS. -

Yes, and if they took the water away they would ruin the country higher up.

Mr. REID. -

And leave the expense to us.

Mr. CARRUTHERS. -

We know that throughout Australia one of the first things to be done in order to make colonization possible is to secure the water by damming it up. Nature has done that so far as the Lachlan is concerned by means of the deposit of soil, the sedge, and the reed beds. To make that river navigable
so as to carry goods, upon it to South Australia would simply be to fly in
the face of all teaching as to what is best to be done in order to insure the
permanent settlement of the country and to make it reproductive. Now,
take the Murrumbidgee, which is partially navigable for a small portion of
its length. The moment we attempted to divert any of the water of the
Murrumbidgee, in order to increase the productiveness of the Riverina
districts, we should be assailed with a charge of injuring the interests of the
people lower down. Honorable members will bear me out in saying that if
we had had during the last twelve months or two years a system by which
we could have diverted some of the water running to waste from the
Murray into the Riverina, we could have saved thousands dying. If we
could by a system of water conservation give greater facilities for stocking
and using the country, we should do much more good than by simply
enabling ships to ply up and down the stream. After all, what is the great
national purpose of the occupation of our country? It is to increase its
productiveness and to so use the land that others may gain an honest and
comfortable subsistence upon it. The moment you introduce any artificial
scheme of railway construction or navigation which will interfere with the
great material purposes of colonisation, you put the machinery of
government to a wrong use. So long as you can make navigation subsidiary
to the great purpose of colonisation and settlement, I shall be heart and
soul with you in any proposal you have to submit. But to use the rivers for
the carriage of products at the cost of productiveness is to put purely
commercial interests above the interests of settlement.

Mr. SYMON. -
We do not propose that.

Mr. CARRUTHERS. -
Now I will take the River Darling. Allusion has been made to the
network of lakes along the Darling, which are fed by the flood waters of
the Darling at certain seasons. If we did not conserve the water in those
lakes, or rather if private enterprise did not do it, it would rapidly run away
through South Australia into the ocean and be wasted.

Mr. GLYNN. -
It would keep up our navigation.

Mr. CARRUTHERS. -
The mere keeping of the water back does not interfere with navigation
for a single day. Nothing that has been done in New South Wales in regard
to the use of the water of the Darling has interfered with navigation. On the
contrary, we have spent thousands and tens of thousands of pounds in
rendering that river navigable, not for the benefit of the Government and
the people of New South Wales, but largely for the benefit of the
Government and the people of South Australia, who derive all the profits from the water carriage to their ports.

Mr. GLYNN. -

Mr. McKinney says in his report that Lake Menindie's reflow keeps the river up for three months.

Mr. CARRUTHERS. -

Mr. McKinney's report was referred to the Public Works Committee of New South Wales, and it has not been adopted. It has practically been rejected by the Public Works Committee. Parliament was invited to carry out a portion of the scheme for looking the Darling but Parliament has not done so. One lock is being constructed at Bourke, and it will have the effect of making the supply of water for navigation more certain. The honorable member must know that where navigation is the principal object, the making of proper provisions for the water to escape simply makes navigation more secure. Nothing has been done by New South Wales with the deliberate intention of interfering with navigation. If we are to have a proper settlement of the land everything must be done to make the best use of the water that flows through our territory. We cannot do that by simply making the rivers available for navigation. We have, as has been pointed out with regard to Victoria, an absolute necessity existing for the diversion of the waters in the streams, but not for the absolute diversion of it so that it may never be returned to ks and weirs, and for what purpose? Simply in order to prevent the water continuing to flow down one channel. It is made to flow down several channels, and during nine months of the year the country is thus enabled to carry three or four times as much stock as before. Agriculture can also in certain limited cases be conducted profitably. Are we to stand idly by, having the control and ownership of the lands that are vested in the people of our colony, and having the responsibility of settling the people on those lands, and see taken away from us the control of that without which the lands are practically valueless-the water? Could any honorable member undertake to persuade the people of New South Wales that if a water supply were required for some country town along the Lachlan, say Forbes or Parkes, or along the Murrumbidgee, that the Federal Parliament would be as active in providing that supply as the local Government? This would be a purely local requirement, and the people would have a reasonable fear that they would not get justice from the Federal Parliament, who would have little knowledge of their requirements. What concern have the people of Western Australia or of Tasmania in the waters of the Darling? And yet
this resolution only aims at the control of the rivers in New South Wales.

Mr. SYMON. -
Rivers passing through contiguous states.

Mr. CARRUTHERS. -
The Lachlan, the Darling, and the Murrumbidgee are certainly tributaries of another stream, and are not national rivers in such a sense that we should be asked to invite the people of Tasmania to share in the expense of making them navigable, and to take any part in the control of them. We should be absolutely unable to persuade the people of New South Wales that this would be a fair price to pay for federation.

Mr. HIGGINS. -
What about the railways?

Mr. CARRUTHERS. -
When honorable members talk about the railways they forget this fact—that the Convention, time after time, has, by its vote, refused to make railway management or construction a matter of federal control. Having refused to relieve the Governments of the various colonies of the management of the railways, is the Convention now to ask the Government and the people of New South Wales to hand over the control of the navigation of the Darling to a Federal Government, which would use that river for the purpose of competing with the local railways? The case would have been very much stronger if the Convention had agreed to hand over the control of the railways to the Federal Parliament. We know that one of the first things that South Australia would ask the Federal Parliament to do would be to open the rivers to cheap carriage, which would compete with the railway system of New South Wales. There would be an expenditure on the part of the Federal Government for the purpose of promoting a competition with the local asset of the railways. The cheap carriage by water, aided by the federal expenditure to which New South Wales would have to contribute, would be destructive to the railways. I am quite sure that the vote that was arrived at before will be supported again by the delegates of New South Wales, because none of us could honestly go back to our constituents and recommend the adoption of a Constitution which contained a provision that would involve so great a sacrifice on the part of our colony.

Sir JOHN DOWNER (South Australia). -
The representatives of New South Wales do the constituents of their own colony an injustice in stating so absolutely that they cannot recommend to them that which appears to be founded on the first principles of right, and which, from my experience of the people of New South Wales, I think they
would be the first to agree to. So far as the law of the case is concerned, I agree with what Mr. Deakin has said. I agree that New South Wales has the control of the river within its territory. I believe that legally she can use every drop of water that is there, and I do not know of any precedent by which any other colony could interfere with her.

Mr. DOBSON. - Has the honorable member any authority for saying that?

Sir JOHN DOWNER. - It is the authority of power. They have got the river and they can use it, and every other state can do the same if the remaining states will endure it. But the other states will not endure it. The preservation of the navigability of a navigable stream has become as well-understood law internationally as if it were incorporated in the Constitution of every State.

Mr. WALKER. - Suppose the stream is not navigable?

Sir JOHN DOWNER. - Let us deal with one thing at a time. I first want to say something from the point of view that the stream is navigable. If we give the Commonwealth Parliament the control of navigable streams I think we have done enough, and the honorable member (Mr. Carruthers) will say that we have done too much, to preserve the navigability of the navigable part of these streams and prevent the taking away of water from parts that are not navigable which would produce unnavigability in portions now navigable. That would be taken as elementary law between unfriendly nations which had no ties of brotherhood or kindly feeling. It is a recognised international right that no State should interfere with the navigability of a stream. The clause in the Bill as it was passed in Adelaide appeared to me to be founded upon an absence of any recognition of the most elementary principles of justice between antagonistic nations, and still less of kindness between those who should be kind to each other. I will take it first that this is a navigable stream.

Mr. MCMILLAN. - Which?

Sir JOHN DOWNER. - That which I am referring to, the control and regulation of navigable streams. I will allow my honorable friend to find out what that refers to later on.

Mr. ISAACS. - Do you assume that it is navigable in one colony only, or that it is navigable in two?

Sir JOHN DOWNER. -
I am referring to a stream which runs through more than one state, and is navigable in more than one state.

Mr. BARTON. -

And forms a boundary between two states.

Sir JOHN DOWNER. -

That is quite immaterial. Like many others, I reserve the right to change my opinion upon this point; but as I am at present advised, I think it will be quite safe if we provide that the Commonwealth should have the control and regulation of navigable streams, because that would prevent the right which the honorable member (Mr. Carruthers) seems to think they have in New South Wales to take the whole of the water for irrigation or any other purpose. I do not say whether they could or could not take all the water, but I understand the honorable member's argument to be founded distinctly on the right of New South Wales to take if they please every drop of water that runs through their territory. I say that, as far as actual legal and physical right is concerned, they have it.

Mr. SYMON. -

They have might but not right.

Sir JOHN DOWNER. -

It is legal in a strict technical sense, but it is most immoral; it would not be endured between two nations that were not friendly. I begin by saying that the control of navigable streams ought, as a matter of course, to be in the Commonwealth. I say that simply because between hostile States any interference with the navigability of streams running through more than one State would be distinctly considered as an unfriendly act which would justify war. We certainly ought not to begin our Constitution by making it possible to be so unfriendly. So far as the experience of foreign countries is concerned—leaving out of the question the different character of their rivers—all the analogies which we can get afford no justification for, at least, not providing that the Commonwealth should have the control and regulation of all navigable streams. It is very likely we ought to go further, and, for the very reasons given by the honorable member (Mr. Carruthers), that we should not go so far. That honorable member says there is no analogy between our case, in this and climate, and the cases from which the precedents are drawn. There is great force in his contention, but the conclusion that you have to derive from it is the very opposite of the one which he draws. The more and the climate, the more limited the rivers, the greater the necessity for water; the more reason there is, in justice and right, that no one state should absorb the whole of the water, and the
greater necessity there is for having some fair adjustment to prevent wrong being done. The honorable member's argument brings me to identically the opposite conclusion to the one at which he has arrived, and so I think it would every member who looks at the matter from a fair point of view, and who does not too much consider his own particular interests.

Mr. HIGGINS. -

He says because the water is very valuable you have all the more right to rob it.

Sir JOHN DOWNER. -

That is the case. Passing from that, I want to know where is the danger in all this? As far as justice is concerned, the control and regulation of navigable streams is founded on international right, and should, at the very least be embedded in any Federal Constitution. The guarantee to each colony for the reasonable use of the water for irrigation in this case recommends the same argument still further. But apart from this argument, founded on natural right and justice, I want to know where comes in the danger that my honorable friend anticipates to such an extent that he says he cannot recommend the Bill to the Parliament of New South Wales if this clause be inserted? Has the honorable gentleman no confidence in the Constitution that is going to be established, and in the Parliament that will be formed? Has he any reason to believe that it will begin by doing New South Wales or any other colony a gross and monstrous injustice? Let me point out to the honorable member at the beginning how initially strong is the position of the countries through which this river passes. This river, as has been truly said, has nothing to do with Tasmania or with Western Australia; it practically concerns only New South Wales, Victoria, and South Australia. I would say to my honorable friend, where is your danger? We had proof as to where our danger was not very long ago, because when we were fighting for the first principles of international right with regard to this river, we had ten voting with us and every other soul in the Convention voted on the other side. So far as any anxiety which the New South Wales delegation ought to have at present is concerned, I think we have in this instance a very good proof of what is the real danger, that is, that in matters that do not concern the smaller states there will be a strong tendency on their part to support the larger ones. Our claim in this instance was founded on elementary right and justice. It was too clear, in my opinion, to admit of serious argument, that the control of any navigable stream within the Commonwealth ought, as a matter of course, to be in the Commonwealth Parliament. The provision limiting it and providing that the Commonwealth Parliament should have the control, but that it should
begin from the boundary of New South Wales and Victoria and then run to
the sea, was handing over the portion of the river that passed through South
Australia, and leaving the New South Wales Government an absolute
control in that portion of the stream that belonged to them. I hope that there
is no such strong feeling on this subject in New South Wales as my
honorable friend (Mr. Carruthers) says there is.

Mr. BARTON. -

There is a strong feeling.

Sir JOHN DOWNER. -

Then I hope it will be overcome. In New South Wales-a colony I have
most affectionate feelings towards, and whose people I have no reason to
do other than like exceedingly-I have not seen in my communications with
them any such radical wrong-mindedness as would lead me to suppose that
they want federation founded on an initial injustice, and on the
establishment as law between friendly colonies of that which between rival
nations would be considered a distinct act of war. I agree with practically
everything that my honorable friend (Mr. Gordon) said in his speech. At
the present time I shall be satisfied if the words were put generally to give
the Commonwealth the control and regulation of all navigable streams,
because I think that that would be sufficient. But I only say that because I
think that giving them the control and regulation of the navigable streams
would enable them to preserve the navigability, so-that if water were taken
from the tributaries to make the stream unnavigable, the Commonwealth
would have the power to interfere. Keep the stream navigable, and let each
riparian proprietor, each riparian state, take what it wants. simply
preserving the international law which has been recognised for many a
long year now, and you are not, I think, interfering with a private right.

Mr. LYNE. -

That is the law now in reference to the Murray between New South
Wales and Victoria. New South Wales cannot interfere with the Murray so
as to reduce the water below navigation level. That provision is contained
in her Constitution Act.

Sir JOHN DOWNER. -

If that be so it must be altered. The question is whether we should begin
our Federation by handing over to the Commonwealth a portion of a
stream which belongs to one colony, and by refusing to hand over the
source, at the same time leaving the source at the will and discretion of the
colony in which it rises, and leaving us merely the outflow which they
please to permit us to receive. I hope that this is not a matter for any
feeling.

Mr. BARTON. -
Here is the provision in the Constitution which applies to the Murray.

Sir JOHN DOWNER. -
Does it do that?

Mr. BARTON. -
It does not prescribe any level at all. It provides for the regulation of navigation between the two colonies.

Sir JOHN DOWNER. -
We have here what may be in the end a fruitful source of discomfort, very often petty, very likely sometimes large, but still having at its root a wrong. It is a bad thing to begin with a wrong when we have the opportunity, with all the well established law which is before us between rival nations, a means of coming to a perfect understanding and preventing future questions of dispute. Therefore it is that I sincerely hope that the representatives of New South Wales are not so prejudiced as my honorable friend says they are on this subject, and that the members of this Convention will do the best they can to educate them to a better frame of mind.

Mr. FRASER. -
I rise to say a few words on this very difficult question. I believe that if we insist upon carrying this amendment we shall still further complicate the mission which we all have so much at heart. I am satisfied that if we insist upon giving the control of all the navigable waters to the Federal Parliament the people of New South Wales will not accept the Bill. What we ought to aim at is to do the greatest good to the greatest number. I am convinced in my own mind that the waters of the river can be best utilized by irrigation. I do not say just now, I do not say during the next ten years, nor perhaps even during the next twenty years; but undoubtedly, in my opinion, the waters of these rivers can be used to better advantage by putting a dense population on the adjacent lands than by navigation. We have railways running in every direction, practically in all the colonies. In this colony we have too many of them; in the other colonies there are railways, and the river, of course, are at present competing with the railways. If you put teeming millions on the land adjacent to the Murrumbidgee, the Murray, the Darling, the Edwards, and other rivers which could be named, undoubtedly you produce an enormous quantity of things, and you thereby enable an immense population to live on the lands, which would be a much more advantageous thing than to keep open the water. The water-ways are only open for some months in the year, and practically goods go by railway all the year round. The waters of the
Darling are only to some extent utilized for transit purposes. The railways do, by 99 times to 1, the traffic of the rivers-probably more than that proportion. I am only guessing at the proportion; but practically all the traffic of the colonies is carried by rail. If you provide in the Federal Constitution that all the rivers shall be kept navigable, then you shut out the possibility hereafter of these valuable lands being utilized for dense settlement. It is perfectly clear to me that New South Wales will not consent to this amendment. For thousands of miles the waters of these rivers flow through her territory entirely, and is it to be assumed that they are going to give way on this point? If they were to give way I think it would be a gracious act. I am not going to say that it would not be a gracious act. We cannot expect human nature to do a thing of that kind, and, therefore, it is hopeless to contend that they will yield this point. In Adelaide the division against the proposal of the honorable member (Mr. Gordon) was 24 to 10, and I do not think the division in Melbourne is likely to be very much more in his favour than it was in Adelaide.

Mr. Howe. -

Yes, it is.

Mr. Fraser. -

I do not think so.

Mr. Lyne. -

It should not be so, at any rate.

Mr. Fraser. -

I do not think it should. I look at it from the practical stand-point-Are we going to have federation or not? If we are going to have federation, then we must get rid of these very difficult questions which are not absolutely necessary on the present occasion. I only rose to say that the question should not be pressed to a division. We have already dealt with the question, and no doubt the waterways, can be better utilized hereafter, as I have said. At present, I can assure honorable members that the waterways are not very largely used. I can quite understand South Australia being anxious to get the traffic of that vast Darling, the traffic of that vast Murrumbidgee, and possibly the traffic of the Edwards River and of the Murray River, but it would be almost impossible to get the other colonies to yield these points. Therefore, while I sympathize with South Australia, and while there is no doubt that the Murray is the natural outfall of all these waters, and that in a national sense, if we were one nation, they would be entitled to whatever traffic might come in that direction, I conceive that the difficulties in the way are so insuperable that I cannot vote for this amendment. Because I am so
anxious to see federation consummated, I will not handicap the Bill by inserting amendments which I am satisfied will kill it before it is referred to the people for their acceptance.

Mr. HIGGINS. -

At Adelaide I ventured to take an attitude on this matter which was opposed to the attitude of my colleagues from Victoria, and the more I have thought on the subject the more I am convinced that the only true federal attitude is that which has been put forward by the representatives of South Australia. It seems to me that all they claim is not that New South Wales shall be deprived of the opportunity to use these waters for irrigation within reasonable limits, but that in using the waters for irrigation, within reasonable limits, they shall not deprive the River Murray of such navigability as it would have by nature, and in order to achieve that end they suggest that the matter should be wholly and unreservedly left to the control of the Federal Parliament, in which New South Wales will be represented.

Mr. LYNE. -

It is not navigable by nature.

Mr. HIGGINS. -

If it is not navigable by nature, I do not think they will contend that it ought to be made navigable by art at the expense of New South Wales.

Mr. SYMON. -

They cannot claim artificial navigation.

Mr. LYNE. -

We can conserve the water with weirs and locks, and make the river navigable for all time.

Mr. HIGGINS. -

All that is contended for—and really it comes to a very narrow issue at the last—is that the whole matter shall be trusted to the Federal Parliament, and that the Federal Parliament shall be able to say what is to be done with the River Murray and its tributaries. Now, with regard to the exact words of the amendment, I think that the object of my honorable friend (Mr. Gordon) will be well enough achieved if he simply uses the words the control and regulation of the waters of the River Murray and its tributaries, because the River Murray and its tributaries are an isolated phenomenon in this continent. You see a great river 2,400 miles long, with great tributaries, which touches in its course four colonies, namely, Queensland, New South Wales, Victoria, and South Australia. And you see that the river draws its supplies from New South Wales and from Queensland, and from South Australia, and from Victoria. And when it is said that the River Lachlan and its water, and the Darling and its waters, and the
Murrumbidgee and its waters, and so on, are our rivers—speaking of New South Wales—when I ask at what point do they become New South Wales rivers? If you look at the case of the Darling you will see that it is fed by the hills in Queensland. At what point, then, does it become New South Wales property? I say that you cannot sever a river from its tributaries, any more than you can sever an engine from its wheels, or a man from his arms. Do these waters become exclusively New South Wales property when they are in the clouds in the form of rain, or in the Queensland hills in the form of creeks? Is the Darling the property of New South Wales when it forms a part of that colony, or when it empties its waters into the Murray and passes through South Australia? The fact is that there is an attempt to make an artificial distinction between the Darling and the Murray, when there is no such distinction. The Darling is the Murray, and the Murray is the Darling, to a large extent. If the claim made by New South Wales be valid, New South Wales has a right to stop up the waters of the Darling and of the Lachlan, and of the Edwards, and of the Murrumbidgee, and monopolize them for herself; and Victoria has a right also to stop up the waters of the Campaspe and the Loddon, and keep them for herself. And if this is to be done, what is to become of the Murray? Is the Murray to be wiped out? And if the two colonies, New South Wales and Victoria, have a right to dictate as to whether the Murray is to become the mere bed of a dried-up stream, it will become simply foetid in its odour—almost as bad as our own River Yarra. What I will submit is that it is quite true that of the colonies represented at this Convention, only three are at present interested, and Tasmania and Western Australia have no direct interest in the Murray and its tributaries. In that respect I think that the representatives of Tasmania and Western Australia may be regarded as a sort of neutral arbitrators, and I think we may safely appeal to the representatives of those colonies, who are not so directly interested in the matter as the other colonies, to act as arbitrators, and throw their votes on that side upon which they think justice lies, regardless of consequences. My honorable colleague (Mr. Fraser) has said that if we vote in a certain way and succeed, we shall lose New South Wales from the federation. Well, I know this—we have already in this Constitution incorporated a number of provisions which New South Wales, it is likely, will not be able to accept; and as long as my honorable friend (Mr. Fraser) found that those provisions suited his own views, he said—"Let us vote against New South Wales views," but when he finds that the particular view is one that suits his own, he turns round and says—"Vote on my side or we shall lose New South Wales from the Federation." I am as eager for federation as any one,
but I intend to vote on the simple principle of justice without regard to consequences in this matter, and although I know that there are a number in Victoria who think that this proposal will be injurious to Victorian interests, I say, as we are legislating for Australia, as a whole, it is our business to sink local interests and do what is right. There are, though, a few matters that have to be considered, and one is that Victoria and New South Wales have spent a large amount of money in surveying and making reservoirs for the conservation of the waters of the tributaries of the Murray-reservoirs on the Campaspe, the Loddon, and other tributaries. But for these reservoirs I am informed-I am putting it as strongly as I can against myself-the volume of water in the Murray would not be so much as it is; and it is said-"Here is South Australia coming in and asking to get the benefit of the River Murray, which is benefited by what has been done in New South Wales and Victoria; and she asks for this advantage without paying a farthing."

Mr. FRASER. -

The volume of the water in the Murray would be larger at times, but not so continuous as it is, except for this water conservation.

Mr. HIGGINS. -

But I should misunderstand the claim of South Australia and her representatives if I were to say that I thought that she wants to get the benefit of the expenditure incurred by New South Wales and Victoria without sufficient recompense.

Mr. GORDON. -

There should be a just apportionment.

Mr. HIGGINS. -

There should, as Mr. Gordon says, be a just apportionment, and I do not think there is a desire to rob Victoria and New South by reason of the expenditure incurred by New South Wales and Victoria. I am willing personally to trust the Federal Parliament in any adjustment between the colonies in establishing the control of the River Murray and its tributaries. I would say that the Federal Parliament should make an assessment of the amount of permanent increase of value that has been effected, and give back to New South Wales and Victoria what has been contributed. I do not think that more should be asked for than that. I admit that there is a secondary use for the water which has complicated this problem in Australia. The secondary use is, in consequence of our dry climate, for purposes of irrigation.

Mr. FRASER. -
It is the primary use.

Mr. HIGGINS. -

It is, at all events, a use so important that we cannot ignore it. But while admitting that irrigation is so important for the development of these colonies, I ask: Is it the irrigation of New South Wales lands alone, or is it the irrigation of Australia, we are looking to? I say it is the latter. There are two uses—two great national uses—to which the waters of a river can be put. The one is navigation and the other is irrigation. And that is the claim, as I understand, which is made by this amendment, namely, that the use of the waters for both purposes shall be put under the control of a body which will administer them for the benefit of the whole continent. The question does not affect Tasmania or Western Australia but it affects the other colonies represented at this Convention, and that is a strong reason for thinking that when it comes before a Federal Parliament in which Tasmania and Western Australia will be represented, the fairness and sense of equity of these colonies will induce them to see to it that no particular colony gets the benefit of the River Murray as against the others. Now, I was particularly anxious to speak upon this question because of the position I took up in Adelaide, with some hesitation—a position which had been taken up after such study as I have been able to give the subject. But I would submit to Mr. Gordon, who has introduced the amendment, that if he looks closely at the history of the development of the navigation laws in the United States he will find that this clause would be much better out of this Bill altogether, for his purpose, than in it. I mean to say that the clause as it stands would be better out. If this clause were out of the Bill altogether—as far as I have been able to read from Storey in his History of Cases upon the Constitution—under such a provision as the first sub-section of clause 52, affecting the regulation of trade and commerce with other countries, it has been held that Congress has full power to preserve the navigability of different rivers between the different states.

Mr. ISAACS. -

That would not satisfy Mr. Gordon.

Mr. HIGGINS. -

It would to a great extent. But I say if, on the other hand, you leave these words as they stand, there is a danger that the powers which are included in the first sub-section will be considerably cut down. I need not explain to Mr. Gordon, as a lawyer, that the expression of this control of the rivers in the one instance will lead to the construction that there is no control given in the first subsection; so that, assuming that the honorable member is beaten upon his amendment now before the Chair, I suggest that he should vote against the whole of this sub-section (31), and leave the matter to the
operation of the first sub-section, which already exists. It may not give-all
my honorable friend wants, but it will go much further in his direction than
if the clause is left as it stands. I have, therefore, to say that so far as I am
concerned, I shall give any assistance in my power to Mr. Gordon and his
colleagues in the representation of South Australia in the attainment of
their object—namely, to see that the great River Murray and its tributaries,
which cannot be severed from the Murray by any natural process, shall be
controlled for Australian purposes, as it is an Australian river.

Mr. OCONNOR. -

I would suggest to my honorable friend the leader of the Convention that
this debate might now be allowed to be adjourned. There is a great deal
more to be said upon the subject. I wish to address the committee myself.

Mr. BARTON. -

I think it is right that we should now discontinue our sitting, and
therefore I will consent to adjourn at this stage.

Progress was then reported.

LEAVE OF ABSENCE.

Sir GEORGE TURNER. -

I beg to move—

That so much of the standing orders be suspended as will enable a
motion to be proposed without notice.

The motion I have to propose is with regard to one of our absent
members.

The motion was agreed to.

Sir GEORGE TURNER. -

I beg to move—

That one week's leave of absence be granted to Mr. Brunker, on account
of illness.

The motion was agreed to.

The Convention adjourned at fifty-eight minutes past four o'clock, until
Monday, 24th January.
Monday, 24th January, 1898.

Commonwealth of Australia Bill—Foundation Day.

The PRESIDENT took the chair at half-past ten o'clock a.m.
COMMONWEALTH OF AUSTRALIA BILL.
The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjournment from Friday, 21st January) was resumed on sub-section (31) of clause 52-
The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.
Amendment suggested by the Legislative Council of South Australia—Omit "river," insert "rivers."

Mr. OCONNOR (New South Wales).—
The clause which it is proposed to amend was the result of a somewhat prolonged and very full discussion of the whole question in Adelaide. That result, which was to a certain extent a compromise, and certainly involved a concession on the part of New South Wales, was arrived at by a majority of 15; the division was 10 to 25. I do not state this (Sir Richard Baker) in any way as an objection to the matter being re-opened. It is a matter of exceedingly grave importance. But I think that the fact of the division, and the discussion which took place before the division, should not be left out of consideration. I have said that this is a matter of grave importance, but it is a matter of varying importance to the different colonies. It is a matter of comparatively minor importance to Tasmania and Western Australia; they have no direct concern in it. It is a matter of what, I think, I shall be able to satisfy the Convention is of potential, almost problematical, importance to Victoria and South Australia. But if this amendment is carried it is a matter of immediate and vital importance to New South Wales. So, sir, I wish, in view of that fact, to place as shortly as I can again the view of New South Wales before the Convention. My honorable friend (Mr. Gordon) in the very interesting and admirable speech which he addressed to us, based his claim to carry this amendment, in the first place, on the ground that his position was absolutely justified in law. He appealed to natural law first of all, and then to international law; and, finally, he appealed to the federal sentiment, which, as he knows, actuates every member of this Convention. I hope that my honorable friend
will pardon me if I treat very lightly his appeal, to natural law. The honorable member asked whether there was any reason why the River Murray should belong to New South Wales any more than the sun which brightens or the air which sweetens its waters. Now, that is a very pretty rhetorical figure, but by the same process of reasoning I have heard gentlemen satisfy themselves that there is no such thing as property at all, that "all property is robbery," and that we ought to "begin again." Well, it may be that in some state of society with which I think we have no immediate concern these arguments will prevail. But we have to take the world as it is at the present time, and the existing condition of things is that there is a law regarding property, and that law regarding property is settled by certain well-known rules. Fortunately, it is no part of our business and no part of our duty to those who sent us here to decide this question upon any fanciful consideration of natural law, but to take the facts as they are. Now, the honorable member, perhaps, came a little bit nearer to the real issue when he raised the question that by international law the right to the control of these rivers was in every country through which they passed. I do not concede that that is the law. I say that, in regard to international law, there is no clearly-settled law that any rights over rivers are given between adjoining States. And let me say here, as the honorable member referred to the view which appears to prevail that we are treating the other colonies—South Australia and Victoria—as if they were foreign States, that in law they are foreign States.

Mr. DEAKIN. -

That may be termed unnatural law as contrasted with natural law.

Mr. OCONNOR. -

We may recognise that it is the feeling of comity between different communities that brings us here to do the work which has been assigned to us. But with regard to any question of law and right these colonies are foreign nations; and you must regard the matter as if you were dealing, say, with countries on the Continent of Europe in regard to concerns which might come to the issue of war over any question of international right. We must deal with this matter, in the first place, on the ground of what the different rights of the colonies are. It may be, and it is the case, that we are countries which, situated as some of the European countries are in regard to the Danube River, on different parts of the stream, the keeping open of that stream for purposes of navigation is so imperious a necessity for all parties concerned, that it has become almost a matter of international recognition that it is against the laws of civilization-

Mr. DEAKIN. -

Against the "comity of nations."
Mr. OCONNOR. -

Against the comity of nations, as my honorable friend (Mr. Deakin) says, to interfere with the river for that purpose. And no doubt that is at the bottom of all those conventions which have been arranged from time to time for the control of such rivers. But my honorable friend (Mr. Gordon) wishes to go a step beyond that.

Mr. GORDON. -

On the same principle.

Mr. OCONNOR. -

My honorable friend wishes to take up this position—that not only does international law give one country a right to free highway over all the streams of this river, but a right to enter and control every stream and every watercourse which feeds that highway of navigation. I say without any hesitation that there is no international law which supports that position, and I say further that it, would be an absurdity if there were any such international law. Consider for one moment the case in Europe alluded to by my honorable friend. Can it be imagined in the case of the Danube, for instance, that contentions or commissions that have been appointed to regulate the navigation of the Danube in the interests of all the parties concerned, would be given the control of every mill-stream and every feeder of a mill-stream all through Austria? It would involve hostile relations at once.

Mr. SYMON. -

Mr. Gordon does not ask that.

Mr. OCONNOR. -

But I shall point out that what he is asking involves that if it means anything. I think that the committee will see the strong distinction that there is between the international rights which are given over the navigation of the highway of commerce passing through different States and that other right to interfere with the sources which feed that river—that is to say, with the tributaries of it—which is involved in the amendment sought to be made by my honorable and learned friend.

Mr. GLYNN. -

Suppose the tributaries are necessary to keep up the full flow of the river?

Mr. OCONNOR. -

My honorable friend will pardon me if I pass on now and answer his interjection in the course of my speech. The position, therefore, as regards international law is open to the distinction I have pointed out. Now, let me take the matter as it is, according to the law which we claim regulates the
rights of the different parties—New South Wales, Victoria, and South Australia. At one time, inasmuch as all the colonies in the first place belonged to Great Britain, Great Britain, in carving out these colonies, might, if she thought proper, have allotted their territories in such a manner as to preserve the rights over these rivers in anyway she thought fit. She might have applied the same law of riparian rights in regard to the relations of these colonies with one another as exists in the case of individuals. But she did not do that. She granted the full right of self-government and control over the waste lands of these various colonies absolutely to the Legislatures of the different colonies. Therefore, you must take their rights as if they were the rights of communities self-governing in the most absolute sense with regard to these waters. There is one exception, and that is with regard to the position of New South Wales and Victoria. In the Constitution Act of New South Wales (18th and 19th of Vict., chap. 54) it is provided that one of the boundaries between New South Wales and Victoria shall be a straight line drawn from Cape Howe to the nearest source of the River Murray—that is important to notice—and that another boundary shall be from the river to the eastern boundary of the colony of South Australia. And it is further provided that the two colonies of New South Wales and Victoria shall have authority to make regulations for the navigation of the river by vessels belonging to the two colonies respectively. The rights, therefore, which were given when these colonies were constituted under the statute were these: That in regard to the Murray, which is the boundary between New South Wales and Victoria, those colonies are given full rights in respect of the control of navigation. With regard to all rivers inside New South Wales, the control of her territory, and the absolute grant of that control to her Legislature, gives her exactly the same rights which any self-governing community would have in regard to those streams. Now, there can be no question that those rights are absolute. Even though they were modified by international law, they give the absolute right to the use of the water under any circumstances whatever. And, remember, we are dealing here with this question on a legal basis only. Now, the rights which I have specified are the rights which New South Wales is bound to conserve for New South Wales, except in so far as it may be necessary for the purpose of federation to give any of them up or to make any concession in regard to them. We cannot forget that obligation. However desirous we may be to concede everything that will bring about the union of these colonies, we have no right to discuss this question upon any other ground except the absolute position in fact of New South Wales. What have we done? In pursuance of
our desire to bring about a federation which shall have all the essentials of union, we have been perfectly willing from the first that the free use of these waters for the purposes of navigation should be handed over to the Commonwealth.

Sir GEORGE TURNER. -

Which waters?

Mr. OCONNOR. -

The waters not only of the Murray but of every navigable stream in New South Wales connected with the Murray system.

Mr. GORDON. -

The honorable member contested that in Adelaide.

Mr. OCONNOR. -

I beg the honorable member's pardon. I shall show him that the Bill as it stands now gives a right to the control of the navigation not only of the Murray but of every portion of the navigable rivers of New South Wales connected with the Murray system.

Mr. GORDON. -

That is under the general clause.

Mr. OCONNOR. -

Yes. I am not sure that the clause which the honorable member wishes to amend does not cut down that power, if it has any effect at all. We were willing to give this concession, and we have done it. From the comments made upon this matter both in the Convention and outside, I do not think that the full extent of the rights given under this power to regulate commerce are appreciated. Fortunately, we are not without authorities upon the question. There have been numberless decisions in America as to the rights which are given by the power to regulate commerce, and, inasmuch as the American Constitution has been interpreted upon principles of British law applied by the great jurists of America, it is only reasonable to suppose that our Judges in interpreting our Constitution will be guided very much by the same principles. Although there are certain

Mr. ISAACS. -

Does the honorable member think that the 1st sub-section would give power to the Federal Parliament to maintain the state rivers in a condition for navigation?

Mr. OCONNOR. -

Beyond all question I do, and I hope I shall be able to satisfy the Convention on the point. In America the decisions have gone to this extent: They hold there that the control of navigation implies the power to remove obstacles to navigation. For instance, the commission which would have charge of this matter would be empowered to remove a weir in any river
under the control of the Commonwealth which was an obstacle to navigation, or to remove a bridge which absolutely impeded navigation. A great many decisions have been given in America which absolutely settle this point. Not only do these principles apply to rivers which are boundaries between states; they also apply to rivers which are connected with such rivers, even though they may be entirely within one state. For instance, there is the case of the River Ohio. In regard to that river it has been decided that, although it is entirely within one state, yet, inasmuch as it is connected with the great system of water highways by which trade passes from one state to another, it is on that account under the control of the United States so far as it is navigable.

Mr. HIGGINS. -

There is no attempt there to distinguish tributaries from main rivers.

Mr. OCONNOR. -

No. Wherever a river is navigable, there the jurisdiction of the United States extends. I am willing to apply that principle here in the fullest possible way, that not only wherever the Murray is navigable, but wherever the Darling and the Murrumbidgee are navigable from their connexion with the main channel, they should come under the control of the Commonwealth, and be subject to its fullest powers for the keeping open of navigation at all times.

Mr. GLYNN. -

You cannot improve the rivers under these decisions.

Mr. OCONNOR. -

There I think the honorable member is mistaken. Not only does the power involve the right to keep open navigation, and to remove obstructions; it also involves the right to improve navigation and to make new channels for the purposes of navigation.

Mr. MCMILLAN. -

That is implied in the Bill as it stands.

Mr. OCONNOR. -

Yes. I do not wish to refer to these matters in detail; but there is an extract from a judgment of Chief Justice Marshall, which honorable members will find in Hare and in Baker's Comments on the Constitution, but upon which I cannot lay my hands just now, which shows to what length this power extends. I have made these statements after a very careful investigation of the whole question of law, and I think the Convention will believe that the opinion I have given is the best I can arrive at upon the matter, looking at it neither from the point of view of New South Wales,
nor of any of the other colonies, but stating the law as I find it laid down by
the best authorities. These authorities go as far as this: That under the
power to regulate commerce the right is given to regulate the navigation of
every stream, not only where that stream flows between two colonies, but
wherever navigation is possible. There is a right to protect that navigation
from any impediments, and beyond that there is also a right to improve
channels, and to make new channels for the improvement of navigation. I
ask whether the granting of this power does not fulfil to the fullest possible
extent the obligations which we are under here in entering into this
Federation? Does it not fulfil to the greatest possible extent the whole
obligations of international law But we have gone beyond that, and in the
sub-section now under discussion, we have given not only the control of
navigation so far as the Murray is concerned, but also the use of the waters
of the Murray, a right which was given expressly for the purpose of
enabling the commission which is to manage these matters to allow the
water to be used for the purpose of irrigation.

Mr. GORDON. -

The clause gives you a larger concession than that which you are asking
for.

Mr. OCONNOR. -

The commerce clauses give control of navigation only; they do not affect
irrigation. But the addition of the words "the use of the waters thereof;"
which were put in advisedly and as a compromise between what I may call
the extreme views of the honorable member, Mr. Gordon, and some of
those who support him, and the views of the representatives of New South
Wales, was made expressly that in regard to one portion of the waters in
dispute the federal authority might have the right not only of navigation but
of use for irrigation. The clause therefore gives now in regard to that
portion of the Murray which flows between New South Wales, Victoria,
and South Australia the use of the water for any purpose which may be
wished. Let me point out for a moment what this means. As we all know,
the matter of irrigation is of infinite importance to Australia, but in its
actual working irrigation is in its infancy. We know very little about it.
Expensive experiments have been made in some of the colonies, but the
way in which the irrigation practice and work of other countries is to be
applied to the unusual conditions which obtain in Australia is a matter
which is very much involved in
doubt. So far as our colony is concerned, the latest advice we have had
upon the subject from Colonel Home, whose experience in India entitled
him to speak with the greatest authority, is not of a very cheering nature.
We have been advised to move slowly. Therefore, our experience in regard to irrigation is vague and indefinite. We know that irrigation will be a very good thing if we can bring it about, but how to bring it about in a way in which it will be effective, and not ruinous in cost, we have yet to decide. But, whatever we may know or not know in regard to irrigating, we are sure that the most important factor is the possession of sources of supply from mountain regions. In giving the control of the waters of the Murray, we give control of that portion of our river system which, of all the rivers in Australia, has the best collecting ground. The boundary of New South Wales, as I have pointed out, extends from the nearest source of the Murray to Cape Howe. The first tributaries of the Murray are in the very heights of the mountains, and collect supplies at altitudes which are absolutely essential to any permanent supply for irrigation purposes, so that this concession involves the highest and best sources of water supply which exist in Australia. But my honorable friend (Mr. Gordon) is not satisfied with this. He wants to go beyond it and to give the commission which is to control the navigation of the Murray, the control of the tributaries of the Murray, or, in the alternative, the control of the Murrumbidgee, the Lachlan, and the Darling which, of course, practically means the same thing. Before I leave this matter I would like to deal with a point to which the honorable and learned member (Mr. Deakin) referred, and that is, as to the control of the rivers where they come into competition with the railways. I would point out to my honorable and learned friend (Mr. Deakin) that the clauses in this Bill which constitute the Inter-State Commission give the Inter-State Commission the control of rivers for the purpose of enforcing and carrying out the provisions of the Constitution. That Inter-State Commission, if constituted as provided in the Bill, would, therefore, be not only an Inter-State Commission for the purpose of controlling railways, but also for the purpose of controlling and managing and regulating navigation. In its hands also would be vested the control of such rights with regard to irrigation as are involved in the sub-section I have referred to over the portion of the Murray in which all the three colonies are directly concerned. To go to the extent indicated by Mr. Deakin would be a long stretch of any legislative authority. The business of the carrier being a public business is always open to control by legislation, but I know of no law in any country which has gone beyond this-to see that the rates charged are reasonable, that they do not favour particular localities or persons or classes of goods. Further than that it would not be reasonable to go. You could very well imagine a state of things in which within all these lines a competition would be opened up on the rivers that would interfere with the railways. That is a matter that we must leave to the
future. It cannot be discussed now. But the very power is given with regard to the control of the rivers which the honorable member desires, and it would enable the Federal Parliament to legislate in the directions he suggests.

Sir GEORGE TURNER. -

Does not New South Wales oppose the Inter-State Commission altogether?

Mr. OCONNOR. -

I do not know that it does. We have not come to the discussion of that question yet.

Mr. BARTON. -

The Inter-State Railway Commission-I have always supported it.

Sir GEORGE TURNER. -

I heard a good many arguments against it.

Mr. OCONNOR. -

That is a very debatable matter. It cannot be dealt with now. I am merely pointing out that if

the Bill stands as it we have already constituted a body with a power to carry out the views expressed by Mr. Deakin.

Mr. DEAKIN. -

Only to a very limited extent.

Mr. OCONNOR. -

Quite as far as would be reasonable, I think. Now, as I have said, the rights which are asked for by Mr. Gordon involve the control of every stream which is a tributary of the tributaries of the rivers of New South Wales, and I think I shall be able to satisfy the Convention that that must be so. It is quite evident that the control of this question of irrigation, if it is to be vested in the Commonwealth, must be placed in the hands of some commission, some body that will be able to deal with it.

Mr. GORDON. -

Hear, hear.

Mr. OCONNOR. -

Yes, I think that will be admitted. If not, it will be in the hands of the Executive Government of the Commonwealth. A power to manage and regulate irrigation must of necessity involve a power to manage and control the supplies of water. Of what use would it be to give the right of controlling the Murrumbidgee, the Darling, and the Lachlan for the purposes of irrigation if there was to be no control over the sources of supply? Of what use would it be to construct weirs, dams, and other works in the rivers for the purposes of irrigation if it was in the power of the local
authorities and of individuals to cut off the supplies which feed those rivers? I say, therefore, that the right of control for the purposes of irrigation must involve the following out to its sources of all the water which feeds these tributaries and which makes them useful.

Mr. TRENWITH. -

Does not that indicate the necessity of striking out this arbitrary line-"where it first forms the boundary between Victoria and New South Wales"?

Mr. OCONNOR. -

I do not think it does. I do not see what application the honorable member's interjection has to my argument.

Mr. TRENWITH. -

I am pointing out that there is a point beyond which the Federal Parliament can have no control.

Mr. OCONNOR. -

Precisely. I have pointed out that that is as far as I, at all events, am prepared to go in representing New South Wales.

Mr. TRENWITH. -

The sub-section does not appear to go as far as you are prepared to go. Mr. Gordon, it seems to me, desires to make it go as far as you are prepared to go.

Mr. GORDON. -

No; the sub-section is all right.

Mr. OCONNOR. -

I am satisfied with the sub-sect

they are navigable as highways, but also that you should enter into every corner of New South Wales from which the water comes which supplies the sources of these streams, you are asking for something which cannot be granted, without giving you the control of the value of the land and of the settlement of New South Wales territory.

Mr. BARTON. -

It would be the same as federalizing our lands.

Mr. OCONNOR. -

It would, because the value of the land is inextricably mixed up with the value of the water supply to it.

Mr. HIGGINS. -

All conditions would apply to lands; all circumstances affect their value.

Mr. OCONNOR. -

No, there is this marked difference; that in controlling a highway of commerce for the purposes of federation it is necessary that commerce
should have free play wherever the waters are navigable. That is all you want. When you ask for powers to use the waters in another way—in a way which would affect locally every acre of land in New South Wales—you are asking for more than the necessities of federation demand, and for more than can, in view of the vested rights of New South Wales, possibly be conceded.

Mr. GLYNN. - Suppose the local use of the water destroys navigation; what then?

Mr. OCONNOR. - As I have said, the control of navigation extends to the control of the water-ways.

Mr. GLYNN. - Would it stop you from keeping back the water?

Mr. OCONNOR. - No, it would not. The honorable member speaks on this question as if he were dealing not with a friendly power, not with a state that was willing to enter into arrangements such as might be necessary for the fair use of the water, but with a power that was intending deliberately to cut off every drop of water which flows down those rivers at the present time.

Mr. HOLDER. - A dry river bed is not much good for navigation.

Mr. KINGSTON. - New South Wales has not shown much anxiety to agree in the matter.

Mr. OCONNOR. - No, under present circumstances it has not. I will point out now to the Convention the justification for what I said at the opening of my remarks, and that is that the interest which Victoria and South Australia have in this matter is merely problematical.

Mr. SYMON. - Oh dear, no!

Mr. OCONNOR. - What has been the history of irrigation up to the present time? The only two cases in which irrigation to any large extent prevails upon this system of rivers taking it right through are Renmark, in South Australia, and Mildura, in Victoria.

Mr. KINGSTON. - We have ten other settlements in South Australia.

Mr. OCONNOR. - That makes the argument all the stronger. The honorable member says there are ten other irrigation settlements. Has there been any diminution as yet of the supply of water to them or to the other irrigation settlements in
Victoria? Is there any possibility so far as we have seen of these supplies being diminished to any material extent.

Mr. GORDON. -

If there is no such possibility, why are you afraid of the amendment?

Mr. OCONNOR. -

For this reason: That I object to handing over to the control of a commission of the Commonwealth the management of that which makes the lands of New South Wales valuable and fertile.

Mr. KINGSTON. -

It has the same effect with us.

Mr. HOWE. -

Yes; what about the other colonies?

Mr. OCONNOR. -

Now, I have pointed out to the Convention what I consider to be the right of this matter. I have pointed out the extent to which we have gone already, which, I think, is a very great extent. I would ask, considering what has taken place in the past, whether there is any reasonable probability of the rights of any of the other colonies interested being prejudicially affected by any scheme of irrigation which we may introduce in New South Wales? Surely the comity and good feeling between the states after federation will not be less than it is now. If it is necessary, as it may be, to arrive at some modus vivendi with regard to the use of the water for irrigation purposes, is there any reason to suppose that a fair arrangement will not be made? For that reason I was very much struck with the suggestion of Mr. Deakin that, in view of the immense possibilities of irrigation, in view of the necessity which may arise of dealing with irrigation throughout Australia in one comprehensive scheme, it might be advisable to give the Commonwealth power to take over this question with the consent of the states, if that is not already implied clearly enough, although I think it is in the provisions of this Constitution. I, for my part, would be quite willing to make it plain that power is given to the Commonwealth to take over, with the consent of any state or states, and upon such terms as may be arranged, the control of any irrigation scheme. If that were done it would be possible to conserve all existing rights, including the rights which New South Wales has already granted to her own people, and to deal with the matter upon a fair basis. If some clause of that kind were inserted it ought to satisfy every reasonable person who looks at this matter from the point of view not of remote possibility, but of actual right and fact.

Sir GEORGE TURNER. -
That would give either House of the New South Wales Parliament power to block it.

Mr. OCONNOR. -

No doubt it would give New South Wales power, by its Parliament, to refuse to assent to any such proposal. But let me remind the honorable member that we have these rights now, but we are giving you rights very much larger than you ever possessed before—the right of navigation over the whole of our navigable waters; we are giving rights of irrigation for the purposes of the Commonwealth, for that purpose which directly affects all of us; and that is all you can reasonably ask for. To ask for more is to ask for what is beyond the necessities of federation and the requirements of international law. I only wish to say, in conclusion, that I hope those honorable members who are not directly interested in this question will remember that it is a dangerous thing to overload the Federation with more duties and responsibilities than ought necessarily to be put upon it. Every additional load and additional responsibility which you place upon it is not only a difficulty to us in future, but a difficulty in some of the colonies in carrying this measure. We in New South Wales have difficulties enough to contend with, and since the settlement of this matter by the vote in Adelaide, possibly we have a further difficulty to contend with. I ask honorable members to consider whether we have not gone as far as can be fairly expected, and to remember that if you ask us to go further—that if you by a majority in this Convention carry something which we cannot possibly advise New South Wales to accept—you are placing a difficulty needlessly in the way of federation, and a difficulty which it ought not to be subjected to. As the honorable member (Mr. Gordon) appealed to the federal spirit here, I also appeal to the federal spirit. I ask honorable members to be satisfied with what is fair and reasonable, and not to expect to get everything their own way, but to remember that we also have to deal with rights and interests, and that we must not be expected, even for the sake of a federal union, to give up more than the people of New South Wales are prepared to concede.

Sir GEORGE TURNER. -

How far are you prepared to go, so that perhaps we may be able to meet you?

The clause is already in the draft as it is. That clause was the result of discussion; it was carried after a large division, and it represents the concession by New South Wales of the rights of navigation over the whole
of the navigable waters of the Murray and rivers connected with the Murray, whether in New South Wales or not. It gives the absolute use and control of the waters of the Murray, not only for navigation but for irrigation purposes. That is the utmost to which I can go, although I am quite willing to accede to the proposal of the honorable member (Mr. Deakin) that some clause might be inserted which will give the Commonwealth the opportunity, by the consent of the state, to take over the use of the waters of any state or groups of states for the purposes of irrigation. That, in a few words, is the position I take up.

Mr. SYMON (South Australia). -

The question put by the honorable member (Sir George Turner) is a very pertinent one, and we are indebted to the further explanation given by the honorable member (Mr. O'Connor) in relation to the solution which seems to be apparent to his own mind of this very difficult question. It is especially important, because the amendment moved by the honorable member (Mr. Gordon) is really a verbal amendment; it raises only the general question as to whether a larger federal control shall be given over the great river system of the continent, or whether that shall be left to all the difficulties and differences that have already arisen, and which would intensify the difficulties and differences which may arise in the future. My honorable friend has not suggested precisely what is wanted to accomplish the purpose we have in view, and it is probable that the clause as it stands or the suggested amendment from South Australia may have to be recast. If that be the case we shall have an opportunity as this matter goes more into detail of meeting the honorable member (Mr. O'Connor) in any suggestion which he may desire to put forward with the view of solving this difficulty, and not only of meeting it, but of dealing with it in the broad and federal spirit which I am sure animates every member of this Convention in dealing with one of the most difficult subjects to be disposed of in connexion with this scheme we are endeavouring to elaborate. Without committing myself absolutely to any mode by which elect is to be given to what is proposed, I say in general terms that I am in favour of, and intend to struggle for, a larger control, a wider power of doing justice, in the Federal Parliament up to, at any rate, the measure of the maintenance of the existing navigability of these great rivers. That is the measure which I have in view. The honorable member (Mr. O'Connor), in his exhaustive speech from the point of view of New South Wales, said he was perfectly willing that there should be free play given wherever the waters of the rivers are navigable. That is the whole distinction which my honorable friend, rather lightly, if I may venture to say so, passed over. Our desire is to keep them navigable. We desire that the Federal Parliament shall have and shall
exercise such a control over all these rivers that navigation below shall not be impeded and lessened.

Mr. WISE. - Has New South Wales ever impeded the navigation?

Mr. SYMON. - I do not kno

Mr. HIGGINS. - They want to have their hands free to interfere if they think fit.

Mr. SYMON. - That is the position.

Mr. REID. - A very advantageous position to be in in reference to something which does belong to you.

Mr. SYMON. - Not from a federal point of view.

Mr. REID. - We are in that position.

Mr. SYMON. - The honorable member is putting the matter as it strikes his mind that these rivers belong to New South Wales. That is a great mistake. The honorable member says "We have got them." We all know that the honorable member is a statesman of the very first power, an orator of the very highest rank; but be is also a lawyer, and I know what he would say if an upper riparian proprietor on being asked to let go the waters in a stream passing through his property in order to give water to the house, the cattle, and the crops of a proprietor lower down said - "I will do nothing of the kind; the waters are my property; I have got them and I intend to stick to them." I am afraid that would not be looked upon as a very satisfactory answer to the claim of the man whose crops and cattle were perishing for water. Then the honorable member (Mr. O'Connor) said that it was an entirely different position to look upon the relations of these colonies in connexion with rivers, because we were all friendly, compared with what it would be if we were unfriendly or hostile states. Now, we desire to keep friendly; we desire to place under the control of the Federation the settlement of all possible difficulties in order that these things shall not bring about difficulties and animosity, and possibly cause strife, in the future of this great Federation. Then the honorable member said we were not to overload the Constitution we are seeking to frame. If there is one subject more than another which ought to be embodied in this Constitution
it is the control of these inter-colonial rivers in which two or more states are interested, and the perfect navigability of which, besides the use of them for purposes of irrigation, is of essential value to the whole national welfare. The question is one of very great gravity and importance; we have to face it, and, the sooner we deal with it and finally settle it the better. It intimately concerns the three colonies of South Australia, New South Wales, and Victoria. The honorable member says it vitally concerns New South Wales. That we shall all of us concede. But he is mistaken when he says it less vitally concerns South Australia. It concerns South Australia more vitally and in a higher degree than New South Wales.

Mr. WISE. -

But as regards South Australia we propose to leave things as they are; while in regard to New South Wales you wish to introduce totally new conditions.

Mr. SYMON. -

The honorable member will have an opportunity of pointing that out. How does that alter the position with regard to New South Wales?

Mr. WISE. -

This amendment will.

Mr. SYMON. -

Not at all. My honorable friend seems to think that we, in South Australia, are seeking to despoil New South Wales of everything.

Mr. WISE. -

It looks like it.

Mr. SYMON. -

My honorable friend will perhaps point that out. We are not seeking to abstract one single drop of river water to which they are entitled. We are not seeking to abstract a single inch of their soil. All we ask is that they shall place under the control of the Federation those rivers which they say are their property, the waters of which they say they can do what they please with, in order that those lower down the stream shall not be subject to injustice. That is all we ask. My honorable friends are taking an entirely mistaken view of the attitude of South Australia and those who are supporting their representatives on this question. Of course, it is our duty to respect the claims of New South Wales, as we do; but whilst we do that it is equally our duty to maintain our opinion. When it is said that this is a question which is vitally interesting to New South Wales and less vitally interesting to South Australia, I beg to point out to my honorable friend that it is deeply interesting to South Australia. It deeply affects us, because we have the best and most available part of the
river for navigation, and also because we are entitled to use it for irrigation. 

Mr. LYNE. -
Why should not we be entitled to use it for irrigation?

Mr. SYMON. -
New South Wales will be entitled to use it for irrigation.

Mr. LYNE. -
Not under this amendment.

Mr. SYMON. -
The honorable member is again doing a grievous injustice to us. We are not seeking to take a single atom away from New South Wales to which it is entitled.

Mr. LYNE. -
The question is-What are you going to entitle us to?

Mr. SYMON. -
No, it is not. We acknowledge the rights of New South Wales to the fullest extent. All that we say is-"You are going to set up a great Federation, a Parliament which is to be empowered to deal with all inter-colonial subjects. Let that Parliament deal with this question, upon which you and we cannot come to an arrangement." That is the whole essence of the subject. What is it we have got? We have got a navigable river, and not only a navigable river, but a navigable river with reasonable use of its waters for irrigation in our colony as well as in the other colonies. That, I may tell the honorable member-if you are putting it on the plane of property-is the right or property that we possess. We have a navigable river with the right to the reasonable use of its waters for irrigation. You have also a navigable river with the right to the reasonable use of its waters for irrigation, and those two rights are co-equal, as, I think, Mr. Deakin put it the other day. If we are to give up to the Federal Parliament the control of the river within our territory as far as we are concerned, we are asking New South Wales not to do one ha'porth more. And it seems to me that really a great deal of unnecessary fuss has been made about this subject. Certain tributaries of this river are in New South Wales. We do not seek to take them away.

Mr. LYNE. -
South Australia is creating the unnecessary fuss.

Mr. SYMON. -
No; New South Wales has been making a fuss on the point as to whether they are prepared, in order that this matter may be made absolutely clear, to hand over the control of these rivers to the Federal Parliament. Now, the tributaries of the River Murray are as much a portion of that river-their waters are as much a part of the Murray waters-as if, instead of being
supplied from these tributaries, they were supplied from the clouds above. But if these tributaries are disconnected, if canals are cut, and if the waters of these tributaries are withdrawn, then the whole of the navigability of the Murray lower down, and the whole of the right of South Australia to the reasonable use of the water of that river for irrigation, will be destroyed.

Sir WILLIAM ZEAL. -
If canals are cut, they cannot take the water out of the watershed; it will come back to the river again.

Mr. SYMON. -
It depends on what they do with the water when they get it away. Still, I do not wish to discuss this matter from the point of view of the extent of the rights to be exercised. The representatives of South Australia do not wish to diminish the rights of New South Wales in any way whatever so long as the rights of South Australia are absolutely maintained. I will only say, in reply to Mr. O'Connor's question as to what our right is, that a riparian state higher up a navigable river cannot use or divert the water of that navigable river, either bonâ fide or wantonly, so as to prejudicially interfere with or destroy its navigability to a riparian state lower down the river. That is the position on which we stand.

Mr. OCONNOR. -
Why do you want to take power to prevent New South Wales irrigating her lands?

Mr. SYMON. -
We do not want to do anything of the kind.

Mr. OCONNOR. -
But you are proposing to do so.

Mr. SYMON. -
Not for a moment. Again, the honorable member, it seems to me, does not appear to comprehend the question. We do not wish for one moment to take that power, and we should be exceedingly sorry to see that power taken in this Bill. Indeed, so far as I am concerned, if it is a comparison of benefits, if it ever came to that, I do think that it would be better, and more in the interests of the whole of Australia, that the whole of the River Murray should be drained, in order that the millions of arid acres in New South Wales, Victoria, and South Australia should be irrigated and made fertile, should be made to smile with abundant harvests, than that navigation should be preserved. Now, I make that concession to my honorable friend. You can make a railway, but you cannot make a river; but I am willing to leave the control of the rivers of Australia to the Federal
Parliament.

Mr. MCMILLAN. -

Are you sure, from the legal point of view, that you have not already got what you want?

Mr. SYMON. -

That brings me to a point which Mr. O'Connor alluded to, and with very great force. I think he is mistaken, but if, as he thinks, the power is inferentially given by the existing Bill, I say let us make it clear.

Mr. WISE. -

Do you wish to preserve the navigation of the Murray?

Mr. SYMON. -

I say, if Mr. O'Connor is right, let us put this matter beyond doubt when we come to deal with the amendments to be made in the drafting of the bill. I assure my honorable friends from New South Wales that I have not the slightest intention of minimizing in any degree the opportunities they have for irrigating the lands of New South Wales, if that can be done without injustice to the other colonies.

Mr. OCONNOR. -

The express ground of Mr. Gordon's amendment is to give the control of irrigation to the Federal Parliament.

Mr. MCMILLAN. -

Yes, and Mr. Symon is speaking on a different matter altogether.

Mr. SYMON. -

No. All that my honorable friend (Mr. Gordon) seeks is that the tribunal-the body we are creating—shall have the power, irrespective of the provincial interests and provincial feelings of New South Wales, South Australia, or Victoria, to deal with this question on a national basis. That is the whole thing we are struggling for.

Mr. WISE. -

You simply want to keep the river navigable—is that it!

Mr. SYMON. -

We are not asking the Convention to say that New South Wales shall not irrigate all those acres which Mr. Carruthers spoke about the other day; we are not asking, as Mr. O'Connor put it a few moments ago, that all those trickling rills away up in the north of New South Wales, or in Queensland—I believe some of them come from Toowoomba to feed this river—shall be handed over to South Australia, or even to the Federal Parliament. My honorable friend's amendment is that the control of the River Murray shall be federalized altogether, and also the control of the Lachlan, the Murrumbidgee, and the Darling, which, I think, is sufficiently specific for all possible purposes.
Mr. LYNE. -
He goes a great deal further than that.

Mr. SYMON. -
The rivers he intends to include are specified in a later amendment from South Australia. We are merely using the present amendment-substituting "rivers" for "river"-to have this general discussion, and to settle the question of whether a larger measure of control over this central river system of Australia is to be given to the Federation. It is perhaps not a strictly formal mode of procedure.

Mr. WISE. -
It is a very inconvenient method. There may be nothing to dispute after all.

Mr. SYMON. -
I am not disposed to disagree with Mr. Wise on the question of procedure. I think it would have been better if we had had this general discussion on a precise amendment designed to convey exactly what was intended. But the main principle, it seems to me, is perfectly clear-that, whether it is a friendly state or a hostile nation, it cannot claim anything as a right due to itself, the exercise of which would be injurious to another nation. Now, there is no legal ownership of the water in the River Murray. There is a user of the water in the river, and that user can only be exercised subject to the rights of the people lower down the stream. The same thing applies to individual states as applies to private individuals. The principles of justice governing riparian disputes between individual states are exactly of the same nature and character as the principles of justice governing riparian disputes between private individuals. But, as I have said, we are not here seeking to have any clause introduced in this Bill limiting the rights of New South Wales on this subject. It is true, as has been said, that you cannot enforce these riparian rights as between states in the same way as you can enforce them as between individuals. There is no court of law which can give effect to the claims of one state as against another. But we wish to substitute, for the courts of law that would operate in the case of individuals, the Federal Parliament, which would practically take, in relation to these states, which are only quasi-independent, the place that is now held by the Imperial Parliament. Suppose we have now a dispute between New South Wales and Victoria, or between New South Wales and South Australia, with regard to the control of the River Murray, or with regard to the use of the waters of that river, the only possible opportunity for redress would be-if the Imperial Parliament would interfere—for one or
other of the colonies to appeal to the paramount authority—the Imperial Parliament—and the Imperial Parliament, of course, might or might not interfere. We are all subject to that paramount power. The same power that passed the Act referred to by Mr. O'Connor, placing the river bed of the Murray entirely within the territory of New South Wales, could deal with this question if it thought fit. Of course, it would lead to some difficulties, and, no doubt, to a very great deal of strong feeling, and perhaps the interference of the Imperial Parliament might not take place. But that paramount authority exists at this moment. If we federate, the influence of that paramount authority will be infinitely reduced, and in lieu of it we are seeking to substitute something else—the authority which we are here assembled to create. Now, why should we practically sweep away the possibilities of the interference of the present paramount authority by creating a Federal Parliament in these colonies—why should we accept this Federal Parliament as the body to deal out justice between the colonies on a momentous inter-colonial question, without making the provision now proposed for the control of the central river system of Australia? Of course we have taken a similar step, in effect, in regard to the judiciary; we propose to bring the judicial power more amongst ourselves—to enable ourselves to deal with it instead of leaving it to be dealt with by the Imperial authority. And I think that the Imperial authority would be reluctant to interfere in a matter of this kind at a distance of some 12,000 or 13,000 miles. I appeal to those honourable members of the Convention who have come from Tasmania and Western Australia, and who are not, of course, vitally or immediately concerned. That is the whole essence of this point—we wish to transfer to the federal authority the settlement of this question.

**Mr. Wise.** -

Without giving New South Wales the opportunity of making terms—is that it?

**Mr. Symon.** -

Why not? Making terms with whom?

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**Mr. Wise.** -

The other states.

**Mr. Symon.** -

When?

**Mr. Wise.** -

When the transference is agreed on. What are the conditions?

**Mr. Symon.** -
The conditions?

Mr. WISE. -

The conditions are not sufficiently known.

Mr. SYMON. -

The honorable member's idea of a compromise is the same as that of the counsel whose only idea of a compromise was to have the terms his own way. The honorable member says:"Name the conditions." What are the conditions he desires? Is it that New South Wales shall in the future occupy the same attitude towards South Australia on this question as she has done in the past?

Mr. MCMILLAN. -

The condition you ask is that New South Wales shall be liable to lose everything and gain nothing.

Mr. SYMON. -

Why not? You want to take away something which belongs to us.

Mr. WISE. -

We have never interfered with navigation.

Mr. SYMON. -

I am not talking about the past. For heaven's sake let us forget the past. We are going to begin a new sheet, and with a new plan.

Mr. REID. -

We are the only people who need not forget it, because we gave you inter-colonial free-trade in advance.

Mr. SYMON. -

We are greatly indebted, and I, as a free-trader, am deeply indebted to my right honorable friend; but we are not now dealing with inter-colonial free-trade. What we are dealing with is this question of an inter-colonial river system, which is no more the property of New South Wales than it is the property of South Australia or the property of Victoria; and we say, if there is one subject which is fitted to be dealt with by the Federal Parliament, and to be under federal control, it is this very one.

Mr. ISAACS. -

It is the whole point of the federal question.

Mr. LYNE. -

If South Australia or Victoria comes to interfere with our rights at the present time, you will see what rights we have.

Mr. SYMON. -

That sounded so very bellicose behind me that if I had not turned round and seen my pacific friend (Mr. Lyne) there I should have thought that it was some veteran warrior talking about bringing out troops and all that sort of thing. We should see what would happen. If we are separate states, what
will the result be? The result will be that we shall go on quarrelling about these things; that we shall have differences between us that they will never be settled.

Mr. WISE. -
We have never quarrelled yet about it.

Mr. SYMON. -
We want to prevent the possibility of quarrelling about it. We want to live in perfect amity.

Mr. WISE. -
Let us continue as we are.

Mr. KINGSTON. -
They disregard any communication we ever send along.

Mr. SYMON. -
Our experience-and I do not wish to go into details-has not been a very happy one in our endeavours to bring about an amicable arrangement with regard to these rivers. All we desire is to improve if we can, but to preserve, at any rate, this great inter-colonial waterway, and to do that for the benefit of all. Surely, as my honorable friend (Mr. Isaacs) says, there can be no more intensely federal purpose than that is. We have seen difficulties before, we may have them again. We want the control and adjustment of these difficulties if they arise to rest with the National Parliament instead of leaving a possible constant source of friction, which will cut both ways—which cannot fail to give rise to difficulties in the future. Is there any other subject, I ask honorable members, which is likely in the future if it is not left under federal control to give rise to difficulty and trouble? I do not know of any. My honorable friend (Mr. Howe) the other day spoke about an ulcer in connexion with old-age pensions. This, at any rate, would be a sore which might be opened at any moment, and unless we have the Federal Parliament to deal with it we shall be utterly powerless to bring about a satisfactory result.

Mr. HIGGINS. -
If New South Wales and Victoria were private individuals, there is no doubt about your right to stop undue interference with these waters.

Mr. GORDON. -
That is a right founded on natural justice.

Mr. HIGGINS. -
It is a legal right where individuals are concerned, but the difficulty is that the colony is not an individual.

Mr. SYMON. -
The only difficulty is, that as between states you cannot have the advantage of legal process or enforcement of legal decrees. If you are left without that, what have you to appeal to?

Mr. ISAACS. -
I would like to see the authority for it being a legal right.

Mr. SYMON. -
I would like to see the authority for that myself. If you leave it unadjusted you have either to deal with it by means of a treaty, and the whole of these treaties in relation to the Rhine and the Danube are an acknowledgment of the principle that the waters of these rivers are not the property of the immediate states through which they flow, but are of common concern to all the states interested, and it is because they must either go to war or the weaker must submit that they enter into these treaties in order to bring about a settlement of their difficulties.

Mr. MCMILLAN. -
In the case of the Danube, they have no right to interfere with the tributaries; it is only the main river they can interfere with.

Mr. REID. -
That is the point.

Mr. SYMON. -
I recognise that. There are greater difficulties here than there are in other countries in connexion with the rivers, as my honorable friend (Mr. Deakin) pointed out again and again the other day. There is no parallel to the condition of things in this country. You cannot find a parallel all the world over for a state of things where you have a navigable river, and where at the other end you have a number of small streams, and land which is thirsting for irrigation, and you can say exactly-"This is how it was dealt with in another case."

Mr. REID. -
It shows that there are two sides to it.

Mr. SYMON. -
I admit that. I do not want the Convention to settle that adversely to New South Wales. All I ask you to say is - "This is a federal matter; put your faith in the Federal Parliament." The object of the Federal Parliament is to do justice to the nation. It is created in order to deal with the very questions which cause animosities between different states, and the sole purpose my honorable friend (Mr. Gordon) has in view in his amendment, which we support, is to place the control where it ought to be, and to put an end to all these possibilities of difficulties should they at any time seem likely to arise. It would be a blot on federation to omit the control of this river system from our Constitution. If we are separate, look at the position we
shall be placed in. If we are separate, states may wrangle and fight it out as best they may. If they are big enough and foolish enough they may go to war over it. If we are united is the same state of things to continue? Are we to wrangle over the thing? Are these two states, with the Federation as a bottle-holder, to go to war if a dispute should arise? Why in the name of all that is federal, should we not place the water system under the control of the Federation to avoid these difficulties? That is all the amendment asks for. I saw the other day, and perhaps honorable members will allow me to read, a quotation showing how difficulties may arise, and how a claim has at present been made by Mexico against the United States. It is as follows:-

Mexico is now pressing claims aggregating 10,000,000 dollars against the United States on the ground that Americans have stolen and are now stealing a great part of the water that ought to flow along the bed of the Rio Grande to the sea. In its upper reaches the Rio Grande is wholly in American territory, and for 100 miles along either side of its banks the settlers have dug artificial trenches for the purpose of irrigating their lands. This has sensibly lowered the level of the stream, and there is no doubt whatever that great tracts of hitherto valuable land in Mexico have been greatly injured. If it were a navigable stream throughout its entire course it might be held that the United States would be bound by treaty to see to it that its value should not be impaired. But the Territorial Supreme Court has not only decided that it is not navigable, but has also declared further that, even if it were, the notion that the United States can be restricted in any way in the free use of the river is an error. If the Federal Supreme Court should affirm this decision Mexico will be entirely without legal redress. But the evidently strong moral claim she has to consideration will probably induce Congress to see if some plan cannot be adopted by which a part at least of the wrong may be straight.

Mexico, of course, is a foreign State in relation to the United States. She is a weak State. It is of no use for her to talk about going to war with the United States about robbing her of her waters, and she has no legal redress.

Mr. REID. -
Then she has no legal right?

Mr. SYMON. -
There are many legal wrongs without a remedy.

Mr. REID. -
No legal wrong without legal redress, but there may be many moral wrongs without legal redress.

Mr. SYMON. -
My right honorable friend does not want us to believe that a State has no
legal redress simply because it is a State-

Mr. REID. -
No; if you throw yourselves on charity, and come to us, we will do with you as we have always done-treat you in the most handsome manner.

Mr. SYMON. -
You would not give us a cup of cold water if you could help it from these rivers. You not only do not give us a drink, but you put our remonstrances in your pigeon-holes.

Mr. REID. -
I am afraid that New South Wales is the colony which fell amongst thieves-I mean, got wounded on the road, and no one would heal her wounds.

An HONORABLE MEMBER. -
She is to make it up by stealing all the water.

Mr. SYMON. -
There we have an illustration of the position to which a small State may be reduced in consequence of the withdrawal-of the stealing, as it is called in this report-of the upper waters of the river on which it depends through its lower course for the irrigation of its territory.

Mr. ISAACS. -
Is that asserted to be contrary to the terms of a treaty between Mexico and the United States?

Mr. SYMON. -
Yes.

Mr. ISAACS. -
That is a different thing.

Mr. SYMON. -
I am very much obliged to my honorable friend for pointing that out. If it is a navigable river, then there is a treaty which will give Mexico redress; but, unfortunately, the Territorial Court in the United States has held that it is not a navigable stream. If that decision is upheld, on appeal, then they are left absolutely without redress, unless by force of arms, or unless by an appeal to conscience and the sense of right on the part of the Congress. And the same thing, too, is likely to happen with Canada. We know quite well that great canals are being cut at this moment to connect the Canadian lakes with the Mississippi, and the Canadians are apprehensive that if that project is carried out the water of the lakes will be reduced by 2 or 3 feet, and that navigation will be interfered with. There is no redress there, because they cannot go to law between themselves. It is not likely that Canada will have recourse to arms, and the only plan will be to have some
adjustment by means of a treaty the two states being independent of each other, in order that justice may be fairly done. All these difficulties will disappear if this control is given to the Federation. All these fears and apprehensions—groundless fears, as I think them—on the part of my friends from New South Wales, will disappear, and I feel sure that, on reflecting further on this subject, they will see that there is really nothing to be alarmed at in this amendment, and that it will be to their interest, as it will be to ours—to the interest of the whole Commonwealth of Australia—that the Federal Parliament shall be able to deal with this subject. They want the navigability maintained as well as we do; perhaps, they are not interested in that to the same extent as we are, but no doubt they wish the navigability maintained. Suppose we so interfere with the lower waters as to destroy that navigability, would not they have a right to complain, and who would settle it? Suppose it was possible to turn the waters of the Lower Murray over the whole of our north-eastern country so as to irrigate that land and make it prosperous, would not the people of New South Wales have a right to complain? Of course they would, and who would settle it? Let the Federal Parliament settle it. They want the upper waters for irrigation; we do not wish to prevent them for a single moment, only we wish that there shall be some authority to see that it is justly done, not in disregard of other interests which are concerned. They may prefer irrigation to navigation; we prefer to have them both. My honorable friend (Mr. Deakin) said the other day that both can go together. I thoroughly agree with him. I do not see why they should not go together; and, if they can go together, then there is no authority under this Commonwealth so competent to deal with it and to see that they do go together as the Federal Parliament will be. I do not wish to go into those other matters upon which my honorable friend (Mr. O'Connor) dilated, with regard to the power to remove weirs and so on under the Bill as it at present stands. That does not reach the difficulty which my honorable friend's amendment seeks to meet, namely, the prevention of the withdrawal of the waters from the affluents of the Murray so that navigation shall be utterly destroyed, or so seriously diminished as to reduce the value of the streams.

Mr. OCONNOR. -

That is what it means—that you want the control of all the sources of the river.

Mr. SYMON. -

That is not what it means.

Mr. WISE. -

Then what does it mean?
Mr. SYMON. -
What it means is to hand over the control to the Federal Parliament. Do you object to hand over the control to the Federal Parliament?
Mr. WISE. -
Could you stop us irrigating?
Mr. SYMON. -
We do not want to stop you doing anything.
Mr. WISE. -
But could you do so?
Mr. REID. -
They could not, but the Federal Parliament could.
Mr. SYMON. -
The Federal Parliament would be entitled to stop the diversion of the rivers.
Mr. REID. -
Three southern colonies could prevent New South Wales from irrigating her own soil.
Mr. SYMON. -
Here is an imputation upon-what shall I say? Upon the honour, the dignity, and the justice of the Federal Parliament. Let us trust them.
Mr. REID. -
That is the answer to all difficulties-"Trust the Federal Parliament."
Mr. MCMILLAN. -
Suppose that any irrigation at any time from any of those rivers affected the navigation of the Murray, then there could be no irrigation.
Mr. SYMON. -
The Federal Parliament might say that it would be better that we should have irrigation than that we should have navigation.
Mr. MCMILLAN. -
Or they might not. At any rate, that is the position.
Mr. SYMON. -
The position we support is that we must leave the matter to the Federal Parliament.
Mr. MCMILLAN. -
Both for irrigation and navigation?
Mr. SYMON. -
For every purpose. You have no legal right to the water.

That is not proposed for the whole of Australia, but for a little part of
Australia.

Mr. SYMON. -

For all Australia, where the conditions are the same.

Mr. REID. -

But you do not propose such an amendment; you look after your rivers alone. That is not federal.

Mr. SYMON. -

If there is any other place where the rivers system is the same, or where the conditions are the same, then we say the same rule should apply. But, unfortunately, the same conditions, so far as I am aware, do not exist anywhere else at this moment. This is the great river of our continent, and it is the river which multitudes-millions-in the future may depend on, not only for navigation but for irrigation. Therefore we say that all matters of that kind ought to be under federal control.

Sir GEORGE TURNER. -

To meet the difficulty of New South Wales, would you consent to the insertion of a direction that irrigation should be always the first consideration?

Mr. SYMON. -

Well, I would like to see that proposal drafted.

Sir GEORGE TURNER. -

I want to settle the difficulties between you two colonies.

Mr. SYMON. -

That is what I wish to do myself. The fact of the matter is that it is with the greatest regret, to some extent, that I find myself bound, on every principle of justice and fair play to my own colony and the colonies generally the only national way of dealing with this question is to bring it under the control of the Federal Parliament that I strongly support the amendment. Whatever shape the sub-section may ultimately take, the broad principle is what I seek to affirm—that there ought to be a larger and wider control, and that in order to secure that we should sink, as far as we can, all our provincial feelings—our provincial prejudices, if you please—and follow the great example which has been set us, as shown in the cablegrams the other day, in England, where the great parties subordinated all their personal and party differences, and put an end to party strife, in the presence of the great and imminent danger which threatened the empire. And so are we in practically the same peril. My honorable friends say they are going to New South Wales to tell the people there that with this condition it would be difficult to accept federation. I hope they will think twice or three times before they adopt a course like that; because, after all, this is not a matter which affects merely the interests of the state of New South Wales; it is a
matter which affects the whole of the federated states, and it is one which, if settled in the way we propose, will tend not only to bring about the union which we all desire, but to make that union permanent, peaceful, and prosperous.

Mr. REID. -

I think every representative of New South Wales is fully prepared to respond to the invitation made by my honorable friend (Mr. Symon) that we should deal with this matter in a lofty spirit—in an Australian spirit—and that if possible we should rocket the views of our honorable friends from South Australia. At the same time, we cannot be altogether blind to the fact that, running through the Australian patriotism of my friends from South Australia, there is a pretty strong web of self-interest; and so it may be said there is in the case of the representatives of New South Wales. To my mind this will probably be the most instructive debate to the people of the Australian colonies that we have had yet; because the people who are asked to trust the Federal Parliament in matters affecting their individual, their local, interests, will really have a valuable object-lesson in this case. In this Australian Parliament we are now considering a question which more directly affects two of the proposed partners than the other three; and it will be very instructive to the people of Australia, and especially to the people of New South Wales, who are supposed to be more distrustful perhaps than the people of any other colony, to see how their interests are dealt with by the gentlemen who come into this Convention representing the various colonies. So, whatever may be the decision after this debate, I look upon it as a debate which will throw a flood of light upon that vague expression—"trust the Federal Parliament." It seems to me that that is a phrase which we only use when we get into difficulties and do not exactly know where we are.

Mr. HIGGINS. -

You used it yourself in Sydney pretty often.

Mr. REID. -

Yes, under exactly similar circumstances. I felt that the financial problem had assumed such a situation that really human ingenuity seemed incapable of solving it, and I had to resort to this pious aspiration of "trust the Federal Parliament." It would be instructive to us, first of all, to know what class of amendments our friends from South Australia intend to support, because one House of South Australia suggests one solution of this difficulty, and the other House of South Australia suggests a very different solution. For instance, the sub-section, if passed in the form suggested by
the Council of South Australia, would read thus:--

The control and regulation of the navigation of the Rivers Murray, Darling, Murrumbidgee, and Lachlan.

The Assembly's amendment, if carried, would make the sub-section read that, and something more--

The control and regulation of the navigation of the River Murray and its tributaries, and the use of the waters thereof.

Now, honorable members will see that there is a substantial difference between the two sets of amendments. The set of amendments from the Council points to navigation only; the set of amendments from the Assembly points to navigation and "Use," which includes, of course, irrigation and irrigation in New South Wales as well as in the other colonies through which these waters run. I want my honorable friend (Mr. Gordon) to tell us what set of amendments he is advocating, because it is important that we should know what he is driving at. I do not wish him to answer the question at once. If the matter has not been settled between the delegates from South Australia, I will leave the question to be replied to at a later period if he likes. It is important that we should know exactly the sense in which we are asked to treat this as a test amendment.

Mr. GORDON. -

Certainly; the sense includes the use of the waters.

Mr. REID. -

Then I understand the Assembly's amendment is the amendment which my honorable friend is advocating?

Mr. GORDON. -

Yes, excepting probably as to its not defining particular rivers.

Mr. REID. -

Then those of us who are not from South Australia, and those who are looking on more as umpires in this matter than as representatives specially interested, are to take it that the test amendment means this—that South Australia asks this Convention to put into this Constitution a power not merely to control all the navigation. I may point out that power as to navigation is already given under the general provision contained, I think, in the first sub-section of this clause. Clause 52 begins by giving the Commonwealth a general power over the regulation of trade and commerce with all countries and among the several states. Now, that is a very wide power. That gives the Federal Commonwealth absolute power over the Yarra and every river in Australia—the Derwent, and the Tamar, and every river in the Federation in connexion with which there is any inter-colonial trade, and where any sort
of provision was being attempted to be made that would interfere with equal commerce. For instance, take this magnificent wharf system in the Yarra. If there was any attempt made at any wharf on the Yarra to distinguish between goods arriving from Warrnambool and goods arriving from any other part of the Commonwealth, under these general words I apprehend that the Federal Parliament could step in and make that regulation of no effect. So that, so far as commerce is concerned, we all know, or ought to know, what we are doing—that over every navigable stream in the Commonwealth, wherever it is situated, we are giving the Federal Parliament power to prevent any abuse of wharfage regulations, or navigation regulations, or domestic regulations which would have the effect of making commerce unequal. That really seems to me to give the Commonwealth a much greater power over us in respect to some of these rivers than perhaps some of us thought. But I say in regard to the federal power—the fair and honest power which lies at the heart of federation—I do not care what its consequences are, I accept them. Therefore, I cannot be accused—neither I nor my honorable friends from New South Wales—of disputing this proposition: That for every inch of water navigable in New South Wales, and capable of being used for inter-colonial trade, we give up any pretence to exclusive control, any power to make commerce unequal as between the colonies.

Mr. HIGGINS. -

The American decisions go further than that.

Mr. REID. -

Yes, I know; they go to an extent which alarms me, because they go to the extent of interfering with irrigation improvements of all kinds.

Mr. GORDON. -

Only in so far as the improvements intercept the traffic.

Mr. REID. -

Yes, I am aware that that is not lost sight of.

Mr. ISAACS. -

Or as far as they affect inter-state navigation.

Mr. REID. -

Well, I do not oppose that power. I am certainly the last one to wish to interfere with a power of that kind, and we as New South Wales representatives should be the last to do so in view of the policy we have adopted in our Colony.

Mr. HIGGINS. -

Would it not also be competent to interfere with the water being taken away?

Mr. REID. -
I must say that I am afraid so, and it raises up, I must tell honorable members, a very serious question indeed, even in its most unobjectionable form as affecting New South Wales. We cannot avoid that. But still I admit that we must be thorough in all matters that, are really federal and national and which affect the broad intercourse of the different colonies. Therefore up to that point, however far it may take me, I feel that I must go. But the honorable member (Mr. Gordon) goes further than that.

Mr. DOUGLAS. -

No.

Mr. REID. -

Well, I will show him how he goes further than that, and will also show my honorable friend (Mr. Douglas) if he will follow my argument. The honorable member (Mr. Gordon) tells us that it is the amendment of the Legislative Assembly of South Australia that he and his colleagues are fighting for. I will read that sub-section again as it would stand if amended as proposed:

The control and regulation of the navigation of the River Murray and its tributaries, and the use of the waters thereof.

My honorable friend knows that he goes further than navigation-"the use of the waters thereof." It is an expression which contemplates the management of the irrigation on the banks of those rivers. If honorable members look at the map for a moment they will see what it means to New South Wales. The Lachlan runs to within 150 miles of Sydney. It runs across New South Wales for 400 or 500 miles. The Darling runs right across New South Wales for about 1,000 miles. There are any number of rivers, tributaries to the Darling, in the northern part of the colony. Take the Murrumbidgee and the Lachlan, which is a tributary of a tributary of the Murray; and yet, putting all international decisions aside, the honorable member includes the Darling and the tributaries thereof. Just consider what would happen in Europe if there were a settlement of the navigation of the Rhine, and one of the parties interested claimed not only the river and the use of the waters of it, but all the many thousand tributaries of the Rhine, and many of the thousand tributaries of the tributaries of the Rhine. Why, all Europe would be startled by such a "naked and unashamed" proposition. It would throw the nations of Europe into war at once, and if the proposition were by any chance adopted, it would involve an interference with almost every corner of every State of Europe. That would lead to a positively intolerable state of things. International law regards the main arteries of commerce, and does not pretend to deal with the water of tributaries which run through the internal boundaries of a State. But this
amendment does. The Murray, and tributaries of the Murray, and the tributaries of the tributaries of the Murray, are included. Can it be pretended that that demand can be justified by any sort of inter-colonial law? Has my inter-colonial lawyer put forward such a position in the history of all this disputed question in regard to water? No; it has been reserved for my honorable friends from South Australia to attempt to make this new principle. It is a principle which has been pointed out as being one of immense importance to us in New South Wales. If we had within our territory one of those vast torrents of water such as may be said to be represented by the Rhine or the Danube, there would be no difficulty whatever in this matter, but in New South Wales, for reasons which are obvious, the matter of water is a matter of water supply, and is an affair of vital consequence to three-fourths, if not to the whole of New South Wales, inasmuch as three-fourths of New South Wales depend upon those four rivers for water supply, And for any sort of irrigation, even the smallest scheme. So that honorable members will see that practically, if they carry this amendment - situated as our commerce and as our people are situated in regard to our rivers - they are handing over to the federal authority a power over our internal domestic affairs at a vital point, which I fear our people will not be in a mood to accept. The honorable member (Mr. Gordon) says - "Trust the Federal Parliament." There is no argument in that. If the honorable member came forward, in his zeal for irrigation at large, and proposed a sub-section to the effect that all the irrigation of the Commonwealth should be under the control of the Federal Parliament, that might seem an absurd proposition, but it would have the merit at any rate of being a uniform one. But the honorable member simply picks out a bit of Australia in regard to a matter which affects the interest of his own colony, and wishes to federalize us for his own benefit. If he wishes to federalize irrigation he has a plain course to pursue. We federalize commerce; we give general powers as to that. We have proposed to federalize a number of subjects in this Bill. There is no objection to that. But our strong objection to the present proposal is to this general power of federalizing subjects being departed from, inasmuch as we in New South Wales and our vital interests are being federalized in a way that affects us as no other colony is being affected. Because federalization carries with it a change of status. An important change of status is involved in this proposition if it became part of the Constitution. Surely it will be admitted that there would not be an internal scheme of irrigation in connexion with that immense territory of New South Wales.
Or anything else.

Mr. REID. -

Exactly; I am dealing with the thing as it is. It is a simple proposition. If it were uniform, it would be different. My objection is—Why not discuss this matter in an Australian spirit? The honorable member (Mr. Gordon) has made that impossible by singling out a particular bit of Australia in respect to which his interests are involved.

Mr. GORDON. -

This is the only water system that runs through contiguous colonies.

Mr. REID. -

Yes, it happens to be the only one that affects the interests of the Honorable member. The observation of the honorable member, however, is not a federal observation, because any man with a zeal for placing a broad system of irrigation in the hands of the Commonwealth would not be deterred by the consideration that he had nothing to gain by it.

Mr. GORDON. -

But we are both interested.

Mr. REID. -

If it is a federal matter, why not make it generally uniform?

Mr. GORDON. -

It may lead to a federal dispute.

Mr. REID. -

Exactly. But I am bound to remind my honorable friend—I think it is about time that I should—that the history of this question is one that ought not to frighten him and his friends. It appears that there has been some delay in carrying out some correspondence many years ago about some inter-colonial control, but the absolute administration of these rivers has been, I think, as fair and as reasonable as anything ever was.

Mr. GORDON. -

Does the honorable member forget various schemes that have been suggested?

Mr. REID. -

Schemes suggested! Any man can suggest a scheme!

Mr. GORDON. -

Official schemes.

Mr. REID. -

Official schemes! How many official schemes appear and disappear? Has Parliament ever adopted any of them, or has the Government of New South Wales ever acted upon any of them? There are many sources of danger to individuals, but are any individuals lucky enough to get a protection against such dangers embodied in a Federal Constitution? I admire the zeal
and determination of the honorable member to get all his difficulties solved in this way, but my objection to this proposal is that it is not federal, as this Constitution must be if it is to commend itself to the people of Australia. He might command the respect even of the people of New South Wales if he proposed a general scheme of irrigation. But he does not. He seeks to legislate with respect to the waters which may affect him individually as a South Australian, but says nothing with regard to the others. That puts the matter before this Convention in a very unfair light, because honorable members must see what the effect of such a course of action in connexion with New South Wales would be. So that, I say, I believe in pushing this matter to an extreme. Let the honorable member propose some general action with regard to irrigation in respect to the Commonwealth, instead of dealing only with these particular rivers. I must again remind the Convention, in justice to the colony which I have the honour to represent, that New South Wales has a railway running to a point on the River Darling, and has the strongest possible interest if it acted selfishly in not spending money for snagging the Darling. I say that if we

had pursued a selfish course we could have thrown a certain amount of difficulty in the way of the commerce of South Australia by not spending money in clearing the Darling. But we have cleared the Darling. Never has a single anti-federal thing been done by New South Wales in connexion with this river system or in connexion with any one of these rivers. And more than that—when the honorable member quotes Clay about artificial contrivances to restrict commerce, one almost wonders whether he is aware of the Tariff that his own colony has imposed, and of the Tariff of New South Wales, which imposes no such artificial contrivances.

Mr. GORDON. -

That is King Charles' head again.

Mr. REID. -

It is hard to think that New South Wales should be accused or suspected of placing artificial shackles upon commerce in a system of this kind. It is too much—altogether too much. Not only have we cleared the Darling for our friends in South Australia-

Mr. GORDON. -

We cleared the Murray for you.

Mr. REID. -

Was it for us?

Mr. GORDON. -

Largely; the clearing brought down your wool.

Mr. REID. -
I thank the honorable member for his disinterested kindness in doing it; but, as a matter of fact, the policy of our colony has always been to recognize this neighbourly obligation in respect to the river systems, and we have done so. We have never put so much as a two-penny tax on a barge coming from South Australia—not a single two-penny tax. I should like to see that sort of thing more general than it is. I think that my honorable friends had better leave the moral aspect of the question of the artificial contrivances alone. We will take the thing on its merits. This is a point on which we feel that we should go further than even the general power contained within this Constitution, which concedes a great deal—think all that my honorable friends really want, looking to the decisions which I have seen upon the subject. But we have gone further than that general power. In sub-section (31) we have given not only the control and regulation of the Murray, which was given in the first sub-section, but the use of the waters of the Murray from where it first forms the boundary between Victoria and New South Wales to the sea. Here, again, we have not acted an ungenerous part. The Constitution which divided New South Wales and Victoria gave us the bed of the Murray and I fancy that was going a long way towards giving us the waters of the Murray.

Sir GEORGE TURNER. -
And a long way short of it, too.

Mr. REID. -
We have gone farther than that. We have allowed Victoria to lease various islands in the Murray. We have never raised any point against the use of the Murray by Victoria. The Victorian Government have carried out most enterprising and very serious schemes of irrigation from the Murray.

Mr. GORDON. -
New South Wales may not always be under the direction of my right honorable friend. The honorable member, Mr. Lyne, may be in power in the future.

Mr. REID. -
Exactly. What my honorable friend wants to do in the interests of his colony is one thing, and what this Convention should do is quite another thing. I give my honorable friend credit for going straight for everything he can get for his colony. I give every one of the South Australian representatives credit for advancing pretensions which might stagger ordinary individuals with a degree of moral enthusiasm which shows that South Australia has a peculiar climate.

Mr. GORDON. -
The right honorable gentleman evidently finds our arguments too hot for him.
Mr. REID. -

Having heard what I must call one of the ablest series of arguments upon a bad point I ever listened to, I now recall the Convention first of all to the principles of international law. We must consider, first, what is the present state of things. Has a proposition ever been made to a body like this, dealing with different interests and trying to reconcile them in a federal spirit, which has had the effect of depriving a country of the whole of its water system? That is the plain English of the power that is now asked for. In framing a Federal Constitution, if power is expressly given to the Federal Parliament, that power ceases to be a mere abstract power; it is an injunction upon the Federal Parliament to discharge the obligation it imposes. If the use of the River Murray, the Lachlan, the Murrumbidgee, and the Darling is vested in the Federal Parliament with our consent, we being members of the Commonwealth, we consent to a Constitution which not only enables the Federal Parliament to do what they like with us if we try to use the water, but puts into their hands a direction that they are to take over our rivers and administer them.

Mr. TRENWITH. -

Control does not necessarily imply that.

Mr. REID. -

No. And if every one were like my honorable friend it probably would not mean that; but before a sensible man signs a deed which he cannot revoke he likes to see that he is being treated equally and fairly. When you tell a business man-"Oh, but it does not follow that they will do this or that," you are treating him like a child or like a person whom you do not believe to be fully educated. Why should we lose all our water system if no other water system is to be taken? If this is going to be such a harmless thing why not put the paint brush all over the continent? Why paint the water system of New South Wales "federal," and leave the systems of the other colonies to be managed by those Colonies?

Mr. GORDON. -

Because the New South Wales system is the only federal water system.

Mr. REID. -

It is the only thing that worries my honorable friend. He is the most consistent public man that I have ever met. We all respect the very great ability with which he puts forward every proposition, and there is no member of the Convention for whom we have a kindlier feeling; but we must argue out these matters of difference, though in a friendly spirit. When my honorable friend came to the Convention of 1891, there was only one nightmare that oppressed him, and that was how the commerce of
Broken Hill could be secured to South Australia. My honorable friend has this great advantage. He can lift matters of the sheerest self-interest into the loftiest regions of benevolence, philanthropy, and even of religion. That is the sort of man who is dangerous. Honorable gentlemen who were in Sydney at the time of the 1891 Convention will recollect that the honorable gentleman's one question was-"Does the Bill secure South Australia in regard to the Broken Hill trade?"

Mr. GORDON. -

No. I then raised the whole railway question, which was not at that time thought to be serious, but which is now admitted to be most serious.

Mr. REID. -

Does my honorable friend recollect the intense anxiety which he displayed to ex

Mr. GORDON. -

Quite well, in the general interests of Australia.

Mr. REID. -

In the general interest of Australia, but still it was Broken Hill all the same. That is where the honorable member's two regions so happily coincided. We should all get to heaven if we could reconcile our morality with our interests in this way.

Mr. GORDON. -

The right honorable member will have to be a good deal fairer in his arguments before he gets to heaven.

Mr. REID. -

The fact was that in the year 1891 my honorable friend had a very keen eye to the railways as they affected Broken Hill, and to the rivers as well, and the only earnest strong speeches which he has made since the federal movement began happen, by accident of course, to have dealt with matters in connexion with

which the business interests of his own colony stand out.

Mr. GORDON. -

Other interests have been safeguarded by other honorable members. One cannot do all things, like my right honorable friend. We cannot each of us be a Jack-of-all trades.

Mr. REID. -

While we have been looking after all interests, including those of South Australia, my honorable friend has not reciprocated.

Mr. GORDON. -

Well, I earnestly desire to reciprocate.

Mr. REID. -
The honorable member's reciprocity does not meet with my entire approval. I am anxious to point out to this Convention the extreme importance of any decision that we may arrive at in regard to this question. All Australia is looking on at a preliminary rehearsal of how federation will work when state interests come into play. Therefore, I make no apology to honorable gentlemen who have no direct interest in this matter, when I put upon them the very serious responsibility of acting as umpires. For the control of navigation, every inch of navigable water in New South Wales must be under the dominion of the Federal Parliament, in order that our rivers may not be used to favour the commerce of any one colony as against the others; but the federal way of carrying out this federal, object would be to make the power of the Commonwealth complete, not only over the Murray, and the Darling, but also over the Yarra, and the Clarence, and every river in Australia. If you want to take irrigation as one of the federal subjects, you must federalize it all over Australia. You cannot put one colony under the control of the Commonwealth and leave the other colonies free.

Mr. ISAACS. -

Wherever the action of one colony might affect the other colonies the matter should be under federal control.

Mr. REID. -

Might I suggest to my honorable friend, who is a very accurate reader of history, that the United States contain any number of very important rivers running through more than one state. I think my honorable friend (Mr. Higgins) said that there was an express clause in the United States Constitution giving the control of the rivers to the federal authority.

Mr. HIGGINS. -

I did not say so.

Mr. GORDON. -

It is universally regretted that such a provision does not exist.

Mr. REID. -

I have failed to find such a provision, and the universal regret seems to be felt deeply in this Chamber. I have found very little trace of it in my readings. I have never heard any outcry for want of this provision.

Mr. GORDON. -

I gave my right honorable friend an argument in favour of it from Kenny the other day.

Mr. REID. -

The United States Constitution contains the words which we have on the forefront of this very clause-"The regulation of trade and commerce with other countries and among the several states." We have deliberately
adopted those words from their Constitution. If honorable members will look at a book which is open to us all, and which contains the judicial decisions upon the American Constitution, they will find that a vast number of decisions have been given upon these words, but they all maintain this central doctrine that under these words no water-way in the United States which is used for interstate commerce can be so treated by the state through which it flows as to obstruct that commerce. Therefore, honorable members must see that in adopting these words in our Constitution, New South Wales gives up the control of the navigation of her rivers.

Mr. HIGGINS. -

That is knocked on the head by subsection (31).

Mr. REID. -

No, indeed, it is not. The regulation of trade and commerce among the several states is not destroyed by those words. If it is thought to be destroyed by them, I am prepared to amend the sub-section with a view to preventing that result. My honorable friend (Mr. Symon) said-"We only want to keep these rivers navigable." To show the haste and the want of consideration which even able intellects like those embarked in this enterprise can be capable of, I would point out to the committee that one of the four rivers which have been referred to has never been navigated since New South Wales was occupied.

Mr. HIGGINS. -

It will do no harm if it is simply kept as it is.

Mr. REID. -

I wish the venue was in Victoria instead of in New South Wales. I wish it was a question of the Ovens or the Goulburn being taken over.

Mr. HIGGINS. -

I wish it were. Then we should do justice.

Mr. REID. -

Justice, according to the honorable member, is a vague and uncertain thing. It is what is called abstract justice, which is always wrong.

Mr. OCONNOR. -

If in New South Wales we had carried out irrigation works which did not pay we should be glad to hand them over.

Mr. HIGGINS. -

I think that a fair talk would arrange these matters. This is a very unsuitable amendment.

Mr. REID. -

I think that the Convention should pause very carefully before coming to
a decision, and that we could show the people of Australia, who are asked to trust the Federal Parliament, that they can begin by trusting the Federal Convention. And let me show in a very few additional words how rash this proposition is. Now, no jurist ever heard of has claimed that there should be a federal jurisdiction of any kind, or a joint control of any kind, over a river like the Lachlan. That is to say, a river that is entirely within the boundaries of one state, and is not navigable. That statement I make as showing how rashly this scheme has been prepared. If for irrigation, and if it is to be justified because irrigation is also to be exercised, let me point-out the extreme absurdity of the proposal in that light. What can be thought of a system which proposes to deal with the irrigation of three-fourths of a colony, leaving the other one-fourth unprovided for? What a marvellous-confusion we should have under this management as to the irrigation schemes of our runs and farms over hundreds and almost thousands of miles. A Federal Government would control and manage them. As to the rest of our irrigation schemes there would be local control and management. What justification could we have in going back to our people with a scheme of that kind? We should have to give a naked answer to those who said-"If you are going to federalize irrigation, why take three-fourths of the colony and not the other fourth?" We should have to say-"This is done to secure South Australia, which is very much afraid of the water being used to prevent its barges from going down to the mouth of the Murray."

Mr. GORDON. -

The barges would not be able to do that if you had your way.

Mr. REID. -

Is that fair? The Government of New South Wales have kept the river free for the barges of South Australia and have not charged one penny toll or licence. How preposterous such it statement is in view of the facts! I suppose it is a federal statement, but I do not trust that sort of federal spirit.

Mr. GORDON. -

Your officials have threatened to drain the Murray dry.

Mr. REID. -

Our officials! May I point out to the honorable member that if he had to be bound by all the tattle of his officials he would find himself placed in an extraordinary position.

Mr. GORDON. -

This is a solemn parliamentary report.

Mr. REID. -

Then I suppose it is accompanied by a statutory declaration.

Mr. GORDON. -
Does the honorable gentleman keep tattlers in the public service of New South Wales?

Mr. REID. -

If it is a solemn parliamentary report, then Heaven forbid I should use such an expression, but the officials who write reports for Parliament do not administer the inter-colonial relations of New South Wales.

Mr. GORDON. -

That may be so.

Mr. REID. -

Those who do administer these relations have never done an unfriendly act.

Mr. GORDON. -

So far. Does the honorable gentleman answer for posterity? He takes big contracts, I know.

Mr. REID. -

My suggestion to the honorable member is this: He has to prove that this is something more than a matter affecting the interests of South Australia.

Mr. GORDON. -

I think that is obvious.

Mr. REID. -

When the honorable member comes before the Convention with a proposition again, he will have to reconcile it to the proportions of the occasion better than he has done in this case. He will have to show that he has submitted a truly federal scheme, and not a scheme which divides New South Wales into two parts, and, as to one part, puts irrigation into the hands-so far as the farmers living on the banks of the streams are concerned-of a foreign power, and leaves the other part to the control of the state Legislature. He really must not come forward with a piebald proposition of that kind. Mr. Symon made the remark-"All we wish is to keep these rivers navigable." Now, does not the honorable member see that he gives up the whole case, that he admits that this is not a straightforward proposition, that he admits that, under cover of taking over this power of regulating the irrigation of South Australia, he does not care a dump about the irrigation of New South Wales, or the lands to be irrigated, but wants to secure the commerce of South Australia? Will the people of New South Wales hand their interests over to persons who act in that way?

Mr. OCONNOR. -

I do not think they will.

Mr. REID. -

I should think not, and nobody could blame them. The people only wish
to see their affairs handed over to the Federation on federal conditions, and I say that it is an unfederal condition to split my colony up in this way and take the control of irrigation and water over three-fourths of it, and as has been no irrigation drain upon them they have gone practically dry, becoming a series of water holes. Honorable members when they speak of keeping these rivers navigable practically enter upon a contract which is incapable sometimes of realization. My own belief is this, that the irrigation of a colony can be carried out even in the case of rivers like the Darling in such a way as not to destroy the commercial interests of any one colony in Australia. Whether that is so or not, we have given power in this Constitution, by these general words, to enable the federal authority to regulate the commerce on these waters—that is, in the control of the Murray at any rate. I should like very much to see this matter put in a shape in which it would be more palatable to members of the Convention generally. I am quite prepared for the proposition of Mr. Deakin. I admit it does not mean very much. It means this: That as the Federation begins to operate, as we hope it will, instead of there being any jealousy or distrust of the Federal Parliament, a different state of feeling will arise, and the people in New South Wales, South Australia, and Victoria who look with the greatest distrust on the things that might happen will come to see that in the end a federal control might be good. I have no objection whatever to a power which would enable the Commonwealth to treat with any state in matters of that sort. The advantage of that is that both parties being on their original rights a fair settlement could be arrived at. The honorable members from South Australia wish to begin this federal enterprise on our rivers by depriving us of our original rights and giving us nothing in return but a divided system of water control. Over a bit of New South Wales the local Parliament is to be supreme, and over the vast water system of the central and western divisions the control is to rest with the Federal Parliament. That sort of proposition cannot commend itself to the Convention, which is anxious where conflicting interests arise to solve them in a federal spirit, or, if that is impossible, to leave the two colonies which cannot be reconciled on a federal basis to a power in the Constitution to come in when time and reason and experience have shown a way in which either locality can give up its rights upon fair and federal grounds.

Sir GEORGE TURNER. -

Would you be prepared to leave it to the Inter-State Commission or to the judiciary to decide if there was a dispute between South Australia and New South Wales with regard to the water, and allow the decision to be final?
Mr. REID. -

The proposition before the Convention is one which practically takes over the irrigation system of New South Wales.

Sir GEORGE TURNER. -

I want to supersede that if I can.

Mr. REID. -

I want to deal with everything as it arises. I make no terms and I enter into no bargain. I will deal with each thing on its merits. I say on the merits this proposition is radically unsound, and will lead to a state of affairs so radically unequal and unfair that it will become very serious indeed. I am prepared, in the interests of commercial freedom, to take a course worthy of the traditions of my own colony and the policy which prevails in it, that is, to secure to all the colonies as fair and equal a use of our natural opportunities as we have ourselves.

Mr. GORDON. -

That is all we want.

Mr. REID. -

Then all I can say is that you should put it in better English.

[The Chairman left the chair at four minutes to one o'clock p.m. The committee resumed at two p.m.]

Mr. KINGSTON. -

I think we must recognise that we have arrived at a very important stage in our deliberations, and that the matter which is now under discussion threatens to divide us in a way which we would all desire to avoid. I rise for the purpose chiefly of suggesting that this is a matter on which we should take the sense of the Convention by division as a list resource only, when all hope of amicable agreement and compromise fails. I am the more strengthened in this suggestion, from the belief that the cause of the colonies interested which has been so ably put before the Convention by the various speakers who have preceded me, only requires that careful consideration which I feel sure the Convention will be desirous of giving to it to insure a concession to their requests of everything that is fair and right under the circumstances. I am sorry to some extent that my right honorable friend the Premier of New South Wales spoke in quite the tone which he adopted. It seems to me to some extent that he did not altogether realize the reasonableness and substantial nature of our requests, and I venture to put it that this is a matter to which it would be best to address our most serious consideration, and not in the slightest degree to attempt to dispose of it with badinage, sarcasm, or anything of that sort. Therefore, I shall purposely refrain from following some of the remarks in which he indulged. But I think that I ought to say, with regard to the criticisms he
levelled against my honorable friend (Mr. Gordon), that the position which that honorable member took up in Sydney in 1891 has, by subsequent events, been shown to be absolutely right. He may have been, and very probably was, foremost in suggesting then that it was idle to provide for the removal of inter-colonial barriers to commercial intercourse in the shape of customs duties if we did not at the same time provide for the removal of the war of railway tariffs. The same importance was not attached by all members of the Convention to his remarks as the honorable gentleman himself attached to them, but subsequent events have shown abundantly that he was right. I do not forget that one honorable gentleman who has been very emphatic in his denunciation of the proposals of the honorable member (Mr. Gordon) at the present time, at an early stage in our meeting in Adelaide rose in his place and put it that it was idle to adopt measures for abolishing the war of custom-houses if we were only going to transfer the seat of war to the railway stations. Similarly, I say here, it is idle for you to adopt measures for abolishing the war of custom-houses and the war at railway stations if you are going to transfer that war to the river-side. That is what seems to me likely to be done if we do not adopt some amendment of the sort suggested by the hon. Mr. Gordon. The honorable member (Mr. Carruthers) has told us, and rightly enough, that this is a question of the greatest importance to New South Wales. I say also that it is of the greatest importance to South Australia. Arid as the territory in New South Wales may be, the same remark applies with equal force to the territory of South Australia; and if by the action or enterprise of New South Wales we be deprived of those blessings in the shape of perennial streams flowing through two contiguous colonies which Providence has given us, and if they are to be absorbed for the benefit of one, or if the possibility of that be permitted, we shall be making a great mistake indeed. I trust all honorable members will do what they can for the purpose of laying down this principle That as regards our river system, where it can be properly termed of an inter-colonial character-important as it is in America, where the streams are great, and the necessities comparatively small; it is greater still in Australia, where the streams are comparatively small, and the necessities are indeed great-I do trust that we shall not separate on this occasion without having adopted a Federal Constitution which does provide that in the distribution of these natural bounties of Almighty Providence all must share and none must suffer. That, I venture to say, on behalf of South Australia, is all that we desire—that that which is naturally the property, advantage, and opportunity of different colonies should not be absorbed to
the benefit of any one. I should like to say to my right honorable friend the
Premier of New South Wales, that I am not attempting on this occasion to
lay down any other principle more in detail than that which I have roughly
indicated. What I am attempting is this: To act in furtherance of the
resolution which was originally moved by the leader of the Convention in
Adelaide; that is, to take to ourselves, as representatives of the people of
Australia, the power of dealing with this question which is at present
possessed by the Imperial Parliament. So far as I recollect, the resolution
moved by the honorable member (Mr. Barton) was this:

That in order to enlarge the powers of self government of the people of
Australia a Federal Government should be created with certain powers.

What is the position to-day? On this matter New South Wales-to put it at
its broadest, simply as a question of law, to say nothing of the equity-can
exercise her rights in connexion with the waters of these rivers, subject to
the control of the Imperial Parliament, which by legislation can provide
what is necessary and fit on the subject. What we suggest now is that when
we are calling into existence an Australian Parliament charged with the
duty of dealing with this matter of inter-colonial concern-of Australian
national concern-that the powers of the Imperial Parliament should be
transferred to the federal authority which we propose to call

I would ask the Premier of New South Wales what does he object to in that?

Mr. REID. -

May I put to you this question. Even from your point of view, do you
justify the basis of this amendment in taking over irrigation in order to
preserve navigation?

Mr. KINGSTON. -

I do not attempt to deal with this question in detail. We have not got
sufficient information for the purpose of enabling me to state definitely on
what lines the legislation should proceed. What I do say is this: That we
ought to give to the Federal Parliament which we propose to call into
existence the power, when it deems fit, to legislate on this question (giving
either the preference to navigation or to irrigation, I care not which, just
according as its wisdom may decide in the future) in order to remove this
fertile source of friction between colonies. I put it to my right honorable
friend in this way: I have no desire to refer to recent history in connexion
with this river trouble, but it is a live question; it is a subject which has
already occupied the attention of several of the colonies interested. It is a
matter on which we have addressed the Government of New South Wales
with the utmost respect—and we shall be prepared to address them similarly in future—but without that fertility of result which we might have desired. Now, the question seems to me, are we, when laying the foundations of federation, with the necessary modifications, which we hope will endure for all time, to permit this question to remain beyond the possibility of being satisfactorily dealt with by that Federation and absolutely outside its jurisdiction, and to be a constant source of friction and irritation, which, under existing conditions, is has been found impossible to deal with? The Right Honorable the Premier of New South Wales has said that at various times and on various occasions the expression "Trust the Federation" has been used with more or less force. I confess that on a variety of occasions when I have used the expression I have used it most sincerely, believing that we are engaged in calling into existence a body in which the whole of Australia shall have confidence. I put it to the right honorable member what will be the position if this jurisdiction which we seek is given? Simply this, that if the Federation finds that it can interfere for the good of all concerned it will do so. If it comes to no such conclusion it will stay its hand. Which colony, I ask, has to run the greater risk? South Australia, with its comparatively small representation, or the senior colony of the group? But I put it on broader lines: Are we fearful of this Federation? For one, I am not. I have every belief in the wisdom of the body which we are proposing to call into existence. If we are fearful, that seems to me to be an argument for keeping out of it. My view is this, that there is no cause for fear, least of all on the part of colonies who will be so strongly represented in the house of Representatives as New South Wales naturally will be. I do ask honorable members not to pass by on the other side of this difficulty, which, if left unsettled and not referred to a tribunal of competent jurisdiction to be dealt with, must be a constant source of that destruction of the feeling of inter-colonial comity, which should prevail amongst the various colonies that we have the honour to represent, and a source of danger to the success of the Federation which we are here to constitute.

Mr. Reid. -

Is not your only anxiety now to preserve the navigability of the river?

Mr. Kingston. -

I tell the right honorable gentleman this—that I would welcome any fair arrangement on the subject.

Mr. Reid. -

Do you desire this power over New South Wales for irrigation purposes or for navigation purposes?

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Mr. KINGSTON. -
I desire it for the good of a
Mr. WISE. -
Is it navigation that you wish to preserve?
Mr. KINGSTON. -
If this water is useful for the purposes of irrigation, as I believe it will be, I think we ought to have our fair share of it, too. I do not want that New South Wales shall, under cover of an unlimited power of irrigation, be able to leave to us nothing more or less than a dry channel.
Mr. REID. -
Therefore, you want to take water for irrigation?
Mr. KINGSTON. -
I want New South Wales to concede to the people of South Australia and the people of Victoria, under this Federation, the same right, with reference to the use of these waters, as her courts would concede to the New South Welshman. Under this Federation, I hope it will not be a question of New South Wales, but of Australia—an extension, practically, for national purposes, of our various powers. The present legal position, on which I understand the Premier of New South Wales to insist with some degree of legal force, is this: That outside the boundaries of New South Wales no person has any right to complain of what use the waters of the River Murray are put to.
Mr. HIGGINS. -
We cannot have war, and we cannot have law.
Mr. KINGSTON. -
No, we cannot have war, because it is impossible for states which are component parts of the same empire to go to war; we cannot have law, because the New South Wales laws do not run for the protection of those who happen to live outside that colony. All we can have is Imperial legislation conferring rights on all. And we do not want—we do not desire to go-cap in hand, complaining to the mother country that our own fellow citizens of the British Empire—the people of New South Wales, which, properly enough, rejoices in the proud designation of the mother colony—claim the right to absorb all the waters of the River Murray, if it so pleases them. We are calling into existence a Federation within which we admit that custom houses should be abolished, that wars of railway tariffs should be stopped, and all I ask honorable members is to go one step further and say that, as respects the use of what are Australian rivers, Australian rights shall be regarded, and that those rights shall not be limited by any provincial jurisdiction. If it were necessary to encourage my honorable friends from New South Wales, I would ask them what have they to fear,
with the magnificent representation that that colony will have in the House of Representatives, and equal representation of the states in the Senate?

Mr. HIGGINS. -

If you give to New South Wales the advantage of her larger population in both Houses I think the whole difficulty will be gone.

Mr. KINGSTON. -

As long as the existing law continues, the existing position will continue. If the Federation does not interfere, such rights as New South Wales claims at the present moment will remain untouched. A majority of the House of Representatives will be necessary to effect any alteration of the existing conditions, and surely in a matter of this sort, in which South Australia and Victoria are just as much interested as any other colony in obtaining a peaceful friendly solution of the question, and are willing to remit it to the decision of a tribunal in which New South Wales is to be so strongly represented, it is an unnatural apprehension on the part of the representatives of New South Wales to fear any direful results.

Sir JOSEPH ABBOTT. -

What about the tributaries?

Mr. KINGSTON. -

The tributaries? All I wish to say is this: for my own part, I would be prepared to concede that, so long as the navigability of the rivers in question is not interfered with, I would not require any special reference to the question of irrigation, relying on the supply of water which is necessary for the purposes of navigation as being sufficient also for the purposes of irrigation, although, at the same time, I do not omit to recognise that there may be a fine line drawn at a point at which the water may be sufficient for the one or the other of those purposes, and not for both. But the question which now chiefly interests me is this—Cannot we arrive at some unanimous friendly solution of the difficulty? I do trust that this Convention will not adopt any other means for a long, long time to come, except as a last resource, than an effort to secure, by amicable negotiation, that which we desire. I assure honorable members, on the part of the colony of which I have the honour to be one of the representatives, that we wish nothing more than is reasonable and fair. Embody any expression which may be desired by any honorable member of this Convention for the purpose of preventing us getting anything else, and we will cheerfully agree to it. And I put it to honorable members that, in framing a Constitution for Australia—a country in which, as has been well pointed out by Mr. O'Connor, water is a matter of absolute necessity, not only for the comfort of the individual, but also for the development of our
resources-unless, as regards rivers which may be truly termed Australian, we make satisfactory provision for their use by the Australian people, and prevent the possibility at any time of their monopolization by one or other of the colonies interested, to the injury of the community, the Constitution will be lacking in one of the chief recommendations for its acceptance by the Australian people.

Mr. LYNE (New South Wales). -

I anticipated, from the remarks which had fallen from previous speakers, that the last speaker intended to have made some definite suggestion to vary somewhat the proposition that has already been made by Mr. Gordon.

Mr. KINGSTON. -

Well, you would not accept it, anyhow.

Mr. LYNE. -

I have not seen it. But I thought from what was stated, before we adjourned for lunch, that it was probable some suggestion would be made that might bring us nearer together. On this occasion I am extremely glad to find that the representatives of New South Wales are in harmony, and, I hope, unanimous, and I am very glad to be able on this question to support the Premier of New South Wales, a thing I do not very often do.

Mr. PEACOCK. -

Perhaps he is wrong now.

Mr. LYNE. -

No; I hardly think he is wrong now. I think that, for almost the first time, he is right.

Mr. HIGGINS. -

When you do agree your unanimity is wonderful.

Mr. LYNE. -

But let me impress upon the Convention that we have to consider many things in carrying out the work in which we are now engaged, and I think that not the least amongst those matters is the duty of preparing such a Bill as is likely to be acceptable to the people of these colonies. Now, in framing this Constitution Bill, I have thought from the onset that we were attempting to import into the measure too many matters and too many subjects, and, if the proposal made by the Hon. Mr. Gordon is going to be carried, it will be the forerunner, and I think it should be the forerunner, of taking over our lands, our railways, our debts, and everything else, and practically relieving the states altogether from all matters of serious state consideration.

Mr. ISAACS. -

Do your debts affect other colonies?

Mr. LYNE. -
No, I do not think they do; but I think that if all debts were taken over we would relieve the other colonies very considerably as far as their debts are concerned, because of our stability.

Mr. HIGGINS. -
We do not want your debts.

Mr. TRENWITH. -
That is because yours are the largest.

Mr. LYNE. -
I mention this matter not because I should support any such proposal, but because I think the proposal is of such a vital character that, if it is carried, we should go still further. I hope it will not be carried. For the sake of seeing this Constitution Bill passed by each state, I hope that this proposal will not be carried, because I feel satisfied that even at the present time in New South Wales the advance which was made to South Australia at the tail-end of the session in Adelaide—that was, to give rights over the waters of the Murray from certain points—is not viewed very favorably. If we go further and give absolute rights, not only over the Murray, but also over the Murrumbidgee, the Lachlan, the Darling, and all the great tributaries which fall into those rivers—I think it is useless to say that if those rivers only are named it does not affect the large tributaries which fall into them. Why, sir, the Darling is supplied wholly or nearly wholly by large tributaries, some of them in channels larger than the channel of the Darling itself. At the head of the Darling you have the Warrego, the Paroo, the Biree, the Culgoa, the Macquarie, the Namoi, the Bogan, and a number of large rivers which go to make the channel of the Darling; not to make its channel only, but to throw their waters for a width of 50 miles, in flood-time, over the lands of our colony. My honorable friend (Mr. O'Connor) alarmed me somewhat when he gave his opinion of the immense power which was given over these rivers even by the proposal carried at Adelaide. If I understood him aright, he said that these rights extended, not only to the Murray, but to all the tributaries of the Murray. Every tributary I named just now is a tributary of the Murray.

Mr. OCONNOR. -
A tributary between certain points—a tributary between where it first forms the boundary between Victoria and New South Wales down to the sea; only that portion of it.

Mr. LYNE. -
Every river I named comes between those two points.

Mr. OCONNOR. -
Mr. LYNE. -
Yes, from where the Murray first forms the boundary between New South Wales and Victoria—that is, up in the mountains—down to the sea.
Mr. FRASER. -
You are quite right.
Mr. LYNE. -
I presume that definition was inserted because otherwise it would be from the boundary of the colony of New South Wales to the sea only, and it was intended to restrict, I take it, the power of the Federal Parliament over the Murray waters only in the channel of the Murray from its head to the sea. The honorable gentleman said that, in his opinion, that power was extended to every tributary of the Murray. If that opinion is correct, there is no necessity for this amendment, for that power already exists in the Bill. If that does exist, then I venture to say if it is definitely understood, and it must be definitely understood before this Bill is completed, it will not be satisfactory to the colony of New South Wales. As the president, for three years, of the Royal Commission on Water Conservation in New South Wales, I had something to do with the framing of a Riparian Rights Bill. The honorable member (Mr. Glynn) referred to the fact that a joint commission from Victoria and New South Wales reported to their respective Governments in favour of a combined commission to deal with the waters of the Murray. The honorable and learned member is somewhat in error. What did take place was that that Royal commission suggested that a joint commission should be appointed to take charge of the head-works on the head waters of the Murray. The reason why that suggestion was agreed to was that according to the Constitution Act of New South Wales, we have power over the bed of the river only to the Victorian bank. We have no power whatever to put a spade or a shovel into the soil on the Victorian side of the river, and, therefore, we have no power to construct any works which would extend on to the Victorian side. Moreover, it was known at that particular time that the Victorian Government was very active in constructing works to divert a large portion of the main tributaries of the Murray—and the main tributaries of the Upper Murray come from the Victorian side—over various parts of the colony of Victoria for the purpose of water supply and irrigation, and it was thought by the two, at any rate by the New South Wales Commission, that that would have the effect of diverting into other channels a large quantity of water which then went down into the Murray channel, and which would thus be lost to the Murray.
River. Considering all the conditions as they were then, it was thought advisable that the Murray River only should be dealt with by a joint commission from the two colonies. It was upon that recommendation being made that a protest, or rather an attempt was made by South Australia to get her finger in the pie; and Sir Henry Parkes, who, I think, led the Government of New South Wales at that time, refused to agree to any proposal which would give South Australia the same right as Victoria or New South Wales with regard to the Upper Murray. The banks of all the channels to which I have referred other than the Murray belong solely to New South Wales. It is not a question of one side of the river belonging to Victoria or to South Australia, and of another side belonging to New South Wales. In the case of all these large tributaries on the New South Wales side they belong solely to New South Wales at the present time, cause they are within the territory of that colony. New South Wales has completed a great many works for the purpose of storing the water, of improving navigation, and of irrigating considerable patches of country. These rights exist now, and what this amendment desires to do is to take away a portion, if not the whole, of these rights, from New South Wales.

Mr. SOLOMON. -

Hardly that.

Mr. LYNE. -

It is that, and I will proceed to show as shortly as I can-and I think our speeches should be as short as reasonably they can be made-why I think that is the case. At the present moment, I think I am right in saying, the Murray is not navigable for a considerable portion of its course, and we all know that it is not navigable, nor, as a rule, is the Darling navigable, for more than three or four months in any year. If that is so now, and South Australia puts in a claim to have the whole of the water which is running into South Australia, because she says the Murray below the border would not be navigable, then that takes away rights, we have at the present time to divert any of that water which in a dry time is so useful and necessary in New South Wales. By doing that you take away the possibility of New South Wales obtaining to the fullest extent the use of the water for irrigation purposes. It was very wisely observed by the honorable and learned member (Mr. Symon) that it is possible that the question of irrigation will take precedence over the question of navigation. I entirely agree with his observation.

An HONORABLE MEMBER. -

He added-You can trust the Federal Parliament for that."

Mr. LYNE. -
If we cannot trust this Convention we must be careful as to how we trust the Federal Parliament. The Premier of New South Wales pointed out, I think with great force, that the people of the colonies are watching the action of this Convention as some kind of a forerunner of what they must expect from the Federal Parliament.

Mr. SOLOMON. -

If it was assured that it would have the same personnel you would all be in favour of it.

Mr. LYNE. -

I am not sure of that. At any rate, I should be very cautious, as regards this particular question, as to how far I would agree to allow the Federal Parliament to deal with it, at any rate for the time being; and by the term "time being" I mean this, that I think the people of these colonies have to gain confidence in the Federal Parliament, and in the course of a few years, if that Parliament should become a reality, the people of any state will be far more likely to hand over their rivers, or their railways, or their debts, should that Parliament act in a manner which they approve than they are at present, when they do not know quite what it is going to be, or how it is going to govern.

Mr. ISAACS. -

That is the case with everything.

Mr. LYNE. -

It is the case with everything, but I think there will very likely be more confidence in the course of a few years in the proposed Parliament than there is at this moment. The representatives of South Australia say they want the waters of the Murray to run into South Australia for navigation purposes, more particularly than for irrigation purposes. What takes place now, I understand, is that each year those persons who have lands fronting the Murray in South Australia anticipate the flood waters to irrigate and fertilize their lands. They may desire that these flood waters should not be interfered with, because they would lose the fertilization of the land which they now secure. Their representatives might go a step further in their argument. If at any time they make the channel to the sea navigable-I do not think it is navigable at present-they may say that they want the water to flow down the bed in sufficient volume to keep open that navigation. The great fault I have found in all the colonies hitherto has been that they have allowed so much of the valuable water of each state to flow to the sea, instead of utilizing it for irrigation purposes. On every river, when we have had a great flood, instead of utilizing the water, it is allowed to flow to the sea. It should be the object of every colony to utilize as much as it is
possible to do. One gentleman has said that New South Wales has done nothing towards conserving the waters of the Darling, or trying to make that river navigable. It is not navigable, as I have said, except for perhaps three or four months in the year; but already New South Wales has attempted to make that river navigable by building one weir and lock, and it is intended to carry on this work, and I think it will be carried on to its junction with the Murray. By these means, instead of having a river which is navigable for only three or four months in the year, we may possibly have a river which will be navigable at all times, by storing the flood waters in such volume as to give depth.

Mr. FRASER. -
No.

Mr. LYNE. -
Yes, I think it is quite possible. By doing that we do not in any way injure the flow of the river into the channel in South Australia. In fact, I think that instead of doing so we are likely to keep up that flow to a more standard level than it is kept up to at the present time, because the more the water conserved in and near the various channels in flood-time the more water will flow down the river at a dry time. I do not think, therefore, the South Australian delegates need have any fear that we are likely to injure the navigation of the river. But, as was truly said by Mr. Carruthers, this question is so bound up with our land legislation, and with the improvement of the lands in our colony, that the fact cannot and must not be ignored by any of the delegates from New South Wales, and I hope that fair treatment will also be accorded to that aspect of the question by the delegates from the other colonies. Mr. Carruthers said that it was a case of a divorce taking place between the water and the land, and so it is, because in our arid country we have land good enough for purposes of production; but in the western parts of our colony it is useless, except during a good season, unless we can utilize the waters to a greater extent than we have been doing in the past.

Mr. HIGGINS. -
What about the sunshine?

Mr. LYNE. -
We have that too, and we do not thank South Australia or any of the other colonies for it.

Mr. HIGGINS. -
You do not appropriate it.

Mr. LYNE. -
We do appropriate it, and it assists us very much. I may tell honorable members that a suggestion has been already made—and I do not think it will be long before it is carried out—under which something like £2,000,000 will be appropriated towards conserving the water at the head of the Darling and along its channels. In addition to that, what we desire to have free power to do is to divert the flood waters, perhaps for 50 or 100 miles, from the Darling, on each side, into the depressions that exist in that vast and country. The Government of the day have done but little in this respect, but private enterprise in some parts has done a great deal. I will just give one instance of this. There are two stations belonging to Mr. Tyson down on the Lachlan near its junction with the murrumbidgee, and some years ago, in a very primitive way, he diverted a part of the Lachlan waters through a dry channel—in fact, he either deepened or made the channel most of the way—40 or 50 miles into the arid back country, where he was unable to keep stock until be carried out that work. In one depression alone, which I saw myself, he created a lake which at most times is 60 feet deep. Are we to be deprived of all the rights we have to do such useful work as this? Because, unless we can utilize the water in this way a great part of our colony will remain unproductive, or practically unproductive, as it has been in the past.

Mr. HIGGINS. -
Does the water get back into the main current afterwards or remain there?

Mr. LYNE. -
Some of it will get back but a great deal remains. Of course where you fill up those immense basins it must remain or it is of no use.

Mr. HIGGINS. -
If that would stop navigation do you think it is fair?

Mr. LYNE. -
I do not think it will have any effect on navigation, as it can only be done in time of flood or half-flood.

Mr. HIGGINS. -
Then the Federal Parliament would allow it.

Mr. LYNE. -
We can do it now, and we do not want any Federal Parliament to interfere with our doing what is of infinite use to our colony. That is only one instance of the manner in which the waters in flood-time are and should be utilized. There are many schemes extending right up to the heads of the Darling to carry on this system to a very large extent, and it cannot interfere with the flow of the river at any particular time. It is only when the river is very low—lower than it is at present—that any complaint can possibly be made. At this moment there is one place on the Murrumbidgee
where the river is not more than 10 feet wide-between Hay and Narrandera-and the stream is scarcely running at all. Now, if we give up our present power, no one could use the waters of the Murrumbidgee under such circumstances, as the whole of the present stream is required to flow down into South Australia. I do not think that Mr. Gordon, in his speech, which I have read, although I had not the pleasure of hearing it, showed one case of a Constitution containing the power which he desires to place in this Constitution.

Mr. GORDON. -
No other country has the same imperious necessity that we have to provide for this.

Mr. LYNE. -
I do not think that this is the only dry country in the world; I think there are other countries where they require to use the small supply of water they possess to the very best advantage, and I challenge the honorable member to show one instance where there is imported into the Constitution of any country the power he is trying to give the Federal Parliament here.

Mr. GORDON. -
The same might be said of a number of powers we are incorporating in this Constitution.

Mr. LYNE. -
I said just now that I think we are incorporating too many powers. The honorable member quoted some writers as to the moral right of those states below other states to get the full force and full supply of water which should come to them, but in no case—not in Canada, in the United States, or in any other country-can I find, or has he shown, the existence of the power which he is trying to import into this Constitution. You are proposing to do something that we have had no experience of at all in the history of the world.

Mr. GLYNN. -
In the Californian Constitution there is a similar power as between individuals.

Mr. LYNE. -
That law exists in each state in Australia now as regards individuals. If one individual on a watercourse above another attempts to take away the right of the water flowing to the second individual, of course he can be prevented by law from doing so.

Mr. GLYNN. -
Is not what is fair as between individuals fair as between one colony and another?
Mr. LYNE. -
I do not think the honorable member is putting the matter very fairly, because in the colony of South Australia you have the Murray channel only—you have no tributaries. You have a

Mr. GLYNN. -
Oh yes.

Mr. LYNE. -
It may be so, but I never heard of it. That being the case, there is very little danger of any such course being taken by the state higher up as would reduce the river below navigation level. But I would like to point out to honorable members that there is a very important factor to which I referred at the outset; it is this—Supposing you import this proposal into the Bill, and you lose federation as a consequence, are you better off for carrying it than you would be by allowing matters to remain as they are and getting federation of some sort? It has been stated that it is possible to make a compromise. I myself cannot see that it is possible to make any compromise in this respect that would not give power to interfere with the supply of water that would be available for irrigation purposes. And if it is not possible to make a compromise that would prevent the interference with water for irrigation purposes, it is not possible to make a compromise at all.

Mr. DOBSON. -
The Federal Parliament would not interfere improperly; it would give you ample justice.

Mr. LYNE. -
That may be so, but the people of New South Wales, at the present time, do not know that it would be so, and their votes would be likely to be out against a proposal which would make this a matter to be controlled by the Federal Parliament. They know what their rights are now; they do not know what they might be then. Now, I would like to say one word with reference to an interjection which I made when Mr. Symon was speaking and which I do not think he took in the spirit in which it was intended. He was stating that the proposal did not desire to take away a right which now exists, and I made an interjection to show that we have is New South Wales, as you have in Victoria, the right to deal with, or use for irrigation purposes, any water flowing through our territory. I said that if there was an attempt at interference at the present moment by any of the other states with that right, it would very soon be proved what our rights were,
the diversion of water in any possible way. We can in the colony of New South Wales divert water from the Namoi, from the Darling, from any of the branches I have referred to, from the Lachlan, from the Murrumbidgee, or from the Murray. If you insert this provision in the Constitution the state of New South Wales will not have that power.

Mr. ISAACS. -

If you apply that principle to every subject there could be no Federal Constitution at all.

Mr. LYNE. -

I am now only arguing in answer to the remarks of Mr. Symon. He said he did not intend, or the South Australian delegates did not intend, to take away any right which exists at the present time, but they cannot possibly introduce a proposal of this kind without taking away a very strong right which exists, and one of those rights which are the life-blood of our colony as far as increasing its production is concerned. We have added practically a new state to New South Wales in the discovery and development of artesian water supply. Every one who knows anything of the interior of our colony knows what a great boon that has been to us, but it is not sufficient to develop our colony to the extent that it will stand development, or to which it should be developed, and we want the flood waters for utilization to a greater extent than the artesian water can be utilized. I admit that this question of irrigation is one which must grow. It cannot be carried out in a day or in a week. It must be years before it will grow to that stage when it will be utilized to the fullest extent, and it would be an unwise thing to attempt to do more than to let it grow in the manner I have described. But what has Queensland to say to this? Queensland has not, I regret to say, joined this Convention, but the waters that are attempted to be attacked in New South Wales extend into Queensland. The heads of the Darling run very far into Queensland-up to Toowoomba, and north up to the range which divides the Gulf waters from the southern waters. That being so, do you think we are not now doing something towards preventing Queensland from coming into the Federation at some future date? If we frame, a proper Constitution and agree to federate, Queensland must come in, and I have no doubt will come in in a few years, if not at first. But you are now proposing to take a right over these waters of that colony, whose necessities are similar to those of New South Wales, and, in doing that, you are adding something to the Convention Bill which will assist to keep Queensland from joining the Federation. I agree with my honorable friend (Mr. Barton) in what he has said, and I think the Right Hon. Mr. Reid has also said the same. It is not intended, I believe, to interfere with commerce in any way—with the commerce between the colonies. In New South Wales
we have never placed a toll or a preferential duty on the steamers plying into South Australia or into Victoria, in order to keep the trade to our own colony, although I admit that a considerable amount of trade has been taken from our railways along the Upper Darling through the navigation of the Darling and the Murray being kept open by New South Wales.

Mr. GLYNN. -
A proposal was suggested in 1893 in the report of Mr. McKinney.

Mr. LYNE. -
A proposal was once suggested in Parliament, but was not carried, and we must only judge from what was done. If there are to be no preferential rates on our railways, and if we are to have inter-colonial free-trade, it would be a most unjust thing to attempt to wage a war of tariffs on our rivers when we did not wage such a war on our railways.

Mr. DOBSON. -
I do not think you could do it legally.

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Mr. LYNE. -
We can do it now.

Mr. DOBSON. -
I do not think so.

Mr. LYNE. -
We can put a differential rate on our railways.

Mr. DOBSON. -
But not a toll on a navigable river.

Mr. LYNE. -
I am not a lawyer, but lawyers will support me, I think, in saying that there is no law to prevent New South Wales from putting a differential toll on the Murray, or at any rate on the Darling.

Mr. SOLOMON. -
That shows the absolute necessity for Mr. Gordon's amendment.

Mr. LYNE. -
I am trying to show that there is no necessity for it at all, because this has never been done, although we have power at present to do it.

Mr. SOLOMON. -

How oft the sight of means to do ill deeds
Makes ill deeds done.

Mr. LYNE. -
We have gone to considerable expense in opening the water-ways as highways of commerce, but we have never up to the present time attempted
to put any differential rates on any water-way. The honorable member intends to include the Lachlan in his proposal. It has been said before-and as I have some particular acquaintance with the Lachlan I can say that it is true-that the Lachlan never has been navigable. It has never been used as a navigable stream, and you could never make it navigable unless you made a canal 10 miles long from the Murrumbidgee to the deeper waters of the Lachlan, and then you would have to snag the river and make it deeper before you could make it navigable. I emphatically say that, as far as I can judge, it would be a very great blot upon the Constitution, and a hindrance to the acceptance of the Convention Bill when it is framed, if you embodied in it a provision of this sort. It has been said that you only want to take rights which the Imperial Government have now. But, sir, I should like to know whether the Imperial Government would attempt in any way-they never have attempted-to dictate whether we should be allowed to take certain waters from the rivers for irrigation purposes, or be restricted to a certain supply, or whether we should make certain rivers navigable or not? I venture to think that the Imperial Government would never think for a moment of attempting to do anything of the kind. One word as to the Inter-State Commission. I do not think that we have yet decided what the powers of that commission shall be. There is a great diversity of opinion as to whether the Inter-State Commission should have full power and sway over the whole of our railways regarding differential rates-I do not say preferential rates; I think they should have power over preferential rates; I cannot see any objection to the Inter-State Commission having power over our preferential rates only. But if you carry this amendment the result will be to place the rivers of the whole of the colonies under the Inter-State Commission, as well as the railways of the colonies. I venture to hope that the proposal will not be carried out, and that the good sense of this Convention will be such that it will allow this Bill to go to the people of New South Wales, and the people of the other states, in such a form that it is likely to be acceptable to them. But if you insert this provision in the Bill, I do not think it will be acceptable. I believe that New South Wales will stand out altogether. Surely South Australia will not desire that; and that being so, I trust that the Convention will permit the Bill to remain in such a form as will cause it to be acceptable to the people of the largest state of the group.

Mr. WISE (New South Wales). -

If I follow a representative of my own colony, it is not for the purpose of differing from him, but because his speech has brought more nearly home to me what I have already felt here and at Adelaide-that there is a very wide scope for misapprehension in regard to the amendment submitted to
this committee. Many of the speeches that have been delivered have never really grappled with the points raised by the speeches made in favour of the amendment, and my object in rising is to very briefly see if an endeavour cannot be made to bring the discussion to a very narrow focus, for the purpose of ascertaining whether-I will not use the word compromise-an amendment may not be agreed to, which will give expression to what I believe to be the general sense of every member of this Convention, including both the representatives of South Australia and New South Wales. I do not understand that the representatives of South Australia desire to deprive us in New South Wales of the right, to use our waters for irrigation. I am quite certain no one in New South Wales has ever proposed to deprive South Australia of the advantage she possesses in the navigability of the River Murray. We are, I think, entitled to a recognition by this Convention of the justice with which we have treated the neighbouring colony of South Australia with regard to this matter. No one can point to one single act of an unfriendly character on the part of New South Wales towards South Australia with regard to the navigation of the River Murray. On the contrary, as my right honorable friend the Prime Minister of New South Wales has pointed out, we have spent large sums of money, amounting to nearly £1,000,000, in the improvement of the navigation of the Darling-I do not say for the purpose, but with the effect, of increasing the volume of trade which passes down the Murray along the borders of South Australia. We have refrained from exercising what is undoubtedly our legal right to impose tonnage or wharfage dues on the ships travelling on the Darling or on vessels on the northern banks of the River Murray; and I think we may fairly ask, as representing the great colony of New South Wales, when we have acted in that friendly and considerate spirit, that we should be credited with the desire and the intention to act in the same way in the future. I may say that until this question was raised in Adelaide I had no idea that there was any disputed river question in existence, and I know that many of my colleagues in New South Wales were in exactly the same state of ignorance. When my honorable and learned friend (Mr. Gordon) first mooted the question we thought he was doing it in that spirit of jocularity which so much endears him to this Convention. For it was difficult to believe that his action was intended as anything but a joke. Now, my honorable and learned friend (Mr. Deakin) in a speech the pregnancy of which will, I think, be more appreciated when it is read than perhaps it was even by those who listened to it, indicated that there was no real difficulty in the way of a solution, because the interests of the various colonies in the question of irrigation are
not antagonistic. I propose to approach this question as a federal question, because I think that the body of expert opinion was accurately voiced by Mr. Deakin when he pointed out that even irrigation works cannot be carried out to any great advantage unless they are regarded as works properly belonging to the Federal Commonwealth, and intended to benefit not the particular locality in which they are made, but the whole Commonwealth. Whether we regard the navigation of a river or the use of its waters for irrigation purposes - in either view it is a federal purpose. Both irrigation and navigation are properly concerns of the Federal Government. I shall start with that admission, which, I am sure, will commend itself to the representatives of South Australia; and I will ask them, when I start with that proposition, to follow me, so that we may see if we cannot recognise that there is a means of giving effect to our conviction that both irrigation and navigation are matters of federal concern, and yet respect the just rights of either colony. The representatives of South Australia are concerned, I apprehend, to secure the availability of the River Murray for navigation at all periods of the year, and they are afraid, not of anything we have done, but of what they imagine we may do in some remote period of time if, say, we have a body of men in power who are utterly lost to all sense of decency and justice. May I put this consideration to them? If a body of selected representatives from South Australia, meeting with the solemnity and the responsibility which their position imposes upon them, think it likely that any New South Wales Ministry will be so forgetful of the simple obligations of right and wrong as to divert all the head-waters of the Murray for their own local selfish purposes to the destruction of the trade of a neighbouring colony, can they wonder that the uninstructed voter of New South Wales may entertain a similar feeling and view when he is asked (as they now ask him) to place his confidence blindly in the honour of an assemblage of gentlemen one-third of whom will be composed of those who express this little lack of confidence in the gentlemen whom they (the New South Wales people) will choose as their representatives; and when he is asked to put it within the power of that body to deprive him and his fellow colonists of the possibility of making any use of 140,000,000 acres of their land? I take it that we are desirous of dealing with this matter as a practical question, bearing in mind the best means of getting this Constitution accepted by the people. I do not believe that the Federal Parliament will do any injustice; but I ask the representatives of South Australia to believe also that we will not work injustice against them. And when they ask us to leave this matter to the Federal Parliament,
we may ask them to bear in mind our previous conduct, which we think warrants us in asking them to repose some confidence in us. When my honorable and learned friend (Mr. Symon) was speaking, I asked him whether the amendment would not put it in the power of the Federal Parliament to prevent us from using one drop of the water for irrigation purposes. He rather avoided the question, but I understood him to admit, in fact, that it would put it in the power of the Federal Parliament to do so; but he said that the power would never be exercised. He said-"You have power to stop our waters." Well, the same reply may be made—that power will never be exercised. Why should we, as practical men, be somewhat vehemently discussing possibilities which are never likely to occur? It was stated in Adelaide by the Prime Minister of New South Wales that New South Wales will renounce any latent rights she may possess (because it would be unfederal and dishonest to exercise them) to interfere with the navigability of the Murray. And an amendment was drawn up in Adelaide, and accepted, as carrying out the intention of securing permanently for South Australia the free navigability of the River Murray.

Mr. HIGGINS. -
Not accepted.

Mr. WISE. -
Carried there; therefore accepted there.

Mr. HIGGINS. -
It was carried after division.

Mr. WISE. -
Surely we can easily hit upon a form of words which will absolutely secure that full effect shall be given to what was intended in Adelaide, that the navigability of the River Murray shall be a matter of federal concern to secure. I agree with Mr. O'Connor that the words are already sufficient, but if there is any doubt it will be got over by inserting immediately before the word "control" the words "maintenance and," so that the sub-section would read "the maintenance and control of the navigation of the River Murray."

Mr. SOLOMON. -
And its tributaries?

Mr. WISE. -
I will point out in a moment why the tributaries cannot be included. I will deal now, however, with the Murray. We have had a step in advance since we met in Adelaide. There what was asked for was control of the Murray, and now the South Australian representatives want to include its tributaries. If we give under this Constitution an absolute assurance that the Murray will not be interfered with, what cause of complaint will the...
representatives of South Australia have?

Mr. HIGGINS. -

What of the Darling?

Mr. WISE. -

That is another matter. If the word "maintenance" is inserted the Federal Parliament will have power to prevent the waters of the Murray being interfered with, and will secure to South Australia the rights which occupancy and property give in the head-waters of that great river. The honorable member (Mr. Solomon) interacted that we ought to go further, and give the Federal Parliament the power to deal with the maintenance, the control, and the regulation, not only of the River Murray, but also of the tributaries thereto. I am not going to repeat the arguments which have been used on the question of the abstract justice of this proposal, but I would point out one instance in which such a scheme would be practically unworkable. The Convention has decided, much to my regret, that the railways are not to be taken over by the federal authority. One of the tributaries to the Murray-the Darling-is at certain seasons navigable as far as Walgett. I am afraid to say how many miles that is from the mouth, but it is considerably over a thousand. The New South Wales Government is about to construct a railway to Walgett. Now, if the suggested amendment were made, the Federal Commonwealth would be able to impose competing rates upon the whole of the River Darling, which might compel us to close the railway which we are now about to make from Narrabri to Walgett.

Mr. HIGGINS. -

The railways are made for the people, not the people for the railways.

Mr. WISE. -

I am one of those who wish that that doctrine should be so fully recognised that the railways should be taken over by the federal authority, but I am now dealing with facts as they exist, with matters upon which the Convention has already come to a determination. I am pointing out how unfair it would be to give the Federal Parliament control of these great waterways which lie wholly within the limits of one colony, when that control is not necessary to secure what we have been told is the main purpose of the representatives of South Australia-the navigability of the Murray. A possible, and almost necessary, result of this control would be that these water-ways would be used in competition to the railway system which has been made at the expense of New South Wales for the development of her resources. Take railways and rivers over together, and no one will give a more hearty support to the proposal than I shall give; but if the railways are left to the various colonies, you cannot, as a matter of
practical justice to the great colony which I represent, give to the Federal Commonwealth the control of our rivers, which are the only dangerous competitors to our railway system within our own borders. After the discussion which has taken place, it is only just that the people of New South Wales should have some guarantee that the power of maintaining and controlling navigation-assuming the amendment to be adopted-will not be used in such a way as to deprive us of the right to improve our land by irrigation. I therefore suggest that the following words should be added to the sub-section:

But not so as to prevent the reasonable user of the said waters for the purposes of irrigation.

The sub-section would then read:

The maintenance, control, and regulation of the navigation of the River Murray, and the use of the waters thereof, from where it first forms the boundary between Victoria and New South Wales to the sea, but not so as to prevent the reasonable user of the said waters for the purposes of irrigation.

Mr. DOBSON. - By New South Wales?

Mr. WISE. - By every colony.

Mr. HIGGINS. - Would you still have the limitation as to the commencing point in the Murray?

Mr. WISE. - I do not think that is necessary.

Mr. KINGSTON. - Is not the honorable and learned gentleman's suggested amendment a limitation of the powers already conferred by the Bill upon the Federal Parliament?

Mr. WISE. - No.

Mr. ISAACS. - Who would be the judge of the reasonableness of the user?

Mr. WISE. - The Inter-State Commission.

Mr. SOLOMON. - If you inserted "and its tributaries" after the word "Murray" you would be giving a concession, and we might be inclined to meet you.
Mr. WISE. -

Is not the word "concession" misapplied? It is said that this is a matter in which the colonies of New South Wales and South Australia alone are interested; but in what different degrees are these colonies interested? South Australia interested in getting something which she has not got at the present time, while we are interested in keeping something which we already enjoy. That is why we offer, in what appears to me a perfectly fair way, to deprive ourselves of the power to exercise any rights which can reasonably be said to interfere with the rights of South Australia. But how can the right of our people to use the waters of the Darling at Walgett—provided that we keep the river open for navigation at the point where it enters South Australia—affect Western Australia, Tasmania, or even South Australia?

Mr. GLYNN. -

The right to navigation as far as Wentworth only is useless to South Australia.

Mr. SOLOMON. -

We have already got that without any concession.

Mr. WISE. -

By our permission, and subject to our good-will. I am afraid I have not made myself understood. I have endeavoured to approach this matter in a federal Spirit, and because I am prepared to trust the Supreme Court of the Federation or the Inter-State Commission with the determination of the question whether the use of the water will interfere excessively with navigation, an outcry is made—by whom? By the representatives of South Australia, who have been asking us all along to trust the Federal Parliament.

Mr. ISAACS. -

If the words the honorable and learned member proposes to insert are not inserted it will be left to the Federal Parliament to judge of the necessity to come to a determination.

Mr. WISE. -

I do not think so. I do not know how any body of men appointed to interpret these clauses of the Constitution can come to any other conclusion than that they were drawn for the purpose of securing the navigation of the River Murray to the Commonwealth.

Mr. DEAKIN. -

Hear, hear; they have no right to consider irrigation.

Mr. WISE. -

Do honorable members wish that our right to use the water for irrigation should be preserved? If so, what is the objection to an amendment which
will enable an independent body to determine whether our claim interferes with yours?

Mr. HIGGINS. -

Is the honorable member willing to secure that the Darling should be navigable so far as nature has made it navigable?

Mr. WISE. -

I have no objection to that whatever; the objection I take is to such a wide vague amendment as that suggested by the honorable member (Mr. Solomon) which provides that South Wales themselves. It is not a question of trusting people, it is a question of committing the administration of an important national resource to the people who understand how to use it, or of committing it to a body of strangers, who, from mere ignorance, will not be able to use it properly.

Mr. ISAACS. -

You desire to have the right to monopolize that water.

Mr. WISE. -

I do not desire to propose any amendment now, because I think that a good deal may be done by quiet conversation, but I should like to see an amendment framed to provide that it should be in the power of the Inter-State Commission, or somebody to be appointed by the Federal Parliament, to adjust the rival claims of irrigation and navigation, and to prevent the navigability of the Murray becoming the dominant object of the Constitution to the deprivation of the settlers of New South Wales of the right to use the water of this river for the irrigation of their lands.

Mr. ISAACS. -

The honorable and learned member agrees that some body should have the right to control the New South Wales Parliament in its dealings with the water of the Darling.

Mr. WISE. -

I am speaking of the Murray at the present time. The implied powers of the commission will extend to the Darling, to prevent any obstruction to the flow of the Murray.

Mr. KINGSTON. -

Then why not say so?

Mr. WISE. -

Because, as a matter of practice, to give the power directly would entitle the commission to exercise jurisdiction over every part of these great water-courses, and in regard to every matter connected with them. The honorable and learned member (Mr. O'Connor) mentioned a fact which
perhaps has not impressed the Convention as it should have impressed them, that over £3,000,000 of private money have been expended in New South Wales in the last few years upon the pledge of the Government that the right to the use of the water would be given to the people who have carried out the expenditure.

An HONORABLE MEMBER. -
Has the honorable and learned gentleman a fear that the Federal Parliament would refuse that right?
Mr. WISE. -
I dare say not but if the honorable member were in the position of the people who spent this money, would he give his vote for federation and take the risk? Would he advise any one who came to him for counsel to hand over his property to four or five others and trust them to make a fair division afterwards? I do not think he would. There should be an independent body to which all questions in dispute might be referred. I do not think it is beyond the power of the Convention to arrive at some form of words which will constitute a body with final power to adjust rival claims.
Mr. ISAACS. -
Does the honorable and learned member admit in any way whatever that the Parliament of New South Wales should be controlled in its powers in regard to the use of river water for irrigation?
Mr. WISE. -
Certainly.
Mr. ISAACS. -
If the honorable and learned member makes that admission, no doubt a provision can be framed to suit him.
Mr. WISE. -
Speaking for myself alone, I am prepared to make the admission. What I would not admit is that an authority should be constituted which, by the very terms of the jurisdiction conferred upon it, should be entitled to a roving commission to go from one end of our territory to another, without whose consent not one ounce of water could be taken for irrigation purposes.
Mr. HIGGINS. -
There is a very small difference between the honorable and learned member and the honorable member, Mr. Gordon.
Mr. WISE. -
I began my remarks by saying that there is the widest opening for misunderstanding in this discussion. I agree with almost every word uttered
the honorable and learned member (Mr. Symon) just as I thought I disagreed with every word spoken by the honorable member (Mr. Gordon). The difficulty arises from having too wide an amendment. This has led to consequences which the mover of the amendment probably did not foresee; but it is a difficulty which ought to be, and which I trust will be, overcome. Before I conclude I should like to make two or three observations upon the general aspect of the case. Reference has been made to the analogies of foreign countries. Since these remarks were made, I think by Mr. Gordon, I have taken the trouble to look up the foundation of the law relating to the control of rivers running through various countries in Europe. I find that it rests—and I am not going to weary the Convention by citing authorities at length—on certain articles in the Congress of Vienna, which can be seen in the Library, and that those articles are strictly limited to the rivers. The Inter-State Commission has no power whatever to exercise a single act of authority over any of the tributaries.

Mr. HIGGINS. -

There is no attempt there to draw the water away in large volumes.

Mr. WISE. -

No, and there has been no such attempt here. I regard Mr. Deakin as somewhat of an expert on this question. I understood him to say, and I think correctly, that a well-devised scheme of irrigation would have the effect of adding to the volume of available water in a river rather than of diminishing it.

Mr. DEAKIN. -

Might have.

Mr. WISE. -

At all events, it is not necessary that the use of water for irrigation purposes, if it is properly conserved and properly applied, should impair the navigability of a river.

Mr. LYNE. -

With proper methods it would increase the volume of the water.

Mr. WISE. -

Mr. Lyne, who speaks with authority, assures me that if water were conserved for irrigation purposes, and proper methods were adopted, the volume of water in the main stream would be increased and not diminished. To show how small the matter we are contending for is, I am privileged in having the opportunity of reading a telegram sent by one of the highest scientific authorities in Australia, Mr. H.C. Russell, the Government Astronomer of New South Wales. I think the Convention will
be surprised if these facts can be accepted, as I do not doubt they can, to see what a trivial matter this dispute is about. Mr. Barton wired in these terms, under date 21st January:

Kindly wire immediately your estimate of average quantity of water which runs out of the Murray into the sea yearly, and the quantity which, under a system of looking, might be used by New South Wales without impairing the river navigation in its course below our boundary. Do you think any conservation scheme likely to be adopted in Sydney would probably impair South Australia's facilities for navigation?

Mr. Russell's answer is as follows:

The average quantity of water which runs out of the Murray into the sea each year amounts to 3,000,000 of tons of water on each square degree of the Murray basin, and would maintain the river constantly 10 feet deep at Euston. I estimate that 10 per cent. of this would cover all that would be used under a system of locking, and this would not impair the river navigation below the boundary.

I do not pretend to speak upon this matter at all with the authority of an expert, but I do say that the receipt of a telegram of this nature from Mr. Russell justifies us in paying the greatest possible attention to some words that were used at Adelaide by Mr. Deakin. Mr. Deakin was urging Mr. Gordon to withdraw his amendment, and he pointed out that the time was not yet ripe for determining the matter in dispute or including a question of so much difficulty and importance in the Federal Constitution. He said-

There is no reason why some arrangement should not be made between the several colonies before this Constitution can be accepted. The work of collecting data must go on for some time before any colony can risk the loss of any of its rights and privileges-rights and privileges which mean life and subsistence to those inhabiting the and interior of these colonies. Before the colonies can enter into any inter-colonial agreement there must be a far more searching inquiry, and the accumulation of a great many more data than are at present amassed. Before any conference or committee could venture to arrive at a settlement of this great and vexed question, which must be settled-but which cannot be settled here-we must be much better acquainted than we are with the needs and possibilities of our vast arid-area.

After having listened to words of warning of that kind from one who has made a study of this question of irrigation, and having obtained such information from the highest scientific authority to whom we could apply, can it be wondered at that those of us who are charged with a trust on behalf of the people of New South Wales should hesitate before we come
to an agreement which would put absolutely at the disposal of a body whose composition is not yet known the power of dealing with one of their most valuable assets? We meet you very fairly if we say we will surrender any power which we may at present possess to injure you. We may fairly ask you to be content with that, and not to insist upon depriving us of the advantage of having inserted in the Constitution a clause for our own protection in regard to one of the most vital matters of self-interest. You who represent the smaller-colonies contended strenuously for equal representation in the Senate, and did so upon a ground I supported—that it was necessary for you, in the Federal Constitution, however much you might be willing to trust the Federal Parliament, to have an enduring embodiment and safeguard of your vital national interests. To us it is just as vital that we should have the control of our public lands. The use and control of our public lands is impossible unless we are allowed to have also the power of making use of the waters of our rivers for the purposes of irrigation. Do we not meet you perfectly fairly when we say that we are willing to comment to the appointment of a body that shall hold a just balance between navigation and irrigation, relying upon either the justice of the Federal Parliament or the integrity of the judicial body whom the Federal Parliament will appoint to see that the interests of both colonies are protected? I do venture to express the hope that before the debate closes a practicable way will be found out of this difficulty, which does not appear to be nearly as great as has been represented, owing in part to the vagueness of the amendment. I press on Mr. Gordon to withdraw his amendment. If it be the sense of the committee, I will move now that we insert the word "maintenance" before the word "control" in the earlier part of the clause. If the committee would prefer it, the discussion might be allowed to proceed a little further, and some form of words might then be agreed to which would conserve the legitimate interests of either colony.

Mr. SOLOMON (South Australia). -

The difficulties that we have to contend with in connexion with the question of the control of our rivers seems to be somewhat increased, as Mr. Wise has stated, by the vagueness of the amendment. If the honorable member would read the succeeding amendments, he would find that they are not so vague as he chooses to think. The honorable member expresses the opinion that the representatives of New South Wales would be quite prepared to concede all the rights that the representatives of South Australia claim as to the navigation of the Murray. But while he admits that this is a question for absolute federal control—a question upon which we should trust the Federal Parliament—he tells us that the control of the Darling, the Murrumbidgee, and the other tributaries which have a vital
influence on the waters of the Murray should be left to the sweet will of New South Wales alone. We have heard a good deal of the sentiment—"Trust in the Federal Parliament." We heard to-day from the Right Hon. the Premier of New South Wales that this sentiment is not one of those which should be used except on occasions when you are in a very tight corner and do not know what other argument is possible. I have been inclined, in my innocence of political life, perhaps to construe this sentiment of "Trust in the Federal Parliament" more liberally than the honorable member has done. If we are prepared to hand over to the Federal Parliament, as we do in this Constitution, the control of many great and important subjects, such as our post offices, our telegraphs, our defences, immigration and emigration, and a host of others which I need not particularize, surely on a question of this kind, which might be a serious cause of friction, and friction which, if the colonies were more nearly on a level in the matter of population and importance, might lead to warfare, we might trust the Federal Parliament to act as arbiters. I cannot for the life of me understand why so many of the representatives of New South Wales, while agreeing that the Federal Parliament is not likely to do injustice, still fight against giving it any powers which affect their particular colony. It is all very well for some of those honorable members to tell us, as they have told us over and over again during the sittings of this Convention, that if the representatives of the smaller colonies, who are not particularly interested in some vital point, allow themselves to be led astray by the arguments of this or that colony, and vote in a particular direction, the Constitution will be such as they, the representatives of New South Wales cannot recommend to the people of New South Wales. I confess that I, for one, am nearly sick of the continuous raising of this bogey. It is all very well for Mr. Wise to say that on the question of the rights of the states to equal representation in the Senate, New South Wales or some of its members gave way. There was no doubt about that point. If it had not been conceded early in the meetings of the Convention, there would have been no federation, and no question of it. In South Australia equal representation was a sine qua non of federation. It would have been useless to continue the debates of the Convention if that one point had not been conceded by a majority of honorable members at the start.

Mr. HIGGINS. -

If New South Wales had her due weight she would not be afraid to trust this question to the Federal Parliament.

Mr. SOLOMON. -

New South Wales will have her due weight. She will have a large
representation in the Lower House, which will have the power of the purse. She will not only have her due weight, but, as far as my opinion is concerned, very much greater weight than the simple value of her population entitles her to. She will get a representation in the House which will have most to say on all leading questions, the House which will control the purse, control the Government, and, to a great extent, control the policy of the Federal Parliament, above that of any of the other colonies. As to the question of the Senate having a veto, in most matters it is a veto that would only be exercised in the most difficult and most important circumstances, and that would be exercised with the very greatest care.

The CHAIRMAN. -

Does the honorable member think that his remarks are strictly pertinent to the question?

Mr. SOLOMON. -

I am speaking now in answer to an interjection. Other questions have arisen in which we have been told that New South Wales could not come into the Federation unless what she demanded was conceded. We have heard to-day from the Right Honorable the Premier of New South Wales that "Trust in the Federal Parliament" is a sentiment that is only to be used when one gets into a corner, and has no other outlet. Another member of the New South Wales delegation (Mr. Lyne) has told us, with a great deal of self-congratulation, that we should consider ourselves extremely lucky.

He points out that New South Wales has not imposed differential tolls upon traffic on the Darling which would completely rain our trade on the river, and suggests that the experience of the past may be repeated in the future. It seems to me that this is a question that might reasonably be left, if we intend to trust the federal authority with anything at all, to the Commonwealth Parliament, considering, as we may do, how that federal authority will be constituted—considering that it will be somewhat of the type of this Convention, having a large number of its members not interested vitally so far as their constituents are concerned in this great question, and not influenced by inter-colonial jealousies. We may well trust such a Parliament with a question of this kind. The honorable member (Mr. Carruthers) has made a comparison between the rivers of Europe and America and the rivers of Australia, for the purpose of drawing this conclusion: That whereas the rivers of Europe and America are such magnificent streams, the mere taking of any portion of their waters does not affect the rights of those living in the lower portions of those countries.
through which they flow; and that, on the other hand, we have rivers in Australia which are dry for a considerable portion of the year, and the waters of which are very much more valuable to the states through which they flow than they are in other countries. What is to be deduced from such an argument? Is it that we have less need for legislation and power of arbitration in such a matter; or is it not rather that here, where we have rivers which are dry in certain seasons of the year, and where the waters are so much more valuable to the people on their banks than is the case in Europe and America, there is all the more need of federal independent authority to control the use of those waters? The amendment of the House of Assembly of South Australia proposes simply to add, after the word "Murray," the words "and its tributaries, and the use of the waters thereof," omitting all the rest of the words. Judging from the arguments of the last speaker-and I followed them pretty closely-I gathered that this amendment should very nearly meet the position laid down by himself and other members representing New South Wales. All that South Australia really claims, or asks for, is a fair right that the navigation of the Murray River and its tributaries should be preserved. As to the question of irrigation, I really do not think that the delegates of South Australia need have very much anxiety about it if the navigation of the Murray and its tributaries-

An HONORABLE MEMBER. - So far as navigable.

Mr. SOLOMON. - Yes; I do not refer to all the little streams, creeks, and branches which stretch out to the borders of Queensland, because, after all said and done with regard to the waters of the Darling, in the wet seasons New South Wales is indebted to Queensland. If Queensland tried to impound those waters and prevent them from flowing into the Darling during wet seasons, the New South Wales delegates would be just as eager to have the question referred to an independent tribunal as we are at the present time. If the New South Wales delegates were prepared to accept a slight amendment of sub-section (31) as it stands, so as to include these words, "and its tributaries," and if they like they could put in the words "navigable tributaries," so as not to include all the smaller streams and creeks that feed the reaches of the Upper Darling-

Mr. WISE. - That would introduce a lot of difficulty with regard to the interpretation of "navigable."

Mr. SOLOMON. - "Navigable" cannot be defined in any Act; it is a question for expert
Mr. WISE. -

According to English common law no river is navigable unless the tide ebbs and flows in it.

Mr. SOLOMON. -

I am not so presumptuous as to debate decisions under English common law with so many learned members in this Convention. I would rather do away with all questions of law, and consider the question of natural justice as it affects the colonists of the various states. If we put in this Bill simply that the control and regulation of the Murray and its navigable tributaries should be placed in the hands of the federal power, we shall be meeting New South Wales as far as irrigation is concerned, and I think we may meet the requirements of the people of South Australia. As to irrigation, a great deal too much has been made of it. I do not agree with those speakers who say that the impounding of the waters of the Darling for great irrigation works might tend to keep the navigation of the lower portions of this stream open for a greater portion of the year. I think, on the other hand, our experience has been that the taking away of the waters for irrigation, especially at great distances, from the banks of the stream-such as was proposed in the last scheme in New South Wales, storing it first in natural lakes or depressions-does decrease the flow in the river unless the filling of these lakes and depressions and artificial reservoirs is completed in seasons when there is an overflow of water, and when it can be done without injustice to the lower portions of the river. Here is an instance where the federal authority could best exercise control. It should be able to say to the authorities in New South Wales: If you construct immense works far up the Darling these reservoirs should be filled only in such seasons and at such times as will not do an irreparable injury to those who occupy the country lower down the stream. For this reason I think that the suggestion of the right honorable member (Mr. Kingston) might very well be considered by honorable members. He suggested that if this question of irrigation is made of such moment in New South Wales we might well accept some compromise which would simply deal with the navigation—which would simply place in the hands, of the Federal Parliament the protection of the navigation of the Murray, and for that purpose the control of the Darling, and the Murrumbidgee, above it. I do not say that the amendment of the House of Assembly of South Australia fully and completely meets the case, but when it is sought to add, after the amendment of my honorable friend has been dealt with, the words "and its tributaries" after the word
"Murray," I feel that it would be necessary to insert an additional word. We have no idea when we say the "Murray and its tributaries" of including every creek and little stream in the watershed of the Murray, the Darling, and the Murrumbidgee, and placing them under the control of the Federal Parliament. If the word "navigable" were introduced before the word "tributaries," I believe that we should meet the wishes of many of the representatives of New South Wales, and prevent an injustice being done at any time to the people of South Australia. It is not my desire to delay the Convention at any great length, although I consider that this in one of the most important points we have to deal with. But I do hope, following on the lines indicated by the right honorable member (Mr. Kingston) and also by the honorable member (Mr. Wise) although not so clearly, that the Convention will see its way to come to a compromise on this question. An amendment should be so framed as to protect the navigation of these rivers without in any way interfering with the necessities of New South Wales with regard to water for irrigation purposes.

Sir JOHN DOWNER (South Australia). -

As this debate has proceeded, there have been really two separate points made. One is, the rivers of Australia treated as navigable; the other, the rivers of Australia as used for other purposes, irrigation, or whatever the case may be. As far as the first is concerned, the Premier of New South Wales says it was never contemplated that there should be any interference with the navigability of that which is navigable. At the same time, I cannot help remembering that he said that during some portions of the year, or at times, the river was not always navigable; that it was only a series of ponds, and that there might arise doubts. However, those doubts do not occur to me, nor have I the fears expressed by the honorable member (Mr. Wise) with reference to the construction that might be placed on what is meant by a "navigable streams" I have no doubt that if it came to be a question of legal construction, the meaning of the words "navigable stream would be taken in connexion with its surroundings, and that the question would be decided from an American stand-point rather than in accordance with the decisions in England. The next question we have to consider now is not whether under the general Constitution this clause we have inserted is practically unnecessary, and whether or not, under the general provision of trade and commerce, which contains all the words in the American Constitution, we have all the protection we require. The question, first of all, is whether we should leave this entirely to judicial decision, or, when we are making a new Constitution, we should place our meaning in plain and unmistakable
words. Seeing that we are all agreed as to the intention of the Constitution to prevent, one state from interfering with navigable streams so as to interfere with their navigability, I do not think there can be very much harm in saying something that will convey that impression without our being forced to litigation and judicial decision. But the matter does not end there, because, as was pointed out exceedingly well by the Premier of South Australia, the matter rests in these colonies on an alternative basis, to which we have to give every consideration. It may well be in the future that the navigability of any river we have would bear no comparison in the interests of each of the states with its uses for other purposes. If we only use in our Constitution words providing that the rivers which are now navigable shall be kept navigable, we may have to go through the complicated process which will be necessary to alter the Constitution before we can do what, perhaps, every man in the state thinks ought to be done. I listened with great interest to th

Mr. REID. -

Does not the Murray concern us?

Sir JOHN DOWNER. -

Not after it leaves New South Wales.

Mr. REID. -

We gave up some hundreds of miles of the Murray.

Sir JOHN DOWNER. -

I do not want to go into elaborations. I concede that New South Wales gave up something, but they took a good deal more. They only began to give up something where the Murray bounded themselves and Victoria. They handed over to the Commonwealth the course of the river along that boundary, and, with equal generosity, they handed over to the Commonwealth all the river where it belonged to South Australia, and gave us, or rather intended to give us, nothing in return. I do not know that they did not give us something. I am inclined to think that, as time went on, and as appeals were made to the judicial tribunals, it would be found that they had given more than they intended to give up. But, still, that would be a bad understanding on which to make a friendly arrangement. We believe that they are giving up something they did not intend to give up; but I think that this agreement ought to begin with a perfect understanding, and not with any of us having any well founded opinion in our minds that by the force of judicial decisions a result will be obtained different from what was intended at the time we made the agreement. Now there is no wish, as has been said, to interfere with the rights of New South Wales. I have no doubt that the
Commonwealth will do every justice to that colony, and I have no doubt that New South Wales will have the power in the Commonwealth to compel justice to be done to them, even if there were any disposition on the part of some to do them less than justice; but I protest, in the first instance, against the supposition that the Commonwealth will be founded in injustice, and will have no disposition to do justice to the different states, and it is only in a secondary way that I put it that, even if it was intended to do that injustice, with the power that New South Wales would be able to exercise, there would be no possibility of carrying such an intention into effect. The Murray runs through the territory of three colonies. Let it be the subject of the control which we have already agreed to on matters of much more importance, and of more vital interest to us. Having shown all the trust we possess on those more important and more vital questions, do not let us show distrust on this particular question, which is as peculiarly a federal concern as any other matter within the four corners of this Bill, and of as much interest to all Australia as the provisions with regard to free-trade and other things. We give the Federal Parliament power to pass social legislation of the highest importance; we hand over to them our dearest relation-the relations of parent and child; we give them unlimited power of taxation; we commit to them the whole of our commerce by telling them that they, and they alone, shall settle the bounds of taxation and other important powers, and then, forsooth, we are to begin by distrusting them in a matter which may, in the outcome, prove infinitely small in importance, or which may, in the outcome, prove large, although I do not think it will, but which, though it prove unimportant, may well produce infinite irritation. We are asked to hold our hands and refuse to transfer to the Federal Parliament the power to control the navigable rivers of Australia, because New South Wales says-"We have the River Murray, under our Constitution-how can we be interfered with?" Well, we all have everything under our Constitutions, and we are all, handing over something-we are all making sacrifices. The very essence of the agreement is the handing over of jurisdiction that we exclusively possess, and we only ask New South Wales, who is already willing to make concessions infinitely greater, not to let the sweetness of the agreement be interfered with by the possibility of friction on a matter of smaller moment like the one now under consideration. I agree with Mr. Kingston that we ought to go further than anybody has proposed up to the present time-that, in the ordinary course of our natural life, circumstances may occur that may make the navigation of our rivers trifling and contemptible compared with their importance for other uses; and, therefore, I think it would be well to so broadly frame our provision with regard to rivers as to preserve their
navigability only so far as is necessary-to except from that liability the necessities of each state, which may be found out and developed from time to time. From that point of view I beg to submit an amendment. If honorable members have any prior amendments-I do not know that they have-I will ask them to withdraw them to enable me to get a test by proposing, as I now do, the omission from sub-section (31) of all the words after "The control and regulation of," with a view to the insertion of the words-

all navigable streams, but so as not to prevent the fair and reasonable use by each state of the waters thereof for irrigation or other reasonable purposes.

The effect of adopting that amendment will be that it will be in the power of the Commonwealth to preserve the navigability of the rivers, if they are navigable, and the Commonwealth will have no control if the rivers are not navigable.

Mr. LYNE. - Would that embrace all the rivers?

Sir JOHN DOWNER. - I think, it would be better to put no limitation. We do not know exactly where it will begin, and how it will end. First of all, I seek to make the primary object the preservation of the navigability of such streams as an navigable, but, at the same time, should circumstances require it, and the opinion of the Commonwealth sanction it, to allow that navigability to be interfered with by the necessary use by each state of what is fair and reasonable for their own purposes. The effect of my amendment will be simply this-instead of having an appeal to the discretion of the Imperial Parliament to alter the Constitution and restrict the rights of any particular state that is so using its powers as to be injuring other states, to give the Commonwealth that power. That is the cardinal idea that has been actuating us all through. We say:"We are brothers, and we want to be fair and just. We will be fair and just, and we will establish a Constitution on such lines that we cannot but be fair and just." And yet, when this very subsidiary matter crops up, New South Wales says:"We have got absolute power over these rivers," whereas they have not in reality, because the Imperial Parliament can control their power. But the basis on which we all act on these matters of purely Australian concern is that we do not wish to appeal to the Imperial Parliament, but to establish a Federal Constitution on just lines, which will enable us to deal with our own affairs without appealing to anybody outside. It is from that point of view that I move this amendment, not at all desiring to adhere slavishly to its words, but quite
slavishly to the idea of the amendment. I think we should not define any particular stream. I entirely object to defining the Murray. I entirely object to the provision as inserted in Adelaide. I objected at the time. I considered that so far from its being an extension of our authority, it was a distinct limitation of it, because under the general scope of the Bill we already had the control of the Murray, and of every other navigable stream within the Commonwealth. so as to preserve the navigation thereof. That would follow from the other portions of the Bill. The only necessity of any provision being inserted was to insure the use of water for purposes other than navigation, and when we inserted that provision we put a strong argument into the mouths of those who chose to argue that, even as to navigability, the River Murray, in the colony of New South Wales, was outside the jurisdiction of the Commonwealth, and possibly we may have settled the question of tributaries, or, at all events, have offered a strong argument that the Commonwealth would have no concern with the tributaries. Now, I have no particular desire to see any words introduced in respect of the tributaries.

Mr. HIGGINS. -

But you want to cover them.

Sir JOHN DOWNER. -

I think that if a stream is navigable it must be made navigable from water supplied from somewhere else, and when the Commonwealth has the control of the navigability of the stream it will have the control of everything that is necessary to make that stream navigable. About that I think there is no doubt. I do not want to use too many words in my amendment. I would like to use fewer words than I have done, if any honorable member can suggest them-the fewest possible words which will give the greatest possible jurisdiction, covering words-and I only suggest these words because I fancy that they convey an idea which is in the minds of a great many members of the Convention at the present time. The New South Wales representatives say-"Certainly, as far as any portion of the rivers in Australia are navigable, empower the Commonwealth to protect the navigability of those rivers, but, as far as the use of the water of the rivers of New South Wales for irrigation is concerned, you must leave us to ourselves." The result of that might be disastrous, because if the commanding condition is that the navigability is to be preserved, then New South Wales would not have the power to use the water they required for themselves, and the results would be injurious to all. Therefore, make the navigability of the rivers your first consideration, but make this qualification of it, that anything fair and reasonable-and the
Commonwealth would be the judge of that—can be done by any state for the purpose of using the waters for irrigation or any other purpose, even though it destroys their navigability. I think if we have an understanding founded on that basis we shall, at all events, begin well, and we will have no necessity to appeal either to arms, which we cannot appeal to, or to the Imperial Parliament, which I am sure we wish to appeal to as little as possible.

Mr. ISAACS. -

Does the honorable member's amendment include navigable streams purely within a state?

Sir JOHN DOWNER. -

I thought at first of inserting the words "running through two or more states."

Mr. ISAACS. -

But I mean to say not open to interstate commerce.

Sir JOHN DOWNER. -

I think the power of the Commonwealth should not be limited. I do not think there is much fear of its being exercised unjustly. As far as my amendment is concerned, I will be very willing to listen to any suggestions other honorable members have to make, but I thought, on consideration, that to impose a limitation like that might be to raise very difficult questions, and to very much interfere with the power which the Commonwealth can, but need not, exercise in its discretion, and to limit the usefulness of that power at a time when we wish to exercise it.

The CHAIRMAN. -

Inasmuch as the amendment suggested by the honorable and learned member (Sir John Downer) comes before the amendment which is now before the committee, it will be necessary that the latter should be withdrawn in order to enable the other to be put.

Mr. GORDON. -

I will withdraw it with pleasure.

Mr. WISE (New South Wales). -

I would suggest to my honorable and learned friend (Sir John Downer) not to move his amendment now. If my honorable friend (Mr. Gordon) withdraws his amendment, I would like to move the one I suggested, namely, to insert the word "maintenance," which would come before the amendment of Sir John Downer.

Mr. HIGGINS. -

I have another amendment here.

Mr. WISE. -

I would suggest to honorable members that they should submit their
amendments for consideration and that we should then adjourn.

Mr. BARTON (New South Wales). -

This is a matter of such vital importance having heard other members' views on the question, I do not wish to speak myself to-day—I think it will be desirable thing, as we shall be adjourning within three-quarters of an hour, that a vote should not be taken to-night.

The CHAIRMAN. -

I will not put Sir John Downer's amendment. I shall keep it as a suggestion.

Mr. GORDON. -

I withdraw my request for leave to withdraw my amendment.

Mr. HIGGINS (Victoria). -

In that case I am anxious at this stage to hand in a

form of words I have drawn up, having listened to the debate with a great deal of care, and seeing that the Convention is going to come to a conclusion which very likely we can adopt. I have long thought that the difficulty with us is more in clearing our own ideas than in trying to reconcile conflicting views, and, if I may say so, I agree heartily with the object which the honorable member (Sir John Downer) has in the words of his amendment. The only thing is how we can best secure the approbation of the whole Convention on an important matter of this sort. I think that the words of his amendment are a little too broad, in that they give to the Federation the control of the rivers; and then with regard to showing that the state has a right to interfere for irrigation or for reasonable purposes, it puts on the state the burden of showing a justification for interfering with the waters flowing through it. I think that the burden of proof ought to be the other way. Having regard to the fact that the lands of the colonies still remain under the control of the state Parliaments, to be administered by the states, I think it proper to say that the waters which go through those lands should be absolutely under the control of the states, except for the specific purpose of the navigability of navigable waters. It is very important to put on the Federal Parliament the burden of showing a right to interfere, and therefore, I put the matter in this form—"To secure the navigability of all navigable waters which, in the course of their flow or after joining other waters, touch the limits of more than one state." In this amendment my honorable friend (Sir John Downer) uses the word "streams," and a question may arise whether that word involves main streams or whether it involves all tributaries, no matter how small they may be.

Sir JOHN DOWNER (South Australia). -

"Navigable streams."
Mr. HIGGINS. -

Suppose the Edwards a navigable; a question may arise as to whether there was any intention to affect a tributary like the Edwards. I take it that the intention of a majority of the members of this Convention is to preserve the navigability of the Edwards although it is a tributary. And, therefore, I have got the word "waters" defined in this way "which in the course of their flow, or after joining other waters, touch the limits of more than one state." I think honorable members will see that there is no doubt that, under those words, the Edwards, the Murrumbidgee, and all other tributaries would be included if, and so far as, they are navigable. As I spoke on Friday, I do not feel justified in making another speech. I only rose to make this suggestion. Of course I will not press it if, after the deliberations which are to take place, I understand, on the adjournment of the Convention, between the representatives of South Australia; and the representatives of New South Wales, it be found that any other form of words will meet the purpose. I only hand it in as my mite towards the solution of this question.

The CHAIRMAN. -

Does the honorable member intend this to be in substitution of the clause?

Mr. HIGGINS. -

Yes, just in the same way as Sir John Downer's proposal is intended to be.

Sir EDWARD BRADDOCK (Tasmania). -

The leader of the Convention very much anticipated what I was about to say. What I was about to recommend, and what I will recommend now, is that we shall take no division on this subject this evening, but that those immediately concerned shall have an opportunity, between this sitting and to-morrow's sitting, of considering some means by which we can arrive at a unanimous and amicable settlement of the subject. It seems to me that there is very little that need divide South Australia and New South Wales in this matter. The representatives of both colonies, I believe, are animated by an earnest and honorable desire to settle the question of the control of these waters on terms fair to each colony, and, necessarily, all the other members of the Convention must have the same desire; and, inasmuch as we find that South Australia disclaims the idea that she would deprive New South Wales of the right of irrigating from her waters, and New South Wales disclaims the idea of interfering with the navigation of the Murray, I do not see any real difficulty in the way of that amicable solution which we all desire to see brought about. I believe that the Bill, as it stands-for some of
the lawyers in the Convention are of that opinion—contains a provision which sufficiently safeguards South Australia in regard to the use or misuse by New South Wales of the waters that make the Murray River. But if the provision we have already be not sufficient, there is a disposition on the part of both colonies to make some further specification to make the matter clearer than it now stands, so that the interests of those concerned in the navigation of the Murray shall be absolutely safeguarded. Although their waters cannot be taken from Tasmania and Western Australia, and although those colonies can hope for nothing from the waters of the rest of Australia, still they have a very material interest in this question, when it comes to be a matter of federal concern, because it is quite possible that the Federal Government, supported by the Federal Parliament, may go in for a very costly system of irrigation works, and a very costly system of locking the tributaries of the Murray; and there is no doubt that, if that were done, Western Australia and Tasmania would have to share the cost. They would gladly share any expenditure it was desirable, in the interests of Australia as a whole, that they should share. I merely mention the fact to show that we have a living, if only a prospective, interest in the solution of this question. I support the proposal of the leader of the Convention.

Sir JOSEPH ABBOTT (New South Wales) -

As one who is fairly well acquainted with most of the rivers running through New South Wales, it has always struck me that it was unjust to that colony that the right to deal with these rivers, starting in the New England district, and extending right down the Darling to the Murray, for the purpose of developing her territory, should be taken away from that state. We have heard a great deal about the difficulties in federating our railways, and one of the strongest arguments used against the federation of the railways was that if the Commonwealth controlled the railways, the states would be unable to develop their respective territories. With regard to these rivers, so long as the control of the navigation alone is given to the Commonwealth, and not interfering with the rights of irrigation in regard to the state, I can see very little difficulty in it. I am one of those who believe it is incompatible to have navigation and irrigation. We have no source of supply in Australia which gives sufficient water for both purposes, and if the Darling River is made navigable in ordinary seasons, as it is in flood-times, from Walgett to Wentworth, then in dry seasons there will be absolutely no water for irrigation. Now we in New South Wales look forward to the development of an enormous territory lying away to the west of the Darling, and lying to the east from the junction of the Narran River. We hope by means of irrigation to be able to occupy that country. At the present time we have from 7,000,000 to 10,000,000 of
acres of land in that country absolutely unoccupied from the want of water and through the presence of the rabbits. If the control of this river and every subsidiary stream is to be taken away from the state, then you may say good-bye to settlement in that portion of the territory of New South Wales. It will be absolutely impossible to settle that country, unless the state can establish a system of irrigation to supply water throughout the length and breadth of it. People, unless they have travelled through that country, can have no conception of the magnitude of its area. Most of these rivers which are spoken of as tributaries of the Darling are generally dry. It is only in an extraordinary season that the Darling is navigable, and if it is made navigable in all seasons, then it will be impossible to draw the water away for irrigation purposes. I think these proposed suggestions, that irrigation and navigation should go together, are absolutely impossible and worthless. We have heard a great deal from South Australia, and, as I said at the Convention in Adelaide, South Australia was not treated with that courtesy which, as a neighbouring state, she was entitled to in regard to these waters. I have yet to learn that South Australia has made any attempt to utilize the waters of the Murray for the development of her own country. But the moment the Government of New South Wales appointed a commission—of which my honorable friend (Mr. Lyne) was, chairman—to consider this question of conservation, that moment South Australia got up in arms, and it has been a nightmare to her public men ever since, that New South Wales is likely to do, with regard to the waters flowing through its territory, what they themselves have never attempted to do.

Mr. SOLOMON. -
Look at the village settlements.

Sir JOSEPH ABBOTT. -
Your village settlements! On the banks of the Murray River you are starving settlers at the expense of the state. We do not want that kind of settlement.

Mr. GORDON. -
Renmark is just as prosperous as any settlement on the Murray.

Sir JOSEPH ABBOTT. -
We want to irrigate country, and let the people depend entirely on their own ability to settle the lands. Without the water it will be absolutely impossible for the people to do so. As I asked before, why not federate your railways? No, you will not do that, because the answer to that is: Each state wants to develop its own territory, and they are not going to depend on the Commonwealth for that purpose. I am surprised that the South
Australian people do not say federate our coal mines. Why not federate them? It would be just as reasonable to make our coal mines federal as to make our waters federal. Why not federate the coal mines, and declare that they shall be controlled by the Commonwealth? While I would be very willing to concede the Murray River and some portion of the Darling, I certainly would not concede anything which would prevent our own state from developing its lands in its own way, and these proposals which I have heard made by the right honorable member (Sir John Downer) and suggested by the honorable member (Mr. Symon) will, I think, prevent the state of New South Wales from developing its own territory. Honorable members must realize, when they begin to speak of irrigation, that Australia is unlike, perhaps, any other country where a system of irrigation has been established. We recently, in New South Wales, employed one of the greatest known experts, and what was the result? His report was that you had better leave things as they are. If the Darling is to be taken from us for the purpose of navigation to South Australia, and the Murray is to be taken from us, what are we to do with our intermediate country? Because it was proposed that the control of every one of the streams, whether navigable or not, should be handed over to the Commonwealth, and it was pointed out in Adelaide that if that were done New South Wales would have no power to enter on any irrigation works whatever in the New England district, because to do so would be interfering with the tributaries of the Namoi, and affecting the navigability of the streams. I hope some reasonable and fair amendment will be suggested which we can all accede to in the morning, and which will have the effect of preventing things being done which will hinder the development of the territory of New South Wales;

inasmuch as any proposal having that effect would certainly not be acceptable to the people of that country.

Mr. SYMON (South Australia). -

Allow me, sir, to suggest a form of words which may commend themselves to many honorable members as suitable for insertion in substitution for the existing proposal. Clause 52 begins as follows:-

The Parliament shall, subject to the provisions of this Constitution, have full power and authority to make laws for the peace, order, and good government of the Commonwealth, with respect to all or any of the matters following, that is to say:-

I propose to insert the following sub-section:-

Navigable rivers flowing in, through, or between two or more states, so far as may be necessary for the improvement of their navigability, with a
just regard to the necessities of water conservation and irrigation.

The CHAIRMAN. -

If any other honorable member wishes to propose an amendment, he may as well state it now. The whole of the amendments will be printed to-morrow.

Mr. BARTON (New South Wales). -

I have written out something which may be considered by honorable members. I think we are now in the stage in which one will not be supposed to be very hard and fast in any proposal he makes. I simply suggest this proposal for consideration. The matter is too important, I think, to be the subject of any rigid or obstinate proposal at the present moment.

Navigation and the irrigation of the River Murray from the point at which it becomes the boundary of New South Wales and Victoria to the sea, but so that the state or all the citizens of the state may continue in the

Mr. MCMILLAN (New South Wales). -

It is with some reluctance that I address the Convention at all on this subject, after the very long and somewhat desultory debate which we have had to-day. It seems to me that the proposals, first of my honorable friend (Sir John Downer) and now of Mr. Symon, have added very much to the complication of the whole question. It would be far better for us to keep clearly before us the one issue which we have had from the very beginning of this discussion—the question to what extent you can secure the navigability of the Murray without interfering with the rights of the particular states affected. Now, of course, any one in discussing this question—especially a layman—feels under a great disadvantage, because there are two large subjects involved: The question of law, and the technical question connected with water conservation and irrigation; and I feel, from the debate which has taken place upon this subject, that we are not at all well versed on either of these matters. Indeed, it seems to me, from what I have heard, that it is a question, as the Bill now stands, whether there is not an implied right of the Commonwealth to do exactly the thing which New South Wales is trying to prevent.

Mr. BARTON. -

Sub-section (1) of this clause allows the Commonwealth to regulate trade and commerce.

Mr. MCMILLAN. -

I do not think the question of trade and commerce should be mixed up with this question. It is a very specific question, upon which depends the prosperity of a large portion of the colony of New South Wales. After all, if we go to the root of the question, it is one involved in the rainfall of
these colonies. We have rainfall now in two ways. Some parts of our colony have a very small rainfall throughout the year—only 5 or 6 inches; other parts have a rainfall which comes at specific periods with tropical severity. And it is absolutely necessary, if these portions of Australia are to be made fit for cultivation, that that water should be conserved. The fact is that the question that we have got to deal with is not so much irrigation as the conservation of water. My difficulty is this: Can you frame any clause by any human inventiveness by which you will prevent a colony like New South Wales interfering with the navigability of the Murray, and at the same time not give over, absolutely to the Commonwealth the sovereign rights over that stream? I do not believe you can. I believe it is simply either a question of handing over either the whole matter to the Federal Commonwealth, or making such specific provisions in the Bill as to keep the control of the river system intact in New South Wales. Now, so far as South Australia is concerned, the question is a very simple one indeed, because South Australia might be able to use a large amount of the water of the Murray for irrigation or conservation purposes without interfering with the navigability of the river, and it would be hard to say at any particular time that they were interfering with it. On the other hand, take the position of the Darling and the Murrumbidgee. These two rivers are at times simply pools. And there is another matter connected with the case of these rivers. We have had too little in this debate of a practical character. A large amount of the volume of water that flows down these rivers never reaches the Murray at all, and the conservation of this water does not affect the question of the Murray in any respect. It does seem to me that we, as representatives of New South Wales, have got a very serious charge in this matter. I have never been accused of a want of federal spirit. I have been ready in everything of large import which clearly applies generally to the Commonwealth to leave the matters in the hands of the Federal Government. But I feel that this is one of those questions which is not at all analogous with the position taken up in regard to trade and commerce, railways, and such like questions. We have in this matter to deal with the effects of our action upon the people of our own country, and it would be suicidal for us—and I am not now threatening—in any way to load this Bill with any general power which may create suspicion and alarm. It is far better in the interests of federation that we should leave to the future some extension of the federal spirit than that now, even though ideally right, though right in the abstract, we should put into this Constitution an elastic provision such as that proposed by my honorable friend, which may be very poetical, which may be in the direction of justice, but which, after
all, so far as I can see—without any legal knowledge—is practically the same thing as handing over the whole power. I would like to be informed by any legal member of this Convention whether if the proposal of my honorable friend (Mr. Symon) becomes part of this clause it is not practically and essentially everything that South Australia desires?

Mr. ISAACS. -
It does not include the Lachlan, Darling, or the Murrumbidgee.

Mr. MCMILLAN. -
You never can tell what is a navigable river. You might have this position—that a colony by the expenditure of its own money might make a river navigable during a certain part of its course, and then under the proposed provision of this Bill it lapses entirely into the hands of the Federal Parliament.

Mr. ISAACS. -
This does not give them control over any of those rivers.

Mr. MCMILLAN. -
I think all this extraordinary question with regard to the possibility of the navigation of the River Murray being a slight matter compared with irrigation, ought not to intrude itself. We have two main questions before us—the question of the navigation of the Murray, and the use of its tributaries. Will any one tell us at the present moment that those tributaries are navigable rivers? They cannot in any sense be considered navigable. If they are not navigable rivers now, the question is: Has not New South Wales the right from this time on, from the creation of this Commonwealth, to deal with them not as navigable rivers, but as streams for the conservation of water? Because if, at the beginning of the Commonwealth's work, there was an embargo placed upon the management of these rivers, which are so intimately connected with the development of our great landed estate,

it would create an amount of friction, which is one of those things which we are absolutely bound to avoid in framing this Constitution, and would tend to confuse the meaning of the Bill. I have heard some contradictory remarks by some honorable members upon this point. At one time they tell us that we should make our Constitution so clear that there can be no reason to mistake its purport. On the other hand, there is a proposal to introduce a fine poetical set of words, which leave it practically to the benevolence of the Central Government to do as it pleases. To my mind it is better to face the one question: Whether it is possible for us to introduce any words into this Constitution which will enable the navigation of the River Murray to be kept intact, and at the same time not interfere with the
powers of conservation or irrigation which belong to the states. If I could see any solution of the difficulty in that way, I should be the first to embrace it, but it does seem to me that this is one of those things in which you can have no compromise without practically giving up your principle. Therefore, I, as far as I can see at the present moment, shall, personally speaking, only be agreeable to such a provision being made in this part of the Bill as will definitely state that, for purposes of its own, all rights should remain intact to the colony of New South Wales in those great tributaries. The honorable and learned member (Mr. Barton) consulted me when he was sending the telegram to Mr. Russell, and I asked him to inquire—and this is a very important question—if we could, under any plan that might be adopted for the conservation of water in the tributaries of the Murray, interfere with the navigability of the main river?

Mr. GLYNN. -

Mr. Russell assumes that the whole of the flood water would be kept back by locks, which is impossible.

Mr. MCMILLAN. -

The question is one so full of technicality that it is difficult for an ordinary person to give an opinion upon it, but will any one tell me how any Government could possibly adjudicate upon a matter of this kind? It is well enough to say that you will have a special commission for railway rates, and to deal with other matters which a dozen business men sitting together could easily settle among themselves; but this is a very much more complicated question. Who is to say to what extent the navigability of the Murray is being interfered with? We know well enough that at certain times the Murray is almost dry in parts. Supposing that at such a period water derived from tropical rains in Queensland were conserved in distant parts of the Darling—which water, if not conserved, would simply sink into the sand and never find its way to the sea—would not the Federal Government say—"We are not quite sure that the conservation of this water is interfering with the navigability of the Murray; but the Murray has gone down below its navigable point, and as we are the trustees of the river, we say that, at any rate, the chance is that it is being interfered with." The conditions of these rivers are so complex that it is impossible to frame a rule which it would be safe to put into the hands of such a tribunal. It is not as if we in New South Wales were showing an anti-federal spirit; we are not asking for anything which really belongs to the other colonies. Will any man tell me that a river like the Darling, which winds and meanders for hundreds, probably for thousands, of miles entirely through New South Wales territory, can, in any sense, be looked upon as a federal river? It seems to me that all argument is against the contention of my honorable
friend from South Australia.

Mr. HOLDER. -

The navigability of the Murray frequently depends upon the flow of the Darling.

Mr. MCMILLAN. -

Yes; but who is to say when it does? Supposing that, owing to the prevalence of unusual conditions, the flow of the Murray is reduced below navigation point if the weirs and locks upon the Darling are removed, the navigation of the Murray may be improved to some slight extent, though probably not at all; but, on the other hand, a large number of settlers will be absolutely ruined. The more this question is looked into, the more complicated and dangerous it appears. It is one of those things which ought to be allowed to work themselves out in the experience of the Commonwealth. Instead of attempting to face it in this heroic way we ought simply to do what appears to be bare justice, and leave it to the development of the future. It is very well known that, in all matters where mere local politics can be cast aside, I have always thrown in my lot for federation, and generally with the smaller colonies; but I think that the absolute unanimity of the representatives of New South Wales upon this point should tell very strongly upon the verdict of the Convention. If I might refer the matter, as one or two other honorable members have done, to the representatives of the two colonies which appear to form the jury upon this occasion, I would say to them that I think that the whole burden of proof lies upon the other side, and that, as the representatives of New South Wales have given such strong expression to their unanimous feeling upon the subject, they ought to hesitate before voting against what we believe to be the real interests of our colony and what we consider to be the opinion of our people. Although I should be sorry to prevent any attempt at what is called compromise, I am very much inclined to think that in regard to this matter an endeavour to that end will only lead to a waste of time. If we stick to the text of the Bill, and make the federal authority the negotiator between the states, I think we shall serve the interests of federation better.

Progress was then reported.

FOUNDATION DAY.

Mr. BARTON (New South Wales). -

I have ascertained from Sir George Turner that next Wednesday, which is kept as a strict holiday in New South Wales, is also observed as such in Victoria, and the probability is that honorable gentlemen would prefer not to sit upon that day. We are not under the same urgency as to time as we
were under in Adelaide; therefore, I shall not press honorable members to sit then, as I know that I can rely upon their co-operation at a later stage of the session.

The Convention adjourned at five minutes to five o'clock.
Tuesday, 25th January, 1898.

Petitions - Representation of Queensland - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITIONS.

Mr. WALKER (New South Wales). -

I have the honour to present a petition from the Christian Endeavour Council of New South Wales, numbering 15,000 members, in which a respectful request is made for the recognition of Almighty God in the Commonwealth of Australia Bill. I beg to propose that the petition, which is respectfully worded, be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

The petition of the undersigned humbly sheweth-That,

At a meeting of the Christian Endeavour Council of New South Wales, representing 15,000 endeavourers, held in Sydney, 10th December, 1897, the following resolutions were unanimously carried:-

First. That in the opinion of this council no scheme of federation will be acceptable to the great body of the people of this colony which does not recognise Almighty God as the Supreme Ruler of Nations and Fountain of all Law and Authority; and

Second. That in view of the Strong Conviction held by us on this subject, your petitioners

would humbly pray that such recognition be inserted in the preamble of the said Constitution or in one of the clauses thereof.

And your petitioners, as in duty bound, will ever pray.

Mr. FRASER (Victoria) presented two petitions from electors of Victoria, praying the Convention, in framing the Constitution of Federated Australia, to provide for election, especially of senators, by means of the Hare system of voting.

The petitions were received.

REPRESENTATION OF QUEENSLAND.

Sir JOSEPH ABBOTT (New South Wales). -

I beg to give notice that I will move, at the meeting of the Convention this day week-

That this Convention desires to express its deep regret at the fact that no opportunity has been afforded to the people of Queensland to take part in
its deliberations.

The PRESIDENT. -

I would like to remark, with reference to that notice of motion, that although I do not propose, at this moment, to rule it out of order, I will require to consider very carefully whether it is within the functions of this Convention to deal with a matter of that description.

Sir JOSEPH ABBOTT. -

At the last sitting of our Convention I was the only member who dared to express the opinion that Queensland was not earnest in its protestations about joining the Convention. My honorable friend (Sir John Forrest) said I would live to regret the words I had then uttered. Now, I want to show the Convention and the public of Australia that I do not regret the words I then uttered, because what I then said has all been proved to be correct. Of course, Mr. President, if you think the motion is out of order I withdraw it at once; but, if it is out of order, so was the motion of Mr. Barton, offering the congratulations of the Convention to the Queensland people.

The PRESIDENT. -

I do not think that the motion proposed by the leader of the Convention was out of order, but I do take the responsibility, after having heard the honorable member, of ruling that the notice of motion which he has given is out of order, as attempting to express the opinion of this Convention with reference to the conduct of a Government which is not represented here.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Monday, 24th January) was resumed on sub-section (31) of clause 52-

The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.

Amendment suggested by the Legislative Council of South Australia-

Omit "river," insert "rivers."

Mr. GORDON (South Australia). -

I desire to ask if the various amendments are in print?

The CHAIRMAN. -

The amendments are in print, but proofs of them have only just come in. They will be handed round now.

Sir JOSEPH ABBOTT. -

They should have been available overnight.

The CHAIRMAN. -
I have no control over the printing-office. I understand it is the wish of the committee that the amendment which is before the committee, to strike out the word "river," with a view of inserting "rivers," be temporarily withdrawn in order that the prior amendments may be moved. I shall put it formally to the committee.

Mr. GORDON (South Australia). -

That was the case at one part of yesterday's proceedings. I asked leave to withdraw my amendment, but afterwards I got leave to withdraw my request to withdraw my amendment, so the position stands that the committee is discussing the substitution of the word "river" for "rivers."

The CHAIRMAN. -

I never put it to the committee that the amendment be withdrawn. As a matter of fact, it is not the amendment of Mr. Gordon, but of one of the branches of the Legislature of South Australia.

Mr. GORDON. -

Yes, except that, as I assumed charge of it, you allowed me to make the request to withdraw it. I made that request, but afterwards I begged leave to withdraw my request to withdraw the amendment.

The CHAIRMAN. -

Undoubtedly. At the present moment the question is that the word "river" be omitted, with a view to the insertion of the word "rivers," but I understood that it was the wish of the committee, that that amendment should be withdrawn from consideration at present. Whether that is so or not it is for the committee to express an opinion. Of course, any one member can object to the amendment being withdrawn. I will put it that the amendment before the Chair be withdrawn for the present.

The amendment was withdrawn.

Sir GEORGE TURNER. -

What is before the Chair now?

The CHAIRMAN. -

Nothing but the clause.

Sir GEORGE TURNER (Victoria). -

When this matter was being discussed in Adelaide very few of us thought that it was of the vast importance which its discussion here during the last two or three days has proved it to be, and when the division was taken very few of us thought that the result of that division might or might not be vital to the interests of any one colony. On that occasion I myself was in very grave doubt as to what was the proper course to pursue, and I then voted against, the proposals of South Australia, knowing that by so doing I would have another opportunity at the adjourned meeting of having the matter
more fully discussed, and ascertaining in reality what was the best course to pursue—and, therefore, while on that occasion I took up a position adverse to the colony of South Australia, it must not be thought that because I voted in that way on that occasion I am bound now, after fuller thought, and after hearing all the discussion, to vote in the same direction. The colony of Victoria is interested to some extent in this provision with regard to the waters of the River Murray. As far as I have been able to ascertain from the Water Supply department of this colony, we really do put into the River Murray more water than the colony of New South Wales.

Mr. LYNE. -
In the upper parts, but not in the lower parts.

Sir GEORGE TURNER. -
Well, all along the river, as far as I have been able to ascertain.

Mr. LYNE. -
Oh, no.

Sir GEORGE TURNER. -
At all events, we do put into the River Murray a very considerable amount of water, and a very large amount also comes from a portion of Queensland. So that Queensland, New South Wales, Victoria, and South Australia all contribute towards the supply of the water in that particular river. Now, I think the debate has shown us that no one colony desires to do anything that is unfair or unreasonable to any of the other colonies. New South Wales simply says—"We have got this river, and you are asking us to make a compromise by giving away something and giving us nothing. That is not a compromise." However, I do not propose to debate the question, which has been so fully thrashed out, as to whether the waters in question, by law, or by international law, or by any other means, really belong to the colony of New South Wales. A portion of the water falls from the heavens in that particular colony; but I say that, so far as I can see, that water ought to be considered as common property. Some of the colonies are anxious that the water should be so conserved as to have the rivers that are now navigable hereafter, and they are afraid—more especially the colony of South Australia—that particular colony is afraid that if New South Wales has the sole control of the water of the river and its tributaries, New South Wales may so deal with those waters as to prevent the river being navigable in South Australia. I myself have no fear that anything of the kind will happen. In the past, New South Wales appears to have dealt with the waters in such a way as not to unduly interfere with the navigability of the river, and I
believe that if we do not federate New South Wales will pursue that line of action in the future. Then New South Wales appears to be afraid that they will not have the same control of the waters in question if this control is handed over to the Federal Parliament. They appear to be afraid that they may then be treated in such a way as not to be able to irrigate portions of their lands which they desire to be able to irrigate, and which undoubtedly they ought to be permitted to irrigate; but I think that the answer to that is in the figures quoted by my friend (Mr. Wise) yesterday. He showed that such an immense quantity of water was carried away by this river that there is no fear of either colony being injured—that anything that New South Wales might possibly do with regard to taking water away for the purpose of irrigating cannot affect the navigation of the Murray, and I am certain that anything that South Australia is likely to do with regard to navigation is not likely to interfere with anything that other colonies may do with regard to irrigation. We have frequently heard the expression "Trust the Federal Parliament." My friend, the Premier of New South Wales, naively confesses that he is prepared to trust the Federal Parliament when the difficulties are so great that he cannot see any way out of them.

M. - When he cannot do better.

Sir GEORGE TURNER. -

Probably when he cannot do better. Now, I do not think that that is the course this Convention ought to take. We are here, as I have previously said with regard to the financial question, to negotiate with each other—we are not here to legislate. Our business is to endeavour, in the way we have been doing the last few days in these discussions, to meet the difficulties raised by one colony and another. It is our duty to endeavour to meet those difficulties, and find some solution if solution be possible; and until we are fairly satisfied in our own minds that a solution is absolutely impossible we have no right, in view of the solemn duty cast on us by our electors, to attempt to shirk a task which it is undoubtedly our duty to perform. In view of the circumstances, we have now to look at the various amendments which are put forward, and see whether, from the mass of matter which is submitted for our consideration, we can possibly devise some scheme which will be fair and equitable to all the colonies. I gave utterance to my views by an interjection yesterday—that I believe that irrigation ought to be our first consideration. It is true that the navigation of these particular rivers is very valuable to South Australia. I confess it is also very valuable to Victoria; but I think that the question of irrigation is far more valuable, at all events to Victoria, than the question of navigation. Still, I do hold the view given utterance to by my colleague (Mr. Deakin) that the two subjects can easily be worked together, if we set our minds to work and devise a
proper scheme. My difficulty is this: Can we, sitting here, 50 of us, devise that scheme? I believe we cannot. I believe that if we have all the amendments before us we will simply be wrangling over them. We will have all our leading lawyers taking a word here and a word there, and quibbling about them—endeavouring to point out that the proposal with the particular word in question in will mean that a certain course of action will be pursued, while other men, on the other hand, will argue equally strongly and forcibly that the proposal with that particular word in will mean something entirely different. I believe that if we attempt here to deal with all these amendments we will probably spend a large amount of time, and we may get up bad temper, which has fortunately been absent from our discussions in the past, and we shall not arrive at a very satisfactory solution. New South Wales is vitally interested, South Australia is also interested, and so is Victoria in a lesser degree. I have been thinking over the matter, and I have come to the conclusion that, as in other matters, perhaps not so important, we have asked a certain number from our body to meet with a view of endeavouring to formulate something satisfactory, and that as that has worked well, it ought to do so on this occasion. My suggestion is that, as tomorrow is our great national holiday—Foundation Day—some of our delegates who do not desire to be present at the sports or the regatta might well spend an hour or two in discussing this matter around a table. I feel certain that if we were to select two from New South Wales, two from South Australia, and two from Victoria, it would be a wise step. I leave the other colonies out as not being equally interested, although I have no objection to two from each of the other colonies being on this committee if it is thought advisable by the Convention. I feel no hesitation in saying that if six gentlemen meet together in the manner I suggested, with the valuable discussion which has taken place in the past and the information they now have on the whole subject, knowing the desire of this Convention that all colonies should be treated fairly and properly, and knowing also that our main object is to preserve the navigability of the Murray and its tributaries, and to prevent the improper use of the water of any of those tributaries so as to interfere with the navigability of the Murray, the committee might very easily, from all these amendments, or by their own judgment and wisdom, suggest a scheme which we would all be prepared to accept. When I speak of the tributaries of the Murray, I do not speak only of those in New South Wales, because whatever is done with regard to the water coming through New South Wales—whatever restrictions may be placed upon its use—I feel that in justice the same restrictions must be placed on water coming from
Victoria. We have discussed this matter very fully. I have no desire to
unduly trespass on the patience of the Convention. My own view is that we
should put irrigation as the first consideration, and navigation as the
second; but I feel, after studying these amendments and considering the
question, that we shall fail unless we carry out the suggestion which I have
made for the consideration of the Convention and our leader. I feel
satisfied that if a committee, such as I suggested, can agree upon a scheme
which will be acceptable to themselves, it will be equally acceptable to the
members of the Convention. I make this suggestion as a means of settling
the difficulty, and of saving the time of the Convention.

Mr. HOLDER (South Australia). -

I regret that since we rose last evening some agreement has not been
arrived at. I hoped, when we rose yesterday, that this difficulty would have
been arranged before we met this morning—that the Drafting Committee, or
some other body, would have considered the various amendments
suggested; and would have evolved from them, or from some other source,
a compromise or a modification in some form which, by general consent of
the states, might have been agreed to. I regret that has not been done. I
think that, perhaps, the next best thing is the suggestion of the Right Hon.
Sir George Turner. I rose chiefly to express the hope that that suggestion
might be accepted by the leader of the House; and that, presently, we might
have this very great stumbling-block removed from the path of our
progress. I

want, however, as I am speaking, to say a few words on the general aspect
of the case, and I shall strive as far as possible to say what has not been
said, so as to avoid travelling over familiar ground from the point of view
of South Australia, and how it affects her rights. Frequently the only
method of reaching the settlers along the Murray River, either to send
goods to them or to bring their produce to market, is the river itself. We
have not along the river parallel with it any railway line; therefore the
whole of the settlers along the river, and they are a rapidly increasing
number, are dependent upon the river as a means of transit. At present the
river is exceedingly low—I mean the portions which are wholly within the
South Australian border, the South Australian territory being on both sides—
and there are portions of the river there which are not navigable. The
settlers are not able, except at heavy, cost and great delay, to get goods
there or to send their produce to market. While that is the position in South
Australia, I wish to show how the River Darling affects the question. I
believe that far up the River Darling at present there is a freshet coming
down, the result of recent floods. At the point which it has reached at
present there is a 3-ft. rise. We are so accustomed to watch the freshets in
the Darling as affecting the navigability of the Murray, that we can say
almost to a day when that freshet will reach Overland Corner, a well-
known point on the Murray. We have been in the habit of calculating these
things, the navigability of the lower river depending upon them for many
years past, and I do not hesitate to say that the hope of many settlers to-
day, on both banks of the river in South Australia, is fixed on this freshet
coming down—a freshet which takes its origin not only within the
boundaries of New South Wales, but in other streams coming from the
distant colony of Queensland. That mere statement that the navigability of
South Australian waters is dependent upon a freshet taking its origin in the
distant colony of Queensland, and passing for hundreds of miles through
the colony of New South Wales, shows what an important question this is
from a federal point of view. Besides that, we have on the river banks those
who are making a living, and developing territory, by irrigation. I quite
agree with what was said by the Premier of Victoria to-day, and by other
members yesterday, as to the importance relatively of irrigation. As to the
navigability of the river, we find that in many parts of the world a
navigable river is not regarded as being so valuable as railway
communication. Especially in the United States we have frequently seen
railways made on both sides of a navigable stream, thus indicating the
superior efficiency of railway transit under certain conditions over river
transit. If that be so—and it has been shown in the United States—I think the
time will probably come at no very distant date when we shall have
railways along the river banks, which will be preferable even to the water-
way as a method of transit for goods. Therefore, I am quite prepared to
admit that navigation may become of secondary importance to irrigation. I
believe that in New South Wales, and in South Australia, as well as
Victoria, we shall in the future see, perhaps, hundreds of people getting a
living by the navigation of the river, but we shall have more thousands of
people than there are hundreds engaged in navigation who will be getting a
living by means of irrigation on the banks of the river. That being the case,
I should be very sorry to do anything here to-day which would make the
navigation of the river the first and only consideration of the Convention. I
think we should secure to all the advantage of a fair use of the water for the
purposes of irrigation. Now I come to the point of view which particularly
interests this Convention. I have shown that for navigation and irrigation
the waters arising in Queensland and flowing through New South Wales
are important to New South

Wales and South Australia, and the waters of the Murray are important to
Victoria, New South Wales, and South Australia. But now comes the
question of pressing importance from the point of view of the right of the
several colonies in these bodies of water. It has been said by New South
Wales that they have the right of possession, which constitutes nine points
of the law. The honorable member (Mr. Lyne) cheers that statement. I
venture to say that there is something behind even possession. If we grant,
as we must, that New South Wales has possession of the waters, the origin
of them as I have shown to a large extent, as far as the Darling is
concerned, is not in New South Wales but Queensland. I ask New South
Wales if she would like Queensland to say-
"These waters belong to us we
shall absorb them all; they shall not flow through your territory and benefit
the state of New South Wales"? South Australia takes up precisely the
same position with regard to New South Wales as New South Wales
would, I am sure, take up in case of emergency with respect to Queensland.
Supposing that difference did arise, I admit freely, as claimed by several
speakers, that, up to the present, New South Wales has not absorbed the
whole of the waters of the Darling, and I do not think it is likely that in the
near future she will absorb them. But we have had proposals, and not only
proposals by Government officials, concerning whom remarks not too
complimentary were made yesterday, but we have also had definite
proposals made by Ministers of the Crown and other persons in responsible
positions in New South Wales. We have had letters from Premiers of New
South Wales; we have had, in the earlier sittings of this Convention, from a
gentleman who speaks with no less authority than the present Minister of
Lands-Mr. Carruthers-statements as to the right of the colony of New
South Wales to absorb, if she pleased, every drop of water that now comes
through the Darling into the Murray. I ask whether this Convention-
whether, at least, members who come from the colony which I, among
others, represent-can lightly regard statements such as these?
Mr. WISE. -
Has the honorable member read Colonel Home's report, in which he
shows that those proposals are utterly impracticable?
Mr. HOLDER. -
No doubt from his point of view that may be the case. While I should be
pleased to spend time in discussing the general question of irrigation, on
which I hold strong views-having carefully looked into the matter for years
past-I am not going to be led off into a general discussion now. I simply
say, in passing, whilst that report suggests that immediate probabilities are
not in the direction I am discussing, I venture to believe that, as time passes
by, it will be possible, from a profitable and other points of view, to utilize,
if not the whole, a very large proportion of the waters coming down the
Darling to the Murray. I say that, in view of the official statements of persons in high authority, we have a right to regard as a possibility a large absorption of those waters. However, I want to say just here that there are many works connected with the waters of the Darling which might, and I think will, be carried out in future by New South Wales, which will largely benefit that state, and at the same time will largely increase the navigability and flow otherwise of the river lower down. One of the greatest advantages connected with the natural features of the rivers running through these colonies arises from the presence of the billabongs, as they are called, or the back waters. Into these back waters the stream flows in flood-time, instead of passing rapidly down. These billabongs hold an immense volume of water, and from them it slowly comes to keep up the flow of the river for many months after the flood proper has passed. I am speaking with knowledge, because I have travelled on both the Murray and the Darling, and I know precisely the full effect of what I am saying and the value of these back waters. If by artificial means these back waters are multiplied, and the water is conserved by locks being placed in the channels leading out of them, and in other ways they are made to contain larger bodies of water, that will not only benefit the state in which the back waters are situated, but will very largely tend to increase the time during which the river will be navigable, and to spread over a longer period those seasons in which, lower down the river, water can be taken out for irrigation.

Sir JOSEPH ABBOTT. -
Will it not interfere with the navigation of the river to put locks there?

Mr. HOLDER. -
I have not yet refer

Sir JOSEPH ABBOTT. -
I mean to put locks on the billabongs.

Mr. HOLDER. -
Locks on the billabongs would not diminish, but would increase the navigability of the river. The locking of very many of these large natural reservoirs-and some of these natural reservoirs are enormously large-would tend to lengthen by months the period of navigability of the river.

Mr. LYNE. -
That would only be supposing the water was allowed to flow back again.

Mr. DEAKIN. -
And not in all seasons.

Mr. HOLDER. -
My reading-and I appeal here with great confidence to my honorable
friend (Mr. Deakin), who is an authority on irrigation—shows me that in India very large bodies of water find their way back into the river, and that in the course of a few miles of their length two or three times the flow of the river system is taken out for irrigation, which must mean that, while all the water does not find its way back, a large quantity of water finds its way back again and again. That may or may not be so—only experience can tell us—in relation to our rivers; but judging by what has been seen in other places we may expect that a similar result will accrue within the borders of South Australia.

Mr. HIGGINS. -

In dry country?

Mr. HOLDER. -

Even in dry country there must come a point of saturation when, owing to the absorption of millions of gallons of water, the subsoil will hold no more, and then all that is applied to it, except that which evaporates under the sunshine, will flow back into the river in some way or other. In my opinion, it is possible to very much increase the utilization of the waters of the upper rivers, to very largely develop the resources of the country alongside of those rivers, without in any way diminishing the navigability of the rivers, and without to a very large extent diminishing the possibilities of irrigation lower down their courses. However this may be, I want to come to the question of what are the present rights of the colonies lower down the rivers in respect of these waters. Supposing that as time goes by any of the states higher up the rivers should be led by experience, experiment, or otherwise, to take large bodies of water out of the rivers to the detriment of states lower down, what would be done? Supposing that we remain as we are, that the federation we are all earnestly hoping for does not come about, and that the states remain apart as they are, and that large schemes for irrigation and for utilization of the rivers are put in hand by New South Wales, and by locks and other means the flow of water lower down is diminished, I ask what is the remedy which South Australia would have? It is said that she has no legal right. It is said that she could do nothing, that she would have to put up with what New South Wales would send her in the shape of surplus waters which she permitted to flow down the channel of the river. I hold that South Australia has, if not any legal right, a very large right, and I think she has a way in which she can assert that right. Whatever may be the case in law—and, as I am not lawyer, I am not going to argue that—

Mr. DEAKIN. -
The honorable member was once Attorney-General.

Mr. HOLDER. -

I was, but I am not now. Whatever the legal position may be, surely South Australia occupies lower down the river, in relation to states higher up the stream, in equity the same position which she would occupy if she and they were individual persons. Suppose that instead of New South Wales being a colony it was a person, and that instead of South Australia being a colony it was a person; then, surely, South Australia would have some rights? That colony would have a court in which she could enforce those rights, but that court is lacking in the case of states taking the place of individuals. If South Australian rights of the character to which I have referred were detracted from in any way she would certainly appeal then to the British authorities. The Imperial authorities have made our boundaries, and the Imperial authorities would be the court to which we would go.

Mr. MCMILLAN. -

And they would not interfere.

Mr. HOLDER. -

We have had correspondence with New South Wales on these questions, and we have in contemplation, in certain events, the making of the appeal to which I have referred to those authorities, who undoubtedly have the power to deal with the matter.

Mr. LYNE. -

And they would not interfere.

Mr. HOLDER. -

I do not agree with the two interjections I have heard on my left, which declare that in case of such appeal the British authorities would not interfere. I think they would, and I believe there are some gentlemen in this Convention who would agree with me. I think if it was shown that her rightful share of the waters of the rivers was being denied to South Australia, or to any colony lower down by a colony higher up the stream, the Imperial Government would interfere to the extent of requiring just such division of right between the various colonies as would exist between individuals in one colony. What South Australia asks on this occasion is that that court of ultimate appeal, in such cases as those to which I have referred, shall no longer be the Imperial authority, but shall be the federal authority. I remember that, when in Adelaide, we had some preliminary resolutions brought up as a basis on which to frame our Federal Constitution, and one of these preliminary resolutions to which our leader paid great attention was one which referred to the enlargement of our powers of self-government. I can conceive of no enlargement of our powers of self-government more important than that to which I have
referred. Here is a power which to-day, if it rests anywhere, rests with the Imperial Government. We want to transfer the power of ultimate decision of riparian rights, questions between states from the imperial Parliament to the Federal Parliament, from the Imperial authorities to the federal authorities. That transference is in direct pursuance of the line of argument of our leader, is in direct pursuance of the line of argument of my honorable friend (Mr. Wise), who yesterday spoke on the other side of this question, and of many other members here who have taken a position which is opposed to that which I am taking now. I ask them to follow up the line of argument which they have used on previous occasions, and to grant what South Australia asks, that in this important matter of inter-state riparian rights all the powers to-day possessed by the Imperial Government and the Imperial Parliament shall be transferred to the Federal Government and the Federal Parliament. That being granted, South Australia has nothing more which she wishes to ask. She believes that she has rights to-day, and she wants to pass on those rights, unimpaired by any word or clause in this Constitution, to the federal authorities. She will not tolerate the inclusion of anything in this Federal Constitution which makes those rights less, or the enforcement of them more difficult; but she will be content, without the insistence of any enlargement of her rights, to pass on those rights unimpaired from the present Imperial authorities to those of the Federation which is to be. I ask who will object to that? Will the colony of New South Wales object to that? Is she so fearful of the position she holds-so uncertain of the ground on which she stands-that she will not permit these rights and these powers to be transferred from far-off England to our own colonies? Is she so fearful of the Federation which is to be that she will not intrust it with the decision of these matters so vitally important to three of the colonies here represented, and to a fourth, which we wish was represented? I do not want to ask that this Constitution should enlarge the powers of South Australia; I do not want to ask that they shall even be defined in the Constitution; I am quite content that they shall be passed on for whatever they are worth. My friends from New South Wales tell me that they are worth nothing-let it be so. Others in the Convention say that they are worth a great deal—I think so. But whatever they are worth, little or much, let us pass them on unimpaired-unhampered by any qualification or limitation-to the Federal Parliament and the Federal Government. Now, with that thought in my mind, I look at the amendments which are before us this morning. I find that the first amendment, although it is proposed by a South Australian, and by one who holds strong views on this question, really would operate
to diminish the powers of the federal authority as constituted in this printed Bill; and I, for one, am not content with that. If we cannot get more than is in the Bill, a larger scope for the federal authority, a freer hand for the federal authority, then let us take what there is. I think if all these amendments were withdrawn, the Convention would pass the clause as it stands. Then, wherefore comes the opposition from South Australia to diminish what the Draft Bill gives us? I do not think that that can be acceptable. Then I come to the amendment proposed by the honorable and learned member (Mr. Wise), and I see there precisely the same result.

Mr. WISE. - Will the honorable member allow me to interpose?

Mr. HOLDER. - Certainly.

Mr. WISE. - I would like to inform the committee that I wish to withdraw that amendment in favour of one to be moved later on by my honorable and learned friend (Mr. Barton).

Mr. HOLDER. - That will save me any necessity for referring to that. I come, then, omitting the amendment of my honorable friend (Mr. Higgins) to that proposed by my honorable friend (Mr. Symon). I do not think that his amendment will help us at all; that it does not make the position any stronger than the Draft Bill, if as strong, and it introduces a provision as to having just regard to the necessity of water conservation and irrigation.

Mr. MCMILLAN. - You want it without a just regard?

Mr. HOLDER. - No; I do not want to insert such words in the clause, which would imply that in all matters the Federal Parliament would act without a just regard to anybody and everybody. If we insert in one particular clause a requirement to this effect, surely we imply in all other clauses where it is not inserted that there would be an absence of this just regard. I do not think there will be. If we insert these words here we had better go back and insert them in every other clause, so as to provide that in all matters, financial, constitutional, or otherwise, the Federal Parliament shall act with a due and just regard to the rights of everyone. I think we may assume that; therefore, I hope we shall not insert a clause which seems to suggest that. We have no right to assume any such thing. Then I come to the amendment suggested by our leader. I understand that it is not to be moved, and

[P.133] starts here
discuss that. I come now to the amendment proposed by my honorable
friend (Mr. Higgins), and, of them all as they stand in print, that seems to
me to be the one which best of all meets the difficulties of the case "to
secure the navigability of navigable waters which in the course of their
flow, or after joining other waters, touch the limits of more than one state."

Sir JOSEPH ABBOTT. -
That saves the Yarra.

Sir GEORGE TURNER. -
We will include the Yarra, if it will satisfy you.

Mr. REID. -
You will have to make some alterations.

Mr. HOLDER. -
No doubt that amendment, as it stands, would exclude both the Yarra and
the Swan, but, seeing that no federal questions arise concerning the use of
the waters of either, I think that they ought to be excluded. We are dealing
with federal questions, and federal questions alone. I hope, therefore, that
in our amendments we will carefully exclude any matters which are of
purely local concern. I have already stated the view I hold as to the
importance of irrigation in the future, and the amendment of my honorable
friend (Mr. Higgins), while it secures the navigability of navigable waters,
leaves out of consideration altogether this, which I believe will be the
larger and ultimately most important use of the waters of the river.

Sir GEORGE TURNER. -
Is not that the dangerous part of the clause so far as New South Wales is
concerned? Will not the people of New South Wales say that it would have
that effect, and make it a reason for refusing to join in the Federation.

Mr. ISAACS. -
It would be dangerous to both colonies.

Mr. HOLDER. -
On that point I would say this: I listened very carefully to what the
Premier of New South Wales said in reference to this matter. I do not think
anybody from South Australia has the slightest desire to place the whole
control of irrigation in the hands of any federal body. The lands belong to
the states. We are contending that they should continue to belong to the
states, and therefore the application of the water to the land must be a state
question. I want here to say that I do not think quite a fair use has been
made by some of the speakers from New South Wales of the area of land
through which the rivers flow. We have had hundreds of millions of acres
of land referred to. We know from the best and most recent authorities, that
the area which can be irrigated from these streams is relatively small. The
area through which they flow is one thing, and the area irrigable is another.
Take the colony of South Australia. For nearly 300 miles the River Murray flows through South Australia. The country adjacent to the river—taking the word adjacent to mean 20 or 30 miles on either side of the banks—is a very large area. The area irrigable from that river, even if we took every drop of water out of it, would be relatively very small. It is not therefore quite fair to talk about hundreds of millions of acres of land being dependent upon the waters of this river.

Mr. LYNE. -
Is not the honorable member mistaken?

Mr. HOLDER. -
The figures mentioned were 140,000,000 acres.

Mr. WISE. -
Hear, hear.

Mr. HOLDER. -
Of that area, if every drop of water were taken out of the rivers, a very small proportion would be irrigable, and therefore it is not quite fair to use these figures in their largest sense.

Mr. WISE. -
The land might be made more profitable by water conservation.

Mr. HOLDER. -
Yes, and the conservation would increase and not diminish the flow of water. Taking the average seasons, it would prevent the floods from being quite so high, but it would also prevent the river from remaining low for so long. Honorable members who have not seen the Murray in flood can hardly form any conception of the difference between that stream in flood and at ordinary times. To-day there is just a narrow stream between clearly-defined banks, but in flood-times the water spreads itself out for miles on either side. We do not mind these extreme floods being diminished, because that would increase the volume of water which flows down between times. I would therefore desire to see water conservation encouraged.

Sir WILLIAM ZEAL. -
At whose expense must that conservation be carried on?

Mr. HOLDER. -
At the expense of the states who receive the whole benefit of the use of the water.

Sir WILLIAM ZEAL. -
South Australia will contribute nothing towards that.

Mr. HOLDER. -
South Australia would certainly conserve the water. The honorable
member, I am quite sure, is fair-minded in this matter, and will listen to the point I am going to put. I say that each state would conserve the waters of the rivers flowing through its own territory, and would do so for the purpose of using them. It would get the benefit of using them, and that would repay it for the expense of conservation. But this conservation, no matter where it was carried out, would be for the general improvement of the river navigation at every season of the year. It will be seen from what I have said, that what I desire is to pass on, unimpaired, the rights of the various states as they exist to-day-to simply transfer from the Imperial authority to the federal authority the decision of those rights and equities, and I fancy that the following words would practically meet the views of the South Australian representatives. I would suggest that we should strike out all the words of the sub-section, and insert in lieu thereof-

Navigability of all navigable waters flowing in two or more states-

This is the most important part.

and the exercise of all powers at present possessed by the Imperial Government in relation to the regulation and control of riparian rights in respect of waters flowing in two or more states.

These words would not impair or diminish the rights of any state. They would simply take over whatever power is to-day in the hands of the Imperial authority and place it in the hands of the federal authority. They would bring the determination of this issue from the other side of the world to this side-from those who know nothing about us to ourselves. I cannot conceive of any argument being used successfully to oppose or upset that proposition. I do not want to move it myself.

Mr. REID. -

The only thing is that there is nothing in it. The Imperial Authority has power to-morrow to abrogate all the Australian Constitutions. But who would put that forward as a serious argument?

Mr. HOLDER. -

I would not dream of putting it forward as a serious argument.

Mr. REID. -

Is it a serious argument to suggest that the Imperial Parliament would interfere with our water-courses by legislation?

Mr. HOLDER. -

I have said that I believe that if an appeal were made to the Imperial Parliament on the question of the rights of South Australia, such rights as she would possess if she were an individual and New South Wales were an individual, those rights would be safeguarded. Those rights are all that we want to protect in the Federal Constitution.

Mr. REID. -
The Imperial Parliament would give us protection, too.

Mr. HOLDER. -

It is said that this gives nothing to South Australia, because we have no rights at present. If that is so, I grant that it would not give us anything. We say that we have rights, and that we should have those rights preserved. If they mean nothing, that is our business. If they mean much, as we think they do,

we ask those who say they mean nothing to give us what they say means nothing, and we shall be bound to accept it. All we ask for is the preservation of whatever we have to-day, without decrease or diminution. I hand this suggestion of mine to the leader of the Convention in the hope that he may find it useful in the preparation of a clause, which I should be pleased to see accepted unanimously, so as to avoid what we should all deplore, the splitting up of the Convention into sections on a matter so important as that which we now have before us.

Mr. MCMILLAN (New South Wales). -

I might be allowed, sir, to say a word or two in continuation of the rather hurried delivery of last night. I speak now entirely in view of the appointment of a committee, which, I presume, will consist of legal members of the Convention. It seems to me that most of the amendments that have been proposed have simply had a tendency to cloud the real issue, and there are sufficiently able men, learned in the law, on both sides, to prevent anybody getting the better of anybody else. We should, therefore, keep before us the simple issue, which is with regard to the tributaries of the Murray. Shall the question of erecting irrigation works for the conservation of water lie absolutely in the hands of the state or in the hands of the Federal Parliament? That is the question. It is all well enough to say "We will indicate some very nice direction to the Federal Parliament, in order to make it act justly." But can you introduce into a clause any direction of that kind which will not imply absolute jurisdiction? You say you cannot have two conflicting powers. You must create a sovereign power in every case. It seems to me, therefore, that it would be idle and futile for a committee to meet, and attempt to draw up any superfine cobweb of sentences which, after all, would not mislead people here, and even if it did would cause incalculable trouble in the future. I consider, with all my federal sentiment, that this is so absolutely a necessity for New South Wales that any other direction, excepting that to which we agreed in Adelaide, would so surround the matter with suspicion in the eyes of our people that it would be absolutely useless for us to go away from that bed-rock. I cannot tell, as a layman, to what extent that
particular sub-section gives implied powers-owing to decisions in the American Commonwealth-to the Federal Parliament in dealing with these matters. It is not for me to say whether these words, which are very comprehensive, imply a right to deal with the subsidiary streams of the Murray. But surely the argument, as I said last night, used by several honorable members, that we ought to make clear our intentions, should prevail in this case. What I want is to make clear the intention of the Convention that the rights of the Commonwealth shall be considered by the state, and that it shall be left to the honesty of the states to see that no irrigation or water conservation works that are not absolutely necessary are carried on so as to interfere with the navigation of this great stream. That is my position. It does not matter what are the exact conditions prevailing now in the arid country of New South Wales. Nobody knows what the conditions are, and nobody knows what the conditions of the future will be. The question of irrigation and of water conservation must be left to local control. Every scheme will emanate from the state Parliament, and the whole evolution of this question must come locally. If there is to be a dispute as to the control of those waterways which are solely and entirely within any one state, the whole weight of argument is in favour of leaving the control to the state, trusting to the honour and righteousness of that state to deal fairly with the question of navigation.

Mr. KINGSTON. -
Do you claim a right to dry up the Murray?

Mr. MCMILLAN. -
We may reduce the thing to a reductio ad absurdum. I say that if we have not the right to take, under certain circumstances, every drop of water in those rivers, then we have no right at all.

Mr. KINGSTON. -
You claim that right.

Mr. MCMILLAN. -
We say there is no fear-

Mr. KINGSTON. -
But you would do it if you pleased.

Mr. MCMILLAN. -
We say there is no fear of any reasonable works that we may erect drying up our streams and interfering with your navigation. But we say, why not trust us? You say, on the other hand-"We will give you the fullest permission to do everything that is reasonable." You believe you can give us the power to do everything without interfering with the navigability of the river, therefore why not trust us? It is a question of who is to be trusted.
Mr. KINGSTON. -
We say-"Trust a body representative of all."

Mr. MCMILLAN. -
That body has to be threshed out yet, and it may be a corpse before we are done with it. I will take an extreme case. I will take a case in which the Murray is reduced to a state of non-navigability, and in which there is a tremendous drought in New South Wales. I will assume that if certain water was let loose from conserved parts, that water would add very much to the volume of the River Murray. Indeed, it might make it navigable. The question then arises: Which is to be considered first, the navigability of the River Murray or the great system of irrigation upon which thousands of settlers would depend? That is one case. You may call it absurd; but it is better for us to see the principle we are dealing with. It is better to have nothing covered over with the cobwebs of rhetoric or verbiage. I have never shown an illiberal spirit in dealing with federal matters. As time goes on, by the education of our people and by a national spirit being evolved, many of the things we are now dealing with in perhaps a narrow way will be broadened out and will come under federal control. We are dealing with essentials of the matter now, in the hope of being able to frame a Constitution which will be accepted by the people of the different states. This matter is absolutely vital to us.

Mr. SYMON. -
You cannot divide the responsibility for irrigation.

Mr. MCMILLAN. -
You cannot divide the responsibility at all. If you once give the Federal Parliament the right to interfere with these tributaries you cannot afterwards make any diminution of its powers; you cannot draw the line between the control of the navigation and the control of the conservation of water. It is absolutely absurd and childish to imagine the contrary. The federal power must in its own domain be absolutely sovereign. Therefore, let us put aside all these differences and compromises and decide once for all whether these streams which touch different territories, or upon which the main stream depends, shall be under federal control, or whether the states shall reserve to themselves all rights connected with streams flowing wholly through their territory.

Dr. COCKBURN (South Australia). -
We have already had a long debate, and as [P.137] starts here
I think almost everything has been said on each side which can be said, I do not propose to add more than two or three words. But if the discussion has led the last speaker to the conclusion that there is any number of
delegates here who desire that the control of irrigation and of the details connected with it should be a federal and not a state matter, it has led him to a conclusion at which I have not arrived. I do not anticipate that a member of the Convention proposes to take the right to use the water of a river for irrigation purposes out of the hands of the state through whose territory that river flows.

Mr. DEAKIN. -
Whoever owns the land must own the water.

Mr. REID. -
Does not an amendment which interferes with the use of the water of four rivers take the right to control irrigation out of the hands of the state through which they flow?

Dr. COCKBURN. -
The right honorable member sees no objection to the federal use of the water when the interests of South Australia are concerned. What is the clause at present in the Bill? The representatives of New South Wales have all strongly protested against the Federal Parliament or any other body controlling the use of the water for irrigation purposes within their own territory, and yet I believe they are prepared to stand by the clause which gives to the federal authority a right to do this so far as that portion of the Murray which is wholly within South Australia is concerned.

Mr. REID. -
We only give that right of interference where a river forms the boundary of two or more states.

Dr. COCKBURN. -
The clause at present in the Bill gives the Federal Parliament the control and the regulation of the use of the waters of that portion of the Murray which is wholly within South Australian territory, a right which the right honorable gentleman says should not be given to the federal authority in regard to the water of the rivers within New South Wales territory. The position seems to me to be most inconsistent.

Mr. GORDON. -
It is the position of the wolf and the lamb.

Mr. REID. -
Yes; but you have not got hold of the lamb yet.

Mr. GORDON. -
I referred to the right honorable gentleman as the wolf.

Dr. COCKBURN. -
The honorable member (Mr. McMillan) has come to a wrong conclusion altogether if he thinks that we want to take the control of irrigation out of the hands of the states and to make it a federal matter. We want the Federal
Parliament to interfere, not in the use of the waters of these rivers, but to prevent abuse. We want the federal authority simply to have the same powers as foreign nations have in the case of rivers flowing through two States.

Mr. MCMILLAN. -

I did not say that the federal authority would abuse its power.

Dr. COCKBURN. -

All we are pleading for is that the Federal Parliament shall have the same power as is recognised as coming within the domain of the comity of nations. The Danube is a river flowing through different states, but, although there is an international agreement providing for certain facilities to be given to the inhabitants of those States in connexion with the use of the river, does the honorable member mean to say that the control of the river is given to any nation except that through whose territory its waters are flowing?

Mr. MCMILLAN. -

But the tributaries of the Danube are not given over to any general authority.

Dr. COCKBURN. -

Well, all we want is that the federal authority shall have the right of inhibition when any colony is unduly using the waters of a river to the detriment of the natural rights of those who have an equal claim to them. I am perfectly willing to trust the Federal Parliament in this matter, although I know that South Australia will have very little voice indeed in it. Although this question is so momentous to us, and although we shall have so little weight in its decision, I think that the common sense and the love of fair play of the Federal Parliament will be such that, notwithstanding the preponderating representation of New South Wales, we may safely leave it in their hands. I think that we are asking for no more than justice. We simply ask that New South Wales and other colonies shall not have the right because of their position to destroy, by the abuse of the waters of the rivers, the natural rights that those lower down have now, and would have, I believe, under federation, even if there were no clause inserted in the Bill. I do not know that it would have been necessary to have put a clause in the Bill were it not for the pronounced attitude which those in New South Wales who have a right to make official utterances on the subject have taken. As the honorable member (Mr. Holder) has pointed out, we have had a statement from the Secretary of Lands for New South Wales, which in importance stands far and away above any telegrams which may arrive...
from Mr. Russell or any other of the influential residents and civil servants of that colony.

Mr. GORDON. -

The right honorable member (Mr. Reid) tells us that the civil servants are tattlers.

Dr. COCKBURN. -

I think that the utterance of a Minister is of far more weight than the official telegram of a public servant, however high in rank he may be. We have the statement of the Secretary for Lands in New South Wales that the whole of the waters of the River Darling will be required for irrigation purposes. He told us that every sup of water will be required for the thirsty soil to enable people to occupy the land profitably." With an official utterance like that before them, can honorable members wonder at the alarm of South Australia? The right honorable member (Sir George Turner) has told us that there is no cause for alarm; but, with an utterance like that before us, I say that we have cause for alarm, and that we are justified in asking that our natural rights in this respect shall be safeguarded.

Mr. TRENWITH (Victoria). -

This subject has been debated at great length and with great ability, and I do not purpose occupying very much time in connexion with it; but the utterances of the honorable member (Mr. McMillan) seemed to me to raise the question whether a river running through two or more colonies can belong to any one of them, a question which, I think, must be answered in the negative. A river which runs through two or more colonies must belong equally to each of them.

Sir WILLIAM ZEAL. -

Do you mean the land or the water.

Mr. TRENWITH. -

The water.

Mr. REID. -

There is no dispute upon that point. In the Bill we apply that principle to the Murray, which is such a river.

Mr. TRENWITH. -

The question is how far you propose to apply the principle, because the honorable member (Mr. McMillan) claimed the right for New South Wales-though he admitted that he was reducing the thing to an absurdity-to take every drop of the water of the rivers which are tributaries to the Murray. If New South Wales can do that she can entirely deprive the other colonies of the use of the Murray, and the inference is that the Murray belongs to New South Wales, and it is only by the grace and at the pleasure
of that colony that it is permitted to trickle through the other colonies. I have no hesitation in saying that his contention is neither right nor just. A river upon which the other colonies depend to as great an extent as New South Wales, and which flows through the other colonies, is as much theirs as it belongs to New South Wales; and, inasmuch as there may and probably will arise conflicting interests in connexion with the use of the river a tribunal ought to be created, its members being representatives of the various parties concerned, to decide any disputes. That, it appears to me, is what is sought for by the honorable member (Mr. Gordon) and other honorable gentlemen who have supported him.

Mr. REID. -

The Federal Parliament would not be such a tribunal.

Mr. TRENWITH. -

It would be such a tribunal, with some other advantages added; it would be composed of representatives of the parties interested in proportion to their interests, as calculated upon the number of their citizens, and it would have in addition three or four disinterested and impartial umpires to see that fair play was given to all concerned.

Mr. ISAACS. -

If necessary, the Federal Parliament could create a special tribunal.

Mr. TRENWITH. -

I would suggest the right honorable member (Mr. Reid) and the honorable member (Mr. McMillan) clouded the issue, in presenting with such force the argument that the management of irrigation in New South Wales would be taken out of the hands of the Government of that colony.

Mr. REID. -

I was addressing myself to the amendment before the Chair, which clearly intended that.

Mr. WISE. -

The whole difficulty is in the drawing up of a suitable amendment.

Mr. TRENWITH. -

I take it that in each of the colonies there are a number of things over which the Central Parliament has control, but in the management of which it does not interfere. Take in Victoria our somewhat complete system of local government. The Central Parliament has control over all the municipalities, but it creates laws under which the municipalities, not the Central Government, shall manage the affairs of the localities. And I take it that when we arrive at some means for giving the Federal Parliament control it will provide machinery under which the various municipalities
can manage their own affairs under such conditions as will not be prejudicial to the welfare of any of the colonies concerned. In looking at the amendments which have been presented, it seems to me that that submitted by Mr. Symon will best meet the case. The amendment suggested by the honorable member is as follows:-

Navigable rivers flowing in, through, or between two or more states, so far as may be necessary for the improvement of their navigability, with a just regard to the necessities of water conservation and irrigation.

I understand that there has been an objection to the use of the word just." Well, perhaps, in inserting it here, it may be vaguely implied that, if it were not inserted, the control by the Federal Parliament would not be just."

Mr. SYMON. -
That is a very hypercritical objection.

Mr. TRENWITH. -
I think it is an hypercritical objection, but, in order to meet that objection, I would suggest that the amendment would be better if we substituted the word due" for the word just." Mr. McMillan has conceived a condition where, in the interests of New South Wales, she might with propriety stop every drop of water from flowing into the Murray. I submit respectfully that there might easily arise a condition of things under which the Federal Parliament would be justified in restraining New South Wales or any other colony from using the waters for certain purposes, in order to retain them for certain other purposes. For instance, the Murray, running as it does for hundreds of miles through three colonies, is used by the people contiguous to it for domestic and stock purposes. While production is extremely important, and must be encouraged by every fair and legitimate means, production under some circumstances becomes secondary altogether to the preservation for the moment of human life. If we can conceive a time when the Murray would be so low that to use its waters at any point in New South Wales or elsewhere would render it inaccessible for the purposes of stock and domestic supply, I have no hesitation in asserting my opinion that the Federal Parliament would be justified in restraining during that period New South Wales from using its waters for irrigation purposes.

Mr. HOWE. -
What would become of the irrigation colony then?

Mr. TRENWITH. -
The irrigation colony would suffer undoubtedly.

Mr. HOWE. -
It would be ruined.
Mr. TRENWITH. -

It would suffer, as the whole continent would suffer.

Mr MCMILLAN. - The other extreme that I put is that the Federal Government would have the right to allow the Lachlan or the Darling to run to a dry bed, in order to keep up the navigability of the Murray.

Mr. TRENWITH. -

What I say is that the circumstances of the hour would be within the full cognisance of the tribunal we create, and if irrigation were more important than navigability I have no doubt that a competent and just tribunal, such as we would create, would take that matter into consideration. But if, on the other hand, both navigability and irrigation became secondary in consideration to the more important necessity of the preservation of the waters of the Murray for stock and domestic purposes, the Federal Parliament would have the power to decree for the time being what should be done in connexion with these waters, not at one particular point, but at any point where it seemed to be necessary to interfere. Thus we would create a tribunal having the interests of all the parties concerned at heart-having the interests of justice and fair play at heart-with power to ascertain from day to day and from hour to hour all the circumstances surrounding the whole question. If New South Wales can spoil the River Murray at its sweet will, by the same rule Victoria or South Australia can spoil the Murray by action within their own dominions at their sweet will. Let us suppose an equally absurd case with that suggested by Mr. McMillan—that South Australia said—We will not have this Murray in our dominions at all; we will dam it back, and throw its waters on to New South Wales and flood out part of that colony." I confess that that is an absurd contingency. But suppose such a contingency arose, what would be the attitude of New South Wales? She would say that she was unjustly treated, and ask, if need be, for the interposition of the Imperial Parliament. I think she would do that. Neither of these contingencies is possible, but still some modified evil between these two extremes would easily be possible; and there seems to me to be nothing unfair, nothing unreasonable, nothing to be afraid of, in submitting to the Federal Parliament the control—not the management—of the Murray, in the same sense that a policeman has the control over the citizens of a state; a controlling influence which never interferes with the citizen unless he proceeds to do wrong, and then only controls his actions in so far as that control prevents him from doing wrong. If this is an illogical proposition, the action of the New South Wales Government within its own dominions is illogical with reference to its own citizens. But neither New South Wales nor any of the other colonies nor the Central Government claims to control all riparian rights. If it happened that a
stream started upon the property of an individual in New South Wales, the
New South Wales Government would step in and say to that individual-
"You shall not use that water in such a way as will injure other citizens; we
do not want to restrict your liberty to do as you like, except in so far as in
doing so you are prejudicing the interests of other people." If this is a
logical position with reference to the relation of the state with its citizens,
surely, under the Federation, the various states are to the Federation as the
citizen is to the state, and the Central Parliament created has as much right
to interfere to maintain the due interests of all its constituents as the Central
Parliament of the

state has to control its citizens within its own domain. Mr. O'Connor
seemed to me to admit this in his argument yesterday morning, in the
course of his temperate, carefully thought-out, and extremely able speech;
but he contended that we have all that is necessary under the clause as it
stands, because, I understood him to argue, if in New South Wales
anything were done by the New South Wales Government to destroy the
navigability of the Murray at any point, the clause gives sufficient power-
read in conjunction with decisions which have been given in America upon
the same point-to restrain New South Wales from so acting.

Mr. BARTON. -
You refer to the trade and commerce clause?

Mr. TRENWITH. -
Yes. But trade and commerce is not all that is involved in the
consideration of this question. Irrigation in these colonies is becoming
daily more and more important, and may become so important as to
overshadow the question of navigability. If it do become so important it
will become so in connexion with the different colonies, not merely in
connexion with New South Wales. Therefore, it seems to me wise and
necessary that, in order that this extremely important aspect of the water
question should be placed upon such a basis as to give security to the
minds of all the persons who are to enter this Commonwealth, it should be
under the control of the Federal Parliament. I said in commencing that I did
not purpose addressing the committee at any length upon this subject, and I
have said more than I had intended; but if the matter is pressed to a vote, if
no compromise can be arrived at satisfactory to all parties, it seems to me
that I ought to vote--indeed, I shall do so--for the amendment of Mr. Symon,
with the alteration I have suggested--which, I understand, meets with Mr.
Symon's approval, although the objection to the word just" is, as he has
said, some what hypercritical. With the alteration of the word just" to the
word due," I shall vote for that amendment.
Mr. GLYNN (South Australia). -

I think it may be advisable if I submit the form in which I originally deemed that this question should be put to the committee. I think I am right in saying that at present there is no proposal before the Chair, although many amendments have been submitted to the committee.

The CHAIRMAN. -

There is no amendment at present before the Chair.

Mr. GLYNN. -

Then I will suggest the amendment which I think will meet the case.

Mr. BARTON. -

I will ask my honorable and learned friend not to formally move an amendment at this stage.

Mr. GLYNN. -

If the leader of the Convention wishes that I should not do so, I will not move an amendment formally at this stage, but I prefer the form of amendment which I have drafted to any others that have been suggested, with the exception of that of my honorable and learned friend (Mr. Higgins). I think we should be definite as to what we are doing, and it seems to me that the words used in nearly all the amendments that have been suggested are not definite. The word navigable," for instance, will lead to a question of interpretation after the adoption of the Constitution.

Mr. ISAACS. -

Yes, it will lead to the question whether the British law or the American law applies.

Mr. GLYNN. -

According to my reading of the American decisions, I think that the Darling would not be held to be a navigable stream. Indeed, I have had put into my hands a decision given in England in 1889, according to which it seems to be clear that the Darling would not be considered to be a navigable river. Wherever there is an interruption, even for three or four days, of navigability, it has been held that the river in question is not really a navigable river.

Mr. ISAACS. -

The decisions require that it shall be subject to the ebb and flow of the tide.

Mr. GLYNN. -

Exactly so. It is, as suggested by Mr. Isaacs, a question of the ebb and flow of the tide, so that the analogy of the English and American decisions would lead us to this position: That if we carry out any of the amendments
which have been moved in which the word navigable" is used, the Darling would not come within the scope of the Federal Parliament at all. I think that what we should do is to say what rivers we want to take over. We should specifically mention the Murray and the Darling. I do not want to take over the tributaries of the River Murray, but I regard the Darling as a main river. I would leave the control of the Darling and the Murray to the Federal Parliament, but would take no cognisance of the Murrumbidgee, the Lachlan, the Edwards, and other tributaries. I do not believe that South Australia would wish the Murrumbidgee to be dealt with in the same way as the Darling and the Murray. But we have a great trade from Bourke to Goolwa. There are times, when the Darling is high, when the export trade from New South Wales to South Australia touches from £1,200,000 to £1,400,000 a year, but when the river is low the trade runs down to £100,000 a year. This is one of the considerations that operate with us. It is one which should affect, also, the delegates from New South Wales, because these exports touch the settlers in their districts. The route selected for export is the cheapest. I would point out to Mr. Carruthers that, in the recommendation of Mr. McKinney, that the Darling should be locked, he points out, as among the chief considerations, the fact that the carriage of goods from Walgett to Wilcannia would, under locking, be reduced all round by £3 per ton, and he refers to the enormous benefits which this would confer on the settlers of New South Wales. If, as the result of giving federal control, we decide on a system of locking, the benefits will not be confined to keeping up the export trade, but there will also be enormous benefits to the settlers in Riverina itself, by the lower cost of haulage as against the railways. Now, I would suggest as an amendment, in order to make this thing definite, to strike out all the words after the first word in the sub-section and insert the following:-

The maintenance and improvement of the navigability of the Rivers Murray and Darling, and the apportionment on, as far as possible, the principles which determine the riparian rights of individuals of the waters of such rivers.

I cannot see on what ground of equity New South Wales can object to her rights being determined by the same principles that operate between individuals of any particular state. These riparian rights are declared by the highest tribunal in the land on an equitable principle as between individuals, and I cannot see what objection New South Wales can urge to the same principle being applied between states. Analogies occur in the Californian Constitution, and all we ask is to adopt the same principle of justice in dealing with streams in which different states are concerned. The effect of the amendment would be to leave the normal average flow of the
Darling to continue. The flood waters would not be interfered with, but we are entitled to say that the normal flow of the Darling into the Murray should not be intercepted by any irrigation in New South Wales—and that it will be intercepted is apparent by what is contemplated in New South Wales. The proposal of Mr. McKinney is that the water of 70 lakes on the Darling should be impounded, and those lakes contain a discharge which, if it is allowed to reflow into the Darling, will keep up its navigable level for six months in the year. In 1892 he stated that Lake Menindie alone had a storage capacity which would keep up t
of 69 other lakes? Undoubtedly, the navigation of the Darling will be six months less in the year than it is at present.

Sir WILLIAM ZEAL. -
The lakes are only filled during flood-time.

Mr. GLYNN. -
I agree with that statement, but I would point out to Sir William Zeal that the main consideration which operates with us is this—the Darling system of lakes is filled by flood waters from the river. When the waters begin to subside, those lakes reflow into the river, and the navigation of the river is kept up for six months by the reflow of those lakes.

Mr. ISAACS. -
Is your anxiety irrigation or navigation?

Mr. GLYNN. -
Mainly navigation, but both; and I will tell the honorable member why. According to Colonel Home's report, which was presented to the New South Wales Government, the capacity of the Darling for irrigation under a system of locking or conservation by locks is exceedingly small. He states that you cannot go beyond about 50,000 acres, whatever you do, and one of his reasons appears to be this: The annual evaporation from the lakes, according to Mr. McKinney, is about 95 per cent. of the total storage capacity. When the water reflows throughout a great portion of the year back again the evaporation is checked, but if we stop the water and keep it in the lake the evaporations continue. For that reason Colonel Home particularly challenges the value of the Darling or of any schemes of conservation in connexion with it for purposes of extensive irrigation. I think Mr. Carruthers will admit that there was a damper thrown on the contemplated schemes of irrigation in New South Wales by Colonel Home's report, and Colonel Home, Mr. Carruthers described, at the Adelaide Convention, as one of the greatest experts in the British Empire on irrigation. What we say is that if you cannot, without an enormous waste of water, carry out the contemplated schemes of irrigation in New
South Wales, you should allow the Federal Parliament to say whether navigation should supersede irrigation, or whether the two should be combined by a system of locking. That this matter is one of vital interest to South Australia I need not point out. Another matter to which I wish to call attention is this: Mr. Russell telegraphs to say, that the discharge of the rivers would keep up a continuous flow of about 10 feet throughout the year, and that therefore the amount of water to be deflected by these contemplated schemes would make no substantial difference in the navigability, but he does not mention that you cannot keep up an average of 10 feet throughout the year. Sometimes the discharge is only 100,000 cubic feet per minute, while sometimes it is millions. Does Mr. Russell say that you can so adjust the average throughout the year as to maintain a flow for every month of 10 feet deep? The proposition is monstrous, and this is one of those statements which we ought to carefully examine, because they often have the result of throwing dust in the eyes of honorable members. Under a system of locking the result would be this. The discharge at Overland Corner goes down to 120,000 cubic feet per minute. Now, under locking we would always keep a minimum of 350,000 cubic feet per minute, and that is the navigable discharge. Supposing any system were arrived at of apportioning the water between the various colonies without locking, and supposing that South Australia got a compensation discharge of 50,000 or 60,000 feet per minute without locking, that would be of very little use for four or five months of the year, because the navigable discharge might not be reached by 150,000 or 200,000 cubic feet per minute. But the moment you keep the river near the navigable discharge, at for instance 300,000 feet per minute, then a compensation of 50,000 feet per minute would bring it up to navigable point. Therefore, if the Federal Parliament has this power, and

admits a system of locking, in order to make navigation effective, a slight compensation discharge from New South Wales into Victoria would be sufficient to keep up the navigation of the river, whereas, for navigation, the compensation discharge, without locking, might require to be six times as large in order to effect the same result. I ask honorable members, therefore, to accept the amendment I have suggested, which is definite, and which excludes all tributaries. This proposal would have the effect of making the Darling navigable, allow trade to go by its most efficient course, and make the Darling always have a permanent discharge of 350,000 cubic feet per minute.

Mr. ISAACS. -

You would not give New South Wales the right to take any water?
Mr. GLYNN. -

Not so as to diminish the normal flow as far as Victoria and South Australia are concerned. It would have the right to take so much of the water as would not reasonably interfere with the normal flow. Suppose the normal flow into Victoria or into South Australia in a particular month were 200,000 feet per minute, New South Wales would be entitled to take any surplus over that normal average flow for purposes of its irrigation. New South Wales says:"We do not want to touch the ordinary flow of the river; we want to intercept floods." Now, I would point out that that power would not be very much diminished by the application of the principle of riparian rights, under which there is an average flow, from time to time, which must not be intercepted by the owner of the banks higher up. The Federal Parliament ought to have competence, on materials in its possession, to determine what was the average flow of the river for every month of the year from New South Wales into Victoria, and from Victoria into South Australia.

Mr. DEAKIN. -

That would have to depend on the rainfall, would it not?

Mr. GLYNN. -

We have had gaugings taken during the last ten or fifteen years in South Australia, and we know the discharge of the river at every point in South Australia, Victoria, and even New South Wales, at every particular month. All we ask is an apportionment before locking, or, if there is to be locking, an apportionment after locking, of the waters for each month of the year from these rivers between the various colonies on some equitable basis. Such a proposition was made in 1890, by a commission that sat to consider the question in South Australia, as I mentioned before. My accuracy on that point has been challenged by Mr. Lyne, and therefore I may state that in 1887 we appointed a Water Commission to discuss the question of inter-colonial rights as regards the rivers with the commissions of Victoria and New South Wales. When our commission was appointed Sir Henry Parkes gave notice that he was going to dissolve his commission, but Mr. Gillies interposed, and said that this would not be fair to South Australia. Sir Henry Parkes then said that the final report of the New South Wales commission would be delayed for one month, and it was so delayed. In its report there was a recommendation made by that commission that there should be a conference between the commissions of the three colonies to discuss some fair method of apportioning the waters of the rivers.

Mr. LYNE. -

What commission was that?

Mr. GLYNN. -
The Royal Commission on the Conservation of Water in New South Wales, which sat in 1886-7, and, I think, sent in their report in 1887. I intend to read an extract from its report which was presented, I think, in the middle of 1887, and which suggested a very fair means of arriving at some definite apportionment of the surplus waters. The report refers to the fact that Mr. Deakin was then absent in England in connexion with the Imperial Conference. I may remind honorable members that the commission of New South Wales, with the commission of Victoria, made definite proposals for the division of the waters of the Murray, as between themselves alone. Objection was taken by Sir John Downer, as representing South Australia, to such an apportionment, and we appointed a commission with a view of meeting the commission of the other colonies, so as to determine upon some equitable scheme of apportionment. As I have already said, as soon as we appointed our commission, Sir Henry Parkes announced that he was about to dissolve the New South Wales commission, but owing to the intervention of Mr. Gillies, he simply intimated that the final report of his commission, would not be presented for another month. Within a few weeks afterwards he gave notice that he intended to dissolve that commission, so that through the action of New South Wales—the dissolution of its own commission—there was no possibility of having a conference between the Water Commissions of the three colonies. In its final report, the New South Wales commission recommended that there should be a conference. One, extract from the commission’s report is as follows:-

Soon after that date—

Referring to the return of Mr. Deakin from England.

it may be practicable for representatives of the three colonies to confer together upon the subject, with a view to submit to the Government of each the conditions upon which the flood waters of the Murray and its tributaries may be best conserved and equitably appropriated.

Now, that is the principle, I say, which should underlie the action of the Convention.

Mr. LYNE. -

Who made that recommendation?

Mr. GLYNN. -

It is a recommendation from the Royal Commission of New South Wales—your own commission—but, unfortunately, the action of the statesman (Sir Henry Parkes) prevented that recommendation being acted on, because he immediately afterwards dissolved the commission.

Mr. BARTON. -
Do you mind stating that recommendation again?

Mr. GLYNN. -

I will read the whole of the extract from the report, as follows:-

It was anticipated that the conference would have taken place before
now, but as the president of the Victorian commission (the Honorable
Alfred Deakin, M.P.) found it necessary to leave Victoria to attend the
Imperial Conference now being held in London, the date of assembling
was deferred until his return. He is expected to arrive in Melbourne in June
or July next. Soon after that date it may be practicable for representatives
of the three colonies to confer together upon the subject, with a view to
submit to the Governments of each the conditions upon which the flood
waters of the Murray and its tributaries may be best conserved and
equitably appropriated.

Mr. LYNE. -

I think you have made some mistake there. I do not think that is in the
report of the commission itself.

Mr. GLYNN. -

Of course the report and the minutes of the commission are available to
the honorable member. I was technically wrong, perhaps, the other day in
using the word recommendation instead of proposals, but it is a distinction
without a difference. The two commissions met, and reduced their
recommendations to writing; but, as they did not send in a final report,
those recommendations were called proposals, not recommendations. At
the same time, they are the conclusions which were arrived at, and they
are, therefore, more or less authoritative. I ask the Convention to express
its opinion on this question which is definitely before us, and to say that
this Bill is only to give the riparian states such rights against one another,
as in the ordinary exercise of justice the courts would grant to one
individual as against another.

Mr. DOBSON (Tasmania). -

We have had a very interesting debate, and I think the time has now
arrived when the suggestion of the Premier of Victoria could be very
usefully put in force, namely, that two or three members from each of the
colonies interested should confer together

[P.146] starts here
to see if they cannot provide for some satisfactory settlement of this very
important matter. I should hardly like to see the number of members
representing each colony at that conference limited to two, because in that
case one or two members of the Convention who have taken an intense
interest in the subject would probably be left out. No one would like to see
the Premier of South Australia choose one of his colleagues and leave Mr.
Glynn and Mr. Symon unable to take any part in that conference. But it is quite enough for us to ask that such a conference shall take place, and leave it to the Premier of each colony to choose two, three, or four, or any number, of his colleagues, to attend that conference. In rising, as a representative of Tasmania, to address myself to this question, I am reminded of the fact that we who are of Tasmania and Western Australia have been told that we have no direct interest in the matter. In one sense that is correct, but in another sense we have a direct interest. That is to say, each of us does his utmost to accomplish the only thing we were sent here for, namely, to devise a right and just Constitution for Australasia. And with a view of enabling me to give my vote on principles that are just, I desire to bring one or two matters before the leader of the Convention, so that I may get from him, as I always do, some very useful information, which will guide me in giving my vote. I must confess that my sympathies, from the commencement, have been with the colony of South Australia, because I cannot get rid of the fact that every individual in every state known to the British Empire, and other empires also, has his riparian rights; and I have been very much astonished indeed to hear honourable members from the parent colony of New South Wales, while admitting that fact as regards individuals emphatically denying it as regards states. I ask why, if we are here to federate, and to talk about one people one destiny, are we to deny that there can and ought to be such things as riparian rights between states as there are between individuals? It appears to me that for the New South Wales representatives to meet us here and say - "Because the Crown did" - or did not - "vest the ownership of the sources of these great streams of this great water-way, the Murray, in our own colony, we are going to federate and to shelter ourselves behind the fact that the grant of the Crown gives it to us absolutely" - which I do not believe - "or that, if the Crown did not give it us, we have actual possession, and no power short of bayonets and guns can take it away from us," appears to me to be thoroughly contrary to the spirit of federation. Therefore, what I desire Mr. Barton to tell us, if he will, is how can we try to frame a Federal Constitution and deny to the states, in reference to these great waterways, what is not denied to the humblest individual in those states? I think that the very last 6s. 8d. I earned in Tasmania before I came to the Convention was paid by an unfortunate man who came to me and said - "I have a stream rising on my land, and I have turned off the water in order to irrigate my potatoes, but here is a letter from the man immediately below me, who objects to my doing so." "Well, my friend," I replied, "I am sorry to say that the man below you is quite right in objecting to your diverting the water to irrigate your potatoes." To this he rejoined - "What, cannot a
man water his spuds?" And I answered - "No, not if you prevent the man below from having water enough to boil his billy." The man was not satisfied with my opinion and therefore I had to get down Addison on Torts and satisfy him on the point.

An HONORABLE MEMBER. -
And you charged him 6s. 8d. for that?
Mr. DOBSON. -
Yes, I did.
Mr. GORDON. -
It is costing a great deal more than 6s. 8d. to settle this question.
Mr. DOBSON. -
What is my stumbling block in the matter is that this is not only a question of justice, but a question of right, and are these states to be denied under this Constitution a right awarded by our courts of justice to the humblest individual within those states? That is a point I cannot get over. Now, in the arguments that have been urged before the Convention there seems to me to have been some little shirking of the main question—How are we to control and vest the ownership of these great water-ways, not for the purposes of navigation, but for the purposes of irrigation? I think that to some extent we may dismiss the question of navigation from our minds, for two reasons—first, because the Premier of New South Wales has told us that his colony have not the slightest objection to keep open to navigation for all time, as far as they can, the great water-ways of that colony as far as they now exist as navigable streams, so that each state may carry on its commerce. And, as I read international law, which I presume will have something to say on this question, no toll of 2d. per ton, which the Premier of New South Wales talks about, can be put on any craft plying its trade on a navigable stream, although it may pass from its own state into the boundaries of New South Wales. Coming to irrigation, who is to say when the moment has arrived when the question of irrigation is to supersede in its importance the question of navigation? Is that to be left to each state to say? Is New South Wales to say—"We want all the water for irrigation," when South Australia may say—"We want the Murray kept up to its natural level for the purposes of navigation"? On the other hand, is South Australia to say—"We are convinced that irrigation is so important that we are going to irrigate our lands"? And are the people of New South Wales to say—"We must keep up the navigation of the river for our own territory"? Therefore, this is intensely one of those matters which must be absolutely under the control of the Federal Parliament. The time will arrive, at all events I look...
forward to it, when irrigation will be of more importance than navigation; and, when that times comes, we shall find that we have made a very great blunder in framing this Constitution if we have not put this important matter under the control of the Federal Parliament. It appears to me that, of all the amendments before the committee, not one is so useful or so good in its scope as the clause we have in the Bill. The clause itself is wider in its scope than any of these amendments. I think it would do more ample justice; and I think our friends from South Australia will be making a mistake if they accept any amendments in preference to the clause in the Bill. But, further, I see in two or three of the amendments an interminable amount of litigation confronting us in the future. How can you say that the Federal Parliament is to control the waters of these streams for the purposes of navigation, having due regard, or having regard, to the necessities of irrigation? There is an enormous lawsuit staring us in the face for years to come if these amendments are adopted. Now, I have only one more thought to express before I sit down in reference to the part that shall be played in our Federal Commonwealth by the Federal Court. In South Australia, I ventured to say that I preferred that important questions of law, and also of fact, should be remitted to the Federal Court by a direct power in the Bill, far before the creation of your Inter-State Commission. By all means have the creation of your Inter-State Commission, if you please, but I would certainly prefer that a matter of this sort, bristling at all these points with law-although the members of the Convention representing New South Wales say they wish to get rid of law-requiring the very nicest application of expert evidence to this question of water conservation and so forth-I would infinitely prefer to have power in the Commonwealth to refer a matter of such vital importance to the Federal Court. You are going to establish that court at the greatest expense, composed of the most eminent men, men removed entirely from all political, and, we hope, all state influences. That is the one tribunal that can help us in this important matter, and unless the Federal Parliament have absolute power to remit it to them, our Constitution will contain a blunder. It is on this point that I require more light and knowledge.

Mr. BARTON (New South Wales). -

This debate has been so full, and the arguments on each side have been so thoroughly put forward, that I do not propose to detain the committee at any length. I rise mainly for the purpose of expressing my concurrence with the suggestion of Sir George Turner.

Mr PEACOCK. - Hear, hear; it is far the best.
Mr. BARTON. -

I do not think the differences are so wide that they cannot be thrashed out in friendly conference. I would not suggest that there should be any formal select committee, or that any number of representatives of each colony should be specified, because at a consultation of the kind suggested matters will not be tested by vote at all; it will be merely a case of Come, let us reason together." I would suggest, therefore—indeed I propose, if the committee agree with me, that it be left to each of the three delegates concerned to select the manner in which their colony should be represented at the conference, whether by one, two, three, or whatever number it may be. What is desired is that the collective views held by these representatives should be put forward, not that there should be any voting or any conflict, but that there should be a mutual understanding come to, and I have not interfered with the debate until the present, so far as to express concurrence with Sir George Turner's suggestion, because I held the hope that by letting the debate go on to what is probably its legitimate conclusion—and probably it has come to that now—we might save further argument hereafter. I think there will not be great difficulty in arriving at some conclusion among the representatives of those three delegations, which conclusion can then safely be adopted by the whole Convention. I think we have advanced a great deal further than the point at which we had arrived last night, because we have the admission from the honorable member (Mr. Holder) as I understand it, and he generally speaks very plainly, that the irrigation question is not a federal but a state matter; and I think it will not require very much argument, if one were disposed to argue now, to convince the Convention that that is so. The real question between us is this: To what extent are certain rivers navigable, and to what extent are they to be kept navigable? If so, what line can we lay down so as to prevent these powers of navigation on the one hand and of water conservation and irrigation on other that injustice should not be done on one hand or the other? That, is the question which awaits that conference which I hope will be held. It is because I think the matter can be put in that way that I do not anticipate any failure in the conference suggested. I am not disposed, looking at what we have to do in this consultation, to endeavour to solve any of the difficult questions which my honorable friend (Mr. Dobson) has just put. I was a little interested in that conflicts, which might be described in his own words almost as the battle of the billy and the spuds, but I do not think, when we try to resolve this matter into its original elements, that there is any great co-relation in the position of the states interested with regard to the flow of the water through other states and the position of individuals with regard to their riparian rights.
Mr. KINGSTON. -
There should be in a Federation.

Mr. BARTON. -
If that is to be the case in a Federation, that is to say, if we are to give the Federation at once control of the apportionment of the water, and convert into a federal matter that which the honorable member, (Mr. Holder) admitted to be a state matter -

Mr. KINGSTON. -
I think you misunderstand him.

Mr. BARTON. -
I understood him to admit it practically without qualification.

Mr. KINGSTON. -
No.

Mr. BARTON. -
The feeling I have about the matter is this: We do not propose to federalize the lands of the state. It is a question of hands off, and the territory of any of the states is not to be touched, except so far as it may be necessary to carry out a constitutional power given under this instrument. If you take away from a number of the settlers in New South Wales the use of the water, if you hand over to any authority the power to diminish the application of the water for the use of their land, it is practically saying to them that you are taking the control of their land also. This body of settlers, not inconsiderable now, and which we hope will become larger, because they inhabit land which with the proper application of water will be extremely valuable, have the right to say this: You are not federalizing the lands of New South Wales; we are inhabiting a portion of that territory which cannot be reasonably utilized without the application of the waters of these rivers. If you federalize the water you might as well federalize the land, for, as far as we are concerned, one goes with the other—one is useless without the other. That is the position they occupy. I put it to the common sense of the Convention whether that is not a position which must be conceded to be reasonable. We have met to frame a Federal Constitution. We have not met to make an amalgamation. Our purpose is to leave the various provinces in the first instance their territory, because that is the very kernel of the question. To take away their territory is to amalgamate. To leave them their territory is to federate, provided that you unite in all matters beyond that. The position taken up is this. We have met for the purpose of making a Federation which involves the retention of the soil by the individual states. The retention of the soil which borders on these rivers is only a retention in name, if you do not give us the use of the water by
which alone we can make that land available for our use-

Mr. ISAACS. -

Apply that to South Australia, too.

Mr. BARTON. -

Supposing you do apply it to South Australia, the question does not become a federal question, merely because one or more states are interested. If the line of demarcation in this matter is the retention of the soil, that must carry with it the means of the development of the soil. If we are right in saying, as we have hitherto said in this Convention, that the railways should not be taken over because they are the instrument for the development of the land, there is equal reason for saying that each state should have the means for the conservation of water and irrigation, as a provincial matter and not a federal matter.

Mr. GORDON. -

It is conceded there must be

Mr. BARTON. -

That is in order to prevent infringement of inter-colonial free-trade, because we make inter-colonial free-trade an absolute condition of the Federation, and we propose, therefore, that there should be no power to render nugatory that provision for free-trade by any conflict of railway or river rates. We must all concede that.

Mr. REID. -

We all concede that.

Mr. BARTON. -

We simply make that provision because we do not wish to give any one power to make inter-colonial free-trade nugatory. The question here is quiet distinct. Any consideration which might impel you to constitute some tribunal to deal with railway rates is a consideration which does not apply at all to the question of the use by the various states of their water. I am suggesting that some arrangement may be come to which will not interfere with the right possessed by individual states to carry out works for water conservation and irrigation. I am pointing out the position taken up by the settlers on the soil when it is proposed to deal with the use of the water, in order to show the extreme importance of this question to the representatives of New South Wales in the Convention. Honorable members will absolve me from making threats to the Convention. I have never been one of those who have said-"You must give us this or we shall have to go away, and it is no use going any further." I do not propose to say anything of that kind now; I simply propose to state what I know to be the facts of the case, leaving the rest to the judgment of
the Convention. If you say that you are not going to take away our soil, any colony whose soil it was proposed to take in any degree would at once retire from this Convention. I want to put the case to you whether it is not almost the same thing to say you are going to federalize the waters in these rivers? It might be possible for us to ascertain something of this sort: To what point this River Murray—I will not say also the Darling; that might be taken into consideration—is navigable, in order to maintain that navigability, not perhaps to extend it, but to deal with the existing conditions so as to be able to insure that any of the states through which the river flows shall have a reasonable distribution of the water. That is what we have been trying to suggest, and that is why I think the suggestion of the Right Hon. Sir George Turner is so good; because, looking at the matter from different stand-points, we find it difficult in framing these amendments to carry out what we all concede is a just principle. In order to enable the suggestion to be given effect to, I beg to move that the sub-section be postponed until clause 69 has been disposed of.

Mr. KINGSTON (South Australia). -

I support the suggestion which is made by the Right Hon. the Premier of Victoria, and any course which makes for the possibility of amicable agreement, rather than an affirmation of a principle forced by a majority on a minority of this Convention. At the same time, I would say to our leader that I think, to some extent, he misunderstands the remarks of my honorable colleague (Mr. Holder). I did not understand my honorable friend (Mr. Holder) to put it that he was prepared to concede to any colony an unlimited use of the waters of the rivers for the purpose of irrigation. What he did concede, and what I do not think has ever been disputed, was that the matter of irrigation works was a subject for provincial control and administration, but as regards the consumption of the water for that purpose, a regulation of the quantity to be taken by each state was a federal question affecting not only the state constructing the irrigation works, but other states lower down the stream. I merely rose to make this explanation.

The motion for the postponement of the sub-section was agreed to.

Mr. BARTON (New South Wales). -

I would now suggest, sir, that you do leave the chair, and that, in the meantime, the leaders of the three representations should meet and arrange the basis for this consultation. It can be arranged in this chamber at once. I beg to move that the Chairman do now leave the chair, report progress, and ask leave to sit again to-day.

The motion was agreed to.

Progress was then reported, and leave obtained to sit again at two o'clock.

[The President left the chair at twelve minutes to one o'clock p.m. The
Convention resumed at two p.m.]

The Convention again resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion was resumed on clause 52 (Powers of the Parliament).

Mr. BARTON (New South Wales). -

I had it in my mind to suggest a new sub-section to follow sub-section (31), and to be called sub-section (31A). Honorable members will notice that clause 86 provides that all lands and other property used in connexion with any department of the public service, the control of which is taken over by the Commonwealth, is to vest in the Commonwealth. But that is only in respect of those departments which are taken over, and it is only at the time of taking over. Further needs are not provided for in any way.

Mr. ISAACS. -

Of these departments?

Mr. BARTON. -

No, of the Commonwealth. The Commonwealth has no power under the Constitution except as conferred by that clause.

Mr. ISAACS. -

Will not sub-section (37) of clause 52 cover it?

Mr. BARTON. -

We thought of that. The question is whether it is sufficiently clear that that provision would give the Commonwealth power to legislate for the resumption of lands.

Sir GEORGE TURNER. -

There is another clause relating to the acquisition of any part of the territory of a state.

Mr. BARTON. -

There is clause 53. Then there is clause 105, which gives the Parliament of a state power to surrender any part of the state to the Commonwealth. There is no express provision in the Constitution for the acquisition by the Commonwealth of any property the acquisition of which might become necessary. It has been suggested to me that subsection (37) of clause 52 might give a sufficient power of legislation for that purpose, but there is a doubt on the subject. I would suggest that the following new sub-section be inserted after subsection (31):-

The acquisition of property on just terms from any state or person for the purposes of the Commonwealth.

I would like to hear the views of honorable members as to whether they think sub-section (37) is sufficiently comprehensive.
The CHAIRMAN. -

Does the honorable member move the new sub-section? There must be something before the Chair.

Mr. BARTON. -

I will move it pro forma. I can withdraw it afterwards if discussion shows that it should be withdrawn.

Dr. QUICK (Victoria). -

I was about to draw attention to the matter to which the leader of the Convention has referred. In the Constitutions of Canada, Switzerland, and the United States express power is given for the acquisition by the Federal Government of lands for public purposes. It has been suggested that the general power given would cover this, but I do not think that that is so. At any rate, in the United States Constitution there is a provision that the Congress shall have power to exercise authority over all places purchased by the consent of the Legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful business. Under the Constitution of Switzerland, on payment of a reasonable indemnity, the Confederation has the right to use or acquire drill grounds and buildings intended for military purposes within the Cantons, together with the appurtenances thereof. It is so also in Germany, where the Constitution says that the right to construct fortresses within the territory of the empire shall belong to the Emperor, who shall ask for the appropriation of the means required for that purpose, if not already included in the regular appropriation. In Canada, the Constitution provides:

The several provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to resume any lands or public property required for fortifications or for the defence of the country.

In these Constitutions there is a general section giving express powers for the acquisition of property which may be required for the purposes of the Commonwealth. In this Bill there is only a power to take over existing buildings.

Mr. BARTON. -

And property at present in use.

Dr. QUICK. -

Yes. There is no power to acquire the land of any state, say, for the purposes of a federal court-house or a federal custom-house.

Mr. ISAACS. -

If that is necessary, for the purpose of the Federal Judicature it is all
included in sub-section (37).

Dr. QUICK. -

It is very doubtful whether, a general provision of that kind would give this express power. Then there is no machinery in that clause for determining the mode in which the Commonwealth is to acquire the land of a state.

Mr. BARTON. -

Clause 53 does not give a power for the acquisition of land. It simply sets out that authority shall be exercised over it when it is acquired.

Dr. QUICK. -

The Commonwealth would be crippled in its future operations if express power were not given in the manner suggested.

Mr. GLYNN. (South Australia). -

I think that the new sub-section should be inserted. I had intended moving a similar amendment in connexion with clause 53. Under sub-section (2) of that clause, the exclusive power is limited to any territory acquired by surrender from the states, but no power is directly given to acquire territory, or, having acquired it, to exercise exclusive jurisdiction over it. According to the American decisions, subsection (37) of clause 52 would not cover what is required. In Sheppard's Constitutional Text Book reference is made to a provision in the American Constitution similar, to sub-section (37), and it is stated-

This clause does not in terms grant any new power or enlarge or diminish any of the powers elsewhere granted. It simply authorizes Congress to make use of such particular means as may be necessary or proper in order to execute the general powers conferred by the Constitution upon the Federal Government or any department or officer thereof.

There being no power given to acquire territory, clause 53 would not cover the ground that is sought to be covered by the proposed new sub-section.

Sir GEORGE TURNER (Victoria). -

I am not at all satisfied that it would be advisable to insert this new sub-section. It comes on us somewhat as a surprise, and I would like to have further time to consider the effect of it. It might enable the Commonwealth to run the states into enormous expenditure. The leader of the Convention will see that whatever property has to be acquired will probably be acquired out of states money. The states have to collect a certain amount of Customs-at least the Commonwealth will collect a certain amount of Customs, and the surplus will be handed over to the states. If we increase these powers of purchasing property we may enable the Commonwealth to incur enormous expenditures. I think it is shown by some notes I have with
regard to Canada and other places that that has really been the result of a power of this kind. If it were so here the states Treasuries would be the sufferers.

Mr. OCONNOR. -

Their functions are much more extended.

Sir GEORGE TURNER. -

I know that, but still the honorable member will recognise that where there is a power, the body having that power would probably extend it to its utmost limit. If they go a little further than we intended, or a little beyond that strict reading of the Act, how are we to stop them?

Mr. BARTON. -

One answer to that is that if you give this power to acquire landed property on just terms, you would have the compensation regulated by the provisions of an Act which would probably involve arbitration or the verdict of a jury. If, on the other hand, you allowed the acquisition to be carried out by contract, as it would have to be without a clause of this kind, it would be more expensive, and would entail a greater diminution of the surplus returned to the state.

Sir GEORGE TURNER. -

I should object to the use of the words just terms" on the ground that they are not proper words to put into the Constitution. We assume that the Federal Parliament will act strictly on the lines of justice. But what I desire to say is that this has come upon us a surprise. We did not know that this amendment was to be moved, and we have had no opportunity of considering its effect. The object of the leader of the Convention may be a good one, but I would urge upon him to allow the matter to remain in abeyance If he would intimate that he would either recommit the clause or deal with it on the report, and he would in the meantime circulate the amendment he would give us an opportunity of making inquiries and ascertaining what the probable effect of the amendment would be. We might then be able to meet his views. I would urge him not to press the new sub-section at the present time, because that would be rather unfair to us, seeing that we have not had an opportunity of considering it.

Mr. I.A. ISAACS (Victoria). -

I would join with Sir George Turner in asking that a little time be given for the consideration of this amendment. I would draw Mr. Barton's attention to the fact that acquisition would mean compulsory acquisition—that is, acquisition by the Commonwealth against the will of the state, which would reverse the principle that has been adopted in the Bill that a
state should not be compelled to give up any portion of its territory. Clause 105 provides that the Parliament of a state may at any time surrender any part of the territory of that state to the Commonwealth.

Mr. BARTON. -

That clause requires a separate Act for every acquisition of territory by the Commonwealth.

Mr. ISAACS. -

Yes. What I wish to point out is that we must be careful that we do not in this rough-and-ready fashion bring about the reversals of principles already laid down in the Bill. Clause 53 embodies a provision which exists in the United States Constitution:-

The Parliament shall, subject to the provisions of this Constitution, have exclusive powers to make laws for the peace, order, and good government of the Commonwealth with respect to the following matters:- . . . . . . . . .

II. The government of any territory which by the surrender of any state or states, and the acceptance of the Commonwealth, becomes the seat of government of the Commonwealth, and the exercise of like authority over all places acquired by the Commonwealth, with the consent of the state in which such places are situate, for the construction of forts, magazines, arsenals, dockyards, quarantine stations, or for any other purposes of general concern.

That provision makes the fullest recognition of the right of the Commonwealth to acquire lands, with the consent of the states, for any purpose of general concern. If we are to reverse that position we ought not to do it hastily, and if it is the desire of honorable members to insert this sub-section, the Bill must be altered very materially in several respects. For these reasons, I would ask that a little more time be given to us for the consideration of the matter.

Mr. BARTON (New South Wales). -

I shall be perfectly willing to adopt the suggestion which has been made upon the understanding that at some future time I shall propose a sub-section similar to this, or the insertion of a new clause of similar effect in some other part of the Bill. It has been suggested to me that the sub-section might be inserted now, but upon the understanding that I shall assent to a recommittal if there is a desire on the part of honorable members to consider the matter further. The 2nd sub-section of clause 53 is not intended to confer powers at all. The sub-section only gives to the Federal Parliament exclusive powers of legislation in regard to the government of territory which has been acquired by the Commonwealth for military and other purposes.
Mr. ISAACS. -

Taken in conjunction with sub-section (37), it would put the federal authority in the same position as the federal authority of the United States occupies.

Mr. BARTON. -

When you hand over such powers as are included in the naval and military defence of the Commonwealth, you unfairly and unwisely restrict those powers, if you make it necessary to procure separate legislation for the acquisition of any lands required for the purposes of defence, because you make the federal authority subject to the dictation of the state authority in regard to each transfer. This convinces me that power must be given to the federal authority not to acquire lands compulsorily, but to legislate upon the subject as I have suggested in the sub-section. However, if honorable members prefer that the sub-section should be withdrawn, I shall consent to that course upon the understanding to which I have already referred.

The sub-section was withdrawal.

Sub-section (32)-

The control of railways with respect to transport for the military purposes of the Commonwealth.

Amendment suggested by the Legislative Council of New South Wales-

After transport" insert but only."

Mr. BARTON (New South Wales). -

Might I suggest that the insertion of these words is unnecessary? The sub-section originally read-

The control of railways with respect to transport for the purposes of the Commonwealth.

It was then sufficiently clear so far as the interpretation which a court of law would put upon it was concerned, because the word transport" is to be accepted in the ordinary sense of the term-the transport of arms, men, and munitions of war generally. But it was thought necessary in Sydney to make the wording clearer for the benefit of laymen who might read the Bill, and therefore it has been suggested that the words naval and military" should be inserted.

The amendment was negatived.

Mr. BARTON. -

I beg to move that the words naval and be inserted before the word military.

The amendment was agreed to.

The sub-section, as amended, was agreed to.
Sub-section (33)-

The taking over by the Commonwealth, with any consent of the state, of the whole or any part of the railways of any state or states upon such terms as may be arranged between the Commonwealth and the state.

Mr. GLYNN (South Australia). -

I wish to move that the words with the consent of the state, be omitted. I am not going into the railway question again, because it has been thoroughly argued in both Adelaide and Sydney. What the Convention seems to have negatived is the proposal to provide in the Constitution that the railways shall be taken over by the federal authority. I think that, without going so far as that, the Federal Parliament might be armed with the power to take over the railways, even though some of the states might not consent to it. As the Bill stands, if five of the colonies federated, and three of them were willing that the railways should be put under federal control, the other two could say-We will not allow it.

Mr. ISAACS. -

I think the words or states should come out.

Mr. GLYNN. -

I wish to strike out the words I have quoted. The position then would be that the Federal Parliament would say-We will take over the railways. Under the Bill as it stands the railways cannot be taken over except with the consent of all the states. Any one state could object to that and say-Our railway system must bot be taken over. Among the appendices to the Proceedings of the Sydney Session of the Convention there was a report by the Chief Railway Commissioner of New South Wales, in which that gentleman agrees with the Railways Commissioner of Victoria, that it would be exceedingly improper to take over any of the railway systems without taking them all over.

Mr. BARTON. -

Would the Federal Parliament take over one of the narrow-gauge lines of Northern Queensland, which do not connect with any inter-colonial system?

Mr. GLYNN. -

That is a matter of detail, but I cannot see that it would cause any harm. Most of the railways in existence are feeders to the main trunk lines, and there could be no harm in taking over one or two lines not connected with the main lines.

Mr. FRASER. -

There would be difficulties in the way of a change of rolling-stock, and in other directions.
Mr. GLYNN. -

The federalizing of the railways would soon get over those difficulties. One of the results of this step would be that the suggestion of the late Mr. Eddy, that there should be an abolition of the break of gauge, would be carried out. His proposal was that we should agree at once upon some uniform gauge—say the 4ft. 8 1/2in. gauge—and order all rolling-stock with a view to its ultimate accommodation to that gauge. When you had sufficient rolling-stock the rest of the work could be done almost in a week, and the change would not nearly so expensive as some honorable members anticipate. If my amendment is agreed to I shall propose further amendments, with a view to making the clause read as follows:

The taking over by the Commonwealth of the whole of the railways of the states, upon such terms as may be arranged between the Commonwealth and the several states.

Mr. WISE (New South Wales). -

I shall support the amendment, as I am one of those who were originally in favour of the federalizing of the railways, because my conviction as to the advisability of that course has been strengthened by the discussions which have taken place during the last twelve months. I do not propose to renew any old debate or to awaken old controversies, but I hope that a division will be taken upon this amendment, so that we may see if there has been any development of federal sentiment in this direction. I am quite content to leave things as they are, because I am confident that within five years of the accomplishment of federation the separate railway systems of the colonies will be found so inconvenient and intolerable, that the natural trend of events will complete the federalizing of the various lines. For these reasons, and without further remark, I shall support the amendment.

Mr. SYMON (South Australia). -

I shall be found supporting the amendment, because I always have been, and still am, entirely in favour of the federalizing of the railways. The committee, however, have dealt with this question, the general feeling of the Convention being that it would be undesirable at the present time to introduce a provision with that object into the Constitution which we are framing. More or less of a compromise was agreed to in the shape of sub-section (33), which gives the Commonwealth power to take over the railways either in whole or in part with the consent of the state. Pursuing a sentiment I have always entertained, I think we should trust the Federation. We must always remember that in deciding this question the Federal Parliament will have the advantage of the opinions of representatives from every colony, and I am confident that justice will be done by them in the negotiations as thoroughly as if the consent of the states was obtained.
severally. It seems to me that it is to whittle down the question of the subsequent federalizing of the railways to a very small matter if we are not prepared to allow the Federal Parliament, with the assistance of the representatives from every colony, to deal with this subject. If the amendment is resisted, I think it will be upon those who resist it to give reasons why the Federal Parliament should not be trusted with this power. I think we are all agreed that the probability is that in the future the railways will be federalized.

Mr. ISAACS. -

Is it proposed that the Commonwealth may c

Mr. SYMON. -

The effect of the amendment will be to leave it to the Federal Parliament to determine whether the whole or any part of the railway systems shall be taken over. Now my honorable friend (Mr. Glynn) proposes to move a subsequent amendment to withdraw the part of the sub-section with regard to taking over any part of the railways.

Mr. WISE. -

I could not support that.

Mr. SYMON. -

Nor could I, for this reason-I think we may in this matter have to go step by step. It may-I think it must-become imperative before many years have passed away that the great trunk lines should be federalized, and it seems to me to be insufficient for us to make a provision which will prevent the federal authority from taking over the great trunk lines, simply because the states are opposed to the taking over the whole. It may be that in Victoria-as my honorable friend (Mr. Barton) has said is the case in Queensland-there are many railways that are so disconnected with the general federal system, that it would be undesirable or inconvenient or not particularly beneficial that they should be taken over.

Mr. ISAACS. -

Because they would not pay well.

Mr. SYMON. -

I do, not think we should assume that the Federal Parliament will act upon that principle. But if they did, the representatives of the colonies would be there to see that the interests of their various colonies were looked after, and I think that we may rest assured in such a matter-which everyone of us recognises to be, although perhaps impracticable now, of real federal concern in the interests of all-that it is right that we should make provision so that the main trunk railways may be taken under general
federal control in some way or other. We should devise some means whereby the Federal Parliament should have a free hand—that Parliament being ourselves in Parliament assembled—to deal with the interests of every state as a whole, and with the interests of the nation as a whole. We shall then be doing a good thing. Of course, it would be unjust in the last degree that railways should be picked out and those which are paying taken over, whilst those which are not paying are not taken over. But, I venture to think that the representatives of the different colonies concerned would take good care that the Parliament did not take any such step; and, more than that, the sense of justice of the people of the nation would prevent any such thing taking place. But I say: Let us leave this to the Federal Parliament in the broadest possible way. Look at the barriers you are putting up if the Federal Parliament has to ask the consent of a state to the taking over of any of its railways. You are throwing the whole thing into a contest, perhaps about some particular railway which has become a matter of very exacting bargain. Justice will be done by leaving out the words with the consent of the state." Leave it to the federal authority altogether, and let them take over all the great trunk lines, or if they think proper the whole of the lines. My own view is that the whole of the railways should be federalized at the earliest possible moment. It has been suggested-"Would you apply that to our suburban lines, and so on?" I say-"Yes." There is no more reason why the federal authority should not control every line of railway throughout the length and breadth of Australia than that these lines should be under the control of the states.

Mr. ISAACS. -
   That is a long way from state rights.

Mr. SYMON. -
   It does not affect state rights. Let the whole railway system be taken over.

Sir GEORGE TURNER. -
   It would affect the bonds of the states.

At any rate, Mr. Glynn's amendment is not that. We are not suggesting that a power of that sort should be enforced; we are not asking for a declaration of that kind, but that it shall be left to the Federal Parliament, consisting of representatives of all the colonies, to deal with this question.

Sir GEORGE TURNER (Victoria). -
   This sub-section provides for-
   The taking over by the Commonwealth, with the consent of the state, of
the whole or any part of the railways of any state or states upon such terms as may be arranged between the Commonwealth and the state.

It leaves the whole matter for a bargain to be made between the Commonwealth and the state. The Commonwealth can, if it choose, take over all the railways of a state upon such terms as may be agreed upon, or it can take over a part of them upon such terms as may be arranged. But if we carry this amendment, we are going to give power to the Commonwealth to take over the railways of one state which may be paying, and leave the railways of another state which may not be paying; or to take over a portion of the railways of one state-the trunk lines-and leave the cockspurs (which are the unpayable portion) with the poor unfortunate state. The honorable member (Mr. Symon) desires to take over all the lines of the state, but the honorable member (Mr. Glynn) says "Oh no, we will only take over the trunk lines." Now, if you are to take over the trunk lines and leave the cockspurs, what about the management? You would have the federal authority managing the main lines, and the local bodies managing the smaller portions, although they must necessarily use the main lines for the purpose of working the feeders, or rather, as we find them here, the suckers. I can understand the proposal to make it compulsory for the Federation to take over the whole of the railways, good, bad, and indifferent.

Mr. SYMON. -
I don't object to that.

Sir GEORGE TURNER. -
But other members naturally will. The railways of New South Wales, according to their published reports, pay very well. The railways of Victoria at the present time do not pay. In a few years' time we hope they will. At the present time they pay 3 per cent., whereas we are paying 4 per cent. on the money we borrowed to construct them. As time rolls on we shall be reducing our interest and increasing our earnings, and we hope that then we shall be making a profit on our railways. The great objection to the proposal is: Are we going to take over the existing railways merely, or are we going to take over also the building of future railways? If we take over existing, railways merely, are we to leave the states to build new railways as they think fit to compete with existing lines? If, however, we are going to take away from the state the power of building new railways we take away the chance of developing the state's territory, because it is, well known that a state may with its eyes open build non-payable lines for a very good purpose-the purpose of developing its territory.

Mr. HOLDER. -
We had better leave the sub-section as it stands.
Sir. GEORGE TURNER. - We build many lines with our eyes open knowing that for a period of years they cannot pay; but if we did not build them we should have to leave a large portion of our territory uninhabited. Therefore, it is better for us to settle our country, and by settling it, although we lose a little upon our railways at first, we ultimately derive large profits from the people who settle on the lands, cultivate them, employ labour, derive a large amount of money from our customers, and pay a considerable sum into the state revenue. The proposal now made seems to me to put us in a false position altogether. Let us either go the whole length and say that we are prepared to compel the Commonwealth to take over the whole of our railway systems-let us do that with our eyes open, knowing that it means that in the future railway construction can only be carried out by the Commonwealth-and I am afraid that if we attempt to go to that length we shall find a very large number of people in the different colonies who will at once say: We are not going to intrust the power of opening up and developing the State to this federal body, which function is no part of their duty"; let us, I say, either do that, or retain the sub-section as it stands in the Bill. This sub-section appears to me to go the full length that we ought to go at the present time. It gives power to the Federal Parliament to make a bargain with any state to take over the railways of that state or a portion of them. I fail to see why we should go any further, unless we go the full length and say-"We are prepared to make it compulsory for the federal authority to take over all railways, good, bad, and indifferent, present and future."

Sir JOHN DOWNER (South Australia). -

I agree with very much of what Sir George Turner has said, and also with what one of the newspapers-quoting some one else-has said, that it is objectionable to overload the Bill. I say, either take over all the railways with all responsibility attaching to them, or else say that you will only take over the railways the states agree to give over to the Federation. I am perfectly sure that the states would not agree to the Commonwealth having power to take what railways it thinks fit. I am quite sure that the states will not agree that the Commonwealth should have the physical power-not that they would do it-of taking over those railways which they think would pay and rejecting those which they did not like. It appears to me that there is no way in between. You have either to take the railways over absolutely-that may be either a good thing or a bad thing; at all events you know what you are doing-or retain the sub-section as it stands. If you give the Commonwealth the power of choice of taking over what railways it pleases without consulting the states concerned, it might elect to take over some
particularly well-paying railway in Western Australia. I know that they would not do it as a matter of fact, but they would have the physical power to take over some well-paying railway which had no connexion with the main trunk lines of Australia, and for no other reason except that it was exceptionally good as a revenue producing line.

Mr. HIGGINS. -

Then they must pay more for it.

Sir JOHN DOWNER. -

We are really dealing in this amendment with a great many other amendments. If you are going to take over the whole—if you are going to strike out of the sub-section the words with the consent of the state" you will have to strike out also the rest of the words down to the word terms," because the object of Mr. Glynn will, it appears to me, be defeated by leaving in all the words about terms which may be arranged between the Commonwealth and the state.

Mr. HIGGINS. -

But Mr. Glynn wants to strike out those words or else to alter them.

Sir JOHN DOWNER. -

I only want to understand my honorable friend's position, because, as he knows, I would not willingly misrepresent him. I understand that what he means is to strike out the words upon such terms as may be arranged." So that the sub-section will then read—

The taking over by the Commonwealth of the whole or any part of the railways of any state or states.

What my honorable friend wishes is for the Commonwealth to take over such railways as it thinks proper, leaving the terms on which they are taken over to be settled by arbitration. I do not agree with that either. You have either got to provide—and it is a matter worthy of a great deal of thought whether it may not be worth while to provide—for taking over the whole of the railways, or you have to say, if any are to be taken over at all, that the state must be consulted as to each particular taking over. There is no betwixt and between—you have either to do one or the other. I have often thought that it would be better to take them all over.

Mr. FRASER. -

It is really impracticable.

Sir JOHN DOWNER. -

I see what difficulties would arise in respect to taking them all over at present, because it would involve a proposal to the effect that the whole of the railway systems of Australia shall be conducted by the Central
Government.

Mr. HOLDER. -

Then the states could not develop their territories.

Sir JOHN DOWNER. -

Then, as my honorable friend says, the states could not develop their territories. I am not prepared at the present moment to think that the states are sufficiently developed to justify, perhaps, any of them in saying that no further internal development is possible, and that there are no other matters, so far as railways are concerned, exclusively for themselves to deal with. As far as South I look to more than the present.

Mr. BARTON. -

It is a monetary detail though.

Mr. SOLOMON. -

What about taking over the debts which paid for those railways?

Sir JOHN DOWNER. -

Exactly; they must, if they are going to take over the railways, take over the debts as well; that is undoubtedly.

Mr. ISAACS. -

They must deal with the railways as a whole.

Sir JOHN DOWNER. -

Of course, they must not only take over the present railways, but take over all future railway development; and, if they take over future railway development, they will have to take with it all responsibilities connected therewith. They will have to take over, at the same time, all expenditure connected with the railway development of every colony, present and future. I wish it could be done; but I am quite sure that it will not. I am anxious to see Australia federated; and, therefore, I do not desire to insert conditions which, I think, will certainly prevent federation being brought about. This particular sub-section, unsatisfactory as it may be to myself, and unsatisfactory as it is to a great many of my friends, still will, I think, prevent any extension of feeling throughout Australia such as would handicap the great cause of federation. There are only, as I have said, two things to do—you have either to take this sub-section as it is, or to take over the present and future railway systems of Australia. I am quite sure that we shall not carry federation with such a condition as that which is now proposed. Is it worth our while, then, to spend our time in discussing a proposal which will undoubtedly so handicap the sub-section as to make federation impossible for many long years to come? I believe the Commonwealth will take over the railways. I believe they would find it impossible to
carry on their business without taking over the railways; but they will be in a better position to understand the conditions on which they can take them over than we are now. They will have all the materials before them; they will know their necessities; they will know what can be gained and what can be lost. Therefore, I do not think we can do better than, when conferring power on the Commonwealth respecting the rights of each state, to say to the Commonwealth-"You can take over the railways, but you shall not take them over without the consent of the state which is concerned." This sub-section has been a matter of much consideration with me, and a matter of the greatest doubt; but both in the cause of what is fair and just, and, above all things, in the cause of what is expedient, in the greater interests of federation, I hope the sub-section will be passed exactly as it stands.

Mr. Howe (South Australia). -

I will follow the advice tendered by my honorable friend (Sir John Downer). I do not intend to take up the time of the Convention unnecessarily, but this is my position: If the federal authority takes over the whole of the railways, I ask will they insist upon every future line of railway that is constructed in any individual state being placed under the supervision of the central authority, or will they allow the separate states to develop their own individual territory? If the federal authority takes over the whole of the existing railways of Australia, I do not see how any individual state could construct another mile of railway unless under the authority of the Federal Parliament. Now, in the present state of railway development in Australia, this would prohibit the necessary opening up of the individual states by railways. Consequently, unless we would have carte blanche to construct railways in our individual states, without appealing to the federal authority for power to do so, I could not consent to this amendment. Take the case of South Australia. South Australia has a territory three times as large as that of the parent colony, yet, so far as railway development is concerned, we are simply in our infancy, and should we give ourselves away as a state, should we give up our state rights to such an extent that we would have to appeal to the Federal Parliament before we could construct a railway, perhaps to some mining district that had recently been discovered? We know how difficult it is, even with the knowledge possessed by those legislating for a particular state, to pass a development line through Parliament in our individual states. How much greater would be the difficulty if we had to get a Bill passed in the Federal Parliament.

Mr. Higgins. -

Are you not assuming that Mr. Glynn wants that? He has not said that he
does so.

Mr. HOWE. -

Does it not follow as a matter of common sense that, if the federal authority takes over the whole of the railways of a state, they would not permit that state to make other lines unless the Bill passed through the local Legislature were indorsed by the federal power? Such a proposal as that suggested by Mr. Glynn would impede federation for a time, instead of assisting it, and for that reason I intend to vote against it.

Mr. FRASER (Victoria). -

I am sorry that we have not accepted this sub-section as it stands in the Bill. If we are going to discuss over again clauses that have been discussed repeatedly, I do not know when we shall finish. I submit that if the federal authority will take over the railways, then the federal authority must take charge of all the extensions, and, of course, that is utterly impossible. The people would cry out like one man against such a thing. There are many parts, even in this colony, where we are overdone with railways, that require railway extensions. There are more parts in New South Wales, and still more in Queensland,

that require railway extensions. They are extending railways very largely in Queensland advantageously, and there are parts of New South Wales where they can also carry out railway extension advantageously. Now, it would be intolerable that those local extensions should be subject to federal discussion. The members of the Federal Parliament would not be conversant with the merits of the case. It is for the state to develop itself. The lands belong to the state, and the railways go with the land. So I say also of the waters to some extent. Therefore I hope that this Convention will not spend much time in debating over again what we have already adopted and have decided upon. This sub-section is good enough as it stands, and I hope we will leave it as it is.

Mr. GLYNN (South Australia). -

In reply to the suggestion of the Right Hon. Sir George Turner, who took a very fair view of the question, I would like to say a few words. His suggestion was that we would be impeding the operations of a state subsequently in developing certain parts of a district if this amendment were carried. Now, I think that does not follow, if you do not deny them the power of asking the Federal Parliament to construct any line, the Federation either taking the risk itself or being guaranteed by the state.

Mr. FRASER. -

Then there would be divided management, which would be absurd.

Mr. GLYNN. -
Certainly not; the honorable member misunderstands me. propose that railways for the future should be constructed by the Federation. But the Federation might either say itself: "We will construct this line," or the state might say that, although the line would show an apparent loss at first, it regarded the line as a development line, and was willing to give a guarantee to pay the amount between what was realized on the line and what was required to make it pay. The state might regard that as the price paid for a development railway. In Switzerland the cantons have relegated the power of constructing lines to the federal authority; but they send in requisitions for lines, and guarantee the federal power, which carries out the lines on those conditions.

Mr. FRASER. -

The case is quite different in Switzerland; there are millions travelling there.

Mr. GLYNN. -

We hope Australia is not going to be stagnant—that the possibilities of the future do not end with the passing of this Bill. If so, we had better stop at once dealing with these matters. I think I am entitled to rely on what Mr. Oliver and Mr. Mathieson have said. They state that the proposals for an Inter-State Commission will probably lead to great difficulty in the development of railways. They do not approve of an Inter-State Commission. They say that the conditions in America are entirely different, as any one will admit who considers the fact that, while here we have only 7,000 or 8,000 miles of railway, in America they have some 200,000 miles in 44 states. Mr. Eddy suggested taking over the railways, and in a report which was published in the Sydney Daily Telegraph while the Convention was sitting at Sydney, the solution of the financial difficulty that was offered by the Statistical department was the taking over of the railways and effecting consequent savings.

Mr. MCMILLAN. -

The proposal was very different; it was to have separate book-keeping for each state.

Mr. GLYNN. -

That is purely a matter of machinery, but Mr. Eddy's suggestion, as published in the Daily Telegraph, was to have central control, with local management acting under it. Mr. Eddy wanted to have one system of management applicable to the whole of the railways of the continent, and one way of obtaining that would be to give the complete control and ownership of the railways to the federal body. I would ask, therefore, that the words with the consent of the state" be struck out.
Mr. GRANT (Tasmania). -

I very much regret that objections have been made to the proposal of the representative of South Australia (Mr. Glynn). It is purely a matter of drafting, it seems to me, and his proposal would make the sub-section read very much better. I think we should leave it to the Federal Government to arrange terms with the state. It seems to me that if the words with the consent of the state" and the words or any part" were left out, the sub-section would be in every respect more complete and distinct, and every purpose would be gained which has been urged by the various honorable members who have spoken. There can be no doubt that it would be utterly impossible to satisfactorily take over merely a part of any railway system. If a railway system in any colony be taken over it must be taken over in globo. It would not be possible to discriminate between certain portions of a system and the whole system. Therefore, I think that the words or any part" should certainly be left out. Then with regard to the terms on which the railways would be taken over, the subsection states distinctly that it is to be upon such terms as may be arranged between the Commonwealth and the state." There are two parties to every bargain that is made, and it would be for the Commonwealth and the state to come together, and to adjust the terms on which the railways of the various states were taken over, those railways being remunerative in different degrees. Of course, the terms on which they would be taken over would have reference to the remunerative character of the traffic; and, therefore, I can see no reason whatever why this sub-section should not be passed with the alteration brought forward by Mr. Glynn.

Mr. HIGGINS. -

Do I understand that you would have arbitration if they could not agree?

Mr. GRANT. -

I do not think they would be likely to disagree. The matter would be dealt with from a purely business point of view. The remunerative character of each railway is shown in the annual reports. There is not a fraction of a copper concealed; and, therefore, an absolute calculation could be made of the value of the railways to the Commonwealth as against the state. I do not think that the clause could be framed in a clearer or better manner than that suggested by Mr. Glynn, in order to do justice as between the respective states. The next sub-section deals with the question of the construction of railways, and the extension of such railways as have already been constructed. Now, I see no difficulty whatever in that-not the slightest difficulty. There are various financial ways for extending railways already in existence and for constructing new railways. I can easily
conceive that a state would be willing to

Mr. FRASER. -

That would be arranging for private companies' railways and Government railways.

Mr. GRANT. -

Any state or the Commonwealth could give up a certain portion of land for the construction of a new line or the extension of an existing railway; or, on the other hand, it might be done by the state undertaking to guarantee the payable character of the railways that were to be constructed or extended—by, in fact, subsidizing the Commonwealth as against the state. Sub-section (34) seems to provide all the necessary machinery for that, so that I see no difficulty in the matter. The only thing that I see that is objectionable is the wording in the 33rd sub-section as it stands—"with the consent of the state" and or any part." If those words were eliminated

I think that every objection of every honorable member who has spoken would be adequately met, and the drafting of the Bill would be materially improved.

Question-That the words with the consent of the state" proposed to be omitted stand part of the sub-section-put.

The committee divided-

Ayes ... ... ... ... 31
Noes ... ... ... ... 14
Majority against the amendment 17

AYES.
Abbott, Sir J.P. Isaacs, I.A.
Braddon, Sir E.N.C. Kingston, C.C.
Briggs, H. Leake, G.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Cockburn, Dr. J.A. Lyne, W.J.
Crowder, F.T. McMillan, W.
Dobson, H. Moore, W.
Douglas, A. O'Connor, R.E.
Downer, Sir J.W. Peacock, A.J.
Forrest, Sir J. Quick, Dr. J.
Gordon, J.H. Reid, G.H.
Hassell, A.Y. Solomon, V.L.
Henning, A.H. Venn H.W.
Holder, F.W. Teller.
Mr. BARTON (New South Wales). -

This amendment is scarcely necessary. The sub-section is quite clear without this proposed addition. It is only a matter of adding words. As between the Commonwealth and the state, I suppose the consent of the state and of its people can scarcely be expressed except by Act of Parliament.

Mr. HIGGINS. -

Government Gazette and Governor in Council.

The amendment was negatived.

The sub-section was agreed to.

Sub-section (34)-

Railway construction and extension with the consent of any state or states concerned.

Amendment suggested by the Legislative Council of New South Wales-

That after the word extension," the words but only" be inserted.

The amendment was negatived.

Mr. DEAKIN (Victoria). -

I wish to draw attention to the word concerned." I have already consulted the leader of the Convention, and pointed out that the word lacks clearness and definiteness. It is quite possible that a state might conceive itself to be concerned, although no part of a proposed railway touched its territory, and it might be some distance from the territory. What was originally intended, I think, was that the consent of a state should be necessary if the line proposed to pass through it or touch it. If it is intended to enlarge the scope of the subsection, so that some other state besides the one in which the railway is to be made should have the right to object, that should be distinctly expressed.

Mr. BARTON (New South Wales). -
I quite agree with my honorable friend. I think it is really a matter of drafting. I will take all that the honorable member has said into consideration, and see whether we cannot reduce the clause to something like the form which has been suggested by the honorable member (Mr. Isaacs).

**Mr. WISE (New South Wales).** -

I trust the Drafting Committee will not amend the clause in any way which will make it narrower. It is the very width of the word concerned that is its recommendation.

**Mr. DEAKIN.** -

Every state would be concerned.

**Mr. WISE.** -

Precisely. Suppose the Federal Parliament, for any reason, agrees to construct a railway wholly within the territory of one state, which would have the effect of diverting the traffic of a neighbouring state, the neighbouring state would be highly concerned that the federal expenditure should not go to create a competing railway system, and it should have the power of protesting.

**Mr. DEAKIN.** -

You cannot prevent them from protesting.

**Mr. WISE.** -

I think they should have more than the power of protesting.

**Mr. DEAKIN.** -

Then you will have to pass a Railway Bill, not through one Parliament, but all the Parliaments of the states.

**Mr. WISE.** -

Exactly so. In the last division I felt the impracticability of giving federal control and the power to construct any railway.

**An HONORABLE MEMBER.** -

Why not go further, and prevent a state from constructing any railway?

**Mr. LYNE (New South Wales).** -

The remarks of the honorable member (Mr. Wise) go to show that by retaining the word concerned" he really wishes to nullify the division just taken. That was to prevent railways being handed over to federal control. I am very glad the honorable member (Mr. Deakin) has called attention to this word concerned," because it will have the effect that the honorable member (Mr. Wise) says it will have, that is to make every state Parliament interested in the construction of almost any railway, or at any rate any railways near its borders.
Mr. WISE. - Any railway constructed by the Federal Parliament.

Mr. LYNE. - I therefore think that the clause should be made more explicit, so as to express the view taken by the Convention up to the present time, that we are not going to place the state railways under federal control.

Mr. WISE. - If the honorable member's view is carried out the Federal Government might construct a railway to the border at Wentworth, and the New South Wales state Parliament would have no right to a voice in the matter.

Mr. LYNE. - I do not think the clause will have that effect. My object is to support what has been already said, that the railways in the various states shall not be interfered with without the consent of the individual states. We should not be obliged to go to any other state to get its consent to the construction of a railway within our own borders.

Mr. BARTON (New South Wales). - There seems to be really a question involved in this which ought to be decided by the Convention. Some honorable members have expressed the opinion that it would not be right, without the consent of a particular state, that federal money should be spent in making a railway in another state, or to divert the traffic of that state. I must say I am inclined to the opinion of the honorable member (Mr. Deakin) and the honorable member (Mr. Isaacs) that it is better to determine this point at once rather than to leave it to the Drafting Committee. I would suggest that it should read railway construction and extension in any state, with the consent of that state." I beg to move-

That after the word extension" the words in any state" be inserted.

Mr. DOUGLAS (Tasmania). - I wish to ascertain from the leader of the Convention what is the particular object of this clause. Does it mean that any two states cannot agree to make a railway from one state into the other without the consent of the Federation?

Mr. BARTON (New South Wales). - No. It means this: That if the Federation wishes to construct a railway in any state, it can do so only with the consent of the state in which the railway is to be made. Having obtained that consent they can carry it out.

Mr. DOUGLAS. - Then this will prevent two states making a railway.

Mr. BARTON. - I may mention that, under the very next sub-section, if two states were to
agree about a Bill which not one of them could pass singly, dealing

with railway construction, they could refer that matter to the Commonwealth always providing that, in the legislation by which they referred it, they placed the apportionment of the money to be spent also in the hands of the Commonwealth.

Mr. WISE (New South Wales). -

I am sorry to occupy the attention of honorable members again, but this has really become a matter of substance, and a very serious one. If this amendment be carried, and the sub-section be altered in the direction suggested by the honorable member (Mr. Deakin) we shall be opening a most dangerous door for log-rolling, which may be to the prejudice of good government.

Mr. LYNE. -

If amended as proposed by Mr. Barton it will be clearer.

Mr. WISE. -

If I thought that I would support it, but as I understand it the amendment would be that the money contributed by the taxpayers of Tasmania, Western Australia, South Australia, and the whole of the Commonwealth could be applied to the construction of a railway wholly within the limits of one colony, and, however that railway may affect the traffic of the other colonies, not one of them would be allowed to enter any other protest than that which could be entered by their effective voting power in the different Houses of Parliament.

Mr. DEAKIN. -

What more do you require?

Mr. WISE. -

That might be sufficient in ordinary circumstances, but we can easily conceive circumstances whereby the practice which is known in the state Parliaments as log-rolling could have effect, and where an arrangement could be made. For instance, an arrangement might be made to construct a railway from Melbourne to Euston by federal money, the larger proportion of which would be contributed by the taxpayers of New South Wales. The representatives of Victoria would be exceedingly gratified to have such a railway made, and the representatives of South Australia might be gratified by the construction of another railway also abutting on the boundaries of New South Wales.

Mr. SYMON. -

That is what happens when all the improvement committees are sitting in America.

Mr. WISE. -
Why should we run that risk?

Mr. DEAKIN. -

Will you show us how we can avoid that risk?

Mr. WISE. -

The Supreme Court would hold, in a case of that kind, that New South Wales was concerned in the construction of the railway; and, unless her consent was given to its construction, the Act of Parliament authorizing its construction would be invalid.

Mr. DEAKIN. -

That only means that New South Wales will have to be taken into the log-rolling.

Mr. WISE. -

If every one is in the log-rolling I do not call it log-rolling.

Mr. DEAKIN. -

Is that the definition of log-rolling—that you are all in it?

Mr. WISE. -

I think that this amendment requires very much more serious consideration than it has received. It is not purely a verbal amendment. It is an amendment placing a very large power, capable of very great abuse, in the hands of the Federal Government. It is an unnecessary power, because one cannot conceive why any railway should be constructed within the limits of a separate state to injure the trade of a neighbouring state for any such purpose, and unless the trade of a neighbouring state will be injured no protest is likely to be made by the neighbouring state. It will not, in the words of that sub-section, be concerned so as to withhold its consent; but if it is concerned so as to withhold its consent it seems to me that the power of refusal to sanction the expenditure of money which is in a large part contributed by itself should be conferred on it by the Constitution. The sub-section as it stands is a safeguard against the abuse of the federal power. It in no way limits the power of the Federal Government to construct railways within the borders of a single state; but all it says is that if that railway should in any way injure neighbouring states they, being concerned, shall have the opportunity to withhold their consent to the expenditure of the general moneys of the Federation. We have had difficulties arising in South Australia. Suppose the railway to Broken Hill had not been constructed, and the Federal Executive, in order to get the vote of New South Wales, which is the largest vote, agreed to construct a railway from Broken Hill to Wilcannia, and from Wilcannia to Sydney, and not to connect it with the South Australian border-
Mr. SYMON. -
South Australia would have to be consulted.

Mr. WISE. -
You would have no power under this amendment to be consulted. Suppose, in order to get the great preponderating vote of New South Wales in the Federal Parliament, we were to propose to run a railway from Hay to Wentworth so as to draw all the River Murray trade to Sydney, would not South Australia say that she was concerned in that, and that she ought to be allowed to protest, and that federal money ought not so be spent unless she gave her consent to the proposal? It seems to me, however we look at it, that there is no occasion for the amendment. All along I have consistently objected to this piecemeal power of dealing with the railways. If railways are to be constructed at all by the Federal Parliament with the consent of the states, then it does appear to me that every state which is involved—every state whose taxpayers contribute money towards its construction—should be allowed to have an effective power of protest against the abuse of that power to their injury.

Mr. DEAKIN. -
So they have through their representatives.

Question—That the words proposed to be inserted be so inserted—put.
The committee proceeded to divide.

Mr. WISE. -
May I be allowed, sir, to withdraw my call for a division?

The CHAIRMAN. -
As there is no objection, the call for a division is withdrawn.

Question resolved in the affirmative.

Dr. COCKBURN (South Australia). -
I think there has been a misapprehension by honorable members, and I want to know, sir, if you cannot assist honorable members to come to what is really the wish of the committee? A number of honorable members wished a vote—and I was amongst them—so as to retain the clause as it is.

Mr. REID. -
So was I.

The CHAIRMAN. -
I put the question quite clearly, that the words proposed to be inserted be so inserted, and the Ayes passed to the right of the chair, and the Noes to the left. The honorable and learned member (Mr. Wise) asked leave to withdraw his call for a division, and as there was no dissenting voice, it was withdrawn.

Mr. WISE (New South Wales). -
I do not know whether there was any misapprehension as to what the
nature of the amendment was. Finding only three honorable members sitting on this side with me, I did not wish to put the committee to the delay of having a division; but, as soon as I had applied for leave to withdraw my call for a decision, I found that a very large number of honorable members were in favour of my view. Which way a division would have gone I do not know, but it would not be a waste of time to have a division now. I do not know, sir, whether the rules will allow the question to be put again?

The CHAIRMAN. -

We cannot go back. A decision has been arrived at on the question; but the committee will have an opportunity to reconsider the matter.

Mr. SYMON (South Australia). -

May I say, sir, that none of us here was under any misapprehension as to the question which was put. We all heard the question very distinctly. We were engaged in moving from one side to the other, and, as there was a good deal of conversation, I think none of us—certainly I did not hear the request for leave to withdraw the call for a division. I was taken entirely by surprise, and, if there is a more convenient way than to allow the question to be brought on later, I would ask you, sir, if you would considerately allow the committee to go back and dispose of the question at once, as it is a matter of great importance. We did not wish to debate it at length. It would be very much better, sir, if you, in your wisdom, could devise some means of having the question dealt with now.

The CHAIRMAN. -

I am afraid that it would lead to endless confusion if, after a division was taken, and the question was settled, it was re-opened.

Dr. COCKBURN. -

A division was not taken.

The CHAIRMAN. -

It was decided on the voices.

Mr. REID (New South Wales). -

I do not know the rules which govern the proceedings of the South Australian Assembly when it is in committee; but I know that in New South Wales, when an evident misunderstanding has occurred, the Chair always gives the committee an opportunity to put itself right. I think, when it is evident that a widespread misconception has occurred, the Chair generally lends itself to the wish of the committee to put itself right, otherwise the Convention is left in a most unfortunate position through misadventure.

Sir GEORGE TURNER (Victoria). -

I would also urge, if it be at all possible, that a division be taken. It is
wiser that we should have the matter settled now than that we should leave it in such a state that it could be said that a mistake had been made. The practice in our Parliament is the same as that described by the Premier of New South Wales. If the Chairman of Committees is satisfied, from the expressions of opinion of honorable members, that a mistake has been made, and that difficulties may arise in consequence of that mistake, he simply says-"I will put the question again." He does so, and then it is competent for any honorable member to call for a division. I would urge that that course be adopted now. It would satisfy every honorable member, and it would enable us to do now what otherwise we might have to do later on.

The CHAIRMAN. -

It appears that, owing to numerous conversations, there has been a misunderstanding as to what the question was, and as to how it was put. I will, therefore, put it again.

The question having been again put, the committee divided-
Ayes ... ... ... ... 27
Noes ... ... ... ... 20
Majority for the amendment 7
AYES.
Abbott, Sir J.P. Isaacs, I.A.
Berry, Sir G. Lee Steere, Sir J.G.
Braddon, Sir E.N.C. Lewis, N.E.
Briggs, H. Lyne, W.J.
Brown, N.J. Moore, W.
Clarke, M.J. O'Connor, R.E
Deakin, A. Peacock, A.J.
Downer, Sir J.W. Quick, Dr. J.
Forrest, Sir J. Trenwith, W.A.
Fysh, Sir P.O. Turner, Sir G.
Hackett, J.W. Walker, J.T.
Hassell, A.Y. Zeal, Sir W.A.
Henning, A.H. Teller.
Henry, J. Barton, E.
NOES.
Carruthers, J.H. Howe, J.H.
Cockburn, Dr. J.A. Kingston, C.C.
Crowder, F.T. Leake, G.
Dobson, H. McMillan, W.
Douglas, A. Reid, G.H.
Fraser, S. Solomon, V.L.&
Glynn, P.M. Symon, J.H.
Gordon, J.H. Venn, H.W.
Grant, C.H.
Higgins, H.B. Teller.
Holder, F.W. Wise, B.R.

Question so resolved in the affirmative.

Mr. BARTON (New South Wales). -

I beg now to move, as a consequential amendment-

That the words any state or states concerned" be omitted, with a view to
the substitution of the words that state."

The CHAIRMAN. -

I would ask honorable members not to hold conversations
when I am putting a question. Honorable members complained just now
that they had not heard what the question was, in consequence of the
conversations that were taking place. I think, therefore, that I am justified
in asking them to keep silence.

Mr. REID (New South Wales). -

I was under the disadvantage you have referred to, owing to the incessant
conversations in the chamber. I wish to have an opportunity of saying that I
have a very strong objection to the whole of this sub-section unless it is
restricted to railways for defence purposes. Any confusion in connexion
with the powers of the Federal Government, and any exceptional powers,
would be likely to create great mischief in the future. In this Constitution
we have left the control of the railway systems of the states to the states,
and this power to construct railways on the part of the Federal Parliament
is an entirely new departure from the structure of the Bill, and a most
extraordinary one. We have just said that the railway systems of the states
shall be kept absolutely free from interference by the Commonwealth, and
for good reasons. All these reasons lead me to inquire why in the next
breath we should give the Federal Parliament, even with the consent of a
particular state, the power of undertaking the task of railway extension and
construction. For defence and military purposes that is perfectly justifiable.
For any other purpose it is absolutely unjustifiable. If we study the history
of America, where such powers are so persistently abused, we can see that
it might easily become a question in the Federal Parliament that would
exercise a malign influence upon the public life of the Commonwealth. For
instance, take my friend (Sir John Forrest). No more upright public man
exists in the world than Sir John Forrest; but if a Federal Government
should tempt him with a trans-continental railway to Perth, I should
tremble for his public virtue. I am putting the strongest case, and we all
admit it. I would have no trouble with my friend (Mr. Gordon); but I do put it to the committee that we should clearly understand what sort of railways this power is intended to refer to and what sort of railway construction. It should be no other sort than that connected with the military necessities of the Commonwealth. I admit at once that that is an excellent power to give, but for any other purposes it is a dangerous power to give. It often occurs in Federal Constitutions that words intended for one purpose are persistently used for every other purpose but that. I would like the leader of the Convention to just consider this point. Would it not be well to limit this power of railway construction in the Commonwealth, so long as our basis is as at present, to railways connected with the military defences of the Commonwealth? Can my honorable friend, or any other member of the Convention, suggest any other sort of railway which the federal authority under our present decision as to railway control should have the power of constructing, even with the consent of the state? I see a great difficulty in the matter, and, as at present advised, I shall vote against the whole sub-section, unless it is altered as I suggest.

Dr. COCKBURN (South Australia). -

It seems to me that sub-section (34) necessarily follows on sub-section (33). If you give the Commonwealth power to take over part or the whole of the railways of any state or states, some powers of construction must follow, in order that they may improve or perfect the lines taken over.

Mr. REID. -

Let that be defined.

Dr. COCKBURN. -

The two things must go together. If the Commonwealth is given power to take over lines it must be given some power of construction. At the same time, I am entirely against the amendment at present under consideration, that the construction of any railway should take place without the consent of the states concerned.

Mr. DEAKIN (Victoria). -

I trust that the committee will not take the narrow view suggested by the Premier of New South Wales. It appears to me that there are some cases, besides those suggested by purposes of military defence, in which it may be a wise act for the Federal Commonwealth to construct railways with the consent of any state through which they must pass. An attempt has already been made to draw a broad distinction between trunk lines and branch lines. It has been considered whether it would not be advisable for the Federal Parliament to take over certain trunk lines, leaving their branch
lines in the hands of the several states. That proposal has been rejected as impracticable; but it might be practicable and desirable that the Federal Parliament should construct trunk lines of its own which would doubtless be of use for purposes of defence, and which could also serve other purposes. A trunk line from the eastern colonies to the extreme west, which would mean a great saving of time in the transit of mails to and from Europe, and an increase of expedition in our trade communication with the old world, might justifiably be constructed by the federal authority. The construction of a transcontinental line—the continuation of the South Australia line—to place us in rapid communication with the seas to the north of Australia, and to encourage commerce, so far as a railway can, between Australia and the other countries of eastern Asia—a commerce to which the greatest attention is now being directed in Europe—might also be constructed.

Mr. Reid.—

The honorable member need not go any further; he has captured the Convention—two tens at any rate.

Mr. Deakin.—

If necessary I shall endeavour to show that the interests of New South Wales would be served by railways of this description, and that the construction of main lines of communication such as I have described might very properly be undertaken by the Federal Parliament.

Mr. Reid.—

Then there would be two railway managements in the one state. A trunk line must have merchandise.

Mr. Deakin.—

That might happen. A trunk line would have to pass through some of the colonies, and if the railway systems of the colonies through which it passed were not taken over by the federal authority there would be two systems of management in those colonies. The way in which I think that difficulty should be removed is indicated by the vote I give on the division immediately preceding the last division. I have a certain amount of sympathy even with the proposal of the honorable and learned member (Mr. Wise), because I saw that by proposing to tie the hands of the Federal Parliament in connexion with the construction of trunk railways he was strengthening the case for the earlier taking over of state railways by the Federal Government. Still, it appears to me that the construction of trunk railways should form an exception.

Mr. Reid.—

I might see a great deal in the honorable member's argument if in New South Wales we had a few trunk lines to make; but ours are all made.
Mr. DEAKIN. -

But the interests of New South Wales in lines such as I have referred to are very great indeed. Her merchants would freely use both of them. These appear to me to be some reasons why we should leave the power of construction, as at present proposed, with the Federal Parliament. Before I sit down may I be permitted to lay before the Convention a suggestion which has been made to me by the Premier of Victoria? We have not provided in the sub-section, though perhaps we might do well to provide, that the Federal Government, if it thought that in the federal interests there should be uniformity of gauge between any two points, shall have power to arrange for such uniformity. The cost of the change might be apportioned between the states, or part of it might be provided by the Federal Government. It must be remembered that when we speak of the Federal Government we speak of a Government which will represent all the states of Australia, and all the interests of those states, and surely our object should be, within reasonable limits, to intrust that Government with the widest possible powers.

Mr. BROWN (Tasmania). -

The honorable and learned member (Mr. Deakin) anticipated some of the suggestions I was about to make, but he has not suggested the precise amendment which I think would meet the views of the Premier of New South Wales, and of the majority of the members of the Convention. If the words for federal purposes" were adopted they would include not only railways designed for purposes of defence but also railways required for the carrying of mails and similar purposes. It would be useless for us to empower the Federal Parliament to construct and extend railways if we did not also give them power to maintain and to regulate them. In the earlier sub-section we had the word regulation," and I think that the insertion of the word maintenance" is also necessary.

Mr. BARTON. -

The power to construct involves the power to keep in repair.

Mr. BROWN. -

I hardly think that the power to construct carries with it authority to regulate traffic.

Mr. REID. -

Surely it does.

Mr. BARTON. -

There is a sub-section at the end which gives incidental and necessary power.

Mr. BROWN. -
If that is so my contention is met; but I agree with the Premier of New South Wales that there should be some qualifying words such as the words I have suggested.

Sir JOHN FORREST (Western Australia). -

I shall support the clause in its wider sense. There can be no doubt that, as time goes on, the powers of the Federal Government will increase, and who can tell what our future requirements may be? The honorable and learned member (Mr. Reid) said that he would only approve of the construction of railways for strategical purposes, but is not every railway used for those purposes?

Mr. DEAKIN. -

The New South Wales railways are.

Sir JOHN FORREST. -

It seems to me that in times of difficulty all these great trunk lines will be most useful for strategic purposes. In regard to the observation of my right honorable friend the Premier of New South Wales that I could easily be bought over-

Mr. REID. -

I meant that you would be the most difficult to be bought over.

Sir JOHN FORREST. -

I can only say that we have already built our railways up to within 400 miles of our boundary, and we shall be quite able to build other lines for ourselves when we can agree with our friends to join us on the border. As far as we are concerned, we should like to see a great trunk line running across the continent from east to west, and another from north to south, and we look forward to seeing this accomplished. Western Australia does not ask for anything which is not reasonable. We are not here to ask for concessions, but simply for the treatment to which we are entitled. I do not think it should be forgotten that, although we are probably not so important as some of the other colonies represented here, we are the owners of one-third of this continent, and no Federation will be complete unless it embraces that great western third. We are the possessors of a revenue of £3,000,000 a year, and we have a trade of £10,000,000 a year. The Federation that would leave out one-third of the continent certainly would not be the Federation that we are all looking for. I think that we should be wise in giving the Commonwealth power to construct railways. There will be quite sufficient security for the rest of Australia in the fact that, before a railway can be constructed, the Parliament of the Commonwealth will have to agree to it; and it seems to me that if the Parliament of the Commonwealth has to agree to the construction of
a line New South Wales need not be afraid, because she will have a very large share of the representation in the Lower House to guard her interests. It would block the road altogether, however, if the Parliaments of the different states had to agree.

Mr. WISE. -

Not every one of them.

Sir JOHN FORREST. -

Every one would consider itself interested. This would mean that the Bill would have to pass through every Legislature, and that every Legislature would have to agree with the action of the Commonwealth; and this would have the effect of the Commonwealth never doing anything at all. This sub-section has been in the Bill from 1891 up to the present time, and I hope that, with the amendment proposed by the leader of the Convention, it will remain here. If it does not remain some other words will certainly have to be introduced, because it will be foolish to give the Commonwealth power to take over railways or parts of railway systems, and not give them power to construct and extend those railways in such manner as may be necessary.

Sir EDWARD BRADDO (Tasmania). -

I understand that the objection of my right honorable friend (Mr. Reid) to this sub-section is that it would result in duality of management and control of certain railways. But every railway constructed under this clause would be constructed with the consent of the state concerned, and if that state gave its consent it would consent to that duality of management, and would not suffer from it.

Mr. REID. -

It is the other state that I am thinking of-the state that does not get the railway.

Sir EDWARD BRADDO. -

That objection is disposed of by the fact that we have given the Commonwealth power to take over railways with the consent of the states. If we have given that power it follows, as a matter of course, that the Commonwealth should have the power of extending those railways.

Mr. MCMILLAN (New South Wales). -

I have been surprised at the hacking and hewing of this very innocent sub-section, which was meant to be merely the complement of the preceding one. It amounts only to this-to give power to the Commonwealth that if it, with the consent of the states, takes over railways, it should have the right of extension of those railways. All of us, I think, agree practically with that.

Mr. REID. -
I do not object to that if that is all that is wanted.

Mr. MCMILLAN. -

If there is any blunder there will have to be some recasting of the sub-section altogether, because certainly there should be a sub-section as a complement to sub-section (33), which indicates what I think is the view of the Convention, that no railways shall be taken over unless the full right of extension and construction is given. I must say that, as far as the question of limiting the powers of the Federal Parliament is concerned, I think it is a very serious step. I have hitherto opposed any attempt to limit what I consider to be the sovereign rights of the Federal Parliament, and I doubt whether we have any right to put into this Bill any embargo upon that action. The right honorable gentleman (Mr. Reid) thinks that the power in question should be confined to defensive purposes or strategic purposes, but it seems to me that that would rather be a blow struck at the spirit of federation. I think we all look forward to the time when, by the interlacing of these lines, and the increase of population, probably the whole of the railways of Australia will be under one Government. But we all think that the time is not ripe for that yet, and that it would overburden our Federal Constitution at present. But for us to go further and say, because that is the status we accept as far as the state railways are concerned, we should put an embargo upon the power of the Federal Parliament to construct a truly federal line for purposes already agreed upon, would be a mistake. We cannot pretend to foretell the future exigencies of this country, and we must recollect that if we put an embargo of that kind, it would make it extremely inconvenient for the Federal Government to do what is necessary. Therefore, it seems to me that some amendment will be necessary to make this sub-section purely the complement of the previous one; and certainly I think we ought not to place any restriction upon what I call the inherent power of the sovereign Government.

Mr. SOLOMON (South Australia). -

In looking at the sub-section as it stands and its relation to the previous sub-section, it seems to me that the sub-section under discussion is not full enough to cover those arguments which have been used by honorable members of the Convention who have spoken previously. It is pointed out that under this sub-section the Federal Government will not have power to deal with the extension of railway systems in those states the railways of which may be taken over. Now, the amendment which the leader of the Convention is to move does not cover the point at all. If it is necessary to give the Commonwealth power to extend railways in any state the railway
system of which has already been taken over by the Commonwealth Government by the consent of that state, it should be distinctly and clearly stated that that is so. If, on the other hand, as pointed out by the Right Hon. the Premier of New South Wales, it is intended to give a free hand to the Commonwealth Parliament to construct railways in any state with the consent of that state, then undoubtedly his objection to this sub-section as leaving the door open to log-rolling of a dangerous character has a great deal in it which is worthy of the consideration of this Convention. The right honorable gentleman said that he would like to limit the construction of railways or the extension of them in any state to the purposes of defence. I would like to point out to him that the consent of the state would not be necessary for the construction of railways for defence purposes. That should be entirely a matter for the Commonwealth Government or Parliament to decide upon, irrespective of the consent of any state whatever. A previous sub-section of this same clause gives to the Commonwealth Parliament the power and control of all the railways throughout the length and breadth of the federated colonies for defence purposes. If an extension of this clause is sought to enable the Commonwealth to extend or construct railway lines for military purposes, it should not be with the consent of any state, but without the consent of any state whatever. It strikes me that the objections raised by some speakers as to the danger of limiting the power of the Commonwealth Parliament are not well founded, because we have in a previous sub-section given the Commonwealth Parliament the power to take over by bargain-by mutual consent-the railways of any state. In this sub-section, as a natural corollary, we should provide that the construction and extension of railways by the Commonwealth Parliament should only be undertaken in the states where the Parliament of the Commonwealth have previously taken over the railways. I do not know exactly the position of the amendment before the Chair.

**The CHAIRMAN.** -

The amendment is to strike out all the words in the last line, and insert in lieu thereof that state." The sub-section, if amended in the manner suggested, would then read-

Railway construction and extension in any state, with the consent of that state.

**Mr. SOLOMON.** -

I will ask the leader of the Convention if he will withdraw his amendment temporarily, to enable me to move a previous amendment which I will indicate before I ask him to withdraw his own. After the words in any state," I wish to insert the railways of which have been taken over
by the Commonwealth."

Mr. ISAACS. -

What railways? All or a portion?

Mr. BARTON. -

Would you make your amendment read the whole or any part of the railways of which have been taken over by the Commonwealth”?

Sir GEORGE TURNER. -

Then the sub-section can be overcome by taking over a few miles of railways.

Mr. SOLOMON. -

I have no doubt that an astute politician like Sir George Turner could get over the difficulty in some way, but, at any rate, we want to lay down in this Constitution something to indicate that it is not desirable, as the Premier of New South Wales said, to give an open and free hand to the Federal Parliament to construct railway lines in any state with the consent of that state alone.

Mr. LYNE. -

Why not confine your amendment to any state all the railways of which have been taken over?

Mr. SOLOMON. -

That would make it still better.

Mr. FRASER. -

It would make it still worse.

Mr. SOLOMON. -

No, it would make it still better. Although it was suggested laughingly and in a jocular way by the Premier of New South Wales, when this federation is accomplished, there may be a very great danger of such a concession to the Commonwealth as the power to construct and extend lines of railways in any state being used in order to capture the support of members representing a particular state, it is no use blinking at what we know to be an absolutely common occurrence in our local Parliaments. the larger Parliament will only be a reflex of what the smaller Parliaments are. The same little tricks of politicians will, probably on a larger scale, be carried out in the Parliament of the Federation, and sometimes the construction or extension of railways at the cost of the Commonwealth might be proposed by the Federal Government simply to obtain the support of representatives from a particular state.

Sir JOHN FORREST. -

There are to be two Houses of Parliament.
Mr. SOLOMON. -

Undoubtedly; and each state is to be equally represented in the Senate, so that the particular state interested in the construction of a new line might have in the House of Representatives only a moderate number of members, but in the Senate would have equal representations—a very large number—which is a much stronger argument in favour of my amendment.

An HONORABLE MEMBER. -

The Senate will never do wrong.

Mr. SOLOMON. -

I am not supposing for an instant that such a thing will actually occur. Let us hope that with a Federated Australia our politicians will improve both in political morals and in their ideas of what is necessary for the good of the whole Commonwealth, but, to take the suggestion of Mr. Lyne in this matter, and thus make my amendment still stronger, if the leader of the Convention will kindly withdraw his amendment, temporarily, to allow me to move mine, I will propose the insertion of words which will provide that only in a state in which all the railways have been taken over by the Commonwealth shall the Commonwealth have power to construct new railways and extend existing lines. I beg to move—

That after the words in any state" the words if the whole of the railways have been taken over by the Commonwealth" be inserted.

Mr. KINGSTON (South Australia). -

I have thought, in previous discussions in connexion with the Constitution of the Federal Parliament, that there would be very little risk of the clashing of national and state interests, but it seems to me that if we are to alter this sub-section in the way it is proposed, to give the Federal Parliament the authority to construct in any particular state any railway to the construction of which that state may consent, we shall increase the probability of clashing of the description to which I have referred to a most alarming extent.

Mr. HIGGINS. -

Are you not going back on a decision we have just come to?

Mr. KINGSTON. -

No.

Mr. HIGGINS. -

I do not object to your doing so; I voted with you.

Mr. KINGSTON. -

What is now proposed is this, that, although the construction of any
railway for military or strategic purposes may be handed over to the Commonwealth, under this proposal a railway which may not be a federal necessity in any sense of the word may be constructed by the Commonwealth if the necessary majorities can be obtained in both Houses of the Federal Parliament, so long as the consent of the state in which that railway is to be constructed is given. That is the simple qualification.

Mr. ISAACS. -

But you have to get the consent of a majority of the states in the Senate.

Mr. KINGSTON. -

Undoubtedly.

Mr. REID. -

As years go on, there will be two political parties running in both Houses of the Federal Parliament as there are in America.

Mr. KINGSTON. -

I have no fear as to the propriety of conferring on the Federal Parliament every power that is necessary for national purposes, but it does seem to me that there is danger to be apprehended from this proposal. I know of no public works more likely to engage the attention of Parliament, provincial or otherwise, than the construction of railways; and if we are to confer on the Federal Parliament, with the consent of a state, the power to construct railways in that state, a railway may be constructed to the injury of another state—possibly a competitor with an existing line—and if we empower the Commonwealth to bring into existence rival railway lines, we shall increase the probability of friction and provincial jealousies by inviting the Federal Parliament to enter a sphere of jurisdiction which it is in no way called on to enter.

Mr. SYMON (South Australia). -

I wish to say one word on the very much larger question which, by the permission of the Convention, has been raised by the Premier of New South Wales. It is exceedingly amusing to hear all the arguments which were used in opposition to the taking over of any part of the railways of the state used to support a proposition which, if it is carried without qualification or amendment, will introduce the most complicated railway system that has ever been seen on any continent. This sub-section seems to me to be utterly illogical. It probably was intended that this sub-section which we are now discussing should only apply in those cases in which the whole of the railways were taken over; otherwise it is nonsensical. The strongest argument that those of us were pressed with in opposition to the taking over of part of the railways of a state was that it would be introducing two railway systems—the running together of two separate managements, with all the inconvenience and difficulties which would
arise from that. Now it is proposed under this sub-section that you should have that state of things which we have been condemning under the other sub-section, with all the incidental opportunities for what has been called log-rolling, and so on, before those lines come to be constructed. We do not contemplate under this Bill that there should be a great public works policy under the Federal Parliament. The longer we can keep the Federal Government out of it the better; but you are going to hand over this machinery of public works in order to bring, about that very state of things which you say is objectionable—the existence in one state of two railway systems and managements. It seems to me utterly preposterous. At the same time, I do not intend to oppose the introduction of that complication for this very simple reason, that it is introducing what ought to be introduced, the control by the federal authority of the trunk lines. I admit every word of the arguments used against this sub-section. It would be far better omitted from the Bill; it is inconsistent, mischievous, and absurd. But I see it may be a lever to bring about the federalization of all the railways; and on that ground, and that ground only, I am going to vote for it.

Mr. REID (New South Wales). -

I wish to suggest another point which I conceive to be of greater practical importance than any yet mentioned. It is with reference to the sub-section which we have passed. Clearly under that sub-section it is contemplated that the whole of the railway system of the state may be taken over by the Commonwealth, by consent. I submit that, if that state hands over its railway system to the Commonwealth, the Commonwealth should not be under the necessity to ask the consent of that state to its policy of railway extension or construction; because this remarkable state of things would follow, that a state having handed over the whole of its railways, which means railway extension and construction, it would still have a veto on the management of the federal power. After the Federal Government had paid millions of money to a state for its railways, that state would have the power to veto any proposed work for the further benefit of the whole enterprise. The state could come in and say we will not consent unless you do this, that, or the other. That would be after the state had got full consideration for its railways in the shape of hard cash.

Mr. BARTON. -

Possibly that might make the federal authorities say they would not take over the railways.

Mr. KINGSTON. -

It might make that one of the terms arranged.
Mr. REID. -

Exactly; but what I would suggest to the leader of the Convention is that, inasmuch as this matter seems to suggest great difficulties, it should be postponed. It seems that there will have to be some alterations in the clause, because, clearly, no matter what agreement maybe made between the state and the Commonwealth, if the law of the Constitution requires the consent of the state to each extension, I am afraid no agreement would be binding. At any rate, it would be a matter of contention whether a blank consent of that sort would deprive the state from coming in afterwards and refusing to consent to a particular proposal. I do not wish to press my views on this matter after having mentioned them, but I think this subject will give rise to a long debate, and it might be well to let it stand over.

Mr. BARTON (New South Wales). -

On reflection, I am inclined to adopt the view just stated by the right honorable gentleman. That is to say that, if the railways of the state have been entirely taken over by the Commonwealth, it would unnecessarily hamper the Commonwealth to require the consent of that state to any further construction. If the whole system is taken over by the Commonwealth it should have power to develop the system, otherwise the incongruities are manifest. I intend to withdraw my amendment for the present, in order to make room for the honorable member (Mr. Solomon) to propose his amendment. I would suggest to him that his amendment would be better if the words he intends to put in, with its consent," were omitted, so that the sub-section would read railway construction and extension in any state if the whole of its railways have been taken over."

Mr. KINGSTON. -

Or without such consent where the whole of such railways have been taken over. That should be added.

Mr. Barton's amendment was temporarily withdrawn.

Mr. REID (New South Wales). -

I should like to suggest to the leader of the Convention another difficulty which shows the necessity of further consideration. Leaving the case where the whole of the railway system has been taken over, we may contemplate a case where part of a railway system has been taken over. Now, as to that part taken over, and important as the area of country served by that part might be, clearly the

Federal Parliament, having taken over an important system of lines, should have unfettered power of construction and extension.

Mr. BARTON. -

I quite see that the power should not be limited where the whole railway
system has been taken over.

Mr. REID. -
I see a difficulty even in the other case where only a part of the system has been taken over.

Mr. BARTON. -
The question is surrounded with difficulties.

Dr. COCKBURN (South Australia). -
Although I am not in favour of any colossal system of public works being vested in the Federal Parliament, still, if railway construction is to be undertaken at all, it will primarily and chiefly be necessary in territories of which the provisional administration is vested in the Commonwealth. I should like to ask the leader if he knows of anything in the Bill at present which provides for this? I cannot see anything. Clause 115 gives power to make laws for the government of any territory surrendered by a state or placed by the Queen under the authority of the Commonwealth. Would that include laws for the construction of railways? The second part of clause 53 provides for the general government of any territory surrendered for the purpose of the seat of government to the Commonwealth; but I do not think it covers the question of a territory simply provisionally vested in the Commonwealth. It would be necessary for railways to be constructed in such territory; and I ask the leader of the Convention to see whether it would not be advisable to add to the clause some words, such as In any state or territory."

Mr. BARTON. -
I think it very likely will.

Mr. DEAKIN. -
It may not be absolutely necessary, but it is desirable.

Dr. COCKBURN. -
I think it is.

Mr. DEAKIN. -
You would not say that they could not make a piece of railway on their own ground-in their own dockyard.

Dr. COCKBURN. -
Yes, they can.

Mr. DEAKIN. -
If they can make a railway in their dockyard, why cannot they make a railway elsewhere in their territory?

Dr. COCKBURN. -
A portion of the Northern Territory of South Australia may be handed over, and undoubtedly if it were, it would be necessary for the federal authority to have power to construct railways there. I would ask the leader
of the Convention to look into this matter, and if necessary to choose some words to be inserted.

Mr. BARTON. -

Hear, hear.

The CHAIRMAN. -

Does the honorable member (Mr. Solomon) wish me to put his amendment in that form?

Mr. SOLOMON. -

I would like, sir, to fall in with the suggestion of the Premier of New South Wales and of the leader of the Convention by eliminating the words with its consent."

The CHAIRMAN. -

As the amendment now stands, it is after the words in any state," just inserted, to insert the following words, if the whole of the railways have been taken over by the Commonwealth." 

Sir JOHN FORREST (Western Australia). -

I do not at all agree with the argument that, because the whole of the railways of a state were taken over by the Commonwealth, that state should in the future have no voice whatever in the direction in which future railways should go. It seems to me that the state would have just as much interest in the direction which railways should take in the future as if it had not handed over to the Commonwealth the control of its railways. It appears to me that if it were a condition of the taking over that the people of that state should for the future have nothing to say in regard to the routes of railways, or the places to be tapped by railways, they would be giving away one of the greatest factors in the development of their territory. For a state to say-We

will hand over these few miles of railway which we have constructed, and by doing so we will hand over to you, living far away from us in another part of Australia, the right to determine what part of our territory shall have railway communication," would, I think, be an absurd proposition, to which no state would ever agree. Another question would have to be considered, and that is whether, in handing over its railway system, a state should be debarred from building any further railways on its own account. It might be a reasonable proposal that it should not build any more railways on its own account; but it certainly ought to have a voice, and it would demand to have a voice, in the direction which future railways should take. Otherwise, it would be giving away the greatest factor of all in the progress and development of its territory. I hope that honorable members will not vote for a proposition that a state, in handing over its railway system to-
day, should for ever give up all its rights to be consulted in regard to future railway extensions. It seems to me that if that were the case no state would be so foolish or would act so suicidally as to think of doing so.

Dr. QUICK (Victoria). -

I, for one, object to the amendment of the honorable member (Mr. Solomon). I understood, when this sub-section was adopted at Adelaide, it was intended to confer on the Federal Parliament power to construct national or trans-continental railways irrespective of the state railways. I submit that, if this amendment be inserted, it will cut down or fritter away that power, and will tie the hands of the Federal Parliament to such a serious extent that you may as well strike out the sub-section. The effect of the proposal is that this power is not to come into operation until the states have transferred to the Federation the whole of their state railways.

Mr. SOLOMON. -

Until some do.

Dr. QUICK. -

Well, any state. It may be that a state does not choose to transfer to the Federal Parliament its state railways, and, consequently, it may have the power vested in it to resist the construction of any federal railways. For instance, suppose that the Legislature of South Australia refused to transfer its state railways, the Federal Parliament would not be able to construct a trans-continental railway connecting the eastern railway system with that of Western Australia, nor would the Federal Parliament have the power to connect the Northern Territory with South Australia, or to connect the railway system of New South Wales with that of Port Darwin. I submit that the power of railway construction will be reduced to a perfect shadow and a perfect sham if the words of limitation now proposed to be inserted are inserted. I, for one, do not at all concur in the suggestion which has been made—that this power was only intended to be brought into operation merely as a complement to the taking over by the Commonwealth of a portion of the railways. I understood it to be an independent power, a power which could be brought into exercise for national purposes at any time, irrespective of and without the consent of the states in the transfer to the Federation of the state railways. I hope, sir, that the sub-section will not be frittered away in the manner which is proposed, but that it will remain in its original form, conferring a real power, and not a visionary or shadowy power, on the Federation.

Mr. REID. -

In other words, colonies which have trunk lines will pay for the colonies which have not.

Mr. OCONNOR (New South Wales). -
Before the question is put, sir, I should like to express my accord with what has just been said by the honorable and learned member (Dr. Quick). The whole power of railway construction which it is intended to give would be absolutely neutralized if it were made a condition that it could not be exercised except in a case where the whole railway system of a state would be handed over. There are very few cases that we know of where the whole railway system of a state could be handed over. In nearly all the colonies there are suburban railways. These suburban railways are very important, a very large amount of money is invested in them, and they pay very well. They would not be likely to be handed over, and they would not be required for federal purposes. If you make this condition you simply set up a condition which is impossible. I do not understand the argument of some honorable members in regard to this matter. The principle on which we give this power at all is that it may be necessary for the Federal Government to take action in regard to very large and important works of trans-continental railway construction, and for two reasons. In the first place, it is very difficult to obtain the amount of funds necessary in any one state to carry out the work. In the second place, the work must be carried out as a whole, and can only be done by the federal authority. It should also be done in some uniform way. Why should that power not be granted? If it is to be granted at all, let us grant it effectually. It is very true that log-rolling occurs, and that it may and probably will occur, in regard to matters of this kind. Unless we are to have an ideal Parliament, filled by an ideal set of men, I suppose there always will be something of that sort. After all, we must remember that the people elect these Parliaments and watch over them, and public opinion is always keenly alive to what is going on in these Parliaments. To say that you cannot trust this power in the hands of the federal authority means that you cannot trust the people themselves. Let us either refuse to give this power or give it in an effectual way.

The amendment was negatived.

Mr. BARTON (New South Wales). -
I beg now to move-
That the words any state or states concerned" be omitted, with a view to the substitution of the words that state."

Dr. COCKBURN. -
Is not the sub-section complete as it stands, and sufficient for all purposes?

Mr. BARTON. -
The original words were"railway construction and extension, with the
consent of any state or states concerned." I proposed and carried an amendment to insert after the word extension" the words in any state," with a view of making a further amendment to omit the final words any state or states concerned" and substituting the words that state." The sub-section would then read:"railway construction and extension in any state, with the consent of that state."

The amendment was agreed to.

**Dr. COCKBURN.** -

Should we not now insert the words or in any territory"?

**Mr. BARTON.** -

I take the sub-section as not having been finally dealt with. It is full of difficulties, and I am not quite satisfied of the correctness of the vote I have given. It seems, so far as I can now determine, to be a right one, but if, at the recommittal stage, there is a large number of honorable members, something like as many as we know are in favour of another view now, I shall not interpose any objection to the reconsideration of the clause. Any amendment of the kind indicated by Dr. Cockburn could then be dealt with.

**Mr. SOLOMON (South Australia).** -

I think this would be the time to move the addition to the sub-section that I suggested when I spoke a few moments ago. It appears to me that, in the case of railways for defence purposes, there should be no necessity whatever for the consent of any state. There is a previous subsection which deals with the taking over and the control of all existing lines for military and defence purposes; but this sub-section, which refers to the construction of new lines only, gives power for the construction or extension of such lines with the consent of the state through which they pass. It appears to me that it would be an improvement to the sub-section if we were to add except in cases of lines necessary for defence purposes."

Some legal member of the Convention might suggest better words, but this is certainly a point that needs looking to if we do not want to make it necessary that the consent of any state should be obtained for the construction of lines for military and defence purposes. As the clause at present stands, it would be necessary-no matter whether the lines were for the development or extension of existing lines-to obtain the consent of the state. That would involve, perhaps, the passing of a Bill in both Houses of the state Parliament.

**Mr. OCONNOR.** -

Would not your proposal get rid of the consent of the state altogether inasmuch as every line would be used for defence purposes?
Mr. SOLOMON. -
I do not think so.
Mr. ISAACS. -
Can you imagine a case where the state would object to a line being constructed for defence purposes?
Mr. SOLOMON. -
There might be such a case.
Mr. MCMILLAN. -
Could a line be constructed without some negotiations-with the state even for defence purposes?
Mr. SOLOMON. -
Undoubtedly. We are laying down a very hard-and-fast line as to what the powers of the Commonwealth Parliament are to be. We have altered this clause so as to provide that the Federal Parliament shall only extend existing lines or construct new lines with the consent of the state. That would exclude them from constructing any lines for defence and military purposes, excepting with the consent of the state. Why should the Federal Parliament in so urgent a matter have to wait until the state gives its consent by an Act passed by both Houses of the Legislature? When the Federal Parliament decides that a line is necessary for military and defence purposes there should be no delay and no question of private interests should arise.

An HONORABLE MEMBER. -
What about compensation?
Mr. SOLOMON. -
That is a question of detail. No private interests should be allowed to delay or to prevent the Commonwealth Parliament from constructing a line necessary for defence and military purposes. I therefore propose to test the feeling of the Convention upon the point.
Mr. BARTON. -
Say-'or without such consent where such railways are for defence purposes.'
Mr. SOLOMON. -
I will accept the suggestion of the leader of the Convention. I beg to move that the following words be added to the sub-section:-
or without such consent where such railways are proposed for the military defence of the Commonwealth.
Mr. REID (New South Wales). -
I suggest to my honorable friend that he should accept the statement of the leader of the Convention in reference to this sub-section. I see many
difficulties in it myself, and I propose to give some attention to them; but in the meantime I am prepared to allow the sub-section to go as it is upon the assurance we have received. Let me point out one serious difficulty created by this very amendment. Suppose the Constitution enables the Federal Parliament to do what these words intend that it shall do, and it builds a railway for defence purposes, that railway can only be used for defence purposes—it cannot be used for any other purpose. The Federal Court would never tolerate an evasion of the statute, whereby a railway built with the consent of the states for military purposes only should afterwards be converted into a mercantile line. The leader of the Convention has put the matter so fairly to us all that it is our duty now to think the matter out, and if we find that the sub-section as it stands is seriously defective will be better to test the matter at a later period.

Mr. SOLOMON (South Australia). -

I have much pleasure in accepting the suggestion of the right honorable gentleman, and with the consent of the committee I shall withdraw the amendment, in order that we may have an opportunity of looking at the sub-section again, and, if necessary, to recommit it.

The amendment was withdrawn.

Mr. HIGGINS (Victoria). -

At this point I move-

That the following new sub-section stand after sub-section(33):-

"Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state."

I moved in connexion with this matter at Adelaide, but at Sydney our time was so limited that I then intimated to honorable members that I should postpone the matter until our meeting in Melbourne. This seems to me the most convenient place for the insertion of a provision of this nature. What I wish is that the Federal Parliament shall have power to make such regulations as it thinks fit for the termination and prevention of widespread industrial disputes. I do not ask the committee to say that courts of conciliation and arbitration shall or shall not be created. I simply desire that the Federal Parliament shall be empowered to create such courts if it thinks fit. Without some provision such as I suggest it will be impossible for the Federal Parliament, no matter what disputes may arise, to create a court to bring about a settlement of them. In adopting my amendment honorable members will simply be leaving the matter to the Federal Parliament. The issue before us is whether the Federal Parliament should be precluded from legislating for the prevention of labour disputes.
Mr. MCMILLAN. -

Does the honorable member's sub-section imply compulsory arbitration?

Mr. HIGGINS. -

I do not ask the committee to say that arbitration shall be compulsory, or even that any steps shall be taken to secure the settlement of industrial disputes; I simply wish to give the Federal Parliament power to legislate on the subject. Whatever honorable members may think, the experience of New Zealand shows that this matter is at least within the pale of practical politics. Nothing has struck me so much in dealing with the Bill as the want of recognition in it of the momentous change in regard to industrial matters which is now taking place all through the world. In this Constitution we appear to be ignoring the peculiar circumstances which surround us. It is quite true that in the American Constitution there is no such provision; but at the time it was framed there was not the industrial difficulty that exists now. I do not regard courts of conciliation and arbitration as likely to finally settle all industrial disputes, but I regard them as a very valuable means of mitigating the pain which an era of change will create. A change is going on, whether we approve of it or not, and we should do our best to meet it, and to prevent, even by temporary means, the disaster and distress which must follow upon diversion of trade and industrial disputes. Every morning there appear telegrams in the newspapers dealing with the engineers' dispute in England, or the dispute in the cotton trade, and we are not without our own experience of shearers' disputes and shipping disputes. Of course, I shall be told that this is a matter for the states. I admit that if a dispute is confined to a state, it ought to be dealt with by that state. But I ask this committee, in the name of common sense—suppose you have a shipping dispute, how can any one state deal satisfactorily with that dispute? Suppose you have a dispute of shearers. You have an organization of shearers all through Australia—an organization extending through Queensland, South Australia, Victoria, and New South Wales; and, on the other hand, you have the employers of the shearers all uniting on the opposite side. How, I say, can any state deal with a dispute of that nature which is inter-colonial? I do not want to overburden this Constitution with matters which may endanger its acceptance. I cordially agree in that principle, but I draw the line here: If we find a matter which cannot be dealt with so effectively by the states, and we find that it in a matter of grave concern to the people of Australia, why not put it in this Bill? We do not say that the power shall be exercised, but that it may be exercised; and I do not think, no matter how conservative, no matter how cautious, any member of this committee may be with regard to
changes in the law, it will be found that I am asking very much when I ask them to join with me in voting that the Federal Parliament shall have at least its hands free to act if it thinks fit. I am going on the principle of Trust the Federal Parliament." I understand that that principle has been thrown over summarily by the Right Hon. the Premier of New South Wales, but I still adhere to it. I say that we may trust the Federal Parliament to be as wise as ourselves, to say the least of it. The chief objection to the proposal is that you cannot distinguish between disputes which extend to the other colonies and disputes which are confined to one. But is that so? Sir John Downer was, I think, the principal opponent to this amendment in Adelaide; but I was hoping—perhaps hoping against hope—that I should have his adhesion on this occasion. At all events, I want to face the most difficult part of this problem and not shirk it. The most difficult point was, I think, put by Sir John Downer, in Adelaide, when he said that you cannot say that a dispute exists beyond a certain colony. If one speaks as a lawyer—and I suppose that Sir John Downer spoke as a lawyer

Sir JOHN DOWNER. -

You, too, I hope.

Mr. HIGGINS. -

Only with great diffidence. It is true that, legally speaking, a dispute between employer and employee is a dispute between man and man, but I appeal to the experience in South Australia and New Zealand, where there has never been any difficulty, so far as I can learn, in deciding that a labour dispute has not been confined to individuals, but is a dispute to which a very large number of individuals are parties. What you have to prove, in order to bring in the Federal Government, is an agreement between a number of persons; and in 99 cases out of a 100 that would be admitted, whilst in the hundredth case the conspirators, the persons acting together, would be easily proved to be doing so. There is no less difficulty in proving a conspiracy in the law courts than there would be in this case. Cases have been dealt with in the New Zealand courts where the whole thing depended upon there being an organization on the one side and the other, and there has never been the least difficulty in deciding about the parties to it being in unison. We spend a great deal of money in settling disputes between individuals to preserve the peace between private persons. Judges and juries go to a great deal of trouble with regard to disputes arising between John Smith and Bill Sykes as to private affairs between them.

Mr. KINGSTON. -

And over matters involving not more than 5s.

Mr. HIGGINS. -
Yes; or even matters involving less than that. But we have no courts which provide machinery for settling disputes which arise, where not only are individuals concerned but where hundreds and thousands and tens of thousands of people are concerned, and where not merely the interests of the people in the dispute are affected but hosts of people and families dependent upon them are affected, and where the whole course of trade may be diverted, as there is danger of trade being diverted in consequence of the engineers’ strike in England.

Mr. GLYNN. -

In the one case you can enforce the decision, and in the other case you cannot.

Mr. HIGGINS. -

I am not speaking now as to whether the decision can be enforced or not. In New Zealand decisions are enforced by means of penalties. I am prepared to trust the Federal Parliament, being confident that they would not make a law which they could not enforce.

Mr. GLYNN. -

A penalty applicable to tens of thousands of workmen, or even thousands, could not be enforced.

Mr. HIGGINS. -

Does the honorable member mean to say that an organization would not back up its officers? An organization would not allow a penalty to be borne by an officer for obeying the organization. I ask honorable members not to be deterred by the difficulty in regard to machinery to be created by the Federal Parliament, after full discussion and investigation, but to simply say that they will not hold their hands nor tie the hands of the Federal Parliament in dealing with a matter of so much importance. I am quite sure that honorable members will be prepared to face this difficult question, and I only ask them to enact in substance that the Federal Parliament is not to be absolutely deprived of this power. I merely want to leave the thing open, and I think I may appeal even to those who are opposed to conciliation and arbitration in labour disputes in this respect.

Mr. BARTON. -

I do not propose to ask honorable members to prolong the debate now. It is a very important subject which my honorable friend (Mr. Higgins) has been referring to, and no doubt it will be debated at considerable length. Therefore, as it is understood that we should not prolong these sittings beyond five o’clock, I beg to move that you, sir, report progress, and ask leave to sit again.

The motion was agreed to.
Progress was then reported.

ADJOURNMENT.

Mr. BARTON. -

I beg to move-

That the Convention, at its rising, do adjourn until Thursday next.

The motion was agreed to.

The Convention adjourned at five o'clock, until Thursday, 27th January.
Thursday, 27th January, 1898.

Commonwealth of Australia Bill - Hours of Sitting.

The PRESIDENT took the chair at half-past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Tuesday, 25th January) was resumed upon clause 52 (Powers of the Parliament), and on the following new sub-section, proposed by Mr. Higgins, to follow sub-section (33):-

Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state.

Dr. QUICK (Victoria). -

I supported this proposal at Adelaide, and I see no reason for not doing so again. It may be that there would be very little scope in the Federal Constitution for the operation of such a provision as this, but I think that a fair and comprehensive survey of the federal arena will show that there will at least be some scope for its operation, though somewhat limited. Even in the Constitution as drawn there is a provision giving the Federal Parliament jurisdiction in the case of navigation and shipping, and this would apply to labour disputes in connexion with navigation and shipping. This new sub-section would give the Federal Parliament jurisdiction in regard to labour disputes commencing within a state, and extending beyond the limits of that state. There is no doubt that there are difficulties connected with this subject. It may be that we are passing on to the Federal Parliament another insoluble problem-insoluble apparently as regards the method of settlement and the enforcement of the award-but I do not know that we are bound at the present stage to suggest solutions or methods of solution. It will be for the Federal Parliament to devise some means of giving jurisdiction to a competent tribunal, and of conferring upon that tribunal power to enforce its decisions. At any rate, I concur with Mr. Higgins in his argument that industrial disputes of late years have assumed such magnitude and importance in all civilized countries that it is incumbent upon any Parliament having jurisdiction to grapple with the question and to find some means of solving it. Take the great dispute which has been raging in England during the last few months; consider the millions of money lost through there being no machinery for the settlement of the dispute, and for the enforcement of the settlement. I
am not without hopes that Parliament in the future-I may even say at the present time-will be able to find some means of the acquiring jurisdiction and enforcing its decisions. At any rate, I think the Convention should show its appreciation of the importance of this question by not shunting it from the Federal Constitution but finding a place for it there, leaving it to the Federal Parliament to discover some means of introducing conciliation and arbitration of the kind proposed.

Sir WILLIAM ZEAL (Victoria). -

I think, sir, it goes without saying that this proposal of Mr. Higgins is one which should commend itself to the good sense of the Convention. It seems to me that the difficulty in dealing with such disputes will arise when the decisions is given against the men. So far as the masters are concerned, there will be no difficulty whatever in enforcing penalties against them; but if the award goes on the other side, how is any machinery which human ingenuity can devise to be put in force to compel the men to observe the award? That is the great difficulty.

Mr. HIGGINS. -

That is true.

Sir WILLIAM ZEAL. -

We have at the present time on the statute-book of Victoria and Act of Parliament which gives power to deal with disputes somewhat in this fashion, but so far it has been a dead letter, because, as Mr. Higgins will probably say, up to the present time no event had occurred which has called for the application of the provisions of that Act.

Mr. BARTON. -

Does the Victorian Act provide for compulsory arbitration?

Mr. HIGGINS. -

No.

Sir WILLIAM ZEAL. -

I think that the Convention might accept the new sub-section. There is no harm in it, but there will be great difficulty in giving effect to it under certain circumstances.

Mr. MCMILLAN (New South Wales). -

This is just one of the matters on which we ought to pause, and that we should weigh very carefully before we come to any definite decision. It is one that opens up a vast area for discussion. We cannot hide ourselves the development that has taken place in connexion with this question during the last few years. I am aware that there are in this Convention honorable members-especially, perhaps, the Premier of South Australia—who have given enormous attention to this subject. But to those who look upon this question as having enormously dangerous possibilities, it is a matter of
vital importance as to whether it should be put as a federal power or left entirely to the states.

Mr. ISAACS. -

What are the dangerous possibilities?

Mr. MCMILLAN. -

Well, I do not wish to argue any of these questions in detail.

Mr. ISAACS. -

It is a mere matter of information.

Mr. MCMILLAN. -

I do not think we have to discuss the policy of any of these matters, or to enter upon any long arguments with regard to their desirability or otherwise. We are here to say, especially in connexion with the particular proposal under consideration, whether any power should be given to the Federal Parliament, or whether the power should not be left entirely to the states. I am strongly of opinion that this matter ought to be left absolutely to the states, and the present stage of our proceedings, whatever may be the future of the Federation, we ought not even to indicate that this is a subject for federal control. It seems to me that, in many of these questions in which it is attempted to give federal control and to clear away difficulties in the future, we shall by giving that federal control simply be laying the foundation of greater difficulties. Looking at this subject from a practical stand-point we have this point to consider. These labour disputes will arise in different states owing to special conditions existing in those states. They may overflow into another state They may purposely be made to overflow in order that advantage may be taken of any provision of this kind. Then are you going to say that the Commonwealth Government is to interfere in a dispute simply because it goes over the range of two states, when it may be a dispute in some particular industry which has nothing to do with the general welfare of the Commonwealth. There is another very serious aspect of this question. There is a clear line to be drawn between the functions of the Federal Parliament and the functions of the state Government. Up to the present time we have laid it down as a principle that the whole industrial life, the inner life of each community, which can be better regulated over a moderate area, should be left entirely to the state. I can conceive of no more potent influence of trouble in the future than the giving of paramount power to the Federal Parliament to interfere in trade disputes. It is all well enough to say that it is only to apply when more than one state is affected, and it, is all well enough to say that the power need not be exercised at all. That very weak argument has been running through many of the proposals made to overload this Constitution.
Once you put a power in clause 52, you give by implication practically the whole case away to the Federal Parliament. Now, I do not of course profess—and I always make this admission when I have not studied a question very closely—to understand this subject of conciliation and arbitration in trade disputes as thoroughly as some honorable members who have given years of attention to it. But, on the other hand, we have not to consider the merits of this question in itself. We have to consider whether it is one of those things which, at the present stage of our federal evolution, so to speak—we ought to include in the powers which are to be more or less exercised by the Federal Parliament. I am as anxious as any one to see that all large national questions that should come under a Supreme Parliament like that of the Federation are given over to it. But, at the same time, I believe that a great deal of the success of our efforts will depend upon the fact that, while keeping clearly in view the sovereign character of that Parliament, we do not infringe in the slightest degree upon that local autonomy which is the basis of federation. I am therefore strongly against the inclusion in the clause of this subsection, even with the qualification that it is only to refer to trade disputes extending beyond the limits of any one state. I hold—and every year of my political life has made it a more sacred principle to me—that the less the Government do, except in acting as policemen in trade disputes, the better for the community. I do not want to insert in this Constitution a provision which by implication will show a trend of thought of a certain character, to which I need not further refer. I do not want it to be presumed for one moment that we desire to give to the Federal Parliament the right to interfere in trade disputes and in the ordinary business and commerce of the country. The less the Government has to do with these things the better, and the more clearly it is understood that the Government is not to interfere excepting for the preservation of law and order the sooner these disputes will be likely to end.

Mr. KINGSTON (South Australia).—

I trust that the amendment will be carried. It seems to me that it will probably be a mistake to discuss the mode in which this power, if given to the Federal Parliament, is likely to be exercised. We might better confine our attention to the consideration of the question whether a power of this sort is capable of being beneficially exercised in the interests of the community, and in that regard it seems to me there is no room for doubt. What have we chiefly to deplore at the present day in connexion with our various industries? The prevalence of strikes and lock-outs—barbarous modes of settling differences, which should, if possible, be
adjusted amicably. I need hardly refer to what has recently been happening in Great Britain—the engineers strike. There we have had a protected struggle ending, so it seems, in the success of the masters. But, however that may be, productive of injury, not only to both men and masters, but to the great industry in which all are engaged; and various particulars which have already been supplied show how it has affected the trade of Great Britain. It was argued by the honorable member (Mr. McMillan) that the State should only act as the policeman, but it seems to me preferable to provide against the necessity for police interference at all. I think we can do that, not by arranging for the arbitrary interference of the Government in matters of this sort, but by giving power to a competent authority to provide facilities which will enable the parties to a dispute to agree by the establishment of courts of conciliation, and, if they desire it, of courts of arbitration, which should have the power to enforce their award upon those who invoke their interference. The subject is a difficult one, and we recognise its difficulties, and I think we might give the Federal Parliament credit for as much wisdom. The members of that body will recognise these difficulties just as we do, and will avoid any arbitrary or unwise interference. The position to-day is that whilst in each state we have the power of making what provision we please in regard to a matter of this sort, there is no Parliament which can interfere with any efficacy where the dispute extends beyond its provincial boundaries. The honorable member (Mr. McMillan) has been kind enough to refer to the interest which I have taken in this matter for some considerable time. I recollect that upon the very first occasion when I rose to introduce a scheme of this sort to the South Australian Parliament I felt oppressed by the consideration that, whilst we could provide satisfactorily for local disputes, we could do nothing in regard to disputes which extend over a larger area, because, of course, those outside our boundaries could resent the interference of a court of limited control. What I feared then has since been proved by case after case, and notably by the maritime strike, which affected not only ourselves, but other colonies. We have, however, been able to provide for the passing of a measure for industrial conciliation. That measure has not as yet been attended with the success which

Mr. MCMILLAN. -

Might you not say that of almost any measure of local autonomy.

Mr. KINGSTON. -

I might. I might say that the High Court of Australia will, in the natural course of things, command a greater respect than any of our local courts, great as is the respect which they very properly command.
Where a strike of the dimensions to which I have already referred occurs, will it not be a good thing that there should be a body charged with the duty of reconciling the parties by peaceable persuasion and all the arts of conciliation, before the struggle has developed to a degree of intensity when pacific interference is worse than useless? I am a strong believer in the propriety of assisting the parties to a dispute to establish courts of conciliation in times of peace. Such courts are much more likely to be productive of good results if the trouble can be nipped in the bud than if you allow it to develop, and you have no means ready in initial stages to prevent its extension. It seems to me that you might just as well attempt to organize a fire brigade satisfactorily in the midst of a conflagration as attempt to establish a court of conciliation when the parties to a dispute are practically at each other's throats and determined to do all they possibly can to use to the utmost the strength which they possessed.

Mr. LYNE. - How can you do any good, unless you make arbitration compulsory?

Mr. KINGSTON. - By these courts we only provide facilities for the settlement of disputes. In South Australia we have a State Board, the president of which is charged at all times to reconcile the parties to industrial disputes by all peaceable means whenever the nature of these disputes is of such a character as to become a matter of public concern. The masters and men are equally represented, and where the efforts of the president fail the board has power to inquire into the matter, and to make a non-enforceable report. It frequently happens, however, that in cases of this description it is of the utmost advantage that the public should be enabled to form a right conclusion by having a declaration of the merits of the dispute by a body compelling such respect as one composed of equal representations from masters and men, and presided over by an impartial president. I think it would also be a good thing-I am merely showing how the powers asked to be given to the Federal Parliament might be advantageously exercised-if provision was made to afford facilities for the registration of local boards of conciliation, which might similarly be ready at all times at the instance of the parties to their constitution to do what is necessary to prevent strikes and lock-outs.

Mr HIGGINS. - That is the arrangement in New Zealand.

Mr. KINGSTON. - Yes, the New Zealand and South Australian provisions are very much alike. I think you might go further, however, as we do in South Australia, and provide for the creation of a private board by a simple agreement between the parties. I do not ask the Convention to come to any conclusion
as to the mode in which this power should be exercised; but I ask honorable members to say that it is a right and proper thing to give to the Federal Parliament the power of dealing with these questions in such a way as it may think fit whenever they assume an aspect of federal importance. The leading feature of this Constitution is that the Federal Parliament should have power to legislate for the peace, order, and good government of the Commonwealth." By what means are the peace and order of the various colonies most disturbed, and their good government threatened, at the present time? By strikes and lock-outs. Shall we not then be wanting in our duty if we do not give to the Federal Parliament power to legislate in such a way as will prevent strikes and lockouts, and enable industrial questions of the greatest difficulty to be amicably settled between the parties, upon considerations of right and wrong rather than because of the relative strength of the disputants.

Sir JOHN DOWNER (South Australia). -

I entirely disagree with the Premier of South Australia. I think this proposal is quite unnecessary. It goes to the root of the preservation of the entities of the states and the rights of contract possessed by their citizens. In my opinion, the proposal must be a failure unless there is added to it something which those who advocate it will not be disposed to agree to. No law of this kind can be effective without a sanction. There must be a vindicatory power somewhere. Where is your vindication to come in here? Are you going to have a federal army to control the people in times of a trade dispute? If that is the proposal, who are the people who will rave against it more than those whom my honorable friend says he is assisting?

Dr. COCKBURN. -

The Federal Parliament will have power to maintain the laws of the Commonwealth.

Mr. GLYNN. -

How could it make men work for a fixed rate of wages for, say, six months?

Mr. HIGGINS. -

In New Zealand the payment of penalties is enforced against the funds of the unions?

Sir JOHN DOWNER. -

Even the argument that New Zealand has done something is not sufficient to satisfy me of the correctness of the present movement.

Mr. HIGGINS. -

I am aware that nothing will satisfy the honorable member.
Sir JOHN DOWNER. -

Nor do I object to it because it comes from New Zealand. What I say is, that this is not a federal question at all. The people of the various states make their own contracts amongst themselves, and if in course of their contractual relations disagreements arise, and the state chooses to legislate in respect of the subject-matter of them, it can do so. It has been done in South Australia and in New Zealand-not in any of the other colonies, I believe.

Sir WILLIAM ZEAL. -

It has been done here.

Mr. DEAKIN. -

No; it is merely nominal here.

Sir JOHN DOWNER. -

I think it is nominal everywhere, so far as its practical effect is concerned.

Mr. DEAKIN. -

It is effective in New Zealand, and fairly effective in South Australia.

Sir JOHN DOWNER. -

Well, I don't know. My honorable friend knows, perhaps, better than I do how effective it is in South Australia.

Mr. DEAKIN. -

I know what the Judge said who has had charge of its administration.

Sir JOHN DOWNER. -

I am not aware that it has been of the slightest effect in South Australia. I have yet to learn that it has been of any use at all. I was rather in favour of making the experiment in this direction when it was proposed in South Australia; and I am now watching the working of these arbitration courts with great interest, although, as I have just said, I have seen no advantage arising from them in South Australia at present. We are now asked to hand over to the Federal Commonwealth a power of legislating with regard to internal concerns affecting every man, woman, and child in every state. Every agreement they make, so long as a sufficient number of them combine together to kick up a row, may be made subject to review before a tribunal. To pass legislation of this sort is in itself an invitation to extend the area of raising quarrels. Such legislation will tend to make such quarrels national, so as to create a power of interfering between individuals who are not satisfied with the contracts they have entered into. In the end it, must result in the establishment of some military or other force strong enough to vindicate the decisions of the court, which step I am certain would not accord with the view of those who advocate the establishment of these courts. I hope that honorable members will think a little carefully
about this question, because if they do I believe that they will come to the conclusion that the power which each state has at the present time to legislate in respect to its own industrial disputes is quite sufficient. An industrial dispute cannot extend beyond the limits of any state. These are individual disputes. A certain class of workmen say-"We are going to insist on being paid so much a day" in one part of Australia, and they arrange with other workmen in other colonies to make the same demand. But the disputes are confined to each state.

Mr. GLYNN. -

What about American disputes?

Mr. KINGSTON. -

What of the shearsers' strike?

Mr. HIGGINS. -

Cannot you prove concert, or conspiracy, or agreement to act together?

Sir JOHN DOWNER. -

Suppose you do, that would not do anything to prove the wisdom of making complaints originating in an unimportant place extend to the rest of Australia, and of giving jurisdiction to a court to determine between the whole of the parties.

Mr. HIGGINS. -

There has never been any practical difficulty in showing the existence of an organization either on one side or the other.

Sir JOHN DOWNER. -

When an organization makes a demand in one colony there has never been any difficulty in getting other organizations elsewhere to extend the dispute. It is really compulsory arbitration that is asked for. It is called conciliation, but it is main force.

Mr. MCMILLAN. -

There is no compulsion, but you must."

Sir JOHN DOWNER. -

I want to know what you can do when you have exercised your main force? What is asked for cannot be done, and, in the meantime, so far from being a source of producing peace and quiet, a power of this sort will actually invite the very differences which it is sought to prevent, and will deceive unfortunate persons by the supposition that in the event of there being a dispute there is a court of law that can not only decide, but that can compel their masters to concede what they desire. I think we should not overload this Bill too much. This is certainly a question on which there will be great difference of opinion, and which, if decided in the affirmative, will interfere very materially with the rights of each state to make, its own laws
with respect to the contracts of its own people, and with regard to its own internal concerns.

Mr. ISAACS (Victoria). -

I have the misfortune to differ altogether from my honorable and learned friend (Sir John Downer), and I desire very strongly to support the amendment of my honorable and learned friend (Mr. Higgins) in this respect. I do not agree with the proposition that providing a remedy for a known evil invites a recurrence or an extension of that evil. We know that, unfortunately, these great evils of labour disputes do arise, and are, in fact, becoming more extensive as time goes on; and we are all desirous of providing some comprehensive and sufficient power of dealing with them. We have before us now a most lamentable instance of a trade dispute in England, and, unfortunately, there is no authority which is powerful enough to cope with the difficulty, notwithstanding that it is causing immense uneasiness and distress and loss in the realm of England. I do think that if there were in existence here a distinct and powerful enactment on the part of the state for the constitution of a tribunal, both sides having confidence in its capacity to decide satisfactorily and in the wisdom of its de

Sir JOHN DOWNER. -

How would you enforce the court's decision?

Mr. ISAACS. -

We are not discussing a form of Bill to deal with the matter now, but we are debating the wisdom of giving power to the Federal Legislature to consider this question in the future, or to refrain from dealing with it if it think fit. If the Federal Legislature see its way in the course of the development of events to legislate satisfactorily, it should have power to do so, and if it find that its attempt to do so is not effectual, it will be able to repeal its enactment.

Mr. LYNE. -

Would it not weaken the power to deal with the matter in the states if the Federal Parliament were to legislate?

Mr. ISAACS. -

I do not think that this proposal affects the power of the states at all, because we know that at the present time trade disputes do extend in many cases, at all events, beyond the limits of particular states.

Mr. LYNE. -

Take a case where a dispute does not extend.

Mr. ISAACS. -

Then this provision does not apply at all. That is just the distinction
which I wish to bring home to the minds of honorable members.

Mr. MCMILLAN. -

Suppose one state does not believe in this power, and a dispute arises which involve every state; would not this provision give power to the Federal Parliament to interfere in the state that did not believe in the provision?

Mr. ISAACS. -

Undoubtedly.

Mr. HIGGINS. -

So it should.

Mr. ISAACS. -

It would give power to the Federal Parliament, just as the power to regulate inter-state trade and commerce enables the Federal Parliament to prevent any obstruction of that inter-state trade and commerce. It is only when the matter becomes an inter-state dispute interfering with trade and commerce—which is, by general consent, a concern of the Federal Parliament—that the power can be exercised. This appears to me to be only the natural complement of the first sub-section of clause 52. Its tendency will be in the direction of peace, and to quieten fears and give confidence in the calm and easy working of the trade and commerce provision of the Federal Constitution.

Mr. SYMON (South Australia). -

I rise to say that I hold strongly to the same opinions as I entertained when this subject was debated at considerable length and with great earnestness in Adelaide. I think that the insertion of this power in our Constitution is unnecessary, and will be absolutely mischievous. In fact, if this is to be carried out, it will create the greatest possible difficulty and complication, notwithstanding which all it does is simply to embody an expression of the sentiment of kindliness and good-will.

Mr. KINGSTON. -

That is something.

Mr. SYMON. -

But I say that this Constitution is not the place in which to introduce a merely barren expression of good-will. Unless it is going to be made use of in the strongest possible way—in a way which will have the effect, as Sir John Downer has pointed out, of creating the greatest possible difficulty between the various states—it is no use putting it in at all. We all, as Mr. Isaacs says, deplore most deeply the industrial strife which results in wide spreading and most mischievous strikes. There is not a man in this chamber who would not gladly join in bringing about some means—if it were possible—of preventing them by what is called conciliation. But this
amendment in its very terms is a contradiction. It provides for conciliation and arbitration for the prevention and settlement of industrial disputes."

How on earth are you to apply conciliation, to apply arbitration, at all, unless first of all you have a dispute? To insert this amendment as it stands seems to me to be simply the insertion of a series of words; and stripped of these idle words the amendment simply means that the federal authority is to exercise complete power over all industrial matters. Is that the wish of this Convention? Is it the desire of the representatives of any state that their industrial affairs shall be placed under the control of the federal authority?

Mr. DOBSON. -
That is hardly what it means.

Mr. WISE. -
The authority constituted could fix the rate of wages for the whole of Australia.

Mr. SYMON. -
The illustration which Mr. Wise has given is a good one. This provision means enforcing the same wages all over Australia.

Mr. WISE. -
It deprives the workers of local self-government.

Mr. SYMON. -
Why should you interfere with the laws in the different colonies affecting the relations of masters and servants, which are purely a matter of domestic legislation? Why should you hand over that purely state function to the federal authority?

Mr. BARTON. -
Would it be a benefit to the workers to have the same rate of wages fixed throughout the Federation?

Mr. SYMON. -
That is undoubtedly a practical way of putting the question. I do not want to now occupy time in dealing with the question in detail as to industrial matters, but what I particularly want to point out is that, however blessed this word conciliation" may be (and there is not one of us who would not give almost everything if we could see it properly applied), but whatever virtue there may be in the blessed word, it is a contradiction in terms as applied to these industrial disputes. You cannot bring about conciliation in disputes of that character without compulsion.

Mr. HIGGINS. -
It has been done in New Zealand.

Mr. SYMON. -
We have had on our statute-book for some years a law framed with the greatest care, displaying in every line the greatest ability, and the strongest desire to give effect to this system, and it has practically been a dead letter.

Mr. WISE. -
So it has been in New South Wales.

Mr. SYMON. -
There is a provision in that Act to enable trades unions and masters unions to register under it. That is the only portion of it which would enable it to be carried into its fullest effect. There are other provisions, but I do not refer to them. As far as I know, there is not at the present time one trades union or masters union which has registered under that Act. What does that mean?

Mr. HIGGINS. -
Bad machinery.

Mr. SYMON. -
It means that none of these bodies believe in it as a law which ought to be brought into effective operation upon them. That is all it means. At the same time, I do not say for one moment that because that Act has been on our statute-book practically inoperative, as many people believed it would be, for years, that that is any reason why this power should not be given.

Mr. DOUGLAS. -
What became of the last strike in Adelaide?

Mr. SYMON. -
It fizzled out. It was unfortunate, and nobody can but feel a sense of regret that it should be so, but the Conciliation Act which we have was practically inoperative to deal with the case.

Mr. BARTON. -
Was not there an award?

Mr. SYMON. -
There was no award under the Conciliation Act so far as I know, but there was a great deal of feeling, and many broken heads; there was a great deal of intervention by the law, which might have been avoided if there had been some system. But supposing you introduce a system of conciliation—and I frankly admit it is no reason because a statute may be inoperative in one colony that a law passed by the Federal Parliament would be inoperative—but how are you going to enforce conciliation upon 100,000 men who are engaged in a trade dispute? How are you going to enforce the award of any board or body of arbitrators in connexion with a matter of that kind? Take the case which the honorable member (Mr. Isaacs) referred to, of the engineers' strike in Great Britain, which has been a national calamity—which has driven trade from her borders, so much so
that rivals in trade on the Continent have been actually contributing funds with the view of supporting this terrible strike. How on earth could the decree of any court of conciliation be enforced upon the men on strike in that case?

Mr. ISAACS. -
Do you not think it is very probable that the British Parliament will legislate for such a case?

Mr. SYMON. -
The best answer to that is that, in a unified state like Great Britain, with all the power and strength of the Imperial Parliament, they have never been able to deal with such a state of things as that. The word conciliation is mere verbiage, and it has been impossible to enforce the decree of any arbitration board.

Mr. ISAACS. -
There is no reason why it should not be tried in future.

Mr. WISE. -
It has been tried.

Mr. SYMON. -
Would my honorable friend (Mr. Isaacs) show how it can be enforced?

Mr. ISAACS. -
That is another question entirely.

Mr. SYMON. -
My honorable friend will hand that over to the Federal Parliament. I do not want to hand over to the Federal Parliament too many of these difficulties. This, in my view, should be solved by the local authorities themselves. They are the people to deal with their own questions of industrialism. I do not want to enter into a discussion as to the modes of carrying out this proposal; that will be a matter for the Federal Parliament if we decide to introduce this power. But I will put to my honorable friend what is a practical question in connexion with this power. Who is to decide as to when an industrial dispute extends beyond the limits of a state? Who is to decide when a dispute originating in South Australia enters into the colony of Victoria, so that Victoria shall be put under some kind of martial law?

Mr. ISAACS. -
It is a question of fact, like anything else.

Mr. SYMON. -
Undoubtedly; but who is to decide it? Is it the Victorian Executive? Did I understand my honorable friend (Mr. Higgins) to say of course"?
Mr. HIGGINS. -
   No, I say certainly not.
Mr. SYMON. -
   Then who is to decide?
Mr. JAMES. -
   The Federal Bill will dispose of that.
Mr. SYMON. -
   How is the Federal Bill to say when a strike spreads from one colony to another? Suppose one shoemaker steps over from Bordertown to Horsham.
Mr. MCMILLAN. -
   There might not be a lawyer at the head of affairs, and whoever was there would not know what to do.
Mr. JAMES. -
   You may be certain the lawyers will be there.
Mr. SYMON. -
   That would be the only means of carrying this out to a successful issue. As an honorable member suggests—and it illustrates the position—supposing a firm has branches in different cities, and there is a strike in the branch in South Australia, and an air of discontent in the branch in Victoria, would that be sufficient to call down the interference of the federal authorities? What I say is that it will not be in your Bill; it will not be in this Constitution; it will not be for the Executive; but it will be for the Federal Parliament to decide that, and you will hand over to the Federal Parliament one of the most pregnant sources of heat and passion that ever was invented.
Mr. HIGGINS. -
   Will you not trust the Federal Parliament with this as well as with the customs duties?
Mr. SYMON. -
   What relation has this to customs duties? The industrial life of the state is considered by all of us (subject to this exception, it may be) a thing of purely domestic concern. We do not want to interfere with the domestic life, or with industrial life, except in the last resort. If you are going to introduce such a thing as this it must be the Federal Ministry which will have to decide, subject to the Parliament, and you will introduce the greatest complication and intensity of feeling that was ever seen.
Mr. BARTON. -
   We do not propose to hand over contracts and civil rights to the Federation, and they are intimately allied to this question.
Mr. LYNE. -
There is the case of the Lucknow strike.

Mr. SYMON. -
Take the case of that strike, or the case of any other strike where you send to another colony for free labour—that might be right or wrong, but we are not discussing that now. Free labourers come over to a colony where the feeling is intense; they had difficulties in front of them in the colony whence they came—is that the development of a strike in both colonies? Is that extending the strike to the second colony? These considerations show the boundless ramifications of such a question, and they ought to make every one of us pause before we throw such an apple of discord as this would be into the Federal Parliament. We shall have a sufficiently fine crop of difficulties without overloading the Federal Parliament, and without introducing matters of this kind, about which, undoubtedly, passion will rage in the most intense degree. We cannot help it. We all know from what is going on around us what will happen. Although we may all be desirous, as we are, of putting a stop to strikes, there is no way in which it can be accomplished except by leaving it to the law and to the states, which deal with industrial matters—with masters and servants—and which are more competent to settle the differences, and more competent to appreciate all these local necessities, than any federal body can possibly be.

Mr. DOBSON. -
How can the law of a state deal with a maritime strike?

Mr. SYMON. -
How can the Federal Parliament deal with it?

Mr. DOBSON. -
How can any state deal with such a strike?

Mr. SYMON. -
It is a local dispute in a state. My honorable friend does not seem to see that a maritime strike does not take place on the high seas. A man comes into port, and he leaves his ship.

Mr. DOBSON. -
You cannot speak of that as a local strike.

Mr. SYMON. -
When a maritime strike takes place the men when they come into port leave their ships.

Mr. DOBSON. -
In that case it would not be a local strike—it would be national.

Mr. SYMON. -
The dispute must arise in some port.
Mr. SYMON. -
That is another reason. When the last maritime engineers' strike took place it began either in Melbourne or Sydney.

Mr. HIGGINS. -
Where did it end?

Mr. SYMON. -
In some place.

Mr. HIGGINS. -
In two colonies.

Mr. SYMON. -
It never took place in South Australia.

Mr. HIGGINS. -
It ended in the same places where it occurred-Melbourne and Sydney—and how could the Victorian law deal with that?

Mr. SYMON. -
Does my honorable friend, who is one of the most profound and acute lawyers in Australia, really put a question like that to me? The Victorian law did deal with that strike and every incident of it. The Victorian law could not bring these people together, and metaphorically knock their heads together, which would perhaps have been the best thing to do; the Victorian law did not say Come together and let us reason out the thing." No power in the world can do that.

Mr. BARTON. -
It is the original dispute and not the subsequent strike which requires to be settled.

Mr. SYMON. -
A strike is the outward and visible sign of the real dispute between these parties. I appreciate the reference made by the honorable member (Mr. Dobson), but I think be must see that a maritime strike is like any other strike. The relations between the parties are determined by the contract in the place where it occurs. The maritime law of England governs all Australia; the Merchant Shipping Act, with some local modifications, is applicable everywhere, and there is no more difficulty in dealing in each port with a maritime strike than there is in dealing with any other strike. The point here, as the honorable member (Mr. Barton) has remarked, is the original dispute. How are you to deal with that? How are we to deal with the two bodies who join in the conflict? What is a court of law to do?
An HONORABLE MEMBER. -

How does a court of law do anything at present?

Mr. SYMON. -

My honorable friend knows that if a striker strikes a free labourer, or vice versa, and that goes to a court of law, you can deal with it by the instrumentality of the court of law.

Mr. JAMES. -

The honorable member was saying that we should leave the parties to settle the disputes their own way. We do not allow masters and servants to do that in every case.

Mr. SYMON. -

You allow them to settle their disputes in their own way by law.

Sir JOSEPH ABBOTT. -

The defendant never wants to go to law.

Mr. SYMON. -

Of course not. I do not suggest that we should resort to the primitive method of settling disputes by fisticuffs or trial by combat.

Dr. COCKBURN. -

Strikes are almost as barbarous. We want to settle disputes by a less barbarous form.

Mr. SYMON. -

Will my honorable friend tell me, first, how he is going to settle the dispute which has produced the strike; and, secondly, what possible benefit it will be to remove this from the local jurisdiction, and to hand it over to the federal authority? My view is that it is purely a matter of domestic concern, that if we hand it over to the federal authority we shall be introducing greater difficulties than we could even hope to cure, and that it will be an invitation to mischievous men-it may be on the other side, but we are not touching that question now-to increase and extend the area of the strike in order to bring about something like civil war. That is a prospect which I dread, and I trust that honorable members will not allow a mere feeling of sentiment, the pleasure of seeing the word conciliation" in this Bill, to lead them away from the practical issue of how they are to justify the federal authority being intrusted with this great power.

Mr. TRENWITH (Victoria). -

The honorable and learned representative of South Australia, who has just resumed his seat, has pointed out innumerable difficulties in connexion with leaving this question to the Federal Parliament. I respectfully submit, however, that by earnest men difficulties should be looked upon not as insuperable, but simply as things to be overcome if the end justifies the effort. I think it is impossible to overstate the importance of this question.
It is true that there are many and great difficulties in dealing effectively with this question; but that all seems to me to point to the necessity of endeavouring to deal with the question and to overcome the difficulties. It is true that legislation on the question has not anywhere yet fully met the difficulties of the case; but it is true also that legislation has to some extent minimized those difficulties. It is true also that conciliation, both voluntary and legislative, has been tried, often without effect, and often with very desirable results. Wherever legislation is undertaken or considered upon this question, the desirability is discussed of securing some means that will make the decree of an arbitration board effective, and the same argument as that which was used by the honorable and learned member (Mr. Symon) is continually used with effect—how will you enforce a decree of a court on hundreds of thousands of men? All who have studied labour or industrial difficulties know that the principal base on which they are fought out is public opinion. If we could by some means create a tribunal which would inspire the people with confidence, and compel the parties in conflict to submit their case to it—and I think that is possible—a decision by such a tribunal would have an immense effect upon public opinion, and would, if it did not settle the matter satisfactorily, at any rate bring the struggle to a close. Industrial struggles are becoming more injurious every year, because our industrial system is becoming more complex every year. In the past it was possible for a number of men to strike and injure very few but themselves, or for a number of men to lock out and injure very few but those immediately interested. But our industrial system has become so complex that it is possible, and, indeed, it often happens, that the parties to a dispute are very few, but that the parties indirectly and seriously injured are very many. Thus it is possible for a handful of men, by refusing to go on with work under the conditions which prevail, or by throwing out of work a few under the conditions which prevail, indirectly to render workless many times more persons than those originally engaged. Having in view this important aspect of the case, it becomes all who think on this question to see if some means cannot be adopted whereby the evil of industrial conflicts shall be minimized. The honorable and learned member (Mr. Symon) points to the efficacy of state legislation for dealing with industrial disputes. In consequence of the continually increasing complexity of our industrial system there scarcely ever happens an industrial dispute of any magnitude, at any rate in the colonies, without it spreads its effect over the borders of two or three, and sometimes of all the colonies. This was notably so in the maritime strike which took place some years ago over the difficulties with
the marine officers. That dispute, at some time or other of its existence, existed, I believe, in every one of the colonies, including New Zealand, and if there had been any means of compelling a decision—not necessarily of compelling acquiescence with the decision, but of compelling a decision—

**Mr. OCONNOR.** -

Does not that follow?

**Mr. TRENWITH.** -

That does not seem to me necessarily to follow, although it would be a splendid thing if we could devise some means by which equitable obedience could be commanded. I would make it compulsory on the court to arrive at a decision.

**Mr. MCMILLAN.** -

You would make it compulsory for the parties to appear.

**Mr. TRENWITH.** -

I would make it compulsory for the parties either to appear or to submit to a decision ex parte. If it was made compulsory for them to appear, or, at any rate, compulsory for the court to arrive at a decision on such information as it could get, I think it would have an immense effect in minimizing the evil effect of industrial disputes. I have been associated for twenty odd years with one of the interests that are involved in these disputes. During that time I have been connected with the conduct of one side of the disputes, and so terrible do I consider them to be, that I can fairly and safely say that I have never counselled a strike. I have felt that if it could be avoided by any possible means it should be avoided and it was only when every other effort had been tried, as far as I could, that I have ever sanctioned or taken part in any conflict of this character. Failing some legislation on the point, these disputes must continue to occur. Evil as they are during their currency, it cannot be denied that they have done a great deal of good; but they do the good, when they do good—and they very often fail to do good—in a very brutal, cruel, and unscientific manner; and if any means can be devised by which the brutality and cruelty involved in these conflicts can be avoided, and the good assured, it is an object worthy of the efforts of the very best men that can be got to achieve it. It seems to me that, in handing over this question to the Federal Parliament—and I may say here that my views have undergone some change since I first began to consider the

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question—we do not deal with it; we merely say that it is an important subject which ought to be within the power of the Federal Parliament to deal with. It seems to me that we are not justified in troubling ourselves very much about how the Federal Parliament can deal with such questions.
If the Federal Parliament finds it impossible, as up to the present time the state Parliaments have found it impossible, to deal effectively with the question, the probability is that it will not deal with it. At any rate, it seems to me that it ought to have the power to deal with the question; and I earnestly hope that, as time goes on, and as attempt after attempt is made to deal with this important question, an experience will be gained which will eventually enable the Federal Parliament and the state Parliaments to deal effectively with what, up to the present time, the latter have failed to deal with effectively. As an active participator in the disastrous maritime strike of 1888, I know that one side in the dispute was for the whole time of its currency appealing for a settlement of the dispute by conference, or by the appointment of an independent tribunal, by which the parties should agree to be guided. Unfortunately, whenever a conflict of that character arises, generally one party, and often both parties, to the dispute, feel that they are strong enough to win—that they can win anyhow—and therefore why should they submit to possible concessions? That is always the difficulty; and there ought to be imposed by the whole of the people, in defence of the whole of the people from these disastrous conflicts between sections of the people, some power to compel the parties to submit their case, and to guide them in bringing the conflicts to a close, or in continuing them if it is thought desirable so to do. Now, in the conflict which is near its close in Great Britain, the people of the civilized world have been interested. In some measure the people of the civilized world have taken a part in that conflict, only guided by such information as was conveyed to them by partisans; partisans who have an interest, and who are justified, under the circumstances, in presenting their side of the case as strongly as it can be presented, and in weakening the case of their opponents. So that the people, while acting, while fighting, while carrying on a conflict by means of this assistance and sympathy are very often misled, because of the inadequate and sometimes garbled and warped information that they receive. Surely a tribunal constituted in such a manner as we have a right to assume that it will be constituted if the Federal Parliament had power to deal with it, would at least be a tribunal so constituted and composed of such men as would give an assurance to the people that, whatever view was taken, the information submitted was reliable, and would be a fair and trustworthy guide for the people to exercise their predilections in connexion with. I hope, therefore, that this power will be given to the Federal Parliament. I confess that, like Mr. Symon, I think it highly improbable, at first, that the Federal Parliament will be able to deal with it very effectually, but I submit to the honorable gentleman and others who think with him on this question that, even in that event, the inability of the
Federal Parliament to deal with it will do no harm. We shall be no worse off than we are now if it transpires that the Federal Parliament is unable to deal with it effectively, but if there should be some sensible method of dealing with conflicts of this character in the way we contemplate, in supporting this proposal, it is necessary, in consequence of the inter-colonial rather than the state character of many of these industrial disputes, that the Federal Parliament should devise the scheme, because, in that case, however extensive the ramifications of the disputes in question, whenever they were touched by the tribunal that was to deal with them they would be touched in every part and corner of the Australian Continent, and, if federation becomes as complete as we hope, in every corner of Australasia, at one and the same time. Now, that seems to us to be a very desirable consummation. We had, in conjunction with the maritime strike to which I have referred, an extremely important and to these colonies extremely disastrous conflict in connexion with the pastoral industries. The shearers' strike went on at the same time as the maritime strike-a part of it.

Sir JOSEPH ABBOTT. -

And it was settled the moment the two sides were brought together.

Mr. TRENWITH. -

Yes, as Sir Joseph Abbott points out, it was settled eventually by means of voluntary conciliation. When the people got together, and reasoned together on the matter, when they could be induced to do that, they came to a mutually acceptable settlement. But that is the difficulty that creates the necessity for legislation-to get people who are, angry with each other, who are calling each other names, and saying bad things about each other, to get machinery by which they can be compelled, as it were, to come together-because when they do come together, experience has taught us, in hundreds of cases, that what appeared to be insuperable difficulties-what appeared to be differences of opinion about which they would fight to the death-have disappeared almost immediately. Those difficulties and differences have only required to be touched by the finger of reason, and they have vanished into thin air and left nothing behind. I remember, and, probably Mr. Symon will remember that-some eleven or twelve years ago there was a conflict in the boot trade in South Australia. They were warring to the knife and they threatened on each side to sell their shirts before they would give in. I had the honour to be sent by a trade union organization here to report whether assistance should be forwarded from this colony, and I was fortunate enough to suggest successfully that the disputants should come together, and talk the matter over. They had a conference at which they did me the
honour of electing me as arbitrator. That conference sat, and drew up a set of regulations which were so satisfactory that both sides appeared to think that they had, achieved something, and were satisfied, and the result of that mediation and that conciliation was that for eleven years in Adelaide, there was never any difficulty that they were not able to settle by voluntary conciliation.

Mr. SYMON. -

The difference is that that was voluntary, and this would be compulsory.

Mr. TRENWITH. -

Well, I was coming to that point. Lately, within the last few months, they have had another fight there. Being so successful on the previous occasion, I felt that possibly I might bring these parties together again, and I took the trouble and went to the expense of going to Adelaide. But the circumstances were different, one party to the dispute saying at that time that it felt it had no need for conciliation, and it was so certain of winning that it would not consent to meet the, other party voluntarily and conciliate. Now, if there had been an effective conciliation or arbitration law in South Australia—which there is not, although they have done what they could do, and what shows, perhaps, the necessity of trying to do more—if there had been an effective law upon the point, the authority created under that law could have said to those two parties—"You are breaking the law, you are causing distress to South Australia, you are doing injury to the people of this country, and you must submit your dispute to the arbitrament of a body having not only your interest but also the interests of the whole community at heart." And then, as eleven years ago, I have not any doubt that an end would have soon been put to the difficulties which divided those people, and that, were calculated to continue to divide them until one side was beaten, and

that have led to a state of affairs in the boot trade of Adelaide now that every citizen of South Australia, I am sure, deplores, because wages have been brought down inordinately, and men are working under conditions of discontent and hardship that would not have existed, I believe, if there had been what we are aiming to get—what all progressive men on this question are endeavouring to secure—the means by which the people who are engaged in a conflict that injures, first of all themselves, and indirectly all those who are in connexion with them—a body which when such conflicts arise, shall have power, not to take the disputants and knock their heads together, but to say that they must come together and state their cases in the presence of persons who have the capacity and the desire to sift them, to analyze them, to say to the people of the colonies which side is right, to say
how far-as often happens-both sides are wrong, and how far either the one side or the other is wrong and thereby to give an accurate and fair index to the people as to how their sympathies should go. I think that if this matter is grappled with, as it will and must be grappled with, that there will be a time, difficult as the problem is, when there will be found some means not only of arriving at an equitable decision, but of enforcing obedience to an equitable decision.

Sir JOSEPH ABBOTT (New South Wales). -

As one who has already recorded his vote against the proposal of Mr. Higgins, I desire to say an this occasion that I intend to vote for that proposal. It may appear somewhat inconsistent for me to do so, but I was very forcibly struck by the arguments of Mr. Kingston that the proposal, was a just and fair one, and the arguments of Mr. Symon convince me that the proposal is just and fair. Mr. Symon said that this was a mere proposal, and simply idle words. Well, if it is-

Mr. SYMON. -

I said it was either that or-

Sir JOSEPH ABBOTT. -

I took the honorable member's words down at the time.

Mr. SYMON. -

Will the honorable member permit me; I said it was either that or a mischievous proposal.

Sir JOSEPH ABBOTT. -

Did not the honorable member say it was idle words?

Mr. SYMON. -

Yes, certainly.

Sir JOSEPH ABBOTT. -

If the proposal is simply idle words, what harm can we do by inserting it in this Bill?

Mr. BARTON. -

That would not be a good justification for altering the Bill all through.

Sir JOSEPH ABBOTT. -

If the insertion of these words has the effect of satisfying a sentiment which we know largely prevails throughout a certain class in Australia-if they are only idle words, what harm will be done by inserting them in the Bill? Mr. Symon argued, in reference to the insertion of those words, more as if be were pointing out what the Bill would or would not be, rather than as on a proposal to give the Commonwealth power to deal with this question. I can really see no harm in giving the Commonwealth power to deal with the question. Mr. Trenwith has referred to the fact that very often these industrial disputes are easily settled if the parties to the disputes can
be brought together. Mr Symon asks-"How can you enforce an Award or
determination against 100,000 working men?" Well, we know that it is
absolutely impossible to do so. But we also know that the working men, at
least in this 19th century, are just as amenable to public thought and reason
as anybody else, and are just as amenable to public opinion as the masters
themselves. And, although these awards cannot be enforced against them
as a matter of law, I can say, from my own experience, that I believe they
to the conciliation court. An award was made, and the men's unions
universally condemned that award, but every one of them loyally submitted
to it, and business went on without any of those quarrels which might have
disorganized the whole of that particular trade. I am not quite sure whether
the dispute was in the building trade or amongst the shoemakers-it was
either the one or the other.
Mr. TRENWITH. -
It has often been so, anyhow.
Sir JOSEPH ABBOTT. -
What we want to do is to give the Federal Parliament power to bring
these parties together. I do not care whether any good results come from it
or not. Very often these strikes occur because the parties are not brought
together to talk over their differences. Take the case of the shearers' strike.
Neither the pastoralists nor the shearers would agree to come together to
discuss the questions in difference between them; but take the case of an
ordinary dispute between masters and men, they will meet each other if
these courts of conciliation are established, and they may be able to
reconcile their differences. Why should not organizations of trades
unionists and masters, which represent very largely the industries of the
colonies, be brought together to reason out their differences, and thus
prevent disastrous strikes as far as possible? No better example than that of
the pastoralists' and shearers' unions could be given to show what may be
done if the parties to these industrial disputes can be brought together.
During that dispute I was Speaker of the Legislative Assembly of New
South Wales. I did all I could to induce the Trade and Labour Council in
Sydney to try and persuade their body of men to meet the pastoralists, and I
did the same with the pastoralists' organization. But each side stood aloof.
Neither the one nor the other would give way and say-"We ask for this
conference." But finally they did come together, after all the mischief was
done; each one gave the other something, and each went away perfectly
satisfied that they had gained a victory. Now, we hear a great deal of
blustering during these strikes, and it is an unfortunate thing for nine-tenths
of the working men that their leaders talk a great deal too much, and talk a
great deal of rubbish. If those labour leaders said less and worked more earnestly half the mischief that arises from strikes would not exist. But we hear a lot of this blustering. For instance, in the course of the shearsers' strike, it was said that no wool would be allowed to go out of Australia unless it was shorn by unionists. That sort of thing does not tend to bring about the settlement of disputes. However, in this particular dispute, as soon as the men and masters met in a conference extending over some days, they mutually gave way; each gave away something, and each went away satisfied that they were the victors. If this is only a sentimental proposal—if these are mere idle words—what harm can come from giving to the Commonwealth power to legislate upon this subject? Does it follow that the Commonwealth will legislate upon it? The Commonwealth may determine to leave the whole question to the states themselves to settle, but if this power is not given to the Commonwealth, in no instance can they interfere in a dispute, although they may be deeply interested in it. There is no man in this colony, I do not care what his position is, whether he is rich or poor, who is not indirectly affected by a very large strike. Men who are unconcerned with these strikes altogether, we all know too well, suffer from the strikes, and those concerned in the industrial warfare are often dragged down to poverty and discontent by means of these strikes. Well, I do not care what means you take to put a stop to this sort of thing, even if it is only by insetting a sentimental proposal—mere idle words—in this Bill, if it will have the effect of putting an end to these disastrous industrial struggles.

Mr. HOWE (South Australia). -

I wish to say a few words in connexion with this question, because I wish to separate the national aspect from the local aspect. It has been admitted on all hands that conciliatory legislation in the various states has, at all events, done no harm if it has not achieved some good. I can imagine, myself, no greater disaster that can happen to any nation, if we are to be a federated one, than, for instance, a coal strike in the state of New South Wales. Now, supposing there was some dispute in the coal mines that might be settled by the Federal Parliament creating a tribunal that might stop it, perhaps, in its early stages, and suppose we had a continuance of that coal strike, I say that the long continuance of such a strike in New South Wales would be very disastrous to every state in Australia. I know that not long ago, when the dispute arose between the coal-owners and the coal miners, many industries in the various states of Australia were paralyzed in consequence. Now, it seems to me that this is one of those
affairs in connexion with which the federal authority should have power to intervene, because such a dispute interferes with the industrial life of the individual states. It may be that hundreds, aye, thousands, of artisans and mechanics, who have no sympathy, perhaps, either with the coal mine owners or the colliers themselves, will have to suffer, and their families have to suffer, through the long continuance of the cessation of the working of the coal mines in New South Wales. That is one reason why it seems to me to be necessary to give power to the federal authority to create a tribunal to deal with such a question as this. We remember that during the great maritime strike, not long ago, many industries were paralyzed, the workers in which had no sympathy with that strike at all. Nevertheless, great disaster fell upon the whole of the people of the states in consequence of that dispute. I submit that if we say we are willing to give to a state power to interfere, and to try to settle any industrial disputes within that state, then, if we are to create a nation, why should we not, on the same reasoning, give power to the national authority to intervene, if necessary, when the dispute interferes with the industrial life of the nation? For these reasons I intend to support the amendment of Mr. Higgins.

Mr. OCONNOR (New South Wales). -

I think the honorable member who has just sat down has shown, from what is going on in his mind, a confusion of ideas with regard to the purpose and object of this amendments confusion which I think is rather prevalent. No one can have more sympathy than, not only myself, but several other members who have taken the same view with regard to the disastrous consequences of strikes which the honorable member has just pointed out, and I think that all of us in our several colonies have done our best by way of legislation—which is only in the experimental stage—to deal with the matter. It must not, therefore, be assumed that those of us who oppose the placing of this power in the Federal Constitution are any less sympathetic with those troubles and disasters, which affect not only the workers but the whole community. We base our opposition to the insertion of this clause in the Federal Constitution upon this ground only—that the matter is a matter not for federal control but for state control.

Mr. HIGGINS. -

How could you deal with a shearing strike or a shipping strike in that way? How could that be a matter for state control?

Mr. OCONNOR. -

I would point out to the honorable member that, after all, when you come to deal with these cases so as to settle them, you must settle the dispute between the original parties. You don't get rid of the dispute between the original parties by settling the extension and the indirect effects of the
dispute; you must settle the dispute itself. Now, the dispute occurs in one
state, and the dispute generally depends on

the terms of a contract or on the terms of employment, so that, however
widespread the consequences of that one dispute may be, in order to arrive
at a settlement of a strike you must settle the dispute. Therefore you have
to deal with a matter arising in a particular state subject to local conditions,
and referring to a contract made by parties living in that state. It is a matter,
therefore, which really, except in regard to its consequences, the Federal
Commonwealth has no concern with. However, I will not pursue that
aspect of the question for the present; I wish rather to deal with a statement
and argument of the honorable member (Sir Joseph Abbott) which seemed
at first sight to have some weight; that is, that if this is a mere form of
words, mere idle words," why should we not put it in the Constitution?
Now we are often asked not to regard the details of this legislation, but I
say that in dealing with this question we cannot avoid that. If we give this
power to the Commonwealth, it behoves us to see how it is likely to be
exercised; because it depends entirely on the way in which it is to be
exercised, whether it should be granted or not, even if it be within the
scope of federal power.

Mr. KINGSTON. -
Surely it is for the people to say how it shall be exercised.

Mr. OCONNOR. -
The right honorable member says that it is for the people to say how it
shall be exercised. I quite agree with him, and it is because I see and I think
any one who reflects must see-that it will be exercised in the one direction-
a direction which it would be disastrous for the Commonwealth that it
should be exercised in by the Commonwealth-that I am opposing this
proposal. As I have said, the whole of this legislation is in the experimental
stage. I think in all the colonies-certainly in New South Wales, South
Australia, and New Zealand, and perhaps in other colonies-what is called
conciliation has been tried. Now, I think I am not stating the case too
strongly when I say that the result of that experiment has been a disastrous
failure.

Mr. KINGSTON. -
Oh, no; not in New Zealand, any way.

Mr. OCONNOR. -
That certainly has been the result in New South Wales, where a great
deal of trouble was taken, not only to give opportunities to establish
conciliation courts, but where the government actually established a
conciliation tribunal presided over by a man in whom the whole
community had the greatest possible confidence, and where they kept up a
department with all the machinery of registration and everything else that
was necessary to bring the thing into full operation. Yet, time after time,
the result showed its utter futility. When we consider the number of strikes
that have been interfered with and settled by means of boards of
conciliation in other parts of the world, I think it must be generally
admitted that we have gone through the first stage of this experimental
legislation, that is, the stage which leaves these matters to conciliation and
voluntary peaceful methods, and I think that if the verdict has not been
given already, the verdict certainly will be, when the matter comes next to
be dealt with, that that stage has shown the utter futility of voluntary
methods. Then can any one doubt that the next stage will be compulsory
arbitration

Mr. HOLDER. -
The power of inquiry in South Australia has been most salutary.

Mr. OCONNOR. -
The compulsory power of inquiry.

Mr. HOLDER. -
They get the fear of public opinion before their eyes on both sides.

Mr. OCONNOR. -
When the honorable member says they get the fear of public opinion
before their eyes he means really this-that probably the business man, the
manufacturer, rather than have his accounts and his books ransacked for
twenty or thirty years back, often submits to what he considers injustice.

Mr. KINGSTON. -
Oh, no.

Mr. OCONNOR. -
I do not want to go into the question of the actual working of the thing in
any particular colony at all, but I say that the next stage of legislation will
undoubtedly be some form of compulsion.

Mr. KINGSTON. -
That means that the people will require it, and are you going to say that
they shan't have it if they want it?

Mr. OCONNOR. -
The right honorable member, with all respect, is begging the question.
The real question now is, not whether the people want it, but whether the
power should be given to the Commonwealth, that is to say, the whole of
the Commonwealth, to enforce the compulsory reference of disputes in one
particular state. If this power to legislate is given at all, the next step in
legislation must be, if it is to be effective, to grant compulsory powers, and you have to regard this matter as if the power was to be exercised in that way. Honorable members cannot deny that it can be exercised in that way, and the probabilities are that it will be exercised in that way.

Mr. HIGGINS. -
If the Federal Parliament is wise, will it not refuse to do an unwise thing?

Mr. BARTON. -
Are we not to assume, if we grant this power, that it will be fully exercised?

Mr. OCONNOR. -
I would ask the honorable member (Mr. Higgins) is he in favour of some form of compulsion?

Mr. HIGGINS. -
I am not in favour of anything at present but of leaving the thing to the Federal Parliament.

Mr. OCONNOR. -
The honorable member, however, has given some attention to the subject, as he has to all subjects of a social character, and I would ask him what is his own opinion? If the honorable member is afraid to disclose his opinion to me-

Mr. HIGGINS. -
I am not afraid of disclosing anything to you, but I want to make no false issue, but to leave the thing absolutely to the Federal Parliament.

Mr. OCONNOR. -
The honorable member is mistaken in saying that this is a false issue. We must consider how the power is likely to be used.

Mr. HIGGINS. -
Will you trust the Federal Parliament?

Mr. OCONNOR. -
I will trust the Federal Parliament when it gets a power of this kind to do what it considers to be effective, and the only way in which it can deal effectively with this matter is to make the power in some way compulsory. I will trust the Federal Parliament with any matter which is a matter of federal concern. The best way of proving that this is not a matter of federal concern is to inquire how it is likely to operate if the power is to be exercised in the way in which it is certainly likely to be exercised.

Mr. ISAACS. -
Surely that is not a correct principle to go upon? Before giving a man a vote would you inquire how he is likely to use it?

Mr. OCONNOR. -
That is not an analogy.
Mr. ISAACS. -

It is very like one.

Mr. OCONNOR. -

When you are dealing with a power of this kind, the very best way to discover whether it is a federal power is to consider how it may be exercised. I do not say for a moment that I would interfere with the right of any state to place this matter upon a compulsory footing. Any state may make that experiment if it thinks fit. Personally, I am not in favour of such a provision, but I say that on this short ground I oppose the introduction of this power into the hands of the federal authority; because I feel convinced that compulsory power would be sought for, and would be obtained. Now, in the first place, it would be a most dangerous thing to bring the federal authorities into conflict—not with a particular locality and a certain number of men in dealing with one of these cases, but with the whole Commonwealth. I say, as Mr. Symon has said, that you have in that an element of difficulty and danger which we should not needlessly expose the Commonwealth to. I really got up, however, chiefly to point out that it is a dangerous argument to use in favour of this power being inserted in the Constitution that it consists merely of idle words." If it is put in the Constitution it will be exercised, and if it is exercised it will be exercised in the direction of enforcing by the powers of the federal authority interference with contracts in a state, the carrying out of which must depend originally upon an agreement, and in the second place upon conditions which are undoubtedly local. The enforcement of such a power might, under certain circumstances, not only be absolutely against the best interests, but even against the wishes, of the state in which it may be required to be enforced. I hope the result of this discussion will be that, however much we may feel in sympathy with this social experiment, we shall say that it is one to be conducted in our own states, and that we shall not add this further power to those quite sufficiently large which have been vested in the Commonwealth.

Mr. DEAKIN (Victoria). -

It appears to me that the reply to my honorable friend is that there are already embodied in clause 52 a number of powers which, under perfectly conceivable conditions, may involve the Federal Government in the most serious relations with certain classes in the various states, and that in no case has that been urged as a reason why we should not confer those powers. I admit that the danger depicted by the honorable member may readily occur, but the whole of the legislation with which we have to deal
is subject to greater or lesser danger. We have all recently seen that in the
great Republic of the West the questions which come under the headings of
currency" and coinage" have threatened to rend the Union asunder. It is
impossible to refuse to permit the settlement of great federal issues by the
Federal Government simply because they involve dangers, unless the
Federal Government is to deal only with minor and unimportant questions,
and to be a kind of glorified Federal Council, instead of, as we intend, the
popular and central Government of the whole of Australia.

Mr. BARTON. -

That is an argument for unification.

Mr. DEAKIN. -

All arguments for federation are arguments for that degree of unification,
necessary for national interest and national ends. Mr. O'Connor also urged
that as yet this question was only in its experimental stage, and that the
legislation on the subject in Australia has not been by any means
conspicuously successful. It has been partially successful in New Zealand,
but nowhere else, although in some form it has been attempted in several
colonies. I admit that the honorable member has made a correct statement
of the facts. I was under the impression that a greater measure of success
had been attained in South Australia, but am now better informed. What
does that lead to? Does it not lead to a recognition of the fact that in all
these delicate and intricate social questions there will have to be an
abundant series of cautiously-conducted experiments before we can hope
to arrive at a final settlement?

Mr. OCONNOR. -

What is the next step?

Mr. DEAKIN. -

I admit that I am impressed by the extreme intricacy of this question, and
the difficulty the Federal Parliament will have in dealing with it. But the
Federal Parliament will have the same difficulty in dealing with a variety
of issues, such as the financial issue, the question of Customs and the
measure of protection to be extended to Australian industry. And yet in
those cases we trust the Federal Parliament. Why should we not do so in
this instance also? Mr. O'Connor asks what is the next step? The honorable
member's argument was that most of the experiments in Australia have
been in the voluntary stage, and that the next experiment will be in the
compulsory stage. So far as I can forecast the future, I agree that that is
likely to be

so. That adds to the difficulty of the situation and the complexity of the
problem, but neither difficulty nor complexity need deter us if we believe
this to be distinctly a federal question, that is to say, a question which will become a federal question when it has extended beyond the limits of a single state. I do not regard the proposal as a form of idle words, or as conferring a power that is to be allowed to remain unused. At the same time, this is a power, like many others, not likely to be exercised by the Federal Parliament for many years to come. The Federal Parliament will be impressed by the importance of the experiments that are proceeding in the states. It will watch them carefully, and will deal with the subject as soon as it feels it is competent to do so. It will be under no compulsion to accept any solution of these difficulties until it feels that it has obtained a satisfactory solution. The argument of Trust the Federal Parliament" appears, to me to be applied most properly in this connexion. The other plea which I would venture to urge is one which carries weight with many other honorable members. It is that, as far as we legitimately can, we should strengthen the Federal Parliament and the Federal Government. Wherever we can detect a federal interest or power we should provide for it in advance, without waiting for public clamour or the long agitation leading up to an amendment of the Constitution. We should provide in advance for all conceivable federal contingencies, strengthen the Federal Government, and trust the Federal Parliament to use its powers wisely.

Mr. DOBSON (Tasmania). -

I desire to say a few words, because I am going to support the amendment, whereas on a former occasion I voted against it. In matters of this kind it is exceedingly difficult to prevent one's sympathies running away with one's judgment, and after the able speeches of Mr. Higgins, Mr. Isaacs, and Dr. Quick, which appealed to my sympathies, came the sledgehammer arguments of Mr. McMillan and Mr. Symon. I think it must be clear to a majority in the Convention that these honorable members have rather tried to stifle their sympathies, and have very carefully and quite unintentionally exaggerated in every particular the difficulties surrounding the simple amendment of Mr. Higgins. My honorable friend (Mr. Symon) even picks to pieces the wording of the amendment. Mr. Higgins does not mix up conciliation and arbitration in the way Mr. Symon would lead us to suppose. The amendment means conciliation for the prevention of disputes, and arbitration for the settlement of them, and I have no fault to find with the language used. Then Mr. Symon said that he would not take up the time of the Convention in considering the mode in which the Federal Parliament might carry out this power if invested with it, but in the next breath he stated that the Federal Parliament, if it had this power, would fix wages for the whole of Australasia. Mr. Wise interjected that by giving this power we should hand over the regulation of industrial disputes of every
kind to the Federal Parliament. Now, I would ask, are not these exaggerations which we have a right to call attention to? I think that they are. Mr. Symon insisted, with very great firmness, that a maritime strike was purely a local matter. Now, may I, with every respect insist with equal firmness that a maritime strike could in no sense of the word be a local matter? It must be a national matter. I am sure every honorable member knows the great and gigantic strides which are being made in all parts of the world in the direction of organization. I need only refer to the political organizations of America, to your federal labour associations, and to your federal employers’ associations. These associations are becoming more scientific and powerful, and I can hardly understand any honorable member saying that a maritime strike would be local. Just in the same way as our Most Gracious Majesty the Queen touched the button and flashed a message of gratitude and goodwill to all the people of the empire, so the time has now come, or will shortly come, when the secretary of a federated labour society will touch a button or write out a little cablegram, which will be flashed throughout all Australasia, and will make any strike a national strike in every sense of the word. I cannot, therefore, agree with those honorable members who say that this is not a matter of federal concern. Mr. Higgins only asks us to give the Federal Parliament power to deal with those strikes the influence of which has extended beyond the borders of a single state. Mr. Symon asked what power would determine whether a strike had so extended itself. That power would, I presume, rest with the Federal Court. If the Federal Parliament, in the opinion of any individual, oversteps its authority, the Federal Court will be there to say whether it is right or wrong. I think that Mr. O’Connor was mistaken, although he has very good reasons for assuming, that the next stage in this matter will be that of compulsory arbitration. The Convention should not, however, allow itself to be influenced by that argument. I do not look forward to the time when it will necessarily be compulsory. The Federal Parliament will wait for the psychological moment. This is about the last question it will touch until it can touch it usefully, and in the interests of commercial life. Honorable members seem to think that if they give this power to the Federal Parliament the Federal Parliament will rush in and use it without reason and common sense. I can come to no such conclusion. Supposing the Federal Parliament contented itself with passing a modest Act constituting a tribunal of five persons. It might be provided that the Chief Justice or one of the Judges of the Federal Court should sit on this tribunal, and that there should be associated with him two or more gentlemen representing the
employers of labour, and two or more gentlemen representing the employees. Would not a tribunal of that sort be capable of doing untold good in the settlement of labour disputes? After the first week or two of the engineers' dispute was it not seen that the employees must lose? Did not the newspapers teem with information about the hours and conditions of labour in other countries of the world which showed that the employees must lose? What happened? The Engineers' Association went on spending funds which ought to have been used in other ways, and particularly for the benefit of the widows and orphans. There ought to be a law to prevent an association from doing anything of that kind. If they had had a tribunal, and especially a tribunal with the dignity, the power, and the importance of a federal tribunal to refer the matter to, this engineering dispute might have been settled two or three months ago and millions of money saved. Why should the Convention refuse to give to the Federal Parliament the power to do so useful a work? One reason why I do not anticipate the time when this matter will be compulsory is that I believe that most industrial disputes can be settled by the force of public opinion. It is to the public that employers and employed look for sympathy and for help. As soon as either side realizes that public opinion is against them they feel the necessity of seeking a settlement. If a court or tribunal of this kind were established-and I do not care how simple or how powerless it is - it will at least be a step in the right direction. I may illustrate what I mean by reminding myself, and telling the Convention, of the first fight I had when a boy at school. The boy was about my own size.

Mr. BARTON. -

Did you only have one?

Mr. DOBSON. -

Yes, only one stand up fight. I do not admit for one moment that I was getting the worst of it, but I do admit that when a mutual friend came and took my opponent's arm and led him away in one direction, and took my arm and led me away in another direction-

Mr. PEACOCK. -

You were very glad?

Mr. DOBSON. -

Well, I was not sorry. I take it that there is no body of persons in the world whom it would be more difficult to persuade that they were wrong than a number of employees fighting for what they think to be right and just on behalf of themselves, their wives, and their children, against their employers. I do not see the common sense or wisdom of refusing to the
Federal Parliament power to create some simple tribunal whereby the employees on the one hand, and the employers on the other hand, could be led away in the peaceful fashion I have just described, and a strike averted which would be fraught with danger to the whole of the Australian Continent.

Mr. LEAKE (Western Australia). -

When this question was before the Convention in Adelaide I had no opportunity of casting my vote for or against the proposal, because with other members of the Western Australian delegation I had already returned to my own colony. For that reason, I do not wish to give a silent vote upon this occasion. It is my intention to vote against the amendment, because I am impressed with the argument that this is a matter not so much for the Federal Government as for the states Governments. The contention that to insert the proposed words would do no harm because they are more idle words does not seem to me to be based upon sound reason. If honorable members have been impressed by the warning given to us by the Premier of New South Wales a few days ago, they will see that words of this sort are not inserted in the Constitution. If this power is given to the Central Government the states Governments will be deprived of the right to legislate upon the subject.

Mr. DOBSON. -

Not at all.

Mr. OCONNOR. -

When the power of the Federal Government is once exercised of course it will.

Mr. BARTON. -

The moment the device of extending a dispute so as to put it under the jurisdiction of the Federal Government is adopted the state Government will be unable to act.

Mr. LEAKE. -

I confess that I think the insertion of the proposed words might deprive the states of a right which they now have. If strikes and industrial disputes were always to be universal perhaps the better medium of settling them would be the Central Government, but I cannot bring myself to believe that they will always be universal. In my experience industrial disputes depend a great deal upon local conditions, and that being so, surely the best authority to settle them is the local authority. We know that, in different colonies, we have varying rates of wages, and we have unionists and non-unionists. In some of the colonies the unionists are more numerous than in other colonies. Now, how can the Central Government, without that local knowledge which is so essential in dealing with difficulties of this kind,
apply themselves to the proper settlement of a dispute? Surely it is better that the states should be allowed to settle the disputes which occur within their own boundaries. If we test the practicability of the proposed arrangement by the experience of the past, we shall find that we are, asking the Central Government, to accept a very great responsibility upon an enormous scale, which the states have been-unable to meet on a small scale. It seems to me that it is unnecessary to burden the Constitution with this provision. I am entirely in accord with the views which the honorable and learned member. (Mr. Symon) has expressed upon this question. A good point was made by the honorable member (Mr. Trenwith) when he said, that perhaps the best tribunal for settling these matters was that of public opinion. After all, that is but a sentimental tribunal, but if sentimental questions are to be settled by some sentimental controlling power, perhaps the Central Government may be able to exercise that power. Another point occurs to me. As I said before, we must not assume that industrial disputes will always be universal throughout the continent. Under the Federation there may be a sub-division of states. Suppose, for the sake of illustration, a dispute occurred in an isolated colony like Western Australia. The chances are that if a strike were to occur in any of our big mining centres, it would, considering our peculiar conditions, in no way affect our neighbours upon this side of Australia. Could not such a dispute be better dealt with by the local authorities than by the federal authorities?

Mr. HOWE. -
There would be no occasion for the federal authority to interfere.

Mr. HIGGINS. -
The federal authority could not interfere. The dispute must be one extending beyond any one state."

Mr. BARTON. -
That gives a direct incentive for the extension of the dispute.

Mr. LEAKE. -
Of course, it is not necessary for the purposes of my argument that the dispute should be a mining dispute; it might be a dispute affecting some other industry. Then, again, disputes might arise in Tropical Australia, in that part of the continent where there may ultimately be new states. A different condition of affairs would prevail there to that prevailing in any other part of Australia: but such a dispute might extend over the border of another state, in which case, if the amendment were carried, it would come under the jurisdiction of the Federal Parliament. But would not the authorities of the states in which the dispute occurred be in a better position
to take steps to bring it to a conclusion than the federal authority? I apologize to the Convention for having detained them on this subject, but under the circumstances I did not wish to give a silent vote.

Mr. GLYNN (South Australia). -

I should like to add to what has been said by some honorable members in opposition to the insertion of these words, speaking from the point of view of the possible efficacy of legislation upon this matter, that the question of the adoption of compulsory arbitration and conciliation was very largely gone into by a Labour Commission which sat in England some seven or eight years ago. That commission examined close upon 500 witnesses, the greater number of whom were representatives of labour, and their decision was, as expressed in an article by Mr. John Rae, in the Contemporary Review, that an Act of Parliament should not be passed to interfere with what is being done by voluntary co-operation.

Mr. HIGGINS. -

But there has been a forward movement since that time even in England.

Mr. GLYNN. -

I do not think the position of affairs there has altered very much during the last six or seven years, or that the well-thought-out recommendation of representatives of labour-recommendations based upon the evidence of members of the several labour societies could have been upset within that time. Here we have from Mr. Rae, who as a writer is one of the greatest upholders of labour, the statement that the witnesses who were examined on behalf of labour organizations would have nothing to do with compulsory state interference. Mr. Rae cites the evidence of several witnesses. In preface to an extract from the evidence of one of them, he says-

One thing was clear-they would have nothing to do with State arbitration or a State-appointed arbitrator. I say," said Mr. Trow, let Parliament mind its own business. We know better what man to select for an arbitrator than Parliament does. We do not want them to foist upon us an arbitrator."

Going further, we have the evidence of Mr. Knight, a representative of capital, who is cited by Mr. Rae in justification of his conclusions:-

"I speak," he said, from long experience of the organization that I represent here to-day, and I say that we can settle all our differences without any interference on the part of Parliament or any one else."

Since 1866, when the late Mr. Mundella established a board of conciliation for the hosiery trade, there have been numerous boards of conciliation established in connexion with various trades. Their operations begin by the establishment of the board through the medium of both sides...
to the dispute. They discuss the matter amicably, and if they can come to no agreement it is referred to arbitration. The mode of enforcing the award of the arbitrators is expulsion from the society. If the decision is against members of a capitalist organization, the officials of that organization are supposed to enforce the mandate of the board by expelling such of its members as refuse to recognise it. If the decision of the board is against the demands of workmen, if they do not comply with that decision, they are expelled from their organization. In Middleborough no less than 400 members of a trade society were expelled because they did not accept the wages awarded by a board of arbitration.

Mr. HIGGINS. -
And yet it is said that it is impossible to enforce these awards.

Mr. GLYNN. -
In these cases the decision come to is the decision agreed upon by those who are interested in the dispute, and, urged by the dictates of conscience and common sense, each side says,-"We are bound to follow out the express mandate of a committee in whose voice we have influence to the extent of one-half;" but if the arbitration were compulsory by Act of Parliament the various trades societies would say-"We know quite as well what should be done in this case as any board of compulsory arbitration, and we refuse to give you the moral adhesion which we should give to the award of any court voluntarily created. We defy the state to say that it has more than a moral power to enforce this award." If the state decreed that 10,000 or 12,000 workmen should accept for a definite time lower wages than they were asking for, could that decree be enforced?

Mr. SYMON. -
On the other hand, what would prevent an employer from shutting up his shop if an award were given against him?

Mr. GLYNN. -
Yes. Would a mandamus be issued if he did not open his shop?

Mr. HIGGINS. -
You can impose a penalty for disobedience. Of course, while you can lead a horse to the water you cannot make him drink.

Mr. GLYNN. -
I would not lead a horse to the water if he were not thirsty. We have seen the growth of voluntary machinery, which 25 years' experience in England has shown to be efficacious, and by substituting for it the principle of compulsion you must, if you do not nip in the bud, at any rate interfere with the early growth of the principle of conciliation and arbitration.

Mr. HIGGINS. -
If the principle is bad the Federal Parliament will not adopt it.
Mr. GLYNN. -

The honorable member must be an innocent in political life if he thinks that.

Mr. HIGGINS. -

Why should not the Federal Parliament be as wise as we are?

Mr. GLYNN. -

No doubt, but that is not going very far. On a simple point like this, we have had something like 25 different opinions, so that there are two years has simply repealed the efforts of earlier legislators who worked on philanthropic lines. I should be prepared to vest this power in the Federal Parliament if I thought that it would do any good or that it would not do harm, because I think we ought to arm the federal body with any power which may be efficacious for the purposes of good government, and which will not annul the existing rights of the states. But I am of opinion that you will tie the hands of the state by enacting legislation of this character, because it will be impossible to say where the line of demarcation is.

There may be a strike in one colony, and there may be manifested sympathy and support towards the strikers from other colonies without an absolute strike taking place in those other colonies. It will then be difficult to say whether the manifestation of that sympathy and that supply of funds does not constitute an extension of the dispute. A provision of this sort would, in fact, be full of difficulties of interpretation, and, instead of having a settlement of disputes, you may have a complication. Further than that, some lawyer might apply to the court for a mandamus to prevent the Federal Parliament going into the matter at all, on the ground of possible interference with state rights. For these reasons I shall be found voting against the amendment.

Mr. REID. -

In the first instance I think that the onus should be placed upon those who wish to add to the subjects on which the Federal Parliament is to have jurisdiction of giving reasons in favour of their proposals. No part of this Bill has received more careful consideration from the various bodies who have dealt with it than this particular clause, so that when an honorable member wishes to introduce a new subject of federal jurisdiction, the onus is placed upon him of showing that there is some distinct advantage to be gained by it. I have no doubt that those who are in favour of the amendment moved by the honorable member (Mr. Higgins) do believe that a distinct advantage would be gained by making this a federal subject. There is a tendency in these days, especially among those who are very anxious to bring about an amelioration of all the ills which flesh is heir to,
to intrust knotty problems to some new authority, in the pious hope, that matters which human wit has hitherto never been able to settle satisfactorily will be settled by some such tribunal. I fear that this attempt to settle the matter of trade disputes by referring them to some new jurisdiction will only lead to an extension of the evil. Because we must see at once that this proposal has a very serious disadvantage in it. The honorable member does not propose to hand over all trade disputes to settlement by the Federal Parliament. He hands over only those trade disputes which extend beyond the limit of one state. Cannot we see that giving any such power must result in a most unfortunate state of things arising? For instance, let us suppose that there are several sets of laws in existence dealing with this subject—one in a particular state, which are not interfered with by any federal law; different laws in each of the other four states; and then a federal law which may be radically different from all the others. Just consider the temptation under those circumstances to shift the venue of a particular trade dispute from a particular state. If the employers in the trade dispute in a particular state think that the federal law and its administration are more likely to suit them, look at the incentive there is to extend the mischief and evil into another state, or more than one other state, in order to shift the venue of the tribunal which will try the dispute. There is at once, I say, an incentive to shift the venue if the employers think that the federal tribunal will be likely to suit them best, and they will be tempted to extend the dispute in order to suit their own personal interests. So it will be with the other side—the working men—if they think that, the federal; tribunal will best suit their interests.

Mr. HIGGINS. -
As if the Federal Parliament would not deal with such a case!

Mr. REID. -
I cannot conceive of a Parliament which could deal with contingencies of that kind.

Mr. HIGGINS. -
It is quite possible for the Federal Parliament to draw the line, and to allow the tribunal to decide whether a particular case referred to it is a bonne fide dispute pertaining to one colony or not.

Mr. REID. -
We are drawing the line here.
But we say that the dispute is only to be dealt with by the Federal Parliament when it is a dispute existing in more than one state.

Mr. HIGGINS. -
Yes, that is so.

Mr. REID. -
That is all I am addressing myself to; and I am showing that such a provision will tend to enlarge the area of trade disputes, for the very reason that in a given dispute the employers might be disposed to extend the working area, or the men might be disposed to extend the area, in order to get the advantage of having the dispute settled by the federal tribunal. Now, I am one of those who quite believe in the compulsory investigation of trade disputes. I have quite come to that conclusion. But a proposal that the Federal Parliament shall provide for the compulsory investigation of trade disputes passes my comprehension. It seems to me that any such proposal would put a premium upon one side enlarging the area of the mischief. Under all the circumstances, it seems to me that it will be better for each state to deal with this matter locally. I am, to a considerable extent, in sympathy with those who are agitating upon this matter, but I think that it is one that can be best dealt with by means of laws passed by the various states. While I am personally in favour, however, of the compulsory investigation of trade disputes in particular states, I am opposed to a compulsory federal investigation of local trade disputes.

Mr. DOBSON. -
A compulsory federal investigation of all trade disputes?

Mr. REID. -
Yes. I have pointed out how a local trade dispute may be extended and made into a federal dispute.

Mr. HOWE. -
The federal law will take care of that.

Mr. REID. -
I am delighted to know that these matters are to be settled so easily, but I would like to say that this Constitution settles the federal law. What are we asked to do by means of this amendment? It provides in point of fact that in case a trade dispute extends beyond one colony the Federal Parliament shall have-

Mr. KINGSTON. -
"May" have.

Mr. REID. -
May? This is a still more extraordinary state of things.

Mr. KINGSTON. -
"May" deal with it.
Mr. REID. -

If there is to be an option, and the Federal Parliament may deal with one class of trade dispute whilst the local law may deal with another-

Mr. KINGSTON. -

I did not say that.

Mr. REID. -

Then may" means that There can be no word may used in a matter of this sort. It must be a power of active legislation to meet the circumstances of this sub-section. And it would not be competent for the federal power to go into the bona fides as to the extension of a trade dispute. If a dispute be existent between two colonies or more the federal tribunal would have to deal with it, and the local power would be disfranchised from dealing with it. That is what I am afraid of. In order that matters may be dealt with federally, we have put a power in the Constitution which enables the states to hand over any matter to the federal jurisdiction. In connexion with this matter I take up the same attitude as I took up in relation to the old age-pensions. I say that it may be a subject which may be made federal in the future. In that event, the states can hand it over under sub-section (35) to the Federal Parliament. But at present the view I take of the matter is that I think it would be better that we should not insert the proposed new sub-section.

Sir JOHN FORREST (Western Australia). -

I intend to support the amendment of my honorable and learned friend (Mr. Higgins). I must, however, say that I am not generally in sympathy with the proposals of the honorable member, and I have hesitated in my own mind whether, in following the honorable member in this matter, I am on the right track. But, for all that it may not be thought so, I have some liberal instincts, although my liberalism is not of the type of that of the honorable member or of many of those who generally support him. I have a greater regard for individual rights, I think, than probably the honorable member has. But my reason for supporting this amendment is that I think the Federal Parliament will be better able to deal with the subject, and will deal with it more moderately, than the local Parliaments will be likely to do. I think that it will not be so likely to be influenced by party feeling as local Parliaments will be. It is no use shutting our eyes to the fact that these industrial disputes have arisen and will arise in the future, and I see no reason why this Parliament which we are to erect should not have the power to deal with these matters. I hope that it will be able to exercise that power with greater moderation and more wisdom than the local Parliaments are likely to do, and for that reason I intend to support
the amendment.

[The Chairman left the chair at one o'clock p.m. The committee resumed at two p.m.]

Mr. HIGGINS (Victoria). -

I desire before a division is taken to express briefly my appreciation of the fair, frank, and courteous way in which the amendment has been treated on both sides. I think the reason why the discussion on this as well as on some other clauses has taken such a long time is that honorable members feel that they are now engaged on the final stage of this Bill, and that the people of the various colonies will appreciate the care which is taken at this stage before they make any final commitment. While I render my thanks to honorable members, I must say the unkindest cut of all came from the Right Hon. Sir John Forrest, who is supporting my amendment. The honorable member very frankly stated that I have not got a proper appreciation of the rights of property, and that I do not respect what a man has rightly earned as I ought to do. I was not aware that I had in any way interfered with his spoons or anything belonging to him, or on what ground he says I do not respect the rights of property, in this instance. I thought it was the habit of lawyers to be always upholders of property and order. The principal objection to lawyers always appears to be that in deciding the question of meum and tuum they are apt to make them suum. But apart from the difficulties which have come from behind me, I am glad to have the support of the right honorable gentleman in that matter. The only doubt I have, after all the debate, about the correctness of my view is that I am supported from such a quarter. I must say I think the issue has on several occasions been obscured during the debate. The issue is not whether there is to be arbitration or not-the issue is not as to what kind of arbitration or conciliation there is to be—but the issue is whether the hands of the Federal Parliament are to be tied, so that no matter how distinctly federal the dispute is, how widespread that dispute is throughout Australia, the Federal Parliament shall have no power to deal with it. I would remind you that the very effect of this federal scheme is to render disputes Australian, which are at present Victorian or purely New South Wales. For instance, we are giving the Federal Parliament the whole power of dealing with the customs duties. That involves the question of particular trades and their protection. At present the dispute in the boot trade is confined to Victoria, as to the Victorian bootmakers, because they have to deal with one kind of conditions, and a dispute in New South Wales as to the bootmakers' wages, and so forth, is confined to New South Wales, because they have to deal with a different set of conditions. When we make federal the whole of the customs duties, when we deal with the colonies as a whole, you will find
that the conditions of the different trades throughout the colonies will be assimilated, and that there is far more likelihood of the disputes spreading over the several colonies. Assuming that a dispute spreads over the several colonies, I ask what possible remedy do the opponents of this amendment suggest? They simply stand blind and helpless before a condition of things which every one ought to face, and they offer no suggestion whatever for the purpose of meeting the most Review of Reviews, dealing with an article in the National Review upon compulsory arbitration, it is said that the employers are always against it. Its adoption is always favoured by the whole of the trade unionists. If there is a strong feeling amongst the workers of Australia that conciliation and arbitration are against their legitimate interests you may be sure that the law will not be passed. I agree thoroughly with the writer of this article that the resistance to conciliation and arbitration always comes from the side of the employers. One of the chief objections raised against my proposal is that there are no means of enforcing an award where there are a great number of people interested. It is said if 100,000 workers are interested, how are you to enforce the award? Now, I find that in the National Review article the scheme in New Zealand has been described. The scheme there is that to deal with such conflicts there are local boards of conciliation composed of equal numbers of masters and men, with an impartial chairman. They are armed with full powers for taking evidence and compelling attendance. The award of the local board is not made enforceable by law, but it is a friendly recommendation to the disputants. If the disputants do not act upon the recommendation there is an appeal to a final tribunal, consisting of a Supreme Court Judge, with one assessor selected by the employers, the other by the employees. That court is able to give an enforceable award if it thinks fit, and that is final. The article says-

After inquiry into any industrial dispute the court gives its award. This can be either legally enforceable or not, as it thinks advisable. If it is to have legal force it is filed in the Supreme Court, and then has the weight of an ordinary submission to an award. That is to say, either party to it can, by leave of a Judge, get an order exacting a penalty for its breach. The penalty, be it noted, is not to exceed £500 in the case of any individual employer or trade union. Should a union's funds be insufficient, each member is liable to the extent of not more than £10. Costs are in the arbitration court's discretion.

Sir GEORGE TURNER. -

Have not all the unions to be registered? Is not that the basis of the Act?
Mr. HIGGINS. -

I do not know whether that is the case in New Zealand, and I do not know that it would be essential but the point is this: It is said you cannot enforce these awards. But what is the fact? In New Zealand, since the Act was passed, there have been sixteen disputes referred to the boards. The article proceeds-

The trades concerned have been the bootmakers, seamen, gold miners, tailors, coal miners, bakers, furniture makers, builders, and painters. During that time there have virtually been no strikes or lock-outs. Out of twelve disputes settled about one-half of them were settled by the boards without appeal to the court.

That I also take to be a very significant fact. If the local board of conciliation gives its decision public opinion knows upon which side to veer. At present the public do not know on which side the merits stand; but if they know there is an impartial board to inquire into the dispute the chances are very strong that public opinion would veer round to and carry out the decision. And my honorable friend (Mr. Trenwith) is quite right in saying that what they look for is the play of public opinion on these disputes. There is also one great advantage which employers appear not to recognise. It gives them to a large extent a certainty for the next two or three years. The New Zealand law is that there is to be an agreement filed for a period which is not to exceed three years. If there is one thing in commercial transactions which commercial men want, it is to have some certainty as to the conditions under which they are to work for the next two or three years. The article continues:-

One of the advantages to the employer is that the verdict, filed in the court, and legally binding for three years, unless terminated by mutual agreement, enables him to make his calculations on an assured basis. If unions fear incorporation as an invitation to harassing litigation by the employers, Mr. Reeves points out that unions can please themselves about becoming corporate bodies for general purposes;" what is not optional is their corporate liability for costs and penalties incurred under the Act.

The mode of enforcement, then, in New Zealand is by going against the funds of the union. Suppose you had, during the last shearsers' strike, to enforce an award against the Shearers' Union, which we all know extends over all Australia, and whose union funds, therefore, are inter-colonial; and suppose you had a New South Wales law which bound the shearers of New South Wales, how could you reach the Shearers' Union funds when those funds would be quickly transferred to Victoria? I ask honorable members, in the interests of the employers themselves, how you are to deal with a case of that sort? Any practical man knows that the best mode of enforcing
the award, if it is to be in its final result compulsory, is to go against the funds of the union, but here you have no measures to your hand. Are we to remain helpless—are we to remain inert? Are we in no way, in making a Constitution in the year 1898, to recognise the gravest questions, involving all our social life, all our industrial life, all our private life, as these disputes do? It has been said "Oh, it is a mere dispute between man and man; every employer has a certain contract with a certain employee." That is very true. There is a contract; but are we to leave it simply to the employer and the employee to fight it out, seeing that the results are so very grave not only to those people but also to those who are behind the employer and employee? Who has suffered most by this dispute as to the engineers in England? Is it the employers or is it the employees? Is it not the families behind the employees? Is it not the general public, who find the whole trade of engineering leaving England? The State has come to this: That it cannot afford to stand idle and to allow these disputes to be carried out to their bitter consummation. It is quite too late for that. All I ask for by this amendment is that just as Victoria can deal with Victorian trade disputes, that just as New South Wales can deal with New South Wales trade disputes, that just as Great Britain and Ireland can deal with disputes in the United Kingdom, so the Federal Parliament shall be enabled to deal with disputes which are Australian. The fact is that we want to do just the opposite of what my friend (Mr. McMillan) has said. He said let legislation be confined as far as possible to keeping law and order. I think the true principle is to prevent as far as possible, to keep the policeman back as the ultimate sanction and ultimate means of sanction. We want to keep the policeman back to the very last. But, according to this principle, which my honorable friend (Mr. McMillan) has put forward, you are to bring the policeman in as soon as ever the employer and employee have a quarrel.

Sir WILLIAM ZEAL. -

He did not say that at all.

Mr. OCONNOR. -

That is not fair. He did not say that at all.

Mr. HIGGINS. -

If we take the remarkable case which my honorable friend (Mr. Dobson) referred to the other day, and which the leader of the Convention described as the battle of the spuds and the billy, in that case, strictly speaking, there were two men who could fight out the quarrel if they wished; but the state says-"No, we will not allow you to fight out the quarrel; we must keep the peace." The two are prevented by the State from resorting to fisticuffs.
Then the State says-"You may do whatever you like, but you must keep the peace; and at the same time we will decide for you as individuals what your rights are with regard to this water." The State therefore interferes between private individuals, and am I to be told that the State is to interfere where there is a dispute merely affecting two individuals, and is not to interfere where there is a dispute which affects hosts of individuals, which affects whole interests of the State, which affects the peace and order of the state, and where the happiness and the means of subsistence of thousands of families perhaps are dependent on the quarrelling between these individuals? Then it is said-"We are throwing the apple of discord to the people." I ask honorable members are we throwing a bigger apple of discord here than they are in referring the whole question of free-trade or protection to the Federal Parliament? Is this a larger question than the question of free-trade or protection? Is there any, thing which excites so much difference of opinion amongst the people as the question of free-trade or protection, and the industries which will be affected by the determining of that question? All I wish honorable members to affirm in this amendment is that the hands of the Federal Parliament shall not be tied, no matter what eventualities may occur, from the making of legislation for federal purposes where the dispute is federal, and I sincerely hope that we shall be able to go to the country with a statement that here we have a means of effectually dealing with a federal matter in a federal manner.

Mr. BARTON (New South Wales). -

I have not risen for the purpose of making a long speech, because I am one of those who hold the opinion that when what one has to say has been as well. said by others it is unnecessary to express that opinion again. I should like to say a word with reference to a remark which fell from my honorable friend (Sir Joseph Abbott). When my honorable and learned friend (Mr. Symon) said the words proposed to be inserted were either idle or mischievous, Sir Joseph Abbott asked, if they were idle words, what harm was there in inserting them in the Constitution. I hope that reasons of that kind will never be accepted. With every respect to my honorable friend (Sir Joseph Abbott), we are not about to make a Constitution which we consider it advisable to fill with this project or that project simply because we think that the insertion of it will do no harm. A federation is supposed by all of us to be something which we undertake for the positive good which it brings, for the positive improvements in certain conditions which it will bring about, and we propose to federate in those matters which cannot be carried out by local legislation and
administration, or which cannot be so effectually carried out by those means. The contest between us here to a large extent is as to whether the questions of arbitration and conciliation may not be as effectually dealt with by the local Parliament as by the Federal Parliament, whether there will be a substantial improvement in the condition of things, and whether this is a class of dispute or a class of subject which is comprehended within the purview of what we regard as federal concerns. I am not going to traverse the ground which has been covered on that particular. As my honorable and learned friend (Mr. Symon) has so effectively and thoroughly dealt with the arguments which were used on the side of the proposers of this amendment. I intend to content myself with adopting in the main the conclusions he arrived at, and in voting with him; and I might here suggest that, as this matter has been so thoroughly canvassed, it is about time that we came to a decision.

Sir EDWARD BRADDO (Tasmania). -

As one who voted in Adelaide on this subject, and as one who believes to the fullest possible extent in the value of boards of conciliation and arbitration, if such boards and courts can be arranged, I desire to justify in some measure my giving the same vote as I gave then. This amendment does not hand over to the federal power the entire dealing with industrial disputes over the whole of the Commonwealth, but only over so much of the Commonwealth as may be affected by those disputes. It therefore imposes upon the various states the necessity for having courts of conciliation and arbitration to deal with the matters affecting their states only. That seems to me to be an admission of the principles principle which I think must be admitted in the present circumstances—that anything whatever in the nature of government or administration which can be better dealt with by a state than by the Commonwealth shall be left to the state. I claim Mr. Deakin's emphatic indorsement of that principle, and I claim his vote, because his vote if he goes with me will affirm the principle. It surely must be better for the employees that their disputes should be settled by courts which know all the circumstances, which understand the condition of things best, than that they should be settled by possibly a distant tribunal which is ignorant of the environment and particular conditions affecting any industry in any one of the states. We

Mr. DEAKIN. -

Is there power to do it? I do not think there is.

Sir EDWARD BRADDO. -

That is mentioned as one of the contingent powers.

Mr. KINGSTON. -

That was said by an objector.
Sir EDWARD BRADDON. -
And a necessary power to be exercised for the effective settlement of a dispute.

Mr. KINGSTON. -
That was said by a critic.

Mr. OCONNOR. -
It must be so.

Sir EDWARD BRADDON. -
And as in the case of wages, which necessarily vary according to varying conditions within a state, so it must be remembered that there are many other matters which are largely ruled and governed by local conditions. I see the matter just as strongly now as I did in Adelaide. I see that it is a matter which should be left to the adjudication of the states; and I would urge further that, by the interference of the Commonwealth Government in matters affecting the different states as to industrial disputes, there will be a probability, possibly more than a probability, of very serious friction arising between the Commonwealth and the states. When the honorable member who moved this amendment rose, I quite thought that he rose with the intention of withdrawing it. After seeing that that amendment, moved by himself as an extreme liberal, and supported by some as extreme liberals, came to be supported by extreme conservatives, or I may say Tories, I was all the more confirmed in that idea when he admitted that the support of my right honorable friend (Sir John Forrest) almost convinced him that he had better leave this matter alone.

Mr. MCMILLAN. -
Perhaps he will withdraw it now.

Sir EDWARD BRADDON. -
I thought he would then, and I hope he will now withdraw it as something which will not be to the interest of labour or to the interest of the states.

Question-That the new sub-section proposed to be inserted be so inserted-put.

The committee divided-
Ayes. ... ... ... ... 22
Noes. ... ... ... ... 19
Majority for the sub-section ... 3
AYES.
Abbott, Sir J.P. Howe, J.H.
Berry, Sir G. Isaacs, I.A.
Briggs, H. James, W.H.
Mr. DEAKIN (Victoria). -

I wish to call attention to this sub-section, which, like several others in this portion of clause 52, represents a power first conferred upon the Federal Council, but which, as it appears to me, if allowed to remain in its present restricted form-suitable enough as that may have been to the Federal Council-is altogether unsuitable to the differing conditions of the Federal Parliament. In the original draft of the Federal Council Bill the proposal was framed in clause 16 as follows:-

The Governors of any two or more of the colonies may, upon an address of the Legislatures of such colonies, refer for the consideration and determination of the Council any questions relating to those colonies or
their relations with one another, and the Council shall thereupon have authority to consider and determine by Act of Council the matter so referred to it.

The draftsman who advised the Imperial Government altered that including it in section 15 of the Imperial Act constituting a Federal Council, where it forms the last part of subsection (i). The first part of the sub-section gives the Federal Council legislative authority in respect to the several matters following, and the clause before us, freely translated, follows:

Any other matter of general Australasian interest with respect to which the Legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application.

Now, that appears to be ample for all the legislation which the Federal Council could have dealt with. That body has no Executive, has no Budget, and undertakes no expenditure. That body is

the mere creature of the colonies, is dependent upon them, except within a very limited area, and, in fact, altogether for any expenditure it may be necessary to incur. Now, during the discussion of the question of old-age pensions, when I referred to the possibility of that matter being dealt with under this sub-section, I evoked a comment from Sir John Downer, which called my attention in a particularly pointed way to a present weakness of the sub-section in this respect. It may well be that some matters referred by the several state Parliaments to the Federal Parliament, in order that common legislation may be passed for one or more colonies, may require legislation involving some expenditure—expenditure which must be undertaken in order to give effect to that legislation. It might be for the ordinary machinery administration—the payment of salaries of certain officers—or it might be the power to levy certain fees and collect certain charges; or it might involve direct taxation; but in all such cases it appears to me that the present sub-section may be inadequate. For instance, if reference be made to sub-section (3) of this clause 52 it will be found that the Federal Parliament has only the power to raise money by systems of taxation which shall be uniform throughout the Commonwealth. Consequently, if any legislation referring to any less number of the colonies than the whole of the colonies, and which involved any expenditure, was passed by the Federal Parliament, although those colonies were willing to vote that expenditure, the Federal Parliament might have no power to raise that money. The only possible means of the Federal Parliament obtaining that power would be if it were conferred in the
provisions of the referring statutes passed by the referring colonies, but unless those provisions exactly agreed—and agreement would be extremely difficult to arrive at—the probability is that the law would be inharmonious and fail in its effect. I would suggest to the leader of the Convention that he should consider whether there should not be such a modification of sub-section (3), which provides for the raising of money by the Commonwealth, as would allow of a reference by two or three colonies desiring to intrust the Federal Parliament with the task of framing legislation for them, and enabling the Federal Parliament, if so called upon, to provide for the raising of the necessary revenue in those colonies. That would be one means of meeting the difficulty. Another means might be that when two or more colonies had determined, under sub-section (35), to refer to the Commonwealth Parliament any matter which required the raising of money from their citizens, it should be possible, for the Commonwealth, in regard to those particular matters, to provide for the necessary taxation to be levied in those colonies by the central authority, instead of leaving them to the very difficult task of coming to an independent agreement among themselves as to all the details of the method by which the money should be provided.

Mr. GLYNN. -

Strike the sub-section out.

Mr. SYMON. -

That is the best solution of the difficulty.

Mr. DEAKIN. -

That may be so.

Mr. GLYNN. -

We may have a conflict of laws under the sub-section.

Mr. BARTON. -

Such laws can only apply to the referring states themselves.

Mr. DEAKIN. -

They would not be, in the strict sense of the term, federal laws.

Mr. BARTON. -

No, they would only apply to the states which referred the matters to the Federal Parliament.

Mr. DEAKIN. -

Exactly; but those laws can be adopted by the other states. If two or three colonies join in requesting the Federal Parliament to pass a statute on a particular matter applying only to those two or three colonies, and that law has been enacted and proved to work well, the remaining colonies of the group may adopt it, and finally

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you may have the Commonwealth in this position, that every colony in the group has adopted, as far as it can adopt, that particular law, which then ought to be a federal law. This contingency is perhaps provided for. That being so, it becomes necessary for us to consider whether we should not also provide for the other contingency. If all the states of the group except one, or if three of the larger colonies, or any three of the colonies, required a common statute in regard to a particular subject, and the administration of that statute involved the raising of money, the Federal Government ought to be able to provide for the levying of that money under the same law if so requested by those concerned.

Sir GEORGE TURNER. -
Will you briefly restate the point?

Mr. DEAKIN. -
My point is that by the requests of different colonies at different times you may arrive at a position in which all the colonies have adopted a particular law, and it is necessary for the working of that law that certain fees, charges, or taxation should be imposed. That law now relates to the whole of the Union, because every state has come under it. As I read clause 52, the Federal Parliament will have no power, until the law has thus become absolutely federal, to impose taxation to provide the necessary revenue for carrying out

Sir JOHN DOWNER. -
Is that not implied?

Mr. DEAKIN. -
If it is implied, would it not be best to make it explicit? The parentage of this clause, as I have shown—originating as it does in a body with practically no financial power—casts a certain suspicion on that reading of it, although, of course, the provision when embodied in this Act would have a different effect. Still, why not make it clear whether we mean that, when the Federal Parliament has passed federal legislation for some of the colonies, we shall allow that same legislation to deal with any necessary raising of revenue from those colonies which may be required to give effect to the legislation?

Dr. QUICK (Victoria). -
I think the point taken by my honorable friend (Mr. Deakin) is one well worthy of the consideration of the Drafting Committee, and probably the difficulty to which he has drawn attention could be obviated by some such provision as that which he suggested. But this matter has struck me also from another point of view, and it seems to me that the provision affords an easy method of amending the Federal Constitution, without referring such amendments to the people of the various states for their assent. Now, either
when the state Parliaments have referred these matters to the Federal Parliament, and the Federal Parliament has dealt with such matters, that becomes a federal law, and cannot afterwards be repealed or revoked by the State Parliaments-that is one position, and in that case, of course, the reference once made

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is a reference for all time, and cannot be revoked, so that to that extent it becomes an amendment of the states' Constitution, incorporated in and engrafted on the Federal Constitution without the consent of the people of the various states. On the other hand, if that be not so, and the states can, after making such reference, repeal such reference, what is the result? You have a constant state of change—no guarantee for continuity or permanence—in this class of laws, and this might lead to a great deal of confusion and a most unsatisfactory state of things. My principal objection to the provision is that it affords a free and easy method of amending the Federal Constitution without such amendments being carried into effect in the manner provided by this Constitution.

Mr. BARTON. -

I cannot understand how it gives an opportunity of amending the Federal Constitution.

Dr. QUICK. -

In this way. At present clause 52, which we are now discussing, deals with the powers of the Federal Parliament. It defines those powers in specific terms, in specific paragraphs. Very well. Then, if under this sub-section power be given to the state Parliaments to refer other matters to the Federal Parliament, to that extent the powers of the Federal Parliament are enlarged, and therefore there is an enlargement of the Constitution. This enlarges the power of the Federal Parliament, and when a law is passed by the Federal Parliament, it becomes binding on the citizens of the states the Parliaments of which have made reference; and if these laws are binding, I say they become federal laws, and those federal laws may be administered by federal courts. Consequently, these referred powers become federal powers, and to that extent this becomes a means of amending the Federal Constitution.

An HONORABLE MEMBER. -

The state Parliaments may refer some subjects to the Federal Parliament without the consent of the people.

Dr. QUICK. -

True, the state Parliaments may refer some subjects to the Federal Parliament without the consent of the people of the states—that is my point-
and to that extent the powers become grafted on the Federal Constitution in a manner directly different from the mode provided by this Constitution.

Mr. BARTON. -

You can make amendments in your Constitution without referring to the people.

Dr. QUICK. -

That is so, but there is a distinct provision here that there is to be no amendment of the Constitution without first such amendment being passed by the Federal Parliament, and then submitted to the people of the states, and there must be a majority of the people and a majority of the states before such amendment can become law. In this case also, I have to use an expression which has been frequently indulged in by Mr. Symon, that another mischievous result will follow from this power of reference. Supposing a state Parliament is troubled and bothered with an agitation upon a certain question—say, that of old-age pensions—and the state wants to get rid of a troublesome problem, it may simply, out of its inclination to get rid of the difficulty, pass a Referring Bill shunting the question on to the Federal Parliament, and the matter may there be hung up on account of other difficulties. Once a state has referred a matter to the Federal Parliament of course it cannot deal with it itself.

Mr. BARTON. -

And it cannot repeal the law referring the matter.

Dr. QUICK. -

There seems to be a difference of opinion on that point. I myself agree with the Premier of Victoria that there is power to repeal, and, consequently that the power of reference is not an ultimate power; it may be repealed, and what is the result? It would lead to a most unsatisfactory state of affairs. My view is that the sub-section should be struck out altogether.

Mr. SYMON (South Australia). -

I think we are greatly indebted to Mr. Deakin and Dr. Quick for raising this question. The only wonder is that it has not struck us at an earlier stage of our proceedings how very mischievous—to repeat a word which has just been attributed to me—this sub-section may possibly become. I do not know, whether a state, after referring a particular subject of legislation to the Federal Parliament could not revoke the reference. My own personal view is that it could. It could revoke the reference, but if the Federal Parliament has acted upon that reference, and legislated upon it, then I think that legislation becomes federal legislation, and could not be revoked or interfered with in any way by the State. If, as
Mr. Deakin has said, they have appealed to Caesar, they must be bound by Caesar's decree, Caesar in this case being the Federal Parliament. The law so passed by the Federal Parliament would become federal law for all time until the Federal Parliament repealed it. Now, if the state happened to change its mind on this particular matter, what would be the result? The reference to the Federal Parliament may have been a mere political contrivance for the moment, as Dr. Quick has pointed out, to get rid of some troublesome question. But if the state at some future period desired to legislate on its own account, and to deal with the matter, which perhaps was a matter of purely local concern, it would be faced with another portion of the Constitution, which says that no state law shall prevail if it is in conflict with the federal law. A majority in Parliament, in order to get rid of a difficulty, might refer it to the federal authority, and then we might find subsequently the people of the state hampered by the impossibility of their retracing their steps, and carrying out legislation which they considered necessary and desirable. I think, myself, that the better way would be to strike out this provision altogether. It is inconsistent, it seems to me, with the foundation of our Federal Government. We declare here specific powers to be intrusted to the Federal Parliament, and by those we should abide, except so far as the matter is controlled by sub-section (36). It ought not to be competent for any state to get rid of a troublesome matter of legislation by saying-"We will refer this to the Federal Parliament." It is obvious that, as has been pointed out by Dr. Quick, this provision would extend powers to the Federal Parliament to a degree which would depend upon the hazard of the moment. Now we are doing all we can, by debating the matter day after day, to secure that those powers may be as precise as possible, and be brought within the limits of the necessities of the case. But here we are giving to any state the power of sending on to the Federal Parliament, for debate and legislation, some matter which it is purely for themselves to deal with, and I do not think we ought to put it in the power of states to relieve themselves from their own responsibilities in legislation or administration by any such easy contrivance as this might turn out to be. I think the provision is really in by mistake. I was not aware until it was pointed out by Mr. Deakin, that it had its origin in connexion with the Federal Council Act, though I know it exists there. It might be applicable in that case, but it is not applicable to the Federal Government we are now seeking to establish. I would also point out that sub-section (36) really gives a very wide power in connexion with the exercise of legislative authority to the Federal Parliament, a power which I fancy would, if it were desired to extend power to the Federal Parliament, meet the case. Sub-section (36) enables the Federal Parliament to make laws with respect to-
The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the states concerned, of any legislative powers which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia.

Mr. DEAKIN. - That is a different thing altogether.

Mr. SYMON. - I am not quite sure whether that is a desirable provision to leave in.

Mr. ISAACS. - It is much too large; I intended to call attention to it.

Mr. SYMON. - I think this matter was brought up before, and it is a much more serious matter than honorable members might at the first glance be disposed to think. I believe it would enable states, in a matter of purely local legislation, to refer the matter to the Federal Parliament for it to deal with. I have not referred to the provisions of the Federal Council Act, but I think the concluding words of sub-section (36), if left in at all, should certainly be very carefully considered. I do not know what they mean or how extensive they may be.

Mr. DOBSON. - Could you give any illustration of a matter which would be referred to the Federal Parliament by one of the colonies?

Mr. SYMON. - Not of what would be referred, but of what might be referred. I will choose one which it might be very proper for us to refer to the Federal Parliament—the question of the disputed boundary between South Australia and Victoria. The reference would probably be quite ineffective, as the Federal Parliament would not deal with a subject of that kind at the invitation of one state.

Mr. BARTON. - If they did the settlement could only extend to that state.

Mr. SYMON. - But look at the invitation which this would give for the engendering of heat, passion, and discussion in the Federal Parliament. Look at the difficulties that would be raised on the part of the Federal Parliament in having a matter of that kind brought under its notice at all. There might be other matters of social concern, and one was mentioned by Mr. Deakin, that of old-age pensions.
Mr. DOBSON. -
That would hardly come under this provision. The financial part of it would operate against its being referred.

Mr. SYMON. -
As Mr. Deakin has put it, supposing such questions were referred, how is the Federal Parliament to deal with them without some enabling powers with regard to finance?

Mr. OCONNOR. -
If a state referred question of state finance it might be dealt with.

Mr. SYMON. -
Does the honorable member say that that would be a desirable thing to do?

Mr. BARTON. -
Is it not for the people of the state to determine whether it is desirable?

Mr. SYMON. -
Is it desirable to shunt on to the Federal Parliament a power that we have not settled in the Constitution? Would not this reduce the powers of the federal authority to a mere fluctuating quantity? My view is that we should strike this provision out altogether, and amend if necessary the succeeding subsection (36). We could then do whatever may be desirable within proper limits.

Sir JOHN DOWNER (South Australia). -
I cannot see any of the difficulties which Mr. Deakin, Mr. Symon, and Dr. Quick anticipate in connexion with this sub-section. This, of course, is to be an inelastic Constitution, which can only be altered after great thought and with much trouble. We define what are to be the boundaries of the Constitution of the Commonwealth. We leave everything else to the states. It may be that questions may afterwards arise which concern one, two, or three states, but which are not sufficiently great to require a complete revision of the whole Constitution, with all the troublesome proceedings that have to be taken to bring about a reform. It would much facilitate matters if these questions could be referred to the Federal Parliament.

Mr. DEAKIN. -
It would not be an easy process. You know how hard it is to get even two colonies to agree to anything.
It would not be too easy.

Sir JOHN DOWNER. -

Nothing should be too easy. We have the power to alter the Constitution, but it is a power that can only be exercised with great difficulty. We also have a power of quasi-arbitration, which the Commonwealth Parliament can exercise in an easier way, although not without some difficulty, at the request of one or more states. Now, is not that a good principle? I do not think many honorable members will say it is not. It is suggested that we are allowing the states to throw upon the Federal Parliament a responsibility they ought to take themselves. My answer is that every state wants to aggrandize itself, to increase its authority, and it will only be in very extreme cases that the states will resort to this means of getting rid of a difficulty. In an extreme case, is there any harm in having a comparatively easy method of reference, not to troublesome negotiations, nor to the Imperial Parliament, but to the Federal Parliament.

Mr. BARTON. -

It might be impossible to dispose of the matter excepting in that particular way.

Sir JOHN DOWNER. -

Yes.

Mr. OCONNOR. -

Take a case of dispute regarding a boundary.

Sir JOHN DOWNER. -

Yes, the cases might be infinite. Take a question of disputed territory, for instance. What could be more proper than that Victoria, if she became reasonable for once, should say—"Look here, we know we promised to do it; we know we have broken our promises; we acknowledge our transgressions, and will refer the matter at once to the Federal Parliament"? Who would blame her? Certainly not South Australia. Even in connexion with the question of rivers some point might arise that might concern two or three colonies, and that could not concern all the colonies. That, again, might be a proper matter for reference, but it could not be a common matter of legislation in respect of every state. I will now take the points Mr. Deakin makes. He doubts whether this power of legislation will carry with it a power of raising the necessary money to give effect to the legislation.

Mr. ISAACS. -

The states themselves will determine that.

Sir JOHN DOWNER. -

Yes, the honorable member has given the answer.

Mr. DEAKIN. -

Read it with sub-section (3).
Sir JOHN DOWNER. -
I do not think that sub-section affects the matter in the slightest degree.

Mr. OCONNOR. -
Sub-section (3) refers to the raising of money for the purposes of the Commonwealth itself.

Sir JOHN DOWNER. -
Yes, and it can, in my opinion, have no relation to this question. When a matter is referred the Parliament of the Commonwealth will have unlimited powers of legislation.

Mr. DEAKIN. -
To the extent of the reference.

Sir JOHN DOWNER. -
Exactly; but the parliament will be entitled to make a law about it which will be as good as any other law. The only thing is that it will be limited in its area of application. Within the limits of the reference, it could deal with finances or any other question. I can see no difficulty at all in carrying out the sub-section in that respect, and I do not think that it wants any addition. We have practically to consider this from the point of view of a question of policy. Is it worth while to leave to the states a power of referring disputed questions that may concern one or more, but may not concern all? What possible difficulty can there be? It may be said that this should be left to the people, but the Parliament can decide. This Bill, before it can go home and can assume the form of an Imperial statute, will have to be submitted to a referendum of the people of each colony. It is only after that has been done that it can be made an Imperial statute, and why should we not give this power of reference to the states if it is a power that would work well? For my own part, I do not think the sub-section requires even verbal amendment. It will work quite well as it is so far as machinery is concerned. In regard to the principle, I think it is a very advisable power to confer, and I hope the sub-section will be agreed to.

Mr. ISAACS (Victoria). -
My honorable friend (Sir John Downer) has put in better language than I could have employed many of the views I was going to present to the Convention. The object of the sub-section I take to be this. The foregoing sub-sections deal with matters upon which authority is to be given to the Federal Parliament to legislate with regard to all the colonies. They are admittedly matters of common concern. Then it was thought that there might be other matters that might turn out to be matters of common concern, but that are not yet regarded as such or have not yet arisen in any
way. In the course of the existence of the Commonwealth questions may arise that we do not foresee, and without any amendment of the Constitution the states may if they choose refer them to the federal power. Or it may be that any two states, unable each of them separately to legislate beyond their own boundaries, may ask that this power to legislate may be given to them without the necessity to go to the federal authority. It is perfectly plain that two separate states, even if they legislate in exactly the same terms, cannot carry the effect of their laws beyond their own boundaries. There may be a difficulty, political or otherwise, as to leaving it in the power of any one state to refer to the Federal Parliament matters of purely local concern. If there be any objection on that ground, I suggest that it can be got rid of by saying that this power shall be limited to matters which may be referred by two or more states to the Federal Parliament. That, I think, would obviate any of the difficulties which Mr. Symon has foreshadowed, and would carry out what we really want. No state, so far as I can imagine, requires to refer to the Federal Parliament the passing of any law that is to affect itself alone. But if it agrees with another state that some law; not to be of universal application throughout the Commonwealth, but to affect it and that other state alone, should be passed, power should be given in some such clause as this to ask the Federal Parliament to enact that what both states desire shall be of common application to them.

Mr. SYMON. -

Could you put that in sub-section (36)?

Mr. ISAACS. -

I do not wish to anticipate what I have to say upon sub-section (36). I think that that sub-section requires amendment, and that it is too large for more reasons than one. But in my opinion the object of sub-section (35) would be better obtained by striking out the power of one state to refer its own purely local concerns to the Legislature of the Federation, and by limiting this power to cases where two or more states desire to be bound by the federal authority.

Mr. BARTON. -

Does the honorable and learned member say that sub-section (36) is too large? I would like to mention that we left out some restricting words because we thought that the provision was restricted by the whole scope of the clause.

Mr. ISAACS. -

Well, I do not wish to confuse the two sub-sections. I think that Mr. Symon's objections will be met if we use the words matters referred to the Commonwealth by the Parliaments of any two or more states." A state Parliament may say-"We will not deal with this matter; we will refer it to
the Federal Parliament." Some honorable members may think that a shirking of responsibility. I do not attach any weight to that contention, but I do not think anything is substantially gained by keeping in the provision.

Mr. BARTON. -

If a state Parliament wants to shirk its responsibility it can fall back upon the referendum.

Mr. ISAACS. -

With regard to the other point that a state may repeal a law, I do not agree with that argument. If a state refers a matter to the Federal Parliament, after the Federal Parliament has exercised its power to deal with that matter the state ceases to be able to interfere in regard to it. Moreover, when the Commonwealth has passed a law at the request of any Parliament or Parliaments, and the Parliament of a third state adopts it, it adopts a Commonwealth law, and it requires the consent of the Commonwealth to get rid of that law. In my opinion, there is no power of repeal with the states, and I feel no doubt that I have read among the decisions of the United States, one which is to the effect, although I cannot just now lay my hands upon it, that when a state has, with the consent of Congress, made certain enactments the power of Congress is required to repeal those enactments.

Mr. REID. -

Otherwise the provision would be perfectly idle. A state would refer a matter to the Commonwealth, and, not being pleased with the precise manner in which that matter was dealt with, it would immediately repeal the law.

Mr. ISAACS. -

Yes; the state might just as well pass the law for itself.

Mr. OCONNOR. -

A law once passed under this provision becomes a federal law.

Mr. ISAACS. -

Yes, and nothing less than the federal authority can get rid of it.

Mr. BARTON (New South Wales). -

With regard to the particular sub-section which we have now in hand, I have not been brought to see that any dangerous power is given in it, or that there is any reason for an alteration. Let us take first the suggestion of the honorable and learned member (Mr. Deakin). The Federal Parliament can only deal with such matters as a state or states refer to it. A state may refer to the Federal Legislature a certain subject without referring, or expressly excepting from the reference, any financial dealing with that
subject. In such a case the Commonwealth could only legislate upon the subject so far as its financial aspects were not concerned. If the whole subject were referred, not excepting finance, the Commonwealth could legislate to the whole extent of the reference. I think that the words used in the sub-section are ample for either case. The difference with regard to sub-section(3) is this: It is plain that that sub-section refers only to the raising of money by any mode of taxation for general Commonwealth purposes. Like all the rest of these sub-sections, with the exception of one or two which contains special provisions, it concerns matters relating to the peace, order, and good government of the Commonwealth," and the word "Commonwealth" means *prima facie* the whole Commonwealth. In this sub-section, however, there are special words which prevent the law applying to the whole Commonwealth, and these are the words quoted by the honorable and learned member (Mr. Deakin):

But so that the law shall extend only to the state or states by whose Parliament or Parliaments the matter was referred, and to such other states as may afterwards adopt the law.

It seems to me that if there is any raising of money intended by the states to be delegated to the Commonwealth-and they can only delegate their legislative authority to a certain extent, provided for by the Constitution-that will be expressed in the reference, or it can be excluded from any reference. In the one case or the other the Commonwealth can only proceed as far as the extent of the reference. Then there was the objection of the honorable and learned member (Dr. Quick), that this provision affords an easy method of amending the state Constitution without the use of the referendum. But at the present time the state Constitutions do not provide for the use of the referendum. The government of the states is by a majority of the representatives of the people, and it must

be constitutionally assumed that when a majority of the two Houses of Parliament make a law the people speak through that law. If the people choose to speak through a law made in this way, there is no evasion of responsibility when an appeal was made to a superior authority for the settlement of a difficulty incapable of settlement by the relations of two bodies at issue. This is not a restriction but an enlargement of the legislative powers of the states, which I think is in the spirit of democracy, and one that we should grant.

**Mr. HOLDER (South Australia).**

I want to ask the leader of the Convention a question, his answer to which will influence my vote on the subject before us. The sub-section upon which we are dealing and the following sub-section are the only ones
which provide for an extension of the powers of the Commonwealth. I have been looking up the clauses in Chapter VIII., and I do not see that under them any extension of the powers of the Commonwealth can be dealt with. I want to know whether I am right in supposing that under these clauses no extension of the powers or scope of the Commonwealth would be possible, because I think that under that chapter, if any alteration of the Constitution of the Commonwealth is desired, the states, to obtain it, must first have a law passed by the Commonwealth Parliament? Now, suppose it is proposed to enlarge the power of the Commonwealth, by placing under its control the administration of Crown lands. First of all, the Federal Parliament would have to pass a law upon this subject, and that law might be held to be ultra vires. There would be no power to submit anything to the electors without Parliament first of all passing a Bill, which, however, would be from the outset outside its power. I should like to know from the leader of the Convention whether my view of this matter is correct?

Mr. BARTON (New South Wales). -

What I understand my honorable friend (Mr. Holder) to ask is this: Suppose it were desired that extra-legislative power than now exists should be granted to the Commonwealth-as, for instance, to take under its control questions relating to Crown lands, and so on—whether an alteration in the Constitution in that direction would be ultra vires? Now, the Bill provides, in Chapter VIII., that the provisions of the Constitution shall not be altered except in the following manner;" which, to my mind, means that if the processes specified are adopted the provisions can be altered in any way. I take the provision to mean that authority is given to the Commonwealth under the processes here specified to alter this Constitution in any manner, so far as it deals with the affairs of Federated Australia, and not with affairs outside the dominion of Australia. Consequently, if it were proposed to add a legislative power of the kind suggested by Mr. Holder, I take it that as Chapter VIII. provides first for the passage of the proposed law by an absolute majority, and then for a referendum, the law would have no effect unless the majorities of the several states agreed to it. So that not only the Commonwealth but the states would have to agree to the passage of the law. Then any objection to that law becoming a new part of the Constitution of the Commonwealth would vanish; because, I think, so much authority is conceded by Chapter VIII.

Mr. KINGSTON (South Australia). -

I think that the difficulty is that Chapter VIII. does not give power for an amendment of the Constitution, except by implication, but simply opposes limitations in the mode of the exercise of the power of amendment. I would suggest to the leader of the Convention that we might add a clause
permitting the alteration of this Constitution, subject to the provisions of Chapter VIII. That would include amongst the powers of the Parliament a power which is very necessary, and which it is no doubt intended to give by the Bill, but which is not at present provided for as clearly as might be.

Mr. GLYNN (South Australia). -

In connexion with the point raised by Dr. Quick that this provision might lead to an amendment of the Constitution otherwise than under clause 121, I would like to suggest that the reference would be as to a specific point. It might be to settle a particular matter of legislation, but not a general power. But we are still in this dilemma: That the state might, by referring the matter to the state Parliament, deprive itself of the right of repeal, and thus take away the general power of legislation from the state Parliament. As I understand, a state Parliament cannot at present abrogate its own powers. It might pass a particular Act or it might repeal an Act, but here the Parliament of the state is giving away some power without the consent of the people of the state. We are giving power to the state Parliament to give away their sovereign powers without the consent of their people.

Mr. DEAKIN. -

To commit political suicide.

Mr. GLYNN. -

That is really what it amounts to. It certainly requires serious consideration.

The subsection was agreed to.

Sub-section (36)-

The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the states concerned, of any legislative powers which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia.

Mr. BARTON (New South Wales.) -

I might mention as to this sub-section that there is a difference between its language and the language of the corresponding sub-section in the Bill of 1891. The difference is this:-In the Bill of 1891, after the words "legislative powers" there came the words with respect to the affairs of the territory of the Commonwealth, or any part of it." It was considered unnecessary to retain those words, because the whole scope of the legislative authority is that the legislation should be for the peace and good government of the Commonwealth itself. Inasmuch as the Commonwealth cannot make any laws except for the peace, order, or good government of
the Commonwealth itself, we thought that it could not make laws except with respect to the affairs of the territory of the Commonwealth or any part of it.

Mr. KINGSTON. -
Will this give power to legislate with reference to a part only?

Mr. BARTON. -
Only to the extent of the reference made. It must be a matter referred with the consent of the Parliament, so that it would only apply to the extent of the reference made.

Mr. ISAACS (Victoria). -
I must say that I am not very clear about this sub-section, which has puzzled me very much. In the first place, the words exercise within the Commonwealth" of certain legislative powers are puzzling. All our legislative powers are to be exercised, within the Commonwealth, and I do not know what the words mean in this particular instance as distinct from any other legislative power. The effect of the whole matter may extend beyond, but the exercise of the power is to be within the Commonwealth, and it is to be exercised at the request or with the concurrence of the Parliaments of the states concerned. Then the sub-section uses the words any legislative powers which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal council of Australasia." Those last words will have to come out. Part of this Act will come into operation as soon as it is passed.

Mr. BARTON. -
The covering clauses.

Mr. ISAACS. -
And they repeal the Federal Council Act. So that there will be no powers remaining in that Act at the time of the establishment of the Constitution.

Mr. BARTON. -
This sub-section giving an increased authority imports authority over the Federal Council of Australasia.

Mr. ISAACS. -
No, it is done at the establishment of this Constitution.

Mr. BARTON. -
I quite see that.

Mr. ISAACS. -
If you keep these words in the final words will have no effect.

Mr. BARTON. -
These words at the establishment of the Constitution" might be altered.
Mr. ISAACS. -

One is inconsistent with the other, but I am looking at this also. I should like to get as much power as possible in this Bill. At the same time, I should not like to send it home saying that something should be altered which the Imperial Parliament will be disinclined to do seeing that the universal assent of the colonies has been obtained. Is the Imperial Parliament likely to assent to this— that the Federal Parliament may exercise, at the request of any state, any of the powers which the Imperial Legislature may exercise? That is to say, it might exercise powers which might be in conflict with treaties, Imperial legislation, and so on, or, at all events, with the principles of Imperial legislation. The clause is very wide, and wants some modification.

Mr. KINGSTON. -

It would be a Bill liable to reservation under the usual circumstances.

Mr. ISAACS. -

It might or might not be; that would depend on circumstances. The power of reservation is in the hands of the Governor-General. I have not the slightest objection to see the largest powers given to the Federal Parliament; but, independent of verbal criticism, it is rather a long way to go to ask the Imperial Legislature, so to speak, to place all its powers in the hands of the Federal Legislature. It will be remembered that Lord Carnarvon was very anxious in the case of the Canadian Federation Bill that no alteration should be made.

Mr. BARTON (New South Wales). -

I will undertake that the matters to which my honorable and learned friend has referred shall receive consideration when the drafting stage is reached. I dare say we shall have a short adjournment for drafting amendments, many of which are in order already. I can see the force of what the honorable member has pointed out, that we have amended in the Bill the covering clauses providing that it is the Constitution, and not the whole Act, which is delayed in its operation until the date fixed by the Queen's proclamation, and that the covering clauses have effect from the date of the Royal assent, which will probably be some months before the proclamation takes effect. In that case the words as to the Federal Council would become inoperative, as referring to the date of the establishment of the Commonwealth. It might be necessary, therefore, to put other words in this clause to meet that objection. In putting other words in the Bill it might be necessary to put in the words Federal Council," as they may give an extension of powers which would be desirable; that is, an extension of power at any rate equal in its elements to that which the Federal Council possesses. The same attention will be given to the other points indicated.
The sub-section was agreed to.

Sub-section (37)-

Any matters necessary for, or incidental to, the carrying into execution of
the foregoing powers or of any other powers vested by this Constitution in
the Parliament or the Executive Government of the Commonwealth or in
any department or officer thereof.

The CHAIRM. - In this sub-section the House of Assembly of Tasmania
have suggested an amendment to leave out this sub-section, and insert a
new one. The Drafting Committee in Sydney passed a number of verbal
amendments, which should first come under consideration.

Mr. BARTON (New South Wales). -

The verbal amendments were made by the Drafting Committee, as shown
by the Bill before honorable members. In order to put the sub-section as
amended by the Drafting Committee before honorable members, I intend to
omit the whole of the subsection now before the committee, and propose
the substitution of the sub-section as amended by the Drafting Committee.

As this deals with matters necessary and incidental to other powers, it is
obviously desirable to make the clause as wide as possible, so that there
may be no power of legislation which the Commonwealth possesses in
which it will not have full scope, that is to say, all the necessary and
incidental powers for making that legislation effective. These amendments
by the Drafting Committee were made in a part of the Bill which we had
not reached at the meeting in Sydney, and they still require, the assent of
this committee. This alteration was practically unauthorized; but, as it was
plainly verbal and for the extension of the clause, we thought we were
justified in making the suggestion at that stage. Now it becomes necessary,
under the Chairman's ruling, which, I think, is perfectly clear, to make
these amendments formally. I beg to move that sub-section (37) be
omitted, with a view of substituting the following:-

Any matters necessary for, or incidental to, the carrying into execution of
any powers vested by this Constitution in the Parliament, or in either
House thereof, or in the Government of the Commonwealth, or in the
Federal Judicature, or in any department or officer of the Commonwealth.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I beg to move that the further consideration of clause 52 be postponed
until after the consideration of clause 69. I may mention that certain
members are obliged to return home, and that they will be back again on
Monday. They are deeply interested in this question of rivers. Among them
I might mention the honorable member (Mr. Lyne) and the honorable member (Mr. Gordon). It is questionable whether we should not postpone this clause so that it will not be decided to-morrow.

The CHAIRMAN. -

We can postpone it again if we come to it.

Sir GEORGE TURNER (Victoria). -

I quite agree with what the honorable member has suggested. For that and other reasons it would be wise to allow the matter to remain in abeyance.

The motion for the postponement of clause 52 was agreed to.

Clause 53. The Parliament shall, subject to the provisions of this Constitution, have exclusive powers to make laws for the peace, order, and good government of the Commonwealth with respect to the following matters:-

1. The affairs of the people of any race with respect to whom it is deemed necessary to make special laws not applicable to the general community; but so that this power shall not extend to authorize legislation with respect to the affairs of the aboriginal native race in any state.

Mr. ISAACS (Victoria). -

I am not sure that I properly grasp the meaning of the sub-section. I understand that there is to be some amendment made in the sub-section.

Mr. BARTON. -

We are going to suggest that it should read as follows:-

the people of any race for whom it is deemed necessary to make any laws not applicable to the general community; but so that this power shall not extend to authorize legislation with respect to the affairs of the aboriginal race in any state.

Mr. ISAACS. -

My observations were extended much further than that. The term general community" I understand to mean the general community of the whole Commonwealth. If it means the general community of the whole Commonwealth, I do not see the meaning of saying that the Parliament of the Commonwealth shall have the exclusive authority to do that, because any single state would have the right to do it under any circumstances. If it means less than that-if it means the general community of a state-I do not see why it should not be left to the state. We should be placed in a very awkward position indeed if any particular state is forbidden to pass any distinctive legislation in certain well-known instances. For instance, if Victoria should choose to enact that Afghans shall only get hawkers' licences under certain conditions which are not
applicable to Europeans she may be debarred by this sub-section from doing so. I do not know how it will affect our factory law in regard to the Chinese which does not operate beyond the confines of Victoria at all.

Sir EDWARD BRADDON. -
Why single out the Afghans?

Mr. ISAACS. -
If any other race possess the same characteristic as the Afghans I will put them in the same class. At all events, the expression general community" means the whole community of the Commonwealth. I do not think that this has any application. If it is to have any application at all, it seems to me to be intended to debar the state from passing legislation-necessary legislation, but purely confined to that state. I do not think that that sub-section ought to be there at all if that is the meaning of it.

Mr. BARTON (New South Wales). -
I think the original intention of this sub-section was to deal with the affairs of such persons of other races-what are generally called inferior races, though I do not know with how much warrant sometimes-who may be in the Commonwealth at the time it is brought into existence, or who may under the laws of the Commonwealth regulating aliens come into it. We have made the dealing with aliens, which includes a certain degree of coloured immigration, a power of the Commonwealth, and we have made the dealing with immigration a power of the Commonwealth, so that all those of the races who come into the community after the establishment of the Commonwealth will not only enter subject to laws made in respect to their immigration, but will remain subject to any laws which the Commonwealth may specially devise for them. There is no reason why the Commonwealth should not have power to devise such laws.

Sir GEORGE TURNER. -
An exclusive power?

Mr. BARTON. -
It ought to have an exclusive power to devise such laws.

Sir GEORGE TURNER. -
If it does not exercise it can the state exercise it?

Mr. BARTON. -
Once the Commonwealth legislates with reference to the question of aliens and immigration, its legislation displaces the state law.

Sir GEORGE TURNER. -
Suppose it does not legislate?

Mr. BARTON. -
You may suppose that it will not legislate, but I think we will have to assume that it will.
Sir GEORGE TURNER. -
The difficulty is that there will be an interval before it does.

Mr. BARTON. -
At any rate, we must assume that these powers will be exercised. If we are going to assume that they are not going to be exercised, we had better not put them in the Bill.

Mr. ISAACS. -
Why make this exclusive?

Mr. BARTON. -
I was going to explain when I was interrupted that the moment the Commonwealth legislates on this subject the power will become exclusive. Of course it is contended, and there is a great deal of force in the contention, that there is a doubt about the expression used, which comes from the Bill of 1891-"Special laws not applicable to the general community," and there is, I should imagine, considerable difficulty in coming at a right form of expression in that regard. What is intended is-and I think what was clearly intended by the Convention of 1891 was-that immediately the Commonwealth came into force there should be a law, if the Commonwealth deemed fit, passed for the regulation of the affairs of people of such races. Of course, as my honorable friend (Mr. Isaacs) suggests, the expression general community" may raise a doubt. It may be that the words should be not applicable to the state in which they are," but whether that be so or not, as to the question of the exclusive nature of the power, I entertain a strong opinion that the moment the Commonwealth obtains any legislative power at all it should have the power to regulate the affairs of the people of coloured or inferior races who are in the Commonwealth. Some persons may say that it will provoke difficulties with the states. I do not think that it will. I think that the states will be prepared to see the general importance of legislation on this subject, and legislation passed with a knowledge of what may in some cases be almost the international relations which will exist in reference to these people. I take it that the proper authority for that purpose is the Commonwealth; and whatever we may say in reference to the advisability of a mere expression here, as to which care will of course be taken-theme matters; are being carefully gone through now-the policy of the sub-section, which is that the law shall be exclusive, ought to commend itself to the members of the Convention.

Mr. WISE (New South Wales). -
While I agree with the views expressed by the leader of the Convention with regard to the purport of this clause, and as to its necessity, it does not
appear to me to be properly drawn in order to meet the purpose of the
draftsman, and I would suggest that all the words after the word whom," in
the first line, be left out, with the view to insert the following words:-

laws have been passed by the Commonwealth in respect of their
immigration into, or emigration from, any part of the Commonwealth.

If the sub-section is so altered it will give the Commonwealth exclusive
jurisdiction over the affairs of the people of any race with respect to whom
laws of the Commonwealth are in force in respect of their immigration
into, or emigration from, any part of the Commonwealth.

Mr. ISAACS. -
I take it that that is merely striking out the exclusive power.

Mr. WISE. -
I have not made myself clear.

Mr. DEAKIN. -
It leaves the domestic control to the states.

Mr. WISE. -
It leaves the domestic control to the states. The object of the clause is a
proper and, indeed, a necessary one. If the Bill takes the power to regulate
the entering of a foreign race into any part of the Commonwealth, then the
race, the moment it enters into the Commonwealth, must be under the
protection, of the Commonwealth, and it is impossible that there should be
any conflicting jurisdiction between the Commonwealth and the state.

Mr. BARTON. -
The Commonwealth will have the control of external arrangements.

Mr. ISAACS. -
If the Commonwealth does not pass a law, you admit the right of a state
to deal with the subject.

Mr. WISE. -
Undoubtedly.

Mr. ISAACS. -
But if the Commonwealth does pass a law, that law is paramount.

Mr. WISE. -
It is paramount.

Mr. ISAACS. -
What is the necessity for this sub-section then?

Mr. WISE. -
I will answer that question in a moment. Until the Commonwealth passes
a law relating to immigration the state has exclusive jurisdiction over that
subject, and as long as the state jurisdiction can be exercised the state alone
should be able to control the rights of the aliens in respect to whom it is
deemed necessary to make special laws not applicable to the general
community.

Mr. ISAACS. -

That would not do, because we have already passed a provision which gives paramount power to the Federal Parliament.

Mr. WISE. -

That is what I am pointing out, but until that power is exercised by the Federal Parliament jurisdiction remains with the state. The object of my amendment is to provide that the moment that power is exercised the regulation of the rights of the aliens in question shall be transferred from the state to the Commonwealth.

Mr. ISAACS. -

Would not that be so without any further provision?

Mr. WISE. -

I do not think it would.

Mr. BARTON. -

Many of the persons in question are not aliens, but come in under the immigration power only.

Mr. WISE. -

We hope to see the Commonwealth embrace the whole continent, and it might be found desirable to establish practically a colony in which black labour might be employed.

Mr. BARTON. -

There is no sub-section dealing with aliens except the one dealing with the naturalization of aliens.

Mr. ISAACS. -

The sub-section is naturalization and aliens."

Mr. WISE. -

If it was found desirable to establish practically a colony in which black labour might be employed, the Commonwealth would, and ought to, have the exclusive power of providing for the passage of those alien labourers from that colony into the southern parts of the Commonwealth if they were allowed, for temporary purposes, to remove from the northern to the southern colonies, and they should be absolutely under the protection of the powers of the Commonwealth. But until the Commonwealth has passed a law dealing with the emigration of alien labour from one colony to another, it is only right that the state should retain the power it now possesses in regard to aliens.

Sir GEORGE TURNER. -

Is passing from one colony into another immigration within the meaning
of this Act?
Mr. WISE. -
    I think so. Under the terms of my amendment it certainly is.
Mr. ISAACS. -
    Your amendment would not touch the class who are not aliens.
Mr. WISE. -
    Yes, it would, because the Commonwealth would have no power to pass
any law relating to the immigration of any section of the community unless
they were aliens. The Commonwealth Parliament is to have no power to
deal with the movement of population except paupers, lunatics, and aliens,
and under section 52 it is to exercise full powers with regard to any or all
of those three classes. All that is designed by my amendment-and it
appears to me that some such power is necessary-is that if the
Commonwealth Parliament undertakes to deal with the movement of
population in regard to one or more of those three classes-paupers, aliens,
and lunatics-the persons whose movements are fettered by the Federal
Parliament shall have the right to look to the Federal Parliament for
protection, and for the full security that the Federal Parliament can give.
The words of the clause are vague, and not very easily construed. Of
course, if the leader of the Convention prefers it, I will postpone the formal
submission of my amendment so as to give further time for the
consideration of the matter.
Mr. BARTON. -
    We had better leave it over for consideration.
Mr. WISE. -
    Then I will merely give it as a suggested amendment for consideration
rather than formally propose it now.
Mr. DEAKIN (Victoria). -
    The difficulty is to determine why this particular sub-section should find
its way into this clause instead of forming a sub-section of the previous
clause 52.
Mr. BARTON. -
    Because the powers in clause 52 are all concurrent powers, and these are
all exclusive powers.
Mr. DEAKIN. -
    I understood that was the difference, and a glance at the following two
sub-sections of clause 53 shows that they are matters upon which the
Federal Parliament will have sole authority, and upon which, naturally
enough, the local Parliaments never could have, or expect to have, any
authority. But, although this provision is linked with them and placed in
the exclusive clause, it deals with questions which are being dealt with,
which have been dealt with, and which probably in the future will be dealt with by the several states.

Sir EDWARD BRADDON. -

And in which aspects they can only be dealt with by the several states.

Mr. DEAKIN. -

If so, this sub-section has found its way into the wrong clause, and should be included in clause 52 rather than in clause 53. We have Acts in some of the colonies relating to the Chinese; in other colonies there are, or may be, Acts relating to Afghans. In the northern colonies there are statutes relating to kanakas. All this legislation is in existence at present, and the leader of the Convention admits that, until the passing of an Act by the Federal Parliament dealing with these people, the several Acts of the several Legislatures relating to these several peoples would remain in force.

Mr. KINGSTON. -

So they would if this sub-section is passed.

Mr. DEAKIN. -

If so, this provision is not exclusive in the strict sense of the term.

Mr. WISE. -

I doubt if they would remain in force.

Mr. KINGSTON. -

But they are preserved.

Mr. DEAKIN. -

There is the first issue. That is the first point we have to determine. Clearly, it would be most unwise and unwarrantable to propose that, on the establishment of a Commonwealth, all laws relating to aliens should be repealed, because there would be a certain interregnum when there might be a condition of relative lawlessness.

Mr. WISE. -

The amendment I propose will get over that difficulty, because it does not give the Commonwealth power until it passes a law in respect of the immigration of aliens into, or their emigration from, any part of the Commonwealth.

Mr. DEAKIN. -

I am not certain that, while the honorable member's amendment will relieve us from one difficulty, it will not plunge us into another, by depriving the states of all future power of dealing with alien races. What more power do we desire for the Federation in regard to these special races than would be conveyed to the Commonwealth by the inclusion of this subsection in clause 52? What power is it that we desire to give to the
Commonwealth in this matter which would not be given if there were a properly expressed sub-section introduced into clause 52, enabling the Commonwealth to legislate in regard to these matters, and casting the duty of legislating in respect of them on the Commonwealth; but until the Commonwealth passes such legislation, leaving the existing legislation of the colonies in full force and effect, and, still leaving to the colonies power to pass special legislation on the subject, in so far as it did not conflict with the federal legislation? I think it is highly desirable that such provision should be made. I am not satisfied that the state of opinion in these colonies is at that even level which would enable us at once to pass an Act, complete in every particular, and applying to the whole group. It might conflict with what was absolutely vital, for example, to Queensland, and we all hope that Queensland will eventually become a part of the Federation.

Mr. KINGSTON. -

Section 100 preserves the existing legislation.

Mr. DEAKIN. -

Yes; and section 101 provides that when a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. But that only brings me back to my first difficulty. Why is this sub-section included in clause 53, instead of in clause 52, and what is the effect of that arrangement? The other matters under clause 53 are clearly matters on which the Federal Parliament alone can legislate-matters on which the state Parliament could never pass legislation. This sub-section, on the contrary, relates to an issue already dealt with by the several states, and that will continue to be dealt with by them unless the absolute prohibition of this Act is imposed. If it is imposed it will be a very serious matter indeed in Queensland, Victoria, and, I think also, in New South Wales. The first question I have to put to the leader of the Convention, and upon the answer to it any further arguments I may have to address will depend, is what reason there is under these circumstances for including this in clause 53? Ought we not to transfer it again to clause 52? We desire to give to the Federal Parliament the amplest power to deal with any and all of these particular races; but there should still be reserved to the states, subject always to the supremacy of the Federation, a power to deal in any special manner with any of the people of such races who are now or may hereafter be within their limits. I take it the amendment proposed by Mr. Wise would absolutely prohibit that.

Mr. BARTON (New South Wales). -
If this is left as an exclusive power the laws of the states will nevertheless remain in force under clause 100.

Mr. TRENWITH. - Would the states still proceed to make laws?

Mr. BARTON. - Not after this power of legislation comes into force. Their existing laws will, however, remain. If this is exclusive they can make no new laws, but the necessity of making these new laws will be all the more forced on the Commonwealth. The amendment proposed by Mr. Wise is one that might possibly be considered desirable if this were to be converted into really a power that was not exclusive. At any rate, it might have the effect of rendering that power exclusive after legislation with regard to aliens and immigration had been adopted. I am not quite sure at present whether it would be advisable to adopt the amendment. I agree with what has been said already. My impression is stronger than ever it was before that this sub-section is one that needs amendment, but I would like to say again that it is desirable that the moment the Constitution comes into force the policy of this sub-section should prevail, which is that the Commonwealth should have exclusive legislative powers with reference to the affairs of such people as the sub-section is intended to cover. That is demonstrated to me by the fact that the Commonwealth will have control of the external relations of the whole of the continent and of Tasmania. These external relations may be very pertinent to any legislation that will have to be adopted, so that you may have the complication, if you do not insert a provision of this kind, of having the states continuing to legislate in respect to a matter in which they have no responsibility, while the external relations, the explanation of all these matters, and the responsibility for them to the Imperial Government, will rest with the Commonwealth. That would be an undesirable condition of things. There are other reasons which could be put very strongly if it were necessary to speak at length, and which would show that the Commonwealth should have this exclusive power. Questions which relate to the whole body of the people, to the purity of race, to the preservation of the racial character of the white population, are Commonwealth questions, and should be so exclusively. Of course it may be urged that it would be better for the Commonwealth to wait until it had exercised its legislative powers with regard to aliens and immigration. I venture to dissent from that view. I do not know why it is necessary for the Commonwealth to wait until it has legislated with regard to the introduction of aliens, or of coloured races not being aliens, before it deals with the affairs of those people of coloured race who are already settled in Australia. If that were so, we should for the time being be left
without exclusive powers with regard to the large number of people of
coloured race already in Australia. Now, the preservation of every inch of
the shores of Australia from immigration of the kind indicated, except to a
certain limited extent, is one of the most desirable powers to place in the
Constitution. But the very reason which makes the preservation of the
continent as a continent to the Federation as a whole Federation so
necessary as one of the powers is a reason that applies with just as much
force to the affairs of the people of such races who have already been
admitted and are at present in the Commonwealth. If it is necessary to give
the Federal Parliament power to make laws for their regulation, not
applying to the rest of the people of the Commonwealth, it is necessary to
give it at once upon the establishment of the Commonwealth. The best way
to bring about legislation of that kind is to make the power exclusive. The
Commonwealth will then be in this position: The laws which at present
pertain

in the states with reference to these people will remain with nothing in
them which is against the interests of the Commonwealth, unless the
Commonwealth at once legislates. To make the power exclusive conduces
at once to its speedy exercise by the Commonwealth. For every reason this
provision should not be transferred to clause 52, but should be implanted in
the Commonwealth as an instant, mild exclusive power.

Sir EDWARD BRADDON (Tasmania). -

While, I quite agree with the, views of the leader of, the Convention as to
this power so far as regards the immigration of coloured races and aliens, I
cannot see the force of his argument with reference to the local
management of these people. Aliens who have been admitted within our
shores will more or less permanently settle in one state or the other, and
they should, I think, be entirely under the Government of the state in which
for the time being they reside. Mr. Deakin has hinted at some grave
objections to giving the Federal Government an exclusive power over these
people. The Attorney-General of Victoria has given one very striking
example of the necessity of the Governments of the states having authority
in this matter, and that is as regards, the licensing of Afghans as hawkers. It
is the practice to issue to them a licence different from that which is given
to other races. That might very well constitute a difficult question in the
state of Victoria, whilst it might not be of the same importance in other
states. In Tasmania it is quite possible that it may come to be a grave
question whether the Hindostanese who are British subjects shall be
allowed to continue the practice of hawking as they have been doing for
some time past. That might develop into a very large question indeed in
Tasmania, and it should be a matter for settlement by the state and not by the Federal Government.

Sir GEORGE TURNER (Victoria). -

I trust the leader of the Convention, will carefully reconsider his position, and the apparently strong views be holds with regard to persons of foreign race. I agree with Sir Edward Braddon, and other honorable members who have spoken, that when these people are once admitted to Australia their control and management should be strictly a local affair. It is not a matter with which the Federal Government should interfere. The Government of this and of other colonies should have full power to make such laws relating to health, to factories, and to the licensing of these persons as they may deem to be fair, just, and reasonable. The great difficulty I see with regard to this clause is in connexion with the making of the power exclusive. If we put this provision in clause 52, as soon as the Federal Parliament chose to exercise its power to legislate, the state laws now in existence would cease to exist.

Mr. KINGSTON. -

Does the honorable member say that they would lapse?

Sir GEORGE TURNER. -

Yes, if they were inconsistent with the federal laws. We must all realize that the first and most important business with which the Federal Parliament will have to deal will be that connected with the Tariff and other financial matters. Can we assume that for some years at least the Federal Parliament will attempt to deal with the matter mentioned in the first paragraph of this clause? For probably three, four, or five years, we shall then be in this peculiar position: The Federal, Parliament alone will have the power to legislate upon these matters, The state Parliaments will have no power to legislate, because of the exclusive power of the Federal Parliament, and thus, although there may be an absolute necessity for legislation, none will be possible. Surely honorable members will not agree to a provision which makes such a position possible. If, however, we place this provision in clause 52, the Federal Parliament would have the most ample powers to deal with the matter to which it relates whenever it chose to exercise them; but, in the meantime, the right of the states to regulate these matters would be preserved to them. I do not desire to move any amendment for this purpose, but I trust that the leader of the Convention will carefully reconsider the matter, because I feel that if we pass the provision as it stands, we may hereafter do a great injustice to the several states.

Mr. OCONNOR (New South Wales). -
I think it is generally admitted that there should be uniformity of law with regard to the races for whom it is necessary to make special laws. The basis of all these laws is that the particular people in question require to be dealt with specially in the general interests of the community, and if they require to be dealt with specially they should be dealt with under some uniform law. I think it will also be admitted that if they are to be dealt with by a uniform law the sooner that law is put into operation the better. Otherwise one state may deal with some particular class of aliens upon specially favorable terms, the effect of which would be that aliens from all parts of Australia would congregate in that state and make the difficulty of dealing with the whole question very much greater. I think that is admitted by Sir George Turner. It is admitted by him that there should be uniformity in these laws, but he says that if the Federal Parliament does not choose to legislate at once power ought to be given to the local Parliaments to deal with the question until the Federal Parliament chooses to legislate. I should like, however, to remind the honorable member of this fact: In the first place, where any local Parliament has made laws, those laws are continued by clause 100, and, as a matter of fact, most of the Parliaments have made laws in regard to these matters. The point at issue is: Is it desirable that the state should have power to go on making separate laws dealing with aliens until the Federal Parliament shall legislate?

Mr. ISAACS. - Why not?

Mr. OCONNOR. - If the Federal Parliament is endowed with this power absolutely, there is no doubt that pressure will be brought by all the states to cause that body to legislate upon this matter at once, and it will legislate upon it. But if the states have power to deal with these matters locally they may in many cases avail themselves of this power, and when the Federal Parliament comes to deal with the subject, and to apply an uniform law, it will be met by the vested interests which have been created by the laws of the states. I say that we should have as few difficulties of that kind as possible. Let us deal with these matters as they exist at the date of the establishment of the Commonwealth. Where laws exist at the time of the adoption of this Constitution they will be preserved; but do not let us give power to the states to make new laws which will create new difficulties and complications. That is my reason for differing from the view of Sir George Turner that this provision should be transferred from amongst the exclusive powers of the Federal Parliament to the powers conferred under clause 52. I should like to add a word in regard to the suggestion of the honorable and learned member (Mr. Wise). No matter what the necessity for uniformity in
these laws may be, the honorable and learned member says that you must wait until some law has been made by the Commonwealth in regard to these particular races. But why should we wait? What possible connexion is there between the making of a law preventing aliens from entering the state and the making of a law to control their mode of living while in that state? I can see no necessary connexion between the two. It seems to me that it would be hampering the power of the Federal Parliament to make it a condition precedent to legislation with regard to aliens within the borders of the Commonwealth, that it should legislate with regard to outside matters. For instance, if you wish to deal with the question of legislation regarding Chinese or Japanese actually here, there would be very little difficulty, but if you wish to make a law dealing with their introduction into the state, you may be brought face to face with the obligations of treaties entered into by Great Britain and other difficulties of that kind which cannot be surmounted.

Mr. ISAACS. -

The same thing exists now.

Mr. OCONNOR. -

That does not apply to dealings with races within your own territory. When other people come within your borders they must submit to your laws.

An HONORABLE MEMBER. -

These laws must relate to the time when they are within your territory, because the distinction is drawn between them and the general community.

Mr. OCONNOR. -

Yes, but I am dealing with the amendment of the honorable and learned member (Mr. Wise). He wishes to make it a condition precedent that what may be the very difficult step of passing a law making arrangements with the outside world should be taken before you deal with aliens within your own borders.

Mr. DEAKIN. -

Everything the honorable member expresses a wish to do could be done quite as well if this provision formed part of clause 52.

Mr. OCONNOR. -

I agree with the honorable and learned member, but I do not think that any opportunity should be given to the state to make laws dealing with these matters before the Legislature of the Commonwealth has dealt with them, for the reason that every law which is made dealing specially with a matter of this kind will create difficulties when a uniform law comes to be
Mr. DEAKIN. -
    The Federal Parliament can remove them.
Mr. OCONNOR. -
    But you are setting up obstacles to uniformity and creating vested interests, which are always difficult to deal with.
Sir GEORGE TURNER. -
    Unless this clause is carefully reconsidered, we shall have to vote against it.
Mr. OCONNOR. -
    I do not suppose the honorable member would suggest that the clause is unnecessary.
Mr. DEAKIN. -
    It is out of place.
Mr. OCONNOR. -
    The question is as to its position. The honorable member objects to its position.
Sir GEORGE TURNER. -
    Yes.
Mr. OCONNOR. -
    With regard to the amendment of the honorable and learned member (Mr. Wise), I think the general sense of the committee will be that it is a matter of substance with which possibly the committee will deal. With regard to the position of the sub-section, that is no doubt a matter of importance, but it need not necessarily be decided now.
Mr. ISAACS. -
    That question means whether it is to be exclusive or not.
Sir GEORGE TURNER. -
    If we allow the provision to stand where it is proposed to put it, it will be decisive.
Mr. OCONNOR. -
    Well, it appears to me in the right place.
Mr. TRENWITH (Victoria). -
    I respectfully submit in connexion with this clause that the necessity for legislation in regard to aliens differs in the various colonies, and to give to the Federal Parliament exclusive powers to legislate would produce inconvenience. This is obviously so, for the reason that what is necessary in one state in connexion with the treatment of aliens may be altogether unnecessary and perhaps inconvenient in another state. Assuming that such contingencies may arise, any uniform legislation must work to the detriment of some state; whereas if, as suggested by Sir George Turner, it
is made optional on the part of the Federal Parliament, wherever any great pressure arises, or a necessity for uniform legislation occurs, to legislate, then the Federal Parliament will undoubtedly take the question up and by its act achieve exclusive control in that connexion so far as it chooses to legislate. But even then it may leave to local autonomy to deal with the question in some connexion in a manner which may be

necessitated by the different circumstances of different localities. Take the colony of Victoria. We have legislation in the form of a new Factories and Shops Act, which affects the Chinese in a manner such as no other colony has yet thought it necessary to affect them. It may happen that no other colony will think it necessary to legislate in that way. But there can be no reason why the legislation which is thought necessary by the Victorian people should not be permitted to continue in Victoria. I have given this illustration because it appears to me that the circumstances of different localities may involve different necessities in connexion with the treatment of aliens. It may be possible that in South Australia, or in New South Wales, or Tasmania, it may be necessary to take some action with reference to aliens that may be extremely beneficial to those colonies, and inconvenient or possibly irksome in Victoria. If the sub-section is, as suggested, taken from its present position and placed in clause 52, it will leave power for the states to legislate as they think proper until the Federal Parliament sees the necessity for bringing about some degree of uniformity. I would submit to honorable members that the whole of our work points to the necessity for giving nothing to the Federal Parliament to do that can be as well done in the interests of the states by the States themselves. What we are endeavouring to do is to constitute a new power which shall do some things which we cannot do as well as separate states. But we wish to avoid handing over to the new power anything that will take from us that sovereignty we now possess, unless it is absolutely necessary to do so. It does not seem to me to be necessary to make it imperative in the Constitution that the sovereignty of the states or their local autonomy in this connexion shall be removed. If the Federal Parliament does not wish to legislate on the subject the local Parliaments should have the power to legislate as their local requirements dictate.

Mr. DOBSON. -
They can do that now.

Mr. TRENWITH. -
They cannot do it if we carry this clause.

Mr. DOBSON. -
Yes they can.
Mr. TRENWITH. -

It seems to me that immediately the Constitution is adopted the local Parliaments can no longer carry any legislation into existence upon this subject—that they cannot perform one act of legislation after the Constitution is effected.

Mr. DOBSON. -

Read clause 100. They can go on altering or repealing, if they like.

Mr. TRENWITH. -

It seems to me that if you use in this Constitution the term exclusive power that means that you exclude all others, and once that power is created there is no other power to legislate. I confess that in a Convention such as this, where we have so many and such able lawyers, I speak with great diffidence upon such a subject.

Mr. ISAACS. -

Clause 100 would not permit new legislation on the subject.

Mr. DOBSON. -

It could be altered to permit that to be done.

Mr. TRENWITH. -

I think we should remove this clause, and then we should not require to alter clause 100. Give exclusive power where it is essential in respect to such matters as may be deemed to be necessary to be dealt with by the central authority. That seems to me to be extremely necessary. This is an extremely perplexing question, and one which has given perhaps as much trouble as any other question to the various states.

Mr. KINGSTON. -

It should be an Australian question, should it not?

Mr. TRENWITH. -

For some purposes.

Mr. KINGSTON. -

For all purposes.

Mr. TRENWITH. -

And whenever the Federal Parliament thinks that it should be an Australian question, the Federal Parliament can, if this sub-section is, as suggested, made part of clause 52, make it an Australian question. But if the Federal Parliament does not see any reason for Australian action that is no reason for depriving the states of autonomy. Therefore, I hope that we shall not take away from the states the power of legislating if we can help it. I can conceive some conditions which may arise in a state where some aliens became extremely objectionable, but in another state they might be considered desirable citizens. It would be a mistake to give to the Federal
Parliament exclusive power to deal with such conditions, when, in dealing with them uniformly, it might embarrass one country whilst giving satisfaction to another. Of course, the danger pointed out by Mr. O'Connor is, I see, patent. That is, a state might impose such conditions with regard to aliens as might cause the interests of other states to suffer in that respect. Whenever such conditions arise, if this clause were placed among the sub-sections of clause 52, it would give the Federal Parliament power to say to that state—"You must not continue to act in that way to the prejudice of the Commonwealth. In order to restrain your doing, we shall pass a federal law dealing with that aspect of the alien question."

Mr. OCONNOR. -

Supposing one local Parliament makes laws of so severe a character as to drive all the aliens into other states.

An HONORABLE MEMBER. -

That might cause a remonstrance to be made from the whole nation to the federal authorities.

Mr. TRENWITH. -

Suppose that is the case, and that this clause is included in clause 52, the Federal Parliament will have all the powers which it is proposed to give it here, except that it will have to act after instead of before. That is all the difference. Whenever a necessity arises on behalf of the interests of the Commonwealth to deal with the question of aliens by one authority, the Federal Parliament can deal with it, and at once. I object to taking away powers from the states now that may or may not be exercised by the Federal Parliament. I feel that this question of the treatment of aliens will be more difficult in the future than in the past. We have an indication of that from what was said by the right honorable member (Sir Edward Braddon) as to the difficulty in Tasmania in dealing satisfactorily with British subjects coming from Hindostan. He says that is a difficulty there, and that it will have to be met by special legislation. That has happened in the past. Other colonies have seen the necessity for special legislation, and it might as easily have happened that in some other colonies, on account of evils arising therefrom the influx of this alien population, they had instituted special legislation. Tasmania might not pass such legislation, because within its borders the evil had not previously arisen. The aliens legislated against might pass into Tasmania; then the Federal Parliament, having the power, would prevent the state which was being embarrassed by the influx of a number of these aliens from taking action on its own account so as to prevent the inflow of the aliens.
An HONORABLE MEMBER. -

Cannot you give us credit for more intelligence, so that if we saw an evil existing in me part of Australia we would recognise it?

Mr. TRENWITH. -

My experience has shown in this Convention that the intelligence which honorable members possess is very much circumscribed, and their mental horizon reaches their own border, but goes with great difficulty beyond it. We have seen that in the discussion we have had lately. We have had it in other discussions, and dealing with difficulties which we have not yet been able to solve. I do not see that there is any great reflection cast upon honorable members by making those remarks. It is very difficult for people to see from a distance the evils that other people are suffering. It is only another illustration of the old adage that no person can tell where the shoe pinches except the man who wears it. We are as a rule very indifferent about the pinching when we do not wear the shoe ourselves.

Mr. HOLDER. -

Why not take the broad view of the question?

Mr. TRENWITH. -

I am trying to take the broadest possible view of it. When local difficulties arise the Federal Parliament may not deal with them. If we carry this clause, and if the Federal Parliament does not deal with those difficulties, the local Parliament will not be able to deal with them; and there certainly should be power given to the local Parliament to deal with such difficulties. There should be power given to the local Parliaments to deal with questions which are of no special concern to the Federal Parliament. I earnestly hope that this clause, instead of being where it is, will be transferred as suggested by the Right Hon. Sir George Turner, the honorable member (Mr. Isaacs), and others. We do not object to the Federal Parliament having this power when the necessity arises and when they choose to act. That is executive power to deal with a special phase of the question; but to refuse to give any power to the states in this matter, no matter how great the pressure may be on them or on any one state, will be extremely unwise, and it will be doing something which will materially prejudice the passage of this Commonwealth Bill in the respective states. There is a very strong feeling in the colonies upon this point. Some of them would very reluctantly give up their power to deal locally with the question of aliens. I dare say they would give up the power readily if there were any assurance that certainly and quickly the Federal Parliament would deal with it. But it is obvious, from the nature of the task which will be before
the Federal Parliament, that it will be some very considerable time before it can deal with this question. For instance, the Federal Parliament will have to deal one way or the other with the Tariff question-with the question of free-trade and protection; we know that that will take a great deal of time. Then there are the questions of finance, quarantine, ocean lights, and a number of other things, each of them very difficult to settle, and on which there are great differences of opinion, and, consequently, it will take a long time to settle them.

Mr. BARTON. -

The only way to make the Federal Parliament deal quickly with this subject is to give them the exclusive power of dealing with it.

Mr. TRENWITH. -

There are so many other important questions which the Federal Parliament will have to deal with.

Mr. BARTON. -

There are few questions of more importance than this.

Mr. TRENWITH. -

I agree with the honorable member as to the importance of the question, and I would not have taken up so much time in dealing with it if it were not so. It will be extremely important to the Commonwealth, and to the states, and possibly it will be important in one aspect to one state, and in another aspect to another state. Uniform legislation, if it is made imperative, may possibly cause inconvenience to various portions of the Commonwealth. I recognise that in admitting aliens to the colony there ought to be uniformity, but in the treatment of aliens when they are in by the Commonwealth it might easily happen that the best interests of the Commonwealth might be served by permitting aliens to be dealt with in one way in one part of the country, and in another way in a different part.

Mr. WISE (New South Wales). -

When I suggested the amendment which is now under discussion, I had no conception that there would be any difference of opinion as to the policy of the clause, and the amendment, which is purely verbal. It now, however, appears that the policy of the clause is strenuously attacked. I have listened to the observations on the other side with feelings of amazement. I have either utterly misapprehended the speech of the leader of the Convention, or I cannot apprehend the attitude taken up by the delegates from a was

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a desire to give a larger power to the Federal Government of dealing with the immigration and emigration of races whose presence we might for one reason or another think undesirable—a larger power than can be now
exercised by any single state. If my ears did not deceive me, I heard the Right Hon. Sir George Turner say they did not wish to give executive power to the Federal Parliament to deal with this question.

Mr. ISAACS. -

Exclusive power.

Mr. WISE. -

Of what use is it to confer a power on the one hand on the Federal Parliament, and then to leave it in the power of local communities to establish little plague spots in corners of this continent which will defeat all the objects of federal legislation?

Mr. ISAACS. -

That is not the question at all.

Mr. WISE. -

The difficulty we have to meet in New South Wales is in connexion with a colony which has not the same stringent law in regard to Chinese immigration as we have, and whose alien population drift across our northern border without its being possible for us to check that immigration. Of what use would it be for the Federal Parliament to pass a law declaring that every alien of a particular race shall pay a poll tax if it was open to the state Parliament, on the following day, to pass a law giving to every alien of that race a bounty of twice the amount of the poll tax?

Sir GEORGE TURNER. -

Do you think for a moment that that is what we are contending for?

Mr. WISE. -

I do not.

Sir GEORGE TURNER. -

Then why do you put such words in our mouth?

Mr. WISE. -

I will tell my right honorable friend why I do. It seems to me that the purport of this sub-section has been entirely misunderstood by the representatives of Victoria, and that in using the arguments they did they have looked at this matter having regard only to the peculiar conditions of their own colony, and disregarding altogether the wider federal aspect of the question. The difference between the honorable member (Mr. Trenwith) and the right honorable gentleman was, if I understood them aright, very marked. What I have just said does not apply to the argument of my honorable friend (Mr. Trenwith), as I understand it. I understand him to be only questioning the position of the clause, but the right honorable gentleman, unless I misunderstood his remarks, went much further.

Sir GEORGE TURNER. -

I am quite willing to put it in clause 52, but I say it is wrong to put it in
clause 53, because the Federal Parliament will not deal with the question for a number of years.

Mr. WISE. -

Will my right honorable friend allow me to express to him my regret for the misunderstanding which has arisen? I certainly understood the right honorable member and his Attorney-General to say—and I took their words down—that they do not desire that the Federal Parliament should have exclusive power.

Mr. ISAACS. -

Exclusive power; but you do not agree with us as to the meaning of the word exclusive."

Mr. WISE. -

I think there are others at this table who are under the same misapprehension.

Mr. ISAACS. -

Will my honorable and learned friend allow me to interpose for a moment?

Mr. WISE. -

Certainly.

Mr. ISAACS. -

The difficulty is this: If the power is put in clause 52 the Federal Parliament can deal with the subject, and, if the Federal Parliament deals with the subject, that law will be paramount, and no state can legislate against it. The meaning of giving exclusive power, in relation to any question, is that only the Federal Parliament can deal with the question, and if the Federal Parliament does not choose to deal with it then the state cannot deal with it. All we ask is that the state may have power to deal with the subject till the Federal Parliament chooses to make a uniform provision, and whenever it chooses to make a uniform provision the power of the state is gone.

Mr. BARTON. -

Which makes matters worse.

Mr. WISE. -

I do not regret that I fell into the error I did, because it has led to this explanation. I am not alone, I may say, in the error, for there are others here who were under the same misapprehension. The matter narrows itself down to a very small compass. Perhaps the Attorney-General of Victoria has not given full attention to this matter that there is no more sure means of securing that which we desire, namely, a uniform law dealing with this subject, than by depriving local Parliaments of the right to pass new
legislation.

Mr. ISAACS. -

I am rather of the opinion the other way.

Mr. WISE. -

There is no question which is more urgent, there is no matter which the people of Australia are more likely to look to as an immediate consequence of the Federation—and in that respect I agree with my honorable friend (Mr. Trenwith) that it is one of the very first questions which will be dealt with—there is no greater assurance that the Federal Parliament will deal with this question than to remove it from the sphere of the state Parliaments, and to force it on the attention of the Federal Parliament as the first matter of their concern.

Sir GEORGE TURNER. -

They can do that just as effectively if you place it in clause 53.

Mr. WISE. -

If that is the only difference between us, it is a very small one.

Sir JOHN FORREST (Western Australia). -

The difficulty, to me, seems to be as to what is meant by the word affairs." Perhaps the leader of the Convention will tell us. I take it that it means the control of those people after they have arrived in Australia. If it was intended to mean their introductions I have no doubt that the most of us would be in accord, because I think every one is of the opinion that the introduction of people of any race, especially coloured races, is a matter which should be in the control of the Federal Parliament. I take it that the word affairs" would mean the control of alien races after they have arrived in this continent. In my opinion the control of the people, of whatever colour they are, of whatever nationality they are, living in a state, should be in the control of the state, and for that reason I should like to see this sub-section omitted.

MY. SYMON. - Why did you vote for the question of conciliation and arbitration being a federal subject then?

Sir JOHN FORREST. -

I am not dealing with that question at this moment. I do not see myself that this sub-section is necessary, because I hold that if it is passed the control of every one living in the state should be within the province of that state. Take the colony which I represent. We have made laws controlling a certain class of people. We have made a law that no Asiatic or African alien can get a miner's right or do any gold mining. Does the Convention wish to take away from us, or, at any rate, not to give us, the power to continue to legislate in that direction? We have also made laws regarding hawking. Certainly they apply to every one, I believe, at the present time.
We have had to abolish hawking—not liking to offend the susceptibilities of British subjects, we had to abolish hawking altogether. But we would much rather have applied our legislation to a certain class of the people. I think I have some right to speak on this subject; and, no one, at any rate, will be able to say of me, or of the colony I represent, that we desire to encourage the introduction of coloured races, because ours if; the only colony in Australia with a law at the present time which excludes from its territory coloured people. Other colonies have talked about it a great deal.

Mr. REID. -
You don't exclude them.

Sir JOHN FORREST. -
Yes, we can exclude them.

Mr. REID. -
Under the Natal Act?

Sir JOHN FORREST. -
Yes, unless they can read and write English they certainly can be excluded. I think that there is no desire on our part to do anything to encourage either in Western Australia, or any other part of Australia, undesirable immigrants. I take it that under clause 52 immigration is a subject within the power of the Federal Parliament to deal with. I would not mind if it were one of its exclusive powers. There may be difficulties in regard to the introduction of persons who are not altogether desirable. But I cannot for the life of me see why we should desire to give to the Federal Parliament the control of any person, whatever may be his nationality or his colour who is living in a state. Surely the state can look after its own affairs. It may require to place a restriction on a certain class of people. As I said, we place a restriction in regard to the issue of miners' rights. We also provide that no Asiatic or African alien shall go on a township on our goldfields. These are local matters which I think should not be taken away from the control of the state Parliament. For that reason I would like not to give this subject a place in either clause 52 or clause 53, but to leave it as a matter to be dealt with by the local Parliaments in their wisdom and discretion.

Mr. REID (New South Wales). -
I think the remarks which have been, made within the last 30 minutes only show how easy it is even for men of very profound knowledge to make very serious mistakes, and I include myself, not, as a man of profound knowledge, but as one who is apt to make mistakes. I think the general idea all through has-been that this sub-section of clause 53 was
intended to deal with the admission of aliens.

Mr. BARTON. -

Not with the admission of aliens, but with aliens after they are here.

Mr. REID. -

No; but there has been as we have seen here lately, considerable confusion on that point, because I know that quite a number of commentators on this Bill have always looked on this sub-section as a provision which handed over to the Federal Parliament the exclusive power of dealing with aliens, and even this afternoon I have heard more than one observation to that effect. In fact, it is only within the last few minutes that the discussion has gone away from that view. I venture to say that the view which Sir John Forrest expressed is the correct one, and that this sub-section really refers to the method in which aliens shall be dealt with when they become members of the community in the physical sense.

Mr. BARTON. -

I don't think the speakers generally have been making the mistake you mention. Certainly Mr. Isaacs and Sir George Turner did not.

Mr. REID. -

I have heard observations that would have been perfectly correct if this sub-section had not that meaning. However, that sort of thing has been happening all through; there is nothing unusual in it. I agree with Sir John Forrest that it is certainly a very serious question whether the internal management of these coloured persons, once they have arrived in a state, should be taken away from the state. I am prepared, however, to give that power to the Commonwealth, because I quite see that it might be desirable that there should be uniform laws in regard to those persons, who are more or less unfortunate persons when they arrive here. Therefore, in that sense I am prepared to say that the clause should stand as it is. But I do not know that the difficulty does not still remain—that if there is no federal law, and until there is a federal law, the local law would not go.

Mr. KINGSTON. -

No, the local laws are preserved under section 100.

Mr. REID. -

Will that cover the difficulty? We will suppose that this Constitution has been created. Supposing the Imperial Parliament has originated over this continent one executive power, having exclusive authority to make laws for certain subjects. It is a very serious question whether, the moment that power comes into force, the existing laws remain.

Mr. BARTON. -

They stand to the extent to which they do not conflict with the federal
Mr. REID. -

It strikes me that the provision on which honorable members have based that opinion was more intended to deal with the difficulty arising under clause 52.

Mr. BARTON. -

That might be the primary intention, but it covers both.

Mr. REID. -

If it does, I will be perfectly satisfied, but I am afraid the words of the provision will not apply to the clause which speaks of the exclusive legislative powers of the Commonwealth. Clause 100 speaks of All laws in force in any of the colonies relating to any of the matters declared by this Constitution to be within the legislative powers of the Parliament of the Commonwealth." Well, these are powers which are declared under this special section to be within the exclusive" power of the Commonwealth.

Mr. ISAACS. -

Therefore they are within the power of the Commonwealth.

Mr. REID. -

If that is so, I have no objection to the clause as it stands.

Mr. ISAACS. -

It prevents you amending your state laws.

Mr. REID. -

There is a concurrent power as to the introduction of aliens which is available to the state.

Mr. ISAACS. -

The concurrent power does not exist as to new legislation.

Mr. REID. -

There is a concurrent power, first of all, with reference to immigration and emigration of aliens.

Mr. ISAACS. -

Not after the Federal Parliament has legislated on the subject.

Mr. REID. -

I quite agree; but that is the whole question. All the legislation we are aiming at is legislation preventing the introduction of certain races of aliens and their becoming members of this community. That is the salient point. Whilst they are members of the community we can deal with them in a very ordinary way.

Mr. ISAACS. -

Not under that clause, because its power is exclusively in the Federal Parliament.

Mr. REID. -
But you say that the laws in force in any state at the date of the commencement of the Commonwealth will remain in force until the Commonwealth Parliament legislates on the subject, and if that is so—if those laws are not annulled by the creation of the Commonwealth—I am quite satisfied to leave the Bill as it is, because if the matter is a pressing matter at all I feel perfectly confident that the Federal Parliament will deal with it by having it brought exclusively within their jurisdiction.

Mr. TRENWITH (Victoria). -

I want to give an illustration which seems to me to prove the possible danger of leaving this clause as it is. In Victoria we have legislated on this question. We passed a tentative measure for three years. In one of its parts that measure deals with this question of aliens. At the expiration of three years we shall desire to legislate on the subject again. If experience proves that measure to be a wise one, we shall desire to renew it, which, of course, will be making a new law; but if this clause is carried as it stands we shall then be too late.

Mr. BARTON. -

Well, you had better make haste, and renew that law before the expiration of the period within which you can re-enact such a law.

Mr. ISAACS. -

But we have to wait for three years to get the experience of the law.

Mr. BARTON (New South Wales). -

I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again. I am sorry that we cannot pass this clause before adjourning, but I do not like to keep honorable members any longer, after they have been sitting for seven hours. I think it is the general desire of honorable members that we should adjourn at four o'clock tomorrow afternoon, or a few minutes afterwards, and, if that course is suggested then, I shall probably have no objection.

The motion was agreed to.

Progress was then reported.

HOURS OF SITTING.

Mr. BARTON (New South Wales). -

I beg to move—

That this Convention do now adjourn.

Mr. DOBSON (Tasmania). -

Might I ask the leader of the Convention to seriously consider the progress we are making with our work?

Mr. BARTON. -

It is already a matter of very serious consideration.
Mr. DOBSON. -

I will not trouble the honorable member then. It is not for me to say whether the progress we have made is good or bad. I hope it is good, but most certainly it is exceedingly slow, and I think the leader of the Convention has, out of consideration to honorable members, halted about calling upon us to sit in the evening in future in committee. I think we are getting on so slowly that we ought to sit two or three evenings a week now. I am perfectly certain that when we have sat here for three or four weeks, the great bulk of us will be longing to get back to our homes and our work, and the grave danger of rushing the more important matters at the last may be avoided if we seek to make up for the time lost in adjourning over holidays, and through early rising, by sitting sometimes in the evening.

Mr. BARTON (New South Wales). -

With regard to the suggestion about sitting at once at night, I am bound to have confidence in honorable members, and to believe that no undue time will be occupied in the discussions of the Convention, and I do not hesitate, so early, to call upon them to make the sacrifice which is involved in sitting at night. The Convention has been summoned at such a time that the public business of the colonies does not suffer by our sitting, perhaps, a week or two longer than we otherwise would have done had some of the Parliaments been approaching the session, and we are bound to bear that fact in mind. At the same time, I do recognise the slow progress that has been made, and I think honorable members will see with me that it will be our general duty to refrain from making lengthy speeches in regard to matters that have been debated over and over again; so that I anticipate there will be a number of clauses upon which we shall have very little debate, and, therefore, this slow progress will be compensated for later on. It must be recollected that the matters about which discussion has taken place—the question of rivers, the dealing with aliens and coloured immigrants residing in the various colonies, and such questions, as that of conciliation and arbitration are of the very highest importance, and that they do justify some serious debate. We shall shortly come to clauses upon which I hope I shall not be considered as in any way unfair if I ask the Convention to say that the matters with which they deal have been settled and do not call for lengthy debate. They have received the common consent of this Convention, at any rate at two of its sittings, as well as of a previous Convention, and for these reasons I shall ask honorable members to bear with me if I suggest that when we come to those clauses we should use expedition.

Mr. DOBSON. -

Is the question of deadlocks to be re-opened?
Mr. BARTON. -

That question is of immense importance. Whilst I might personally be opposed to any proposal with the intention of re-opening the question, I should, nevertheless, feel bound if a request were made by any large number, of honorable members to say that it should be re-opened. The financial clauses will come before the Convention presently, and I may here intimate that the Finance Committee have made progress. They have only one more question to consider, together with the questions that have been submitted to them by the Drafting Committee with regard to their intention in one or two particulars. They are going to meet to-night. When they have completed their work there will be no loss of time in drafting the clauses.

Mr. SYMON (South Australia). -

I rise for the purpose of protesting against the constant statement that slow progress is being made. I deny that slow progress is being made. The matters that we are engaged in debating are of the highest consequence. We have met here in this the third session of the Convention for the purpose of completing this work. It is our bounden duty not to leave the chamber finally and for good until the work is completed. If we do we shall be humiliated and discredited from one end of the country to the other. As this is the final opportunity we shall have, every point ought to be thoroughly and exhaustively dealt with. So far as I am individually concerned, I am not going to abate one jot of my interest in these subjects, or in the duty of dealing with them, because of some insinuation on the part of persons who do not attach the same importance to them that it is a waste of time. We have not wasted one moment of time. Some of us ought to protest against these constant insinuations as to the time being badly occupied.

Mr. BARTON. -

I do not think there has been any suggestion made excepting now.

Mr. DOBSON. -

There has been no suggestion of the kind the honorable member indicated. I hope the honorable member does not mean what he has said.

Mr. HOLDER (South Australia). -

I join with Mr. Symon in saying that we have not wasted time; but I rise to ask the leader, of the Convention to consider very carefully the remarks that have been made by Mr. Dobson. I agree with him that we might give at least some evenings in the week to the consideration of these important matters. What I am afraid of is that we shall, within two or three weeks, come to a time when some honorable members will be obliged to leave,
and when we shall have to debate large questions in a thin Convention. It would be better to sit two or three evenings now than to delay matters until that contingency is reached. I would ask the leader of the Convention to consider whether we could not sit two or three evenings next week.

Mr. BARTON (New South Wales). -

It makes no difference to me, because I do work in the evenings as it is, but it will make a difference in another respect. If the Convention refrains from sitting at night for the present the Drafting Committee will have more time in which to do the work intrusted to them. If there are night sittings there will have to be a long adjournment hereafter. There will, therefore, be perhaps no loss of time in continuing the present proceedings. I shall be ready to propose night sittings quite as early as will be agreeable, I think, to the majority of honorable members.

Mr. REID (New South Wales). -

The labour and anxiety imposed on our Drafting Committee from the first has been so intense that in the interests of this Constitution I shall protest against any arrangement of our sittings the effect of which will be to throw on these gentlemen a strain absolutely beyond human endurance. There is no more critical work than that which the Drafting Committee has in hand-no work which would task men more in every sense-and if we sat at night, and the Drafting Committee had to sit, as they would have to do, after we adjourned, we should not only put an inhuman strain

The Convention adjourned at seven minutes past five o'clock.

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Friday, 28th January, 1898.

Commonwealth of Australia Bill - Representation of Queensland.

The PRESIDENT took the chair at half-past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on subsection (1) of clause 53 (Exclusive powers of the Parliament), which was as follows:-

The affairs of the people of any race with respect to whom it is deemed necessary to make special laws not applicable to the general community; but so that this power shall not extend to authorize legislation with respect to the affairs of the aboriginal native race in any state.

Dr. QUICK (Victoria). -

I have always been under the impression that this clause embodied, certainly, one of the most valuable powers to be conferred upon the Federal Parliament, and have indicated that view during my federation campaign as a strong argument in favour of federation, inasmuch as this power gives the Federal Parliament control over the immigration of aliens. But the discussion which has taken place upon the matter shows the importance of debate. I think that no time has been wasted in the discussion of subsection (1), which is worthy of full ventilation. I would like to bring even more closely under the notice of the Drafting Committee the real import and significance of the provision. My honorable friends in the representation of Victoria yesterday drew attention to a point of considerable importance as to the possible effect of this sub-section in preventing the local Legislatures from dealing with the alien question up to a certain point. There can be no doubt as to the desirability of conferring unlimited powers on the Federal Parliament to prevent the introduction of foreign coloured races. It may be thought that that power is conferred on the Federal Parliament under other clauses in the Constitution. This subsection, as I understand it, is restricted in its operation to people of certain races when they are within the jurisdiction of the Commonwealth. I would like to suggest whether it is wise to withdraw all power and jurisdiction from the Federal Legislature upon such people within certain limits. Sir John Forrest, yesterday, touched upon the fringe of the subject I am discussing when he mentioned that there are certain laws in Western Australia which prevent certain coloured races from having miners' rights,
or from going on the gold-fields, or holding hawkers' licences.

Mr. PEACOCK. -

There is a similar provision in our Mines Act.

Dr. QUICK. -

And in the Victorian Mines Act there is power to insert in the covenants of a mining lease a provision that the employment of Chinese labour shall not be permitted to be a compliance with the labour covenants of the mining law. That is, of course, an important power to be held by any Parliament, and it is a power which is restricted within the territorial limits. It is not proposed in this Constitution to take away from the state Legislatures jurisdiction over mines and minerals. I would, therefore, like the Drafting Committee to consider whether this sub-section, as it stands at present, will not prevent the Parliament of Western Australia from abstaining from granting miners' rights to coloured aliens, and prevent the Parliament of Victoria from continuing to enforce the proviso that the employment of Chinese labour shall not be a compliance with the labour covenants of the mining law?

Mr. DEAKIN. -

Read clause 110 in connexion with that.

Mr. BARTON. -

That applies rather to the administration of the laws, I think.

Dr. QUICK. -

The clause alluded to by Mr. Deakin says-

A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth, nor shall a state deny to any person within its jurisdiction the equal protection of the laws.

It may be that that clause supports the view that the state would not be able to impose disabilities upon coloured aliens.

Mr. KINGSTON. -

It goes further.

Mr. HIGGINS. -

It has been held under a provision such as this that you cannot cut a Chinaman's pigtail off.

Mr. KINGSTON. -

No more you should.

Dr. QUICK. -

I will respectfully suggest—Why should the Federal Parliament desire a power, or why should a power be conferred upon it, of interfering with what is a state right, a power of interfering in the development of the state's
mineral, agricultural, or other resources? And why should not the state be able to say what should be a compliance with its own labour covenants? And why should it not impose its own terms and conditions upon the development of its own territorial resources? While I am anxious to equip the Commonwealth with every power necessary for dealing with the invasion of outside coloured races, I do not see why, at the same time, the local Legislatures should not continue to enjoy local state rights within certain limits; and I would suggest to the Drafting Committee to consider whether they could not insert at the end of this clause a provision to meet the case I have described. I am not referring to the exclusive powers of the Federal Parliament. You may, if you like, give certain exclusive powers as to determining the confinement of these races within certain areas, or regulating their admission, or keeping such aliens out altogether. But is not such a power sufficient for all the purposes of the Commonwealth? I would suggest whether the states should not have reserved to them such comparatively minor rights as those which Sir John Forrest has mentioned, and which I have called attention to.

Mr. KINGSTON (South Australia). -

I do not know that I am often found disagreeing with my honorable and learned friend (Dr. Quick), but in connexion with this matter I do disagree with him strongly. He puts it that the state is the landlord of the soil of its territory, and has, therefore, a right to dictate as to the terms on which that soil shall be worked.

Mr. DEAKIN. -

By its lessees.

Mr. KINGSTON. -

By its lessees or any one else. Pushed to a legitimate conclusion his argument would amount to this: That the state might dictate as to the right with which each person could step ashore on to that soil. I do not think the matter should be viewed solely with regard to our dealing with alien races, who will chiefly come within the scope and purview of this sub-section. We ought to deal with the matter not on local or provincial, but on broad Australian lines. I know that in this respect I differ a good deal from many with whom I generally work in sympathy, but the view which I venture to propound is this—that if you do not like these people you should keep them out, but if you do admit them you should treat them fairly—admit them as citizens entitled to all the rights and privileges of Australian citizenship.

Mr. TRENWITH. -

And compel them to observe the same rules as other citizens?

Mr. KINGSTON. -

Yes, compel them to observe the same rules as other citizens, but impose
no special rules intended for their special injury and to emphasize what
some may consider the degradation of their position. Sir, I think that in
connexion with this coloured races question we should do whatever we can
for the purpose of keeping out coloured races, and I recollect with
considerable interest and some pride that I had the pleasure of being
associated with Mr. Deakin at the Chinese Conference in 1888, when an
Australian policy was agreed to—a policy

which had the effect, to a very considerable extent, of limiting the
introduction of these coloured people. I think that subsequent events have
shown, not only the wisdom of that policy, but also that, if it had a defect,
its only defect was in not going sufficiently far.

Mr. DEAKIN. -

Hear, hear.

Mr. KINGSTON. -

My honorable friend indorses that opinion, and there is no doubt that, in
view of our proximity to the crowded millions of the East, we must look
very closely into the question as to whether or not restriction should not be
replaced by absolute prohibition, in the interests of what is generally and
properly known as the white Australian. The matter was considered a
couple of years ago—I think it was at another Conference in Sydney—when
further legislation was agreed to, and that legislation has been passed by
the senior colony and by South Australia, but it has not yet received the
Imperial assent. Now, it seems to me that there has been no substantial
difference of opinion as to the propriety of dealing with this question as an
Australian question, and I trust that in framing federal legislation on the
subject we will adhere to that principle, and that we will not encourage the
policy of dealings with the coloured races by various provinces on different
and varying lines.

Mr. DEAKIN. -

The difficulty is as to those we have got here now, you see.

Mr. SYMON. -

They are no worse than those who may come in future.

Mr. KINGSTON. -

We have got those coloured people who are here now; we have admitted
them, and I do trust that we shall treat them fairly. And I have always set
my face against special legislation subjecting them to particular
disabilities, whether it is, as in one province, by declaring that a solitary
Chinaman shall constitute a factory—

Mr. WALKER. -

It is disgraceful.
Mr. KINGSTON. -

I am not going to say whether it is disgraceful or not. I disagree with it. As I was saying, I have always set my face against special legislation subjecting these coloured immigrants to particular disabilities, whether it is, as in one province, providing that a single Chinaman shall constitute a factory, or whether, as in our colony, it is the prevention of the ownership of mineral leases by Chinamen. I think it is a mistake to emphasize these distinctions. Keep these coloured people out if you do not want them here, but if you admit them and do not want them to be a standing source of embarrassment in connexion with your general government, treat them fairly, and let them have all the rights and privileges of Australian citizenship.

Sir JOHN FORREST. -

Would you give them the right to vote?

Mr. KINGSTON. -

I do not think we ought to give them the right to vote.

Mr. PEACOCK. -

They are here now, and they are naturalized citizens.

Mr. KINGSTON. -

Then that is an additional reason for according them the full rights of citizenship, and, as regards not giving them the right to vote, I put it to honorable members that the proper course is to decide that question by Australian legislation, and I should be undoubtedly found supporting a proposal which, as regards future arrivals at the least, would prevent them being admitted to the exercise of the franchise.

Sir JOHN FORREST. -

You would not give them all the rights of citizenship, then? . - I would not allow them to come here in the hope of exercising those rights, but I trust also that they will be kept out. There is no doubt whatever, it seems to me, that one of the most important subjects that the Federal Parliament will have to deal with as regards the regulation of these coloured immigrants-a subject second only in importance to that question-is the question of the Australian treatment of those immigrants when they are here; and just as I think that every one of those subjects ought to be dealt with by federal legislation, so I think that, only in a secondary degree, the same remark applies to the question of how the coloured people who are here shall be dealt with. The result will be, if one colony is allowed to subject these coloured people to special disabilities, to force them into the other colonies where they are more favoured, but no more wanted. The broad view of the matter, which I venture to adopt, is that it is
an Australian question, and should be dealt with by the Federal Parliament, land by the Federal Parliament only. Some question has been raised as to whether or not this power-if conferred on the Federal Parliament in the shape in which we find it in the Bill-will prevent the local Legislatures from dealing with the question pending federal legislation.

Mr. PEACOCK. -
That is the whole point.

Mr. KINGSTON. -
That is the whole point at issue. My hope is that it may be made perfectly plain that, whilst the local Legislatures can retain, if they please, the benefit of what they have already done, they ought not to interfere further with the matter, after the Federal Parliament is established, but the Federal Parliament should be left to deal with it, and, by being made practically the only body competent to deal with it, should be forced, at an early date, to deal with it, and to deal with it on Australian lines, as broad and fair as possibly may be. I cannot help thinking, however, that if we pass the sub-section in the shape in which we have it before us at the present moment, until the Federal Parliament deals with the matter, the local Legislatures will have jurisdiction to amend their laws, either in the shape of liberalizing them, or of greater stringency towards these coloured races.

An HONORABLE MEMBER. -
Clause 100.

Mr. KINGSTON. -
Clause 100 has some reference to the matter, but a more important point was the one taken by Mr. Clark, then Attorney-General of Tasmania, and concurred in by Sir Samuel Griffith at the Convention in 1891. Mr. Clark called special attention to the use of the expression-"the people of any race with respect to whom it is deemed necessary to make special laws not applicable to the general community" and he asked-"By whom is it to be deemed necessary?" The answer, of course, is-"By the Federal Parliament." Mr. Clark asked:"Do we know when the Federal Parliament will deem it necessary to make special laws not applicable to the general community?" And the answer is-"Not until the Federal Parliament exercise that power."

Mr. TRENWITH. -
But whether the Federal Parliament deem it necessary to make such special laws or not, their power to do so is exclusive.

Mr. KINGSTON. -
It is only exclusive in connexion with the question that arises after the declaration by the Federal Parliament that it is necessary to make such special laws.
Sir GEORGE TURNER. -

That is too fine to risk this on, anyhow.

Mr. KINGSTON. -

I hope it will be made perfectly clear, but in an altogether different direction to that which I think is the view entertained by Sir George Turner. The right honorable gentleman puts it that it is too fine to risk it on that point. I say not only was it the opinion of Mr. Clark, but also of Sir Samuel Griffith, that it was unnecessary, and Mr. Deakin gave in his adhesion to that view. However, let us make it clear. But I hope that we shall make it clear in this direction, that as regards this matter and the treatment of alien races in Australia, both as to their immigration and the terms on which they are permitted to take up their abode amongst us, the Federal Parliament; and no other shall have anything to do with it.

Mr. SYMON (South Australia). -

I so strongly sympathize with the broad and generous views expressed by the last speaker that, except that this is a question of very great moment, I should hardly have felt it necessary to occupy the attention of the committee even for the very few seconds I propose to do. This is a very much larger question than one of drafting. It has travelled a long way beyond that stage. In this discussion two points have been raised. One is more or less a matter of drafting—a technical matter—and that is the point which was raised yesterday by my honorable friend (Mr. Deakin) as to the meaning and effect of the word "exclusive," and as to whether this particular provision is not out of place in this series of sub-sections dealing with matters in the exclusive ambit of the Federal Parliament—whether it ought not more properly be placed in clause 52, and whether if we retain it where it is it may not have the effect of creating a sort of interval between the coming into force of the Federal Constitution and the enactment of a federal law dealing with the subject of this sub-section. That, I think, is substantially the point which has been put from the first aspect—that is to say, when this Federal Constitution comes into force it simply operates as a barrier to all legislation by repeal or alteration on the part of a state with regard to any existing laws dealing with people of the nationalities which are referred to, although circumstances may arise to render it absolutely necessary that some alteration should be made. That is a very serious and a very important question, and, although I am disposed to think if this sub-section is retained where it is under these exclusive provisions, the effect will be to erect such a barrier as I have indicated, still it may be open to doubt as to whether that is the effect of the word "exclusive." But to solve the matter, and to save it
from all doubt, I agree with the honorable member (Mr. Deakin) that it would be very much better to place this provision in clause 52, so that until the Federal Parliament does legislate on the subject the existing laws of the states shall prevail, and that if the states should find it necessary to alter or modify or change those laws in any way they shall be at perfect liberty to do so. That, at any rate, would be consistent; it would be proper; and it would save the hiatus of legislation which might otherwise occur, and conserve to the states that right which they now possess, and which it might be absolutely necessary, in their own interest, they should exercise. But the second question is one of much wider and more far-reaching consequences. It is one of great constitutional substance. It is whether it is proper at all that this power, described in this sub-section, should be conferred on the Federal Parliament.

**Mr. DEAKIN.** -
Solely.

**Mr. SYMON.** -
In clause 52 we have given to the Federal Parliament the power of dealing absolutely with immigration. If we have given that power, then incidental to that power they will have an exclusive jurisdiction as to the status and citizenship of people who come into this country. If, therefore, the Federal Parliament are to have this entire control of the citizenship of the nation, then they have a right to say who shall be admitted to that citizenship and who shall be excluded, and they must also have the power to define the terms of that citizenship. They may say that they will admit the coloured races-those whom we describe, as aliens-to the full advantage of the citizenship of Australia. They may give a limited citizenship if they like. They may impose any terms or conditions, or they may, I apprehend, admit these people, and confer on the states themselves the right of regulating the control within the boundaries of the particular states. There may-and this was a point which was put by my right honorable friend (Sir John Forrest) yesterday, at least as I understood him-have to be varying laws, according to the different degrees of latitude in the various states, which may require differentiation in relation to these particular people. Well, the Federal Parliament would have perfect power to confer on the state the right to discriminate in that way if it chooses; but it seems to me, in common with the last speaker, that it is the federal authority alone which has to deal with and define and control the national citizenship.

**Mr. DEAKIN.** -
Is it to do that positively as you propose, or negatively as we propose?
That is the difference between us. We do not object; but we say that that control should be negative—that is to say, that until the Federal Parliament legislates, for instance, in regard to the employment of Chinamen in mines, the local laws ought to operate now and hereafter. It is only a difference between positive and negative.

Mr. DOUGLAS. -

The fight is over a shadow.

Mr. SYMON. -

I think, as my honorable friend puts it, the fight is over a shadow; there is really no substantial difference between us. It appears to me that we have been under some misapprehension, and the very pointed address to which we have just listened has been founded on an assumption of difficulty which has not been suggested. What I understood my honorable friend to desire was, that the power of regulating these coloured races, to use the expression which is best understood, shall be left entirely with the states.

Mr. PEACOCK. -

No.

Mr. TRENWITH. -

Only until the Federal Parliament deals with it.

Mr. DEAKIN. -

Negatively, instead of positively.

Mr. SYMON. -

As at present advised, I see no particular objection to the proposal to leave it with the states until the Federal Parliament defines what that citizenship shall be. Otherwise, of course, the result might be that you would neutralize absolutely the power which you are giving to the Federal Parliament, because, if you left it to the state to say how these people should be employed, under what conditions they should be licensed in particular vocations, you might defeat your federal legislation by starving the people you admit.

Sir GEORGE TURNER. -

And the Federal Parliament can always pass a law overruling the state law if that law is a bad one.

Mr. SYMON. -

What you want to do is to maintain your existing laws, with the power, of course, till the Federal Parliament legislates, of altering them as you please; but until the Federal Parliament legislates with regard to the admission of these people, and the quality of the citizenship which they are to possess—whether it is full and free like our own, or more limited; and until they also interfere with your internal regulation of affairs with these people your laws are to operate.
Mr. DEAKIN. -
And any amendment of them.

Mr. SYMON. -
If, in opposition to the view which was just taken, you have the power, in the interim between the establishment of the Federal Constitution and the passing of the federal law, to alter them, those alterations will have the same effect as existing legislation on the subject. Therefore, it seems to me, if that is the whole matter in dispute, it does not raise quite so large a question in substance as I anticipated. I thought, from the view which was expressed yesterday, no doubt from my misunderstanding it, that the whole question of the separate control of the states over the alien races, once admitted, was to be reserved to the states, and I emphatically concur in the speech which we have just listened to. It is monstrous to put a brand on these people when you admit them. It is degrading to us and our citizenship to do such a thing. If we say they are fit to be admitted amongst us, we ought not to degrade them by putting on them a brand of inferiority.

Mr. HOWE (South Australia). -
I have listened with great pleasure indeed to the speeches of the two last speakers. It is so very seldom that they are in accord with each other on questions of this kind, that I could not help marvelling that they should come together on a question of this magnitude. The honorable member (Mr. Symon said it was monstrous, for a civilized community like the Australians, to place a brand of degradation upon those alien races once we admit them. I think our first duty is to consider the welfare of our own kindred. Do you ever find British labour going to these eastern countries and competing with the labour there? Certainly not.

Mr. WALKER. -
Engineers go there from our country.

Mr. HOWE. -
Simply because those races have no engineers of their own. We send capital into those countries. We benefit them in that way, and we do not take hordes of people to compete with the labour of eastern countries. I have no objection to treat them fairly well when they are in Australia, but the Government ought not to go out of its way to grant them licences when there is a power of restrictions and when the Government can refuse any one a licence. Why should we grant them mineral licences to compete with our miners on gold-fields, and hawkers' licences to compete with our Australian hawkers?

The CHAIRMAN. -
I would ask the honorable member if he thinks his remarks are strictly relevant as to which body should have the power to deal with this matter?

Mr. HOWE. -

I am coming to that. If this law be passed as proposed, I am in accord with the honorable member (Mr. Deakin) that the federal authorities should have supreme power, and that the laws in the states should be operative until the federal law is passed. I am quite in accord with the Victorian members who say that those local laws should remain in full force and vigour until a new law is passed by the federal authority. I have no fear that the law passed by the Federal Parliament of Australia will be one that will be less exclusive, as against these alien races, than any law obtaining in any state at present.

Mr. WALKER. -

Do you think they will pass a more exclusive Act?

Mr. HOWE. -

Yes; I think the cry throughout Australia will be our first duty is to ourselves, and that we should as far as possible make Australia a home for Australians and the British race alone. It is not our duty even to go out of our way to create competition between the aliens residing in our midst at the present time against our own flesh and blood. I shall support the contention advocated with so much force and ability by the Victorian members, as I consider that the welfare of the colonies, as against alien cheap labour, depends upon the local laws being maintained in full force and vigour until a federal law is passed.

Mr. MCMILLAN (New South Wales). -

I do not intend to extend the debate, and therefore I shall only say a word or two. I have not been under any misapprehension with regard to the real issue before us. I am inclined now to alter my mind, and to say that this sub-section ought to be included in the 52nd clause, and for a reason that perhaps has not struck some honorable members up to the present time. I hold that the placing of this subject in the Bill as an exclusive power restricts, to some extent, the discretion of the Federal Parliament, because, in the earlier stage of our federation, it may be considered right not to interfere too much with the autonomous powers of the different states. It might be a wise discretion to leave everything exactly as it is for some years to come. If the states have not over-reached what is fair to the position of a citizen pure and simple, then, on broad grounds, the Federal Parliament may think it best in the early stages of federation to do nothing at all; whereas, if you make this an absolutely exclusive power, it is more or less a direction that, at the very earliest moment, a uniform law shall prevail throughout the whole continent. It seems to me, therefore, that on
the whole it would be better to include it in the other concurrent powers, leaving the Federal Parliament, as I think we ought in all matters, the fullest possible discretion to deal with matters according to their own views.

**Dr. COCKBURN (South Australia).** -

I quite agree with the contention brought forward by the honorable member (Mr. Deakin) yesterday that this ought to be a concurrent, and not an exclusive power. It is a fair question for the states to legislate upon until legislation inconsistent with their action is introduced by the Federal Parliament. I may say it is a matter which is beyond the stage of theory. Special legislation, as touching alien races, became, in South Australia, a matter of great importance in administration. In the Northern Territory of South Australia there is a large preponderance of Chinese, as against the white population. It was found that the Chinese themselves were not prospectors, but they followed the British prospectors, shepherded them, and as soon as any discovery was made by one or two enterprising men of our own race, the Chinese, who would not undergo the risks themselves, came down upon the mine and destroyed all possibility of its being worked by our own people.

**Mr. HIGGINS.** -

Would not the whites murder them?

**Dr. COCKBURN.** -

There were only a few whites, and the murder might turn out the wrong way. For years and years the people in the Northern Territory clamoured to Parliament for the prevention of these occurrences. For years Parliament turned a deaf ear to their entreaties, but at last an Act was passed precluding the Chinese from going on to a gold-field until a certain number of years after its proclamation. I understand that has placed the matter on a satisfactory footing, and that the Act has worked very well. It seems to me this is a power which might require to be local in its exercise. Not only should the states have power to legislate in the interim until the formation of the Commonwealth, but afterwards until the Federal Parliament chooses to pass a law, and even after that so long as the state law is not inconsistent with the federal law on the subject. Of course, the Federal Parliament must have power to legislate on this subject. That is an absolute national necessity. But until the Federal Parliament chooses to legislate in such a way as to over-ride the state law, certainly the states should have this power. It is a pure question of state rights and local government. It would be disastrous in a huge continent like this, where conditions vary so much, to make it necessary for any particular state to get the ear of the Federal
Parliament before it could get legislation in this direction. I have pointed out how exceedingly difficult it was, even within the limits of South Australia, for a distant part of that territory to get the ear of Parliament. How much greater will be the difficulty to get the ear of the Federal Parliament on a matter which perhaps only concerns one particular part of a particular state. The states themselves should have the power to legislate in this matter as long as their legislation is not inconsistent with the federal legislation. I quite agree that with regard to immigration the Federal Parliament must have the whole power, so as to be able to restrict undesirable immigrants; but it is not only a question of keeping out alien races. We have them with us. As I have said, in our Northern Territory we have a preponderating population of Chinese. I can quite well see that other problems, not perhaps quite identical with that of keeping the Chinese off new goldfields, but yet problems of a similar character, may arise. Therefore, it is not sufficient that we should retain the right of our own laws as they stand, but it is necessary that the states should have the right to take the initiative in any matter which might have a local bearing, and which might not concern the whole of Australia.

Mr. DEAKIN (Victoria). -

In order to bring this matter to a head, I intend to move an amendment. I have consulted the Drafting Committee as to its form, and beg to move—

That the words "The affairs of," first line sub-section (1), be omitted.

Mr. BARTON. -

I have no objection to taking it that way.

Mr. DEAKIN. -

I think it must now be perfectly clear that what we desire is, not to deprive, the Federal Parliament of its paramount power in every respect in regard to any dealings with the races referred to, but to leave to the several states, until the Federal Parliament legislates upon the alien question, the operation of all legislation already passed, and the right to legislate in the future until the Federal Parliament thinks fit to supersede it by specific legislation. For instance, the Federal Parliament might well pass a general law applying to these races without making any reference to their employment as miners or hawkers, and any state legislation in regard to those occupations which might be in existence would continue, or now legislation regarding them might be introduced. When the Federal Parliament chooses to make regulations in regard to the employment of aliens as hawkers and miners, the state legislation will cease to have effect. The honorable and learned member (Mr. Symon) said—Hand to the Federal
Parliament all powers connected with aliens, and allow them to give back
certain powers to the state." We say-Instead of taking these powers from
the states and giving them back again, let us leave them with the states
until the Federal Parliament chooses to assume them."

Sir JOHN DOWNER (South Australia). -

I do not think it makes any substantial difference whether you put this
provision in clause 52, or leave it where it is. The Federal Parliament has
first to say what races it is: necessary to make regulations about.

Mr. ISAACS. -

That is giving a rather limited meaning to the words "deemed necessary."

Sir JOHN DOWNER. -

There must be some body which deems it necessary, and the only body to
which the words can refer is the Commonwealth Parliament. What very
substantial difference does it make whether we leave the provision as it
stands or put it into clause 52? True, if the provision is left where it stands,
the Federal Parliament will have exclusive power in connexion with this
matter: but that body will only have exclusive power when it chooses to
exercise it. It is only when the Federal Parliament has passed legislation
dealing with the people about whom regulations are to be made that this
exclusive power will have arisen. The only matter for the committee to
consider is as to the expediency of leaving the provision here or of putting;
it into clause 52. Wherever it is, it will, upon the passing of the
Constitution, operate as an intimation to the Federal Parliament that this is
a matter of national import, upon which they are expected to legislate.
Once within the Commonwealth citizens should be able to go freely from
one state to another; there should be no lines of differentiation between
states. If races are admitted into one state, and are not free to go into
another, the inconveniences of administration, especially on the borders,
will be very great. It has been thought well that there should be a uniform
law throughout Australia in respect to the citizens of Australia, and it was
considered that this provision should be put into a separate clause giving
exclusive powers, in order to emphasize the fact that the Federal
Parliament should legislate upon this matter. In my opinion, whether you
put the provision into clause 52, or leave it where it is, its substantial
legislative effect will be the same. As to the meaning of the words, "the
affairs of the people of any race with respect to whom it is deemed
necessary," in my opinion it is the Federal Parliament who must deem it
necessary.

Mr. ISAACS. -

What is the meaning of the statement that the state cannot legislate for
the whole general community?
Mr. BARTON. -

That is by way of description. A law made by the state does not apply to the general community.

Sir JOHN DOWNER. -

My argument is that deemed necessary means deemed necessary by the Parliament of the Commonwealth. Assuming that I am right, I ask to whom does this clause extend? The persons named by an Act of the Commonwealth Parliament. When the Commonwealth Parliament deals with this subject, its legislation will over-ride any local legislation, no matter whether you put the provision in clause 52 or leave it in clause 53. What the representatives from Victoria want is exactly what is provided here, but the provision is put where it is for the purposes of extra emphasis, and to indicate to the Federal Parliament that they are expected to make over-riding and general legislation in regard to this vital question. I think honorable members are, almost without exception, strongly of opinion that there should be federal legislation upon this matter, and I therefore believe that it will meet the wishes of honorable members if we leave the provision exactly where it is, as a means of hurrying up the Federal Parliament and causing it to legislate in this matter as soon as possible.

Mr. WALKER (New South Wales). -

I am in perfect accord with much that has been said by the right honorable member (Mr. Kingston), the honorable and learned member (Mr. Symon), and the honorable member (Mr. McMillan); but I must admit that I see great force in the remarks of Sir John Downer. If we wish to compel the Federal Parliament to legislate upon this

Mr. DEAKIN. -

Hear, hear.

Mr. WALKER. -

I am glad to hear from Mr. Deakin that the intention is that the local legislation shall after a time be absorbed by the federal. But unless we leave this power under clause 53, the local legislation may go on for an indefinite period. I, for one, cannot understand why, when once a man has paid the poll tax, or whatever charge is imposed, and has been admitted to Australia, he should be treated differently from others. With regard to the poll tax, the view taken by the Chinamen in Sydney amused me. They said-"We do not ask you to vote against the poll tax; those of us who are already here are quite satisfied with the law as it stands."

Mr. GLYNN (South Australia). -

I desire to call the attention of the leader of the Convention to an
apparent vagueness in the word "exclusive," to which reference has not yet been made. The word "exclusive," no matter at what time the power arises, whether on the coming into being of the Commonwealth, or the exercise of the power by the Federal Parliament, may mean, and I believe does mean, that the power of the state to legislate ceases. On the question of whether the exclusive power under this provision comes into being with the establishment of the Commonwealth, I would call the attention of the leader of the Convention to clause 84. That clause seems to indicate that this exclusive power arises the moment an Act is passed. It speaks of the exclusive power of enforcing customs duties being vested in the Federal Parliament, but the second paragraph says-

But this exclusive power shall not come into force until uniform duties of customs have been imposed by the Parliament.

It would appear that without that limitation the exclusive power would come into force at once, and the position would be as stated by the Victorian representatives. If you pass this clause as it stands the state could no longer legislate with regard to Chinese.

Mr. BARTON. -

If the exclusive power is given without any restriction, I think it would arise immediately on the establishment of the Commonwealth.

Mr. GLYNN. -

Having regard to the wording of clause 84, I think that is doubtful.

Mr. BARTON. -

That is a special case.

Mr. HIGGINS. -

Clause 84 was intended to mean that the power referred to should not be exclusive until uniform duties of customs had been imposed.

Mr. BARTON. -

There is no exclusive power for a period of two years, but by a proviso the power becomes exclusive at the end of that time. Where there is no such proviso the exclusive power must operate, at any rate, from the date of the election of the Federal Legislature.

Mr. GLYNN. -

There seems to be some doubt as to whether the exclusive power arises upon the establishment of the Commonwealth or on the exercise of the power of legislation. The doubt seems to be removed by clause 84. It is said that if we put this provision in clause 52 the exclusive power may be postponed until legislation takes place. But may you not then have a concurrent power, and may not the competence of the local Legislature to legislate in the matter be continued as long as the legislation is not in
contradiction of federal legislation?

Mr. DEAKIN. -
That is the point.

Mr. GLYNN. -
Yes, and there is still a vagueness in the word "exclusive." If it is doubtful whether the exclusive power commences with the foundation of the Commonwealth, and if it is possible that it may only come into being on the passing of legislation, may it not still be said that on the passing of exclusive legislation the power of the local Parliaments to legislate is extinguished, but that on the passing of concurrent legislation that power does not cease?

Mr. REID (New South Wales). -
I think that enough has now been said on this subject by honorable members both sides of the chamber, and I have only a very few remarks to offer. It appears that if the sub-section remains where it is state laws will be valid until federal legislation, but the states will not be able to alter or improve those laws during the possibly long interval between federation and federal legislation. Under these circumstances, as we leave to the states for an indefinite time the power of maintaining the laws they have, we should grant to them the power of improving those laws. It would recommend the Constitution more to a large number of persons if we put the sub-section in clause 52, thus enabling each state to legislate on this matter until the Federal Parliament comes in and legislates for all.

Question-That the words "the affairs of" proposed to be omitted stand part of the sub-section-put.
The committee divided-
Ayes ... ... ... ... 10
Noes ... ... ... ... 35
Majority for the amendment 25
AYES.
Downer, Sir J.W. Moore, W.
Fysh, Sir P.0. O'Connor, R.E.
Grant, C.H. Walker, J.T.
Holder, F W.
James, W.H. Teller.
Kingston, C.C. Barton, E.
NOES.
Abbott, Sir J.P. Henry, J.
Berry, Sir G. Higgins, H.B.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Isaacs, I.A.
Mr. BARTON (New South Wales). -

I beg to move that all the rest of the sub-section be omitted with a view to its being transferred, in a shorter form I hope, to clause 52.

The amendment was agreed to.

Sub-section (2). - The Government of any territory which by the surrender of any state or states and the acceptance of the Commonwealth becomes the seat of government of the Commonwealth, and the exercise of like authority over all places acquired by the Commonwealth, with the consent of the state in which such places are situate, for the construction of forts, magazines, arsenals, dockyards, quarantine stations, or for any other purposes of general concern.

Mr. BARTON (New South Wales). -

As to this sub-section, there are one or two matters which I should like to point out to the committee, and then leave it to them to say if they are matters of drafting or matters of substance. I think myself that they do partake of substance. This is the sub-section which relates to an exclusive power to be given to the Commonwealth to deal with territory or certain pieces of land required for Commonwealth purposes, the territory being for the seat of government, and other pieces of land being for the construction of forts, magazines, arsenals, dockyards, quarantine stations or for any other purposes of general concern. Now there is no necessity, I take it, for the words in the first, second, and third lines of the sub-section, "by the surrender of any state or states and the acceptance of the Commonwealth," because they are provided for by clause 105, which is a special clause.
providing for the surrender of territory by a state and its acceptance by the Commonwealth. Then, with reference to the second, the parenthetical part, of the subsection, to be found in the words "with the consent of the state in which such places are situate," I think these might also be well left out. This is not a clause which deals in any way with the powers to acquire land, whether it is the acquisition of land for the seat of government or the acquisition of land for an arsenal, &c.; and therefore this kind of expression is not required. I think, therefore, that both these portions of the sub-section should go out, one being already provided for, and as to the other, it should be provided for, either in a separate clause or by some provision such as I suggested in clause 52, which would apply equally to the acquisition of land by the consent of the state, or to such compulsory acquisition as might be justified by any law. I take it that this clause is not the place for either of those provisions, and, apart from questions of drafting, these words unnecessarily encumber a portion of the Bill which deals only with powers to be given by the Commonwealth to itself by its own legislation.

Mr. ISAACS. -

Is not the whole gist of the matter the consent?

Mr. BARTON. -

No; we must give the Commonwealth the exclusive power to govern territory which may become the seat of government. The Commonwealth may not think fit to acquire or accept the surrender of any territory for the seat of government; it may either follow the precedent of Canada, or it may acquire a piece of territory for the seat of government and federalize that.

Mr. REID. -

Once it is federal territory won't all the powers of legislative authority be implied?

Mr. DEAKIN. -

Look at clause 115.

Mr. BARTON. -

I have clause 115 in my mind. I do not think you can well do without giving power of this kind in this part of the Bill. Clause 115 refers to making laws for the provisional administration and government of any territory surrendered by any State to the Commonwealth, and that applies more generally.

Mr. DEAKIN. -

Ought not that provision to be in sub-section (2) of this clause?

Mr. BARTON. -

I think not. It applies more generally to acquisitions of territory, which may become territories under that
name, and, therefore, be subject to that kind of legislation which precedes their admission as states. It does not refer to a piece of territory for the seat of government, but to territories in the general sense of the word. This sub-

That the words "by the surrender of any state or states and the acceptance of the Commonwealth" be omitted.

Mr. DEAKIN (Victoria). -

One point I wish to put to the leader of the Convention has partly been anticipated, but not wholly. This clause-clause 53-defines exclusive powers which are given to the Parliament, and a later clause, clause 115, to which the leader of the Convention has alluded, refers also to an exclusive power of legislation which is to be possessed by the Federal Parliament for the provisional government of territories, or, as they have been happily termed, embryo states. What I am at a loss to discover is why two clauses should be needed or placed so far apart. Should not clause 115, as the power of legislation there conveyed is an exclusive power, be included in clause 53, where the exclusive powers are supposed to be found, and not be relegated to another portion of the Bill, where, it seems to me, those powers are at all events not equally in place?

Mr. BARTON. -

It was thought advisable to leave that provision regarding territories where it is-under the head of "New States"-because it refers particularly to that kind of territory which afterwards develops into a new state.

Mr. DEAKIN. -

Yes, but it is an exclusive power, and might as well be placed in the clause relating to exclusive powers.

Mr. BARTON. -

Is it not logically in better place where it is?

Mr. DEAKIN. -

It is logical where it is, and it would also be logical if included in clause 53. However that is a question for the Drafting Committee. I would also ask is the word "territory" in this second sub-section the proper word to use, inasmuch as "territory" has a specific meaning based upon American experience, as indicated by clause 105 and clause 115? Would it not be better to substitute another term, say, "area" or "part of state"?

Dr. COCKBURN (South Australia). -

I would like to be quite sure that in making any improvements in drafting we do not really make any important alteration in substance.

Mr. ISAACS. -

There is an important alteration; it may be right, but it is important.
Dr. COCKBURN. -

I think there is. It is quite right that the Federal Parliament should have no power without the consent of the state concerned to take territory for its capital, for example. I think the consent of the state should be required in that case, although in most cases I do not think there would be very much trouble about it.

Mr. BARTON. -

If you refer to clause 105, you will see that it can only be done with the consent of the state.

Dr. COCKBURN. -

On the other hand, Sydney might object to have her harbour and 10 miles roundabout taken away by the Federal Parliament, and its administration withdrawn from the local Government.

Mr. BARTON. -

Clause 105 is quite clear on that point.

Dr. COCKBURN. -

I would like to be sure of that. Would there not be some right of pre-eminent powers in the Federal Parliament, unless it was restricted by this Act, to take any land anywhere it chose?

Mr. ISAACS. -

Yes; so there ought to be.

Dr. COCKBURN. -

I do not think there ought to be. Whether or not there ought to be is a matter for debate and for settlement by this Convention as a question of principle, and not as a mere matter of wording. Now, take the second part of the sub-section, in which power is given with the consent of the state for the construction, say, of a quarantine station. I question very much whether the power to establish such a station as a leper station, for example, ought to be given to the Federal Parliament without having to consult the wishes of the state in which it is proposed to establish such an institution. The Federal Parliament will be a distant body, and it may not be exactly apprised of all the local conditions. It may want to establish a leper station in some part of Australia where its establishment would be most disastrous to the interests of the communities in the vicinity, which ought, I think, to have a voice in a matter of this sort. These words are put in to make it abundantly clear that the federal capital shall be chosen only with the consent of the state concerned, which consent would, of course, be given in most cases. I should like to have the matter I have referred to made perfectly clear. It is open to doubt at present, I think, whether the Federal
Parliament will have power to take any land for the purposes of government without the consent of the state concerned. I do not think the Federal Parliament should have such a power, and I should be sorry to see it have such a power by the mere insertion of certain words which were not intended to have that meaning. I should like this committee to be clear as to whether or not it is intended that the Federal Parliament should have power to take land from any state without the consent of the state.

Mr. OCONNOR (New South Wales). -

I think the honorable member who has last spoken is quite right; but there is a great distinction between the two classes of matters dealt with in this sub-section. I think that the seat of government of the Commonwealth ought to be in quite a different position to such matters as the construction of forts, magazines, arsenals, dockyards, and so on. Dr. Cockburn will recollect that there is no such power for the acquisition of land for the ordinary public purposes of the Commonwealth.

Dr. COCKBURN. -

Might not the power be included in the general powers of sub-section (37)?

Mr. OCONNOR. -

No. The only powers that can be held to be given are those which are expressly given. It will be wise, later on, to add a clause which I think the Convention will see the advisability of adding, restricting the power to acquire land to acquisition for the public purposes of the Commonwealth; and I think it should then be made very clear that no power is given in that clause to acquire land for a federal capital without the consent of the state interested. Because it is quite clear, from the nature of things, that it is quite impossible that a power of that kind could be carried out without such an amount of friction and difficulty as might lead to a great deal of trouble.

Mr. HIGGINS. -

Why should not the Federal Parliament buy land from a private owner for the purpose of an arsenal without the consent of the state?

Mr. OCONNOR. -

Exactly so. I do not think the honorable member apprehends what I am saying. I admit that for all such purposes the Commonwealth would have the power either to purchase or to acquire compulsorily on fair terms.

Mr. HIGGINS. -

Without the consent of the state?

Mr. OCONNOR. -

Undoubtedly; because in regard to defence there should be a paramount power for the Commonwealth to act as might be thought necessary, and there should be a similar power with regard to quarantine and other matters.
which are of general concern. But with regard to the acquisition of a piece of land for the seat of government, which must embrace a large area and be an exceedingly important matter for the state in which it is situated, the Commonwealth should not have power to obtain such land without the consent of the state. That can be dealt with when we are dealing with the general clause, giving power to acquire land for the use of the state.

Mr. Higgins. - Does not clause 105 answer that objection?

Mr. O'Connor. - No; that is simply a permissive power to the Parliament of the state to surrender any portion of its territory.

Mr. Isaacs. - And saying what shall happen if they do.

Mr. O'Connor. - Quite so; but that clause does not deal with the question as to whether the Commonwealth may acquire land for any purpose.

Mr. Symon. - Is that power of the state necessary in this Constitution at all?

Mr. O'Connor. - I do not know that it is.

Mr. Symon. - I think it is an interference.

Mr. O'Connor. - Of course the state can deal with its own territory, except that when it does surrender land for the purpose of the Commonwealth, that land will, according to the latter part of clause 105, "be subject to the exclusive jurisdiction of the Commonwealth." That may be necessary. The state may have no power to give up exclusive jurisdiction over any portion of its territory, and it is just as well to clear that up. What I rose to point out on this matter was that in dealing with the question of the acquisition of land, the point raised by Dr. Cockburn should be considered. I do not think that the matter is affected one way or the other by the words which are the subject of the present amendment, because all territory will be acquired lawfully under the Constitution, and it is territory acquired in that way which is dealt with under this sub-section. This is not the proper place to indicate how the property is to be acquired. That matter must be dealt with by another place; so that it does not matter whether the words, "by the surrender of any state or states and the acceptance of the Commonwealth," are here or not. I think, as a matter of logical arrangement and drafting, all
that need be dealt with here is the matter of handing over, and we can deal with how the territory should be handed over in some other way.

Mr. BARTON (New South Wales). -

It has occurred to me since I previously spoke that there was a consideration which might make it wise not to carry this amendment now. Apart from other questions which have been raised, I think there is a question of construction which should suggest to us not to make the amendment at present. It is plain that the Commonwealth should have the power of exclusive government of any territory taken over for the purpose of government, when it becomes federal territory. But suppose the Commonwealth follows Canada, and the seat of government does not become a federal district, such as Washington has become in the United States, then the ordinary power of local Government would exist with regard to that place.

Mr. ISAACS. -

Including the local laws with regard to crime.

Mr. BARTON. -

Yes, police matters would be included. If the Commonwealth undertakes the government of a piece of country only 10 miles square, it must completely govern that country, including the establishment of its own force of police. If it follow the Canadian precedent, the ordinary operations of provincial Government subsist there, and it is only the exclusive powers of Government which are exercised. If we leave out these words, there might be implied a power to assume the whole government in the place which might be made the seat of Federal Government, whilst without an authorization of that sort it would not be necessary for the Commonwealth to assume governing power over it all. The original provisions of the Bill would appear at first sight to be probably wiser than the suggestion made, which confines a power of exclusive government to any place which becomes the seat of

Mr. ISAACS (Victoria). -

I think the leader of the Convention is right in withdrawing this amendment. I will point out why. We have now reached a subject which is full of consequence to us all, move especially in respect to one or two points with which Mr. O'Connor dealt. This sub-section is to a large extent based upon the American Constitution, Article 1, section 8, clause 17, and the object of giving this exclusive jurisdiction to certain limited cases, namely, in the case of territory acquired by the Commonwealth with the consent of the state, is very plain. There is, no doubt, in the first place, that the United States Government is, and the Commonwealth Government
here will be, a Government of limited, of enumerated powers; but as to these powers, the Commonwealth Government will be supreme, and for the purposes of these powers—for everything necessary and incidental to them—it will be unlimited in its acquisition of means to carry out those powers.

Mr. WALKER. -
Yes, by sub-section (37) of clause 52.

Mr. ISAACS. -
And even independent of that provision. It has been held over and over again in the United States that it is one of the attributes of sovereignty that the Supreme Government shall be unfettered in carrying out the powers intrusted to it, and for the purpose of carrying out those powers it has the right to acquire land compulsorily. No express power is given in the United States Constitution, and the Supreme Court of that country has held that no express language is necessary. That power was exercised for the first time, I think, in 1875, but it has since been exercised, beyond all doubt, on several occasions.

Mr. REID. -
For what purposes?

Mr. ISAACS. -
For public purposes—only for the purposes committed to it by the Constitution.

Mr. HIGGINS. -
In the Constitution of the United States there is a general power given for all purposes incidental.

Mr. ISAACS. -
Oh, the same as we have here.

Mr. KINGSTON. -
Is not the supremacy of the United States Government a little different from the supremacy of our proposed Federal Government?

Mr. ISAACS. -
Not in this respect. The supremacy, as far as the powers committed to it are concerned, would, in this respect, I apprehend, be exactly the same as the Supremacy of our Commonwealth Government in relation to its powers. In the case of Kohl v. United States, which was decided in 1875, on this very question of the right of the United States Government to compulsorily take property within the state for its public purposes, the court said this:—

It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the states for its own uses, and to enable it to perform its proper
functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the General Government demand for their exercise the acquisition of lands in all the states. These are needed for forts, armories, and arsenals, for navy yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses; If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a state prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the Government is dependent for its practical existence upon the will of a state, or even upon that of a private citizen. This cannot be. No one doubts the existence in the state Governments of the right of eminent domain—a right distinct from and paramount to the right of ultimate ownership. It grows out of the necessities of their being, not out of the tenure by which lands are held. It may be exercised, though the lands are not held by grant from the Government, either mediately or immediately, and independent of the consideration whether they would escheat to the Government in case of a failure of heirs. The right is the offspring of political necessity; and it is inseparable from sovereignty, unless denied to it by its fundamental law. Put it is no more necessary for the exercise of the powers of a state Government than it is for the exercise of the conceded powers of the Federal Government. That Government is as sovereign within its sphere as the states are within theirs. True, its sphere is limited. Certain subjects only are committed to it; but its power over those subjects is as full and complete as is the power of the states over the subjects to which their sovereignty extends. The power is not changed by its transfer to another holder.

Then the court went on to say—

But, if the right of eminent domain exists in the Federal Government, it is a right which may be exercised within the states, so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution.

The whole judgment proceeds in that way. It has been followed in several cases, and I think it has been laid down more than once in express terms that, for the purpose of carrying out the powers expressly given to the federal authority in the Constitution, the right of eminent domain is an essential attribute, and therefore I do not entertain the slightest doubt that, as in that case, and as in several other cases, the United States Government
has, even without the consent of the state, taken land so far as it was necessary for the exercise of its public duties, we should have the same right here. I will now proceed to show the meaning of this sub-section. This sub-section does not say that the Federal Government is to have the power to take that land. It assumes that the Federal Government has that power, but when the Government does take land, compulsorily or by purchase, in a state as its possession, it takes that land certainly by virtue of its sovereign power of eminent domain, that is, the highest dominion. But it does not hold that land as sovereign, it holds the land as proprietor. Now, where it holds the land merely as proprietor, without the consent of the state being given to it, it is quite plain that the jurisdiction of the state should run, except, of course, so as not to interfere with the performance of the governmental functions of the Federal Government. But, as far as punishing crime is concerned, as far as any other ordinary state supervision relates, not inconsistent with the performance of the supreme functions of the Commonwealth, the ordinary state law will run. But the United States have provided, and we, I understand, propose to provide here, that, where the state consents to the Federal Government acquiring any land, either by purchase or compulsorily, it thereby consents, and that consent is equivalent to the admission of the right of the Federal Government to exercise exclusive jurisdiction in respect to that particular portion of territory. And if the state does not choose to give its consent, it says, in effect-"You may take this land, it is true, by virtue of your sovereign right, for your sovereign powers, but you hold it as proprietor; you can carry on your post-office, your court-house, or anything you please, but as regards ordinary state laws outside those functions our state laws prevail. Where the state, however, is asked by the Federal Government to consent to the excision of a piece of land from its own territory for governmental purposes, and does consent, then the exclusive right of the Federal Government to govern that portion of land attaches to it, and this is what the sub-section we are now considering intends to enact. Therefore, I think that the leader of the Convention is right in not pressing this amendment, and that we should be doing well to keep in the words "with the consent," because it does not relate to the acquisition of property, but to the exercise of jurisdiction over the property when it is acquired.

The amendment was withdrawn.

Mr. BARTON (New South Wales). -

In the sub-section which we are just about to dispose of the Drafting Committee suggested, and the Convention accepted the suggestion, to leave out the word "other" in the expression "or for any
other purpose of general concern." I think it is a very proper amendment to make. It will restore the matter to the condition in which honorable members found it in their Bills as printed. I beg to move—

That the word "other" be omitted from the sub-section.

The amendment was agreed to, and the sub-section, as amended, was adopted.

Sub-sections (3) and (4) were agreed to.

Clause 53, as amended, was adopted.

Clause 69. - On the establishment of the Commonwealth the control of the following departments of the public service in each state shall become transferred to the Executive Government of the Commonwealth, that is to say:—

Customs and excise:

Posts and telegraphs:

Military and naval:

Ocean beacons and buoys, and ocean lighthouses and light-ships:

Quarantine:

The obligations of each state in respect of the departments transferred shall thereupon be assumed by the Commonwealth.

The CHAIRMAN. - In this clause the first amendment is suggested by the Legislative Assembly of New South Wales. It is to omit the word "On" at the beginning of the clause, and to insert in its place the words "as soon as practicable after."

Mr. BARTON (New South Wales). -

There are two suggestions made with reference to this particular part of the clause. One is to make the clause begin with the words "As soon as practicable after the establishment of the Commonwealth"; and the other is to make the clause begin with the words "On a date to be proclaimed by the Governor-General after the establishment of the Commonwealth."

The CHAIRMAN. -

The Council and Assembly of Tasmania make a suggestion which is substantially the same as this suggestion.

Mr. BARTON. -

The Tasmanian suggestion is that, instead of the words "On the establishment of the Commonwealth," we should adopt the words "On the day fixed by a proclamation issued for that purpose by the Governor-General." That is practically the same amendment as the last one I read. The difficulty which these two amendments are suggested to meet is a practical one, and I think we ought to adopt one of them. The clause as it is provides for the immediate vesting of these departments in the Executive Government of the Commonwealth, which term perhaps ought to read, "the
Government of the Commonwealth." I think it is clear that there will be a great deal of inconvenience about the immediate investiture of these departments in the Government of the Commonwealth.

Mr. FRASER. -
You will not have the machinery ready.

Mr. BARTON. -
The Commonwealth itself does not come into force till after a date named in the proclamation, consequently there will be no Executive Government of the Commonwealth till the date fixed in the proclamation, which happens to be also the date named in the beginning of this clause. That will give rise to a very practical difficulty, because the departments will be handed over before the Government of the Commonwealth will be fully constituted and in working order. Therefore, it will be far better either to prescribe that the handing over should occur as soon as possible, or to adopt the words "On a date to be proclaimed by the Governor-General after the establishment of the Commonwealth." Perhaps the latter would be the better of the two amendments. I would suggest that we negative the one which has just been proposed, and adopt either that of the Parliament of Tasmania or that of the Legislative Council of New South Wales.

The amendment to omit "On" was negatived.

Amendment suggested by the Legislative Council of New South Wales-
After "On" insert "a date to be proclaimed by the Governor-General after."

The amendment was negatived.

Mr. BARTON (New South Wales). -
If we leave out the words "Executive Government of the," so as to make the clause read "transfer to the Commonwealth," it will be quite sufficient, and avoid difficulties. I beg to move-

That the clause be further amended by the omission of the words "Executive Government of the."

The amendment was agreed to.

The CHAIRMAN. -
There is an amendment proposed by the Drafting Committee to transpose "Military and naval." There are several other amendments suggested by various Parliaments, but they are all concerning matters which the committee has already decided, and therefore I shall not put any of them.

Dr. QUICK (Victoria). -
Under the head of "Posts and telegraphs," I would draw attention to the fact that that line remains in the condition in which it was before the
insertion of the word "telephones" under the heading of "General powers." Under subsection (5) of clause 5, perhaps posts, telegraphs, and telephones would come together and could not be severed very well. I suggest the insertion of the words "and telephones" in this clause.

Mr. BARTON. -

Those are the only like services we know of at present.

Dr. QUICK. -

I beg to move-

That the word "and" after the word "Posts" be omitted, with the view to the addition of the words "and telephones."

Sir JOHN FORREST (Western Australia). -

To hand over the telephones of a state to the Commonwealth seems to me to be an absurdity.

Dr. QUICK. -

It has been done.

Mr. REID. -

They are worked by the same departments, and that is the only reason why they are handed over.

The CHAIRMAN. -

The object of the amendment is to make the Bill consistent with itself.

Sir JOHN FORREST. -

I want to make it as inconsistent as I can in that respect.

Mr. KINGSTON (South Australia). -

I would like to ask, sir, is it held that we cannot alter this clause because we have inserted in clause 52 the subjects of postal, telegraphic, and telephonic services?

Mr. BARTON. -

Not that you cannot, but that it will be inconsistent.

The CHAIRMAN. -

I do not say that you cannot, but this clause is simply as to the date when it should be handed over.

Mr. KINGSTON. -

I was suggesting for your consideration, sir, whether it would not be competent for any representative to move to strike out the words "Posts and telegraphs;" and that would not be inconsistent with sub-section (5) of clause 52, because all the sub-section does is to give power to the Federal Parliament to legislate on this subject, a power which need not be exercised, and, even if exercised, might be exercised only to the extent of controlling the state's mode of management of these works. It does not necessarily decide that the control of the departments should be handed over. I respectfully submit that matter for your consideration, sir, and I
know that your decision will naturally be to allow the fullest debate consistent with the rules of the Convention.

The CHAIRMAN. -

I think the honorable member is right. It does not necessarily follow that the power given by clause 52 need be exercised.

Sir JOHN FORREST (Western Australia). -

I beg to move-

That the words "outside the limits of any state" be inserted after the words "Posts and telegraphs."

Mr. REID. -

Foreign cables-Banjoewangie.

The CHAIRMAN. -

I would suggest to the right honorable member (Sir John Forrest) that it will perhaps be better if we adhere to decisions we have practically arrived at at this stage, and bring up these questions again when we are reconsidering the Bill.

Mr. BARTON. -

If you decide afterwards on recommittal to leave out of clause 52 the legislative powers about post and telegraphs, then you will have, by consequence, to recommit this clause to strike out these words.

Sir JOHN FORREST. -

I do not want to leave out that clause because the post and telegraphs are not-

Mr. BARTON. -

May I explain to my right honorable friend. We need some power of the kind here, because there must come a time for the Commonwealth to legislate about posts and telegraphs and to take over the departments. If we make it read that it shall take place on the date of the proclamation by the Governor-General it will only take place when the Governor-General will take that action by publishing a proclamation. Then it would follow the action of the Commonwealth.

Sir JOHN FORREST. -

I shall be glad to fall in with the views of the Chairman, and move the amendment at another time. My object in wishing to take from the Commonwealth control of the posts and telegraphs is that there is no necessity for the Commonwealth to take over that control. If there is one subject that is federated sufficiently at the present time it is the posts and telegraphs. We do not want federation in order to deal with that subject. All the posts and telegraphs of the civilized world are federated. With the
exception of having the same stamp throughout the whole of Australia, there is not a single advantage which we could gain under a federal form of Government which we have not got now. But this clause will take away from the local Government the right to build telegraphs and post-offices here, there, and everywhere throughout its territory, and will be interfering; with local Government and local requirements. Every one knows that not only in these colonies, but throughout the civilized world, there is a Postal Union which we all form part of, so that we have already all the advantages of federation. To take away from the local Government the control of posts and telegraphs will not be doing any good; it will be very irksome, and will cause irritation, which will interfere with the smooth working of the new form of Government. I do not say that in 100 years it will be irksome, but it will be at first. When we are building up our different states, and when the erection of new post and telegraph offices and telegraph lines is a matter of daily occurrence, to have to go 1,000 or 2,000 miles to a central authority, in order to do what we now have a right to do for ourselves, will be regarded as very irksome and irritating, and will certainly do no good.

Dr. COCKBURN (South Australia). -

I agree with the remarks of the Right Hon. Sir John Forrest, and I think it will be a mistake for the federal authority to take control of these matters, because, at present, on this subject, we have federated to the fullest extent of our requirements. I should like the right honorable gentleman to adhere to his intention to strike out the words in this clause.

Mr. REID. -

It would not be right to deal with the subject in such an unexpected way.

Dr. COCKBURN. -

It is not unexpected.

Mr. REID. -

It would not be fair to do so without notice.

Dr. COCKBURN. -

If we cannot-strike out the power in clause 52, I should like to see the power struck out here. The difference is this: That under clause 52 legislative action would be required, whereas if the words are allowed to remain here the post-offices can be taken over by executive action.

An HONORABLE MEMBER. -

Strike out both.

Dr. COCKBURN. -

We may succeed in carrying one omission, but not both. I believe that the right honorable gentleman could succeed in striking out the words in this clause.
Mr. REID. -  
He will not take honorable members unawares.

Dr. COCKBURN. -  
If the right honorable member says there is a danger of any one being taken unawares, of course we shall not proceed. If we cannot strike out the power in both clauses I should like to see it struck out, here. If the posts and telegraphs had to be taken over by legislative action, I do not think the Federal Parliament would undertake the necessary action, because when the subject was debated they would see that the present system of administration would be better than consolidated administration, and that we already have all that is required. If, however, it depended only on executive action, as this clause implies, I think the federal authority might take over the posts and telegraphs without considering all that would be implied thereby.

Dr. Quick's amendment was agreed to.

Dr. QUICK moved -

That after the word "telegraphs" the words "and telephones" be added.

The amendment was agreed to.

The sub-section, as amended, was agreed to.

Mr. BARTON moved -

That the words-
Ocean beacons and buoys, and ocean light-houses and light-ships: Quarantine," stand part of the clause.

The motion was agreed to.

Mr. HIGGINS (Victoria). -
I want to call attention to the last two lines of this clause.

Mr. BARTON (New South Wales). -
If the honorable member will move to omit the last two lines of the clause, with a view of dealing with them at a later stage of the Bill, when there is an opportunity, that would be acceptable.

Mr. HIGGINS. -
I shall gladly accede to that request, as I feel there would be a difficulty in striking out the last few lines. I beg to move that the following words be omitted:-

The obligations of each state in respect of the departments transferred shall thereupon be assumed by the Commonwealth.

The amendment was agreed to, and the clause, as amended, was adopted.
Clause 52 (Legislative powers of the Parliament).

Mr. BARTON (New South Wales). -

What remains of clause 52 to be considered is the question of river control, and, acting upon the understanding come to yesterday, I propose a further postponement of the clause in order that honorable gentlemen who have gone away upon that understanding may have an opportunity to be present during the discussion of the question.

Dr. QUICK. -

"The people of any race" section might be re-inserted.

Mr. BARTON. -

I was going to put that provision into the clause when we come to consider it.

The clause was further postponed until after the consideration of Chapter III.

Clause 71. - The judicial power of the Commonwealth shall be vested in one Supreme Court, to be called the High Court of Australia, and in such other courts as the Parliament may from time to time create or invest with federal jurisdiction. The High Court shall consist of a Chief Justice and so many other Justices, not less than four, as the Parliament may from time to time prescribe.

Amendment suggested by the Legislative Council of South Australia-

Insert at beginning of line "Until Parliament otherwise provides,"

Mr. GLYNN (South Australia). -

Before this amendment is dealt with I should like to indicate an amendment which I wish to ask the committee to consider. I wish to make the last sentence of the clause read:-

The High Court shall consist of a Chief Justice, and, until Parliament otherwise provides, the Chief Justices of the states. In the case of the illness or death of the Chief Justice the powers of the Supreme Court may be exercised by the other Justices, being not less than three.

Of course, the insertion of the words proposed by the Legislative Council of South Australia would upset my amendment,

and perhaps I might be allowed to mention the reasons which have operated with me to again bring forward a proposal which at Adelaide obtained practically no support. Sir Samuel Griffith, in a pamphlet which he has published upon the work of the Convention, suggests that the Supreme Court at the beginning should be composed of one or two Federal Justices, while the Justices of the states might be utilized in the meantime. I think honorable members will see that such a suggestion is reasonable. Should we in the beginning have machinery which is not likely to be called
into execution very often? If honorable members will look at the original powers conferred upon the Supreme Court by clause 77 they will see that perhaps not once in six years will these powers be exercised by the Federal Court. They are confined to matters relating to the representatives of other countries; arising under a treaty between states; litigation to which a state is a party; and litigation in which an officer of the Commonwealth is to be made subject to a prerogative writ. In very few case will there be an application to the original jurisdiction of the Federal Court. Again while that jurisdiction is original it is also appellate, so that the application may not be made to the Federal Court but to the subordinate court, and the appellate jurisdiction may not be called into existence at all. Then we have to fall back upon the delegations under clause 52. It is extremely probable that during the first two years of the Federal Parliament legislation will be confined to such a question as the arrangement of uniform customs duties. The passing of the Tariff will take a whole session, and during the first ten or fifteen years very few of the matters delegated to the Federal Parliament will become the subject of legislation. If there were such expedition as to make all these matters the subject of legislation, the chances are that the functions of the Federal Parliament would be exhausted in 25 or 30 years.

Mr. HIGGINS. -

Do you not think that for the first two years there would be a large number of cases, arising under the Constitution, to be settled by the Supreme Court?

Mr. GLYNN. -

I do not think so, and I will tell you why. In America, they had at the start thirteen states. There was far greater likelihood of disputes, under the Constitution, arising between those thirteen states, because their mutual feelings prior to 1787 were those of antagonism rather than sympathy, and they were practically forced into union. But what was the experience of the Federal Court for the first 30 or 40 years of its existence? In 1801 there were only ten cases awaiting trial.

Mr. HIGGINS. -

You have given more powers to this Parliament than were given to the American Parliament.

Mr. GLYNN. -

Yes, but bearing in mind the fact that we are giving this Parliament a wide jurisdiction, I think that the constitutional points arising will be few. In 1801 there were only ten cases awaiting trial in the Supreme Court of the United States, although the Union waft composed of thirteen states as against a probable maximum here of five, and possibly only four states. In the five years following 1801 there were 120 cases before the Supreme
Court, and the average number of cases between 1820 and 1830 was only 58 a year. Now, of course, the Federal Court is practically overloaded, but that is because of the enormous crop of private legislation, which we do not anticipate here. We know that there is a marvellous complexity of affairs in America, where they have 44 states, and enormous mercantile concerns, such as railway companies and other large companies, which create a condition of things that we need not anticipate here for a generation or two.

Mr. HIGGINS. -

Shall we not feel the complexity here?

[P.267] starts here

Mr. GLYNN. -

We shall feel the complexity to the extent of the clashing of interests which may arise. But this clashing of interests cannot be very great, where there are only four or five states.

Mr. REID. -

Is this relative to the amendment?

The CHAIRMAN. -

No, I do not think it is. I understand that the honorable member is showing why the amendment of South Australia should not be carried, because of some amendment which he wishes to move.

Mr. GLYNN. -

If the South Australian amendment is carried it will make it impossible for me to carry my amendment. I propose to make the appointment of the Chief Justices obligatory, and I propose to give power to the Parliament to appoint other Justices in lieu of the Chief Justices.

Mr. OCONNOR. -

Then vote against this amendment, and move your own amendment later on.

Mr. GLYNN. -

I am giving reasons for my amendment now in order that it may be fairly considered upon its merits before the South Australian amendment is dealt with. I might mention, as regards the point referred to by the honorable member (Mr. Higgins), that we are giving a wider sphere of duty to the Federal Court by taking in local appeals, appeals from the state courts-

Mr. HIGGINS. -

And far more subjects are remitted to the Federal Parliament for discussion and legislation.

Mr. GLYNN. -

There are a few more. Of course, that affects the consideration of my
remarks, but subject to this slight discount I think they remain open to fair consideration. With regard to appeals from state legislation to the Supreme Court, before these appeals come to the Supreme Court they must filter through the state courts, and we may measure their probable number by the number of appeals that now go to the Privy Council. I do not say that the proportion will be the same, because our courts will be more accessible, and because there are very great delays in England before a case goes to the Privy Council. Sometimes a case has to hang over for two years; but still we must measure to some extent the chances of local appeals by the few cases, and they are comparatively few, that are sent to England. It may be objected, as it has been in Adelaide, that you are creating a tribunal in which some members of the court will be actuated to some extent by state prejudices. I may say, in answer to that, that in the majority of cases at all events the point of dispute will be between individuals and not between state and state. As between individuals, there is practically no opening for prejudice. You may have the Chief Justice of a state sitting again in judgment upon a verdict he has already given. But there will be four other Judges from the federated states and the Chief Justice of the Commonwealth, and the chances are that the operation of prejudice will be checked in that way. But we recognise at present that it is advantageous to have a Judge sitting on a question which he has decided in another court. We have sent Chief Justice Way to England as the representative of Australia on the Privy Council, with the possibility of his taking into consideration a decision that he gave in South Australia.

Mr. ISAACS. -
Would he sit in such a case?

Mr. GLYNN. -
I have known a case in which a Judge sat as a Court of Appeal from a district court decision, and be again sat in Court in Banco and reversed the decision of the Court of Appeal. I was in the case myself, and I remember with pleasure, as showing the freedom from preconceptions of the Judges, the fact that the reversal did take place. This shows that courts are not operated upon very much by prejudice, and it seems to me that it would be an advantage rather than otherwise to have a Judge sitting on a question the whole facts of which have come before him in a lower court.

An HONORABLE MEMBER. -
That was your experience when the verdict went your way.

Mr. GLYNN. -
Decidedly. Very often points of law are coloured by the facts of a case, and we know that the facts do not, except in a synopsis, come before the Judges in the higher tribunal. The objection from the point of view of prejudice, which was largely relied upon at Adelaide, is not capable of being too strongly insisted upon. I think for this reason that we ought not at the start to overload the Federal Constitution with judicial machinery. We can by using the Chief Justices of the other colonies make a saving of £10,000 or £12,000 a year, and as Parliament finds that the judicial machinery ought to be extended, an opportunity will arise by the fact of the power being reserved to abrogate the right of the local Chief Justices to sit and to substitute other Judges. The federal character of the tribunal must be amply recognised and preserved by the establishment of a Federal Chief Justice, and that is part of my amendment, and the part which makes it different from the suggestion of the Parliament of South Australia.

Mr. Barton (New South Wales). -

I desire to intimate, as early as possible, that I, for one, intend to stand by the clause. I do not believe in accepting any amendment which will subject the judiciary system of the Commonwealth that judiciary system, which is to be the arbiter in any dispute that may arise between state and state or between state and Commonwealth—in all its constitution, and under all circumstances, to legislative changes. I do not think that that is a desirable thing in any sense of the word. No matter at what low limit you place it, or what the number of Judges is, the foundation of the judiciary system should stand on the bedrock of the Constitution, and words which may be taken advantage of to make change after change, which would enable the Parliament to alter arrangements upon the faith of which the various states will enter into this agreement, should not be inserted. Insert these words—"Until the Parliament shall otherwise provide," and it means this: That the Parliament may at any time pass an Act to destroy the Supreme Court of the Commonwealth, and to destroy the power vested in the Parliament to create other federal courts, or give federal jurisdiction to certain of the state courts.

Mr. Higgins. -

Although the Supreme Court is to be the arbiter between the states and the Commonwealth.

Mr. Barton. -

Yes, although the Supreme Court is to be the arbiter between state and state or state and Commonwealth. This amendment would place it in the power of the Commonwealth to make such alterations as would practically destroy this power. That is an objection of principle which goes to the root of the amendment. We ought on no consideration to consent to any
alteration which would subject the foundations of this court as an arbiter between the states to the risk of legislative changes. We have used the words "Until Parliament otherwise provides" for many purposes in order to give elasticity of legislation to the Parliament of the Commonwealth, and to avoid the necessity of resorting to a referendum of the people for making minor changes. But this would be no minor change. It would be a structural change in the whole fabric of the Constitution. These words "Until Parliament otherwise provides" were never intended to be inserted for the purpose of enabling Parliament to structurally change the Constitution. This is the argument I have against the amendment suggested by Mr. Glynn. I would also like to say now that in this clause it should be provided, as it is at present, that there shall be a Chief Justice and a minimum n

is necessary to the constitution of this source of arbitrament, to which we all attach so much importance. The proposal that the court should be constituted of Judges from the various provinces, or of the Chief Justice from each province, is one to which I would also offer opposition, and on this ground: The formation of this court should always be open to be made in such a way that it would embody the best talent available to the Commonwealth for the constitution of so important a tribunal. It is intended to be a court with high appellate powers. It will have to decide disputes between the states and between the states and the Commonwealth. If so, in its constitution there should be every opportunity afforded of gathering together the best talent available from end to end of the Commonwealth, and a restriction of its constitution to a choice of the Chief Justices of the various states, however good they may be, would, instead of keeping up to that court its federal character, which is the most important part of its character, impart to it a provincial character. It would also lead to the suspicion that the Chief Justices chosen from the various states were intended to be in some sort of way the representatives of provincial interests, and that it was not intended that the court in its impartiality should be representative of the Commonwealth as distinct from the provinces.

Mr. ISAACS. -
The tenure of the Judge would depend on the laws of the state.

Mr. BARTON. -
Yes, the constitution of the highest court of the Commonwealth might depend on any law the state might from time to time make.

Mr. SYMON (South Australia). -
The amendment that we are considering is the insertion of the words
"Until Parliament otherwise provides"; but Mr. Glynn has enlarged the scope of the discussion by suggesting a further amendment. I desire to call attention to that amendment. I think honorable members will agree with me that a more nondescript tribunal could not very well be constituted than that which he proposes. He wants to strike out all the words after "and," in the fifth line, and to add "Until Parliament otherwise provides the Chief Justices of the different states in the Federation." The effect of that would be that we should have a Federal Chief Justice, and that the Chief Justice in each separate state would become, immediately he crossed the border of his own state, into federal territory, a Puisne Judge of the higher court. We should then have this extraordinary sort of olla podrida, a Federal Chief Justice owing his position, his emoluments, and his judicial allegiance to the Federal Parliament, and four Puisne Judges in one sense under him who are Chief Justices in their own court, and who owe their judicial allegiance and their emoluments to the separate states.

Mr. GLYNN. -

You have that in the case of the Privy Council at the present time.

Mr. SYMON. -

It is a very bad thing, and the sooner that anomalous judicial body—the Privy Council—is wiped out, for that and for other reasons, the better. I am obliged to my honorable friend for giving me at this preliminary stage so valuable an argument. But then, as my honorable friend (Mr. Isaacs) interposed a moment ago with an exceedingly pregnant suggestion, they will all owe their tenure of office—not only their judicial allegiance and emoluments, but their tenure of office—to the state. Then see what an extraordinary position these Judges would occupy in a High Court so constituted. I could understand the suggestion, although I think it would not be one which would meet with the approval of any reflecting man, that the Judges of the different state courts, or a selection of them, should constitute the High Court of Justice; but to say that you should have a Federal Chief Justice appointed by the federal authority, and, as I say, owing undivided allegiance, if I may use such an expression in relation to judicial affairs, to the National Government in its highest sense, is a position of matters which I am sure could not possibly commend itself to any one. I certainly did not bear any argument that was at all convincing on the question of the desirability of making such a change as this, but my honorable friend must also have noticed that by so altering the clause you are limiting the choice of the Federal Executive in the selection of its Judges. It would be perfectly and absolutely competent for the Federal Executive to choose the men who are
to occupy this commanding position in the High Court that we proposed to establish from existing benches, which would comprise men of great experience and great judicial knowledge.

Mr. KINGSTON. -

Do you think retirement should be necessary?

Mr. SYMON. -

I think retirement ought to be compulsory. I think they should not hold a divided office with a divided allegiance, if I may so express it. At any rate, there is nothing to prevent the Federal Executive from having the benefit of the experience, the wisdom, and the learning of the existing occupants of the judgment seat in Australia if they so choose. But if you introduce this into the Constitution, you are limiting the power of selection by the federal authority, limiting their choice, and binding them down to the selection of one Judge—the Chief Justice—from the whole of the judicial power of Australia, whether on the bench or off it; and as to the other Judges—whether the number is two or four, is, as Mr. Barton said, a matter of minor importance—limiting their choice to the existing benches, I think it cannot be too strongly emphasized that such a state of things would be extremely unsatisfactory. You are sending an arbitrator from each state to sit on the judicial bench, who will go, as arbitrators often do, as a partisan. Judges are human beings.

An HONORABLE MEMBER. -

Judges do not act in that way.

Mr. SYMON. -

I was talking about arbitrators. Everybody recognises the fact that when a matter goes to arbitration, each of the rival parties selects the man whom be thinks most likely to give judgment in his favour.

Mr. ISAACS. -

And be is called an indifferent person.

Mr. SYMON. -

Yes, he selects an indifferent person who is to be a partisan, and then these two between them choose an umpire. You will have a dispute between South Australia and Victoria-no, such a thing is not possible—or rather between Victoria and New South Wales, and the amputations and the insinuations that may possibly be made as to the views which these respective Judges would take can be imagined. Then you would have a Federal Chief Justice, having in the long run to occupy the position of arbiter between them. Do honorable members really think any of the Chief Justices of the different colonies would consent to occupy such a subordinate position as that of Puisne Judge in this tribunal?
Mr. KINGSTON. -

It is a higher court.

Mr. SYMON. -

It is a higher court, no doubt, but his position in that court would be that of a Puisne Judge. The Chief Justice in his own colony would be called His Honour the Chief Justice, but in the Federal Court he would be His Honour Mr. Justice so-and-so. The whole thing is absurd and ridiculous as a constitution for this court. If any special advantages could be associated with it, I, for one, would be willing to give it my very best consideration, and favour its adoption if it could possibly be shown to be advantageous, but that has not been done so far. My honorable friend referred to Sir Samuel Griffith as supporting this. Now, I do not know that we ought to be over-influenced by Sir Samuel Griffith's views, which seem to me to be a little permeated by hypercriticism. If my honorable friend, however, had read the passage in Sir Samuel Griffith's very valuable contribution to the criticism of this subject he would have found that this is a mere tentative suggestion. All Sir Samuel Griffith says is that it is worthy of consideration. He admits that the arguments in favour of an independent Federal Judiciary "are obvious and are no doubt very cogent," and he merely suggests at the end of these criticisms that "it is worthy of consideration whether it might not be wise to empower the Federal Parliament, if they think fit, to make laws authorizing the provisional constitution of the High Court in whole or part by Judges of the state courts." This amendment, in my opinion, would be futile, and would be a blemish on the Constitution we are framing. But the great argument against it is that which was so forcibly used by Mr. Barton, namely, that by adopting this you are doing something which is utterly opposed to the whole basis and principle upon which this High Court is founded. The object is to create a court which shall settle all these difficult constitutional questions. It is to be clothed with all the powers of a High Court of Appeal, and it will in this respect I disagree with my honorable friend—it will have an immense amount of business from its very first inception. We know the difficulties that we have had in construing different provisions, and we are aware of the difficulties which the Drafting Committee have experienced. The High Court will be the tribunal to which the interpretation of this Constitution will be committed, and to which will also be committed—that is to say, if those who constituted the majority of this Convention before have their way again—the vast body of appeals in relation to the ordinary litigation of the country. My honorable friend thinks that cases under the Constitution will be few, but I disagree
with him in that. I think that in all probability they will be many but whether they be few or many, the High Court should not depend for the discharge of its duties on the convenience of a Judge of another court in another state, whose time may be greatly occupied with his own affairs. He has to do his own work, and to perform his own duty, and if, the Judges of the separate state courts discharge their functions thoroughly, as we know they do, they have very little time for entering on a new jurisdiction, and bringing upon themselves an additional responsibility.

Mr. BARTON. -

They all complain of overwork now.

Mr. HIGGINS. -

When there is an application, for a mandamus under the original jurisdiction it will be very hard to get the Judges to attend to hear it.

Mr. SYMON. -

This would involve the thing which we are all against, that is, Judges sitting to hear an appeal from their own judgment. As Mr. Barton has pointed out, there are several very important considerations which have to be taken into account; but the main objection is that the whole object of our constituting the High Court is to get, as Sir Samuel Griffith says, a strong and independent-tribunal entirely detached from the states, and if we adopt this amendment we shall be getting a hybrid tribunal which will be open to the objections which have been already stated. It will, at any rate, be certainly open to the objection of placing upon the shoulders of the local Chief Justices the lowered dignity which they would assume in becoming second or third or Puisne Judges of this other court, and of placing also upon their shoulders an additional burden of work, which, if they do their own work in their own states, they would have neither the time nor the opportunity to perform satisfactorily. Therefore, I say, on all these grounds it would be a fatal blow to the Federal Court we are seeking to create if this amendment were adopted.

Mr. KINGSTON (South Australia). -

As regards the amendment now proposed, I shall be found recording my vote against it, because I think we ought to provide, in as clear a way as we possibly can, how the Federal Judicature shall be constituted, and remove it beyond the sphere of parliamentary control. We have already made great efforts in that direction at Adelaide. I think they were fairly successful, but now to introduce into our work a limitation seems to me to be striking a blow at the security of the court. I cannot follow my fellow representative (Mr. Symon) in the views he has expressed as regards the amendment of my honorable and learned friend (Mr. Glynn), and I shall
probably be found, when the time comes, recording my vote for that amendment.

Mr. SYMON. -

You will reflect a little before that time comes.

Mr. KINGSTON. -

There will be an opportunity for reflection in the ordinary course of events. But this is a matter to which I have given a considerable amount of attention. I think Mr. Symon has put the case too strongly when he says that if you avail yourself of the services of the Chief Justices of the different colonies, they will owe allegiance to the colonies from which they come, and will regard themselves to some extent in the light of partisans, and justice on the broadest aspect will not done. If we were to consider this matter having regard to who the Chief Justices

Mr. ISAACS. -

You would not carry the matter of state interest into the Australian High Court?

Mr. KINGSTON. -

One of the most important subjects which is likely to come under the notice of the High Court of Australia is where the federal authority ends and the state authority commences, or vice versâ. On a matter of that sort there may, in the natural course of things, be the greatest amount of feeling, and I ask honorable members to consider whether if my honorable friend's (Mr. Symon's) argument has weight in suggesting bias-

Mr. SYMON. -

I did not suggest bias; I merely illustrated the position.

Mr. KINGSTON. -

I do not wish to put the matter an stronger than Mr. Symon put it in suggesting what possible influence the Judges might be affected by.

Mr. WALKER. -

Unconscious bias.

Mr. KINGSTON. -

I do not care what the term is. I am suggesting what Mr. Symon suggests as to the provincial Judges, and I am asking whether the same remarks would not apply with equal force to the constituted authority if appointed by the Federal Government? It seems to me that if there was any strength in an observation of the character to which I have referred, honorable members should rather come to the conclusion that substantial justice to the merits of the case will be done without regard to the source of the appointment of the Judges. The matter can be best met by the proposition of my honorable and learned friend (Mr. Glynn) that there shall
be a representation of both sides, the states and the Commonwealth-the Commonwealth by the Chief Justice appointed under the federal authority, and the states by the Chief Justices of the different provinces.

[The Chairman left the chair at one o'clock p.m. The committee resumed at eight minutes past two p.m.]

Mr. KINGSTON.-

When we adjourned, I think I had said sufficient for the purpose of showing that there is no more reason for the Federation to be apprehensive of injustice at the hands of Judges, who, to use an expression that has already been used, owe their allegiance to the states, than for the states to be apprehensive of injustice at the hands of Judges who owe their allegiance to the Federation. The fitting solution, I think, is found in the proposition of my friend (Mr. Glynn), which is that there shall be a representation of both the Chief Justice of Australia, the highest officer in the Commonwealth responsible to the Federation, and the other Judges, more numerous, and selected on account of the positions which they occupy in respect to the provinces. I would like, further, to say that I think there is nothing in the contention that the Chief Justices of the different provinces would be unwilling to accept positions of the description suggested. I know of no higher position in the gift of the federal authority than the position of Judge of the High Court in Australia.

Mr. REID.-

I know that one of the Chief Justices is strongly in favour of such a constitution of the Federal Court.

Mr. KINGSTON.-

That is Sir Samuel Griffith, Chief Justice of Queensland?

Mr. REID.-

No, I allude to another Chief Justice.

Mr. KINGSTON.-

I am glad to hear from Mr. Reid that not only is Sir Samuel Griffith, a gentleman whose name commands respect in federal circles, and everywhere else, and who occupies the high position of Chief Justice of Queensland, in favour of a proposal of something of this sort, but that another gentleman occupying a similar distinguished position favours the same proposal. I do not see how it can be seriously contended that the post of Judge of the High Court of Australia is in the slightest degree inferior—it scenes to me to be in many respects considerably superior—to that of the post of Chief Justice in the provinces. If I recollect rightly, there was a meeting some years ago in this city of various representatives of the judicial benches of the different colonies, in which a proposal, something of this sort, met with considerable acceptance, but I am sure that my friend
(Mr. Symon), who has indulged in some gloomy prophecies as to the difficulty of getting the Chief Justices to accept a position of this kind, would have some difficulty in referring to any particular instance in which any such difficulty would be probable or natural. Another reason, and that is the reason which was urged with great force by my friend (Mr. Glynn), is the necessity of economy. We should, above all in the early stages of the constitution of this Federation, be careful lest we involve the Commonwealth in an unnecessary expense—in expense which is altogether out of proportion to the necessities of the case. It seems to me that, although this Bill is in a preferable shape to that in which it originally saw the light, in that it contains no appropriations within the four corners of the Constitution, of any huge sums for judicial salaries, yet, if we do not carry an amendment such as is now suggested, we shall take away from the Commonwealth a facile means of providing all that is required, at least in the earliest period of the history of the Constitution, at the least possible expense. I am sanguine

that if a proposal could be submitted to Australia as to whether or not it would be satisfied with a court constituted, as suggested by my honorable friend (Mr. Glynn), of a Federal Chief Justice and the Chief Justices of the colonies, there would be a practically unanimous assent to the proposal. I think that a court so constituted would be eminently satisfactory, and would, at the same time, enable the Commonwealth to secure in an economical manner every efficiency which could possibly be desired. I would ask who are they who, in the natural order of things, we can more respect than the members of the judicial benches of the Australian Colonies? In creating a tribunal of this description we will at least remove, it seems to me, from the sphere of federal politics the great majority of judicial appointments, and enable the Commonwealth to be served with a degree of efficiency and economy which can be in no other way secured. In these circumstances, whilst I shall be found resisting the amendment which is now proposed, I do trust that some proposal on the lines of that which is suggested by my honorable friend (Mr. Glynn) may be adopted. Something has been said as regards the impropriety of Judges sitting in courts of appeal to review their own decisions. Some colonies have adopted legislation prohibitory of any such course being taken. It has been done in Queensland, and, I think, also in New South Wales. We have not yet placed any such legislation on the statute-book of South Australia; but I do think that the position which is sought to be affirmed by legislation of that character is a right and proper one, and, whilst avoiding speculating as to the probability of a similar course being adopted in the colony from

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which I come, I would be perfectly prepared to see a principle of that sort embodied in the Constitution. Possibly it may not be considered a matter of constitutional importance sufficient to require a declaration within the four corners of the Constitution, but, so long as it is left to the Federal Parliament to deal with it, all that is necessary may be secured. Under these circumstances, I think we shall be meeting the public wish for economical and efficient administration of justice in the higher spheres by adopting a proposal of the character referred to. I shall be found at the right time recording my vote in favour of the proposal suggested by my friend (Mr. Glynn).

Sir JOHN DOWNER (South Australia). -

I shall vote for the clause as it stands. There are questions of the very greatest importance involved in this discussion, particularly in the amendment proposed by the South Australian Council, and to a large extent in the suggestion made by my honorable friend (Mr. Glynn). The amendment which is suggested by the South Australian Council goes to the very root of the Constitution. The very essence of this Constitution is the establishment of a Commonwealth which is not to interfere with the rights conferred on the states, and a tribunal to decide when those rights are imperilled. To provide that the Parliament-the very tribunal whose jurisdiction is intended to be questioned, or over the exercise of whose jurisdiction there is to be a supervising power-should itself be the authority to decide what the tribunal should be that is to sit in judgment on itself, in disputes between it and the states, is to make an attack on the very cardinal principles on which Federal Constitutions are established. I really do not think that in this committee there will be a great deal of difference of opinion on the subject that that amendment ought not to be agreed to for one moment. I disagree also with the suggestion of my honorable friend (Mr. Glynn), that you should in your Constitution fix, without really knowing very much about it—if of course, I am speaking of the committee as a whole—the tribunal that is to be established at the initiation of the Commonwealth. Each colony I suppose, knows and has varying opinions of the excellency of its own tribunals. The other colonies have some knowledge of the gentlemen constituting the Supreme Courts of those colonies, but who can be said in this Convention to have an accurate knowledge of the abilities of the Chief Justices of all the colonies?

Mr. HIGGINS. -

And who will be, too?

Sir JOHN DOWNER. -

Still less of those. I want to put the argument in its strongest light, and,
therefore, I do not refer to fixture Chief Justices, who, of course, only some one who is not here possibly can decide. I prefer to confine myself to the more narrow limits, of which, in the ordinary course of things, we may have some knowledge. I ask how many honorable members of this Convention can honestly say to themselves that they are competent to express an opinion, not merely about their own Chief Justice, but about the Chief Justices of all the other colonies?

Mr. SYMON. -

But this would arrogate to this Convention what is really the function of the Federal Parliament.

Sir JOHN DOWNER. -

My honorable and learned friend has said exactly what I was coming to. In ignorance of the details of the subject, and having the most general views about it, we are to take upon ourselves the important functions of the Executive of the Commonwealth, by deciding, in the first instance, who are to be the men who will have the greatest part in forming this Commonwealth; because honorable members must not forget that, although we form it in form, they form it, to a large extent, in substance. With them rest the vast powers of judicial decision, in saying what are the relative functions of the Commonwealth and of the states. With them rest the interpretation of intentions which we may have in our minds, but which have not occurred to us at the present time. With them rests the obligation of finding out principles which are in the minds of this Convention in framing this Bill and applying them to cases which have never occurred before, and which are very little thought of by any of us. With this Supreme Court, particularly in the earlier days of the Commonwealth, rests practically the establishment on a permanent basis of the Constitution, because with them we leave it not to merely judicially assert the principles which we have undoubtedly asserted, but with them rests the application of those principles, and the discovery as to where the principles are applicable and where they are not. As was felt in America, and in every Federation which has had any permanence, there comes the necessity of a tribunal to stand between the states and the Commonwealth, of such dignity and held in such esteem, so free from all possibilities of influence or corruption that the general people of the Commonwealth will recognise that the jurisdiction has been well placed, and must be properly exercised. Now, what is proposed to be done here? The question of expense I attribute no importance to at all. It is so small that it is not worthy of serious cons

Mr. DOBSON. -

It means £50,000 for the first few years.

Sir JOHN DOWNER. -
No, it may mean £10,000 or more; but suppose it means £20,000 a year, divided amongst the whole of Australasia.

Mr. SYMON. -

£20,000 in order to secure the best kind of justice.

Sir JOHN DOWNER. -

Where is the importance of £20,000, compared with the placing of our Constitution on a basis which will recommend itself to everybody, and its vindication by a tribunal about which there can be no question? The point of view of expense is parochial to the lowest degree, and not worthy of one moment's serious consideration. Now, as to the motion that the Chief Justices should be as a matter of course members of this court, I say, first of all, you are placing the appointment of the Judges out of the Commonwealth which you have created, and you are giving it to the states, which is a direct invasion of the other principles which we are all trying to establish. They may be good, they may not. That depends upon whether the state appointments are good or bad, and whether the states happen to exercise their power of appointment wisely, or whether they do not.

Mr. KINGSTON. -

Would you disqualify the provincial Judges?

Sir JOHN DOWNER. -

I will come to that presently. The power of appointing the very highest tribunal, on which, after all, the duration of the Commonwealth must rest, is not to be exercised by the whole Commonwealth, but is to be exercised by each independent state, and appointments of greater or less efficiency may result. I will now deal with what the Premier of South Australia has suggested. Would you disqualify the Judges of any of the states? I say, certainly not. In all probability the selection would be made from them to a very large extent. If, for instance, Sir Samuel Griffith were selected, I do not suppose there would be any complaints on the part of many people in Australasia, and so there are other persons, or one particularly, whom we have placed in all important position in the conduct of our affairs here, with respect to whom, if placed in a position of importance in the judicial authority of the Federation, I do not suppose there would be any difference of opinion. I would not limit the area of selection in the slightest degree; but I would do two things. I would do this-I would say that a Judge of the Federal Court should not occupy the dual position of Judge of the Federal Court and Judge of any state court.

Mr. KINGSTON. -

That is taking the power out of the hands of the Federation, even if they
desire to do that.

Sir JOHN DOWNER. -
Not at all; the Federation has no control over the state courts, and no right to dictate to the state courts, but the Federation has a right to dictate to itself, and the Federation, dictating to itself, will say-Our Judges shall by no possibility be mixed up with the local concerns of any state or with local politics." From that point of view, we in no way limit the area of selection; otherwise we know that, owing to the infirmities of human nature, men might come into the position with prejudices here and there. That is inevitable. We have only certain material to deal with, and we must deal with that material in the best way we can; but, doing that, we say whatever local limitations you have now, they will not be extended by allowing the Judges to occupy the dual office of a Judge here and a Judge there. My honorable and learned friend, the Premier of South Australia, gave away the whole situation when he said he was prepared to accept a provision that a Judge should not sit in the hearing of appeals from his own decisions. Why should he not do so? Because he would have a natural prejudice in favour of the judgment which he had given. That is founded on the general infirmity of human nature.

Mr. KINGSTON. -
It is a conclusion which he has arrived at, and in which he will have to be disturbed.

Sir JOHN DOWNER. -
And on which he does not like to give way.

Mr. KINGSTON. -
I hope not.

Sir JOHN DOWNER. -
The honorable gentleman is so removed from the passions and weakness of humanity, that it has never occurred to him that each a thing could take place. But that is not the case, with weaker men, whom I have met in my time. I have known men to adhere to a thing because they have said it previously. I have known men to vote against their convictions because they said:" How can I give way when I have expressed a strong opinion?"

Mr. HIGGINS. -
That must have been in South Australia.

Mr. KINGSTON. -
No; it has occurred in the course of Sir John Downers travels.

Sir JOHN DOWNER. -
Probably the people I have met have been of the weaker sort, but I have known that to occur, and I
need not go a thousand miles away for examples. I might even find them in Victoria, when gentlemen who, even in this present Convention, during the course of its sittings, have entertained grave doubts whether they should adhere to opinions they have vehemently expressed, but who at the same time said, after expressing them so strongly, they could not see how they could go back on their previous statements, although I am sure they will do so ultimately. I am merely referring to this as an instance of the weakness which I am most painfully conscious of in myself, and I am perhaps judging my fellows by an unfair standard in reasoning from my own feelings and experience on this subject. I think that this great tribunal, of such dignity, with such responsibility, should be removed from all possible thought or shadow of prejudice or influence. If a Judge might be prejudiced in favour of his own decision so that he should not be allowed to sit upon a tribunal which is considering it, will not the same argument, though in a much smaller degree, apply to the colony which that decision might materially concern? The Judge, in the case which my honorable friend has conceived, who has decided in a certain way, should, he thinks, be excluded from being a member of a court of appeal sitting to consider his decision. Does not my honorable friend consider that he might go a little further, and say that where a question materially concerns one colony—South Australia, for example—there might be an unconscious prejudice? If he thinks that there would be no unconscious prejudice, does he not think that other people might believe that there was?

Mr. KINGSTON. -

If you regard that, where are you?

Sir JOHN DOWNER. -

It is almost as important that the administration of justice should be thought pure as that it should be pure. In order to produce a tribunal with such a big jurisdiction as this will have, which would be beyond all risk of public suspicion, you should surely provide that the Judges should occupy no other position than that of members of this tribunal. By that means you will have your Constitution well established in the first instance, and supported afterwards by a tribunal in which the people will have confidence. The question of expense, divided as it will be amongst these great colonies, I look upon as of no importance. We are all indebted to Mr. Glynn for his great thoroughness. He has given us some American statistics to show how small the work of the Federal Judiciary is likely to be in the first instance. I thought there was a little of the wisdom of the serpent when my honorable friend stopped at the year 1820.

Mr. GLYNN. -

From 1820 to 1830 I gave the average of cases as 58 a year.
Sir JOHN DOWNER. -
I thought that my honorable friend did just as well to stop at a time before commerce began to make the great strides which it has since been making, and before the judicial business of the Federal Courts had become out of all proportion to that which they originally transacted.

Mr. DOBSON. -
The honorable member (Mr. Glynn) admitted that the business of the Federal Courts had grown very considerably.

Mr. SYMON. -
The Supreme Court of the United States has not a tithe of the jurisdiction which we are conferring upon this court.

Sir JOHN DOWNER. -
Of course not. But in any case an analogy drawn from the work of the Supreme Court of the United States in 1820 or 1830 must be illusory. The courts then had nothing to do in comparison with what they have to do at the present time, and in comparison with what our courts will have to do.

Mr. DOBSON. -
How many cases does the honorable member think there will be in the first five years?

Mr. BARTON. -
How many cases do you think there will be?

Mr. DOBSON. -
About half-a-dozen.

Sir JOHN DOWNER. -
I am glad that my honorable and learned friend has got that answer. This court is not only to have a considerable original jurisdiction, but it is to be the Appellate Court for all the courts of Australia. I will ask the question: How many appeals are there from Australia at the present time—that is, from New South Wales, Queensland, Victoria, South Australia, Tasmania, and Western Australia?

Mr. DOBSON. -
I am only alluding to appeals where the states complain that the Federal Parliament has infringed state rights.

Mr. SYMON. -
Take Canada as an illustration. Last years decisions are contained in a volume 6 inches thick.

Sir JOHN DOWNER. -
I will first of all deal with the answer I have got. My honorable friend would propose to give this court an appellate jurisdiction in any case.
Whether it is to be a court of final jurisdiction is another question. I do not think any honorable member is prepared to say that the Federal Court should not be a Court of Appeal from the Supreme Courts of all the colonies. The question between us is: Whether it is to be a court of final appeal, or under what circumstances shall an appeal be allowed to the Queen in Council. Therefore, there was great relevance in asking how many appeals there are from the colonies.

Mr. DOBSON. -
I am serving the appeals which have reference to the Constitution.

Sir JOHN DOWNER. -
I venture to say that that is not a fair severance. If every one of us, including my honorable friend, is agreed that the Federal Court should be a Court of Appeal from the Supreme Courts of the colonies, my question is a pertinent and relevant one. If my honorable friend thinks it should not be a Court of Appeal his objection is pertinent and his answer relevant. Otherwise, his answer is unsatisfactory. This court will have a good deal to do only in dealing with appeals from the different colonies; but the matter does not end there. Does my honorable friend suppose that at the initiation of this Commonwealth the relative powers of the states and the Commonwealth will not be the subject of a good deal of question?

Mr. DOBSON. -
Yes, after the first few years.

Sir JOHN DOWNER. -
On the contrary, I should say during the first few years. After the first few years the difficulties will have all gone.

Mr. GLYNN. -
Then we must be doing very bad work.

Mr. KINGSTON. -
Yes. At all events, we will try to make the Constitution as clear as possible.

Sir JOHN DOWNER. -
We are not of necessity doing bad work because we do not make provision for everything. We are dealing with the most intricate of all mercantile concerns. We have enough analogies and decisions in connexion with the American Constitution to assist us, but we have no guarantee that the views of our Federal Judiciary will always be the same as those of the American Judiciary. There may be some circumstances for which, with all ingenuity, we shall be unable to provide. In my opinion, from the very first there will be plenty of work for the Supreme Court to do to justify the establishment of this tribunal, even apart from the necessity for a constitutional Court of Appeal. In the meanwhile, of course, we have
to do the best we can to make matters so clear that there need be no necessity to go to courts. The very fact of the establishment of a tribunal in which the citizens of the Commonwealth have perfect confidence, and which they know will decide only according to justice and right, will not create litigation, but prevent it, and will be a guarantee to every man, woman, and child in the Commonwealth that that which has been enacted will be carried out.

Mr. HIGGINS (Victoria). -

As one of the Judiciary Committee, I think it will not be amiss for me to say that I object to both of these amendments, and I will state my reasons. I have been a good deal impressed by the argument of economy, which is really the chief argument in favour of the proposal; but if this court is to fulfil an essential function in the Commonwealth, we should not, in this Convention, adopt a cheeseparing policy. The saving of a few thousand pounds—even if it amounts to a few thousands—is a small matter as compared with the great issues which will depend upon the constitution of this court. The proposal of the South Australian Parliament is practically to allow the Federal Parliament at any time to change the character of this Supreme Court of Australia. As I interjected, so I repeat now, the Supreme Court of Australia is to be the arbiter between the Federal Parliament and the state Parliaments, and it would be most dangerous to allow the Federal Parliament a power to change the constitution of a court which will have to decide between its wishes and the rights of other parties. I would also submit that it is even more important to preserve the independence of this Federal Court in the Australian Constitution than it was in the American Constitution we have the three authorities—the Executive, the Legislative, and the Judicature—all distinct. The Executive is not controlled by the Legislature, and the Legislature is not controlled by the Executive is not controlled by the Executive; but here under responsible government—and we all assume that this Constitution will give us responsible government—the Executive and the Legislature must pull together. So long as the Executive is the creature of the Legislature so long the Legislature and it must be in harmony, and therefore we have two great powers—the Executive and Legislature—under the Australian Constitution having a great interest to pull one way, and having every temptation to so mould the character of the High Court as to get it to adopt their views. I am not speaking of merely theoretical danger. I would ask those honorable members who are familiar with what happened in connexion with the income tax dispute in the Supreme Court of United States to bear me out.
They will remember how it has been said—I hope unjustly—that, with a view of getting a reversal of a previous decision with regard to the income tax, certain Judges were appointed to the bench in America, and the income tax decision was reversed. I agree with Sir John Downer to a large extent. It is important, not only that we should keep the bench pure, but that, like Caesars wife, it should be above suspicion. In the American High Court it is the practice on occasions for the court to reverse its own decisions. The House of Lords does not do that. If that power is exercised, as I suppose it will be, in Australia, as it is in the United States, the danger will be still greater, because Parliament, by altering the number of Judges, and by making stipulations as to their appointment, could so mould the character of the High Court as to get from it a decision conformable with its own views as against the views of the state Parliament. It has been said that there will not be enough business for the court. I do not think that what happened in the United States affords any clue to the business that will be done here. In the early years of the Constitution of the United States there was very little federal business. There were then no inter-state canals, and the relations of state with state were much less intimate than they have been since the introduction of railways.

Mr. SYMON. -

What was their commerce then?

Mr. HIGGINS. -

Owing to the conditions of travel it was impossible that there could be such inter-state relations and inter-state difficulties as there will be under the complexity of modern commerce, and we in Australia will share in the complexity of modern commerce, although we cannot suppose that with our small population we shall have as much legislation and as much litigation as America had in the Federal Parliament and in the Federal Court. May I also indicate to Mr Glynn, in regard to the matter of the appointment of Chief Justices, that under this clause the Executive can, if they think fit, appoint it Judge of any of the state courts as a Judge of this court?

Mr. KINGSTON. -

Would you be willing to make it clear that one man might hold the two offices?

Mr. HIGGINS. -

I think it is clear enough. The Executive have power to appoint any one.

Mr. KINGSTON. -

To hold the two offices?

Mr. HIGGINS. -
Yes, but I shall point out presently why it would be inexpedient for one man to hold the two offices. Mr. Glynn is hardly correct in stating that Sir Samuel Griffith, in his Notes, recommended that the Chief Justice of each state should be appointed to the Bench of the High Court. I have in my hand his recommendation.

Mr. WALKER. -

He did not say Chief Justices, but Judges.

Mr. HIGGINS. -

Yes. Sir Samuel Griffith says it is worthy of consideration whether it might not be wise to empower the Federal Parliament, if they think fit, to make laws authorizing the provisional constitution of the High Court in whole or part by Judges of the state courts. There is that power here. The Executive can, if they think fit, appoint any Judge. I am sure I shall not be misunderstood if I say that there is nothing in the character of the Chief Justices which render them necessarily more fit to be appointed to the High Court than any of the other Judges of the Supreme Court of a state. It is not unfair to remind honorable members that of all the Judges of the states those who are most frequently appointed by political influence are the Chief Justices. It has not, very fortunately, been the ordinary rule of late years; but in England the position of Chief Justice is more of a political appointment than that of any other Judge on the Bench. In these colonies there has been a tendency in the same direction. The Chief Justice is no more fitted merely by virtue of his office to be a Judge of the Federal Court than the Puisne Judges are. There is also this point to be considered: That if the amendment be adopted, until the Constitution is changed—and it takes a great deal to change a Constitution—the Federal Executive will be limited in its choice of Judges to the Chief Justices. It will in this respect be tied hand and foot, no matter what may be the conditions under which any state appoints its Chief Justice. It is quite true, and very happily so, that under the different Constitutions of the different states of Australia it is the practice to appoint the Chief Justice and all Judges of the Supreme Court during good behaviour. But there is nothing to hinder the Judges being made elective, as in America. There is nothing to hinder the tenure of Judges being made for a certain number of years, as in America; and I can only say, from my slight experience of the working of American courts, that I sincerely hope we shall never have our Judges elected. I sincerely hope that we shall give them the strongest tenure, and make them as independent of any man's favour and any man's hate as we possibly can. Therefore, I submit that it would be a dangerous thing for us to limit the discretion of the Federal Executive to the man whom a state might happen to appoint.
Mr. BARTON. -

Supposing a state changed its method of appointing Judges, and made them elective? Then you would have an elected Chief Justice in the state, and the Constitution prescribing that he should be a member of the High Court. Would not that destroy all the security we wish to take?

Mr. HIGGINS. -

Quite so. I think I included that point in my statement, but it has been put very clearly by the leader of the Convention. You leave the states absolutely free to alter the tenure of their Judges as they like. You leave a state absolutely free to say how long a Judge is to hold his office, and also whether he shall be elected or appointed. All these conditions are left to the state, and is the Federal Executive to be limited-to be tied down hand and foot-to the appointment of whomsoever the state chooses to appoint? In these, as in other matters, I say trust the Federal Parliament, trust the Federal Executive. Let us give, as far as we can, unlimited discretion to it to get the best men, no matter where they may come from. Then there is this point, that to take the Chief Justice of each state would be a grand mistake, for this reason—it would be a mistake to drag the equal representation of states into this matter of the Judiciary. Of course, the Convention has its own view with regard to the equal representation the states in the Parliament, but I think it would be a grand mistake, at all events, to drag that into the question of the Judiciary, where a man has to act as an arbitrator, and not to look at the interests of this person or that person, but to look at what is just and what is the law. Supposing you drag in the Chief Justice of each state, there will be a strong tendency for him to feel himself the representative of his colony, and nothing could be more damaging to the cause of the Federal Court than that. I say he ought to go there wholly indifferent.

Mr. HOWE. -

He need not take part.

Mr. HIGGINS. -

I say, with all respect, that it would be his duty to take part, as the law had put him there.

Mr. GLYNN. -

We could easily provide for that.

Mr. HIGGINS. -

I certainly think it would not be right to put the Judges in the position of feeling that they are delegates from the particular states. Then I would ask one thing further. I do not know how it is in the other colonies, but in our courts, at the beginning of the year, the Chief Justice arranges the list and
fixes what the work of each Judge will be for each month-Assizes, Criminal Court, Nisi Prius, Full Court, and so on. Now, supposing an urgent application comes on for a mandamus under the original jurisdiction, in which a writ of mandamus or prohibition is sought against the Commonwealth. That class of cases is one which should be dealt with urgently on the moment. There may be many a time when the whole of the machinery of government may depend upon whether the officer of the Commonwealth is to do thing, or to do that. Supposing there is an application under the original jurisdiction for a mandamus or prohibition, are they to wait until they call arrange that all the Chief Justices of the five or six Colonies find a month in which they could sit to hear this application for a mandamus? I feel that here there would be a practical objection, on which I would appeal to business men. Are the delays of the courts to be added to by having the High Court of Australia to wait until they can find Chief Justices able to give a few days to this thing or that thing? A banker, for example, wants to have his cases decided quickly.

Mr. HOWE. -

The Judges can go home on twelve months leave of absence when necessary.

Mr. HIGGINS. -

I do not understand the honorable member's interjection. At all events we ought not, under the plea of economy-though we ought to regard economy-to commit ourselves to a measure which may injure the efficiency of the court and the rapidity with which the court is to do its work.

Mr. WALKER (New South Wales). -

It requires a certain amount of courage for me, as a layman, to speak on a subject of this sort, but as I had the honour of a seat on the Judiciary Committee I presume I am supposed to have looked into this matter. The Privy Council at the present time, I understand, desires to have representatives of the colonies on that body, presuming that such Judges have a special knowledge of colonial law. The Chief Justice of South Australia is a member of Her Majesty's Privy Council, and, I believe, recently sat on the Council. One advantage of having a choice, at all events, of state Judges for the High Court would be the probability of having some person there who would have a special knowledge of the laws of the state in which

I take leave to submit, as a question deserving of serious consideration, whether the work that would fall to a Federal Supreme Court is likely for some years to be sufficient to warrant the immediate creation of a complete separate judicial establishment.
Mr. SYMON. -
That was not the opinion he expressed in 1891.

Mr. WALKER. -
I am not responsible for his opinion in 1891. I believe it is not unusual for some lawyers to change their opinions according to the side by which they are engaged from day to day.

Mr. BARTON. -
You ought to have learnt more than that on the Judiciary Committee.

Mr. WALKER. -
Of course, Sir Samuel Griffith admits that-
The arguments in favour of an independent Federal Judiciary are obvious, and are, no doubt, very cogent. It might indeed be necessary-
And I think here we shall agree with him.
to have one or two exclusively Federal Judges to preserve the continuity of the tribunal, and to organize and supervise its machinery.

When the time comes, I trust that Mr. Glynn will slightly amend his proposed amendment, so as to have, at all events, two Judges who are purely Federal Judges, and that temporarily the quorum of Judges necessary may be made up by Judges of the state courts. With regard to the difficulty which my honorable and learned friend (Mr. Higgins) has alluded to of getting representatives from the state courts, that might be obviated by their obtaining leave of absence now and again for three or four months to attend the Sittings of the Federal Judiciary.

Mr. HIGGINS. -
How are they to foresee which months they will be wanted in?

Mr. WALKER. -
I understand, although not a lawyer, that there are certain vacations-ordinary vacations-and, moreover, that it is not a matter of difficulty, as Mr. Howe interjected just now, for the Judges to obtain leave of absence pretty frequently for one reason or another. Surely then such an important matter as the laws of the Federation would justify the respective Supreme Courts in granting leave of absence. Be that as it may, I agree with Sir John Downer that after a time the matter of expense is not to be considered very greatly. At first, however, it is a very serious matter. Every day we find persons objecting to federation on the ground of expense, and they seem to think, uncharitable people as they are, that the constitution of this Convention, which only includes 24 lawyers out of 50 members, affects, to some extent, our opinion with regard to the necessity for a Federal Judiciary.

Mr. REID. -
If the people think that, why did they elect the 24 to the Convention?
Mr. WALKER. -

I think that they showed their wisdom in that. I have very great respect for the legal fraternity myself, and I do not wish to speak of them except in the most complimentary manner, but as a layman it is my intention to support Mr. Glynn, if he will amend his amendment in a certain direction. Of course, at present we are not dealing with the whole subject of appeals to the Privy Council. When the time comes to debate that question I shall have an opportunity of saying something more on the subject.

Mr. ISAACS (Victoria). -

While we all respect the opinion of Sir Samuel Griffith, we have to act on our own judgment in this matter, and I think our own judgment must tell us that such a proposal as my honorable and learned friend (Mr. Glynn) has made will not bear serious consideration for a moment. It is open to the objection at once that gentlemen representing primarily their own colonies because they do so are to have seats on the Bench. The very statement of that proposition is enough to defeat it. My right honorable and learned friend (Mr. Kingston) said: Why not take the reverse of this proposition, and why have Commonwealth Judges only? Well, sir, what is a Commonwealth Judge? A Judge who has equally dear to him every part of the Commonwealth, and who has no partiality for one part more than another.

Mr. KINGSTON. -

He is to prefer the whole to the part, because there may be disputes.

Mr. ISAACS. -

Yes, he should prefer the whole as it stands, as he thinks it really is, rather than seek the advantage of any particular part. No one would suspect a Commonwealth Judge of favouring one part of the Commonwealth more than another, and it is for that reason that the whole of Australia would have confidence in him. I can see that there is a question of economy concerned, but I do not think that that question should be countenanced for one moment in this regard. Economy may be very expensive, and in the administration of justice it is altogether too expensive. If there is one moment more than another when a strong Judiciary is needed, in which unbounded confidence is to be placed, such a Judiciary is required for this Commonwealth when the Constitution first comes into operation. We are taking infinite trouble to express what we mean in this Constitution; but as in America so it will be here, that the makers of the Constitution were not merely the Conventions who sat, and the states who ratified their conclusions, but the Judges of the Supreme Court. Marshall, Jay, Storey,
and all the rest of the renowned Judges who have pronounced on the
Constitution, have had just as much to do in shaping it as the men who sat
in the original Conventions. I therefore think that, at the beginning, we
should take the utmost care to establish a Judiciary to effectuate the work
we are here preparing. I do not think we can guard against everything. I
know very well that the Parliament will have an immense power, and we
know that the Executive in America, as Mr. Higgins has said, have
degraded the influence of the Supreme Court. But that has been done in a
way that could not be prevented, and we cannot prevent it here. There will,
however, be less reason for it here than in America, and I will tell
honorable members why. What was done in the United States? Shortly
after the American war there was an issue of United States notes, and the
question arose (which was carried to the Supreme Court) whether Congress
could make those notes legal tender. It was decided by the bench—not the
full bench of nine Judges, because one of them was ill or absent from some
other cause—that the notes were not legal tender. The American
Constitution—and this is the lesson which we ought to learn—is practically
not susceptible to amendment. There was no means whatever of amending
the Constitution so as to do what the people and Congress desired, to make
the notes legal tender. What was the only way open? It was this. It just
happened that a vacancy took place on the Supreme Court Bench, and then
Congress passed a Bill adding one to the number of the Supreme Court
Judges, and they took very good care to appoint a man to that position
Upon whom it was known they could rely. The question was again
agitated, and the Supreme Court Bench reversed

the former decision. That was one of their ways of amending the American
Constitution. I trust we shall remember that instance when we are dealing
with clauses relating to the amendment of the Constitution. What I have
described was done by the republican party, but the other party cannot
claim to be much better in principle. What happened at the last Presidential
election? The democrats, knowing the decision of the Supreme Court as to
the income tax—a most unfortunate decision, because it says (in accordance
no doubt with the Constitution) that direct taxation must be according to
population, and not according to the capacity of the individual to bear it—
came to the conclusion that they would have to carry their point by altering
the Supreme Court, and there was accordingly a proposal in the platform of
the democratic party to take the same course as was taken in regard to the
United States notes. We cannot prevent Parliament adding to the number of
the Judges of the Supreme Court. We can only prescribe a minimum, at all
events, so that there shall be a strong guarantee to the Commonwealth,
when it comes into operation, that there shall be a bench of such ability as we can secure, and in which we can all place confidence in the fairness and impartiality of its decisions as to the meaning of this Constitution and every part of it. That duty of course will not end with the first few years of the Federation, but I again say that the proposal of my honorable and learned friend (Mr. Glynn) should not be supported by this Convention.

Mr. LEAKE (Western Australia). -

I object to this proposal on two grounds-on the one hand that it is inconvenient, and on the other hand that it is inconsistent. It is inconvenient for this reason: That the Chief Justices of the different colonies are prevented from discharging the duties which devolve upon them in their own various states. Take, for instance, the case of a Judge coming from the remote West. He would have to be away from his local duties for such a considerable time that it must necessarily interfere with the due administration of justice in his own courts. In Western Australia, as also in South Australia, we have three Judges. The Full Court consists of three Judges. And how in these colonies, in the absence of the Chief Justice, could the business of the courts go on? It would have to be suspended during the absence of the Chief Justice. The proposal is inconsistent, I submit, upon this ground-that while the Chief Justices of the colonies are drawing their salaries from their particular states, the Federal Government would not be paying their Judges the full amount of their salaries, but would be asking the states to contribute in that direction. With regard to the question as to insufficiency of work for the Federal Judges, I agree with those honorable members who have ventured to say that there will be ample work from the very commencement for the whole Federal Bench. Moreover, it seems to me that if you place the Federal Judges in the position of ex officio members of the High Court, you will derogate from the dignity of their position. On these grounds I intend to oppose the amendment. It has been said by other members that the choice of the Federal Government is limited. Why should that choice be limited merely to the judicial bench, and not to the bar of Australia? There are honorable members sitting in this House representing New South Wales, Victoria, and South Australia, who are well qualified to adorn the Judicial Bench of Australia.

Mr. REID (New South Wales). -

I find that we are discussing one thing, whilst the amendment before the Chair is another. The sooner we get back into some regular practice the better. I would suggest that we should dispose of the amendment before the Convention, which, as I understand, proposes to insert in the beginning of the clause the words "Unless the Parliament otherwise provides." It occurs
to me that one of the essential features of

this Convention should be a federal judicial power. That is a power that is absolutely necessary, and I shall therefore prefer to vote against the amendment, because the amendment would make the judicial power of the Commonwealth the creature of the Federal Parliament. The clause, as it stands, places the Federal Court in the bed-rock of the Constitution.

The amendment was negatived.

The CHAIRMAN. -

I will point out to Mr. Glynn that there is an amendment suggested by the Legislative Council of South Australia to omit all the words from "a," immediately preceding the words "Chief Justice," with a view to the insertion of the words "Judge from the Supreme Court of each state, one of whom shall act as the Chief Justice." I will put the question-That the words proposed by the Legislative Council of South Australia to be inserted, after the word "a," be so inserted. If they are not inserted, then Mr. Glynn can move his amendment.

The amendment was negatived.

The CHAIRMAN. -

It is now proposed by Mr. Glynn to insert, after the word "and," in the seventh line of the clause, the following words, "until Parliament shall otherwise provide, the Chief Justices of the states." So that the latter part of the clause will read, if this amendment is carried-

The High Court shall Consist of a Chief Justice, and, until Parliament shall otherwise provide, the Chief Justices of the states.

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

The committee divided-

Ayes ... ... ... ... 9
Noes ... ... ...

Majority against the amendment 20

AYES.

Berry, Sir G. Howe, J.H.
Cockburn, Dr. J.A. Kingston, C.C.
Gordon, J.H. Walker, J.T.
Grant, C.H. Teller.
Holder, F.W. Glynn, P.M.

NOES.

Abbott, Sir J.P. Leake, G.
Braddon, Sir E.N.C. Lee Steere, Sir J.G.
Carruthers. J.H. Lewis, N.E.
Crowder, F.T. McMillan, W.
Deakin, A. O'Connor, R.E.
Dobson, H. Peacock, A.J.
Douglas, A. Quick, Dr. J.
Downer, Sir J.W. Reid, G.H.
Forrest, Sir J. Solomon, V.L.
Fraser, S. Symon, J.H.
Fysh, Sir P 0. Trenwith, W.A.
Hackett, J.W. Turner, Sir G.
Henry, J. Zeal, Sir W.A.
Higgins, H.B. Teller.
James, W.H. Isaacs, I.A.

Question so resolved in the negative.

The CHAIRMAN. -

The next amendment, to omit the words "not less than four," is suggested by the Legislative Assembly of New South Wales, the Legislative Assembly of Victoria, and the Legislative Council of Tasmania.

Mr. REID (New South Wales). -

I think this is a most sensible amendment, because the effect of the amendment will be that if it be found necessary to have four Judges of the Supreme Court, in addition to the Chief Justice, there would be no difficulty in the way, but it might be, at the beginning of the Commonwealth and for a very long time, that the Chief Justice, with two other Justices, would form a sufficient bench.

Mr. OCONNOR (New South Wales). -

I think that the amendment has a great deal more meaning in it than perhaps the honorable member who has just spoken would suppose. At first I myself was disposed to think that the number of Supreme Court Judges of the Commonwealth might be left in the hand's of the Federal Parliament, but an argument that has been used by Mr. Isaacs just now very strongly points to the conclusion I think, that it is just as important that the minimum number of Judges of the Supreme Court should be fixed as that the court itself should be constituted. The argument in favour of the amendment is simply an argument that it will

save expense. I cannot perceive any other argument in favour of it.

Sir JOHN FORREST. -

Well, that is a good one.

Mr. OCONNOR. -

It is under certain circumstances, but it all depends upon what price you pay for the money you save, and it may be very dear economy.

Sir JOHN FORREST. -
They could always be added to.

Mr. OCONNOR. -

One of the reasons why you wish to place this Constitution upon a foundation which will insure that you will have a tribunal which will equitably and impartially decide between the states, is that that is the guarantee of fairness which each state and each individual has in the foundation of the Constitution. One can quite foresee occasions in which the interpretation of a law—whether it be a state law or whether it be a Commonwealth law—may involve exceedingly high feeling in the states and in the Commonwealth. It may be a matter of the most immense importance to the Commonwealth that a particular law should be decided to be valid. It may be a matter involving political issues of a very grave character, and it may be that the whole question in issue between strong contending parties in the state will have to be decided by a Judge or by the Judges of the Federal Court. One can easily understand that if a decision is given against the view of a strong majority in Parliament, there will be very great temptation to an Executive, in the event of a vacancy occurring, not to fill up that vacancy if, by so doing, it can insure a majority in the court of the states.

Mr. KINGSTON. -

Look at it the other way.

Mr. OCONNOR. -

That is exactly the same kind of case which the Attorney-General of Victoria alluded to in the instance he cited in the history of the United States.

Mr. GORDON. -

If they can appoint in that way, there is nothing in your argument.

Mr. OCONNOR. -

If they can appoint another Judge undoubtedly, but if, by not appointing a Judge, they can get a majority or an equal number in the court which will decide the question as they wish, there will be a strong temptation on the part of the Federal Government to do that.

Mr. ISAACS. -

It is much easier to do that than to appoint another Judge.

Mr. OCONNOR. -

It is much easier to do that which involves not making an appointment, than to make an appointment which will involve an expenditure of money.

Mr. SYMON. -

And which will be much more open to criticism.

Mr. OCONNOR. -

It would be obvious to every one that it would be done for one purpose,
and that was to secure a particular decision.

Mr. GORDON. -

You would have to get a Judge to die first.

Mr. OCONNOR. -

Perhaps this power will have to be carried out in the first instance by the passing of a federal statute which will appoint a certain number of Judges and fix their remuneration. No additional Judge can be appointed without passing a new Act, and the object of passing a new Act will be so obvious that the probabilities are that, except in circumstances of very strong temptation, the Federal Parliament will not pass any such Act; and if it does it will have to be by the concurrence of both Houses of the Federal Parliament. The appointment has to be made by the Executive, and the Executive, representing only the majority in the House of Representatives, may feel so strongly about one of these measures that it may omit to make an appointment, and what is there to force it to make an appointment if these courts are to be constituted of such number of Judges as may be determined? What we should secure in the appointment of the Federal Judiciary is that its constitution shall be certain and, above all things, that its constitution shall be such that neither by any act of commission, nor by any act of omission, it shall be rendered ineffective or warped from its purpose of deciding according to the most absolute right upon all questions of the Constitution. Inasmuch as the only argument in favour of this amendment—that is, the saving of the expense which may be involved in the appointment of one or more extra Judges—is a very weak one, especially when we remember that you will always have just the same vigilant criticism of expenditure in the Federal Parliament as you have in the local Parliament, and you will have just the same strong objection to increasing the number of judicial officers that obtains, and very properly obtains, all through Australia, you can very well trust to that to insure economy; but do not, by carrying an amendment of this sort on the ground that you are effecting an economy, run the great risk of placing in the hands of the Federal Parliament and the federal authority a means of interfering with the courts of justice.

Mr. LEAKE (Western Australia). -

I hope that the committee will not accept the amendment. This question was very well thrashed out before the Judiciary Committee. The principal reason which influenced the members of the committee in fixing the minimum of four Judges was that, inasmuch as the Federal Court would really exercise in chief an appellate jurisdiction, it would appear to be inconsistent that by any possibility two Judges of Federal Court should
have it in the power to upset the decision of five or seven Judges in a state.

Mr. FRASER. -  
It is the weight of numbers.

Mr. LEAKE. -  
I think there is always wisdom in numbers. We have been told that very often.

Mr. SYMON. -  
And there is strength.

Mr. ISAACS. -  
And safety.

Mr. LEAKE. -  
I would rather accept the unanimous judgment of seven Judges than the divided judgment of three Judges. For that reason, I think we had far better make this judicial body as powerful as it is possible for us to do. Nobody can say that small matters will first arise. It is quite possible that the first appeal to the Federal Court may be one of first and prime importance, and it is improbable the first decision of the Federal Court can by any possibility give rise to friction or dissatisfaction either in any one of the states or in the Commonwealth. For these reasons I oppose this amendment.

Mr. SYMON (South Australia). -  
The whole object of this clause is to establish by the Constitution a Federal High Court. If this amendment is carried the result will be that you will have a Federal High Court established without any fixed minimum to constitute the bench. The thing seems to me perfectly absurd. There may be a difference of opinion as to whether we should have a minimum of two or a minimum of four. That is another thing; but if you wipe this out altogether you may as well wipe out the whole thing. If you are going to establish a court which is going to be symmetrical at all, you must have it constituted in some way or other with a minimum, leaving it, of course, as the exigencies of business require, to be increased by the federal authority empowered to do it.

Mr. HOLDER (South Australia). -  
I rise to ask you, sir, to put the question on this amendment in such a way that I shall not be precluded afterwards from moving to strike out "four," with a view to insert "two" in lieu thereof. I am not prepared to vote for the amendment now before the committee, but presently I shall desire to substitute the word "two" for the word "four," because I do not agree with the honorable member (Mr. Leake) that the decisions of this court will be the more weighty because of the greater number of Judges of it. I believe that the knowledge of the Judges, their learning, their experience, and the
weight of the men
themselves, will be the chief factors in the respect paid to any decision of
the court.

The CHAIRMAN. -
I will put the question in such a form that the proposition as to whether
there should be a minimum or not can be decided. The question is-
That the words "not less than" stand part of the question.

Mr. PEACOCK (Victoria). -
I hope that this amendment will not be accepted. One of the strongest
reasons which prevails in the minds of the public outside for accepting the
Federal Constitution is the fact that a strong Federal Court will be
established. I am only a lay member of the Convention, but my experience
of the Judiciary Committee, and my general reading, have shown me that
the liberties of th

Mr. HOWE. -
But there is no need to be extravagant.

Mr. PEACOCK. -
Quite so; but the question of a few thousand pounds ought not to be taken
into consideration. When we remember that this Federal Court will have to
deal with important matters affecting the liberties of the people, we are all
desirous of seeing a strong Federal Court established, and appeals should
be decided without incurring the large expenditure which is now involved
in the case of appeals to the Privy Council. I am confident the people are
desirous of not seeing this provision weakened—that they would rather see it
strengthened. I therefore hope the amendment will be rejected.

Sir EDWARD BRADDOCK (Tasmania). -
I cannot see that the amendment will weaken the Federal Court,
inasmuch as it does not suggest that the number of Judges should be
limited in any way. It only strikes out a limitation which is undesirable at
the present time. We talk a great deal about trusting the Federal Parliament
and Executive. May we not well trust them to fix upon the number of
Judges required in this court in the first instance, to fix upon a number
which will be sufficient and necessary, and, I hope, competent to do all the
work of appeals? That can be very well done whether we strike out these
words and insert nothing else, or whether we strike out the word "four" and
insert "two" instead of "one." I shall certainly support the amendment that
you, sir, are now going to put, and the retention of the rest of the clause.

Mr. ISAACS (Victoria). -
I think it would not be economy—it would be simply parsimony—to cut
down the number of Judges. After the fullest consideration that I have now
been able to give to the matter, I think it would be a great inducement for
the people of the various colonies to accept the Constitution in view of the
immense issues at stake in that acceptance, if they know that there is a
guarantee to them within the four corners of the Constitution, and that it is
beyond the power of the Federal Parliament to alter it, that we shall have a
Supreme Court of a certain magnitude and power. Do honorable members
who support the amendment consider that if there was a
question relating to their state involving, it might be, practically the
existence of that state, its power of taxation, its rights over rivers, over
territories of various kinds, that they would be more content to have that
immense question decided by five Judges than by three-by two it might be?
There might be one on either side, and that would mean that the state
would have its future position determined under the Constitution of the
Federation, and under their own Constitution, by the casting vote of one
out of three. I am prepared to believe that the people of these colonies,
when they are told that they are committing these vast issues to the
Federation, and that the provisions in this Constitution go safeguarded by a
Supreme Court of not less than five Judges, will feel an immensely greater
amount of confidence in saying "Yes" to the great question which I hope
will be soon submitted to them.

Mr. REID (New South Wales). -

My honorable friend (Mr. Peacock) spoke of expense as a matter in
which we should not play to the gallery; but I can assure the honorable
member that the gallery is more interested in the question than any other,
because they have to find the money. The gallery may criticize this
provision in its present shape in this way. There are a great many allusions
made, and perhaps improperly made, as to the number of lawyers in this
Convention, and it might be an object of sinister criticism that we should
be careful to provide that there shall not be less than four Judges. It might
be an observation upon that, that if it is necessary to fix a minimum it is
necessary, in order to secure the independence of the court, that there
should be a maximum, because you can swamp a court of five if the
maximum is left open to the Executive. There might be only perhaps one
of a majority in some moment of great political excitement, when, perhaps
a burning question would be before the federal tribunal. When we turn to
the United states, and the honorable member (Mr. ISAACS) knows better
than I do what has happened in that great country in reference to the bench-

Mr. ISAACS. -

The only difference is that we can at present judge of our existing
requirements, but we cannot tell what will be the future requirements of the
Federation.

Mr. REID. -

I fancy that it is not always the most numerous bench that is the strongest; it does not follow. I have seen in the law reports some knotty questions referred to a large number of English Judges, perhaps fifteen, and I have found that the decision was given by eight Judges to seven. I do not call that a strong bench, or a strong decision. It is a very weak decision and a very weak bench when the members are divided in that way. The number does not always show the strength of the bench; that would depend upon the individuals upon the bench. Whatever the number may be, whether it is one, three, or six, it strikes me it would be quite possible that, with the Chief Justice and two Judges, we should have a stronger bench than if there were the Chief Justice and four Judges. I mean in the intellectual sense, and in the sense of commanding the approval and confidence of the public. I quite see that it would not do to limit this in any very arbitrary way, but if there is to be a limit on one side there should also be a limit on the other, in the interests of the independence of the bench. Therefore, under the circumstances, I am prepared to vote for an amendment which will fix both the minimum and the maximum. Of course, if the working of the Constitution requires a larger number later on, there is no doubt that would not be a matter of political excitement in the states. A time could be chosen when it would not be, and it ought not to be very difficult to get an amendment of the Constitution on that point. In the great United States there are 70,000,000 people, and it will be a long time before we have such a population. I believe that on constitutional questions the quorum of the United States Federal Bench is nine, and on other questions five. If we allow for the development of numerical strength, and if we have a court consisting of the Chief Justice and four other Judges, we will provide a very strong Supreme Court for many years to come.

Mr. HIGGINS. -

What words would the honorable member suggest?

Mr. REID. -

The present amendment, I believe, is to alter the clause so that it should read "not less than two."

The CHAIRMAN. -

The present amendment is to leave out "not less than" so as to decide whether there should be a minimum or not.

Mr. REID. -
I am not in favour of such an amendment. I am in favour of an amendment defining a maximum and a minimum. If that fails, I am in favour of having neither a maximum nor a minimum.

Sir JOHN DOWNER (South Australia). -

The argument of my right honourable friend (Mr. Reid) is one which has often recommended itself to me when I have held strong views upon a subject, and have felt that the people were against me. I have known the superiority of one man to the many, and the advantage of having a dictator who understands exactly what he wants, and can avoid that appearance of weakness which arises from differences of opinion.

Mr. ISAACS. -

Providing he is of your own mind.

Sir JOHN DOWNER. -

Of course. The proposal now before the committee is to leave it absolutely to the Federal Parliament to say whether there shall be one Judge or a dozen. As to that, I think my honorable friend and myself are entirely agreed.

Mr. REID. -

Cannot the honorable member see the danger of a provision which leaves it open to the Executive to appoint any number of Judges?

Mr. BARTON. -

It is not the Executive, but the Parliament, who appoints the Judges.

Sir JOHN DOWNER. -

This court, after the establishment of the Constitution, will not merely have to decide as to the relative powers of the state; it will be a Court of Appeal from the Supreme Court of the various states. Those courts may be composed of any number of Judges up to six or more, and I think that an appellate tribunal of two would not, under such circumstances, give satisfactory results. The same argument might be used, in degree, in connexion with any less number. The first thing we have to do is to establish a Supreme Court composed of a sufficient number of Judges to enable the people to place confidence in it. The suggestion of the honorable member (Mr. Holder) was that the number of Judges should be limited to two.

Mr. WALKER. -

Not less than two.

Sir JOHN DOWNER. -

Well, I think that such a provision would be unsatisfactory upon the face of it. It might be, as the right honorable member (Mr. Reid) put it—that one man might have brains enough for the whole concern. One man might be able to manage the whole Commonwealth better than any number of men
could do it, but he would not give satisfaction, because other people would differ from him in opinion. You must have more than one Judge, if not to produce competency, to preserve confidence. The question is, what minimum can we fix? Four is a very low number.

Mr. WALKER. -

Four, and a Chief Justice.

Sir JOHN DOWNER. -

I think that that is a smaller number than was at first proposed. I think that the original number was seven, and that in Adelaide we reduced it. If we go on in this way we shall reduce the Supreme Court to a condition which I think will be extremely unsatisfactory, so far as the probability of obtaining the confidence of the people is concerned. There are two propositions before us. The first is to leave this matter to the Commonwealth; and there is a great deal in what the right honorable member (Mr. Reid) said upon this question. If we leave the matter to the Commonwealth we are giving it power to appoint a tribunal which is to decide upon the conflicting claims of the states and the Commonwealth.

Mr. WALKER. -

Do you not trust the Commonwealth?

Sir JOHN DOWNER. -

Of course we trust the Commonwealth entirely, within the sphere of legislation that we bestow upon them. We trust their discretion absolutely; but when we come to the constitutional question of the legal rights of the Commonwealth we define them by fixed legislation. Otherwise there would be no object in having a Supreme Court to decide between the Commonwealth and the states upon perfectly *bonâ fide* questions. We trust the Commonwealth entirely within the limits of the Constitution, and in respect to the exercise of the powers we bestow upon them. But we have two objects. One is to preserve the states, and the other to establish the Commonwealth. Therefore we have a third party, the Federal Court, which is to have no voice in the exercise of the discretion of either of them, but must decide when either party is acting beyond its constitutional rights. If we establish this body we ought to establish it ourselves. The argument that it is to stand between the Commonwealth and the Parliament is a very powerful argument in support of the contention of the right honorable member (Mr. Reid) that we should establish this body ourselves, and not leave to the Commonwealth the power of frittering away the protection we give by the establishment of this tribunal.

Mr. BARTON. -

You must make the Constitution yourself; but you must trust the
Commonwealth for legislation within the Constitution. That is what we mean.

Sir JOHN DOWNER. -

And that is what I mean.

Mr. REID. -

Still you do not leave the Commonwealth the option of saying that there shall be only three Judges.

Sir JOHN DOWNER. -

The view which the right honorable member took, though I do not agree with the manner in which he introduced it, had the merit of being absolutely logical. If you have to establish this court fixed and immutable, to stand between the Commonwealth and the states, establish it fixed and immutable, and do not give to the Federal Parliament the power of appointing more Judges than you have nominated. At the same time, I do not think it expedient to adopt this course. I think it would be wiser to leave the provision just as it is. I think that, the proposed number of Judges is certainly not too large.

Sir EDWARD BRADDON. -

Not too large as a maximum.

Sir JOHN DOWNER. -

You cannot tell.

Mr. REID. -

There is no enthusiasm about appointing Judges of the Commonwealth.

Sir JOHN DOWNER. -

There is no enthusiasm about appointing Judges anywhere; but when disputes arise between the states, or between a state and the Commonwealth, there will be much enthusiasm in finding out the value of the power which is to decide between them. Under these circumstances I think it well to fix a maximum, and to leave to the development of events the appointment of new Judges, if that becomes necessary. The position of the right honorable member (Mr. Reid) is quite logical. If you follow it to the bitter end, all the arguments in favour of appointing the tribunal and fixing the number of its members point to the necessity of making that number permanent. Still, we have to add to that a little, and, having provided that this number shall be fixed, I think we should leave it to the development of events to decide whether more Judges should be appointed. For my part, I hope the clause will remain as at present. To say that the Commonwealth can decide as they please would be practically to take away a large proportion of the protection. They might appoint one man to do what they wanted. They might, of course, appoint
four men to do what they wanted, but, still there is a certain safety in
numbers. I agree with Mr. Reid that, after all, the opinion of one man may
be better than the opinion of a dozen but still, in the establishment of our
judicial tribunals, we have always found it necessary to appoint Judges in
numerical proportion to the importance of the work they have to do. Under
these circumstances, I think four is the lowest number we should fix in the
first instance.

Mr. MCMILLAN (New South Wales). -

As there seems to be some diffidence and modesty on the part of legal
members in dealing with a question of this kind, I might be allowed to
wind up the debate. It seems to me that the question of expense and of the
work to be done ought not to enter into this discussion. We have simply to
decide what is the number of Judges that will meet with the confidence of
the people of Australia. If I recollect rightly, there was a great deal of
discussion on this question before, and Mr Symon, who was the principal
member of the Judiciary Committee, had his views altered on that question.
It does seem to me, having regard to the momentous matters which this
tribunal will have to decide, that we must have: a sufficient number to give
that friction of human intellect which is so necessary. Of course, if you get
a Marshall as a Chief Justice, and two other men of equal calibre, that
might be sufficient, but taking things according to ordinary chances it
seems to me that we should require a tribunal of at least five Judges to give
complete satisfaction. Furthermore, although this is a court of a peculiar
character, I take it there will be cases of different kinds and, although I am
not a lawyer, I know that the legal fraternity give their attention to the
different views of any subject with which they have to deal. In a tribunal of
that kind you would probably have all the varieties of intellect and
knowledge necessary. But I doubt whether that would be so if the number
of Judges were, less than five. The whole question should rest on the
appropriateness of the number, and the legal members of this Convention
know how to deal with that point better than the ordinary layman.

Mr. BARTON (New South Wales). -

There is a difficulty arising out of this clause which has not yet been
pointed out. On the coming into force of this Constitution, it will be
necessary to constitute a Federal Court as soon as possible, because there
will be business coming to it by way of appeals from other courts, not to
speak of the possibility of cases arising under its original jurisdiction, that
will have to be attended to. As the clause stands now, the High Court is to
consist of a Chief Justice, and so many other Justices not less than four, as
Parliament may from time to time prescribe. The question has to be
considered whether the Judges, other than the Chief Justice, would not
have to be appointed after the passing of a prescriptive law by Parliament. In that case the functions of the Supreme Court, excepting in so far as the Chief Justice could exercise them, would not in the meanwhile come into operation. After the passing of a prescriptive law, the appointments would be made by the Governor-General in Council. This is a difficulty that may arise. Unless it is made clear that the Chief Justice and all the original members of the High Court are to be appointed in the first instance by the Executive, there is a danger of there being no Federal Court, excepting in so far as one man can constitute it, until a law has been passed by the Parliament.

Mr. ISAACS. -

At what salary would the one man constitute it?

Mr. BARTON. -

It is very hard to say. This is a difficulty that might very well be taken into consideration by the Convention. It has been arranged that we shall adjourn early to-day, and I thought that I might mention this matter, in order that some of my legal colleagues in the Convention might bring their acute intelligence to bear upon it to see if there is not some way in which the Federal Court could be constituted, at as early a period as practicable, of a Chief Justice and some minimum number of Judges.

Mr. ISAACS. -

That particular point was noticed by the Victorian Parliament, as will be seen from one of the amendments suggested by them.

Mr. BARTON. -

It has not been noticed in the Convention, and it was not noticed in the New South Wales Parliament. It is worthy of attention, because honorable members will see the immense importance of placing the Federal Court in such a position that it will be able to deal with the business that is brought before it at an early period. If that is not done, the business will have to wait until all the preparations are made for a general election, and until Parliament has dealt with other urgent matters and is in a position to pass the necessary Act. In the meantime the cases will either not be brought before the court at all, or those who have them in hand will suffer a denial or a delay of justice.

Mr. ISAACS. -

Will the honorable member look at the amendment suggested by the Victorian Parliament in clause 72? It was to insert after "Shall," in subsection (1), the words "have such qualifications as the Parliament may prescribe and shall."
Mr. BARTON. -
That would scarcely touch the difficulty, which is that until Parliament has passed a prescriptive Act no Federal Court can sit.

Mr. ISAACS. -
Of course, but the point was under consideration.

Mr. BARTON. -
I would suggest to honorable members that we should consider some modification of the clause, with a view of meeting that difficulty. My own view is that some provision should be inserted, by which there could be appointed, as early as possible, the Chief Justice and a minimum number of Puisne Judges-say three-and that that should be the number of the constituted court until Parliament thinks it necessary to make an increase. I throw this out as a suggestion before I move to report progress, because I think we are all interested in seeing that this matter takes proper shape. I beg now to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

REPRESENTATION OF QUEENSLAND.

The PRESIDENT. -
I have to report to the Convention the receipt this afternoon, from the Acting Premier of Queensland (Sir Horace Tozer), of a letter which I will ask the Clerk to read.

The CLERK then read the following letter:-

Chief Secretary's Office,
Brisbane, 25th January, 1898.

Sir,-With reference to my letter of the 29th September last, and to previous correspondence on the subject of the adjournment of the Federal Convention for the purpose of enabling representatives of this colony to take part in its deliberations, I beg now to inform you that, as soon as practicable after the return of the Prime Minister from England, a Bill, of which I enclose a copy herewith for your information, was prepared to provide for the representation of the colony at the Convention. The Bill was introduced, and read a first time, in the Legislative Assembly on the 11th November, and the second reading was moved on the 20th of the same month. An amendment proposed by Mr. G.S. Curtis, junior member for Rockhampton, having for its object the withdrawal of the Bill, was carried by 29 to 27.

The Government, having made a determined endeavour to give effect to the resolution of the Assembly with the result above indicated, did not feel it possible to do anything further in the matter, and it only remains for me
to express the sincere regret felt by the Government that their efforts in the cause of federation have not been supported by Parliament.

I have the honour to be,

(For the Chief Secretary) Sir,

Your most obedient humble servant,

HORACE TOZER.

The Right Hon. C.C. KINGSTON, P.C.,

President,

Australasian Federal Convention.

Mr. BARTON (New South Wales). -

I beg to move that the letter be recorded on the minutes.

Sir JOSEPH ABBOTT (New South Wales). -

At an earlier stage I predicted, not only in South Australia but at the Convention in Sydney, that there was no sincerity in the proposals of the Government of Queensland with regard to this question of federation. I pointed out over and over again that the Government of Queensland never submitted a proposal to the Legislature which they could reasonably expect would be accepted by the people of Queensland. It is idle to say that it was on account of the action of Mr. Curtis that the Bill was rejected; the Bill was rejected because the Queensland Government were afraid to trust the people with electing the members of the Convention. If in the earlier stages, after the agreement of the Premiers in Tasmania, the Government of Queensland had taken the same steps to seek the same legislation as the other colonies did, I have not the slightest doubt that they would have been successful with the Parliament of that colony. But what did they propose? They proposed to allow the two Houses to select members to send to the Convention. Naturally enough that was rejected by the people of Queensland. They have never yet made a proposal by which the people of Queensland have been offered an opportunity of selecting their representatives.

Sir JOHN FORREST. -

That was done in this Bill.

Sir JOSEPH ABBOTT. -

No. I maintain that the Government Bill did not do that. It did not give to the Queensland people that opportunity which Victoria, New South Wales, South Australia, and Tasmania have given to the people of those colonies. I am very pleased to have this opportunity of saying all that I desired to say on a previous occasion. I only hope the leader of the Convention will see his way to send a congratulatory address to Sir Horace Tozer for having
written this letter to the Convention.
Mr. WALKER (New South Wales) rose to speak.

Mr. HOWE (South Australia). -
Mr. President, I desire to ask you, on a point of order, whether this
discussion is in accordance with our standing orders?
The PRESIDENT. -
I think the discussion is in order in connexion with the consideration of a
communication from the Government of Queensland. It was my duty to
bring that communication before the Convention, and it opens the subject.
Mr. WALKER. -
With all due respect to my honorable and learned friend (Sir Joseph
Abbott), he has evidently spoken under a misapprehension. The very Bill
which was defeated was intended to carry out the intention settled upon by
the other colonies except Western Australia.
Sir JOSEPH ABBOTT. -
No.
Mr. WALKER. -
With regard to making Queensland one constituency, I may point out that
any one who knows anything about the politics of Queensland must know
that there are three divisions in that colony. At the present time Her
Majesty has the prerogative of dividing off from Queensland any portion of
it on receiving a petition from the inhabitants; but it came to the knowledge
of the representatives of Northern and Central Queensland that if
Queensland came into the Convention no separation of Queensland could
ever take place unless the Parliament in Brisbane consented, and that is
really the reason why-I think very foolishly-the representatives of Northern
and Central Queensland opposed the Bill. I believe that the Queensland
Government acted honestly in this matter right through. I believe in the
honesty of Sir Hugh Nelson. He has not been what you might call a strong
federationist, but he is an honorable man, and when he says a thing he
means it. I beg, as an old Queenslander, to repudiate the idea that the
Queensland Government has acted otherwise than honorably.

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Mr. BARTON (New South Wales). -
I would like to point out that what has been, urged by Sir Joseph Abbott
may be very truthful as comment, but it does not really affect a motion of
this kind, because it is our duty to record this matter on the minutes in
pursuance of the course which was followed before. We had
correspondence from Queensland which asked us to make an adjournment
for them, and we acceded to that request, first placing the correspondence on the minutes. It is only in accordance with the fitness of things, therefore, as well as an act of official courtesy, that the Queensland Government should send the communication which has been read, and that we should put that communication on the minutes, in order to make the history of the matter complete. This is the whole object of the motion. For my part, I do not find fault with the action of the Government of Queensland with regard to their Bill. I read the debate on that Bill carefully, and it seemed to arise from the unfortunate inter-provincial divisions which exist in Queensland—not locally defined, but, nevertheless, very strong—that such a course was taken as resulted in the defeat of the Bill. The Ministry themselves offered to listen to a proposal of the kind made by Mr. Curtis if brought forward in committees proposal for the division of the colony into three for purposes of voting. They said they might not vote for that proposal, but, nevertheless, they would accept the amendment if it was carried. They made the fairest possible offer, in my opinion, and it was not their fault that the proposal was not accepted. Of course I have nothing to say with reference to the attitude of the people of Queensland. How far they are in favour of federation will be disclosed when they take a vote on the subject.

The motion was agreed to.

The Convention adjourned at seven minutes past four o'clock, until Monday, 31st January.
Monday, 31st January, 1898.

Leave of Absence: Mr. Brunker - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

LEAVE OF ABSENCE.
Mr. ISAACS (Victoria). -

In the absence of the Right Hon. Sir George Turner, I beg to move the motion standing in his name:--

That one week's leave of absence be granted to the Hon. Mr. Brunker, on account of illness.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Friday, 28th January) was resumed on clause 71, which was as follows:-

The judicial power of the Commonwealth shall be vested in one Supreme Court, to be called the High Court of Australia, and in such other courts as the Parliament may from time to time create or invest with federal jurisdiction. The High Court shall consist of a Chief Justice and so many other Justices, not less than four, as the Parliament may from time to time prescribe;

and on the amendment suggested by the Legislative Assembly of New South Wales, the Legislative Assembly of Victoria, and the Legislative Council of Tasmania, to omit "not less than four."

The CHAIRMAN. -

In putting the question I will leave out "four," in order that the number may be afterwards decided.

Mr. BARTON (New South Wales). -

Since we met on Friday, following out the suggestion I then made that there should be some means by which the judicial machinery of the Commonwealth might be put in motion as soon as occasion required.

and also having in view the general feeling that seems to exist that a minimum and maximum number of Judges would be a wise thing to provide, I have drafted another amendment. Of course, before this amendment can be put, leave would have to be given for the present parliamentary amendment to be withdrawn, as mine is a prior amendment.
I suggest that the latter part of the clause be amended to read as follows:-

The High Court shall consist of a Chief Justice and three other Justices. The Parliament may, nevertheless, increase or diminish the number of Justices from time to time, but so that there shall be not less than three nor more than six Justices in addition to the Chief Justice.

Of course, the numbers are subject to alteration.

Mr. SOLOMON. -

How does the word "diminish" come in?

Mr. BARTON. -

Because Parliament may have increased the number to more than three in addition to the Chief Justice, so as to have, say, five Justices, and it may afterwards seem good for Parliament to decrease that number. The word "diminish" is, therefore, necessary to prevent the decrease below the minimum number, so that Parliament will have a free hand within the limits of the minimum and maximum prescribed.

Mr. KINGSTON. -

But not to affect any existing Judge.

Mr. BARTON. -

Of course. Parliament would not do that. The mode of expression I have used in my amendment is something like that adopted in a previous clause.

The CHAIRMAN. -

I am afraid I cannot put that amendment, because I think the committee have already decided that the words "and so many other Justices" shall stand. Therefore, we cannot amend any part of the clause prior to those words.

Mr. BARTON. -

In that case I shall have to make an alteration of my amendment.

Mr. SYMON (South Australia). -

I feel rather sorry that Mr. Barton has suggested this amendment. It is by no means an improvement on the clause as it stands, even if the intention was carried out. It would be better, I think, to leave the phraseology of the clause as it is, and provide "not less than three nor more than six," rather than to put it in this somewhat ambiguous way, by giving the subsequent power to the Parliament to increase or diminish the number from time to time, in an amendment which seemed to suggest, in fact required, the explanation which my honorable friend gave, that it was not intended to interfere with the Judges already appointed. I would suggest that even if the substance of the amendment were approved of, it would not be advisable to insert it in exactly the shape in which Mr. Barton has read the amendment. But I entertain also an objection to the substance of the amendment. In the first place, although perhaps not so strongly, I think it is
inadvisable to reduce the number of Justices from four to three. I was originally of opinion, when the Judiciary Committee discussed the matter at some length, that probably the Chief Justice and two other Justices might be a sufficient minimum. It was then pointed out very forcibly that it was contemplated—of course, quite irrespective of appeals to the Privy Council—to clothe the High Court of the Commonwealth with appellate jurisdiction from all the states courts, so that this tribunal of three would be sitting as a Court of Appeal from judgments delivered certainly by Full Courts of three Judges in the states, and, in the case of Victoria and New South Wales, by courts, I think, of a larger number. The actual number was pointed out at the Judiciary Committee—I do not at this moment recollect it. That view of the matter was very forcibly impressed on us, and the result was we felt that, in order to create—quite irrespective of the matter of Appeal to the Privy Council, on which difference of opinion might very well be entertained—it was desirable to have a strong Federal Court, a court not only strong in ability, but strong also in numbers, which undoubtedly adds to the strength of any tribunal or any body of men. Of course, if you go on reducing it to its smallest dimensions, you may say that if you have a sufficiently strong Judge, one Judge would be ample, but I do not think that would commend itself to honorable members. We often say that the best government in the world is the government of a despot, so long as you get a benevolent and enlightened despot, and so, if you could get that ideal man of sufficient strength and power and ability, you might be able to constitute the one man a High Court which would give universal satisfaction. But I think all of us will agree that, where you have a tribunal which is to be the interpreter of the Constitution, which is to be really, as between the individual citizens and the Commonwealth, the guardian and security of their liberties; and which is to be, as regards the states, the guardian and security of their interests and their rights; then I think it is well to secure not only intellectual power and judicial eminence, but to add to that, within, of course, reasonable limits, the numbers that would create—I use the word without any apology—an imposing tribunal. Now, those were the reasons which influenced us, and which have confirmed in my mind the desirability of retaining the number of Justices of the High Court that is in the measure as it now stands before us—the number which was in the Bill of 1891, a minimum of four; and I feel perfectly certain that if we do that we shall, so far as its composition and so far as its constituent elements are concerned, create a tribunal which will inspire confidence amongst the people of United Australia. The only reason, the one argument, which has been urged
against having four Judges is the matter of expense—that by reducing the
number to three, or, as my honorable friend's proposal makes it, to four
altogether, we shall be economizing. Now, what would the economy be?
What is it suggested as probable—I do not say final—the salaries of the
Justices of the High Court may be? Well £15,500 a year. If you are paying
the Chief Justice £3,500 a year—
Mr. WALKER. -
That would not be enough.
Mr. SYMON. -
Well, of course, I am assuming that if you did pay your Chief Justice
£3,500 a year, and each of the other Judges £3,000 a year, you would get
then the cost of the Judiciary, for the Judges, at some £15,500 a year. Now,
by adopting Mr. Barton's amendment you will be saving £3,000 a year.
Sir WILLIAM ZEAL. -
Are the salaries fixed, then, already?
Mr. SYMON. -
I am afraid the honorable gentleman has not been doing me the
compliment of listening to what I have been saying.
Sir WILLIAM ZEAL. -
There is nothing stated about salaries in the Bill, is there?
Mr. SYMON. -
Nothing whatever. I have been assuming. How much does my honorable
friend think he would save by cutting off one Judge?
Sir WILLIAM ZEAL. -
If we could do away with the whole lot we should save a good deal.
Mr. SYMON. -
My honorable friend does not want to see justice administered at all. Like
the Gentiles, he seems to be a law unto himself, and he would like to be a
law to everybody else.
Sir WILLIAM ZEAL. -
We are better off without the lawyers. They take up all the time of the
House.
Mr. SYMON. -
That is a matter of opinion. I am addressing reasonable men, and I am
pointing out, in regard to the assumption that a saving of £3,000 a year
might be made, that that is not worth considering as against the constitution
of a strong and acceptable court. Nobody knows better than the honorable
member (Sir
William Zeal) that we are now creating, from the states which now exist, a
nation as separate, in great national respects, as though it were upon
another continent. This nation, if it is constituted only of the states which are represented here, will have a population of something like 3,200,000 people. Now, on the other side of the world, there is a country called Scotland, which has a population of 4,000,000, and in that country there are no less than thirteen Judges. The cost of judicial salaries there amounts to £50,000 a year, of which the Lord Justice-General gets £5,000, and the Lord Justice Clerk £4,800. In addition to the High Court, there are also the Sheriffs courts, which are in some respects analogous to what our state courts will be, and which cost something like £20,000 more. If the tribunal which we are creating would cost £15,000 a year, my honorable friend's proposal would result in a saving of £3,000 a year, or, if the number of Judges were cut down to two, of £6,000 a year. I think that we shall be doing well if, in order to create such a lofty and powerful tribunal as each one of us desires, we give it a constitution which will clothe it with the confidence and commend it to the acceptance of the people of the continent. It seems to me right that we should fix a minimum in regard to the appointment of Judges, because that leaves to the voice of the people the determination of what they think would be a sufficient number to make a competent court. We are asking the people to pass judgment upon this Constitution, and we ought, I think, to leave it to them to say what number of Judges will constitute a court which will meet with their approval. But it would be very inadvisable to fix a maximum. Whether we should appoint two, three, or four Judges is a debatable matter; but I beseech honorable members not to introduce a provision fixing a maximum number, because that will have the effect of limiting for all time, notwithstanding any expansion that may take place in the judicial business of the country, the number of Judges constituting the court, unless an amendment of that nature has been taken that in framing these provisions expense should be cut down as much as possible. The method adopted in the United States of having circuit courts, and so on, all over the country has been wiped out here, so that the Federal Parliament may save that expense, and the Parliament has been given power to vest the judicial control of matters not to be dealt with by the High Court in the state courts. I therefore hope that my honorable friend will not press his amendment in the shape in which it is now, and that we shall fix a minimum but not a maximum.

The CHAIRMAN. -

I find that the amendment suggested by the honorable and learned member (Mr. Barton) can be put if the amendment now before the Chair is withdrawn. The question before the Chair is the omission of the words "not less than," with a view to decide whether there should be a fixed number or a minimum.
Mr. MCMILLAN (New South Wales). -

I think we had better test the feeling of the committee on the clause as it stands. It is about time that we cane to a vote. It seems tome that all the arguments which have been used go to affirm the wisdom of the original provision.

Sir WILLIAM ZEAL (Victoria). -

I trust that the Convention will not agree to the proposal that there should be three Judges and a Chief Justice, because two will be ample. There may be no work for this court to do for the first two or three years, and is the Constitution to be so overweighted with expense as to be discredited before the people? What led to the rejection of a former Constitution? It was the enormous expense which it involved. It has already been said that these judicial offices have been allotted.

Mr. BARTON. -

Who says that?

Sir WILLIAM ZEAL. -

It is common talk out-of-doors. I can only tell honorable members what I hear. What is the position of affairs at the present moment? In this colony we have six Judges—a Chief Justice and five other Judges; and in New South Wales they have, I believe, six Judges and a Chief Justice. Are we to multiply these legal officers until the colonies cannot bear the load? Is it necessary that this enormous expense should be created? It seems to me that it would be better that there should be some small amount of injustice perpetrated than that the colonies should be weighted down with an expenditure. Honorable members are proposing now to overload the Constitution, as its provisions contrast with the Judiciary of Canada.

Mr. ISAACS. -

Canada is very greatly weighted with Judges.

Sir WILLIAM ZEAL. -

The Chief Justice of Canada gets only £1,650 a year.

Mr. ISAACS. -

Yes, but how many are there?

Sir WILLIAM ZEAL. -

And how many are we going to have? We are going to have a Chief Justice for every colony, and large executive appointments as well. It is all very well for the honorable and learned member to advocate the appointment of these Judges. He is one of the cloth, and this is only bringing grist to the mill. We notice, however, round the chamber that, when one lawyer gets up and swears that thing a black, there is always another to follow him and say that it is white. This is the way in which the
time of the Convention is wasted. I trust that the lay members of the Convention will not be parties to this extravagant and gross waste of the public funds. I intend to propose that the words not less than four be struck out.

Sir GEORGE TURNER (Victoria). -

As one of the cloth, I am glad upon this occasion to be able to agree with my honorable friend. I feel that this matter has now been thrashed out, and that it is time we should come to a vote. I am of opinion that this court will for many a long day have little or nothing to do. I cannot see where the work is going to come from until doubts and difficulties arise in connexion with the working of the Constitution. Therefore, in my opinion, two Judges and the Chief Justice will be ample. I voted for a small court in Adelaide, and I intend to do the same not if we come to a vote upon the question; but I am quite prepared to leave the whole matter to the Federal Parliament, because this is, I think, one of the cases where we may fairly trust them. I believe the Federal Parliament will be of the opinion that a Chief Justice and two Judges will be all that are required for many a long day, and when the necessity arises they will have full power to increase the number.

The CHAIRMAN. -

Does the leader of the Convention desire that the amendment be withdrawn?

Mr. BARTON. -

It seems the general desire to take a vote upon the clause as it stands. I prepared the amendment with a view to meeting what appeared to be the drift of debate, but the debate is now taking a different drift, and I am not responsible for that.

Mr. TRENWITH (Victoria). -

In Adelaide I voted for the clause as it stood, and I propose to do the same again now. The remarks of the honorable member (Sir William Zeal) were extremely unwise and ill-judged when he referred to talk outside about the appointments to these offices having been allotted. That is so absurd an idea that it is difficult to imagine that there is such talk outside; but, at any rate, if there is it ought not to be repeated by members of the Convention.

Sir WILLIAM ZEAL. -

"A Daniel come to judgment."

Mr. TRENWITH. -

We must consider what this court will be, how important its functions, and how necessary it is that it should inspire complete confidence in the
people. From the first it is to be the custodian of the Constitution. It must decide upon all occasions whatever questions of constitutional difficulty arise. Parliament itself may offend against the Constitution, and the court will then have to curb it. I think it highly improbable that the Federal Parliament will desire to violate the Constitution, but if it did it would have a distinct interest in limiting the number of Judges, and in influencing their mental complexion. Therefore, while we may assume that at the first the court will not have very much outside business to do, it is reasonable to think that constitutional difficulties at first will be more numerous than they will be later on when the states become better acquainted with the working of the Constitution. It is while the Constitution is new, while there is perhaps uncertainty in the minds of the people, and possibly also in the minds of the Federal Parliament, as to its exact bearing, that this court should be strong and capable, if need be, of putting a proper curb upon the action of the Federal Parliament and upon the action of the states. It has been said that this discussion has lasted a long time, but the subject is so important that I felt bound to offer these few remarks before I voted on the clause. We had better spend a few thousands of pounds a year more than is absolutely necessary to secure that certainty which would come from having a court against which no person could cavil.

**Sir JOHN FORREST (Western Australia).** -

It seems to me that if we provide in the clause that there shall be a Chief Justice and not less than two Justices, we shall not be in any way tying the hands of the Federal Parliament. On the initiation of the Federal Government there may be difficulty in filling up a number of offices suitably or at once. If a Chief Justice and two Justices were appointed, the Federal Parliament could at anytime appoint more if necessary. It has been argued that a maximum should be fixed, but that is not essential. An Act of Parliament would have to be passed to provide for the salaries of the Judges, and there is a sufficient security against the appointment of too many Judges. If we provide for the appointment of a Chief Justice and not less than two Justices, we shall, I think, do all that is necessary to serve the purposes of the Federation.

**Mr. KINGSTON (South Australia).** -

With reference to what has fallen from Sir John Forrest, I would say that it is of considerable importance that we should fix a maximum as well as a minimum. Unless we do that, we shall place in the hands of the Federal Parliament the power to control, by additions to the Federal Judiciary, the findings of that body in a way that is most undesirable.

**Mr. SYMON.** -

So we, would in any case within the limits of the maximum.
Mr. KINGSTON. -

I acknowledge that; but once the maximum is reached the Federal Parliament could not interfere any more. It was well pointed out by Mr. Isaacs that American history affords instances in which this sort of thing has been attempted. I think the honorable member mentioned one case in which it was done. He laid great stress on the possibility, unless you provide a minimum, of the federal authority refusing to fill up a vacancy, and in that way obtaining control of the Federal Court. Bad as that may be, it is not attended with half the risk that will arise if you give the federal authority absolute powers as regards the increase of the number of the Judiciary. It may happen during a contest between the Federal Government and the state, that a vacancy may be caused by the death of a Judge whose decision has been obnoxious to the federal authority. The vacancy might not be filled up. But give power to the federal authority to increase the number of the Judiciary to an unlimited extent, and you give an even greater power than is possessed by certain Governments with reference to additions to a nominee Chamber, or by the Imperial Government with reference to the creation of new lords. We must consider the fact that this body is to be created for the purpose of holding the scales fairly between the states and the Federation. At any rate this is one of its purposes. If in the Constitution you give the Federal Executive-a possible party in a serious conflict between the states and the Federation-an unlimited power to increase the number of Judges it seems to me that you will be placing in the hands of the federal authority a power that it is not necessary it should have, and which would be capable of being exercised to the very serious disadvantage of the states, who should be equally protected under the Constitution.

Mr. ISAACS (Victoria). -

I desire just to say one or two words that have been called forth by the remarks of Sir William Zeal, who, on this occasion, as on some others, has mistaken some strong personalities for arguments. They are weak arguments but strong personalities.

Sir WILLIAM ZEAL. -

Then they would not influence you.

Mr. ISAACS. -

I am sure that reason seldom influences my honorable friend.

Sir WILLIAM ZEAL. -

It never influences you.

Mr. ISAACS. -

I should like to point out in one or two words how utterly ignorant the
honorable member is of the judiciary system of Canada.

Sir WILLIAM ZEAL. -
I am following your example.

Mr. ISAACS. -
The honorable gentleman's position as President of the Legislative council of Victoria ought to teach him to keep order.

Sir WILLIAM ZEAL. -
So ought yours as Attorney-General.

Mr. ISAACS. -
In Canada there is a Supreme Court. In that Supreme Court there is one Chief Justice and there are five Puisne Judges. In the province of Ontario there is a Court of Appeal, with one Chief Justice and three Puisne Ju

Sir WILLIAM ZEAL. -
Tell us what their salaries are.

Mr. ISAACS. -
In the province of Quebec there is a Court of Queen's Bench, with one Chief Justice and four Puisne Judges, and then there is a superior Court strongly analogous to our Supreme Court, with one Chief Justice and twenty-seven Puisne Judges. In addition to that, there is a Justice of the Vice-Admiralty Court; and yet Sir William Zeal wants the committee to believe that we are going far beyond Canada. I mention these facts to show how much weight can be attached to the honorable member's argument.

Mr. HOLDER (South Australia). -
I do not wish to delay the vote, but I desire to remind honorable members of the intimation that I gave on Friday, that I intend to support the retention in the clause of the words now under discussion, but that I shall afterwards propose the insertion, after "than," of the words "two nor more than." The latter part of the clause will then read-
so many other Justices, not less than two nor more than four, as the Parliament may from time to time prescribe.

Dr. COCKBURN (South Australia). -
It is very desirable that we should fix a maximum, because, in such a vast territory, the most plausible pretexts may be advanced at any time for an increase in the number of the Federal Judiciary. We shall, I presume, have circuit courts, and, under the plea of adding to the number of circuits, it would be possible to increase the Federal Judiciary almost to an indefinite extent.

Mr. SOLOMON (South Australia). -
I have listened with a great deal of attention to the remarks of the
honorable members who have preceded me in this debate, and I am rather inclined to think that, although this sudden cry of economy may be very popular in some quarters, we can obtain economy in the establishment of the Federal Judiciary at far too great an expense. The Bill drafted in 1891, like the Bill that is now before us, provided for one Chief Justice and four Judges as a minimum, and that seems to me to be fair and reasonable. I cannot for the life of me understand why honorable members should insist so strongly on economy in connexion with this very important matter.

Mr. ISAACS. -

It is most important to the smaller states, too.

Mr. SOLOMON. -

It is important to all the states, and more particularly the smaller states. The other day we passed, with hardly any comment, a clause which provided for the payment of the members of both Houses of the Federal Parliament at the rate of £400 a year. That is a great deal more than is paid to the members of the local Parliaments, and it will involve an expenditure of about £50,000 a year. The Members of Parliament can be replaced at any time, and they will be of very little moment individually as compared with the Judges of the Supreme Court. I am surprised that this cry of economy has been raised on so important a point. It is all very well to say that for years to come the Federal Court will have nothing to do, but, as Mr. Trenwith said just now, during the first years of the Commonwealth that court may have some most difficult and intricate questions submitted to it in regard to the interpretation of the Constitution.

Mr. BARTON. -

Those will be the most critical years.

Mr. SOLOMON. -

I agree with the honorable member. In the first few years when we have just come together, and before the little roughness have been smoothed over, there will be more liability to friction as between federal and state interests than subsequently. To kick up such a fuss, if I may use so common a term, about an expenditure of £15,000 or £16,000 a year on the Federal Judiciary, to which we shall look for protection of the interests of the various states which may be, and will be in the Lower House, represented in an unequal manner in the Commonwealth, appears to me to be rather absurd. We shall not only look to the Federal Judiciary for the protection of our interests, but also for the just interpretation of the Constitution: This Federal Court will also be a Court of Appeal. Honorable members point to the few appeals to the Privy Council; but that is explained by the delay and expense, which places that mode of obtaining justice entirely out of the reach of men of moderate means. We have all
had a great deal to say about this Federal Court. Most of us, when we were candidates for election to the Federal Convention, placed great stress upon it as affording a means of bringing justice within easy reach of the poor man. It is a court to which persons could appeal who could not afford to go to the Privy Council. It is ridiculous to attempt to estimate the number of appeals to this court by the number of appeals to the Privy Council.

Any one who has had any experience of the difficulty and expense of appealing to the Privy Council will understand that advantage will be taken of this court by hundreds of colonists who simply could not afford to appeal to the Privy Council. I do not think that the minimum fixed is at all too high. With regard to the fixing of the maximum, I was surprised to hear our President, who has professed over and over again his willingness to trust the Federal Parliament, say that if there was no limitation the door would be left open for the Federal Parliament to do the grossest wrong.

Mr. HOLDER. -
It has been so in the United States.

Mr. SOLOMON. -
We have heard too much about the example of United States all through the meetings of this Convention. If the Constitutions of the United States and Canada has been burned before the Convention met we should have done more practical work, and we should probably have evolved a Constitution quite as suitable, if not more suitable, to the people we represent.

Mr. HIGGINS. -
We would not have had equal representation.

Mr. SOLOMON. -
I think we should. The people of Australia are, I think, even more strongly in favour of equality and fair play than the mixed population of the United States. The honorable member will, at any rate, admit that the principle of equal representation in one House has been conceded by all sections.

The CHAIRMAN. -
The subject of equal representation is hardly relevant to this clause.

Mr. SOLOMON. -
The Federal Judiciary will have to interpret the Constitution, and I think, therefore, that the question of representation has a bearing on the clause. I do not wish, however, to follow the example of some honorable members by occupying the time of the Convention at any great length. I shall vote for the clause as it stands. It is a wise provision—it has been carefully
framed, and I think that it will commend itself to the people of the colony.

Mr. OCONNOR (New South Wales). -

I intend to vote for the clause as it stands, but I wish to call the attention of Mr. Symon to the form of the amendment that Mr. Barton has suggested. The substance of the amendment should be made to accord with the sense, and with this difference. Under the clause as it now stands it will be impossible for the Federal Government to appoint Judges or the Chief Justice until Parliament has passed an Act. It might be a very desirable thing to appoint Judges before Parliament has an opportunity of passing and Act, because immediately on the establishment of the Constitution a number of matters will be withdrawn from the jurisdiction of the local Judges. In a variety of cases the jurisdiction of those Judges will no longer exist. It is highly desirable that that state of things should be provided for by giving the opportunity and power to the Federal Government, and before Parliament has actually time to pass a Bill, to make these appointments. The difference between the clause as it now stands, and the amendment of the honorable member (Mr. Barton), is this, that as the case now stands, nothing can be done until Parliament fixes the number of Judges. After federation, as the honorable member (Mr. Barton) proposes, the substance will be retained exactly in the same way, but the Government will then have power to appoint these new Judges in addition to the Chief Justice, and then their remuneration and other matters will be fixed by Parliament afterwards. It is only a matter of form, but it is a matter of very great importance with regard to the powers exercised by the Federal Parliament. I would suggest to the leader of the Convention that he might modify his amendment, which could be easily done, so as to accord with what I think is the general feeling of the Convention that the clause should stand as it is, but that we should put it in such a form that the powers might be exercised at once instead of waiting until a Bill is passed by Parliament. The clause would then read: The High Court shall consist of the Chief Justice, and not less than four other Justices. The Parliament may nevertheless increase the number of Justices from time to time."

Mr. ISAACS. - I hope no Judges will be appointed until Parliament meets.

Mr. OCONNOR. -

It is a matter of great importance, and I think it wants pointing out.

Mr. BARTON (New South Wales). -

I do not want to prolong the discussion, but if there is no power taken to constitute a Supreme Court which can sit as a Full Court with the powers
given here, cases may arise in which the absence of such a court would breed disorder. The only way out of the difficulty is to allow the Executive to make a complete court in the early stages of the Federation, in order that such important business as may arise may not be left undealt with. That is the object of what the honorable member (Mr. O'Connor) has read out. It is not to interfere with the question of a minimum, but to prevent such a state of things arising as would occur if Parliament delayed to pass a Bill to deal with the judicial offices, and, in the meantime, there being no appointments made, business might arise the non-dealing with which might be disastrous.

Mr. ISAACS. -

The honorable member does not intend to move that now, until we deal with the other question of "not less than."

Mr. BARTON. -

I shall vote now for the retention of the number four; but I wish to point out with regard to this suggested amendment that, unless we adopt some such form, a difficulty might arise and lead to disaster.

Mr. GLYNN (South Australia). -

I hope the Convention will not accept the amendment of the honorable member (Mr. O'Connor). There will not be an Executive that the people will be inclined to trust until Parliament assembles. Who is to say that the choice of the people will be a certain six persons? What will be the consequences of delay? Absolutely nothing. There will be no federal legislation to give a decision upon. There may be some appeals, but they would only be suspended for a few months. Parliament must meet in six months, and then there would be ample power to make provision for Justices. The body to have a say in these appointments should be an Executive which has the preponderant voice of Parliament supporting it; not an Executive Council probably appointed by the Governor-General. That would be at complete variance with all our notions of parliamentary government.

Mr. BARTON. -

The honorable member forgets that the Executive must be responsible to the Federal Parliament which meets in a few months.

Mr. GLYNN. -

Does the leader of the Convention suppose that the Governor-General would be justified in selecting executive officers before Parliament meets?

Mr. REID. -

He must do so.

Mr. GLYNN. -

I do not know so much about that; it would be opposed to all our notions
of parliamentary government. The primary duty of the Governor-General will be to call Parliament together, to know who is to preside over the departments.

An HONORABLE MEMBER. -

Who will look after writs and other machinery?

Mr. GLYNN. -

The first Parliament will be called together without delay. By the Constitution the Governor-General has an obligation laid on him to call Parliament together at an early date. With regard to the proposition of appointing two additional Judges with the Chief Justice, I will strongly support it. The honorable member (Mr. Isaacs) has quoted Canada, but he might have taken the example of the United States. There, the circuit courts do an enormous amount of business, and they only have two Judges in each circuit, who are paid less than £3,000 a year each.

Mr. ISAACS. -

I only cited Canada to show that the observations of the honorable member (Sir William Zeal) were not founded on fact.

Mr. GLYNN. -

The honorable member (Sir William Zeal) might have supported his arguments by the example of the United States, where the Judges are paid small salaries and do an enormous amount of business. Two Judges there do an amount of circuit business which will not be done by the court here for twenty years.

Mr. ISAACS (Victoria). -

I strongly support the view expressed by Mr. Glynn, and although I ventured to interject when the honorable member (Mr. O'Connor) was speaking, I quite grant that the Governor-General must nominate his Executive to bring the Parliament into existence. But to intrust an Executive that has never been appointed by the people-selected we do not know on whose advice or by what means—with the power of Constituting our Supreme Court—perhaps the most important appointments in the whole of the Commonwealth—would be subversive of everything we have been led to expect. The people would be very much astonished and grieved if we gave them a Constitution under which it could be supposed for a moment that the Judges of the Supreme Court were to be appointed by some power independent of and anterior to Parliament. Under such a law the people would have not a single word to say in the selection of the Supreme Court. What confidence would they have in such a court? I hope that such a proposal will not be made, and that the feeling of the Convention will be
seen to be utterly against the adoption of such a proposal. A serious blow would be stuck at the confidence of the people in the Constitution if we were not to frame our Constitution by adhering to the principles of responsible Government as we know them.

Mr. FRASER (Victoria). -

As a lay member, may I be allowed to say a word or two? I would support the honorable members (Mr. Barton's) view. The Constitution would be somewhat lop-sided at the start unless the Judiciary were appointed; but I would suggest to the honorable member (Mr. Barton) that he should subject the appointments to the confirmation of Parliament.

Mr. OCONNOR. -

That would be so necessarily. They could not draw any salary until an Act was passed.

Mr. FRASER. -

But that would get over the objection freely uttered that very bad appointments might be made. Therefore, if the appointments that might be made were subject to the approval of Parliament or the Executive of Parliament, that objection would not hold good.

Mr. HIGGINS. -

And they could not act in the meantime until Parliament met.

Mr. FRASER. -

Yes, give them the power to do so.

Mr. REID. -

Once appointed, by whomsoever appointed, the offices would be for life, subject to good behaviour. No Parliament in the world could move them except for cause.

Mr. FRASER. -

That could be easily altered, so as to make the appointments subject to the approval of Parliament.

Mr. REID. -

No, that would make them political officers.

Mr. FRASER. -

You are going to make them political officers in another direction, because the Executive of the Parliament will appoint them.

An HONORABLE MEMBER. -

We do not want that.

Mr. FRASER. -

How are you going to work the Constitution for the first few months?

Mr. ISAACS. -

Just as they did in the United States and Canada.
Mr. FRASER. -

With regard to the Judges, surely we need not run to the United States, and Canada, and other countries to find out how many Judges are required. We have our wits about us. We know that the Judges are not overworked now, and that they are not likely to be. Persons are frightened to go to law now. The reason why there are no lawsuits is that people are afraid to go to law—they know that if you win you lose, and if you lose you are done for.

Mr. REID. -

The honorable member is evidently a layman.

Mr. FRASER. -

I know the feeling of the lay public, and I know they will rather submit to an injustice, or arrive at some settlement, than submit to the law, which is so costly and uncertain. The Judges in Canada have not a tithe of the salaries paid in Australia. I think we can trust this matter to the Parliament, as a few thousand pounds either way are not worth talking about.

Mr. SYMON (South Australia). -

I suggest that we take a division on the clause as it stands, instead of enlarging the debate in connexion with these constitutional questions as to when the Judges should be appointed and as to the number of them. Even if appointed by the Executive, which might be appointed before Parliament assembles, the Judges could do no work until Parliament met and passed a Judiciary Act, which would give them a court to sit in and a court to enable them to do their business, so that it is not worth debating at present.

The amendment that the words "not less than" be struck out was negatived.

Mr. HOLDER (South Australia). -

I beg to move-

That the word "two" be inserted after the words "not less than."

I need not go over the debate again. The many speeches delivered show to my mind the importance of fixing a minimum. As to the importance of fixing a maximum I would direct attention to the speech of the Attorney-General of Victoria, who proved clearly the mischief that had arisen, not that might be expected to arise, in the United States for the want of a maximum. I hope, therefore, the Convention will accept the suggestion that the minimum should be two and the maximum four. It has been argued that four would be so small that an amendment of the Constitution will be required before many years pass. I think that for the next 50 years at least four will be an amply sufficient number. If no amendment of the Constitution is required for 50 years we may be very well content with the
work we have done here. I understand there are a number of honorable members who are prepared to fix two as the minimum, but who are not prepared to go so far as to fix the maximum at four. If the word "two" be inserted I will move the insertion of the words "not more than."

Mr. KINGSTON (South Australia.) -

It will be competent afterwards to move the omission of the word "four" in order to insert any other number.

Question - That the word "two" be inserted after the words "not less than" - put.

The committee divided -

Ayes ... ... ... ... 23
Noes ... ... ... ... 22

Majority for the amendment 1

AYES.

Berry, Sir G. Higgins, H.B.
Braddon, Sir E.N.C. Howe, J.H.
Carruthers, J.H. Kingston, C.C.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Deakin, A. Moore, W.
Forrest, Sir J. Quick, Dr. J.
Fraser, S. Reid, G.H.
Glynn, P.M. Turner, Sir G.
Gordon, J.H. Walker, J.T.
Grant, C.H. Zeal, Sir W.A.
Hackett, J.W. Teller.
Hassell, A.Y. Holder, F.W.

NOES.

Abbott, Sir J.P. Leake, G.
Briggs, H. Lewis, N.E.
Brown, N.J. McMillan, W.
Clarke, M.J. O'Connor, R.E.
Crowder, F.T. Peacock, A.J.
Dobson, H. Solomon, V.L.
Douglas, A. Symon, J.H.
Fysh, Sir P.0. Trenwith, W.A.
Henning, A.H. Venn, H.W.
Henry, J.
Isaacs, I.A. Teller.
James, W.H. Barton, E.

Question so resolved in the affirmative.

Mr. HOLDER moved -
That the clause be amended by inserting, after the word "two," the words "nor more than."

Mr. ISAACS (Victoria). -

I should like to say one word with regard to this amendment. My argument in the Convention a few days ago has been used in a manner that is not warranted. I pointed out what a strain had been put upon the Supreme Court in America, and also that that was because of the insufficiency of the provisions in the American Constitution for amending that Constitution. It was acknowledged right through America that it was a wrong thing to treat the Supreme Court in the way they did by increasing the number of the Judges, not because the amount of work warranted that increase, but because this was the only practical way open to the American people of amending their Constitution. The evil was admitted to be a great one. But there was a greater evil behind it, namely, a continuous struggle for an alteration of the bench. America had just passed through a terrible civil war, and she did not want to have another struggle. The increase of the number of the Judges was an admitted evil, but it was resorted to in order to avoid a still greater evil. We, I hope, will have no such excuse, but the people of the Commonwealth will be free to increase or to refuse to increase the number of their Judges, just as we in our colonies are free to increase or decrease them at the present time. There is no temptation whatever for us to increase or decrease the number of our Judges for political purposes.

Mr. FRASER. -

No Government dare do it.

Mr. ISAACS. -

Exactly; no Government dare do it. The people would not allow them. If it were suggested for one instant to put an additional Judge on the bench for the purpose of over-riding the decisions of the court upon any particular question, t

Mr. SYMON (South Australia). -

My honorable friend (Mr. Holder) admits that his reason for this amendment is to guard the Federal Parliament we are creating from its own corruptibility. I say that that is a disgraceful ground upon which to base an argument, and this would be a disgraceful amendment to put in the Constitution for any such reason. We have no right to attribute to the Federal Parliament any such possibility of corruption. An attempt of the kind would, I am certain, result not only in the expulsion of the Government from power, but would produce a revolution. I do not think
that the people of this continent would tolerate even the semblance of such corruption. I cannot predicate conduct of that kind to the Federal Parliament. If I could believe such conduct to be possible I would not adopt Mr. Holder's amendment, but would wipe the High Court out of the Constitution altogether. Why is a limit inserted when if the number of Judges may be enlarged there is a possibility of corruption? If you fix the minimum at four it gives the Federal Parliament power, if it wants to corrupt justice on the bench, to do so. Either you must make the number an irreducible minimum, without a possibility of extension at all, or you must leave it as it is. There is no middle course unless you write on the face of this Constitution—"This Federal Parliament is likely to be corrupt."

Mr. REID (New South Wales). -

I simply wish to say, in reply to the honorable gentleman who has just sat down, at in my view the Federal High Court a vital point of security in connexion with the whole Constitution, and if it be right that there should be a minimum number of Judges, I think there should also be a maximum. I think so for many greater reasons than those which have been given. It is of no use for honorable members to point to the abuse of this provision in the United States and say "Such a thing will never happen here." We do not know what the vicissitudes of the future may be. Mr. Isaacs has shown that in a certain event, where popular feeling is highly excited, the way to secure an amendment of the Constitution is to secure a majority on the Supreme Court Bench. Well, we are very virtuous in our English communities, I have no doubt, but I think it is rather better that we should make the position of the Supreme Court absolutely certain, as nearly as we can, by preventing any danger of swamping the bench.

Mr. ISAACS. -

You would allow the bench to be swamped up to the number of six.

Mr. REID. -

You may be sure that if there are six such appointments open they will all be filled up. I do not contemplate a single good appointment under this Constitution remaining vacant.

Question-That the words "nor more than" be inserted-put.

The division bells having been rung,

Mr. HOLDER (South Australia) said -

I desire to ask leave, Mr. Chairman, to withdraw the call for a division.

The CHAIRMAN. -

The representative of South Australia (Mr. Holder) asks leave to withdraw his call for a division.
Mr. SYMON (South Australia). - 
I object.

Mr. FRASER. - 
Mr. Holder merely wishes to save time.
The committee divided-
Ayes ... ... ... 14
Noes ... ... ... 28
Majority against the amendment 14
AYES.
Berry, Sir G. Kingston, C.C.
Braddon, Sir E.N.C. Moore, W.
Carruthers, J.H. Quick, Dr. J.
Cockburn, Dr. J.A. Reid, G.H
Fraser, S. Zeal, Sir W.A.
Glynn, P.M.
Higgins, H.B. Teller.
Howe, J.H. Holder, F.W.
NOES.
Abbott, Sir J.P. Henry, J.
Barton, E. Isaacs, I.A.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Clarke, M.J. McMillan, W.
Crowder, F.T. Peacock, A.J.
Deakin, A. Solomon, V.L.
Dobson, H. Symon, J.H.
Douglas, A. Trenwith, W.A.
Forrest, Sir J. Turner, Sir G.
Fysh, Sir P.0. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W.
Hassell, A.Y Teller.
Henning, A.H. O'Connor, R.E.
Question so resolved in the negative.

Mr. HOLDER. - 
Now, I assume, sir, that the word "four" will come out.

The CHAIRMAN. - 
The word "four" must come out, otherwise it will read nonsense.

Mr. HOLDER moved -

That the word "four" be omitted.
The amendment was agreed to.
The clause, as amended, was adopted.
Clause 72. The Justices of the High Court and of the other courts created by the Parliament:
    I. Shall hold their offices during good behaviour:
    II. Shall be appointed by the Governor-General in Council:
    III. Shall not be removed except for misbehaviour or incapacity, and then only by the Governor-General in Council, upon an address from both Houses of the Parliament in the same session praying for such removal:
    IV. Shall receive such remuneration as the Parliament may from time to time fix; but such remuneration shall not be diminished during their continuance in office.

Amendment suggested by the Legislative Assembly of Victoria-
    After "shall" insert "have such qualification as the Parliament may prescribe, and shall."

Mr. ISAACS (Victoria). -
The Legislative Assembly of Victoria has made this proposal, and I think it will be found to be a necessary one unless we decide to do what I hope we shall not decide to do, namely, to allow the Executive to appoint the Judges before Parliament has any voice in the matter. Clause 71 provides for the number of Judges, but there is no word in the Constitution as to whether they may be appointed straight away or whether you must wait for Parliament to make any provision with regard to their qualifications. There is no doubt that Parliament will have to make a provision in any case for their salaries, but I think we ought to make it perfectly clear that they are not to be appointed until Parliament has a chance of saying something about it, and at the very outset I think we ought to leave the qualifications of the Judges in the hands of some persons responsible to the people. The Legislative Assembly of Victoria, having seen the possibility of appointments being made before Parliament meets, before responsible Ministers are appointed, has made this proposal, which honorable members will find on page 44 of the schedule of suggested amendments. The reason why the Legislative Assembly of Victoria thought it necessary and important that these words should be put in was because it signifies on the face of the Constitution that the appointments are not to be made except with the consent of Parliament. I therefore support the proposal.

Mr. OCONNOR (New South Wales). -
This amendment is not in the least degree necessary, even in order to carry out the object which my honorable and learned friend (Mr. Isaacs) has in view. According to clause 71, as it has been carried, it is impossible
for these Judges to be appointed until Parliament has fixed the number of them.

Mr. KINGSTON. -
   No.

Mr. ISAACS. -
   Why?

Mr. OCONNOR. -
   I beg your pardon.

Mr. KINGSTON. -
   Not more than two.

Mr. ISAACS. -
   You can appoint the Chief Justice and two Judges.

Mr. OCONNOR. -
   That is a minimum, but the actual number to be appointed must be such as Parliament may determine.

Mr. ISAACS. -
   Parliament cannot diminish this. You can only appoint a Chief Justice and two Judges.

Mr. OCONNOR. -
   The Chief Justice may be appointed, but the number of the other Judges is not being fixed, except that a minimum of not loss than two is fixed. I really cannot understand this fear that the first Executive will do something extraordinarily wrong in the appointment of the first Judges. No salary can be voted or paid until the Parliament has met, and the Federal Executive will have to face the consequences of that as well as every other executive act when they meet the Parliament. To insert a pro-vision of this kind, not for the direct object which the words would suggest, but for the indirect object of tying the hands of the Executive till Parliament has met, seems to me altogether unworthy of the trust we are supposed to place in the Executive which will be created under the Constitution. There is no necessity whatever to place these words in the first subsection, because of course Parliament will have the power to decide what the qualifications of the Judges shall be. Parliament, in deciding to make these appointments and the way in which they are to be made, necessarily, has the power to declare what qualifications shall be necessary.

Mr. MCMILLAN. -
   Can you appoint a Chief Justice without knowing what he is going to get?

Mr. KINGSTON. -
   You can offer it to him.

Mr. OCONNOR. -
Of course you can. As my honorable and learned friend (Mr. Symon) remarked, it will be impossible for the Judges to exercise any jurisdiction till a statute has been passed fixing the procedure by which they are to move. I would suggest to my honorable friend (Mr. Isaacs) that the object he has in view is quite sufficiently attained by the clause as it is, and that to insert a provision of this kind face of it, but for an indirect object which is altogether unworthy of the Constitution.

Mr. ISAACS. -

Do you think that the Chief Justice could not be appointed without the insertion of these words?

Mr. OCONNOR. -

I said before that the Chief Justice can be appointed, but he can perform no duties, and his remuneration cannot be in any way fixed until Parliament meets.

Mr. ISAACS. -

Why should it be so?

Mr. SYMON (South Australia). -

If the desire is to prevent the possibility of the temporary Executive, which will be constituted before the meeting of Parliament, or to put it in a direct shape, to say that they shall have no power to do anything of the kind, I would ask my honorable and learned friend (Mr. Isaacs) to direct his attention to the whole scheme in the Constitution, the basis of which is that nothing is intended to be done in regard to the Judiciary till Parliament has met. First of all, you must single out some one to take the office, and get a kind of private understanding—if we can attribute anything of that kind, for the possibilities of human nature are immense—but there would be no salary. In the second place, I doubt very much if either the Chief Justice or either of the two Judges could be appointed legally under the Constitution till Parliament has met. We must look at this measure not as a rigid Act of Parliament but as a Constitution, and the whole intent of the Constitution is that no such appointment is to be made till Parliament has provided the judicial machinery; the Act called in the United States the Judiciary Act, under which the Judges hold the appointments, and by virtue of which they exercise their offices. Suppose you appoint Judges, it would be a perfectly idle performance; they could do nothing; they would be simply floating in an uncertain state, and till Parliament met there could be no conclusive appointment to office, because there would be no salary. The whole thing would simply be nugatory. If my honorable friend's object is simply to bring about that result, you might as well put in the Constitution
what the Judges are to wear. You might as well prescribe whether the Judges shall wear wigs and gowns.

Mr. ISAACS. -

Why was it put in by the Judiciary Committee that their remuneration shall be such as Parliament provides?

Mr. SYMON. -

It was done to avoid the possibility of it being left to the Executive, or of the Executive assuming that they could fix it, and leave it to Parliament afterwards. The attire of the Judges may very well be left alone; at any rate, I appeal to my honorable and learned friend on broader grounds than that. I say to him the intention of this provision is, seeing that there is no judicial machinery, that Judges shall not be appointed at all till Parliament has met.

Mr. SOLOMON. -

Is there any doubt about it?

Mr. SYMON. -

No doubt whatever.

Mr. REID (New South Wales). -

I would suggest to my honorable friend (Mr. Isaacs) that this is not the place to deal with that very important question as to what shall be done by the first Executive prior to the assembling of Parliament.

Mr. ISAACS. -

I am not proposing that.

Mr. REID. -

It is a matter of some importance, and I rather sympathize with the view which my honorable friend takes. It will happen inevitably that the first Government will be chosen by the Governor-General, in the absence of any electoral body or parliamentary body. But it may be very desirable to insert in this Constitution that such an Executive, beyond the necessary acts of government, and the acts of calling Parliament into existence, shall not have power until Parliament is assembled. And the moment Parliament assembles they become responsible Ministers, because if Parliament chooses to keep the Ministry in office by not expressing any disapproval of them, from that instant they become responsible Ministers. It is too serious a difficulty to be dealt with in a piecemeal way. I hope we shall try and get through this clause with some expedition.

The amendment was negatived.

Amendments suggested by the Legislative Assembly of Victoria-

After "behaviour" insert "but may be removed by the Governor-General in Council upon an address from both Houses of the Parliament in the same session praying for such removal."
Mr. ISAACS (Victoria). -

I would like to explain why the Legislative Assembly of Victoria suggests the insertion of these words. In the United States-

Mr. FRASER. -

We have had enough of the United States—we know all about the United States.

Mr. REID. -

Why don't you give Canada a turn?

Mr. ISAACS. -

I have no doubt that the honorable member's knowledge of Canada is about equal to his knowledge of the United States. In the United States Constitution it is provided that Judges shall hold their office during good behaviour. No mode of removing them is mentioned, except that by a construction of the Constitution they are held as civil officers to be liable to impeachment. Impeachment means that the House of Representatives may make a charge against a Judge, and when it does the Senate sits as a court and decides the question. There is no appeal from the decision of the Senate. In England the provision is that the Judges hold their office during good behaviour; but they may be removed upon a vote by both Houses of Parliament. In all the colonies it is the same. In this Constitution the wording of the section introduces a new feature, and it seems to me a very difficult one. It is quite right to say that the tenure shall be during good behaviour. It is also quite right to say that the Judges shall be removable by the Governor-General in Council upon an address from both Houses of Parliament in the same session praying for such removal. But the difficulty that I see here as likely to arise is, that the Judges can only be removed by the Governor-General acting upon an address from both Houses, provided that their Honours have been guilty of misbehaviour or incapacity. Now, it does not make the removal final. It does not make the judgment of the Governor-General in Council and of the two Houses of Parliament final. That is the weak spot in this proposal. I can conceive that a Judge—if such an unfortunate thing should happen, as I hope never will, as that a Judge should be removed upon an address from both Houses—will turn to this Constitution, and he will see that the Judges are to hold their office during good behaviour and that they shall not be removed except for misbehaviour or incapacity, and then only by the Governor-General in Council upon an address from the two Houses of Parliament.

Mr. SYMON. -

Those words make the decision final.

Mr. ISAACS. -

No. The honorable member will forgive me for saying that there is an
element of doubt. It may be construed that that is so, but I doubt it. The Judge may say:"You have your two Houses and the Governor-General, and you have only power to remove provided I am guilty of misbehaviour or incapacity." Where is there anything in the Constitution making the two Houses a court of justice, as in the United States making the Senate a court of justice? I strove to put this matter to the Convention on a former occasion, and I would ask them to consider it again. In Canada it is not so, in England it is not so, and in all the colonies it is not so. The Judges are appointed during good behaviour, "but"-this is the word used-they may be removed upon an address from both Houses. Now, it is said, and said very fairly, that you are not to have the Judges dismissed upon the mere whim of the two Houses of the Commonwealth Parliament, but I would first of all like to remind my honorable friends that no other proposal is made; and, secondly, that there is the Senate whose concurrence is necessary to their removal. Now, the Senate is the States House, and it will take care that no Judge is removed because-I am merely putting, a conjectural case-he has given a judgment in favour of a state as against the Commonwealth.

Mr. SYMON. -

Do you contend that a Judge should be removed by a majority of both Houses, even though he has not been guilty of misbehaviour?

Mr. ISAACS. -

I should say "No" to that, but I say that, as in England and in these colonies and elsewhere, you must leave the final determination whether he has been guilty of misconduct somewhere. If the question is not to be, finally concluded by the votes of the two Houses, then by what is it to be finally concluded? Take the case of a Judge who says:"It is true that the, two Houses have passed a unanimous vote for my removal, but I maintain that I have not been guilty of misbehaviour or incapacity. It is true the Houses have considered the matter with all the gravity, fairness, and deliberation with which two legislative bodies have to decide on so weighty a matter. Still I would appeal"-Where? To the Supreme Court, of which he is a member, and in the decision of which question every one of his brethren is interested. Now, sir, I would like to put that case seriously to my honorable friends. Are we to suppose that the two Houses of the Legislature will corruptly lend themselves to the removal of a Judge as for misbehaviour or incapacity when he is not fairly chargeable with this? Should we not leave the matter as it is left in England, as it is left in these colonies, and as it is left in Canada, under the 99th section of the Canadian Act, to the two Houses, one of which is there for the defence of state
rights? Suppose, to take the case of the danger which is apprehended, very lightly I hope, that a Judge gives a judgment which conflicts with the notions of the House of Representatives as to the validity of a Commonwealth law as opposed to the states, there is the Senate which has not only passed the law in question, but which is there to defend the rights of the states as against any proposal to remove a Judge, and I would seriously ask my honorable friends whether they would allow this Constitution to go into operation with so serious a question staring them in the face as that? I should say that every precaution should be taken to guard the Judges securely in their tenure, and they ought to be left to enjoy their tenure for life, subject only to removal for misbehaviour or incapacity. But I maintain that you must leave the final determination of that question in some responsible body. You must not allow the solemn verdict of two Houses of Parliament on this question to be challenged anywhere. If you do, what will be the result? To carry the case I have supposed one step further, the Judge is removed, or is attempted to be removed, by a vote of the two Houses. We must always suppose that any Judge would have the fullest and fairest opportunity of defending himself before the two houses. If the one House does not give him that opportunity I cannot but suppose that the other will. Now, I assume that these votes are passed, and the decree goes forth for his removal. He appeals to, the legal tribunal, and suppose that that legal tribunal decides that he has not been guilty of misbehaviour. He is restored to his position, but what a position him would be then! The two Houses of the Legislature, representing not only the people as a whole but the states as well, have said that the Judge ought to go, and if, owing to the action of the legal tribunal, he cannot be thus got rid of, I ask: would there be any longer any confidence in his judgment? He would be a marked man.

Mr. BARTON. -

Certainly he would be a marked man if he appealed to the bench against the decision of Parliament in such a case.

Mr. ISAACS. -

Yes; but if the decision was challengeable at all he would have the right to appeal.

Mr. KINGSTON. -

How do you propose to prevent its being challenged?

Mr. ISAACS. -

The amendment is to strike out the words "for misbehaviour or incapacity, and then only."
The CHAIRMAN. -

The honorable member (Mr. Isaacs) is referring to the wrong sub-section. Sub-section (1) is now before the committee—that the Judge may be removed by the Governor-General in Council.

Mr. ISAACS. -

It is the same point exactly. It is only putting this in another way. He may be removed by the Governor-General in Council "upon an address from both Houses of the Parliament praying for such removal."

Mr. REID. -

If you add to the words "praying for such removal," the words "upon the ground of misbehaviour or incapacity," I think you would get rid of the difficulty. Make it necessary that the addresses shall allege misbehaviour or incapacity.

Mr. ISAACS. -

I quite agree with my honorable friend (Mr. Reid). To remove any misconception, these words should be added, so that the Houses may show that they are not attempting to remove a Judge for anything but misbehaviour or incapacity.

Mr. OCONNOR. -

Do you put sub-sections (1) and (3) together?

Mr. ISAACS. -

Sub-section (3) would be practically unnecessary then, and I would be prepared to strike it out. I am quite prepared to accept the suggestion of Mr. Reid. What I desire to do is to prevent such a calamity, such an impasse, arising in the working of the Constitution, as that the decision of the two Houses of Parliament, representing the will of the people in its very highest form, should be challengeable in a court of justice on this question.

Mr. SYMON. -

You want to make the resolution of the two Houses final?

Mr. ISAACS. -

I want to put that beyond dispute.

Mr. FRASER. -

That will cause very great danger.

Mr. ISAACS. -

I want to follow the English Constitution, the 38th section of our own Constitution, and the 99th section of the Canadian Act. I want to lay it down distinctly that a Judge shall not be removed under any circumstances, except for misbehaviour or incapacity; but I want the verdict of Parliament—the verdict of the States House by itself, the verdict of the; people's House by itself, the conjoint, independent, and separate verdicts of these two
Houses to be final and unchallengeable. I am quite willing to accept the words suggested by Mr. Reid.

Mr. KINGSTON (South Australia). -

I think I am responsible to some extent for the form in which sub-section (3) now appears.

The CHAIRMAN. -

We are now discussing sub-section (1).

Mr. KINGSTON. -

Of course; but to a certain extent the meaning of sub-section (1) is controlled by sub-section (3), and it seems necessary to discuss the two together in considering what provision we are to make. I think the intention of the Convention at Adelaide was this: To prevent the Judges being removable at the whim and caprice of both Houses of the Legislature. If you give to the Federal Parliament the uncontrolled power of securing the removal of Judges by passing addresses for that purpose, you make the judicial position, altogether insecure, and, you undoubtedly place the Judiciary in a position in which they ought not to be placed. Each Judge should feel that as long as he is fit to discharge his duty, as long as he behaves himself in his high judicial office, he can; be touched by no one, either state or Federation. He need, fear no one-he will favour no one. At the same time, it would be highly undesirable, whilst limiting the power of the Parliament to interfere to cases of misbehaviour or incapacity to allow the decision of the Parliament on matters of that sort, which no doubt will be pronounced with due consideration of the gravity of the issues, to be challenged by any inferior tribunal elsewhere. I do not think, as the clause now stands, it would be capable of being challenged, but if it can be made clearer that the addresses of the two Houses are only to be passed on the finding of misbehaviour and incapacity, and that that finding once declared by those two bodies shall not be challenged in the slightest degree, well and good.

Mr. ISAACS. -

If the words suggested by Mr. Reid were added they would carry out that idea.

Mr. KINGSTON. -

I commend the matter to the attention of the Drafting Committee. I am inclined myself to think that the clause is clear enough at present, but if we could make it more clear so much the better. I would suggest that if we add after the words "misbehaviour and incapacity" the words "found and declared by both Houses of Parliament," or insert similar words at the end of sub-section (3), and in express terms state that the finding of the two
Houses on this subject shall not be challenged in any way, that might be an advantage. We are all agreed that it is desirable to protect the Judges so long as they behave themselves in the best sense of the term, but at the same time on this question of good behaviour or misbehaviour we should make the position of the Federal Parliament unchallengeable and without appeal.

Mr. FRASER (Victoria). -

I was very pleased indeed to listen to the remarks of the Premier of South Australia. To make the Judges amenable to a resolution, even of both Houses, which resolution might be passed on false evidence, would, I think, be a great mistake. Evidence might be trumped up by a Cabinet which was anxious to get rid of a Judge. Of course, I am putting an extreme case. A resolution might be passed by the House of Representatives in a hurry, and it might be submitted to the Senate on false evidence. The Judges would not be in a position to defend themselves properly. I think the clause as it stands is good and safe enough, and to make the Judges amenable to a resolution that might be rushed through in a hurry would be a very unsafe thing indeed. I therefore hope that the alteration suggested will not be made.

Mr. BARTON (New South Wales). -

I would like to suggest to my honorable and learned friend (Mr. Isaacs) that perhaps the amendment might come in a better place if it were, as he suggested it was in addressing the Convention, an amendment on the third of these sub-sections.

Mr. ISAACS. -

I do not care where it comes so long as it is inserted.

Mr. BARTON. -

If the amendment was proposed on sub-section (3) we should be enabled to pass the present subsection now. At the drafting stage I intend to transpose the first and second sub-sections, as they ought to have been transposed before. We might test this amendment on the third sub-section.

Mr. ISAACS. -

I have no objection.

Mr. BARTON. -

I take it that my honorable friend would wish the sub-section to read—

Shall not be removed except for misbehaviour or incapacity, but may be removed by the Governor-General in Council on addresses from both Houses of the Parliament, on the ground of misbehaviour.

Mr. ISAACS. -

That is not quite it.
Do I understand that that does not go far enough?

Mr. ISAACS. -

I think that the view of my honorable friend of transposing the second sub-section so as to be the first is a good suggestion. Sub-section (1) will then be sub-section (2), providing for the Judges holding their positions during good behaviour, and then my amendment could be inserted in subsection (2), as it is in the 38th section of the Constitution Act.

Mr. SYMON. -

Why not make it a separate sub-section?

Mr. ISAACS. -

I have no objection to that—I do not care where it comes in.

Mr. BARTON. -

I quite understand now. I may say that in the Convention in Adelaide, in 1897, I took the view which my honorable friend (Mr. Kingston) took then, and I think to a large degree holds now, that the position of the Judges in relation to Parliament is a very different one in the case of the Federation from what it is in the case of the states. I hold that opinion still; but Mr. Isaacs has pointed out so many difficulties and dangers which may arise from leaving the sub-section in its present position that I am rather inclined to coincide with him in the suggestion he has made. We may have a Judge some time who is not only impracticable, but who may, to a certain extent, be losing his mental capacity. He may not present that condition to his brother Judges, because there is always, I think, in such cases a desire to—

Be to his faults a little blind,
And to his virtues very kind.

That is human nature, and in saying that, I make not the slightest imputation on any Judge in the land. What I mean is that those who are associated with one another in friendly communion during a long period of years become, as they ought to become, confidential and intimate friends; and the Judges of the High Court are no doubt likely to have such intimacy with each other that, as friends, they will be the last to see a defect of the kind we have in view.

Mr. REID. -

And should be the very last persons to have such a question thrust on them to determine.

Mr. BARTON. -

Yes, they should be the last persons to decide such a question with regard to a brother Judge. Their own good taste would urge them to ask to have such a burden removed from them, and I really think such a burden ought
not to be put on their shoulders—that it should not be left to the Federal Court, as a Court of Appeal from Parliament, to decide on the capacity of a brother Judge. I was unable to see the full force of this objection when my honorable friend urged it in Adelaide, or, rather, I should say that my sense of the importance of preserving a proper relationship between the Judiciary and Parliament in the Federation over-awed my objection as I felt it then. Mr. Isaacs has now put it so strongly that he has quite convinced me, and I shall support the amendment which reduces things to the only proper position. We cannot conceive such a thing happening, for the safety of and with benefit to the Commonwealth, as that a Judge, having committed some misdeed, or having lost his capacity, should find himself so utterly opposed to the decision of Parliament upon the matter that he should turn round and appeal to his brother Judges for a decision in his favour. We ought not to put him or the Federal Court in that position, and I do not think that it would conserve the dignity of the court if we were to impose such a task upon it.

Mr. FRASER. -

How can the accused Judge defend himself against a resolution proposed in each House of Parliament?

Mr. BARTON. -

I think there can be no objection to the proposal on that score. I cannot conceive of the Federal Parliament condemning any Judge unheard. Although Parliament may sometimes be swayed by passion, may sometimes be misled, may sometimes be influenced by popular clamour and sometimes by other causes—

Mr. FRASER. -

By Cabinet influences.

Mr. BARTON. - Still, in matters of that kind, which concern their relations towards the highest officers of the land, I have always found the votes and proceedings of Parliament perfectly fair, and I do not think there would be any likelihood of the Commonwealth Parliament condemning a Judge without giving him full opportunity of being heard.

Mr. GLYNN (South Australia). -

May I suggest whether it would not be advisable to transpose sub-sections (1) and (2)?

Mr. BARTON. -

I will move that now, in order to facilitate the amendment of Mr. Isaacs.

The CHAIRMAN. -

If it is the wish of the committee I will transpose sub-sections (1) and (2)
as a matter of clerical work. We had better, perhaps, finish sub-section (1), and then transpose them afterwards. I will put the question that sub-section (1), as it now stands, stand part of the clause.

Sub-section (1) was agreed to.

Sub-sections (1) and (2) were then transposed.

The CHAIRMAN. -

The question now is that sub-section (2) stand part of the clause.

Mr. ISAACS (Victoria). -

I am quite willing to accept the view of the leader of the Convention, and after the sense of the Convention is taken to leave it to the Drafting Committee to carry out the intention.

Mr. BARTON (New South Wales). -

I should like to be sure that the sense of the Convention is with the view I hold with my honorable friend (Mr. Isaacs). We can take the decision of the committee on the word "not." If we keep the word "not" in, we will take it that the amendment is carried.

Mr. GLYNN (South Australia). -

Why not join sub-sections (2) and (3), as is done in Canada.

Mr. ISAACS. -

That is what I first proposed, but I am willing to leave it to the Drafting Committee to determine how it shall be done.

Mr. GLYNN. -

This matter was most amply thrashed out in Adelaide, and Mr. Higgins suggestion to give this power to the Federal Parliament was not agreed to.

Mr. KINGSTON (South Australia). -

I understand that the proposal is this—that whilst you provide that the Judges shall hold their office during good behaviour the question of misbehaviour or incapacity has, to be referred to the Federal Parliament for final finding.

Mr. FRASER (Victoria). -

If Parliament has to decide on the misbehaviour, you may as well strike out the other part of the provision altogether, because it is a mere subterfuge.

Mr. ISAACS. -

Oh!

Mr. FRASER. -

I mean to say that possibly it may be a mere subterfuge. Parliament may decide on incomplete evidence, and, as far as I can see, the Judges will not have the opportunity of appearing and defending themselves before Parliament. Parliament may come to a hasty decision. If you make the clause provide that the resolution of both Houses must be passed in two
sessions of Parliament, there will be some safeguard, but to have it passed in one session, perhaps at the behest of popular clamour, would render the position of the Judges of the High Court of the Commonwealth insecure.

Sir GEORGE TURNER (Victoria). -

I have heard so many statements lately with regard to what the Federal Parliament may or may not do that I am beginning to doubt whether we are taking a wise step in creating the Parliament at all. It seems to me that we are suspecting that it is a Parliament which, the moment it comes into existence, is going to do everything that is wrong and improper and nothing that is right. Mr. Fraser appears to be in grave doubt as to whether the Judges of the High Court of the Commonwealth will get any fair play, in the event of being charged with misbehaviour or incapacity, and, indeed, as to whether they will have a chance of being heard at all. Now, can we imagine a deliberative body like the Parliament of the Commonwealth removing one of the Judges of the Federal Court unless on the strongest possible grounds, and for the best possible reasons, and after having given everybody the fullest opportunity of being heard on every point in question? Surely we cannot for a moment imagine that any body called into existence to carry out the affairs of the Federation would ever think of taking any step to remove a Judge without giving him a full opportunity of being heard?

Mr. FRASER. -

It is only a majority in either House, and the majority may be only one in either House.

Sir GEORGE TURNER. -

It is a matter for the maturity in both Houses to determine, and then the Governor-General in Council has to carry it out.

Mr. MCMILLAN. -

The whole system is to secure the independence of the Judges.

Mr. REID. -

The object is to make the Judges independent.

Sir GEORGE TURNER. -

Undoubtedly.

Mr. REID. -

And that would do so.

Sir GEORGE TURNER. -

Yes; the object is to make the Judges independent, but not independent to such a degree that they cannot, if just cause be shown, be controlled. Surely if a Judge had lost his brain altogether, Parliament would not allow
him to continue to sit on the bench and carry out the duties of his judicial office. Such a thing might be done if there is no provision of this kind in the Bill.

Mr. REID. -

And if a Judge lost his brain, he would be the last man to believe it.

Sir GEORGE TURNER. -

Then is no doubt of that, because many of those who are confined in our hospitals for the insane are perfectly certain that they ought not to be there.

Mr. SYMON. -

They are perfectly certain that all the world is mad except themselves.

Sir GEORGE TURNER. -

That is generally the feeling of those unfortunate individuals. Now, what we desire is that while the Judges shall have an absolutely safe position as long as they carry out their duties, if it is found that they are guilty of such gross misbehaviour that they ought not to remain on the judicial bench, or if it is found that they are incapable of carrying out their duties, then some body, some tribunal, must be able to remove them, in the interests of the Federation, in the interests of the people. Well, we are prepared to place that trust in the hands of the Federal Parliament, and I venture to suggest that we shall meet the difficulty if we make the clause read-

Shall not be removed except by the Governor-General in Council upon an address in both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

That will make it perfectly plain that a Judge is not to be removed unless he has been guilty of some misbehaviour-reckless behaviour that will mean-or unless he is incapacitated from carrying out his duties, and it will also make it perfectly clear and certain that if the two Houses of Parliament said the Governor-General in Council come to the conclusion that either of these things has arisen no other tribunal shall be required to finally determine the matter.

Mr. BARTON (New South Wales). -

I should like to know whether it is or is not the desire of Mr. Isaacs and Sir George Turner that the address of the two Houses of Parliament should state on its face that the removal of a Judge is desired because his misbehaviour or incapacity has been proved? That would insure the Judge having a hearing. It seems to me that rise introduction of those words might be a greater safeguard to the Judge, while it would prevent Parliament from lapsing into any mis-trial of the matter.

The CHAIRMAN. -

I shall put the question in the manner suggested by the Legislative Assembly of New South Wales and the Legislative Council of Tasmania. It
is the same amendment as is suggested by Sir George Turner. The question is that the words "for misbehaviour and incapacity and then only" proposed to be struck out stand part of the sub-section. If these are omitted, the other words can then be inserted at the end of the clause.

Mr. SYMON (South Australia). -

I shall be found supporting the amendment as indicated by my friend (Sir George Turner). I do not think that any of us desire now or ever have desired that the removal of any Judge should be upon other grounds than misbehaviour or incapacity, and I do not believe any of us would desire to see on the bench of the High Court or of any other court in the Commonwealth a Judge occupying his position, and attempting to discharge his duties, if he was chargeable with either of these matters. The only point is whether the final decision of the question should be left to the body described in the clause, namely, the Senate and the House of Representatives, followed by the Governor-General in Council. I entirely agree that they ought to be the complete and final judges of the matter. It would be impossible and absurd that there should be an appeal to the tribunal of which the accused Judge-if I may use the expression-was a member; because he would continue to be nominally a member of the bench until his formal removal from it. I do not think any of us could contemplate such a state of things as that would produce with equanimity or satisfaction. On the other hand, I do not agree with honorable members who think that the Senate and House of Representatives should unite together for the purpose of removing a Judge upon other grounds than those of incapacity and misbehaviour. Therefore, I am perfectly content to leave the final decision to them. In the United States a Judge is removed upon impeachment before the Senate.

Sir WILLIAM ZEAL. -

That gives him a right to defend himself, which he would not have here.

Mr. MCMILLAN. -

Will the Executive have power to suspend?

Mr. SYMON. -

It will have an implied power of suspension. My honorable friend (Sir William Zeal) speaks of the necessity of securing to an accused an opportunity to defend himself, but I am satisfied that the Federal Parliament would give an accused Judge the amplest opportunity to do that.

Sir WILLIAM ZEAL. -

Well, no provision is made for that.

Mr. SYMON. -
There is no necessity for such a provision. The principle is inherent in every British conscience, and in every British breast. I do not think the Federal Parliament will turn renegade to the principle of the British Constitution and refuse a hearing to an accused. I support the amendment, and I hope that the modification suggested by the leader of the Convention will be adopted.

The amendment to omit the words "for misbehaviour or incapacity and then only was agreed to.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "upon the grounds of proved misbehaviour or incapacity" be added to the sub-section.

Mr. KINGSTON (South Australia). -

We want to make it perfectly clear that the decision of the Houses as regards the matter of fact shall be conclusive. I would, therefore, suggest to the leader of the Convention whether we might not make the amendment read-"upon the ground of misbehaviour or incapacity, proved to the satisfaction of such Houses."

Mr. REID. -

I do not think the word "proved" is necessary, because the two Houses would not adopt addresses unless they considered the misconduct proved.

Mr. BARTON. -

There might be a defect in their method of arriving at a conclusion.

Mr. ISAACS (Victoria). -

I understand that the Drafting Committee will not be bound by the form of words adopted by us now, and that if the amendment is carried they will frame the clause using

Mr. SYMON. -

Hear, hear.

The amendment was agreed to.

Sub-section (4) was agreed to, and the clause, as amended, was agreed to.

Clause 73-The judicial power shall extend to all matters-(1) Arising under this Constitution or involving its interpretation. . . .

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Mr. ISAACS (Victoria). -

There is a word at the beginning of the clause about which I should like some information from a member of this Judiciary Committee. The word "matters" seems to me a very wide expression. Of course it is necessary that the expression should be wide, but I am not quite clear as to the full extent of its meaning. I presume that when we come to questions arising
under the Constitution the term will be restricted to such subjects as are really judicial matters. In the United States Constitution the words used are "judicial cases." The question may arise as to whether the term "matters" may not include matters partaking of a political nature. I should be very glad if some of my honorable friends would enlighten me upon this question.

Mr. BARTON. -

It is a good thing to have a wide expression.

Mr. ISAACS. -

Yes, so long as the expression is not too wide. Questions have arisen in the United States as to the right of the court to interfere in matters which are strictly political.

Mr. OCONNOR. -

The court can only adjudicate according to fixed principles of law.

Mr. ISAACS. -

Yes, but this is a very wide expression, and one worthy of consideration. I have tried to think of a word which would satisfy me better, but I have not been able to do so.

Mr. SYMON (South Australia). -

My honorable and learned friend puts both sides of a case so well that he often answers his own questions, and I think he has done so in this instance. We want the very widest word we can procure in order to embrace everything which can possibly arise within the ambit of what are comprised under the sub-section. As my honorable and learned friend will see, it would be of no use to adopt the word "case" or "controversy."

Mr. HIGGINS. -

It maybe held that there must be a plaintiff and a defendant.

Mr. SYMON. -

Yes; I was going to indicate that. In the United States Constitution the words "cases and controversies" are used. Is the word "matters" used there?

Mr. ISAACS. -

No. I think "cases" is used in one place and "controversies" in another.

Mr. SYMON. -

I think we are using the best word here. The word "matters" merely indicates the scope within which the judicial power is to be exercised, but no matter can be dealt with until it comes before the authorities in the form of a case or some judicial process which will be regulated by the Judiciary Acts. It does not strike me that the word is too wide.

Dr. QUICK (Victoria). -

The view taken by the Attorney-General of Victoria has also suggested itself to me. The fear that this word might give the Supreme Court power in
quasi-political cases is not altogether without foundation. What would there be to prevent the Government of the country from going to the Supreme Court under this section on their own motion to obtain an ex parte interpretation of the Constitution? That is guarded against in the United States Constitution, which says that the judicial power "shall extend to all cases in law and equity arising under this Constitution." The United States court has no jurisdiction except where there is a plaintiff and a defendant, and both sides of the case are represented. The words used here are "shall extend to all matters." I think that the use of those words affords ground for the apprehension expressed by the Attorney-General of Victoria that the construction might be made too wide, and might give the court jurisdiction in matters which were not cases.

Mr. SYMON.

It could not.

Dr. QUICK.

What would there be to prevent the Federal Government from going to the Supreme Court ex parte and asking for an interpretation of the Constitution? On the other hand, the use of the word "cases" would confine the jurisdiction of the Supreme Court to cases to which there were parties.

Mr. SYMON.

It could not.

Dr. QUICK.

What would there be to prevent the Federal Government from going to the Supreme Court ex parte and asking for an interpretation of the Constitution? On the other hand, the use of the word "cases" would confine the jurisdiction of the Supreme Court to cases to which there were parties.

Mr. GLYNN (South Australia).

I do not think there is any danger of the Supreme Court being asked to decide upon a political matter. In the Privy Council Act the word "matters" is used, but it has been decided that matters of policy cannot be referred to the council. The word "matters" was decided upon by the Judiciary Committee after a long discussion, and we there had the help of two laymen. I would, however, draw attention to Subsection (8), where there is the only possibility of ambiguity. The clause provides that-

The judicial power shall extend to all matters between stalls.

I think that provision ought to be qualified in some way.

Mr. ISAACS.

Higher up there is a sub-section relating to matters "arising under any treaty."

Mr. GLYNN.

I think that sub-section should be struck out, because the power of the Judiciary cannot extend to a treaty.

Mr. BARTON.

I think the word "matters" means such matters as can arise for judicial determination.

The sub-section was agreed to.
Sub-section (2) was agreed to.
Sub-section (3). - Arising under any treaty.

Mr. GLYNN (South Australia). -
I would point out that the judicial power cannot extend to a treaty. I think this subsection should be struck out. The court cannot decide upon a treaty, otherwise it might abrogate the Imperial law or polity upon the question at issue.

Mr. SYMON (South Australia). -
Some day hereafter it may be within the scope of the Commonwealth to deal with matters of this kind, and why should it be necessary to amend the Constitution in order to give the express power? It cannot do any harm to leave this provision in the clause.

Mr. REID. -
A treaty might be made in regard to the control of the rivers by New South Wales, Victoria, and South Australia.

Mr. SYMON. -
Quite so; or the Commonwealth may have control of treaties having relation to the South Seas or some parts of the East. This provision may be necessary at some future time, and for that reason I think we should leave it in the clause.

The sub-section was agreed to.
Sub-sections (4) and (5) were agreed to.

Sub-section (6). - In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

Mr. GLYNN (South Australia). -
I should like to call the attention of the committee to this sub-section, and to ask for a consideration of the points whether it gives any right or action in substitution of a petition of right against the Commonwealth I If it does not what does it mean? The Commonwealth will under this provision take the place of the Crown. In parts of the Bill the, term Crown" is used in contradistinction to the word "Commonwealth," but in other parts of the Bill the terms are synonymous. You cannot abrogate tile laws as to a petition of right by implication. I would ask whether, under this provision, an action for torts or contract might be maintained against the Commonwealth without a petition of right?

The sub-section was agreed to.

Sub-section (7). - In which a writ of mandamus or prohibition is sought against an officer of the Commonwealth.

Mr. BARTON (New South Wales). -
The doubt I had about this sub-section has been increased by what Mr. Isaacs has just said to me. The question is whether the words "a writ of
mandamus or prohibition" are not rather words of limitation that might be held to exclude other proceedings which might become equally necessary on behalf of or against the Commonwealth, such, for instance, as all injunction or a writ of habeas corpus. I put it to Mr. Symon whether these words may not operate as a limitation in what we agree is a very widely-drawn clause? The bulk of the words of this clause come from the American Constitution.

Mr. SYMON. -

We want to make this clause as wide as possible, and I do not think the words referred to will operate as a limitation. They were intended to direct attention to the fact that the judicial power of the High Court was to deal with these matters of mandamus and prohibition, and it seems to me it would be safer to leave them in than to take them out.

Mr. ISAACS (Victoria). -

The view of the leader of the Convention is right. I do not think that these words are in the American Constitution. I have before me section 2 of Article 3, and looking at it hurriedly I do not see the same provision there.

Mr. BARTON. -

I fancy it is in some part of the American Constitution.

Mr. ISAACS. -

I do not know where else it would be. I should say that if we put in these words the inference will be irresistible that if they had not been put in the court would not have had this power. If we trust certain classes of cases to the Federal Court, the mode of enforcing its decrees will be necessarily included within its powers. Whether that power is effectuated by a mandamus, or a prohibition, or an injunction, or a writ of habeas corpus, is a matter for the court's jurisdiction or for provision by the Federal Parliament. I think I am safe in saving that the power is not expressly given in the United States Constitution, but undoubtedly the court exercises it. In a recent and most interesting case in the United States, that of in re Debs, the court had no hesitation in issuing an injunction. If an injunction were asked for here the court might ask why the words "mandamus or prohibition" had been inserted in this clause.

Mr. DOBSON. -

What words would you put in?

Mr. ISAACS. -

I would not put in my words.

Mr. HIGGINS. -

This provision was in the Bill of 1891, and I thought it was taken from the American Constitution.
Mr. ISAACS. -
In my opinion it would be better to omit the sub-section.
The sub-section was struck out.
Sub-section (8) was agreed to.
Sub-section (9). - Relating to the same subject-matter claimed under the laws of different states.
Mr. REID (New South Wales). -
I do not know whether there will be any difficulty in connexion with this sub-section.
Mr. BARTON. -
It is in the American Constitution.
Mr. REID. -
The words are very wide, and might they not include a case which did not fall within the jurisdiction of the court naturally, but in which jurisdiction was sought, simply on the ground that two or more states happened to have a claim to the same thing? For instance, I do not know whether our friends might not, under these general words, bring in the water rights question.
Mr. ISAACS. -
It is all governed by the word "matter."
Mr. REID. -
That is a wonderful word. The word "matter" occurs in sub-section (9). I think, under these circumstances and for the admirable reason suggested by the honorable member, I need not pursue the matter further.
Dr. QUICK (Victoria). -
Would it not be advisable to insert in this clause words giving the Federal Court power to determine questions of boundary disputes between the various colonies? I do not know whether such a power is given by subsection (8).
Mr. BARTON. -
The words are wide enough for it.
Dr. QUICK. -
Of course a boundary dispute could not arise under the Constitution, or under any legislation proceeding from the Federal Parliament. What the meaning of the words "between states" is I am at a loss to understand, because sub-sections (1) and (2) point to disputes arising under the Constitution or under any laws made by the Parliament.
Mr. BARTON. -
This is similar to the power in the American Constitution, which is described as "controversies between two or more states." It was thought
that the words "two or more" were unnecessary.

Dr. QUICK. -

It would, I think, be wise to give the court power to deal with boundary disputes. Disputes may arise in the future of greater magnitude than any that have arisen in the past.

Mr. BARTON. -

Does not the honorable member think that the words "between states" cover it?

Dr. QUICK. -

I do not think so. What law would it be decided by?

The sub-section was agreed to.

Clause 73, as amended, was agreed to.

Clause 74. - The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences of any other Federal Court, or court exercising federal jurisdiction, or of the Supreme Court of any state, whether any such court is a court of appeal or of original jurisdiction; and the judgment of the High Court in all such cases shall be final and conclusive.

Until the Parliament otherwise provides, the conditions and restrictions on appeals to the Queen in Council from the Supreme Courts of the several states shall be applicable to appeals from them to the High Court.

Amendment suggested by the New South Wales Parliament-
After "jurisdiction" (line 1), insert "where the parties consent."

Mr. CARRUTHERS (New South Wales). -

This amendment opens up the whole subject of appeals to the Privy Council, and I think I may fairly ask the leader of the Convention to postpone the consideration of the clause until after lunch.

Mr. BARTON. -

I have no objection.

[The Chairman left the chair at five minutes to one o'clock p.m. The committee resumed at two p.m.]

Mr. CARRUTHERS (New South Wales). -

The proposal of the New South Wales Parliament, shortly stated, is one which will preserve the right of appeal to the Privy Council, unless the parties divest themselves of that right of appeal by mutual consent. It simplifies the procedure as against other proposals where the right of appeal is maintained, in that no additional hurdle for litigants to have to overcome is created. That is to say, if the parties choose to let their case be decided by the High Court of Appeal in the colonies, there will be no appeal to the Privy Council.
Mr. ISAACS.

You would want the consent of both parties.

Mr. CARRUTHERS.

If either party objects, then the appeal will have to go to the Privy Council. It will commend itself to honorable members in this respect: That if we are going to have an additional Court of Appeal constituted in Australia, having the Privy Council as the final Court of Appeal, it will simply mean adding to the expense of litigation, making it impossible for men of comparatively, moderate means to undergo the expense of pursuing their case from court to court. It will simply be the means of creating another court, in which litigants will not have finality, but in which lawyers will have full play for their faculties.

Mr. ISAACS.

But that is not proposed; that is guarded against.

Mr. CARRUTHERS.

This proposal at any rate has this merit, that it does not create an additional court to those which litigants have now to face. There will be but one Court of Appeal, and that court, wherever it may be, the Privy Council or the Court of Appeal in the colonies, will be a final Court of Appeal. I would never vote for any proposal which made litigation filter through the Supreme Courts of the various colonies, through the High Court of the Federation, and finally leaving a right of appeal to the Privy Council. That would be multiplying law, and as a community we should have no ultimate decision better than we have at the present time. This proposal is followed by consequential amendments later on, which will give effect to the whole view which I have shortly summarized. I have always been in favour of the preservation of this right of appeal to the Privy Council. Listening to the debate which took place this morning my views, if it were possible to strengthen them, were very much strengthened by hearing the arguments of Mr. Symon, Mr. Isaacs, and others in favour of having the colonial court, the High Court, so constituted as to place it above the possibility of political or parliamentary influence, so as to make it in truth the guardian of our Constitution, impervious to all outside influence from the other component parts of the Constitution itself. You will never get a court so free from these influences which render it liable to attack, so free from local bias and control, either by the Legislature or the Executive, as the Privy Council is. We can never imagine that the Privy Council will be influenced by the state of parties in Federated Australia.

Mr. SYMON.

Nor have you any right to imagine it in respect to the High Court.
Mr. CARRUTHERS. -

We can never imagine that a Government will swamp the Privy Council; we can never imagine that such an occurrence could take place as in America, which led to a judicial scandal. The Privy Council will be, in all truth, the bulwark of our Constitution, being so far removed from the party conflicts and those things which create party conflicts in Federated Australia. If honorable members argue, as no doubt they will argue, that it is necessary to have a strong court in the colonies as the guardian of the Constitution, I do not know of any court that can be constituted which will be so strong as that great Appeal Court—the Privy Council—which is so far removed from those things which are an element of weakness in any Australian court. But I go on very much higher grounds than the mere thought of safeguarding our Constitution. I am reminded that the resolutions which we have passed, this Bill which we are now framing, and the union which we are hoping to consummate, declare that this is to be a union under the Crown. We reserve to ourselves the right to make laws, but before those laws can become operative they have to go to the Queen for her assent. We are not denying to the Crown the right of refusing to ratify the legislation passed by the Parliament under this Bill. We have reserved to the Crown the right of giving or withholding its assent to that legislation. In every respect, except this one, we have been careful, in framing this Constitution, to keep the spirit of the text up to the words that "it shall be a union under the Crown." Here is the most manifest of all the links which have bound us in the past, and up to the present time still bind us, to the Crown. This is the one tangible and visible element of union now between these colonies and the mother country.

Mr. SYMON. -

It is simply a court.

Mr. CARRUTHERS. -

We know that our Governors have no real practical power; this is the only other visible link connecting us with the old country. As far as our laws are concerned, we have no link so tangible and visible as the link which binds our Judiciary here to the Judiciary of the mother country.

Mr. SYMON. -

Would not the link be the same if the Lords Justices were the Court of Appeal?

Mr. CARRUTHERS. -

Of course the link would be the same, so long as the court were constituted by the Queen as the Appeal Court of the empire. I do not say the Privy Council is composed as well as it might be. I am not arguing as to the wisdom which has been shown in the mother country in constituting
this council as the Appellate Court for the empire. I say that the Privy Council, and the right of appeal to the Queen in Council advised by her law advisers there, is the one real visible link that now remains binding us to the Crown. I do not speak merely on sentimental grounds, nor do I say that sentiment should over-ride utility, but sentiment should have a great deal to do with this matter, unless it is shown that the sentiment is founded on false premises and leads us to false conclusions. In the initiatory resolutions we resolved that there was to be a union under the Crown, and we should, before we change that state of things, see that there is some clear and manifest evidence to show that the change is desirable. Has such evidence been adduced? There have been no petitions to us asking for this change. I defy any honorable member, to show that there has been since we have had representative government in Australia any agitation which could by any honorable member, however desirous for the change, be termed widespread for an alteration of this character.

Mr. HIGGINS. -
There are very few interested in the appeals.

Mr. CARRUTHERS. -
People are satisfied with this right of appeal to the Privy Council. No discontent has been created by its practice and operation. Surely the onus is upon those who desire this change to show that it is asked for by the people, and that it is a change that is warranted. Especially when we are framing a Constitution to unite us under the Crown should we be very chary of snapping the one last visible link that binds us to the Crown, the more so when that link is one that less been felt, and felt agreeably, by the people to be one binding them to their own advantage. I remember that in Adelaide great stress was laid upon the fact that if we take the right, (as it was alleged we were taking it) to frame our own legislation, to make our own laws, we should also have the right to interpret those laws. But we do not here ask for the right to frame our own laws. Under this Bill it is provided that no law shall become operative until the Royal assent has been given to it, and there is a special power for the reservation of that Royal consent. I say that that is a right and wise thing to provide for, that no law should become operative until the Crown has manifested its consent to it; and if the Crown has a right to be consulted, the Crown should also have the right to interpret those laws upon the requisition of any subject affected thereby. Otherwise, we might have this state of affairs—that the Royal assent is given to a law that, interpreted by some local judicial body, is not made to operate the same way as it would appear to operate when
interpreted by the Crown acting by the advice of its legal advisers. Then, again, we have great emphasis laid on the fact that this Constitution would not abridge the right or liberty of any subject of the Queen in these colonies, but would rather enlarge them. I say that it is abridging the privileges of a subject of the Queen when you take away from t

Mr. SYMON. -

But you are giving him a better right in lieu of it.

Mr. CARRUTHERS. -

That is a matter upon which the honorable member holds a strong opinion, but he has never yet succeeded in showing me or those others who differ from him in what way the right was better. It does not appear to me to be better to give up going to the fountainhead of justice and to go to some local source of justice instead—a local source about which the honorable member might argue from week's end to week's end without proving it to be better than the present local sources of justice. I have said so much upon the point with regard to past practice and the right which ought not to be curtailed. I know that this proposal will be met at once by the objection that carries a great many people away with it, that the abolition of appeal to the Privy Council will result in cheapening the processes of law by bringing the ultimate decision nearer to the litigants, and making it easier for the poor man to prosecute an appeal. It only requires a little reflection to show that no more delusive argument could be brought forward than that of cheap law for the poor man by means of a Federal Court of Appeal.

Mr. HIGGINS. -

The poor man never goes to the Privy Council.

Mr. OCONNOR. -

A man is generally a poor man when he leaves it.

Mr. CARRUTHERS. -

We know that this Court of Appeal would not be one that would go wandering about taking justice to the very doors of people. We are not likely to be led away by any argument of that character. This court, whenever it is constituted, will sit in the capital city of the Federation. To that court, wherever it may be situated, appellants will have to bring their cases. I ask the representatives of Western Australia whether it will be cheaper for their constituents to bring their cases from Perth to some inland town of New South Wales or Victoria, or take their cases, as now, to London? Again, so far as regards the bar that will have to be retained for the conduct of these cases, we know very well that when cases are tried in London there is a choice not from a bar of ten or twenty or fifty members,
but from some thousands of men practising in the city. A litigant is not limited in his choice. But if the High Court is constituted in the capital city of the Commonwealth the possibilities-nay, the probabilities-are that that capital city will not be one of the great cities in which lawyers now congregate, but will be some inland town selected far away from where the courts are constituted at the present time; and the probabilities that the litigants will have to pay very high fees to get men to leave their practice at Melbourne, Sydney or Adelaide, to conduct cases at the Federal Court. There will also be a very limited choice of men indeed. Laymen do not need to be told that lawyers' fees in Australia are not lower than fees in the mother country—I go no further than that; and men cannot expect to be served by the bar before the High Court of Australia for lower fees than those for which they would be served by the bar appearing before the Privy Council at Westminster. Therefore, I think, on the score of economy, there is very little to induce litigants to favour the establishment of a High Court of Australia. Far more expense is likely to be incurred at the local court, and eminent barristers capable of taking these cases will be likely to demand their own terms. Altogether the probability is that there will be more expense instead of less attaching to the trial of cases before the High Court of Australia. Then again, there, is surely some importance to be attached to the argument of preserving uniformity of decisions in our laws. It will be, some guarantee to the people within the Commonwealth, and a, greater guarantee to the people outside the Commonwealth, who may have large business transactions with Australia that will go on increasing and increasing many fold when federation is accomplished, that their interests will not be sacrificed, when, if they are engaged in disputes, and recourse has to be had from the lower courts to the final Court of Appeal in England, the decision ultimately will be according to the uniform law of the empire. I will not amplify that portion of the subject, because it has been referred to in the letter which is before honorable members, written by Mr. Justice Richmond, of New Zealand, in 1891. There is a portion of my argument which I shall make no apology for referring to, and that is that, with our limited choice of the bar in Australia, there is very great difficulty in getting competent men to occupy seats upon the bench. There will be just as great difficulty in the future, if we add to the number of judicial officers. The choice is too limited for us to be sure of getting men capable of filling these highest judicial positions, and, if we add probably five or six more to the number of Judges who

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have to be appointed-if we have to take men from the Benches of Western Australia or Victoria, of Tasmania or South Australia or New South Wales-
it is very questionable indeed whether it will be possible to fill up their places satisfactorily. We know that it is very difficult indeed in Australia to induce eminent lawyers to leave the active practice of their profession to take seats on the bench. It means a great sacrifice to some of them, which they are not willing to incur, and you cannot have always as efficient a bench as you have in the Privy Council as it is at present constituted. Therefore, we are likely to sacrifice the efficiency of our Judiciary in adding to the number of our Judges in Australia; and we are likely to sacrifice the bench we have already provided without expense to us in the mother country. Then again (I say it almost with bated breath) in these small communities there is always actuating men in public life, even on the judicial bench, an unconscious bias, whereby their minds and their decisions are (it is likely to be said) prone to be affected.

Mr. HIGGINS. -

In what direction is the bias?

Mr. CARRUTHERS. -

We know that we can trust our Judges in all cases, but still in small communities such as this it is no wrong thing to say that-through our surroundings and acquaintances, and through almost every man in the community knowing everybody else, through our small public life, and our small circle in social life-men are so well known to one another, and things that influence people in public and private life are so widespread and so active, that men are apt to be biased by these influences; and, even if they are not biased, they are apt to have their decisions questioned, because bias will be attributed to them. Even where there is not actual bias, there is often unconscious bias, which makes a man give his decision, if not in a manner opposed to the evidence before the court, at all events with the influences I have referred to affecting his mind. Judges have to try cases in Australia, an very often before the cases come before them, they know a good deal as to the private life of litigants. Consequently, they sit on the Bench with a certain amount of unconscious bias. This consideration has always been used as an argument against the efficiency of Judges sitting in small communities, where the local surroundings are so keenly felt by reason of the community being so small.

Mr. SYMON. -

That is a very good argument for the abolition of the courts of justice in the colonies at present.

Mr. CARRUTHERS. -

Not at all. My honorable and learned friend must see that you must not strain the argument against it, that it is better to go to the source of justice where it is pure and undefiled. If he cannot always get to that source of
justice pure and undefiled, surely my honorable and learned friend would 
not refuse to take any justice at all. Unfortunately, in all small 
communities, there are influences which provoke a bias, and in many cases 
provoke an unconscious bias which lead men to decisions which probably 
may be questioned hereafter. I will give one instance of it in a case which 
was tried in New South Wales. In the case of Alison v. Burns the Judges 
decided that the intention of the Legislature with regard to the rents to be 
paid by the squatters was of such-and-such a character, and they 
interpreted the law accordingly. The Privy Council interpreted the law in 
quite the reverse way. There is no doubt that our local court was governed 
in its decision largely by the fact that the members of that body had been 
present in the colony when the legislation was being passed, had heard or 
read the debates in Parliament, had a great knowledge of the circumstances 
outside of those facts which were brought in as evidence. Unconsciously, 
the Judges got an idea into their heads that they knew the intention of 
Parliament better 

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than was shown in the four corners of the statute itself: The Privy Council 
had no knowledge of the debates in Parliament, of the circumstances of the 
past, or of the requirements of the Treasury. It reversed the decision of the 
local court. That reversal necessitated the passing of new legislation. To 
put the question beyond all doubt, that new legislation embodied the real 
intention of the Parliament of New South Wales, and followed the decision 
of the Privy Council. Now, there is an instance which shows that there are 
certain influences governing the minds of the Judges, which shows that by 
some unconscious bias they were led to a decision which was very 
properly set aside by the Privy Council. Moreover, it is always a wise thing 
to have some corrective influence behind Judges-I do not care what 
position they occupy and the Privy Council has always exercised a 
corrective influence over the doings of our local courts. It is well for men, 
no matter how high they are placed, to know that there is some power 
behind them, to know that there is some body which can review their 
decision. They are less likely to pursue a wrong course when they know 
that their decision can be set aside and reviewed by some other court. For 
these reasons, I commend the proposal of the New South Wales Assembly 
to the Convention, and I hope that it will be carried.

Mr. SYMON (South Australia). -

I would ask you, sir, as a matter of convenience, whether it is desirable to 
discuss this large question of Privy Council appeals on this particular 
amendment? It will confuse the whole issue very much. The amendment 
which is now under our consideration is to insert the words "with the
consent of both parties." The effect of their insertion will be to destroy the power of appeal we propose to give to the High Court unless both parties consent. I do not believe there is any man here who desires that. We wish the High Court to have the power of appeal. The issue between us is whether that shall be final, or whether the parties shall, after that, at the instance of the appellant, take it to the Privy Council.

Sir GEORGE TURNER. -

Some think that the appeal ought to go direct to the Privy Council and not to the High Court here.

Mr. SYMON. -

Very good.

Sir GEORGE TURNER. -

Either one or the other.

Mr. SYMON. -

No doubt. The place, I think, at which it might be much more conveniently discussed, would be at the end of this clause.

Sir GEORGE TURNER. -

Or on the next clause.

Mr. SYMON. -

Or on the next clause. I do not think there are any honorable members here who are desirous of absolutely destroying the High Court we have taken the trouble to create in an earlier clause.

Mr. MCMILLAN. -

Would there be a double appeal?

Mr. SYMON. -

No; because a provision could be inserted in the next clause. At least, I understand that some honorable members desire that there should be an optional appeal, that is, that it should be at the option of the appellant to go to the Privy Council without going to the High Court of Appeal. But this is to make it necessary to have the consent of both parties before you can go to the High Court.

Sir GEORGE TURNER. -

On every appeal?

Mr. SYMON. -

On every appeal. The thing is a contradiction in terms. The successful party would say-"I do not want to appeal," and therefore what is the good of putting in a provision of that kind?-The successful party would never consent; he would say to the other You can do as you please." I would suggest to my honorable friend (Mr. Carruthers) whether it would not be better to dispose of this amendment, and then to deal with this very important question of Privy Council appeal on the last words of the clause,
which makes the judgment of the High Court in all cases final and
conclusive. There we can raise the issue and know what we are driving at.

The CHAIRMAN. -

This amendment was suggested by the Legislative Assembly of New South Wales, and we are bound to dispose of it.

Sir GEORGE TURNER (Victoria). -

Without entering on the merits of the question, I would also urge on my honorable friend (Mr. Carruthers) that if he attempts to discuss the amendment on this particular clause we will get into a state of confusion. I intend to support him as strongly as I can in his contention that the right of appeal should not be taken away from any of our citizens who desire to go to the Privy Council. But I cannot, vote for this amendment, because it would mean that whenever a case was tried, and one party wanted to appeal to the court within the Commonwealth, he could not appeal unless he obtained the consent of the other party, and the end would be that the other party of course, would not consent. I would suggest to my honorable friend that his wiser course is to allow this clause to go as it is, to discuss the question on clause 75, and, if in that clause we, succeed in making such an alteration as will enable an appeal to be made either to the High Court here or to the, Privy Council, then the Drafting Committee necessarily must make alterations so as to bring clause 74 consistent with clause 75. If he persists in taking a vote on clause 74, I am afraid that many of us who desire to support him will have to vote against him, and by that means he may lose what we are anxious that he should gain.

Mr BARTON (New South Wales). -

It may be that my honorable friend (Mr. Carruthers) would really desire, in place of the amendment, he is moving now to assimilate the law of this Constitution to that which exists in Canada, under which the Queen in Council may grant leave, to appeal in any case, and under which, as honorable members know, the principles on which leave to appeal has been granted have been laid down by the Privy Council itself.

Sir GEORGE TURNER. -

We want to do more; we want to give power to the High Court here, to allow appeals.

Mr. BARTON. -

I am rather inclined to support the Bill as it stands, but if we are to have the matter decided I take it that the real broad battle between us is this—Whether the appeal shall be limited as it is proposed to be limited by the Bill, or whether it shall be open to the Queen in Council to grant special leave to appeal in any case. What has been done in Canada is this: After
the words "final and conclusive" in a similar provision the following words occur in their legislation-

Mr. ISAACS. -

It is not contained, in their Constitution.

Mr. BARTON. -

No; the Constitution gave power to the Dominion Parliament to constitute a Supreme Court. That power was exercised in the year 1875, and in section 47 of the Canadian Act 38 Vict, Chap. XI., I find this provision-

The judgment of the Supreme Court shall in all cases be final and conclusive, and no appeal shall be brought from any judgment or order of the Supreme Court to any court of appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to Her Majesty in Council may be ordered to be heard; saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative.

The intervening words after the words "final and conclusive" will not affect us here. In a case decided on the operation of this section-Johnston against The Trustees of St Andrew's Church-the intervening words, with reference to any court of appeal established by the Parliament of Great Britain and Ireland, were decided by the Lord Chancellor to be merely hypothetical words applying to any court, apart from the Privy Council, which might be constituted, so that those words may be left out of consideration here.

Sir GEORGE TURNER. -

That will not carry us any further than clause 75 does.

Mr. BARTON. -

I am only pointing this out as a matter of drafting, because I am not at all satisfied that I should support this amendment. What this amendment would do if placed at the end of the first paragraph of the clause would be to make it certain that the Privy Council could grant leave to appeal in any case of petition to appeal, and the result of that would be, if carried, I take it, that clause 75 would have to be struck out of the Bill.

Sir GEORGE TURNER. -

Would that carry us one step further than clause 75 does?

Mr. BARTON. -

A great deal further, because clause 75 limits the cases of appeal to those matters-

In which the public interests of the Commonwealth, or of any state, or of any other part of her dominions are concerned.
Sir GEORGE TURNER. -

Are there any decisions in which that power has been construed differently?

Mr. BARTON. -

There are some. The words of limitation in clause 75 my honorable friend (Mr. O'Connor) suggests may be left out, and that would achieve the same object. The Privy Council has never narrowed the appeals from Canada down to the point to which this Bill proposes to narrow them down. This Bill prescribes for only certain specified cases which I have alluded to; but in Canada there is still held in reserve by the Privy Council power to grant leave to appeal in any case in which there are large and important issues involved, and the class of cases has been laid down very specifically by the Privy Council. It is quite clear there is a disinclination in England, to cut down this Privy Council jurisdiction, which is held to be a part of the Queen's prerogative. It is not discussed as we are discussing it here as part of the subject's sacred right to appeal. It is discussed as part of Her Majesty's possessions by way of prerogative, and the disinclination there is to cut down that prerogative.

Mr. SYMON. -

It is the outcome of the old Crown colony time.

Mr. BARTON. -

Yes, it is simply the Queen's own jurisdiction to hear her subjects' humble petition from any part of her possessions, and that is exercised in judicial matters by the Judicial Committee of the Privy Council. What I wish to lay before honorable members is this: If it is desired to place the legislation which will ensue from this Constitution on the same footing as prevails in Canada, the few words I hold in my hand will amply carry that out in the same way as is done in Canada. Therefore, I suggest to my honorable friend (Mr. Carruthers) that if he wishes to take a test vote on this question the best way to do it is not to support the amendment he is now dealing with, which I think would be only provocative of confusion, but to move an amendment at the end of the first sub-section similar to that which I hold in my hand, and there the whole matter could be fought out. And if he succeeded in carrying that amendment, then I, for one, would no longer contest the necessity to strike out clause 75.

Sir GEORGE TURNER. -

Would that give an alternative right of appeal to one court or the other? Would it not mean that you would have to go first to the Federal Court, and then, its decision not being final and conclusive, to the Privy Council.

Mr. BARTON. -

No, it would read in this way:-
The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences of any other Federal Court.

That means that they have jurisdiction. It does not mean that every appeal must be brought to them; it means they have jurisdiction to hear when an appeal is brought to them.

or court exercising federal jurisdiction, or of the Supreme Court of any state, whether any such court is a court of appeal or of original jurisdiction; and the judgment of this High Court in all such cases shall be final and conclusive.

If there is to be any exception to that provision the exception would be best created by passing an amendment such as I hold in my hand, and then it would be optional still to a person to appeal to the High Court, or to petition for leave to appeal to the Privy Council, and the Privy Council would decide the matter on the lines which they have laid down already in regard to Canada. Possibly it might be a little more restricted, but one cannot predict that it will, because there is evidently a considerable reluctance to part with what is considered a prerogative right, and the probability is that the Privy Council would lay down lines on which appeals would be heard precisely as they have laid them down in regard to Canadian appeals. That, I take it, is really what our friends who do not concur with us in this matter are aiming at. I should say that if an amendment of that kind were carried, it would be impossible to support clause 75, The whole matter would hinge upon such an amendment.

Mr. GLYNN (South Australia). -

Is it not an objection to Mr. Barton's amendment, that we are creating another Court of Appeal in state cases, because an appeal may be taken to the High Court and afterwards, by consent, further on? I understand that the object of Mr. Carruthers' amendment is to render an appeal to the High Court optional, but Mr. Barton's amendment would make it open to appeal to that court in all cases and to go further in some. I do not agree with Mr. Carruthers' amendment, but I would suggest that an informal amendment has been suggested by the New South Wales Assembly—that the words ought to be inserted in the fifth line, after "or." I doubt whether it is not a verbal mistake to put them in the first line. The point is this: If the words are put in the beginning of the clause, then you put limitation upon the right of appeal in federal cases, which is not intended; but if you put the words after "or," in the fifth line, the right of appeal in all federal cases will
be absolute, which is intended. But there can only be an appeal from such judgment in state legislation where both parties consent. That is what is intended, and it is evidently a grammatical mistake made by the New South Wales Assembly to suggest the insertion of the words in the place it does. I would ask you, Mr. Chairman, whether it would not be competent for you, on the suggestion of an honorable member, to put the amendment after "or" in the fifth line, and so accomplish what is aimed at? That might be done, I think, because if an amendment is suggested by a local Parliament which would not be in order if proposed by an honorable member here, you would have power to reject that amendment or to propose it in its proper place.

The CHAIRMAN. -

The committee may reject the words where the Legislative Assembly of New South Wales have asked them to be inserted. It may afterwards agree to a proposal to insert the same words lower down, because they would not be dealing with the same question over again. The insertion of the words lower down would have an entirely different meaning.

Mr. KINGSTON (South Australia). -

I desire to say that I shall be found supporting the fullest and final authority of the local court of appeal. But I would suggest that it is highly undesirable that we should carry the amendment now proposed, because the effect of it will be that, to give the High Court of Australia this jurisdiction, the consent of both parties will be necessary. If you want to give an alternative appeal, not an accumulative appeal, you should confer, I would suggest, original jurisdiction on the High Court; but if the parties desire or agree to avoid going there, and prefer to go to the Privy Council direct, then, by the consent of both parties, let that be done. I think, however, that in founding a Constitution for Australia we should make a provision conferring,

independent of any consent, proper jurisdiction on the court we are proposing to call into existence.

The amendment was negatived.

Mr. GLYNN (South Australia). -

- I beg to move-

That the words "with such exceptions and" be struck out.

This is a limitation of the power of appeal, a limitation of the general vesting of the appellate power under this clause, by rendering it competent for Parliament to say in what cases there shall be an appeal and in what cases there shall not. As the clause reads, the High Court shall have jurisdiction "with such exceptions" as Parliament may prescribe. It is in the
power of Parliament to say that even in some federal cases and cases of state appeals the appellate jurisdiction of the High Court shall not exist—the High Court will only have jurisdiction "with such exceptions and subject to such regulations" as Parliament may from time to time prescribe. Now this word "regulations" must mean something different from "exceptions". "Exceptions" means a deduction from the powers of the court, and there must be a significance given to the word "exceptions", which is wider than the word "regulations". Therefore, I think it will be in the competence of Parliament to say that the right of appeal, even from federal courts, may be cut down, and also the right of appeal from state courts. Now, that was never intended. I drew attention to the point at the meeting of the Convention at Adelaide, but it was scarcely considered. In America, time after time, demands were made to emasculate the jurisdiction of the courts when the decisions were against the opinions of the construction of the Constitution that were dominant at the time. In 1803 the whole jurisdiction of the circuit courts was thus interfered with, and in other cases the jurisdiction was cut down in order to forestall decisions which were expected to be unfavourable. It will be seen, therefore, that we cannot expect that ideal of purity of motive on the bench which has been talked of by some honorable members. Courts are human. From 1801 to 1835, during Marshall's jurisdiction, the complexion of the American courts was federalist, while for ten years afterwards it was democratic. Attempts were made by Parliament to forestall the decisions of the courts, or to interfere with their constitution by increasing the number of members on the bench. We should be anxious not to put in words which will render it competent for the Parliament to state that in certain cases within the limits of clause 73 appellate jurisdiction shall not exist even in federal matters. They might also, under this provision, declare that the right of appeal upon state matters will exist only in exceedingly few cases. There is not a clause in the Bill which expressly gives appellate jurisdiction except this clause. It is given by implication in clause 77, but not expressly. I think it would be better to leave it only by implication rather than not to strike out these words. In my opinion, the retention of the words "with such exceptions and " would allow too great an interference with the appellate jurisdiction.

Mr. HIGGINS (Victoria). -

I hope the amendment will not be accepted. I find that the words to which Mr. Glynn takes exception are the words which are used in the United States Constitution, Article 3, section 2, which, of course, deals only with federal matters. In that section one sentence states—

In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and
under such regulations as the Congress shall make.

If they were willing in the United States to allow exceptions even with regard to appeals in federal matters, then a fortiori I think the Federal Parliament ought to be allowed to make exceptions in connexion with the High Court, which is to deal with appeals in matters of all sorts and from all courts, otherwise a man might protract litigation ad infinitum on the most trumpery case. For instance, if there was an order made by a Judge as to the form of pleading—that a man must make a statement of claim more definite-then, according to my honorable friend's amendment, an appeal about a statement of claim or declamation, could be carried up to the High Court of Australia, and the High Court would have its time taken up with the wretched question as to whether a certain word should be put into a statement of claim.

Mr. OCONNOR. -

Or about some matter involving only a matter of 40s.

Mr. HIGGINS. -

Yes. Supposing a man was convicted of being drunk and disorderly, and was fined or ordered to be imprisoned for a certain number of hours; if he were rich he might carry the thing to the High Court, and the time of the High Court might be taken up by such a trumpery matter as that. In this, as in other matters, we must trust the Federal Parliament to a very large extent. I think the whole machinery of the Act will become ridiculous if the people are to be told that, no matter how trumpery a case may be, the litigant shall have power to oppress the other side by carrying it to the High Court of Australia.

The amendment was negatived.

Mr. SYMON (South Australia). -

I beg to move—

That after the word "state" the following words be inserted, "or of any other court of any state from which an appeal now lies to the Queen in Council."

I propose this amendment merely because of the condition of things in our own colony, in which there is another Court of Appeal from which an appeal now lies to the Privy Council, an intermediate Court of Appeal which is seldom availed of, but which exists.

Mr. DOBSON (Tasmania). -

I am inclined to think that the words suggested are necessary with regard to all colonies. In Tasmania we have no appeal in certain mining cases, and there may be other colonies which have no appeal in other cases. I think the appeal should be given in all cases where the state gives an appeal
itself. You do not want to interfere with the local law, and confer an appeal from our Supreme Court where we do not grant such an appeal now. I would ask Mr. Barton and Mr. O'Connor whether it is meant under this clause that an appeal will lie in any criminal case? The word "sentences" is used. That may mean a sentence of condemnation in an admiralty suit, but does it also mean an ordinary sentence in a criminal case?

Mr. HIGGINS. - That is covered by the words "with such exceptions as Parliament may from time to time prescribe."

Mr. DOBSON. - No doubt that would cover it.

Mr. ISAACS. - I believe it would include that, but there is power in the Federal Parliament to except.

Mr. DOBSON. - Of course I am aware that it is of no use saying that we should trust the Federal Parliament, and then in every other sentence show that we distrust them; but, at the same time, I think the Act should make it clear whether you intend to confer the right of appeal in criminal cases. I can understand that Parliament must have jurisdiction to make limitations, and to say that you shall not appeal, say, in any case involving less than £500 or £1,000; but I do not know that we should give the Federal Parliament the right to say that you shall not have an appeal in an admiralty case, and you shall have an appeal in a criminal case. I think the Constitution should decide these matters.

Mr. OCONNOR (New South Wales). - The words in clause 74 are as wide as possible. They cover every possible species of decision, civil or criminal.

Mr. ISAACS. - I think, they are the same as in the Privy Council orders.

Mr. OCONNOR. - Yes, they follow the same words. To take the illustration of Mr. Dobson, an adjudgment of guilty in a criminal case is the judgment of the court. The jury find the verdict, but the judgment is the judgment of the Court. So that every possible case is covered. Now, it appears to me that we must suppose that the power to grant these exceptions or limitations which is given to the Federal Parliament will be exercised with ordinary common sense, and with a due regard to justice. We cannot suppose that the Federal Parliament would deprive a criminal of his right of appeal any more than any other
litigants in cases of less importance. The right of appeal in criminal cases is, therefore, fully preserved, and will not be withheld by the Federal Parliament.

The amendment was agreed to.

Amendment suggested by the Legislative Council of New South Wales and the Legislative Council of Victoria-

Omit "and the judgment of the High Court in all such cases shall be final and conclusive."

Mr. BARTON (New South Wales). -

I trust that these words will not be struck out. I am quite prepared to find that somebody will propose an amendment to follow them, to reserve the Queen's right to grant leave to appeal; but I do not think that either side would like to take away the final and conclusive nature of the judgment of the High Court of the Commonwealth, except subject to what is done in the way of appeal to the Privy Council. Therefore, I submit that the words proposed to be struck out are absolutely essential and cannot be dispensed with.

Sir GEORGE TURNER (Victoria). -

I do not propose to raise any objection to these words remaining as part of the clause, but I intend to endeavour to add a few words afterwards, in order to give the right of appeal to the Privy Council in certain cases.

Mr. MCMILLAN. -

We are voting on this amendment on the understanding that words will be added giving the option of an appeal to the Privy Council.

Mr. SYMON. -

Somebody will have to move that amendment, then.

The amendment was negatived.

Sir GEORGE TURNER (Victoria). -

I do not wish to traverse the ground which has been so well covered by Mr. Carruthers, who has put fairly before us all the reasons which could be adduced why we should not take away absolutely the right of appeal to the Privy Council. I feel that the reasons that he has adduced are, or ought to be, sufficient to convince us that if we take away altogether the right of appeal to the Privy Council we will be taking a step which the people of the Federation hereafter will have cause to regret. Clause 75 provides that-

No appeal shall be allowed to the Queen in Council from any court of any state, or from the High Court or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth, or of any state, or of any other part of her dominions are concerned, grant leave to appeal to the Queen in Council from the High Court.
I understood at Adelaide that those words correctly interpreted the judgments which had been given by the Privy Council on applications for appeal, and that by incorporating those particular words in this statute we would be giving to the people in our Federation exactly the same right of appeal which the people in Canada have at the present time.

Mr. HIGGINS. -
And although you thought that you voted against us.

Sir GEORGE TURNER. -
Certainly, because I did not know of any reason why the right of appeal should be restricted. At present any person who feels aggrieved, except against mere trumpery judgments—because there are certain reasonable limitations which no one can object to—has the right to apply to the court in the colony for permission to appeal to the Privy Council, and, failing that, has the right to appeal direct.

Mr. SYMON. -
Except a poor man concerned in a case of £200 perhaps.

Sir GEORGE TURNER. -
I am afraid that his £200 would be very little good to him after the case was over, even if he succeeded in his appeal.

Mr. SYMON. -
Why should he not have the right to appeal?

Sir GEORGE TURNER. -
He has the right to appeal. In all cases for over £500 with us he has the right to go to the Queen direct and ask permission to appeal.

Mr. SYMON. -
Do you think he would be likely to get it?

Sir GEORGE TURNER. -
I do not know. If he has the means to do so, he has the right to go to the Queen direct and ask for permission to appeal, and if he has not the means, we cannot by any statute give him the means to do so.

Mr. SYMON. -
And there are 10,000 litigants who have not the means to appeal to every one who has the means.

Sir GEORGE TURNER. -
Very likely; but why shut out the one who has the means from appealing to the highest court of the realm, which we have all the right to appeal to at the present time? Again, other cases may be tried within the Commonwealth which affect persons outside the Commonwealth. We have large contracts with people in England, who will have to be bound by our
laws here, and they will not be able to appeal to the Privy Council, even if they think that the decisions of our courts here are not correct.

**Mr. SYMON.** -

Why should not that be so?

**Sir GEORGE TURNER.** -

Why should they be shut out of the right of appeal to the Privy Council simply because they reside in another part of the empire? They should have the same right of appeal as all other citizens have.

**Mr. SYMON.** -

Except in Great Britain and Ireland; they have not the right of appeal to the Privy Council.

**Sir GEORGE TURNER.** -

In Great Britain and Ireland they have the right of appeal, although perhaps not to the same body as we have the right to appeal to here. I quite agree with Mr. Carruthers that we do not desire to add more hedges or more ditches. But we do say that the person aggrieved should have the right of appeal to the one court or the other. I would not support the contention that the rich litigant should have the privilege of dragging the other man, whether he be rich or poor, through all the courts of the colony, including the High Court of Appeal here, and then the right of appealing to England. I say that the man who is beaten and desires to appeal should have the full right to select the Court of Appeal. I would allow him to appeal to the High Court here, if he so chose, on the condition that if he got beaten he must stop, or I would give him the right to go to the Appeal Court in England, where, if beaten, he would have to stop. But then there is the case of the man who is dragged before the High Court here and beaten, and he should have the right of appeal to the Privy Council.

**An HONORABLE MEMBER.** -

That would be a double appeal.

**Mr. SYMON.** -

Yes, he would be a glutton for litigation; you must have finality somewhere.

**Sir GEORGE TURNER.** -

It would not be a double appeal.

**Mr. HIGGINS.** -

If the Federal Court and the Privy Council differ as to the law, what is to guide the Supreme Court of Victoria or of New South Wales?

**Sir GEORGE TURNER.** -

The decision of the Privy Council.

**Mr. HIGGINS.** -
I mean to say, if the Federal Court and the Privy Council differ in two cases, what is to guide the courts of inferior jurisdiction here—if the Privy Council has taken one view of the law and the High Court of Australia another?

Sir GEORGE TURNER. -

Undoubtedly, as part of the British dominions, we ought to be bound by the decisions of the highest court in the realm.

Mr. SYMON. -

According to your argument the two courts will be equal?

Sir GEORGE TURNER. -

I did not say that they would be equal.

Mr. SYMON. -

But they must be equal if you give the alternative appeal.

Sir GEORGE TURNER. -

I would rather see this High Court that we are talking so much about, and which is going to be a terrific expense for very little benefit, taken away than I would see the Privy Council taken away. But I do not want the High Court to be taken away, because that court would be useful in many cases. At the same time, I think we can very easily preserve, in all cases where it is necessary, the full right of appeal to the Privy Council. I would say that no appeal should take place except by permission of the High Court or of the Queen in Council. It should be quite competent where the High Court had decided a case to make an application to that court for leave to appeal to the Privy Council. If the High Court allowed it, of course the appeal could go to the Privy Council, but if the High Court refused it I would still allow the parties to ask the Privy Council for leave to appeal. But where a person of his own motion had selected the High Court to finally decide the matter, he ought to be prevented from going further, though I would not prevent any one else from going to the Privy Council. I have not attempted to go through the reasons which lead me to take this attitude, because I think they have been fully stated by the honorable member (Mr. Carruthers). In order to test the matter, though I am not perfectly satisfied that the words I propose to add are exactly the words that the Drafting Committee would like to adopt, I beg to move that the following words be added to the clause:—

except in cases where an appeal may be allowed either by the Privy Council or the High Court.

Mr. WISE. -

Why not take the words that are used in the Canadian Act?

Sir GEORGE TURNER. -
If we add the words "saving any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative," that will give no power to the court here. Why should the parties be put to the expense of applying to the Privy Council for leave to appeal?

Mr. BARTON. -

Because then the poorest man could get an appeal if the case was important.

Mr. WISE. -

The honorable member's amendment would make an additional step in the litigation, which would be in favour of the rich man.

Sir GEORGE TURNER. -

Not at all. I give the right to apply to the Queen in Council for leave to appeal, but I also go a step further and give the right to apply to the court here for that permission.

Mr. OCONNOR. -

But the court would make rules regarding the matter, and they would probably fix a certain amount as a limit.

Mr. BARTON. -

£500.

Mr. ISAACS. -

I think it is a great mistake to deal with this matter in the Convention at all.

Mr. WISE. -

I am rather inclined to agree with the honorable member, but still I am coming round on this question.

Mr. DOBSON. -

Why should a litigant have to go to the Queen in Council to get leave to appeal?

Sir GEORGE TURNER. -

Quite so. A litigant has the right to appeal now in all cases involving more than £500, and in other important cases he may get leave to appeal. I do not want appeals to be made upon trivial matters, nor do I think it likely that such appeals will be made. We know that the appeals which take place now concern matters of great importance, affecting not only the parties to the litigation but hundreds of other persons as well. I am not particularly wedded to the words I have suggested, but I desire to have some provision embodied in the Constitution which will preserve to us the right of appeal to the Privy Council. The provision in the Bill, to my mind, instead of enlarging the rights of the people of the Commonwealth, limits them.
Mr. WISE (New South Wales). -
I would suggest that in order to get this matter settled the honorable member should alter the first word of his amendment, and instead of beginning with the word "except;" begin with the word "saving." We could then take a test vote upon the question. Those who are in favour of making the decision of the Federal Court final and conclusive and of keeping the clause as it stands would vote against the insertion of the word "saving." If the vote was carried against those who are in favour of the clause as it stands, we could then determine upon the actual form of amendment, and agree upon one which might be more suitable than that which has been moved by the honorable member. There are two matters to be considered. First, the opinion of the Convention has to be taken as to whether the clause should remain as it stands. Would it not be better to take a test vote upon a single word? Then, if that were carried in our favour, we could insert the provision of the Canadian Act, or any other amendment we thought suitable.

Sir GEORGE TURNER. -
I have no objection to that.

Mr. SYMON (South Australia). -
The real matter of substance that we are so anxious to determine is whether the right of appeal to the Privy Council should or should not be taken away except in certain specified cases. That is expressed clearly in the first words of section 75 as they were agreed to in Adelaide. Would it not be very much better to deal with that provision substantively? If the vote is that that portion of the clause should be retained, we do away with appeals to the Privy Council except in certain specified cases, or we can retain these words and add, after the word "except," anything that my honorable friend desires. I understand that we have finished with clause 74.

The CHAIRMAN. -
No.

Sir EDWARD BRADDOCK (Tasmania). -
I shall support to the fullest possible extent the principle of the amendment moved by the honorable member (Sir George Turner). I do not think anything more calamitous could occur than that we should deprive the people of the Commonwealth of the right to appeal to the Queen in Council, a right that, as Britons, they should be allowed to exercise, and one which is enjoyed at the present time by every man in every part of the empire. The Premiers, who were my colleagues in our recent visit to England, know the very strong feeling which exists upon the part, of the British Government, or at any rate upon the part of the Secretary of State for the Colonies, that the tie between the colonies and the mother country.
should be retained. At the present time there are very few tangible and substantial ties between us, and of them I think this in possibly the most precious. All the people from end to end of the colonies profess the greatest possible loyalty to the Throne and to the Sovereign who sits upon it. We all, I believe, desire to remain members of the great British Empire, and we wish to continue British subjects with all the rights of British subjects, and of those rights this appeal to the Privy Council is a very considerable one. I would repeat what was urged at the Convention in 1891, that by depriving the people of these colonies of the right of appeal to the Privy Council, we should be sapping the foundation of that Constitution, which is avowedly a Constitution under the Crown. I hope, and hope with every possible confidence, that in this, our final dealing with this matter, we shall by a large majority decide to retain the right of appeal to the Privy Council.

Mr. REID (New South Wales). -
This matter has been discussed so thoroughly and on so many occasions that I shall do little more now than state how I intend to vote. I consider that if the right of appeal to the Privy Council is to be maintained as heretofore the federal tribunal should have no jurisdiction over appeals from the colonies. Such an arrangement will simply interpose an additional obstacle in the way of that finality which is the one thing to be aimed at in any judicial reform. With the addition of the words "saving Her Majesty's prerogatives," we shall have the benefit of a court which will be final; as to all matters that involve no great principle or no serious question as to the correctness of the decisions; of the High Court of Australia. Any litigant who is on sound ground, that is to say, who, in a petition which would not cost much, could set forth facts for the consideration of the Queen in Council which would go to show that the High Court had, decided contrary to the law of the empire would no doubt be granted a right of appeal to the Privy Council by the Queen under her prerogative. Let the High Court for all practical pu

Mr. SYMON. -
And the option to be with the appellant litigant.

Mr. REID. -
I say, rather have no Australian Court at all if that state of things is to continue. With references to the Judges, I do not think they would like to have it thrown on them to decide on their own judgment when they should say no to an application, to appeal to the Privy Council and when they should say yes. They would have to frame rules in order to secure some sort of uniformity, and the effect of those rules, would be to establish a
normal state of appeal from the Federal Court to the Privy Council. Let us look the thing straight in the face. Are we going to maintain the relations that we have at present without the Federal High Court or not? If we are in favour of maintaining the present system we need no Federal High Court for such appeals. If, on the contrary, we think that we have sufficient judicial ability to decide the average case correctly, let this be a final Court of Appeal, and the Queen by her prerogative will deal with all those difficult and important cases which may in the course of the jurisdiction come up.

Mr. HIGGINS (Victoria). -
Whatever may be the final decision upon this matter, and it really assumes to my mind, more importance as it is discussed, I hope that, the proposal of the Right Hon. the Premier of Victoria will not be accepted because it would lead to the greatest perplexity and uncertainty, and to a want of finality as to the law. I still ask for an answer to the question of what is to happen where you have got two final Courts of Appeal for the same country? Which final Court of Appeal is to settle the law? It is not of so much importance what the law is as that the law be certain.

Mr. WISE. -
And speedy.

Mr. HIGGINS. -
Yes, and speedy.

Mr. ISAACS. -
And cheap.

Mr. HIGGINS. -
That goes without saying. Honorable members who are engaged in commercial transactions will admit that there is nothing so irritating to a man as not to know the law by which he is to be guided. There is no country in the world which has a system such as the Right Hon. the Premier of Victoria suggests with two Courts of Appeal, each of which is final and conclusive, and cannot be over-ruled by the other, and by either of which all litigants are to be bound. I can understand the suggestion, although I do not approve of it, to have an appeal to the Privy Council after the High Court of Australia; but I do not think honorable members are disposed to give one more means to the lawyers of earning fees, bad as the times may be. They are not inclined to multiply appeals. To come to the root of the matter, I may say that it is our business in framing the Constitution to see that the different departments of the State shall assume the full responsibility of nationhood, subject always to the Crown. We ought not to shirk those responsibilities. The more fully we take them upon
ourselves the more fully will the people respond to them, and the better will be the work that is done. We should not shirk a task which was taken up, no doubt, with a considerable degree of hesitation by the states of America when they seceded from England. They took upon themselves, at a time when their population was similar to our own, the framing of a court whose decisions should be final. I ask is there any court in the whole world which has such influence and whose opinions are so weighty as the opinions of the Supreme Court of the United States? whose decisions are read and cited and acted upon frequently in the House of Lords and the Privy Council.

Sir GEORGE TURNER. -

You would not allow of an appeal from America to England.

Mr. HIGGINS. -

No, but I would object to a system under which you would have an appeal either to America or to England, when you would have the poor unfortunate people who have to act according to law uncertain as to whether they were to act according to the American decisions or the English decisions. With regard to the argument of the honorable member (Mr. Carruthers), I think he has put the argument in favour of the Privy Council as strongly as it can be put; but it is all nonsense to talk of this as being a matter of popular right and demand. There is no popular demand. Not one man in 100,000 cares a snuff about a Privy Council appeal. Very few people go there-only a few wealthy corporations and a few working against them particularly. Who cares about the Privy Council or the Privy Council appeals? It is not a matter of popular rights. It is simply a question of whether we here, in framing a Constitution, are too timid to take upon ourselves the responsibility of carrying out rights between party and party. Of course, I admit there is no popular demand for it. But I ask, is there a popular demand that the appeal to the Privy Council should be given? As the honorable member (Mr. Isaacs) suggested, I think that he is quite right in saying that we ought to object to any right honorable gentleman in this chamber giving any opinion upon this matter of the Privy Council.

Mr. ISAACS. -

I did not put it in that way.

Mr. HIGGINS. -

I did not want to state it as my own opinion, but I think it is an excellent point. Still it is not a popular cry, and not one man in 100,000 cares at all about it.

Sir GEORGE TURNER. -

If the members of the Privy Council here are fair representatives of it, the Privy Council ought to be popular.
Mr. HIGGINS. -

If they were all on the Judicial Committee, I admit that we should have very good decisions. Coming to the serious part of it, I do not think that any answer has yet been made to the argument adduced with such weight by the honorable member (Sir John Downer) at our last meeting in Adelaide. There has been no answer to his argument that if you intrust the Federal Parliament with the making of laws affecting the life, liberty, and property of every one of the people of Australia, why on earth should you not intrust to the Federal Judiciary the power to interpret these laws? There is no answer to it. The honorable member (Mr. Carruthers) says that the Queen has still to give her consent to these laws. Is not that very like cant? Does the Queen refuse her consent to those laws?

Sir JOHN FORREST. -

Sometimes.

Sir GEORGE TURNER. -

She has done so very lately.

Mr. HIGGINS. -

There might be a Bill passed decreeing that the honorable member (Sir John Forrest) and his Ministry in Western Australia should be suspended by the neck until they were dead. I am not sure that in that extreme case Her Majesty would refuse to give her consent. I believe that with tears in her eyes and with much regret she would give her consent to such a law. The consent of the Queen to an ordinary Act of Parliament is given, very properly under constitutional government, almost as a matter of course. It is only in those cases where there is any interference with the rights of states or with other British subjects that there is ever a refusal to give assent. If there is any difficulty with regard to the matter, I think the honorable member (Mr. Wise's) suggestion to adopt the same words as are in the Canadian Act would not be taken amiss, although, with all respect, I think they are perfectly useless. I have here the case of Prince v. Gagnon, vol. 8, Appeal Cases before the Privy Council, in which the Canadian Act giving the right of appeal to the Privy Council on Her Majesty's prerogative was discussed. It was a case involving £1,000, and the question was whether a transaction between father and son amounted to a gift or a sale. There was first a decision in the court that it amounted to a gift. There was then an appeal in Canada to the Queen's Bench, and they held upon the same particulars that it was a sale. There was an appeal again to the Federal Court in Canada, and they held that it was a gift. It then went to the Privy Council, the members of which said it was only a question involving £1,000; it did not involve any question of magnitude, of law, or of public
interest. The report says-

Their Lordships, having looked into the case, see that it involves nothing whatever beyond this £1,000. There is no grave question of law or of public interest involved in its decision that carries with it any after consequences, nor is it clear that beyond the litigants there are parties interested in it.

Their Lordships then proceeded to apply the principles laid down in certain cases, and said-

They are of opinion that they ought not to advise Her Majesty to exercise her prerogative by admitting an appeal in a case depending upon a disputed matter of fact in which there is no question involved of any magnitude.

Of course, when they speak of magnitude, they are referring to the amount of money involved. They say-

In which there is no question involved of any magnitude, or of any public interest or importance, their Lordships will humbly advise Her Majesty to refuse liberty to appeal in this case.

Mr. REID. -

But that would mean that the case would be different, and would be of very great importance if a question were involved, having a far-reaching effect, and raising an important legal principle.

Mr. HIGGINS. -

I would prefer to take the clause as it stands, because I think that the sooner we feel in a Federal Court of this sort that we throw the full and final responsibility upon them the more that court will face the responsibility, the more weighty will be its decisions, and the more it will have respect in the eyes of the people in this country. But, at the same time, rather than that the honorable member's (Sir George Turner's) amendment should be carried, I should prefer to adopt the words in the Canadian Act. However, I shall vote against both. I shall vote in favour of making our Australian Court as weighty as we can in the eyes of the people. I am quite sure that the people will not regard it as sufficiently weighty when it feels that the decisions of that court may possibly come, to be over-ruled in a committee numbering certain Judges from South Australia, from India, and other parts of the world.

Mr. WISE. -

I should like to ask how the Chairman intends, to put the question?

The CHAIRMAN. -

I understand that the right honorable member (Sir George Turner) has agreed to the verbal amendment proposed, and I will put it in this way:-

Saving in cases where an appeal may be allowed either by the Queen in
Council or by the High Court.

Mr. WISE (New South Wales). -

In order to bring the discussion to a point and to get to a division, yielding to a suggestion from the Chairman, I propose to amend the amendment by omitting all the words after the word "saving" with the view to insert the following in their place:-

Any right which Her Majesty may be graciously pleased to exercise by virtue of her royal prerogative.

In order that the committee may understand exactly what, they are voting for, I desire to explain that if the amendment I have moved be carried, that is, the amendment on, the honorable member (Sir George Turner's) amendment, that, will restore our Bill to a similarity with the Canadian Act. For my own part, I believe in the Bill as it stands. Therefore although I shall vote for the amendment I am now moving, because I prefer that alteration to the alteration proposed by Sir George Turner, when the further question comes to be put, that the clause as amended, or that the words as carried, be added to the clause, I shall then vote

Dr. COCKBURN. -

The honorable member moves an amendment on the amendment of Sir George Turner, and then he votes against both.

Mr. WISE. -

Yes; I do so because a vote was given the other day under a misunderstanding. Sir George Turner has moved an alteration proposing, the addition of certain words. They have the effect of giving an additional power to the Privy Council, at the discretion of the High Court here. I am opposed to that, and if any alteration is to be made in the Bill as it stands, I prefer an alteration to assimilate our law to the law in Canada, that is to say, an alteration giving to the Privy Council itself a right to say what appeals shall be made. If my amendment be carried, I shall still vote-when the question comes to be put that these words be added to the clause-on the negative side, because I prefer to keep the Bill as it stands. In my view, clause 75 gives effect to the decisions of the Privy Council, and makes still more clear the rules which the Privy Council has laid down for its own guidance in the advice which it gives to Her Majesty in allowing or disallowing an appeal.

Sir EDWARD BRADDOCK (Tasmania). -

I hardly know why the honorable member (Mr. Wise) has taken the trouble to move this amendment.

Mr. ISAACS. -

He does not like either of the amendments, but he likes his own better.

Sir EDWARD BRADDOCK. -
Of course we can see the object of it. He prevents a decision being given directly upon Sir George Turner's amendment, and then reserves to himself the right to slaughter his own.

Mr. REID. -

He does not like the sharp edge of Sir George Turner's, and, therefore, be blunts half of it.

Mr. ISAACS (Victoria). -

The more I think of it the more I come to the conclusion that it is a mistake to finally decide this matter at all. They have not finally determined it in the Canadian Constitution, and what is proposed now by Mr. Wise's suggestion is to bring our Constitution into accord with one particular Act of the Parliament of Canada. Now, there are other Acts in Canada that do not allow an appeal to the Privy Council at all; as, for instance, where the Privy Council has decided from the wording of an Act—the words of which were that the judgment of the court should not be susceptible of any appeal—that there was no appeal to the Privy Council. I think that the proper course here should be for the Convention, seeing the divergence of opinion among representatives here, and knowing that there is also a divergence of opinion outside, not to attempt to finally settle this matter in the Constitution. We should leave it for the people as represented in the Parliament to decide the matter. I should say that it would be preferable, inasmuch as we have adopted clause 74 as far as we have, to put in a saving, clause to say, "saving or except where otherwise provided by the Parliament"; leaving the High Court decision to be absolutely final and conclusive, except that the Parliament might, if it thought fit at some future time, provide that there should be an appeal to the Privy Council. That would leave the Parliament utterly free to do as it wished. The desire of the people might change upon the question from time to time, and supposing the majority of our people were to be demonstratively in favour of leaving this appeal to the Privy Council at the present time, they might in five years hence change their opinion, but they could not give effect to that change except by an alteration of the Constitution. I think we have made a mistake here, as we have in other things, in attempting to provide in the Constitution matters which should be properly attempted by means of federal legislation.

Mr. HIGGINS. -

The character of the High Court should be a matter for the constitution.

Mr. ISAACS. -

Yes; but whether its decisions should be subject to appeal or not need not be.
Mr. SYMON. -

That is a matter that should be provided for in the Constitution.

Mr. ISAACS. -

In the very clause which we have dealt with we have acted otherwise, because that clause says "with such exceptions and subject to such regulations as the Parliament may from time to time prescribe." To constitute a High Court will undoubtedly be a matter of considerable expense. I do not say that it will be a matter of undue expense. This is going to be a body of great, and, as Mr. Symon has said, of imposing power and weight, and I think it is a great mistake to say that we shall make this tribunal a tribunal of appeal from our present Supreme Court, and then allow under any circumstances, except what are mentioned in clause 75, a further appeal to the Privy Council. I consider that it is allowing undue weight to wealth, because it is not within the power of a man of limited means to go to the Privy Council, more especially when he has had the previous expense of going to the High Court. It is difficult enough as it is for a poor man to prosecute an appeal, and, if his resources are to be further straitened by means of this intermediate appeal, I doubt very much whether his rights will not be forfeited through the failure of his pecuniary resources, and through the superiority of the resources of his antagonist. I have seen cases in this colony where the power of appeal to the Privy Council has been exercised, rightly and fairly under the law as it is, but as, for instance, in a case which I have in my mind's eye—with the effect of making it absolutely impossible for the poor litigant to be represented.

Mr. SYMON. -

I have known a poor litigant to compromise rather than go to the Privy Council with an appeal.

Mr. ISAACS. -

I think that the difficulty that exists is great, and it will be still greater if we interpose this High Court jurisdiction, giving power to go to the Privy Council. I think we should retain clause 75 as it stands, allowing an appeal to the Queen in Council in certain public cases, but beyond that, where it is a mere matter of litigation between individuals, I think the High Court of Australia should be left to deal with them. I therefore find myself in the regrettable position of having to differ from my right honorable and learned friend and leader (Sir George Turner) with regard to this matter. It is not often that we do differ, and I regard myself as unfortunate in having to differ from him now, but by the exercise of the best judgment I have with regard to the matter, I think, in the interests of everybody, more
especially of those litigants who are limited in means, we should not hesitate to adhere to the Bill in this respect as it stands.

Mr. BARTON (New South Wales). -

I do not know whether I shall call down any ridicule from my right honorable friend (Sir Edward Braddon) in what I am going to say, but I am in the same position as my honorable and learned friend (Mr. Wise) is. If there is to be any alteration of this Bill as it stands; if the limitation on appeals contained in clause 75 is to be out out in favour of some form of appeal to the Privy Council generally, then I would rather see this Constitution assimilated to the Constitution which has flowed from the Canadian Act, than see the amendment of my right honorable friend (Sir George Turner) carried. I think it would be far better that we should, if we are to depart from the Bill as it stands, tread in well-known paths-paths that have been proved as those of Canada have been proved, and as to which the people of Canada at any rate do not seem to express any great dissatisfaction. The question whether we should leave the appeal as it stands in clause 75 or assimilate the practice here to the Canadian practice is a very different one, and as between these two I, on the whole, prefer the Bill as it stands. We are four times as far as Canada is from the central Court of Appeal, and when you consider the greater difficulties and the time which must be occupied in these circumstances, it is a reasonable thing, on the whole, that the right of appeal should, in some degree, be restricted to the most important cases which may be defined. Agreeing, up to that point, with my honorable and learned friend (Mr. Isaacs), I do not agree with him that we should leave out a precise definition of this subject from the Constitution, because I am of opinion that the ultimate authority of the court we are about to create is nearly as important a question as the jurisdiction which you will give it. If you are going to give it a jurisdiction and leave it to future events to say to what extent that jurisdiction can be effectually exercised, I think you will be leaving that uncertain which you ought to make certain in the Constitution. I think, on the whole, I shall find myself supporting clause 75, and, therefore, not supporting the amendment of Mr. Wise when the question is put—that the words proposed to be inserted in the clause be inserted; but when the question is put as a whole, I, preferring his amendment to that of Sir George Turner, I shall, up to that extent, be found voting with Mr. Wise.

Mr. SYMON (South Australia). -

It is, I think, the most comforting thing that lawyers can possibly have experience of, to find so many honorable members of the Convention thrusting business upon them in this most unasked for fashion, and insisting that the people of this country shall have yet another Court of
Appeal, through the purgatory of which they may be dragged by the successful and, perhaps, more wealthy litigant. I was exceedingly gratified to hear the view expressed by my honorable friend (Mr. Isaacs), and it embodies the view which, from the very beginning of this matter—when it was discussed in the Judiciary Committee, and at the Adelaide session—I have held. But I do not quite follow the views of some other honorable members who have suggested that there should be a reservation of power on the part of the Privy Council to give special leave to appeal in any particular case in which they might think fit. Nor do I agree with the amendment, which would, in general terms, save the Queen's prerogative; because the only purpose we have in view in dealing with this matter is, of course with Her Majesty's assent, to take away that prerogative. At present it is under no statute that this appeal exists—the whole thing is provided for by means of Orders in Council. Therefore, if you reserve, by the words which are suggested, the Queen's prerogative, you are reserving in substance exactly the power of appeal which exists at the present moment, and which may be provided for by means of Orders in Council just in the same way as it exists here. I am greatly astonished to hear my right honorable friend (Sir Edward Braddon) talk of the substitution of one of Her Majesty's Courts of Appeal for another as sapping the foundations of our Constitution.

Mr. DOBSON.—
That is a quotation from an 1891 speech.

Sir JOSEPH ABBOTT.—
Only "idle words."

Mr. SYMON.—
Yes; as my honorable friend interjects, those are mere idle words. They remind me of the petition which was presented to the Convention a few days ago, of which, when it was presented, it ought to have been said, not that it was respectfully worded and contained a prayer, but that it was extravagantly worded, and contained a prayer which actually went the length of saying that this matter of constituting under this Constitution another Court of Appeal—its quality, of course, is a matter which may be open to debate would constitute a serious menace to the integrity of the empire. Why, sir, when I observe that this emanates from a body called the Australian National League, I wonder what foolish people could have put their heads together and written anything so absurd. We are not dealing with the foundations of the empire; nor are we dealing with anything which is going to menace the integrity of the empire. We are simply creating a court which we all admit is absolutely essential. We have decided to
establish a Federal Judiciary. It is to be a High Court, supreme over all other courts, federal or state. It is to be established by the Constitution. It is to be part of the bed-rock of the Constitution, to be placed there by the voice of the people of Australia, who have to vote for the acceptance or the rejection of the Constitution when framed. It is to be a court which is to guard and secure the freedom of every citizen. It is to protect the rights of the states; it is to interpret the laws which the Federal Legislature is to make; and yet it is said-and it astounds me to hear it said-that this same court is not fit to dispense final justice in matters of commerce and so forth to the people of this continent. Now, that is the issue. What is the good of our having these idle and absurd rhetorical expressions used in connexion with a matter of this kind? Of course, hitherto, we have had no intermediate tribunal between the Supreme Court of the state and the Privy Council, except in South Australia. But now we have a High Court of the Commonwealth, and yet, as I interposed a few minutes ago, some people are such gluttons for litigation as to suggest that we should make this a Court of Appeal, and, lest people should not have enough of litigation, we should send them to yet another court. As my right honorable friend (Mr. Reid) said in Adelaide, where is it all to end? There are some people who are so anxious to fight for their rights, or at any rate to exhaust their opponents, that there is no limit to their desire for Courts of Appeal, but where is this to end? If this is to be a court such as I have described, then surely it is competent to deal with every question that may concern the commercial and business and other relations of the people of the Commonwealth you are going to establish. If it is not, then let us do away with it altogether. Let us be content with the courts of the states and the Privy Council as the interpreters of the laws we are considered to be competent to make here. It may have been thought that there are some reputations on the competence of the Privy Council. My objection to the continuance of the Privy Council is not on the ground of want of competence at all. That it is a competent court I do not deny, and I do not think anybody else denies it. Though the seats in the Privy Council are occupied by men of the very highest eminence and distinction, trained in that noble body of jurisprudence called the common law of England, still that very training is, to a certain extent, a limitation when we have regard to the nature of the constitutional questions which will be brought before them for consideration. What training—and I ask this with all possible esteem, in fact, with the highest admiration for the power and competence of that court—what training or experience or knowledge of the questions to arise under the Federal Constitution has that court? They will approach the
subject as students. They will approach the subject with all the disadvantage of a long life spent in a different environment, under totally different conditions.

**Sir EDWARD BRADDON.** -

The Judges of the Supreme Court were students to start with.

**Mr. SYMON.** -

But the Judges of the High Court in this Commonwealth will have grown up with the subject.

**Sir EDWARD BRADDON.** -

They are just dropping the feeding-bottle.

**Mr. SYMON.** -

Then if they are just dropping the feeding-bottle-a not inapt expression-they will be dropping it for the Judges of the Privy Council to take it up, and I should prefer those who have escaped from that condition to those who are just entering upon it. But can it be doubted for a moment that, if both courts approach the matter as students, in the one case you have a body who are dealing with it 12,000 miles away, and, in the other case, you have a body who are dealing with it amongst ourselves body constituting the High Court, in which we repose the safeguarding of our liberties? But I wish to call honorable members' attention to this also, as allusion has been made to Canada, that it is notorious that the Privy Council has failed to interpret the Canadian Constitution in the large spirit which is essential in dealing with a Constitution which must be elastic. I will read to honorable members a quotation, merely prefacing it by saying that I am not disparaging the Privy Council at all, but only pointing out that they are guided by a more rigid adherence to what is literal, as though they were interpreting simply an Act of Parliament, rather than by a regard for those great constitutional principles which throw light upon and assist in the efficient interpretation of a Constitution. Bryce, on page 509 of his book-I commend the quotations very strongly to the attention of honorable members, because this is a much larger question than the mere form of words we are to use in this Constitution-in pronouncing a eulogy upon the work of Marshall, the famous Chief-Justice of the United States, says-

That admirable flexibility and capacity for growth which characterize it (the American Constitution) beyond all other rigid or supreme Constitutions is largely due to him, yet not more to his courage than to his caution.

Now, what does he say about the Privy Council, contrasting it with that?- Had the Supreme Court been in those days possessed by the same spirit of strictness and literality which the Judicial Committee of the English Privy Council has recently applied to the construction of the British North
American Act of 1867 (the Act which creates the Constitution of the Canadian Federation), the United States Constitution would never have grown to be what it is now.

Now, there you have a criticism by a valuable authority as to the limitations on the capacity of the Privy Council, at any rate on their willingness to interpret the Constitution with a view to that elasticity that ought to prevail; and Bourinot, in a valuable article which appears in the Arena of March last, writes-

Several cases involving constitutional issues of great moment have already come before that learned body (the Privy Council), and on more than one occasion the decisions of the Supreme Court have been reversed-

And yet in spite of that fact he goes on to state-

...the general result so far has been to strengthen confidence in the Canadian tribunal.

There we have the experiment. The experiment has been made in connexion with Canada, where these questions have gone from the Canadian Supreme Court to the Privy Council, and the result, in the estimation of a great constitutional writer, notwithstanding the reversals that have taken place, has been that the confidence of the Commonwealth in the Canadian Dominion has been greatly strengthened in their own High Court. Now, why should we pass through this experiment again? Why should we not be content with the experience that has been already gained? Then it may be, indeed it has been said that these appeals that are talked about are appeals going to the Privy Council in matters involving the common law. Now, what is the present condition of things? Is it not a fact that the colonies have concurred in sending an Australian Judge, as Mr. Chamberlain said in his address to the Premiers, to strengthen and instruct the Privy Council? I am proud myself that the lot in that respect, has fallen on South Australia. I am, as we all are, gratified that the distinction should be conferred on the Chief Justice of our colony, and I am willing to admit that as a token of goodwill and conciliation on the part of the Imperial authorities it is valuable. But I am candid enough, at the same time, to admit that the whole thing is rather a farce, because, on the one hand, it cannot be to strengthen the Privy Council, so far as the common law of England is concerned. The Judges of the Privy Council are at least just as competent as the Judges of Australia to interpret the common law of England. It cannot be to strengthen the Privy Council so far as the statute law of the colonies is concerned, because the Judges of one colony are no more competent to deal with the statute law of the other colonies than the
Judges of the Privy Council would be. But at the same time, having concurred in the desirability of appointing an Australian Judge to a seat on the Privy Council Bench, it is impossible for us to say that we are satisfied with the Privy Council as previously constituted, or with the Privy Council under these conditions in relation to the ordinary Australian appeals. And how long, I ask with Mr. Isaacs, who pointed out that we are establishing a great court to deal with great questions, are we to be in a condition of tutelage? Are we for ever to be unequal to the task of appointing a final Court of Appeal?

Mr. ISAACS. -
I have not argued against the honorable member's view.

Mr. SYMON. -
No, I am accepting the honorable member's argument, which is strongly in favour of the view I am putting. If we are not now fit to dispense final justice-we, a people, as represented in this chamber, of over 3,000,000-I want to know when we are to be fit to do so? It is for honorable members who say that we are not fit now to tell us how much longer it will be before we are fit, and how much more training we are to undergo? We must begin somewhere, and at some time. When is it to be? At what stage are we to escape from the swaddling bands of infancy in regard to the administration of justice? I ask honorable members to treat this not as a mere matter of sentiment in relation to the existence of a particular court, but as a great question, involving the nationhood we are seeking to establish. I understood we were creating a nation which is to be self-contained, self-sufficing in every possible respect, and we are surely abandoning that position if we admit that we are unequal to the function of creating a High Court of final jurisdiction.

Mr. ISAACS. -
If we can make our own laws, we can interpret them.

Mr. SYMON. -
That is exactly it. The very foundation of the Constitution rests upon the fact that we have statesmen equal to the task of governing the country, and that we shall have legislators equal to the task of legislating for it. If we have laws made within our boundaries, surely we ought to have them interpreted within our own boundaries. I should be sorry to see the High Court confess itself unequal to the task of dispensing final justice to the citizens of the Commonwealth. Why should we go 12,000 miles to get a final decision? Some honorable members seem to think that nothing. Why should we send five miles for a loaf of bread if we can buy a very good loaf across the street?
Mr. PEACOCK. -
That is a good protectionist view.

Mr. SYMON. -
Then, again, why should we allow a wealthy and unsuccessful litigant to drag his less wealthy opponent 12,000 miles away to get a final decision.

Mr. REID. -
Your arguments and the climate have melted all opposition.

Mr. WALKER. -
Let us divide.

Mr. SYMON. -
Will the honorable member vote with me? I am anxious to see him voting for what is just. There is only one other thing that I should like to say, and that is with regard to the expense of these appeals. It is not only the question of counsel's fees. There are expenses connected with the whole of the details of sending an appeal to England. Honorable members seem to think that you can get a decision in a week or two, and that there is no particular trouble. But the condition of things is quite different. It is only a few years since a Royal commission sat in Victoria to inquire into the question of inter-colonial legislation and a Court of Appeal, and on page 14 of their report they insert the following passages from the London Times, of 22nd June, 1870, though, of course, the condition of things has greatly improved since then:-

We have no hesitation in saying that the condition of the Judicial Committee of the Privy Council is simply disgraceful.

Again, Lord Westbury and Lord Cairnes are reported to have said-
That a beaten suitor can, by appealing to the Privy Council and giving security for £400, hang up his adversary for half-a-dozen years, and so either weary him into a compromise, or at least deprive him of the fruits of his victory for a period long enough to frustrate the very object of the suit.

If honorable members will only read the report of the commission they will be perfectly satisfied that no wiser provision has been inserted in the Constitution than that which takes away the right of appeal to the Privy Council, and constitutes the High Court of Australia the High Court of Appeal. I have lately had the figures taken out, and honorable members will hardly believe that for 33 years the average amount of time occupied in deciding cases sent from South Australia has been two years and one month, and for the last seventeen years two years and five months. In connexion with Victorian appeals, for 23 years the average time has been one year and eleven months, and for ten years two years and ten months. In New South Wales, the average for 23 years has been one year five and a half months, and for ten years one year and five months. In Queensland,
the average has been for 23 years one year nine and a half months, and for
ten years one year and six months. In Tasmania, they have had only one
appeal, which took one year and nine months to decide, and, in Western
Australia, the average time occupied in deciding appeals for 23 years has
been two years and one month, and for ten years two years and four
months.

Mr. BARTON. -

Does not the feeding bottle question come in here? These are
rather longer periods than an ordinary baby requires.

Mr. SYMON. -

Yes. The expense of these delays is, of course, enormous. There is one
more point to which I should like to call attention. It is said that we are
denying to the people of Australia a right possessed by all other British
subjects. Now, there are 40,000,000 people in the British Islands who have
no right of appeal to the Privy Council. A Privy Council appeal is really an
anachronism and an absurdity. Law reformers in England think there
should be

Mr. Wise's amendment was agreed to.

Question-That the words "saving any right which Her Majesty may be
graciously pleased to exercise by virtue of her Royal prerogative,"
proposed to be inserted after the word "conclusive," be so inserted-put.

The committee divided-
Ayes ... ... ... ... 14
Noes ... ... ... ... 22
Majority against the amendment 8

AYES.
Abbott, Sir J.P. McMillan, W.
Braddon, Sir E.N.C. Quick, Dr. J.
Brown, N.J. Reid, G.H.
Carruthers. J.H. Turner, Sir G.
Forrest, Sir J. Walker, J.T.
Fraser, S.
Grant, C.H. Teller.
Lee Steere, Sir J.G. O'Connor, R.R

NOES.
Barton, E. Kingston, C.C.
Cockburn, Dr. J.A. Lewis, N.E.
Crowder, F.T. Moore, W.
Deakin, A. Peacock, A.J.
Douglas, A. Solomon, V.L.
Clause 75. - No appeals shall be allowed to the Queen in Council from any court of any state, or from the High Court or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth, or of any state, or of any other part of her dominions, are concerned, grant leave to appeal to the Queen in Council from the High Court.

Amendment suggested by the Legislative Council of New South Wales—Omit "no," line 1, and insert "an."

Mr. ISAACS (Victoria). -

As I understand it, the amendment would simply reverse the intention of the clause.

Mr. BARTON. -

Yes.

The amendment was negatived.

The CHAIRMAN. -

The other amendments suggested by the Legislative Council of New South Wales are consequential, and I need not now put them.

The clause was agreed to.

Clause 76. - Within the limits of the judicial power the Parliament may from time to time-

I. Define the jurisdiction to be exercised by the federal courts other than the High Court:

II. Prescribe whether the jurisdiction of the federal courts shall be exclusive of, or concurrent with, that which may belong to or be vested in the courts of the states:

III. Invest the courts of the states with federal jurisdiction within such limits, or in respect of such matters, as it thinks fit.
Mr. GLYNN (South Australia). -

I scarcely think that either sub-section (2) or (3) is necessary. Under the first clause of Chapter III., "the Federal Judicature," the judicial powers of the Commonwealth may be vested in any courts that Parliament may from time to time create or invest with federal jurisdiction. Under that provision there is ample power to say that a state court shall have federal jurisdiction.

Mr. WISE. -

This gets rid of the doubt that was raised in the United States.

Mr. GLYNN. -

If there was a doubt, I would withdraw the objection, but these two sub-sections do not appear to be necessary, because under clause 71 a state court may be invested with federal jurisdiction. If this provision is inserted, it may be construed as a limitation of clause 71. As regards sub-section (2), once you invest a court with jurisdiction, its powers in federal matters must be concurrent, they cannot be exclusive.

Mr. BARTON (New South Wales). -

I think we had better retain both sub-sections. The first gets rid of a question of legal construction that might arise as to whether an investiture with federal power would mean a complete investiture, or whether there could be any limitation when once the federal power is given. I do not say that that is a probable construction, but the sub-section gets rid of the difficulty. I see no objection to giving Parliament an express power to define the jurisdiction to be exercised by courts other than the High Court.

Mr. Glynn thinks that the words in clause 71, "invest with federal jurisdiction," are sufficient, but there is a doubt about that, and we had therefore better retain the sub-section. I did not quite clearly follow Mr. Glynn's objection to the other sub-section, but it seems to me that it must be left to the Federal Parliament to decide whether the jurisdiction of the Federal Court shall be inclusive or concurrent with that of the state court. There is no other authority to decide it.

Mr. KINGSTON. -

I would suggest to the leader of the Convention whether be ought to retain the words "other than the High Court." Under clause 74 it is evident that the Federal Parliament will require to legislate in connexion with the High Court as to exceptions and regulations with regard to its jurisdiction.

Mr. BARTON. -

I will take a note of that.

Mr. ISAACS (Victoria). -

I should like to mention that there is almost an imperative reason for keeping in those words "other than the High Court." Clause 73 provides what the judicial power is. Clause 74 states what the High Court shall have
jurisdiction over. Clause 77, which we are going to deal with, provides that the High Court shall have original jurisdiction, as well as appellate jurisdiction, in certain matters, and the Federal Parliament is not to be at liberty to define the jurisdiction of that High Court so as to take away any portion of it. Then sub-section (1) of clause 76 is to give power to the Federal Parliament to define the jurisdiction of federal courts other than the High Court. It cannot create any.

Mr. BARTON. - And the judicial power has been defined already.

Mr. ISAACS. - But if the Federal Parliament chooses to create any Federal Court other than the High Court, it may define the jurisdiction of such Federal Court. Then sub-section(2) of clause 76, as the leader of the Convention has pointed out, says that the Parliament, in defining the Jurisdiction of the federal courts, shall prescribe whether that jurisdiction shall be exclusive or concurrent with that of the courts invested with federal jurisdiction. In sub-section (3) it provides for the investiture of state courts with federal jurisdiction in certain matters;

Mr. SYMON. - How are you going to define the exceptions to the jurisdiction of the High Court?

Mr. ISAACS. - The jurisdiction of the High Court is not to be touched except by this Constitution, and except as in section 74, where express power is given to the Parliament to except from the appellate jurisdiction of the High Court.

The clause was agreed to.

Clause 77. - In all matters-

I. Affecting public Ministers, consuls, or other representatives of other countries:
II. Arising under any treaty:
III. Between states:
IV. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:
V. In which a writ of mandamus or prohibition is sought against an officer of the Commonwealth:

the High Court shall have original as well as appellate jurisdiction.

The Parliament may confer original jurisdiction on the High Court in other matters within the judicial power.

Mr. BARTON. - I should like to transpose the sub-sections so that (2) will be (1),(1) will
be (2),(4) will be (3), and (3) will be (4), and I intend to move that sub-
section (5) be omitted.

The CHAIRMAN. -

With the consent of the committee, I will make those suggested
alterations.

Sub-sections (1),(2),(3), and (4) were agreed to.

Mr. BARTON. -

I beg to move that subsection (5) be omitted.

Mr. HIGGINS (Victoria). -

Before that is agreed to I should like to point out that very likely the
reason why this provision with regard to a writ of mandamus or prohibition
was inserted specially was that, being a prerogative right, and being a
matter to which the Queen is

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 78. - The jurisdiction of the High Court, or of any other court
exercising federal jurisdiction, may be exercised by such number of Judges
as the Parliament prescribes.

Mr. BARTON. -

I am going to suggest an amendment of this clause. In order to simplify
the clause, I beg to move-

That after the first word, "The," the word "federal" be inserted; that the
words "the High" be omitted, with the view of inserting
the word "any," and that the words "or of any other court exercising federal
jurisdiction" be omitted.

The amendments were agreed to.

Amendment suggested by the Legislative Council of Tasmania:

After "Judges" insert "and in such part of the Commonwealth."

The amendment was negatived, and the clause, as amended, was agreed
to.

Clause 79. - The trial of all indictable offences cognisable by any court
established under the authority of this Constitution shall be by jury, and
every such trial shall be held in the state where the offence has been
committed, and when not committed within any state the trial shall be held
at such place or places as the Parliament prescribes.

Mr. BARTON (New South Wales). -

I have an amendment to propose in this clause. I think it is a little more
than a drafting amendment, however. I beg to move-

That the words "established under the authority of this Constitution" (line
2) be omitted, and that the words "exercising federal jurisdiction" be
substituted.
The amendment was agreed to.
Amendment suggested by the Legislative Assembly of South Australia:
Omit "shall be by jury, and every such trial" (line 3).

Mr. GLYNN (South Australia). -
I hope that the committee will seriously consider this amendment. It was proposed in Adelaide, and by the Legislative Assembly of South Australia. The object of the proposal is to render the Federal Parliament as omnipotent within its own authority as the existing Parliaments of the states are at present. I do not see why we should put any limit on the Federal Parliament within its own jurisdiction such as is proposed in this clause. We are making trial by jury a fixture.

Mr. WISE. -
Hear, hear.

Mr. GLYNN. -
We should give the Federal Parliament as much latitude in deciding whether trial by jury should be perpetuated as possible. We should not render its power less great than the power which is possessed by the states at present. It is for that reason that the suggestion is made by the Legislative Assembly of South Australia, and I trust that the words in question will be struck out.

Mr. WISE (New South Wales). -
I think that the clause as it stands is a necessary safeguard to the individual liberty of the subject in every state. It does not interfere with the right of every state to alter its laws and to deprive its citizens of their liberty of being tried by a jury of their fellow countrymen, but it does say that the Federal Parliament shall be compelled to submit any person accused of a breach of the federal laws to trial before a body of his own fellow citizens, in the state to which he belongs. If this clause were not here offenders under the Federal Parliament might be removed under an executive act from one part of the Commonwealth to another, to be tried by resident magistrates, and the Federal Executive would be given authority which might permit them to tyrannously interfere with the liberties of every subject in the community.

Mr. SYMON (South Australia). -
The only argument I have heard in support of the argument of my honorable friend (Mr. Glynn) was that which O'Connell used in the House of Commons. He said that he was concerned in a case in which a prisoner was being tried for murder. The case was tried in Ireland. The one witness who was called for the defence was the murdered man. There was no doubt as to his identity, but the jury found the prisoner guilty.
Mr. HIGGINS (Victoria). -

I feel very strongly that, no matter how much we may value trial by jury as a piece of machinery, it is not a matter for this Constitution at all.

Mr. WISE. -

It is only for indictable offences committed under laws passed by the Federal Parliament.

But why should we make it a matter for the Constitution, which cannot be affected by anything the Federal Parliament may do, that there shall be a jury for the trial of any indictable offence?

Mr. WISE. -

Because it is a safeguard of liberty.

Mr. HIGGINS. -

If the honorable member were speaking a hundred years ago he might have expected his remark to be applauded when he spoke of trial by jury as being a necessary safeguard of liberty.

Mr. WISE. -

I am speaking of modern times and in view of the decisions of Courts of Equity.

Mr. HIGGINS. -

A Court of Equity would not be able to imprison the honorable member, except be were guilty of contempt of court, without trial by jury; they would have no power to put him in prison for an indictable offence, even supposing that the honorable member were guilty of an indictable offence. It would be, in the mouth of any one else but my honorable and learned friend, mere clap-trap to say that trial by jury was a safeguard of liberty at the present time. I agree that it is as well to have a jury in criminal cases; I should like to see the system preserved in such cases. But that is not the issue. The issue is whether we are to stereotype this in the Constitution, and to say, no matter what changes may come about in legal procedure and in the mode of dealing with crimes, that we must have a jury, and that nothing but a change in the Constitution can bring about an alteration. I can tell honorable members that under a similar provision in the American Constitution there has been a great deal of embarrassment, because they have not been able to alter the criminal procedure in order to suit the exigencies of modern times.

Mr. GLYNN. -

They have no power to take a majority verdict, for instance.

Mr. HIGGINS. -
That may be right or wrong; they cannot have assessors in commercial cases. No matter how important the case may be, nor how large the interests at stake, they have to take the verdict of a common jury composed of men taken out of the street, as it were, although the case may involve huge interests, and be very complicated. There is more and more a tendency for the frauds which take up the time of the criminal courts to be of a complicated nature, often involving difficult questions of accountancy. And is it fair to say that there should be no power to say what class of men shall try a case of that kind? In Victoria, where there have been charges made against the directors of public companies, there has been a general feeling that ordinary juries are not competent to go into the difficult questions of accountancy involved.

Mr. OCONNOR. -

This matter does not cover cases of that kind, but relates to matters which are undoubtedly offences under the Constitution.

Mr. HIGGINS. -

But the instances I have given serve as an illustration. Under the American Constitution, which is still more stringent, they have no power to vary the constitution of the jury; the kind of jury must always be the common law jury. In dealing with federal functions, or functions which come under the federal law, we should not restrict the Federal Parliament from making its own procedure. I may remind honorable members that the Federal Parliament will have power to deal with bankruptcy law, with company law, and other complicated matters. In view of such intricate affairs being delegated to the federal authority, is it not possible that there will be difficult matters of accountancy cropping up in cases tried under the federal law? I shall, therefore, have much pleasure in supporting Mr. Glynn in this amendment. I may say also with regard to the latter part of the clause, that I think it is still more objectionable. Why on earth should the trial necessarily take place in the state in which the offence is committed? The offence, or alleged offence, may be one which is backed up by the sentiment of the people in the state in which it is committed, and it may be very hard indeed to get a conviction there. My view is that what we want to get is justice—to get the law carried out, right or wrong, and in order to get justice it may often be expedient to have the, trial conducted in a place far removed from where the offence was committed. For instance, if the customs law happens to be agreeable to eleven out of twelve states, but the twelfth state objects to the law, and an accusation is brought against a man in the twelfth state, why on earth should not the trial be removed to where
there may be an impartial verdict given?

Mr. BARTON. -

Is not every state big enough to have a trial in?

Mr. HIGGINS. -

It may be big enough, but every state may have different interests.

Mr. WISE. -

A man ought not to be punished for what twelve jurymen think to be right.

Mr. HIGGINS. -

It depends upon what the jurymen are. Suppose they happen to be twelve pals of his.

Mr. WISE. -

That is his good luck.

Mr. HIGGINS. -

Suppose the twelve jurymen happen to be inclined to favour the offender. I do not mean to say, as a rule, that a man ought not to be tried among those who are his neighbours, but I hold that we ought not to put this as a rigid condition within the four corners of the Constitution Act. I shall support my honorable friend now, and if he succeeds in this amendment, then I shall support him if he moves to leave out the latter part of the clause.

Mr. ISAACS (Victoria). -

I do not think there is any safeguard at all such as the honorable and learned member (Mr. Wise) has stated. He says it is to safeguard the right of every person charged with an indictable offence to have a jury. To my mind, it is a very proper thing to do. I think, in our present state of development, a man is entitled to have a jury in a case; but it is no fetter on the Federal Parliament, because, when it creates an offence it may say it is not to be prosecuted by indictment, and immediately it does it is not within the protection of this clause of the Constitution. In the United States Constitution, the corresponding clause is "the trial of all crimes, except in cases of impeachment, shall be by jury," which is a very different thing; so that if the Congress of America were to declare any act or default to be a crime, necessarily it could not go on to say, or use any words, or make any provisions by which a person could be deprived of a jury.

Mr. WISE. -

Do you think that public sentiment would ever tolerate the punishment of imprisonment for an offence which was not triable by indictment?

Mr. ISAACS. -

It is done every day. A man is tried before a magistrate and gets twelve months or two years' imprisonment.
Mr. WISE. -
Two years?

Mr. OCONNOR. -
Two years, by a court of summary jurisdiction?

Mr. ISAACS. -
I will not bind myself down to two years, but it is certainly a year's imprisonment that he gets.

Mr. BARTON. -
Then you ought to have very good magistrates.

Mr. ISAACS. -
I will say, two years at all events, and in the Court of Insolvency one Judge sits and has power to inflict imprisonment to a very considerable period. Whether it is right or whether it is wrong, I think a man should have, for what are known as criminal offences, a right to a jury. But this clause as it is framed will not conserve that right. It does not use the word "crime"—it uses the words "indictable offence"; and all the Legislature has to do is to say that an offence shall be prosecuted by information or shall not be tried by indictment, and there is no right to a jury at all. The moment the offence is not an indictable offence, then it ceases to be one which comes within the purview of this clause.

Mr. OCONNOR. -
You may trust the Parliament not to increase the list of offences to be dealt with by summary jurisdiction.

Mr. ISAACS. -
Then you may trust the Parliament not to wipe out the right to a jury? I am not arguing against the right to a jury, because I think that, except in certain cases of summary procedure, a man has a right to have a jury, and public sentiment would not at this day allow that right to be swept away. If this is intended to fetter the Federal Parliament it partly fails in that intention.

Mr. GLYNN (South Australia). -
I would like, in order to have this point a little more carefully considered, to point out that this is one of the original amendments which were put in the American Constitution. At the meeting of nine states in New York in 1765, in the Declaration of Rights against England, it was declared that trial by jury, which it was then feared was being attacked by England, was one of the inalienable rights of every British subject in the colonies, and many of the states which took part in that Declaration of Rights in 1765 subsequently refused to join unless a similar provision was put in the American Constitution. I ask on what grounds are we to follow the
precedent of America in this matter? There is no reason why we should do so. It is simply the copying, without the existence of the same necessity, of a clause in the American Constitution. On the ground that you should not fetter the omnipotence of Parliament, I hold that the words ought to be struck out.

Mr. SYMON (South Australia). -

I shall vote with my honorable friend (Mr. Glynn). Although at first I was inclined to say that these words ought to be put in, I think now they are very much better left out. I think that in cases where it is desirable that a man should be tried by a jury the Federal Parliament will confer that right. If there are cases in which some other mode of trial ought to be prescribed, I think we may rest assured that the necessary provision will be made by the Federal Parliament.

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

The committee divided-
Ayes ... ... ... ... 17
Noes ... ... ... ... 8
Majority against the amendment 9

AYES.
Barton, E. O'Connor, R.E.
Cockburn, Dr. J.A. Peacock, A.J.
Crowder, F.T. Quick, Dr. J.
Deakin, A. Solomon, V.L.
Downer, Sir J.W. Trenwith, W.A.
Holder, F.W. Turner, Sir G.
Isaacs, I.A. Walker, J.T.
Kingston, C.C. Teller.
McMillan, W. Wise, B.R.

NOES.
Dobson, H. Lee Steere, Sir J.G.
Douglas, A. Lewis, N.E.
Grant, C.H.
Higgins, H.B. Teller.
Howe, J.H. Glynn, P.M.

Question so resolved in the affirmative.

Mr. HIGGINS (Victoria). -

I beg to move-
That, after the words "every such trial shall," the words "unless Parliament otherwise provides" be inserted.

Mr. WISE. -
That gives the Executive power to change the venue.

Mr. HIGGINS. -

No-the Parliament. It will simply give Parliament the power to declare under what circumstances and in what cases there shall be a discretion to have the trial in any other state. The law as it stands in the present Bill is that the trial, as a matter of constitutional law, shall be held in the particular state where the offence was committed. I propose to enable the Federal Parliament to say that in certain cases and on certain Contingencies, and with certain restrictions and limitations, the trial may be held in some other place. I think that is simply another instance of trusting the Federal Parliament to put the matter on the best basis.

Mr. WISE (New South Wales). -

The only class of cases contemplated by this section are offences committed against the criminal law of the Federal Parliament, and the only cases to which Mr. Higgins' amendment would apply are those in which the criminal law of the state was in conflict with the criminal law of the Commonwealth; in any other cases there would be no necessity to change the venue, and select a jury of citizens of another state. Now, I do not know any power, whether in modern or in ancient times, which has given more just offence to the community than the power possessed by an Executive, always under Act of Parliament, to change the venue for the trial of criminal offences, and I do not at all view with the same apprehension that possesses the mind of the honorable member a state of affairs in which a jury of one state would refuse to convict a person indicted at the instance of the Federal Executive. It might be that a law passed by the Federal Parliament was so counter to the popular feeling of a particular state, and so calculated to injure the interests of that state, that it would become the duty of every citizen to exercise his practical power of nullification of that law by refusing to convict persons of offences against it. That is a means by which the public obtains a very striking opportunity of manifesting its condemnation of a law, and a method which has never been known to fail, if the law itself was originally unjust. I think it is a measure of protection to the states and to the citizens of the states which should be preserved, and that the Federal Government should not have the power to interfere and prevent the citizens of a state adjudicating on the guilt or innocence of one of their fellow citizens conferred upon it by this Constitution.

The amendment was negatived.

Clause 79, as amended, was agreed to.

Mr. BARTON (New South Wales). -
I understand that there is likely to be some debate on clause 80, and I therefore propose, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

FINANCE COMMITTEE.

Mr. BARTON (New South Wales). -

In moving that the Convention do now adjourn, I would like to remind honorable members who may not have heard the arrangement that has been made as to the order of procedure that, after clause 80 has been dealt with, the sub-section of clause 52 relating to the rivers will be taken.

Mr. DOBSON (Tasmania). -

May I ask the leader of the Convention when the report of the Finance Committee will be brought up, and also when he thinks a day will be appointed to consider that report? I take it that we shall make a terrible blunder if we put off this very important matter until late in our sitting so that we shall not get the benefit we expect to obtain from public criticism.

Mr. BARTON. -

I can give the answer at once.

Mr. DOBSON. -

All I wish is to get the report on at a very early date, so that the numerous people throughout Australia who are interested in the terms of the bargain we are about to make may have time to give us their criticism of the financial proposals, and that we may have the benefit of the greatest amount of public criticism we can get.

Mr. BARTON. -

I received, late on Saturday, the conclusions of the Financial Committee. There has been no time yet to put them into the shape of clauses. They will be reduced to the shape of clauses, which will then be sent to the Financial Committee for them to peruse, and when they have said whether those clauses as drawn represent their intentions the clauses will be printed, and will be dealt with in due course. If we have reached the financial part of the Bill before the clauses are in print, of course it will be necessary to postpone the consideration of those clauses.

The motion was agreed to.

The Convention adjourned at seven minutes past five o'clock.
Tuesday, 1st February, 1898.

Commonwealth of Australia Bill.
The PRESIDENT took the chair at half-past ten o'clock a.m.
COMMONWEALTH OF AUSTRALIA BILL.
The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.
Clause 80. - No person holding any judicial office shall be appointed to or hold the office of Governor-General, Lieutenant-Governor, Chief Executive Officer, or Administrator of the Government, or any other executive office.
Amendment suggested by the Legislative Assembly of New South Wales, and the Legislative Assembly of Victoria-
Omit the clause.
Mr. HOLDER (South Australia). -
This clause was not originally in the Draft Constitution, but was inserted in Adelaide. At the time I opposed its insertion, and I have gone through the debates since to see if there was any reason why I should change my mind. But I have found no sufficient reason for doing so, and I shall, ask the Convention to look into the facts, and see if it would not be well to reverse the previous decision. The object of the clause is to prohibit Judges from taking the position of Acting Governor, which they can take at the present time in either of the colonies. I can conceive of no person more able or more fit to take the position than one of the Judges of the High Court. We want persons of high position, independent of all other persons in the state, to step into the place rendered vacant by the temporary absence of the Governor-General, and it seems to me that there are no persons in the Commonwealth so well fitted to meet the case as either of the Judges of the High Court. The only person besides them that I could think of might be the Commander of the Forces; but certainly the position would be a very inconsistent one for him to occupy. More at the mercy of the Executive as a servant of the state than the Judges, he would be quite out of place in the position. It may be said that one of the Governors of one of the states should occupy, the position in the temporary absence of the Governor-General. But we must all admit that under the Federation the state Governors would be persons of much less weight and influence than the present Governors of the colonies. It is quite expected that one of the results of federation will be a weakening of the position now held by the Governors of the states, and we shall have an officer at the head of each state who will be much less qualified to fill the office of Governor-General.
than either of the persons of whom we think when speaking of the Governors of the colonies. I shall vote against this clause.

**Sir GEORGE TURNER (Victoria).** -

I agree with Mr. Holder that this clause is a mistake. More than that, it seems to me to be a blot on the Bill. Why should we debar gentlemen who hold high judicial positions from occupying the post of Acting Governor-General when we do not attempt to debar the President of the Senate or the Speaker of the House of Representatives, or even the Premier of the day? In addition to that, I think that this clause really takes away the right of the Queen to appoint whom she thinks fit to represent her in any portion of her dominions. Why should we put in the Bill a clause like this, which is aimed at a particular class in the community?

**Sir JOHN FORREST.** -

A class who can look very well after themselves.

**Sir GEORGE TURNER.** -

They are a class, as Sir John Forrest says, who can generally look after themselves very well, and who are a necessary evil to keep the rest of the community honest.

**Mr. GORDON.** -

You are speaking of Victoria.

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Sir GEORGE TURNER. -

It is more especially to South Australia that the remark applies. Looking at the proposal in all seriousness, there is no reason whatever for the insertion of the clause, and I hope that the Bill will be made as it was originally, leaving it entirely to the Queen to appoint whom she thinks fit to represent her in this portion of her dominions.

**Sir JOHN FORREST (Western Australia).** -

I hope the clause will be allowed to remain where it is. It seems to me to be a mistake to mix up the judicial with the administrative in the way which is the custom at the present time. In my opinion, the system prevailing in most of the colonies of Australia does not work well, even now. It either has the effect of weakening the Supreme Court, or else you find that the Governor for the time being occupies a seat on the judicial bench. Those who have had any experience of government must know that the system has been found very inconvenient, and I think that the inconvenience will probably be greater under the federal form of government. We have heard a good deal of keeping the Judges independent and aloof, occupying their high positions altogether apart from local politics. But if this clause does not find a place in the Bill we shall have the
Chief Justice or one of the Judges of the High Court acting for the time being as the head of the political organization of party government. Even now the existing system frequently places the Chief Justice in a peculiar and awkward position. The only argument that would prevail with me would be that there would be a dearth of men capable of occupying this temporary position; but as that argument does not prevail now, we should keep the Supreme Court altogether independent of the Government. Of course, if it is said that there are no persons in the community, and are not likely to be any, who are competent or suitable for this high office temporarily, it would be a very good argument, and one having force with me; but unless that is the case—and I do not think it will be the case and as we are not making this Constitution for to-day or to-morrow, but for all time, it will be much better to keep altogether separate the judicial and administrative parts of the Government.

Mr. OCONNOR (New South Wales). -

I hope the committee will stand by this clause. The arguments used by Sir George Turner and Mr. Holder are very well when applied to the state Governments because there the Judiciary is not necessarily brought into contact with political questions. But I do not think it can be too strongly emphasized that the position of the Judiciary in the Commonwealth is altogether of a different character. The Chief Justice or any Judge of the Federal Judiciary may at any time be put in the position of having to decide a question which may become a matter of burning political moment—a question of the validity of a law which may affect very largely the interests of a state and the Commonwealth, and may at any time become a matter of heated controversy between a state and the Commonwealth. The only authority for deciding such a question will be the Supreme Court—the Judiciary of the Commonwealth. It will therefore be altogether a wrong thing to put it in the power of the Government to appoint to any office in which be will be brought into contact with the Executive Government a high officer who may be called upon at any time to decide such questions. The difference between the two positions is so strong that it appears to me to be only necessary to point it out. I can see that there may be inconvenience in following this course, but it is much better that inconvenience should occur in the selection of persons to fill this appointment than that it should be within the power neither of a judicial officer or of the Executive Government at any time to put the Judiciary in a false position in regard to the Commonwealth. Because, as has been said before, it is necessary not only that the administration of justice should be pure and
above suspicion, but that it should be beyond the possibility of suspicion; and it would be impossible that a high judicial officer who had to decide these questions, which may at any time become political questions, should also be in the relation of having to be advised by the Executive Government—perhaps advised to grant a dissolution of both Houses of Parliament in regard to a dispute which may have arisen in relation to the validity of a statute; or be might have to decide a question arising as between state and Commonwealth. On these grounds, I hope that the essential difference between the Governor-General of this Commonwealth and the Governor of the states will be recognised, and will prevent the committee from altering the clause from its present form.

Mr. HIGGINS (Victoria). -

I am amazed at the weakness of the arguments which have been urged in favour of the clause, because if any one can put reasons strongly my honorable friend (Mr. O'Connor) can. What is the reason which we put to the people for this clause—what is the substantial reason for the clause? It was passed, after a very short debate in Adelaide, on the ground that it would interfere with the impartiality of the bench. How on earth will it interfere with the impartiality of the bench if one of the bench happens to be a Lieutenant-Governor for a short time? First of all, will it interfere with the impartiality of the bench? And, from the other aspect, will it interfere with the impartiality of the Governor as Governor in deciding as to a dissolution, and so forth? There has been no suggestion as to who is to take the post in case a Judge does not take the post. Under the Victorian Constitution there are only three classes who are forbidden to take part in Parliament-Judges, convicts, and clergymen. Unless you have a Judge appointed I suppose you must take a convict or a clergyman to be Lieutenant-Governor. At the same time, I think that Sir Samuel Griffith, in his Notes, has put this matter in a nutshell. We have no right, in this Constitution, to dictate to Her Majesty to who shall be her agent. Her Majesty has a right to pick such agent as she thinks fit in any part of the colony, and we have no right to say—"You shall not do so and so." There is an ulterior motive in this particular clause. There is an ulterior motive, with the view of forcing the Crown to appoint a particular personage, who will have a high office in connexion with the Senate, as Lieutenant-Governor.

Mr. WISE. -

Is that Sir William Zeal?

Mr. HIGGINS. -

No, I have not referred to Sir William Zeal; he would be the last person to whom to impute anything on that score. I think the people of the colonies will require some further explanation for this clause. It is perfectly
apparent that that ground of impartiality will not do. With all respect to my honorable and learned friend (Mr. O'Connor), that is all mere clap-trap. Impartiality will not be interfered with in the slightest degree. And then, sir, I would ask, is there any colony in which the temporary appointment of a Judge as Lieutenant-Governor has made any serious inconvenience?

Mr. HOLDER. -
No.

Sir JOHN FORREST. -
Yes.

Mr. HIGGINS. -
If the experience of Western Australia is different I should like to hear it. We have had the Chief Justice; acting dozens of times as Lieutenant-Governor in Victoria, and there has never been the least inconvenience. The Chief justice carries on his judicial duties, and perhaps, on one day in the week, or one afternoon in the week, he attends at the Executive Council and signs documents as a constitutional Governor as a matter of course. There are very rare cases, indeed, in which a Governor or Lieutenant-Governor has to exercise a discretion. The only case I can think of is in granting a dissolution, and in that case he acts upon the advice of his advisers. But my honorable friend (Mr. O'Connor) says that there is no analogy between the case of an ordinary Judge and the case of a Federal Judge. Now, this clause is not confined to Federal Judges.

Mr. SYMON. -
Yes, it is, distinctly.

Mr. HIGGINS. -
It says-

No person holding any judicial office-

Mr. SYMON. -
That is acting in the capacity of Governor-General.

Mr. HIGGINS. -
That is-

No person holding any judicial office shall be appointed to or hold the office of Governor-General or Lieutenant-Governor.

Mr. SYMON. -
That is in the Commonwealth.

Mr. HIGGINS. -
No, it is not.

Sir JOSEPH ABBOTT. -
What is the Bill for?
Mr. HIGGINS. -

If my honorable friend will look at the debates in Adelaide, he will see that it was put deliberately that any judicial officer, whether he is in the state, or whether he is in the Federation-

Mr. BARTON. -

Yes, there was a reason for that. The question was asked whether, if you excluded a member of the High Court, you would allow a Judge of a state court to be appointed to this office in the Commonwealth, and it was at once agreed that they all ought to be excluded.

Mr. HIGGINS. -

The leader of the Convention is quite right in his recollection; it was put deliberately, and therefore the reasoning of my honorable friend is beside the point.

Mr. MCMILLAN. -

It refers to the Commonwealth.

Mr. HIGGINS. -

The leader of the Convention has just explained that it means this-that no person holding office as Judge, even in Victoria or New South Wales, of a state court is to hold the appointment of Lieutenant-Governor of the Commonwealth.

Mr. MCMILLAN. -

Quite so.

Mr. HIGGINS. -

But the point which my learned friend (Mr. O'Connor) made, and which honorable members will admit now goes by the board, was that this only applies to the case of a Federal Judge. It applies to all Judges, and Her Majesty therefore would have no power to appoint the Chief Justice of New South Wales to be her agent for the purpose of a Lieutenant-Governorship throughout Australia. There is no sufficient distinction between a Federal Judge and an ordinary Judge in regard to this matter. A Federal Judge, we all hope, will be a constitutional Lieutenant-Governor if he is any kind of Lieutenant-Governor; and, after having laid down the law in a very important state and federal case, he will have to follow the advice of his constitutional advisers as to granting a dissolution or not. As we all know, in ninety-nine cases out of every hundred a Governor or Lieutenant-Governor has simply to follow the advice of his advisers; and even as to granting a dissolution, he follows the advice of his advisers. My honorable and learned friend will not be able to point to any case in which he thinks it at all likely, within the reasonable bounds of chance, that a Federal Judge will find the duties of Lieutenant-Governor to conflict with his federal duties. I sincerely hope that there will be more attention given to this
particular clause on this occasion, and that it will not be passed without a very keen examination.

Mr. MCMILLAN (New South Wales). -

I hope that the clause will be passed as it stands unless there is some verbal alteration necessary in order to make clear exactly what it means. A great deal of looseness has been prevalent as to this matter in the different colonies, but I do not hold that, although there may have been no miscarriage of justice and no absolute inconvenience or error in the state judicature, that applies in the case of the Federal Government. We have not made the same absolute distinction between the Executive and the Legislature and the Judiciary in the cases of a state Government as we have done in the case of this Federal Government. We have implanted in this Constitution this great high Supreme Court, which practically marks the Judiciary off from the other branches of Government, except that the Executive has to make the appointments to the bench. Therefore, it does seem to me that although this custom may have been in vogue for years, and no difficulties may have arisen, that is no argument as a matter of principle in dealing with this great Commonwealth Bill. Now, apart from that, it has always shocked me to see a Chief Justice occupying the position, even temporarily, of Governor of a colony, and at the same time sitting on the bench of the Supreme Court. It does seem to me that the two positions are utterly inconsistent. You might even have a case in which a criminal might be condemned to death, and the Lieutenant-Governor might be the Judge who had tried the case. The only argument of my honorable friend (Mr. Higgins) and of others is, cannot we trust the Judges? Have they ever made any mistakes? We can trust them, because the Australian Bench has been one of the purest in existence, and we do not doubt for a moment that any of these men would do his duty without any conscious bias in any matter he had to undertake in government. At the same time, we are dealing with great principles, and the argument which says-"Whom are you going to appoint in such a limited community?" is no argument at all. Then again, we are told that this provision interferes with the Queen's prerogative. There are lots of things, probably in this Bill, which interfere with the Queen's prerogative. We have to indicate what we believe to be the basis of this Constitution in all its parts, and I think that the principle which we lay down-that this great Judiciary shall be, not merely not under the heel of the Executive and Legislature, but shall be absolutely isolated and apart, is one of the truest principles in this Bill.

Mr. REID (New South Wales). -
It seems to me that we are taking a rather extreme course in putting a clause of this character in the Constitution. There are practical difficulties, from whatever point of view we look at this matter. Some one must occasionally act for the Governor-General. Who is it to be? Is it to be a man in the political life of the country?

Mr. ISAACS. -

The President of the Senate or the Speaker of the other House.

Mr. HOWE. -

Why should not the senior Governor of the states take the position?

Mr. REID. -

A more objectionable idea has never been put in this Convention than the one the honorable member has just uttered. Which Governor?

Mr. HOWE. -

The senior Governor.

Mr. REID. -

The senior Governor! Here is a Governor whose jurisdiction is entirely apart from the federal jurisdiction constitutionally holding two offices, for practically he is Governor of a state and Governor of the Commonwealth.

Mr. HOLDER. -

He might be acting for the Governor-General in Sydney for a week.

Mr. REID. -

At that particular time there might be some friction existing among the states, which would cause the appearance of a state Governor in the seat of the Governor-General to excite considerable feeling. I think the safer plan will be to leave the matter entirely open. No one wishes to take the Chief Justice from his high duties for a single day if some better arrangement can be made. The best arrangement which can be made is the arrangement which is made at the particular time the difficulty occurs. The objection to this clause is that it absolutely prevents you from acting in any case. Let us suppose now that some other proposition was adopted. We know that it occasionally happens that a vacancy, temporary or permanent, occurs, but even in that case it would be impossible for the Chief Justice to act. I do not think there is any necessity for the clause. I think the Chief Justice of the Commonwealth at all time will command the respect of the people, whether he acts in this capacity or whether he does not, and would give infinitely more confidence to the people of the Commonwealth than the Governor of a neighbouring state, who is absolutely removed and away from a favorable position of observation, and who owes no responsibility to the Commonwealth. Surely the radical objection to appointing the Governor of a neighbouring state is seen in that one thing. Whoever fills
this post should owe some responsibility to the Commonwealth. I admit the Governor-General is looked upon generally as only responsible to the Queen. That is a superficial view of his position. He owes a great responsibility to the people whom he governs, in an honorable and effective sense, and so would any officer of the Commonwealth acting in this position; but an officer of another state may owe a divided duty. Under all the circumstances, while I do not say that the Chief Justice should occupy this position—I do not for a moment take up that position—I think we might well leave this Matter to the Federal Parliament, or to Her Majesty's Ministers at home, whichever it may happen to be, or to both. I think it would be safer to leave out the clause.

Mr. ISAACS (Victoria). -

If we look at another portion of the Bill, which I presume we may do for the purpose of discussing this clause, we will find that in clause 119 it is provided—

The Queen may authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Commonwealth, and in that capacity to exercise, during the pleasure of the Governor-General, such of the powers and functions of the Governor-General as he deems it necessary or expedient to assign to such deputy or deputies—

Now, that is a general power.

Sir GEORGE TURNER. -

It might not be while he was there.

Mr. ISAACS. -

It might not be while he was in the jurisdiction.

Sir GEORGE TURNER. -

It might be while he was away for a few months.

Mr. ISAACS. -

Under his instructions, the Governor of Victoria has power to appoint a deputy during his absence, and there is nothing in this Bill to prevent the Queen from authorizing the Governor-General, who is her agent in law, from appointing a deputy to exercise his office, whether he is present or absent. But this clause which we are now discussing is a restriction upon that. Why should we make a restriction in the case of a particular clam of individuals? Are we going to seek through the whole of our civil officers to see who are to be ineligible for that post? Why not exclude the President of the Senate, and say that it would be very improper and unjust that the President of the Senate should ever be Acting Governor-General, because there might arise a position of antagonism between the House of Representatives and the Senate? In the same way disqualify the Speaker of
the House of Representatives. Proceeding like that, why not enumerate all of those whom we think unfit, for any reason, to assume that position, and where shall we end? It seems to me that the only proper and sensible course, if I may say so without disrespect, is to leave the matter entirely open as the Right Hon. Mr. Reid has said, and leave it to the working of the Constitution to determine from time to time what is the proper course. Why should we now once and for all put a fetter upon the Constitution in this respect? The Chief Justice will be perhaps the most independent man in the whole community. He will be placed altogether above the reach of party, and he will be in a position where he will seldom have an opportunity of doing anything of a strictly political nature. His duties will be mostly administrative but if his turn should come, I have not the slightest doubt he will act as fairly and impartially as Chief Justices have in the various states up to the present time.

Mr. SYMON. -
Do you think that because he would perform executive acts well that that is a good reason for joining executive acts to judicial duties?

Mr. ISAACS. -
My honorable friend is falling into this error: He is arguing as if there is a provision in the Bill that the Chief Justice should be Acting Governor-General.

Mr. SYMON. -
No; we want to prevent that.

Mr. ISAACS. -
Whatever our opinion may be here, formed on insufficient evidence, we ought to leave it to the judgment of those who come after us to say whether in their discretion the Chief Justice or any other person shall at any particular juncture occupy the t

Mr. REID. -
Parliament might pass a law at any time in accordance with experience.

Mr. ISAACS. -
Exactly. Parliament might pass an Act preventing the Chief Justice from taking the position.

Mr. MCMILLAN. -
It is not a question of persons. Is it not a question of principle as to whether a person should combine executive with judicial functions?

Mr. ISAACS. -
Why mention Judges any more than the President of the Council or the Speaker of the Assembly? I should say, if I were to express an opinion on
the matter, that the Chief Justice would be infinitely more impartial than
the President of the Senate or the Speaker of the House of Representatives;
but whom are we to appoint? Are we to appoint the Governor of a state,
who will occupy not only a dual position, but absolutely antagonistic
positions? Suppose there is a quarrel between the state Parliament and the
Commonwealth Parliament, what a terrible position it will be for the
Governor of a state to be in! Of course, this is a matter on which each one
may act according to his own impression, but we shall make a mistake if
we put in this restrictive provision, while, if we strike it out, we shall not
make the Chief Justice Acting Governor-General. It will be left entirely to
the Governor-General, acting upon his instructions or in any other
constitutional manner. What I contend is that we should not fetter the
power to be given to the federal authorities.

Sir JOHN DOWNER (South Australia). -

The arguments of the honorable member (Mr. O'Connor) which did not
recommend themselves to the honorable member (Mr. Higgins) were
simply unanswerable. They were delivered with great temperance, and they
were all the more effective probably on that account. We are making a new
Constitution, the very basis of which is to take care of the powers of the
Commonwealth and to conserve the powers of the states. From that point
of view, we appoint a protector of the Constitution; that is, the Supreme
Court, which is to be in a calm ether of its own-removed from party strife
and political passion. The argument as to the present practice of appointing
Chief Justice in the different colonies as Acting Governors has very little
bearing, as the honorable member (Mr. O'Connor) pointed out, upon this
question, because the basis of this Federal Court is that it is the tribunal to
conserve the Constitution. It is said that, if you are going to shut out the
Chief Justice, why not shut out the President of the Senate and the Speaker
of the House of representatives?

Mr. ISAACS. -

Hear, hear.

Sir JOHN DOWNER. -

There is no possible analogy. The President of the Senate, and the
Speaker of the House of Representatives, truly enough occupy a certain
judicial position in the Houses over which they preside; but when it comes
to a question of the administration of the Commonwealth, they have
nothing to do with it, and there is no reason why they should not be
appointed.

Mr. HIGGINS. -

Suppose there were a quarrel between the two Houses?

Mr. ISAACS. -
And a dissolution asked for.

Mr. REID. -

Caused by something which the Senate did; that would be a nice position for the President.

Sir JOHN DOWNER. -

I quite understand that, and I agree with the Right Hon. Mr. Reid that that would be a strong reason for not appointing those officers. But it is not a reason that goes to the root of the Constitution, as this would. We can all imagine cases where the Chief Justice of the High Court, whose business it is to take care, when appealed to, that the Executive does not exceed its functions, might have to sit in judgment upon his own acts. Although in a certain play that we had amongst us, which we have witnessed with a good deal of satisfaction, the character of Pooh-Bah gave us a great deal of amusement, we do not in any way want to introduce such a character into this Constitution.

Mr. ISAACS. -

Would not the same difficulty arise in a state where a Judge of the Supreme Court might have to pronounce on the acts of the Executive? Therefore, there is no difference.

Sir JOHN DOWNER. -

As I was going to say when the interjection was made although the arguments are conclusive, in my opinion, against this being allowed for a moment in the Commonwealth, I do not mean to say that it is the best possible state of things to allow the Chief Justice to take the position of Acting Governor in the states. It is only for convenience that that is done. It is only because of the small area of selection that the Chief Justice is appointed to the position.

Mr. SYMON. -

And whilst they occupy it the bench is deprived of their services in all matters in which the Government is interested.

Sir JOHN DOWNER. -

But when we have this Commonwealth established we shall have a broader area of selection. We shall not be restricted to the extent that the colonies are in finding somebody whom Her Majesty may consider fit for the position.

Mr. DOBSON. -

But the honorable member proposes to limit the area in this clause.

Sir JOHN DOWNER. -

No; only in one matter. We say, as a question of principle, that the
protector of the Constitution must not be a portion of the Executive, and the argument is unanswerable. On the face of it it is wrong. It might not work very badly in the result, and we may be attaching at least as much importance to the question as it deserves; but, as an abstract principle, I do not think there are many members of this House who would not say that, if you can possibly avoid it, the Executive and the Judiciary should never be filled by the same person. I hope that this clause will stand substantially as it is at present. We cannot be too careful in the foundation of our Constitution not to interfere with the functions of Parliament. I believe in largely trusting the Federal Parliament, but we have to fix the relative positions of the Commonwealth and the states, and the time to do so is at the initiation.

Mr. HOLDER. -
That is a strong reason for not allowing the state Governors to take the position.

Sir JOHN DOWNER. -
In reference to the suggestion about the state Governors taking the position, I cannot see much objection to that. In all probability that is the manner in which Her Majesty will act in selecting the temporary Governor-General instead of selecting the Chief Justice.

Mr. REID. -
That will be quite open to be done if this clause is left out.

Sir JOHN DOWNER. -
Quite so; and that is the reason why I would not make the limitation more than the circumstances require, and the only limitation I am in favour of is that the protector of the Constitution should not hold this office.

Mr. WALKER (New South Wales). -
When I came here this morning my sympathies were largely with those who are in favour of the retention of the clause; but, after listening to the debate, I have come to the conclusion that we should not do anything to limit Her Majesty's prerogative. Yesterday, in deciding not to allow an appeal to the Privy Council, except in a very roundabout away, we did something to sever the connexion between the home country and ourselves. I may be wrong in that impression, but unquestionably I desire to support those who wish to maintain Her Majesty's prerogative in this matter. I find, in glancing through a paper I have here, that some of the reasons for maintaining Her Majesty's prerogative are summed up.

Mr. SYMON. -
Is that by Sir Samuel Griffith?
Mr. WALKER.-
Yes. He says-
If the Sovereign is to retain any prerogative rights in respect to the Commonwealth, the choice of her own representative would surely be included amongst them.

If it is desired by the Parliament at any time that the prerogative should not be exercised by the Sovereign in a particular way, an address indicating their desires is more in accordance with usage and constitutional theory than an enactment purporting to limit its exercise.

I shall not go further with this matter beyond stating that I have found reason to change my opinion, and that I intend to support those who wish to retain the prerogative of Her Majesty.

Mr. SYMON (South Australia).-
If Sir John Forrest will allow me, I should like to utter a sentence in order to support his views, and to say a word in favour of the clause, for which I share the original responsibility. I am sorry that the honorable member (Mr. Walker) has changed his mind in such a short time as has elapsed since he entered the chamber to-day; but I know what very great influence Sir Samuel Griffith has over my honorable friend, and probably it was the existence of this pamphlet in his pocket, quite as much as the arguments which he has listened to today, which have not been very forcible, that convinced him he ought to change his mind. I think my honorable and learned friend (Mr. Isaacs) used a somewhat exaggerated expression when he talked about the insertion of this clause as a fetter on the Constitution.

Mr. ISAACS.-
What else is it?

Mr. SYMON.-
If my honorable and learned friend had pointed out how it would be a fetter on the Constitution I could understand it; but so far as the clause itself is concerned it is, in fact, a mere request. We cannot take away the Queen's prerogative, and, in fact, this is a request to Her Majesty. It is not a prohibition, although Her Majesty assents to it. So far as the Commonwealth is concerned, it is a mere indication that we believe and desire that one of the three parts of the Constitution which we are seeking to establish-the Judiciary-which to a certain extent is co-equal with the other two, and is intended to be kept absolutely apart from the other two, shall be so kept absolutely apart. And I also think, with great deference, that we are needlessly widening the area when we import into this discussion the question of the independence of the Chief Justice of the Commonwealth. We all believe, and have no doubt whatever, that the Chief Justice of the Commonwealth will be as absolutely independent as
the Chief Justice of every separate colony is now. But that is not the
question we are dealing with. Honorable members have taken, if I may say
so, not so much a narrow as a shallow view of this subject. The point is
whether we are to keep, even in appearance, the Judiciary of this
Commonwealth, in which is reposed the care of every interest, individual
and state, apart altogether from the Executive. That is the question we have
to determine. We are not called upon to go by a process of exhaustion, and
to say who shall be eligible, and who shall not. There is, of course, as has
been exemplified, room for wide difference of opinion as to whether we
should ask Her Majesty to exclude the Judges from these appointments.
Why should not half-a-dozen Lieutenant-Governors be appointed to hold
office in succession

in the absence of the Governor-General? I do not suggest the appointment
of the President of the Senate. Mr. Higgins said "There must be some
sinister motive. It is the Senate. This is a cruel and sinister device on the
part of the small states to strengthen the Senate."

Mr. HIGGINS. -
I did not say that.

Mr. SYMON. -
What does the honorable member mean when he talks about ulterior
motives and the constitution of the Senate? We know the effect any
reference to the Senate hag upon the honorable member's mind. We are not
going to determine who is to hold the office. We are only going to
determine, in accordance with every line of this Constitution, that the great
tribunal we have established, not as a mere state tribunal, but as a part of
the Constitution, to preserve the rights of individuals and states, shall not
be mixed up even in appearance with the Executive.

Mr. HIGGINS. -
This applies to other Judges.

Mr. SYMON. -
Yes, to every one holding judicial office.

Mr. HIGGINS. -
Not only under the Federation, but also under the states.

Mr. SYMON. -
And so it should. We are not seeking to interfere with the appointment of
Acting Governors in the states, although I feel bound to support what my
right honorable friend (Sir John Forrest) has said, that even the existing
systems in the states is a highly inconvenient, improper, and
disadvantageous one. We know that the Governor is the chief executive
officer, and we know also that he is supposed to be the leader of fashion,
and the leader of society. Is that a position in which the Chief Justice should be placed? And I say that that is a far higher ground to take than the question of his eligibility to the particular office. In order that honorable members may see that this is not a view entertained simply by people in these colonies, I will read one sentence from a despatch from the Duke of Newcastle to a former Governor of South Australia, Governor Daly, dated 20th January, 1862. It is as follows:-

To separate the functions of a Judge from those of a Governor is one of the first precautions which society adopts in order to secure itself from injustice, when it becomes capable of political and judicial organization.

That is an excellent axiom, and one that, I am sorry to say, has been departed from in our state administration. I should like to see it returned to. In the plan of a model Constitution offered by Mr. Dudley Field some years ago, there was this provision:-

No Judge, except a justice of the peace, shall hold any other office of public trust under the Government of the United states, of this state, or of any other state or country.

Those are the principles upon which we should proceed.

Mr. DOBSON. -

And upon which we have not been acting.

Mr. SYMON. -

We have been acting, I admit, differently, and, as I think, with all deference to those who entertain a contrary opinion, wrongly. There is no analogy between the position of the Judiciary in the states and in the Commonwealth. The Judiciary in the Commonwealth occupies a position entirely of its own, referable only to the Federal Constitution, and the Judges there ought to be kept aloof in semblance as well as in reality from everything pertaining to the Executive. If not, we may come back again to the old condition of things under the Privy Council, when the people who had to quell a riot were also the judges who tried the offenders. Such a thing is an anomaly. I hope that the clause will be retained, not on any small issue, but on the broad principle that we should keep the Judges of this tribunal, in appearance as well as in reality, apart from the Executive.

Mr. KINGSTON (South Australia). -

The quotation from the Duke of Newcastle's despatch which has been read by Mr. Symon loses some of its force when we recollect that it has since then become the firmly-established practice of the Colonial-office to select, as a rule, for the discharge of the duties of Lieutenant-Governor, the Chief Justice of the province. I think also, and no doubt there are many here who can speak
with similar authority, that the practice has been found to work well, and that no better selections could have been made than have been made in these colonies in the persons of our Chief Justices. If they were excluded from the area of choice, I do not see how it would be possible to make a selection which would give equal general satisfaction in any one of the colonies or in the Commonwealth. What sort of man do we want in the position of Governor-General? It seems to me that we want first a man who is no partisan, and, secondly, one who, when he has a discretion, will exercise it in a semi-judicial way. And yet what is the proposition? The proposition is to absolutely exclude from the area of choice the individual who, in the natural order of things, should possess the highest judicial faculties, and should be absolutely free from partisanship.

Mr. SYMON. -

This is not a question of partisanship, but of keeping the Judiciary apart from the Executive.

Mr. KINGSTON. -

I agree with the view of the Premier of New South Wales. Do not let us attempt in a matter of this sort to tie the hands of those who are to come after us. Do not let us endeavour in too many instances to practically declare that we are the people, and wisdom will die with us. No doubt it is capable of argument that it might be possible to find some one better fitted to fill a position of this sort than the Chief Justice. I confess that I do not know where he is to be found. I am sure that in our various provinces no happier selection could be made. For years past this has been the practice so far as the states are concerned. If it had not given general satisfaction an address from the popular branch of the Legislature would have secured what was desired.

Mr. OCONNOR. -

That shows the necessity of this provision.

Mr. KINGSTON. -

Has any such address been proposed? Has the matter even been mooted? In what cases, I would ask, has this practice of selecting the Chief Justice failed to work well? I do not intend to go into the question of whether or not it would be possible to find some one else to fill the position. I will not indulge in speculation as to whether the President of the Senate or the Speaker of the Lower House might be selected. I hope that no such choice will ever be made. If you take the President of the Senate, the Speaker of the Lower House, and the Chief Justice, or a Judge of the Federal Court, and compare the probabilities of finding in either of them absolute freedom from partisanship and faculties of the highest judicial character, it seems to me that the result must be in favour of the latter. Do you want judicial
faculties for the exercise of vice-regal functions? I think that you do. To put into the Constitution a provision which is absolutely unprecedented, and to declare once and for all that every man who has distinguished himself by the possession of the faculties to which I have referred, and by having had high judicial office conferred upon him, shall be disqualified from acting as the head of the Executive, would, it seems to me, be a great mistake. Leave it to those who come after us. Credit them with the possession of a certain degree of common sense. We have the practice of the past to strengthen us in the position that is now sought to be attacked. It has never previously been attacked on the floor of any Legislature, and I do trust that we will not put the stamp of disqualification on members of the Judiciary, even with reference to the temporary occupation of the chief seat in the Executive.

Mr. WISE (New South Wales). -

There are, I believe, certain broad principles that ought to be clearly defined in the Federal Constitution, and of these one, and by no means the least important, is the absolute independence of the Judiciary. There is no analogy between the position of a provincial Chief Justice and that of Chief Justice of the Federal High Court, and, therefore, the appeal the Premier of South Australia has made to the experience of the past ought to have no weight with the committee in estimating the value of the proposal now made. I am not going to occupy the time of the Convention by repeating what has been already said, but I will ask you to face this practical question. A Judge of the High Court is supreme interpreter of the Constitution; and is there not something utterly incompatible between the position of the supreme interpreter of the Constitution, and that of the chief executive officer? The Chief Justice might be advised by his Ministers on the Monday to affix his name to a proclamation. He would be bound to take that course. On the Tuesday the matter might come before him in the Supreme Court, on an application for habeas corpus or prohibition, and he might have to declare illegal that which his Ministers advised him on the previous day to declare legal. Could we imagine anything more likely to bring the high office of Chief Justice into contempt than such an apparent conflict?

Mr. ISAACS. -

Could not the same thing occur under our Constitution?

Mr. WISE. -

It could not occur, because there is no power given to any Judge under a state Constitution to declare any Act of Parliament ultra vires.

Mr. ISAACS. -
Not if contrary to the Constitution?

Mr. WISE. -
That question has been raised and has been settled by the Privy Council.

Mr. ISAACS. -
Yes, in the case of McLeod; and the Privy Council said that if the New South Wales Parliament made the Act in the way in which it was contended it was made it would be beyond their jurisdiction.

Mr. OCONNOR. -
The Constitution is not above the Parliament, as it is here.

Mr. WISE. -
There is something in what the honorable member says. There is a broad essential difference between the functions of the Supreme Court of the Commonwealth in interpreting the Acts of the Parliament of the Commonwealth and the functions of the Supreme Court of any province in interpreting the Acts of the Parliament of the province. I am not going into legal quibbles to point out where that distinction lies; it is sufficient for my argument that it exists. We know that the way in which the constitutionality of Acts of Parliament has been tried in America has been in many instances by appeals being made against the acts of executive officers purporting to act under them. The executive officers act upon authority purporting to be conferred upon them by the signatures of high officers of state. In our colony the high officer of state who gave the authority would be the Governor or the Acting Governor, and therefore if the clause is struck out the Acting Governor may be called upon as Chief Justice to reverse an act to which he had made himself a party on the previous day.

Mr. TRENWITH (Victoria). -
This is a subject which has been argued from an intensely technical standpoint, and one which it is very difficult to follow in all its ramifications but it is one upon which each of us must vote, and, as I have resolved to vote for the clause, it seems only right that I should give one or two reasons for doing so. The Premier of South Australia laid great stress upon the fact that in the various colonies the Chief Justices have been appointed Acting Governors, and that no inconvenience has been occasioned by the arrangement. But it seems to me that there is no analogy between the two cases. In the various colonies Parliament is a High Court from which there is no appeal except to the Imperial authorities; but in the Constitution that we are framing the Chief Justice will be the head of a High Court, superior in questions of interpretation to Parliament itself. To my mind, he should not be asked to descend to
Parliament—I do not use the word in an offensive sense—and become a part of the Executive, when, as has been pointed out, and as is obvious, he may be called upon to pass judgment upon his own acts. I do not see that that is at all an improbable contingency.

Mr. HOLDER. -
They would not be his acts; they would be the acts of the Executive.

Mr. TRENWITH. -
They would be the acts of the Executive sanctioned by him.

Mr. HOLDER. -
Not sanctioned by him, only done in his name.

Mr. TRENWITH. -
That was one of the points I was about to urge as a reason why the Chief Justice should not be placed in the position of having to perform an executive act in the performance of which he would have practically no option. The attaching of his signature to a proclamation would make him, at any rate mechanically, a party to it, and subsequently he might have to adjudicate upon this act which he had been compelled to perform, and which was at least an act of his own hand. I think that is a sufficient answer to the contention that in our state Governments the appointment of Chief Justices as Acting Governors has not created inconvenience. It does not follow that because the practice has created no inconvenience in connexion with the Constitutions with which we are acquainted, it will not create something anomalous in the practical working of the Constitution which we are framing, by which the Chief Justice and

Mr. HIGGINS. -
The clause prohibits state Judges from occupying the position of Acting Governor.

Mr. TRENWITH. -
I do not understand it so.

Mr. HIGGINS. -
The clause says-"No person holding any judicial office."

Mr. TRENWITH. -
Well, I will not pursue that point. I am stating my reasons for voting for the provision which prevents the Chief Justice of the High Court of the Commonwealth from acting as Governor-General. If by any means the convenient arrangement which at present exists in the states can be continued, I see no reason why it should not be continued, but I object to the Chief Justice of the Federal Court being made temporarily part of the Executive, when one of his primary and most important functions is to see that neither the Executive nor any other branch of the Federal Parliament oversteps its constitutional powers.
Mr. PEACOCK (Victoria). -

We have already spent an hour in discussing this question, and I think every one has already made up his mind as to how to vote upon it. To me it appears that those who are arguing for the retention of the clause should give very much better reasons in support of their views than have yet been advanced. The clause contains restrictions preventing certain officials from occupying particular positions. I have listened very closely to the statements of our legal friends, but all the instances they have given have been based upon the most imaginary possibilities. If there should be this restriction with regard to judicial officers, I do not know why we should not go further and put in restrictions as to other officials. I think that those who are arguing for the retention of

the clause should show us-the lay members of the Convention and the people outside-what persons might be selected to fill these positions. The argument of the Premier of New South Wales cannot be answered. The contingencies and difficulties which have been spoken of have never arisen in the experiences of the states, and if they should arise in the experience of the Commonwealth, the Commonwealth Parliament, which we have been repeatedly told that we should trust, can be left free to deal with them. For these reasons I shall oppose the clause.

Mr. BARTON (New South Wales). -

My mind has been fluctuating a good deal about this clause. I was at one time rather disposed to think with those who would leave this question to be dealt with by the Federal Parliament. I was strongly with the honorable and learned member (Mr. Symon) when he proposed the clause in Adelaide. Since then I have been very much impressed with the argument that the matter should be left to the Federal Parliament; but, upon reconsideration, I think that perhaps it might be better and safer to retain the clause. It has been argued that the clause is an interference with the prerogative. If there had been no interferences by legislation with the prerogative there would not be one-half so much freedom in the community as there is to-day. The prerogative is a power which has either been slowly suffering decretion and loss, or it is a power which so far as it has been allowed to continue in its full nominal force has become something which is used in trust for the community.

Mr. DEAKIN. -

A weapon of the Executive.

Mr. BARTON. -

Yes. So far as the Executive may in these days be gaining more power than they should have, it is a weapon in the hands of others than the
Crown. There is this argument about the prerogative that we are proposing to diminish it, and that, therefore, we should leave the matter to the legislation of the Federal Parliament. But if it is undesirable that we should deal with this matter, because it is a matter touching the prerogative, is it any more desirable that the Federal Parliament should deal with it? That is the way in which it appears to me, and that is why I have resolved to vote for the clause. If the matter is to be left alone because it is a matter touching the prerogative, then the other half of the argument of those upon the other side, which is that it should be left to the Federal Parliament, cannot stand. If it should not be dealt with as a matter of prerogative, it should not be dealt with either by the Federal Parliament or by ourselves. As I take it, what we have to consider is, is this a matter of absolute constitutional principle? If it is, should it be left to be dealt with by the Parliament or implanted in the Constitution? I believe that it ought to be implanted in the Constitution. It has been urged that there is practically no difference between appointing the Chief Justice of the Commonwealth to be Administrator of the Government and appointing any other person such as the President of the Senate to fill the position. I think there is a considerable difference. If you appoint the President of the Senate you are simply appointing to the performance of certain executive and legislative functions a person who is already in a branch of the Legislature, whereas if you appoint a member of the High Court you are appointing a person whom it should be our desire to keep separated by every safeguard we can possibly devise from interference with executive and legislative business.

Mr. HIGGINS. -

If the President of the Senate is in the Legislature he must be a partisan.

Mr. BARTON. -

That does not follow, because he has to hold in the Legislature a semi-judicial position—a position which, in a great measure, prevents him from being a partisan. Upon the impartiality of his decisions a great deal will rest.

Unless you appoint impartial men to these positions their decisions will suffer.

Mr. KINGSTON. -

His only duty is parliamentary impartiality.

Mr. BARTON. -

I take it that the habit of impartiality is the same whether you put this or that adjective before it. I cannot recognise any difference between judicial and parliamentary impartiality in the exercise of judicial functions. But
there is not the same risk in appointing a person whose functions are in a large measure akin to those afterwards to be imposed upon him as there is in appointing a person whose functions are the opposite. If I voted against the clause I should be of opinion that neither the Chief Justice nor any judicial officer should be appointed Acting Governor to the Commonwealth, but I should vote against it because I thought, that the matter might be better legislated upon by the Commonwealth Parliament. I now think, however, that as this is a principle of the Constitution it should be implanted in the Constitution. Some misunderstanding seems to have been created by the words "No person holding any judicial office." But there is an obvious reason for that. If you are to exclude the Judges of the High Court from participating in functions of this character, it would be obviously more improper to allow those functions to be performed by lower judicial officers, and perhaps officers of a state, and not of the Commonwealth. If the reason is a good one, that the members of the High Court should be separated from the performance of these functions, then it is not desirable that these functions should be open to others whose very appointment to them would be considered an incongruity. That is the reason why the clause is so extensive as it stands, and if an amendment is proposed to cut down the clause in this particular, I shall certainly resist it, although it is not without a considerable deal of doubt and hesitation that I support the clause itself.

Mr. HOLDER (South Australia). -

I do not rise to reply, but I want to intimate my intention to take another step, should this amendment be negatived. Will you, Mr. Chairman, put the first five words of the clause as a test of the question whether we shall place in this Constitution any restriction on the right of choice? If the Convention is against me on that, then I am going to move the insertion of words to prohibit the mixing of the legislative functions with the functions of the office of Governor-General. The great argument is that we must keep distinct the executive, legislative, and judicial functions; and, if that argument is to have weight, I am going to take good care, if I can secure it, to prohibit the holding of this executive office by any person who is a Member of Parliament.

Mr. REID (New South Wales). -

I simply wish, before the division, is taken, to point out that whilst some honorable members seem prepared to irrevocably limit the choice of the Crown in case of a temporary vacancy in a high office of the Crown, not one of those honorable members has suggested any other person or any other official as a possible occupant of that office.

Question-That the words "No person holding any judicial" proposed to
be omitted stand part of the clause-put.

The committee divided-

Ayes ... ... ... ... 25
Noes ... ... ... ... 20

Majority against the amendment 5

AYES
Braddon, Sir E.N.C. Leake, G.
Briggs, H. Lee Steere, Sir J.G.
Carruthers, J.H. Lyne, W.J.
Crowder, F.T. McMillan, W.
Douglas, A. Moore, W.
Downer, Sir J.W. O'Connor, R.E.
Forrest,, Sir J. Symon, J.H.
Fysh, Sir P.O. Trenwith, W.A.
Grant, C.H. Venn, H.W.
Hackett, J.W. Wise, B.R.
Hassell, A.Y. Zeal, Sir W.A.
Howe, J.H. Teller.
James, W.H. Barton, E.

NOES
Abbott, Sir J.P. Kingston, C.C.
Berry, Sir G. Lewis, N.E.
Brown, N.J. Peacock, A.J.
Clarke, M.J. Quick, Dr. J.
Deakin, A. Reid, G.H.
Dobson, H. Solomon, V.L.
Fraser, S. Turner, Sir G.
Glynn, P.M. Walker, J.T.
Henry, J.
Higgins, H.B. Teller.
Isaacs, I.A. Holder, F.W.

Question so resolved in the affirmative.

Mr. HOLDER (South Australia). -
I beg to move-
That after the word "judicial" the words or parliamentary" be inserted.

Mr. PEACOCK. -
Say "or legislative."

Mr. DEAKIN. -
"Or parliamentary" is better.
Mr. BARTON (New South Wales). -
I think there is one solid reason why this amendment should be rejected, because it emanates from those who first declared themselves against any limitation whatever, and who now want to double the limitation in the clause.

Mr. PEACOCK. -
Oh, no, that is not fair.

Mr. REID (New South Wales). -
I am afraid that these solemn difficulties of the Constitution are not to be got rid of by the play upon words which my honorable friend, the leader of the Convention, has indulged in. We are willing to leave this matter perfectly open to the Federal Parliament, and to the necessities of the future times of this Federation, and we now find that there is a very strong determination, in spite of what we believe to be the obvious sense of the matter, to provide that the road to the Governor-Generalship, when it is vacant, shall not be obstructed by a certain class of officials. The power of the Governor-General is a power which is always exercised, if properly exercised, in a judicial manner, and this Convention has now expressly excluded the highest and most independent officers of the Commonwealth, whose office not only trains them to judicial discretion, but, by their oaths, binds them to it as a matter of daily life and habit. And yet we find, immediately my honorable friend wishes to bind the Convention down to the logic of its own position, an attempt to brush this question aside. Now, the election of the President of the Senate is the object of this division. So far as it can have any object, it is that the road shall be made clear for the occupancy of the Governor-Generalship, in a time of vacancy, by the President of the Senate. And I say that, because, if the Chief Justice of the Supreme Court is excluded, the President of the Senate is the next natural choice of Her Majesty, if Her Majesty's discretion is fettered. Now, let us see what position that will land us in? The President of the Senate is not in the position of the President of the Legislative Council at all. The President of the Legislative Council is a Crown officer, and does not vote.

Sir JOHN FORREST. -
How is he a Crown officer?

Mr. REID. -
Because he is appointed by the Governor in Council.

Mr. KINGSTON. -
In South Australia he is elected.

Mr. REID. -
I am speaking of the fact that in our colony the Queen appointed the President of the Legislative Council next the Chief Justice to occupy this
position in times of emergency. Well, in our colony we always thought it an objectionable thing, and we always strongly protested against it, and urged that the head of a body which might be at serious issue with the other branch of the Legislature suddenly became another estate of the realm in dealing with disputes between two of those estates. And in the case of the President of the Senate, he is a gentleman who by this Constitution has the right of voting, he is elected by the Senate, so that he peculiarly is the mouth-piece of the Senate, and he is sent into the Senate by an active political representation of the state. Now, who can dream of such a person being put in such a position that Her Majesty will really have no discretion but to appoint him? Because the Queen must choose the next eligible distinguished personage in the state. If she is told that she must not choose a Judge, she must choose the President of the Senate.

Mr. Walker. -

Or, say, a Governor of a state.

Mr. Reid. -

Well, the idea of going outside the Federation for some one to temporarily occupy the chief seat in the Commonwealth seems to me the most extraordinary idea in the world.

Sir William Zeal. -

It has worked very well in this colony.

Mr. Reid. -

Have you sent out of your colony for another Governor?

Sir William Zeal. -

Yes, for Sir William Robinson.

Mr. Reid. -

Well you have done so many strange things here, that I have never been able to follow you.

Mr. Isaacs. -

That was an appointment by the Queen.

Mr. Reid. -

Do I understand that in that case the Legislative Council sent over the straits or to Western Australia for a Governor of the colony?

Sir William Zeal. -

No; the Government of the day probably.

Mr. Reid. -

Well, I used to think that the Queen had something to say on these points, but it may be a mistake on my part. My very strong objection is this—we have now limited Her Majesty's choice. We have prevented Her Majesty...
from appointing an occupant of a judicial office to the post of Governor-General, and we have practically bound Her Majesty down to appoint the President of the Senate.

Mr. PEACOCK. -

Whom do you substitute?

Mr. REID. -

I do not say that my honorable friends had any such idea, in taking the course they have taken, but will the honorable member suggest any other high personage in the Commonwealth whom Her Majesty would more naturally think of?

Mr. SYMON. -

My right honorable friend himself, if he were then out of politics.

Mr. REID. -

That is just the sort of view I have been afraid of, because I say that that sort of personage, who has played a conspicuous part in politics, and happens to be out of politics at a particular time, is absolutely the worst person to put in the position of Governor-General. And it really seems to me that we are getting into a perfect mania of creating billets under this Federal Constitution, and that we must have another office now, a paid office, of Lieutenant-Governor, the occupant of which shall be ready to take the place of the Governor-General when a vacancy arises. However, I have such confidence in the logic of the Convention—if in nothing else, about it, in its thorough logic—that I feel sure that, having prevented the judicial power of the Commonwealth from taking this position, we will proceed to prevent the political potentialities of the Commonwealth from doing so.

Mr. MCMILLAN (New South Wales). -

I think that in dealing with a question of principle like this, all these personal considerations should have no weight. It is not for us to say who shall be appointed; it is for us to say what it is right to do in this Constitution. Now, there is no analogy between the two positions. Under responsible government, as we have it—not on the American basis—under responsible government there is a direct link between the Executive and the Legislature, but we purposely follow the American rule by absolutely isolating the Judiciary from either the Executive or the Legislature. Therefore, even if there was a chance of somebody connected with the legislative part of the Government being introduced into the position of Governor-General temporarily, that is no reason at all why we should put him in the same position as a member of the Judiciary.

Mr. REID. -

Do you approve of the President of the Senate being appointed
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Mr. MCMILLAN. -

No, I do not approve of anybody connected with the Legislative being made Lieutenant-Governor, but I am simply answering the argument now that, if you exempt one, by analogy you should exempt the other. I say there is no analogy between the two cases. I should be very sorry to see the day when the President of the Senate, who occupies a certain position with regard to the states, should be in the position of Lieutenant-Governor any more than the Speaker of the House of Representatives. But I do not look forward to either contingency. It is a very poor argument, to my mind, to throw aside a sacred principle in this Constitution because at the present moment we do not see any one but a Chief Justice capable for the position. I think, myself, we must argue these things strictly on the principles. The difficulties that may arise in the future are not for us, to deal with, so long as we make the bed-rock of the Constitution beyond danger.

Mr. ISAACS (Victoria). -

I think that, accepting the vote which has just been taken, we ought at least to be consistent. We have set to work to exclude one set of officers from the possibility of choice by Her Majesty as Governor-General for the time being; and, having done that, we ought not to hesitate to exclude those whose presence in that position would be infinitely worse. I will just point out how it would be infinitely worse. A Chief Justice, placed in the position of Governor-General for the time being, is independent of any man. When a request is presented to him by a Minister, say, for a dissolution, he simply decides the matter according to his better judgment, and he says:"I am responsible to none." But take the position of any parliamentarian, whether he is President of the Senate, Speaker of the House of Representatives, or any other man in Parliament. What will he think? Apart from any struggle between the two Houses, of one of which he is a member, apart from any party contest in which he may have participated, he thinks to himself:"What will be popular with my constituents? I have got to face the next election." Is not that an overwhelming reason why we should, if we set about the work at all, exclude at least men holding parliamentary positions from the possibility of being placed in such a trying situation? I do not hold with the vote which we have just given, but, having taken that step, I think we shall be worse than inconsistent if we do not carry the amendment now proposed by Mr. Holder.

Mr. SYMON (South Australia). -
It seems to me an extraordinary thing to hear the honorable member (Mr. Isaacs) talking about consistency. He has utterly misapprehended the position upon which a majority of this Convention has proceeded in retaining this clause. The ground on which we have proceeded is a ground of principle.

Mr. ISAACS. -

And I want to maintain the principle of separating the legislative, executive, and judicial offices.

Mr. SYMON. -

The honorable member has not made his argument a bit clearer by his interjection. The position of the matter is simply this: We have not proceeded on the principle that we wish to define in the Constitution who is to be Lieutenant-Governor. We do not intend that by this clause. We do not intend to go through a process of exhaustion, and to enumerate all those who we think may be ineligible for the position, either on the ground of their being mixed up with parliamentary affairs, or with other affairs. The only reason for our retaining the clause is that we consider that the Judiciary should be kept absolutely apart from everything in relation to the Executive, and that it should not wear even the semblance of being mixed up in any way with it. That is the principle on which we have proceeded.

Mr. REID. -

Does not your principle include the objectionableness of elected Members of Parliament occupying the position of Governor-General?

Mr. SYMON. -

No.

Mr. REID. -

I only wanted to know.

Mr. SYMON. -

I am obliged to the right honorable member for putting the question, but my principle does not ideal with that matter at all. There may be scores of people who some of us may say would be very eligible, but who would be open to many grave objections by others. There are grave objections to the selection of the President of the Senate—the gravest possible objections objections which, I think, would be fatal in the estimation of the Imperial advisers in dealing with that subject. My honorable friend (Mr. Holder), a few minutes ago, said we should leave the exercise of Her Majesty's prerogative untrammeled.

Mr. HOLDER. -

You are not acting consistently now.
Mr. SYMON. -

I am not interfering with the prerogative. It would be unnecessary to make this provision, even in the case of the Judges, if a practice

Mr. REID. -

I am only annoyed at the disappointment of not seeing you Governor-General some day.

Mr. SYMON. -

There might be a greater objection to me in that position even than to my right honorable friend. But the position, so far as we are concerned, is that we desire to indicate that we wish the Judiciary kept consistently within the limits of the Constitution. It is in furtherance of that view-in order to make it harmonious with the rest of the Constitution-that we have put this in. There is no analogy between that and the eligibility of other persons whom we might think of, and name for the position. I do not hold the view which some of my honorable friends entertain, that there is an objection to the Governors of colonies in successive seniority taking this position. I think, myself, that that would be a most eligible thing to do—that in the absence of the Governor-General the senior Governor of a colony, and failing him the next senior Governor of a colony, and so on in succession, should perform the duties of Acting Governor-General. I see no objection to that.

Mr. KINGSTON. -

What about the difficulty of his going to the seat of government?

Mr. SYMON. -

I see no difficulty about his going to the seat of government, any more than about our coming here to attend this Convention, and the easiness of his duties would be another reason for his holding the position. But we are not to decide this. All we say is-Keep the Judiciary by itself, and leave all the rest to the exercise of Her Majesty's prerogative, with a wide field of selection." My right honorable friend (Mr. Reid) knows that, in his own colony, an ex-Chief Justice, Sir Alfred Stephen, held the office of Lieutenant-Governor with satisfaction to the colony for many years. Why should not there be many other men who might hold a dormant position as Lieutenant-Governor in the same way? It does not follow that there should be any salary while he was not exercising the functions of the position. So far as I know, no salary has ever been, or ever will be, paid to a

Lieutenant-Governor until he assumes the functions of the office, and then, I believe there is some arrangement for his participating in the salary of the Governor. But there are heaps of people who might be selected. I say that the Governors of the colonies, or, short of them, any fair-minded enlightened citizen, would be perfectly open, perfectly able, to exercise the
functions, and hold the position. It is ridiculous to suggest that the field is barren if you take away the Judges, or even if you take away the President of the Senate, or any parliamentary functionary. I am not in favour of the appointment of any parliamentary functionary; but there is no reason whatever, by analogy with the principle which we have embodied in this clause, that would operate as regards any other single individual.

Sir GEORGE TURNER (Victoria). -

I do not desire to detain the Convention more than one or two minutes, because I think that it is time we finished dealing with this subject. But there is one very important point which has occurred to me that makes me feel more strongly than ever that we ought to debar any legislative officer from this position if we debar the Judiciary. When the matter was being discussed in Adelaide, I asked that if we were to debar the Judiciary, we should also debar the legislative officers, following the ground taken up by Mr. Holder. But we have now altered the Constitution so that at a very important time it might be necessary to decide whether there should be a dissolution of the House of Representatives alone, or whether there should be a dissolution simultaneously of the House of Representatives and the Senate. Now, would it not be a fearful position to put the President of the Senate, or the Speaker of the House of Representatives, in that he should have to decide whether the dissolution should be of the House of Representatives alone, or of the Senate and the House of Representatives at the same time? I submit that that would be a most improper position in which to place such an officer, and as we have gone the length of saying that no judicial officer shall be eligible for this position, we ought, if we are to be consistent, to go the full length of prohibiting everybody who can have the slightest interest from occupying the position. I do not believe myself that we ought to prohibit anybody; I believe that we ought to leave the matter free and untrammelled to the prerogative of the Queen. But as we have done this, having done it, the only consistent position we can take up is to prohibit everybody who we think might be placed in a false position if he were to occupy the position of Lieutenant-Governor. Seeing the very serious difficulty that might arise in the way I have pointed out, and what the Governor-General for the time being would have to decide, this is, it seems to me, a very strong reason for carrying the amendment of the honorable member (Mr. Holder), and so taking away from the occupant of the position any question whatever of self-interest.

Mr. HIGGINS (Victoria). -

I think the object of both sides of the Convention in this matter is to avoid partisanship on the part of whoever holds the office of Governor-General for the time being. We thought that there was no danger of
partisanship on the part of one who held a judicial office, but the Convention has thought that there may be some danger of partisanship in that way. Now, if there is danger of partisanship on the part of a Judge, there is a much greater danger of partisanship on the part of one who is elected to the Legislature, who holds an office in the Legislature, who represents a state or a number of people— one who has to answer to his constituents. A Judge of the courts has to answer to no constituency but his own conscience, but the President of the Senate or the Speaker of the House of Representatives has to answer to his constituency, and he is by virtue of his election more or less of a partisan. The position we take up is, therefore, a very logical and right one. If you think you are right to tie Her Majesty's hands and limit her discretion in appointing her agent at all by virtue of this danger of partisanship, there is much more reason for limiting Her Majesty's discretion in the matter of one who holds office in the Legislature than of one who holds office on the bench. May I remind honorable members that there is a dormant commission in every colony? I suppose there will be one under the Federation. This dormant commission has to be addressed to whoever holds office for the time being, but is not necessarily addressed to him by name. For instance, there have been in some of the colonies Lieutenant-Governors, like Sir Alfred Stephen, who was not in office; but you will find, in the ordinary course, in the event of a Governor-ship falling vacant, and there being no one to represent the Queen, there is a dormant commission in the colony addressed to the office, not to an individual, because the office must be permanent, whilst the man is not. Now, therefore, as there must be a dormant commission in order to carry out the machinery, that commission must be addressed to some office. If you do not address it to a judicial office it must be addressed either to an executive office or an office under the Legislature; and I think the Prime Minister of New South Wales is perfectly right in saying that almost necessarily, from social and other reasons, it will be addressed to the President of the Senate. The result will be that the President of the Senate, who will be elected by his state to the office of a kind of ambassador, will be a partisan; and yet you give him a position enabling him to stand as an arbiter in questions of dissolution or so forth. So that he will be able to say whether he is personally to go to a dissolution or not. You actually make him the person to say whether he shall face his electors or no. I think if we desire to prevent partisanship we should let that prevention apply all round, and especially to a greater danger than has been provided against already.

Mr. WALKER (New South Wales). -
In justice to myself, I think it necessary to say how I intend to vote with regard to the matter under discussion. I voted before against limiting Her Majesty's prerogative, and I shall continue to do so.

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

The committee divided-
Ayes ... ... ... ... 17
Noes ... ... ... ... 20
Majority against the amendment 3

AYES.
Berry, Sir G. Kingston, C.C.
Brown, N.J. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Dobson, H. Reid, G.H.
Glynn, P.M. Solomon, V.L.
Gordon, J.H. Trenwith, W.A.
Henry, J. Turner, Sir G.
Higgins, H.B. Teller.
Isaacs, I.A. Holder, F.W.

NOES.
Briggs, H. Lewis, N.E.
Crowder, F.T. Lyne, W.J.
Douglas, A. McMillan, W.
Forrest, Sir J. Moore, W.
Fysh, Sir P.O. O'Connor, R.E.
Grant, C.H. Symon, J.H.
Hackett, J.W. Venn, H.W.
Hassell, A.Y. Walker, J.T.
Howe, J.H.
Leake, G. Teller.
Lee Steere, Sir J.G. Barton, E.

PAIR.
Aye. No.
Clarke, M.J. Braddon, Sir E.N.C.
Question so resolved in the negative.

The amendment suggested by the Legislative Assembly of New South Wales and the Legislative Assembly of Victoria for the omission of the clause was put and negatived.

The clause, as amended, was agreed to.

The CHAIRMAN. -

We now have to go back to clause 52, sub-section (31).
Clause 52—Sub-section (31). - The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.

Mr. GLYNN (South Australia). -

In order to give some definiteness to the discussion of this river question, I think I will now propose the amendment which I have prepared. I may say that it is one that takes to some extent the character of a compromise, and one which I think should recommend itself to the good sense of the representatives of New South Wales, as I believe it will also secure the sympathy of the other members of this Convention. What I, at all events and I am sure my South Australian colleagues also desire is that whatever solution we arrive at will have the effect of being a fair compromise. I may remind honorable members that, in speaking upon the question formerly, I made a suggestion that the Federal Parliament might have power to maintain and improve the navigability of the Rivers Murray and Darling, and to apportion on the principle that regulates riparian rights between individuals the surplus waters thereof. I am going now to make a suggestion which will not go quite as far as that. I think we are reasonably entitled, on the principle of the comities that regulate opposing interests between nations, and allow full ownership of inter-state streams, to the fall terms of the amendment which I suggested on a former occasion: That is, to maintain, and in the interests of the Federation - of New South Wales as well as South Australia and Victoria - to improve, the existing navigability of the Rivers Murray and Darling; because the improvement of those rivers would be of exceedingly great use in conserving the waters for the purpose of irrigation in New South Wales, and would raise the river to a permanent level of 4 feet. Sometimes zero is reached for as long as twelve months. In 1886 the navigation of the Darling was only possible for two days; and if honorable members will look at the map which I had prepared some four months ago, and which is now in the appendices of the New South Wales Convention, they will see that the navigation of the Darling sometimes stops for two years, and is sometimes continuous for two or three years. There is ample water passing down for an average permanent level of 4 feet being maintained in the water of the Darling, as well as securing a considerable surplus supply for irrigation. The proposal I made was a fair one in the interests of New South Wales, as well as Victoria and South Australia - that power should be given to the Federal Parliament to hit upon some system of keeping up the navigability of the river, and also utilizing...
the waters of the Murray and the Darling for irrigation. That can be done effectively by some joint system of locking. Now, New South Wales may object for some reason or another to giving the Federal Parliament power to improve the river, but I say that New South Wales cannot reasonably object to empowering the Federal Parliament to keep up the existing navigability of the river, nor can they object to some sort of a ban being placed upon the power of New South Wales to destroy the natural navigability from month to month of that river. The proposal which I am going to ask the committee to consent to is that the existing navigability shall from time to time be maintained, and that when the three riparian colonies agree upon a system of improvement the Federal Parliament shall have power to carry it out.

Mr. MCMILLAN. - Have you had your amendment printed yet?

Mr. GLYNN. - I have shown it to some of the representatives of New South Wales. Of course my object is that the matter may be fairly considered, without any haste. I will now read the amendment which I have the honour to propose:-

The maintenance and, with the concurrence of the riparian states, the improvement of the navigability of the Rivers Murray and Darling.

I think that honorable members will agree that that is fair enough.

Mr. WALKER. - Excluding tributaries?

Mr. GLYNN. - So that the Federal Parliament will have power to keep up the existing navigable discharge of the rivers.

Mr. REID. - Beginning with taking possession.

Sir GEORGE TURNER. - What do you mean by "existing"?

Mr. GLYNN. - I do not know what the Right Hon. the Premier of New South Wales means by "taking possession.

Mr. REID. - How can you have maintenance of existing navigability without taking control of the rivers?

Mr. GLYNN. - I will tell honorable members what will result from this proposal. The Darling is a peculiar river. Sometimes there are within a period of two or three months from three to four floods, with rapid declensions of level
between. There are times when the river rises from 1 foot to 40 feet within a month. I think that that map which was prepared will show that on several occasions there have been three successive floods on the Darling within a month. The policy of New South Wales, if unchecked by the Federal Parliament, will be to cut off the floods for the purpose of local irrigation. The power of the Federal Parliament would extend to prevent New South Wales from cutting off the floods so that the existing navigability of the Darling lower down, and of the Murray, should be stopped. I think that it is a power which it should have, because a flood of 25 feet at Bourke may mean a flood of only 15 feet at Echuca. It may mean a rise at Wentworth of perhaps 10 feet, and at Overland Corner the extent of the rise may be measured by a few feet. The flood waters of the Darling take sometimes two months to reach South Australia, so that the policy of New South Wales (being pushed out) would amount to this, that by cutting off floods of 30, 35, or 40 feet higher up the Darling River you are destroying the ordinary levels of the river lower down, and of the Murray. What we want to do is to preserve the existing navigability of the Darling River lower down, and of the Murray, and give power to the Federal Parliament to say that wherever irrigation will result, by huge schemes of diversion, in the destruction of the ordinary navigable discharge from month to month of either the Darling or the Murray it shall be stopped.

Mr. ISAACS. -

Are all the South Australian representatives agreed as to this amendment?

Mr. GLYNN. -

I think I can fairly say that the representatives of South Australia will accept this.

Sir GEORGE TURNER. -

Will the representatives of New South Wales accept it?

Mr. OCONNOR. -

No.

Mr. LYNE. -

They won't.

Mr. GLYNN. -

I am submitting it to the representatives of New South Wales for their consideration. I do not think we would be justified in the interests of our colony in backing down one step behind this proposal. It is a limitation of the powers which will be vested in the Federal Parliament under subsection (1); because, under that provision, as honorable members know, they will have the power to improve the navigability of the rivers-

Mr. OCONNOR. -
Why not be satisfied with that?

Mr. GLYNN. -

The difficulty I am in is to know what New South Wales will accept. We have made proposal after proposal, and we are wanting the representatives of New South Wales to say specifically what they will accept. I believe that the adhesion of South Australia would be given to some proposal of this sort. I am putting a fair proposition before the Convention. There is thus, then, in this proposition, the power to conserve existing rights of navigability, and whenever New South Wales joins with Victoria and South Australia in determining to improve the river in the interests of the Commonwealth, that power shall be vested in the Federal Parliament.

Mr. HIGGINS. -

Do you leave no power to New South Wales to improve the Darling, unless with the assent of South Australia?

Mr. GLYNN. -

That power is not excluded by the terms of the amendment.

Mr. HIGGINS. -

You would still leave New South Wales that power to improve the Darling.

Mr. GLYNN. -

The honorable member is quite right. If New South Wales wishes to improve the Darling it will not be prevented by this provision from doing so. It would be better for the system of improvement to be federal, because the improvement of the Murray must run with the improvement of the Darling, otherwise the continuity of navigation would not be kept up. I may tell the honorable member that the power exists to do it; but that New South Wales will not do it will be evident from this fact—that New South Wales already declares in a report that they are not going to adopt a system of locking on the Darling which will allow the flow of commerce to go to Victoria and South Australia, and that if they do lock the Darling, auxiliary to that will be a system of preferential rates to prevent the flow of commerce to Victoria and South Australia. I am speaking now from the declaration in the report of 1893 by Mr. McKinney. Under the Federal Constitution the power to impose these preferential rates is taken away, and, by consequence, the inclination of New South Wales to lock will also diminish. But if New South Wales does wish to lock, the power exists to do so. I feel perfectly confident that, as time goes on and the subject of navigability is more closely studied, the people of New South Wales will see that for navigation and irrigation it is very largely to their interests that
the river should be improved by some joint system of locking. It is in the hope of that being eventually done by the consent of all the states that the representatives of South Australia are willing to allow the improvements to be done only with the consent of all the states which are interested in the river. That is to some extent a very large concession to be made by South Australia, and it is one which should recommend itself to the acceptance of the representatives of New South Wales. My object in submitting this amendment is that the matter shall be fairly considered, that nothing shall be done with haste, that no settlement shall be arrived at which will not be one recognised to be, on the face of it, fair as between parties taking very strong points of opposition, and in order to put into some definite form a proposition which South Australia will be prepared to accept, and which, I believe, ought to receive the adhesion of other members of this Convention.

Mr. LYNE (New South Wales). -

The honorable member who has moved this amendment, very considerately says that South Australia is prepared to allow New South Wales-

Mr. HOWE. -

He did nothing of the sort.

Mr. LYNE. -

He used the word "allow."

Mr. HOWE. -

No, he did not.

Mr. LYNE. -

He said "to allow New South Wales to improve the navigation of the Darling, with the consent of South Australia."

Mr. GLYNN. -

Not with the consent of South Australia.

Mr. DEAKIN. -

No, he said "with or without the consent of South Australia."

Mr. LYNE. -

I took the words down, and he said "with the consent of South Australia."

Mr. DEAKIN. -

No, he was asked a question, and he said with or without the consent of South Australia.

Mr. LYNE. -

He further said that a ban must be placed on New South Wales to prevent her from injuring the navigation of the river to South Australia. The proposals he refers to as numerous, and as having been made in connexion with this river, have all been proposals to take away from the colony we
represent some right which exists at the present time, and I, for one, am not prepared, on an important matter of this kind, which is the life of the interior of our colony, to give away a right which exists at the present moment. I regret exceedingly that the map, which I think the New South Wales Minister of Lands has with him, is not presented to honorable members here in the chamber, so that they may be able to see really what this proposal means to New South Wales.

Mr. DEAKIN. - It is hanging up in the corridor here.

Mr. LYNE. - I have not seen it, but my honorable friend (Mr. Carruthers) has a map here, which I think, will convince honorable members that this is perhaps the most serious proposition which has been made regarding the interior of New South Wales.

Mr. ISAACS. - Do you say that your Minister for Lands is going to explain that?

Mr. LYNE. - No. I say he has a map, and I regret that it is not here, so that it may be seen by honorable members at the present moment; because it shows the trouble and the expense which New South Wales has gone to in surveying and contouring the whole valley of the Darling, giving the heights above water-level on nearly every

Mr. REID. - In some years.

Mr. LYNE. - In some years-and in most years-has the Darling for a number of years past been navigable. That being so I maintain that it is not a navigable river and it has only been made as navigable a it is during that time by the expenditure of money by New South Wales; and a proposition coming from South Australia which places navigation above irrigation and conservation cannot be satisfactory to New South Wales. There is an area of about 149,000,000 acres of land drained by the Darling River and its tributaries, running like fibres right through every portion of this area-149,000,000 acres of land which is, not absolutely, but to a very large extent, useless, unless the waters throughout the whole of that basin can be conserved, and can be used first for conservation and irrigation. I speak of conservation, for the purpose of conserving water in all directions to maintain the stock. which the land is carrying at the present time.

Mr. GLYNN. - How many acres of that area of 149,000,000 acres can irrigation affect?
Mr. LYNE. -

The honorable member must not attempt to try to show that I said that 149,000,000 acres of land can be irrigated. I have had sufficient, and indeed a great deal of, experience in connexion with the matter of irrigation, and I know that it is only a very small proportion of the country adjoining any river, no matter where it is, which may be irrigated. But irrigation at the present time and for many years to come is a secondary consideration to conservation and distribution. That is the great point which we have to consider throughout these and plains near the headwaters of the Darling. I thought, when I saw the clause which was inserted in the latter days of the session in South Australia—I mean the clause 31, giving certain use and certain powers over the waters of the Murray—that by far too great a concession had been given to South Australia. And, as some representatives of South Australia have said already, that there is an inherent right which may be obtained for South Australia by an appeal to the Imperial Government, let that inherent right remain, if there is such a right, and let it be dealt with after the Federal Parliament comes into existence; strike out clause 31, and leave the whole question to be dealt with under sub-section (1) of clause 52, which intrust the Federal Parliament with-

The regulation of trade and commerce with other countries, and among the several states.

I think, as it was put by the right honorable member (Mr. Reid) the other day, when the matter was being discussed here, that we, in New South Wales, do not wish or intend to attempt in any way to interfere with the navigation, if navigation exists in New South Wales, either to divert trade to or from South Australia or Victoria. I think it has been shown in past years that we have had no such intention, nor have we now any such intention. Any proposition to keep to South Australia or to Victoria the rights of navigation, or the rights of trade on a navigable river, I do not think will be contested by New South Wales for a moment.

Mr. DOBSON. -

What is the specific objection to the amendment of Mr. Glynn?

Mr. LYNE. -

If that amendment is carried we cannot deal with the improvements of our rivers or with the distribution of water from our rivers as the state may desire without the consent of South Australia and Victoria.

Mr. GLYNN. -

You can improve, but the Federal Parliament cannot improve without your consent.
Mr. LYNE. -
I understood from the statement of the honorable member that the consent of the other two states must be obtained before this matter can be dealt with.

Mr. GLYNN. -
Before it can be done by the Federal Parliament, but you can improve without that consent.

Mr. LYNE. -
What did the honorable member mean when he said that a ban must be placed on New South Wales to prevent her from injuring the navigation of the Murray in South Australia?

Mr. DEAKIN. -
You want to forbid the banns?

Mr. LYNE. -
We do not wish to do anything of the kind. We object—at least I object altogether—to a ban being placed on New South Wales to deal as she may think fit with the waters of the Darling, of the Lachlan, or the Murrumbidgee, or of the other tributaries running into the Darling, until such time as this matter can be agreed upon by the various states.

Mr. GORDON. -
That is what we want to do. We want the various states to agree now.

Mr. LYNE. -
Yes, you want the various states to agree to prohibit New South Wales from doing what she has during all time had the privilege of doing.

Mr. GORDON. -
We only want to prohibit her from doing what you say she does not want to do—that is, interfere with navigability.

Mr. LYNE. -
Anything that places the navigability of the rivers above water conservation will not be acceptable to the delegates of New South Wales.

Mr. SYMON. -
Will you accept an amendment which excludes that dominance?

Mr. LYNE. -
I should like before I give an answer to know thoroughly what the wording of the amendment is. I am prepared to give all rights of navigation in navigable rivers so long as the proposal excludes the right of any state lower down to prevent New South Wales diverting the water to the dry plains.

Mr. SYMON. -
That is consistently with the necessities of irrigation.

Mr. MCMILLAN. -
Preserving navigability. That is the whole point.

Mr. LYNE. -

Yes. If navigability is preserved I do not see why words could not be imported which would give New South Wales the right to deal with the conservation of water as she desires. Unless some words can be ingeniously devised to do that, I do not think any proposition will be acceptable to the members from New South Wales.

Mr. REID. -

I think when you have time to read the amendment of the honorable member (Mr. Symon), you may find, as I do, that you can accept it. I will accept

the amendment of the honorable member (Mr. Symon).

Mr. LYNE. -

I have read it, but I must say I do not think I can accept it. That amendment says: "navigable rivers-flowing in one or two or more states so far as may be necessary for the maintenance and improvement of their navigability, with a just regard to the necessity of water conservation and irrigation" What is a just regard? Who is to decide what is a just regard?

Mr. SYMON. -

Put in "adequate."

Mr. LYNE. -

The Federal Parliament is to decide what is a just regard, and that is taking away a state right.

Mr. SYMON. -

No; the intention of it is simply to prevent irrigation being subordinated to navigation. That is to say, irrigation shall be looked upon as paramount by the Federal Parliament.

Mr. LYNE. -

I disagree with the honorable member. I do not think it goes so far as that. New South Wales would be restricted under this amendment from dealing as she has been dealing with water conservation within her own boundaries. As the Minister for Lands says, she will not know where she is. I do not think I can vote for such an amendment. Mr. Glynn's amendment says "the Maintenance and with the concurrence of the riparian states." That is to say with the concurrence of all the states.

Mr. GLYNN. -

No; "the riparian states" only means those which adjoin the river banks.

Mr. LYNE. -

It does not say with the concurrence of any individual state, but with the concurrence of the riparian states. That means the three states-Victoria,
New South Wales, and South Australia. It says-"the improvement of the navigability of the Rivers Murray and Darling."

Mr. GLYNN. -

By the Federal Parliament, but the power of the state remains until after the concurrence is obtained.

Mr. LYNE. -

If the honorable member will put this clearly-that by the rejection of the proposal by New South Wales the Federal Parliament cannot interfere-I think the proposition will be worth considering.

Mr. GLYNN. -

That is the very thing that is done by that proposal.

Mr. LYNE. -

I cannot see that it has that effect.

Mr. CARRUTHERS. -

It would prevent the carrying out of works of irrigation.

Mr. LYNE. -

That seems to me to be the case. It is a very difficult problem and I think it will be better to strike out sub-section (31) of clause 52, and to let all the rights now existing remain. Let South Australia preserve the rights which she may have now as to the water which, passes through New South Wales. Probably she could assert her rights at the present time. If we allow things to remain as they are without importing the 31st sub-section of clause 52 into the Bill no harm will be done to New South Wales. But there is one thing I wish to impress upon the Convention, as one who earnestly desires to be able to go back to New South Wales, and to heartily support the Bill which is to be framed here. That is not to import any matter that will make it still more difficult for New South Wales members to support the Bill strongly when they return. Feeling strongly in favour of federation, I do not say that even if this provision be imported I will not support the Bill; but, however much I might desire to do so, the probability or possibility of getting a sufficient number of voters in favour of the Bill will be very much jeopardized if you interfere with this state right.

Mr. GORDON. -

Although two of your leading daily papers are in favour of the attitude taken up by South Australia.

Mr. LYNE. -

I do not pay much attention to those two daily papers, and I never did. If the honorable gentleman will look at the country press throughout New South Wales he will find that as a whole they are as strongly opposed to any interference with the state right in the waters of New South Wales as
I am. The two newspapers to which the honorable member refers represent probably the feeling of a good many people in the city. But I have been in New South Wales since those articles were written, and I venture to say that the conductors of those two newspapers see now that they made an egregious blunder, and the constituents of those two papers are absolutely opposed to the views expressed in those articles. If I thought that those two morning papers knew more of the subject than I do, I would be inclined to pay respect to their views; but I think I know as much of the subject as they do, and perhaps a great de

Mr. HIGGINS. -

Even though they are Ministerial papers.

Mr. LYNE. -

Quite so. If I thought that they interpreted the feelings of the people of New South Wales better than I can, I would in justice say at once that I am wrong; but I feel very strongly that their interpretation is not correct. I feel certain that to import in any way words into this Bill which would give navigation priority over irrigation and water conservation would be unfavorably received in New South Wales. In a few years I am sure that the necessity for navigation on those rivers will cease. In a map to which I have referred, I notice that South Australia has a railway to a place called Morgan. That is only a short distance from the boundary of New South Wales, and that railway must, before many years, be carried from that point to the border of New South Wales. What will then become of the navigability of the river? The navigability of the Murray below Wentworth will be a very secondary consideration, and very few steamers will ply upon the river there. If you want an example as to what takes place when railways are extended, I would ask you to look at the Murrumbidgee from Hay up to Wagga Wagga. At one time they had no other means of sending away their produce or of obtaining goods except by teams or by using the river. Our Government went to the expense of snagging the river, dredging many portions of it to keep it navigable. But since the railway was made from Wagga Wagga to Hay, I do not think there is a steamer on the river more than once in twelve months, or perhaps once in two years. From Hay down to Balranald on the Murray, the river is of course still the highway for a certain amount of produce, but the traffic is much more limited than it used to be. If you look at other places where railways have been made from Victoria to the river—for instance, at Swan Hill—you will find that the Murray is not utilized to anything like the same extent as it used to be for the, purposes of navigation. The river from Echuca to Albury used to be a well-used highway, but that has ceased to be the case since railways were extended to those towns. Bridges have been built across the river which
prevent steamers coming up to Albury from Echuca except when the river has been very low, and the water is considered to be more important for the purposes of irrigation than of navigation. The time must come when that will be the case with all those rivers, especially the Darling, which has only been an intermittent highway up to the present time. It will be found cheaper for New South Wales to run a railway to certain points on the river to tap the traffic, or to run railways side by side with the water-course, so as to convey produce to various points, rather than to attempt to keep the river navigable. The work contemplated and commenced by the present Ministry of locking the river—and one lock has already been completed—will be more for the purpose of conserving water than keeping the river as a highway. The only effect of those works in keeping the river navigable will be to carry produce from the various jetties and wharfs along the river to a terminal point of the railway system, such as at Bourke. In the future, no doubt, there will be similar terminal points at Walgett, Wilcannia, and Menindie. The stream will be kept navigable simply to connect those different points, and not for the purpose of conveying traffic to any great distance up and down the river. Therefore, it must be apparent to all members of the Convention that the most we can look for in the future is the conservation of water in every possible way for the purposes of irrigation. If honorable members will take the trouble to look at the map to which I have referred they will find a chain of lakes which are sometimes mere dry indentations, miles away from the river, which are filled with water only at flood time or half flood. If we were not allowed to store water in those large indentations the prosperity of that part of the country would be very seriously affected. In the flood of 1870 the water went from the Lachlan along the Willawra billabong to a sand ridge about half-way between the Lachlan and the Darling. At the same time the water from the Darling came through a chain of these indentations, covering the country until the water stretched from the Darling to the Lachlan, being only divided by this sand ridge to which I have referred. Honorable members will understand from this how very important it is to New South Wales to have power to impound as much water as it possibly can when there is abundance of it. There is another fact which must not be lost sight of. If we can store water in these large inland seas, because that is what they are, in times of flood, it will affect the rainfall of the colony very much, because evaporation from these large areas of conserved water is likely to produce a better rainfall for some years afterwards. All these matters have to be taken into serious consideration. In South Australia, where the river has no tributaries, where they have simply the bed of the
river, I do not think there need be any fear of injury being done, because the water of the river higher up may be used for irrigation and water conservation instead of navigation.

[The Chairman left the chair at one p.m. The committee resumed at two p.m.]

Mr. LYNE. -

Following on what I previously stated, I wish to inform the committee of a matter that was within my own knowledge, and that took place at the time when the Victorian and New South Wales Commissions were sitting and taking evidence regarding the Murray River. The suggestion was then made that a joint commission should control the Murray River. I gave the reasons for that in speaking on the subject on a former occasion, and it is unnecessary to repeat them now. It is, however, important in this connexion, because the speeches made by the proposers of the many amendments from South Australia went to show that what they want is the continued maintenance of the navigation of the Murray through South Australia. When that suggestion was made by the two commissions in connexion with the water question, it was with the view of getting the two colonies to establish and construct very large dams and conservation works at the head of the Murray. We have already given to the Federal Parliament power to control the navigation of the Murray, and this should remove the fear which evidently exists in the minds of the South Australian delegates that New South Wales may do something which will interfere with the navigation of the river. The Federal Parliament will have the right to construct any and all kinds and classes of conservation works at the head of the Murray, and there are natural basins in which water enough could be stored to keep the Murray navigable at all times, irrespective of the Darling, the Lachlan, and the Murrumbidgee. If that is the only reason why the South Australian delegates are anxious to obtain control of a portion of the waters of the New South Wales rivers, there is a solution of the difficulty. It is in the power of the Federal Parliament to conserve water enough in the vast water-sheds at the head of the Murray, where the Snowy Ranges are, to keep the river navigable to an even greater extent than it has been in the past. That does away with the claim to divert a quantity of water from the other rivers for that special purpose. If the South Australian delegates want only to secure the navigation of the River Murray, the power that they require has already been conceded, and there is no necessity whatever to interfere with any of the waters of the Darling or the other tributaries higher up. As I said previously, the chief purposes to which the waters of
Australia will be applied in the future are conservation and irrigation. The question of navigation will sink out of sight perhaps before twenty or twenty-five years have passed over our heads. If a sufficient volume of water has hitherto flowed down the River Murray there should be no complaint at all from South Australia as to the action that is being taken by the delegates from New South Wales at the present time. At the Convention of 1891, certain resolutions were moved, but I am not sure about the wording of them. At the Adelaide Convention, Mr. Barton submitted a series of resolutions. One of these was—

That trade and intercourse between the federated colonies, whether by land or sea, shall become and remain absolutely free.

If the fear is that a toll or preferential rate may be charged on any of the navigable waters which will have the effect of impeding commerce, I take it that the Federal Parliament would have power to step in and veto any such proposal. The River Darling is not navigable at the present time, but in the course of a few years the New South Wales Government will probably expend a large sum of money upon works that will enable that river to conserve a great deal more water than it does now. The water by right belongs to New South Wales, and in a season of drought it could be taken into the dry parts of the colony to keep the stock alive. What is the use of having a river to carry produce upon if you destroy the power of the country to raise that produce? In this particular case the country will remain almost in its normal condition, unless we have an opportunity by artificial means of increasing the productiveness of the territory we own on the western water-shed. If its productiveness is increased, and the produce can be carried at less expense to a South Australian port than to a New South Wales port, it will be to the interests of South Australia to extend her railways to our border, and the distance would be very short from Morgan. That being so, I really think that the various claims made by the representatives of South Australia should be abandoned. I would impress upon honorable members the advisability of not importing into this Bill a variety of subjects of a controversial character that will raise objections in the minds of the people. You may take my word for it that we shall have all that we can do to get the people of New South Wales to accept even a reasonable Bill. If you import into the Bill a variety of subjects that will strengthen the position of its opponents you will strike a heavy blow at the bed-rock of federation. It would be much better to leave out of the Bill any of those subjects that can afterwards be dealt with by the Federal Parliament with the concurrence of the individual states than to insert any provision in it that might wreck the chances of its acceptance by the population. Under these circumstances, I appeal to the representatives of
South Australia not to press this matter, and I appeal to the committees not to import into the Bill a provision having a very serious aspect, so far as the electors of New South Wales are concerned. I think that it would be better to leave this matter in the hands of the states, much as we have left the control of the railways with them. As a state may, if it thinks fit, hand over the control of its railways to the Federal Parliament, so the states might be allowed, if they chose, to hand over their waterways. Suppose, for example, that New South Wales did not feel justified in expending £4,000,000, or £5,000,000 in opening up channels through her dry country, and in diverting flood waters, and the Federal Parliament said: "If you hand over the control of these rivers to us we will carry out the works," the probability is that New South Wales would immediately hand over the control of the rivers to the federal authority. Under these circumstances, I hope that honorable members will not import into the Constitution a provision which I think even the leader of the Convention must feel will seriously impair the prospects of its acceptance in New South Wales, when we go back and ask our people for the 80,000 votes which we require.

Mr. OCONNOR (New South Wales). -

I do not think any one who has listened to the temperate and detailed statement made by the Honorable member (Mr. Lyne) with regard to the real meaning of the rights which are asserted by the representatives of South Australia with regard to New South Wales territory, can under value the importance of this question to the representatives of New South Wales. We are not here to decide this matter upon first principles. If we were here simply to decide this question upon the absolute rights which should be distributed to the people inhabiting these watercourses throughout their entire length we might be in a different position; but we are here representing certain rights and interests, and the question for us is, to what extent is it necessary to give up these rights and interests for the sake of securing federal union? I do not propose to travel again over the lines which I took in addressing the Convention upon this matter a few days ago; I wish now to throw out a proposal for the consideration of the Convention. It appears to me that we are now at a stage of the discussion when we have stated our own claims very fully. We know very well what is required upon each side. Our duty now is to come to a settlement of our differences, and it is with a view to offering for discussion a solution of our difficulties in a practical form that I have risen to address the committee. I wish to speak with all possible moderation in regard to this or any other view, and while I believe that the suggestion I am about to make embraces the only way out of the difficulty, I shall be willing to listen to any criticisms or comments
upon it with an open mind, and to come to any settlement which does not require the giving up of more of the rights of New South Wales, than we ought to give up. To my mind the fairest, and, if I may say so, the most statesmanlike solution of this difficulty is to leave out the sub-section which we are now discussing, and to rely entirely upon the rights which are given under sub-section (1) of the clause. I regard the sub-section now under consideration as a limitation of the general rights which are given under sub-section (1), and I think that most lawyers who have paid any attention to the matter will agree with me.

Mr. ISAACS. -

The first part of the sub-section?

Mr. OCONNOR. -

Yes. I think most lawyers who have paid attention to the matter will agree with me that the very wide powers over navigable streams which are given in the first part of sub-section (1) are, to a certain extent, cut down by sub-section (31). In my opinion

navigable, I think we should give it the same rights in regard to all navigable rivers, both those which form highways between different states, and those which are highways from the sea into the interior, so that all the waters of the Commonwealth may be under the control of the federal authorities, so far as that may be necessary to secure free passage and intercourse for commerce. Therefore I would strongly object to any provision limiting the general rights of control of navigable waters given in the first part of sub-section (1). I have said that I consider that the fairest and best solution of the difficulty is to leave out sub-section (31) altogether, because it restricts in a very large degree the operation of sub-section (1). Let me remind honorable members again of the powers which are given by sub-section (1). The Commonwealth has placed in its hands the control of navigation and of all navigable streams, in so far as this may be necessary to keep navigation open.

Mr. HIGGINS. -

Does the honorable and learned member use the word "navigable" in the sense of all rivers which, even in the interior, where their waters are quite fresh, are in fact navigable?

Mr. OCONNOR. -

Undoubtedly. I use the word "navigable" in the sense in which it is used in America.

Mr. HIGGINS. -

There it is confined to rivers which are affected by the ebb and flow of the tide.
Mr. OCONNOR. -

No; quite the other way. The English decisions limit the use of the word "navigable" to rivers affected by the ebb and flow of the tide.

Mr. HIGGINS. -

And so do the American decisions.

Mr. OCONNOR. -

The rivers over which I would give the Commonwealth power of control are all rivers which are in fact navigable and capable of becoming the highways of commerce. To give an illustration. The Murray, which is navigable, would come under the control of the Commonwealth, as would also the Darling, so far as it is navigable.

Mr. WALKER. -

And the Tweed?

Mr. OCONNOR. -

Yes, the Tweed also. If at any time any state were to add a stream to the system by making it navigable, that stream would come under the control of the Commonwealth. So much for the area of control; now for the nature of control. This includes not only the maintenance and regulation of navigation-that is to say, the control of ships passing up and down-it also includes the maintenance of navigability by the removal of obstructions of any kind.

Mr. HIGGINS. -

And the prevention of irrigation where it interferes with navigability?

Mr. GORDON. -

Does it cover that?

Mr. OCONNOR. -

It includes not only the removal of obstructions, whether in the way of weirs or dams or any construction of that kind which interfere with navigability; it also includes the power to increase navigability by deepening channels, and by closing old channels and opening up new ones. Now, with regard to the meaning of "navigability." If in any part of the River Murray which is now navigable a weir were constructed for purposes of irrigation which interfered with the navigability of the river, the Commonwealth would undoubtedly have power to remove that obstruction in order to render the river navigable.

Mr. GORDON. -

We are all agreed upon that point.

Mr. OCONNOR. -

I am reminding the Convention again of the full powers given by subsection (1). The sole question that remains between us is this: To what extent does this power of controlling navigation over-ride private rights or
public rights in regard to irrigation which may be possessed in the different states?

**Mr. GORDON.** -
That is the crux.

**Mr. OCONNOR.** -
That is the question upon which we find it so difficult to agree, because, in the first place, to come to any settlement of it is to come to a settlement without a full knowledge of all the circumstances and surroundings, and to give up in a definite way rights which it may not perhaps be necessary to give up in order to secure the object at which we are aiming.

**Mr. SYMON.** -
We only ask for the appointment of a tribunal.

**Mr. OCONNOR.** -
What I propose is this: To leave the whole power of control to the Commonwealth, as provided by sub-section (1). That involves the proposition that, when any question arises as to how far the right to irrigate possessed by any individual or any state should be allowed to interfere with the rights of navigation, it shall be left to the decision of a federal tribunal. Any matter of controversy that arises will come within the jurisdiction of the Federal Court, and be decided by them.

**Mr. ISAACS.** -
Would not the court be restricted to saying that irrigation was perfectly lawful so long as it did not prevent the navigability of the river?

**Mr. OCONNOR.** -
Undoubtedly.

**Mr. ISAACS.** -
Such a decision might possibly leave no water for irrigation to South Australia.

**Mr. BARTON.** -
South Australia is not making any trouble about water for irrigation.

**Sir GEORGE TURNER.** -
Yes; the representatives of South Australia claim the right to water not only for navigation but also for irrigation.

**Mr. ISAACS.** -
If they do not, I have misunderstood them.

**Mr. OCONNOR.** -
There is a division of opinion upon the point. The extreme claim made by the representatives of South Australia no doubt embraces both navigation and irrigation, but other claims have since been made, as appears from the
various amendments, which do not go beyond requiring water for navigation.

Mr. GORDON. -

The claim made by me never went further than a just apportionment of the water for irrigation.

Mr. OCONNOR. -

Yes, but the honorable member claimed the apportionment of the water for irrigation. Later claims do not go so far as that. The representatives of South Australia now only require it to be insured that the navigability of the river shall not be interfered with by any cause whatever, either by irrigation or anything else.

Mr. GORDON. -

That is a concession.

Mr. ISAACS. -

If South Australia does not wish to secure the right of irrigation the matter is very simple.

Mr. OCONNOR. -

The representatives of South Australia will, I think, be inclined to take the view that so long as navigability is absolutely secured to them that will be a very fair settlement of the matter.

Mr. GORDON. -

That is a concession.

Mr. OCONNOR. -

I do not care whether it is or is not a concession; that is a matter we need not trouble about. We are willing to give that. As far as I am concerned, I am willing to leave the whole of this question to the federal tribunal.

Sir GEORGE TURNER. -

As to what rivers?

Mr. OCONNOR. -

As to all navigable rivers. I was pointing out, when Mr. Isaacs interrupted me, the principle on which, it appears to me, the Federal Court would regard this matter. I should take it that the Federal Court would, in the first place, decide that the power had been given to the Commonwealth to regulate and control the navigability of navigable rivers, which would imply all the powers I have already alluded to. I take it, further, that the Federal Court would also assume that all powers necessary to carry that out effectually would be given to the Commonwealth. And I take it that they would further consider, assuming those powers were given, that all rights, which would interfere with the carrying out of those powers, in the hands of private individuals, whether of irrigation or other rights, would be deemed to have been taken away as far as they interfered with the fall
power of maintaining the navigability given to the Commonwealth
by sub-section (1). Now, whether in any particular case, or under any
particular circumstances, the rights exercised by a person or a state using
water for irrigation interfered with or took away from the rights necessary
for preserving navigation would in all cases be a matter to be decided by
the court, whether on the claim of an individual, or on the construction of a
statute of a state, or on the construction of a statute of the Commonwealth,
and the question then coming before that tribunal for decision would have
the advantage of being decided with a full knowledge of all the particular
circumstances, with all the evidence brought in a proper way before the
tribunal, and, in addition to that, it would be brought before a tribunal
which would have the absolute right to do what we cannot do now, and that
is to decide absolutely and definitely the rights and the principles upon
which the decision should proceed.
Mr. LYNE. -
Just as the Privy Council would do.
Mr. OCONNOR. -
No, the Privy Council could not do that in all cases. There is no common
basis of right, no common code of law to which both parties could appeal;
but in the case of a matter brought before the federal tribunal there would
be a common basis of right, that is to say, a decision between the merits of
the conflicting rights of navigation and the right of the state or of the
individual to irrigation. I merely throw this out as a suggestion which
commends itself to my mind as the simplest and most statesmanlike way of
solving this difficulty, and, as far as I am concerned, I am quite willing that
the matter should be left in that way to the decision of the federal tribunal.
Mr. HIGGINS. -
Does not my amendment carry out your view exactly, then?
Mr. OCONNOR. -
I do not think, with all respect to the honorable member, it does, because,
as I pointed out before, any of these provisions cuts down the general
scope of the trade and commerce clauses; and, although I am perfectly
willing to allow the freest possible control of navigation over all our rivers
that are navigable, I should want the Commonwealth to have the same
powers in regard to all other navigable rivers within its limits. Therefore,
my suggestion is that we can best settle this question by leaving out
subsection (31) altogether, and relying upon the broad fixed principle
which is embodied in sub-section (1) of clause 52, leaving it to the federal
courts to decide the question of the conflicting rights, which, under all the
circumstances we find ourselves unable to agree on.
Mr. HOLDER. -

Will you expressly say that by putting in here "inter-state riparian rights"?

Mr. OCONNOR. -

No, because that would introduce an element of great doubt and difficulty. We say there are no interstate riparian rights at the p

Mr. HOLDER. -

You say that the federal courts should decide. Give them the power to decide.

Mr. OCONNOR. -

But it might be construed that, by using an expression of that kind, we were giving riparian rights that did not exist before, by the very provision the honorable member would propose. I shall go in that direction no further than the proposition I have made, which I throw out to the Convention for its consideration.

Mr. CARRUTHERS (New South Wales). -

I to some extent concur with my honorable friend who has just resumed his seat that, so far as navigation is concerned, there would be very little danger to any of the colonies if the Commonwealth took the power of regulating navigation over all navigable streams, including the Murray or any of its tributaries which might be navigable. But the difficulty which the representatives of New South Wales have to face is this—that if by conceding the right of controlling the navigation or of improving the navigability of a stream, there is an implied authority to the Federal Government to control also the use of the water, to take away from the local states the right they now possess to use the water for the development of their resources, then a very grave difficulty will have been imported into the Constitution. And it is a difficulty which New South Wales must be prepared to face at the present time. It is a difficulty that prudent men must foresee, and in framing this Constitution we will not be acting truly as representatives of our colony if we do not see that some provision is made which clearly defines that to concede the control of navigation is not also to hand over the control of the waters. Now, as I said before, a great deal of the support, given to this proposal from South Australia arises from a total misconception of the character of the rivers affected. If honorable members, study the Darling River system and the Murray River system, so far as it affects Queensland and New South Wales, they will see that the Darling is a stream which is not navigable for any great portion of the year, and certainly a stream not deriving its navigability from the rainfall along the Darling itself. If you wish to control
the navigability of the Darling, in the sense that you are to control the use of the waters by conservation, so that them will always be a full flow in the Darling, to be effective in that purpose you must also control the flow the tributaries, because if the main tributaries flowing into the Darling were closed up by weir or locks there would not be enough water one day in twenty years in the Darling itself to carry even an ordinary pulling boat. That is to say, that the rainfall of the region through which the Darling proper flows is almost as small as that of any settled region of Australia below 10 inches a year, never sufficient to make the Darling flow. So you, have to look to the tributaries of the Darling. And in the same way, but nothing nearly to the same extent this applies in regard to the Murray I cannot shut my eyes to the fact that if proposal is made to conserve the navigation of the Murray and the Murrumbidgee, and to improve the navigation of those streams, to be effective it must also deal with the tributaries. And if it is not to be effective, why make it at all? You bring at once into the future local self-government of New South Wales, and hereafter of Queensland, an element of uncertainty which alone will be ruinous to the best interests of settlement. We will be unable to undertake any work of water conservation in this great river system in New South Wales with the federal authority having control of navigation, because the federal authority may at any time set aside those works as being contrary to the power delegated to the Federal Government.

Mr. GORDON. -

Does not that proposition mean that the Federal Government would do what is unfair under those circumstances?

Mr. CARRUTHERS. -

It is not a question so much of what the Federal Government might do; they might act honestly, fairly, and reasonably towards the people concerned, but no person would know how the Federal Government would act, and, therefore, no person would be in a position to embark capital in water conservation, because he would have no certainty, having no prescience, of how the Federal Government might regard his doings. For instance works of a gigantic character will have to be carried out on the watershed of the Darling before that country can be settled Honorable members may be surprised to know, when I tell them, but it is a fact, that in the colony of New South Wales pastoral holdings embracing an area of over 1,280,000 acres have been abandoned simply because of the inability of the people to obtain a fair water supply. Not one but several holdings have been abandoned because of the natural difficulty of obtaining a fair water supply. It is not a mere question of the expenditure of small amount of capital. The state is not
embarking in expenditure to meet the requirements of that part of the colony at present, but some day we hope to see the state embark in expenditure to meet the requirements of settlement there, by making water provision. And when that is done it will require the expenditure not of hundreds, but of thousands and hundreds of thousands of pounds. And the state will not be in a position to risk the expenditure of money in those water supply works, nor will any private individual, when the whole work may be condemned as inimical to the navigation or navigability of the Darling.

Mr. HOLDER. - Nor can we spend money in South Australia if you have the power to take the water away next day.

Mr. CARRUTHERS. - It is absurd to use an argument of that character. There has never been any such unreasonable proposal emanating from New South Wales.

Mr. HOLDER. - But you claim the right to do so.

Mr. CARRUTHERS. - We claim the right to use the water for the development of our own territory, not for the purpose of wanton waste.

Mr. HOLDER. - No one has suggested that.

Mr. CARRUTHERS. - And we claim that we have the right to settle the lands and the people on the lands, and the right to use the water in conjunction with the lands for that purpose; but we have never made any such proposal, nor are we so lost in regard to the interests of others, that we would injure the people of another colony by depriving them absolutely of all water. My honorable friends of South Australia have sat very silently by while water has been taken away from their people, not by New South Wales, but the moment New South Wales proposes to take a drop of water from the Darling or the Murray, they are up in arms at once. Now, if it could be shown that any such proposal has been entertained-because proposals may be made; there is nothing in that-by the people of New South Wales to seriously injure the rights of the people of South Australia, there would be some strong argument adduced for having some hard-and-fast rule in the Constitution to prevent such proposals being put into operation. But I will undertake to say that if it were necessary to drain the Darling dry in the interests of that large area of land-100,000,000 acres along the Darling-which belongs to the Crown, to the people of New South Wales, which is still unalienated-if
it were necessary, in the interests of improving that land, and making it carry a teeming population, to drain the Darling dry, it would pay New South Wales to do it, even if that colony had to pay an immense sum in compensation to South Australia.

Mr. GLYNN. -

What percentage of that area can be utilized in the way of irrigation?

Mr. CARRUTHERS. -

A very small percentage. I do not pay very much regard to irrigation. I never have laid great stress on the question of irrigation, but I have laid great stress on water conservation and the necessity that exists for the reconstruction of the rivers of New South Wales. That is to say, we have to put the water back into channels through which it has not flowed within the memory of man. When we have those channels made for us we can have that water radiated over a far greater territory than it is at present, and we can make the possibilities of pastoral occupation, which must precede closer settlement, far greater than they are now. We shall never have irrigation until we have close population, and we shall never have close population until the pioneer work of settlement has been done by the pastoralists in the far west. And we cannot have that pioneer work done to any great extent unless we place within the reach of the pastoralists every facility for the conservation and the use of water, which is absolutely necessary to enable them to carry stock. The work which has been done on the tributaries there—because it is useless to talk of the work that has been done in the main channels—is already stupendous. I have read with some surprise articles in New South Wales papers which speak as if we had neglected these regions. The neglect may have been neglect largely on the part of the Government, if there has been neglect at all, but, so far as the occupants of the soil are concerned, there has been very little neglect indeed. Take the Bogan River, for instance, which has as large a water-shed as almost any river which flows into the Darling—a water-shed of 4,930 square miles—coming from country where there is a rainfall of 20 inches. Again, take the Macquarie, which runs parallel, and which has a water-shed of 10,359 square miles, with a rainfall of 27 inches. Both of these rivers come from districts where we have a fairly large rainfall, and with large drainage areas. But for the work done on the Bogan by the settlers—the pastoralists—that river would have been from year's end to year's end just a dry course, but by the construction of dams along it a very large volume of water has been conserved. If those dams were cut and destroyed, as being inimical to the interests of navigation, there would be no perceptible rise in the Darling from end to end. That would not influence it
any more than Mrs. Partington with her mop succeeded in keeping back the Atlantic. On the Macquarie, there has been an expenditure by the Government of large sums in the construction of two weirs, in order to divert water from the main Macquarie channel into two other channels, which give an additional 300 or 400 miles of water frontage to the pastoral lands in the west. That work has simply utilized, as nature intended, the rainfall in the best way, instead of allowing it to go into one channel, where it was lost to almost every human being, running into reed beds, and trickling out again into the Darling, in a narrow stream which one could almost jump across. The work done by private enterprise on these tributaries of the Darling has been no small work. That work has rendered population possible, has added largely to the production from settlement, and has given revenue to the Government as well as profit to the people. And all of that work in the future would be jeopardized the moment you have a dual authority controlling the right to the use of the water—one authority claiming that the natural flow from the rainfall should not be diverted so as to impede or injure navigation, and the other—the local authority—claiming that that water ought to be used to assist in the development of the land, which is the great responsible asset left in the hands of the local authority. That conflict is bound to occur, and we would be unreasonable men if we did not make honest provision for it. Which is to be the paramount right? That is the question I have to face in my mind, and that is the question which, I think, every member of the Convention ought to face in his mind. Which is to be the paramount right—the right of navigation or the right of water conservation? We have reached, I hope, an era when no man will place the mere right of navigation along streams, especially in these and regions, above the right to use the water for the purpose of creating production, without which no navigation would be profitable or necessary at all. It is a matter essential to the settlement, occupation and development of those and regions that there should be a reasonable right to use the water, not merely for the purpose of irrigation. I hope honorable members will disabuse their minds of any arguments relating to the present requirements of irrigation. We require to be allowed to use the water, to conserve it, and re-adjust its flow so as to provide water for waterless tracts, which at present cannot be occupied by reason of the scantiness of water. I give my honorable friend (Mr. Gordon) all credit for making this proposal in the interests of the great colony he represents, in order to do away for all time with the danger of conflicts, which may be, disastrous to the Commonwealth, and which he certainly seems, to fear might be disastrous to South Australia. The honorable member attached a
rider or corollary to his proposal at Adelaide, which I have now, before me. One of his amendments which was amended and carried, provided for giving control over the River Murray to the Federal Government. He also proposed to provide an uninterrupted passage for ships between the River Murray and the ocean—showing how largely the attention of South Australia is directed not to the ordinary navigability of the Murray, but to making, the Lower Murray navigable, and having an outlet in the way of an ocean port at its entrance. The honorable member must know that the expenditure of any large sums of money to give an uninterrupted passage for ships between the Murray and the ocean must, the moment it is carried out, largely diminish the body of water in the river itself. The reason the Murray has been kept open for navigation so long is because of the impediments at its mouth; and the sooner you open a

Mr. GORDON. -
Oh, yes, the honorable member is mistaken.

Mr. FRASER. -
No.

Mr. GORDON. -
There is already a steamer going regularly from above the Murray mouth to Port Victor.

Mr. CARRUTHERS. -
That is news to me. I always understood that navigation was impeded at certain points in the Murray, and that all goods were transhipped to Port Victor.

Mr. GORDON. -
I have been through myself on a steamer.

Mr. CARRUTHERS. -
In order to make out the case for handing over the navigability of the Darling as a paramount right, over the ordinary rights of water conservation, you must show that the Darling is a navigable stream. Now, I have returns here which will not be gainsaid, showing the days on which the Darling was navigable from the 1st January, 1882, to the 26th March, 1896, inclusive. In 1882 the river was open for navigation for 84 days, and closed for 281 days. Surely that is not a navigable stream.

Mr. GLYNN. -
That is the reason why we want this—because you say it is not navigable.

Mr. CARRUTHERS. -
You are not entitled, under a claim to some existing right, to claim a right which never existed. You are not entitled to claim that the Darling is-navigable and that being navigable stream, it should be handed over to the Federal Government. I am showing that it is not a navigable stream within
the meaning of that term. In 1883 it was open for 44 days and closed for 321 days. That is to say, it was only open for 12 per cent. of the days in that year. In 1884 it was open for 21 days and closed for 345 days. In 1885 it was open for 31 days and closed for 334 days. In 1886 it was open for 222 days (or 61 per cent.), and closed for 143 days. In 1887 it was open for 269 days (or 74 per cent.), and closed for 96 days. Then there is a sudden drop. In 1888 it was only open for 82 days. Now, history repeats itself, and what do these records show? In one year you have the river open for nearly three quarters of the year, and the next year you have it open only for about one-tenth of the year. Now, immediately there is a similar drop there will be inquiries made by the federal authority as to what was the cause of this falling off in the navigability of the river, and it will be very hard to persuade men that the cause of it is, simply that the drought has begun to make its effects known. You will have at once put in jeopardy all those works which may have been constructed in a time of a plentiful supply of water. Evidence will be brought, and it must be remembered that evidence is easily procured amongst men with rival interests. to serve men who have embarked their capital in shipping enterprise on the river, or in importing warehouses at Bourke, or in transhipping warehouses on the Murray mouth. These men will have rival interests to serve, and evidence will very soon be got to show that an expenditure of money on a weir, the diverting of water into an old channel, or the blocking up of a lake, has affected the navigation of the river. It will be very hard for men who have expended their money in water improvements to gainsay such evidence brought by persons interested. There will be jeopardy at once to enterprise, and no man who has any sense, and; no colony with any sense will embark one shilling of capital in enterprise which may be threatened at any moment with annihilation by a conflict arising in this way-a conflict arising from a dual authority. Now the average for these fourteen years of the time, when the river was open is 49 per cent. of the days of the year. That is a trifle under one half. The period when it is wholly open is during the period of the tropical rains, during January and February. I think these statistics will show that, so far as the Darling is concerned, it is not within the meaning accepted by English or American legal writers of the term "a navigable stream," to the navigation of which the Commonwealth could be said to set up any claim, or any state set up any claim.

Mr. HOLDER. - 

To what point of the river do these statistics refer?

Mr. CARRUTHERS. -
I take it the point will be from Wilcannia.

Mr. HOLDER. -

That is a long way up.

Mr. CARRUTHERS. -

I will hand the honorable member the statistics and he can look them over for himself. This proposal seems, unfortunately-I say unfortunately advisedly-to be directed largely to New South Wales. This debate has been criticised as a duel between New South Wales and South Australia; but I wish to direct attention to the fact that our proposals in New South Wales have robbed the Darling, the Murrumbidgee, and the Murray of a very small proportion of the water, whereas the proposals carried into effect in Victoria must have largely diminished the flow of water in the Murray. Yet this work has been going on, and there has been no complaint that the navigation of the Murray has been impeded by what has been done at the instance of the Victorian Government. I should like to enlighten the members of this Convention as to the works—for which I give great credit, to the Government of Victoria—which have been done by that Government; works such as we are to be prevented from carrying out. I think no one has risen to show that there has been the slightest injury to the navigation of the Murray by the construction of the works I am about to mention in connexion with the Victorian tributaries of the Murray, the Mitta Mitta, the Broken River, the Goulburn, the Loddon, the Campaspe, and the Ovens. Most of these are very important tributaries coming from a colony whose average rainfall is about 32 inches per year. Some of them are mountain streams with a very impetuous flow; some of them are navigable—for I understand that the Goulburn has been navigable as far as Seymour. Indeed, some of these streams are just as navigable streams as the Darling may be said to be a navigable stream. The Goulburn has been intercepted at Murchison by a weir 40 feet in length, largely diverting the whole of the summer supply into two great canals. We have never done anything of that kind in New South Wales. We have never diverted a river by the construction of a weir in this way. Does any one say that this work impedes the navigation of the Murray? No. Possibly South Australia does not see any chance of navigating the Goulburn as far as Seymour and diverting a portion of the trade of Victoria in that way; therefore, not having any interest in sending to Seymour for cargo, she does not propose to interfere with the Goulburn River, which Victoria can with impunity block and bar. The western canal, which is partly constructed, is designed to carry 103,000 cubic feet of water per minute, and the eastern canal, the head-works of which have [P.394] starts here
been completed, will, when finished, carry 21,000 cubic feet per minute; that is to say, the two channels, when in operation, will carry 124,000 cubic feet of water per minute. Works on the Campaspe have been carried out to the extent of £53,000, the effect of which is to intercept and divert the whole of the ordinary discharge of that stream. That discharge is not sufficient, however, to irrigate the whole area which it is proposed to deal with. On the Loddon, works for the interception of the whole of the ordinary supply have been constructed at a cost of £174,000, and, as in the case of the Campaspe, the whole flow of the Loddon would be insufficient for the irrigation intended to be carried out; and proposals have been made for the diversion of the waters of the Ovens and the Broken River. Then from the Murray works constructed at the instance of the Government draw a large supply. It appears that Victoria takes from the Murray water for the irrigation of 97,000 acres in the Cohuna Trust, 6,500 acres in Koondrook Trust, and so on. Taking the total area, works have been constructed by the Government drawing water from the Murray proper for the irrigation of 166,800 acres, and taking as a basis a statement of the Victorian Government this area will require a supply of 80,000 cubic feet per minute. To this has to be added the case of Mildura, where water is taken to the extent of 66,000 cubic feet per minute from the Murray. This shows that the total area diverted from the Murray and its tributaries by the Victorian Government is: From the Goulburn River 124,000 cubic feet per minute, from the Campaspe River 10,000 cubic feet per minute, from the Loddon River 20,000 cubic feet per minute, from the Murray (for trusts) 80,000 cubic feet per minute, and from the Murray, for Mildura, 60,000 cubic feet per minute-making a total of 294,000 cubic feet per minute.

Mr. SYMON. -

But I understand that Victoria is willing that all her tributaries should be placed under the control of the Federal Parliament.

Mr. CARRUTHERS. -

My honorable friend and his colleagues have not proposed to interfere with Victoria and its tributaries. There is no proposal to interfere with the Campaspe and the Goulburn. It is only New South Wales that has to suffer-New South Wales, which has not done anything to interfere with the water of its tributaries at all.

Mr. HIGGINS. -

Deal with them all alike.

Mr. CARRUTHERS. -

My honorable friend (Mr. Higgins) may intend to be consistent. He may be prepared to break down the dam on the Goulburn River, but I should like to know how any proposal to interfere with the irrigation works that
have been constructed for the benefit of settlers in this country would be received?

Mr. FRASER. -
It would be nonsense to do it.

Mr. CARRUTHERS. -
There is no proposal to do it, and I complain that the whole proposal is directed towards the one colony-New South Wales. How can we go back and say that we have tolerated a proposal of this character, while we have to stand by and see proposals carried into effect in Victoria—which we do not complain of—interfering with the tributaries of the Murray?

Sir GEORGE TURNER. -
I said the other day that we were perfectly prepared to place the whole of our tributaries under the control of the Federal Parliament if New South Wales would do the same.

Mr. REID. -
Then they cannot be worth much.

Mr. CARRUTHERS. -
When the people of Victoria began to understand that this might mean interfering with the water trusts that have been established, in order to benefit South Australia, there would be the same feeling here as has been raised in New South Wales. What do the facts which I have stated mean? I have told the committee that 294,000 cubic feet per minute are taken from the Murray for Victorian works. This is 5,000 feet in excess of the entire quantity which it has been proposed to take from the Darling, the Murrumbidgee, and the Murray combined, by any proposal which has been made to the New South Wales Government.

Mr. HOLDER. -
As the Bill stands the Murray is federalized.

Mr. CARRUTHERS. -
I do not want to be drawn from the course of my argument. The works I have mentioned have actually been carried out by Victoria, and they divert water to the extent of 5,000 cubic feet per minute more than would be effected by all the proposals of the Government engineers in New South Wales to divert water from our three great rivers, the Darling, the Murrumbidgee, and the Murray combined.

Mr. GLYNN. -
The waters in Victoria are taken from a flood discharge, which otherwise would be wasted.

Mr. CARRUTHERS. -
My honorable friend knows very well that we cannot take any water in New South Wales unless it comes by flood. We do not get it from springs. In what other way does it come? We have only one region from which water comes from snow. We have to depend upon the floods. But what we object to is that if this proposal is put into full effect you must control this conservation of waters from floods, from snow, or from any other source, if you are going to have any effective control of navigation. We object to making navigation the paramount purpose of the streams of Australia. I can remember that a little time ago in Melbourne - Sir George Turner may remember it, too - some people, in consequence of the prolonged drought, asked for a day of humiliation and prayer; but a wise bishop said he would not give his consent to it.

Mr. Higgins.

It was not a Sydney bishop.

Mr. Carruthers.

The bishop said that the Almighty sends us enough water here, if we would only take care to store it up in time of flood, and make use of it in times of scarcity. But here we have a proposal made which is to tie the hands of the colony, which depends largely, and whose great pastoral industry must depend, on the storage of the water; a proposal which is to tie up the hands of the local authorities so that we cannot store any water for fear that we risk the navigability of a stream which flows into the neighbouring colony of South Australia. We do not forget these things; we do not forget that Victoria is allowed to do these things with impunity, but New South Wales, which has done nothing of this character, is for all time to be burdened and injured by these restrictions. In addition to these works, which are really in operation in Victoria, proposals have been placed before the Government of that colony for the interception of the whole of the ordinary supply of water, in the River Ovens, and for the establishment of several additional trusts—which will depend on the Murray for their supply of water leaving this arch-offender, if there is any offence at all—and I say there is no offence, that Australia federated or unfederated, can never be a land carrying any great population until we have altered the face of the earth by providing from the plenty of the floods a sufficient quantity of water for all time to make settlement certain—now we come to the next offender, South Australia. We find that it has given a concession at Renmark similar to that which is given at Mildura, allowing it to take 60,000 cubic feet per minute for that settlement. More water is allowed to be diverted to Renmark than the New South Wales Government has sanctioned for irrigation on any one
of these three rivers.

Mr. GLYNN. -

Do you say that more is being diverted?

Mr. CARRUTHERS. -

South Australia is taking more water away from the navigable waters of the Murray than is being taken by New South Wales from any one of the three rivers.

Mr. GLYNN. -

It does not take a seventieth part of the summer discharge, and Mildura only takes a sixtieth part of the summer discharge.

Mr. CARRUTHERS. -

It may only take that proportion, but the concession is given.

Mr. GLYNN. -

You seem to be talking of concessions not of facts.

Mr. CARRUTHERS. -

It is not the fault of the Government that Victoria does not take it, because the Government has given them authority to take it. Suppose the Government or the people of New South Wales were to run away from their contracts, and to say-"Oh, they do not work up to the contract," you give them the right to take up to a sixtieth part of the summer discharge. And so with Mildura. You surely have not given them that right without knowing that it is a good thing to allow them to do it. Let us see what is being done in New South Wales. The Government works for utilizing the waters of the Murray, or its tributaries, for irrigation which have yet been carried out, are at Hay on the Murrumbidgee, and at Wentworth on the Murray. The quantity of water which may be raised at the former place is 480 cubic feet per minute, and at Wentworth it is 640 cubic feet per minute. Now, that is the total amount of water diverted from the Murray, or the Darling, or the Murrumbidgee by all the Government proposals for the irrigation of the colony of New South Wales. There has been 1,200 cubic feet per minute diverted as against 249,000 cubic feet taken in Victoria, and 60,000 cubic feet which may be taken in South Australia. When it was proposed to construct a canal from the Murray, at Bungowannah, near Albury, in pursuance of the idea which was always strong in my mind, not of irrigation but of the reconstruction of rivers, that is, filling old courses, taking the flow of water close by the homesteads of the settlers, not necessarily for the purpose of feeding their wheat crops, but in order that there might be a plentiful supply, or, as my honorable friend (Mr. Dobson) said, to boil your billy not to waste the water, but to bring it up to those who want it in the literal sense of the word, who, with their stock at times dying of thirst, want it; when it was proposed to divert a portion of the
upper waters of the Murray—to divert a third of the water which the Government drained from the Murray and its tributaries not a third of the whole supply of the Murray, but only a third of the total quantity which the Victorian Government divert, from the Murray by its scheme—the proposal was met with indignant protests from Victoria and South Australia.

Mr. REID. - Naturally.

Mr. CARRUTHERS. - And that work has never yet been carried out, largely on account of the protests which were entered against it by the two sister colonies, whom we did not wish to offend by ruthlessly acting on what we considered to be our just rights. Then again, the proposal, which is now under consideration, to divert water from the Murrumbidgee to the extent of a fifth of the quantity of water met with a similar reception and the Victorian Government asked New South Wales to arbitrate on the portions of the waters still left to New South Wales, and to limit the rights of New South Wales to deal with that balance. I would not have referred to these facts, because facts they are, with regard to the history of this water question, if it had not throughout this debate been urged, as if New South Wales were the chief culprit in regard to robbing South Australia of the water necessary to carry on its navigation. We have done very little to divert water permanently from the Murray. We have done a great deal, and I hope we will do a great deal more, towards the reconstruction and impounding of waters for the purpose of enabling the country to be settled, and any proposal in this Bill which interferes with that purpose will be detrimental to the best interests of the people of all Australia, not merely the people of New South Wales—because it is just as much to the interests of the people of Tasmania and Western Australia that there should be prosperous settlement in the central regions of New South Wales, as that there should be prosperous settlement in any regions in their own colonies. Now, a great deal of stress is laid on the point that the Darling River is one which is largely fed by the waters of Queensland. I heard honorable members from South Australia ask what right has New South Wales to impound waters which do not come from the New South Wales rainfall, and claim those waters as her own? It may surprise honorable members to hear that, except in very rare periods, possibly less than two months out of twenty-four, the Darling waters which may be impounded for the beneficial purposes of New South Wales, are waters deriving their source entirely from the New South Wales rainfall. It is true that we have devastating floods at times from the Queensland rainfall, but we would
sooner be without those floods than with them.

Mr. HOWE. -

We should not.

Mr. CARRUTHERS. -

In 1891, when the Darling was a stream over 100 miles wide, it cost the Government of which I was a member some thousands and thousands of pounds to repair the damages done to public property from flood waters coming down from Queensland. We had a stream flowing over 100 miles wide, and keeping a large portion of our territory for a month or six weeks under water. These are rare occurrences, but that is what the Queensland water generally does to us. Honorable members will not forget this, that the main tributaries of the Darling, those which come to feed the Darling, are the tributaries in New South Wales. Take the Culgoa, the tributary which flows into the Darling River at Brewarrina. The Culgoa at Brewarrina is a stream on which you could not take an ordinary pulling boat with any degree of safety, yet when the Culgoa gets into Queensland—it is only an affluent of the Balonne—it is almost as great a stream as the Darling itself. Where does that water go to? It is not any evaporation which loses it, but it is lost by soakage somewhere so that that great stream of Queensland, when it does come down, comes down almost as a danger to New South Wales. The Warrego, in Queensland, in many parts is a stream of permanent water. The Warrego, in New South Wales, lower down, where it ought to be affected by the Queensland flow of water, is a dry bed with no water for nine months out of the year, and yet in Queensland it is almost a permanent stream. Although in Queensland, it is a permanent stream, the Queensland water does not reach us in ordinary seasons. It is absorbed by the thirsty soil or it goes to form a subterranean water supply. Speaking of the Warrego, it is characteristic of the waters of those tributaries in that western country that you may have a thunderstorm in one part of the river causing it to run a banker, while 50 miles lower down you can walk across the bed of the river without getting your feet wet. There are no similar cases in any other part of the world. We cannot draw in the old world laws to govern and regulate these streams. If a man is to be refused the right to dam the Warrego it means that the water will run to waste, and in 24 hours afterwards, except in the case of small pools, there will be nothing left of the thunder-storm waters. Honorable members must not think that we get the advantage of the rainfall in Queensland, where they may have, perhaps, 24 inches in a day in this or that place. That water does not reach the Darling; most of it is absorbed by the soil. The rivers of New South Wales, the McIntyre and the Dumaresq, come from a region
where the annual rainfall is about 21 inches. The Gwydir is a permanent running stream, the Naomi the same. The Castlereagh is not a permanent stream, but it comes into the Darling in a fair volume. The Macquarie is one of the largest of our rivers, and is one of the most peculiar streams. It flows for 200 or 300 miles through our territory, giving a great water supply to cities like Bathurst, Orange, and Dubbo, and then it loses itself in the wilderness. Although the Macquarie is one of our grandest streams, a man can step across it at its junction with the Darling. When you have these anomalies, it is dangerous to say that any authority, federal or otherwise, should be able to claim the right to the flow of these waters into the Darling or the Murray. Provision might be made to maintain navigation, and if any honorable member can make a reasonable proposal that the expense of carrying out works to maintain the navigation and the expense of dredging and snagging the Darling should be a federal matter, we would go heart and soul with him.

Mr. GORDON. -
That is involved in our proposal.

Mr. CARRUTHERS. -
We have spent £80,000 or £100,000 in snagging the Darling, and what have we got from it? We have simply diverted trade from New South Wales to other colonies.

Mr. HOWE. -
Where has most of that money been spent—beyond Bourke?

Mr. CARRUTHERS. -
Honorable members may make provision to snag the river beyond Bourke if they like, but what South Australian representative would be so foolish as to propose such a thing in the Federal Parliament when he knew the trade would not go down to South Australia? We have locked the Darling at Bourke in order to make it navigable from Bourke to Brewarrina, and we hope to make it navigable much further, in fact, right up to Queensland. We are doing all that at our own expense, and we do not ask any one to join us. We have made the river navigable for the benefit of South Australia by spending £80,000, in snagging the river between Bourke and Wentworth.

An HONORABLE MEMBER. -
We have also spent £20,000 in making the river navigable.

Mr. REID. -
The South Australian people did not do that in order to provide trade for other colonies.

Mr. CARRUTHERS. -
If it means that we are to hand over the control of our waters to the federal authority and to divide the control of the waters with the federal authority, then the price is too dear. No matter what people may say, or what people may write, who do not understand this aspect of the question, no greater disaster could be inflicted on the interior of New South Wales at this juncture when men are awakening to the fact that closer settlement is impossible without water conservation in the interior. No greater injury could be done to New South Wales than to divide the authority which controls the water. During the last session of our Parliament we passed a Water Rights Act, which, for the first time, laid down the law with regard to the ownership of water in the streams of New South Wales. Until the passage of that Act men knew nothing of their rights. They spent their own money at enormous risk to themselves. £25,000 was spent on the Yanko Cutting, on the Murrumbidgee River. What was the result? A harvest of litigation to-day. After the passage of the Water Rights Bill in New South Wales, the position of the Crown, and of the riparian owners, was well defined, and we have now inaugurated a new era, when more capital will be spent and more enterprise devoted to the storing and proper distribution of water, which will bring about increased profitable occupation of the land. At this juncture, if you raise any doubt as to the local administration of these rights, you will jeopardize the best interests of the people settled in that part of New South Wales. We tell those who would give control of the navigation to the federal authority to make navigation subservient to the local interests with regard to the use of the water. I invite my honorable friend (Mr. Gordon), who has taken this matter in hand on behalf of South Australia, to make his proposal clear and well defined, so that navigation and improvement of navigability shall merely mean the removal of those obstructions which from time to time are placed in the river. But let him not give the Federal Parliament paramount authority over those local rights, which should still remain in the states for the use of the water for conservation and local purposes.

Sir JOHN FORREST (Western Australia). -

I have been a listener to this debate for a considerable time, and I hoped there would be no necessity for me to say anything with reference to it. My object in speaking is to appeal to those honorable members who are interested in this matter to come to some conclusion with regard to it. A short time ago we had a debate which lasted for two days or more on this subject, when all those who took a prominent interest in the matter spoke and exhausted themselves. We were then asked to defer coming to a decision until there should be a conference. That conference took place, but
I never heard what was the result of it.

Mr. HOWE. -

We see the result now before us.

Sir JOHN FORREST. -

It seems to me the only result of the conference has been that we have given time to the combatants to refresh themselves, and that they are here to-day ready to go over the whole of the ground again. To me this subject has become somewhat tedious, although I admit that it is a most difficult question, and one requiring grave consideration. I really think that the conference ought to have done something in the direction of meeting the difficulty. I understand South Australia asks that the present position of affairs should not be interfered with in the future. I understand that she asks that the privileges which she now enjoys should be continued under the Federal Constitution.

Mr. BARTON. -

She asks for a great deal more than that.

Sir JOHN FORREST. -

I do not think she has any right to more privileges than she enjoys at present, but I think South Australia has some reason to be very careful when she hears, as we have heard from the representatives of New South Wales, that they claim that they have a right to take every drop of water out of the Darling. That has been said by more than one honorable member. It has also been stated that the people of New South Wales would never think of doing such a thing. If that is the case, there is no reason why some provision should not be made in the Constitution under which South Australia might continue to enjoy the privileges which she has had for so many years.

Mr. LYNE. -

Leave things as they are and she will have those privileges.

Sir JOHN FORREST. -

I am not prepared to support those who would deny to New South Wales a right to use the water of all the tributaries of the Darling and the Murray. It seems to me that that would be an unreasonable demand, which would every much interfere with the development and progress of New South Wales. There is one difficulty, and it is a very grave difficulty, on the question of whether navigation or irrigation should be paramount. I altogether favour irrigation being paramount. I do not attach much importance, and I dare say my friends from South Australia will not agree with me, to the River Darling as a means of transit. From the information given to us it would appear that it is not at all a certain means of transit. It
is only available now and again; and I believe the time will come when it will cease to be a means of transit, owing to the greater advantages offered by the railways. But then, of course, there is the question of the navigation of the Murray, which might be influenced very largely by the waters of the Darling and the other tributaries of the Murray being used for irrigation. South Australia has a right to protect herself against that. If those who are particularly interested cannot come to an agreement it seems to me that the only way out of the difficulty is to make the provision inserted in the Constitution so wide that the question will be left to a considerable extent, to the Federal Parliament. I do not wish myself to be an arbiter in the matter. I should much prefer that those particularly interested should come to a reasonable conclusion. If they cannot get all they want they should make the best possible bargain, and not be at arm's length, as they seem to be at the present time. My principal object in rising was to urge honorable members not to discuss this matter all over again. We have had two days of it, and it seems to me we shall have two or three days more if we are to re-discuss the whole question. There is a limit even to the endurance of the delegates to the Convention. I do appeal to honorable members to try to shorten the debate as much as possible, and I hope it will not be necessary to go to a division, but that some mutual arrangement which will be fairly satisfactory to all parties will be arrived at.

Mr. HIGGINS (Victoria). - I think that the committee should now be prepared to come to a determination on this subject. After the long discussion the other day, and after the masterly, and exhaustive explanation given to us to-day of the position of New South Wales by Mr. Carruthers, I see no reason why we should not come to a decision at once. In the first place, no one desires that sub-section (31) should remain in the Bill, and it might be struck out. New South Wales does not want it, and South Australia does not want it, because it limits the powers which by implication are contained in the first sub-section. We might, therefore, start by making a clean sweep of sub-section (31). The next step I would suggest would be to have two divisions if need be. One would be on the question of whether the whole subject of inter-state rivers should be left to the Federal Parliament or not. I would suggest the insertion in clause 52, giving the Federal Parliament power to legislate on certain matters, of the following words, which, I think, would effectuate the purpose of those who hold with me:-

The adjustment of riparian rights as between states as to all waters which in the course of their flow or after joining other waters touch more than one state.

If that were adopted the effect of it would be not to decide whether
irrigation is to be paramount to navigation, or navigation to irrigation, or whether conservation and storage, are to be paramount to both; but simply to treat the question of the River Murray and its tributaries—and I take these as being, par excellence, the federal rivers—as a federal matter.

Mr. REID. -
Your language is wide enough to include the Queensland tributaries.

Mr. HIGGINS. -
Quite so, and we hope that Queensland will be in the Federation eventually. But this amendment will only give the Federal Parliament power to deal with the colonies in the Federation.

Mr. REID. -
To what extent?

Mr. HIGGINS. -
It will give absolute power to adjust riparian rights.

Mr. LYNE. -
You take the power away from the states altogether.

Mr. HIGGINS. -
No. As I understand the question of riparian rights as between the owners on the bank of a stream up high and down below, an owner up high has a right to use the waters in any way he thinks fit without let or hindrance, provided he does not infringe upon the equal rights of the owner down below.

Mr. REID. -
That is not the law as between states.

Mr. HIGGINS. -
No. The difficulty which the New South Wales representatives have, and which have been so ably stated by Mr. Carruthers, with the responsibility and knowledge which he possesses as Minister of Lands, is that they feel that, owing to the peculiar conditions of the Australian climate, they must make some use of the waters of these rivers. My amendment would not prohibit them from making use of any of the waters of those rivers provided they did not infringe upon the equal rights of South Australia and the other colonies by diminishing the flow.

Mr. REID. -
You know that South Australia, as a matter of law, has no possible jurisdiction over the waters of the Darling.

Mr. HIGGINS. -
That is so.

Mr. REID. -
And although they have no jurisdiction, and, therefore, no legal rights,
you ask us to give up the legal rights we possess, and to jeopardize our vital interests of water conservation.

Mr. HIGGINS. -

I think as between friendly states you ought to be equally just in your dealings with those who occupy lands high up the river and those who occupy lands below. It is quite true that South Australia has not got an army with which she could go and besiege the Parliament House of Sydney to compel the New South Wales Parliament to do a certain thing.

Mr. REID. -

What grievance has she got?

Mr. HIGGINS. -

Supposing that New South Wales were the owner in fee simple of all the land along the Darling in New South Wales, and that South Australia were the owner in fee simple of all the land along the Murray down below where it runs into the Southern Ocean, there is not the slightest doubt that South Australia would be able to get an injunction to prevent New South Wales from using the waters of the Darling so as to diminish substantially the normal flow.

Mr. REID. -

Where would such an injunction be got?

Mr. HIGGINS. -

I am assuming that they are owners in fee simple. Of course, I do not speak with the responsibility Mr. Carruthers feels as Minister of Lands having to administer a most complex law. I speak as a private member of the Convention, whose only desire is to get a speedy determination of this dispute. I ask how can South Australia submit to a condition of things such as was so frankly and so fairy stated by the honorable member (Mr. McMillan), who asserted that New South Wales is entitled to take every drop of the water of the Darling for its own purposes, without making any arrangement with South Australia?

Mr. MCMILLAN. -

I simply said that the right must be somewhere.

Mr. HIGGINS. -

The honorable member was, as usual, perfectly logical and correct. If the New South Wales claim amounts to anything, it amounts to what the honorable member stated.

Mr. BARTON. -

Is not that the law?

Mr. HIGGINS. -
If you were private owners it would not be the law, but inasmuch as South Australia has no power to enforce its claim, you must come to an agreement.

Mr. BARTON. -
Is it not the law now?

Mr. HIGGINS. -
All that South Australia asks is to be
The adjustment of riparian rights as between states as to all waters which in the course of their flow or after joining other waters touch more than one state.

Assuming that the committee are unwilling to go to the extreme course-I do not call it extreme-of leaving this matter absolutely to the Federal Parliament, I think that a compromise such as that provided for by the words of my other amendment might be adopted. The effect of my other amendment is to assert for South Australia the undoubted right she would have at law, if there were a law applicable to the circumstances. If you secure the navigability of the river to South Australia, she will eventually be able to use the water to which she is entitled as she thinks fit. The honorable member (Mr. Carruthers) has shown that New South Wales is interested in the way in which South Australia uses these waters, and that by the widening and deepening of the mouth of the Murray the course of the river may be very greatly affected. Why then should not New South Wales leave to the Federal Parliament the control of the mouth of the Murray, so as to insure that the interests of New South Wales shall not be injured? However, we all understand how our minds are made up now, and therefore I would suggest that we should drop out subsection (31), and adopt my proposed amendment in its place.

Sir JOSEPH ABBOTT (New South Wales). -
I think that the representatives of New South Wales will agree with me that the proposal of the honorable member (Mr. Higgins) is worse than any suggestion which has come from South Australia. South Australia, I believe, does not care a fig about the navigability of the River Darling, except so far as the keeping open of the river for the purposes of trade is concerned. So far as I can ascertain, the South Australian Government, up to the present time, have done nothing to utilize the surplus water of the Murray for the purpose of rendering its lands more valuable than they were previously. I have heard something said about village settlements, which probably could be sustained with a few gallons of water per week or per month; but, with the exception of Renmark, I know of no other place in South Australia where an effort has been made to render land more valuable by the use of water in irrigating it.
Mr. HOLDER. -
The South Australian irrigation settlements have large areas under irrigation.

Sir JOSEPH ABBOTT. -
The representatives of South Australia say-"We must preserve our rights as against New South Wales." They are to be able to use these waters as they think proper; but we are not to use them except for the purpose of navigation.

Mr. GORDON. -
That is not contended.

Sir JOSEPH ABBOTT. -
That is the effect of every proposal which I have heard. In Adelaide I did not object to the Darling being handed over for the purposes of navigation, if it was insured that there would be no interference with the tributaries of that river. It was proposed then, by the representatives of South Australia, that the Darling should be handed over to the Federal Parliament. I have not the slightest objection to that being done if we are to be allowed to utilize the streams which flow into the Darling, or which are created by the Darling in flood time, for our own purposes. But if we are to be told that we are not to conserve these waters, by whose use millions of acres of land may be rendered valuable, but must allow them to flow down into the river, and if that be an essential condition of federation, I, for one, will oppose federation as strongly as it is in my power to do so. If we are to give up these rights and get nothing for them and I do not see how anything could compensate for the loss of the right to conserve these waters at the very source—I shall oppose federation. Let me take as an illustration of my position, the case of the Lachlan, which begins to flow near Goulburn, within 120 miles of Sydney, and runs to Balranald, losing itself in ordinary seasons in a swamp known as the Reeds, and ultimately emptying into the Murrumbidgee. Are we to be told that the people in Goulburn, 400 or 500 miles away, are not to interfere with any of the streams in their district, because by doing so they would be interfering with the navigability of the rivers lower down? I say that that is a monstrous proposition. I admit with regard to the whole of the Darling country that New South Wales has done very little to produce settlement there. In the early days the whole of the country was settled by South Australians and Victorians, and very little of the capital which went there came from New South Wales. The natural flow of trade from the district has always been to South Australia. But if we in New South Wales chose to act in that selfish spirit with which we are charged, how easy it would be
for us to interfere with the navigability of the river. I have represented in
the New South Wales Parliament, for ten or twelve years past, an electorate
through which the Darling flows, and during that time I have never lost an
opportunity of impressing upon the Government the necessity of rendering
the river navigable. For what purposes? For the purposes of trade. I think I
am before both free traders and protectionists, because I have always urged
that trade should be allowed to flow where it is most profitable to the
producer to send it. I have gone so far as to urge the construction of a line
of railway from Hay to Deniliquin, and I have urged the opening up of the
Darling, although I knew fall well that none of the trade of the district
would go to Sydney, but that it would go to South Australia. I have always
recognised that if our producers can benefit, no matter to how small an
extent, by sending their produce to a neighbouring colony, it is to our
interest to enable them to do so. If we wanted to be selfish, all we should
have to do would be to wait for one flood to come down, and there would
be no navigation afterwards. Honorable members can hardly conceive what
the Darling is. I have seen it, even when steamers have been trying to get
up and down, a mere gutter, not broader than this chamber and at other
times I have known it to be absolutely dry. I have seen boats loaded with
goods for Bourke stuck for twelve months at Wentworth, and for nearly
eighteen months at Wilcannia. That was before we had a railway to
Bourke. If we liked to be selfish all we need do is to say-"We will not keep
this highway open." New South Wales has never dealt as generously with
the Darling as she should have done. In the olden days we used to pay £50
a mile for the maintenance and the keeping open of our main roads; but
since 1864 or 1865, when Captain Cadell began the snagging of the
Darling, we have only spent about £60,000 upon the river, with the
exception, of course, of what has recently been spent on the construction of
a weir at Bourke. That is through the whole course of 1,250 miles. Well, if
we had spent on the Darling even the amount that was granted for the
maintenance of a first-class road, instead of having spent £60,000 on that
river from 1864 or 1866 to the present, we would have spent over
two millions of money on the Darling. I have never been able to impress
my views on this subject upon those in authority in Sydney, but I say that
we pay too dearly for the trade of our remote districts, and that it will be
very much better for us to let that trade drift away to its natural outlet, if by
doing so we can benefit our own settlers. If we can enable those people, by
sending their produce to other colonies rather than forcing them to send it
to Sydney, to get more money for their produce, that will be a benefit to
New South Wales which New South Wales ought to be satisfied with. But
when we are charged with selfishness about this Darling River, when we are told that we are greedy about it, and it is shown by Mr. Carruthers that we have never taken anything like the water that has been taken out of our rivers for the purposes of an irrigation scheme, which, as far as Victoria is concerned, has been an absolute failure-

Mr. DEAKIN. -
You are quite under a misapprehension them. First of all, much of the water flows back again, and there is little loss on account of any diversions we are making.

Sir JOSEPH ABBOTT. -
That is something uncommon.

Mr. DEAKIN. -
It is a fact, nevertheless. And our irrigation scheme is not a failure.

Sir JOSEPH ABBOTT. -
I am very glad to hear that your irrigation scheme is not a failure. Most people in New South Wales have pointed to it as an absolute failure, and as successful only in places where the rainfall is sufficient without irrigation.

Mr. DEAKIN. -
Thousands of people have been maintained on our lands during the last few years who would have been ruined but for irrigation.

Sir JOSEPH ABBOTT. -
I am very glad to hear it. Your scheme of irrigation has been held up in New South Wales as an object-lesson against costly irrigation works. Now, as I said before, I am not concerned about the navigation of the river. I would willingly be one of those to keep up that river as a highway, not for the convenience of the people of South Australia, but for the benefit of those of our own producers the natural outlet for whose produce is South Australia. But when we are told that we are not to interfere with our rivers and tributaries in New England, and with our streams 120 miles above Sydney, and that the whole colony is to be condemned with regard to these waters, which it has never attempted to utilize, whatever the result may be, I would never be a party to any such concession as is now demanded. I will be delighted if any scheme be proposed by which this matter can be settled. I think that possibly South Australia has been treated discourteously with regard to her proposals for utilizing the water of the river, and that at times South Australia has been treated contemptuously in reference to the correspondence on the subject and therefore I do not wonder that they are irritated.

Mr. LYNE. -
That is not our fault.

Sir JOSEPH ABBOTT. -
I know that it is not our fault; but I also know that South Australia has been so treated. I have heard it said that it would have been very much better for our own colony if the district of the Darling River had been left to the blackfellow instead of being opened up to settlement. I do not agree with that view, because we get enormous sums out of the trade of that district as the entries of the Custom house will show. I think that we shall be sacrificing the interests of New South Wales too much if the navigability of the rivers is to be maintained at the expense of every stream throughout the colony.

Mr. Howe. -
We do not ask for that; we never asked for that.

Sir Joseph Abbott. -
But the control of the navigability of the Darling River carries with it the control of every stream that flows into the Darling. What is the good of the South Australian representatives saying—"We never asked for that," if the rivers are to be kept navigable down to Adelaide under the authority of the Federal Parliament? To say to New South Wales—"You have no right to make the reservoirs or weirs because you are interfering with the navigability of the Darling and Murray," is to make a claim which New South Wales cannot concede. The term is too, broad and comprehensive for us to accept. But if the representatives of South Australia can come to any middle course which they can show us to be just and fair, I am sure many of us will be willing to agree to it. If they will clearly show me, for one, that they do not propose to interfere with the feeders of the Darling River to any extent, and to take the control of those feeders from the state, they will find me, at all events, voting with them for the maintenance of the navigability of the Darling.

Mr. Holder (South Australia). -
I join with Sir John Forrest in expressing the hope that this debate, already much prolonged, may speedily come to an end. At the same time, there are two or three points which I wish very briefly to put by way of restating the case for South Australia, and I also wish to offer a word or two of comment, which will perhaps make it clear that South Australia, never contemplated for one instant anything in the nature of a trespass on the territory or the water rights of New South Wales. References have been made in the debate on several occasions to the possibility of South Australia’s claim involving the possession of irrigation works or works of water conservatism on the Darling and its tributaries. Nothing of that kind has been thought of by me for a single moment. We always realized, every one of us, that the water of the river and its local application was a matter
too closely associated with the land to be removed from the local control of the local state Governments; but what we have said all along is that, in our opinion, we had, if not legally, then otherwise, in some other way which I will express presently, a, right to require that, whatever New South Wales might do in her own territory-and she

Mr. LYNE. -

What will you do?

Mr. HOLDER. -

That is one of those details into which I do not wish to go just now, because I desire to speak as shortly as possible. Our position is that when the waters come within the borders of South Australia we have our right to our share, and we say that that right shall be exercised, not only for the purposes of navigation, but for whatever purposes South Australia may please. That is precisely the position. I have said already that water conservation and irrigation will probably in the future outweigh altogether in their importance, in relation to these rivers, the mere question of transit. However that may be, our claim is that, while New South Wales may do as she likes with her share of the water, we equally, within our boundary, shall be at liberty to do as we wish with our share of the water. It is simply a question of shares.

An HONORABLE MEMBER. -

Will you tell us what your share is?

Mr. HOLDER. -

It has been said that South Australia has no legal right to any share at all; and the word legal has been severely strained. If instead of being states, we were private individuals, there would be no question of legal rights. We should have our legal rights, and the question is whether, in framing, this Federal Constitution, we are going to plant within it a law which might be all very well between states at variance with each other-states foreign to each other -but which is quite out of place between friendly states which are members of the same Constitution.

Mr. HIGGINS. -

The water does not belong to New South Wales, Victoria, or any other colony; it is the public property of Australia.

Mr. REID. -

And yet we have got it.

Mr. HOLDER. -

So has every land holder up the stream got the water, but that fact does
not entitle him to take away from the land-holder below him the latter's share of the water.

Mr. REID. -

It entitles him to take his own share, but not the other man's.

Mr. HOLDER. -

Here, the question of legal right comes in. We are giving away some of our legal rights under this Constitution. We have the legal right to levy customs duties on New South Wales goods imported into South Australia, and we are giving up that right.

Mr. REID. -

We have already given up our legal right in that respect. We have swept such duties away.

Mr. HOLDER. -

We are surrendering that right under this Constitution.

Mr. REID. -

We surrendered it in advance. You are surrendering it in the hope of getting customs duties up to your level all round the federated colonies.

Mr. GORDON. -

That is where you are making a mistake.

Mr. REID. -

I do not think so.

Mr. GORDON. -

Ask Mr. Lyne.

Mr. HOLDER. -

I am quite sure that when New South Wales abandoned her duties of customs she did it, not for our sakes, but for her own sake.

Mr. REID. -

Still, she was a good sort of neighbour to have.

Mr. HOLDER. -

A very nice neighbour. We hope that the same neighbourly spirit will come in with regard to the question of the waters. I am showing that we are abandoning the legal right we have now of taxing the goods of New South Wales and other colonies, and coming into a friendly agreement, by means of which there shall flow through all the channels of commerce the goods of all the colonies, and I say that what we are doing in regard to trade and commerce we should do also in regard to riparian rights. The point upon which I am now is this: Here is a question of legal right which would exist between us as individuals, and which we wish shall be sustained between us as members of a friendly group of states. Let me refer for a moment to the peculiar position which would arise if the contention of the representatives of New South Wales were assented to. Imagine a case
where a resident in New South Wales has property situated on the Darling, but higher up than the property of another citizen who is also resident in New South Wales. The man who is lower down the stream can enforce his right, as against all those who are above him, to a certain flow of water. But there may be below the man who is situated lower down the stream, another person having property also on the Darling waters, but situated within the borders of South Australia—all the property-owners, however, being within the federal area. But the mere fact that the dividing line between South Australia and New South Wales separates one man from another, places the man who is within the borders of South Australia in an entirely different position to the others. The others can enforce a legal right, but, according to the contention of the delegates from New South Wales, the man on the South Australian side, simply because he resides in another state of the Federation, can enforce no such legal right. The matter has never been made clearer than it has been this afternoon by the speech of the New South Wales Minister of Lands (Mr. Carruthers), by whom we are asked to leave this very important matter to be a means of friction and dispute between the states. I contend that if we have no legal right which can be enforced in any court of Australia, we have a right which would be recognised—a right which pertains to us all—of appealing to the Imperial Government. But why should we do so?

Mr. REID. -

How much will you sell that right for in cash?

Mr. HOLDER. -

Here I would allude to some remarks made by Mr. O'Connor. The honorable and learned member has suggested: Why not strike out this sub-section and leave the rights of South Australia where they are, so that she can appeal to the Federal Court? I rather agree with that suggestion. Surely it is far better, if we are to form a self-contained Federation which is to make its own laws, and administer its own affairs, that an appeal upon this or any other important question should be made to a body within our own borders, rather than to a court in the old country across thousands of miles of ocean.

Mr. REID. -

Then you give up the question of control? All you want is the right of appeal against possible misuse?

Mr. HOLDER. -

We have never sought the right of control in the sense in which the right honorable gentleman uses the word. It is the right a land owner can enforce against another landowner higher up the stream which South Australia has
asked for. We wish to allow so important a matter as this to be settled without reference to an authority 16,000 miles away, and to provide that the reference shall be to authorities within our own borders-to the High Court of the Federation, carrying out the legislation of the Federal Parliament. Mr. O'Connor, I think, fenced a question which I put to him while he was speaking; I do not say that he fenced it knowingly. As the honorable member was speaking I thought his mind was working in the same direction as my own; but as soon as he came to be asked the question whether the right to which he referred included the right of pumping water out of the Darling to the detriment of navigation, we got no answer from him.

Mr. OCONNOR. -

Perhaps the honorably gentleman will allow me to explain now. The position I took up, and which I take up now, is this—that the Federal Court will have the right to decide whether in any case the use of water for irrigation purposes is derogating from the right of the control of navigation given in sub-section (1) of clause 52. I go no further than that.

Mr. HOLDER. -

Then we come back to the control of navigation alone, and it is more than that that we have been contending for and wish to secure, either by the omission of this clause altogether, or by its omission followed by something else. If Mr. O'Connor had gone so far as to set out clearly that the Federal Parliament and the High Court should decide all these matters, I could have joined with him, being prepared to rely on the good offices and fairness of the Federal Parliament. But the honorable member will not agree to that. He will not agree to put in the place of the sub-section we are now discussing words giving the federal authority express power to legislate and determine in these questions. And that is just exactly what we say the Federal Parliament should have power to do. We cannot decide today which is the more important, irrigation or navigation.

Mr. REID. -

You have only one interest though.

Mr. HOLDER. -

We cannot decide a question of that sort at present, but we wish the decision of it to be given to the Federal Parliament, which will include representatives of all the states concerned, and where there will also be others to arbitrate between the states most nearly interested, as is the case in this Convention. We want this reference, and because we want it we think that we had better get it by distinct provision in the Constitution, than by means of something implied, which might or might not give effect to what it is said we might receive from it. South Australia simply desires
this, and no more. She desires no control over New South Wales, and no power to interfere with works carried out in New South Wales, but simply the right to prevent what the New South Wales Minister of Lands has suggested as a possibility—the draining of the Darling dry. Surely with such a phrase as that in our ears we cannot be expected to leave ourselves without protection.

Mr. ISAACS. -

Would you mind saying definitely: Is it in navigation only that South Australia is interested, or in irrigation also?

Mr. HOLDER. -

We are concerned in navigation but we are concerned to-day also in irrigation. We have large areas to-day under irrigation cultivation, the water for which purpose has to be taken from the Murray. We cannot be sure whether irrigation or navigation will be the more important to us in the future. I think it possible that we may have more concern for the one than for the other, though I cannot any for which we shall have the more concern. It is impossible to answer the question now. We want power to use the water for the one purpose or the other, according to which may be of greater importance to us.

Mr. REID. -

That is what you want to deprive us of.

Mr. HOLDER. -

We do not want to deprive New South Wales of any such power. We wish to leave that colony as free as ourselves to use her rightful share of the water for any purpose she pleases. Who is to determine what is the rightful share? The Federal Parliament. What has New South Wales to answer to this? Her representatives have no answer to give. They cannot say what their rightful share is. They leave us simply with the power of reference to the British Government; and I say in this matter, when we are framing a Federal Constitution, we should leave all such references to our own authorities. Now, as to the form of the sub-section as it stands, I see the full force of what my honorable friend (Mr. Symon) said just now. It gives away the position as far as South Australia is concerned, and leaves us worse off than we should be if it was not there. What does it do? As it stands it is a distinct limitation on the other powers in the Constitution. As it stands, it permits the federal authorities to come within territory which is wholly South Australian, and to determine how we who are down the stream shall use every drop of the water in the river. It may say to us "You shall take
Mr. DEAKIN. -
You cannot suppose that there is any risk in that.

Mr. HOLDER. -
No, but we are handing over very large powers concerning the lower river to the Federation.

Mr. DEAKIN. -
Which they can only exercise for your benefit. They have no motive to do anything else.

Mr. HOLDER. -
The point I want to make is, that while we are asked to hand over these large powers concerning the Lower Murray, New South Wales, on her part, says, concerning the upper waters "No, theme waters shall not be federalized."

Mr. REID. -
It is quite the opposite. We are giving the Upper Murray just the same as the Lower Murray. You are always after the Darling.

Mr. HOLDER. -
It is the Upper Murray of which I am speaking. South Australia is perfectly prepared to see the Murray federalized if the Darling, which is a very important feeder to it in the way of both merchandise and water, in federalized too. But South Australia is not prepared to see the river within her borders federalized, while other colonies see so much danger in the federalization of the water that they will not dream for their part of any such action

Mr. FRASER. -
Your waters must be used for your benefit only. They cannot be used in any other way.

Mr. REID. -
In reference to our share of the Murray, we give you federal control exactly the same as federal control is given over your waters. The Murray is treated in exactly the same way, whether it is in your colony or in ours.

Mr. HOLDER. -
Persons up stream have less interest relatively in the lower stream than those down stream have in the upper stream, and those who are interested in the upper river, and who have less interest in the lower river, ask us to make an entire surrender of our rights and powers concerning the lower river, while they will make no surrender of any kind at all in respect of the waters of the upper river in which we are more concerned than they are concerned in those which flow through our borders, and that is what South Australia objects to. We had better omit the present sub-section and have
nothing than leave things as they are. But I do, hope that even yet it will be possible to expressly refer this very vexed question to the Federal Parliament, so that it may have power to deal with it. New South Wales says that it is giving away something which she has. No, it is not, if she has any right to it. Does she believe that any right she possesses will be diminished by the action of the Federal Parliament?

**Mr. FRASER.** -

She is jeopardizing her rights.

**Mr. HOLDER.** -

That is to say, that all this talk about trusting the Federal Parliament does not apply to that state which will have the largest representation in it.

**Mr. REID.** -

The Federal Parliament will control federal things.

**Mr. HOLDER.** -

I will not be drawn off my track, for I will not speak much longer. I will only say, in reference to the remark of the premier of New South Wales that he wants the Federal Parliament to have federal control in federal things, that to my mind there can be no more federal question than the question of inter-state riparian rights.

**Mr. REID.** -

Where they exist.

**Mr. HOLDER.** -

Riparian rights which exist either with appeal to the local authority or with appeal to the British authority, I do not care which—riparian rights appear to me to be a federal question, and therefore one which should be left to the decision of the federal authority. I hope that it will be possible to find some phrase by which, without any injury to the self-respect of either party to the dispute, this whole question may be referred to that authority which alone is competent on evidence to deal with it, which alone will have all the facts before it—which will be able to adapt its legislation from session to session or from term to term to the changing facts it has before it.

**Mr. BARTON (New South Wales).** -

Perhaps, notwithstanding Sir John Forrest's remarks about the length of this debate, the fact that I have not occupied the attention of honorable members for above three or four minutes in the whole course of it may justify me in seeking to put forward the position I hold, and in putting forward that position the first matter of importance is to inquire, what is the principle about which we are debating? I take it that we shall not be able to decide many questions which will arise under this Constitution precisely upon the principles upon which they would be decided in a British court of
justice. That is to say, that there are powers and necessities arising under this Constitution which must be construed more in the light of American decisions than they can possibly be construed in the light of such decisions, for instance, as are given in England about navigable waters. Obviously, of course, the decisions about navigable waters in England will not apply. That criterion which limits the navigable water to the distance of the ebb and flow of the tide, has plainly no more applicability in this country than it has in America. Although it was set up by my learned friend (Mr. Wise) the other day, I must say at once that I abandon any such contention as that, and I think our rights will

have to be regulated as regards navigation by considerations something like those which prevail in the courts in America. Now, I wish to take the stand that this sub-section should be struck out, and that no other sub-section should be inserted in its place. I wish to take the stand that the rights which are contended for, so far as they are federal, are confined to rights of navigation, and that so far as they are rights of navigation they should be made applicable to the whole Commonwealth, and not to one or two rivers of New South Wales. When we are constituting a Commonwealth which is to regulate the trade and commerce of the whole of the federated colonies; when we find that a part of the regulation of trade and commerce is inevitably the regulation of navigation; When we also provide that the trade between all these colonies has to be absolutely free-what are we also providing? We are providing, as I shall show under the American decisions, that the control of navigation is under the authority which is intrusted with the control of trade and commerce, and the regulation of that navigation is as important in the case of any navigable water on the whole continent and Tasmania as it is important in the case of any river which flows between New South Wales and South Australia, or between New South Wales and Victoria. Now, with reference to this, I should like to quote a passage from Hare's American Constitutional Law, page 441, which lays down the principle rather clearly:--

We have seen that wherever inter-state or foreign commerce extends, the power of the United States goes with it for its protection, and may be exercised within the boundaries of the state when such action is requisite for the attainment of the object. The authority of Congress is consequently not limited to marine navigation, but includes all the waters of the United States through which intercourse takes place among the states, and with other nations

That is to say, that, where a vessel sailing from New South Wales to
Western Australia enters a river in Western Australia which is navigable, the control of that river for navigation is as completely intrusted to the Commonwealth under a provision of this kind as if you had special words for that purpose.

The ebb and the flow of the tide, which is the test of navigability in England, and marks the line at which the prerogative of the Crown ceases and private ownership begins, is as much out of place here as it would be if applied to the Rhine, the Danube, the Ganges, or the Nile; and every stream or lake which can be traversed by ships or steamers, and affords a continuous channel for the transportation of goods or passengers from state to state or abroad, is as much within the power to regulate commerce as the sounds, straits, and estuaries which give access to the waters of the sea.

There is the principle laid down in perfectly unequivocal terms.

Mr. GORDON. -

Will that apply to rivers which are only intermittent?

Mr. BARTON. -

I will come to that presently. I will quote a passage from the same author, which will take my honorable friend a little further in his argument. On page 459 of the same volume, I find this passage:--

Rivers are a means alike of internal, interstate, and foreign commerce, and may consequently be regulated both by the states and by the general Government-subject, nevertheless, to the general principle that a state may not adopt any course which is at variance with the laws made by Congress, or that will injuriously affect trade with her sister states or foreign nations. It follows that while the United States may improve the navigation of a bay or river by removing bars or shoals, or turning the whole force of the current into a single channel, the right is not exclusive, and may be exercised concurrently by the state.

Of course, with this limitation, that where the Commonwealth or the United States legislate, to that extent the legislation of the state drops. It goes on:--

It was accordingly held in the case last cited, that the state of Alabama might tax the city of Mobile for the improvement of the bay or harbor on which it is situated, although the effect was to charge the city with the entire expense of an improvement in which the whole state was interested.

There was a case where the state was allowed to tax a city within the state for the purpose of navigation, because the powers were concurrent; although, if the power had been once exercised with reference to that part of the state by the United States Congress, to that extent the right of the state of Alabama would have disappeared. The report goes on:--
The improvement of harbors and bays, and of navigable rivers flowing into them, is within the power of Congress over commerce; but so long as Congress does not see fit to act, the way is open to the states.

In these two passages are to be found the principles which here, as much as in America, would deal with the control of navigation. Let me give one or two instances from the United States decisions to show the way in which this power is practically illustrated. I find, in reference to the case of Gibbons v. Ogden, 9 Wheatstone, 1:-

Commerce is traffic, but it is also something more. It is intercourse—it describes the commercial intercourse between nations, and parts of nations, in all its branches. It comprehends navigation.

To show again that that includes navigation, I will cite the case of Cooley versus The Board of Wardens. I am quoting from Baker's Annotated Constitution, which is a digest of these cases. It says-

The power to regulate includes the regulation of navigation, which comprehends the power to prescribe rules in conformity with which navigation must be carried on—Cooley versus Board of Wardens, 12 How.

That shows the extent to which the right over navigable waters is possessed where the instrument which admits the power of a state admits also of the application of the general rule of the Constitution. In the case of Pennsylvania versus Wheeling Bridge Company, 13 How. - it is reported:-

The River Ohio is a navigable stream, and as such is subject to the commercial powers of Congress, which have been exercised over it; and if a bridge is so erected across it as to obstruct navigation it is a nuisance, and an Act of the Legislature of Virginia authorizing its construction would afford no justification to the Bridge Company.

I also find here the following with reference to a case which I shall cite further on:-

If a river is not of itself a highway for commerce with other states or foreign countries, or does not form such highway by its connexion with other waters, and is only navigable between different places within the state, then it is not

That tends further to answer the doubt of the honorable member (Mr. Gordon). Then I find another case, The United States versus Coombs, 12 Peters, 72. The report says-

Under this clause Congress possesses the power to punish offences of the sort enumerated in the 9th section of the Act of 1825. The power to regulate commerce includes the power to regulate navigation as connected with commerce both foreign and inter-state. It does not stop at the boundary line of the state nor is it confined to acts done on the waters or in the necessary course of the navigation thereof. It extends to acts done on
land which interfere, obstruct, or prevent the due exercise of the power to
regulate commerce and navigation both foreign and among the states. Any
offence which thus interferes with, obstructs, or prevents such commerce
and navigation, though done on land, may be punished by Congress under
the general authority to make all laws necessary and proper to execute its
delegated constitutional powers.

I think the two passages I have read from Mr. Hare's well-known volume
establish clearly what is included within this power to regulate commerce
among the different states, and with foreign countries, and to what extent
in the exercise of that power the Parliament would be entitled to go, not
only to maintain, but to improve navigation. I want to make these things
clear, and I do so frankly to show to what extent I, for one-and I hope other
members from New South Wales will go with me-am prepared to go in
leaving this power to regulate trade and commerce unlimited in its widest
form, only making this condition, that if you leave untouched that power to
regulate trade and commerce, you serve the whole Commonwealth
alike. We shall then leave the navigation of New South Wales in the same
position as the navigation of every other state; that is, we shall have federal
control of navigation. That is the position I take up. It amounts to this: That
this power to regulate trade and commerce is so large-that the powers
which can be conferred by itself on the Parliament by its legislation are so
sufficient for the regulation of navigation and all matters relating to trade
and commerce-that the Commonwealth can want no greater power with
regard to navigation. I shall vote against any proposition, any sub-section,
which seeks to limit in any way the power to regulate navigation in the
waters of one state or any other state. I claim that it must be co-extensive
with the limits of the Commonwealth. If you make the power co-extensive
with the limits of the Commonwealth you can only justly do that by
leaving this power of regulating trade and commerce untouched and
unrestricted. That is the position I take up with regard to navigation. In
order to show more fully what this navigation is, I would cite a short
passage from the Daniel Ball case, reported in 10 Wallace, Supreme Court,
U.S., page 563. I find these words:-

This was an appeal to the Supreme Court of the United States. The first
question presented for determination was whether the steamer was, at the
time designated in the libel, engaged in transporting merchandise and
passengers on a navigable water of the United States within the meaning of
the Acts of Congress.

This is the passage of the decision which, I think, will be found material
under the present circumstances. Upon the first of these questions Mr.
Justice Field, speaking for the Full Court, said—

Upon the first of these questions we entertain no doubt. The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all, of the navigability of waters. There no waters are navigable, in fact, or, at least, to any considerable extent, which are not subject to the tide, and, from this circumstance, tide water and navigable water there signify substantially the same thing. But in this country the case is widely different. Some of our rivers are as navigable for many hundreds of miles above, as they are below, the limits of tide water, and some of them are navigable for great distances by large vessels, which are not even affected by the tide at any point during their entire length. A different test must therefore be applied to determine the navigability of our rivers, and that is found in their navigable capacity. Those rivers must be regarded as public navigable rivers in law which are navigable in fact, and they are navigable in fact when they are used or are susceptible of being used in their ordinary condition as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Mr. SYMON. -

Does that refer to intermittent or continuous navigation.

Mr. BARTON. -

It seems to me that the power which I have shown exists for regulating trade and commerce extends to the improvement of the navigation, and it could be applied to rivers with an intermittent flow.

Mr. GORDON. -

What would be the case when the ordinary condition of the river is that it is navigable only for half the year?

Mr BARTON. - I should say it applies to their ordinary condition as rivers, not as mere chains of water-holes. The report goes on to say—

And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the states, when they form in their ordinary condition, by themselves or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water.

In these extracts I have endeavoured to show how large a power I am willing to concede with reference to the navigation of rivers, but I claim, that it should be extended to the navigation of all navigable
waters within the limits of the Commonwealth. There cannot be any reason of justice why they should be limited to rivers which only concern two or three states. If every navigable river is to be treated alike, and to be under the same law, then let that law apply to its fullest capacity; and subject to the necessary result of the interpretation of the question of what is a navigable stream at a particular time, let all this be a matter which shall go to a tribunal far better than the Commonwealth Parliament or the Parliament of a state—because either of these may be parties to a dispute—the tribunal which alone is not a party to the dispute—the Federal High Court.

Mr. LYNE. -
    Would not that mean handing over the whole thing?

Mr. BARTON. -
    It would mean handing over the navigation of the rivers, so far as they are navigable. To that extent I am prepared to go. In giving a power to regulate trade and commerce, you are giving a power to regulate navigation.

Mr. GLYNN. -
    Have you defined navigability?

Mr. BARTON. -
    I have endeavoured to show how far it is defined by the extracts I have read. They show that a stream, not only which is capable, but which is susceptible, of navigation is a navigable river within the meaning of the power to regulate trade and commerce.

Mr. DOBSON. -
    Or that joins with other rivers?

Mr. BARTON. -
    Yes. When I come to the other question of irrigation, I come, notwithstanding my desire to be absolutely conciliatory, to a point which I, as representing New South Wales, cannot afford to concede. As I have said, I would vote against every sub-section which did not give a right to the Commonwealth over all navigable streams. There must be no singling out of New South Wales rivers or of Victorian and New South Wales rivers, or of South Australian and New South Wales rivers. I should, therefore, vote against any proposition which did not concede the whole right of navigation. But such a proposition is unnecessary, because the point is bodily conceded already. I must say, on the question of irrigation, that I regard that as a provincial right.

Mr. HOLDER. -
    So it is, but inter-state riparian rights is another question.

Mr. BARTON. -
    There are no such things as between two states when one has a legal right
and has not consented to surrender or restrict it in any way by convention or agreement. Any actual right of a state to the waters which flow through its territory cannot be voted away from it excepting by its own consent, and therefore in the absence of an agreement it is beyond contest that the legal right remains. Mr. Holder said-"We have a right which would be recognised by the Imperial Government" I do not think South Australia has such a right, and more than that, if my memory is not at fault, I have an indistinct idea that some ten or eleven years ago a reference was made from South Australia. There was an appeal by correspondence, and they were told that the Imperial Government could not interfere. I do not wonder then that Mr. Reid asked Mr. Holder how much he would take in cash for the right. If that has been the experience, I do not suppose the thing would be worth much if it were put up at auction or offered for sale in any other way. But then we are told that there is a moral right. I cannot concede that there is a moral right. Take the case a little further, and suppose that Queensland were engaged in the Convention. Queensland has within her territory a large quantity of the headwaters of the Darling which she is entitled to use. How should we stand if, in a Convention like this, Queensland being represented, we set up against Queensland the same claim that South Australia sets up against us?

Mr. HIGGINS. -

It would be very just.

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Mr. BARTON. -

It might be very just for a man to ask another for a portion of his means, but the other would be entitled to retain what he had got. It might be just to ask it, and if the other man were afflicted with a peculiar benevolence, he might grant it. But who gave us a right to come here and be benevolent? We were elected to represent New South Wales, and not to give away a part of the patrimony of New South Wales.

Mr. HOWE. -

To be just?

Mr. BARTON. -

Yes, in a way which recognises all legal rights as sacred. If you are going to base the Constitution upon a kind of justice which would mean simply generosity to South Australia it would be very exceptional in its character.

Mr. HIGGINS. -

Supposing that Queensland held back all her water?

Mr. BARTON. -

If she did we should negotiate with her, but we were not sent here to
negotiate about our provincial rights. We were sent here to federalize those things which are in their essence federal. The application of the water to the land that is in our own territory is a provincial right, and we have no authority to make it the subject of any federal legislation. Let us endeavour to arrive at a reasonable adjustment. Why not, instead of South Australia claiming to have not only the navigability of some of these rivers, which would be readily conceded, but also the use of the water, make an adjustment which is within every ratio of law, and which is in consonance with federal rights? Let the power of navigation go to its full extent, as under the provision relating to trade and commerce, but let that which is purely provincial—the application of your own water to your land—be left outside the compact.

Mr. LYNE. -

How would that affect the water in the tributaries?

Mr. BARTON. -

It might enable the Federation at some points to build up the banks so as to improve the channel. It would permit of the stopping, not of the whole stream, but of one or two or several channels in order that the others might be made stronger. Whether it would include a power to prevent the diminution of the water in any tributary is another matter. I take it—and I want to be perfectly frank—that the power of the Commonwealth to keep up navigation would be limited by the extent of the legislation which it enacted itself. It would have no power to do anything under this provision unless it passed an Act, and it would be limited by that Act. Whether, it would give a power to prevent the diminution of the flow of a tributary is a difficult question. That brings me back to the real argument, which is that it is for the Federal Court to decide to what extent the legislation of the Commonwealth is within the powers of the Constitution, and questions of that kind can only be decided upon the passage of an Act of Parliament.

Mr. DOBSON. -

Is it not clear that, the navigation of the Darling not being continuous, that river would not be affected by the provision in sub-section (1)?

Mr. BARTON. -

No. I do not think "continuous" means continuous in point of time; it
means continuous by way of course. It is a word which applies to the course of the river, and not to the period during which it flows. I wish to define the position which I occupy with regard to this question. I may be going further than some of my colleagues wish to go.

Mr. ISAACS. -

Will the honorable and learned member clear up a doubt which is in my mind? Does he take up this position-that for the purpose of maintaining, and, if necessary, of improving the navigability of rivers, he agrees that the Federal Parliament shall have power to use the waters of the Darling, even though this use may deprive New South Wales of some of the water for irrigation purposes?

Mr. BARTON. -

I agree that the federal authorities should have power to use the water to enable them to keep up the navigability which they find, and to improve it to the extent which is laid down in the cases to which I have referred. That may involve some detraction from the use of the water for navigation purposes, but to that extent I must go, or else I should not be honest in the matter of federation. I want to leave the whole question of navigation to the laws of the Federal Parliament, and I wish to see these laws, when they exceed the rights of the Commonwealth, decided upon by the Federal High Court. I think the only way to secure that is to strike out the sub-section. We want in this Constitution to secure inter-colonial free-trade. We all admit that there can be no federation without inter-colonial free-trade, that federation is idle unless between state and state there is absolute freedom of commerce and intercourse. We propose with respect to the railways-and I hope we shall carry out the proposal-to constitute an Inter-State Commission, which will also have certain powers with regard to rivers. All the powers of the Inter-State Commission will be summed up in the maintenance of the trade and commerce clauses of the Constitution. It is plain that in dealing in this way with the railways, we wish to provide that they shall be managed so that there shall not be any such preferential rates as will amount to the infringement of the freedom of inter-colonial trade. If we place the rivers under the same commission, ought we not to leave this provision in its widest state, so that in connexion with the clauses which apply to the Inter-State Commission we may be sure that, whether we are dealing with railways or with rivers, entire freedom of trade between the colonies shall be preserved? If that is so, and if it is incident to the freedom of trade that the channels of trade should be kept free-which it must be-must it not be clearly the right of the federal power to control navigation?

Going as far as I do in this matter, I feel impelled to assert what is the other side of the question, the other part of the contention. I do not anticipate
danger from the fact that there will be one authority—the federal authority—which will control navigation, and another authority—the state authority—which will control irrigation, because when there is any conflict between these authorities the Supreme Court will settle it quickly and finally. In this respect I have no fear. But the claim that it is not just for New South Wales, not to take more than her share, as it is called, of the waters of the rivers which flow through her territory, but to deal with them as she pleases, is a proposition to which I cannot assent, and that is why I think it is desirable that this provision dealing with trade and commerce should be accepted with all its consequences, and in its full concession to the federal power. But to propose that anything should be done beyond the adoption of such a provision is to interfere with the rights of the state which I represent, and which I have no authority to give up.

Sir George Turner. -
Do they ask you to go beyond that?

Mr. Barton. -
Yes. If South Australia will consent to the striking out of this sub-section, and to the throwing out of any sub-section except that dealing with trade and commerce, upon which the decisions are undeniable and amply extensive, I shall be content with that solution of the difficulty; but the moment the representatives of that colony set up a claim to the use of the waters of these rivers, I shall oppose it, because I have not received the permission of the electors to give up their rights.

Sir George Turner. -
Can you not put the effect of these decisions into the Bill, so as to satisfy the representatives of South Australia?

Mr. Barton. -
The effect of these decisions is to explain the meaning of the words "trade and commerce," which are identical in both Constitutions, and the best thing to do is to repeat the words. Where a phrase has been expounded and made clear by decisions upon principle, the best way to obtain the benefit of those decisions is to adopt that phrase.

Mr. Gordon. -
Our courts would not be bound by American decisions.

Mr. Barton. -
No; but it would be impossible for them to be bound by the English decisions in regard to the navigability of rivers. It is inconceivable that the High Court would deny the applicability of the American decisions. I think every lawyer will agree that the result of the decisions of the High Court would be palpable beforehand, and that the court would hold that the
power to control navigation must go with the power to regulate trade and commerce.

Sir GEORGE TURNER. -

The Judges might say that the rivers here were different from the American rivers, and therefore their decisions might differ from the American decisions.

Mr. BARTON. -

I do not think that would be said, because the Judges would be shut up to one of two courses; they would have to follow either the American or the English decisions. It is inconceivable that the English decisions, under which rivers are considered navigable only so far as the influence of the tide is felt, would be considered to apply here. The evidence would make such a decision impossible.

Mr. ISAACS. -

The decision would be upon an English Act of Parliament.

Mr. BARTON. -

Yes; but the conditions would make the American decisions much more applicable than the English decisions ever can be.

Mr. GORDON. -

The difficulty is whether or not those American decisions could be applied to the Darling.

Mr. BARTON. -

That is what I am pointing out. The court would have either to limit the definition to the extent of the tidal ebb and flow, or extend it to the susceptibilities to navigation. There can be no question as to what they would do in the case of rivers like ours. What I suggest is that there is a course open to this Convention which would be just, effective, and not aggressive. It is just, because it puts the matter into the hands of the highest tribunal we are constituting; it is effective, because the decisions show how enormous, and yet how right and federal, the power is that I suggest should be given. It is not aggressive, because it does not touch the right of any state except those rights which we claim here to federalize, that is to say, such matters as trade and commerce; it treats all the rivers alike as between the states.

Surely, therefore, it is the best proposition yet put forward. It sends the matter to the best arbiter, the best tribunal we have—our own High Court, which we have decided is the best—and is it not better that, instead of having conflicts between states, instead of having discourteous correspondence, there should be a means created whereby, if you adopt this
course, there will be a constitutional mode of settling such questions beyond all doubt, and for all time? I recommend this decision to the Convention, because it means going much further on the question of navigation than New South Wales has ever offered to go before, but not further than the interests of the federal power require. I recommend it because it conserves to New South Wales those matters which belong to her as a province, and which the federal power should not require from her, because they are not parts of the federation. This is the true solution of the difficulty, and if we can by this means enable the proceedings of the Convention to go on to their proper close, we shall do a great benefit to the whole of Australia.

Mr. ISAACS (Victoria). -

I desire to make some observations upon this question, but I feel that at this late hour it is undesirable for me to do so.

Mr. BARTON. -

I will move that the Chairman report progress.

Mr. ISAACS. -

Perhaps I may be permitted to say, with regard to the observations of the leader of the Convention, that I understand it is the desire of South Australia to make sure that the decisions referred to will apply here, and, with that view, to try to put some words actually into the Constitution—I think we have come very near to each other now—which will carry that out. To-morrow I shall suggest for the consideration of the Convention, some words which I have here in print, which will be circulated, and which, while perfectly fair, will even insure to New South Wales as good, perhaps better, conditions as regards her own powers over the water than she would have under those decisions. Of course, these words are subject to modification. They are only to be proposed with a view to insert a principle, and to make sure that certain points mentioned in the course of the debate will be definitely settled.

Mr. DOBSON. -

Where would they come in? Read them.

Mr. ISAACS. -

They would form one of the powers of Parliament in sub-section (31) of clause 52. My amendment reads as follows:-

The navigability of rivers which by themselves or in connexion with other rivers are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states. But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such extent as in the opinion of the Inter-State Commission is not unjust or unreasonable, having regard
to the needs and requirements of any other state for such purposes.

Mr. BARTON (New South Wales). -
I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.
Progress was then reported.
The Convention adjourned at five minutes to five o'clock.
Wednesday, 2nd February 1898.

Finance Committee - Commonwealth of Australia Bill - Western Australian Statistics.

The PRESIDENT took the chair at half-past ten o'clock a.m.

FINANCE COMMITTEE.

Mr. LYNE (New South Wales). -

I should like to know when we are likely to obtain the report of the Finance Committee? The time is going on, and I do not want the question of finance to be left over until the last few days of the Convention and then hurried through. It is a very important question, and if it is possible to obtain the committee's report now, the Convention should have it. If we cannot get it at present it should be made available as soon as possible.

Mr. BARTON (New South Wales). -

All I can say is that the Finance Committee have come to a conclusion; but at a conference between the chairman of that committee and the chairman of the Drafting Committee it appeared that there were one or two questions which had arisen incidentally, and on which further instructions would be necessary. The opinion of the Finance Committee was taken, and from the information given to the Drafting Committee it seemed that the matter had given rise to some further questions, which would have to be settled. Honorable members will understand how difficult it is to give precise instructions to the Drafting Committee, and how one question leads to another. The Finance Committee will have to hold another meeting, and then their instructions to the Drafting Committee will be completed, and the clauses will be drawn.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on sub-section (31) of clause 52 (Powers of Parliament), which was as follows:-

The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea.

Mr. ISAACS (Victoria). -

I beg to move-

That the sub-section be omitted, and that the following be inserted in lieu
thereof:-

The navigability of rivers which by themselves or in connexion with other rivers are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states. But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such extent as in the opinion of the Inter-State Commission is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purposes.

I perceive with a considerable amount of pleasure and satisfaction what seems to me to be an approach between the representatives of South Australia and the representatives of New South Wales, in regard to this very difficult and important question. When the discussion was first opened by my honorable friend (Mr. Gordon) in his very able speech, and he was answered by some of the honorable members from New South Wales, it appeared that the distance between them was very great indeed. The claims of South Australia were made to rest on grounds that I should find it very difficult to support to their full extent. I must also say that the answer given by New South Wales seemed to be altogether too uncompromising. I believe I am correct in stating that there are now indications of a considerable abatement on both sides of the position originally taken up. But I am not quite clear even now as to the extent to which this approach has been made. At the first it appeared that we from the other colonies would have to take up the very unenviable position of arbitrators between altogether unwilling disputants, but I believe, and I hope, that in the end we may be able practically without any real difficulty, and perhaps unanimously, to adopt some scheme—whether it is that which I have suggested, or some other—that will commend itself as being the best obtainable for both colonies. It would be very unfortunate if the Convention broke up with the feeling that the discussion of this matter had only eventuated in utter disappointment and soreness to both sides. I agree with those honorable members who deplore the possibility of there remaining any source or point of friction—continuous friction—and perhaps eventually ill-feeling, which would deepen as time went on, with regard to this question. It is important that we should deal with it now to some extent, and that we should do so in the light of experience. I think, therefore, that I shall be justified in bringing the teachings of experience a little more fully before the Convention than has hitherto been done, because the future of Australia may depend in a very large measure upon the course we adopt. I regard this as a federal question, and it is on this ground that I should hold with those who propose to deal with it here. I
must say also that if it became necessary to decide on the point, I could not agree with Mr. Gordon and some others of my honorable friends from South Australia who rest the claim upon international law. Treating it as a matter between utterly independent States, I am not able to satisfy myself that there is any such thing as a right in the question. I can find no analogy. I have looked again at the various authorities, including the very excellent work of Mr. Hall, to which Mr. Gordon referred. Mr. Hall, we know, was one of the first international lawyers of Europe, and his death has left a gap that it will not be easy to fill. He is most distinct in his opinion that no such right exists. It only applies to navigation at the best-to the free right of navigation. But even as regards that point he rests it purely on convention, and not by any means upon international law. He is followed in that view by another recent international lawyer, Dr. Walker, of Peterhouse College, Cambridge, and a few words from his work will convey, very shortly, but clearly, what I believe to be the result of the later international law. On page 37 of his Manual of Public International Law, 1895, he says-

These various Acts-
That is, treaties and negotiations.

render clear the fact, to which the remarks of the Russian, Austro-Hungarian, and German representatives at the Conference of Berlin were calculated to draw attention, that, although-the doctrine of the freedom of navigation of great rivers has advanced in general favour, the new order has arisen by virtue of particular treaty entered into by the interested nations, not by the outright recognition of a general law, and the right of riparian states to regulate the traffic has been, in each instance, formally acknowledged. In no case have we witnessed a recognition of any natural right such as that which the United States, in harmony with her earlier Mississippi experiences, asserted in the navigation of the St. Lawrence in 1824.

At the conference held in Berlin in 1885, in relation to the African rivers the Congo and the Niger, although Count Bismarck did assert that the expectation of the states to have free navigation through the territories of other riparian states had passed into the domain of public law, his view was dissented from by every other representative present. We may take it that there is no such right. There is undoubtedly what has been properly called an increasing and more enlightened policy of permission on the part of states through which rivers pass. There is a disposition on the part of those states, for their own benefit, as well as for comity with other nations, to permit of free navigation through their territory, not only of the rivers, but also now of some of their tributaries.

Mr. BARTON. -
That is navigation.

Mr. ISAACS. -

Yes. It is subject to the consent of the nations, and it is limited purely to navigation, and I may say that, even as regards navigation, the somewhat freer permission that was granted in regard to the Elbe and another river by the Congress of Vienna in 1815 has been departed from, and the rule made more rigid, by an arrangement under which vessels have to pay customs dues at every frontier they pass on the river. So far as this claim is based upon international law or natural right it has never been admitted. In one instance it was asserted, as a matter of inherent necessity and of natural right, by the United States, in regard to the Mississippi, in relation to Spain. It was also asserted in connexion with the St Lawrence, but Great Britain never admitted it, and when, in 1854, she entered into a treaty with the United States to permit free navigation she expressly stipulated that she could withdraw that permission whenever she chose. It was only in 1871, when the Geneva arbitration claims arose, that Great Britain, taking that noble stand she has taken on many occasions of offering peace to the world, while standing firm when occasion demanded, agreed to allow for ever the free navigation of the St. Lawrence to the people of the United States. Great Britain then obtained a corresponding right with regard to the Yukon, the Stikine, and the Porcupine Rivers, now celebrated in connexion with Alaska. These were mutual concessions.

Mr. BARTON. -

All you can say to another nation is-'Will not you come to some agreement?'

Mr. ISAACS. -

Yes, and the mutual concessions in this case were limited absolutely to navigation. I do not think any one could put his hand upon any treaty which goes beyond that. Passing from the question of international law, my honorable friend (Mr. Gordon) touched upon a point which I think invites the deepest attention of the Convention from another aspect. It had relation to what is called the new law of riparian rights in the and area of America. I believe that this matter has hitherto received an all too limited notice. The question is one which offers for us the most interesting consideration, and, as a Convention of representatives of all Australia, we ought to pay the most careful attention to the experiences, more especially of late years, of that important region. This question is so important that, in the opinion of many of the greatest statesmen of the United States, it is threatening to produce a peaceful revolution of their institutions. It has already overturned
many cherished ideas, it has absolutely reversed the British common law of riparian rights, and, at the present time, it is setting up a series of problems which America has yet to face. The pamphlet of one of her most noted writers is causing a demand in some quarters for a revision of the Constitution.

Mr. DEAKIN. -

In California alone the introduction of this principle of the British common law into their Constitution cost them tens of millions of dollars.

Mr. ISAACS. -

Yes; but that has been altered. The United States is almost equally divided by the 100th meridian of latitude. The population of the whole territory is about 70,000,000 people, of whom about 64,000,000 live to the east of the 100th meridian, while the remainder live to the west of it. In what are known as the eastern states, we have all the civilization of Europe. We have the institutions that we know in British communities—the laws, generally speaking to which we are accustomed. All the great problems of our civilization are there. We have great cities with their social difficulties, just as they exist in the British Islands, and the conditions are becoming still more like those of the British Islands every day. On the west of the 100th meridian a wholly new organization of society has appeared. It is true the climate is varied and attractive, that they have every range of physical condition from Montana on the north to New Mexico on the south, and from Nebraska on the east to California on the west. But prolific as the soil is, diversified as the climate is, great as are their opportunities in many respects, in this one particular they are severed from the civilization of the east. The region is arid; it is rainless.

Mr. DEAKIN. -

Relatively.

Mr. ISAACS. -

It is practically rainless; it is a desert. People cannot live thereat least they cannot thrive there under the conditions which prevail in the eastern states. The difference in population bears witness to

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very fact. Some years ago an attempt was made, and with success, to alter these conditions. In the west there are some seventeen states, containing 800,000,000 acres of arable land, from 10,000,000 to 20,000,000 acres of which have been reclaimed and turned from a parched desert into prolific arid smiling gardens.

Mr. SYMON. -

The land has been made to blossom as the rose.

Mr. ISAACS. -
Yes. Horticulture, agriculture, and pastoral pursuits are being followed with a greater or less degree of success. This country contains the territory to which my honorable and learned friend referred the other day, that through which the Rio Grande and its tributary the Pecos flow. I am not going to refer to the great work which has been done by the use of artesian water in that district; I wish to confine my remarks more particularly to the irrigation which has been carried out from the rivers. Under the common law of England, as we know it, the riparian owner lower down the stream has a right to have the flow of water above undiminished to any appreciable degree. The upper owner must not pollute, he must not obstruct, and he must not sensibly diminish the flow of water. In 1848, when gold discoveries first began to attract attention in California, the miners wanted water to work their claims, but they found that the exigencies of the situation prevented them from carrying on their work and developing the resources of the country if they adhered rigidly to the English common law affecting riparian rights. They therefore set up their own customs, and taking water from the rivers they did not return it to them. Cases were brought into the courts, and the courts immediately said-"We cannot be bound by the customs and the common law of England in this respect, because our circumstances are wholly different from those of England. In England the climate is moist, and is well supplied with water, in fact it is to a great extent over supplied with water. The problem there is, not how to get water, but how to get rid of it-how to drain the land. We know that Drainage Acts have been passed there, and commissions have been appointed to inquire into the best means of dealing with this difficulty. But when we come to California the circumstances are wholly reversed. The problem here is how to get water, how to conserve it, and how to conduct it on to the land." They, therefore, held that the miners were entitled to use the water of the rivers irrespective of the claims of those below.

Mr. GLYNN. -
As against men who did not want to use the water lower down.

Mr. ISAACS. -
The law of riparian rights there is that the first man to appropriate the water has first claim to it.

Mr. OCONNOR. -
Is that fixed by judicial decision or by statute?

Mr. ISAACS. -
It has been fixed in every way. It was first fixed by the recognised customs of the miners; it was then acknowledged by the judicial decisions of the state courts. It has also been acknowledged by the legislation of the
various states, by the legislation of the United States, and by the Supreme Court of the United States. In every possible way has this new law of and America, which is the only law which would have led to its conquest-to use an expression employed the other day-been acknowledged.

Mr. DOUGLAS. -

Does it not apply to mining only?

Mr. ISAACS. -

No.

Mr. DOUGLAS. -

It first applied to mining.

Mr. ISAACS. -

In California it arose out of the requirements of the miners, and the course pursued by the courts of California was followed by the courts of other states; and a law based upon the inherent necessity of the situation has been adopted throughout, I believe, the whole of the arid regions of America, viz., the western states.

Mr. DOUGLAS. -

But this is not the law of America.

Mr. ISAACS. -

It is a law which has application not only to mining, but which it has been found necessary to apply to milling, to manufacturing, to horticulture, and to agriculture. Without it the great region of which I am speaking would be uninhabitable, and one-half of the United States would be incapable of development. It has been said-and the saying is one which may be repeated, because of its applicability to a great part of Australia-by a man who is called a genius in regard to these matters-that irrigation is not a substitute for rain, but that rain is a substitute, and a mighty poor one, for irrigation. What has irrigation done for the western states of America? It has not only made occupation and development possible, but it gives certainty of production.

Sir WILLIAM ZEAL. -

What has all this to do with the question we are discussing?

Mr. LYNE. -

The honorable and learned member is arguing in favour of the position taken up by New South Wales.

Mr. ISAACS. -

Irrigation in these states has given certainty to the operations of the farmers, the agriculturists, and the horticulturists.

Mr. GLYNN. -
The law that the honorable and learned member speaks of seems to me very much like the right of the first robber.

Mr. ISAACS. -

The reason why I am referring to this matter so closely is that I am in favour of putting irrigation before navigation. I think that the Convention should support the view that irrigation has a prior claim to navigation, so far as the rivers of this country are concerned.

Mr. LYNE. -

The honorable and learned member has not made that claim.

Mr. ISAACS. -

Yes; I think I have.

Mr. SYMON. -

We are all agreed as to the general principle, but there are exceptions.

Mr. ISAACS. -

I want to point out why in the amendment I have proposed I have placed irrigation before navigation.

Sir WILLIAM ZEAL. -

The diggers in this colony have been doing it for the last 40 years.

Mr. ISAACS. -

The position is simply this—I believe that the future of Australia may depend very much upon the attitude that we take up in regard to this matter. If we place the navigation of the Murray and of the Darling before irrigation we may be doing a great wrong against the future development of the continent. We do not know to what extent the water may be required for irrigation. We can make railways and roads, but we cannot make rivers. We can, however, improve the rivers that we have, and I, therefore, want to make a change if I can from the view taken in the United States Constitution, which places navigation first and leaves irrigation to the states to do as they please about it. I should like to point out, especially to those of my honorable friends who have asked me how these facts apply, that the law of first appropriation has been found a necessary one to adopt, but it has been modified to some extent. The way in which it has been modified in California of later years is this: Where there are several persons who have rights of irrigation, or to the user of water for other purposes, it has been laid down that the use must be reasonable as between themselves.

Mr. GORDON. -

Hear, hear; that is the principle.

Mr. ISAACS. -

In the case of Harris v. Harrison, 93 California, 676, it was decided by the Supreme Court of California that the common law right of riparian
ownership which prevails in British communities has been modified and enlarged, so as to secure reasonable user, and that the reasonableness of the user depends wholly upon the facts. In this particular case, both the plaintiff and the defendant required the use of the water to-the extent of the full power of the stream, and the court said, as the courts have said in other cases-"We must apportion these rights relatively, and the only way we can do so in this case is to say that, at certain times, the plaintiff shall use the whole force of the water, and at other times the defendant." In other cases these reasonable rights have been adjusted, not by time, but by quantity; but in all cases in later years, so far as I have been able to discover, and as late as 1895, the courts have set themselves to secure a reasonable and proportionate use of the water.

Dr. COCKBURN. -

What courts does the honorable and learned member refer to-they state courts or the Federal Courts?

Mr. ISAACS. -

The state courts. I may point out that the new law of which I am speaking-the western states law-has been recognised in the United States courts, and I may mention the name of a case in which it is so recognised-Jennison v. Kirk, 98, United States, 453.

Mr. BARTON. -

These irrigation laws of the states are, of course, untouched by the Constitution; they are upheld.

Mr. ISAACS. -

Of course they are upheld, but the United States law has, by various alterations, commencing in 1886 and coming down as late as 1890, recognised this right of prior appropriation. I do not want to dwell any longer on this point than is necessary, but I want to urge that the new law has been recognised, and that its reasonable exercise has been recognised. Now, how does that apply here? If we merely strike out sub-section (31) and leave the court to exercise its jurisdiction upon the first sub-section of clause 52, it means undoubtedly that navigation is to be the prior consideration, and it means more than that, as far as I can judge, because it means that as long as a state-say, New South Wales-leaves sufficient water for the navigation of the river, it may use all the surplus water for irrigation of its own lands without regard to the claims of South Australia. I do not think that was intended by my honorable friends from New South Wales, but it would, I believe, have that effect. I am not afraid of putting in a special clause to carry out what I believe to be our intention. We have
already limited sub-section (1) in a way in which it is not limited in the
United States, by making special references to customs and excise,
navigation and shipping; and I would say to the leader of the Convention
that we ought not to be afraid to put in another clause with a view to
making this matter definite and certain. "Navigation and shipping" is taken
from the Canadian Act. It is specially mentioned there besides trade and
commerce, but the Canadian Act provides, in the first place, that the
Dominion Parliament may legislate in all cases whatsoever, and then,
without prejudice to the generality of that power, it goes on to enumerate
certain other matters, so that I do not think that the mere adding another
clause, specifying the power, would in any degree depart from the course
we have already adopted. Now, I should like to say this that I would not
have urged another suggestion if I could have found, in any of the
proposals previously made, something that would have met my view
altogether. Mr. Symon's suggestion comes nearest to it, but I think that that
suggestion would leave New South Wales just as it is. I think it would
leave New South Wales with the power to take all the water that it requires
for irrigation, irrespective not only of the claims of South Australia for
irrigation, but also of the claims of South Australia as regards navigation.
Mr. LYNE. -
And you want to take that power away, I suppose.
Mr. SYMON. -
I do not think my amendment will do that.
Mr. ISAACS. -
I would like my honorable friend to consider his suggestion from that
point of view. What I think is fair is this—we should vest in the
Commonwealth the navigability of these rivers.
Mr. REID. -
What does the word navigability mean?
Mr. ISAACS. -
I should say that it means everything connected with the navigability
of the rivers, as we ordinarily understand the word.
Mr. REID. -
That shows how vague the term is.
Mr. ISAACS. -
It means everything connected with the maintenance of the navigability
of the rivers—their improvement and control.
Mr. LYNE. -
And of the tributaries?
Mr. ISAACS. -

No, only rivers that are themselves highways of commerce for inter-state intercourse.

Mr. LYNE. -

How about the tributaries that carry volumes of water into the main river?

Mr. ISAACS. -

I do not propose to touch them.

Mr. LYNE. -

But the navigability of the rivers depends on those tributaries.

Mr. ISAACS. -

Then it would give the control of them which the Federation has under the first sub-section of clause 52; it would make no change in that respect. But still, in intrusting the navigability of these rivers to the Federation we should place irrigation in the first position, and we should leave each state to exercise its own will even independently of navigation, so far as regards conservation and irrigation, and limited only by one consideration, namely, the corresponding requirements and rights of other states.

Mr. LYNE. -

That is no consideration for New South Wales.

Mr. ISAACS. -

Well, now, I am sorry to hear that. The honorable member will see that the rights of New South Wales will be preserved-the powers of New South Wales, for I think the word powers should be used instead of rights in the honorable member's meaning. New South Wales has an enormous territory covered by these waters, compared with South Australia. We are told that she has nearly 150,000,000 acres which would be served in a greater or less degree by the River Darling and its tributaries, whereas South Australia has, at the most, 500,000 acres that could possibly be irrigated by these waters, and if we take those figures into consideration-showing, as they do, that New South Wales will have a claim on these waters about three times as great, as far as extent and quantity go, as South Australia-I think the honorable member will see that New South Wales is giving up very little indeed.

Mr. GLYNN. -

That is not the case, though; you are talking of two different things.

Mr. LYNE. -

And we are told that we cannot exercise that right or power of irrigation without the consent of the other states.

Mr. ISAACS. -

The honorable member is mistaken, and he will see, on reflection, that I
am endeavouring to support the rights of New South Wales, so far as they are consistent with the rights of South Australia. I admit that New South Wales should have, and has, a right over irrigation and conservation. That is antecedent to the right of navigation. I believe that, as in the states of America, the settlement of the land—the development of its productive power—should be the first consideration; but I cannot shut my eyes to the fact that South Australia has an equal right to that consideration, and all I claim is, while putting irrigation and conservation in the first rank as regards its position relatively with navigation, I think we ought not to shut out the claims of South Australia, which, I believe, are legitimately made in this respect. Why should South Australia be left with a dry channel?

Mr. BARTON. -
She never is.

Mr. ISAACS. -
She might be, as far as irrigation is concerned. As far as navigation is concerned, she would have the power to navigate.

Mr. LYNE. -
And we have given to the Federal Government the right to a better river than South Australia has now, by water conservation at the head of the Murray.

Mr. ISAACS. -
When the honorable member urges that this is a matter entirely between the two states, and not a federal question, I wonder if he will adopt that ground of argument on the question of railway rates to the Riverina province? Will he say that that is a federal or is not a federal question? And if he is told that Victoria can do anything she likes on her own railways in the way of attracting trade from Riverina, will he say—"I acknowledge that"?

Mr. REID. -
I take up that position.

Mr. LYNE. -
So do I.

Mr. ISAACS. -
It is not the position that has been taken up hitherto.

Mr. LYNE. -
You should not carry your special railway rates into New South Wales.

Mr. ISAACS. -
We do not enter New South Wales one bit; we simply remain on our own ground, and say, with regard to certain persons and certain goods that are sent there, we will carry their goods at a certain rate. We have a perfect
right to do that, and when the representatives of New South Wales say they are going to have that altered, are they not interfering with Victorian rights in the same way as they are now talking of New South Wales rights being interfered with?

Mr. Reid. -

I have never asked for any such power over the Victorian railways. We can deal with them ourselves.

Mr. Isaacs. -

We will see what the representatives of New South Wales will do, when we come to the sub-section relating to the railways, about putting them on the same basis. I think the railways should be dealt with on a federal basis, and that it would be a most unfederal action to refuse to have them dealt with on a federal basis. But the question of this water is in exactly the same position. We are willing to let the free course of trade prevail between the various colonies, as regards the railways, and we want the natural course of water to run unimpeded.

Mr. Reid. -

There is a difference between water and trade.

Mr. Isaacs. -

Well, I cannot sever the two in considering this question. The honorable member has heard the leader of the Convention state the law most distinctly-law which has been followed down to as late as 1896 in the United States in Gibson's case that the question of this commerce and trade is inseparably bound up with the navigation of the rivers. Now, if that is so, how do the representatives-of New South Wales draw a distinction between rivers as a highway for commerce and railways as a highway for commerce? I see no distinction as far as this question is concerned.

Sir William Zeal. -

The one is naturally made and the other is artificially made.

Mr. Isaacs. -

Well, that distinction is certainly artificial. But I urge on my honorable friends who base their claim on the ground that what concerns two colonies directly, and only two colonies, is not a federal matter, to remember that argument when they come to deal with the question of the railways. I can quite understand their position, and I think it is a legitimate ground to take, and I sympathize with my honorable friends from New South Wales when they take up this ground, that what they claim is so vitally important to New South Wales that they are not justified in giving it up even for the sake of federation. I can understand that grounds which is solid ground-ground that we cannot approach, ground that we cannot contradict-if New South Wales, which has free power to say "Yes" or "No" to federation
when this Constitution is framed, thinks that she is paying too high a price for federation. But that is another question. It is not the same question as saying that this subject is not a federal matter. To my mind it is a federal matter, but I admit that we cannot get anything into this Constitution—anything federal or otherwise without the assent of each state so far as that state is concerned. New South Wales has a perfect right, in that sense, to stand outside this Constitution, and say—"No; if this Convention insists upon that as a condition of federation, New South Wales will have none of it."

Mr. LYNE. -

Is it a good thing to risk that?

Mr. ISAACS. -

It is for my honorable friends from South Australia to say whether they will take the risk, but if the question is put fairly and squarely to the Convention, I feel bound to say that the solution I have suggested, which is to a large extent what has been suggested more or less definitely before, is such a solution as I shall feel compelled to vote for, because if we are obliged to take up a position which none of us desire to hold—the position of arbiters in this matter—we must simply vote as best we can to preserve our chance of securing federation, and, at the same time, not inflict an injustice on any one state. Now, I have put this proposal before honorable members, and I should just like to point out how it operates. The first portion of it gives to the Federation the navigability of rivers which by themselves, or in connexion with other rivers, are in fact permanently or intermittently navigable for trade and commerce among the several states. That would include the Murray and also the Darling, because the Murray by itself, and the Darling in connexion with the Murray, would be permanently or intermittently navigable for trade and commerce among the several states. If it stopped there, I should say it would bear out the construction which the leader of the Convention put yesterday. I think it would amount to nothing more or less than a proposal entirely within the first subsection of clause 52.

Mr. KINGSTON. -

But making it clearer.

Mr. ISAACS. -

I do not know that it makes it clearer except for this, that we do not know whether our courts will take the same view; we cannot predicate that. We have British courts here, and a certain line of decisions, and we are not sure that our courts will follow the course adopted in the United States.
Mr. LYNE. -
    If we are prepared to put up with such a risk as that, don't you think that
    the others should also be prepared to take a risk?
Mr. KINGSTON. -
    Why risk anything?
Mr. LYNE. -
    Why risk anything which South Australia wants? You are ready to risk
    everything which New South Wales wants.
Mr. ISAACS. -
    I do not say that you should take any risk at all. The worst which can
    happen to you is that the courts should not follow that line of decisions,
    and if they did follow that line of decisions, it would be all the better for
    New South Wales.
Dr. COCKBURN. -
    Have we not taken it out of the purview of the courts by vesting it in the
    Inter-State Commission?
Mr. BARTON. -
    The difficulty I find, Mr. Isaacs, is that if you carry a sub-section like the
    first part of your proposal it may have a very considerable effect on the
    legal construction of the trade and commerce sub-section afterwards in
    other particulars.
    . - That is the real danger.
Mr. ISAACS. -
    I have been looking at that, but the same danger applies to the provision
    relating to customs and excise, because they are included in the first
    subsection, too.
Mr. BARTON. -
    Very slightly. In the American Constitution there is the provision to lay
    and collect taxes, but here, as in Canada, we are splitting it in two-putting
    the power to impose customs and excise in one sub-section, and the power
    to raise money by any other mode or system of taxation in another.
Mr. ISAACS. -
    My honorable friend is right, and, if my recollection is right, it agrees
    with his recollection as regards Canada. But there is this important
    distinction in the Canadian Act. It gives absolute powers, and then it goes
    on to specify certain particulars, but says that they are not to prejudice the
    generality of the main object of the clause.
Mr. BARTON. -
    That is true.
Mr. ISAACS. -
    That makes all the difference. You may strike out every one of the
particularized subjects in the Canadian provision and still have them there by virtue of the general words, but we are not doing that. We are following the United States precedent of enumerating the powers. Therefore, if you put in the trade and commerce power-

Mr. BARTON. -

It is all in one subsection in the Canadian Act.

Mr. ISAACS. -

The power to raise money by any other mode or system of taxation we have put in a separate paragraph in the Bill.

Mr. BARTON. -

That is practically the same as the United States provision to lay and collect taxes.

Mr. ISAACS. -

That is a different subsection. The "regulation of trade and commerce" is the power under which the regulation of customs and excise between the states takes place, and that, therefore, would, in our Constitution, include any other sub-section relating to customs and excise; but we have taken the precaution to set it out specifically. Having done that, we therefore are departing from the principle of keeping everything in one sub-section.

Mr. KINGSTON. -

We have done that with navigation and shipping too.

Mr. ISAACS. -

I am not sure that we have not done it with some other things; but, at all events, I do not think that that consideration ought to outweigh the desirability of meeting the views of South Australia in this respect, and putting, as far as we can, by a lot of decisions, express and explicit words into the Constitution which will satisfy the desires of a colony that regards this matter as of the highest importance.

Mr. KINGSTON. -

You can expressly declare that it shall not limit the effect of the general words.

Mr. ISAACS. -

Yes, you can. Then my amendment goes on to provide that irrigation should take the first position, but so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such an extent as in the opinion of the Inter-State Commission-

Of course, you can substitute any other body you choose for the commission, and you can add words such as "any other body created for
that purpose by the Federal Parliament." That expression is only put in as a suggestion. I am sure the Drafting Committee would carry out the views of this committee in that respect, as they have so kindly done in every other.

is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purposes.

I understand that some honorable members have some difficulty about these last words. I would point out that unless these last words are put in South Australia will have no guarantee whatever, because it would mean that any State—that would be New South Wales in the first place—might take the waters to such an extent as would not, in the opinion of the Inter-State Commission, be unjust or unreasonable, having regard of course only to the question of navigation.

Mr. LYNE. -

Do you take away the whole power of New South Wales, and give it to the Inter-State Commission?

Mr. ISAACS. -

My honorable friend either has not followed me—

Mr. DOUGLAS. -

You cannot satisfy him.

Mr. ISAACS. -

Very well.

Mr. LYNE. -

Why not take the whole thing at once?

Mr. ISAACS. -

Then the last words are intended to protect the reasonable and proportionate rights of South Australia, and the position would be simply this: Directly this Constitution went into operation every state could take as much water as it pleased, for conservation and irrigation; New South Wales could take whatever she wanted, and if South Australia complained they would go before the Inter-State Commission, and that body would say whether New South Wales was taking more than her fair share. If New South Wales was not taking more than her fair share, having regard only to South Australia's needs for similar purposes, she would be uninterfered with, and the Federation itself could not come in and stop New South Wales from taking the water, simply on the ground that it was interfering with navigation.

Mr. SYMON. -

The last part of your amendment seems to disregard the needs and requirements of the state from which the water comes. Would it not be better to say "having regard to the needs and requirements" of all states.
interested?
Mr. ISAACS. -
That is a matter of wording. I am quite willing to adopt any verbal alteration; I am only trying to explain the principle of the amendment, but as to the wording of it, I am quite willing to fall in with the views of my honorable friend, if he thinks that any other form of words will better meet the idea I have endeavoured to interpret.
Mr. WISE. -
Has the honorable member considered how far his amendment will or will not confer rights to the tributaries to navigable streams?
Mr. ISAACS. -
I do not think it would go beyond the rivers which are in fact permanently or intermittently navigable.
Mr. LYNE. -
Did not you say that it would, where the flow was sufficient to stop the navigability?
Mr. ISAACS. -
No. I have said all along that there should be no such control over anything but the rivers which are in fact navigable.
Mr. OCONNOR. -
That is according to the honorable member's definition, which, of course, would include the Darling.
Mr. ISAACS. -
It would include the Murray and the Darling; it would include, of course, every river running to the coast.
Mr. BARTON. -
Is your construction of that that the waters of the tributaries could be taken by a state into which they ran, to any and every extent?
Mr. ISAACS. -
I think that the waters of the tributaries could be taken to any extent for the purposes of conservation and irrigation; subject, of course, to this, that the power to control navigation would come in.
Mr. REID. -
That is the whole difficulty. Will my learned friend allow me to put this point to him?
Mr. ISAACS. -
Certainly.
Mr. REID. -
On the Darling there are some irrigation schemes going on; the river is running low, and it is perfectly clear that if these irrigation schemes are continued it will cease to be navigable. Now, would not the Federal
Parliament have the power of stopping these irrigation works in order to maintain the navigability of the Darling?

Mr. ISAACS. -
No, not under my amendment.

Mr. BARTON. -
It would have the power to legislate in such a way as to prevent that.

Mr. REID. -
Have you any objection to make that clearer, if there is any doubt about it?

Mr. ISAACS. -
No.

Mr. REID. -
I think I can suggest something which will make that clearer.

Mr. ISAACS. -
I shall be very glad to accept anything.

An HONORABLE MEMBER. -
That is what he does not want.

Mr. REID. -
If it is to be accepted, I shall endeavour to make it as clear as possible.

Mr. ISAACS. -
I thought I had made this, at all events, clear, that irrigation was to be the first consideration, and making it the first consideration I stated-and I wish to repeat that my intention is, and I hope the words I have put here embody that idea-that if New South Wales and South Australia and Victoria are in accord as to the quantity of water to be taken for irrigation by each respective state, the claims of the Federation over the navigability should be subordinate to the state claims. I think that will meet every reasonable demand on the part of the colonies. I hope some such scheme will be adopted. I think, as I said before, it is essential to the future development of Australia; and if that can be done by any form of words, I care not in what form, I shall be glad to give any such proposal my support.

Mr. MCMILLAN (New South Wales). -
I should be very sorry, after the long debate on this very important question, to add to it anything which was not, absolutely necessary. I shall try, in the few remarks I intend to make, not to repeat any of the arguments which have been used. I have very carefully considered all the numerous amendments. I have also considered the latest amendment by my learned friend (Mr. Isaacs), and I listened with great pleasure, as far as I could
understand it, to his very able speech, full of erudition and legal ability. But it seems to me that we are no nearer the question than we were when we started. After all, it is well for us to get at the facts of this case. It is well enough to wander over the universe, it is well enough to tell us the law of riparian rights, but it is to me a matter of such practical importance that I want to see the solid ground on which I am standing; I want to grasp absolutely the facts of the case and to hold them. Let us look at the case again. We have a stream called the Murray, and with regard to the navigation of that river and the use of its waters we are all more, or less agreed. The principal matter in contention now is the question of dealing with the Darling, and we have had some very profound arguments making an analogy between the personal right of individuals in one state, and urging that water is an antecedent right to that of navigation, it is absolutely necessary that, for the purposes of our state, the waters of that stream-running not for 100 or 200 miles, but for at least 1,500 miles, meandering through a large portion of our territory-should be kept inviolate. Now I come to the real part which is at issue. We have had a lot of amendments, all trying to get over an absolutely insuperable difficulty. With a great deal of refinement, the honorable member who has just sat down, in his speech (in which to me the issue was very largely clouded), said in one breath that he considers irrigation paramount; but he said in the next breath, that if you give the right of navigability, you must give the right on every stream and every tributary. There is no getting away from that. If the right of navigation is given to the Federal Parliament, which will be the paramount power on this continent, you must give by implication the right to impound the waters right throughout the whole system. There is no question about it. If we are to have clear definitions in this Constitution, what is the good of introducing any one of these different proposals, which, after all, leave the matter as it was before; not merely leaves it as it was before, but practically by implication gives over the whole of the rights to the Federal Parliament. Now, we simply hold this, that in the first place, the Darling River is not the main body of the Murray River, which we have already agreed to give over to the Federal Parliament. We hold that it is essentially a

New South Wales stream in every respect, and that it is essential to the future development of New South Wales, without which navigation is of no use. We hold that that stream should be kept, if necessary, absolutely for our purposes. I was derided by some honorable members and by the press for saying that if you reduce the thing to an extreme argument we had an absolute right, under certain conditions of drought, to take every drop of
water out of the Darling River. I say that anything placed in this Constitution which does not clearly and effectively give us that right gives us no right at all.

Mr. HIGGINS. -
That will not be given to you.

Mr. MCMILLAN. -
Is there to be no friendly negotiations between the Federal Government under this Constitution and the states Governments? Is there to be no possibility, when any right seems to be impaired or any unfriendly act seems to be done, for the Federal Government to deal, by negotiation, with the states Governments? I have no doubt, myself, that in the years to come there will be large schemes to render navigable the Darling River, but when these schemes are propounded, interfering as they probably will with contracts of the state, interfering with the enormous expenditure by private individuals, there will have to be some quid pro quo given if the inherent rights of New South Wales are sacrificed for the benefit of the whole community. But before we know what we are doing and what these rights are—before we know what the conditions of irrigation and water conservation may be in the future—we are asked now absolutely to render it impossible for New South Wales to retain her own rights and assets. Now I come to the question of the first subsection of clause 52. With all due deference to my honorable friends who know more of the legal aspect of the question than I do, I say distinctly that if that carries with it the right to insure the navigability of the different rivers, and if that right carries with it the right to interfere with the Darling, then it is not sufficiently satisfactory for us. It is our sacred duty in this Convention, by every possible means, to prevent litigation in future. Mere litigation on matters which everybody allows remains with one power or the other, especially with the Commonwealth, is a matter of no importance, but it is very different in any matter which would create friction between the states, and perhaps paralyze federation at its very base, because you are dealing, if I may be allowed to say so, with the strongest and most populous, and, at any rate at present, the wealthiest colony of the group. Any danger arising out of any looseness of expression in this Constitution which would bring about friction between that great power New South Wales and the rest of the Commonwealth would be absolutely deplorable.

Sir GEORGE TURNER. -
Is the power of the Commonwealth to be overlooked?

Mr. MCMILLAN. -
There is no use my honorable friend saying that; I am only pleading for clear definitions. I am not going to threaten what New South Wales will
do. Whatever we agree to by a majority in this Convention, I will try to get the Bill passed in my own colony. We have to frame the Bill, and things have to be determined ultimately by a vote. But I say it is a crime for us to attempt to leave any matter of such enormous importance without an absolutely clear and satisfactory definition.

Mr. LYNE. -

It will be very difficult to get the Bill accepted without that.

Mr. MCMILLAN. -

I think enough has been said now to show honorable members that we, the delegates of New South Wales, consider that this is one of the most vital matters. I believe, as far as I know, there is absolutely no discord in our ranks.

Mr. HIGGINS. -

You will not go so far as the honorable members (Mr. Barton, Mr. O'Connor, and Mr. Wise). They all go further than you do.

Mr. MCMILLAN. -

They do; but at the same time they may see more clearly than I do that there is no risk to these rights of New South Wales. But I do not see that clearly.

Mr. LYNE. -

Neither do I.

Mr. MCMILLAN. -

I am willing to be advised, and if there is any legal opinion which I would take it would be the opinion of those honorable members, including Mr. Higgins. But it does seem to me, weighing with my own common sense all the arguments which have been adduced, that it would be most deplorable after these interminable arguments for us to imagine that we had protected these rights and then when we went back to our colony to find that we had betrayed them. It is all very well to take opinions in this Convention, but these opinions will be sifted and sounded elsewhere. Although, perhaps, I would not be so responsible as some of my legal friends, still we are all responsible more or less. If I may appeal to my honorable friend (Mr. Isaacs), I think that he will allow that he has practically failed to solve the problem. He has introduced one of the worst proposals that has yet been introduced.

Mr. ISAACS. -

Why?

Mr. MCMILLAN. -

Because it takes in the question of an Inter-State Commission, which is
not before us at the present time.

Mr. KINGSTON. -
    It is in the Bill already.

Mr. MCMILLAN. -
    But it may not be in the Bill when completed.

Mr. ISAACS. -
    I explained that you could alter these words to what you like, so as to create what kind of body you might like.

Mr. MCMILLAN. -
    What I would point out is, that it makes no difference what sort of body you appoint if you merely erect a tribunal to decide an uncertain point. What we want is absolute certainty.

Mr. ISAACS. -
    Absolute control.

Mr. MCMILLAN. -
    Absolute control of the River Darling from beginning to end, trusting to the State that it will be as reasonable and gracious in dealing with that great river as the Federal Parliament would be.

Mr. ISAACS. -
    Does the honorable member think that if political pressure were put on the New South Wales Government that they would leave a single drop of water for South Australia?

Mr. MCMILLAN. -
    I am sorry to have to repeat myself, but I want to say again that, before ever the Federal Government can deal with this subject (and I think the honorable member will allow this), large questions will have arisen, probably, on that river, with regard to the conservation of water. Contracts will be made under the state Government, and there will be a network of interests and responsibilities which will have to be faced. The very fact that the state is absolutely in possession of the river now, that the first process of developing it for water conservation purposes will have gone on long before the Federation is formed, clearly shows it is an absolute state right which ought to be conserved. I do not believe that morally New South Wales would have the right to take all the water out of that river and attempt to interfere with the navigation of the Murray. Still, she must be herself the guide of what she does.

Mr. HOWE. -
    This is the federal spirit.

Mr. MCMILLAN. -
    The federal spirit is right enough.

Mr. SYMON. -
It is federal water, not federal spirit.

Mr. KINGSTON. -

Will you not embody a grave moral right like that in the Constitution?

Mr. MCMILLAN. -

I do not think we can embody a moral right in the Constitution, or give effect to resolutions of a moral character. I believe in being straightforward as to what we believe to be our rights in New South Wales. I want to bring the argument down to the simple issue that we have been contending for instead of having the debate unreasonably prolonged by elaborate legal dissertations upon riparian rights in other parts of the world, and upon conditions with which we have nothing to do. Therefore, it would be far better to leave the clause as it stands with the exception of the use of the waters. We have got a substantial concession now for federal purposes in the whole control of the Murray. I should like to see introduced into the present clause, some words similar to those suggested by the honorable member (Mr. Symon), that the Federal Parliament should not interfere unnecessarily with the proper use of the waters. I think, myself, it would be far better and save a great deal of time in this discussion, if we would simply stand by the clause as it was drafted in Adelaide, with the exception of a few words indicating the moral rights, as my honorable friend says, of the different owners of land in the states along the river.

Mr. OCONNOR. -

That would make them legal rights immediately.

Sir EDWARD BRADDON. -

What would moral rights be worth?

Mr. DEAKIN. -

Nothing in Tasmania.

Mr. MCMILLAN. -

Here I think is where the clause is wrong. The essential idea of this clause is to give to the Federal Parliament the right to keep open the navigability of the rivers, but, besides, it says "the use of the waters." To my mind, the use of the waters would allow the Federal Parliament to interfere entirely with irrigation and the conservation of water. It seems to me that, if there is any sense in these words at all, they give an absolute control over irrigation and conservation of water. I think the clause might be drafted so that the Federation should only have that control for purposes of navigation. If the clause is passed with that exception, I believe that it will be satisfactory. There will be something definite about it. I consider we have made a great concession, and that it
Mr. SYMON (South Australia). -
I shall endeavour not to offend against the wish of my friend (Mr. McMillan) by saying anything further in the way of legal dissertation on this question-

Mr. WISE. -
Very judicious of you.

Mr. SYMON. -
The law being so completely on our side, and having been so exhaustively expounded by Mr. Isaacs this morning, that it would be quite needless to enter upon any such further inquiry. But I may be permitted to say that I think that all of us have, during the discussion of the question, been filled with very grave anxiety in respect to it. The subject is one of the very gravest complexity, and I am afraid that the renewed debate which has taken place has not relieved us from that sense of complexity with which the discussion originated. In fact, looking at the circumstance that Mr. McMillan has suggested that there should be some other amendment introduced of a moral character

Mr. WISE. -
That was the expression used by Mr. Kingston.

Mr. SYMON. -
The phrase was adopted by Mr. McMillan; but if it be objectionable to describe the amendment desired as one of a moral character, I do not want to say immoral, but will call it not legal; and I think that if we open up a matter of that kind we shall occupy the time of this Convention with matters that would land us in still further entanglements, when we might be occupied with more substantial things. Now, I think this matter has occasioned more anxiety than would otherwise have been the case, because it is one that is so liable to be surrounded with prejudice and feeling. It is a question which may so very easily be made to assume a rather fictitious magnitude and importance. If there is one conclusion to be drawn, so far as the facts are concerned-into which I do not propose to enter, because they have been so completely dealt with by Mr. Carruthers and other speakers-it is that the matter of irrigation has been, at all events, brought very fully before the Convention.

Mr. DEAKIN. -
The Victorian details are erroneous.

Mr. SYMON. -
I do not express any opinion one ways or the other as to the facts, but I do not think that an inquiry or an investigation into these details at great length is necessary; and as to putting the blame for the withdrawal of the
waters on the right or the wrong shoulders, that would not advance us one atom upon the discussion of this matter as a practical question. I may say also that I feel we have now reached a stage in this business when it is our duty to come to some settlement. We must settle it; and we are going to settle it, I believe, with the good-will of everybody concerned.

Mr. HIGGINS. -
As a cannibal settles a corpse.

Mr. DEAKIN. -
Which is the cannibal, and which is the corpse?

Mr. SYMON. -
I will express a feeling which I am sure is the feeling of every representative of South Australia—that we sympathize with the position of New South Wales, and we feel (the more so, perhaps, in consequence of the emphatic statements of Mr. McMillan, who does not generally yield to that tendency, but who now speaks of going back to New South Wales and being held up to opprobrium as having sacrificed the interests of that colony) that this is a subject which may give occasion to the foes of federation in New South Wales to glory. You look at the map and you see a number of streams flowing from one end of that colony to the other, and you may have some agitator, who is desirous of inflaming feeling against the Constitution we are framing, saying Why, these people are going to despoil us of these rivers which have been flowing through our territory ever since New South Wales was a state." It is very easy to do that, and therefore I sympathize with my honorable friends who are so apprehensive. I do not seek to under-estimate their apprehension on that score at all.

Mr. LYNE. -
You would not if you represented New South Wales.

Mr. SYMON. -
I wish my honorable friend to believe that I am as anxious to put myself in the position of New South Wales upon this question as I am anxious that he shall put himself in the position of a South Australian. I look upon the matter with a desire to see impartial justice done, and if a sense of justice induces me to fall in with the view of New South Wales no man in this Convention will more readily do it. We are all striving, I believe, not so much to have our own way upon any particular measure as to see on which side justice lies. But, on the other hand, I ask the representatives of New South Wales to consider the position in which South Australia is placed, and how the foes of federation there may just as readily point the finger against us when we go back. There will be many who will be credulous and ready enough to believe that the Murray is to be allowed to run dry, and that the whole of the valuable trade which passes through South
Australia at this moment is to be withdrawn from us and utterly destroyed.

Mr. WISE. -

You can point to the fact that New South Wales has consented to the Murray being controlled by the Federation, although she has her rights under her Constitution.

Sir WILLIAM ZEAL. -

The Murray can never run dry.

Mr. SYMON. -

I have no apprehension on that score at all, but we know the difficulties which we have to face. There is no one more cognisant of the considerations that influence public feeling than my honorable friend (Sir William Zeal), and we know that these things may be said in New South Wales, or in South Australia. My honorable friend (Mr. Wise) points to the fact that New South Wales has surrendered the navigation of the River Murray. But we have also surrendered the control of the navigation of the Murray, and under the provision as it stands in the Bill, we have also surrendered the use of its waters. Now, if at some future time—and I invite my honorable friend's consideration to this—the trade of the Murray River for the sake of the producers of New South Wales should become to that colony of greater importance than they seem to consider it to be now, and we, for the purpose of our irrigation should prefer irrigation to navigation, what an outcry there would be on the New South Wales side. My honorable friends may say that is an unlikely contingency. But it is the unexpected that often happens; and when we are met on the one hand with objections from one set of people, as my honorable and learned friend (Mr. Wise) suggests we may be, I reply that we may also be met on the other hand with the statement that we have given up the control of the lower waters of the Murray as well as of navigation. But while these two positions have got to be considered, we shall not succeed in our effort unless we also remember that we must rise altogether, or to a large extent, above local claims and local interests—above partial claims rather, and partial interests; and it is from that point of view that I welcome, in many respects, the speech which my honorable and learned friend (Mr. Wise) made this morning, as I also welcome that made by Mr. Carruthers yesterday; because these two speeches, in common with the whole debate, have helped us to get a more precise grasp of the particular theme which is in issue between us, and, I hope, of the remedy which will solve all our difficulties. We are met for consultation and discussion, and not to snatch a victory against an isolated minority. We wish to accomplish this settlement, if we can, with, as far as possible,
good-will; and although the amendment of Mr. Isaacs may not accomplish what we desire—judging from the objections already made to it—it may, in common with every amendment proposed when they are all taken into consideration, eventually lead to something being obtained from the combination of them all, especially if my honorable and learned friend does not consider himself wedded to the actual language of his amendment.

Mr. ISAACS. -

I certainly do not.

Mr. SYMON. -

I felt rather uneasy when Mr. McMillan said that in regard to the claim to the absolute control of the River Darling, New South Wales would brook no interference. I am afraid that if my honorable friend adheres to that position, in which he is not supported by Mr. O'Connor and Mr. Barton, our chances of success in solving this matter are getting very slender indeed; and I do hope that my honorable friends from New South Wales, although they may adhere to the sentiment—in which to a large extent I agree—with regard to the control of irrigation within that colony, will not be led away by such an uncompromising declaration of absolute and (if my honorable friend will forgive me for using the word) unreasoning right as that proposal would involve. Now, let me state in one or two words what my position in this matter is. My position, as I have stated it originally, and repeat it now, is that we now have the Murray as a navigable stream, and we have also its great affluent, the Darling, not permanently, but intermittently navigable. My claim is, and always has been, that, so far as these streams are at present navigable and avenues of trade, they should be kept navigable. That is the extent to which I go, and it seems to me that that condition of things should be within the federal ambit. I also recognise—and I repeat this again—the paramount importance of the conservation of water for irrigation as compared with any question of navigation on this continent. Except for that paramount consideration of conservation of water, there would be no difficulty whatever about this matter. I have listened to all the speeches delivered with great vehemence on the part of the representatives of New South Wales, and it seems to me that they concede that their difficulty is this question of irrigation and the conservation of water. So far as I am concerned, I would like, if it were possible, to see the irrigation of the whole of Australia nationalized. But that of course is impossible, at least under a federal system which leaves the land entirely under the control of the states. If the Federation gives the
states exclusive power of dealing with their land it is impossible that the control of the waters can be withdrawn from them. If that is the case, then the debate has brought the matter to this conclusion that it would be unjust to federalize the waters, or part of the waters, of any one colony, or part of a colony, to the exclusion of the rest and I am not going to support any proposal which would have the effect of federalizing the irrigation of any part of the colony of New South Wales. Of course, I have also come to this conclusion—that it would be inconvenient and disastrous to divide the control of the irrigation of any one colony. It must be all in all, or not at all.

Mr. DEAKIN. -
It is a state matter.

Mr. SYMON. -
It is absolutely a state matter. I confess that I have had my views, which were in that direction before, considerably strengthened by what has taken place. We are all here with our minds open to conviction and change. I feel myself that the views of South Australia have been misrepresented in assuming that we desire to control or actively interfere with—subject to an exception that I shall mention—irrigation works or irrigation operations in New South Wales. All we are entitled to ask is, that the navigability, in which we are deeply interested, and which is essential to our trade, shall be without doubt or apprehension placed under federal control. Now, that, I think, is really what the representatives of New South Wales are wining to give us.

Mr. LYNE. -
Not if that will embrace the tributaries in our colony.

Mr. SYMON. -
What we want is simply the navigability maintained

Mr. LYNE. -
What is to be the definition of "navigability"?

Mr. SYMON. -
The honorable member can give us his definition.

Mr. REID. -
Nature is the only guide in the Darling.

Mr. SYMON. -
My right honorable friend (Mr. Reid) I think has hit it. Nature is the guide. The river is intermittently navigable, and when nature says it is not navigable, it would not come in the category of a navigable stream for that particular time. But we wish to provide in the Constitution, and

Mr. DOBSON. -
Do you go in for the improvement of navigation?

Mr. SYMON. -
Certainly. To us or at least to me, it is chiefly or solely a question of the Darling trade, because my belief is that, if we have the Darling and the Murray maintained in such a condition as will keep them in a state of navigability, we need never trouble ourselves about the necessities of irrigation so far as the lower stream is concerned. I think we shall always have enough water for reasonable use in that respect. But the main point is that New South Wales must not—and this is bringing the matter to a practical issue—so act in regard to the Darling and its waters as to divert trade, or to make trade impossible. Now, that is the position which I wish to see given effect to.

Mr. OCONNOR. -

Under sub-section (1) we could not do that.

Mr. SYMON. -

I am coming to that. We listened yesterday to learned and convincing speeches on this subject, and the effect on my mind has been that I am disposed to think that that may be accomplished under sub-section (1) of clause 52. I think that probably that would be the case, and that would be so whether the term "navigable river" were construed in the English sense, or whether it was interpreted in the American sense. My own belief is, that the definition of "navigable river" would be given according to the American authorities in any court of justice dealing with Australian matters because the condition of things here is more nearly the condition of things in America than in England. That has been shown beyond the shadow of a doubt by the interesting information supplied to us this morning by my honorable and learned friend (Mr. Isaacs). But I doubt—and this is the difficulty which I wish to see removed by my amendment if possible—whether sub-section (1) would be sufficient to empower the Federal Parliament to improve the navigation to the fullest extent.

Sir WILLIAM ZEAL. -

What is an "improvement of the navigation"? Would dredging the Murray at its mouth be an improvement of the navigation?

Mr. SYMON. -

Yes.

Sir WILLIAM ZEAL. -

Then you would have the Murray dry.

Mr. SYMON. -

Of course, the honorable member speaks: as an engineer, and it would be unbecoming of me to controvert his view, but I do not want this Convention, to decide now what improvements should, be made in the
Murray or the Darling. All I want to secure is that the federal authority shall have the power of improving the navigation either of the Murray or the Darling, and by "improving," I mean the word in its fullest sense by locking it, if necessary. The position might be this: Supposing New South Wales should be desirous of diverting the trade that ought to come, down the river to her ports by means of her railways, of course she never would improve the navigation of the Darling. It might be of great national importance that the navigation of the Darling should be improved, but New South Wales would remain perfectly passive-like the dog in the manger, if I may be allowed to use the simile-and her want of action, while doing her no good, would do, us a great deal of harm. Therefore, there should be some means of overcoming that possibility, and of leaving the entire question of navigability in such a position that difficulties of that kind might be obviated, and wrongs of that sort averted.

Mr. MCMILLAN. -

Should we not create the certainty of enterprise if possible?

Mr. SYMON. -

I agree that we should create that certainty, and it is because we have now the certainty of the Darling trade, subject to the limitations which are imposed by nature, that, platting aside every other aspect of the question, we should desire that certainty to be continued. On the other hand, we do not wish to interfere with irrigation, or the possibility of irrigation, in New South Wales, which should also be made certain. No one of course will expend capital in connexion with irrigation unless he is sure of some return.

Mr. LYNE. -

The whole thing is wrapped up in the meaning of the term "navigability." Does the term "navigability" involve the question of the control of the water in the tributaries? If the Darling was low, and a large volume of water was diverted or conserved in any of the tributaries, would not this give power to the Federal Parliament to compel the liberation of that water to assist navigation?

Mr. SYMON. -

The honorable member asks me whether, if there was a portion of the River Darling where there was a body of water which was backed up by the con formation of the stream-or, it might be, artificially-such a provision as I suggest would not enable the federal authority to interfere, and to require that water to be let go? In the first place, that body of water would not be likely to make the Darling navigable. I cannot conceive such a thing possible as that the letting go of a pool of water, to pass down a long channel, could possibly make it navigable, at any rate for any period of
time. But, in the second place, I do not think the Federal Parliament would do anything of the kind. It would be so outrageous that I should not predicate it of the Federal Parliament, or of any body of men seeking to serve the national interest.

Mr. LYNE. - The question is not whether they would, but whether they could.

Mr. SYMON. - It is on that ground that I should prefer to see some specific provision inserted, without derogating, as my honorable friend (Mr. Isaacs) said he had no desire to derogate, from the effect and scope of sub-section (1).

Mr. ISAACS. - Something will have to be done, because sub-section (8) refers to navigation.

Mr. BARTON. - It is not quite certain that it was a good thing to put in that subsection. I think the clause would be safer if sub-section (8) were omitted.

Mr. ISAACS. - Then it would render it very doubtful if navigation is included in sub-section (1).

Mr. BARTON. - Sub-section (8) may raise a doubt, and, therefore, it should go out.

Mr. SYMON. - Now that this very interesting conversation has ended, I may proceed. Of course, sub-section (8) will have to be considered, and its effect upon sub-section (1). But the difficulty is to know what to substitute. We have all had a try at it, and with more or less success. I object to the present provision, because South Australia under it hands over the control of the Murray and our own use of its waters, without any corresponding concession whatever from New South Wales. They cut off our trader, or reserve the right to do so. The difficulty is to know what to substitute that shall make it clear that the navigability is to be maintained, and may be improved, without importing any undue interference with irrigation. That seems to me to be what we all ought to strive for. In other words, without making the navigation primary and irrigation secondary, without making navigation paramount, or irrigation paramount, leaving them both on the same level, to be treated as the exigencies and the justice of the case require.

Mr. ISAACS. - In order to carry that out, you would have to vest the waters absolutely in the federal authority.
Mr. SYMON. -  
No, I think not. At any rate, it is in that view, and in that spirit, that I have framed the amendment which stands in my name:-  
Navigable rivers flowing in, through, or between two or more states, so far as may be necessary to the maintenance and improvement of their navigability-  

Sir GEORGE TURNER. -  
We do not agree with you there.  

Mr. GORDON. -  
Would that include the Darling?  

Mr. SYMON. -  
I think so.  

Mr. GORDON. -  
It does not flow through more than one state.  

Mr. SYMON. -  
This covers the tributaries.  

Mr. GORDON. -  
The Darling has a geographical definition as a separate river.  

Mr. SYMON. -  
I think not; it is a tributary of the Murray. However, that would be a matter for amendment. My desire is to cover all I have indicated, and if my proposal does not achieve that object I am quite willing that there should be an alteration in that respect. Then I wish to put forward the recognition in the Constitution that the maintenance of the navigability is not to be subordinated to the claims of irrigation-in fact, to keep alive, to keep paramount if you will or if not paramount, at any rate on the same level, these two beneficial objects.  

Mr. CARRUTHERS. -  
Do you not see the state of doubt that would exist if that were adopted? Who would embark any capital in works to conserve water when he was likely to have his work set aside on account of the injury to navigation?  

Mr. SYMON. -  
But is it likely that in such a country as my honorable friend (Mr. Carruthers) has described, and under such river conditions as he has referred to, there would be a possibility of the rights of the settlers being interfered with in that way, or of the rights of the states being interfered with? Of course, I am not complaining of the honorable member being apprehensive. He is apprehensive of his rights being infringed, just as we are apprehensive of our rights being interfered with, but I think there is no
likelihood whatever of any difficulty of that sort arising.

Mr. CARRUTHERS. -

As long as a doubt exists that any works undertaken may afterwards be destroyed, the people will not be disposed to spend money upon them.

Mr. SYMON. -

I do not think we can, in human affairs, prevent the possibility of some doubt. We have only to get as near absolute certainty as we can. We know that things are always changing in the management of property and of public and private affairs. It is impossible to reduce to a specific and certain rule anything that involves the rights of mankind. That never has been done yet, and we cannot do it in this Constitution. This amendment I should have had no hesitation in asking my honorable friends from New South Wales to agree to, and I shall support, subject to certain verbal alterations, Mr. Isaacs' amendment if it is put. I cannot say that I like it as well as my own, but that may be pardonable on my part. It embodies in substance my own amendment, with this difference that it substitutes for the control of the Federal Parliament the control of the interstate Commission in regard to irrigation.

Mr. ISAACS. -

It provides for the apportionment of the water between the states.

Mr. SYMON. -

I suppose the last part of it is suggestive in that respect.

Mr. ISAACS. -

That was intended.

Mr. SYMON. -

But it seems to me that it would merely have the effect of preserving the claims of irrigation as compared with navigation. At any rate, on two grounds I support it. It makes clear what we are driving at, and it settles the doubt which exists in my mind as to the scope of sub-section (1). I think that under the am

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that it looks as if they were afraid of their own resources. This is only one part of the great resources of New South Wales. It is only, as I think, a comparatively small part. If you believe the reports that have been mentioned to me, the possibilities of this extensive system of irrigation are not in a very concrete shape just at present, and therefore, I say, it would be far better for our friends from New South Wales to look upon their rivers and their tributaries a little more as though they belonged, not to a fragment of the continent, but to the whole nation, that is, to a nation whose resources, as we all know, are boundless, and the energy of whose people to deal with these resources is unquenchable. Just as their energy is
unquenchable, so, I believe, their sense of justice is not so dull that it will permit New South Wales or any other part of the continent to be wronged under the Constitution of this Commonwealth.

Mr. REID (New South Wales). -

I certainly would not address the Convention again but for the very great importance of this matter, not only as it affects the colony which I represent, but as it bears upon the prospects of our success in framing a Constitution which will be accepted by the states represented here. Feeling that, I wish in the most fair way-commonly fair way-to appreciate the difficulty of our friends who come from South Australia. There is no doubt whatever that the people of South Australia have a very deep interest, a very large commercial interest, in this question, and in no sense do I complain of the endeavours which they are making to secure for themselves the freedom of navigation of the River Darling and the River Murrumbidgee. They have a distinct interest in the matter, but when we come to questions which affect the conflicting interests of any one or more colonies, then we have to begin upon the only solid basis, that of frankly recognising what their present rights are. There is a substantial difference, as we all know, between interests and rights. It is the interest of every man sitting round me here to-day to seek a fair and peaceful settlement of this matter. But there are a number of gentlemen present who practically have the decision of it in their hands, and who are not representatives of any rights in the sense in which we claim to represent rights. I am not going to put our rights on the basis of mere assertion. I wish, and it is the first time I have quoted an authority in the Convention, to read just a few words. The matter is so important, and there is so much confusion as to what the rights of the respective colonies are, that, while I apologize to the Convention, I feel it to be absolutely necessary to endeavour to show what is the legal basis of these rights. In Boyd's edition of Wheaton's International Law, page 256, the following statement is made:-

The territory of the state includes the lakes, seas, and rivers entirely enclosed within its limits.

Now, the Murrumbidgee and the Darling are rivers which come under that designation. It follows, therefore, that these two rivers are part of the territory of New South Wales. If part of the territory of New South Wales, honorable members do not need argument to convince them that their value is infinitely greater to the colony than any given area of land, looking at the natural conditions of the land and the water in that colony. Honorable members will, from that aspect, see how slow we of New South Wales naturally are to allow the federal arm to stretch through our colony in more than one direction to assert the right of absolute control in the manner
which is wished for by our friends from South Australia. I will not read the whole of the passage from Wheaton, being deeply sensible of the value of the time of the Convention, but I will read the concluding sentences, which define the whole matter as affecting the River Murray and rivers in a similar position in a very simple way. They are as follows:-

The right of navigating,-

And that is the right that South Australia is concerned in in connexion with the River Darling, at any rate.

For commercial purposes, a river which flows through the territories of different states is common to all the nations inhabiting the different parts of its banks; but this right of innocent passage being what the text-writers call an imperfect right, its exercise is necessarily modified by the safety and convenience of the state affected by it, and can only be effectually secured by mutual convention regulating the mode of its exercise.

Now, that applies to rivers like the River Murray, and has no application whatever to the other rivers—the Murrumbidgee and the Darling. It applies to the Murray as a river which runs between two different states, and even in such a case the right is an imperfect one, and one that is to be modified by the safety and convenience of the state. It only becomes a right in a legal sense when it is the subject of a legal agreement. Now, in reference to the Murray, so far as it does flow along the frontage of New South Wales, this state of things exists. The water course is expressly given to New South Wales by the Imperial statute, emanating from that Imperial authority which Mr. Holder has in reserve. The Imperial statute 18 and 19 Victoria, cap. 54, section 5, legislates in this way with reference to the Murray:-

And whereas doubts have been entertained as to the true meaning of the said description of the boundary of the said colony, it is hereby ordered and enacted that the whole water-course of the said River Murray from its source therein described to the eastern boundary of the colony of South Australia is and shall be within the territory of New South Wales.

On elementary authority the water-course includes the water as well as the bed of the stream.

Mr. SYMON. -

No.

Mr. REID. -

Then I will quote an elementary authority. Angell, on water-courses, says, at page 5 of his work:-

Where the lines given in a grant of land include a stream of water, the
soil covered by the water and consequently the water itself will pass. Surely the words of the Imperial statute include the water-course.

Mr. SYMON. -

They do not give away a navigable river.

Mr. ISAACS. -

Riparian rights are quite independent of property in the water of a stream.

Mr. REID. -

I will give honorable members a further proof, and I confess that in this matter I am indebted to what I conceive to be a very able statement of the case which was published in the Sydney Morning Herald a few days ago. I happen to know the author of that statement, who is a man of immense authority upon this subject. He goes very fully into it, and touches upon this very point:-

An American text writer of very great authority, and frequently quoted by English Judges, Mr. Angell, in his work on watercourses, defines a water-course as a "body of water issuing ex jure nature from the earth, and, by the same law, pursuing a certain direction in a defined channel till it forms a confluence with the sea." And the same writer lays it down that "every water-course consists of-(1) the bed (alveus); (2) the bank or shore (ripa); and (3) the water (flumen)."

Is there any possible ingenuity which will dispute that a water-course consists of the bed, the bank, and the water?

Mr. DEAKIN. -

Two banks.

Mr. REID. -

Yes, and in this case, according to the definition, New South Wales possesses them both:-

The bed is covered by the water, and is the space subjacent to the water through which it flows, and is that which contains the water at its fullest, when it does not overflow its banks. It is, generally speaking, all the soil below the high-water mark of the ordinary daily tides or of the ordinary floods. The "bank" is the uttermost part of the bed in which the river naturally flows. The bed and the water (flumen) may be said to be correlative terms, as one cannot be owned without touching the other.

It is not at all important to enter into the question of how much we got in getting the water-course, because, as a matter of fact, we, in New South Wales, have never by any act endeavoured to treat the Murray as though it belonged to us. By no single act have we touched a gallon of the water upon the faith of the definition in the Imperial statute of our right to the water-course. As
a matter of fact, all the water taken from that part of the Murray which flows between Victoria and New South Wales has, with some trivial exceptions, been taken by Victoria, and, so far as our Government is concerned, I think without complaint. We have even carried our complacency so far as to allow our enterprising friends to take possession of several small islands in the river which belong to us, but for which they have claimed the rent.

Mr. ISAACS. -

We do not admit that they belong to you.

Mr. REID. -

No, and therefore you took them. We contend that they belong to us, but we allow you to use them. That is the difference between us.

Mr. ISAACS. -

The question was thoroughly discussed.

Mr. REID. -

I am sure that my honorable and learned friend would see to that, but our time is too valuable to permit one to go into it now. To show the effect of the law upon the subject, as laid down in the most modern text-book I can get, in Hall's International Law, edition 1895, I find it stated at page 142:-

But neither at the Congress of Vienna, nor in the Treaty of Paris, was the right of co-riparian or of foreign States to navigate territorial water asserted as an existing principle, and effect was given to the intention of the Powers in a series of conventions made between the States concerned. The Congress of Vienna, therefore, though it intended to establish the principle of free navigation with regard to European rivers, respected the right of property in its mode of action, and it stopped short of applying the principle to rivers lying wholly within one State.

There are the clearest possible words from all the authorities that can begot to show that, even as to waters flowing between States, there is no absolute law. There is an imperfect right, which must be modified by the safety and convenience of the States concerned. But, as to rivers lying wholly within one State, the absolute right of property exists in that State untrammelled by any obligation of any kind whatever towards any other State.

Mr. DOBSON. -

But is this right untrammelled?

Mr. REID. -

Upon what ground is the complaint of a settler upon a stream against a settler higher up the stream based? It is based upon the ground that the water of the stream does not belong to the settler above, but that it simply passes
Mr. HOLDER. -  
This water neither begins nor ends in New South Wales.

Mr. REID. -  
My honorable friend has nothing to do with the beginning of the water.

Mr. HOLDER. -  
It is a federal question.

Mr. REID. -  
Queensland is not in the Federation, and only Queensland can be heard with regard to the rights in water above New South Wales.

Mr. HOLDER. -  
We hope that Queensland will come into the Federation.

Mr. REID. -  
No doubt, and so do we. The water we get from Queensland comes in times of flood, when we do not want it; in wet seasons, when the tributaries of the Murray give us and our friends as much as we can possibly want. I want honorable members to look this matter clearly in the face. The Darling and the Murrumbidgee are absolutely within our territory, and belong to us. They are the most precious possessions we have over three-fourths of New South Wales. Without these possessions the country must continue to be a mere sheep-walk, carrying a sheep to, perhaps, 20 or 50 acres. This is not because of the barrenness of the soil. The soil is capable of the utmost fertility. It is capable of untold development, but a supply of water is the one condition upon which that development depends. An improvement has been taking place throughout Australia which has been noticed by the older colonists, but which, I think, has not been mentioned. It is a fact that the pastoral industry is gradually changing for the better the character of the continent. An old settler has marked that change so near Sydney as Bathurst. When he went over the Blue Mountains in the early days he found the Bathurst Plains so loose in formation that his horse's hoofs sank in at every stride. To-day the Bathurst Plains give as firm a turf as you will get in England. It is an absolute fact that the character of the whole surface of the continent will, by the treading of animals and other incidents of the pastoral industry, become infinitely better and more valuable than it is at the present time. But without water the finest soil in the world is comparatively useless. Owning these streams, which are vitally necessary for the development of our country, I think honorable members will understand that we have not come here in any narrow selfish spirit, and that we are charged with a great responsibility. As the honorable and learned member (Mr. Symon) says, as to our conduct with regard to South Australia, we are in this happy position, that we have
never by any act of ours shown anything but the most friendly and
generous disposition to that colony—except in correspondence, which is
dear to the soul of my right honorable friend at the foot of the table. I have
always objected to the establishment of a jurisdiction over New South
Wales which has such far-reaching consequences as what is proposed. I
object to place in any federal authority the control in a physical active
sense, implying possession, of the Rivers Darling and Murrumbidgee. I am
quite agreeable to allow the first sub-section to stand, because it gives a
federal power expressed in general terms to secure a federal purpose.

Mr. SOLOMON. -
And you think it quite harmless.

Mr. REID. -
I am not asking my honorable friend to interpret my thoughts am
endeavouring to express them in my own way. Whatever the consequences
of giving a federal power for a federal purpose—the purpose of trade and
commerce—I am willing to risk legal decisions in regard to what I am
giving, but I would prefer to see a more definite expression in the
Constitution, always so long as the absolute possession of these waters by
New South Wales is made clear.

Sir WILLIAM ZEAL. -
Hear, hear; that is quite right.

Mr. REID. -
Honorable gentlemen may laugh, but they are in the position of outsiders
to whom these waters do not belong. I would respectfully ask them to
recollect, however, that those who represent the people of New South
Wales have a very serious trust to respect. If the Federal Parliament took
over the power of irrigation, the people of New South Wales would be in a
better position upon some of the proposals than if the power were taken
over merely in general words, because then the Commonwealth would owe
a duty in respect to irrigation to the people of New South Wales. But if the
provision is left in such a state that the Commonwealth may acquire the
control of our rivers in an active physical sense, and owe no duty in respect
of irrigation, our position will be worse than ever.

Mr. ISAACS. -
That is not proposed.

Mr. REID. -
Well, it was proposed, but I do not think it is now. I think we have got
away from the extreme proposals with which this discussion was
commenced. Now, I would like to come to the proposal of my friend (Mr.
Isaacs). No one will deny that Mr. Isaacs has made an earnest effort to
settle this matter in a way as fair as he could possibly manage it, and I feel
myself personally indebted to him for the attitude he has taken on this question throughout the Convention, although I do, with great respect, think that he has not quite apprehended the serious position of our rights in connexion with some of these rivers. But the very first words in Mr. Isaacs' proposal, raises the old difficulty—"The navigability of rivers." Now, if we were dealing with the ordinary sort of river to which the decisions refer there would be no question as to "navigability."

Mr. ISAACS. -

The subsequent words of my proposal provide for that.

Mr. REID. -

I am coming to that point presently. But the navigability of a stream which is not navigable except for irregular periods is a vague expression. The control and duty of preserving the navigability of a stream in such a case becomes a very serious one, and the old difficulty, which Mr. Isaacs has made an honest endeavour to get rid of, remains. Seeing that difficulty, Mr. Isaacs has added to his amendment this provision:

But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such extent as, in the opinion of the Inter-State Commission

And "Inter-State Commission" introduces an element of uncertainty at once as to whether such a commission will exist.

Mr. TRENWITH. -

Substitute Federal Parliament.

Mr. REID. -

I think that would be better. We will regard that as an open question. Mr. Isaacs' amendment goes on to state—

as, in the opinion of the Inter-State Commission, is not unjust or unreasonable, having regard—

Having regard to what?

the needs and requirements of any other state for such purposes.

There the fairness of Mr. Isaacs' proposal unintentionally breaks down, because the needs and requirements of New South Wales are boundless. It is not the just rights, the fair rights, the riparian rights; it is "the needs and requirements of any other state." Even if I were in the position of being a representative of South Australia, I should consider the rights of my colony were put in a very vague position by that proposal.

Mr. ISAACS. -

That is controlled by the words "not unjust or unreasonable."

Mr. REID. -
The honorable member's proposal says-"having regard to the needs and requirements," not, as I would suggest, "having regard to the riparian rights possessed by other states."

Mr. ISAACS. -

That would mean nothing at all.

Mr. REID. -

That is exactly the point. I am so glad I have got my friend to admit that. The latter part of the honorable member's proposal is a most ingenious cloud of words, intended to deprive people in New South Wales of the use of water for irrigation and conservation on the only basis they possess it at present-their just rights-and to make their just rights subsidiary, not to the just needs and rights of any other state, but "to the needs and requirements of any other state for such purposes."

Mr. KINGSTON. -

Would the insertion of the word "just" meet the difficulty?

Mr. REID. -

No, it would not.

Mr. HIGGINS. -

That is the best test you could have.

Mr. REID. -

The difficulty would be met if you put in the words "the just rights," or "the riparian rights," of any other state for such purposes.

Mr. WISE. -

Or "conserving the just rights of New South Wales."

Mr. REID. -

I do not mind which. With great respect, I was trying to get from Mr. Isaacs what he is really driving at, and with his customary candor, he has at once informed me that everybody dealing with a state which has absolute right, and possession too, is asking that state to subordinate its water conservation, or irrigation to the just rights or just means and requirements of another state, which has no bearing at all on the Murrumbidgee and the Darling. I admit that they have on the Murray.

Mr. ISAACS. -

The Murrumbidgee and the Lachlan are not included in this.

If the honorable member will exclude the Darling and the Murrumbidgee from this proposal, there is not the slightest difficulty, because our friends from South Australia have rights in the Murray. We are the first to admit that they have the fullest riparian rights in connexion with the Murray. We
admit that. Let it be understood, once for all, that New South Wales engages in no controversy on that point—that we absolutely admit the rights of South Australia, so far as the River Murray is concerned. And, more than that, we are willing to agree to any proposal which comes from my friend Mr. Isaacs, or from any other representative in this Convention, to make the just rights of South Australia in the River Murray as clear and indefeasible as possible. Therefore, let us at once narrow down the discussion to the crucial point—the Darling and the Murrumbidgee. We, as to those rivers, take up the ground that the law gives us.

Sir GEORGE TURNER. -
Is the Murrumbidgee included? Is it not the Darling that is in question?

Mr. WISE. -
The Murrumbidgee is more navigable than the Darling.

Mr. REID. -
We rest our case as to the Darling and the Murrumbidgee on the simple ground which the law gives us, and therefore we thank no one for it.

Mr. HIGGINS. -
No, but because there is no law. That is what you rest on.

Mr. REID. -
Surely the honorable member will admit that a state has a right to its own territory.

Mr. HIGGINS. -
Yes.

Mr. REID. -
Very well; the Darling and the Murrumbidgee are part of the territory of

Mr. HIGGINS. -
There is no law which gives you the flowing water of any of those rivers.

Mr. WISE. -
Absolutely.

Mr. REID. -
There is only the law of right and, possession.

Mr. WISE. -
There is more than that.

Mr. BARTON. -
Where is the law that diminishes our right?

Mr. REID. -
I should like Mr. Higgins to recollect that we are just now not in some dreamy court of equity, where we prosect about rights that are never found anywhere except by equity authorities; we are dealing with solid legal rights, absolute rights, state rights, recognised by every authority in the world.
Mr. HIGGINS. - That begs the whole question.

Mr. REID. - Well, if the honorable member can quote a single authority which shows the contrary, I will listen to him.

Mr. HIGGINS. - I thought that you scorned authorities.

Mr. REID. - I did not say I scorned authorities; I scorn the interjections of the honorable member, that is all.

Mr. HIGGINS. - Because there is no law between South Australia and New South Wales, you claim to grab all the water.

Mr. REID. - No, because there is a law which gives us an absolute right to the Murrumbidgee and the Darling. In the interests of the people to whom we have sold the land in fee simple, if for no other purpose, we must vindicate our right to the water of those rivers. One of the aspects of this matter is entirely lost sight of. New South Wales has sold enormous quantities of land, based on the rights which the people possess in this water under the New South Wales law and Government. Millions of money have been received by the New South Wales Government for land sold within the water-shed of the Murrumbidgee, and the owners of that land have all the right of that Government in those waters as defined at present under the law. It is not a light question for us to nullify the things we have sold-frontages to the rivers. Supposing we were willing to hand over those rivers tomorrow to the Federal Parliament as far as the power of irrigation and water conservation went, we would change the position of our land-owners in many parts of New South Wales very seriously. We are bound to respect their rights as well as our own State rights in this matter. But what I wish honorable members to make up their minds about is this: I can quite understand, when they have a reasonable chance of appropriating something that does not belong to them, some people would try to get it, but when the person from whom it is to be got is not asleep, and knows his rights, it must be remembered that the chance, of getting it is very slight; so any attempt on the part of this Convention, or any other body under Heaven, to get New South Wales to give up her absolute ownership in the River Darling and the River Murrumbidgee must fail. That being so, I am prepared to consent to all the incidents which federal powers will bring. I admit that on those general words, as put so ably and
forcibly by the leader of the Convention, about navigation and shipping, and the regulation of commerce among the states, we may have given up powers to the Federal Parliament far beyond those which we may wish to give up, but we are giving them up, on equal terms; we are giving them up for legitimate, for vital, for necessary federal purposes. We only give them up as every one else gives up something; but this attempt to single out, in this Convention, the state rights of New South Wales for special adjudication must fail, because the tribunal is not complete. Now, I certainly do not go all the way with Mr Barton in his view, which of course, he only bases on these decisions because it happens that no decision touches the immediate point which we are on, but I think the solution of such a question on the general words of sub-section (1) would go necessarily to the highest tribunal of the empire, where all our local interests or feelings, whatever they may be would not have any voice in the decision. The matter would be decided, simply on a dry question of law, by a tribunal thousands of miles away from the conflicting interests. To-day, I am perfectly satisfied, in the interests of federation, to give up to the federal power the right to go along the Murrumbidgee and the Darling-to do what? Not to take possession of them; but, as the policeman goes along the street, in order to see that in our management of our own property we act according to law; in order to see, for instance, that in the management of those rivers we do not so manage them as to place the enterprise of South Australia or Victoria upon a different footing from that of our own enterprise. With all respect to the views which may be held, my views of these general words in sub-section (1) just amount to this—that those words do not give the physical control of the waters of the rivers concerned, that they simply give the power to look on, and if anything is done upon those rivers derogating from freedom and equality of commerce, the right to come forward and say that that thing shall not be done.

Mr. ISAACS. -

That, very possibly, will be the decision of the court.

Mr. REID. -

Well, I do not wish to gain any vote on this question by disguising my own views on the matter. My own opinion is that those general words would only have that effect.

Mr. KINGSTON. -

Which effect?

Mr. REID. -

The effect of giving the Federal Parliament, if it chose, to legislate on the subject, power to prevent our use of those rivers of New South Wales in the interests of New South Wales traders, as opposed to the interests of all
other Australian traders. In other words, that they would secure equality of commerce on those rivers. For that federal purpose, I heartily hand over every pint of the waters of the Murrumbidgee and the Darling to the Federation, to see that all the colonists of all the Australias, and indeed the citizens of the world at large, shall be absolutely equal and free upon those waters. That is where I propose to stop.

Mr. KINGSTON. -

But not to give them any power to maintain the navigability of those rivers?

Mr. REID. -

The honorable member must see that in the case of rivers which are not always navigable

Mr. KINGSTON. -

I only wish to find out what you want.

Mr. REID. -

That is the whole trouble. Here we have the River Darling, which runs for 1,300 miles, and then becomes, not dry exactly, but certainly unnavigable. If we were to give to any tribunal on earth the power of maintaining the navigability of the River Darling we would absolutely put every irrigation scheme along the banks of that river in such a position that it would be worthless-

Mr. HIGGINS. -

How do you show that?

Mr. REID. -

I find that my honorable friend's interjections do not generally tend to enlighten what I am saying, so I disregard them.

Mr. HIGGINS. -

May I ask the right honorable gentleman this question?

Mr. REID. -

Not at present. I wish to make this perfectly clear, that we must look the natural facts in the face, that it is of no use to talk about maintaining the navigability of the river, which nature has decreed shall, or may, at certain times, and often, be unnavigable. That being the case, if any power is charged with the duty of maintaining the navigability, we practically hand over every pint of water in these rivers to navigation, where navigation conflicts with the use of the waters for other purposes. That is the dilemma we are in, and we will not, for the sake of ease and comfort, shirk that dilemma. We will not allow any form of words to go into this Constitution which will place our colony in that position, and until-if the proposition of
the leader of the Convention, which I think absolutely fair, is not adopted—we hit on some solution which will make it perfectly clear that the rights of New South Wales over the waters of the Murrumbidgee and the Darling, for the purposes I have mentioned, are preserved to New South Wales, all our labour here will be in vain. The amendment of the learned member (Mr. Isaacs) is therefore objectionable to me on this point—that if we make the navigability of the rivers one of the powers of the Commonwealth, we, for such purpose, hand over, subject, of course, to what follows—I quite understand that—the whole length of the Darling and the Murrumbidgee, to the actual physical control of the Commonwealth. Now, the line we draw, as I said before, to sum up our position in a few words, is this: We will not hand over the actual physical control of the River Darling or the River Murrumbidgee, because they both absolutely belong to us.

Mr. BARTON. -
We have no authority to do it.

Mr. REID. -
Of course, we have no authority to do anything of the kind. But we are quite willing, under general words, to give the Federal Parliament the same power over these rivers as it has over every other river in the Commonwealth, the power of stepping in when we, in the navigation of these rivers, establish unfair distinctions, to the prejudice of other Australians and to the advantage of our own colonists. That defines, I hope, clearly the position we take up. It is a position which, I think I may say, is a final one. We are prepared to take all the risks of the decision on the words which are in sub-section (1). We will take all our risks, because those are federal powers of a general character. But I again earnestly wish to make it perfectly clear to this committee that what I have said really defines the final attitude of New South Wales on this matter.

[The Chairman left the chair at five minutes past one o'clock p.m. The committee resumed at ten minutes past two p.m.]

Dr. QUICK (Victoria). -
This question has been discussed with such great ability on both sides that I feel somewhat reluctant to take up the time of the committee in adding to the discussion. But it is a question of such momentous importance,
this discussion some days ago, at its initiation, by the honorable and learned member (Mr. Kingston). I was pleased at the expression of the hope in which he indulged, that the subject would be thoroughly discussed and thrashed out from every point of view, and would be eventually settled satisfactorily, and that without a division. I hope, sir, that that expression of hope will be realized—that, as the result of all the debate which is being indulged in, such a consummation will be realized. I must admit that the case made out by the representatives of South Australia in supporting their demands appears to be a very strong and reasonable one, and had I the responsibility of representing that colony in this Convention I would feel, not only justified, but bound, to take the attitude which they have assumed. They are claiming on behalf of their colony recognition of a right which would, no doubt, be of immense value and importance to that colony, not only in the immediate future, but for all time, and I, speaking as a disinterested listener to this debate, should be very glad indeed if the representatives of New South Wales could see their way clear to agree to some reasonable compromise in the direction suggested by the representatives of South Australia. On the other hand, I also feel this difficulty, that if I were a representative of New South Wales I could not possibly avoid feeling the strength of the convictions they have given expression to in this debate—convictions which have been fairly and temperately expressed by Mr. Lyne, yesterday, and by Mr. McMillan and the Premier of that colony to-day. I do not feel that this is a question upon which the representatives of disinterested colonies ought to be called upon to assume the position of arbiters. I, for my part, decline to assume the position and the responsibility of an arbiter in a contest of this kind. There are certain branches of the Constitution as to which every member of the Convention must assume the responsibility of voting according to his deliberate convictions. The structure of the Federal Parliament, of course, does not involve the consideration of any state or provincial right, but it involves a question of vital principle. On such questions as those we must assume the responsibility of our convictions, but as regards a class of powers such as the power which we are now discussing, I feel that the class of powers to be inserted in this sub-section affecting the territorial rights of states cannot be decided upon by a majority in division. I would venture to draw attention to the fundamental resolution on which we are endeavouring to frame this Constitution, a resolution which was adopted at Adelaide without the slightest dissent, and which seems to suggest and formulate the principles according to which we should go in selecting the surrendered powers to be inserted in this Constitution. It is this, that the "powers, privileges, and territories" of the several existing colonies shall
remain intact, except in respect of such surrenders as may be agreed upon, to secure uniformity of law and administration in matters of common concern. That affirms the principle to which we all agree. It says that "the powers, privileges, and territories of the several existing colonies shall remain intact, except as regards such surrenders as may be agreed upon."

Not such surrenders as may be wrested from a colony by the force of a majority division, but a free and voluntary surrender of powers. I ask, therefore, does this right which is now in dispute come within what was contemplated by this fundamental resolution, "powers, privileges, and territories"? That is the question I put to myself in determining my vote in this division. If not generally admitted, the weight of the argument is in favour of the contention that what is now endeavoured to be secured for the benefit of South Australia at the expense of New South Wales does come within that class of powers, privileges, and territorial rights now asked to be surrendered. It is suggested that if the representatives of this great colony will not agree voluntarily to surrender, it is to be wrested from them by the force of a majority division. That is a position which the Convention ought not to assume. I think that is a position which the Right Hon. the Premier of the, important colony of South Australia would not like the Convention to assume.

Mr. KINGSTON. - We prefer an agreement, of course.

Dr. QUICK. - Undoubtedly we would prefer an agreement, and I am not without hope that some agreement will be arrived at. But we are asked to force the situation when the representatives of New South Wales, after a full consideration of all the circumstances, have solemnly assured this Convention, unanimously, and not by a majority of its representatives, that this is a state right, a provincial right, which they cannot surrender. We are told in certain quarters-notwithstanding that assurance—we ought not to accept the statements of the representatives of New South Wales, but that we ought to accept some evidence of the opinion of the people of New South Wales outside.

An HONORABLE MEMBER. - Is South Australia to give up everything?

Dr. QUICK. - I admit the arguments on the side of South Australia are very strong; but I am placed in this position, that I have to decide how I am to give my vote.
Whilst I join with every member of the Convention in urging the representatives of New South Wales to make such concessions as they possibly can for the sake of securing a convention, or treaty, or agreement, which might be embodied in this Constitution, at the same time I fail to see how we can assume an attitude that would probably prevent the representatives of New South Wales from taking any further interest in the proceedings of this Convention. I was glad to notice the stand taken up yesterday by the honorable members (Mr. O'Connor and Mr. Barton) with reference to this question. I think their speeches pointed out the direction in which an agreement might be come to, and to remove all doubts, it might be reduced to black and white in the shape of a clause to be embodied in this Constitution. I believe that if that were done, and if those learned members will not merely give their verbal assurance as to the construction that might possibly be placed on the first sub-section, relating to the control of commerce and trade, but will place it in this Constitution, probably the first paragraph in the amendment proposed by the honorable member (Mr. Isaacs) might meet the case.

Mr. WISE. -

The first paragraph only.

Dr. QUICK. -

Yes.

Mr. MCMILLAN. -

Would it not be better to define navigability?

Dr. QUICK. -

That involves a technical question of definition which it might be unwise to place in the Constitution. It would be a very narrow definition. This is not an instrument for defining, the meaning of words in the English language; it is an instrument to define certain legal principles which can afterwards be dealt with by any federal tribunal to be intrusted with this great and important duty.

Mr. KINGSTON. -

Would you prefer the first part?

Dr. QUICK. -

I think the first part would greatly assist the position of South Australia. I feel some doubt as to the real demands of that colony. This morning, as stated by the honorable member (Mr. Symon), in the earlier part of his observations he seemed to restrict his demands purely to the question of control of navigation. Of course, if that

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comprises the limits of his demands, these are much simpler than are represented by the motion which he asks the Convention to accept, because
that motion goes further than the earlier portion of his remarks. In his motion he proposes to confer upon the Federal Parliament, or some federal tribunal, the control of the waters, not only for the purpose of navigation, but of irrigation.

Mr. SYMON. -

No.

Dr. QUICK. -

It seems to me, therefore, that his own motion goes further than what his observations have led the Convention to believe he actually wants. If a clause similar in nature to the first paragraph of the honorable member's (Mr. Isaacs') amendment were embodied in the Constitution, it would place beyond all doubt the application of the principles of those cases cited by the honorable member (Mr Barton) yesterday, and it would secure for South Australia that right of navigation which undoubtedly she, as well as all the other colonies, ought to have. If that principle be embodied in the Constitution, I hope that the representatives of South Australia will be able to see their way clear to accept it, and that, on the other hand, the representatives of New South Wales will also be able to see their way to agree to it.

Sir JOHN DOWNER (South Australia). -

I listened with great pleasure to the very able and fair speech made by the honorable member (Mr. Isaacs), in which he dealt with the matter more thoroughly than I think anybody else has dealt with it. He was good enough to inform honorable members in detail of the legal position with which some of us but not all were acquainted, and generally to suggest a point of view for the settlement of this dispute which was both broad and statesmanlike. I say at once that I am going to support the amendment of the honorable member (Mr. Isaacs), and failing his amendment being carried, I mean to support the striking out of the clause altogether. I am going to support the amendment of the honorable member (Mr. Isaacs), not because it is an extension of the powers of the Commonwealth which would be created by the mere fact of striking out this clause, and allowing the general provision as to trade and commerce to remain. I am going to support it on the distinct ground that it is a limitation, and a limitation which, I think, is a wise one. I shall also support it on the further ground that I do not think it is well in the initiation of this Constitution that we should use words which have a clear and distinct meaning only by reason of a judicial decision in another state, which may or may not be followed as the outcome of this Constitution. If my honorable friends (Mr. O'Connor and Mr. Barton) mean what they have said, if they mean that these words bear precisely the meaning that we want, then surely no misunderstanding
can happen from saying so. The words can never be words of extension, they must be words of limitation, so that if they want to limit us in the insertion of the words we shall be giving away something, and by no means gaining anything. To frame a Constitution with respect to which the honorable member (Mr. McMillan), one of the clearest-headed men here-no matter what differences of opinion we may have with him in respect to the speech he delivered to-day will understand one thing, and we will understand another, is to begin with a misunderstanding, and not to found a Constitution on the substantial basis on which we wish to establish it. My position has always been the same in this Convention. When the words were inserted in Adelaide which stand now, and when other words were rejected, I said then that I considered those words were words of limitation, and in no way words of extension, and I opposed them. My position has never changed. I have from the first only asked for the control-and I do not stand to the particular phraseology I am using, because honorable members will know what I mean-and the regulation of the navigable

streams. When my honorable friend (Mr. Gordon) came forward in Adelaide and suggested that, I understood there was a general feeling on the part of a great many of the committee to accept it. That is all that I require. I wish to ask New South Wales to give up nothing. I wish her only to give up what by international comity is understood to be given up by rival or hostile nations to each other.

Mr. WISE. -

Would you like it to be inserted in the Constitution that the watercourse of the Murray is not in the territory of New South Wales?

Sir JOHN DOWNER. -

I would not object to anything so long as we had the proper regulation of it. Our position, so far as that matter is concerned, is clear and definite. We ask New South Wales to give up nothing which she would not have to give up if she formed one state in America and we formed another, or if she formed one of the old states of Germany and we formed another, or if she formed a continental kingdom and we formed another. We ask her to give up nothing, but simply to recognise that railways and rivers have no relation to each other Jure naturae railways belong to those who construct them. The whole position is entirely different so far as a river is concerned, and the law which regulates all civilized communities in their internal relations should regulate hostile states, and of course to a much larger extent friendly states. I have protested throughout that we want to take nothing from New South Wales; we do not want to prevent them from irrigating their vast interior, although I do not believe that they will carry
out that work. We do not wish to prevent them from exercising any rights which they reasonably can exercise at the present time. New South Wales must remember that, although they protest they have done nothing un-neighbourly (and they have not), they said they would; but they have not kept their word. But supposing New South Wales as a matter of fact were to say, as the honorable member (Mr. McMillan) says they are entitled to do, that they would take away every drop of water from the Darling so as to materially interfere with the enjoyment of the proprietors below on the river banks-

Mr. WISE. -

I do not think it would appreciably affect the navigability of the Murray if every drop of water were taken from the River Darling.

Sir JOHN DOWNER. -

Does my honorable friend think that the Imperial Government would allow them to do it? I admit the Imperial Government are difficult to get at in questions, between the colonies; they are easy of access, but very difficult to get into motion; but, at the same time, if there were any serious proposals that had a probability of being carried out on the part of New South Wales to materially interfere with the ordinary flow of those rivers, I have not the slightest doubt that the Imperial Government would interfere, and by legislation would exercise the only control there is over the colonies in this matter, and limit their authority. We do not want that. We ask for nothing but what hostile nations would allow to each other, and we say: Treat those who are brothers at least no worse than you would treat your enemies. Recognising these fair and reasonable principles, we want to put down none of the rights of New South Wales, except in the event of that colony trying to invade ours, and then, instead of being forced to appeal to an Imperial tribunal, we wish the matter to be decided amongst ourselves according to the principles of justice and right. What fears have the representatives of New South Wales? From my point of view, I do not claim that any part of this water should ultimately go to South Australia at all, but that the water should be made the best use of for Australia. If, as years go by, it is found that irrigation in New South Wales is the best thing for Australia, though it destroyed the River Murray, I would say-"This is a matter for the Commonwealth, I trust the Commonwealth." We are studying the greatest happiness of the greatest number, and if the greatest number happen to be in New South Wales, let them have the benefits nature intended them to have. I want the Commonwealth to have power to do that, so that we may have an assertion from
Mr. MCMILLAN. -

What does sub-section (1) mean?

Sir JOHN DOWNER. -

I do not know, after the speech of the honorable member who interjects, that I should be too profuse in my explanation of what it means. It may mean what Mr. O'Connor and Mr. Barton have said. And not that alone: The effect not merely of that sub-section, but the whole ambit of the Bill, is to secure absolute freedom in the Commonwealth, so that every man can go from state to state and be charged no duty. Probably this sub-section will be wide and strong enough to do all which we want to do. Very likely it might even do more than I would do. I say this frankly, and that is why I so much appreciate the wise and thoughtful speech Mr. Isaacs gave us this morning. Because Mr. Isaacs' suggestion is not an extension of the implied powers but a limitation. It is founded on this principle—irrigation may very likely become first and not second in importance, and navigation in all probability will become quite subordinate to irrigation. Now, if either under an express provision for preserving navigability, or under an implied provision as trade and commerce, you put it in the hands of anybody—because anybody could do it who was affected—to get an injunction to preserve the navigability of the rivers where it was to the interests of the state that their navigability should not be preserved, you would not be doing what was best for the Commonwealth; but the primary right being navigability—that being the initial condition to be preserved—you are not to destroy that navigability without the consent of, somebody representing all the states, and that will be the jurisdiction which will properly be placed in the Commonwealth. So that, as far as my position is concerned, I mean to support Mr. Isaacs' amendment, distinctly on the ground that it is broad, statesmanlike, and just, not an extension but a limitation, and might be highly necessary.

Mr. SYMON. -

But you object to it being added to the amendment that it is not to be a limitation.

Sir JOHN DOWNER. -

I do not know about that.

Mr. SYMON. -

Some of us want it to be an extension.

Sir JOHN DOWNER. -

I think the amendment is distinctly a limitation. But I should like the position to be this: Suppose any citizen—because that is what it comes to—goes to the Supreme Court of the Commonwealth, and insists on the navigability of the stream being preserved, although it might be to the
direct interests of not merely one state but of all the states that it should not be preserved. We could only remedy that defect by an alteration in the Constitution; and what Mr. Isaacs' amendment says is:"Let us consider both of these things—let us consider that irrigation might become much more important than navigation—and whilst preserving the initial state right of the stream being kept navigable, still give a power to the Commonwealth to use the water for other purposes, it in the opinion of the Commonwealth—not of any particular state—that inter-state right should be infringed." As to what navigability is, I do not think that depends altogether on the time when the river is navigable. If in its natural condition a river is at times navigable, that is navigability, and in my opinion we are entitled to have it preserved. My view is that striking out this clause will leave the matter broader than if you put it in; but I go for putting it in because it is a just and righteous limitation, and gives the Commonwealth a power which it ought to have. We have had a lot of legal quotations from various sources about this matter. We had one from the Premier of New South Wales to the effect that in no case did any decision ever question the right of a state to deal with the rivers within its own borders. Of course that applies when the river rises within the borders of the state, and also discharges itself within the borders. But the moment the river rises within the borders of another state, or discharges within the borders of another state, a different aspect is given to the whole question, and we have to consider the rights of other people. Although we have not Queensland here at the present time—and more's the pity—I can well imagine the point of view that would be taken by the representatives of New South Wales if this River Darling, that our friends are treasuring so much, were interfered with, as it could be, by the action of Queensland. We cannot really deal with any of these questions without dealing with the whole. The matter is essentially federal in certain aspects, distinctly local in certain other aspects; and, while I agree with Dr. Quick as to preserving to every state the full power that is properly exclusively applicable to that state, still, above all is the Australian principle that, wherever rights may become conflicting, or even under some circumstances might cause conflict, it is well to leave within the Constitution a means of settling them, and not found this agreement, which is intended to give satisfaction to all, on a distinctly varying interpretation by different persons—taking different views of what is meant. The South Australian representatives have been accused of taking a provincial view of this question. Now, I do not think that the view I take is in the slightest degree provincial. I say I have asked for and would be satisfied to get a
provision preserving the navigability of the navigable streams within the Commonwealth; and what I want to get is only what, in the case of adverse states adjacent to each other, is allowed by the comity of nations. Of course, when one comes to talk of right, there is no right at all. Every nation has a right to do with its own property just as it likes, as long as another nation lets it do so. That is the limitation of right. But, superadded to that comes another consideration—so long as other nations let them do it; and out of that comes responsibility, and out of that the comity of nations, and friendly agreements, which are as real as if they were the civil law of a particular nation. I intend, sir, to vote in the first instance for Mr. Isaacs' amendment, and, failing that, I shall vote with Mr. Barton.

Mr. DEAKIN (Victoria).—

Before the question is put, there are one or two observations which I should like to address to the committee, not in repetition but in continuation of those which I made on a previous occasion in connexion with the debate on this question. And, in the first instance, although I do not propose to enter in any way into the consideration of the side issues raised by honorable members, there have been certain statements made with reference to the Victorian policy in regard to the water question which call for, at all events, a sentence or two of brief explanation. The record of these debates may fairly be expected to be widely read, and the observations to which I allude might otherwise lead to a certain amount of misconception. My honorable and learned friend (Mr. Carruthers), the New South Wales Minister of Lands, had evidently been furnished by one of the officers of his department with a statement as to the quantity of water being diverted by Victorian irrigation works at the present time from the tributaries of the Murray, and from the Murray itself; but I regret to say that the officer who furnished that information has confused the present and future tenses, and has included schemes which have not yet been attempted to be constructed with other projects partially executed, and with schemes which are working, but are not yet fully developed. The statement which Mr. Carruthers has made on the faith of his officers, and which he has based upon official publications which he has been good enough to show to me, is, owing to that confusion of present and future tenses, altogether a misapprehension. For instance, the statement is made that we are taking 124,000 cubic feet of water per minute from the Goulburn. But, as a matter of fact, we are not diverting 10 per cent. of that quantity—indeed not 5 per cent. I am not able at the present moment to show exactly how much is being diverted per minute, but according to information given in the last
annual return issued by the Water Supply Department of Victoria, the total quantity diverted is shown to be not 5 per cent. of the annual quantity which would be taken if it were as set down in the return upon which my honorable friend founded his remarks.

Mr. CARRUTHERS. -

Your head-works are not capable of doing it.

Mr. DEAKIN. -

No, not capable even of diverting more than from three to four fifths of the amount the honorable gentler man mentioned, and the subsidiary works are not capable of doing half that amount.

MY. CARRUTHERS. - The authority upon which my information was based are the statements of your own engineer.

Mr. DEAKIN. -

But that is only in regard to the capacity of certain headworks, and is no indication of the quantity actually being diverted. If the honorable gentleman alludes to works other than the head-works, then there are no subsidiary works capable of carrying that quantity. The next river referred to by the honorable gentleman was the Campaspe, which it is alleged we are wholly appropriating; but, in regard to that, as a matter of fact, we are diverting no water whatever. The next river referred to was the Loddon, in regard to which the same allegation has been made. But this statement necessitates for the full understanding of it the further explanation, that whatever diversion we make on these rivers is made, so far as it is made at all, in connexion with storage reservoirs, in which we preserve the flood waters and utilize them. The other rivers named are those from which we are not now diverting, either because separate reservoirs have not yet been constructed, or the works are not fully used. In order, therefore, that the statements made by a gentleman of position like Mr. Carruthers may not be taken without this qualification, I briefly call attention to the fact that, in regard to the estimate which he has given, the actual diversion of the waters made by Victoria from the Murray and its tributaries is a very small fraction of the sum total alleged. Then my honorable friend (Sir Joseph Abbott) was good enough to inform us that he had formed the opinion, and that others in his colony had formed the opinion, that irrigation works in Victoria were a failure. Of course the use of the word "failure" is open to any critic, but it should be used, I take it, with the qualifications and illustrations which irrigation experts themselves employ. Now, one of the highest irrigation authorities in the British Empire is Colonel Home, who recently presented a very valuable report to the New South Wales Government upon certain schemes in Riverina, and in a special paragraph of that report he takes care to point out that they call irrigation works
successful in India if they pay the cost of working expenses and the main part of the interest in ten years, and if they will what we call "pay" in twenty years. There is not an irrigation scheme in Victoria which has been in operation for even ten years, and there is not an irrigation law passed for much more than that time. Therefore, only one-half of the period has passed which the best Indian judges, speaking of a densely-populated country and of the highest class of irrigation systems, say is required on which to pronounce a judgment. Consequently, we may fairly say that any criticism of any Victorian scheme is at present entirely premature. There is not the slightest doubt that the honorable gentleman was justified in repeating what he himself had heard in Victoria, because up to three years ago, we had a succession of seasons of excellent rainfall, during which the irrigation works, as then constructed, were disparaged on every hand, and even in the districts where they were constructed were often condemned. Since then we have had three years of drought, and an entirely different verdict is now given in those districts, and in the colony as a whole. I will only give one instance of this. A body of men, who were capable of giving a very fair judgment, picked out one particular trust as representing a part of Victoria which they said ought never, under any circumstances, to have had an irrigation trust established within it, and in connexion with which the existing irrigation works were absolutely worthless, and could never return a single penny of value either to the State or to the persons within the trust. Now, we have been favoured within the last few months with an official report from officers of the Water Supply Department on that very trust, the Swan Hill Trust—a small trust embracing only 14,000 acres; and their report shows, by absolute figures, that at that time without the trust the people in the district would have been driven off the land, whereas, with the condemned works in that most unsuitable spot, the farmers in that season had put £30,000 in their pockets more than the farmers in the same district who were not within the trust. The whole of the inhabitants within the trust, the report said, were not only enthusiastic with regard to the benefits it had conferred, but were reaping a rich harvest from the works, instead of being driven off the land, as they would have been if it had not existed. I have taken that case, because it was picked out as the worst instance of a Victorian irrigation trust. I do not say that mistakes have not been made in this colony. I will not discuss that. I do not say that we were not somewhat premature in the extent of works we constructed, and their character and disposition—we have not completed many of them. But if we believe the representatives of New South Wales in their statement, that the transfer of rights over these
rivers to the Federal Government would mean a certain hostility of the whole of the population of the Western district of their colony, I venture to say, without the fear of successful contradiction, that any proposal in this Constitution for the transfer of the Victorian irrigation works to the Federal Government would mean the absolute hostility to federation of every farmer in the irrigable areas north of the Dividing range. That is the test of how the Victorian farmer and agriculturist regards our irrigation works.

Sir WILLIAM ZEAL. -

How are you going to vote?

Mr. DEAKIN. -

In a matter of this kind, I thought it was only reasonable to give the brief explanation I have made, so that it might be placed on record by the side of statements regarding Victoria so serious as those with which we have been favoured by representatives from New South Wales. As to my vote, I am in the painful position of not being able to vote on this question as the abstract merits of the question demand. I should have elaborated my position more fully, but that Dr. Quick, who preceded me, has anticipated my remarks. Our business and duty as a Convention is to frame a Constitution suitable for acceptance over the whole of Australia, and likely to be accepted by the whole of Australia. We are not here to draft an ideal system, but to embody in this Constitution propositions which shall embody a settlement made to the best of our ability of the rights and liabilities of all the colonies concerned. We are called upon to do that, so far as we can do so consistent with the conviction that we are not thereby defeating the very object we have in view. We are here, it is true, to settle all federal questions from a federal point of view-to bring within the scope of this Constitution all questions properly federal-and this is one-if by so doing we are not imperilling the very object for which we are here. Now, what is the position in which we find ourselves? We are asked to take,-as I think we ought to take, if we were perfectly free and unfettered, a federal stand-point on this question. Regarding it from a federal point of view, I fully indorse the claim which has been made by some, at all events, of the representatives of South Australia for the reasonable federalization of the whole of the waters of this great arterial system. It appears to me a reasonable claim, and if this were a judicial tribunal I think we should be conscientiously compelled to give a verdict in their favour. But, sir, I leave that aspect of the question for this reason, that such a settlement involves, as I put it-on a former occasion, practically all the sacrifice on the one part and practically all gain on the other part. I find that the representatives of
Mr. ISAACS. -

Some of them will vote for it.

Mr. DEAKIN. -

Some of them may, but so far as I have followed their voices they are unanimous in saying that they have no authority on this question to be governed even by their own sense of justice of the case—that they do not come here authorized to give away any of the rights which their colony undoubtedly possesses with regard to these great tributaries of the Murray—that however sound may be the arguments of the South Australian representatives, however forcibly they may have put forward their views, the representatives of New South Wales are not in a position to concede them. On the contrary, several of them have intimated that if this proposal were embodied in the Constitution, they not only believe that the electors of New South Wales would not indorse it, but that they themselves might probably have, in some degree at all events, to oppose it. Under these circumstances—although I differ from the New South Wales representatives as to the extent to which this arterial system should be federalized (I myself believe in its complete federalization)—I have to put to myself the practical question: Would I risk the loss of New South Wales rather than postpone, the settlement of this question?

Mr. HOLDER. -

Would not the South Australian electors feel just as strongly on the other side?

Mr. DEAKIN. -

I recognise the force of that interjection, but it appeals to me with much less force for this reason: That the South Australian electors are losing nothing they at present have.

Mr. ISAACS. -

They will lose something, because they will be prevented from doing what they can do now—use the Murray for irrigation as they please.

Mr. LYNE. -

They get justice.

Mr. DEAKIN. -

They get something less than what I think justice, if we were dealing with this question, as I put it on a former occasion, as with unsettled country, but not much less than justice if you take into account the vested interests in New South Wales of landowners who bought their properties, and staked their fortunes by taking up residence in its interior, on the faith that the rivers were under the control of New South Wales. These interests
have to be taken into account, and they are an important item. However, I do not wish to enter into details on this question, for reasons already given. On the whole, I believe that the federal view must be with South Australia, but fail to see that its exclusion from this Federal Constitution can be any detriment to South Australia, beyond the inevitable detriment of the postponement of the realization of her wishes. In point of fact, South Australia does not lose anything by the baulking of her reasonable ambition. If the representatives of South Australia will look at this matter through my spectacles for a moment; if they, see, as I see, no loss to South Australia, and if they see, as I see, a serious loss threatened to New South Wales, they will realize the reasons—the practical reasons—for which a final settlement of this question may well be postponed.

Mr. HIGGINS. -
What do you mean by loss?'

Mr. DEAKIN. -
There will be no loss to South Australia of any privilege which she at present enjoys, unless it be of that extremely indefinable inchoate privilege of appeal to the Imperial Government, which, personally, I do not value at anything at all. If this right of appeal to the Imperial Government on a question of inter-colonial concern is, as I conceive, intangible and practically worthless, I can see no loss to South Australia, and no reason why the electors of South Australia should reproach their representatives for having failed to gain what they could only gain at peril to the cause of federation in other colonies. Let me go a step further, and point out once more, though very briefly, the opportunities which, it appears to me, will be afforded for a settlement of this question upon better lines and on a sounder basis after federation is effected. Let the representatives of South Australia look at this question once more in a purely physical aspect; remember how entirely the future of this river system depends not upon political considerations, but upon physical conditions. It is possible—as has been shown in a leaflet by Mr. Lyon, who has had great experience of irrigation in the Ballan district—it is perfectly possible, in some cases, to render the interests of navigation and the interests of irrigation harmonious instead of antagonistic. Whether that is absolutely possible and practically feasible on the Darling I do not venture to say—it is a question for expert opinion; but there is a reasonable prospect that it may so prove, and that those whose chief concern is navigation, and that those whose chief concern is irrigation, may yet find their aspirations harmonious. We all know that whatever irrigation there is from the Darling must be extremely
limited. The best systems of irrigation are those in which a regular quantity
of water can be relied on, at regular seasons, to grow classes of crops
which it is expensive to put in, but which yield the largest return. Such
irrigation is possible anywhere in the interior of Australia to a very limited
extent indeed. The class of irrigation which is possible in the interior of
Australia is the least profitable class of irrigation, because it depends on the
most precarious conditions. It is an irrigation, practically, so to speak, from
flood waters-an irrigation from the unpredictable flow-which can be
utilized, and for which some preparation can be made by the agriculturist,
but for which he cannot afford to make any extensive preparation, and in
connexion with which he cannot sow expensive crops, there being so many
chances of failure. The consequence is, that irrigation in the interior of
Australia, beyond a very small margin, must be somewhat the same as we
see in the north-west of India, and in certain parts of the western states of
America, where inexpensive crops are put in on the chalice of there being
irrigation in any particular year. Irrigation in the interior of Australia must
always be limited by the very irregular and uncertain discharge from its
rivers, and, therefore, instead of navigation being altogether overwhelmed
by the irrigation interest, as it might be under other conditions, navigation
is likely to continue to be an important interest in the interior of Australia.
Because it is perfectly possible, by the canalization of the rivers and the
avoidance of existing losses, to maintain navigation in the river at a very
small

Sir WILLIAM ZEAL. -

Where are you going to conserve the water?

Mr. DEAKIN. -

There are suitable places scattered throughout New South Wales. It is
ture, as Mr. Glynn pointed out, that the question of evaporation is more
important in that colony than anywhere else, excepting perhaps, on the
Indian plains. That is on account of the severe heat, but still the stories can
be artificially improved. They can be deepened, and the loss relatively
lessened. It is clear that it is not an unlimited, but a narrowly limited,
power of irrigation which can be looked for on the Darling and the
tributaries of the Murray. The physical conditions surrounding the river
point to the maintenance of a cheap system of navigation at a
comparatively small loss of water; but that is to be gained most effectively,
only by treating the river as a whole, from its mouth to its furthest
navigable point. The only way in which that can be done is by federal works, under federal control. If that be the case, it should be made competent under this measure, not only for the Federal Government, with the consent of the states concerned, to take over the executive administration of the River Murray and such of its tributaries as may be necessary, but also for the Federal Government to prepare and place before the colony plans for treating the Murray and its tributaries as a whole. Colonel Home has shown, in his report, how it is possible to make a connexion between the Murrumbidgee and the Darling, or the Lachlan—one or the other. It is probable that if the system were taken as a whole, and dealt with by a sufficiently capable engineering expert, the Federal Government would be able to lay before the several colonies so strong a case for its improvement that New South Wales would find it to its advantage to hand over the Darling to federal control, and that South Australia and Victoria would then reap, under such an arrangement, all the benefits they can hope to reap under the provision our neighbours are desirous of inserting in this Constitution.

Mr. HOLDER. -

You cannot divorce the water from the land.

Mr. DEAKIN. -

No; the utmost the Federal Government can do is to make the water available at certain points, which will be chosen for their physical suitability. The state Government takes that water, and distributes it where and to whom it pleases, and at whatever cost it chooses to incur. I do not contemplate the Federal Government having any control of irrigation in any part of Australia, but if it had control of this river it could deal with it in the interests of irrigation by making the surplus water available at the most suitable points, when it would hand over that water to the local Governments. To put a clause in the Constitution is to make something like that certain. To omit it, and to leave action optional, is to make it of course uncertain. It is because of the want of a precise knowledge of detail in connexion with the possibilities of the utilization of these rivers that so much antagonism exists in New South Wales to any dealings with them. The most exaggerated anticipations have been entertained. The report of Colonel Home has come as a wet blanket upon hundreds of settlers who cherished the most sanguine hopes as to the advantages to be derived from irrigation. But that report is not final. It is not intended to be final; Colonel Home only deals with the most and part of New South Wales, but so far as that part of the country is concerned, he has discouraged many by his able and valuable report. It will only be when further information of the same character has shown the people of New South Wales what the possibilities
of irrigation and navigation practically are that you can hope to put to them the question that you are seeking prematurely to put to them here, of surrendering in a large measure the control of the rivers. Of course an immense amount of information has been accumulated by New South Wales as to its rivers, and a number of proposals for their use have been made.

Sir WILLIAM ZEAL. -

Supposing we have a drought, how will you provide for it?

Mr. DEAKIN. -

We have studied the Murray, but all this information needs to be brought to a focus. As Sir William Zeal interjects, you have the possibility of a drought always before you. You would need to have diagrams such as that which is included in our published papers, and which is now before me. This is certainly the longest diagram we have yet seen. It shows the gaugings of the Murray and its rise and fall at particular times of the year for a number of years. The information given in this most valuable map requires to be supplemented by similar information as to the Darling and the other tributaries. The whole of the reports would then have to be focussed and compared, and the river dealt with as a whole. It is only in this way that you can get the greatest value out of Australia's great arterial river. When you take into account all the ordinary federal influences and all the practical facts of the case, they certainly strengthen what may be termed the reasonable expectation that when full information has been acquired with regard to the Darling, and has been dealt with by an expert authority, the people of New South Wales will be in a better position to consider this question than they can be to-day, when they are speaking of uncertain possibilities and unknown resources. It does not appear to me to be a fair or reasonable request to ask ten representatives, returned for the purposes of federation, to consent to the introduction of a general provision in this measure, which might have the effect of handing over the control of the enormous river system which supplies the whole of their colony with the exception of the coastal districts. They do not understand what sacrifices they are being asked to make, and to persevere in such a demand as that is to raise a serious obstacle in the path of federation.

Mr. HIGGINS. -

You had better ask New South Wales what they want, and give it to them.

Mr. DEAKIN. -

When the matter relates solely to one state, and its representatives are unanimous, that is not at all an unwise method of procedure. I do not think
the representatives of any colony should be called upon to vote away an existing right.

Mr. HIGGINS. -

Are you justified in saying that New South Wales alone is concerned in this? If you can prove that the case goes.

Mr. DEAKIN. -

I do not attempt to prove it. I have not the time. But if, as I contend, the control of the Imperial Government is of no value, then practically these waters do belong to New South Wales in the sense in which the Premier of New South Wales has asserted.

Mr. HOLDER. -

These waters rise in Queensland, flow through New South Wales, and reach the sea through South Australia. How can you say that they are purely New South Wales waters?

Mr. LYNE. -

Only a small portion of the water comes from Queensland.

Mr. DEAKIN. -

If Mr. Holder will recall what I have already admitted, he will see that I am not putting it that these waters ought to belong to New South Wales in the sense in which he applies my statement. They are federal waters, but they can only be dealt with as such with the consent of those who have the present legal title, so to speak. It is a narrow and unjust title if you like, but certainly it is a legal title, whereas nobody else has any kind of legal title which can be enforced. New South Wales is asked to give up the present legal title, in order that justice may be done. That is a reasonable demand, but it is not necessarily a demand that can be reasonably and fairly insisted upon in this Convention by the representatives of other colonies. I safeguard myself by saying that the vested interests of land-holders in New South Wales create a formidable obstacle to the entire federalization of the rivers until the scheme of inquiry which I propose, and by which these land-holders will see that they are, on the whole, the gainers, is carried out. The interests of these men, and the hundreds of thousands, and perhaps millions, of pounds they have expended in improvements are a very important factor in the consideration of the position of New South Wales. I have been favoured with letters from several engineers who have called my attention to facts, more or less encouraging, in this connexion. One of these letters to which I should like to refer, because it comes from Mr. Culcheth, an Indian engineer of large experience, states that the writer has seen in India large irrigation works carried out which diverted the whole course of a stream. Within a few
miles, however, the water began to percolate back again into the empty channel, and 10 or 15 miles down it seemed to assume its original volume. Of course, we have yet to prove that this will be the experience upon the Darling and the Murrumbidgee, but examples of the principle of which this is an extreme case are not altogether uncommon. There is every reason to believe that a considerable portion of the water used in irrigation finds its way back to the stream from which it is taken. By way of illustration, let me mention what is occurring in connexion with the Goulburn. The country through which that river flows slopes from the Dividing Range to the Murray and the streams there run roughly north and south. Our object is to divert the water from them; but we only carry it back from the river for a distance of a few miles, and it naturally flows either above or below ground in the direction of the slope of the country. It is my opinion, though I cannot base it upon a sufficiency of fact to be absolutely confident of its correctness, that in this way the greater proportion of the water taken finds its way back into the Murray, or into the streams which feed the Murray.

Mr. GLYNN. -
What about the navigation of the intermediate portion?

Mr. DEAKIN. -
That point does not arise with us, because upon the Victorian rivers navigation does not pay. The whole of the tributaries being within the colony we naturally keep the river well supplied with water all the way down. In conclusion, I would say we have received a solemn assurance, which I for my part accept, that any interference at the present time with the control of the rivers of New South Wales which is possessed by the Government of that colony would probably be fatal to the prospects of federation in that state. Under these circumstances, and recalling in how much obscurity the practical facts of the case still lie, and how much the question can be illuminated by the further accumulation and combination of these facts—a knowledge of which will point to the wisdom of the creation of a federal control, and induce New South Wales to grant in the light what she is now being asked to grant in the dark—the South Australian representatives need have no cause for regret when they face their constituents. They have made a gallant attack, and if they do not succeed it will not be for their want of ability, energy, fertility of resource, or ingenuity in making suggestions and proposing compromises to gain the end which they have in view. Nothing could improve upon the tactics they have adopted or the manner in which they have conducted the fight. They have done everything that deserves success. They can go back to their constituents saving—"If we have not gained anything, we have not put you in any worse position than you occupied before." I am sorry to have to vote
against men who are fighting in a good cause, and only the paramount
interests of federation would
justify me in doing so. We are not called upon to decide a question the
settlement of which involves a sacrifice on the part of one state, and one
state alone. We, the representatives of other states, who are not called upon
to make this sacrifice, are not justified in voting to impose it upon New
South Wales. Such an action would be equivalent to being generous by
deputy, and would not give the assurance of even-handed justice.
Therefore, I shall be found voting not upon the merits of the case, but with
a practical eye to the success of federation in the great colony of New
South Wales, in the confidence that when federal government is in
existence, and the people of New South Wales have become accustomed to
the federal relationship and jurisdiction, the plea which is now urged
unsuccessfully will be successful, and South Australia will obtain what I
think she ought to obtain, and what we all desire—a federal control for the
Murray and its tributaries.

Mr. DOBSON (Tasmania). -

I rise to make a few remarks because, when I wanted to ask the Premier
of New South Wales a question, I understood from the honorable member
(Mr. Higgins) that he was rather disinclined to answer questions. Possibly
the right honorable gentleman will do me the favour now to answer a
question upon an important phase of the argument.

Mr. REID. -

My experience of the honorable member (Mr. Higgins) is that his
questions sometimes have a latent meaning.

Mr. DOBSON. -

Well, all I desire is to get at the facts, and to understand the law upon the
subject, in order that I may vote for what I believe to be just. The right
honorable member quoted to us part of a section of an Act amending the
Constitution, whereby the water-course of the Murray, which he undertook
to say meant the soil, the banks, and the water, is vested solely in the
colony of New South Wales. But he omitted to read the last part of the
section, which says that the control of this water-course for the purpose of
navigation, and the making of laws and the framing of regulations
controlling navigation, is to be vested, not in New South Wales, but in the
colonies of New South Wales and Victoria.

Mr. REID. -

Therefore New South Wales is mistress of the situation?

Mr. DOBSON. -

I take it that this part of the section absolutely negatives the right
honorable gentleman's argument, and shows clearly and conclusively that
the Imperial authorities had no more idea of granting the right to the water
to New South Wales than I have of granting Tasmania to my right
honorable friend. The section goes on to say that although the water-
course, meaning I suppose the bed and the banks, is vested in the parent
colony, the control of the water flowing through it is to be given to another
colony.
Mr. REID. -
No.
Mr. DOBSON. -
The writer of that interesting article, which has been referred to in this
debate, contends that because the colonies of New South Wales and
Victoria have not made joint laws and regulations for the control of the
navigation of the Murray, the whole of the Act amending the Constitution
is void, and the water, banks, and bed of the stream vest in the parent
colony. I read the article with great pleasure, but how can the writer say
that, because certain powers given by an Act have not been exercised, that
Act can be put upon one side, and you can fall back upon rights conferred
by a Constitution which it was passed to amend? I never heard an argument
so wanting in common sense, and in justice.
Mr. LYNE. -
The amending Act does not give any power over the water.
Mr. DOBSON. -
The amending Act speaks for itself. It vests the joint control of
navigation in two colonies, and therefore I take it that the Constitution Act,
upon which my honorable friends rely, contains about all that some of us
are asking to be embodied in this Constitution.

Mr. REID. -
Is it not fair to recollect that I distinctly stated that I raised no question of
the rights of New South Wales over the Murray?
Mr. DOBSON. -
Yes, but if the honorable member is going to dissever the tributaries from
the Murray, what kind of a river would he give to the Commonwealth,
seeing that it has about half-a-dozen tributaries in New South Wales, and
not a single tributary flowing into it after it leaves the New South Wales
border? Does the honorable member think that arguments of that sort will
carry conviction to the mind of anybody? I have no interest to serve but to
help my fellow members of the Convention to frame a right and just
Constitution, and arguments of that sort will hardly influence my mind. I
prefer to fall back on the arguments of Mr. Isaacs and others, to which I am now going to allude. Mr. Isaacs pointed out—and we all ought to be most grateful to him for his contribution to this debate—that in the western states of America, where water is of the greatest benefit and value to the and districts, just as it is in New South Wales, the man who came first—the first robber,—somebody suggested—got the right to the water, but Mr. Isaacs went on to show how the Supreme Court of that country, seizing hold of the principles of law and of the comity of states, whittled down that right, and declared that where the water was necessary for two or more states, the state or states first served must so use the water, no matter if it or they were the first robbers, as to leave a certain amount for the other states. That was definitely held by the highest court in America, and Mr. Isaacs’ proposal seeks to embody the same principle in this Constitution. If a reasonable share of the water cannot be obtained by agreement, it must be given by the Inter-State Commission, or, as I prefer, the Federal Court.

Mr. REID. -

Don’t you see a wide distinction between the rights of riparian occupiers in the same state and the rights of individuals in another state to the water of a river which begins and ends a long way from those individuals in that other state?

Mr. DOBSON. -

The honorable member puts before me the very crux of the whole matter, which he declined to deal with when on his legs. The whole question is—Are the members of this Convention willing to state in the Constitution, as I think they ought, whether we will have states with riparian rights or not? Are we going to allow the humblest individual in a state to have his riparian rights, and yet declare that the whole of the individuals in a state which happens to be below the water-shed of this river in New South Wales are to have no such rights whatever? I have always been, and must always continue to be, against the colony of New South Wales on that point. But I desire to help them, and I see and am ready to consider their difficulties, but when I asked Mr. Deakin to speak, as I did before lunch—because I know no member of the Convention who takes the same broad federal view of matters as Mr. Deakin—I did not expect that I should be, as I am, quite unable to follow him into the region where his last speech landed him. He distinctly tells us that he is not prepared to vote on this question on its merits, and that he is going to vote against his interests, his convictions, and his judgment, because he is sure, as if anybody could assure him on the point, or because he is told, as if anybody could tell him, that if we go in that direction, the people of New South Wales will not accept federation.

Mr. DEAKIN. -
And because this is not the tribunal to determine the question.

Mr. DOBSON. -

We have heard too much of what the electors will and will not accept. I do not think it is my duty to help to frame a Constitution that people will accept. I desire to frame a Constitution that they ought to accept—a Constitution which is just, which takes account of the experiences of mankind, and does not go in for any new-fangled experiments. I shall be satisfied if I know that it is a Constitution that the people ought to accept, and I am not going to bother myself about whether they will or will not accept it. Because, if we frame a Constitution in which we have confidence, and which we believe the people ought to accept, every member of the Convention ought to be loyal to the body of which he is proud to belong, go forth to his people, and ask them to accept it.

Mr. LYNE. -

What if we do not believe in what is put in the Bill?

Mr. DOBSON. -

On this question nothing would satisfy my honorable friend, and if any honorable member has half an eye on the Convention, and an eye and a half on the people of his colony, we cannot satisfy them, and should not attempt to satisfy them. But if the majority believe that a certain provision in this Bill is right and just, every one of us, the honorable member included, ought to go throughout the length and breadth of his country and advise his people to accept the Bill. If we do not do that we shall never get federation. If we are going to be disloyal to ourselves, to our work, and to the judgment of the majority of this Convention, we shall never get federation at all. One word in reference to the exact tenor of Mr. Isaacs' amendment. Although the leader of the Convention put his points very clearly, and gave us very good arguments why sub-section (1) will do, I am inclined to think that we ought, at all events, to put the first part of Mr. Isaacs' amendment in the Bill. If we stop at the word states, perhaps that might be a fair compromise. We ought to have it engrafted in this Constitution that not only the navigation of rivers which are permanently navigable, but also the navigation of rivers which are intermittently navigable, shall be under the control of the Federal Parliament. Otherwise it will be of very little use, and will land us in endless disputes. If we are to leave the question of irrigation to the Commonwealth hereafter, let that be done, if it be the will of honorable members; but may I point out that this is not really wise Constitution building? Every honorable member who has spoken has put irrigation before navigation, and yet in the Constitution we
are going wilfully and deliberately to put the cart before the horse-to leave out what every honorable member has declared to be the most important, and to legislate about the least, important of the two questions.

Mr. BARTON. -

For the simplest of reasons-one is a provincial arrangement, and the other a federal power.

Mr. DOBSON. -

The leader of the Convention would have disposed of the whole question in a single sentence if that were a fact; but it is not a fact. He tells us that this is not the place to deal with the question. Well, he has entered this Convention in the federal spirit—we are bound to credit him with the federal spirit—and I say that the rainfall which finds its way into the Murray, and the water-way of the Murray, which the Crown did not give to New South Wales, ought to be federally dealt with. The honorable member is not in a position to say that it is a provincial—a local-matter. He might just as well ask, when you talk about preferential and differential rates as a local matter—"Why should not Victoria carry goods for nothing within her own community, if she is the first or the last, robber, or anything else?" No, that is contrary to the spirit of federation; it is contrary to the business we have in hand, and if we are going to, do away with differential and preferential rates, if we are going to have a federal spirit pervading our railways, so we ought to have the federal spirit prevailing when we deal with the great waterways of this continent. Therefore, if, as a compromise, Mr. Isaacs' amendment is to stop at the word "states," I shall be only too pleased to vote for it, and I think that the representatives of South Australia will then get pretty well all they want, because we shall have engrafted in the Constitution a provision setting forth that the navigability of these rivers is to be maintained; and does not that at once limit and restrict the use by New South Wales of the water for irrigation? Certainly it does. And yet I understand the representatives of New South Wales are one and all content with that limitation. It is a considerable limitation, and in twenty or thirty years' time, when the question arises for determination: Is it wise to consider giving up federation for irrigation? I am quite sure the federal spirit will prevail then more than it does now. We shall not have the same mistrust of one another and of the Federal Parliament as some honorable members have now. In twenty or thirty years' time I believe the question of irrigation could be settled with justice to everybody, but on more federal lines, and in a more generous spirit, than that of the arguments adduced to us by the representatives of New South Wales.
Sir EDWARD BRADDON (Tasmania). -

I think the responsibility that rests on the representatives of Western Australia and Tasmania is possibly much weightier than that which rests on any other representatives, inasmuch as we are wholly unconcerned with this matter. We have no personal interest to serve; and therefore we have been recognised to some extent as the arbiters of this question. We are certainly not in the enviable position of my learned friend (Mr. Deakin), who is able to vote against his conscience, to vote against that which he believes in, because he fears that if that were carried it would prevent New South Wales from entering the Federation. If we all adopted that strain as to every question, we should have first one state, then another, and next a third severed from the federal body by some particular question being carried against it. I cannot see why the representatives of New South Wales, for whose earnestness and integrity we have the greatest possible respect, should not be ready to accept the very moderate compromise offered by the Attorney-General of Victoria in this amendment. It is not disputed by New South Wales that South Australia should have the right of navigation on the Murray. It is not contended by South Australia that New South Wales should not have the right of irrigating from her waters, and what is the difficulty?

Mr. REID. -

Ha!

Sir EDWARD BRADDON. -

What we have to recognise is that there has been something like a threat on the part of a New South Wales representative to drain the waters of the tributaries of the Darling and other rivers to the obvious depreciation and impairment of the Murray.

Mr. REID. -

No such threat.

Mr. MCMILLAN. -

No, it was distinctly stated as an extreme reductio ad absurdum of the whole-argument. I simply said that we have that right, but the statement of a fact does not imply a threat.

Sir EDWARD BRADDON. -

The honorable member who interrupts me claimed the right to drain the Darling to its last drop.

Mr. REID. -

That is either right or wrong; but it is not a threat, if it is ours.

Mr. BARTON. -

He was asked what limits he put on his legal right, and he stated the limits in that way.
Mr. REID. -
He never acted in that spirit.

Mr. WISE. -
Just in the same way South Australia has a right to drain the Murray.

Sir EDWARD BRADDON. -
The honorable member did not qualify his remark by saying that it was far from the thoughts of New South Wales to carry out her views to that extreme.

Mr. MCMILLAN. -
I said-"Reducing it, to an absurdity," and that is strong enough language.

Sir EDWARD BRADDON. -
The amendment of the honorable member (Mr. Isaacs) provides simply for interference with the action of New South Wales in regard to her waters when that action will have a detrimental effect on the Murray-that they shall not be allowed to carry on their irrigation to such an extent as to injure South Australia in her main water-way. I hope that moderation in our counsels will prevail, and that we shall see some settlement arrived at on this amendment. I have no fear that New South Wales for many years to come, if ever, will be required to do anything like draining the Darling, let alone the other rivers.

Sir WILLIAM ZEAL. -
For months in the year it is quite dry. At times there has been as much as two years' wool stored at the stations, because they were not able to get the barges up the river.

Sir EDWARD BRADDON. -
Then they were not required to drain the river; it was done for them. I do not think that irrigation will be proceeded with to the extent that some of us here imagine. Irrigation is not always the great success which some honorable members think it is. In India, after constructing tremendous canals for the purpose of irrigating large tracts of country, it has been found by experience that thousands and thousands of acres have been rendered absolutely sterile by the irrigation. The effect of the water flowing upon these lands has been to extract from below salts which have rendered the land absolutely barren. The representatives of New South Wales, who know the nature of their country, must realize that it is only in very limited areas that they will be able to irrigate with any effect, by reason of the tremendous cost of any system of irrigation. Channels which will cover the whole of the wide expanse of that country requiring irrigation-

Mr. BARTON. -
How much damage will it do to South Australia?
Sir EDWARD BRADDON. -
Therein lies, may I say in a strictly parliamentary sense, the folly-
Mr. BARTON. -
Fallacy we will say.
Sir EDWARD BRADDON. -
Therein lies the folly of New South Wales contending against the amendment, which only provides against something of which they see no possibility.
Mr. LYNE. -
What we have all contended for is that we require more water for conservation than for irrigation.
Sir EDWARD BRADDON. -
I do not see why t
Sir WILLIAM ZEAL. -
At the cost of herself and to the benefit of her neighbour.
Sir EDWARD BRADDON. -
I shall support the amendment.
Mr. HIGGINS (Victoria). -
There has been, I understand, this morning a contention raised which I thought never would have been raised, namely, that as between private owners, if they were private owners, South Australians would have no right to stop the taking of this water for irrigation if it interfered with navigation. I thought that thing was perfectly clear and perfectly beyond dispute. I am told that the Premier of New South Wales to-day referred to authorities which, to his mind, satisfied him that there was no such legal right. With all respect, I challenge his authorities. His authorities merely refer to the case where the source of a stream and the end of a stream are within the boundaries of the same owner, and, lest there should be the least doubt about it, I have looked up the case of Duddon against the guardians of Clutton Union in 26 Law Journal Exchequer, in which, beyond all doubt, it was laid down, at page 146, that where there was a spring-
Mr. REID. -
What year was that?
Mr. HIGGINS. -
The right honorable gentleman has refused to reply to my interjections, no matter how pointed they were, and I think I am entitled at present to hold the Chair.
Mr. REID. -
Quite right.
Mr. HIGGINS. -
Under these circumstances I will proceed. The position is this: That there was a spring from which there was a flow of water in a small channel into a brook, and this brook worked a mill. The man who owned the ground where the spring was, built some tanks and took all the water from that spring into his tanks. It interfered with the water lower down, and it was held there and without any doubt that there was no right possessed by the owner of the spring so to divert the water. If there is the least doubt about it the thing can be easily settled. I am rather amazed that at this time of day there should be any dispute on the point that as between private owners the lower private owner would have the right to stop the diversion of water which would diminish the flow of the water for his purposes lower down the stream. In the case of the battle of the "billy and the spuds," which is now historical, the advice of the honorable member (Mr. Dobson) was quite right, and in that case the 6s. 8d. was well earned. He was quite entitled to tell his client that he had no right to take the waters of the spring which interfered with the flow of the waters in the creek.

Mr. KINGSTON (South Australia). -  
I purposely refrained from speaking, in the hope that some arrangement might be made on this subject agreeable to all parties to the difference. But it seems the time is now approaching when we shall be compelled to have recourse, at least for a time, to the solution afforded by a division. Under the circumstances, I desire to shortly explain the reasons which will induce me to record my vote in a certain way. I shall be found giving my unqualified adhesion to the amendment proposed by the honorable member (Mr. Isaacs). I think that the Convention is not only indebted to him, as an impartial witness of the difference which chiefly concerns South Australia and New South Wales, for the preparation of that amendment, which seems to deal with matters of principle in a manner just to all, but at the same time for the remarks which he delivered in introducing the subject to the notice of the Convention. What is the position in which we find ourselves? We are told by some that the right course will be not only to strike out the sub-section which we carried in Adelaide, but to put nothing in its place. What will be the effect of that? It will be that we shall not be able to tell those, to whom it will be our duty in due course to return, what we have done; for it is abundantly clear that there will be ample room for the gravest doubt and difficulty, as to the effect. Is that a fair thing? Ought we, who were sent here for the purpose of framing a Constitution for the acceptance of the electors, to go back under circumstances which will warrant us, at least, in telling them that, as regards the effect of the position in connexion with the waters of the federal rivers, we do not know what we have done? Ought not we at least to try to put the matter clearly before the
electors! Ought not we resolve what is really the difference between us, and ask the Convention to vote upon it? The reason why I emphasize this is because of the doubt which exists as to what will be the effect if we strike out the sub-section now under consideration, and put nothing in its place. It is bad enough in a matter of this sort when the opinion of representatives from different colonies vary; but when we find such high authorities as the representatives of New South Wales at variance on the subject, the position to my mind appears to be altogether lamentable. We are told by the leader of the Convention that if we strike out the subsection, and put nothing in its place, there will be ample power in the Federation to restrain interference with navigable streams.

Mr. BARTON. -
I say that again.

Mr. KINGSTON. -
On the other hand, I think our leader will agree that his view is not altogether concurred in by the Premier of New South Wales, who put it that so long as no preference was given to the people of New South Wales, or some particular state, the people of New South Wales would have an unlimited right to interfere with the navigability of rivers within their boundaries. Which is right? I do not want, when such high authorities differ, to express any definite opinion upon the subject.

Mr. BARTON. -
Which do you think is right?

Mr. KINGSTON. -
I will not even endeavour to overcome my natural diffidence upon the subject, but I will ask this Convention to say; and I think there will be practically unanimity upon the subject. We ought to make it perfectly clear. To return to our several colonies, and to tell them that, whilst the leader of the Convention has declared that the Bill is in such a shape that the navigability of navigable streams cannot be interfered with, yet the Premier of New South Wales holds an altogether different opinion would be to return under conditions which would be discreditable, and I use the word advisedly, to every member of the Convention. We ought to agree. There are various modes of making an agreement. There is the agreement of absolute unanimity; there is the agreement of the majority in a certain view; but there is one position which I think that we ought to avoid. It is that of returning to our colonies under such conditions that we shall have to tell those who sent us here to make arrangements that we have not been able to make any satisfactory arrangement; that the only agreement we
have come to is differ; and that we have come to look upon the subject in this light: That we shall have to get some authority to pronounce a decision on the subject, but that there are very grave doubts whether that authority has any very considerable power of dealing with the question. It has been put with some degree of force by the honorable member (Mr. Deakin) that he is embarrassed by the position in which he finds himself; that he is struggling between considerations of right and justice, and what he thinks may induce the acceptance of this Constitution by a particular state. He told us—and I confess I was disappointed to hear it from him—that he has concluded that the better course will be to sacrifice his conscientious scruples as to what is right and fair between the several states and to vote—

Mr. DEAKIN. -
To decline to give a verdict at present.

Mr. KINGSTON. -
And to vote in a manner which might induce a greater desire on the part of New South Wales to accept this Constitution than otherwise might be the case. I would put it to the honorable member that we are here for the purpose of framing a Constitution for Australasia fair and just to the several states. In what we have done we have done our duty, and so long as we have discharged this duty we can be in no way to blame. Upon the electors of the various provinces will rest the responsibility of saying whether or not they will accept this Constitution when it is presented to them for their consideration; and I ask the honorable member (Mr. Deakin) whether he thinks it would not be better for him to record his vote in accordance with his conscientious conclusion as to what is fair and right, than to defer to that oft-repeated—I will not say threat, but that oft-repeated expression of the probability that a contrary vote to that he intends to give might injuriously affect the cause of federation in New South Wales? There may be in a matter of this sort a natural desire on the part of those who represent the various states to put the matter more strongly, for the purpose of securing the approval of their own particular people, but I am very sanguine that, so long as we do only what is right and proper to each and all, no state will require, as a term of its assent to federation, anything like an injustice such as

the Bill, in the condition in which Mr. Deakin proposes to leave it, would effect, so far as South Australia is concerned.

Mr. DEAKIN. -
Your claims would be postponed, they would not be impaired.

Mr. KINGSTON. -
It seems to me that this is the time when we should, so far as we possibly
can, bring within the ambit of the federal jurisdiction all matters that properly belong to it. This is the time for removing constant sources of conflict, which should be determined by the federal authority. What is the position of South Australia? I make no complaint with regard to the attitude of New South Wales, but representations that have been addressed to her upon this subject in the past have not been as fruitful in result as we could have desired. We have postponed any further action in the matter, in the hope that at a gathering of this sort, attention might at least be given to our fair claims; we are here to-day to ask for that attention to be given to them, and also that those who recognise our claims as fair and right may be found recording their vote according to their consciences. Why should the representation be postponed? Honorable members see the action of the representatives of New South Wales to-day, when it is proposed that a reference of this difficulty should be made a term of the great partnership into which it is proposed that we shall enter, when we are able to offer some inducement to her for the relegation to the federal authority of matters of this sort, to which authority we are equally disposed to refer similar matters. What additional hope is there that we shall be able to secure what is denied to us to-day, if the matter be now deferred? As regards our customs barriers, we agree to remove them most freely; as regards the question of rival competing railway rates, they are to be referred to the jurisdiction of the federal authority; and as regards this matter, I venture to remind honorable members of this Convention, having in the natural order of things some knowledge of how it affects South Australia, that our trade with New South Wales is dependent to a very great extent on the navigability of the River Darling, notwithstanding which the position that is put by some of the representatives of New South Wales to-day is that they have a right, if they so desire, to cut off that trade from us altogether, draining every drop of water out of the Darling.

Mr. LYNE. -
Do you not contemplate extending your railways some day?

Mr. KINGSTON. -
We know what are the rival advantages of water as compared with land carriage. I think it is generally recognised as exceedingly difficult for land carriage to compete with water carriage. We desire to have the benefit of the fair advantage arising from our geographical conditions, and from the bounties of Providence in connexion with the use of river waters. We want nothing more.

Mr. REID. -
Providence meant that there should be some communication, I think.

Mr. KINGSTON. -
Yes. In regard to this amendment of Mr. Isaacs, the necessities of irrigation are recognised, and the fairest provision is made for the use of the water for this purpose.

Mr. LYNE. -
And some one else is to tell us how much we may use.

Mr. KINGSTON. -
Some one else is to act in the interests of all the parties concerned. If it were a question of fear, we in South Australia might fear to the requisites of navigation. I do trust that the vote which it seems to me must be shortly taken—though even now I should welcome anything in the shape of an amicable arrangement—will have the effect of securing a recognition of the claims of South Australia, which I think it will be admitted have been most moderately urged, to that attention to which I venture to suggest they are entitled.

Mr. CARRUTHERS (New South Wales). -
I do not desire to trespass to any great length upon the time of the Convention, having in view the fact that I have twice already expressed my views upon this subject. My purpose, however, in rising is in order to make a proposal which may be assented to by a majority of the committee, and which, if agreed to, will, I believe, be satisfactory to the colony of New South Wales. In the first place, the proposal made by Mr. Isaacs is not one which the representatives of New South Wales could fairly vote for. It leaves the question in a state of doubt and uncertainty which would absolutely prevent enterprise and capital being expended in New South Wales in any works of water conservation, where the waters of navigable streams could be affected, until such time as the Inter-State Commission had given some authoritative decision. I allude to the latter portion of the amendment proposed by Mr. Isaacs, which states—

But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such an extent as, in the opinion of the Inter-State Commission, is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purposes.

The proposal is in the amendment stated in negative language, but putting it in affirmative language it means that the state may be and shall be prevented from using or conserving water unless such conservation or use is consented to by the Inter-State Commission. That provision is unreasonable and unjust, having regard to the rights of every state. While there is an unknown quantity being imported into this great question of water conservation, who is going to risk the expenditure of £25,000—which
is the least sum you can speak of for purposes of water conservation on a large scale—in connexion with these rivers, when you can have no decision as to whether the expenditure is allowable or not till the works are in operation, and the Inter-State Commission is brought into the matter as an arbitrator? If a clause of this character were inserted in the Constitution, it would paralyze all energy and enterprise in New South Wales with regard to the use of the water, and the representatives of Victoria must see that. A proposal is now before the colony of New South Wales for the diversion of a large proportion of the waters of the Murrumbidgee by long channels, which will ultimately restore that water to the Murray River. There will be no actual use of the water except for the stock along the course of the channels, and there will be no loss of water so far as South Australia is concerned. It will, however, be diverted from a stream that would come within the definition of navigable river in this amendment. It may be that a work of that character would never be objected to, but still the promoters of it would not dare to run the risk, knowing that possibly after they had expended £100,000 or £200,000 the federal authority would declare the scheme to be unlawful. The importation into this Constitution of an element of uncertainty in relation to what we consider to be essential to the development of our resources ought not to be tolerated, and I say that the latter part of the amendment, which gives the Inter-State Commission the right to declare any works to be unlawful because they are unreasonable or unjust, would jeopardize the construction in future of any works for water conservation.

Mr. ISAACS. -

No, it would not affect the works, only the quantity of water you may take at any particular time.

Mr. CARRUTHERS. -

I will put a case to the honorable member, and I think he will see that his interjection is not an answer to my argument. I will take one work, which is the subject at the present time of extensive litigation in New South Wales, without passing any opinion on the litigation itself. The same question arises in this case as would arise under the provision we are now considering. Some enterprising Victorians—I think Sir Samuel Wilson and some others—spent £25,000 in diverting water from the Murrumbidgee River into the Yanko Creek. That water has been diverted for some considerable time past. The persons who have diverted it—the run-holders along the channel—are now applying under our Water Rights Act for certain rights. Certain other persons lower down make a claim for obstruction. A
work of that character must interfere to some extent with the navigability of an intermittently navigable stream like the Murrumbidgee. The cutting into the Yanko diverts a large quantity of water from the Murrumbidgee. That water is never restored to the Murrumbidgee, but it enters the Edwards River, which flows into the Murray River. The question of the quantity of water taken from the Murrumbidgee hardly enters into consideration, because the moment the cutting is made to a certain depth, the river is robbed of some of its water. If the cutting is to be of any value at all, it must take away a large body of the water. The question is whether such a cutting as that would be permissible at all; but I venture to say that no person would be so blind to his own interests as to undertake a work of that character without knowing what view the Inter-State Commission would take of it.

Mr. ISAACS. -

May I say that in many of the western states of America they have boards variously constituted to decide precisely similar questions with regard to gigantic works?

Mr. CARRUTHERS. -

I dare say they have, and I dare say the difficulties I am endeavouring to indicate have occurred. As a matter of common sense, they must occur. I put it to honorable members whether men with capital would risk its expenditure in works when they did not know whether those works would be considered to be reasonable or not.

Mr. ISAACS. -

They do it in America.

Mr. CARRUTHERS. -

They could not do it under this proposal. There is no proposal before the committee by which the Inter-State Commission could give a right and a title to the works before they were constructed. Under all legislation in Australia at the present time, the parties do get a title before the work is constructed. You can apply under the Water Rights Act of New South Wales for a title. In Queensland a similar law has just been passed, and I dare say it is the same in Victoria. The contemplated work is placed before a board. The board examines it, and it grants a licence for the work. Here the proposition is that after the work has been constructed and has been in operation it may be declared illegal, on the ground that it is contrary to some provision in the Constitution Act. That imports an element of doubt and uncertainty, which would be fatal to the exercise of energy and to the expenditure of capital, in regard to what we consider to be a very great necessity in the colony of New South Wales—water conservation, I listened to the remarks of my honorable friend (Mr. Deakin) with a great deal of
interest, and I hope he will forgive me for again saying that, as far as New South Wales and its representatives are concerned, we do not place much importance upon irrigation. Water conservation, as distinct from irrigation, which will meet the present requirements of the large number of stock that are carried in our country is what we attach most importance to.

Mr. DEAKIN. -

The greater includes the less. We use the larger term because it includes with us water conservation and distribution.

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Mr. CARRUTHERS. -

There could be no irrigation without conservation. Just as pastoral occupation must largely precede agricultural occupation, so water conservation must precede irrigation. We have arrived at a stage at which water conservation becomes an absolute necessity unless we are prepared to go on as we have been doing during the last three years, losing 10,000,000 sheep each year. This loss is caused not so much by the want of food as by the want of water. The stock have to be crowded together near the tanks and the river frontages. There may be grass in the back blocks, but there is no water. We find it necessary to take the water to where the food is, in order that we may profitably continue the pastoral occupation of the country. Mr. Deakin glanced cursorily at Colonel Home's report, and he will forgive me for saying that that report goes to show that the time has not yet arrived in New South Wales, or practically in Australia, for any irrigation schemes to be put in operation. This is not because the land is unsuitable, or because the water is not there, but simply because we have not a sufficiently large population to make a market for our products. When we have 100,000,000 of people we can go in for irrigation schemes such as have been carried out on the Ganges and on the Nile. Colonel Home's report practically shows, not that irrigation is impossible, but that we must postpone our irrigation until we have got consumers to use up the products obtained by irrigation. So far as water conservation is concerned, Colonel Home proposes or sanctions two schemes, both of which would be jeopardized if Mr. Isaacs' amendment were carried. One of these schemes is to divert a large body of water from the upper portion of the Murrumbidgee, and not to use it for irrigation, but to ran it along through channels in Riverina which have been dry for many years, and return it to the Murray, to replenish and increase the volume of that river for the purposes of navigation. My chief object in rising was to propose a new sub-section in place of subsection (31). I quite concur with the major portion of the speech of the Premier of South Australia. I do not believe in
the excision of sub-section (31), because that would leave this question to be decided by the Federal Judicature, and would import the same element of doubt and uncertainty as would be imported by the adoption of the proposal of the Attorney-General of Victoria. It would be fatal, not only to our reputation as framers of the Constitution, but to the interests of those who must engage in these water schemes, to leave this element of uncertainty as to the legal rights of the states, and of the Commonwealth. I am of the opinion that a provision should be embodied in the Constitution putting this question beyond all doubt and uncertainty. In regard to navigation, I agree with my, honorable friends from South Australia and Victoria that there should be very little difficulty, and, therefore, I propose that the maintenance of the navigability of the Murray and its tributaries shall be a matter of federal concern, subject to a condition to which I shall afterwards refer. The improvement of navigation is a proper thing for the Commonwealth to, undertake, with the concurrence of the riparian states; but both the maintenance and improvement of the navigation should be subject to what we have practically agreed is the paramount right—the state powers. I am indebted to the honorable and learned member (Mr. Isaacs) for that expression, and I was very much taken with his use of the words "state powers" in place of the words "state rights." The maintenance and improvement of navigation should be a matter of state concern.

Mr. ISAACS. -

In other words, New South Wales should be able to do as she likes.

Mr. REID. -

If she has the state powers. You are always grabbing at something that does not belong to you.

Mr. CARRUTHERS. -

Have we done as we liked with these waters in the past?

We have never done anything with regard to them to injure the rights or powers of our neighbours. And are we to be mistrusted to such an extent that our colony must enter the Union tied hand and foot, and bound every way by regulations of this character? This is not the federal spirit, and if the belief in this feeling gets abroad it will give the death-blow to federation in New South Wales. If it is thought there that these clauses have been put into the Constitution because New South Wales is dreaded and distrusted in the exercise of her undoubted powers, you are not likely to get her people to accept the Constitution.

Mr. ISAACS. -

She will not accept a just Constitution; is that what you mean?
Mr. CARRUTHERS. -

She will not accept a Constitution importing an element of doubt and uncertainty, which will be fatal to the use of these rivers for irrigation. It would be cheaper for New South Wales to buy out the trade of South Australia than to permit this interference with her rights. It will be cheaper for us to pay South Australia so many million pounds for her trade on the Darling than to sacrifice what we consider to be an element of vitality. We have no intention to use the waters of these rivers so unreasonably as to prejudice navigation. What we dread is that rival interests may spring up - not state interests, but mercantile interests - which will bring cases into court in which it will be asserted - and the assertions may be hard to answer - that New South Wales is responsible for the low state of the rivers because of her water conservation and irrigation works, whereas this low state of the rivers may be solely attributable to droughts. We may be made responsible for the changes and vicissitudes of the season, if merchants are empowered to raise these questions in regard to matters affecting their pockets. Upon what does the maintenance of the navigability of the Murray and its tributaries depend? Largely upon the snagging of the rivers. My honorable friends from South Australia know that. The Darling could be made navigable for at least three months longer in each year if the bed of the river were properly snagged. Of course there is occasional laxity on the part of the New South Wales Government in carrying out this work to keep open a river for the benefit of South Australia; but we are quite willing that the Federal Government should have the power to come in and render the water-way navigable by removing the obstructions which are brought down by every flood. With regard to the improvement of the navigability by the construction of locks and in other ways, we believe that to be a matter of state concern, and one in which the states that are interested should concur. I have no doubt that it would be found to the interest of New South Wales to agree to any reasonable proposal for the improvement of the navigability of either the Murray, the Murrumbidgee, or the Darling. I have pointed out, in common with my colleagues, that we have a provision relating to the occupation of our Crown lands, under which, upon the assessment of the rents of such lands in the western division, regard is had to the cost of carriage to the nearest regular market. If the Federal Parliament could so improve the navigation of the Darling as to cheapen the carriage of wool from our stations upon the Darling we should benefit, because we should get more rent for our land; but I say that the concurrence of the riparian states should be obtained when these improvements are suggested. It would be a very serious thing for Victoria and New South Wales if a federal project were put on foot having for its
object the expenditure of some millions of pounds to make a permanently
good entrance for shipping at the mouth of the Murray, because we should
then have the waters that ought to be conserved in that river quickly
flowing out to sea; and as you gave a better outflow at the mouth, so you
would have a lower level of water in the
river, which would, of course, be detrimental to navigation. With regard to
the latter portion of my amendment—that making the maintenance and
improvement of the navigability of the Murray and its tributaries subject to
the state powers over the waters thereof for local conservation and use—it
does not import any unreasonable use of the waters, it only imports that the
state powers now possessed and exercised shall continue to be possessed
and may be exercised by the states.

Sir GEORGE TURNER. -
Would not there be the very element of uncertainty with regard to those
words which you object to in Mr. Isaacs' amendment?
Mr. CARRUTHERS. -
No, because I do not use any such words as "unjust or unreasonable."

Sir GEORGE TURNER. -
But what are the state powers?
Mr. CARRUTHERS. -
The powers now possessed by the states.

Sir GEORGE TURNER. -
We are not agreed on them. What are they in your opinion?
Mr. CARRUTHERS. -
They have been put by Mr. McMillan, who said that South Australia has
the power to drain the Murray dry if she likes to exercise it, that New
South Wales has the power to drain the Darling dry if she likes to exercise
it, and that Victoria has the power to drain the Goulburn dry if she likes to
exercise it. But who, about to embark into federation, would accuse any
colony of daring to do any such thing? Surely we never came here with
such doubt and suspicion as to believe that we should have a provision
against those things in the Constitution? If we were obliged to provide
against every contingency of that character we should have to frame a
Constitution which would be a monument of disgrace to the colonies
concerned, a Constitution teeming right throughout with provisions of all
kinds against things which no colony would dare to do. Therefore it is
quite unnecessary to make any provision for things which it has never been
proposed to do, and which no honest man believes ever would be done. I
hope my amendment will be carried, because it is a fair compromise on all
the matters that are exercising our minds, and because I believe that it
offers the only practical and agreeable solution of the case, as far as New South Wales is concerned.

Mr. SOLOMON (South Australia). -

The atmosphere outside the House is rather foggy, and the debate has resolved itself into a somewhat similar condition. After listening to the Premier of New South Wales and other learned lawyers, I shall not even quote the celebrated case of the spring and the brook, or imitate those honorable members, some of whom, like Tennyson's brook, would, I believe, be able to go on for ever. I intend to put my remarks in as few words as possible. Mr. Carruthers has proposed what he considers a fair compromise, but that compromise, boiled down, really means that New South Wales is to retain not only all the rights she has, but also all the rights that she says she has.

Mr. CARRUTHERS. -

South Australia will got the same, and a great deal more.

Mr. SOLOMON. -

The honorable member's amendment says that the rights of the riparian states, which are not interpreted, shall be preserved, and that the navigability of the Murray and its tributaries shall be preserved. The last two lines of his innocent amendment adds-

But subject to the state powers over the waters thereof for local conservation and use.

Those latter words seem to me to put the whole thing back to the position at which it started. What are state powers? Have we all come here as representatives of the various colonies to adhere strictly not only to the letter of the law as to assumed or imaginary rights, but to stick to those state powers that we think have been given to us by our original charter? Or have we come here with some idea of federation? Is there any sentiment of federation whatever in the representatives of New South Wales in reference to this question? We have heard from them over and over again the idea of trusting to some extent the Federal Parliament, but here, in this particular case, we have heard all through, from the commencement to the finish of this debate, but one thing from New South Wales—that they will not budge a single inch; and not only do they suggest that they will not agree to a fair and reasonable compromise such as is proposed by the Attorney-General of Victoria, but also that subsection (31) of clause 52 as it now stands should be eliminated from the Bill, because subsection (1) of the same clause covers the whole ground.

Mr. BARTON. -
It covers a lot more.

**Mr. SOLOMON.**

I am really surprised at the leader of the Convention and other legal members, and, with some temerity, I venture to question their genuineness in the interpretation they are giving to the Convention of the meaning of subsection (1). It seems to me exceedingly strange that, after fighting about this sub-section (31), which, at least, preserves the navigation of the Murray from where the river first bounds Victoria and New South Wales, we should be told it is all covered by sub-section (1). But if subsection (1) means all that these learned gentlemen of the law have told us, why is it that we have heard so little about it until the last moment, when they are cornered?

**Mr. BARTON.**

That is not the fact. I have all along said that the proper course was to abolish this sub-section, and stick to sub-section (1).

**Mr. SOLOMON.**

Will the leader of the Convention or the Premier of New South Wales say that sub-section (1) means as much, or anything like as much, as sub-section (31)?

**Mr. BARTON.**

It means more, because it gives you everything that sub-section (31) gives you, except the use of the waters, and it secures you a great deal more in the way of navigation, because it takes the navigatory power over the whole of the Commonwealth.

**Mr. SOLOMON.**

A very wide meaning may be given to sub section (1), but almost all the legal gentlemen of the Convention-perhaps I was wrong in saying all-have argued right through that subsection (1), which in very broad language gives power to the Federal Parliament for the regulation of trade and commerce with other countries and among the other states, covers the ground in reference to rivers. Very few of those honorable members have taken that ground until the last few days. It has been their refuge after every other argument has failed. Take this particular sub-section, which may be interpreted in the future by the Federal Judiciary, which, we hope, will have to interpret the Constitution we are now framing, as covering everything and giving full rights between the states, in such a way as to equitably deal with all the states in regard to their commerce and the navigation of their rivers-there is hardly a member of the Convention who will not admit that there is a very strong element of doubt as to whether sub-section (1) will ever be interpreted by the Federal Judiciary in such a way as to conserve the interests of South Australia. There are some
honorable members, I am sorry to say, who are willing to accept this interpretation, who are willing to give away the little bit of consideration that the representatives of South Australia have fought for right through-that consideration in sub-section (31) which gives to the federal authority, without any doubt, without any fear of misconstruction, the control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea. They would give away that one right-that one little bit of substance-for a mere shadow, which has been presented to them by some eloquent, earnest, and undoubtedly clever legal gentlemen who occupy seats in this Convention. Whether the amendment of Mr. Isaacs will or will not be accepted I do not know. I shall certainly give my vote for his amendment—with some slight alterations perhaps—but I do earnestly appeal, not only to honorable members representing South Australia, but also to other honorable members, not to let slip sub-section (31) until we are absolutely assured that we have something equally as definite, equally as clear in its interpretation, to place before the people who sent us here. If the representatives of South Australia were to go back to that colony with this particular sub-section eliminated, especially after this Bill has been before the Parliament of that colony, without any suggestion that that sub-section covers the whole ground, and to say then to the people-"We have given away sub-section (31), which certainly gave you-

The control and regulation of the navigation of the River Murray, and the use of the waters thereof from where it first forms the boundary between Victoria and New South Wales to the sea;

and we have accepted in its place subsection (1), which gives an indefinite and a very questionable control of the commerce, and we take that as a full interpretation," I fear very much that South Australians would hesitate before they accepted a Constitution so framed. The honorable member (Mr. Carruthers) has told us, in a style peculiarly his own, that it would be better for New South Wales to buy out the whole of the trade of South Australia than to give way one inch in reference to the navigation of the waters of the rivers. Of course we know that New South Wales could buy out the whole of the trade of South Australia. Probably she could purchase South Australia in fee simple, and then Victoria, and the balance of her unused funds this wealthy colony could invest in consols, and reduce the taxation on her people. All this might be done by New South Wales. We do not want them to purchase the trade of South Australia, we do not want them to give anything but what is just and federal and right; and the
representatives of South Australia have not asked for anything but what is just and fair, and have shown their idea of justice and their federal spirit by proposing from start to finish that the whole of this question as to the rights of the colony having the river passing through its territory lower down than the Darling should be distinctly and clearly placed under the control of the Federal Parliament. We might very well contrast this attitude of South Australia and her representatives, in regard to a question of this kind, with the attitude of the representatives of New South Wales all through in this particular debate. It has been one continuous cry-"We have the rivers, they pass through our territory; we hold them, and we will stick to them." It has not been a question of whether this particular sub-section which is submitted or that sub-section will suit New South Wales. It has been a question with the representatives of New South Wales that they have their claws on the rivers, and intend to stick to them as far as they possibly can. But in this one important point - and undoubtedly it is a very important point to South Australia - New South Wales will not consent even to grant the small concession demanded as to the keeping open of the navigation of the rivers to South Australia. Now, what are the arguments used by the Minister of Lands for New South Wales, in reference to this particular question of irrigation? At first we heard from that honorable gentleman and others that the question of irrigation in New South Wales was one of paramount importance, that they had thousands, if not hundreds of thousands, of acres of land which might be rendered fertile by using the waters of the Darling and of the Murrumbidgee for the purpose of irrigation.

Mr. CARRUTHERS. -
Not by me. You are quoting somebody else.

Mr. SOLOMON. -
By other members of the delegation from New South Wales. Undoubtedly the first argument placed before this Convention, and reiterated by member after member representing New South Wales, was that irrigation was of immense importance to that colony. I think honorable members will hear me out that that was the first ground taken. But the Minister of Lands for New South Wales, who should be the one to know to what uses the lands of that colony can best be put, tells us to-day that the question of irrigation is not of so much importance, because there have been arguments over and over again from other members of the Convention that irrigation by pumping has not been a success throughout Australia, but that it is in order to supply the millions or hundreds of
thousands of starving sheep and cattle in New South Wales with water in dry seasons that they desire to retain the control of these waters absolutely.

Mr. CARRUTHERS. -
Without which you would have no trade at all down the Murray.

Mr. SOLOMON. -
Then again, the honorable member told us that these waters will be absolutely returned to the Murray, or almost all of them, in another direction. I do not understand this shifting of ground. First we have the question of irrigation works with a view to agricultural settlement, with a view to adding to the fertility of the country, but it is well known, as has been pretty well shown by previous speakers, that irrigation by pumping has so far throughout Australia proved to be a bitter failure, to the cost of Victoria and South Australia, with their experimental settlements at Mildura and Renmark. So far from enabling the settlers to profitably occupy the land, and to compete with California and other places in the growth of fruits and so forth, irrigation has been an absolute failure. The distance of the settlers on the Murray from the markets, and the cost of from 25s. to 30s. an acre for irrigation by pumping, have precluded the possibility of their competing with California in these matters. We know that not only these two settlements but that other settlements on the Murray which have been established by the South Australian Government have been absolute and utter failures. The representatives of New South Wales have retreated from that particular ground altogether. They do not require the waters of these rivers for the purpose of irrigation, for the purpose of agricultural settlement, but for, the support of the pastoral industry in the pastoral country. Will any honorable member with colonial experience tell me that he knows of pastoral country being profitably occupied, of sheep or cattle being profitably grown, in irrigated country, except in some of the northern and north-western parts of Queensland, where the irrigation has been by gravitation from artesian bores? With that exception, I think, I may safely challenge any honorable member to show me where the occupation of pastoral country, especially in the present state of the market for pastoral produce, has been rendered profitable by irrigation by pumping. What are the conditions of the country on the borders of the Murray which they are going to irrigate? Are the levels such as to permit of irrigation by gravitation except at a tremendous cost?

Mr. CARRUTHERS. -
I never referred to irrigation at all. I referred to water conservation and the supply of water in the creeks for the stock to drink.

Mr. SOLOMON. -
Precisely; water conservation for the supply of stock over a vast area.
This water has to be conserved in natural lakes, which are dry in most seasons. The water is to be carried from these lakes over miles of country. I have seen sketches of what is proposed by the New South Wales Government. They propose to carry the water over stretches of dry country for miles and miles. Will the honorable member say seriously that he believes pastoral occupation can be profitably conducted under such circumstances?

Mr. CARRUTHERS. -
I did not relate such ridiculous circumstances.

Mr. SOLOMON. -
Unfortunately, those are the circumstances. Having retreated from the position that the water was necessary for irrigation for agricultural settlers, honorable members say they must have this water for the benefit of the pastoral country.

Mr. CARRUTHERS. -
What does the trade of South Australia consist of except the carrying of the wool from this pastoral country, and the wool cannot be grown on the sheep's back unless there is a water supply.

Mr. SOLOMON. -
At the present prices it would not pay to grow wool under such circumstances, and such an experiment would be disastrous to the people of New South Wales. If this Convention prevents the possibility of such an experiment being made it will confer a benefit upon the people of New South Wales. It has been tried elsewhere, and never without failure. The honorable member said that this would not decrease the flow of water in the Murray; that the water will be afterwards returned to the Murray with little loss.

Mr. CARRUTHERS. -
I referred to a particular place.

Mr. SOLOMON. -
I thank the honorable member for his interjection, because it reminds me that while he and his colleagues are fighting so strenuously against the reference of this important question to the arbitration of the Federal Parliament, he told us of an instance in his own country where some private persons had obtained water rights, and had spent £25,000 in diverting the waters; but they now have to face litigation in the colony, because they are interfering with the rights of those below. If any honorable member of this Convention could possibly give us an instance to show how necessary it is to provide something in this Constitution to deal with water rights between states, it is the very instance which the honorable
member has quoted, where even in their-own colony the diversion of the water has been fruitful in litigation. The Premier of New South Wales expressed the opinion that the first sub-section of clause 52 would do all that the smaller colonies or South Australia really demanded. If that is the case, what objection in reason can that honorable gentleman or his colleagues have to place this matter, which they say is fully covered, in a very clear and convincing manner? What reasonable objection can they have to place it absolutely beyond doubt, as it is placed by the amendment of the Attorney-General of Victoria? Either they do not believe that the clause does cover the ground or they think there is an element of doubt which may be construed for the benefit of New South Wales if there is any controversy on the subject. I do not think that the demands of South Australia can be termed unreasonable. We have made no demand whatever to interfere with any possible irrigation or water conservation works to be constructed in future by New South Wales. All that has been claimed by the representatives of South Australia all through is that whatever works may be constructed, whatever may be necessary for the benefit of New South Wales and the development of her natural resources, shall receive fair and due consideration. They say this Convention is not the place where we can state what that consideration shall be in absolute words. No Constitution that we can frame could provide for contingencies which may arise in reference to this serious question. But, as pointed out by Mr. Holder in an interjection, we, an absolute minority in the House of Representatives under the proposed Constitution, are content to trust to the justice and equity, and the spirit of fair play, which will, we hope, be the prominent characteristics of Members of the Federal Parliament with respect to our rights, whereas the great colony of New South Wales, which will be represented in the House of Representatives under the Constitution by three times as many members, fears to trust the Federal Parliament to construe anything of this kind. The Premier of New South Wales said, to my mind with questionable taste, that the honorable members who represented certain colonies in this Convention which had no interest in this particular question should stand aside; that they should leave the arena clear, and should be extremely careful how they interfered in a question of such great moment between New South Wales and the other colonies. Is that the attitude that that honorable member and his colleagues intend to take in the Federal Parliament where these small colonies are also to take part? Is that the attitude to be taken up in this Convention by those colonies which are not expressly and vitally interested in a question of this magnitude? Is that the attitude which the smaller
colonies are expected to take in the great Federation we are now trying to bring about? Is it that the smaller colonies, unless they are vitally interested, are to be glibly talked over by the eloquence of gentlemen representing the larger colonies? And are they to stay their hands from doing what they have plainly told us is in their opinion simple justice? I say that the small states, who are not interested in a question of this kind, are best able to judge its merits, and to stand between the colonies most deeply interested, and which have most to fight for. The Hon. the Attorney-General of Victoria has submitted an amendment, or, rather, a sub-section to take the place of sub-section (31), which I think might with some modifications meet the wishes of the whole of the members of this Convention, even of those representing New South Wales, who express themselves as fully prepared to give way on the question of the navigability of the rivers. There is, however, one point which might, perhaps, be pointed out, and which ought to receive consideration. That is, that in regard to the proposal of the amendment to leave it for the opinion of the Inter-State Commission as to whether the use of waters for irrigation is not unjust or unreasonable. Now, as yet we have not decided upon the functions of this Inter-State Commission, and it appears to me that a question of such magnitude as the one we are now discussing—the question of the conservation of water for the purposes of irrigation—should either be left to the Federal Parliament or to the Federal Judicature to be decided. I would prefer it to be left to the Federal Parliament so far as I am concerned, because the Federal Parliament would have the opportunity of examining into the claims of each individual colony, and if they failed to come to a reasonable agreement, undoubtedly it would be a question which might be submitted to the Federal Judicature. The amendment of Mr. Isaacs seems to me to be a fair compromise—a compromise brought forward by a gentleman who has no individual interest in the question, and who represents a colony which has no real interest in the matter before us. It is a compromise which, I think, should recommend itself to this Convention. I hope, therefore, that the amendment will be agreed to, subject to the alteration which I have suggested. Before I sit down, Sir Richard Baker, I should like to ask you, in putting this question, to put it in such a way that if the amendment suggested by Mr. Isaacs be not agreed to, we shall have an opportunity of taking a fair vote upon the question as to whether sub-section (31) as it stands should remain in the Bill or be excised.  

The CHAIRMAN. -  
The first question I shall put to the committee is, that sub-section (31) stand part of the clause. If this sub-section be struck out, I shall put the suggested new sub-sections in the order in which they have been
suggested.

Mr. SOLOMON. -

I would point out that that will make the position of some of the representatives somewhat difficult.

Mr. BARTON. -

That is because it is the order of Parliament, I suppose.

Mr. SOLOMON. -

No; I have as much respect for the due order of Parliament and for parliamentary procedure as the leader of the Convention has, but the position is that, without knowing how the vote may go upon the amendment of the Attorney-General of Victoria, I do not wish to vote for the excision of subsection (31), which I have already stated gives South Australia something. With great respect to the legal gentlemen who have expressed a contrary view, I think that the people whom I represent will think sub-section (31) better than nothing at all, and therefore I do not wish to see that sub-section excised without an amendment, unless the amendment which I think covers the whole ground better is negati

The CHAIRMAN. -

Sub-section (31) is now under consideration. We have treated all the sub-sections of clause 52 as clauses, and the rules of Parliament in reference to clauses are the rules which we have adopted in reference to these sub-sections. The question I shall put is that sub-section (31) stand part of the clause. Any honorable member can move an amendment to that. No honorable member, however, has yet moved an amendment.

Mr. SOLOMON. -

Is not the proposal of Mr. Isaacs an amendment?

The CHAIRMAN. -

No; it is not an amendment, but a proposal in substitution of sub-section (31). It is, however, competent for any honorable member to move an amendment to sub-section (31).

Mr. BARTON (New South Wales). -

I do not know whether it will be more desirable that we should adjourn now, or whether some decision should be arrived at upon this question, which has taken up so much of the time of the Convention. For my own part, I think it desirable that we should take a vote-at any rate, we should arrive at some understanding upon a matter which has occupied such an amount of time. I am afraid that it may be thought, and rightly thought, that, as compared with other great matters which have to be dealt with by this Convention, too much time has been given to the consideration of this
river question.

Mr. PEACOCK. -

If you do not take a division now, you will have another big debate to-
morrow.

Mr. BARTON. -

I consider it an important question, especially as it is one which will
affect the colony to which I belong; but I think that the time has arrived
when something should be done. And now I would like to express my
regret that, for the first time since this Convention met in Adelaide in April
last year, there has been a member of this Convention who has ventured to
question the genuineness and sincerity of the action of his colleagues. This,
I regret to say, has been done by the representative of South Australia (Mr.
Solomon). All I can say is that I think that every one of those who act with
me will agree with me when I say that I resent—and resent very strongly—
what I consider to be an imputation which has been made upon our
genuineness and sincerity in connexion with this matter. Every member of
the Convention to whom I have spoken knows very well the stand which I
have taken in favour of the striking out of this sub-section, and the
maintenance of sub-section (1) in its integrity. That is what I have always
affirmed, and what I have spoken in support of since the beginning of this
Convention. The stand which I have taken is no new stand. Many
honorable members are aware that at the conference which took place on
the day of the public holiday, a little while ago, I expressed my opinion
upon the subject plainly. I think that Mr. Gordon, for instance, will bear me
out in that. Therefore, I do not think it is right for any honorable member,
on data which must be obviously insufficient, to prefer a charge of
insincerity against his fellow representatives simply from the fact that he
may not have been consulted upon a matter which

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has occupied the time of others. It is our bounden duty to credit our fellow
representatives with perfect honesty; but beyond saying that I resent the
imputation which has been made by Mr. Solomon, I have no more to say
with regard to what he has stated.

Mr. SOLOMON (South Australia). -

As a matter of personal explanation, I should like to say that I did not
impute to the leader of the Convention any insincerity whatever.

Mr. BARTON. -

You imputed it to the delegates for New South Wales generally.

Mr. SOLOMON. -

I made a statement which I do not intend to qualify one iota, but I desire
to explain it in order that I may not be misunderstood. It has been asserted
by some of the representatives of New South Wales that the sub-section as it stands covers the whole ground, and gives power to adjudicate upon this question of the navigation of the rivers. If those representatives who have so spoken are absolutely sincere they should show their sincerity by making the matter clear in the Constitution. That is what I desire to say with regard to them, and that has been said not only by myself but by other honorable members. If there is no difference in sub-section (1), why not make the matter perfectly clear?

Mr. BARTON. -

Does not the honorable member see that if we substitute Mr. Isaacs' amendment for sub-section (1) it at once raises the provincial question, about which New South Wales stands firm?

Mr. SOLOMON. -

At this time of day I do not intend to re-open the discussion. I merely state the logical conclusion I draw from the action of the honorable members who say that sub-section (1) gives all the necessary power to the Federal Parliament. If they decline to put that in plain English they show their insincerity.

Mr. BARTON (New South Wales). -

I think I can in a few words show the untenableness of the honorable member's position if he thinks that sub-section (1) and Mr. Isaacs' amendment are identical.

Mr. SOLOMON. -

I did not say that.

Mr. BARTON. -

Or that they are the same in effect.

Mr. SOLOMON. -

I did not say that either.

Mr. BARTON. -

The charge of insincerity comes to nothing unless the honorable member's statement amounts to that.

Mr. SOLOMON. -

I say, put in other words to make it plain.

Mr. BARTON. -

Very well. The honorable member has argued for 45 minutes that those other words are to be Mr. Isaacs' amendment. Does he not see that if we adopt the amendment in place of the power to regulate trade and commerce, we raise the whole question of riparian rights between the states, which riparian rights we say, and have said from the beginning, are non-existent? How can the honorable member adhere to the accusation of insincerity when that is pointed out?
Mr. GLYNN (South Australia). -
I would ask the leader of the Convention not to do more to-night than take a vote on the question of the retention of sub-section.

Mr. BARTON. -
I think we will go as far as we can.

The CHAIRMAN. -
If the sub-section is retained no other sub-section inconsistent with it can be inserted in the clause.

Mr. ISAACS (Victoria). -
I understand that it is the desire of honorable members to take a test vote on the amendment I have proposed.

Mr. SYMON. -
There are other amendments.

Mr. ISAACS. -
I only want to fall in with the views of the committee. I would suggest that a test vote be taken on the question of the omission of all the words after "The" in the sub-section, with the view to inserting my amendment.

Mr. BARTON. -
If the question is put as one of insertion, and it is carried, that will mean the adoption of the honorable member's amendment.

Mr. ISAACS. -
Yes. I should be perfectly willing to have the question put in that way, but I do not desire to anticipate other honorable members who think that another course would be preferable.

Mr. HOLDER (South Australia). -
I hold strongly to the view that, as we have so many amendments before us, the proper course would be to first strike out the subsection. Then, when we have cleared the ground, any one of the amendments may be dealt with.

Mr. ISAACS. -
I am quite agreeable.

The CHAIRMAN. -
Do I understand that the honorable member does not wish to press his amendment?

Mr. ISAACS. -
No, I wish to fall in with the general desire of the committee.

Mr. TRENWITH (Victoria). -
I do not purpose detaining the Convention, but so much time has been spent over this subject that we should not now rush to a decision. I would
respectfully suggest that we should to-night simply take a test vote on the question of whether the subsection should be retained. I do not think it would be wise to proceed now to take a division upon all the amendments that have been submitted. It is unfortunate that we have had to take up so much time in discussing this question, but it is of so much importance that it could scarcely have been dealt with in less time. I think that honorable members would be in a better position to vote on the amendments after a night's reflection.

Sub-section (31) was negatived.

The CHAIRMAN. -

I understand that Mr. Glynn wishes me now to put his amendment. The sub-section he suggests is as follows:-

The maintenance and, with the concurrence of the riparian states, the improvement of the navigability of the Rivers Murray and Darling.

Mr. GLYNN (South Australia). -

I would ask the leader of the Convention whether it would not be advisable now to report progress? My amendment has been partly accepted by New South Wales, but I do not wish to interfere with the other amendments by taking a vote on the question to-night. No good can be done by undue haste. There should not be any further general debate, but as the amendments are put they must be specifically examined, even in their wording. I would ask the leader of the Convention to consider whether under the circumstances it would not be in the interests of the proposed Commonwealth to adjourn the further discussion of the question.

Sir GEORGE TURNER (Victoria). -

No one will accuse me of desiring to unduly lengthen the proceedings of the Convention, but I would join with Mr. Glynn in urging upon our leader that it would be wise in the interests of the Commonwealth to report progress. There are a large number of amendments, and very few of us understand the bearing of one as compared with another. I have seen a rough draft of a further amendment, which, if it could be agreed to, would probably settle the whole question. It might be possible to-morrow to formulate such an amendment as would be accepted with unanimity, and, under the circumstances, I would suggest to Mr. Barton that he should now consent to progress being reported.

Mr. BARTON (New South Wales). -

Mr. Glynn has made, perhaps, an important suggestion, that is, as regards the substance of his amendment. I am not going to say at the present moment that I do not object to that amendment. My position has been from the first, and I think, notwithstanding anything that has passed, honorable members will say that I have maintained it with perfect honesty, that the
subsection relating to trade and commerce is the most federal provision that we can adopt, and that we should strike out all other sub-sections which may seem to restrict or limit it. That is the true federal position. An important suggestion has now been made, and perhaps Mr. Glynn's amendment might be improved if some such words as these were added—"so as not to restrict the powers conferred by sub-section (1)." But, in any ease, I hold that there should be no subsection beyond sub-section (1), and that

that would best conserve the interests of all of us. Still

The motion was agreed to.

Progress was then reported.

WESTERN AUSTRALIAN STATISTICS.

Sir JOHN FORREST (Western Australia) laid on the table papers containing financial and statistical facts relating to the colony of Western Australia, and moved that they be printed.

The motion was agreed to.

The Convention adjourned at eleven minutes past five o'clock.
Thursday, 3rd February, 1898.

Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.
COMMONWEALTH OF AUSTRALIA BILL.
The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.
Discussion (adjourned from the previous day) was resumed on clause 52 (Powers of the Parliament), and on Mr. Glynn's amendment to substitute for sub-section (31) (omitted the previous day), the following sub-section-
The maintenance and, with the concurrence of the riparian states, the improvement of the navigability of the Rivers Murray and Darling.

Mr. GLYNN (South Australia). -
As I mentioned last night, the first part of Mr. Carruthers' amendment practically adopts this amendment, the only difference being that the word "tributaries" is substituted for the word "Darling," after the word "Murray." Of the other amendments suggested, I personally would prefer the one proposed by Mr. Isaacs. I think, it might facilitate matters if I move mine now, and see if something can be tacked on to the terms of my amendment which would practically carry the effect of Mr. Isaacs' amendment. At the same time, of course, it would facilitate the consideration of the amendment tabled by Mr. Carruthers, because the carrying of these words would be the carrying of half of Mr. Carruthers' amendment. Honorable members will see that in the alternative amendment which I am suggesting, I have put in a definition which, I think, covers the ground so clearly stated by Mr. Barton and Mr. O'Connor—that South Australia is getting, under subsection (1), everything that colony is reasonably entitled to, and practically everything which it demands. My fear is that the American decisions may not in their fulness be extended to the Australian rivers by the Federal Judicature, and there is some doubt whether the intermittency of the flow of the Darling would entitle it to be called a navigable stream within the meaning of those decisions. But I understood Mr. Barton to say that he would be willing to bring the Darling within the scope of those decisions, and that he believes those decisions do extend to the Darling. So I have suggested the adoption of a definition not going beyond the scope of those decisions. After my first amendment

I have suggested as an alternative the following:-
A river shall be deemed to be navigable if at times its waters, by themselves or their connexions with other waters, form and are used as a continuous channel for commerce with other nations or among states.

That definition, I believe, is the essence of the American decisions, but it will bring within the scope of those decisions the River Darling. The only point of doubt as regards the Darling would be the intermittency of its flow, but, as I understand that Mr. Barton and Mr. O'Connor are willing that the Darling should come within the scope of those decisions, I have put the matter clearly, by way of definition. I would suggest, however, to meet the views of others, an alteration of the wording of that amendment, so as to make it read as follows:-

For the purposes of sub-section (1) waters shall be deemed navigable for trade and commerce which are in fact navigated continually or at times for trade and commerce with other nations or among states either by themselves or by their connexions with other waters.

The effect is the same, only the wording is considered by some to be more concise and clear.

Mr. BARTON. -

I think that is an endeavour to catch the gist of the American decisions.

Mr. GLYNN. -

That is exactly what my intention is. I am personally willing not to insert anything more than a definition which will explain, in the terms and to the extent to which Mr. Barton says he will go, the meaning of sub-section (1), as regards trade and commerce. I am willing to accept that, and I believe that that is the position which the representatives of New South Wales take up. They are willing to grant us the provisions of sub-section (1) to the extent of those decisions but I wish to relieve the matter from possible doubt. I merely make that suggestion at present, and in order to facilitate the consideration of other amendments-Mr. Carruthers' and Mr. Isaacs'-for which, in the event of mine not being adopted, I will vote, I now beg to submit my first amendment.

Sir JOHN DOWNER (South Australia). -

We spent practically the whole of yesterday in considering the amendment suggested by the Attorney-General of Victoria, and I think my honorable friend (Mr. Glynn) will see that it would be more convenient if he postponed his suggestion until we have dealt with the amendment of Mr. Isaacs. We are fresh from that amendment; we have had a long discussion on it, and if it is settled the whole thing will be settled. I am sure that the honorable member wishes to assist the Convention in every way he can, and I would suggest to him the expediency of practically going on with the discussion initiated yesterday, and dealing with Mr. Isaacs'
amendment.
Mr. ISAACS (Victoria). -
I am entirely in the hands of the committee. If Mr. Glynn is satisfied with that arrangement, I am perfectly willing to go on with my amendment, but if he is not, I am quite willing to postpone it.
The CHAIRMAN. -
Mr. Glynn must withdraw his amendment before Mr. Isaacs' amendment can be put.
Mr. GLYNN (South Australia). -
I quite understand that, but I think it would facilitate matters if the committee would now deal with my amendment, which will virtually carry Mr. Isaacs' amendment.
Sir GEORGE TURNER. -
We should get complicated if we took that course.
Mr. GLYNN. -
If Mr. Isaacs wishes me to do so, I will withdraw my amendment.
Sir GEORGE TURNER. -
You had better withdraw it.
Mr. GLYNN. -
Very well; by leave of the committee, I beg to withdraw my amendment.
Mr. Glynn's amendment was withdrawn.
Mr. ISAACS (Victoria). -
The position I desire to take up is simply this—that I have no wish to press anything that the representatives of South Australia do not want, and that the representatives of New South Wales are unwilling to give. It seems to me that the amendment I have suggested is fair, not only to those two colonies, but also to the whole of Australia. The first objection that I see, from an Australian point of view, to the amendment Mr. Glynn has submitted, and which is practically the first part of Mr. Carruthers' amendment, is that it does not give any weight whatever to the truly Australian question, both present and future, of irrigation. None whatever. It leaves navigation the primary consideration of the federal authority.
Mr. REID. -
And, remember, it makes the Federal Parliament a harbor trust for every river in the Commonwealth, and it will have some nice bars to clear away in the rivers of our colony at the federal expense.
Mr. ISAACS. -
That might be so. At all events, it gives no weight whatever to the question of irrigation, which is all-important to New South Wales, and, it
seems to me, to South Australia, and, in a large measure, to Victoria.

Mr. SYMON. -

But some of us do not agree with putting the irrigation of the colonies under the control of the Federation.

Mr. ISAACS. -

That may be so. But that is one great difference between the two amendments. The next objection is that merely defining what is a navigable river will not make the application of the decisions certain at all. It will make one matter certain, and that is the meaning of what is a navigable river. But I would like Mr. Glynn to bear this in mind, that it is not merely the definition of "navigable" river that will be in doubt, but there is something more in doubt, and it is this: In sub-section (1) of clause 52 we have reference made to trade and commerce. Now, the United States courts, when they started 100 years ago to define that sub-section, decided it from the very large point of view-a startlingly large point of view, at first sight, at all events-that the regulation of trade and commerce included the improvement of navigable rivers. Now, that may be a very broad and proper view to take. It was the view taken by the United States courts, but it is by no means certain that the Privy Council will be prepared to go that length, especially in view of the considerably different wording of the provision in clause 52 as compared with the corresponding provision in the United States Constitution. We have no guarantee at all in this Constitution that the Privy Council-and remember the appeal lies to the Privy Council in disputes between States-will decide that trade and commerce has that enormously extended meaning given to it under the American Constitution. And suppose it should turn out that the court of last resort did not take that wide view, but the more narrow view that it has taken in many cases under the Canadian Constitution, as pointed out by Mr. Symon-suppose the Privy Council restricted itself to the more literal definition of the Constitution and said:"This is a British Act of Parliament, passed in the ordinary way by the British Legislature, and is now interpreted by the Privy Council in the ordinary way, granting, of course, that it is a Constitution, but still it is a British Act of Parliament"-and suppose the Privy Council decided that those words "trade and commerce," though including everything directly concerning trade and commerce, did not go so far as to enable the Federation to take water from rivers and enlarge the carrying capacity of rivers within the state, even though those rivers are the highways of commerce, what position would we be in?

Mr. REID. -

Then you do look forward to the Federal Government taking up the task of clearing all the rivers at the expense of the Commonwealth?
Mr. ISAACS. -
I did not say that.

Mr. REID. -
You want the power.

Mr. ISAACS. -
No, not even that; but I do admit that, so far as rivers which are navigable between states are concerned—not for purely state rivers.

Mr. REID. -
Is there no distinction in your amendment as to localities?

Mr. ISAACS. -
Yes; the navigability of rivers which by themselves or in connexion with other rivers are navigable permanently or intermittently for trade and commerce with other countries or among the several states. That will leave outside the sphere of the federal authority all the purely state rivers.

Mr. REID. -
That points the objection to your proposal as to two rivers, belonging to one colony. You take these powers ostensibly for navigation, but really to meet the difficulty of South Australia.

Mr. ISAACS. -
No; my right honorable friend is, I think, departing a little bit from his conceded position of yesterday, because he said we are willing that under the first

Mr. REID. -
I never made such a statement. I doubted the construction put upon that matter by the leader of the Convention. As this is a matter of some importance, I should like to be allowed to explain that what I said, and say still, and what I am willing to say in all places, is that in the Constitution, in order that there may be no lawyers dispute about it, we in New South Wales are prepared to say that, as to every inch of water we have got which is navigable, permanently or intermittently, we agree that there shall be unfettered and absolute equality of navigation as between ourselves and all the other colonies. We are prepared to concede perfect equality in the use of our rivers to the whole Commonwealth when they are navigable, whether permanently or intermittently. We are prepared to guarantee that in express words in the Constitution.

Mr. ISAACS. -
That I am sure is not sufficient. I would like to point out what that means. My right honorable friend says that during certain seasons of the year, when the Darling is not navigable, the federal authority shall not have the
right to make it navigable, shall not have the right to improve it, and unless it is naturally navigable, or is only as navigable as New South Wales chooses to make it, nobody shall make it more navigable or improve it; and New South, Wales can take every ounce of water that South Australia gets now.

Mr. MCMILLAN. -

Does not "with other countries," include all our local rivers with bar harbors?

Mr. ISAACS. -

Certainly; that is the same as in America.

Mr. MCMILLAN. -

I thought you said a moment ago that it only referred to rivers running between the states, such as we have been discussing. The point is a very important one. Would the federal authority have the right to come in and improve rivers which, while they are purely local, have bar harbors? These surely are navigable rivers with other countries.

Mr. ISAACS. -

What I meant to exclude were purely state rivers, which did not affect inter-state or international commerce. In America there is no doubt about that. What I wanted to exclude were rivers-purely within a state in their flow, in their effect., in their operation.

Mr. OCONNOR. -

There are no such rivers.

Mr ISAACS-Then the question is pointless. The first part of my amendment puts beyond all doubt the right of the federal authority to deal with the rivers as in America. There is a diversity of opinion, and I do not wish to put any honorable member in a position of more difficulty than the nature of the case demands. It has been suggested to me by some honorable members, and I am willing to accept their views, that we should put my amendment portion by portion. The first portion down to the word "states" undoubtedly refers merely to the decisions as they stand in America, and it puts beyond doubt the question, which I think ought to be put beyond doubt, that the federal authorities should have the right to control the navigability, of, at all events, these inter-state and international rivers. Therefore, with permission, I will put the first part of the proposed amendment, so that we may have a really genuine vote, as to which there can be no misapprehension, as to whether New South Wales is willing that there should be inserted in express terms in this Constitution the same power that exists under the American Constitution.

Mr. LYNE. -
I say decidedly, no.

Mr. ISAACS. -
If New South Wales is not willing to do that-

Mr. BARTON. -
Willing to do what?

Mr. ISAACS. -
To put in express terms the power that undoubtedly exists by virtue of the decisions of the Supreme Court in the United States. That is the first part.

Mr. MCMILLAN. -
Put the amendment first down to the word "irrigation," and then test the other matter.

Mr. ISAACS. -
I do not think that would do; you cannot put the second part first. I have been asked to put the amendment in the shape I have suggested, although personally I do not care in which way it is done; but in order to have it properly tested, so that we may judge of the merits of the question more properly, and so that no person maybe unnecessarily embarrassed in his vote, I propose to put the first part of the amendment first, and afterwards the second part.

Mr. LYNE. -
I think that will embarrass a great many votes.

Mr. ISAACS. -
It may embarrass my honorable friend, but in a proper way.

Mr. LYNE. -
You will never embarrass me, I promise you, because I will go straight.

Mr. ISAACS. -
I therefore beg to move-

That the following words be inserted in lieu of sub-section (31), which has been struck out: The navigability of rivers which by themselves or in connexion with other rivers are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states."

Mr. SYMON (South Australia). -
I propose to move a short amendment, which my honorable and learned friend himself indicated the other day, so as to make it quite clear that in introducing these words, with which I agree, we do not limit in any way the powers conferred by sub-section (1) of the clause. I beg to move-

That the following words be inserted at the beginning of the proposed amendment-"without limiting sub-section (1)."

We must all have been greatly impressed by the views expressed by the
honorable members (Mr. Barton and Mr. O'Connor), and I have some doubt whether the amendment would have a limiting effect upon sub-section (1); but, after the very emphatic opinion expressed by the honorable member (Sir John Downer) yesterday, an opinion to which I attach great weight, it seems to me that the representatives of South Australia should take care there is no limitation of anything which may be given to us under sub-section (1), as well as what may be given to us under this amendment.

Sir GEORGE TURNER. -

There are other sub-sections which will limit also, if this does, and the better plan would be to put in a general clause.

Mr. SYMON. -

I think not.

Sir GEORGE TURNER. -

There is the clause about navigation and shipping.

Mr. SYMON. -

I do not wish to differ from the honorable member on that point, because I wish to make it clear that when I vote for this amendment I am not voting for something which will at all limit us. Therefore, I will move this as an expression of opinion on that point, leaving it to the Drafting Committee to insert it as they please.

Sir JOHN FORREST (Western Australia). -

I feel that I ought not to say very much on the present occasion, because I am one of those who think a great deal of time has been devoted to this subject. At the same time, I feel that I should not give a vote without expressing my view. I did hope that some settlement would be arrived at between the representatives of South Australia and New South Wales which would have been acceptable to every one. I regret very much that we should have to take a vote upon this matter, in which Western Australia and Tasmania, as has often been said, have no particular interest. We, however, are placed in the position of having to give a vote according to the best of our judgment on this very difficult question. I do not speak for any one but myself. I do not suppose for a moment that the representatives of Western Australia will vote as I shall vote on this matter; neither do I know how they will vote; but I have given the question a considerable amount of attention since we separated last evening, and I have come to a fixed conclusion with regard to it. I confess that I have been halting between two opinions for some time. I think we made a mistake last evening in altogether abolishing sub-section (31). That was a very important sub-section, which would have met the
case perhaps with a little amendment, and would have been very valuable, especially in the interests of South Australia. However, the representatives of South Australia allowed it to be expunged, and I do not desire to say anything more about it. I cannot help trying to place myself, with regard to this matter, in the position of the representatives of New South Wales. I make bold to say that if I were a representative of New South Wales, or if any other honorable members representing the other colonies represented New South Wales, we would take up exactly the same attitude that they have taken. I cannot make myself believe that if I represented New South Wales I would be willing that there should be any control over that great river system, which, I think I may say, is the lifeblood of that country. There is an excellent map in one of the corridors, which shows that nearly the whole of New South Wales is dependent—and will be dependent in future, if this great country is to carry the population which we all expect it will carry—upon the great river system which fortunately it possesses. I have come to the conclusion that it will be far better for this continent that that river system should be used in order to fertilize the lands through which it passes than that it should be used for any other purpose whatever. It is far better for Australia that navigation should cease on the Murray itself, than that we should place restrictions upon the use of the water of that great river system for fertilizing the land through which it passes. I have also come to the conclusion that the Darling is not a navigable river, because it is only for a few months in the year, and sometimes not at all in the year, that it is capable of being used for navigation. I am of opinion that South Australia has no legal right whatever to the trade along the Darling. If the legislation in New South Wales had been so devised, they could have placed impassable barriers, not only by weirs, but also by means of a tariff and tolls, which would have altogether prevented the use of that river by any other country but itself.

Mr. REID. -

I wonder if they would question our right to impose tolls on the traffic of the river.

Sir JOHN FORREST. -

I hold that New South Wales has at the present time a perfect right to place barriers in the shape of customs duties and tolls, which would altogether destroy the use of that river to any other country than herself. I have come to the conclusion that New South Wales has a primary right to the waters of the Darling and the Murrumbidgee, and of all their tributaries, in order, if she so desires, to aid her progress and development. I am, of course, very unwilling to do anything in this Convention which would in any way militate against or injure the colony of South Australia. I
cannot but remember that South Australia is one of the smaller states, that
she will not have the great power and influence which New South Wales
will have in the Federal Parliament, and

that New South Wales, under any circumstances, will be able to look after
herself to a far greater extent than the other can. At the same time, looking
at this question as a matter of right, and, as far as I can judge, of justice, I
cannot bring myself to believe that New South Wales should in any way be
hampered in using these waters which belong to her, in order to develop
and improve her own territory. I think that South Australia ought to be
content, and I think it is reasonable that she should be content, with the
protection, whatever it may be-and we have heard different opinions in
regard to it-of subsection (1); and if it is not sufficient she must be content
to rest on the fair play and fair dealing of the great colony of New South
Wales. I do not take my stand on the ground taken up by my honorable
friend (Mr. Deakin) yesterday, and I think my honorable friend (Dr.
Quick)-the ground of expediency. I would not do that. I am here to try and
give my vote in the way which I think is right without looking too much to
the consequences. We must try to do justice as far as we can. The reason
why I have come to the conclusions I have come to is because I think they
are founded on right and justice, and therefore I will support with my vote
the views of New South Wales in this matter. I believe they will be found
to be not only what is just, but to the largest extent in the interests of
Australia.

Sir GEORGE TURNER (Victoria).—

Like my right honorable friend (Sir John Forrest) I have been halting
between two opinions in connexion with this matter. My sympathies are
undoubtedly with South Australia. At the same time, I cannot conceal from
myself the fact that our friends from New South Wales have urged strong
arguments in favour of their views, and my great desire all through has
been to endeavour to reconcile the conflicting interests, so that we might, if
possible, arrive at a conclusion which would be fair and equitable to all the
states concerned. We are told that we may rest on subsection (1). That sub-
section appears to be somewhat on the lines of the provision in the
American Constitution, but I do not think it is wise to ask any state
entering into a partnership with other states to risk such a large question as
this undoubtedly is on the interpretation which hereafter may be put on the
words we use by any Federal Court or by the Privy Council; because, as
distinctions and differences have been drawn in America so as to induce
them to practically reverse the common law of England with regard to
riparian rights, so here, taking the differences in our circumstances and the
differences in regard to these rivers and their navigability and their use for various purposes, we cannot be certain—it is a matter of utter impossibility to be certain—that the court here would follow the decisions given in America. They might possibly say that they would prefer to follow the decisions given in England, and not to recognise those, given in America. As there is that great doubt about the matter, it is our duty, if we possibly can, to put in the Constitution words which will render our desire and our meaning fairly certain and intelligible. I also mentioned, when I spoke shortly on this matter some time ago, that in my opinion, in the interests of the colonies, irrigation should be the first consideration, and navigation the second. In speaking of irrigation, of course I include the conservation of water. We, in Victoria, require water for irrigation purposes perhaps more than they do at the present time in New South Wales; there they require water more for conservation. But as the years roll on, and our population increases, we must all recognise that eventually very large quantities of water will be required for conservation and for irrigation. If we put navigation in the forefront, what will be the result? Irrigation and conservation may hereafter perhaps be ruined. But if we put irrigation and conservation first, what will happen to navigation? At the worst, the carriage of goods may be delayed for a few days, or for a few weeks, or a few months. That is the worst, in my opinion, which possibly can happen to those who are urging so strongly that navigation should be our first consideration.

Mr. HOLDER. -
It means an absolute diversion of trade in many cases.

Sir GEORGE TURNER. -
Not necessarily so.

Mr. HOLDER. -
It does.

Sir GEORGE TURNER. -
Well, only to a very small extent, and for a very limited period. Even if it does mean an absolute diversion of trade either from South Australia or from Victoria—because we are equally interested in getting that trade, and have good opportunities to get it—still it does not alter the opinion I have formed, that we must suffer that diversion of trade which is for the benefit of the few for the sake of the greater benefit to the many who will derive advantages from irrigation. If we have an irrigation scheme, and at the very time that the water is wanted it is not there, those persons who desire to use the water are practically ruined.

Mr. LYNE. -
Would you take for the irrigation scheme power to divert the water from the state?

Sir GEORGE TURNER. -

No; as far as irrigation schemes are concerned, I say I would not for a moment give power to the Federation to enter upon any schemes of irrigation at all. I look upon these as entirely local matters. If we have the Federation spending immense sums on irrigation, and immense sums on improvement of the navigation, that money comes out of the pockets of the states; they have to find it by some means. The state Treasurer has to go so much short, and he has to make up his deficiency by taxation of some kind, which we all know is very difficult in any of our colonies, except perhaps in New South Wales, with its immense land revenue. I cannot go the length which my friend the Attorney-General of Victoria has gone, for this reason: He does leave an element of uncertainty by the words which have been used, and I desire to remove that element if it is possible. I cannot understand why my learned friend has broken up his amendment into two in the way he has done, because the first portion of it is something which, I think, none of us wants.

Mr. SYMON. -

None of us objects to.

Sir GEORGE TURNER. -

The first portion of it is-

The navigability of rivers which by themselves or in connexion with other rivers are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states-

Mr. SOLOMON. -

Does not that extend the interpretation of sub-section (1)?

Sir GEORGE TURNER. -

I am not prepared to say that it extends it or that it limits it.

Mr. SOLOMON. -

Interprets it, I should say.

Sir GEORGE TURNER. -

Our able friend from South Australia (Mr. Symon) appears to think that it limits subsection (1), because he desires to put in words to say that it shall not limit subsection (1). I suppose, if you ask other lawyers, they may possibly say that it extends it, but as these words stand that is a simple declaration that navigation is to be the first consideration.

Mr. ISAACS. -

No.

Mr. LYNE. -

And that word "navigability" would extend to all the tributaries.
Sir GEORGE TURNER. -

That is how I read the amendment, but I may be wrong. The navigability of rivers is what we are told to give to the Federal Parliament. It may be that afterwards we shall have certain words for giving irrigation and conservation an equal right or a greater or a lesser right, as the case may be, but we may not have those words at all. Suppose that a majority of the Convention should say: "We have now provided that the maintenance of the navigability of the rivers is to be the duty of the Federal Parliament, and we are not going to alter that provision," we would then go a long way further than I think any of us desires to go. This amendment proceeds with these words:—

But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation—

So far I go with my honorable friend the Attorney General of Victoria.

Mr. SYMON. —

You are taking away everything from us.

Sir GEORGE TURNER. —

We are not taking away everything from you.

Mr. SYMON. —

You are giving an implied power to do what they like with the water.

Mr. BARTON. —

No state is to be prevented—neither you nor we.

Sir GEORGE TURNER. —

It says that no state shall be prevented from using any of the water, that is to say, that South Australia can use it.

Mr. GORDON. —

That is a rather lively prospect, considering that South Australia is the last state through which it flows.

Sir GEORGE TURNER. —

Does the honorable member mean to say that any schemes of irrigation in New South Wales will ever put the river in such a position that South Australia will not be able to use out of the Murray all the water which she is likely to require for irrigation purposes?

Mr. GORDON. —

Extremely probable.

Mr. WISE. —

It will not make an appreciable difference.

Sir GEORGE TURNER. —

I can understand my honorable friend saying that the water used for irrigation may possibly limit the navigation, but if he goes the length of
saying that any water used for irrigation by New South Wales can ever prevent South Australia from having an ample supply of water for all the irrigation that that colony is likely to require, then I cannot go with him. While I admit that the taking of water for irrigation may possibly injure the navigation, I feel that, even if navigation is to be injured, navigation is a secondary consideration to irrigation.

Mr. MCMILLAN. -
That does not prevent the committee from testing the latter part of the amendment if it likes.

Sir GEORGE TURNER. -
These are the words of the amendment to which I object:-
to such an extent as, in the opinion of the Inter-State Commission-
Or the Parliament, or the Federal Court, as it may be.
is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purposes.

I have placed myself in this position: Suppose that some persons who are anxious to spend a large sum in irrigation works on the Darling or the Murrumbidgee consult me as to the position they will be in, and I have to give them an honest and conscientious opinion, could I, with those words staring me in the face, ever advise those persons to spend £50,000 or £100,000 in irrigation works? I could not do it. I would tell them that I was perfectly certain in my own mind that no difficulties could ever arise, but still there is that element of uncertainty with regard to what might happen in the future that no man could conscientiously advise others to spend a considerable sum of money. By that means we would practically prevent any money from being expended for irrigation purposes by any others than the state.

Mr. TRENWITH. -
Could they not obtain an Act from the Federal Parliament, as local bodies obtain an Act from the provincial Parliament, authorizing them to do it, and removing the uncertainty?

Sir GEORGE TURNER. -
I doubt if they could under this Constitution. I do not think that any of us is prepared to go to the extreme length of handing over the whole of our irrigation in the future to the Federal Parliament, any more than we would be prepared to hand over to the Federal Parliament the extension of our railways for the development of our country in the future.

Mr. OCONNOR. -
But the Act would not be interpreted until something was done under it.

Sir GEORGE TURNER. -
Of course there is that difficulty. Although they might get an Act authorizing them to do it, still, when the question came before the court, the court might decide, "although the Federal Parliament has passed that Act, still it is a derogation from this particular exception, and therefore is unlawful, and does not protect you." I would suggest to my honorable friend (Mr. Isaacs) that the wiser course is to propose the whole amendment as he has drafted it. I know that he has had a lot of anxiety, and has taken a lot of trouble in the endeavour to frame a provision which would be fairly acceptable to all, and I think that he has succeeded to a very great extent. But if only the first paragraph of the am

Sir JOHN DOWNER. -

The right honorable member would destroy the amendment altogether.

Sir GEORGE TURNER. -

I do not think so. If I thought that, I would not attempt to oppose any portion of it, but in my opinion the exception renders the amendment absolutely useless. If the members of the Convention will go the length I am willing to go, the rights of South Australia to navigation will be fully and amply conserved, and the rights of all states to the use of water for irrigation and conservation will also be conserved. I am not afraid that in the future any one state will use the water in order to dry up a river. I do not believe that that could be done, and I am perfectly certain that no one would want to do it. I am convinced that we on both sides are fighting a shadow. Having given the matter anxious thought, the conclusion to which I have come is that I am not prepared to place the people of New South Wales in such a position that they would not dare to use the water for irrigation and conservation, but at the same time I am willing to give South Australia every fair right to navigation.

Mr. KINGSTON (South Australia). -

I confess that I have come to an altogether different conclusion from that which has been arrived at by the Right Hon. Sir George Turner. It seems to me, from the tone of the debate, that instead of fighting a shadow we are fighting a matter of the gravest substance. Various honorable members have spoken on this question at different times, and from different sides. Those who have resisted the claims of South Australia to have this matter of the use of the Darling and Murray Rivers referred to a federal tribunal which will be representative of all interests have, in some instances, clouded their meaning. It has, however, been left to the Right hon. Sir John Forrest with his accustomed candour, to tell us what their arguments really amount to. He has told us plainly that the view which he takes, and which no doubt is shared by others who have spoken to similar effect but with less plainness, is that the Darling is not navigable, and that South Australia
has no right whatever to any of the Darling trade.
Mr. LYNE. -
   Hear, hear.

Mr. KINGSTON. -
   I am pleased that my quotation of the observations of the right honorable member has produced that cheer from a prominent representative of New South Wales. It is a pity that the matter was not stated with the same clearness by the representatives of New South Wales. All I can say is that we in South Australia hold a different opinion. We attach the greatest importance to the navigation of the Darling, and the Darling trade which we have hitherto been in the habit of enjoying is a matter of serious consequence to us.

Sir JOHN FORREST. -
   You have been enjoying it on sufferance.
Dr. COCKBURN. -
   In the interests of the settlers there.
Mr. KINGSTON. -
   In the interests of the settlers, though no doubt to our interest, too. As the honorable member (Sir Joseph Abbott), who represents in the New South Wales Parliament an electorate through which the Darling flows, has shown, it is of the greatest moment to the settlers there to obtain ease and economy of carriage to market. Are we to be told at a time like this, when we are striving to remove all obstructions to free intercourse between the states, to cut down commercial barriers, to abolish conflicting and rival rights, that the River Darling, the waters of which flow naturally into the Murray, and give us access to New South Wales, and the New South Wales settlers access to the markets of South Australia, is for New South Wales alone? Surely not. I urge upon honorable members that the spirit of fair play should be allowed to prevail. We should not be deterred by anything in the shape of threats as to the probable consequences of this, that, or the other. A quotation was indulged in by the honorable and learned member (Dr. Quick) as to the resolution carried in Adelaide. If my memory serves me aright, the resolutions upon which we originally entered into the consideration of this question in Sydney in 1891 laid it down as a fundamental principle that federation Should be based upon lines which were just and right to the several states. Are we to be told by the honorable and learned member (Mr. Deakin) that although our claim is just and right it is not to be allowed? Is this proof of the existence of that inter-colonial comity which must be the safeguard of the small states? At the very initial
stage of our work is it to be asserted that what is the admitted right of South Australia should be sacrificed to the interests of another colony? I hope not. I rose chiefly for the purpose of emphasizing our wish that in this matter, in which we are so vitally interested, that which is fair may be done. I am content to trust the whole question to the Federal Parliament. Some honorable members give the supreme consideration to the question of navigation, others to the question of irrigation. I am careless which shall in the long run be considered to be supreme. I would give the Federal Parliament power to solve the question when its solution is necessary, and when its members have the materials before them upon which to arrive at a just conclusion.

Mr. HIGGINS. -

We cannot say what new conditions may arise.

Mr. KINGSTON. -

I am inclined to think that the possibilities of successful irrigation are at the present moment under-estimated. I am very strongly of the opinion that, although great benefits may be expected from the carrying out of systems of irrigation, it will be difficult for those who have water rates to pay to compete successfully with those who have no such expense. Irrigation upon a large scale has not yet proved absolutely successful in Australia. It may prove successful, but, as regards the rival questions of irrigation and navigation, we in South Australia and all others who have given the subject the consideration which its importance deserves know that the navigation of the Darling and of the Murray is of the utmost importance for the purposes of trade. Just as we have laid it down as a fundamental principle that unnatural obstacles to trade should be removed at the initiation of federation, we should leave the Federal Parliament power to deal with this matter as in the light of subsequent events they may deem fair and proper in the interests of all concerned. I am prepared to support the amendment of the Attorney-General of Victoria. I think that he has introduced it as a fair and equitable solution of this difficulty. I also think that he had no intention of limiting the rights which the Federal Parliament may possess under the sub-section relating to trade and commerce. But whilst I am prepared to vote for the amendment as a whole, and even, as it is proposed, for the first part of it, I am not prepared to vote for it in a mutilated form so as to give each individual state the right to absorb as much water as it may think fit for the purposes of water conservation and irrigation, utterly regardless of whether that may or may not destroy the navigability of the river. To do that would, in my opinion, be to create a blot and a perpetual disfigurement in the Constitution. To
adopt such a course would mean the stereotyping into the Constitution of a declaration such as has not yet been made by any competent legislative authority, to the effect that each state shall have the right to use the water of the rivers, even to the extent of destroying their navigability. Whatever the rights of Victoria and of New South Wales may be, they are subject to Imperial control, and, as has been put by my honorable colleague (Mr. Holder), we suggest that this control should be transferred from an authority upon the other side of the world, by which, because of other pressing engagements and the impropriety of Imperial interference in matters of colonial concern, it is not likely to be exercised, to the Federal Parliament, which will have the fullest power in the matter. I wait with the deepest interest and concern the result of the division which we are about to take. I hope that, in the interests of all of us, we shall be able to go back to our several states and say that nothing has been implanted in the Constitution which has taken from us the fair exercise of the riparian rights with which Providence intended to bless us, and that a majority of honorable members will properly resent the suggestion that, in the interests of a greater state and in the cause of expediency, the rights of a small state be sacrificed.

Mr. TRENWITH (Victoria). -

This important question, occupying as it has done more time than any other single question that has come before this Convention, has been argued so continuously and so persistently from the legal point of view that it may seem temerity for a mere layman to discuss it at all. But it seems to me that there are some considerations in connexion with it, having in view that our aim is to federate the various colonies, superior even to present legal rights. We have in connexion with this federation movement, if we achieve anything, to give up a number of legal rights that we now possess in order to create other legal conditions that will entail privileges upon us. The question seems to me to be whether there can properly be said to be a federal interest in this question; and if we arrive at the conclusion that there is a federal interest, the federal power should be intrusted with control—not necessarily management, not even incidental management, but control. Now, the Right Hon. the Premier of New South Wales, in dealing with the question yesterday, laid down in the most emphatic and unmistakable way that in regard to the point of view of interests involved in the question New South Wales is prepared to stand upon her present legal rights. These rights appear to be, failing any international or inter-state law, that New South Wales has control over all the waters which are within her borders while they remain within her borders, and that she can, if she choose, cut off the flow of any river at the point where it is about to
leaving the borders of New South Wales. But the right honorable gentleman said, when rivers run between two colonies there has been admitted or stated to be not a right, but a sort of half or incomplete right which, when it occurs, must be settled by convention or negotiation.

Mr. REID. -

That applies only to rivers which have two different communities on their banks—not to rivers of the Darling, and Murrumbidgee type.

Mr. TRENWITH. -

Assuming, for argument's sake—and I think we may assume absolutely—that that is correct, we are now proposing to blend together in a Federation States that at present are separate so far as these particular interests are concerned, and in connexion with which conflicts may in the future arise. Surely it seems to be a logical position to take up, seeing in front of us the possibility of conflicts of this character, that we shall, at the inception, not settle or decide anything in detail, but provide a competent and fair tribunal that shall settle when such conflicts arise.

Mr. REID. -

That is exactly what we have done; there is a tribunal provided for.

Mr. HIGGINS. -

What is that?

Mr. REID. -

A federal tribunal called the Supreme Court.

Mr. TRENWITH. -

But if the right honorable gentleman will pardon me—and I submit the point with great diffidence, because it is a legal point—I am led by his declaration to the conclusion that, if such a dispute comes to be settled by the Supreme Court, it must be settled not in accordance with the interests concerned, but in accordance with the present legal rights involved, if those legal rights are not to be altered by anything contained in this Constitution.

Mr. REID. -

The court deals with interests in the sense of rights; it cannot do wrong in order to meet the interests of any particular litigant.

Mr. TRENWITH. -

I recognise the difficulty of discussing an intricate legal question of this character from a layman's point of view, and I am endeavouring, as far as I can, rather to avoid the legal intricacies of the question, and to present to the Convention my views of what are the facts of the case. And it does seem to me that whatever the exigencies of state or national rights may involve, whatever the lack of international, law entails upon us, there may be involved questions of equi
Mr. REID. -

It is a very old point. When the navigation of the Rhine was under discussion, an understanding was come to as to the navigation of that river by the countries on its banks, but the tributaries of the Rhine, which actually flow into the Rhine, but are entirely within certain countries, were not taken under joint control. The Rhine has 16,000 tributaries flowing into it. The agreement made was as to one river. The 16,000 tributaries were not affected.

Mr. TRENWITH. -

Quite so. What I am endeavouring to show now is that the difficulties that arise here, as in the case of the Rhine, should be settled when they arise by a tribunal representing in proportion to their importance each of the states involved.

Mr. REID. -

There is no trouble about that. The Murray holds a corresponding position in Australia to the Rhine in Europe. It flows between two or more states. Therefore there is no trouble in regard to it. We raise no difficulty about the control of the waters of the Murray.

Mr. TRENWITH. -

I respectfully submit to the right honorable gentleman that, even with regard to the point he puts so frankly and pleasantly in respect to the control of the Murray, there is the greatest possible conflict of opinion between authorities. I believe it would be difficult to find a deliberative body in which there are more able or more competent legal authorities than there are in this Convention, and our experience has taught us that, unless we make clear what we mean in the most unmistakeable manner, the subtlety of the legal mind leads to the greatest and widest differences as to the construction which may be fairly put upon what we resolve. What I rose to urge was this: We have no right in this Convention, if we desire federation and wish to display—as I am sure we do—a true federal spirit, to put our foot down and say—"We stand on our present rights"; because, if that were done by all of us, there would be no question to be handed over to the Federal Parliament. Each of the states has now a right to the absolute control of our military forces, and if a war broke out, and an invasion of Australia were threatened, each state has a right to say that each of the defence forces in Australia shall remain within its own state territory. But we are willing to give up that right for the obvious reason that it is to secure a greater advantage—the unity of our forces in the event of danger. Our postal system now is entirely within the control of each of the states, which can make such arrangements as they choose for their own postal
accommodation. But, in order to secure a further right, a greater privilege, we give up the absolute legal control over our own postage. And so in connexion with any question you can conceive. We are here not to stand on our rights merely, but to secure that, in the changed conditions that must ensue, whatever conflicts arise between the interests of the states shall be considered fairly by a tribunal properly constituted, and representing in a fair proportion each of the interests involved. I would submit respectfully that we are giving up a right in connexion with this river question—a very important right—one of several important rights.

Mr. LYNE. -

What right are you giving up?

Mr. TRENWITH. -

I am talking collectively of the states of Australia. I prefer, in discussing any question in this Convention, to look upon myself and the other representatives here rather as representatives of Australia endeavouring to arrive at a conclusion in the interests of Australia than as representatives of separate states fighting for their own hand, and striving to secure the interests of those states without regard to the interests of other states involved. I use the word "Australia," but if the honorable member (Mr. Lyne) asks me to be more definite, I say that South Australia, in this conflict—if she join the Federation without some security, not that the waters of the Murray shall be handed over to her, but that the control of the waters shall be handed over to a fair tribunal, in which her interests shall be considered—is giving up some rights which she now possesses. For if we do not federate, and it appears to the people of South Australia that New South Wales or Victoria is using the waters of the Murray in such a way as interferes with and prejudices their interests, they can appeal, as we all can, to the Imperial Parliament, by whose authority we govern ourselves. But if we federate, and refer the whole control to the Federal High Court, we shall, in a measure at any rate, if not absolutely, deprive ourselves of that right. Honorable members know that in the last resort, whenever every other course has failed, and injustice is being done by one country to another, there is the right of resort to arms. It is a right that I hope it will never be necessary to exercise beneath the Southern Cross, but it is a right that at present exists, and that will be removed by federation. One of the reasons most strongly urged by myself, and, I believe, by some of the candidates for the Federal Convention, why we should unite in bonds of friendship and justice, was lest at some time in the future these colonies, peopled from the same stock, from the same race, speaking the same language, and having the same aspirations generally, might be led by the
differences that must inevitably arise into war. Now, I say that this question is so grave—it involves such important issues—that the people of South Australia are justified in viewing with alarm the giving up of a right or a power that they now possess to compel fair treatment without obtaining some guarantee of fair treatment in its place. The honorable members representing New South Wales, and more particularly Mr. McMillan and the Right Hon. the Premier of that colony, have repeatedly spoken of the handing over of their right to control their own waters as involving the handing over of their right to control their own lands. In some respects they have already handed over the control of their own lands. They have given to the Federal Parliament powers of direct taxation, which may involve the imposition of taxes or the levying of tolls on the lands of all Australia, including those of New South Wales, and surely it is not to be considered a dangerous proceeding to say that the Federal Parliament shall stand by as an umpire or an arbitrator in the event of conflicting interests arising, and one side feeling rightly or wrongly that it has been unfairly treated. Now, on the point that if Mr. Isaacs amendment is carried the construction of extensive irrigation or conservation works will be jeopardized, it seems to me that it ought to be very easy to make some provision giving a guarantee against unfairness to New South Wales, and a guarantee of perfect certainty to persons desiring to undertake works in connexion with water conservation and irrigation. There should be no difficulty in providing some means analogous to those given in the Constitutions of the various states. Acts of Parliament are passed authorizing the construction of certain works, and that gives the promoters a sufficient security. If that objection is one that weighs strongly with the people of New South Wales, it can readily be removed. In conclusion, I would say that the length of time that this question has occupied proves—not that the time has been wasted, but that the question is of extreme importance. Honorable members representing New South Wales have in a veiled—indeed, not in a very veiled way—threatened that if anything is done to in any way interfere with their absolute right to do right or wrong, they, or their colony, will withdraw from the Convention. I do not believe there is anything in that threat. The people of New South Wales are not so selfish as they have been represented to be, and I think they have such confidence in the tribunal to be created called the Federal Parliament, and which will represent them in fair proportion, and the other colonies of the group in fair proportion, that they will hand over anything, not to the management but to the fair arbitrament, in the event of disputes as to whether justice is being done, to the
Federal Parliament. But if they will not, and that is a bar to federation, have we not to consider, the people of South Australia also?

Mr. LYNE. -

A handful, comparatively.

Mr. TRENWITH. -

There was a time when the most populous of the colonies was only a handful. We are very, very young yet, and it is impossible to say, from the circumstances of our development, which of the colonies will hereafter be the most populous. South Australia, with its much larger area, may be more populous than New South Wales; but I prefer, in discussing a question of right, not to consider mere population, but the justice of the proposal that is made. I earnestly hope that before this question is decided some means will be provided by which a guarantee of fair play can be given to South Australia and to New South Wales. I trust that the representatives of New South Wales do not ask for more than that. Surely they do not ask for the right to act unfairly if they choose. They may be perfectly justified in maintaining that right now when we are unfederated, but it should have no place in the discussion of a federal question such as that we are now, considering. The right to do wrong if they choose ought not to be bestowed under a Constitution by which the whole of the colonies are to be blended into one for federal purposes.

Mr. ISAACS (Victoria). -

I only want to say that my object in dividing my amendment was not for the purpose—I am sure that that would not be suspected for a moment—of subordinating irrigation in any way to navigation, but of relieving some honorable members of a difficulty which they had intimated to me they suffered under in regard to the vote they should give. There is, however immense force in what the Premier of Victoria said, that the adoption of that course might cause increased embarrassment, and, with the permission of the committee, I would submit the amendment as a whole. It would then be left to any honorable member to move the omission of any words or to alter any of the words in it, and it would give honorable members the freest choice in regard to the exercise of their vote. As to the uncertainty of the position, there is no uncertainty as between irrigation and navigation. Irrigation takes precedence under all circumstances. The only element of uncertainty is in regard to the quantity of water each state may take relatively to any other state, and I should be willing to accept an amendment that this should be made certain by the proportions being determined by an Act of Parliament. They could not then be altered except by another Act of Parliament. I do not, however, think that the question of uncertainty is important, because in America this sort of thing is done
every day. Canal or ditch companies, as they are called, construct immense works, and have their relative rights determined.

The CHAIRMAN. -

The amendment now before the Chair is that submitted by Mr. Symon. Does the honorable member desire to withdraw it?

Mr. SYMON. -

No.

The CHAIRMAN. -

Then Mr. Isaacs cannot put his amendment as a whole.

Mr. McMILLAN (New South Wales). -

I have a proposal to submit to unite the two amendments, which would probably meet the wishes of all the members of the New South Wales delegation. It will retain the first portion of Mr. Symon's sub-section, and a portion also of Mr. Isaacs' amendment.

The CHAIRMAN. -

Unless Mr. Symon withdraws his amendment, it must, be put.

Mr. SYMON (South Australia). -

I should, like to say a word before you adopt that course, because the condition of things has considerably changed. I sincerely hope that we shall feel it incumbent upon us as a matter of duty, when considering any amendment, not to re-open again the whole subject, which we have been debating for four days with the utmost exhaustion of intellect and of physique. In relation to matters so complicated, whatever the absolute rights and wrongs may be, this Convention cannot settle them, and probably no tribunal could settle them, satisfactorily. The better way then would be to confine our remarks to the specific amendment under the consideration of the committee. I would, at the same time, thank Mr. Trenwith for his exceedingly able and generous defence of the position that South Australia has taken up, and I agree with him that the sentiment he emphatically gave his adhesion to - that we should look upon this matter as citizens of Australia, rather than as people coming from diverse states, ought to govern the solution of the question. We who represent South Australia, as well as the honorable members who represent New South Wales, must not, however, forget the old saying of a member of the Swiss Parliament that, after all, his shirt was nearer to him than his coat. We may be excused if we show a certain amount of warmth in vindicating our position and asserting its justice. Sir George Turner's speech this morning came to us like a "bolt from the blue." It shattered, absolutely shattered, Mr. Isaacs' amendment. It took the whole claim from it that it possessed any virtue whatever. I would ask honorable members to consider for a
moment what the position is. My right honorable friend said that we were really fighting a shadow, and he set about reducing the amendment to the same shadowy position which the question occupied in his mind. Just consider what the amendment is. We are to leave in the Constitution the control of the navigability of rivers. That is all very well.

The CHAIRMAN. -

Will the honorable member take his seat for a minute? I think the time has now come when the standing orders should be strictly applied, and the remarks of honorable members confined to the immediate question before the Chair. The immediate question is the introduction of the words "without limiting sub-section (1)." We have not come to any amendment suggested by Sir George Turner yet.

Mr. SYMON. -

May I point out, Sir Richard Baker, that I am advocating my own amendment, and, in doing so, perhaps you will allow me to combat the views opposed to it? I do not see, with all submission, how I can submit my amendment to the consideration of the committee, unless I point out the circumstances which render it impossible for me to withdraw it.

Mr. ISAACS. -

Allow me to point out to the honorable member that if he permits me to do as I wish, he can still move his amendment. He will still have precedence. It is only to relieve myself and some others from a difficult position into which I have got, partly from the views of my honorable friend.

Mr. MCMILLAN. -

I desire to explain that when I said I wanted to propose a conjunction of two portions of these proposals, one of Mr. Symon's, and one of Mr. Isaacs', I did not refer to the small amendment of Mr. Isaacs' at the beginning.

Mr. SYMON. -

Sir, I do not know what the standing orders are coming to, but if there is to be a debate on another amendment in the middle of my few remarks-

The CHAIRMAN. -

The amendment now is to insert the words "without limiting sub-section (1)." That is the only question before the Chair.

Mr. SYMON. -

My honorable friend (Mr. Isaacs) will understand that I am perfectly willing to accommodate him if possible. I merely wish it understood that, under the altered conditions of things, I do not hold myself open to withdraw my amendment as originally proposed. If it would convenience the honorable member, I have no objection to withdraw it temporarily.
Mr. Symon's and Mr. Isaacs' amendments were then temporarily withdrawn.

The CHAIRMAN. -
Mr. Isaacs now moves the whole of his proposal (see p. 418).

Mr. SYMON. -
Then I desire to move my amendment.

Mr. REID (New South Wales). -
Before the honorable member moves his amendment, I would like to be perfectly clear about the words, "The navigability," at the beginning of Mr. Isaacs' amendment. I want to understand what the honorable and learned member has in view by using the words "The navigability." Do I understand that those two words would give power to the Federal Parliament to do this, we will say-to appoint a trust for a particular river which falls within the wording of this sub-section, for the maintenance of navigability, and with the duty of maintaining the navigability of any particular stream, which falls within these words? Would this give the Federal Parliament power to do anything of that sort? Would it give the Federal Parliament physical jurisdiction over the waters, as opposed to the general power of preventing anything being done which is unfederal, or contrary to the terms of the Constitution?

Mr. ISAACS. -
As I understand, it would give to the federal power not only the right to prevent obstructions, but, as in America, to improve the navigability of a river; but not the right of interfering with any streams but those rivers specifically mentioned.

Mr. REID. -
That clears up the difficulty I was in, and it also points out very strongly the anomaly that would arise under the version of my honorable and learned friend. Under that version it would be possible for the Federal Parliament to conduct works for the navigation of rivers falling within these words.

Mr. ISAACS. -
On the river itself.

Mr. REID. -
On the river itself. But an equally important power, the power of conducting works for the improvement of the entrances of harbors which are not rivers would remain within the provincial control.

Mr. ISAACS. -
No.
Mr. REID. -
Surely "The navigability of rivers" is an expression which does not necessarily include the navigability of harbors?

Mr. ISAACS. -
There is another sub-section with reference to navigation and shipping which would include that.

Mr. REID. -
If that sub-section would include the navigability of harbors, what is in the sub-section that does not include the navigability of rivers? How can those terms be held to be so narrow that, whilst they include harbors, they do not include rivers? and, if they include rivers, there is no necessity for this

Mr. ISAACS. -
The honorable member has lost sight of what I endeavoured to emphasize-my desire to place irrigation before navigation, and without this subsection you cannot do that.

Mr. REID. -
Then I understand the position.

Mr. SYMON (South Australia). -
I rise to a point of order. I do not like raising points of order, as I am exceedingly good-natured; but I thought that I was in the middle of a speech.

The CHAIRMAN. -
The honorable member (Mr. Symon) sat down and the right honorable member (Mr. Reid) rose.

Mr. SYMON. -
I thought I sat down merely in order to enable you to settle a point of order; but still I always prefer to hear my honorable friend's voice to my own.

Mr. REID. -
Sir Richard Baker, I know that when you allow me to address you, I am in order in doing so. I know that you keep us in very proper order. I understand from the honorable member (Mr. Isaacs) now that, after all, these words are not so much necessary in this place, as to clear up doubts.

Mr. ISAACS. -
There are several reasons; another is that this limits it to rivers which are not purely and solely state rivers. That is an important consideration.

Mr. REID. -
Does it, really?
Mr. ISAACS. -

Undoubtedly.

Mr. REID. -

Are not rivers, for instance, on the coast of New South Wales, "navigable for trade and commerce with other countries"? I cannot conceive a river on the coast of Australia which won't fall within the definition of rivers which are, "in fact permanently or intermittently navigable for trade and commerce with other countries."

Mr. ISAACS. -

Is the Lachlan within that definition?

Mr. REID. - Will not that expression, "navigable for trade and commerce with other countries," include every coast river that is navigable?

Mr. ISAACS. -

Yes, but it would not include the Lachlan.

Mr. REID. -

It would not, and therefore by adding the other words you include them all. In one breath the honorable member makes out that he is only referring to certain rivers, and in another breath, in order to meet that difficulty, he includes all rivers.

Mr. ISAACS. -

That is not correctly representing me.

Mr. REID. -

Which position does my honorable friend take up? Does he mean to include rivers on the coast of Australia which are navigable or intermittently navigable? Does he or does he not?

Mr. ISAACS. -

I have answered that question in the affirmative about a dozen times already.

Mr. REID. -

Very well; then this has a general application.

Mr. BARTON. -

It includes the, improvement of a bar entrance.

Mr. REID. -

It must do so. What is the use of navigation on a river which has a bar that prevents navigation? What I desired the answers of my honorable friend (Mr. Isaacs) for, was on a very important business point. I want the Convention to understand that, in trying to adjust this difficulty about the waters of the Darling and the Murrumbidgee, the Federation is distinctly loaded—whereas the matter before was, at any rate, vague—with the duty, if it thinks fit, of improving the navigation in all the rivers of Australia, and at the same time it is not, with equal distinctness, given the opportunity of
improving the harbor entrances of the continent. There is only one harbor in Victoria, and that is an ocean harbor, so that probably this matter has not come directly under my honorable friend's personal observation. But take, for example, the harbor of Newcastle. In that harbor, which has an enormous trade, it is absolutely necessary, as I have been advised by the officers, that, in view of the exigencies of commerce, we should deepen the entrance several feet. Now, why should this definite power be inserted here with reference to rivers, and not also with reference to harbors? In what sense is the improvement of a river a national work, and the improvement of a great harbor like that of Newcastle not a national work? What an extraordinary anomaly we should be landed in if there were provincial control of harbors-avenues of trade and commerce with the world-and federal control of the rivers, down to very small streams that are navigated by small ketches on the coast of Australia. Why should we load the Federation with this purely local duty? Why should we bring into the Federation all sorts of local questions? Why blight the prospects of expansion of the federal power with these eternal questions, which trouble us so much in our local politics, about river and harbor improvements? If this is to be done, let it be done fully. Let river and harbor improvements be taken over generally. I am against the whole proposal, and I am only pointing out the objection to what we all admit is my honorable friend's most praiseworthy attempt to deal with this matter. We all fully recognise that the intention of the honorable member is to endeavour to bring the parties now at issue to a friendly settlement;

but, in his anxiety to do that, he has lost sight of the fact that he would really put the Federal Parliament in a most anomalous position, if, by express words, the navigability of rivers is to be a subject on which it may, if it likes, exercise jurisdiction, whereas the navigation of harbors and the improvement of entrances would not be such a subject.

Mr. ISAACS. -

If that is your difficulty, you can vote afterwards for Mr. Symon's proposed amendment, which would remove all question about the matter.

Mr. REID. -

My objection is a cardinal one to the whole proposition. I submit that it is better to leave it as the Constitution originally left it. We certainly made no express legislation about it, and I appeal to members of the Convention whether they ever thought that, in passing the general words of this clause, they were aware that they were, by these general words, handing over, if the Federal Parliament wishes it, the physical control of all their rivers, and the improvement of navigation?
Mr. DOBSON. - It is only a concurrent jurisdiction.

Mr. REID. -

In this sub-section we have only put in subjects on which we think the Federal Parliament should act. No doubt the honorable member is strictly right that this is only concurrent, but the object of making these powers concurrent was to meet the difficulty which would exist if they were made exclusive, and the state laws perished immediately the Federation came into existence.

Mr. BARTON. -

As we know by the case of the United States, the Federal Government will only legislate when they consider it absolutely necessary, and in America they have postponed legislation on a great many subjects.

Mr. REID. -

No doubt that is true; but to come back to the practical difficulty I have mentioned, if, with all the claims I know of in my own colony for improvements, it is considered that the Federal Parliament has this power, and can exercise it, it would be exposed to a great many attempts, at any rate, to obtain federal expenditure on such works. I do not want to have any uncertainty on this point. I am glad the honorable member raised the matter in this way, so that we can elicit some definite opinion upon it, and can afterwards make that opinion clear, if it is contrary to the view of the honorable member. I invite those who are opposed to handing over to the federal authority the right of dealing with rivers and harbors, in the sense of spending money on them, and taking possession of them for the purposes of navigation-I invite those who take that view to oppose this amendment, and in inviting them to do that, I at the same time cheerfully recognise that we have already passed general words which will absolutely prevent any provincial power, in dealing with its rivers and harbors, from treating the trade of any of the other colonies differently from its own. On that point we are all at one. We wish to have equality of trade all over the Commonwealth; but the difference between the honorable member and myself is that I propose that the Federal Government shall have a preventive power-the power to prevent abuses in the colony; whereas my honorable friend's amendment hands over to the Federation the duty respecting the navigation of rivers without handing over, in express terms, the same duty in reference to harbors. Then, again, I oppose the whole proposal.

Mr. BARTON (New South Wales). -

Although I am following an honorable member who is from New South Wales, like myself, and who takes up to a very large extent the same
position as I take, I should like to say a few words at this stage in order that my own position in this matter may not by any means be misunderstood. I am here to state, with reference to what I think is the true construction of "trade and commerce," that if Mr. Isaacs will look at clause 89, which provides that-

So soon as uniform duties of customs have been imposed, trade and intercourse throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free.

He will see that that clause, in terms not thought of at the time the American Constitution was framed, secures to the Commonwealth the control of all trade and intercourse in the direction of freedom. That is to say, that the words "internal carriage," in clause 89, if they are carefully read and contrasted with "ocean navigation," must apply to the security of freedom of trade, whether the trade is carried by land or on a river. Then, that clause, I take it, means uninterrupted intercourse between the states.

Mr. SOLOMON. -

Is the meaning of that clause any greater than the mere freedom of inter-colonial trade and commerce from customs duties.

Mr. BARTON. -

It means that at least, but I think it means more, read in connexion with other clauses.

Mr. ISAACS. -

It is a prevention of barriers between the colonies.

Mr. BARTON. -

It is the prevention of barriers between the colonies, for one thing. Now, I submit that uninterrupted intercourse means no interference with trade or commerce. Clause 89 seems to me to find its corollary in sub-section (1) of clause 52-

The regulation of trade and commerce with other countries, and among the several states.

The corresponding sub-section in the United States Constitution contains the originating power. In this Constitution, sub-section (1) of clause 52 is really the corollary of clause 89, covering internal free-trade, and the command of navigation and carriage, internal and external, which is conveyed by clause 89. So that the point I made is this—that instead of being an originating and original power as in the United States, sub-section (1) is a corollary, it is really derivative from clause 89, which is the spring and source of sub-section (1). If honorable members will read the two provisions together I think they will see that there is great force in that contentions consideration of the matter which, to some extent, has been
overlooked.

Mr. ISAACS. -

Do you consider that that would touch the power of the Federal authority to deal positively with the waters of rivers, or give any such power to the federal authority?

Mr. BARTON. -

I think it strengthens sub-section (1) in the direction of legislating for the prevention of obstruction to navigation, and for the furtherance of navigation. I go a great deal further than my honorable friend, and my colleague, Mr. Reid. I put it this way—take it that clause 89 insists that trade and commerce shall not be interrupted, or, I would rather put it, that trade and commerce shall be uninterrupted. Trade and commerce are not uninterrupted if the state can make navigation on ordinarily navigable rivers of the Commonwealth impossible. Therefore, the Commonwealth must secure that navigability. If that is not so, the federation is not complete in what I consider an essential of any federation, Sub-section (1) of clause 52 does permit the Commonwealth to secure this essential, because, read with clause 89, looking at it in that way, in which we can see that the one provision may be derivative from the other, there is no doubt in my mind that, under these circumstances, the trade and commerce clause is for the purpose of permitting the Commonwealth, by legislation, to secure those things which are secured by way of declaration in clause 89—namely, uninterrupted trade and commerce. I do not see how we of New South Wales—I make this frank declaration—can object to that if we are to call ourselves, federalists. It is a federal power. The means to secure inter-colonial free-trade-uninterrupted trade and commerce—should be in the hands of the Federation, and a man cannot call himself a federalist if he does not submit to that proposition. Nevertheless, this leaves the state powers of conserving water untouched unless they are used in contravention of any legislation of the Commonwealth within the powers conceded to it by legislation. The point I now wish to make is this: That going to the fullest extent of what I consider is the strength and construction of the trade and commerce clause, arising from the presence in this Bill of such a provision as clause 89, which has no compeer at all, no parallel, in the United States Constitution—allowing for all that, nevertheless the state powers of conserving water, and indeed of dealing with navigation on their rivers, so far as it is the navigation of that state alone, are altogether untouched until there arises some act of legislation by the Commonwealth, properly and constitutionally passed, under which that power of conservation of water-
may be to some extent impaired or infringed for the necessities of navigation.

Sir GEORGE TURNER. -

On your argument does not clause 82 take that away at once?

Mr. BARTON. -

No; I do not think that there is anything in the Bill that takes it away. Very well, then, if a state law, or the action of the state, or the action of a citizen of a state, does not contravene Commonwealth legislation under that power of legislation, granted in this Bill, the state law is still valid, and cannot be touched or interfered with, and that I conceive is sufficient for the purpose of New South Wales under this Constitution. Now, my honorable friend (Mr. Isaacs) yesterday, in that remarkably able and statesmanlike speech which he made—one of the best speeches addressed to this Convention since it began its sittings in Adelaide—mentioned state laws with regard to irrigation in the United States, especially state laws passed with reference to the and country, and with reference to California. Now, while my honorable friend mentioned those in support of his argument, all those instances are evidences that, under the operation of the trade and commerce clause in America, the right is retained to the states, under the United States Constitution, to deal with these matters, and is recognised by the courts. And if there were any doubt about that in our own' case, we have only to refer to clause 99 of this Bill, which tells us that—

All powers which at the establishment of the Commonwealth are vested in the Parliaments of the several colonies, and which are not by this Constitution exclusively vested in the Parliament of the Commonwealth, or withdrawn from the Parliaments of the several states, are reserved to, and shall remain vested in, the Parliaments of the states respectively.

Mr. KINGSTON. -

That is the reservation clause.

Mr. BARTON. -

Yes, the reservation clause. Now, that clause has a twofold operation. It means, first, that the power to deal with water conservation and irrigation, which, if you rely on sub-section (1) alone, finds no mention in this Constitution, and, therefore, is not a power given to the Commonwealth, but a power retained in the states absolutely. And it means, in addition to that, that the states will retain their power of dealing with the navigation of their rivers, except so far as those rivers fall under the domination—if you like to use that large word-of the legislation of the Commonwealth, when the Commonwealth chooses to legislate on the subject of navigation. So that the position of the state is secure as regards the conservation and use of its waters, except to the extent that there may be an actual navigation
law passed by the Commonwealth, which may have the effect of limiting the state use of the water of the rivers within that state. Now, when we consider that as we go on in these colonies the uses of our rivers for purposes of navigation are likely to be less and less instead of largely increasing, when we consider that in the United States the use of the rivers for navigation, notwithstanding the grand volumes of their streams, is really diminished, and has given place very largely to the carriage of goods and produce by traction on land, by railways which cut off the corners, so to speak, when we consider that railways in these colonies will cut off so much more of the corners because our streams are so immensely meandering, when we consider that railways in the United States, are streams that are navigable only piecemeal, as it were, cannot we see that as years go on, and railway traction increases, whether we hand over the railways to the Commonwealth or not, the result will be that the tendency of the states will be to carry their goods and their produce by rail, as a continuous and daily cheapening means of communication, instead of by these sparsely-watered rivers. What will follow from that? It has been well pointed out already by Mr. Isaacs that no doubt as time goes on, as river navigation yields to railway traction, so the uses of the states of the waters of those rivers in the way of conservation and irrigation will meet with less and less interference from the Federal Government by the exercise of its power under sub-section (1) of clause 52. So that a state which is now tremulous about its power of water conservation and irrigation may well take this comfort to itself - that, as years go on, its right to do that will be more and more recognised, whatever the Constitution says, simply because the Federation would not find it useful or necessary to make many regulations as to the navigation of intermittent streams. I say that to clear away the misapprehension that seems to exist in the minds of some honorable members from New South Wales, as well as in the minds of other honorable members from other colonies, and I say it also because it seems to me to clear up the question a great deal. First, you have to ascertain by the operation of this Constitution, which differs in an important respect from the United States Constitution, this power of navigation. This power of navigation is a strong power to give to the Federation, but it must be given if we are to federate at all, because it is a federal power, inseparable from the right of maintaining free intercourse. Then you have it established that while that may be not only technically, but in right and justice, a necessary power to establish at this moment, the dangers to states which
are fearful about the conservation of their water will diminish every year, from the circumstances I have explained. Well, now, all these considerations lead me to say that the safety which is secured first by a sufficiently definite provision in the Constitution, and is secured as time goes on by the elasticity of the Constitution, will be fortified by leaving the trade and commerce section untouched, and not encumbering it with limitations. The honorable member (Mr. Solomon), or anybody else who has a doubt about it, may be assured of this, that I am taking this Convention entirely into my confidence and telling it entirely what I believe. Recognising that, I feel that to the full extent the whole of the rivers of Australia must be subjected to the right of navigation. I am bound as a federalist to accede that power, and that is why I am in favour of the trade and commerce section. I think that doubts as to whether a British court would interpret it in the same way as the American courts have interpreted a similar section in the United States Constitution will be apt to vanish when we find that that section is so enormously fortified as it is in this Constitution by clause 89. I am satisfied that our best and wisest course is to leave things to the operation of the trade and commerce section, fortified as it is, and to let the natural tendency of things work itself out. If irrigation is more important than navigation, let it be so. Navigation, at any rate in competition with land traction by railways, will inevitably diminish. That subject will become less important every year, and the rights of the states with regard to irrigation and water conservation will ultimately prevail, according to the necessities of the people. Is it not better to leave these things to future developments, rather than interfere by hampering restrictions and limitations, such as are contained in this great number of amendments? I should like to reiterate the position I took up the other day. I will not consent to any dealing with the navigation of rivers which are in New South Wales, or on its boundaries, in any other way than the rivers of the whole Commonwealth are dealt with. I know no way of maintaining that impartial application of the law to all rivers of the Commonwealth, except by striking out all these sub-sections, replacing no one of them, and depending upon the efficacy of sub-section (1) of this clause. Perhaps I shall find myself compelled, when the amendments are moved, to vote for anything which I consider will improve them or render them less dangerous, but I say at the outset that my intention is in the end to vote against every amendment and restriction that has been proposed. I would urge upon the Convention that the safety of all the colonies concerned lies in the maintenance of sub-section (1).

Mr. SYMON (South Australia). -
After the rest I have had from the continuance of the few remarks I intended to make-

Mr. BARTON.-

I hope I did not interrupt the honorable member.

Mr. SYMON.-

The honorable member interrupted me most agreeably. I will now resume, and finish the little I have to say with regard to the substantial amendment, but before doing that I should like to preface what I have to say with the remark that with a great deal of what the honorable member (Mr. Barton) has said I entirely agree. It has very largely my unqualified assent. At the "we time, be did introduce a good many things that are debatable, full of doubt, and a number of other matters that are purely speculative as to the future operation of this clause with which we are dealing. I do not intend to re-argue the matter or re-open these general questions. But I wish to point out to honorable members what this amendment as proposed to be mutilated by the right honorable member (Sir George Turner) comes to. We of South Australia thought that by this amendment we were going to get something—that we should get at least a tribunal which would determine any difficulties and doubts that might arise with regard to the operation of these clauses affecting navigable rivers. Instead of that, the amendment which is proposed to cut this paragraph short at the word "irrigation" will have the effect of embedding in this Constitution a declaration that the states shall have absolute and uncontrolled power over all these water-courses with which we have been dealing. I ask my right honorable friend if that is fair? We have been debating for days the necessity for some provision which will secure this navigability, as to the necessity of which we are all agreed, and the whole matter in dispute between us has been as to whether it shall be dealt with entirely by a federal authority, or, as suggested by the honorable member (Mr. Isaacs), whether it shall be referable to an Inter-State Commission. It has never been suggested, except in the contention of New South Wales, that there shall be this absolutely uncontrolled power on behalf of the state. It is taking away everything we have got. It would be better for us to leave the whole thing absolutely as it is, without protection of any kind, than to introduce the amendment of my right honorable friend. It is absolutely destructive of the other principle which the Attorney-General of Victoria has proposed, and to which certainly we were misled, I do not say intentionally, into giving our assent yesterday in principle, subject to any verbal amendments, as it substituted some [P.505] starts here

fair tribunal to deal with this matter. I ask my right honorable friend if he is
prepared to do that now? I say, further, that to put this amendment as a whole and not sub-divided will have the effect of more greatly embarrassing this question than would be the case either by sub-division or by withdrawing this amendment altogether. I warn my honorable friends from South Australia that if they vote for the amendment of the honorable member (Mr. Isaacs) as a whole, they may find themselves-I will not say entrapped—but in an unfortunate position at the end of the discussion, by having assented to this amendment mutilated in the way the Right Hon. Sir George Turner desires.

Mr. ISAACS. -
Not if they vote for it as a whole.

Dr. COCKBURN. -
It will not be the case if we get the amendment carried as a whole.

The CHAIRMAN. -
I may point out that the amendment has not yet been moved.

Mr. SYMON. -
I am dealing with what has been indicated to the Convention. The clearest way is to have this amendment put section by section, in order to know what we are voting for. I tell the honorable member (Mr. Isaacs) that I am not going to vote for this amendment of his except piecemeal. I will vote for the first part, with the addition which I have proposed, but I cannot vote for that portion down to "irrigation." I will not vote for any amendment as a whole that is likely to imperil the object we have in view.

Mr. ISAACS. -
If it is carried as a whole the risk will disappear.

Mr. MCMILLAN. -
As I have spoken enough on this subject, I merely rise to make a practical suggestion, if I am in order. Before doing so, I should like to say that I would be very pleased indeed if I could follow the lead of my honorable friend the leader of the Convention; but I cannot see that in a case of this kind, where there is distinctly a doubt, that we have a right to leave that doubt in this Bill. The whole of this controversy, with the enormous amount of legal ability which has been exercised, is an object-lesson for the future. If, amongst the ablest men in this Convention, we find absolutely divergent opinions, what will be the case in the High Court of the future? Then, again, the great evil of the amendment of the honorable member (Mr. Isaacs) is that after confining our attention entirely to the question of one river—the Darling or, at any rate, to the question of the rivers that flow between different states, it is extended now to the question of the whole of the rivers of the colonies. Why should this new ground be opened up at all? I find that by combining a portion of the
proposal of the honorable member (Mr. Symon) with a portion of the amendment of the honorable member (Mr. Isaacs), we can, at any rate, get a clear test of what we are fighting for. If I am in order, I would just make this suggestion in the course of my speech. I would suggest that an amendment should be drawn up so that it should read in this way:-

Navigable rivers flowing into or between two or more states, so far as may be necessary to the maintenance and improvement of their navigability.

That is taken from the amendment of the honorable member (Mr. Symon), and I think it brings us back to our original position. Then I would add these words from the amendment of the honorable member (Mr. Isaacs):-

But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation.

All that the honorable members from South Australia will have to do, in dealing with this, is to put in the word "reasonable," or something else to that effect.

Mr. KINGSTON. -
Will you agree to that?

Mr. MCMILLAN. -
I do not say that I would, but we should then have a clear issue, and we shall have done with the round-about fighting. We shall know what we are doing. Of course I differ from my honorable friends (Mr. Barton and Mr. O'Connor). I say, without limiting the general powers under sub-section (1), or the general powers under navigation and shipping, we ought, in this matter which we have been fighting about for days, to have a clear enunciation of the views of the Convention. This seems to me to bring matters to a point.

Sir GEORGE TURNER. -
Are you willing to put in the word "reasonable"?

Mr. MCMILLAN. -
I am not.

Mr. GORDON. -
The honorable member will not agree to anything reasonable.

Mr. MCMILLAN. -
Perhaps my only unreasonable action is my friendship for the honorable member; but, at any rate, without going away from the original conflict of opinion, this would be our proposal for New South Wales, if I may speak for my colleagues. The proposal of my honorable friends from South Australia would be to restore one or two words of the amendment of the
honorable member (Mr. Symon), in order to give a discretionary power to the Federal Government.

An HONORABLE MEMBER. -
   Or the Federal Judiciary.
Mr. MCMILLAN. -
   Yes, I do not care which.
Sir GEORGE TURNER. -
   Would your suggestion include the Darling and the Murrumbidgee?
Mr. MCMILLAN. -
   That is questionable.
Mr. BARTON. -
   Why make flesh of one and fish of another? Why mention New South Wales?
Mr. MCMILLAN. -
   I do not want to introduce any words of my own; I have no objection to the honorable member (Mr. Symon) introducing some expression which will bring in the Darling River. If my honorable friend (Mr. Isaacs) would agree to the withdrawal of his amendment, and if be and the honorable member (Mr. Symon) would consider the proposal on the lines I have suggested during the luncheon hour, we should have a clear test vote. My honorable friend, perhaps, was not listening to me when I was speaking a moment or two ago. What I objected to principally was that he broadened out the question into that of the whole of the rivers of the colony.
Mr. ISAACS. -
   Would the honorable member mind reading it again?
Mr. MCMILLAN. -
   I beg to hand it to my learned friend.
Mr. DOBSON. -
   What would happen under your proposal when the time came that so much water would be wanted for irrigation that navigability could not be maintained?
Mr. MCMILLAN. -
   Now, that is going over the whole question again.
Mr. DOBSON. -
   What would happen then?
Mr. REID. -
   We all want to know that one thing.
Mr. MCMILLAN. -
   I have been twitted with reducing the question to a reductio ad absurdum. If the state has a right absolutely, as we contend it has, to the waters of the
Darling, although such an extreme right would never be exercised, it must absolutely carry the whole right of draining that river. There is one matter on which I feel very strongly. It has been referred to slightly before, and at the expense of wearying the committee I would refer to it again, because it is one of the most important matters connected with the development of New South Wales. It will be necessary, in the development of these and districts of New South Wales, to carry out large works of irrigation. At the present time there is a syndicate in Melbourne in treaty for private lands in a portion of New South Wales, and they intend to ask for irrigation rights from the Government. If it is told to these companies, who employ either colonial or English money, that the whole of their works might be declared ultra vires by the Supreme Court of the Commonwealth, it is very clear that all their operations will cease. However, I would suggest to my learned friends (Mr. Isaacs and Mr. Symon) to put their two proposals together, somewhat in the shape I have indicated, and let us have a fair test vote on the matter without any more circumlocution-as we certainly have spent long enough time over it.

Mr. LYNE (New South Wales). -

I was very much inclined to agree to the idea which my learned friend (Mr. Barton) gave expression to this morning, namely, that we should have no sub-section dealing with this question in place of sub-section (31), and should allow the whole matter to be left to the interpretation of the words in sub-section (1). But I am very much against allowing that to take place after listening to his interpretation, for it gives away everything which New South Wales has been contending for, and I, for one, cannot agree to that. The proposal which my honorable friend (Mr. McMillan) has just made would be one which I think would definitely show what power of conservation and irrigation we should have, and without something of that kind I fear very much that the very extended interpretation given to sub-section (1) by Mr. Barton will not be favorably received by those who are most interested. The proposal of the honorable member (Mr. Isaacs) is one that I could not support, and I do not see how any other representative of New South Wales could support it. The nearest one I could support is Mr. Symon's, but that is not such a one as, I think, we are justified in accepting; and, indeed, no amendment that does not interpret what rights we have regarding irrigation and conservation will, I think, be acceptable to New South Wales or to the representatives of that colony. I regret very much, now that we have come to this stage, that we cannot agree with Mr. Barton in his idea, and I think South Australia ought to be more than satisfied with
the interpretation he has placed on that sub-section. It has frightened me, and I venture to think it has frightened a few representatives of New South Wales.

Dr. COCKBURN (South Australia). -

The honorable member (Mr. Lyne) certainly is very candid, and I think we can leave that candour to speak for itself. I only rise to say that I hope no such use will be made, as is suggested by the honorable member (Mr. McMillan), of the amendments of Mr. Isaacs and Mr. Symon as to warp them to a purpose so entirely opposite to the desire of each of those honorable gentlemen. The result of combining portions of the two amendments would be to put a face on the hybrid just exactly the opposite of what is intended by those two honorable gentlemen. I cannot help noticing, I regret to say the decline of the federal spirit in this Convention as compared with the Convention of 1891; and, if honorable members will pardon me for a moment, I will read from the official report of the debates of the Convention of 1891 a very short speech, by one of the leading members of the New South Wales delegation, on that occasion. It is very short, but it is so sparkling and luminous on the point under discussion, and it expresses so thoroughly what I, if I spoke at any length, might vaguely endeavour to express, that I am sure honorable members will pardon me if I read the speech.

Mr. WALKER. -

Who is speaking?

Dr. COCKBURN. -

It is Mr. McMillan's speech. Speaking of the sub-section which relates to river navigation, with respect to the common purposes of two or more states or parts of the Commonwealth, he says-

This is a sub-section that I think requires some kind of elaboration, which probably those who have drawn the Bill may be able to undertake. The sub-section means more than the river navigation. We want the control of the rivers as regards the use of the water, and furthermore, it is necessary to have some control over the tributaries. As we know, in connexion with the Murray, there may be tributary streams, to check the flow of water from which might have such an effect as to render the river useless. It seems to me although I do not propose now to indicate any actual amendment—that there ought to be some very general powers with regard to the control of the river, not merely for navigation purposes, but also for purposes of irrigation and the conservation of the water. That I look upon as one of the most important matters in connexion with the whole scheme of federation. We have large
rivers which are absolutely essential to future schemes of irrigation and the conservation of water.

Mr. MCMILLAN. -
You have shown me the danger since then, you know.

Dr. COCKBURN. -

These run through different colonies, and if economically managed by one power-

Mr. MCMILLAN. -
Are you still quoting from me?

Dr. COCKBURN. -
I am still putting forth my own thoughts in the language of the honorable member, which I say surpasses all I could possibly achieve by my own inferior utterances.

Mr. SYMON. -
No, you don't go far enough. They are his thoughts, too.

Dr. COCKBURN. -
Yes, they are his thoughts, too.

Mr. SYMON. -
I mean his secret thoughts.

Dr. COCKBURN. -
His federal thoughts, and that is why I regret the decline of the federal sentiment.

These run through different colonies, and if economically managed by one power, equitably dealing with all the rights of the different states, they may be great sources of wealth in the future. Consequently, it seems to me that a clause ought to be introduced into the Bill which will give the Central Government general powers to deal in some equitable way with the different rights of different states, and with the general conservation of all rights with regard to these rivers.

Mr. REID. -
That was said seven years ago, and a man entirely changes himself in seven years.

Mr. DOBSON. -
A verdict for South Australia.

Dr. COCKBURN. -
We want nothing more than that, and I wish in some respects we could get back to the feeling which animated that Convention.

Mr. DOBSON. -
Will not Mr. Higgins, amendment give you that now?

Dr. COCKBURN. -
Yes; and I will ask my honorable friend (Mr. McMillan)-

Mr. HOWE. -

This is not the same man, is it?

Dr. COCKBURN. -

He does not appear altered in the slightest degree. I question whether he is able to express himself better than he did in the language he used in 1891. I will ask my honorable friend to go back to the time when he attended that Convention in the responsible position of Colonial Treasurer of the mother colony. I think we have to place more weight on the utterances of a responsible Minister than we can place on the words of a gentleman not occupying an official position. And knowing that when the Treasurer of such a great colony as New South Wales speaks, he weighs every word before he utters it, I cannot but admire the succinct manner in which my honorable friend placed before the Convention of 1891 his views.

Mr. KINGSTON. -

And the views of New South Wales, too.

Dr. COCKBURN. -

His views were the views of New South Wales.

Mr. REID. -

In fact, it was an official utterance.

Dr. COCKBURN. -

It was an official utterance of the views of New South Wales.

Mr. REID. -

By the First Lord of the Admiralty.

Dr. COCKBURN. -

Let us have more of the federal spirit in the consideration of this question. I want to say but a few words more on the question. I have occupied very little of the time of the Convention in the course of this discussion. It is such a battle of legal luminaries that I almost think that if I had my career to begin again, and knew that I should have to attend so many Conventions, I should get myself articled to a lawyer before I started with regard to the remarks of Mr. Barton

Mr. REID. -

Surely they ought to satisfy you.

Dr. COCKBURN. -

They would if I was quite sure about his version; but as my right honorable friend (Mr. Reid) takes entirely the opposite view, and as I have a very great regard for his astuteness-a feeling which has grown on me every time I have met him,
and seen him meeting his foes in controversy-his clear exposition on this matter throws some doubt-

Mr. Reid. -

I am going to clear that up before I am done with it.

Dr. Cockburn. -

It throws some doubt in my mind on the able exposition of the leader of the Convention. As far as I can read clause 89, on which the leader of the Convention lays so much stress, it seems to me nothing more than a provision that no duties and no tolls shall be levied on these rivers. That is the interpretation my right honorable friend (Mr. Reid) places on the clause, and I believe he is right. It is said that we can take the precedent of the United States with regard to the general development of this Constitution. But I do not think we can derive any reliable analogy from the United States in this respect. We must remember that for many years the United States Constitution was developed under a very strong centralizing and national influence. We know that for a number of years the nomination of the Supreme Court Bench was entirely in the hands of those who wanted to see the whole country unified- until they had translated to the bench, I believe, without one exception, none but Judges holding only a similar view on this matter, and because they, under these circumstances, placed an interpretation on the Constitution which tended towards giving large powers to the Federal Government in this matter, it does not follow that in our case the same result would ensue. I feel, sir, that it is not right unduly to prolong the debate at this stage. But I cannot refrain from observing that there was no desire on the part of the Convention to close the debate while those holding the federal view had an apparent majority, but now that there is some feeling that the majority has gone the other way there appears to be a very strong desire to bring the debate to a close. I rather wish that not quite so conciliatory spirit had been shown by South Australia in this matter.

Mr. Howe. -

It is a pity that you did not read the extract yesterday.

Mr. McMillan. -

Who put you up to reading the extract?

Dr. Cockburn. -

I never run anybody else-

Mr. McMillan. -

You are too harmless a dove to find that speech.

Dr. Cockburn. -

I never run anybody else into a sin for which I alone am responsible.

Mr. McMillan. -
In this case somebody ran you into it.

Mr. SYMON. -
This is not a sin.

Dr. COCKBURN. -
It is a sin from his point of view.

Mr. SYMON. -
It is a virtue.

Dr. COCKBURN. - Even justice, from the present point of view of the honorable member (Mr. McMillan), is a sin. Remembering the luminous nature of his utterances, I obtained a copy of the Hansard of the Convention of 1891, and therefore the honorable member is solely responsible for my having raised up from under the dust of the ages of the past his previous powerful utterances. I felt that he was not on this occasion doing himself justice, but I hope that after a few minutes' reflection he will see that his official opinion, when he felt that the eyes of the colony—indeed, the eyes of the world—were on his utterances, is the correct one, and I ask him to go back to his first love, and show himself again to be imbued with that federal spirit of which we all formerly recognised him to be so able an exponent.

Mr. DOBSON. -
Were there any more speeches of the same kind made in 1891?

[The Chairman left the chair at one o'clock p.m. The committee resumed at six minutes past two p.m.]

Mr. HIGGINS (Victoria). -
I have not spoken this morning, and I do not intend now to make a speech of any length; but I wish to know, Mr. Chairman, exactly how the amendment which I indicated my desire to move some two days ago stands? I have not joined in this discussion, because I cannot help feeling that the debate has been carried on upon a low level with regard to federal principle, upon a level with which I cannot have any sympathy. The amendment to which I refer is that marked "AA," which would leave to the Federal Parliament "the adjustment of riparian rights as between states as to all waters which, in the course of their flow or after joining other waters, touch more than one state." The effect of that amendment would be to leave it absolutely to the Federal Parliament to declare as an inter-state matter what shall be the use of these waters. I utterly reprobate any attempt to say at this stage of our history that conservation and irrigation shall be paramount to navigation. In the ordinary course of the development of science, the Federal Parliament will learn what is best to be done, and I do not think it is for us in framing a Constitution to dictate to the Federal
Parliament what shall be considered the paramount use. This is a matter which is in all respects of federal interest. I did not want to interrupt the course of debate upon the amendment of the honorable and learned member (Mr. Isaacs), because I saw a very great chance of its being carried with the approbation of South Australia, and I did not think that I, a Victorian representative, would be justified in interfering with an arrangement which seemed likely to be accepted all round. I have, however, been pressed by at least half-a-dozen honorable members to insist upon my amendment, and, as the amendment of the honorable and learned member is not now likely to be accepted all round, there is a strong feeling that a division should be taken upon the question whether the mode of using these waters from their source in Queensland, throughout New South Wales, Victoria, and South Australia, should not be left to the determination of the Federal Parliament, in the interests of all.

Mr. SYMON. -

The Federal Parliament is the proper tribunal to determine this question. It is a political rather than a judicial question.

Mr. HIGGINS. -

My honorable and learned friend is quite right. I should be willing to leave this question to the Federal Court if it were a question of law, but, as a question of expediency, I wish to leave it to the Federal Parliament. In the course of centuries—because this Constitution is a matter for centuries—I want to leave the Federal Parliament free to alter the rules in regard to these waters as expediency may dictate. I admit that we cannot, in view of the expression of the representatives of New South Wales, carry any provision with their assent which will suit the views of the majority of honorable members. It is not for me to judge other honorable members, but the change of feeling in regard to this matter which has taken place since 1891 is to me lamentable, because it was then distinctly recognised that this was a matter for the Federal Parliament to deal with. Where you have a river which is filled by rains falling in Queensland, in New South Wales, in Victoria, and in South Australia, it and its tributaries cannot be properly dealt with except by the Federal Parliament. I understood you to intimate, Mr. Chairman, that you intend to take these amendments in their order, and, under the forms of the House, the amendment of the honorable and learned member (Mr. Isaacs) has been put first. In order, however, to allow a test vote upon the question whether this matter should be left to the decision of the Federal Parliament, as expediency may dictate, I shall propose the emission of all the words after the word "The" in the amendment, with a view to substituting the words contained in my amendment.
Mr. ISAACS. -
Do not strike out anything; put in your amendment afterwards

Mr. HIGGINS. -
Yes, I can do that if the honorable member would prefer me to take that course. I should like the amendment to read-

Without limiting sub-section (1), the adjustment of riparian rights as between states as to all waters which, in the course of their flow or after joining other waters, touch more than one state.

Sir GEORGE TURNER. -
Had we not better come to a decision in regard to the amendment of the honorable and learned member (Mr. Symon) first, so as not to mix up these matters?

Mr. HIGGINS. -
I hope that the honorable and learned member (Mr. Symon) will not misunderstand me when I say that I do not sympathize with the narrowing of South Australian rights which I think is involved in his amendment. I am of opinion that South Australia and all the other colonies are entitled to insist that this matter of the use of these waters, whether for irrigation or for navigation, shall be left to the Federal Parliament. The effect of my amendment is, not to enable the Federal Parliament to spend money upon irrigation in New South Wales or elsewhere; but to declare the limits within which New South Wales and Victoria may operate for the purposes of irrigation. The Federal Parliament is to make an adjustment of the rights of the colonies interested. The Federal Parliament, in fact, has a kind of negative power to say that New South Wales can irrigate as long as she likes, providing that she does not go beyond a certain number of gallons. Now, I think we might agree to that. This debate has been prolonged because I and certain others felt that there might be an agreement, but we now see that it is impossible that there should be an agreement, having regard to all the conditions. It is therefore important for all of us who feel this matter to be one of federal import to declare our views.

Mr. HOLDER. -
Do not think that when we are voting with Mr. Isaacs we are voting against you

Mr. HIGGINS. -
No; but the position is that we shall have to vote upon the insertion, after the word "The," of the words which I have proposed. Of course, if my words are carried I understand that Mr. Isaacs will not insist upon his, because the greater will include the less. This is not at all a new matter. My amendment has been before the Chair for two days at least, but I did not
press it, because I thought there was a possibility of an agreement on the part of New South Wales. But I now see that there is no possibility, and that it is essential that we should have a division.

Mr. ISAACS. -

How does your proposal differ from mine?

Mr. HIGGINS. -

My proposal will leave it for the Federal Parliament to say, from time to time, what shall be the reasonable use for any purpose of these waters-will leave it entirely to the Federal Parliament; but the amendment of Mr. Isaacs only goes so far as to say that the Federal Parliament may make laws as to the navigability of these waters, subject to the paramount power with regard to conservation and irrigation.

Mr. ISAACS. -

On the part of the states.

Mr. HIGGINS. -

I say that we ought not to declare in making a Constitution that any mode of use is to be paramount. I admit that it is likely that irrigation for a dry continent like this is likely to be the paramount use, but it is not a matter for the Constitution. It is a matter for the Federal Parliament to decide from time to time. I feel that I should not be justified after this long debate in prolonging it, but, having been pressed to do so by several of those who are in favour of the Federal Parliament having control in this matter, I shall feel bound to press my amendment to a division.

Sir GEORGE TURNER. -

Ought we not to decide Mr. Symon's amendment first?

The CHAIRMAN. -

Honorable members ought to confine their remarks to the amendment before the Chair; but

I find that it is extremely difficult to keep honorable members strictly to the point.

Mr. BROWN (Tasmania). -

It has been my misfortune to be so often in opposition to my honorable and learned friend (Mr. Higgins) in the discussions of this Convention, that it gives me a peculiar pleasure to say that on this occasion I am entirely in accord with him. I have listened without intervention or interruption of any kind to the very prolonged debate which has taken place on this subject, and during the last two days I have asked myself—not for the first time during the sittings of this Convention in Adelaide, Sydney, and Melbourne whether you, sir, were not presiding over a judicial court, in which a case exciting very widespread interest was being contended for on the one side
and the other, by the most brilliant members of the Australian bar. The legal technicalities which have been brought forward have, of course, been highly interesting, and I would like to say that especially the speech of the Attorney-General for Victoria yesterday was, I thought, a most valuable contribution to the debate. It certainly put the matter before us in a most lucid and forcible manner, especially in regard to its legal aspect, which has given rise to so much discussion. I think I must take exception to one remark of Mr. Higgins as to the change of feeling since 1891. I think there has been no change of feeling in regard to the point that this matter should be left to the decision of the Federal Parliament, but a new aspect has been given to the case by the springing upon us of the claims of South Australia as to the navigability of the Murray, those claims having provoked counter claims on the part of New South Wales, which to most of us seem of an overwhelming character, as to their right to use the waters of the sources of the Murray for irrigation purposes. These claims have imported into the matter a very much larger interest than there could possibly have been on the occasion when the question was discussed in 1891. But, sir, what I wish to impress upon the members of this Convention more especially is this—that, as has been said on more than one occasion during the course of this debate, we are fighting with a shadow, and it will be far better for the general principles to be left for the Federal Parliament to deal with, giving the Parliament the powers which we can give to them, in terms suggested by Mr. Higgins, but not attempting to import into the document embodying this Constitution limitations and discriminations which are so dear to the legal mind, but which to men of common sense seem, as regards a matter of this kind, altogether unnecessary. There is another phase of the question which is, I think, occasionally lost sight of, and that is that, while it is true that the colonies of New South Wales and South Australia are mainly concerned in this matter, yet they have surely sufficient confidence that the decisions of the Parliament will be such as will insure right and justice being done by the members for those states which are not immediately concerned in the matter. It is, I think, obvious to every honorable member that when matters of this kind come before the Federal Parliament they will be dealt with as similar matters are dealt with in our local Parliaments; members not immediately interested have no particular motive affecting them in their decisions, except the consideration of what is right and just between the parties concerned. The same thing will happen in the discussions of the Federal Parliament we are about to create. I think that our friends from South Australia should trust to the sense of fairness of the Federal Parliament, and I am sure that our friends from New South Wales ought to be equally satisfied to do the same.
Mr. KINGSTON. -
That is what we want to do.

Mr. BROWN. -
I am supporting the proposition of Mr. Higgins, to leave the matter to be decided by the Federal Parliament, so as not to prolong our discussions on limitations, definitions, and discriminations, as to which it is absolutely impossible for 50 members of this Convention to come to an agreement. I think the sooner we come to a division the better. I shall be glad to support a proposition which will leave it entirely for the Federal Parliament to deal with the matter; and I take leave to say that I think they will deal more effectually with it than we can, because they will have before them all the facts and all the interests concerned, which we have not before us. I trust, therefore, that, without further prolonging the discussion, we shall come to a decision upon the point. I say, unhesitatingly, that if we do not decide it on the general principle which I have indicated, I shall oppose every one of the amendments which have been suggested, and do all I can to have them rejected, so as to leave the matter as it stood before Mr. Gordon introduced sub-section (31), which has been so much objected to. I am sure that that will be much the safer and better way of dealing with the whole matter.

The amendment for the insertion of the words "without limiting sub-section (1)" was agreed to without a division.

The CHAIRMAN. -
The next amendment is that of Mr. Higgins.

Mr. HIGGINS (Victoria). -
I now beg to move the insertion, after the word "The," of my amendment AA, which is as follows:-
adjustment of riparian rights as between states as to all waters which, in the course of their flow or after joining other waters, touch more than one state.

Sir GEORGE TURNER (Victoria). -
I should like to have some explanation of the meaning of these words.

Mr. KINGSTON. -
They mean referring the whole matter to the Federal Parliament.

Sir GEORGE TURNER. -
I do not think they do. If the amendment is a general proposition that the whole question of irrigation and navigation, and the rights of the states to water, shall be left to the Federal Parliament, I shall be prepared to support it.

Mr. HIGGINS. -
That is what it means.

Sir GEORGE TURNER. -

I do not know that the insertion of these words will carry out that meaning. "The adjustment of riparian rights." The "adjustment"-what does that mean?

Mr. HIGGINS. -

You have a declaration of what the rights are.

Sir GEORGE TURNER. -

The honorable member assumes that certain rights are existing.

Mr. HIGGINS. -

No.

Sir GEORGE TURNER. -

If the Federal Parliament is to adjust them, surely he does.

Mr. HIGGINS. -

No.

Sir GEORGE TURNER. -

If you say rights, what rights do you mean?

Mr. HIGGINS. -

Can you suggest a better word?

Mr. OCONNOR. -

Mr. Higgins wants to give new rights.

Sir GEORGE TURNER. -

If it is simply to adjust existing rights we shall be left in the same difficulty as we are in now, because New South Wales claims that she has all the rights, and that South Australia has none at all, whereas South Australia claims that she has certain rights. "Riparian rights" here, I would urge, mean legal rights-some existing legal rights-and all the Federal Parliament will have power to do will be to adjust those rights between two conflicting States. I do not know whether the Federal Parliament is the proper body, to do that. I should say that the Federal Judicature is the proper body. But it seems to me that these words will not give South Australia what the representatives of that colony think they are going to get, and will not give what I, for one, desire to see the Federal Parliament have power to give, if it is to have any power at all. There is no question here about navigation; it is simply to "adjust riparian rights." Well, so far as I can recollect, from reading the law many years ago, that will be an extremely limited power, which will be useless to South Australia, and, to my mind, will give New South Wales everything she wants if she has the legal rights she claims to have.

Mr. GLYNN (South Australia). -
I should like to ask whether Mr. Higgins would consent to substitute the word "rivers" for "waters"? I have some doubt as to whether the Darling will come in under this.

Mr. BARTON. -
What about the lakes?

Mr. GLYNN. -
I am afraid that they would not come in under this amendment. We are anxious about them, because the lakes amount to a six months' flow and affect the navigation of the river. About six months' discharge of the Darling finds its way into lakes, and would not reach South Australia at all.

Mr. HIGGINS. -
Would not the word "waters" cover "lakes" better than the word "rivers"?

Mr. GLYNN. -
I think not.

Mr. HIGGINS. -
Does the word "rivers" include lakes?

Mr. GLYNN. -
The word "waters" would not include the waters kept back in the lakes into which the Darling flows at times.

Mr. HIGGINS. -
I understood that waters would cover the whole thing.

Mr. GLYNN. -
Does the honorable member think that the flood waters of the Darling, which find their way into about 70 lakes, and would be impounded by New South Wales, would come under the definition of this clause?

Mr. HIGGINS. -
Yes.

Mr. GLYNN. -
I have a doubt about it.

Mr. HIGGINS. -
The word "rivers" would be less wide than the word "waters."

Mr. GLYNN. -
I simply call attention to the point so that it may be considered.

Mr. BARTON (New South Wales). -
I do not want to take any further part in the discussion, but it may be of interest to honorable members to learn that I have received a communication from a gentleman whose authority we all value (Mr. A. Inglis Clark), in the shape of "Notes on the Proposal to provide in the Constitution of the Commonwealth of Australia for the regulation of the use of the waters of the River Murray and its tributaries." It is a highly interesting and learned Statement, and, without expressing any opinion
upon it myself, I propose to lay it on the table.

Mr. DEAKIN (Victoria). -

Would it not be the most convenient course to take it as read, so that it may go straight into Hansard?

Mr. BARTON. -

I do not want to make it a portion of any remarks of mine on the subject, because I have not sufficiently considered it.

Mr. DEAKIN. -

Then I will take the responsibility of it. I do not propose to read the document, but would ask the Chairman's ruling on the question whether it may be taken as read, so that Hansard may publish it to-morrow?

Mr. BARTON (New South Wales). -

It has been suggested to me that the paper should be laid on the table when the Convention resumes its sitting. The only difficulty I feel about it is that some honorable members may, wish to make use of it this afternoon.

Mr. DEAKIN. -

Is there any objection to the paper being taken as read?

The CHAIRMAN. -

I understand that the honorable member proposes to make a speech in which, instead of reading the paper, he is to be supposed to have read it?

Mr. DEAKIN. -

Exactly.

Mr. SYMON (South Australia). -

I venture to submit that that would be a very irregular proceeding. It is irregular to lay any expression of opinion from a private individual, however distinguished he may be, on the table, and the only way in which this paper could properly be included in our debates would be to make it a part of a speech. We should then have an opportunity of considering it. To put it in the records of the debates in a silent manner would be utterly irregular, and it would serve no useful purpose so far as the present discussion is concerned.

Sir JOSEPH ABBOTT (New South Wales). -

I would like to take your ruling, Mr. Chairman, on the question of whether this document can be read at all, or be placed on the table of the House? If it can, then an opportunity is afforded to any person outside to practically make a speech to the Convention. Mr. Clark holds no position in Australia different from that of others. If he can send a letter to the Convention and have it read, what is to prevent thousands of other persons from doing the same thing? To permit such a proceeding would be highly
inconvenient, and it would also be contrary to the practice of Parliament. It is not, I submit, within the power of an honorable member to read a document in the House and to lay it on the table, unless he is a Minister charged with some responsibility. If it was, we know the ki

Mr. BARTON (New South Wales). -

I recognise that it is the rule of Parliament that outside persons shall not be allowed to take part in the debates of Parliament. That is a rule that should guide us. Under the circumstances, I shall not again ask to have this document laid on the table, but I will take the ordinary course of handing it to the press at the conclusion of the sitting.

The CHAIRMAN. -

The question before the Chair is the insertion of the words proposed by Mr. Higgins.

Mr. ISAACS (Victoria). -

While fully appreciating the intention of the honorable member's amendment, I would point out that it would land us in a greater state of perplexity than we are in at the present time. First of all, with regard to the words "adjustment of riparian rights," when an arbitrator is called in to settle accounts between conflicting parties, it is assumed that their rights exist, and he has to adjust matters between them.

Mr. HIGGINS. -

What words would you suggest?

Mr. SYMON. -

Ascertainment and adjustment.

Mr. ISAACS. -

I think that the honorable member's intention would be expressed by some such word as creation or determination.

Mr. HIGGINS. -

Determination means that the rights exist.

Mr. OCONNOR. -

Creation is the proper word.

Mr. ISAACS. -

Yes, that is the only word which would make the thing certain. We might say "creation and apportionment."

Mr. BARTON. -

We have to be sure that this is not an attempt to give rights.

Mr. ISAACS. -

I think a court would be loath to say that to adjust rights means to create or apportion rights. Then there is another difficulty. The amendment only refers to waters which, in the course of their flow, or after joining other waters, touch more than one state. Now, apply that practically to the
Darling. Does the Darling in the course of its flow touch more than one state?

Mr. HOLDER. -

The waters touch two states.

Mr. ISAACS. -

Do the waters, after joining other waters, touch more than one state? I think it could be argued, with more or less success, that all the waters above the point of junction would be outside the amendment. Mr. Glynn pointed out that the word "rivers" might extend the whole length, but "waters after joining other waters" refer to the whole flow after the waters reach a certain point.

Mr. HIGGINS. -

This is a question of drafting. If we approve of the idea, the Drafting Committee can suggest the words.

Yes, if we are thoroughly seised of the meaning of the words. I am not sure that the vote will properly show whether we are all of the same mind.

Mr. KINGSTON (South Australia). -

I am quite sure that I am representing the views of my fellow delegates when I say that what we are desirous of doing is to leave to the Federal Parliament the full power of absolutely determining the conflicting rights of states in connexion with these rivers.

Mr. HIGGINS. -

Claims.

Mr. KINGSTON. -

Yes. I do not think it departs in the slightest degree from the position we have taken up. It is simply a furtherance of the suggestion now made, and, at the least, it shows that the representatives of South Australia have confidence in the justice of the claims they have put forward when they are prepared to submit them to the final arbitrament of a tribunal in which New South Wales, in the natural order of things, will be much more largely represented than South Australia.

Mr. REID. -

Fancy a Parliament settling a point of law.

Mr. KINGSTON. -

We shall make a great mistake if, in the Constitution of our Federal Parliament, we omit to provide a facile means for the settlement of disputes which now agitate the people of the states.
Very facile, no doubt.

Mr. KINGSTON. -

We should be leaving an element of possible discord and disruption if we did not do that. For my own part, I should be prepared to give this power in the fullest possible form. The preceding portion of the clause confers on the Federal Parliament the power to legislate, and I would ask honorable members whether they see any objection to the specification of the subject of legislation in the following terms: "Inter-state riparian differences" or "differences between states as to riparian rights"?

Sir GEORGE TURNER. -

Riparian "rights" is a bad expression.

Mr. KINGSTON. -

Then we might say "inter-state riparian differences."

Mr. HIGGINS. -

Or claims.

Mr. KINGSTON. -

Yes. No word can be suggested that South Australia would look upon as too large for the purpose of referring this matter to the peaceful solution of the Federal Parliament.

Mr. SYMON. -

Claims would be better.

Mr. KINGSTON. -

That term may be larger. The position will then be that there will be no interference until there is a bonâ fide dispute. When there is a dispute as to the rights of the various states with reference to the use of these waters, there will be a tribunal which can properly and finally settle it.

Mr. DEAKIN (Victoria). -

On this point, Mr. Inglis Clark's paper includes a reference to certain United States authorities which show the effect of a power in the Constitution of the United States identical with a power we have already adopted. Attaching great value to Mr. Clark's opinion on this matter, let me read a part of the paper.

Mr. BARTON. -

The authorities, at any rate, might be cited.

Mr. DEAKIN. -

Mr. Clark says-

The Draft Bill to constitute the Commonwealth of Australia expressly provides that the judicial power of the Commonwealth shall extend "to all matters between states"; and it has been decided by the Supreme Court of the United, States of America, that, under the provision of the Constitution of that country, which extends the power of the Federal Judiciary to
"controversies between two or more states," one state may file a bill in equity against another state to determine the question of a disputed boundary (Rhode Island v. Massachusetts, 12 Peters 657). And if the Federal Judiciary of the Commonwealth of Australia will have the like power to determine a question of a disputed boundary between two states, it must, as a logical sequence, have jurisdiction of the question whether any portion of the territory within the boundary of one state is to be deprived of all that makes that territory valuable by the aggressive legislation of another state. The riparian rights of the owners of land abutting on the River Murray, in the colony of South Australia, are rights of property in South Australia, and if those rights shall be infringed by any private person or any public body professing to act under colour of the authority of an Act of the Legislature of New South Wales, when both colonies are constituent parts of the Commonwealth of Australia, the citizen of South Australia whose riparian right has been violated will have a remedy in the federal courts of the Commonwealth, either for damages or for a writ of injunction to restrain the continuance of the injury, or for both. As a direct authority upon this point, I may refer to the ease of the Holyoke Water Power Company v. Connecticut River Company, which was decided in the United States in the year 1884 (22 Blatchford, 131). In that case the Legislature of Connecticut had authorized the Connecticut River Company to raise their existing dam across the River in Connecticut to improve the navigation, and also maintain the water power of the company. The Connecticut River Company's dam was about 16 miles below the dam and factories belonging to the Holyoke Water Power Company in Massachusetts and the Connecticut River Company proposed to raise its dam in Connecticut so high that it would cause a diminution in the fall of the river above the dam for six or seven months in the year, to the detriment of Holyoke Company, and the Holyoke Company filed a bill in equity, in the Circuit Court of the United States for the district of Connecticut, praying for an injunction restraining the Connecticut River Company from raising their dam to the proposed height. The court granted the injunction.

The concluding portion of the judgment of Judge Shipman is quoted, but I will not read it. Then Mr. Clark says-

The same principle of inter-state law was enunciated and applied by Treat, J., in the case of Rutz v. City of St. Louis (7 Fed. Rep., 438). . .

The consideration of this subject in the light of judicial decisions upon it in America has directed my attention to the omission in the Draft Bill to constitute the Commonwealth of Australia, of the provision in the
Constitution of the United States which extends the jurisdiction of the Federal Judiciary to controversies between citizens of different states.

I will not read the whole of this, but I will read the concluding paragraph, which is as follows:-

In regard to the particular question of the riparian rights of two or more states in relation to the same river, the states concerned could at any time refer the question to the Federal Parliament for legislative action upon it under sub-section (35) of section 52, and in the meantime the separate states could pass such local legislation as might be beneficial to their own citizens without affecting injuriously the riparian proprietors of other states. But if the whole subject is transferred to the Federal Parliament in the Constitution, the Legislatures of the several states may find themselves deprived of all such power, to the detriment of their local industries and local supplies of water for purely domestic purposes. Under this aspect of the question, the colonies of South Australia and Victoria may discover that they have as much interest as New South Wales in refraining from granting to the Federal Parliament exclusive jurisdiction on the subject in the Constitution.

Mr. KINGSTON. -

This is not exclusive jurisdiction.

Mr. GLYNN (South Australia). -

I would ask my honorable friend (Mr. Higgins) if he would consent to the substitution of the word "claims" for "rights"?

Mr. HIGGINS. -

Yes.

Mr. GLYNN. -

I would also ask the honorable member if he would consent to the insertion of the words "of rivers" after "waters"?

Mr. HIGGINS. -

Is it not enough to settle the principle of leaving the whole thing to the Federal Parliament now? There will be time afterwards to have the exact drafting settled.

Mr. WISE. -

In order to leave it to the Federal Parliament, you must vote against every one of these amendments.

Mr. GLYNN. -

At all events, by the substitution I suggest of "claims" for "rights," I think you will have a more emphatic declaration of what is intended, and it will be a guide to the draftsman.

Mr. HIGGINS (Victoria). -

I think that "claims" is a better term than "rights"; and, with the leave of
the committee, I will amend my amendment by substituting "claims" for "rights."

Mr. WISE. -

Is this an admission from South Australia that they have no rights at present?

Mr. Higgins' amendment was amended accordingly.

Mr. SYMON (South Australia). -

I would ask the honorable member (Mr. Higgins) if he would have any objection to insert, after the word "touch," the words "or would, but for interference or obstruction; touch"? (Laughter.) My honorable friends from New South Wales laugh.

Mr. WISE. -

We are only astonished at your modesty.

Mr. SYMON. -

What I want is to prevent the possibility of interference with the waters that will keep them from touching or coming into our colony. I am not going to move an amendment, but I would submit this alteration for my honorable friend's (Mr. Higgins') consideration.

Mr. REID (New South Wales). -

I only desire to say, before a division is taken, that I think this is a most objectionable attempt to take away from the Federal Court the decision of legal rights as affecting different states, and to transfer it to a political tribunal, the Federal Parliament.

Question-That there be inserted in Mr. Isaacs' proposed new sub-section, after the word "The," the words "adjustment of riparian claims as between states as to all waters which, in the course of their flow or after joining other waters, touch more than one state"-put.

The committee divided-

Ayes ... ... ... ... 18
Noes ... ... ... ... 26
Majority against the amendment 8

AYES.

Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Brown, N.J. Kingston, C.C.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Dobson, H. Solomon, V.L.
Downer, Sir J.W. Symon, J.H.
Glynn, P.M. Trenwith, W.A.
I would ask Mr. Isaacs if he would agree to strike out the word "several" before "states"? As the sub-section reads now, it relates to "trade and commerce with other countries or among the several states." That might be a limitation, because the Murray and the Darling are not rivers with trade and commerce amongst several states.

Mr. ISAACS. -

I am keeping to the words of the first sub-section of clause 52.

Mr. GLYNN. -

The honorable member knows that the American decisions refer to commerce between two states. What I am afraid of is that the terms of the clause are too wide.

Mr. ISAACS. -

I think it should be left as it is, to keep it in harmony with sub-section (1) of clause 52.

Mr. GLYNN. -

If the honorable member is satisfied, I have no desire to move an amendment. I would, however, make another suggestion with regard to the use of the words "other countries." It has been said by the representatives...
of New South Wales that this will give the Federal Parliament power over rivers whose source and discharge are in one state; such rivers are not touched in America.

Mr. ISAACS. -
Yes, they are.

Mr. GLYNN. -
They are so far as regards the provision with reference to freedom of trade and commerce; but do the decisions authorize improvements on these rivers?

Mr. ISAACS. -
Yes, just the same.

Mr. GLYNN. -
At all events, this is a very strong objection urged by the representatives of New South Wales to the amendment.

Mr. ISAACS. -
That also follows the words of sub-section (1) of clause 52.

An HONORABLE MEMBER. -
Are you fighting for New South Wales now?

Mr. GLYNN. -
I am fighting with regard to a thing which we do not care about. I wish to conciliate New South Wales to some extent if possible. We do not want control over rivers whose source and discharge are altogether in one colony, and if this would affect the vote of New South Wales, I, for one, would consent to the elision of these words, and make the amendment cover only rivers which flow into or through more than one state.

Sir GEORGE TURNER (Victoria). -
I desire to move an amendment in the last three lines of the proposed amendment of Mr. Isaacs. The first portion of that amendment gives jurisdiction with regard to the navigability of rivers, and then, for the purpose of putting conservation and irrigation in the forefront, it declares that the state is not to be prevented from using the waters for those purposes. Then it has this further limitation upon that-it is to be to such an extent as, in the opinion of the Inter-State Commission, is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purpose. Now, my great difficulty with regard to that is this: I desire that, if it be at all possible, irrigation and conservation shall be taken into consideration by the Federal Parliament when dealing with this subject above the mere question of navigation; but I do not desire to leave any doubt in the minds of those who are about to expend money on
irrigation works as to what may become of those works afterwards, and, as the amendment stands the question could not be decided until after the money had been expended.

Mr. KINGSTON. -

Yes, it could.

Sir GEORGE TURNER. -

No, the work would have to be done, and then the question would be raised as to whether the taking out of the water, in consequence of that work, was unjust or unreasonable. Now, with that doubt staring a man in the face, no one would attempt to expend any money, and the result is that you stop altogether any schemes of conservation or irrigation in New South Wales. If we can get, by some means, finality in the matter, then the persons who expend their money will know that, having expended it, they cannot be interfered with. I desire to obtain that if it is at all possible. I am perfectly prepared, for one, to trust the Federal Parliament to carry out properly the protection given in this clause; that there shall be navigability of the rivers, but that that navigability is to be subservient, wherever possible, to conservation and irrigation; and I want to give certainty to those who expend their money for irrigation purposes.

Mr. HOLDER. -

Certainty to those in New South Wales; and uncertainty to those in South Australia. That is the effect of it.

Sir GEORGE TURNER. -

The honorable member does not know what I am about to propose. I propose to so alter this clause as to leave absolute power to the Federal Parliament to deal with the matter before the expenditure of money. Of course, I know this will not be palatable to New South Wales, because they claim that they ought not to submit to the jurisdiction of the Federal Parliament. But, for my own part, I think that we all ought to submit as far as we possibly can to that jurisdiction.

Mr. REID. -

There is a great difference between the Federal Court and the Federal Parliament.

Sir GEORGE TURNER. -

The case would be one for the Federal Court if you had to decide existing legal rights, but I want to go further than that. Of course, I can understand that my honorable friends from New South Wales say that they have the rights.

Mr. BARTON. -
You want to confer rights.

Sir GEORGE TURNER. -

If the rights do not now exist, I want to give this body, whom the leader of the Convention has told us, on more than one occasion, we ought to trust, the power of conferring these rights.

Mr. REID. -

By taking them from us.

Sir GEORGE TURNER. -

If it is in the interests of the whole Commonwealth.

Mr. BARTON. -

We quite understand you.

Sir GEORGE TURNER. -

I have no doubt that you understand me. I do not want to conceal my object but in dealing with these rights you must keep conservation and irrigation in the foreground, and navigation in the background. I propose to amend Mr. Isaacs' proposal, so that the latter part of it will read as follows:-

But so that

So that we will then leave it to the Federal Parliament to have this jurisdiction. They are to deal with navigation, but they are always to keep in mind, when dealing with that subject, the questions of conservation and irrigation. And, in dealing with the questions of conservation and irrigation-in giving the necessary powers to take water for those purposes-they must have regard to all the other states.

Mr. LYNE. -

You are proposing to do what we have been fighting all along not to do.

Sir GEORGE TURNER. -

No, I think this is a modification of what the honorable member and his friends have opposed.

The honorable member and his friends are against giving any, power whatever to the Federal Parliament. That is, of course, what they are fighting against. I desire to give the power to the Federal Parliament with this limitation: That they must not deal with navigation to the detriment of conservation and irrigation. That is the argument. I am not endeavouring to put the case for New South Wales, and the representatives of that colony will probably vote against my amendment, but I desire the Parliament to protect the people of New South Wales and the people of Victoria also, and that the Parliament shall have a direction given to them by this Constitution that their first care is to, be conservation and irrigation, and their next care navigation.

Mr. LYNE. -
You are taking away our present state powers altogether.

Sir GEORGE TURNER. -

As soon as the Federal Parliament legislated by virtue of this provision, no doubt state powers would have to be modified, and some of them would be taken away. Well, state powers have to be taken away with regard to many matters, if we are to have a true federation. If we are to have federation, and the states are to retain all their powers, our federation will be of very little use indeed. The question as to whether this should be another power for the Federal Parliament to deal with is a question for this Convention to decide. I trust that we shall give this power to the Federation, but, until it is so given and until the Federation Parliament legislates on the subject, the states will continue to deal with their irrigation and conservation schemes as they think fit. If the Federal Parliament does once legislate on the subject, then the rights of the state Parliaments to legislate on it will probably be gone. But in that federal legislation I feel perfectly certain existing rights will be preserved. I am sure that if we were sitting as a Federal Parliament instead of as a Convention, and legislating on the subject,

we would say with regard to whatever the states had done up to the time we passed our legislation-"We will take good care to protect the interests of the states." I put in my amendment the words "may by Act declare," because if it were a mere resolution it might be rescinded at any time, but if it has to be done by an Act of Parliament, then the persons who act by virtue of that legal enactment will know that any change can only be made by another Act of Parliament, and the Federal Parliament, in passing an amending or repealing Act, will, of course, do justice to all.

Mr. BARTON (New South Wales). -

I think there is a root objection in principle to this amendment, which objection ought to claim the consent of every member of the Convention, with every respect to my right honorable friend. And it is this-this is a proposal to make the second part of Mr. Isaacs' amendment read as follows:-

so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such extent as Parliament, having regard to the needs and requirements of all the states for such purposes, may by Act declare.

Mr. Howe. -

That is reasonable.

Mr. BARTON. -

The first thing that strikes a reasonable mind about a proposal of this
kind, is what is the real distinction between the functions of Parliament and the functions of the High Court which we are creating? A declaration of rights between people is for the High Court to make, but if you want to create or confer new rights, that is a thing for Parliament to do. But it is not for Parliament to create or confer new rights that were non-existent at the time of federation, there being then no legal right for Parliament to take hold of. Yet the amendment amounts to an attempt to enable Parliament to make a declaration by Act—that certain things are rights which were not rights at the time of federation. That is an attempt to enable Parliament to declare what is not true.

Sir EDWARD BRADDON. - What new rights?

Mr. BARTON. - The right to determine that a state having, at the time of federation, the use and control of certain water is to be limited in the use and control of that water. There is to be a power given to Parliament to limit the exercise of that right. If disputes arise as to rights between states, those are matters of law, which ought to be determined by the Federal High Court. If you go outside that, and give Parliament any right by legislation to declare matters to be rights which at the time of federation were not rights, you are misprescribing the process of federal legislation, because you give the Parliament power to declare rights over property which rights did not exist at the time of federation. If there is to be any determination as to the rights of South Australia, New South Wales, and Victoria, as they exist at the time of federation, there is one tribunal, and one only, to decide them, that is the court constituted for the very purpose of determining them—the Federal High Court. If there is to be any departure from that, let this amendment be distinct on its face. Don't let the amendment talk about Parliament declaring the extent to which water may be used, because that very declaration is the creation of a right in somebody who did not possess it at the time of federation. What is the use of endeavouring, by cloaking over the object with words, to give Parliament the right to make an enactment altering rights that existed at the time of federation? The whole thing would be a process which we did not contemplate, and which our constituents did not contemplate when they sent us into this Convention. We were sent here for no such purpose as that of giving Parliament the right to make such a declaration, and at the same time alter the rights of the states as they exist at the time of federation. There is a distinct objection in principle, which every one of us ought to raise—the objection to this manner of endeavouring to settle this dispute by conferring more rights on
the Federation. I do not want to enter into other aspects of the question—into
the provincial dispute—but this is not a constitutional thing to do, or a piece
of work which we can at any time be proud of, in making this Constitution.
Mr. SYMON (South Australia).-

In the interests of South Australia, I also object to this amendment. Its
effect is to declare that no state irrigation shall take place without a Federal
Act of Parliament being first obtained. That is the effect of the amendment.
We in South Australia could not use one drop of water from these rivers
without being obliged to go to the Federal Parliament for legislation to
enable us to do so. I venture to prefer Mr. Isaacs' amendment. The
difference between Sir George Turner's and Mr. Isaacs' amendment is this—
that my honorable friend (Mr. Isaacs) says that to every state shall be
continued the power of dealing with its own irrigation. But the abuse of
that power, that is, the unreasonable or unjust use of the water, might be
liable to be restrained by the Federal Parliament, the Inter-State
Commission, or the High Court, as it might be. The amendment suggested
by the Right Hon. Sir George Turner is that no state shall be allowed to use
the waters of these streams for irrigation if, on the pretext of affecting their
navigability, the question should be remitted to the Federal Parliament.
Mr. ISAACS.-

Would my honorable friend's difficulty be met by an amendment of this
kind—"so that no state shall be prevented from taking any of the waters of
such rivers for works of irrigation and conservation except to such an
extent as the Parliament, having regard to such considerations, may declare
to be unjust or unreasonable"?
Mr. SYMON. -

I do not think that would meet the difficulty. I think the intention that my
honorable friend has in view is clear enough from his own amendment. He
does not want to interfere, and we do not want to interfere, with the power
of the state to deal with its own internal irrigation. But if there is an excess
of that user which will interfere with navigability, he says remit that for
settlement either to the Federal Parliament or the Inter-State Commission.
My right honorable friend (Sir George Turner) says "I go beyond that. I say
that no state is to rise the water, the user of which may interfere with
navigability, without a Federal Act of Parliament."
Sir GEORGE TURNER. -

No; I said exactly the reverse. The state will go on using the water until
the Federal Parliament choose to legislate by virtue of this clause.
Mr. SYMON. -

I do not see the difference. Without the thing being unreasonable or
unjust, the Federal Parliament might interfere; it might be made a party
question, and the Federal Parliament might step in and take out of the hands of the state the power of saying water is required for irrigation. South Australia might have to establish irrigation colonies, and she ought not to be liable to be put in that position. There are modifications which I think might be suggested in the amendment of the honorable member (Mr. Isaacs), but I think, with great respect, that my right honorable friend's suggestion really makes the matter worse.

The amendment that the words "Inter State Commission" be omitted, with the view to insert the word "Parliament," was negatived.

Mr. SYMON. -

I beg to move that after the word "the," before the words "Inter State Commission," the following word be inserted:-

The CHAIRMAN. -

It is too late, because it has been resolved that these words shall stand part of the question.

Mr. SYMON. -

I thought the words we voted upon were "as in the opinion of."

The CHAIRMAN. -

No: I put the question quite clearly and distinctly.

Mr. SYMON. -

I thought we were dealing with the matter so as to allow the introduction of the words proposed by the Right Hon. Sir George Turner.

The CHAIRMAN. -

The honorable member spoke against that, and cried "No" against it. It was carried that the words stand part of the question.

Mr. SYMON. -

I was certainly under a misapprehension as to our adopting the principle of the Inter-State Commission. The result will be that, owing to a misapprehension, I will now be obliged to vote against the whole thing. I do not wish to be put in that position. I object to the Inter-State Commission, and I certainly did not understand that we were adopting the principle of an Inter State Commission.

The CHAIRMAN. -

I put the words quite clearly, and read them out distinctly, and no amendment can be moved, unless it comes after the word "unreasonable." If no further amendment be moved, I shall put the sub-section as amended.

Mr. ISAACS. -

I understand that the honorable member (Mr. Symon) wishes to move for the insertion of some other body than the Inter-State Commission.

Mr. SYMON. -

Mr. ISAACS. -

This is only, I understand, to give an intimation to the Drafting Committee. Could not an amendment be put in this way: To insert words after the word "unreasonable"? It would then read it as in the opinion of the Inter-State Commission is not unjust or unreasonable," and if my honorable friend

Mr. SYMON (South Australia). -

I will accept the suggestion of the honorable member, because I wish to facilitate the honorable member in bringing on his motion for a division. I will move the words he proposes, with a view afterwards of their being licked into proper shape. I beg to move-

That after the word "unreasonable" the following words be inserted:-"or as in the opinion of the Parliament is not unjust or unreasonable."

Mr. BARTON (New South Wales). -

Do I understand the honorable member (Mr. Symon) that his real wish is to substitute the discretion of the Federal Parliament for that of the Inter-State Commission?

Mr. SYMON. -

Yes.

Mr. BARTON. -

Then I object to his putting this, because it makes an alternative discretion instead of a sole discretion, and that does not carry out the intention of the mover of the amendment.

The CHAIRMAN. -

The amendment is in order all the same.

Question-That the words "or as in the opinion of the Parliament is not unjust or unreasonable" proposed to be inserted be so inserted-put.

The committee divided-

Ayes ... ... ... ... 24
Noes ... ... ... ... 20

Majority for the amendment 4

AYES.

Berry, Sir G. Higgins, H.B.
Braddon, Sir E.N.C. Holder, F.W.
Brown, N.J. Howe, J.H.
Cockburn, Dr. J.A. Isaacs, I.A.
Dobson, H. Kingston, C.C.
Douglas, A. Leake, G.
Downer, Sir J.W. Lee Steere, Sir J.G.
Fysh, Sir P.0. Solomon, V.L.
Glynn, P.M. Trenwith, W.A.
Gordon, J.H. Turner, Sir G.
Grant, C.H.
Hackett, J.W. Teller.
Henning, A.H. Symon, J.H.
NOES.
Abbott, Sir J.P. O'Connor, R.E.
Briggs, H. Peacock, A.J.
Carruthers, J.H. Quick, Dr. J.
Deakin A. Reid, G.H.
Forrest, Sir J. Venn, H.W.
Fraser, S. Walker, J.T.
Hassell, A.Y. Wise, B.R.
Lewis, N.E. Zeal, Sir W.A.
Lyne, W.J.
McMillan, W. Teller.
Moore, W. Barton, E.
PAIR.
Aye. No.
Henry, J. Clarke, M.J.
Question so resolved in the affirmative.

Mr. REID. -
I think we might also put in "or the Federal Supreme Court."

Mr. BARTON (New South Wales). -
I would like to call the attention of the committee to the position of this
sub-section. It does not matter very much to me as a member of the
Drafting Committee, or as a member of the Convention, what a member
states as his reason for moving an amendment, but the position of the sub-
section now is this, that two authorities are created, and there is not the
least dividing line given as to how these authorities are to work-
independently of each other or together; whether the Inter State
Commission is to work independently of the Parliament, or whether the
Parliament is to work independently of the Inter-State Commission, is not
shown; whether there is to be an appeal from the one or the other, or which
is to be the higher court of the two, is not shown. The whole sub-section is
now a rank absurdity.

Mr. REID. -
It is exactly what we might have expected from the debate.

Mr. BARTON. -
I voted in order that the amendment at any rate might be made intelligible; but having been carried as it is the amendment is really in a state which a printer would describe as "pie." There is absolutely no possibility of distinguishing what cases the Parliament is to choose for itself, or what cases the Inter-State Commission is to choose for itself—which is to be subordinate to the other, and whether each of them is to give different decisions, and both of them are to be the law.

Mr. OCONNOR. -
Or in what way is Parliament to adjudge matters of this kind.

Mr. BARTON. -
Is it to determine that where the commission has not acted, it is time for the Parliament to come in, and is it therefore to wait until the Inter-State Commission acts? Or is it to step in at the beginning, and is the Inter-State Commission to come in afterwards, at the heel of the hunt?

Sir EDWARD BRADDON. -
The Federal Parliament will appoint the Inter-State Commission.

Mr. BARTON. -
It will appoint the Inter-State Commission, but how will that affect the question? You have a Constitution here-

Mr. REID. -
Which is above the court and the Parliament.

Mr. BARTON. -
The Constitution is above the court and above the Parliament, and it must be read and interpreted. You have a right given to the Inter-State Commission or to the Parliament to decide what is just and reasonable for the purpose of conservation and irrigation, and you have given equal power and simultaneous power to both.

Mr. DOBSON. -
When the clause is recommitted that can be altered.

Mr. REID. -
Recommitted! Another month to be spent over the question!

Mr. BARTON. -
I ask the committee not to commit itself to a process of making hash-and that is what has been going on.

Mr. HIGGINS. -
Is this in order, sir?

Mr. BARTON. -
I submit, sir, that it is in order. I ask the committee not to commit itself to the process of making hash of the various clauses, that no Drafting Committee can ever regulate. In expressing this intention the committee has expressed its will, and now it has reduced the sub-section to such a
state that the whole clause, if you once read it together, becomes absurd
and impossible, and I submit to the committee that it ought to be rejected
without further consideration.

Mr. ISAACs (Victoria). -

If this were the final stage of the measure, I think my honorable friend's
remarks would be unanswerable, but I believe the committee felt perfectly
well-at least I think the majority did-that in voting in this way it was only
to give the learned member (Mr. Symon) an opportunity to get the views of
the committee as to the Federal Parliament.

Mr. SYMON. -

And the committee, by that vote, have decided that, the Federal
Parliament is the tribunal they wish to deal with it.

Mr. FRASER. -

No, they may strike out the whole clause.

Mr. SYMON. -

That is another thing.

Mr. ISAACS. -

I think it will be agreed that the views of the majority were that the
Federal Parliament was a preferable tribunal to the Inter-State
Commission, and there can be no doubt that, as far as the forms of the
Convention will allow, the present formal difficulty which exists can be
swept away. I therefore submit that there is no difficulty arising from that
vote. I would like to say, with regard to the very forcible and powerful
observations of my learned friend (Mr. Barton) this morning in regard to
the clause as a whole, and in regard to clause 89 of the Constitution, I was
not able to follow him as I usually do in the interpretation of that clause as
applying to this present question. Clause 89, he urged, enlarged or
confirmed in some way the powers in sub-section (1) of clause 52, so as to
make perfectly clear, beyond any reasonable doubt, at all events, the power
of the Federal Parliament to deal with the navigability of the rivers, and
that, therefore, there was no reason whatever for putting any express power
in. Clause 89 is simply, as far as I read it, a declaratory clause. It is too
large, I think, as I once before expressed it, in its present terms; but in its
full extent it simply declares that there shall be no obstacle to trade by
reason of any customs duties, or licence-fees, or anything of that kind as
between the states. It is intended to preserve perfect freedom of trade as we
ordinarily understand it. But, to my mind-I may be wrong; possibly I am
wrong, as I am in opposition to my learned friend (Mr. Barton)-it does not
touch this question in the smallest degree, as to the navigability of the
river. And, therefore, with the greatest deference, I would say that the presence of that sub-section—which will have a potent influence, however modified, in regard to freedom of trade hereafter, and truly, as the leader of the Convention said, in a somewhat different degree to the position of free-trade under the United States Constitution—will have good effect, too, here. Its real import in our Constitution, as contrasted with its absence from the United States Constitution, is that, Congress could if it chose provide for protection as between the states, could say that one state could levy duties against another. The absence of any prohibitory clause to that effect would give Congress that power. It has been held in the courts that, so long as Congress does not legislate on the subject, it is equivalent to a declaration that trade between, the states shall be free, and we know, as a matter of practice and as a matter of fact, that Congress would never legislate to the contrary. The presence of clause 89 in this Bill is a prohibition on the Federal Parliament to ever make any such law whatever. It would be unconstitutional, and, therefore, illegal, for the Federal Parliament to say that one state could levy any duty against the citizens of another state. The presence of that clause has that effect, but it has, in my humble judgment, no relevancy whatever to the question of the navigability of the rivers or to the question of irrigation.

Mr. BARTON. -
Are not inter-state duties forbidden by the Constitution of the United States?

Mr. ISAACS. -
No.

Mr. BARTON. -
Well, what is the meaning of that provision that no state shall levy any import or export duty?

Mr. ISAACS. -
That refers to duties on goods coming from foreign countries.

Mr. BARTON. -
Are you quite sure of that?

Mr. ISAACS. -
Yes.

Mr. BARTON. -
There is no restriction on it?

Mr. ISAACS. -
No.

Mr. REID (New South Wales). -
If it were not for the gravity of the matter we
are now about to decide, the proceedings of to-day would certainly appeal very keenly to any sense of humour which any member of the Convention may possess. For many days, throughout the whole of this struggle, our friends from South Australia have come forward in the purest possible guise as a body of men seeking only their just legal rights in connexion with these rivers, and their complaint has been that the representatives of New South Wales have, with equal zeal, contended for the enjoyment of those rights, and, more than that, are determined for all time to prevent them from the enjoyment of those just rights. But what is the extraordinary development which we witness to-day? and I am sorry to see that it is a development to which gentlemen from other states have deliberately made themselves parties. This, at any rate, fair pretension or demand has suddenly assumed a most sinister complexion. Whereas upon all the most vital matters that can arise in the history of this Commonwealth, affecting the very life of the nation, every one here is anxious that the Supreme Court of the Federation should decide according to justice, we find this positively sinister development, that in this matter between states, and vitally affecting the interests of one of them, there is an organization here to deflect the course of justice from the supreme judicial tribunal of the Commonwealth to the party arena of the Federal Parliament. This is a most sinister complexion to put upon the matter, and it must be so regarded by those whose interests are concerned. It becomes all the more sinister when I find that the Premier of Victoria makes no secret of the fact that he wants to go further than legal rights and justice, and to confer rights upon South Australia—at whose expense?

Sir GEORGE TURNER. -
To confer rights upon the Parliament.

Mr. REID. -
For what purpose? To take away rights from New South Wales. If there is no intention to take away something unjustly, surely the federal tribunal of the Commonwealth is pure enough and independent enough to deal with these disputes between states. More than that in all solemnity, and without the slightest difference of opinion from any one representative, it is expressly provided in clause 77, which was passed only a few days ago, that disputes within states will be within, not only the appellate jurisdiction of the Supreme Court—because if only within that jurisdiction they might never come before that tribunal at all—but within its original jurisdiction. The meaning of these words is that any state, as a matter of right, in a question by which its interests are affected, and as to which some other state is doing something contrary to its rights, can come into the Federal Court and complain of the proceedings of that other state and get justice. It
is not enough for my honorable friends that the Federal Court that we have established should deal with these disputes between states, it must be a political and party tribunal, with scarcely a fairly constituted court. I speak in all seriousness. This is not a laughing matter. It may, perhaps, become a laughing matter when you have New South Wales in the Federation; you may laugh as much as you like then, but not until then. It is a very serious matter to us to find, after the statement made by the leader of the Convention, which went infinitely further than I ever dreamt of going in connexion with the waters of the Commonwealth, that there is this deliberately organized attempt to take this matter-in which we in New South Wales, as every one will admit, have vital interests-out of the ordinary course of justice and to commit it to the chances of politics. I say at once to honorable members that if the Convention is so composed-I cannot conceive that it can be-that a majority can be got to twist the Constitution in this sinister way before its birth, in order to serve the interests of one state, I am afraid our labours will fall somewhat from the high plane upon which we have endeavoured to keep them. I beg to remind honorable members that we in New South Wales cannot excite any indignation in dealing with this matter, because whilst, as a matter of right and justice, we have spoken strongly as to that which we believe ourselves to possess, in our conduct or management of it we have shown a generosity and federal spirit which exists in no other part of Australia to-day. That is a solid fact from which my honorable friends from South Australia get great benefits every day up and down the Murray and up and down to Broken Hill. We come forward as persons who, resolved upon the defence of our just rights, have acted a brotherly part towards the trade and commerce of the other colonies, such a part, as no other colony has ever attempted to act. We do not stand in a light before this Convention in which we can be exposed to any ungenerous imputations. It is not because we have the remotest idea of at any time using the Darling in a way unfriendly to South Australia that we take this strong stand. We have sense enough not only as individuals, but by the form of our public policy as registered in Acts of Parliament, to believe, and to legislate, too, in the direction of securing the interests of persons settled along the banks of that river at such a great distance from our own metropolis without the slightest reference to any consideration of self-interest. We have spent more than £100,000, I believe more than £200,000, in clearing this highway of commerce between South Australia and Bourke to defeat' the profits of a railway which we have constructed at great expense, piercing as it does into the very heart of the continent. We have never allowed the interests of our railways to put the
slightest embargo upon the trade of our citizens with every part of Australia.

Mr. Howe. -
For the advantage of your citizens.

Mr. Reid. -
Is not that a proper course to pursue? I wish the honorable member could make a similar boast with regard to his colony. We have reconciled the benefit of our own producers with the federal interests of all Australia. That is the peculiarity of our policy. A colony which has done this, whatever may be thought of the particular merits of her policy from a domestic and internal point of view, stands in this Convention in a truly honorable position—unfortunately, a position of solitary distinction in this respect.

Dr. Cockburn. -
The only honorable colony!

Mr. Reid. -
No, not at all.

Dr. Cockburn. -
Those are the right honorable member's own words.

Mr. Reid. -
I never dreamt of suggesting anything so offensive. I only say, what the honorable member cannot deny, that whatever may be the merits of our policy as it affects our own people, those outside our borders must admit that it is truly federal. Why are we preparing this Constitution? To obtain federal freedom for trade and intercourse between the different colonies of the Commonwealth. We have given that already.

Mr. Higgins. -
To all the world.

Mr. Reid. -
Is that interjection a sneer or a piece of applause? I can quite understand my honorable friend (Mr. Higgins) thinking that when we enlarge the benefits of the intercourse of our producers in New South Wales with the whole world, it is a great wrong not to draw the line at South Australia and Victoria. But we have not done that, and I do not suppose we ever shall. The one point which I wish to insist upon before the division is taken is this: Whilst we have had to be resolute in the maintenance of our rights, yet in the management of things belonging to us we have invariably treated the other colonies in a friendly, broad, and generous spirit.

Mr. Dobson. -
Why not put that spirit in the Constitution?

Mr. Reid. -
I do not intend to consent to putting it in the Constitution, because what we have is now in the possession of those who can be trusted to treat their neighbours generously. I am sorry to say that in this dispute between South Australia and New South Wales there has been displayed on more than one occasion a frivolous conception of the rights we possess, and an indifference to the vital problems of colonization that depend in New South Wales upon its waters, which is not at all reassuring to the people who have to work out the destinies of that part of Australia. The whole case assumes (to repeat a word I have already used) a decidedly, sinister aspect when those who have been clamouring for justice to be meted out to them are not prepared to leave the Federal Court of the United Commonwealth to give them that justice which they require. I am willing that every matter of dispute between New South Wales and South Australia, and every other colony in the group, shall be referable, in so far as it can form a dispute at all "between states," under clause 77. I believe that at present we have put all that is required in that provision. If the words in clause 77, giving an original jurisdiction as well as an appellate jurisdiction to the Supreme Court, in all matters "between states" (sub-section (3), confer an original jurisdiction in regard to all such matters of dispute between states, then, if this Federal Court were established, it would give any one colony the right to go into court and complain of any act on the part of a neighbouring state in a matter affecting both, as this is said to be, and to get justice if justice was required.

Mr. BARTON. -

Yes, if the act complained of infringe upon the legal rights of the complaining state.

Mr. HIGGINS. -

That is the whole question.

My. REID. - It is not remarkable for my dreaming equity friend (Mr. Higgins) to look at legal rights as things to jeer at, but I should be surprised if this Convention were prepared to follow the somewhat socialistic lead of the honorable member. Mr. Higgins is satisfied with a very small quantity of figures upon all other matters coming before this Convention, but suddenly, in regard to this question, he has become a sort of leader of the Convention, a man of great influence among us. And on what ground?

Mr. BARTON. -

It is on the ground of water.

Mr. REID. -

No doubt; but really on the ground that the legal rights of New South Wales are to be dealt with contrary to the wish of New South Wales, by a
tribunal which New South Wales has not accepted, a tribunal whose jurisdiction every representative of New South Wales here repudiates. You cannot arbitrate under such circumstances. The essence of arbitration is the reference of a matter by mutual consent to arbitrament. And the one point I wish to emphasize is this: That after we have all agreed to a method of arbitration of the fairest kind, after we have established, embedded in the bed-rock of the Constitution, a tribunal giving an everlasting guarantee to every human being in the Commonwealth that justice shall be done, we suddenly have this most sinister demand that in reference to this particular matter, which only vitally affects one colony, that colony is to be deprived of the tribunal which is being set up with so much solemnity to settle the humblest and the greatest of the difficulties that arise within the scope of the Constitution. I should like to see any gentleman out of South Australia voting for that proposition.

Mr. WISE (New South Wales). -

I have refrained from taking any part in the debate upon this question, which has lasted nearly the whole of the week, and if I intervene now it is to say a few words in the belief that the committee, if they adopt Mr. Isaacs' amendment, will be voting contrary to their intention and their desire. I would like to say, by way of preface to my remarks, that I do not regard this question as a dispute between South Australia and New South Wales. I look upon it, as I have endeavoured to do during the whole discussion, from the federal point of view, and I say at once, that, although I represent New South Wales, which is by some supposed to take an unfederal attitude upon this matter, for my part every vote I give will be given to secure the recognition in the fullest manner possible of the principle that the navigability of all navigable rivers within the Commonwealth is essentially a matter of federal concern; and I am prepared to accept any amendment that will define navigable rivers to include rivers intermittently navigable. I go further, and say that the maintenance of navigability includes both the improvement and the maintenance of navigation. I think, having said that, and intending to act on that assertion of principle, I may claim to be speaking to the Convention with full candour when I point out that the step honorable members will be taking if they vote for Mr. Isaacs' amendment will be such as they do not desire to take. The principle I have endeavoured to lay down is one which has been accepted from all sides of the chamber, that the territorial integrity of each province should be preserved. As an illustration of that principle Sir George Turner, either this morning or yesterday, in a most emphatic manner, declared that irrigation is essentially a state matter. Now,
if this amendment is passed no water trust in Victoria will be enabled to extend its works so as to increase by a single cubic foot the volume of water drawn from the Murray unless it gets a Bill passed through the Federal Parliament.

Mr. ISAACS. -

We are prepared to trust the Federal Parliament.

Mr. WISE. -

That is a fair thing to say, but it is a distinct violation of the principle of Sir George Turner that irrigation is essentially a matter of provincial concern. I quite recognise the spirit of the remark of the Attorney-General of Victoria; but let us recognise what we are doing if we accept that as the view of the Convention. It is exactly the same in regard to South Australia as in regard to Victoria. South Australia has irrigation works along the banks of the Murray; but under this amendment they will not be able to improve or modify or alter those works in any way without a Bill being passed through the Federal Parliament. Do we wish for that? The clause is still wider in its extension. It proposes to place under the control of the Federal Parliament the navigability of every navigable river in the Commonwealth. The Derwent, the Tamar, the Swan River, as well as our Clarence and Richmond, the Yarra, and every navigable river that is valuable for commerce between any part of the Commonwealth and other colonies, would be, by that part of the proposal, placed under the control of the Federal Parliament.

Mr. ISAACS. -

How can there be any rights of other states for conservation and irrigation in connexion with the Swan River?

Mr. WISE. -

I have not made myself clear. I say that the first part of the amendment already carried has nothing to do with irrigation. If finally carried, it absolutely places the control of the Derwent, the Tamar, and the Swan Rivers for the purposes of irrigation under the Federal Parliament, and to that extent I am pleased with it. I do not know whether the representatives of Tasmania are equally pleased. Then follows the other qualification, which provides that if it is desired to use any of those rivers which, when navigable, are adjacent to more than one state for any domestic purpose whatever it shall first be necessary to obtain the sanction of the Federal Parliament. I will not repeat myself. I hope the Convention will clearly understand that the step they are taking now is a new step, and one which is in contradistinction to the express declaration of policy from honorable members on every side of the chamber during the last few days, and from no one more clearly than Sir George Turner,
who said that irrigation was essentially a matter of domestic concern.

Mr. FRASER (Victoria). -

I am only going to say a few words. I have refrained from speaking purposely because I have been sorry to see so much waste of time. In my opinion, honorable members, in voting for this proposal as amended, will effectually kill federation.

Mr. DOBSON (Tasmania). -

I desire to say that I voted for the last amendment not because I believe in the Federal Parliament having the determination of this matter. It should be settled by the Federal High Court. I thought it was understood that after our very long, I will not say weary, debate, although the subject is getting rather wearisome, the principle which we are seeking to engraft in this Constitution would be put in proper phraseology by the Drafting Committee.

Mr. BARTON. -

The Drafting Committee will do nothing to undo the decision of the committee.

Mr. DOBSON. -

I agreed with every word Mr. Barton said half-an-hour ago. It did not need the long and powerful speech of the Premier of New South Wales to convince me that a political tribunal like the Federal Parliament was a totally unfit tribunal to adjust riparian rights or apportion the water. It is a great mistake to criticise too closely what we are doing now, because we are in somewhat of a muddle with six or eight or ten amendments before us. We have a right to look to the Drafting Committee to put into legal shape the principle that we desire to see adopted. If the words "Federal Parliament" and "Inter-State Commission" appear in the sub-section-and I do not wish to see them retained-cannot we strike them out when the clause is recommitted and substitute "the Federal High Court"?

Mr. SYMON. -

You can move now to insert the Federal High Court.

Mr. DOBSON. -

Yes. It may be said that we should then make the thing ridiculous. We should, however, be acting in strict conformity with the standing orders, and if we made nonsense of the sub-section we should at least indicate what was the desire of the majority of honorable members. There is only one difference between the Premier of New South Wales and myself. Whilst he is overflowing with federal love and with the milk of human kindness, when he is asked to give expression to his generous sentiments in the Constitution, he says no. I was disappointed that Mr. Higgins'
amendment was not carried. I thought it was the most statesmanlike amendment before the Chair. As it has been lost, I shall have much pleasure in supporting Mr. Isaacs' amendment, but I shall be no party to remitting this great question to a political tribunal, which would be utterly incapable of dealing with it.

Mr. PEACOCK (Victoria). -

As one of the lay members of the Convention, I may say that I have listened with interest to the discussion that has taken place on this question. At first, I was inclined to the view that too much time was being devoted to the consideration of it, but I think it will be agreed by every honorable member that its importance demanded that the closest attention should be given to it. The people of the colonies have received quite an education on this subject in the splendid speeches that have been delivered by gentlemen holding high official positions. I differ entirely from Mr. Dobson. The views expressed this morning by my chief (the Premier of Victoria) are exactly the views I have held all through. I would not have intruded at this late hour were it not for the fact that my honorable colleague (the Attorney-General of Victoria), after having moved his amendment, stated, speaking on behalf of the delegates and the people of Victoria, that they were quite prepared to leave this matter to the Federal Parliament. I have always been, and I am still, and I believe the people of Victoria generally will be, wholly opposed to the limitations introduced in the latter part of the amendment. This question should neither be left to the Inter-State Commission nor to the Federal Parliament. I will not enter into the merits of the dispute as between South Australia and New South Wales, but I must express my honest conviction, and it has been forced upon my mind during the last 48 hours, that the position taken up by the delegates of South Australia in the sister capital of Adelaide and here has been dictated by considerations of provincialism and trading rather than by the higher consideration of what is the best in the interests of the whole of the people of Australia. I have the greatest respect for the members of the Convention who belong to the legal profession, but with regard to the quotations they have given to us from American authorities, it struck me, as a layman, that to us this is an entirely different question. You cannot enter upon the consideration of it simply from the point of view of the experience of the United States. The United States have an altogether different river system. No speech made a greater impression upon me than that of Sir Joseph Abbott, which clearly proved-and that conclusion is verified by information which I have received-that the first consideration of this Convention and of the people of Australia
should be production, and not navigation. We have to remember that many of these streams are intermittent. A friend of mine—a retired squatter—told me the other night that in times gone by he has had on this very River Darling to take measures to protect his stock. For months the river was only a chain of water-holes, and to distinguish his sheep from his neighbour's sheep he had to erect fences along the water-holes. Any honorable member can see by looking at the map in the corridor how essential it is to the development, not of a portion of New South Wales as New South Wales territory, but of a large part of the continent, that conservation of water and irrigation should come first. There must be no doubt in our Constitution as to the position we take up. It is for these reasons that I have, with great regret, to differ from my honorable colleague (the Attorney-General of Victoria) I have determined to oppose the amendment in the interests of the people of Australia, because water conservation and irrigation must come before navigation.

Mr. ISAACS. -

The amendment places them in that position.

Mr. PEACOCK. -

I do not agree with the honorable member. There will be a doubt in the minds of the people, at any rate. The matter should be left in the form suggested by the Premier of Victoria, and I should have liked to have seen an amendment submitted in the direction he indicated. By adopting that proposal we should have been doing far more to promote the interests of federation than we shall be by carrying the amendment of Mr. Isaacs in the form in which it is now presented. I do not desire that any difficulties should be raised in connexion with this question. It is for these reasons that I have determined, rather reluctantly, to vote against my honorable colleague. I say that in the interests of production as compared with navigation it is our duty, as a Convention, to reject the amendment.

Sir EDWARD BRADDON (Tasmania). -

I rise simply to ask the honorable member for Victoria (Mr. Isaacs) if he will agree to allow the words that have reference to the Inter-State Commission to be struck out when we come to reconsider this clause in committee?

An HONORABLE MEMBER. -

What would be left?

Sir EDWARD BRADDON. -

I think a statement of that sort made by him might remove the considerable confusion that now exists, and might effectually reply to the somewhat severe strictures of the honorable leader of the Convention, who
has told us that we have made nonsense of this provision by instituting two powers.

If after hearing that opinion we now took a vote, the honorable member's amendment might very possibly be lost, simply because it sets up those two separate powers. I think if Mr. Isaacs would make that statement, the majority in favour of the action of the Federal Parliament being undoubted-the Federal Parliament as against the Inter-State Commission-if he would do that, those who support him would support him in it, and I admit I was one of his strongest supporters in that respect, and we should then get a decision on the merits of the case.

Mr. ISAACS (Victoria). -

In answer to that question, as I stated at the very beginning, I am not wedded to any particular tribunal. The words Inter-State Commission were put in by me originally to form a basis of discussion. I would willingly consent to meet the wish of the committee in the matter, whether its choice is the Inter-State Commission, the Federal Parliament, or the Federal Judiciary, or any other tribunal that may be suggested. None other has been suggested but those three. My only object in the matter is, first of all, to put irrigation before navigation-my honorable friend (Mr. Peacock) is going to vote against the only proposal to effect that-and, secondly, to secure a fair division of the water for irrigation between the colonies. But whatever tribunal is desired by a majority of the Convention I will be perfectly willing to insert in my amendment.

Mr. BARTON (New South Wales). -

If, on recommittal, the words relating to the Inter-State Commission are omitted, so that the tribunal remains the Federal Parliament, I should be equally opposed to this amendment, and opposed to it for this reason. If there is likely to be-I do not know that there will be-any conflict of authority between the powers exercised by the Federal Parliament as to navigation and the powers exercised by the states with regard to the conservation and distribution of water, that, like all other disputes under this Constitution, ought to be determined by the Federal High Court, and not by the Federal Parliament. And there is no right or reason in seeking, with reference to the productive value of a portion of the territory of New South Wales, to wrest the matter away from the authority which the Constitution sets up to deal with it and to substitute another authority. Then, again, I must object to this amendment on the original ground that, whatever we may say with regard to the extent of the power to be exercised as to the navigation of rivers, we from New South Wales cannot consent,
under any circumstances, to have the provincial right of distributing water which is collected in our territory interfered with by any authority under heaven. And for this reason. Honorable members say-"Why not trust the Federal Parliament?" Well, I think that we do trust the Federal Parliament, and that we have shown it repeatedly in this Convention, but what we are here to trust the Federal Parliament is federal matters, and we never came here to trust the Federal Parliament in provincial matters. That is the whole distinction that lies at the very root of the matter. Here there is embodied in this sub-section an absolute denial of the very first sub-section of the set of resolutions which we passed in Adelaide. The first of those resolutions was this-

That the powers, privileges, and territories of the several existing colonies shall remain intact, except in respect of such surrenders as may be agreed upon to secure uniformity of law and administration in matters of common concern.

But here is a matter of the development of the territory of one of the colonies, not being a matter of common concern, which this amendment seeks to make a matter of common concern, and to say "Wrest the whole business away from the intention with which we came here, and from the resolutions we passed in Adelaide."

An HONORABLE MEMBER. -

It is not a surrender, but-an exaction.

Mr. BARTON. -

No, it is not a surrender, but a taking of this power. I do not wish to give it any worse form of words than that; but this is clearly an effort to take a power which we do not give up—which we refuse to give up. We refuse to give up any, portion of our territory, and we refuse to give up that without which alone we can not develop our territory. Let other people try to develop their territory in the same way as us, and not complain that, in the exercise of our rights as a state, we are getting an advantage. If the course of the Murray was almost entirely in New South Wales, and only one mile in South Australia before it debauched into the sea, South Australia would surely not think of making this claim, and yet every reason of justice would apply in support of their claim on account of that one mile as on account of the distance it actually traverses that colony, and which is only a fractional part of the course of that river and the Darling in New South Wales. But the grave objection I have to the amendment is that this is an interference with the provinces on a matter of provincial concern, and it, is idle to talk
about trusting the Federal Parliament—it is idle, under the guise of that sentiment, to take away part of our province, and then say—"Trust the Federal Parliament to govern your province." Does South Australia ask the Federal Parliament to govern her province. What state has asked the Federal Parliament to govern her province? Not one in matters of territorial concern, and this will be the only instance from end to end of this Bill in which any province will be required to give up matters of entirely territorial concern, without its own consent, to the Federal Government. That is a proposal which stands alone, and I rely on the justice and good sense of this Convention to protect New South Wales from this irruption on her undoubted rights. Not only that. I shall fight to the last against any attempt to take away from New South Wales these matters of entirely provincial concern. I have over and over again expressed my willingness to do everything I can, with regard to the great power of navigation, to get accepted a construction of the Constitution, which I feel it fairly and rightly bears, which will give a vast deal more than the South Australians have ever asked us for in the way of navigation, but I dissent from this or any other proposal to give them rights in respect of New South Wales rivers alone. Why should they not be content with the rights proposed to be given in the way of navigation-content with taking the powers which deal with the federal side of the question—the navigation side, and not attempt to usurp powers which deal only with the provincial side of the question, and that against a whole state? The adoption of this amendment would be an entire infraction of the first resolution passed in Adelaide—the resolution under which the Bill of 1891 and this Bill were drawn; and, strong is I am in my respect for the Attorney-General of Victoria, I must say that, as far as any part of this resolution affecting to deal with the river system of New South Wales is concerned, it will meet with my uncompromising opposition, and I believe that the sense of justice of the Convention will support New South Wales in that respect.

Mr. GLYNN (South Australia). -

I beg to move—

That the proposed new sub-section be amended by adding the following:—

"Provided that nothing in this sub-section shall be construed as making mandatory the provisions of section 96."

The provision we are discussing will, I think, render it compulsory on Parliament to appoint an Inter-State Commission under clause 96, and I do not believe that that commission will be a success. At all events, I do not think that we should fix it so rigidly on the Constitution that it cannot be abolished except by an amendment of the Constitution.
Mr. ISAACS. -

There is nothing in clause 96 to make it mandatory.

Mr. GLYNN. -

No; but if you provide in this sub-section that a certain power shall be given to the Inter-State Commission it cannot exercise or continue that power unless it is created. To prevent any doubt, I wish to move that these words be added. The representatives of South Australia have been described as unreasonably provincial, and other epithets have been used by honorable members today which would not have been used yesterday by those honorable members, according to their own expressions. It is extraordinary how the wind of opinion will change about. We have seen since last night a great deal of shifting of position, not only by the larger but by the smaller states. That cannot be the result of any deep study during the last 24 hours. The honorable member (Mr. Wise) put the position very clearly as being one that necessitates the very strongest consideration by the other members of the Convention as to the justice of the claim put forward by New South Wales. He said he would be quite willing to stand upon sub-section (1), with a definition which would get rid of the doubt as to what was a navigable river and the difficulty as to intermittency. I have on the printed list of amendments one which defines rivers that are navigable, including those which are intermittent. I ask honorable members, and particularly the delegates from New South Wales, will they be prepared, if the amendment of the honorable member (Mr. Isaacs) is not carried, to rest upon sub-section (1), and remove all doubts as to its comprehension by a definition? I said this morning that personally I was prepared to do that, but until I get some definite statement from the members from New South Wales as to that definition, I shall stand by the amendment of the honorable member (Mr. Isaacs).

Mr. WISE. -

The amendment as it stands will prevent you doing anything with your own irrigation works without going to the Federal Parliament.

Mr. GLYNN. -

I am not going to argue what this amendment will do. I do not say it is the best amendment possible.

Mr. WISE. -

Are you willing to hand over your irrigation works to the Federal Parliament

Mr. GLYNN. -

Certainly not.

Mr. WISE. -
Then you ought to vote against the amendment.

Mr. GLYNN. -

I am not now going to discuss the scope of the amendment, but I am not so wedded to the amendment which I intend to propose that I would not be prepared to support the New South Wales members if they would make clear the meaning of sub-section (1). I have heard the honorable members (Mr. O'Connor and Mr. Barton) say over and over again that they wished to leave the rights of the states to be decided under sub-section (1). There is a doubt whether the Darling River would come under its comprehension, and I ask to have that doubt removed. Is it unreasonable for the members from South Australia to say to the members from New South Wales, are you prepared to render plain beyond all doubt the meaning of sub-section (1)? If they say "Yes," I will give them my adhesion. If they will not answer, I am bound to support the amendment of the honorable member (Mr. Isaacs). I am not absolutely wedded even to the definition which I have given in my amendment on the paper. I will be prepared to support any words that will make it perfectly clear that the intermittent flow of rivers will not prevent them from being considered navigable.

Mr. LYNE. -

Why not allow that to be decided by the High Court?

Mr. GLYNN. -

Why leave a matter of doubt to be interpreted by any tribunal? The New South Wales delegates have over and over again said, "until this doubt is removed our hand will be stayed as to improvements." We want to settle that question. The honorable member (Mr. Lyne) now says -"Why not leave that to the Federal Judicature?" The Federal Judicature might not decide the matter for two or three years, and in the meantime the works contemplated could not be carried out, according to the New South Wales delegates.

Mr. WISE. -

I have stated the course I will take up.

Mr. GLYNN. -

The honorable member is perfectly fair, and I am prepared to stand by the position he has assumed. He says -"Do not pass this clause, but put in a definition." I am prepared to do that, but I am not going to vote against the amendment of the honorable member (Mr. Isaacs) until I know what the New South Wales delegates will do. I only ask that they shall put such a definition before us as will place it beyond the possibility of doubt whether the Darling is navigable within the meaning of the American decisions. That is a fair position to take up.
Mr. TRENWITH (Victoria). -

I submit to the honorable member (Mr. Glynn) that it is utterly useless to press this amendment. The provision for the Inter-State Commission is only in this clause now because of our inability to take it out at present. It is clear that on the recommittal of the clause it will be taken out, and then the proposed addition will be unnecessary.

Sir GEORGE TURNER (Victoria). -

I have been most anxious all through to vote for the South Australians if I can possibly see my way to do so. I know that the Attorney-General of Victoria has spent a large amount of time in drafting this amendment, but the more I think of it the more I feel that the last three lines will practically kill water conservation and irrigation.

Mr. FRASER. -

And federation.

Sir GEORGE TURNER. -

I do not say federation, because I do not think it will have much effect, but the more I think of it, notwithstanding the strong opinion of the honorable member (Mr. Symon), I am convinced that these lines will prevent the carrying out of what is my great desire—that is, to see the furtherance of irrigation and water conservation. With great regret, I shall have to vote against the amendment of the honorable member (Mr. Isaacs).

Mr. Glynn's amendment was negatived. Question—that the proposed sub-section, as amended, be inserted in the clause—put.

The committee divided—

Ayes ... ... ... ... 20
Noes ... ... ... ... 24

Majority against the sub-section 4

AYES.
Berry, Sir G. Henning, A.H.
Braddon, Sir E.N.C. Holder, F.W.
Cockburn, Dr. J.A. Howe, J.H.
Dobson, H. Kingston, C.C.
Douglas, A. Lee S
Downer, Sir J.W. Solomon, V.L.
Fysh, Sir P.0. Symon, J.H.
Glynn, P.M. Trenwith, W.A.
Gordon, J.H.
Grant, C.H. Teller.
Hackett, J.W. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Moore, W.
I withdrew my alternative amendment this morning to give my honorable and learned friend (Mr. Isaacs) an opportunity to move his amendment. I said that I did not care for his amendment so much as I did for the alternative one I had drafted, I suppose because of the love which a parent has for his offspring. I ask you now, sir, to put my amendment to the committee. I think it will be a fair test as to whether New South Wales is willing to give us what they declare will be the effect of this decision. I have already spoken on the matter, and therefore I content myself, sir, with asking you to put the amendment.

Mr. KINGSTON (South Australia). -

I would suggest to you, Sir Richard, that, although the amendment would
be undoubtedly out of place if it were included in the clause as one of the powers of legislation, still if it were inserted at the end of the clause as an assistance to the interpretation of sub-section (1) it would be in order. We have not yet completed the consideration of the clause itself.

Mr. BARTON. -

We have that proviso about the liquor trade standing in the way.

Mr. KINGSTON. -

I will put it, for instance, in this way—if my honorable colleague were to move, not at the end of any particular sub-section, but at the end of the clause itself, that for the purposes of sub-section (1) of the clause navigable rivers shall be deemed to be so-and-so, it would be in order.

The CHAIRMAN. -

I think the amendment would be in order if it were moved, not as a power of Parliament but as a portion of the clause.

Mr. GLYNN (South Australia). -

My intention, sir, was that it might subsequently be transposed to its proper place in the clause. I beg to move—

That the clause be amended by the addition of the following words:—"For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which are in fact navigated continuously or at times for trade and commerce with other nations or among states, either by themselves or by their connexions with other waters."

Mr. BARTON. -

What does "at times" mean?

Mr. KINGSTON. -

Intermittently.

Mr. BARTON. -

It may be one day in the year.

Mr. HIGGINS (Victoria). -

If the amendment of my learned friend (Mr. Glynn) be adopted, it will preclude me from moving the alternative amendment which I have prepared, and which has been in print for some time. It will be understood that I had to vote against the amendment of my learned friend (Mr. Isaacs) on the ground put so clearly by my honorable friends (Mr. Wise and Sir George Turner), which was that the last words of the amendment virtually made it necessary for each state to get the permission of the Federal Parliament, or of the Inter-State Commission, before it could make one water trust.

Mr. ISAACS. -

No; that was not the case.

Mr. HIGGINS. -
I am putting my view of it, but I am not going to discuss it now I have no doubt whatever that that will be the effect, and of course my honorable friend has a doubt the other way. If my learned friend had put the first part of his amendment alone I should have voted for it. He did not put the first part of his amendment alone, and therefore I propose to move as sub-section (31) the amendment printed on the notice-paper:

To secure the navigability of all waters so far as in fact navigable which, in the course of their flow or after joining other waters, touch more than one state.

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The effect of this amendment will practically be what appears in the first part of the amendment of my learned friend (Mr. Isaacs). I was hoping that the two parts of his amendment would be divided, so that we might have the beneficial part, that is the first part, and not have the second part. I think honorable members who are interested in the cause—the just cause—of South Australia will have an opportunity, on pty amendment, to secure in effect the first part of the amendment of my learned friend (Mr. Isaacs), and, therefore, I beg to move the amendment accordingly.

The CHAIRMAN. -

Will the honorable member (Mr. Glynn) withdraw his amendment for the purpose of allowing the honorable member (Mr. Higgins) to move his amendment?

Mr. GLYNN. -

I understand, sir, that the honorable member wishes to insert his amendment where sub-section (31) was struck out.

The CHAIRMAN-Yes.

Mr. GLYNN. -

Of course, sir, my amendment may be moved after his amendment is disposed of?

The CHAIRMAN. -

Yes.

Mr. Glynn's amendment was withdrawn.

Mr. HIGGINS. -

I beg to move-

That the following be sub-section (31):-

To secure the navigability of all waters so far as in fact navigable which, in the course of their flow or after joining other waters, touch more than one state.

Sir GEORGE TURNER (Victoria). -

I do not know whether my honorable friend (Mr. Higgins) has the right
view of this or whether I have. I think we are both of the opinion that we ought to provide for irrigation; but the wording of this amendment is a direct instruction to the Federal Parliament to secure the navigability of all waters so far as in fact navigable which, in the course of their flow or after joining other waters, touch more than one state. That, to my mind, will shut out irrigation entirely.

Mr. HIGGINS. -
No.

Sir GEORGE TURNER. -
Surely my honorable friend must misconceive it, with all due deference to his better knowledge and better judgment than mine. It simply says to the Federal Parliament: "It is your duty to secure the navigability of these rivers at all hazards or at all costs, and the expense of irrigation is not to be taken into consideration. If I read this amendment correctly I must vote against it, unless my honorable friend can show me that I have misconstrued his meaning.

Mr. KINGSTON. -
It is not a direction or a duty, but a power.

Sir GEORGE TURNER. -
Surely power implies a duty.

Mr. BARTON (New South Wales). -
One broad reason which influences me in voting against the amendment is that it, like so many others which have been suggested, makes a difference between certain rivers and the other rivers of the Commonwealth. I hold the distinct opinion that whether we leave the Constitution to the operation of sub-section (1), or whether we do anything by way of stronger definition-and I am afraid that strong definitions too often amount to limitations—we should make no difference between the navigable waters of one state and those of another.

Mr. HIGGINS. -
My amendment refers to all navigable waters touching more than one state

Mr. ISAACS. -
That will not include the Darling.

Mr. HIGGINS. -
It would include the Darling, but not the Yarra.

Mr. BARTON. -
The Commonwealth control of navigation should include control over the navigation of the Yarra, the Tamar, the Derwent, the Swan, and every river in the Commonwealth which is in fact navigable.

Mr. DOBSON. -
Not unless its waters touch more than one state.

Mr. BARTON. -

During recent debates we have heard a great deal about federalism, but we never heard that it was federalism to prescribe in one part of the Constitution that trade and intercourse should be absolutely free, while in another part of the Constitution power is not taken to secure that freedom.

Mr. DOBSON. -

That is hardly a fair way of putting it. What have we to do with rivers that do not touch more than one state?

Mr. BARTON. -

We prescribe in the Constitution that trade and intercourse shall be free; we also give the Commonwealth power to regulate trade and commerce. By the combined effect of these two provisions, and by further words, if necessary, we wish to obtain that the authority of the Commo

Mr. DOBSON. -

Yes, between state and state.

Mr. BARTON. -

Not merely between state and state. If a ship sails from Sydney for the Swan River, or from some port in Victoria for the Derwent or Tamar, is that not commerce between state and state?

Sir EDWARD BRADDON. -

Is it not the river that flows from state to state that we want to regulate?

Mr. BARTON. -

No, that is an exploded idea, which has been created by the continuous way in which the minds of some honorable members have been sedulously directed to the belief that the only river traffic worth troubling about is that in which New South Wales is concerned. A great many honorable members have been led to forget that inter-state commerce is not comprehended in the navigation of the Murray and of the Darling, that it of necessity includes the navigation of all rivers that are navigable, and which under a reasonable interpretation of the trade and commerce sub-section can be kept navigable. The difficulty which has arisen, and which I quite anticipated, has arisen from the fact that we have been discussing the question of the Murray and the Darling at such great length that we have really left all other rivers out of account. I am sure that every honorable member will see that whatever power we give over the navigability of one river we must give over the navigability of another.

Mr. ISAACS. -

My amendment proposed to include them all.
Mr. BARTON. -

So far as the first portion of it is concerned the honorable and learned member took the statesmanlike position of proposing to deal equally with all the rivers of the Commonwealth. With regard to the trade and commerce sub-section I have been quite at one with him; we have been at difference only as to the best means to effect our ends. But I want honorable members to recognise that we must not make fish of one and fowl of another. We have no business to prescribe certain regulations for rivers which flow through or between two or more states. What we have to deal with is the river system, not of New South Wales or of Western Australia, but of the whole Commonwealth. The only federal view to take of the question is to let the power of controlling the navigation of rivers extend to every navigable river in the Commonwealth. If a ship goes out of a harbor, and is bound to a river, or if she goes out of a river, and is bound to a harbor, it matters not, the control of that river is essential to the complete federal control of the navigation. Without labouring the matter, I have only to say that I object to any differentiation between the rivers of one part of the Commonwealth and those of another part of the Commonwealth. When we deal with the rivers, we must make a uniform law applicable to them all, and as we are not now making that law, but only giving power to enact it, we must make that power as comprehensive as the equity of the case demands, and as wide as the limits of the whole Commonwealth.

Sir EDWARD BRADDON (Tasmania). -

It is with something approaching to awe that I venture to differ from the construction placed upon the amendment by the leader of the Convention. The honorable and learned member is a lawyer, and a very astute one. I am a simple layman, who, when he reads the English language, outside of certain Acts of Parliament, puts a reasonable construction upon what he reads.

Mr. BARTON. -

Is not that claiming infallibility?

Sir EDWARD BRADDON. -

I do not claim infallibility; I have read the proposed amendment, as I think any average schoolboy and a good many adults would read it. The amendment is to secure the navigability of all waters so far as they are in fact navigable which, in the course of their flow or after joining other waters, touch more than one state. How can my honorable and learned friend contend that a vessel leaving Adelaide for the Tamar sails its course over the waters of a river which join with the waters of the port from which
the vessel comes?

Mr. BARTON. -

My right honorable friend must have misunderstood me. I never committed myself to any ridiculous nonsense of the kind.

Sir EDWARD BRADDON. -

I understood the honorable and learned member to say that the Tamar, the Derwent, and the Swan were three rivers over which, according to the amendment, federal control would be given.

Mr. BARTON. -

Will the right honorable member allow me to explain what I said? I objected to the amendment because it dealt with rivers which, in the course of their flow, touched more than one state. My objection was that it was not material whether a river flowed entirely through one state or not, for if we gave the power to regulate trade and commerce, and with it navigation, that power should be so large as to extend to the control of the navigation of every river within the Commonwealth so far as it was navigable. Therefore, the clause imposed a limitation with which I did not agree.

Sir EDWARD BRADDON. -

I am glad that the leader of the Convention did not make such a monstrous statement as I understood him to make.

Mr. ISAACS (Victoria). -

I quite agree with the leader of the Convention with regard to this matter, and I am not disposed to criticise the amendment from a merely verbal stand-point. I agree also with Sir George Turner that the radical defect in the amendment is that it places navigability not only in the first rank, but refers to it as the only consideration. It is, under this amendment, the primary duty of the Federal Parliament to look after the navigability of these rivers, and to disregard every other consideration. I utterly disagree with that view; and I think from the wording of the amendment-I am not going to make any verbal criticism, because in my view no alteration would amend it-that the Darling would not be included, because the amendment is confined to waters which in the course of their flow do, after joining other waters, touch more than one state. Now, the waters of the Darling would not come under this provision until they touched more than one state. Suppose, however, you alter the word "waters" to "river," when does the River Darling ever touch more than one state? Never. The Murray does after the Darling joins it, but after the junction is effected the Darling has its existence obliterated.

Mr. BARTON. -

Might not the Darling touch more than one state after joining with the Murray?
Mr. ISAACS. -

Would any one say that it is the Darling River after the junction with the Murray?

Mr. BARTON. -

But the intention of the amendment is to say that the Darling is a river after the junction.

Mr. ISAACS. -

The water of the Darling joins the water of the Murray. If you use the word "river" you never get lower than the junction of the Darling and the Murray, and if you use the word "waters" you never get higher than that. Honorable members will see that you are simply between Scylla and Charybdis.

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Mr. HIGGINS. -

The idea is plain enough; it is merely a matter of drafting.

Mr. ISAACS. -

I am pointing out that the amendment does not make the matter plain by any means, but I am also pointing out that it is giving the go-by altogether to irrigation, and has this further cardinal defect, that it does eliminate, by embracing one class of rivers, and therefore excluding another from the federal control, rivers which ought to be under federal control for the purposes of inter-state commerce, and which are inseparable from inter-state commerce. I think we should put in words which will make it clear that that control ought to be adhered to. I do not know any better words than those of the first part of the amendment which I suggested, which embrace all such rivers and exclude all other rivers.

Mr. HIGGINS (Victoria). -

I should like to reply to the criticisms which have been made upon my amendment, but I will do so very briefly. The leader of the Convention says that if this control is to be given in regard to any waters it should be given with regard to all navigable rivers, even with regard to the Snowy River, the Darling, the Tamar, and the Yarra. I join issue with the honorable member. I do not think we should give to the Federal Parliament the control over the Derwent, the Tamar, the Swan River, the Yarra, or the Brisbane River. These are purely state concerns. More than that, under the United States Constitution there is no such power given. I have a passage here which makes it clear that under the United States Constitution there is a power which we have often had referred to during the last few days-to regulate trade and commerce. Now, Story, in his work on the Constitution of the United States, says that-
It is not doubted that it extends to the regulation of navigation, and to the coasting trade and fisheries, within as well as without any state, wherever it is connected with the commerce or intercourse with any other state, or with foreign nations. But it does not extend to the navigation of a river wholly within one state, separated from tide water by an impassable fall, and not forming part of any continuous track of commerce between states, or with a foreign country.

Mr. BARTON. -

Does not the case of Daniel Ball settle the matter?

Mr. HIGGINS. -

That case refers to the ebb and flow, I think.

Mr. BARTON. -

It denies that ebb and flow is an essential.

Mr. HIGGINS. -

I do not intend to detain the committee with a discussion upon this matter now, but I think the point is clear from Story; and I deny, as a matter of expediency, that it is desirable to intrust the Federal Parliament with the control of the Tamar, the Derwent, the Swan River, the Yarra, or-

Mr. HOWE. -

Or the Styx.

Mr. HIGGINS. -

Quite so. Sir George Turner says that this amendment stops irrigation. It does not. It simply leaves irrigation as it was, but subject to such paramount laws as the Federal Parliament may enact for the purpose of securing navigation. I admit that this amendment is not the one that I should have liked to have. I have already indicated what I should have liked, and eighteen members of the Convention have voted for it. But this amendment does say that the Federal Parliament shall secure the navigability of all inter-state rivers. That is all I wish to do here. Mr. Isaacs has said that this amendment puts navigability in the first rank. I admit that he is right; it does. I will be as frank with the committee as I can. I should have liked to leave the whole question to the Federal Parliament to say whether irrigation or navigation should be in the first rank. But if we come to the question of what is right between states, I do think that all that South Australia could fairly claim would be that navigability should be kept up to such a degree as nature has allowed navigability. But that is all. South Australia cannot claim more than that.

If she achieves the result of having maintained such navigability as nature gave the Darling and the Murray when their waters come to South Australia, she will be able to make use of those waters for irrigation or for
any other purpose which will not interfere with the use of the waters above.

Mr. Barton. -

You mean to keep, not make, them navigable? You do not want to extend navigability?

Mr. Higgins. -

All I say is that if South Australia and New South Wales were in the position of private owners, with the Murray flowing through their land New South Wales, as the owner higher up the stream, must not diminish the flow of the water so far as to affect the degree of navigability which the river possesses at certain times. Apply that to the states, and say that the Federal Parliament may make such enactments as may keep navigable this river so far as nature has given it a navigable quality. If for this p

Mr. Dobson. -

Is the honorable member quite sure of his law when he says that, even though the navigability of the river is to be maintained, when a stream of water reaches South Australia, South Australia can set to work to irrigate? Might not one solitary trader object and say that his rights were being interfered with?

Mr. Higgins. -

I admit that if South Australia took, for the purpose of irrigation, such a volume of water as would prevent the navigation of the Murray, it would be doing an illegal act, and that it could be restrained: But I understand that South Australia, for the purpose of irrigation, will be able to take great quantities of this water without seriously interfering with the navigability of the river.

Mr. Dobson. -

Could not one trader stop the whole of their irrigation schemes if he were injuriously affected by them?

Mr. Higgins. -

He could, provided the Federal Parliament had passed an enactment to secure the navigability of the stream.

Mr. Glynn (South Australia). -

I would ask Mr. Higgins whether this amendment is not really a cutting down of the scope of sub-section (1), which gives a power to improve rivers? This will limit the power of the Federal Parliament to securing existing navigability.

Mr. Higgins. -

Not existing.

Mr. Glynn. -

Yes; it specifies something that might fall under sub-section (1), and it might, therefore, limit the scope of sub-section (1). If the navigable
discharge was 4 feet, it might be necessary, in view of evaporation, to secure by a lock a discharge, in a given month, of 8 feet. Under this amendment an application could be made against the state for attempting to raise the level to 8 feet, because the navigable discharge without the lock would have been 4 feet. You make it 8 feet, and therefore you are really increasing beyond existing navigability the navigable discharge of the river. That would stop the hand of the Federal Parliament in improving the river. I do not say that there may not be some doubt about this point, but it seems to me that the amendment would operate as a bar to the Federal Parliament in improving the river under sub-section (1). It is a limitation rather than an extension of that provision.

Mr. SOLOMON (South Australia). -

I would suggest to the leader of the Convention that this would be a convenient time to report progress. We have struck out sub-section (31), and we have got the ground clear for some other proposal which might possibly meet with the approval of a majority of honorable members. I am sure that if we leave a blank and rest content with sub-section (1), which has been described by the leader of the Convention as covering the ground, we shall not give satisfaction, at least to the people of South Australia. I have no desire to continue the debate now if the leader of the Convention will indicate that he is prepared to report progress.

Mr. BARTON (New South Wales). -

This debate has taken up five or six days of the time of the Convention. When the public speak at all on the subject through the press they say that they are heartily tired of it, and they do not want to hear the voices of any more of us, even through the press. We have all said our say, and expressed our views as strongly and emphatically as we can. If we do not come to some decision soon it will be said that we are indulging in idle reiteration. Every honorable member will agree with me that a body of this kind ought to show that it does not indulge in the practice of repeating sentiments and arguments that prevails in some other places. A good deal more is expected of the elected of the five colonies than is expected generally from representative bodies. I do think it would be a wise thing for Mr. Solomon to withdraw his request, and let us decide the matter to-night. The country is waiting to hear our decision, and when I speak of the country I speak of Australia. I think that some irritation will be caused if we do not come to a decision.

Mr. SOLOMON (South Australia). -

I would submit with all respect to the leader of the Convention, and with
all respect to the press and to the country, that this is a matter of so much importance that the representatives of South Australia cannot rest content with the omission of sub-section (31). That sub-section was not struck out because of any feeling on the part of honorable members that the South Australian claims did not call for recognition, but because of the manner in which the question was put, and in which the amendments were hacked about by various legal gentlemen. A number of honorable members did not know what they were voting for. I am not inclined to give way now on account of any expressions of opinion on the part of any section of the press as to the way in which our work should be done, or how long we should continue sitting. If we spent, not four or five days, but even four or five weeks, on the consideration of so important a question, and succeeded in arriving at some satisfactory conclusion, we should have done our duty. It is my intention to endeavour to get some provision inserted in the Bill that will satisfy the people of South Australia before we leave this particular clause. It is all very well for the leader of the Convention, as the representative of the colony of New South Wales, to say-after we have knocked out one sub-section that would have protected any "fancy" claims, as they have been called, of South Australia, but what we choose to call its moral claims—that the country has had enough of this subject. As far as the representatives of South Australia are concerned, they have not had enough of it. We want some provision inserted in the Bill which will more definitely place the control of the rivers in the Federal Government, and more definitely protect the interests of South Australia with regard to the Murray, than the sub-sections that now stand in this clause. I do, therefore, desire to debate the matter, at any rate, a little further. As to the question of the time occupied, I would ask whether it has been occupied by the lay members? Was it not the legal members who spoke hour after hour, and time after time, upon every simple amendment, and did they not rather resent any attempt on the part of the lay members to give voice to the opinions of their constituents? I do not wish to occupy the time of the Convention unduly. I have not done that at any of our sittings. I have always endeavoured to confine my remarks within as few words as possible, but I do not think it fair to the colony that I represent that the debate on this important subject should be closed at once. The amendments now submitted require careful consideration, and I hope that they will be discussed, and discussed fully. Mr. Higgins' amendment may not as it stands at present meet the views of all the members of the Convention, but we might, by the substitution of other words, make it acceptable. We should, at any rate,
insert some provision in place of sub-section (31) which has been struck out, and in my opinion most foolishly struck out, so far as the representatives of South Australia were concerned, at any rate. That sub-section did give us some definite protection in regard to our rights in the River Murray.

Mr. FRASER. -

You were not satisfied with it.

Mr. SOLOMON. -

It is not for me to say whether the whole of the representatives of Australia were satisfied with it or not. They were not satisfied with a clause in the Draft Bill of 1891, which, to my mind, would have met all our requirements, and to which the people of New South Wales were perfectly willing to agree. That clause placed under the control of the Federal Parliament river navigation with respect to the common purposes of two or more states or parts of the Commonwealth." Sub-section (31) should have been left in the clause, and it probably would have been left in, but for a reversal of the old saying, that in the multitude of counsellors there is wisdom." There were too many counsellors-too many Queen's counsellors-and the result was that this provision, which would have been useful, was struck out. Now we find ourselves without any protection whatever against any encroachment on the part of New South Wales. I am sure the leader of the Convention will see that it is not the desire of the members of the Convention to close this debate hurriedly. We have given ourselves ample time for the consideration of many points that have been brought before us, but there is here a blank which should be filled up. There is something more wanted, and I, for one, will resist any attempt to take a final vote on this question until a reasonable opportunity has been given to honorable members to fully consider it.

Dr. QUICK (Victoria). -

I think the request made by the honorable member is a reasonable one. I am not at all satisfied in my own mind about the omission of sub-section (31). I am quite sure that some of our friends from South Australia were led to believe that that subsection conferred on them an empty right and an empty power, and, that being their view, they were quite willing to allow the sub-section to be struck out. But it is a serious matter for them, and they ought to have an opportunity of considering whether, now that the other proposals have been rejected, that sub-section ought not to be restored. I would suggest that it should be restored, with the addition of the words "without limiting sub-section (1) of clause 52." I should like to do something to help the representatives of South Australia, and I shall be no party to rushing this matter through. I would advise honorable members to
seriously consider whether sub-section (31) should not be restored with the addition I have suggested. The great argument against it was that it limited the sub-section relating to the regulation of trade and commerce, and there might be considerable force in that argument. In order to give time for consideration, I would suggest that progress be reported.

Mr. REID (New South Wales). -

It is obvious that sub-section (31) could not be restored now. It was negatived on the consideration of this clause, and it could not be reinstated at the same stage, so that if we were to wait till midnight the honorable member would not have the opportunity he seeks. There will be an opportunity later on, if honorable members are disposed to re-open the question, to recommit the clause for the purpose of its further consideration. I myself have an amendment, which I have sent to the Government Printer, and which I may think it necessary to ask the Convention to consider.

Mr. HOWE. -

That is another reason why we ought to report progress.

Mr. REID. -

No, I do not propose to bring it on at this stage of this clause at all. I feel that after the very long time we have taken over this question the public have a right to know our final mind upon it.

Sir JOHN FORREST. -

Have we not got to a decision of it yet?

Mr. REID. -

It does not look like it, rooting about, as we are, among the embers.

Dr. COCKBURN (South Australia). -

It is true that sub-section (31) was negatived, but not on its merits. There was a majority in favour of the purport of the sub-section, and it was simply negatived because some unfortunate words crept in which put the majority against it. However, we want to arrive at the sense of the Convention on this important question, and I think it is only reasonable that we should be given time to consider the matter. We have the members of the Convention whom we look upon as authorities on questions of this character taking opposite sides. We have the leader of the Convention telling us that we have everything we want in sub-section (1) of clause 52, and we have the Premier of the same colony from which the leader himself comes telling us that that same sub-section gives us nothing at all.

Mr. REID. -

I did not say that.

Dr. COCKBURN. -
The honorable member told us that the rivers of New South Wales were free highways, free from all tolls, free from all duties, but he is careful to oppose any provision which would secure justice to South Australia in this matter.

Mr. HOWE. -
Mr. Isaacs takes the same view as Mr. Reid.

Dr. COCKBURN. -
Yes, Mr. Isaacs says that we have not got what we are contending for under sub-section (1) of clause 52.

Mr. ISAACS. -
I do not know what you contend for now.

Dr. COCKBURN. -
I am not reflecting on the honorable member, who has helped us to the best of his ability, and who has thrown such light on this matter as to enhance his already great reputation by the lucidity he has brought to bear on the problem which confronts us. Through the loss of this provision South Australia, and indeed the whole federal cause, has sustained a great injury, and we now want to know where we are.

Mr. REID. -
You had better take a week to ascertain that; you will never find out.

Dr. COCKBURN. -
No, not a week. I think we ought to take the adjournment at the ordinary time. To those honorable members who have any misgivings as to the length of time taken over our deliberations, I would venture to say that when we are at a critical point, the more time we take for the solution of the problem the better chance we shall have of securing federation, because our action in so doing goes to show that we intend to adopt the Constitution. People take more trouble about building houses when they are going to inhabit them. The great legal luminaries of the Convention differ, and we should be given time to ascertain which is on the right side and which on the wrong, because undoubtedly some members of the Convention who have the highest legal reputations are hopelessly in the wrong on the one side or the other. I want to know which side it is, and I join in the appeal that we should adjourn at the usual time, which has already arrived, to see if we cannot, to-morrow, put in some words which will make the intention of the Convention abundantly clear. I have been considering whether we had not better go back to the clause as framed at the 1891 Convention. I think that the proceedings of that gathering will never throw anything but lustre on the cause of federation. The clause which was then arrived at
unanimously, I believe, reads as follows—

River navigation with respect to the common purposes of two or more states or parts of the Commonwealth.

I am in doubt whether it would not be better for us to go back again to that fountain of wisdom, and to put in some words similar to those which have been erroneously struck out.

Sir GEORGE TURNER (Victoria). -

No doubt we have been discussing this matter for a considerable time, but we have made good progress to-day, and if we were to continue sitting we would have, in order to do any real work, to sit till a late hour this evening. Now, I would put it to my honorable friend, the leader of the Convention, that we have all been in a good temper, and that there has been good feeling right through, but I am afraid that if we sit on till late, as we should have to do to give proper time for the discussion of these amendments, we may depart from that good behaviour which has characterized us up to the present. I would therefore urge upon the leader of the Convention once more that it would be wise, in the interests of the progress of business, to give way and let us go home.

Mr. BARTON (New South Wales). -

Honorable members know that I always regard the Right Hon. Sir George Turner as my "guide, philosopher, and friend." I had no intention to sit late, but I thought when I was first asked to report progress that, as we had discussed principles ad nauseam, and had decided the principles of two or three of the amendments, we might perhaps go on and deal at once with the main question. If, however, that is not the desire, and if representatives of South Australia say they wish to continue the discussion to-morrow, I am not going to exercise any drastic rule over the Convention. I am only here to carry out the wishes of honorable members, and I should certainly have the greatest pleasure in reporting progress. I thought we might sit until half-past five and dispose of the whole matter, but, as that is not to be, I shall not ask honorable members to sit any longer. I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to. Progress was then reported.

ADJOURNMENT.

Mr. BARTON. -

I beg to move that the Convention do now adjourn.

Sir JOHN FORREST (Western Australia). -

I must enter my protest against the prolongation of the debate on the rivers question. We have been debating the subject for days, and we have practically come to a conclusion. We are all tired of the question now, and if any further amendments or new sub-sections are to be moved the wisest
course will, be to give notice of them, and deal with them on the recommittal of the Bill. We have devoted too much time to this subject. I have come a long way to do my duty, and I have not unlimited time. Water is supposed to be refreshing, especially when diluted; but I really think we shall dispose of this subject better if we go on with some other business, and give time for honorable members to give notice of their proposals, which can be dealt with, as other important matters will be, when the Bill is recommitted. I hope we shall not devote the whole of to-morrow to this rivers question.

Mr. BARTON (New South Wales). -

I am quite at one with my right honorable friend in wishing a speedy termination of the debate. I hope we shall all make up our minds and take some practical step. We know each other's opinions, and if there are any other propositions made, let us not debate them interminably, but go to a vote, and take the fortune of war. Something has been said about night sittings. I should like to say that the position of business is such that the finance and trade chapter will have to be postponed until after we deal with the states and new states. That will give time for the drafting of the clauses. I do not myself propose, subject to the opinion of the Convention, to ask for any night sittings until after that point is reached—until after we begin the debate on finance—when we shall be in a position to decide whether they will be necessary.

The motion was agreed to.

The Convention adjourned at fifteen minutes past five o'clock.
Friday, 4th February, 1898.

Statisticians' Reports - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

STATISTICIANS' REPORTS.

Mr. WISE (New South Wales). -

I should like to call the attention of the leader of the Convention to the request I made at one of our earlier sittings during the present session (on 21st January) that the letters of the Hon. Edward Pulsford in reference to Mr. Coghlan's figures might be laid on the table. I do not know whether those letters have been reprinted yet, but I would call attention to the fact that Mr. Pulsford has, in the Sydney Morning Herald of Wednesday last, published another letter in criticism of the further paper forwarded to the members of this Convention by Mr. Coghlan. I would ask that that letter should be included in the paper to be printed along with the first.

Mr. BARTON (New South Wales). -

I have not the slightest objection to the letter referred to by my honorable friend being printed.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 52, and on Mr. Higgins' amendment to substitute for sub-section (31), which had been struck out, the following sub-section:-

To secure the navigability of all waters so far as in fact navigable which, in the course of their flow or after joining other waters, touch more than one state.

Question-That the sub-section proposed to be inserted be so inserted-put.

The committee divided-

Ayes ... ... ... ... 12
Noes ... ... ... ... 22
Majority against the amendment 10

AYES.
Braddon, Sir E.N.C. Howe, J.H.
Cockburn, Dr. J.A. Kingston, C.C.
Dobson, H. Lee Steers, Sir J.G.
Douglas, A. Moore, W.
Downer, Sir J.W.
Grant, C.H. Teller.
I now beg to move—

That the following be sub-section (31):—

The Rivers Murray and Darling, so far as may be necessary to the maintenance and improvement of their navigability, but so that no state interested shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation.

I think that these words embrace our original intention, that the use of the waters in a state is a state right; and that although we give away general powers with regard to navigability, still we put the necessity for irrigation and conservation first as within our own power. It seems to me that this brings us back to a very fair test of the whole question. The only difference, so far as I can see, between ourselves and South Australia is this: By the previous proposal of Mr. Symon—and I may say that the words of this proposal are entirely his words and those if Mr. Isaacs, there is scarcely a word of my own in it—to which we took objection, and on which we differed, he introduced the words "reasonable use." Now, it seems to me that if the honorable member wishes to test this question fairly and squarely, and to bring us back to our original position, he can propose as an amendment upon my proposed new sub-section, words to the effect that no state shall be prevented from the "reasonable use" of any waters. That seems to me to bring the whole matter to a fair test.

Sir GEORGE TURNER. -

Does it not introduce the same uncertainty as we had in regard to the previous amendment?
Mr. MCMILLAN. -

I do not approve of that amendment, but I understand that it is sufficient for South Australia.

Mr. SYMON. -

I am going to move an amendment to that effect.

Mr. MCMILLAN. -

It indicates the principles which the South Australian representatives are fighting for; but, at the same time, we hold that there should be no restriction whatever upon our rights in that respect. Because, if honorable member will think of the question that will have to be tried in the future, they will see that it is not a question of law; it is a practical question of fact, as regards the condition of the time when any action may be taken; and it is clear that you must have the rights so embodied in the different states that there can be no friction whatever. I therefore beg to move the insertion of the words which I have read.

Mr. SYMON (South Australia). -

The proposed sub-section of Mr. McMillan, subject to the insertion of the words "the reasonable use of the waters," will substantially give effect to my view of what the position ought to be, and which, I venture to think, the majority of this Convention desire.

Mr. ISAACS. -

It only refers to two rivers.

Mr. SYMON. -

I know it only refers to two rivers, and in that respect I very much prefer my own amendment, with the little alteration I intended to make in it. But, as a very large instalment of our contention with regard to the Darling, Mr. McMillan's amendment is substantially a great protection to South Australia.

Mr. KINGSTON. -

If amended.

Mr. SYMON. -

It does not go as far as my honorable friend (Mr. Isaacs) in his generous desire to help us wishes to go, but I desire that, if possible, we should settle this question and come to a fair arrangement. If the majority of this Convention concur in this amendment it will be an instalment of that justice to which we think we are entitled. I beg to move

That after the word "from" (line 4), the following words be inserted:-"the reasonable use of."

If my amendment is agreed to the sub-section will read as follows:-

The Rivers Murray and Darling, so far as may be necessary to the maintenance and improvement of their navigability, but so that no state
interested shall be prevented from the reasonable use of any of the waters of such rivers for the purposes of conservation and irrigation.

I apprehend that that will bring the provision, notwithstanding its shortcomings, within the scope of what will be just to us and fair to the other colonies.

Mr. LYNE (New South Wales). -

I rather regret that the amendment has been submitted. As we went so far yesterday in deciding to leave matters of rights and use to the Federal Court, I think it is better to remain where we are. To my mind the amendment infringes upon the powers of the Federal Court.

The words "maintenance and improvement" apply only to two rivers—the Murray and the Darling—but there are other rivers with which we require to deal.

Mr. HOWE. -

Do not widen the question. Let us narrow it as much as possible.

Mr. LYNE. -

I am not going to widen the question but I do not think that the power of the Federal Court to decide these rights should be restricted as the amendment would restrict it. I think that in the interests of South Australia, whose representatives have fought so determinedly in connexion with the Darling question, this power should be left unrestricted. I question very much if it is a wise thing to give the Federal Parliament power to interfere with the works of any state.

Mr. HOWE. -

The amendment has nothing to do with the Federal Parliament. The honorable member is off the track.

Mr. LYNE. -

I venture to think that it has something to do with the Federal Parliament.

Mr. HOWE. -

Read the amendment.

Mr. SYMON. -

What the right honorable member (Mr. Reid) contended for yesterday was that the High Court, if anybody, should decide these matters.

Mr. LYNE. -

Quite so; but the amendment takes it out of the power of the High Court to do this.

Mr. SYMON. -

No; quite the reverse.

Mr. LYNE. -

The honorable and learned member's amendment was moved with the
intention of leaving it to the Federal Court to interpret the meaning of the words "reasonable use," but, in my opinion, if we are to accept the statements of leading members of the Convention, the High Court can do that now.

Mr. SYMON. -

No. The point is one which the High Court cannot determine.

Mr. LYNE. -

I judge from the explanation of the honorable and learned member (Mr. Barton), and of other honorable members, that the court can determine all rights existing upon the establishment of the Federation. We are surely not going to restrict this power. I thi

Mr. SOLOMON. -

There was no test vote.

Mr. LYNE. -

If we do not do so we shall be discussing this matter all next week. Some honorable members think that we should place irrigation and conservation before navigation, but I say that the Federal Court could decide that.

Mr. SOLOMON. -

That is just what the honorable member will not agree to.

Mr. LYNE. -

If the amendment is carried, the Federal Court will not be able to go beyond it. The court will have to say that conservation and irrigation must come before everything else.

Mr. KINGSTON. -

That is what the honorable member was arguing for yesterday.

Mr. LYNE. -

I have no objection to the latter part of the amendment, but the first part of it gives the Federal Government power to come in and do what it likes in connexion with the two rivers mentioned.

Mr. SYMON. -

Only for a limited purpose.

Mr. LYNE. -

This provision will prevent the state from carrying out works without the consent of the Federal Parliament. I do not object to the second part of the amendment, but I am not going to vote for the second part in conjunction with the first part.

Mr. KINGSTON. -

Would the honorable member like the amendment better if it applied to all rivers?

Mr. LYNE. -

I do not think that it is necessary. In my opinion, matters had better be
left as they stand. If you put in a declaratory clause to the effect that conservation and irrigation must come before navigation I shall not object; but I am not asking for that at the present time. To give the maintenance and the improvement of the Murray and the Darling to the Federal Parliament is to take away a state right from New South Wales, which I, as a representative of that colony, decline to give up.

Question-That the words of Mr. Symon's amendment proposed to be inserted be so inserted-put.

The committee divided-
Ayes ... ... ... ... 20
Noes ... ... ... ... 20

The CHAIRMAN. -

The numbers being equal, I am called upon to give a casting vote. I give my casting vote with the Ayes.

AYES.
Braddon, Sir E.N.C. Holder, F.W.
Brown, N.J. Howe, J.H.
Cockburn, Dr. J.A. Isaacs, I.A.
Douglas, A. Kingston, C.C.
Downer, Sir J.W. Lee Steere, Sir J.G.
Glynn, P.M. Solomon, V.L.
Gordon, J.H. Trenwith, W.A.
Grant, C.H. Wise, B.R.
Hackett, J.W.
Henning, A.H. Teller.
Higgins, H.B. Symon, J.H.

NOES.
Abbott, Sir J.P. O'Connor, R.E
Briggs, H. Peacock, A.J.
Carruthers, J.H. Quick, Dr. J.
Deakin, A. Reid, G.H.
Forrest, Sir J. Turner, Sir G.
Hassell, A.Y. Venn, H.W.
Leake, G. Walker, J.T.
Lewis, N.E. Zeal, Sir W.A.
Lyne, W.J.
McMillan, W. Teller.
Moore, W. Barton, E.
PAIR.
Aye. No.
Dobson, H. Fraser, S.
Question so resolved in the affirmative.

Mr. REID (New South Wales). -
The first objection I have to the amendment of the honorable member (Mr. McMillan) is that it departs from the federal lines upon which the Convention has acted from the initiation of this movement down to the present moment. It seeks to isolate two streams for particular treatment. This is done in order to help one colony which is represented in the Convention at the expense of another.

Mr. ISAACs. -
The amendment has been proposed by a representative of New South Wales.

Mr. REID. -
That does not limit my intelligence in addressing myself to the subject. It is a peculiar sort of answer to any reasoning I may advance that another intellect has arrived at a different conclusion. If the honorable member (Mr. McMillan) were His Holiness the Pope, the honorable and learned member's interjection might have some force.

Mr. ISAACs. -
The right honorable member said that the amendment was introduced for a particular purpose.

Mr. REID. -
For the first time in the history of the federation movement the Convention lays its hand upon the property of one colony for federal purposes, in spite of the protest of at any rate the great body of the representatives of that colony. I do not object, as I have said all along, as to the Murray. My point of objection is not as to the Murray. I consider it is a federal river in every sense of the term. I make no difficulty about any reasonable proposition as to the Murray. I am dealing with this question as it affects the other river named—the Darling—which is the point of my observation only. I want to point out that this extends the federal fiscal interference and control right through 1,300 miles of New South Wales territory, on a river which is entirely within New South Wales territory, and I ask honorable members, if they can, simply to apply this case to their own colony. Just let us consider if, instead of New South Wales, this was Western Australia, with 1,300 miles of a river that happened to flow into any river which eventually reached the borders of another colony. Let us imagine that this was the case with Victoria, although I think Victoria in its works of conservation is much bound up with us in this matter. It is not at all a matter of interest to me; it is a matter entirely for my honorable
friends who have so faithfully represented the colony of Victoria.

Mr. DEAKIN. -

Only two of them voted over there.

Mr. REID. -

I am very glad to hear that. I want to point out that whilst we in New South Wales are quite agreeable that the power of the Federation should stretch along every inch of that river, along the whole 1,300 miles in New South Wales, for the purpose of preventing or stopping any exercise of local control over the rivers which is unfederal and unequal, and distinguishes in favour of our own people against the people of any other colony; whilst I am absolutely prepared, as we all are prepared in the interests of federation, to hand over to the Federation the power over all that area of New South Wales, we stop short at this. Whilst we are willing that the Federation should step in, if in our management of our lands and waters we do anything to derogate from the freedom of federal trade and commerce, we are not willing to carry the sacrifice so far as to hand over these 1,300 miles of water running through New South Wales, for it is handed over absolutely under these words.

Dr. COCKBURN. -

No.

Mr. REID. -

I shall endeavour to show my honorable friend why I say it is. If you hand over to any power whatever, either a Federal Parliament, a harbor trust, or a river board, the duty or the power of maintaining river navigation, you absolutely hand over the fiscal control of the waters navigated for the purpose of maintaining navigation. Surely that is a proposition which no one will deny. Very well, what follows from that? We come then down to a state of things which is no stretch of imagination, but is the plain notorious history of that River Darling, that, over and over again in every year, times occur when the river ceases to be navigable. Now, let us take the duty of the Federal Parliament in that case. The river is approaching the point at which it ceases to be a navigable river. The Federal Parliament has only one duty in this matter, and that is the duty of maintaining navigation.

Mr. ISAACS. -

And improvement.

Mr. REID. -

And improvement. What is done for Conservation and irrigation in all the works along the river banks? They are to have the use of these waters as far
as that use is reasonable. But when you come to a conflict between
navigation and irrigation, what is a perfectly reasonable use of the waters
when there is a conflict, and when the river is in a normal state for the
purposes of irrigation and conservation, becomes an unreasonable use if it
destroys navigability. And that is the point that would have to go to the
Federal Court from hundreds, perhaps from thousands, of persons all along
the banks of that federal river. This is not so simple as a controversy
between two states. In the ease of hundreds of thousands of persons settled
along the banks of the river in times to come every one of them will have a
right to go to the Federal Court, to have all these various questions—they
will vary according to the circumstances of the river naturally-settled by a
court of law, and the Federal Court. Now, I ask this committee whether
they are going to reduce irrigation to that precarious state or not? As my
honorable friend (Mr. Peacock) said, it is not a New South Wales matter.
When this federation is accomplished, the broad productive interests of
New South Wales are the interests of every person represented in this
Convention. Nothing surprised me more in a Convention which is
supposed to consist of a large number of representative men, sworn by
their whole political careers to enhance production, even at the expense of
the most elaborate fiscal systems of protection; nothing staggered me more
in this Convention than to find men who have devoted years of their lives—I
do not wish to get into any fiscal controversy, I do not wish to express an
opinion on the merits of what has been done, I am merely accepting
matters from their point of view—when honorable members who are
distinguished throughout Australia by this attitude, so believe in
developing the native industries and native productions

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of Australia that they go the length of putting all sorts of taxes on
importations, it is astounding to me to find that, as far as the traders of the
Murray are concerned, the whole productive interests of this vast country
sink into second place, and it is the merchant traders of South Australia
whom these advocates of native industries really represent. This is a
peculiar inversion of political careers and political sympathies. Now, I am
determined, in the face of the whole of the people of Australia, to test
every member of this Convention on the one question—whether, in the case
of these great rivers, to which we look for an indefinite development of
native industries, honorable members are prepared to put the convenience
of a few barges laden with wool for Adelaide above the destinies of the
continent? That is the question it has come down to. What is all this
struggle about? It is a struggle for the South Australian barges to carry the
wool down the Darling. When we know that, owing to the cheapness of
water carriage, it is a common occurrence for the settlers of New South Wales to leave their wool on the shadow of which the irrigation of Australia will be secured, in every court and under all circumstances, we are asked to throw that vital point at the mercy of a decision, not one decision, but a thousand decisions on a thousand different sets of facts, affecting a thousand different settlers and conservation works on the banks of the River Darling. Now, if any man can look forward cheerfully to the prospect of putting the pioneers of Australia in that part of the continent under such a condition for the development of their industry and the employment of their capital, I certainly cannot view the prospect with any satisfaction, and I strongly oppose this proposal for the reasons I have mentioned; and, whether carried or not, I shall subsequently invite the Convention to pronounce on the vital point which I have referred to.

Mr. ISAACS (Victoria). -

I have to oppose the insertion of this sub-section, because, in the first place, it cuts down the commercial powers, if those powers exist, of the Federation with regard to navigable waters throughout Australia. I can support, and I have supported to the best of my ability, a proposal that would be unlimited in its application with regard to navigable rivers for inter-state and international commerce throughout Australia. But I can never be a party to limiting those powers expressly to two particular rivers, in one particular colony practically. Another reason why I must oppose the insertion of the sub-section is, because it is extremely unfair to Victoria, and it is extremely unfair to New South Wales. And when I interposed the remark I did, that the sub-section came from a representative of New South Wales, all I intended to convey was, that I was quite sure that no such motive was actuating its proposer as was suggested by my right honorable friend (Mr. Reid). Now, why is it unfair to New South Wales, and why is it unfair to Victoria? I think I can demonstrate that in two or three words. It provides in the first place that the Commonwealth shall have charge of the navigability of the Murray and the Darling, and practically only of the Murray and the Darling. But then it goes on to say, not as I want the Convention to say, that irrigation and conservation should stand in all cases, as to all the rivers and all colonies, in the first place, and stand before navigability; but to a very limited extent should irrigation and conservation take precedence of navigability, and the limited extent is this—that as to Victoria there is to be no precedence at all. Every river in Victoria is to be subject to the full extent of navigability, and Victoria is not to have the smallest right, under this sub-section, of insisting on conservation and irrigation, because the conservation and
irrigation powers are limited to "such rivers," that is, to the Murray and the Darling. Now, with regard to New South Wales, it is unfair, because as regards the Lachlan and the Murrumbidgee, she has no right of conservation and irrigation except subject to the navigability of the Murray. For this reason I think it will be seen that I am bound to oppose the insertion of the sub-section. I am ready to support, and I have as far as I could supported, a much broader view; but I cannot give my adhesion to a sub-section which limits both the commercial powers of the Commonwealth, if they exist, and certainly by putting in these words it would limit them—for they are an express limitation, and consequently they limit in an unfair and unlooked-for manner and degree the powers for the conservation of water and irrigation which we are all so anxious to engraft on the Constitution if possible. For these reasons I think I am bound to oppose the amendment.

Mr. TRENWITH (Victoria). -

I feel that it would not be wise to adopt this sub-section, because it is contrary to the distinctly federal spirit that we have been all along advocating. Although I have voted for every proposal that has been submitted for giving such powers as it is proposed to give in this sub-section over all the rivers in Australia, I must vote against this one, which is limited to two rivers. But I rose more particularly to, deprecate the somewhat adroit shifting of the ground in the discussion by the Premier of New South Wales, when he expressed astonishment that men who, had been fighting for local production should be giving away immense resources for local production in the interests of some barges. He evidently does not think—cannot think—that that was the object about which honorable members were struggling when they were endeavouring to make federal all interests in connexion with rivers which run through more than one state. It was both ungenerous and unfair for the right honorable gentleman to attempt to shift the ground of the discussion in the manner he has done. I shall not waste more time upon that to me somewhat little, not to say contemptible, treatment of this great question. The amendment for which we were fighting all day yesterday made any river that was navigable or intermittently navigable subject to federal control, and it subsequently placed irrigation in the forefront as superior to and more worthy of consideration than navigation. To charge us, therefore, with deserting irrigation—with deserting any factor of local production in the interests of a few barges—is unjust. At the same time, I would submit that these barges, important as they are to South Australia, are immensely more important to some of the people of New South Wales. It might be charged against the Premier of New South Wales that he is willing to sacrifice the interests of
some of the people of that colony in order to serve the interests of the Sydney merchants, but I would not descend to that line of argument.

Mr. SYMON (South Australia). -

It is perfectly amazing to me to hear the reasons that have been given against this proposed amendment. The statement of my honorable and learned friend (Mr. Isaacs) that he cannot vote for the insertion of this sub-section, because it singles out two rivers, seems to indicate that he has entirely forgotten everything that has taken place during the last few days, and forgotten also the whole purpose of his own amendment. What other rivers have we been discussing throughout the whole of the debate? About what other rivers has the controversy arisen? Is it not a fact that the only rivers with which we have been concerned have been the Murray and the Darling? Mr. Reid says-"Why select these two for the purposes of this amendment?"

Mr. FRASER. -

There are other rivers, such as the Murrumbidgee and the Edwards.

Mr. SYMON. -

The taunt at first was that we were selecting too many rivers. It was conceded from the beginning that there was no difficulty and no injustice in the Federal Parliament having control of the navigation of the Murray and the Darling. That was the whole point in dispute, and I ask honorable members opposite whether they are to be terrified by the ad captandum appeal made to them by Mr. Reid, because some of them happen to be protectionists, and to be led astray from a real vindication of the justice of the position by a suggestion that they are doing violence to their feelings in refusing to protect the producers of New South Wales? The position of the right honorable member himself is that he seeks to deprive the federal authority of the control and the right to maintain this navigation which is admittedly, as he said the other day, the main avenue by which some of the producers of New South Wales get their produce cheaply to market. I never heard anything more utterly illogical and unworthy, if I may say so-

Sir WILLIAM ZEAL. -

Is it true?

Mr. SYMON. -

It is not true.

Sir WILLIAM ZEAL. -

I think it is.

Mr. SYMON. -

Then the honorable member is mistaken.
Mr. REID. -

The only difference is that the honorable member has been there and you have not.

Mr. SYMON. -

Is it not a fact that Mr. Reid the other day electrified us by his argument about the necessity of giving an avenue for the producers in that part of New South Wales, and said it was desirable that the means of river traffic should be maintained? Now he tells us that we must not allow the federal power to interfere, because the barges by which all this produce should come down belong mainly to South Australian merchants.

Mr. REID. -

No; I say they can wait a day or two until the water comes down.

Mr. SYMON. -

New South Wales might be like the boy who sat on the bank and waited until the river ran dry.

Mr. REID. -

The people often have to do that.

Mr. SYMON. -

That is all the honorable member wishes—that they shall remain perfectly passive on the banks of this stream, and shall not only themselves decline to continue and improve the navigation, but refuse to allow the federal power to do so. That is a most unfederal attitude to take up, and I am astounded to see honorable members on the other side getting up and abandoning their convictions and the sense of justice which seems hitherto to have animated them, simply because they are browbeaten, if Mr. Reid will forgive me for using that expression.

Mr. REID (New South Wales). -

I would ask you, Sir Richard Baker, whether it is in order to assert that any member of the Convention is or can be browbeaten?

The CHAIRMAN. -

I do not think the honorable member should use such an expression.

Mr. SYMON. -

I will at once withdraw the expression. I do not suggest that Mr. Reid was taking my honorable friends by the throat or anything of that kind, but I would ask whether he did not make a vehement personal appeal to them?

Mr. DEAKIN. -

No.

Did not he make an appeal to them on the ground that they were...
protectionists, and that this seemed like an interference with the protectionist doctrine that New South Wales ought to act upon in dealing with her producers in the western district? All I can say is that that seemed to me to be utterly inconsistent with the attitude which Mr. Reid took up, and which we were all delighted to hear him take up, at the initiation of the discussion. For my right honorable friend to say also that the whole thing amounted to this, that you are being asked to help one colony at the expense of another is not a fair way in which to put the question to the Convention. You are not being asked to help one colony at the expense of another. I would not stand here for one moment if the object of our proposal was to enable South Australia to be aggrandized at the expense of New South Wales. It is because I believe that New South Wales will not suffer by one halfpenny, and that justice will be done between the two colonies, that I support the amendment moved by Mr. McMillan, with the alteration that has been made in it. Mr. Reid says: "You are going to lay your hands on the property of New South Wales." Nothing of the kind. Are we going to do that any more under this amendment than under sub-section (1)? Mr. Barton laid it down as clearly as it could be laid down that under sub-section (1) the Federal Parliament would have control in respect to the navigation of the rivers. He said that the federal authority would be entitled to take charge of the water-courses for that purpose, and the only object of Mr. McMillan's proposal is to enable the federal authority to make improvements in the navigation which they could not otherwise do. I do not know why all this opposition should be offered to the amendment. It embodies—and I have no doubt that was the intention of Mr. McMillan—the desire of the Convention that the navigability of these rivers should be maintained; and it in effect declares that the power of maintenance shall not be limited to the removal of snags and obstructions, but that it shall extend, if need be, to further improvements. The honorable members representing New South Wales have all along conceded the right of controlling the navigation, and, therefore, the statement about the Federal Parliament taking over something which belongs to another state in order to aggrandize another set of people is utterly unfounded. It is merely a diversion which will have the effect, whatever the intention may be, of carrying honorable members' minds away from the real issue. We are all agreed that irrigation is to be paramount, and that it is not to be interfered with. If Mr. Reid thinks that the latter part of the proposal is not sufficiently clear on that point, let him move a further amendment. We are all agreed that the power of irrigation shall be maintained, but we say that if there is a dispute the High Court should determine it. Yesterday, Mr. Reid denounced the amendment proposed by Mr. Isaacs, on the ground that
it referred either to the Inter-State Commission or to the Federal Parliament, which is a political body, the settlement of what was really a judicial question, and my right honorable friend pointed out with his accustomed force and power that the proper tribunal, if any, was the High Court.

Mr. HOWE. -

Now he objects to it.

Mr. REID. -

We all object to putting irrigation at the mercy of appeals to any court.

Mr. SYMON. -

Under this amendment, if there is a dispute with regard to an excess of irrigation or an improper interference with the water, the Federal High Court will determine it. I thought that was what we were all seeking to secure, and hence the amazement I expressed when I first rose that we should have these, if I may say so, extraordinary and flimsy reasons given by honorable members for abandoning the position that they have taken up and voting against Mr. McMillan's amendment.

Sir JOSEPH ABBOTT (New South Wales). -

Mr. Reid, in referring to the trade of the Darling being simply a wool trade, hardly recognised the resources of the Darling country.

Mr. REID. -

I did not mean that.

Sir JOSEPH ABBOTT. -

The Government of New South Wales are doing all that they possibly can to induce settlers to go into that country and take up land there. Unless means are afforded to those settlers of getting their produce to some market, I do not care where it is, we may as well say good-bye to the settlement of that country. The right honorable member is, I think, absolutely mistaken in laying stress on the question of irrigation as far as the Darling is concerned. It is important, but what I object to is any interference with the sources Of the Darling River or the waters which may come down in flood time. Now, if we maintain the navigability of the Darling River at the expense of the water which we require for our own producers in that part of the country, we can never maintain those producers upon the land. The irrigation of that country will not take place from the Darling, but rather from the old water-courses and lakes, about which the honorable member (Mr. Carruthers) spoke so eloquently a day or two ago. If that country is to be settled we must have command of the water which at any time flows into those watercourses and lakes. I do not
think the honorable member (Mr. McMillan) is likely to vote for his own amendment, seeing the words which have been introduced into it. Although I can congratulate the honorable member (Mr. Wise) upon having gone back upon all he has hitherto said in voting for the introduction of those words, I think the honorable member can hardly conceive the effect of that amendment, or he would never have voted for it. It provides for the reasonable use of the water for irrigation purposes, putting navigability first. That carries with it the control of every water-course that flows into the Darling River. The clause, as amended, means that the navigability of the Darling River is to be the first concern.

Mr. KINGSTON. -

No.

Sir JOSEPH ABBOTT. -

Yes, it means nothing else; and the Federal Government or High Court can interfere and stop any use of the water which would interfere with navigation. Surely any use of the water for the purposes of irrigation would be held by the Federal Court to be an unreasonable use if it had the effect of preventing the navigation of the Darling River. There is no use in trying to do by a side-wind what we have straightforwardly refused to concede. So far as the Darling is concerned, I would like to see weirs and locks on it from one end to the other. At the same time, I claim the right of New South Wales to control its own streams away up at Armidale and Goulburn and all over the colony.

An HONORABLE MEMBER. -

Certainly.

Sir JOSEPH ABBOTT. -

But we shall not have that right if the navigability of the Darling is to be the first concern.

Mr. SYMON. -

We do not wish to make it the first concern. The effect of that part is to take away navigability as being the first concern.

Sir JOSEPH ABBOTT. -

Oh, no.

Mr. SYMON. -

That is our intention.

Sir JOSEPH ABBOTT. -

Your very anxiety makes me doubt.

Dr. COCKBURN. -

It is only to be such navigability as can be secured subject to the use of the water for irrigation and conservation.
Subject to reasonable use; that is a very different thing. What would any court if called upon to interpret such a clause say, but that the reasonable use of the water meant something which would not interfere with the navigation of the river? I think the Government of New South Wales are quite capable of maintaining the Darling for the purposes of its own settlers. I am not at all in favour of trying to divert that trade to Sydney.

Mr. Reid spoke somewhat contemptuously of the class of settlers in that country.

Mr. REID. -
Not at all.

Sir JOSEPH ABBOTT. -
I think the honorable member did.

Mr. REID. -
Is not wool a very honorable thing?

Sir JOSEPH ABBOTT. -
But the honorable member has a knack of referring to squatters as being nobodies.

Mr. REID. -
I have never in my life done so. I get a great deal of money from them.

Sir JOSEPH ABBOTT. -
I am sorry I have been doing the right honorable gentleman an injustice. The squatters have been the pioneers of that country, but the time has come when we say we must get another class of squatters, and we can only do that by giving them the first thing required for their existence, and that is a fair supply of water. The honorable member talked of irrigation and the traffic on the river. I do not anticipate that there will be irrigation from the Darling River at any time. We should maintain it for navigation. We cannot take out of the river directly water for irrigation, but we can, during flood times, store immense quantities of water—far greater quantities than would maintain the Darling navigable during the whole year, if we were allowed to do so. But I say that, under this proposal, we will not be allowed. The time may come when the Darling will be falling, and we shall be told by the Federal Parliament—"Now you are interfering with the navigation of the river, and you must open every lock and weir in New South Wales. Not only the direct outflow from the Darling, but from every tributary that flows into the Darling." That is so unfair that under no circumstances should the Convention take away from us the right to develop our own lands. We were told that the railways could not be
federated, and one of the strongest arguments in favour of that view was that the Commonwealth would not recognise the rights of the states to develop their own country. We hope to be able to develop every part of the large territory of New South Wales, and consequently we cannot see our way to federate the railways. If we cannot federate the railways for fear of restrictions upon the development of our own country, how much more cautious ought we to be in regard to giving away the use of the water for any purpose which would deprive us of our own right and ability to place people upon the land? Every country aims at settling her people upon the land; they are the producers and consumers of the country; they are the very strength and life of the country. For years past we have been doing our best to settle the people on the land. Are we now to place ourselves at the mercy of any Federal Court or Parliament with regard to the use of our own Crown lands?

Mr. WISE (New South Wales). -

I would not have taken part at all in this debate, but for the direct reference made to me by the honorable member (Sir Joseph Abbott), a reference to which I shall reply in rather a different tone to that used by the honorable member, and perhaps more briefly. I object to this amendment of the honorable member (Mr. McMillan), as I object to all the amendments which have been moved, as being unnecessary. I think the right course is to leave the control of navigation to the general clause, and while it may be necessary to add a further clause of definition in another part of the Bill, I voted for the insertion of the word "reasonable," because that was the idea I first formed, as the honorable member (Sir Joseph Abbott) would have seen if he had looked six lines down the paper at an amendment which I myself proposed to move. I voted for the word "reasonable" also, because if the word had been left out it would have been possible for the single state of South Australia to drain away as much of the Murray waters as it required for irrigation, without any regard to New South Wales' necessities. My intention is and was, as expressed at the time, to vote against the amendment of the honorable member (Mr. McMillan) as a whole if put. I shall take that course. If I may be allowed, I would respectfully suggest to my honorable friend that it is not desirable nor necessary to impute motives, nor to question votes given by honorable members. It only prolongs the debate unnecessarily.

Sir JOSEPH ABBOTT. -

By way of personal explanation, I desire to say that I did not wish to impute any motive to the honorable member, who, I think, is deeply indebted to me, because he has given an explanation of his vote which
otherwise would not have been understood outside.

Mr. REID. -

Quite true.

Mr. KINGSTON (South Australia). -

Even at the risk of having it again suggested, that South Australia is guilty of provincialism in this matter, I should like to reiterate my desire that this should be treated as a federal question. If that can be taken as an exhibition of provincialism I am sorry for it, but I do not think such a remark can be fairly applied. I also think that the observation which has been made that South Australia has some sinister designs is no more warranted by fact than the other statement. What we simply wish is this—that in regard to the treatment of the Murray waters the Federal Parliament should have power to deal with them in such a manner as having regard to all the circumstances it should deem just. Surely a position like that is not open to criticism as betraying provincial predilections. I am not wedded to any particular form of words on the subject. I am sorry to see how votes have varied, and are likely to vary. It has been suggested that the attitude of some honorable members is in some slight degree influenced by a consideration of the question as to the quarter from which the various amendments proceed. I hardly think that a suggestion of that sort is justified, although I am at the same time somewhat at a loss to otherwise explain the alteration in the attitude of some honorable members with reference to different amendments, which appear to me to seek to establish the same principle.

Sir JOSEPH ABBOTT. -

Do not look at me, I did not say all those nasty things I said you should have the trade.

Mr. KINGSTON. -

I was delighted to hear the remarks of the honorable member (Sir Joseph Abbott) on this matter, and they render it absolutely unnecessary for me to take any notice whatever of the somewhat emphatic speech of my right honorable friend (Mr. Reid). The honorable member (Sir Joseph Abbott) has shown that the traders and settlers, to whom the right honorable member somewhat contumaciously referred, should be regarded in an altogether different light. Under those circumstances, I do not propose to deal further with that subject. But what I would point out to my honorable friend (Mr. Isaacs) especially, as wel

Mr. LYNE. -

They do not.

Mr. KINGSTON. -

Then what have they to fear?
Mr. REID. -
    I will tell you what they have to fear.

Mr. KINGSTON. -
    I did not ask the honorable member to do so at this particular moment. Of
    course I do not object to a short interjection, but I do not want
    to have a speech from the honorable member interpolated with my own, as
    that is somewhat confusing. But what have the people of New South Wales
    to fear under such circumstances?

Mr. LYNE. -
    What have you to fear?

Mr. KINGSTON. -
    What we have to fear is this: That New South Wales will exercise the
    rights which she claims, and which, we are told by Mr. Lyne and others,
    she has in reference to the Darling and to the Murray waters, that is the
    right to reduce them to such an extent that South Australian navigation will
    be destroyed, and South Australian irrigation will be an impossibility. Would
    anything of that sort be reasonable, I ask my honorable friend (Mr. Lyne)?

Mr. GORDON. -
    What sort of answer does the right honorable member expect from him?

Mr. LYNE. -
    I did not hear what the honorable member said.

Mr. KINGSTON. -
    I would ask any representative of New South Wales whether a serious
    interference with South Australian navigation would be reasonable under
    the circumstances?

Sir JOHN FORREST. -
    No one wants to do that.

Mr. KINGSTON. -
    I am glad indeed to find that my right honorable friend from Western
    Australia speaks with his characteristic candour. I am sure he would wish
    to prevent anything unreasonable.

Sir JOHN FORREST. -
    Yes, on the Murray.

Mr. KINGSTON. -
    On the Murray or anywhere else. Surely there is no particular charm
    about the Murray, as compared with the Darling. When the
    Commonwealth is formed the Murray will be an important river in the
    Commonwealth, but the Darling will also be a very considerable branch of
    the same Australian river system. Does my right honorable friend suggest
that New South Wales should have the right to do anything unreasonable with reference to the Darling?

Sir JOHN FORREST. -

If it does not affect the Murray, yes New South Wales can do anything she likes.

Mr. KINGSTON. -

I see. Well, of course, so far as the Premier of Western Australia and I are concerned we seem to be hopelessly at issue. The right honorable gentleman has put it that we have no concern in the Darling trade.

Sir JOHN FORREST. -

No right, I say.

Mr. KINGSTON. -

We have, according to Sir Joseph Abbott, who has a more practical and intimate acquaintance with this subject than even Sir John Forrest. We have that concern in the Darling trade, and, according to Sir Joseph Abbott, it is a good thing that it should continue, in the interests of both South Australia, and New South Wales.

Mr. LYNE. -

Cannot we make the Murray a better river under federation?

Mr. KINGSTON. -

I do not know which is the best way to deal with the subject, and I do not think my honorable friend does either. He may know a great deal more than I do about it, but at the same time he may not know so very much. The honorable member may not know enough to enable him once for all to pronounce a final opinion as to which should receive greater attention—navigation or irrigation. We may be a body of constitutional experts, but I doubt whether any one of us has sufficient acquaintance with the question of irrigation to be able to finally determine what shall be the line on which this river system shall be dealt with by the Federal Parliament. The way it is put by the amendment before us is this—the Federal Parliament shall have power to deal with the subject as they think fit, subject to the recognition of the rights of the state for conservation and irrigation, but only so long as the exercise of its powers is not unreasonable. And who is to determine whether the manner in which it exercises its powers is unreasonable or not? Objection was taken yesterday that it should not be decided by the Interstate Commission. Well, an opportunity was sought to meet that objection by providing, in the alternative, for the decision of the Federal Parliament. Then the Premier of New South Wales pointed out with great emphasis that that was relegating to the decision of a political tribunal what ought to be decided by the Federal Judiciary. Today the
amendment is so framed that the only authority which will have any power whatever to interfere with the right of the states over the unlimited use of water for conservation and irrigation will be the High Court of Australia—
and that court can do it only when an unreasonable use of the waters is made for those purposes. Under these circumstances, where can the objection be? It has been suggested by the Attorney-General of Victoria that this provision ought not to be limited simply to the Rivers Murray and Darling. It strikes me that the whole discussion has proceeded on the consideration of those particular rivers, and it is well they are named, but we have not the slightest objection to the extension of this provision to all the rivers of Australia. And I think it a pity, indeed, if our friend the Attorney-General of Victoria intended to base his departure from the principle which is involved in this amendment because of its limited application, and that he did not move to extend it. We should have been very happy to support him, and I trust, for the sake of the principle which we have argued for during the last three or four days, at his instance, and which he has convinced, or almost convinced, a majority should be affirmed—that the Federal Parliament should have power to regulate this matter, subject only to the right of the states to the reasonable use of water for irrigation and conservation—that he, even now, will reconsider his expressed determination of voting against this proposal, and be found voting for the affirmation of the principle for which of late he has so admirably contended.

Mr. MCMILLAN (New South Wales). -
I simply rise to make a personal explanation, and I think it is due to me, as the proposer of this amendment, that the Convention should allow me to do so. I do not want to make a speech, and I did not make a speech in introducing this proposal. I was willing that it should go to the vote, but I think that in some respects it has been unfairly dealt with. My object was to get a vote on the main issue, and I still think that this question, as far as the use of the waters throughout the whole of New South Wales is concerned, ought to be absolutely settled upon a sure basis. But it struck me as very remarkable on the part of Mr. Isaacs and others, after we had, been discussing—what?—after we had been discussing sub-section (31), the control and regulation of the navigation of the River Murray and the use of the waters thereof, &c., and after only one member of this Convention (Mr. Barton) having asserted that he did not believe in this sub-section being inserted, that, within the last 24 hours, there should be, as there is, an absolute change of front; and that we should be told, as we are told, that any provision that is made that will not take in all the rivers of Australia is absolutely futile. We came to the conclusion that we had to face this
peculiar position, that there are two rivers affecting certain colonies alone, and that the position of those rivers would have to be put on a base that could not be misunderstood. I certainly think that my amendment would have settled the matter. I shall now vote against the whole provision.

Mr. KINGSTON. -

Because it is provided that it must be reasonable.

Mr. MCMILLAN. -

I shall vote against the introduction of any limitation of the powers of New South Wales, and I may say also that it seems to me that this sub-section, as I proposed it, practically puts back, in effect, the original sub-section, except that it introduces the Darling, because it has been laid down by Mr. Barton that under the general powers of the Commonwealth the Commonwealth can maintain the navigation of rivers.

Mr. SOLOMON. -

But if the New South Wales representatives thoroughly believed that sub-section (1) had that full application they would immediately vote to alter it, otherwise, why their action over this sub-section?

Mr. MCMILLAN. -

Well, that may be. I will say unhesitatingly, and I believe that my views are shared by others, that we do not consider that sub-section (1) ought to remain as it is without some other provision which will clearly define the rights of New South Wales.

Mr. SOLOMON. -

Hear, hear; and of the other colonies.

Mr. MCMILLAN. -

We are simply face to face with South Australia in a certain issue, and the whole of my action during the last two or three days has been to try to bring about a determination on the real issue we have got to decide.

Question-That the new sub-section, as amended, proposed to be inserted be inserted-put.

The committee divided-

Ayes ... ... ... ... 16
Noes ... ... ... ... 24

Majority against the amendment 8

AYES.

Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Cockburn, Dr. J.A. Kingston, C.C.
Dobson, H. Lee Steers, Sir J.G.
Mr. REID (New South Wales). -

Now that this matter is practically settled, I wish to propose the insertion of words at the end of the clause which, I think, will meet with the concurrence of even my friends from South Australia. Because the interests of irrigation are just as important to South Australia as they can be to New South Wales or Victoria, and we all know that already on the banks of the Murray, in the direction of South Australia, some very important industries have been established, owing to the use of the water for such purposes. I beg to move that the following words be added to clause 52

Sir GEORGE TURNER. -

We have not finished trying to fill up this blank.

Mr. REID. -

There is no blank.

Mr. PEACOCK. -

Oh yes, we have omitted sub-section (31), and made a blank.

Mr. REID. -

There is no blank made by omitting a sub-section.

Sir GEORGE TURNER. -
Why, we have been trying all the morning to fill up the blank.

Mr. Reid. -
Surely you are not going to try any more?

Sir George Turner. -
Yes, we are going to have another try.

Mr. Barton. -
Perhaps Mr. Reid's amendment would do instead.

Mr. Reid. -
However, I will read my amendment; and if, after hearing it, the honorable member still wishes to insert a sub-section in lieu of sub-section (31), of course I will give way.

Mr. Peacock. -
Is your amendment printed?

Mr. Reid. -
Yes, my amendment is in print, but I shall not move it exactly as printed. It is substantially the same as the printed copy, but, verbally, I have altered it. The amendment reads as follows:-

If any question arises between the Commonwealth and a state, or between the Commonwealth and a citizen, concerning the navigation of a river and the use of the waters thereof for purposes of irrigation or water conservation, the maintenance and improvement of navigation shall be taken to be subservient to the maintenance and extension of works of irrigation or water conservation.

The leader of the Convention has stated that, in his opinion, the general words in the beginning of the clause give the Federation the power practically of maintaining navigation, and my honorable friend mentioned certain cases that were decided on, I think, very high authority in the United States, showing that, under such general words, the United States Government had so much power that they could come in and remove anything which obstructed the navigation of a river. Now, I think, in these matters, we do not want to leave things to the chances of legal decisions. They are too vitally important. If that law is correct, and, as I have said, there are many high authorities in its favour, then I say, under these general words, there would be no security for irrigation at all; because while the federal power had not a duty in connexion with irrigation, it would have a duty in connexion with navigation; and it would be a duty, therefore, on the part of the federal power to carry on the navigation, while they would have no responsibility with reference to irrigation. Now, we do not want to leave matters in an uncertain state. We do not want to have a vista of litigation. I
want this vital matter to be put so that the settlers of Australia shall not be enmeshed in proceedings in the Supreme Court on questions between navigation and irrigation. These questions may not arise—on most of the rivers they will not arise—but they will inevitably arise on some of the rivers, on the Murray, on the Darling, and perhaps on the Murrumbidgee, but certainly on the Murray. Therefore, they affect the irrigation interests of the three colonies, and I do think that the men who play the part of pioneers in this country, and who are endeavouring to develop the resources of this country by means of irrigation, should not be put to the chances of a Supreme Court decision, whether they are settlers in South Australia, Victoria, or New South Wales.

Mr. SOLOMON. -
This is what you call carrying the war into the enemy's camp, I suppose?

Mr. REID. -
We have no enemies here, we are simply a band of brothers. We may be trying to take a little advantage of one brother, but it is all in the family, and no harm has come of it. And now I am looking after the interests of the irrigationists of South Australia. All my friends declare that they look upon irrigation as superior to navigation, and, therefore, I hope they will carry out their professions. At any rate, I am giving them an opportunity of doing so by moving this amendment.

Mr. GLYNN (South Australia). -
Sir Richard Baker, I would like to ask whether, according to the arrangement you made last night, my proposal should not have precedence of Mr. Reid's?

The CHAIRMAN. -
I think that what I should do is, to ask any honorable member if he has anything else to propose to take the place of the sub-section which has been struck out? If no proposal is submitted to take the place of that sub-section, then we will go on to the end of the clause, and after that, we cannot go back.

Mr. GLYNN. -
Yesterday evening I proposed my amendment, and progress was reported, partly, I understood, to enable honorable members to see it in print. I only temporarily withdrew it to facilitate the discussion of Mr. Higgins' amendment. I would ask that my proposal should have precedence to Mr. Reid's, as his would interfere with mine.

The CHAIRMAN. -
I would first ask whether any honorable member has any sub-section to propose, in lieu of the sub-section which has been struck out?

Mr. SYMON (South Australia). -
I have a new sub-section to propose. I beg to move the following amendment, which is in print, with the exception of one or two verbal alterations, in order to bring it more into conformity with the opinions which have been expressed during the debate:

Waters permanently or intermittently navigable flowing into, through, or between two or more states, so far as may be necessary to the maintenance and improvement of their navigability, with a due regard to the necessities of water conservation and irrigation.

The CHAIRMAN. -

I doubt very much whether we have not already decided that. I would like to hear the honorable member on the point before deciding.

Mr. SYMON. -

This is a sub-section of general application to all rivers, and it is proposed to meet the point which was taken by Mr. Isaacs, as to the other proposal being limited in its operation to two specifically named rivers.

The CHAIRMAN. -

It seems to me that this has, in substance, been already decided upon; and, at this stage of the committee, I think that we should not discuss a matter which has already been decided upon.

Mr. SYMON. -

I would ask to be heard, sir, with regard to the point whether this is, in substance, the same as the proposal which has been already decided upon. So far as I can see, this is quite a different amendment from that on which the committee has decided.

An HONORABLE MEMBER. -

We had all the rivers yesterday—the Swan River and all.

Mr. SYMON. -

No doubt there was an amendment which was applicable to all rivers, but that amendment referred the whole dispute to the Inter-State Commission and to Parliament.

The CHAIRMAN. -

The committee could have altered that.

Mr. SYMON. -

But that was the essence of the amendment. The whole object of that amendment was to secure the determination of the use of the waters for irrigation or navigation by the Inter-State Commission or Parliament. Now, this amendment of mine is simply to confer upon the Federal Parliament the power of legislating in respect of all navigable waters coming within the description in the amendment. It is not limited in any way, as the other
amendment was; and general words are put in which will place irrigation in, at any rate, an equal position, if not a paramount position, to that occupied by navigation. I submit that this is entirely distinct in substance from the amendment which was proposed yesterday. The nearest approach to this amendment was the amendment of Sir John Downer, which has not been moved.

The CHAIRMAN. -

If this was the final stage, I should be very deeply impressed with the responsibility which I am now taking of ruling this amendment out of order. But this is not the final stage. The committee can, and no doubt will, reconsider a good deal of the work which has been done, and this amendment may then be considered. But it seems to me, in substance, according to the very statement of the honorable member (Mr. Symon) himself, to be the question we have been debating for so many days, and which we have settled, so far as we can settle it, in this stage of the committee. I therefore rule the amendment out of order.

Mr. GLYNN (South Australia). -

I beg now to propose the definition C, which stands at the beginning of the list of amendments. The definition is as follows:-

For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which are in fact navigated continually or at times, for trade and commerce with other nations or amongst states, either by themselves or by their connexions with other waters.

I think honorable members will agree with me, that we ought not to start a Constitution leaving any point doubtful, if we are conscious that a doubt really does exist, as to the interpretation of the Constitution.

Mr. ISAACS. -

There is no reference in sub-section (1) to what you propose.

This presupposes something which may never happen.

Mr. GLYNN. -

But no one has shown more forcibly than the honorable and learned member (Mr. Isaacs) what the probable scope of sub-section (1) will be.

Mr. ISAACS. -

This won't settle the question.

Mr. GLYNN. -

Perhaps, with the help of the honorable member, it may be made more clear; but it gives expression to this fact—that we desire to extend, as far as possible, the American decisions upon this point to the interpretation of sub-section (1) of clause 52. Now, that a doubt exists is, I think, fairly
clear.

The CHAIRMAN. -

Perhaps the honorable member will allow me, before he goes on, to decide which of the two amendments that have been proposed, should come first—the amendment of Mr. Reid or the amendment of Mr. Glynn. They are both to come at the end of the clause. They do not appear to be inconsistent with each other, and both can be inserted. The only question is, which I ought to put first. Now, Mr. Glynn withdrew his amendment in order to allow a new sub-section to be proposed, in lieu of sub-section (31), and, I think, as a matter of courtesy, that honorable member's amendment should be taken first.

Mr. GLYNN. -

Thank you, sir. I was saying that a point of doubt arises as to whether the character of a river, as to its being navigable, would be determined by English law or American law, and, even if it is held that the American law applies, still there is a doubt as to whether rivers that are only intermittently navigable come within the scope of the American decisions. By English law, I believe, the navigability of a river is determined by the tidal ebb and flow of the river at some point. There are two Canadian decisions not directly on this point, but the analogy of which may be followed—one given in 1883, and the other in 1896, and they seem to lean to an interpretation that would be in consonance with the English common law. The decision of 1883 speaks of "tidal" and "navigable." There was a decision on the point with regard to the question of the fisheries in 1896, which also referred to these rivers as tidal and navigable. The question of irrigation, of course, did not crop up in Canada; but so far as there is an interpretation given by which we may be guided in an English court of judicature, that interpretation would hold good in English common law. It was an assumption, in the course of argument, made by the Judges, that the question of navigability in connexion with rivers was always referred to by the use of the words tidal and navigable. Even if they were merely obiter dicta on the part of the Judges, we must be certain that they are not also emphatic declarations of the English law on the subject. In America, we have a decision which extends the idea of navigability, by making the essential condition the fact that a river is navigable irrespective of whether there is an ebb and flow and a continuity of the river as a stream of commerce. There have been some other state decisions on the point in America. There was one that laid it down that so long as a stream was, for some period of the year—or some seasons I think the word was capable of being navigated for the transfer of logs, to that extent it was a navigable stream, and came under the decision. That is a decision that seems to
indicate that the Darling would come within the American decision. But the point is doubtful, because it is only a state decision, and because the question of intermittency there, and in any other decisions which I have seen, was limited to intermittency within a year; but, in the case of the Darling, we have a stream whose navigable character might be destroyed for two or even for more years without a break. Therefore the point is extremely doubtful, and it is one that should be cleared up. Beyond that, we have heard several statements by prominent representatives of New South Wales in this Convention that they are willing to leave the question of riparian rights and claims to the interpretation of sub section (1)-that, so far as that sub-section goes, they are willing that the powers of South Australia as against the other colonies, or of the other colonies as against South Australia, shall be determined under it. Therefore, there should be no objection on their part to make the point clear, because they are willing that the full extent of the American decisions should be the determinator of the scope of sub-section (1). We should not make the Supreme Court the judge of what we mean. If we know what we mean ourselves, we should put our meaning clearly in the Constitution. At present we seem to leave it to the Supreme Court to decide what we mean, and the decisions of the court upon the point might not be given for two or three years. We know ourselves what we mean, and we know that a doubt exists, and that doubt should be cleared up. I think it would be a fair thing to have these words inserted, and, as the amendment is not a limitation or an extension of the sub-section as it stands, I think it will recommend itself to honorable members for acceptance.

Mr. Reid (New South Wales). -

If we are to begin to insert other words I may have several amendments to suggest myself-amendments of interpretation, I mean. I am prepared to take the risk of these general words so far as I am concerned, because I am quite in favour of any federal control over anything used for inter-colonial purposes. When I say control, I mean control over the conduct of the states as opposed to taking possession of the property of the states. I submit that the amendment of the honorable member is not a new sub-section at all.

The Chairman. -

It is not proposed as a new sub-section.

Mr. Reid. -

I gave way, although I had a proposal before the Chair myself, because it was suggested to me that I should do so.

The Chairman. -

The right honorable gentleman probably did not hear the explanation I
gave as to why Mr. Glynn's amendment should be taken first. Yesterday Mr. Glynn moved this amendment C, but he gave way for the purpose of allowing another honorable member to submit a prior amendment. Therefore, as a matter of courtesy, I think his amendment should come before that of the Right Hon. the Premier of New South Wales.

Mr. REID. -
I concur, then, that the amendment should be taken before mine. I did not hear the explanation.

Mr. BARTON (New South Wales). -
I think an improvement might be made in Mr. Glynn's amendment by an alteration of its language. I think it would read better if, instead of saying "continually or at times," we said "permanently or intermittently." "At times" is a very awkward phrase to use, and might be held to cover a river which only runs once in a year.

Mr. GLYNN. -
I have no objection to the amendment which the leader of the Convention suggests.

Mr. BARTON. -
Then it would be better if the words at the end of the amendment were altered. I think, indeed, that it would be better if the amendment were made to read in this way:

For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which, either by themselves or by their connexions with other waters, are in fact navigable permanently or intermittently for trade and commerce with other nations or among the several states.

Mr. GLYNN. -
I am quite willing to accept the suggestion of the leader of the Convention.

The CHAIRMAN. -
Perhaps the honorable member (Mr. Glynn) will ask leave to amend his amendment?

Mr. GLYNN (South Australia). -
I beg to ask leave, sir, to amend my amendment so as to make it read in the manner suggested by Mr. Barton.

The amendment was amended accordingly.

Dr. QUICK (Victoria). -
I rise to support the proposal of Mr. Glynn, which I hope will commend itself to the favorable consideration of the Convention. I would point out, in the first place, that it is not in any way consistent with the sub-section
which we have adopted.

Mr. REID. -

On reconsideration, although I think the amendment of Mr. Glynn seems to extend the jurisdiction over us, still, as it is for a federal purpose, I shall not raise any objection to it.

Dr. QUICK. -

The amendment is intended to carry out the view of the leader of the Convention. It does not invade the rights of any of the states; it is merely an interpretation, and intends to give effect to what is contemplated by the trade and commerce sub-section (1). Therefore I hope the Convention will adopt it.

Mr. ISAACS (Victoria). -

I am in full sympathy with putting in some words, but it seems to me that as the amendment is now framed, it is almost identical with the first part of my amendment; but there is a little hiatus, I think, because subsection(1) does not contain a reference to rivers and navigability and it is rather an awkward interpretation to say that for the purpose of that sub-section waters shall be deemed to be navigable. I shall, however, support the insertion of these words, but I hope that hereafter we shall have some provision made with regard to conservation and irrigation.

Mr. LYNE (New South Wales). -

Unless it is understood that there will be some provision made to place irrigation and conservation before navigation, I feel very much disposed to oppose this amendment.

Mr. REID. -

So should I absolutely.

Mr. LYNE. -

Supposing this amendment is carried, and the amendment with regard to conservation and irrigation which Mr. Reid intends to propose is not carried, we shall be in an awkward position.

Mr. REID. -

So will the other people be.

Mr. LYNE. -

I do not wish to threaten them at all.

Mr. REID. -

I am not threatening.

Mr. LYNE. -

I anticipate that there will be a definition inserted to say that irrigation and conservation shall be above navigation.

Mr. Glynn's amendment was agreed to.

Mr. REID (New South Wales). -
I beg now to move that the following words be added to the sub-section:-

If any question concerning the navigation of a river and the use of the waters thereof for purposes of water conservation arise in the exercise of powers vested in the Federal Parliament, or in the exercise of powers belonging to the several states, the maintenance of navigation shall be deemed to be subservient to the maintenance and extension of works of water conservation.

Mr. GORDON (South Australia). -

Unless this amendment is one of the right honorable gentleman's elephantine jokes, it will require only a few words to prove two things; first of all, that it is an attempt at a piece of colossal selfishness; and, secondly, that it evidences the complete inconsistency-I am almost inclined to say the political unscrupulousness-

Mr. REID. -

You are entitled to say it on account of the hot weather-

Mr. GORDON. -

Of the right honorable gentleman himself. It is a cool proposal for the right honorable gentleman to make that irrigation shall be placed above navigation, when the colony which controls the head-waters is New South Wales herself. To carry this would simply mean that the other colonies might be deprived of every drop of water in these rivers if New South Wales proposed to use it for irrigation.

Mr. REID. -

No.

Mr. GORDON. -

That is so, though.

Mr. REID. -

May I point out to my honorable friend that I considered that before moving the amendment? The amendment is so worded that it would not interfere at all with the right of any person in connexion with an irrigation work situated in, say, South Australia, to come into court to prevent the abuse of a similar right enjoyed by some person in New South Wales. The rights of irrigationists in South Australia, Victoria and New South Wales, as between themselves, will be left as they are at the present time. The amendment would not debar a person from applying for a restraint upon the abuse of water which prejudiced irrigation lower down; but, of course, it would not give to any person practising irrigation in any part of Australia a law of his own.

Mr. GORDON. -

That is mere juggling with words. I am obliged to my right honor
Mr. REID. -

As to the Darling the honorable member is quite right. That does not apply to the Murray.

Mr. GORDON. -

Why does the right honorable gentleman waste time in these attempts to blindfold us?

Mr. REID. -

The Murrumbidgee and the Darling are entirely within New South Wales, and riparian rights upon those rivers can only be the rights of owners in New South Wales.

Mr. GORDON. -

I will take my honorable friend by his infantile syllogistic steps-

Mr. REID. -

I was an elephant just now.

Mr. GORDON. -

The right honorable gentleman is everything by turns and nothing long. He seems to be tossed by every wind blown from my honorable friend Mr. Lyne.

Mr. REID. -

I am afraid the heat wave is telling upon the honorable gentleman.

Mr. GORDON. -

The right honorable gentleman's statement of the position is this: Inasmuch as the Darling is the principal tributary of the Murray, and the Murray, to some extent, runs through New South Wales, that colony may exhaust absolutely the whole of the waters of these rivers so far as they are in her territory. While there are those of us who admit that irrigation may be a most important thing, and one which we are willing to place above navigation, the use of the water must be put upon a fair basis. If it is not, New South Wales will be able to deprive the other colonies of water.

Sir GEORGE TURNER. -

Who is to decide what will be a fair use?

Mr. GORDON. -

There was a proposal to leave the question to a tribunal which I think could have decided it, the tribunal to which we are leaving all the huge interests of Australia. If a matter of this kind can be decided upon the fair lines which the Attorney-General of Victoria tells us are being adopted in America, surely it can be dealt with in the same way here. While we are willing that irrigation should be placed above navigation, provided that there is a fair adjustment of the use of the water, we are not going to be so silly as to allow New South Wales the command of the whole of the water.

Mr. LYNE. -
New South Wales has the command now. You are simply trying to take away a right from us.

Mr. GORDON. -

We have heard that parrot cry day after day. Our answer is that, according to the principles of international comity, you have it not. The honorable member's interjection shows how callously selfish this proposal is. The right honorable member (Mr. Reid) has been arguing for days that this is not a federal matter, that the federal authority has no right to say to any state—"You shall either do one thing or another"; but he wishes now to give the right to the federal authority to say that we in South Australia must place irrigation above navigation. The right honorable gentlemen has been educated up to a recognition of the advantage which majorities at the Convention have unfortunately given to the selfishness of New South Wales, and he is trying to go one better than the honorable member (Mr. Lyne). The Convention apparently is to be made the victim of the very natural ambitions of these honorable gentlemen, who must so soon appeal to the electors of New South Wales. If this is a joke-and the right honorable member very often wears the cap and bells—it proves two things, that New South Wales would like to be absolutely selfish and exclusive to the extent of being unjust to the other colonies, and that the right honorable member is prepared to be absolutely inconsistent, and to take up a position absolutely contradictory to that which he formerly held, just when it suits him. If the federal arm should not go into New South Wales, why should it go into South Australia? Upon what principle is this suggested? Upon no principle, but simply for the reason that New South Wales may be assisted to use a power which is put into the Constitution to the detriment of South Australia. I need not detain the Convention any longer in attempting to show that the amendment should be laughed out of court.

Mr. SYMON (South Australia). -

I should like to ask the leader of the Convention what course he intends to take with regard to the amendment? It seems to me-adopting the expression that was used yesterday—to be a sinister attempt to whittle down the broad basis upon which the right honorable gentleman appealed to the Convention to reject the claims of South Australia. Honorable members must see that this matter has now become much more serious than it was before. The leader of the Convention assured honorable members with all the weight of his great authority and learning that under sub-section (1) the federal authority would have ample power to deal out justice in regard to these water rights between South Australia, New South Wales, and Victoria. The honorable member (Mr. Lyne) said that he was alarmed at
that, and while the Premier, of New South Wales did not make the same admission he no doubt has been influenced by the alarm of the honorable member (Mr. Lyne), and he now seeks to introduce into the Constitution a provision irremovable except by an amendment of the Constitution, which is in effect a declaration that navigation, where-ever it conflicts with irrigation, is to be absolutely swept away. As the honorable member (Mr. Gordon) has just pointed out, South Australia is not answerable to anybody for her use of the water passing through her territory so long as she maintains the navigability of the stream; but if a dispute were to arise in any way whatever, and the amendment were carried, we should have this declaration that navigability, even in our own territory, is to be subservient to irrigation. If, as the leader of the Convention says-and his words produced a great effect upon my mind-everything is amply protected and controlled by sub-section (1), and the Federal High Court, guided by the American decisions, will do all that is necessary for the maintenance and control of navigation, why should we have inserted in the Constitution a sub-section which will tie the hands of the Supreme Court, and which will lay down a rule for its guidance which may work immeasurable mischief in the future? Honorable members who have been guided by my honorable and learned friend must vote against the amendment. Otherwise the whole good faith-I use the term advisedly-would be an absolute nullity. Is there a man in the Convention who has not been greatly impressed by what my right honorable friend has said? Have not votes been influenced by the attitude which he assumed? But now this amendment is proposed with a view to cutting the ground entirely from under my honorable friend's feet, and to take away the foundation upon which many votes were given against us. Is that fair treatment? Is it the treatment to which men of self-respect should be called upon to submit? My honorable friend (Mr. Gordon) has excused the proposal in his light way by saying that it was a joke upon the part of the right honorable member (Mr. Reid). That is putting the best possible aspect upon it. If it is not a joke, it is in effect a violation-I do not say an intentional violation-of the line of conduct upon which we have been proceeding, and a repudiation of the attitude which the leader of the Convention has hitherto taken up-a noble and broad attitude-by which a large number of honorable members have been guided. Talk about giving with one hand and taking away with the other. The right honorable member is like Ahab, so envious of Naboth's vineyard that he wants to take from us in South Australia even our little barges. If you declare that navigation is to be considered subservient to irrigation, that is equivalent to the declaration that the claims of navigation are not to be
considered at all. I therefore appeal to the leader of the Convention, before the debate goes a step further, to say whether he will or will not support the amendment.

Mr. WISE (New South Wales). -

While I entirely approve of the principle declared in the amendment-and I think it is one which has the support of a very large majority of honorable members-that irrigation should be the predominant influence in the development of the continent, I am not quite clear as to how far it is expedient to make a declaration of this kind in the Constitution. What weighs with me is the recollection that no step can be taken in the exercise of the powers conferred under sub-section (1) without the consent of the Federal Parliament. No Act can be passed dealing with navigation, which will go before the Supreme Court, which has not previously obtained the consent of the majority of the representatives in both Houses of the Federal Parliament. The declaration which the amendment contains is intra wires of the Federal Parliament itself. The Federal Parliament at its first meeting could pass a resolution containing this declaration. The advantage of having this declaration in an Act of the Federal Parliament, rather than in the Constitution, would be that the Act would be framed having regard to special circumstances with which it was thought at the time desirable to deal, and it could be amended; whereas it is not easy to see now what the effect of putting it in a, fundamental instrument like the Constitution would be.

Mr. REID. -

Then why was Mr. Glynn's definition put in?

Mr. WISE. -

Because there is an obvious difficulty. There are two lines of conflicting decisions.

Mr. REID. -

Will there not be an obvious difficulty about irrigation and navigation?

Mr. WISE. -

No. The difficulty between irrigation and navigation cannot possibly arise until an Act is introduced into the Federal Parliament dealing with one or the other.

Mr. REID. -

Will not the Executive Government have the right to act under the powers in the Constitution?

Mr. WISE. -

At present, I think not. This is a matter which requires more consideration. Even with the fear of Sir Joseph Abbott before my eyes-

Mr. GORDON. -
He is not here.

Mr. WISE. -
I have not yet seen this matter in all its bearings, and I am only pointing out now that it is a question which requires more consideration than at first sight it appears to demand. The distinction between the two things to which my right honorable friend (Mr. Reid) referred just now is a very plain one. "Navigable" is a term we all use in the Constitution.

Mr. REID. -
No; not the word "navigable."

Mr. WISE. -
The word "navigation."

Mr. REID. -
That is a different thing altogether.

Mr. WISE. -
I do not know how you can have navigation except on something that is navigable.

Mr. REID. -
Exactly; and what is the need for a definition at all?

Mr. WISE. -
If you put the word "navigation" in the Constitution, it implies that there is something which is navigable; and when we know that the two courts by whose decisions any Federal Court must be guided—the English High Court and the American High Court have given two absolutely inconsistent decisions—not one, but a long series of inconsistent decisions—it was only our duty to say at once whether we desired to follow the English interpretation or the American interpretation. No question in the Constitution itself arises as between irrigation and navigation. Any question which will arise between irrigation and navigation will arise from the terms of the Act which the Federal Parliament itself will enact.

Mr. REID. -
Don't you think it is a question which arises in the mind of a man who is asked to become a partner?

Mr. WISE. -
I do not think that that necessarily follows.

Mr. REID. -
I think so.

Mr. WISE. -
Because, as the leader of the Convention has pointed out, the court itself, even if the Act of Parliament was silent, would give such a reasonable
interpretation to any words in the enactment as to prevent any injustice from being done, either to one interest or to the other. So that the danger which this amendment is designed to meet does not appear to me to be as real as is imagined, either by those from South Australia, or by those who are supporting it in what may be the interests of New South Wales.

Mr. SYMON. -

The mischief is that this is a declaration of a paramount right in the Constitution.

Mr. REID. -

Not of a right. It is putting one source of national development above another-putting production above trade.

Mr. SYMON. -

That is a play on words.

Mr. WISE. -

It appears to me it is unnecessary, because, in the very nature of things, one source of production is paramount above another-because in the very nature of things irrigation must be superior to navigation.

Mr. REID. -

Don't you see that this is one of the troubles of the matter-that if the two things were handed over to the, Federal Parliament, the Federal Parliament, having both duties within its powers, would probably do its best in justice to both; but the difficulty here is, that whilst navigation and the interests of navigation are made a duty of the Federal Parliament if it chooses to interfere, the interests of irrigation are left in the hands of the separate states that own the rivers concerned. The duty, therefore, is a divided one as far as irrigation and navigation are concerned, and our trouble is that, the power of preserving navigation being given to the Commonwealth, we, want to safeguard it.

Mr. SYMON. -

Is all this in order, sir?

The CHAIRMAN. -

It is not in order.

Mr. WISE. -

I am much obliged to my right honorable friend for the explanation he has given me. What does not impress me, as it impresses the right honorable gentleman, is that there is no immediate or likely danger of these interests clashing in the Federal Parliament. What also weighs with me, is that a declaration of this kind is likely to put our friends from South Australia in very much the same difficulty as they would have put us in if they had carried some of the propositions they have made.

Mr. GLYNN. -
That is a very strong point.

Mr. WISE. -

I feel that this is a dispute which has gained an altogether fictitious importance. According to the best information I can obtain, if New South Wales drained every drop of water out of the Darling, and never allowed any water except that which came in flood time to go into the Murray, the navigability of the Murray would not be appreciably affected. That is to say, as far as the actual navigability of the Murray is concerned, there can be no appreciable effect produced on it if all the waters of the Darling and of the whole of its tributaries are diverted. What we are really fighting over is one of those theoretic assertions of rights which often excite people far more than disputes about direct pecuniary interests. And I throw out as a suggestion to the representatives of South Australia whether it might not be a settlement of this difficulty-and an honorable settlement to them-to hold to the arrangement which was come to at Adelaide, to go back on the previous vote, meeting their views if they wish, and meeting the general views of the Convention, by striking out the words "the use of the Murray" in the original amendment, and confining this exclusive power of navigation wholly to the Murray.

The CHAIRMAN. -

Does the honorable member think that he is not redesuscussing a matter which has been settled?

Mr. WISE. -

I will go no further in the matter. To the leader of the Convention, I throw out the suggestion as to whether there is really any necessity for this amendment, so that the matter may be fully discussed, and a step may not be taken which, if it is unnecessary for self-defence, may prove dangerous as an unnecessary source of irritation to others.

Mr. LYNE (New South Wales). -

I regret that my learned friend (Mr. Wise) has seen fit somewhat to differ from the right honorable member (Mr. Reid) in the proposal he has submitted. I was very much afraid, when the previous amendment of the honorable member (Mr. Glynn) was so readily accepted, that we would find ourselves in the position we are in now, with a strong opposition to interpreting the use of the water, as between navigation and irrigation. The pertinacity with which South Australia has fought this question, is, I think, a lesson to New South Wales. It is a lesson to New South Wales which will be of infinite advantage.

Mr. WISE. -
There are extremists on both sides, remember.

Mr. LYNE. -

If we are to accept a Federal Parliament with a Senate composed in the same way as this Convention is composed, then this pertinacity in debate will be a very strong lesson to New South Wales, and require her to be wary before she takes a course from which she cannot withdraw. It seems to me altogether beyond justice for South Australia to keep on persistently demanding to import into this Bill what she has no right to do.

Mr. HOLDER. -

We are not asking for anything now.

Mr. LYNE. -

And to put an interpretation in the Bill which will direct the Federal Court as to what decisions it must give on certain matters connected with the distribution of water.

Mr. HOLDER. -

We do not want it.

Mr. LYNE. -

Then why are you asking for it?

Mr. HOLDER. -

We are not asking for it.

Dr. COCKBURN. -

We will vote against the clause.

Mr. LYNE. -

I am very glad to hear that the South Australians are coming to their senses. Listening quietly, as I have listened to the speeches, and feeling strongly on this matter, it has become clear to my mind that South Australia is fighting almost solely for the little trade she is likely to get in consequence of keeping the Murray navigable through South Australia, and the Darling navigable in New South Wales. She is paying little attention to the Murray. She is not talking about the navigation of the Murray from her borders to its source. That can go; that can be put on one side. It is all about the navigability of the Darling she is talking. It would have been wiser for South Australia to have taken what was given at Adelaide—I thought it was too much; but as the proposal was made I was not prepared to oppose it—that is, certain

rights over the Murray River for navigation. I think I know as much as most honorable members of this Convention know of the condition of the head of the Murray. As it runs on one side of my electorate for a distance of 100 or 150 miles, I think I may speak with some authority, in spite of what the right honorable member (Mr. Kingston) has said, in saying that
there is a possibility, not at too great an expenditure, to conserve the water at the head of the Murray, which will keep the Darling right to its mouth in better condition and fuller than it is or ever has been. That being so, and we being prepared to give that up to the control of the Federation, surely South Australia should be quite satisfied with what she cannot claim at the present time, and what we have given up. Let us have the control of the Darling River, which is altogether within our territory, and deal with it as best we can.

Mr. SOLOMON. -
Will you support me if I try to get that sub-section put in again?

Mr. REID. -
If you vote for this, certainly.

Mr. LYNE. -
I may support the honorable member if he makes such a proposal. I would not like to give a definite reply to his question till I saw the surrounding conditions, but I feel very much disposed to support the honorable member.

Mr. REID. -
So will I, if he votes for this.

Mr. SOLOMON. -
I will have to consider it gravely, but I will not do it, I think, under these circumstances.

Mr. LYNE. -
My learned friend (Mr. Wise) has said that this dispute has obtained a fictitious importance. I must differ from the learned member. I think it is one of the most important questions which we will have to deal with in this Federation, dealing as it does with New South Wales, or having such vital interests in New South Wales as scarcely any other provision which could be imported into the Bill could have. It is of very vital importance to New South Wales, and I am sure if it were not so her representatives would not have been found to be so unanimous as they have been in sticking together on this question. I am satisfied, as I said before-and I have never attempted to say a word as a threat to the Convention during this adjournment—that it will cause great difficulty in the acceptance of the Bill in New South Wales if any of these rights, as to the rivers which are wholly and solely inside the territory of New South Wales is attempted to be controlled by the Federal Parliament, and taken away from the state Legislature. I should like, sir, if I am in order, to say one word in reference to a matter which is likely to take place if this is left as a state power. I feel that the state will develop the resources of New South Wales much more rapidly than the Federal Government could do, and everything which may be left in the hands of
the state, as far as the development of navigation or the conservation and
distribution of water are concerned, will receive far greater attention if left
to the state than it would if dealt with by the Federal Parliament. Under
these conditions, I am sure the whole of the people of New South Wales
will view with great alarm any attempt to take away a state right or a state
control where the development is of so vital a character, and to place that
control, as is attempted to be done by the representatives of South
Australia, in the hands of the Federal Parliament. I cannot reconcile the
bitter antagonism which has been shown to New South Wales by one
representative of Tasmania (Mr. Dobson).

Mr. KINGSTON. -

Nonsense!

Mr. LYNE. -

That honorable gentleman is more antagonistic almost than are the South
Australian representatives.

Mr. KINGSTON. -

He is not antagonistic.

Mr. LYNE. -

Certainly it is a matter which does not affect Tasmania, and I expected to
have had very strong support from the honorable gentleman in this
particular matter. Why he has taken the
antagonistic view he has taken to New South Wales I cannot understand.

Mr. SYMON. -

On what ground can you expect him to support an unjust proposal

Mr. LYNE. -

I beg to differ from the honorable member. I think the unjust proposal
comes from South Australia.

Mr. KINGSTON. -

He takes an impartial view of the question.

Mr. LYNE. -

South Australia is attempting to take away from New Sout

Mr. GLYNN. -

It is not dictating.

Mr. LYNE. -

It is nonsense for the honorable member to tell me that it does not dictate.
I am not a lawyer, but I have some common sense. It absolutely dictates as
to what course is to be taken, or what decision is to be given, or what view
the High Court is to take in certain matters. That makes it absolutely
necessary to put a still further definition into this sub-section. Rather than
do what we are now doing it would be much better to go back to the Bill as
it left Adelaide. That would be far more satisfactory to South Australia, and I think also to ourselves.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past p.m.]

Mr. REID (New South Wales). -
I desire to withdraw the amendment which I proposed.
The amendment was withdrawn accordingly.

Mr. REID. -
I beg now to move-
That the following words be added to the sub-section as amended:-"But no state or citizen shall be prevented from using any of such waters for purposes of irrigation or water conservation."

Mr. HIGGINS (Victoria). -
I have not spoken this morning, and I just rise in order to ask the committee to put an end to this system of amendments. Mr. Reid has achieved his purpose, and the right honorable gentleman knows perfectly well that the amendment he now proposes will have the same effect as that which he has abandoned.

Mr. REID. -
I know that, but I am putting it in better words.

Mr. HIGGINS. -
In better words, but at the same time they do not show the real effect so clearly as the former amendment. I do not think that the Premier of New South Wales, having achieved his purpose need press the amendment. The leader of the Opposition in New South Wales has no card with which to overtrump this trick.

Mr. REID (New South Wales). -
Mr. Chairman, I do not mind such imputations from gentlemen who show ordinary frivolity, but I must take exception to such words when used by "grave and reverend seigniors" like Mr. Higgins. Coming from him they have a great deal more vitriol in them than when coming from other individuals. I submit that it is entirely wrong to impute to any honorable member that he is watching the movements of any other honorable member, or that he is endeavouring to take advantage of some other honorable member in connexion with affairs that are not before the Convention. It is highly disorderly to refer to us in any capacity excepting that in which we appear before the Convention. We are all here as representatives bound to carry out a certain duty.

The CHAIRMAN. -
I do not think the remark of the honorable member is in accordance either with the practice or the courtesies of Parliament. If any honorable
member thinks that any observation that is made imputes improper motives to him it should be withdrawn.

Mr. HIGGINS. -

I withdraw the remark unconditionally. The committee will bear with me when I say this: That we have watched, with great regret, the course of this debate right through, from first to last, with regard to the amendments from South Australia. The effect of the amendment now proposed is to declare that the expressed intention of Mr. Barton and Mr. O'Connor shall not have effect. They say, rightly or wrongly, that sub-section (1) gives to the Federal Parliament power to prevent any substantial interference with the navigation of these rivers. I understand that the view of Mr. Barton and Mr. O'Connor is to leave to the glorious uncertainty of the construction of this first sub-section the question of whether or not there is that power which apparently has been taken in the United States. As we cannot agree upon an amendment that will secure to South Australia, and I may say to Australia, the federal control of this river system we ought to stop.

Mr. GLYNN. -

Hear, hear.

Mr. HIGGINS. -

The committee have listened patiently to the discussion of this matter, and have watched the peculiar struggle of interests that has taken place, and which I should not be in order in describing. I do submit that this amendment might be dropped, and that we might allow the glorious uncertainty of the construction of the law to operate on the first sub-section. What I desired was to make this matter federal, and I am sorry that the Premier of New South Wales has shown so anti-federal a spirit as to refuse to make it federal.

Mr. REID. -

What is the use of your saying that? I have had more to do with it than you will have if you live for a thousand years.

Mr. HIGGINS. -

I do submit that the position of the Premier of New South Wales has been distinctly anti-federal.

Several HONORABLE MEMBERS. - No.

Mr. HIGGINS. -

I have no doubt there are some honorable members who will differ from me, but I am entitled to my view.

Mr. REID. -

Hear, hear; nobody minds your view.

Mr. HIGGINS. -
I do not expect the right honorable gentleman to mind my view, but still I do regret that we have not been able to arrive at a conclusion on a matter that is distinctly federal. If we cannot agree, even to any modification of a federal resolution, let us leave this question to sub-section (1). I think that South Australia has gained distinctly by the omission of sub-section (31). That is my view as a matter of construction. Mr. Wise puts very lucidly the view which I struggled to indicate the other day. He was not here at the time.

Mr. WISE. -
Yes, I was.

Mr. HIGGINS. -
At all events, he said that this placing of irrigation and conservation above navigation is not a matter for the Constitution. It certainly is not. It is a question for the Federal Parliament, having regard to the changed conditions of the times; it is a question of policy, to be determined by the conditions of science and of Australia as a whole. I happen to recollect that in the Federalist, Published 110 years ago, such men as Madison and Hamilton were discussing the effects of the Constitution, and they propounded for all time, as a matter of course, that agriculture would be the principal industry of the American people. With all their wisdom, how they have been falsified! Here we are asked to stereotype in the Constitution the idea that water conservation and irrigation are to be paramount for all ages over navigation.

Mr. FRASER. -
That is a different country to this one.

Mr. HIGGINS. -
That is quite true, but it is not the question. Being a different country, how are we to know what will be the altered condition of things, which may render the use of those rivers far more valuable for other purposes than even conservation and irrigation? There is great doubt about irrigation and conservation now. I admit that there is overwhelming evidence at the present time that water conservation and irrigation are more useful than navigation, but it is not for the Constitution to say so. That is what is proposed to be stereotyped and rigidly declared, that the Federal Parliament must, notwithstanding how conditions may alter, treat irrigation and water conservation as paramount. As the honorable member (Mr. Holder) says, we cannot foresee what the conditions of the future may be. I have failed in carrying out my view to leave it to be absolutely determined by future conditions, and to leave it to the best arbiter—the Federal Parliament. Having failed in that, I
determinedly oppose this idea of rigidly dictating to the Federal Parliament that irrigation and water conservation shall be paramount over navigation. There are uses to which water can be applied, suggested during the last ten years, which may alter altogether the idea which we are trying to put into this Bill. The leader of the Convention and the honorable member (Mr. O'Connor) have put their view that sub-section (1) gives a certain operation to the Constitution. Their view, I understand, is that this does not put water conservation and irrigation above everything, but simply gives power to the Federal Parliament to interfere with any undue removal of the water from the Darling or any other river. I would appeal to them, if I could, to declare their view upon this matter. They have hitherto succeeded in opposing every amendment. I understand the view of the leader of the Convention is that there should be no sub-section put in the place of sub-section (31), but that the whole thing should be left to the operation of sub-section (1).

Mr. BARTON. - Yes.

Mr. HIGGINS. - Having regard to that, I would ask for the honorable member's vote in this matter, for here you would be dictating to the Federal Parliament that they should not have the powers which you say they ought to have under the American and this Constitution. Before we go to a vote, I should like to have the view of the leader of the Convention on this question. I want to ask whether he still persists in that view?

Mr. BARTON. - That will be stated at the proper time.

Mr. HIGGINS. - I am glad to hear it, and that will be before the division is taken; that, I apprehend, is all we want. Those honorable members have succeeded in avoiding all amendments. If they adhere to that attitude we shall be very grateful. I feel there will be a chance hereafter, and I hope, as the Convention has gone back on some of its previous resolutions, it will go back upon the resolution here. But I feel we cannot do so at this stage. I feel it is utterly impossible to carry any amendment, and I hope also there will be an absolute blank with regard to the 31st sub-section, or anything else, and that if possible we shall proceed to the next business. It is with the view of stopping this discussion-which has been fruitless from my point of view, and which has put the matter exactly as the leader of the Convention and the honorable member (Mr. O'Connor) have stated-it is with the view of stopping the discussion, and leaving it where those honorable members wish to leave it-that I rose to speak.
Mr. REID (New South Wales). -

I wish to assure this Convention that when the honorable member (Mr. Higgins) accuses me of an unfederal attitude on this matter he does me a great injustice. I tell the Convention plainly that if what I aim at is not embodied in this Constitution, I, as at present advised—it is too responsible a matter to speak finally upon—will be unable to use any influence which I possess in New South Wales in recommending the labours of this Convention to the acceptance of her people. Honorable members will see that it would be a far more unfederal act on my part to sit still and use no influence to prevent a thing being done which, when done, would convert me, perhaps, into an opponent of federation.

Mr. HIGGINS. -

Your own constituents do not support you.

Mr. REID. -

I am not explaining to the honorable member at all, I am explaining to this Convention, that I would act an unfederal part, that I would act the part of a traitor to federation, if I sat at this table, and, without any effort on my part, allowed the Constitution to be finished in such a shape that I should have to oppose it when finished. Let me remind the honorable member that there is no one in this Convention who can have a larger interest in the success of this enterprise than the man who originated it, who I happen to be. This

Mr. HIGGINS. -

No.

Mr. REID. -

It is absolutely so; that it should not rest on a question of legal decision. The honorable member (Mr. Glynn) has defined in the Constitution the meaning of general words so as to secure the control of the Darling, a river which is intermittently navigable; and those honorable members who now talk of leaving everything to definition and chance and general words, have got in special words of definition which drag the Darling out of New South Wales into the federal possession.

Mr. WISE. -

Only for one purpose.

Mr. REID. -

What is the difference?

Mr. WISE. -

Only for trade and commerce.

Mr. REID. -

Exactly. I am very sorry indeed that the honorable member (Mr. Wise)
cannot see quite clearly, as I think I do, the evils of a divided jurisdiction over the same thing. Whether it is a question of navigation or of irrigation, it clearly concerns the same thing—the watering these rivers. Now there is a divided, jurisdiction upon that subject. We do not, hand over a trust and a duty with reference, to irrigation to the Federal Parliament. If we did it would be infinitely better than as it now stands, because then the Federal Parliament would owe a duty on that subject to the people of Australia. But we simply hand over a duty and an interest, with reference to the use of the water for navigation purposes. There being a divided jurisdiction over the same thing, are we to leave it to fights between the states and the Commonwealth, between the states and private individuals, between one set and another set of private individuals?

Are we to leave this question of divided jurisdiction and use to the conflicts and the chances of the future? I say no, and I say no in the interests of a colony to which the interest is a vital one. Therefore, the Darling having been taken by force under the amendment of Mr. Glynn into this Constitution, on that ground alone, I cannot leave to the federal power the control of these waters for navigation, with the certainty that in the control of these waters for navigation questions might arise as to their use for irrigation and conservation. What remedy is a court of law to a settler? What surer course to absolute ruin is there to a man who has works for water conservation on the banks of a river than the Federal Supreme Court? We owe it to the people of Australia, who put their money and enterprise into this work, to let them know the security on which they stand.

Mr. HIGGINS. -
You urged yesterday that it should be left to the Federal High Court.

Mr. REID. -
I said, as to the position before the Convention then, that matters of dispute between states should be left to the Federal Court, and this is done by section 77.

Mr. HIGGINS. -
Knowing that there was no legal right.

Mr. REID. -
So far from that being the case, I pointed out that section 77 gives an original jurisdiction to enable any state to come into the Federal Court and complain of the conduct of any other state. The honorable member now admits that there is no legal right.

Mr. HIGGINS. -
I have always said so.

Mr. REID. -

Now, the honorable member puts himself before Australia in this position: There being no legal right behind this struggle of days against New South Wales, her waters are to be handed over to the whole field of conflicting jurisdiction, and doubt, and uncertainty, and litigation in a matter vital to the future of New South Wales. I decline to leave the solid interests of the settlers of New South Wales to such a tribunal on a vital point.

Mr. HIGGINS. -

They are not her waters but there is no legal right which you can enforce.

Mr. REID. -

I see. I do not know how to deal with any one like the honorable gentleman. I should like to know what sort of a right it is that is unenforceable?

Mr. HIGGINS. -

I did not say that. I have not said there is a right. I said you ought to treat the South Australians as the law treats owners lower down the stream.

Mr. REID. -

We do more than that; we treat them in a perfectly generous way, so much so, that not a single act is complained of. But the honorable member is shifting his ground. One moment he says it rests on legal right-equitable right-and then he says that we ought to treat South Australians in a certain way, and my reply is that we treat them in such a way.

Mr. HIGGINS. -

Have I said so?

Mr. REID. -

What I point out is, it is not a question of treating this or that action rightly or wrongly; we have no right to leave this vital question in doubt. If it was a matter of vital consequence to the Federal Constitution that Mr. Glynn's amendment should be added to relieve the federal courts from even the chance of deciding according to law, and to compel them to decide, that a certain river, because that is all it was aimed at, should be navigable-if that was important enough to be put in the bed-rock of the Constitution, in definite words, we from New South Wales are bound, in view of divided jurisdiction over these waters, to put some rule of conduct and decision in the Constitution to decide the vexed questions that must arise all along the banks of rivers, such as this river to which I have referred. It is the old consideration-trying to get, for navigation, the control of waters that we want and must have for irrigation.
Mr. FRASER. -

That is the whole trouble.

Mr. REID. -

This matter of disputes arising under a divided jurisdiction is of importance to, us all. In the western districts of our colony the land has become fertile owing to the expenditure of a large amount of capital and industry, by means of works of conservation and irrigation. Just as these works are fulfilling their part, just as these water conservation works are most undoubtedly filling their vital part in colonization, the river runs down to a point at which navigation is becoming dangerous, at which the issue is trembling in the balance. Are those draughts of water for irrigation purposes to continue, because if they do the river will become unnavigable? Or, are they to be stopped in order to maintain the navigability, of the river? And the only duty which the Commonwealth will have under these words will be to maintain the navigability of the river, because we put that duty on the Commonwealth

Mr. SOLOMON. -

What words in Mr. Glynns amendment do you mean?

Mr. REID. -

The honorable member ought really scarcely to interrupt me in the way he is doing, because it is admitted by all of us that, under general words, the duty of maintaining the navigability of these rivers will be vested, by this provision, in the Federal Parliament.

Mr. SOLOMON. -

That is not admitted all round.

Mr. REID. -

Well, it is astonishing how my honorable friends follow Mr. Barton when it suits them, and throw over his construction of the provisions of the Bill when it does not suit them.

Mr. HOWE. -

That shows their innocence.

Mr. REID. -

All I can say is this, whether it is so or not, eminent lawyers in this Convention-and I know that the honorable the leader of the Convention is one of the most eminent-hold such an opinion. Now, since Mr. Glynn's anxieties have been cleared up by definition, I want the rights and anxieties of the people of Australia with reference to water conservation to be cleared up and defined. If they are not defined, litigation, uncertainty, and paralysis are certain to follow. And the trouble we are in in New South Wales is this: We are handing over to the Federation, in general words,
according to this Bill, the whole of the waters of the Darling and the Murrumbidgee without a definition as to what our rights will be, and as to how they will be regarded if a difficulty arises between the two things—navigation and water conservation and irrigation. I say it will be an unstatesmanlike proceeding to leave that portion of the Bill in that state. The interests at stake are too serious for us to agree to that. I can assure honorable members that the ardour and earnestness with which I am fighting this matter are entirely above the tricks of local politics. Surely if there are two men in New South Wales who may be supposed to have a very fair idea of the opinion of the people, it is the two men who happen to be the Premier of the colony and the leader of the Opposition. And when gentlemen, accustomed as we are to differ perpetually and to fight constantly, agree and tell you what the public opinion of New South Wales is on this point, instead of being a proof of some trick or of a desire of the one to overpass the other in our own colony, I think the more candid-minded members of this Convention will regard it as a proof that both of us are representing what we believe to be the feelings of the people of our colony.

Mr. HOWE. -

But the leader of the Opposition is an anti-federalist.

Mr. REID. -

That is not so.

Mr. HOWE. -

He stated so.

Mr. REID. -

I know that the leader of the Opposition has never put himself in that position. His presence here is no proof of that charge. But whether that is so or not, I think, when a man who is pretty well qualified to speak on a subject expresses his opinion, it should at least be received with that respect which is usual amongst assemblies above a certain level. Now, I am earnest about this matter, because I feel that if the Constitution is left as it stands, it puts me in a very painful position in endeavouring to advocate its acceptance in New South Wales. In no case, is that a threat. It is my particular desire to stand side by side with Mr. Barton in New South Wales in strongly recommending this Constitution to the people of New South Wales, and I think my honorable friend knows, from our consultations in this matter, that I have given him practical proofs of my desire in that respect. That being so, I hope honorable members will credit me with higher motives than those that have been attributed to me.

Sir GEORGE TURNER. -
Is the honorable member prepared to concede to South Australia a right to use these waters for irrigation purposes, leaving out navigation?

Mr. REID. -

I consider that the amendment I propose is satisfactory, in the sense that it places the irrigationists of all Australia on the same footing.

Sir GEORGE TURNER. -

Subject to the prior right of New South Wales to use all the water but it does not give South Australia any chance of having a right to use this water. Your amendment wants some modification in that direction.

Mr. REID. -

Now, in the first place, as a matter of fact, I believe there would be no practical difficulty.

Sir GEORGE TURNER. -

I quite agree with you.

Mr. REID. -

Because it is a comparatively simple matter in South Australia as compared with New South Wales. By the time the Murray reaches South Australia it is a large river. I do not know exactly how far it runs in South Australia, but it is a very short distance compared with our water system in New South Wales. My difficulty is this-I believe that the people of New South Wales, in their treatment of these waters, will act as they have always acted. I believe that our interests are so bound up in that part of the country with the navigation of the Darling, that, in the actual administration of affairs between the states and the Commonwealth, practically no hardship whatever can come to South Australian irrigation. That is the view I take. Now, that being my view, I am asked to give up something which has this unfortunate attribute-that, give up that something in any way you will, it raises that eternal doubt as to what the rights will be. Supposing, for instance-I want, as far as it is possible, to clear up this difficulty-I am willing to say that no rights of New South Wales in the tributaries of the Murray, or in the Murray itself, should be so exercised as to interfere with the navigation of the River Murray. Now, that would be something to ask me to give up. The evil of that concession immediately suggests itself to a practical mind. What power on earth is ever to decide a question of that kind with reference to the water of a river which does not get to South Australia for a certain period of time I allude to the water of the River Darling? What tribunal in the world is to decide this question as to whether, in fact, some one or some body of men is or are doing those things to produce that result? The everlasting uncertainty of the thing, the certainty of everlasting attempts to get these things settled-things incapable of solution on account of the uncertainty of the conditions-would put all
parties in an uncertain position, in which the waters of the river would be of no use to them.

Sir GEORGE TURNER. -

You say yourself that a deal of the uncertainty is never likely to happen.

Mr. REID. -

But we would be establishing a settlement which would, in itself, be sure to be uncertain. It would conduce to the raising of disputes which we would be anxious to avoid. If I could see a concession which I could make, which would avoid the risk of future disputes, I can assure my honorable friend, the Premier of Victoria, that such a [P.579] starts here proposition would have the greatest possible attraction for me. But the evil of any such a suggestion as, that which has been put to me is that it only exchanges a general for a practical uncertainty.

Sir GEORGE TURNER. -

Could not you allow the Federal Parliament, as a fair body, to grant to South Australia certain rights for irrigation with regard to these waters?

Mr. REID. -

Let me put my difficulty on that point in this way. It is a very important question, and no one objects to interjections when they are of such value as those which Sir George Turner is making. I will show you our difficulty on that point. We are willing to accept, and we have accepted, a provision which enables South Australia, or any citizen of South Australia, to go to the Federal Court and complain of any act by New South Wales, or by any citizen of New South Wales, which derogates from any right they possess.

Sir GEORGE TURNER. -

That is going back to the old trouble.

Mr. REID. -

But you will understand I am beginning at the beginning of this matter. Now I am asked to do this-it being admitted that there is to be a solution, in which a state or a citizen of the Commonwealth can get all its or his rights-I am asked to give up something which belongs to New South Wales-something which is not a right on the part of persons outside of New South Wales. And the objection which I have to give up that right of New South Wales is this-I say again I would do it, if the concession would produce certainty of tenure for enterprises in water conservation. But in giving up those rights of New South Wales-they are pretty generally recognised now-the concession would take such a form that the whole right would go. That is to say, it would produce an element of uncertainty in the use of the water, which would debar all practical men from embarking their capital in New South Wales in enterprises which depend upon the use of
this water.

**Sir GEORGE TURNER.** -

I think the Federal Parliament might so devise their law, at the time they were making it, as to avoid that difficulty. That is my feeling.

**Mr. REID.** -

Well, on federal matters, I am prepared, as every honorable member is, to accept the chances of federal action, but what I am asked to do, and what New South Wales in this vital matter will not do, is to go away from that position—the equal position in which we have been acting in federation up to this moment—and take a course which is practically giving up something for which we get nothing in return.

**Mr. HIGGINS.** -

You will give up nothing.

**Mr. REID.** -

Well, is there a colony which, on its public policy, is in greater danger of giving up a great deal than New South Wales? Are none of the risks of federation falling upon the people of New South Wales, who, under any conceivable circumstances, will bear nearly 50 per cent of the taxation of the Commonwealth themselves alone?

**Mr. HIGGINS.** -

I am speaking of you personally, not of New South Wales.

**Mr. REID.** -

Oh, that is the misfortune of the honorable member. He has been dealing with me too personally in this matter. I decline to be regarded as a person speaking from personal motives on this question. I am, in a special sense, the guardian of the rights and interests of a great colony—of a great community—and I say, for the first time in this federal enterprise, New South Wales, which must give up so much, which must take so large a share of the federal risks of the Commonwealth, is asked, in addition to her share of the risks of federation, to distinctly give up local rights. Now, the basis of this attempt at federation was this—that no colony was to be asked to give up its rights, unless it was prepared to surrender them. I take my position on the bed-rock of this federal movement, and I say that those who at this late hour of the day, when the Constitution is about to be finished, throw this additional difficulty in the way of the delegates of New South Wales, of asking them to make a local sacrifice in a vital matter, where no other colony is to make a local sacrifice in a vital matter, throw too great a strain upon the enthusiasm, whatever it is, of the people of New South Wales for federation. We cannot go back to our people with the destinies of three-fourths of our territory

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vitaly concerned—we cannot go back to our people and say—We have given up the rights of the colony," and given them up in such a way that, instead of producing a settlement on a clearly-defined line, we would be throwing every one into the uncertainties and confusion of legal decisions upon things which are incapable of being decided on by a legal tribunal.

Mr. SOLOMON. -
We have tried to avoid that all along.

Mr. REID. -
My honorable friends have, if they will allow me to say so, been fighting to get this thing, which belongs to New South Wales, out of New South Wales in the name of federation. Well, in the name of federation, I tell you that you cannot get it.

Mr. SOLOMON. -
That is, you are prepared to give nothing?

Mr. REID. -
Give nothing? Does New South Wales give nothing in allying its destinies with the colony of South Australia?

Mr. SOLOMON. -
Not much.

Mr. REID. -
Does a country, constituted as New South Wales is, risk nothing in joining in this union? Surely, if we are willing to take an equal risk with every other colony, that is all that can be asked of us.

Mr. SOLOMON. -
The risk of what?

Mr. REID. -
Of your being Treasurer of the Commonwealth, though I admit that is very problematical. I say that this is a vital matter for New South Wales; we all must admit that.

Mr. SOLOMON. -
What is a vital matter?

Mr. REID. -
It is a vital matter to New South Wales that we should be asked to make this purely local sacrifice when there are no other local sacrifices. Where is the local sacrifice that any colony has tendered yet in the name of federation? Where is there one point in this great Constitution where any one colony has come forward and said:"In the name of federation we give up something that belongs to us exclusively"? At one moment honorable members claim rights, which, in the next breath, they admit they do not possess.

Mr. SOLOMON. -
We do not claim rights, but a fair bargain if we are going into this union. We say-"If we are going into this Federation let us go into the Federation. on such terms as we can recommend to the people of South Australia."

Mr. REID. -

I must admit that I quite see the position of the South Australian representatives. I quite see that it is a vital matter to them, and it is a vital matter to us. But the difference between the two colonies is a difference which ought to decide, in my respectful opinion, every independent member of this Convention outside of those colonies. The difference is that New South Wales is not asking anything that belongs to any one else—that New South Wales is simply asking to be allowed to keep that which belongs to her. That is the only difference, and that is an important difference, and independent men in this Convention must see that it is an important difference. After the great fight we have had, I thought we had come long ago practically to this conclusion—that in the interests of federation, New South Wales shall not be forced—she cannot be forced, but the attempt should not be made to force her into making a sacrifice, which is admitted to be a sacrifice, without her own free will and consent. Now, I go behind the representatives of New South Wales. I tell you, from all the means of information I possess, that the people of New South Wales cannot voluntarily consent to make this sacrifice. When the colony asked to make the sacrifice tells the Convention that, I think it ought to settle the matter with the Convention, and I simply put the matter upon that ground, assuring honorable members that, if I did not see the grave danger of this matter to our great enterprise, I would not have taken up the time of the Convention to-day as I have done.

Sir JOHN DOWNER (South Australia). -

I think it is a little to be regretted that the right honorable gentleman who has just sat down did not as vehemently resist the amendment proposed by Mr. Glynn as he now supports the amendment which he himself has suggested, because the effect of the right honorable gentleman's amendment on Mr. Glynn's amendment is practically to negative that amendment.

Mr. HOLDER. -

Worse than that.

Sir JOHN DOWNER. -

That at least. Whether that amendment was necessary or not I am not sure.

Mr. KINGSTON. -

It was only to make something clear which was doubtful.
Sir JOHN DOWNER.

I believe it was simply for the purpose of clearing up all doubts. However, I think myself that it is a matter for deep regret that the committee did not adopt the line of action recommended by the Attorney-General of Victoria the other day, which was founded, as I think everybody admitted, on what was right and just. Now, after three days more discussion, we have the Premier of New South Wales getting up and taking identically the same stand as he did at the beginning, asking us to reconsider everything that we have been considering over and over again for the last four days, making all our consultations and debates futile, and simply telling us that he would be a traitor to the cause of federation if he did not assure us that his people would not possibly accept federation, except on terms that we consider to be inconsistent with any true federation. Quite apart from the right honorable gentleman's difficulties with his constituents—with his colony—we have to consider the cause of what is fair and right. We are not here, I think, to make impassioned speeches. We are here to talk quietly and reasonably, and we should pay a poor tribute to the intelligence of each other if we thought declamation would very much assist argument. The right honorable gentleman asked Mr. Higgins whether he claimed that there was any legal right. Mr. Higgins replied—"I always said there was no legal right." I myself had said before that there was no legal right; everybody had said there was no legal right, in the sense that there was no court in which the right could be enforced, and it could not be enforced by the arbitriment of war. But that there was a right is what we have always contended, a right which, if the next-door neighbour of New South Wales happened to be a hostile nation, New South Wales would by the comity of nations have to recognise. All we have said is this:—"True, we have no court in which we can bring an action against you; we have no bailiffs with which we could turn you out; and we have no military to use force—we would not be allowed by the Imperial Government to do so if we had—but treat us, at all events, no worse than you would treat a hostile neighbour if he happened to be next door, instead of friends and brothers, and do what is considered by the law of nations to be reasonable and fair. I was always satisfied to have the control of navigable streams and nothing else. That was objected to. One matter after another was proposed, was resisted, and was rejected. Now, this identical proposition of the right honorable gentleman (Mr. Reid) has in effect been proposed before. It is really in substance, though not in form, the proposal that was made by Mr. McMillan, a proposal which was discussed at length, and negativted. And now we have come back to it again. We are
having the whole thing over again, and we are asked to say whether or not we will begin this Federation with a distinctly anti-federal provision, and by the establishment of a condition that is bound to end in trouble to the Commonwealth, which we all hope will work smoothly and well in the future. Anything more anti-federal than the position taken up by New South Wales can hardly be conceived. For my own part, I would be willing now, although I thought it very undesirable, to take the position that Mr. Higgins takes and to say—"Strike out all these provisions and leave the matter to sub-section (1), relating to trade and commerce. What has the Premier of New South Wales to fear in regard to that? Who has been a greater advocate for the absolute freedom of trade and commerce than my right honorable friend?

Mr. REID. -
Hear, hear. And I have acted up to that, too.

Sir JOHN DOWNER. -
Exactly; and then when a Bill is brought in, in which we only provide for the absolute freedom of trade in the Commonwealth-

Mr. REID. -
I always fought for freedom of water conservation too, and here is a divided jurisdiction which might conflict. That is the trouble.

Sir JOHN DOWNER. -
That is not the point I am dealing with just now. What I am willing to accept, as Mr. Higgins is willing to accept, is the simple provision for the control of trade and commerce, coupled with the other provisions for freedom of trade; yet the grand advocate for freedom of trade in Australia objects to that, because he says that in America there has been a construction put upon it, which the leader of the Convention says would apply to this, and which makes trade and commerce very much freer than even the great free-trader desires it to be. That is the objection of my right honorable friend (Mr. Reid). What injustice, I would ask, has come from the judicial decisions on the American Constitution? What injustice does my right honorable friend think will come from this High Court, which will be established, and which will certainly do justice to all in the Parliament, which is bound to represent all the best minds of Australia? But he objects to this. He wants to assert the right of every state through which a river runs to take every drop of water if it likes; and, as New South Wales happens to be the first state through which this water runs, when they have taken it all, or have acquired the possibility of taking it all, they kindly say to us—"You have just the same right; you can take the rest." Now, sir, where is the difficulty? We have had the delegates from New South Wales telling us half-a-dozen times that we are fighting shadows. They fight them very
hard. If this is the manner in which the representatives of New South Wales contend with shadows, I should not like to meet them in a contest on a matter of substance. But the shadow that they want here is what we happen to consider a substance, and they are determined that we shall not have it. Now, I hope that, although the eloquence of the right honorable gentleman might have appealed to some, the appeal will not be strong enough to influence the sense of right and justice in the mind of any honorable member in this Convention. Certainly, as this discussion has gone on altogether at too great length, in my opinion— the adhesion to the cause of South Australia has become "small by degrees, and beautifully less." I do think that after this four days' discussion—

Mr. WALKER. -
Six days.

Mr. DEAKIN. -
Let us restore the seventh day, then.

Sir JOHN DOWNER. -
I hope so. I hope that after this discussion, we shall come to a decision that will not send us back just to the condition that we were in in the first instance, and one that will not render futile all

the great debate that has taken place. I shall vote against this amendment. If it would be any satisfaction to the Right Hon. the Premier of New South Wales, I should be willing to strike out the amendment of Mr. Glynn, and leave sub-section (1) to do the work, taking the consequent risks; although it would not be artistic, and I agree that at the initiation of this Constitution we should explain what we mean and not leave too much to judicial construction. That is the view we took, and we have endeavoured to carry it out in supporting the amendment of the Attorney-General of Victoria. That amendment took into consideration all the views upon the subject. It dealt exhaustively with every question. The same reason which made me support the amendment of Mr. Isaacs makes me oppose that of Mr. Reid. If it becomes necessary, or will assist in any friendly understanding, to strike out Mr. Glynn's clause, I would, although I should think it a mistake to do so, agree to that, rather than part with a misunderstanding. But I hope that honorable members will, in spite of the strong appeal of my right honorable friend (Mr. Reid), and in spite of his undoubted knowledge as to the probable intentions of a certain portion of his constituents, be prepared to trust to the good sense of honour and justice of the people of New South Wales not to refuse to accept a Constitution which is right, because of a condition in it which they may say affects their interests prejudicially, but will rather pass the Constitution in the form we think just and right, and
trust to our brothers in New South Wales to do the right thing. It is better to
do this than to follow the Premier of New South Wales, who assures us he
represents the views of his people, and wishes us to buy their allegiance at
the expense of what we consider a wrong and an injustice.

Mr. DOBSON (Tasmania). -

I regret that an honorable member of this Convention has thought fit to
accuse another honorable member of harboring animosity towards the
mother colony of New South Wales; and if my honorable friend (Mr.
Lyne) has mistaken for animosity the earnest efforts which I have made to
do what is just and right, I must leave him alone, believing that no other
honorable member will hold that opinion. But in order that I may be just,
and that I may vote rightly upon this extremely difficult question, I would
like to say a word or two to my right honorable friend, the Premier of New
South Wales, whose second amendment is now before this Convention.
When the right honorable gentleman moved his first amendment, I was
most anxious to rise in my place and implore him to withdraw it. I am glad
that he has withdrawn it, but it appears to me that he has now moved
another amendment which is almost equally objectionable in its character
The amendment of the right honorable gentleman which we are now
discussing is objectionable, because if it he is absolutely going back upon
himself-withdrawing from the offer he made to us and from the promise
which he made to the colony of South Australia I had been congratulating
myself during this debate that if we did not engraft upon this Constitution
that states as well as individuals have riparian rights, we should at all
events fall back upon the promise of Mr. Reid and maintain the
navigability of these rivers, because so long as you have engrafted on the
Constitution that the navigability of the rivers must be maintained, that to a
very great extent limits the power of New South Wales to go in for
irrigation at the expense of navigation. And when the time came for the
Federal Parliament to declare a policy as to whether irrigation should be
paramount the federal spirit would prevail, and I am sure the colony of
New South Wales would be glad to give up her claim to irrigation unless it
could be done without injuring the other colonies. By the amendment now
proposed, Mr. Reid, to use his own words, desires to force upon

this Convention a new proposition. Now, will the right honorable
gentleman deny that in the early stages of this long debate be promised in
the most absolute way that the navigability of these rivers should be
maintained for the purpose of inter-state commerce? and will he deny that
if you are to put irrigation above navigation, and to grant that the waters of
these highways which are used for the purposes of commerce may be used
so that every drop of water may be taken from them for irrigation purposes, he promises a thing with one hand and withdraws it absolutely with the other? In case the right honorable gentleman should, have any doubt as to what he actually did promise, let me read a quotation from his speech on page 83 of Hansard. In that speech, the right honorable gentleman said-

But I my, in regard to the federal power-the fair and honest power which lies at the heart of federation-I do not care what its consequences are, I accept them. Therefore, I cannot be accused-neither I nor my honorable friends from New South Wales-of disputing this proposition: That for every inch of water navigable in New South Wales, and Capable of being used for inter-colonial trade, we give up any pretence to exclusive control, any power to make commerce unequal as between the colonies.

Mr. REID. -
That is perfectly correct.

Mr. DOBSON. -
How can the right honorable gentleman give up the navigability of there waters, and then say that paramount to that, and above that, he can use every, drop of the water to irrigate the arid land of New South Wales?

Mr. REID. -
I used the expression "navigable" deliberately, and I make the same statement now. When the river is navigable we do not claim any unequal right over any other colony.

Mr. DOBSON. -
Quite so; the right honorable gentleman now, by the amendment which he has moved, asks to maintain the right of New South Wales to use every drop of the water.

Mr. REID. -
To maintain their right of irrigation, surely.

Mr. DOBSON. -
Let us read a little further-

Mr. HIGGINS. -
The American decisions go further than that.

Mr. REID. -
Yes, I know; they go to an extent which alarms me, because they go to the extent of interfering with irrigation improvements of all kinds.

Mr. GORDON. -
Only in so far as the improvements intercept the traffic.

Mr. REID. -
Yes, I am aware that that is not lost sight of.

Mr. ISAACS. -
Or as far as they affect interstate navigation.
Mr. REID. -

Well, I do not oppose that power. I am, certainly the last one to wish to interfere with a power of that kind, and we, as New South Wales representatives, should be the last to do so in view of the policy we have adopted in our colony.

Mr. HIGGINS. -

Would it not also be competent to interfere with the water being taken away?

Mr. REID. -

I must say that I am afraid so, and it raises up, I must tell honorable members, a very serious question indeed, even in its most unobjectionable form, as affecting New South Wales. We cannot avoid that. But still I admit that we must be thorough in all matters that are really federal and national, and which affect the broad intercourse of the different colonies. Therefore up to that point, however far it may take me, I feel that I must go.

Mr. REID. -

That is why I moved the amendment.

Mr. DOBSON. -

The right honorable gentleman, having "gone the whole hog," is now very much afraid of consequences from which he did not shrink seven days ago, and seeks by an amendment to derogate from his own gift.

Mr. REID. -

I did not promise to sacrifice irrigation to you or to any one else, and I never will.

Mr. DOBSON. -

I desire to do what is right to the parent colony. I know the immense water-shed which she has, and I am certain that no Federal Court or Parliament would take from her the enormous right which she possesses to use the waters of her rivers for purposes of irrigation. But why throw dust in our eyes by telling us that we are to have control over the navigation of every inch of water, and then put irrigation before navigation, and let the inter state trade go where it likes? The second ground upon which I object to the amendment is this: The right honorable member has all along been most cocky," as the boys say. He is of the opinion that, as Providence has given this water to New South Wales, that colony has the sole right to it. I do not think that that is so, and when the High Court or the Privy Council come to deal with this matter they will see some way of engrafting upon the Constitution the federal spirit which ought to be displayed, and they will shrink from saying-"You federalized these waters for the
purposes of navigation, but New South Wales can use every drop for irrigation." Would any Judge take such a view? Would any court in the world be driven to such a conclusion if there were a way of escape? One strong man would rise up and show the way out of the difficulty. We cannot be guilty of such folly as to federalize the waters of the continent for navigation, and allow them to be abused for irrigation. I ask my right honorable friend to show the federal spirit which animated the honorable member (Mr. McMillan) in 1891, and which animated him seven days ago.

Mr. REID. -

It killed the 1891 Bill.

Mr. WISE (New South Wales). -

I agree with the honorable member (Mr. Dobson) that this is a matter which ought to be discussed without personality. None of us wish to see federation swamped in the waters of the Murray and the Darling; but unless we deal in a very cautious manner with the particular issue now presented to the Convention, we shall run the risk of losing the fruits of our labours. I am more convinced than I should like perhaps to express in words of the very critical nature of the point round which our discussion is hinging. I have incurred some reproach at the hands of my colleagues for having persistently refused to regard this question as one between New South Wales and South Australia. I continue in that view. I cannot rise to those great heights of provincial patriotism which enable one to rejoice that one colony exceeds in resources another colony, or that one colony, by the development of her natural resources, has diminished the trade and commerce of her neighbours. It appears to me that the development of any colony should redound to the advantage, pecuniary and otherwise, of every other colony. At the same time, I accept freely the determinations which, if we can gather anything from a seven days discussion, have been arrived at almost unanimously by both sections of the Convention. They are these: While navigation is to be a matter of federal concern, irrigation is to be exclusively provincial. No one has been more emphatic in regard to that doctrine than the representatives of Victoria have been, because no colony has a larger interest at stake in the matter than Victoria has. I do not agree with the amendment proposed by the right honorable member (Mr. Reid), for various reasons which I will briefly indicate, but I consider that it is absolutely necessary, in view of the far-reaching nature of the American decisions, to make it absolutely clear that provincial rights in the matter of irrigation and water conservation are to be preserved.

Mr. REID. -

Hear, hear; that is all I desire. I will accept any form of words which makes that clear.
Mr. KINGSTON. -

Even to the destruction of navigation.

Mr. WISE. -

I do not say even to the destruction of navigation. What I say is that at present we have not yet reached that full development of the federal spirit which would enable us to hand over all irrigation works to the Federal Parliament. I express no opinion as to whether that is a good thing or a bad thing; but can we gather anything from the discussion unless it is that the opinion of both sides is that irrigation should be a matter of provincial concern? The question for us to consider-and it is one which may be discussed without any heat-is this:

Does the Constitution, as at present framed and without any amendment, strike at this provincial right?

Mr. SYMON. -

No; it does not.

Mr. WISE. -

That is a question in regard to which, as a lawyer, my mind has wavered very much. The clause conferring the right to regulate trade and commerce has been interpreted in the United States to include the right to control navigation. That right, of necessity, includes the right to remove obstructions to navigation. Now, obstructions are not only such as prevent navigation; they may only make navigation difficult and retard its possibility. Let me take a concrete instance to show what might occur. Suppose I, as an individual settler, dammed back, at my own expense, a billabong running entirely within my own land. Suppose I did that near the mouth of the Murray-and the first billabong that would be dammed is near the mouth of the Murray.

Mr. HIGGINS. -

Do you mean in South Australia?

Mr. WISE. -

It does not matter whether I am in Victoria, South Australia, or New South Wales. I dam back a billabong and keep the water from flowing into the Darling or the Murray, as the case may be. The result is that when a drought comes navigation is impeded for, say, two days, or two weeks, or two months. Could a man whose barge was stopped-never mind whether there has been legislation on the subject-apply to the High Court under the clause for an injunction to restrain me from impounding the water?

Mr. ISAACS. -

If there had been no legislation he could not, according to the American
decisions.

Mr. WISE. -

The matters seems to me to be open to very grave doubt.

Mr. SYMON. -

The Convention could not sit in judgment upon that point.

Mr. WISE. -

No; but my contention is that, as the matter is open to doubt and I know that doubt is shared by other lawyers than myself—we are not doing our duty to those who sent us here in refusing to define clearly what will be the individual rights of a citizen in a matter of this kind.

Mr. SYMON. -

You cannot possibly have a definition to meet a case like that.

Mr. WISE. -

I think we can, and I will suggest one. The definition I propose is to make it perfectly clear in the Constitution that no general words, in either sub-section (1) or any other part of the Constitution, interfere with the exclusive right of each province, as it exists to-day, to legislate on matters of water conservation and irrigation.

Mr. DOBSON. -

Subject to the, right of navigability?

Mr. WISE. -

I say subject to nothing.

Mr. DOBSON. -

That is the whole point.

Mr. WISE. -

I admit that I cannot satisfy, and I shall not attempt to satisfy, those who say that navigation is to take precedence of irrigation.

Mr. SYMON. -

You offered it to us.

Mr. WISE. -

And I cannot satisfy those who say that irrigation is a matter of federal concern.

Mr. TRENWITH. -

If your contention is correct, every billabong and the whole of the tributaries of the Murray may be dammed back by the colonies in which they are, and the Murray converted into a dry gully.

Mr. WISE. -

May I answer that by putting another question? Do we wish to take that power away from the state?

Mr. TRENWITH. -

I think we should.
Mr. WISE. -

That is a frank clear expression of opinion. It involves a determination which the Convention has not yet come to. It involves a determination which the Convention has rejected. It involves the federalization of irrigation. I will go with the honorable member for that power. I shall be found in a minority here, I believe, of fourteen. I believe that all those who voted for the federalization of the railways, of whom I think, the honorable member was one, will vote in favour of the federalization of water-ways and irrigation absolutely.

Mr. TRENWITH. -

With federal control, not management.

Mr. WISE. -

Federal control, management, and everything.

Mr. TRENWITH. -

No.

Mr. WISE. -

I will go further, perhaps, than most members to strengthen the Federal Government, but I recognise that I am in a hopeless minority. My only wish now is to suggest some form of words which will give expression to the wishes of the majority here. I do not say that I would not go further, for I would, and I have done as much as I possibly could do to extend in every direction the powers of the Federal Parliament.

Mr. HIGGINS. -

By voting against us.

Mr. WISE. -

My honorable friend and I have not often differed. On one occasion, I believe, we did, and on that occasion I was right. Without occupying further time, I accept what I believe to be the decision of the Convention. With the desire to reserve exclusive provincial control over the matters over which control exists to-day, I suggest as an amendment the insertion of these words:--

Nothing in this Constitution shall affect the exclusive right of each state to legislate upon the subjects of water conservation and irrigation within its own territory.

Now, we are told by South Australia that that right does not exist to-day. If it does not exist there is a very easy way to test it. Let an application be made to-morrow in the Equity Court, through my honorable friend (Mr. Higgins), for an injunction to restrain the water trust of Goulburn, on the ground that it has no power to divert any of that water which naturally
would otherwise flow past the territory of South Australia; or let the application be made to the Privy Council. The amendment which I suggest is designed to preserve, not only to us, but to our neighbours, whatever rights either may have. If the representatives of South Australia could, by application to the Imperial Parliament, get the powers of the Legislature of New South Wales or Victoria so altered as to deprive them of making use of water for this purpose, that right is preserved by the amendment I suggest. All that is preserved is the present exclusive right.

Mr. FRASER. -
That is leaving us as we are now.

Mr. WISE. -
It leaves things exactly as they are. I would like to make this appeal to my friends from South Australia, the opinion of the Convention being against them-

Mr. HOLDER. -
It is not against the trade and commerce clause though.

Mr. WISE. -
The opinion of the Convention being against them in this respect, that they cannot attain the object they have in view except by giving to the trade and commerce clause an extension utterly inconsistent with their own ideas as to the rights of the state Parliament to deal with irrigation-how can they be in a bad situation when recommending this Constitution to their constituents, when they point out to them that matters remain as they are?

Mr. HOLDER. -
You do more than that.

Mr. WISE. -
It is no question of loss; no power is taken away from a single South Australian elector. There is no assertion of any new right on the part of any of the other colonies.

Mr. HIGGINS. -
Mr. Reid will abandon his amendment for mine, perhaps.

Mr. WISE. -
It would be an express declaration in the Constitution that the rights of each state in regard to these matters remain for the future exactly as they are.

Mr. GORDON. -
And we are surrendering rights in all other directions except one.

Mr. REID. -
Are we not all doing that?

Mr. WISE. -
It is all a matter of surrender, but there is no surrender in respect of these
water rights by any colony. That is to say, the right to control navigation is a right which is surrendered by every colony, not by one at the expense of another. And if we do desire honestly to keep irrigation separate as a matter of provincial concern, what can be the objection to making that statement definitely in the Constitution? My objection to the previous amendment was that it attempted to lay down a hard-and-fast rule for the guidance of all future time, for the guidance particularly of the Federal Parliament, when we could not possibly forecast the necessary physical conditions, which might determine the relative importance of the two questions of irrigation and navigation. But if we have refrained from that, and if we are simply making an assertion that things are to remain as they are, then much of the objection I had is removed. The objection I have to the present amendment is that it is a serious interference with provincial rights. It provides that no state or citizen shall be prevented from taking water. It seems to me clear that this being an Imperial Act, passed by the Imperial Parliament, the result would be an absolute destruction of the right of any provincial Parliament to legislate over its own waters. As the law now stands, a man may not take water as he pleases; he maybe prevented, because he must pay regard for the rights of other riparian owners. If we put this provision in the Constitution, which will be an Imperial Act, that no citizen is to be prevented from taking water, we abrogate the common law entirely.

Mr. ISAACS. -

Strike out the words "or citizen."

Mr. WISE. -

That would remove that part of my objection. It is a mere matter of drafting. It appears to me that the form of the amendment, as I suggest it, makes it much more clear that the intention of the committee is simply to leave things as they are.

Mr. SYMON. -

What is your amendment?

Mr. WISE. -

My amendment is as follows:--

Nothing in this Constitution shall affect the exclusive right of each state to legislate upon the subjects of water conservation and irrigation within its own territory.

Mr. ISAACS (Victoria). -

I rather favour the amendment submitted by the Premier of New South Wales, with this exception, that I think the words "or citizen" should be
struck out.

Mr. REID. -
I am quite agreeable.

Mr. ISAACS. -
A great deal of difficulty will be cleared away by the excision of those words. It will leave the matter in this position: That, by reason of Mr. Glynn's addition, there will be no doubt, I take it, that the Federal Parliament will have a right to legislate as to the navigability of these rivers.

Mr. SYMON. -
No; only in so far as relates to the maintenance of the cardinal principle of the Constitution—the freedom of trade and commerce.

Mr. ISAACS. -
That is quite right, but, according to the whole of the decisions in America, this provision will leave it absolutely to the discretion of the Federal Parliament to say how far the control of the waters is necessary for that purpose. There is no power in the United States to say that you have gone too far. It is quite right to state that they are only to legislate as to the navigability of the rivers for the purposes of trade and commerce, but the question of the extent of the control to be assumed by the Federal Parliament is a political one, as the courts have decided time after time.

Mr. SYMON. -
Do you think the control of the freedom of trade and commerce, which is the basis of the Constitution, ought to be cut down at all? It is a little too late to raise this issue.

Mr. ISAACS. -
I am saying that if you give the power to the Federal Parliament with regard to trade and commerce it ought to be complete, but I say, as I said beforehand for the reasons I gave the other day—that we must place in the forefront the question of irrigation for the purpose of production.

Mr. SYMON. -
Why cannot you trust the Federal Parliament?

Mr. ISAACS. -
Mr. Wise has raised a very important question as to whether any individual could appeal to the Supreme Court in the absence of any federal legislation to compel the removal of obstructions? I want to refer to a very late decision of the Supreme Court of the United States, which, to my mind, goes to show most conclusively that that cannot be done. The case is that of the Willamette Iron Bridge Company v. Hatch, which was decided in 1887, and is reported in vol. 125 United States Reports, at page 1. I am
The power of Congress to pass laws for the regulation of the navigation of public rivers, and to prevent any and all obstructions therein, is not questioned. But until it does pass some such law, there is no common law of the United States which prohibits obstructions and nuisances in navigable rivers, unless it be the maritime law, administered by the courts of admiralty and maritime jurisdiction. No precedent, however, exists for the enforcement of any such law; and, if any such law could be enforced (a point which we do not undertake to decide), it would not avail to sustain the bill in equity filed in the original case. There must be a direct statute of the United States in order to bring within the scope of its laws, as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the states.

The matter seems to be absolutely clear. Other decisions are referred to in this case, and it is established in the United States that until Congress does legislate there is no power by which the courts can enforce the removal of obstructions.

Mr. SYMON. -

Is there any decision in the United States or anywhere else to the effect that a dam for irrigation would be an obstruction?

Mr. ISAACS. -

I am not aware that there is a precise decision, but I have no doubt that any abstraction of water from a river which reduced its navigability would be held to be an obstruction to navigation. You can obstruct navigation by taking water away. In fact, that is the most effectual means of doing it. It seems to me that some such provision as that which the Premier of New South Wales has introduced is necessary, unless we are going to say that we are willing to abandon the claims of irrigation.

Mr. REID. -

That is the one point.

Mr. ISAACS. -

It is. If we are going to abandon the claims of irrigation, leave the matter as it stands. If we are not going to abandon the claims of irrigation—if we are going to give the people water to enable them to utilize the land in the most profitable way, perhaps in small settlements, as in parts of America—then we should insist on inserting some such provision as this. With the omission of the words "or citizen" the amendment will, I think, meet the whole case. It means that no state shall be prevented by any law of the Federal Parliament from taking any water it may require for its own use for conservation or irrigation. I regret that the amendment is not coupled with the other qualification which I desired to have added to it, but I intend to
support it, because it acknowledges and enforces the right of irrigation. I am very sorry that the addition has not been made to it which, in my opinion, is necessary, to give complete and ample justice.

Mr. TRENWITH (Victoria). -

It seems to me that the proposal now before us makes things worse than they have been at any time during the discussion. The amendment the Premier of New South Wales has been compelled to make proves the injustice of the whole proposal. He has been induced to strike out the words "or citizens." Clearly if we enter into this Federation on friendly terms the state becomes to the Federal Parliament what the citizen is to the state Parliament. If it is improper - and I agree that it is, that a citizen within a state should use some portion of a stream in such-a manner as to injure some others below him on that stream, it is equally wrong that a state should use some portion of a stream in such a manner as to injure some other state below it on that stream.

Mr. WISE. -

Each citizen is entitled absolutely to use all the water that falls on his own land.

Mr. TRENWITH. -

If the water that runs on to his land flows from other lands, and passes on from his lands to other lands again, all the parties along the stream have an equal right in regard to the use of it. Nobody at either end can act so as to prejudice the other. Suppose, for the sake of argument, that a stream has been running through a person's land, which is of no use to him; he considers it to be a nuisance, and he dams it back; he would be liable for causing damage to those people. The honorable member (Mr. Wise) says that his amendment is to leave things as they are. I respectfully submit to him that that is not the case. It is to state distinctly in this Constitution that each state has a natural right, enforceable by law in future, to legislate as it chooses with reference to the waters that run into other states. Now at present, although that right is claimed, it is very vigorously contested, and I am one of those who take the liberty to contest it. At present we have an appeal to the Imperial authorities, but if we get another Imperial Act with this declaration in it, that each of the states may legislate absolutely if they choose, without regard to the interests of other states, we shall have lost that appeal which we now possess to the Imperial authorities.

Mr. GLYNN. -

Validating an act which at present may be illegal.

Mr. TRENWITH. -
It seems to me, in view of the extraordinary length of this discussion, and the extraordinary legal intricacies developed in connexion with it, that it would be better to leave the Constitution in this respect a blank page than adopt such an amendment as is here suggested; that, badly off as under some circumstances some portions of the continent dependent upon the Murray undoubtedly are at present, it would be immensely worse if we adopted either the amendment of the honorable member (Mr. Wise) or that moved by the Right Hon. the Premier of New South Wales.

Mr. REID. -

What is your view about irrigation?

Mr. TRENWITH. -

I think irrigation is all-important. It is highly probable that it will be immensely more important than navigation. But if it is important to New South Wales, it also is to South Australia and Victoria. If, as I contend, there do exist water conditions in these three colonies in connexion with which each have an interest, and to a certain extent an equal interest, there must be created, either in regard to navigation or irrigation, some equitable central authority which can decide when conflict arises upon the justice of the case, according to all the conditions and facts before them. If we were independent states, as I ventured to point out the other day, we should have the right, in the event of wrong or injustice, to resort to arms. That is an extremely undesirable thing, which I hope will never happen, but when honorable members talk about legal rights between separate states, with all deference I say that they are talking absurdity. There can be no legal rights between separate states, because there is no international court, no tribunal, to which they can refer a claim with reference to those legal rights. All the rights that separate states possess is the right that is contained in their strong arm; if they are strong enough to maintain what is absolutely unjust they can do that. To illustrate my view, I will assume that instead of New South Wales being the stronger, as it undoubtedly is, it were the weaker state as compared with South Australia. I will assume that it proceeded to do something which was perfectly correct and just, but which South Australia objected to. If they were separate states, with no other power to intervene, South Australia could by force of arms demand that New South Wales should do what South Australia desired; but no one would call that a right except the right of conquest. It is very much in the nature of the right of conquest that a claim is made on behalf of New South Wales, that is, that it is in the stronger position. It has never had to fight for that position, but it is strong enough to fight if necessary, and therefore claims the right. But when New South Wales talks
about legal rights or moral rights in that contention, I venture to say that it is talking absurdity. We are here as persons representing the various states, eager to arrive at a decision that shall be friendly to start with, that shall be just and equitable in all its incidence, having right to stand upon, and what we call our national rights at present. If it happens, in the use of some of the conditions by which we find ourselves surrounded, that one state works injury to another state, though we may be strong enough to do it, it is repugnant to every sense of right and justice to say we shall do it. Taking the illustration that I elicited from the honorable member (Mr. Wise) that there does lie inherent in the various states the right to dam up every billabong and tributary of the Murray to such an extent as to leave it a dry channel, I say, unhesitatingly, it does not exist; and that if it were exercised an appeal to the Imperial authorities would restrain the persons who acted in pursuance of such a claim. They would not permit the colony of New South Wales to reduce the Murray to a dry gully. If they would, what is the position of New South Wales in connexion with it? When New South Wales has more water than it wants, it will say to South Australia-"Find a passage for this water to the sea." When New South Wales wants all the water, it will say to South Australia, without considering its interests-"The river shall be left dry, it shall be of no use to you; there shall be no water for you." Is that a just or equitable attitude to assume?

Mr. REID. -

Is it not a clumsy cure for that to put irrigation at the mercy of navigation?

Mr. TRENWITH. -

I agree with the honorable member, and I never sought to do that. I never sought to put one at the mercy of the other. As I have said, we are about to create a Constitution, under which we hope a nation shall be built, which will go on developing, and the necessities of which may become such that we can form no conception of them. If we wish that to be so we should create under the Constitution a power to establish a tribunal which shall deal equitably with the conditions which shall arise. We should not be guided by anything we see now as to how disputes shall be settled, but we should be guided by the exigencies of the various colonies at the time when the settlement is called for. That is all I have ever contended for. That is what, I think, ought to be done. The whole question with regard to the control of the rivers in which two or more colonies are interested-from the fact that they flow from one to the other, and all the questions in connexion therewith, either as to irrigation or navigation, without saying which shall be paramount-should be placed under federal control; so that in the future, if conditions have altogether changed, if conflict of interests should arise,
and it should be alleged that one colony is acting in a manner prejudicial to the other and unfairly, the federal tribunal, Constitute upon a fair and right basis, and having a number of impartial persons upon it, should be able to say with authority what is the right and equity of the case, and what should be done.

Mr. SYMON (South Australia). -

I only wish to interpose for one moment between the division and the speech of my honorable friend. And I wish again to thank my honorable friend (Mr. Trenwith) for his very vigorous and very lucid exposition of principles which appear to me to be impossible to be controverted. But I do not wish to enter into these large questions at this particular moment. The whole of the discussions good deal of which I have been exceedingly sorry to listen to-has proceeded under an entire misapprehension of the position of things under this Constitution. Honorable members seem to think that there is something hid somewhere within the four corners of this instrument as it now stands which declares that navigation is to be deemed superior or paramount to irrigation. There is not one single word from beginning to end of this Bill, as we now hold it in our hands, which can possibly be construed to have that effect. Now, that is what I wish to impress on honorable members-not one single syllable, from beginning to end of this Bill, which can be construed to have the effect of making irrigation subservient to navigation. If we had succeeded in introducing into this measure some of the amendments which have been proposed, in which we declared that the maintenance and improvement of navigation was to be a concern of the Federal Parliament, then it would have been a fair contention. We could accompany that with some words which would amount to a declaration that, at least, irrigation should be placed upon an equal footing, or even, if the view of my honorable friends and my own view were to prevail, that it should be placed on a paramount footing. But we have been defeated in our efforts in that direction. Nothing of the sort has been inserted. My honorable friend (Mr. Reid) is using what is really a form of words that may impose upon, shall I say the credulity of some honorable members, in saying that this measure, but for his amendment, will throw upon the federal authority the maintenance of navigability. That position I entirely deny. I wish, it did so, but it does not do anything of the kind. The essence of this Constitution is that the trade and commerce between these states shall be free-that trade and commerce shall be entirely under the control and regulation of the federal authority. If that is not so, then the sooner we disband this Convention the better. It is the foundation of the Federation which we are going to establish, and the amendment of
Mr. Reid-equally, I am sorry to say, the amendment of Mr. Wise-is to derogate from that great principle, to cut it down, and to say that the Federal Parliament shall not have the control of trade and commerce if the question of irrigation comes into play. That is the position. That is what this amendment means. There can be no doubt about it. It is either tying the hands of the Federal Parliament in this connexion, or, it is tying the hands of the Judiciary, which has got to determine the question. I do beseech honorable members to look at the clauses of this Bill that we are now considering, and if they do so they will see that the view which I am submitting is the correct one-that the governing words of sub-section (1), under which the Federal Judiciary is, in the last resort, to have the power of dealing out justice between the various states, are "the maintenance of trade and commerce." A few minutes ago Mr. Isaacs cited a case following on the lines of the case cited the other day, with the principles of which I entirely agree, but there never has been a case decided, and I do not believe that any case will be decided, in which a court having jurisdiction in such matters will declare a dam or a river or anything of that kind an obstruction trader such conditions as exist in Australia without taking into consideration the claims of irrigation as part of the national interests.

Mr. ISAACS. - Does the honorable member mean a dam in the river itself?

Mr. SYMON. - What I mean, is such a dam or weir as I can only conceive possible, away up, as Mr. Trenwith said, on one of the far-off billabongs, tributaries, or rivulets that may run into the river.

Mr. PEACOCK. - Do you think that the people of Australia will consent to allow this matter to rest on the decisions of courts of the United States?

Mr. SYMON. - No; my honorable friend (Mr. Isaacs) wishes the decision of this Convention to rest on them.

Mr. ISAACS. - No, I want to make things clear; I want to make it perfectly clear that irrigation shall be the first consideration.

There is not a decision in the United States or anywhere else in this universe which can be used as an argument to show that the claims of irrigation will be subordinated in the consideration of the tribunal which has got to decide the matter. Why, all these things are new. We all admit
that we are living in a country the conditions of which are not to be paralleled anywhere else. And does any honorable member tell me—I will take an extreme case that if a diversion were made of the lower course of, I will not say the Darling because that is very debatable but of the River Murray between where it first forms the boundary of New South Wales and Victoria, and where it enters South Australia—does any honorable member tell me that if there was a connexion made to divert the whole of the waters of that stream, it would not be a matter for the Federal Parliament to deal with and to stop—that it would not be a just thing to stop? My honorable friends on either side will not say for a moment that that is a matter that ought not to be prevented. It is only when you come to take the opposite case of the billabongs, tributaries, and rivulets in far distant parts of New South Wales that opposition to doing so can be raised, even theoretically. If a canal were cut to take away all the water of the river, no one will deny that there should be some power—the power of the Federal Judiciary, if you like-to interfere with and put a stop to it. You can put any case of a state, you can build up an argument by those oft-reiterated declarations of Mr. Reid—"You want to take away from us something we have got"—declarations which we are sick and tired of hearing; but that is not the kind of argument to address to us. What we have to see is whether there is anything in this Constitution on which the alarms of my honorable friend the Premier of New South Wales can possibly rest. We say that there is nothing in this Bill for them to rest on. Therefore, the insertion of this amendment would be—I won't say a gratuitous insult to, but a gratuitous interference with, the rights of South Australia. It is unnecessary. You have beaten us. We have been defeated in our endeavour to put in a paramount way this question of the navigability of the rivers. You have beaten us all along the line, but now you want to humiliate us.

Mr. Reid. -

It is too bad for you to say such a thing.

Mr. Symon. -

It is not too bad for me to make such a statement. My honorable friend has made declarations and appeals here which were much more too bad. If you can justify this amendment, if you can say there is something in this Constitution which creates a paramount claim on

Mr. Wise. -

If you will show me that it is perfectly clear that the Bill does not do so, I will consent to leave out the amendment.

Mr. Howe. -

We had better adjourn and let you lawyers fight it out.

Mr. Symon. -
It is a matter for everybody's consideration. It is not at all a lawyer's question.

Mr. REID. -

If it were a lawyer's question, you would say-'I am not without doubt that this opinion may be over-ruled.'

Mr. SYMON. -

I am sure my honorable friend will acquit me of having suggested at any time that he is influenced by the tricks of politics, and it is not unnatural for him to declare that he is here as the special guardian of the rights of New South Wales. We also are here as special guardians of the rights of South Australia, and I tell my honorable friend, as emphatically as he has told us, that I do not think we could go back to South Australia, if this amendment is put in, and vindicate our position in reference to these waters. In saying that I make no threats. I never have made any threats. My desire is to help to advance the cause of federation, but I venture to tell honorable members that the position will be a most difficult one for us if this amendment is carried, and I sincerely hope that it will be rejected.

Mr. BARTON (New South Wales). -

There can be no division, I understand, this afternoon, because a number of honorable members have gone away understanding that there shall be no division; and it has been represented to me that there are reasons why the Convention should adjourn at four o'clock.

Mr. HOWE. -

Sine die?

Mr. BARTON. -

I do not think so. I think we shall get through our difficulties without very many scars being inflicted upon any one. I now beg to move, sir, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at four o'clock, until Monday, 7th February.
Monday, 7th February, 1898.

Paper on Control of Rivers-Leave of Absence-Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

CONTROL OF RIVERS.

Mr. BARTON (New South Wales). -

A question arose the other day about some notes by Mr. Inglis Clark, of Tasmania, upon the proposal to provide in the Constitution for the regulation and the use of the waters of the River Murray and its tributaries. A copy of the paper has, I find, been sent to one or two other gentlemen besides myself, and there is a general desire expressed by honorable members that they should have an opportunity of reading it. I take it that there would be no objection to my laying it on the table, and moving, as I now do, that it be printed.

The motion was agreed to.

LEAVE OF ABSENCE.

Sir GEORGE TURNER (Victoria) moved -

That the standing orders be suspended to enable a motion to be submitted granting further leave of absence to Mr. Brunker.

The motion was agreed to.

Sir GEORGE TURNER (Victoria) moved -

That leave of absence for a further period of seven days be granted to Mr. Brunker, on account of illness.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Friday, 4th February) was resumed on clause 52 (Powers of the Parliament), and on Mr. Reid's amendment for the addition of the following words:-

But no state or citizen shall be prevented from using any of such water for purposes of irrigation or water conservation.

Mr. REID (New South Wales). -

I have thought this matter over during the interval, and I propose to amend the amendment. I do not intend to formally move the amendment now, because some other honorable member may have some suggestion to make as to the form it should take. I will simply now intimate that I propose to omit the words "or citizen," with a view to inserting, after the
word "using," the words "or authorizing the use." The amendment will then read:

But no state shall be prevented from using or authorizing the use of any such water for purposes of irrigation or water conservation.

The effect of this would be that the matter would be placed under state authority, and that the state would be directly responsible for any action of this kind.

I should have no objection to add to the sub-section the following words:

Subject to any right to the use of any portion of such water for the same purposes by any other state.

This would make it perfectly clear that we do not wish to take anything beyond that which we actually possess.

Mr. BARTON (New South Wales). -

Since Mr. Reid proposed his first amendment I have given anxious consideration to this question. I think that no honorable member here is likely to accuse me of paltering with any subject that we have to deal with, or of doing anything which is inconsistent with any pronounced declaration I have made. I do not intend to be guilty of any such conduct on this occasion. I find that a difficulty has arisen, and arisen largely by my own fault, because it was partly my fault that the amendment of Mr. Glynn was accepted, out of which seems to have sprung the two propositions by Mr. Reid and Mr. Wise, which are now practically before the Convention. I take it that if the declaratory amendment proposed by Mr. Glynn had not been passed, there might have been no necessity for either of the two propositions which are really now appended to it, more by way of limitation than anything else. I have expressed myself very strongly upon the question of placing reliance on sub-section (1), relating to the regulation of trade and commerce, and I intend to quote some short passages in order that I may make my attitude very clear. I find that on the 2nd of February I said this:

Every member of the Convention to whom I have spoken knows very well the stand which I have taken in favour of the striking out of this sub-section, and the maintenance of sub-section (1) in its integrity. That is what I have always affirmed, and what I have spoken in support of since the beginning of this Convention. The stand which I have taken is no new stand. Many honorable members are aware that at the conference which took place on the day of the public holiday, a little while ago, I expressed my opinion upon the subject plainly.
I think it only fair that I should read these passages shortly, because I intend that there shall be no escape by myself from the position in which I stand with regard to the sub-section relating to trade and commerce. I also said-

My position has been from the first, and I think, notwithstanding anything that has passed, honorable members will say that I have maintained it with-perfect honesty, that the sub-section relating to trade and commerce is the most federal provision that we can adopt, and that we should strike out all other sub-sections which may seem to restrict or limit it. That is the true federal position. An important suggestion has now been made, and perhaps Mr. Glynn's amendment might be improved if some such words as these were added, "so as not to restrict the powers conferred by subsection (1)."

That is not the amendment that was carried on Friday.

But, in any case, I hold that there should be no sub-section beyond sub-section (1), and that that would best conserve the interests of all of us. Still, I think, although this matter has been very fully debated, that there might be an adjournment, as we might find from the multitude of propositions that have been submitted that some arrangement could be come to that would satisfy the Convention generally. For myself, I am not very hopeful of that. I am more hopeful that the decision come to will be that sub-section (1) is sufficient for all of us.

I need not multiply quotations of that kind. I mention this in order to show that I did maintain a definite position, which I think I ought not to depart from. I wish to put also on the other side of the question the fact that, in taking up that position, I have spoken strongly against any surrender by any province, at any rate by New South Wales, of its right to deal with water conservation and irrigation by the application and use of the waters within its own territory. In saying that I must lay it down plainly that it must be taken in connexion with what I have said with regard to the right of navigation under the sub-section relating to trade and commerce. I have contended that the right of navigation is one which we cannot deny the Federation, and that we must grant it, so far as the sub-section relating to trade and commerce does grant it. I pointed out that it is not necessary to make any express mention of the rights of irrigation and water conservation in this Bill, because those rights are conserved by clause 99, under the powers reserved by the state. The provincial right of dealing with water conservation and irrigation is therefore retained to the full extent compatible with the allowance to the Commonwealth of the right of preserving navigation. I
have maintained also that that power should be unrestricted, that is to say, that no river which forms a highway of the Commonwealth should be excepted from its operation. I need not refer honorable members to authorities upon the subject of the extent of the power of navigation legislation over the rivers of the Commonwealth; but, inasmuch as Mr. Higgins the other day expressed a doubt as to whether these powers were as extensive as I stated them to be, I should like to refer him to one or two cases mentioned in Baker's Annotated Constitution of the United States, which carry the proposition to the full length. One of these is the case of Escanaba, Transportation Company v. Chicago, which is mentioned on page 22 of this book, paragraph No. 28. The others are in paragraphs 29 and 30.

Mr. ISAACS. -
Would the quotations be too long to read?

Mr. BARTON. -
Perhaps I had better read them. The first is as follows, and is with regard to the case Escanaba Transportation Company v. Chicago, 107 United States, 678:-

The Chicago River and its branches, notwithstanding the fact of its being wholly within the state of Illinois, must be deemed navigable waters of the United States, over which Congress, under this clause, may exercise control to the extent necessary to preserve and improve the free navigation thereof. But, in the absence of congressional legislation, the courts will not interfere with reasonable state regulations over that river within the limits of the city of Chicago.

The next to that is the case of Miller v. The Mayor of New York:--

Navigation being a branch of commerce, Congress has the control of all navigable rivers between the states, or connecting with the ocean, so as to preserve and protect free navigation. As a corollary of this, Congress has the paramount right to conclusively determine what shall be deemed, so far as commerce is concerned, an obstruction thereto.

The other case I mentioned is similar in statement to that case:-

A bridge constructed in accordance with the legislation of both the state and Federal Governments must be deemed a lawful structure; and it cannot therefore be treated as a public nuisance nor be subject to complaint before the courts. By "navigable waters of the United States" are meant such as are navigable in fact, and which by themselves or their connexions with other waters form a continuous channel for commerce with other nations or among the states.

That, I take it, includes every navigable river of the United States, and would include every navigable river of the Commonwealth. I need not read
any more decisions-others go to the same length. I merely wanted to justify my position that in granting the power of legislation by way of regulation of trade and commerce, we are granting power, if we make no restriction on it, to regulate with regard to free navigation in the carrying out of free-trade and intercourse throughout the Commonwealth with respect to all rivers, although they may be wholly within a state or communicate with other states by way of the ocean, which is the channel of communication, so that the navigation is continuous between one state and the other—

Mr. ISAACS. -
Would the learned member mind my stating what our difficulty is?
Mr. BARTON. -
No.
Mr. ISAACS. -
Apart from the doubt which some of us possess as to whether the same rule would be followed here as in the United States, our difficulty is this: Suppose the Federal Parliament legislates for navigation in such a way that it requires a large body of the water, and suppose the state legislates as to irrigation whereby it requires a portion of the same water—which would prevail?
Mr. BARTON. -
As my honorable friend (Mr. Wise) mentions, if Mr. Clark is right in the memorandum he has sent over, in which he cites authorities, that is a difficulty which could be settled if it arose between the Commonwealth and the
Mr. ISAACS. -
Mr. Clark's reference, whether it is right or whether it is wrong, does not touch the point. It does not say whether the Federal Parliament will override the state Legislature.
Mr. BARTON. -
The Federal Parliament, I take it, would be entitled to exercise the right of legislation on the subject of free navigation to such an extent as to make that navigation equal to that which it is authorized to do, that is to say, to keep open free-trade and intercourse between parts of the Commonwealth for commerce. That being so, it could deal with anything done under a law of the state which was an obstruction to the navigation, when once the Commonwealth had legislated on the subject to that extent.
Mr. ISAACS. -
And therefore it could over-ride it.
Mr. BARTON. -
And therefore, to that extent, it could over-ride the state legislation.

Mr. ISAACS. -
That is our difficulty.

Mr. BARTON. -
That, I take it, is the law, and my position all along has been that inasmuch as this power of navigation is a federal power, that inasmuch as we are not making inter-colonial free-trade a reality, but are leaving this power to be so exclusive as will enable the Commonwealth to make inter-colonial free-trade perfectly effectual feeling that we are not acting in a truly federal character unless we do that, I have been prepared to go as far as that. I have not come here to-day to say that I depart from that position. Now, there is this also to be remembered by those who have any very great, hesitation about the extent of this power which is to be granted to the Commonwealth. It is simply a power of legislation, and it is a power of concurrent legislation; in other words, it is plain that the state can, not only carry on these works of water conservation and irrigation-the power to do it is actually reserved to it by clause 99-but it can legislate for and regulate the navigation of any water within that state up to the point at which the legislation of the Commonwealth comes in, if it ever does legislate. It is purely optional to the Commonwealth whether it will exercise the power or not; and if the Federal Parliament, in which all the states will be represented, finds it to the interest of the Commonwealth that they should not legislate, or, to put it more plainly, finds it to the interest of the Commonwealth that the conservation and use of water should continue to go to the extent to which they, have gone, and should be allowed even to progress if they find that by doing that they are best exercising their duty, and that the navigation of the river is then sufficiently provided for, it is perfectly, open to Parliament to decline to legislate upon the subject, or to legislate only to that extent which it thinks is absolutely and imperatively necessary. And this is where I think, at any rate out-of-doors, some confusion arises. It seems often to be imagined that by placing in clause 52 of the Constitution a power, the Constitution itself will have legislated on the subject. The Constitution, of course, does nothing of that kind; it simply confers a power for use. That is a matter well known to most of us if not to all of us, but it does not seem always to be correctly appreciated out-of-doors.

Mr. REID. -
All powers intended for use.

Mr. BARTON. -
Yes, but the policy, of the Commonwealth is for the people of the Commonwealth as represented in their Legislature to determine. Whether it
is a politic thing at a particular time to exercise any of these powers is a question not for us but for the Commonwealth itself to determine. I take this to be the position: So far as this free option of the Commonwealth goes, so far as it is unfettered, it is held even in America to have power in certain circumstances to over-ride the High Court; for that is practically what it amounts to. In the case of Pennsylvania against Wheeling Bridge Co., which I know is familiar to my learned friend (Mr. Isaacs)-

The Supreme Court of the United States, by decree thereof, declared a bridge crossing the River Ohio an obstruction to navigation and directed its removal. Afterwards Congress, by an Act, declared the bridge to be a lawful structure, "anything in the laws of the United States to the contrary notwithstanding."

So that you have first a decree of the Supreme Court, which would be equivalent to a decree of the High Court here, and next an Act of Congress declaring this bridge to be lawful. It was apparently a state structure which the Supreme Court declared to be a hindrance to navigation, and Congress itself, acting for the people, declared the bridge to be a lawful structure.

Mr. SOLOMON. - Did they over-ride the decision of the High Court?

Mr. BARTON. - They declared the bridge to be a lawful structure, anything in the laws of the United States to the contrary notwithstanding.

Mr. SOLOMON. - Was the decision over-ridden?

Mr. BARTON. - It went again before the Supreme Court, and that court held-

That while Congress cannot annul a judgment of court upon private rights of parties, it can so annul a judgment founded on the unlawful interference with the enjoyment of a public right, which is subject to congressional regulation. In this case it is an exercise of the power to regulate commerce.

That is to say, such a right as the right of navigation. In this case it is an exercise of the power to regulate commerce. I think that is a case of some importance, because it shows how much or how little, according to its own good judgment and policy, the Parliament of the Commonwealth may do in respect to the exercise of a power of this kind. It shows that it may do as little as it likes. It shows also that Parliament may declare what would otherwise be an obstruction to the navigation, and would, therefore, be an illegal structure-it shows that the Parliament of the Commonwealth,
notwithstanding that they have power to regulate trade and commerce, and, therefore, navigation is placed in its hands, can declare that to be lawful and save it from destruction.

Mr. SYMON. -

That shows that they will take into consideration as against navigation other matters of public importance.

Mr. BARTON. -

That is just what I was going to say. It shows that the Parliament of the Commonwealth can do here as the Congress has done in America—that it can consider the position of affairs, and if it finds it not politic to act in the exercise of a power of this kind at any time, or if, on the other hand, it finds that things have been done under a state law which it would be impolitic or wrong to remove or destroy, it is open to the Parliament of the Commonwealth not only to legislate on the subject, but actively to legislate for the protection of that state structure, which many people think would be doomed to destruction under this power of the regulation of trade and commerce. I mention this case because it seems to me to throw a very strong light on the position. It prevents any one of us from regarding this particular right to preserve navigation as the bugbear which it has been held up to be. There is nothing to be afraid of in it, simply because it will be exercised or not at the will of the Parliament, which will contain, as this Convention contains, representatives of every State.

Mr. WISE. -

And, as Mr. Clark's memorandum shows, if any state was injured by the legislation of another state, it could sue in the Supreme Court for redress.

Mr. BARTON. -

That is quite so. Any state which has a legal right to maintain the navigation can complain and implead the Commonwealth, if necessary, for the purpose of maintaining that right.

Mr. WISE. -

And the other state, too.

Mr. BARTON. -

If it arises between two states or between a state and the Commonwealth the position is exactly the same. That being as far as we can judge the legal position in this matter, what is there to be afraid of in merely maintaining the trade and commerce sub-section? What I suggest to this committee is that we may have made a mistake in hastily acceding to Mr. Glynn's proposition—that the whole of this difficulty may be settled if some guarantee is given that upon reconsideration or recommittal Mr. Glynn's
amendment will be struck out.

Sir GEORGE TURNER. -
What difference would that make supposing that your law is correct?

Mr. BARTON. -
I will tell my right honorable friend in a moment. I would suggest that, upon that understanding with Mr. Glynn, it would be quite just and a fair settlement of the difficulty if Mr. Reid and Mr. Wise did not proceed with their amendments.

Mr. SOLOMON. -
What about Dr. Quick's notice to move for the recommittal of the Bill to re-insert sub-section (31) as it was before with a slight alteration?

Mr. BARTON. -
That, of course, conflicts with the position I have held from the beginning. I am against all these sub-sections, any one of which might be restrictive. I am in favour of the right to regulate trade and commerce without it being restricted, because I am not afraid of the Parliament which will exercise that right, and because I am confident that, in doing so, it will have due regard to those interests of water conservation and irrigation which exist, and which may then be actually more important than they are now. Now, let us look at the amendment of Mr. Glynn. It reads as follows:-

For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which either by themselves or in connexion with other waters are navigable permanently or intermittently for trade and commerce with other nations or among the several states.

Now, it may be that that is nothing more than a definition of what the Federal High Court might determine when asked the question as to whether a river is navigable. What I suggest to the committee is that matters of that kind should be left, as they have been left elsewhere, to the determination of the High Court—that, having appointed the High Court as an arbiter, we should leave it free and open to that body to decide upon the evidence before it whether a river is or is not navigable. If we do that we shall be acting in the spirit with which we have treated the constitution of the High Court from the beginning; if we do that we are not running any danger or any risk whatever, but we shall have created a federal power to regulate trade and commerce. We shall have created a federal authority to interpret that power, and that will be a power which can deal with rivers that are navigable in fact, and that question is a fitting one for the determination of the High Court. But if my honorable friend's amendment is retained, it will to a considerable extent alter the situation. I must confess that if his amendment were allowed to remain where it is all of us would have to consider our position, and one would have to consider whether a
proposition such as that of Mr. Reid or that of Mr. Wise would not have to be assented to, because the definition put in here by Mr. Glynn's amendment alters the position, as it takes the matter practically out of the hands of the High Court and substitutes for that power a declaration in the Constitution. That is to say, it is practically a direction to the High Court, instead of the High Court being left to be the arbiter.

Mr. HOLDER. - It does not go any further in the declaration of the policy.

Mr. BARTON. - It may not; I am not quarrelling with this amendment on that ground at all; but I say that we who held, and hold still, that matters should be left to the operation of sub-section (1) and that powerful clause 99, which protects and preserves the rights of the several states, find that position somewhat altered by this amendment, because the arbiter which was to decide the question of the regulation of trade and commerce, being the High Court, is directed by this declaration of the honorable member's (Mr. Glynn) in a way in which we, who spoke upon that subject, did not contemplate at the time. As I said before, I take some blame to myself for this, because if I had reflected upon the effect of the amendment I would have voted against it. The declaration that the honorable member (Mr. Glynn) has put in.

Mr. SOLOMON. - Limitation or nullification.

Mr. BARTON. - That is a question of construction, and I was just about to apply myself to that. The whole effect of the sub-section proposed by the honorable member (Mr. Glynn) is to declare what is to be navigable water for trade and commerce, in order that under sub-section (1) the Parliament may legislate with regard to that water if it is navigable. Very well, this is a proviso upon it, and a statement that no state shall be prevented from using, or authorizing the use of, any such water for irrigation and water conservation. With the addendum that is proposed, that may not be so formidable as some honorable members suppose. For this reason: That if you read it as a proviso to the amendment of the honorable member (Mr. Glynn), the question arises whether the use there spoken of must not be the reasonable use. The amendment of the honorable member (Mr. Wise) says-"Nothing in the Constitution shall affect the exclusive right of each state to legislate upon subjects of water conservation and irrigation within its own territory." I take that amendment not to go a jot farther than clause 99. I do not think it has any more effect than that if it is deemed necessary in the interests of one colony, and if another colony thinking its interests will not
be damaged by it chooses to assent to an amendment of that kind, it may possibly be that such an amendment should be put in the Constitution. I do not think it would improve the drafting of the Constitution or the sense of it; but the citizen-who is often called the man in the street-might be able to understand the matter better.

Mr. ISAACS. - Exclusive would not affect the question as to which should prevail.

Mr. BARTON. - Not a bit. It is simply exclusive qua the state, and clause 99 preserves every exclusive power that every state has, and every concurrent power that every state has, except to the extent that a power may either be given expressly by the Constitution or under some power given by the Constitution to the Commonwealth, there might be some effect in limiting the state law. Nothing can go further than that; so I take it that the amendment of the honorable member (Mr. Wise), like that of the honorable member (Mr. Glynn), is declaratory, and I am not quite sure if the amendment of the Right Hon. Mr. Reid is not also declaratory. What is objected to by my South Australian friends is this. They say-"You defeated us on sub-section (1); you have been against putting in any of the sub-sections which we have put forward, and which others have put forward, in a very friendly spirit; you wish now by these amendments to put something in the Constitution which, after we have been defeated, will have the effect of humiliating us." I do not know how far that may go in South Australia, because I really, believe the common sense of the people in that province would not take them to that extent, and induce them to think their representatives have been humiliated. I must say, for them that no representatives of any state could have made a more pertinacious or courageous stand than they have, but the whole question seems to boil itself down to this. There is not much more of importance in any of these amendments than there is in the trade and commerce clause. Are we to put them in with the risk, as we are told by our friends from South Australia, of offending their people and of causing a prejudice against this Constitution, or are we to refrain from these amendments? I should like to be understood by the Convention, that if I take this stand, that I adhere to the trade and commerce clause without any sub-sections, it is on the understanding that my honorable friends; from South Australia shall consent to the amendment of the honorable member (Mr. Glynn),in which case I shall not vote for the amendments of the Right Hon. Mr. Reid and the honorable member (Mr. Wise). But what I say must be taken with full faith and understanding, because I do not want to have any discussion afterwards as
to the meaning of it.

Mr. OCONNOR. -
That is to be the final settlement?

Mr. BARTON. -
Yes. I hope this proposal of mine will be accepted.

Mr. GLYNN. -
There must be two parties to a settlement.

Mr. BARTON. -
Yes; that is why I think this proposal of mine should be considered. I only want to say a few words more. It must be recollected by the Convention that there is a public in New South Wales to consider as well as a public in South Australia. We must have regard to the public feeling in each of our states in what we do. I believe that if you leave this trade and commerce section unimpeded, the people of New South Wales will see that their rights as to water conservation and irrigation are preserved, except to the extent that anything may be declared under Commonwealth legislation an obstruction to navigation. They will see that the power of navigation is federal, and they will consent, knowing that the whole Commonwealth is treated alike, and that the rivers of New South Wales are not singled out for exceptional treatment. I believe that will be a great factor in obtaining the consent of the people of New South Wales. I think I can appeal to the honorable member (Sir Joseph Abbott), who is intimately acquainted with the district, to say that the people of that district, who are supposed to be so very much concerned, will not have any objection to the power of legislation with regard to, navigation being exercised for the benefit of the settlers in that district to any extent to which it is likely to be exercised. Let us not magnify this difficulty. It is a difficulty with regard to public-opinion, but it is a, difficulty that events will diminish. I pointed out the other day—and I am only mentioning it now for the purpose of fortifying the position I take up—that this resort to legislation for the purpose of opening and keeping open navigation is a power that not only will be sparingly exercised in view of the rights of the various states, but it is a power that will become unnecessary to exercise as years go by, and as traction by land, with the conveyance always open-traction which is so very different from the intermittent condition of some of these rivers—as traction by land assumes the importance which it will under the Commonwealth, when it becomes as cheap as we know it is becoming daily. Because we know this, that the navigation of these rivers will be largely superseded by railways, which, even following the general run of the rivers themselves, will in various
directions cut down the distance by two-thirds. We may be sure that the Parliament of the Commonwealth will be quite as much alive as we are to the fact that, as navigation becomes superseded, the likelihood of the use of these rivers will be more in the direction of water conservation and irrigation. Then we have nothing to fear from the Federal Parliament having power to develop trade and commerce, and from the development of events in future, because that power of regulating navigation and trade and commerce will become less necessary, and those who are so anxious about irrigation will find that their fears of its being hampered, or that the right of irrigation will be impaired as time goes on, were perfectly groundless. That is the remark with which I wish to conclude. I do hope, without wasting further words or attempting to make an oratorical speech, my friends from South Australia will see the justice of the position I have endeavoured to define, and that they will consent to leave the matter as I propose, so that the amendment of the honorable member (Mr. Glynn) and the qualifications of it proposed by the Right Hon. Mr. Reid and the honorable member (Mr. Wise) may alike disappear, and that the federal power may be left in possession of the instrument to preserve navigation, which we know they will not exercise to an improper or dangerous extent to the states, while the states will have in this very Constitution their right to irrigation preserved by the operation of one of the strongest clauses in it.

Mr. WISE (New South Wales). -

I should like to say, in answer to the appeal of the honorable member (Mr. Barton), that I entirely concur in the views expressed by him. Having had an opportunity since the adjournment of looking into this matter more carefully than before, I am satisfied that the fears expressed, and which I gave expression to on Friday, as to the position in which New South Wales might be placed by trusting entirely to the power to regulate trade and commerce conferred by sub-section (1) were groundless. It seems to me that the fears expressed by the representatives of South Australia were equally groundless. Therefore, if the representatives of South Australia will take the course suggested by the honorable member. (Mr. Barton), and if the honorable member (Mr. Glynn) will withdraw his amendment, or consent to have his amendment negatived on the recommittal of the clause, I will be most happy to withdraw my amendment, and trust to the clause as it stands. I should like to call the attention of the committee to a passage from a paper by Mr. A.I. Clark, now laid on the table, but not yet printed. My excuse for reading it is that it cannot be printed in time to influence the division on this matter. He points out that the mere fact of constituting this Commonwealth brings all the several states into union as constituent parts of one nation. Therefore, any act upon the part of any Legislature, which, if
the states were separate, would be ground for national complaint, or would be likely, if they were hostile, to lead to war-if the states were independent nations-will be a violation of the Constitution of the Commonwealth, and will, therefore, be a matter for redress by the Supreme Court of the Commonwealth. The whole fear that has been expressed on both sides is that one state by internal legislation might injure the citizens of another.

Sir GEORGE TURNER. - Would not that redress be by means of some existing legal right?

Mr. WISE. - I apprehend that no state can even pass an Act of Parliament without a legal right to do so. Any Act of Parliament passed will be an assertion of a legal right, and the only question remaining is whether if a state, in the present condition of isolation of the states, should pass an Act of Parliament which injures the citizens of a neighbouring state, that Act would be allowed to have force. I will read what Mr. Clark says to put the matter beyond a doubt:

Whenever several independent states enter into a federal union such as that which is constituted by the United States of America, and which is contemplated by the Draft Bill to constitute the Commonwealth of Australia, the federated states give up their respective rights to vindicate their claims and complaints against one another by war or other act of retaliation and aggression, and a federal system of judicial tribunals is established to adjudicate their controversies; and in every case in which a previously independent state enters into a permanent federal union with previously separate states-

Dr. COCKBURN. - We are not "previously separate states."

Mr. WISE. - Not separate? I wish we were not.

Dr. COCKBURN. - No; we are all parts of one empire.

Mr. REID. - I wish I could think so when we send goods over your border. We find that we are two bodies then.

Mr. WISE. - Mr. Clark's paper proceeds:

under a Constitution which establishes a Judiciary with power to adjudicate controversies between the several states, it thereby submits the validity of an its conduct which affects the rights of citizens of the other
states in the Federation to the decision of the Federal Judiciary, which is required to adjudicate by the known and settled principles of international law or municipal jurisprudence, as the particular case may demand. (See 6 Wheaton, page 380.)

Now, it will be observed that in that position there is no statement that all that is meant is an actual legal right. The question is whether that which is done affects the neighbouring states.

Sir GEORGE TURNER. -

Do you admit that the Federal Court will allow South Australia to have a share of this water?

Mr. WISE. -

I say this: That if South Australia drained all our water, whether by opening the bar of the Murray or by establishing big irrigation works, to the injury of the settlers in our territory, New South Wales or any settler within our territory could obtain an injunction from the Supreme Court to restrain her from doing so; and vice versa.

Mr. GLYNN. -

Is that something new conferred by the Constitution?

Mr. REID. -

You are always after some thing new.

Mr. WISE. -

No; it is not. Mr. Clark proceeds-

The Draft Bill to constitute the Commonwealth of Australia expressly provides that the judicial power of the Commonwealth shall extend "to all matters between states,"

It is not a matter of rights; I do not understand the meaning of rights at present.

and it has been decided by the Supreme Court of the United States of America that, under the provisions of the Constitution of that country, which extends the power of the Federal Judiciary to "controversies between two or more states"-

I will pause for a moment on that word "controversies." Controversies arise because two persons assert conflicting rights.

Mr. ISAACS. -

How is it to be determined? Who is to judge of it as a right?

Mr. WISE. -

one state may file a bill in equity against another state to determine the question of a disputed boundary. (Rhode Island v. Massachusetts, 12 Peters 657.) And if the Federal Judiciary of the Commonwealth of Australia will have the like power to determine a question of a disputed boundary
between two states it must, as a logical sequence, have jurisdiction of the
question whether any portion of the territory within the boundary of one
state is to be deprived of all that makes that territory
valuable by the aggressive legislation of another state. The riparian rights
of the owners of land abutting on the River Murray, in the colony of South
Australia, are rights of property in South Australia, and if those rights shall
be infringed by any private person or any public body professing to act
under colour of the authority of an Act of the Legislature of New South
Wales, when both colonies are constituent parts of the Commonwealth of
Australia, the citizens of South Australia whose riparian right has been
violated will have a remedy in the federal courts of the Commonwealth,
other for damages or for a writ of injunction to restrain the continuance of
the injury, or for both. As a direct authority upon this point, I may refer to
the case of the Holyoke Water Power Company v. Connecticut River
Company, which was decided in the United States in the year 1884. (22
Blatchford, 131.) In that case the Legislature of Connecticut had authorized
the Connecticut River Company to raise their existing dam across the river
in Connecticut to improve the navigation, and also maintain the water
Power of the Connecticut River Company's dam, which was about 16 miles
below the dam and factories belonging to the Holyoke Water Power
Company in Massachusetts, and the Connecticut River Company proposed
to raise its dam in Connecticut so high that it would cause a diminution in
the fall of the river above the dam for six or seven months in the year, to
the detriment of the Holyoke Company, and the Holyoke Company filed a
bill in equity in the Circuit Court of the United States for the district of
Connecticut, praying for an injunction restraining the Connecticut River
Company from raising their dam to the proposed height. The court granted
the injunction, and the concluding portion of the judgment of Shipman, J.,
runs as follows:-"The owner of land abutting upon a navigable river owns
it subject to the right of the states to improve the navigation of the river,
because the land is within the governmental control of the states; but, it
seems to me that the state obtains by virtue of its governmental powers no
right to control over or right to injure land without its jurisdiction.
Jurisdiction confers the power and right to inflict consequential injury, but
where no jurisdiction exists the right ceases to exist. It is a recognised
principle that the statutes of one state in regard to real estate cannot act
extraterritorially. As Connecticut has no direct jurisdiction or control over
real estate situate in another state, it cannot indirectly, by virtue of its
attempted improvement of its own navigable waters, control or subject to
injury foreign real estate. If this resolution is a bar to an action for any
consequential injury to land or to rights connected with land in Massachusetts, Connecticut is acting extra-territorially. Let there be a decree enjoining the defendant against any further raising of its present dams to a greater height than the height occupied by the respective portions of the present structure.

Other authorities are given. If I may refer for a moment to the interjection of Sir George Turner that it all proceeds on a question of legal right, I reply that I fail to appreciate at present the force of that observation. What took place is this. One state—say Connecticut—in order to improve the navigation for a certain period of its own rivers, granted, by Acts of its own Legislature, authority to raise a dam. That affected the power to irrigate in a lower state, and then the lower state, by virtue of powers which we have conferred in precisely the same terms upon the Federal judicature to deal with matters between states, brought an action, the result of which was the decision that Connecticut could not exercise jurisdiction over its own waters to the injury of the territory of a neighbouring state, the states having come together in a Federation.

Mr. ISAACS. -
Did Connecticut destroy navigation?

Mr. WISE. -
They simply made the water lower for manufacturing purposes; the navigation of the river was not affected. I see what is passing in my honorable friend's mind. He is thinking of the trade and commerce subsection. The action of Connecticut did not destroy navigation; it only rendered the waterless useful for the purposes of certain mills lower down.

Mr. ISAACS. -
Manufacturing is not within the trade and commerce clause.

Mr. WISE. -
The judgment cited is not based upon that ground but upon another ground altogether—that one state cannot, after its entry into federation with other states, exercise any jurisdiction to injure the territory of neighbouring states within their own rights. That is to say, that whereas the states before the federation had power to legislate with regard to their own water, as we have to-day or South Australia has, and any grievance that arose from the exercise of that power could only be redressed by diplomatic means or by war, yet once the states come together in a federal union, any injury inflicted on neighbouring states by legislation is subject to inquiry and redeem at the hands of the Supreme Court.

Mr. LYNE. -
Do you not think that that is a reason for having something definite in the
Constitution, so far as New South Wales is concerned?

Mr. WISE. -

I do not. I am prepared to trust the Federal Court to the same extent to which we expect that the other states will trust the Federal Court.

Sir GEORGE TURNER. -

Then under that South Australia will be able to complain to the Federal Court if New South Wales so uses the water as to injure navigation in South Australia!

Mr. WISE. -

Yes, and we shall be able to complain if South Australia use the water of the Murray in a similar manner. The matter can be safely left to the Federal Court for the rival claims to be decided by the only body that can adjust them. We cannot adjust them now, because we have not the data which is necessary.

Mr. SOLOMON. -

Why not put it definitely in the Constitution?

Mr. WISE. -

Because it seems to me that that would restrain the hands of the court, and I am prepared to trust the court absolutely; but I am not prepared to make a definition now when circumstances may be changing from year to year, and when the result maybe to lessen the beneficial power to be exercised for federal purposes, and those alone, by a tribunal of the highest authority. For those reasons I shall withdraw my amendment.

Mr. ISAACS. -

It is not the Supreme Court of the United States that is referred to in the decision you have quoted.

Mr. WISE. -

It is a judgment by a Federal Judge.

Mr. ISAACS. -

That is a different matter.

Mr. WISE. -

It seems to me that the objection is an utterly fanciful one.

Mr. ISAACS. -

You will not find the decision in any of the text-books of the United States.

Mr. WISE. -

As the case has not been appealed from it stands as law.

Mr. ISAACS. -

I do not know that it has not been appealed from.

Mr. WISE. -

The decision was given in 1884.
Sir JOHN FORREST (Western Australia). -

I rise for two purposes. First of all, I wish to express the hope that the very reasonable suggestion—and I think the best suggestion that could be made—of the leader of the Convention (Mr. Barton) will be generally accepted by honorable members. It seems to me that we shall never be likely to get any proposal which will probably secure more general approval. We must recollect that Mr. Barton has adhered to his position throughout, and has since we last met had time to reconsider the matter; and he now, for the second or third time, recommends the committee to leave the whole question to the operation of the trade and commerce subsection. But I have another object in rising, and that is to express the hope that we shall not have another week's debate upon this question. I do not think that any one even amongst those who are most interested can say that the members of this Convention have not listened most patiently to the whole of last week's debate. But I really think there is a limit to forbearance, even on the part of those who are most anxious to listen to the words of wisdom which come from honorable members. I have taken the trouble to find out the number of times some honorable members have spoken in the course of the debate on this question.

Mr. SYMON. -

Do not go into statistics—refer the point to the Finance Committee.

Sir JOHN FORREST. -

At any rate, from the number of times some honorable members have spoken, they should have been able to place their views distinctly before the Convention. My honorable and learned friend who interrupts has spoken seventeen times upon this question—I do not refer to interjections, but to long speeches, made with a pile of notes before him on each occasion. Seventeen times has the honorable and learned gentleman tried to teach us the merits of his case! My honorable and learned friend (Mr. Glynn) is only two points behind him, having spoken fifteen times, whilst my honorable and learned friend the Attorney-General of Victoria has spoken thirteen times. My honorable friend (Mr. Higgins) has spoken twelve times. I think that these honorable gentlemen should feel satisfied that they have placed the matter before us to the best of their ability and knowledge. There cannot really be anything in their minds in regard to this question the benefit of which they have not given us. Of course, I recognise the importance of the subject, but I think that I should hesitate before placing my views before any assembly in seventeen set speeches, no matter how important the subject. On one day I think the honorable and learned member (Mr. Symon) gave us no fewer than ten speeches; perhaps he is
prepared to give us ten more to-day. I believe that this question can be summed up in a very few words. If the views of New South Wales are correctly expressed by one of the leading journals this morning, they are reasonable and should meet with the approval of even the people of South A

Mr. SOLOMON. -

They will not put that into the Constitution.

Sir JOHN FORREST. -

The representatives of South Australia had the control of the Murray given to them, but they were parties to the striking out of the provision.

Mr. SOLOMON. -

The last portion of the provision to which the right honorable gentleman refers was never in print.

Sir JOHN FORREST. -

The last part of it goes with the first part. If you give up the control of a river you must make provision against interference with the tributaries of that river. I look upon the Murray as a federal river, and the only river in Australia that can really be called a federal river, and I am willing that it should be under federal control, and that if any of the colonies-New South Wales, South Australia, or Victoria-did anything to interfere with its navigation, the High Court of the Federal Parliament should have the right to interfere. I am altogether in favour of the proposal of the leader of the Convention, and I hope that it will be accepted, because it is the only way out of the difficulty. We all remember the fable of the dog and the shadow.

Mr. SYMON. -

The right honorable member must not quote constitutional authorities.

Sir JOHN FORREST. -

In trying to get a little bit more one sometimes loses what would otherwise be willingly granted. If my honorable friends from South Australia are wise they will join with the representatives of New South Wales, and with all of us, in coming to a conclusion which will not leave any bitter sting behind, a conclusion expressed in general terms which will be applicable to all, and one which will enable them to go back to their people and say-"We are in the same position as every other state in Australia. The trade and commerce...

sub-section does not apply to us in a worse degree than that in which it supplies to any other state; we are all on the same footing." I did not rise to throw any new light on this question, because it is impossible for me to do so, but, having come from a distant colony, and having been here for nearly three weeks, the greater portion of which time has been taken up in
discussing it, I think I have a right to protest, in as friendly a spirit as possible, against the prolongation of the debate. I am sure we have heard enough about the matter now, and if we can come to an amicable settlement, which will not be unfair to any one, I entreat honorable members to let us do so.

Mr. HOLDER (South Australia). -

I am glad that my name does not appear in the list which the right honorable member (Sir John Forrest) has just read. I have sat still for a number of days listening to the numerous speeches which have been delivered, and deploring the time occupied in the discussion, and I should not have risen to speak this morning but that I think the official position I hold demands a statement at my hands. This statement I shall make as short as I can. I listened with great attention to the speech made by the leader of the Convention this morning, and I regret exceedingly the attitude which he has taken. It seems to me that he is mixing up two matters which have almost nothing in common, and that he is seeking to make, as a condition of justice in one case, the surrender of that which he admits is of justice in another case. The position before the Convention just now is this-if I may use one other word of reply to the remarks of the right honorable member (Sir John Forrest). South Australia is content with things as they have been, since some time on Friday last, when, without division, and I think without a single voice being raised in dissent, the proposal of the honorable member (Mr. Glynn) was accepted-

Sir JOHN FORREST. -

It went through before we knew anything about it.

Mr. LYNE. -

I protested against it at the time.

Mr. HOLDER. -

I did not hear a dissenting voice. The amendment had been in print for some days, it had been discussed, and, I think, some of the seventeen speeches which have been referred to were delivered in support of it, so that the Convention could not have been taken by surprise. Since the Convention accepted the amendment, South Australia has been content.

Mr. REID. -

The amendment was accepted under the belief that our amendment would be accepted too. That was the only ground upon which I let it go.

Sir GEORGE TURNER. -

The honorable member (Mr. Lyne) specially mentioned that.

Mr. REID. -

Yes, my honorable colleague mentioned that.

Mr. HOLDER. -
The amendment was proposed to give effect to a declaration of policy which we had from the leader of the Convention some days ago. He told us that the sub-section upon which he relied—that relating to trade and commerce—meant so-and-so, and we were content with his assurance. We were willing to accept the position as he stated it to us.

Mr. Reid. -

You went on fighting all the same.

Mr. Holder. -

Not until something happened, to which I am about to refer. Almost immediately after this explanation we had speeches from the honorable member (Mr. Carruthers) and from the right honorable member (Mr. Reid), which put an entirely different view of the case; a view which was supported to a large extent by the Attorney-General of Victoria, and which showed us that, while the leader of the Convention might be of one opinion, these other legal gentlemen were of another opinion, and therefore the statement of the honorable and learned member (Mr. Barton) was not to be accepted undoubtingly, because of the eminent authorities in the Convention by whom it was questioned. We therefore thought that we had better provide in the Constitution that the provision in respect to trade and commerce should be taken to mean what the leader of the Convention said it means, and nothing else, instead of leaving it in an uncertain condition, so that no one could say beforehand whether the decision of the High Court would be in accordance with the views of the leader of the Convention or in accordance with the views of the Premier of New South Wales. The amendment proposed by the honorable member (Mr. Glynn) went no further, however, than to declare that the federal rights in respect to trade and commerce should extend not only to rivers always navigable, but also to rivers intermittently navigable. The amendment went not a hair's-breadth beyond the declaration made by the leader of the Convention, and repeated by him again this morning. But, because we have placed beyond doubt and question the provision in respect to trade and commerce, is it to be said that a large concession has been made to South Australia in respect to the rights of New South Wales in regard to irrigation and water conservation, which must be balanced by large concessions to New South Wales? Has any concession been made to South Australia in regard to water conservation and irrigation? There has been none. There has been only the making clear of what we all say is a federal provision—the right of the federal authority to control trade and commerce upon the rivers. I appeal to the honorable and learned members (Mr. Deakin and Dr. Quick), and to other honorable members, not excluding the right honorable member (Sir John Forrest),
who in the past have taken up a position not unfavorable to South Australia. When South Australia was seeking to have placed in the Constitution certain provisions which made more clear her right to a share of the waters of the Darling, these honorable gentlemen said "No." The honorable and learned member (Mr. Deakin) put it very clearly. He said "I think you are right, but in spite of that let this stand upon the trade and commerce sub-section. Let us not put into the Constitution anything which will give away any of the rights of New South Wales at the present juncture." It, was not that the honorable and learned gentleman did not believe in the existence of the rights of South Australia; he counselled that course only for the sake of expediency. I ask these honorable gentlemen to take the same position to-day, when it is not South Australia but New South Wales who is seeking the establishment of rights. When every right which South Australia has asked for has been refused by the Convention, and when upon the top of these refusals New South Wales is asking for concessions I ask these honorable gentlemen to say to New South Wales to-day what they said to us last week, and to tell them:"No, you must stand upon your rights under the trade and commerce sub-section, and not ask for special rights in relation to water conservation and irrigation." If honorable gentlemen take that attitude to-day, which will only be consistent with their attitude last week, and say to New South Wales, as they said to South Australia:"Stay your hands, I have no fear but that this intended encroachment by New South Wales will be rejected by the Convention. Much has been said about the rights of this case, and I do not want to quote a number of legal decisions, which may or may not have a bearing upon it. There are piles of books upon the table which have been referred to by other honorable gentlemen; but how do we know that these American decisions, which have been quoted at such length and with such persistency, have a bearing upon the case? How do we know that the Federal High Court will take its law from the American courts? Is it not likely that it will take its law from the English courts, or more probable still that the Judges will say-

Sir JOHN FORREST. - Not at all.
Mr. HOLDER. -

I am going to mention two points which I think have been overlooked. For many years Victoria has been a great competitor with South Australia for the Darling trade. A large amount of the wool from what we call Riverina—the Upper Darling—comes down to Wentworth, and then goes up the Murray to Echuca for shipment to Melbourne, and a large quantity of stores have gone up by the same route to the Riverina country. I ask Victoria, has she all in a moment lost her interest in the Darling trade? Is it not with her to-day a vital matter? Is she not going to give her votes to help South Australia in this matter of maintaining this amendment by Mr. Glynn to protect for her as well as for South Australia the right to a share in this Riverina trade? Who developed Riverina?—Victorians and South Australians. To whom is it important that the Darling River should be kept open for the Riverina traffic? It is of importance to the stock-holders and to the others who are resident in the Darling country, and for their sakes—for the sake of Victoria quite as much as for the sake of South Australia—this amendment of Mr. Glynn's should be inserted in the Constitution, and should by no means be abandoned. But there is another point. It is admitted on several hands that we all have the same rights to the waters of the Murray, because it is said those waters flow from one colony through another. Now, much has been sought to be made of the fact that in name the Darling is purely a New South Wales river. I know that that has influenced my honorable friend (Sir John Forrest) very much, and I want him particularly to listen to me, if he will, for a moment or two, while I put a point or two which I think he will appreciate. It is said that the Darling being wholly a New South Wales river, practically beginning in that colony and ending as far as name goes, in New South Wales, that colony should be left free to do as she likes with that river and its waters. Now, what are the facts? In name the River Darling ends just below Wentworth, but what is to prevent South Australia altering the name of the Lower Murray to the Darling, if there is so much in a name? The mere alteration of that name would make the Darling, together with the Lower Murray, the main stream, and we should then have a right to the Darling waters, which to some extent are conceded to us now.

Mr. REID. -

Then we would call the Darling the Murray.

Mr. HOLDER. -

That just brings me to the point I want to make. I hoped that I should evoke some such interjection as that, to show the folly of being guided by a mere name. Now, supposing I am a land-owner, and have a stream running through my land—a stream which begins just outside one border of my land...
and flows out through the other border, into another man's land—will my
naming that
-Murray waters clear, coming from the mountains, fed by the melting
snows; the waters of the Darling heavily clouded, having passed through
the alluvial country along its course, from Queensland downwards.

Mr. GORDON. -
Yes. Discoloured with Queensland mud.

Mr. HOLDER. -
Yes; I have seen the waters of the two rivers flowing side by side, and
not mingling their courses.

Mr. MCMILLAN. -
But which is the main stream there?

Mr. HOLDER. -
I have seen the waters of those two rivers flowing side by side in the
Murray channel when the main stream has undoubtedly been the waters of
the Darling. I have seen that on more occasions than one—the greater
volume of the water that which came down the Darling and the lesser
volume that which came down the Murray. With these facts before us it is
idle to pretend that the mere cessation of the name Darling River in New
South Wales cuts off from all below the borders of that colony any right to
a share of the waters of the Darling, which are so important a factor in the
Lower Murray. I do not wish for a moment to make more serious the
serious difficulties in which we find ourselves placed. I speak with a very
heavy sense of responsibility in saying what I do. I recognise the
difficulties which prevail in New South Wales, and particularly the special
difficulty of getting 80,000 votes in favour of this Constitution before it
can be accepted in New South Wales; but I say that this is not the difficulty
of New South Wales only, but the difficulty of every member of this
Convention. Our business is to frame a fair Constitution, acceptable not
only by the people of the other colonies, but acceptable also by the people
of New South Wales, and I ask where is, the use of our framing a
Constitution which will be acceptable in the other states, if it is rejected in
New South Wales? Therefore, the difficulty of New South Wales is the
difficulty of every one of us, and what we have all to consider is how we
can best remove that difficulty and make possible the acceptance by the
people of New South Wales of the Constitution we shall frame. But, while
New South Wales has its difficulties, South Australia has its difficulties,
too. For many years past the river question has involved South Australia in
very considerable difficulty from many points of view. It is not a question
that has sprung into life and being since this Convention began to sit.
Sir JOSEPH ABBOTT. -
Have you not made the difficulties without any necessity up to the present?
Mr. HOLDER. -
I do not know whether the honorable member refers to the proceedings of the Convention; I cannot think he does.
Sir JOSEPH ABBOTT. -
I mean as to the navigation of the river. In what way have we hitherto interfered?
Mr. HOLDER. -
I am very glad to say that in the past New South Wales has not interfered with the navigability of the river, but has, in fact, done a great deal to make it more navigable, although it has, at times, required a good deal of correspondence to bring about that result.
Mr. REID. -
But there were no cheques in the letters sent from Adelaide.
Sir JOSEPH ABBOTT. -
Nor would the South Australian Government allow us the use of their punts.
Mr. HOLDER. -
I am quite prepared to go on with my remarks if honorable members will permit me. I say that New South Wales has, up to the present, rendered much assistance in maintaining and improving the navigability of the Darling. But for whose sake, I should like to know?
Sir JOSEPH ABBOTT. -
For South Australia's sake.
Mr. HOLDER. -
Sir Joseph Abbott knows better than any one else in this Convention that the maintenance of the navigability of the Darling has been the one thing which has made possible the continued occupation of the Darling country.
Sir JOSEPH ABBOTT. -
Quite so.
Mr. REID. -
But still that does not alter the fact that we have not prejudiced the navigation.
Mr. HOLDER. -
New South Wales has behaved very well in this matter in the past, but she will not promise to behave as well in the future.
Mr. REID. -
We consider it an insult to throw any doubt on our intentions.

Mr. HOLDER. -

I want to dispose of this matter, because it is just off the point I desired to make. If New South Wales would simply prohibit herself from the unreasonable use of the waters of the Darling, which was all we asked her to do the other day—we do not go so far as that now—we had all been content on Thursday last. But New South Wales refuses to do so, so that it is the unreasonable use of the waters of the Darling that she evidently contemplates, or she would not object to be prohibited from that unreasonable use. I wish, however, to refer to a difficulty that has so long prevailed in South Australia, a difficulty which has been the subject of debates in Parliament, and which we have attempted to settle by correspondence with the Governments concerned, by attempted inter-colonial conferences, and in many other ways—this question of the Riverina trade. It has been a burning question in South Australia for years, and I do not hesitate to say—not by way of threat, nothing of the kind, I should be very loath indeed to threaten, to the last extreme I should refrain from using threats—that if we go back from this Convention with a Constitution which contains in it even the implication of the surrender of any of the rights of our people in the Riverina trade, it is hopeless to think the electors of South Australia will accept such a Federal Constitution.

Mr. LYNE. -

What about New South Wales?

Mr. HOLDER. -

I have already admitted that it is a serious difficulty in New South Wales as well as in South Australia, and my suggestion to honorable members is now—I ask them to admit that the difficulty in South Australia is as much theirs as ours, and that they should be as willing to help us to get rid of that difficulty as far as our colony is concerned as we are willing to help them to get rid of it as far as New South Wales is concerned.

Mr. REID. -

If we will see you through your difficulty, via Mr. Glynn's amendment, will you see us through ours via my amendment?

Mr. HOLDER. -

I want to go back on the first question. Mr. Glynn's amendment dealt with trade and commerce only; now we are dealing with quite another question. The way out of the difficulty that I suggest is this—the Convention has persistently refused by vote after vote, and by increasing majorities, to give South Australia the slightest advantage in the use of these waters, and if the Convention will say precisely the same to New South Wales the matter will be settled. The representatives of New South Wales can then go
back to their colony without having surrendered anything on their part, and we can go back to our colony without having surrendered anything on our part. We shall both stand where we were. It will be a drawn battle, fairly fought on both sides, and drawn with honour to both sides, but without advantage to either and without loss to either. We have come to the point where we should not put anything in the Constitution. The Convention has refused to put anything in for South Australia; let it also refuse to put anything in for New South Wales. Let us have it a drawn battle, neither side to triumph over the other, neither to suffer an ignominious defeat. If the Convention will agree to that course, negative the amendment of Mr. Reid, and, afterwards, if it is proposed, the amendment of Mr. Wise, the Convention will take a course which will send the delegates home enjoying peace with honour.

An HONORABLE MEMBER. -
Do you wish the question to be left to the Federal Parliament or the Judiciary to decide?

Mr. HOLDER. -
I am speaking of what this Convention has refused to give to South Australia, and I ask why should the Convention give to New South Wales what it has refused to give to South Australia? That is the question I want answering. That is the question we had before us last week.

Mr. LYNE. -
What about Mr. Glynn's interpretation of "navigable river"?

Mr. HOLDER. -
That does not touch the question of water conservation and irrigation. We are simply by that placing beyond dispute the interpretation of the leader of the Convention of the trade and commerce provision.

Mr. REID. -
But surely the leader of the Convention is not here to interpret the Constitution we have not yet established. Why don't you follow the leader when it does not suit you? You only follow him when it suits you. You have been fighting against him for a week.

Mr. HOLDER. -
If the leader of the Convention had disputed the force of Mr. Glynn's amendment, there would be some force in that interjection; but as he did not dispute it, but, on the contrary, as he appeared to me to agree to the insertion of the amendment, I fail to see where that interjection comes in at all. I am sorry that the leader of the Convention happens to be out of the chamber for a moment, because I am sure that he would confirm my
statement on that point. Now, I appeal to the Convention to look first to the
difficulty of New South Wales, and to place that colony under no
disability; but I also appeal to the Convention to look next to the difficulty
of South Australia, and to place South Australia under no disability. By
that means we should leave this contest a drawn battle between the
contesting parties, and settle, once for all that which both sides, and indeed
everybody, have admitted is a federal question—the question of trade and
commerce. I regret having taken up so long a time in making these
observations, but, in view of the interjections, I could not occupy a shorter
time. I ask the Convention to remember that there is not only a difficulty to
be met in New South Wales, but also in South Australia, and I submit that
the best, I think the only, course is to draw the battle between the parties.

Mr. SYMON (South Australia). -

May I respond for one moment to the invitation of Sir John Forrest? In
adding one more—a very little one—to the long list of speeches, which he in
the solitude of his Sunday has so industriously compiled—I was better
occupied on Sunday—

Mr. REID. -

It was a beautiful sermon.

Mr. SYMON. -

I am quite unable to check his figures, although, knowing his reputation
as a great financial authority, I am quite willing to believe them to be
absolutely correct. But I think he does himself injustice when he says he
does not think it possible for him to throw any further light on this
question, because we all feel that he speaks as an oracle when he gets up to
address the Convention; and I am sure that on a subject like this, which
does not interest him, and about which he does not profess to be greatly
concerned, his advice is all the more valuable. Now, sir, I rose simply to
say one or two words about the present position of this question. I hope
that my right honorable friend (Mr. Reid) will feel himself in a position to
withdraw this amendment, which may not be very important in itself

Mr. Holder has pointed out, that places South Australia and the South
Australian representatives in a position of very great difficulty in
advocating any settlement in relation to these rivers. The conclusion which
I have myself come to, on the authorities which have been referred to, and
upon the best interpretation which I am able to give to this Constitution as
it now stands, is that which I have already expressed; that under sub-
section (1) it will be within the power of the Federal Parliament, and within
the power of the Federal Judiciary, to deal justly between both New South
Wales and South Australia in relation to these rivers in the interests of
trade and commerce. I take that view not only as a lawyer-

Mr. REID. -

There is no doubt about that. In the interests of trade and commerce there will be equality; but what about irrigation?

Mr. SYMON. -

It does not appear to me, as my right honorable friend says, that there can be any misunderstanding upon that point, even from the view of a constitutional lawyer, or from the view of one interested in the preservation of the rights of his state. I think that what my honorable friend (Mr. Barton) has said this morning puts it even more clearly than the position which it occupied before. If it is possible that that state of things can happen in America which occurred in relation to the bridge over the Ohio, we may have exactly the same position of things here. If a weir or a dam is considered to be an obstruction to the navigation, and if the Federal High Court, acting within the rigid limits of the Constitution, could declare it to be an obstruction, and require its removal, it would be perfectly competent for the Federal Parliament, in its authority to legislate with regard to the regulation of trade and commerce, to declare, either by a general or a special law, that it was not an obstruction—that it was a legal structure—and to that extent to nullify the decree of the High Court. That is the view I entertain with regard to the effect of the sub-section. Now, Mr. Glynn has moved an amendment which I think has been greatly misunderstood. That amendment declares no right; it confers no right: It simply amounts to a definition, within the four corners of the Constitution, of what we all believe the American authorities have decided a navigable river to be—what we all believe the High Court of this Commonwealth will, upon far stronger grounds, looking at the condition of things within this continent in relation to water, also decide. That is the view which I have taken all along about my honorable friend's amendment. It is a desirable amendment if you wish to lay down once for all, within the limits of the Constitution, what you believe to be the definition of a navigable river. On the other hand, it does not carry the law one atom further than that it would exist without the insertion of these words in the Constitution.

Mr. MCMILLAN. -

It might prove a limitation.

Mr. SYMON. -

I was going to point out, a little later on, that the danger of every definition where you are dealing with the interpretation of a Constitution, which you mean to be elastic, is that it may operate in the future as a limitation. The difference is this. If we believe, as I in my conscience believe, the words of Mr. Glynn's amendment to be a reproduction, a
concentrated reproduction, of the law on the subject as we have heard it
expounded by Mr. Isaacs, Mr. Barton, and Mr. O'Connor, it maybe right at
this moment; but you make it irremovable and unalterable without an
amendment of the Constitution. If, on the other hand, you leave it to the
Federal Judiciary, which is bound to expound the Constitution in an elastic
fashion for the interests of the whole nation—the general interests of the
entire Commonwealth—you leave it in a position in which it may be adapted
to the changing requirements of the times. Now, on the
one hand, I appeal to my honorable friend (Mr. Glynn) whether there is
really anything to be gained by inserting this definition in the Constitution?
I agree that there is this in the first instance to be gained: That you are
placing what we think is an interpretation of a navigable river, according to
the American law, in the Constitution at the present moment; but, on the
other hand, you are laying down a hard-and-fast rule which cannot be
altered, and which may lead us into greater inconveniences and difficulties
in the future. I would, therefore, ask my honorable friend to reconsider the
matter. I do not ask him to give it up if he thinks and believes—and there is
no doubt that he is absolutely sincere and earnest on the question—that it
will be a gain to have it in as it now stands, notwithstanding the
possibilities of change in the future. But I will ask him also to consider
whether it will not be better to leave it out of the Constitution, apart
altogether even from Mr. Reid's amendment—to leave it, as we now believe
it to be, the law, and subject, if necessary, to the fluctuations that may take
place hereafter.

Mr. GLYNN. -
I am not going to let the Federal Judiciary be the legislators.

Mr. SYMON. -
I think my honorable friend, if he will allow me to say so, is not taking a
very just view of the situation. The Federal judiciary never can be
legislators, but the Federal Parliament. It is in the Federal Judiciary,
however, that is reposed the obligation of interpreting the Constitution; and
the point is, whether we should put into the Constitution a provision which
will tie the hands of the Federal Judiciary from doing, perhaps, greater
justice to us in the future than we should obtain by inserting this rigid
definition now. That is the view which I take, and which I ask my
honorable friend, with all earnestness, to consider. If, by inserting this in
the Constitution, we gain only a momentary certainty, with the possibility
of disadvantages hereafter, I think the disadvantages would greatly
outweigh the present benefits, and that it would be better for us to have
regard to the future of the Commonwealth we are creating, rather than to
the immediate need of the present moment. At the same time, I do not think that my honorable friends from New South Wales ought to have put the withdrawal of this amendment as a condition to their withdrawing from what I cannot help feeling would be a vicious amendment, and one that would be very serious for us to overcome. I think the Convention ought to reject the amendment of Mr. Reid, but if a majority of the Convention, those who are interested, and those who have been looking on with a view of doing justice to both sides, consider that it would be better to relieve the Constitution of both, I, for one, am prepared to take that course. I think we have had enough discussion on this subject. I agree with Sir John Forrest on that point, but I hope that, in spite of my seventeen speeches, I have not-at any rate wilfully-want only or needlessly occupied the time of the Convention. I am sure that I have no desire—I should be the last—to postpone for one moment the completion of the work which we have in hand, and if it will hasten that work and hasten the completion of this Bill in such a shape that we can disarm hostility, and will enable us to take it to our people with a fair amount of good-will, I am prepared to do anything reasonable to accomplish that end.

Sir GEORGE TURNER (Victoria). -

I have failed to understand the position taken up by my honorable friend (Mr. Wise). From what I can gather, New South Wales claims that it has unquestionably a right to the water of the Darling, and that South Australia has no right whatever to the use of that water.

Mr. REID. -

But we are willing to leave it to the Federal Court to decide the matter as its own judgment determines.

Sir GEORGE TURNER. -

That, of course, does not carry South Australia one inch further.

Mr. REID. -

Then we must have the right.

Sir GEORGE TURNER. -

If the right honorable member would do what I would like to see him do by way of concession—give to South Australia some little right to the use of that water, or leave it to the Federal Parliament to decide what right South Australia should, after the Federation, have to the use of the water, I think the whole difficulty would be solved. But, unfortunately, my right honorable friend will not do that. He says—"I won't submit to the jurisdiction of the Federal Parliament under any circumstances;" and I think that, in that position, he is wrong.
Mr. REID. -

Is not the Federal Court a better tribunal to decide than the Federal Parliament, where there will be politicians fighting?

Sir GEORGE TURNER. -

The Federal Court will have jurisdiction to decide existing rights, but it will have no jurisdiction to do what the Federal Parliament could, and I think ought to, do—that is, to do justice to South Australia, so that they should have some use, some fair and reasonable use, of this water, while not dealing unjustly with the other colonies. I, for one, although Victoria is vitally interested, would be prepared to leave the whole question of navigation, conservation, and irrigation to the decision of the Federal Parliament; but, if we are to leave it to the Federal Court, the Federal Court, as my right honorable friend knows, can only deal with legal rights, and cannot do what I think ought to be done—justice.

Mr. WISE. -

My contention is that each colony has a right to its own water, but that, after the Federation, neither colony would be able to exercise its right to the detriment of the other colony.

Sir GEORGE TURNER. -

All the rights of each state are preserved by the Constitution, but the honorable member's argument would lead to the belief that, after federation, the Federal Court would be able to so decide as to prohibit the use in New South Wales of water for conservation and irrigation, if it were detrimental to navigation in South Australia.

Mr. WISE. -

And adjust the rights of both parties.

Sir GEORGE TURNER. -

We have heard that expression before. "Adjust the rights" means nothing.

Mr. REID. -

It means nothing if you have not a right.

Sir GEORGE TURNER. -

It means nothing to the unfortunate colony which, it is said, has not a right, but which, in my opinion, ought to have some right.

Mr. WISE. -

To use its own waters.

Sir GEORGE TURNER. -

What does that concession amount to—to use the waters falling in its own colony, or to use the waters which New South Wales thinks fit to leave to it to use?

Mr. WISE. -

It goes much further than that.
Sir GEORGE TURNER. -

The right does not go any further, and I want the Federal Parliament to be able to go a little further. That is the reason why I cannot follow the honorable member's contention. The Federal Court would have no power to give what many of us, in spite of the risks we are running ourselves in our own colony, desire to see South Australia get from this Convention—the only place from which she can get it—and, therefore, I am at a loss to understand the bearing of the argument of Mr. Wise on the difficulties which surround us in connexion with this matter. Now, the leader of the Convention has advised us to rest entirely on sub-section (1), which deals with trade and commerce, and he asks us to expunge the amendment which was inserted on the motion of Mr. Glynn. That amendment laid down in the Constitution what we had been told by several of our leading lawyers was the effect of the decisions in America, but, as I pointed out before, my difficulty is this—that while those decisions may have been given in America, under the circumstances of America, it does not follow that, in this country, our court would decide on the same lines.

Mr. SYMON. -

Do not you think it would?

Sir GEORGE TURNER. -

I think it ought to, and therefore I say it is our duty to say that it shall. I was pleased to s

Mr. SYMON. -

Are you going to support Mr. Reid's amendment?

Sir GEORGE TURNER. -

I intend to support it with a certain variation, which, if agreed to, would, I think, meet all the difficulty, but I am afraid Mr. Reid will not be able to see his way to agree to it, although the alteration is slight. Mr. Holder pointed out that Victoria is concerned to some extent in the Darling trade. I do not know whether he was anxious to induce us from self-interest to vote in a certain direction, or for what reason he brought that matter so prominently forward. There is no doubt that Victoria is interested to a very great extent in having the Darling navigable at all times, and by that means getting a considerable amount of trade which might otherwise go elsewhere. I have said before, and I repeat it now, that while we are anxious that navigation should be preserved we are more anxious, so far as our colony is concerned, that water conservation and irrigation should be provided for. We look upon that as the first consideration in the interest of our settlers and of the thousands and tens of thousands who in years to
come will undoubtedly be dependent for their living on having a full and ample supply of water for irrigation purposes. If one or other has to give way, then I say, unhesitatingly, that navigation must give way to conservation and irrigation. That applies to Victoria, to a certain extent, but it applies to the larger colony of New South Wales to a very much greater extent.

Mr. OCONNOR. -

It will always be in the power of the Federal Parliament to enact that.

Sir GEORGE TURNER. -

Our honorable leader told us that until the Federal Parliament did legislate on the question of navigation the states would retain all their rights of dealing with irrigation and water conservation.

Mr. BARTON. -

And would afterwards retain them to the extent to which they had not been dealt with by the Commonwealth.

Sir GEORGE TURNER. -

Of course they would retain them, unless over-ridden by the federal law. Why should that be so? Why should there still be that element of doubt? Is it to be expected that any Government, I may even say any individuals, are going to spend large sums of money on irrigation and conservation works when there will be the risk of the Federal Parliament passing a law which would render those works absolutely useless? If the Federal Parliament is, as I believe it will under the Bill as it now stands, to give first consideration to navigation, it might, after certain works had been constructed in New South Wales or Victoria, pass a law for the benefit of navigation. That law might and probably would injure those works to a very great extent. I think it is quite possible to leave a power to the Federal Parliament that would prevent any doubt or difficulty arising and that would be a power under which, unless the works were prohibited by the Parliament or were stopped by some means before they were carried into execution, no law should be passed by the Federal Parliament that would injure them or injure any existing works. If we made that provision we should go a considerable length towards meeting the difficulties of our colony and of New South Wales. Mr. Holder has fairly pointed out that our friends from New South Wales will have great difficulty in obtaining the requisite number of votes in favour of the Constitution. That applies equally to all the colonies, although New South Wales will have a larger number of votes to obtain, and there will be many opponents of federation. We know that in this colony there are many and strong opponents of federation, and they will take advantage of every point for the purpose of
inducing people to vote against, or, at all events, not to trouble themselves
to vote for this Bill. Supposing that in the northern districts, where the
people have to depend on the water, the argument is used, as it probably
will be, that we, by our action, have handed over to the Federal Parliament
the power to prevent any future irrigation works, it will not be enough to
tell them in reply that the Federal Parliament is not likely to do anything
that will injure them. If navigation alone is provided for they will say: "We
prefer to retain what we have than to trust any other body." My anxiety is,
whilst I am willing to make every reasonable provision for navigation to
assist South Australia and to benefit Victoria, to have such other provisions
incorporated in the Constitution as will enable me to tell the people that
their irrigation works cannot hereafter be interfered with for the benefit
only of navigation. I think, therefore, that the amendment we have already
carried should stand, because it makes certain what we are told is the law,
and what we desire to have as the law. Some such provision as Mr. Reid
has suggested ought also to be incorporated in the Bill, and incorporated if
possible with the good will and consent of our friends from South
Australia. With regard to Mr. Wise's amendment I agree with the leader of
the Convention that these words, if inserted, would merely be declaratory
of what we have already in the Bill. I hardly agree with our leader that the
amendment proposed by Mr. Reid will not go a long way farther than any
provision at present in the Bill. No state is to be prevented from using or
authorizing the use of water for the purposes of irrigation and water
conservation. I should like to have that, and that only, but I think it goes a
little too far in the interests of South Australia, and that it should be
modified. Mr. Reid proposes to modify it by adding the words "subject to
any right possessed by any state." If those words were added the
amendment would, in my judgment, give South Australia nothing, because
the contention all along has been that that colony has no rights. I should
prefer that these words should be left out, because they would be of no
benefit whatever. I would appeal to Mr. Reid to modify his very strong
views. Having regard to the difficulties that will be experienced not only in
New South Wales, but also in South Australia and Victoria, in obtaining
the requisite number of votes, I would point out to Mr. Reid that it is his
duty, whilst protecting the interests of New South Wales, to assist the other
colonies in getting a Constitution which their people will accept. He can do
that without any great detriment to New South Wales or Victoria, because
in this matter our interests run together. He might insert, instead of the
words "subject to any right possessed by any other state," the words
"subject to any rights which the Federal Parliament may hereafter grant to
any other state."
Mr. OCONNOR. -
That opens up the whole question again.

Sir GEORGE TURNER. -
It may; but if the words which Mr. Reid himself suggests are inserted we shall be giving South Australia nothing.

Mr. REID. -
Do not say "we." You mean New South Wales.

Sir GEORGE TURNER. -
The Goulburn is a navigable river.

Mr. REID. -
The Darling and the Goulburn are two very different streams. There are no barges on the Goulburn.

Sir GEORGE TURNER. -
I think we contribute as much, if not a good deal more, water to the Murray than New South Wales. I am quite willing, as I have been all through, that all these rivers, whether they be in New South Wales or in Victoria, should be placed in the one category. I do not want any advantages to the rivers of Victoria that are not given to the rivers of New South Wales, and I do not want any disadvantages to be placed on New South Wales that I am not prepared to see placed on Victoria. We must all enter into this Federation on the same footing. I would again appeal to Mr. Reid to consider whether he cannot couch his amendment in language that would, while protecting the rights of New South Wales and Victoria, with regard to water conservation and irrigation, to some reasonable extent protect the interests of South Australia in relation to navigation, and also to irrigation. We ought to be able to agree to some form of words that would have that effect. I would do it by leaving the matter absolutely to the judgment and discretion of the Federal Parliament, believing that they would take into consideration all rights and all interests, including any works already constructed. If works had been constructed by the states or individuals, I feel sure that they would not be interfered with without full and ample compensation being given. So far as the rights and interests of Victoria are concerned, I should be quite prepared to leave the whole subject, in the widest possible form, to be dealt with by the Federal Parliament. I am in this position, that I must assist in retaining the words already, inserted on the motion of Mr. Glynn, because I think it wise to put beyond all doubt the construction to be picked on subsection (1). I also desire to have in the Constitution a declaration that, although navigation is of great importance, water conservation and irrigation are of equal if not
greater importance to the colonies of New South Wales and Victoria.

Mr. DOBSON. -

If you want that engrafted in the Constitution, must you not say that either the Parliament or the High Court shall settle disputes?

Sir GEORGE TURNER. -

The honorable member must see that the High Court can only interfere when a complaint is made that owing to some water conservation or irrigation works navigation is being injured.

Sir JOHN DOWNER. -

Trade and commerce are being injured.

Sir GEORGE TURNER. -

Yes, trade and commerce may be injured by works that affect prejudicially the navigation of the river.

Sir JOHN DOWNER. -

There may be other causes apart from navigation affecting trade and commerce.

Sir GEORGE TURNER. -

There may be, but at present we are discussing the question only from the point of view of navigation. Trade and commerce is a wide term, but in time to come I believe that the rivers of Australia will be used very little for navigation and far more for water conservation and irrigation. I would again ask my right honorable friend if he possibly can modify his views so as to assist us all out of the difficulty? It does seem to me that the simplest and easiest plan we can possibly adopt is to have trust in the body we are going to create, a body who will probably be something like we are here; a body who, no doubt, will be disposed and will be in a position to prevent injustice from being done. My advice to my right honorable friend and to the Convention is to place the fullest possible powers we can in the hands of the Federal Parliament to deal, not alone with navigation, but also with navigation, conservation, and irrigation on an equal footing.

Sir JOHN DOWNER (South Australia). -

I intend to accept the suggestion of the leader of the Convention. I have long thought that, in our anxiety to prevent injury being done to particular colonies, we have really been putting limitations on the rights which we are creating by the general words which are used. And when in Adelaide the clause, as introduced, was cut down in the way in which it was in the Bill when we began our consideration of it at this meeting, I protested against it on the ground that it was a limitation, and said I should oppose the clause in every shape and form. The amendment which is moved by the Premier of New South Wales I addressed myself to before. As regards the
amendment on the amendment, I will say that it only emphasizes his intention. He says there is no right, and he wants to declare that the states can enforce any rights they have, having previously said that no state has any right out of its own territory. I do not think that South Australia has any reason for thanking my right honorable friend for any concession in that amendment. It is rather putting an emphasis on the assertion of provincial right which he has been making all through. But if we make no amendments, leaving the clause regulating trade and commerce to stand as it is, what will be the result? We must go to the only country in which a similar clause has prevailed in order to find it out. The courts of America, Chief Justice Marshall, and the eminent men who followed him-

Mr. DEAKIN. -

There is no Marshall in our Constitution, you know.

Mr. SOLOMON. -

And no courts of America.

Mr. BARTON. -

There are stronger words in our Constitution.

Sir JOHN DOWNER. -

The courts of America, Chief Justice Marshall, and the eminent men who followed him founded their decisions on the common law of England. They had no statute law to assist them; the common law of England was their basis, and on that their decisions went. So it is with continental states. The international law, hard as it is to define, still existing with some degree of precision, is founded by analogy in reality on the ordinary riparian rights of persons on the banks of a stream. There the streams are navigable; the important interest is navigation; the one thing to be conserved is navigation, and navigation accordingly is always made the criterion. There is no question there of taking water for any other purpose. In America, as was pointed out very ably by my learned friend (Mr. Isaacs), in that very excellent speech in which he satisfied many of us, but the reasoning of which he has not altogether adhered to since, I think, there was a different ground for decision. There, in many instances, navigability was the test, but in the more and country, as he pointed out, navigability was not always the test; and so here under these general terms, if we leave the Parliament power of regulating trade and commerce, they will be able to regulate everything that carries trade and commerce.

Mr. BARTON. -

All the success they have had in water conservation and irrigation in America has been in face of the power to regulate trade and commerce.

Mr. DEAKIN. -

Yes, but on rivers where the conflict could not occur.
Mr. REID. -
Where the point would not arise.

Sir JOHN DOWNER. -
Where could you have a more eloquent illustration of the reason for the decision in America than the case which has been cited by Mr. Inglis Clark? There it was not a question of navigation, it was a question of manufactures. An interference with stream which interferes with navigation may or may not be an interference with trade and commerce. An interference with manufactures is certainly an interference with trade and commerce. What may we reasonably expect to find? Trade and commerce have to be free. The Parliament has the regulation of trade and commerce. That will deal with everything which is incidental to the well-being of the subject-matter which is included in it. It may be to keep the river navigable, it may be the method in which they think trade and commerce in these particulars may be best preserved. It may be, on the other hand, that it will destroy the navigability. It may be in the best interests of the trade and commerce they want to conserve; but, in every instance, the Parliament of the Commonwealth will have to decide, and from time to time to define, what is the best for trade and commerce. In Adelaide I opposed the clause as it was introduced, because I considered they were words of limitation, and not words of extension, and it is from that same point of view now that I feel that my honorable friend (Mr. Glynn) has moved his amendment. Although I could see no objection to it, it appeared to me that it might in the result work differently from that which he intended. I say, put words broad enough to give the Commonwealth absolute power under this provision—I think they get power to do exactly what they like—and then leave the Constitution to work itself out according to circumstances, which we cannot for a moment foresee. Our vision is very limited, and although we might legislate clearly and definitely on that which we see clearly and definitely, it is quite as impossible for us to forecast the future as to be able to say what the Federal Parliament ought to do. What we have to do is to give them power to do what is best for the Commonwealth from time to time.

Mr. DEAKIN. -
Have you done that?

Sir JOHN DOWNER. -
I believe so.

Mr. DEAKIN. -
I doubt it.
Sir JOHN DOWNER. -

In my opinion, under these regulations providing for trade and commerce, they will have all the powers which they will need to exercise. Originally, if we could have had a definition broad enough, I would have preferred trying to put something in, adding words like my learned friend (Mr. Symon) sought to do, that this should in no case be taken in limitation of powers implied in the phrase "trade and commerce." But a strong disposition has been shown in this committee to do nothing of the kind. The committee has refused to do so. The Premier of New South Wales has told us that he cannot go back to his country and advocate this, if we are too precise in our definition.

Mr. SOLOMON. -

That is not the only subject he has told us that about.

Mr. REID. -

Ah!

Mr. SOLOMON. -

That is not the only subject he has told us that about.

Mr. REID. -

What was the other one?

The CHAIRMAN. -

Order.

Sir JOHN DOWNER. -

I will support the view taken by the leader of the Convention, because I believe that in supporting that view, so far from depriving South Australia of a single right, we give the Commonwealth greater rights than will be given by the definitions which, however perfect we may think them now, may in the end prove to be mere limitations of a general power which the analogy of America shows will flow from the use of the words which are in the Bill.

Mr. REID (New South Wales). -

I think it is most distressing that, after the days of discussion, and the multitude of amendments we have had, we really seem, from the tone of the discussion this morning, to be getting no nearer to a settlement.

Mr. DOBSON. -

Whose fault is that?

Mr. REID. -

As far as I am concerned, I allowed Mr. Glynn's amendment to go, notwithstanding my strong objection to it, simply because I had my own amendment shadowed forth to the Convention; and, although of course there was not a shadow of an understanding with any
member of the Convention, still, from the trend of the discussion at that particular point, I had reason to believe, I think, that the majority of honorable members were prepared to put words in to show that irrigation and water conservation, when the two happen to conflict, must be regarded as the superior claim. I think we had got to that point, and I had no objection to Mr. Glynn's amendment with that understanding. But as matters stand now we are just as far away from coming to the point as ever we were. It is absolutely impossible for me to withdraw my amendment, and I believe the desire of the majority of honorable members is that the interests of water conservation and irrigation throughout Australia should not be left in an uncertain state. Unfortunately, this is very different from any other subject. There are many other subjects where we might adopt suggestions like that made by my right honorable friend opposite, because they would admit of exact definition, but to endeavour to establish an exact definition of a subject of this sort, with rivers unnavigable so many times in the year, is a matter of sheer impossibility; I think every one will admit that. We have, therefore, simply to choose in a broad way between navigation and irrigation. My honorable friend the leader of the Convention admits that, under these general powers, the duty of the Federal Parliament would be only as to navigation. We are charging the Federal Parliament and the Federal Executive with the duty of maintaining the navigation. We have even gone so far as to say that rivers which in fact are not navigable shall be deemed to be navigable in order to extend the jurisdiction for federal purposes over trade and commerce. I am quite agreeable to that federal jurisdiction being given for the purposes of trade and commerce. I am quite agreeable that no state should use its waters for those purposes in such a way as to distinguish between its own citizens and the citizens of another state. But we find the old difficulty staring us in the face: The water which is federal as to navigation, is state as to irrigation. And can we launch this Commonwealth Bill without some expression of our opinions as to which interest is to be the predominating interest when they clash? We hope that they will never clash? We hope that it will be possible, by improving the rivers, to maintain the navigation for all time. That will be within the power of the Commonwealth to do, but facing the uncertainties and the anxieties of the future, we have, as my right honorable friend (Sir George Turner) admits, I think rather against his disposition, to put words in. I submit that the words I have suggested, with the amendments I propose to make, are the only words which can make this right clear. I would be willing to concede, if a concession would make a certainty of anything, but it would only intensify the uncertainty of the case. I say again, if any dispute arises between the states as to these
matters, the High Court is there to deal with it. My trouble is accentuated by the provision in this Constitution—a necessary provision—that where a federal law and a state law are inconsistent the federal law must prevail. If we had a state irrigation law and a federal navigation law, and the state irrigation law conflicted with the navigation law of the Federation, under an express section of the Constitution, the irrigation law would go down.

Mr. BARTON. -
To the extent of the inconsistency.

Mr. REID. -
Of course, only to the extent of the inconsistency. This danger is presented to us again under the powers of the Constitution, that a state may have a scheme of water conservation absolutely necessary to the development of its territory, and for a purpose which all Australia would applaud, but unfortunately it would imperil navigation, and just as the federal power would come along and remove a bridge which had been established by the state across a river, so the federal power might come along and veto that scheme of irrigation, on the ground that it was detrimental to navigation. Now, facing all these troubles as we have to do, I ask the Convention to come to a decision at once, without any further delay. If anything can be added to my amendment which, without creating greater uncertainty, will meet the susceptibilities of my honorable friends from South Australia, I am willing to add it. Perhaps, with consent, my amendment might now be put in this form, with the omission of the words "or citizens" so that nothing shall be done without the authority and responsibility of the state, making the state responsible for what is done. I would gladly add other words which have been suggested, only they do not seem to be accepted as conveying anything. It is useless to add words which will be considered as meaning nothing.

Mr. DOBSON. -
They mean a great deal.

Mr. REID. -
I shall be most happy to add the following words, if they are desired—"subject to any right for the use of any portion of such water for the same purposes possessed by any other state." If my amendment is established, I will propose to add those words.

Mr. DOBSON. -
That cuts away the authority, according to Mr. Clark. When we enter into the bargain, all rights we now possess should be maintained. Those words would give it over to the federal authority.

Mr. REID. -
Then you do not want these words?

Mr. DOBSON. -

No.

Mr. REID. -

Very well, I will meet your views. I wish to amend my amendment so that it will read as follows:-

but no state shall be prevented from using or authorizing the use of any of such waters for purposes of irrigation or water conservation.

The amendment was amended accordingly.

Mr. BARTON (New South Wales). -

I do trust that I shall not be driven into the course of supporting any of the amendments by the attitude of South Australia. I am pleased to see the attitude taken up by the honorable member (Mr. Symon) and the honorable member (Sir John Downer). I have thrown out a suggestion myself, which I think is a very reasonable one, and which has found a good deal of support. The result, of that suggestion would be that what I myself would always adhere to as a proper course would be taken here. An amendment has crept in, not improperly moved or supported by any one, but inadvertently allowed to pass by some of us who ought to have opposed it. I am not inconsistent, as the honorable member (Mr. Holder) suggests, in saying now that I wish to revert to the original position, from which, except inadvertently, I have never departed. The position is this: If South Australia persists in adhering to the honorable member (Mr. Glynn's) amendment, I have a perfect right in honour to hold myself free to support any other amendment. On the other hand, if those honorable members accept the course which I indicated this morning, I shall stand with them in not voting for any limitation or any further definition of the trade and commerce clause. I believe that is the solution which is best for South Australia, for New South Wales, and for the whole Federation, when established. Let us take this course and delay no longer. Let us do something to settle this matter as soon as we can. Why not deal with the amendment of the honorable member (Mr. Glynn) at once? Take the sense of the committee whether it should remain. It will involve my moving a motion to put myself in order. If it does remain, those who wish to see it out, and who would prefer to rely on the trade and commerce clause, will have their hands untied, and will be free to support any amendment which will, in their judgment, prevent the amendment

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of the honorable member (Mr. Glynn) from having a dangerous effect. If, on the other hand, we obtain a reconsideration, and we do away with this amendment, we who think thus will be able to stand with South Australia,
and I hope that a majority of the Convention will say that the trade and commerce clause is sufficient for us, and we will support that. To do that involves us in taking a step, and that step is to get rid of the question which prevents a reconsideration at once of the amendment of Mr. Glynn. I understand I can do that. At any rate, I would be able to do so in New South Wales, and I ask the opinion of the Chairman as to whether I cannot do it now. I propose that the Chairman should leave the chair, report progress, and ask leave to sit again, after an instruction to the committee has been moved and dealt with. When the Convention resumes for that purpose I shall then move the suspension of standing orders in order to move the following motion: That it be an instruction to the committee that they have power to reconsider immediately the amendment in clause 52, carried on the motion of the honorable member (Mr. Glynn). If that motion be carried, I shall then move that Mr. Glynn's amendment be struck out. If I succeed in doing that I shall stand firm to the trade and commerce clause. I intend to make that proposal now in order to obtain some finality. During the luncheon hour there will be an opportunity to consider the proposal.

Sir GEORGE TURNER. -

I would ask the honorable gentleman not to move the motion he has indicated until I make a few remarks.

Mr. BARTON. -

In courtesy, anything that my honorable friend asks for is immediately granted, but I hope we shall be able to take a step at once to deal with this matter.

The CHAIRMAN. -

I have not yet put the motion, so that the honorable member is in order.

Sir GEORGE TURNER. -

I, for one, certainly would not object to any request by the leader to take any course he thinks fit. He has the responsibility; but I want to point out to him and the other members of the Convention that, even although we may omit the amendment of the honorable member (Mr. Glynn) to which he objects, still I feel, and I am sure a large number of honorable members feel, that we must have some declaration in our Constitution that water conservation and irrigation shall be protected.

Mr. BARTON. -

I quite understand that. My course is to move what I have indicated, and those who do not think with me will take the opposite course.

Mr. SYMON. -

This motion will not pledge any of us to support the striking out of the amendment of the honorable member (Mr. Glynn).

Mr. BARTON. -
I beg to move—
That the Chairman report progress, and ask leave to sit again after an instruction to the committee has been moved and dealt with.

Mr. Reid. -
Is this a regular stage at which such a proposition can be made?

The Chairman. -
All that the committee will do will be to report progress, and ask leave to sit again. It will be for the Convention to say whether the standing orders shall be suspended.

Mr. Holder. -
I want to say a few words before the motion is agreed to.

The Chairman. -
The motion cannot now be discussed.

Mr. Barton. -
I am quite willing that the honorable member should have an opportunity of speaking.

The motion was agreed to.

Progress was reported, and leave obtained to sit again after an instruction had been moved and dealt with.

Mr. Barton. -
I beg to move—
That the standing orders be suspended to enable me to move an instruction to the committee.

Mr. Holder (South Australia). -
The point which I wish to submit is this: As it appears to me, it is quite possible now to leave the clause as it was introduced, and to strike out the amendment of the honorable member (Mr. Glynn). After that, we may have the other clause proposed by the Right Hon. the Premier of New South Wales put in. That is, instead of having got nearer to the end, we shall get further away, and shall inflict greater injury on South Australia. I think a much fairer way could have been adopted. I do not want to impute unfairness to the leader of the Convention or anybody else, but it would have been fairer if the Convention had taken a vote on the motion of the Right Hon. the Premier of New South Wales, and after that vote the Convention could have decided what it would keep in - whether it would leave out both on the motion for the suspension of the standing orders, or what it wished to have done. That would be far preferable to this motion.

Mr. Barton (New South Wales). -
I did not take this course with a view of preventing the Convention from
taking any action that honorable members might think wise in their judgment. I simply took this course to bring about some finality. I think I sufficiently explained before, that, while I shall endeavour to have the amendment of the honorable member (Mr. Glynn) struck out, if after that the amendment of the Right Hon. Mr. Reid is moved and carried it would be only fair to reinsert the amendment of the honorable member (Mr. Glynn) in front of it. I think the amendment of the Right Hon. Mr. Reid should be supported only as a definition of the amendment of the honorable member (Mr. Glynn). I hope that will meet the views of the honorable member (Mr. Holder).

Mr. HOLDER. -
That is right.

Mr. LYNE (New South Wales). -
It seems to me we have got rather into a tangle.

Mr. HOLDER. -
Not at all.

Mr. REID. -
You are never in a tangle if you back on what you have done.

Mr. LYNE. -
I am sorry to hear the leader of the Convention say that if the amendment of the honorable member (Mr. Glynn) were struck out he would oppose the carrying of the amendment by the right honorable member (Mr. Reid). The remarks which fell from the Right Hon. the Premier of Victoria showed clearly that there should be some definition in this Bill.

Sir RICHARD BAKER. -
On a point of order I submit that the question before the Convention is the suspension of the standing orders. If the standing orders are suspended then would be the proper time to discuss whether or not an instruction should be given to the committee. Any reasons now given should be reasons as to suspending the standing orders.

The PRESIDENT. -
The honorable member (Sir Richard Baker) is perfectly right, and the honorable member (Mr. Lyne) is out of order. He must confine his remarks strictly to the question.

Mr. LYNE. -
Before you gave your decision, sir, I wished to point out that I was only following the remarks made by the leader of the Convention, and if he was out of order, of course I am.

The PRESIDENT. -
I should probably have ruled the leader out of order if objection had been taken, but I think more latitude is properly allowed to the leader of the
Convention than to other honorable members.

Mr. GLYNN (South Australia). -

The objection there is against the retention of my amendment in the Bill applies with greater force to the suspension of the standing orders. It has been objected that my amendment was agreed to too hurriedly. My answer is that I had my amendment printed for four days, and it was circulated publicly as well as privately among honorable members. It was considered by the majority of the New South Wales representatives, so that the point as to want of consideration absolutely fails. We are now asked to cancel what was done on the motion for the suspension of the standing orders, which ought to be founded absolutely on urgency.

Mr. BARTON. -

I did not take the stand mentioned by the honorable member that his amendment was decided hurriedly.

Mr. GLYNN. -

I did not say that the honorable member (Mr. Barton) had urged that, because he is always perfectly fair and clear, but it has been strongly urged that my amendment was carried without due consideration, and that therefore it should be cancelled. We are now asked to strike it out without proper consideration. That position is utterly inconsistent with the arguments urged against the retention of my amendment.

The motion was agreed to.

[The President left the chair at one p.m. The Convention resumed at two p.m.]

Mr. BARTON (New South Wales). -

In pursuance of the procedure being adopted, in accordance with my former motion, I now beg to move-

That it be an instruction to the committee to have power to reconsider immediately an amendment of clause 52.

Sir RICHARD BAKER (South Australia). -

In seconding the motion perhaps I may be permitted to address a few words to this Convention. The occupancy of the position of Chairman of Committees has not only debarred me from expressing my opinion upon all the important questions which have come before this great meeting, but has prevented me from making a single speech, and a portion of making eighteen speeches upon one point. Therefore, perhaps, without any intention whatever of prolonging the debate, an without any intention, as I shall show by-and-by, of going into the merits of this particular question, I crave leave to make few remarks upon the present position. Now, after having listened, I think patiently for eight days to a very long and able
debate-I have come to the conclusion that if the suggestion of the leader of the Convention (Mr. Barton) is adopted, the battle between South Australia and New South Wales (if I may so express myself) will be drawn slightly in favour of South Australia. I look upon it that the striking out of sub-section (31) as it existed in the Bill when we first met in Melbourne is a distinct advantage—or it might be a distinct advantage—to the colony of South Australia, inasmuch as that sub-section was a limitation of the powers of the Fede... people of New South Wales quite as much as the difficulty of obtaining the consent of the people of South Australia. For years I have laboured in this great cause of federation, for years it has been one of the dearest objects of my life to see Australia united under a Federal Government, and I hope that when I depart hence I may have been amongst those who have contributed to that great result; but what good is it to me for the people of South Australia to consent to the Constitution if the people of New South Wales say "No"? The cause will stand just where it does now. I urge on the Premier of New South Wales that he should take the same position as has been before suggested to him, that he should consider the difficulties of the delegates of South Australia, as well as the difficulties of the delegates of New South Wales. Now, sir, I do not wish to say anything more. I am greatly tempted to give my opinions concerning the merits of this question. But, having heard everything that has been said—everything which I think it is possible to say with effect on both sides, I do not believe that I should advance the cause of federation were I to reiterate the opinions which have been so much better put by other speakers. If there is one thing which has struck me when listening, as Chairman of Committees, to this debate, it is how very true the old proverb is that, although "speech is silver, silence is golden." I am perfectly certain that if some of those honorable members who have, at such great length, reiterated, over and over again, their opinions, were to put themselves in the position of listeners, they would arrive at the conclusion that the oftener they have reiterated their own ideas, the less effective their speeches have become. I hope that this matter will be settled, at all events, so far as the present committee stage is concerned, without any further debate, and any further delay, so that we may after going through the rest of this Bill if necessary reconsider the subject as it will stand if Mr. Barton's suggestion is adopted calmly and deliberately. We can then, if it is thought necessary, amend the Bill in such manner as we may think to be demanded by the interests of the people of the colonies from which we come.

The motion was agreed to.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

The CHAIRMAN. -

As an instruction has been given to the committee that they shall have leave to reconsider the last amendment made in clause 52, I may state that that amendment was one for the insertion of the following words:

For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which, either by themselves or in connexion with other waters, are in fact navigated permanently or intermittently for trade and commerce with other nations or among the several states.

Mr. BARTON (New South Wales). -

I do not propose to occupy the time of the committee at any length. I think it will be seen that it will not be necessary for Mr. Reid's amendment to be moved if Mr. Glynn's amendment be struck out.

The CHAIRMAN. -

I think the proper course will be for the leader of the Convention to move that the last amendment made in clause 52 be reconsidered.

Mr. BARTON (New South Wales). -

In accordance with your suggestion, sir, I beg to move-

That the last amendment made in clause 52 be reconsidered.

In moving this resolution I will say, as I have said before, that Mr. Glynn's amendment is a direction to the High Court in place of that open right of decision which, under the trade and commerce clause, I wish to be confided to the Supreme Court. For that reason I am against it. If it is not struck out I shall have to consider whether I should not vote for the amendment of the Premier of New South Wales as a proper limitation upon it; but if the amendment of the honorable member (Mr. Glynn) is struck out, I do not see any necessity for the amendment of the right honorable and learned member (Mr. Reid).

Mr. GLYNN (South Australia). -

I think that it would be fairer to the committee and to myself, as the mover of the amendment which it is now proposed to strike out, if the amendment of the right honorable member (Mr. Reid) were considered first. It should be considered upon its own merits. At present a sort of threat is held out to us; but it seems to me that this is not the way in which a matter of the most vital importance should be dealt with. I do not think an in terrorem appeal of this sort should be made to us.

Dr. COCKBURN (South Australia). -

I indorse the remarks of the honorable and learned member (Mr. Glynn). His amendment stands upon an altogether higher plane than any dictation
to the Federal Parliament as to the relative importance they should give to navigation and irrigation. It appears to me that there are two sets of decisions with regard to the meaning of the term "navigability," and the committee is in doubt as to which set of decisions will be followed by the Federal Court, the English set, which limits navigability to tidal waters; or the American set, which extends navigability to rivers which are only intermittently navigable. It is of infinite importance to us that the decisions of the Federal Court should run along the lines most suitable to the conditions of this country—that is, the American lines. I think, however, that, unless the amendment of the honorable and learned member (Mr. Glynn) is retained, the decisions of the English courts will be followed.

The CHAIRMAN.

The proposal is that the amendment of the honorable and learned member (Mr. Glynn) be reconsidered. The honorable member can move, as an amendment on the section, that the amendment of the Premier of New South Wales be considered first.

Dr. COCKBURN.

I do not want to have the amendment of the honorable and learned member (Mr. Glynn) reconsidered, because I think it is essential to have those words in the clause. I was pointing out, in support of what the honorable and learned member (Mr. Glynn) said, that there is a great probability that, unless his amendment is retained, the decisions of the Federal High Court will follow, not the lines we wish to see followed—those laid down by the American courts, where the conditions are similar to those existing here but the lines of the English decisions, where the conditions are quite different from our conditions.

The CHAIRMAN.

Would not the honorable member's remarks be more pertinent to the question "That the words be struck out"?

Dr. COCKBURN.

No; because I am contending that things should be left as they are. It is probable that the English decisions will be followed, for this reason: It is contended that uniformity in legal decisions throughout the empire, so far as that may be possible, is desirable. There will still be an appeal to the Privy Council upon questions arising between the states, and unless it is clearly laid down that the Supreme Court of Australia must determine the question of navigability upon the American, and not upon the English precedents, it is likely that whenever an appeal is taken from this court to the Privy Council there will be a reversal of judgment on the plea of uniformity. This is a most important matter, because if there were a reversal of judgment every time an appeal was made, it would be
disastrous. Still, unless it were laid down in the Constitution that the American precedents must be followed, the Privy Council would undoubtedly adhere to the English precedents, and thus we should have a law applied which was altogether unsuitable to our conditions.

Mr. BARTON (New South Wales). -
I simply wish to point this out with regard

to our procedure. If the committee take the amendment of the right honorable member (Mr. Reid) first, which I understand from the Chairman they have power to do, this state of things will arise. I the amendment of the right honorable member (Mr. Reid) is carried, it will be tacked on to that of the honorable and learned member (Mr. Glynn), and if, upon reconsideration, it is thought better to leave out the latter amendment, it will be impossible to reconsider the amendment of the right honorable member (Mr. Reid) without going out of committee to get leave from the House to do so.

Mr. REID (New South Wales). -
I have had an opportunity of consulting some of the representatives of New South Wales, and I really feel so great a desire to avoid, if possible, the raising of questions which create strong feeling that I am quite willing at the present time-reserving to myself the right if the amendment of the honorable and learned member (Mr. Glynn) is kept in to move my amendment afterwards-in order that the committee may for the present get away from this business, to withdraw my amendment. I am anxious to take a course which will commend itself to the committee as relieving our friends from South Australia of difficulties which are not absolutely inherent in the nature of the case. Do what we will, we are bound to have difficulties; but I am sure that we are anxious to remove as many of these difficulties as possible. If I find, after consultation with my New South Wales colleagues, that we can rest satisfied with the attitude of the honorable and learned member (Mr. Barton), I am so desirous of maintaining an attitude in harmony with his, that I shall go the length of withdrawing my amendment.

Sir GEORGE TURNER. -
Do I understand that the honorable and learned member withdraws his amendment temporarily?

Mr. REID. -
Yes; and I shall be very glad if I can be convinced that I should withdraw it altogether. I am not in that state of mind now; but I should be very glad to be brought to that state of mind.

Mr. LYNE (New South Wales). -
I understand—I want to be clear upon this matter—that the Premier of New South Wales withdraws his amendment for the time being, and that if the amendment of the honorable and learned member (Mr. Glynn) is not negatived he retains the option of moving it later on.

Mr. REID. -

I retain that option in any case. Do not let there be any misunderstanding about the matter.

Mr. LYNE. -

I gathered that the right honorable gentleman is anxious to consult with other members of the New South Wales representation to see if an arrangement can be made which will prevent the necessity for at any time moving it again, but that he holds the right of moving it again if he thinks fit.

Mr. ISAACS. -

We had better settle the question now, since we have been discussing it so long.

Mr. LYNE. -

I should like to see the amendment withdrawn for the present, in order that we may know what course will be taken in regard to the amendment of the honorable member (Mr. Glynn), and whether an arrangement can be made to prevent the necessity of moving the amendment of the right honorable member (Mr. Reid) again. If no such arrangement can be made, the amendment must, in justice to the colony which we represent, be moved again.

Mr. DOUGLAS (Tasmania). -

As I understand the position of affairs, it is this: That the right honorable member (Mr. Reid) withdraws his amendment, and that the honorable and learned member (Mr. Glynn) withdraws.

Mr. BARTON. -

The honorable and learned member (Mr. Glynn) will not withdraw his amendment, but we shall try to knock it out.

Mr. DOUGLAS. -

It will come to the same thing. The right honorable member (Mr. Reid) reserves to himself the right to move his amendment later on, but I hope that we shall have no more of this nonsense, and that we shall come to a final vote now. We have been talking about federation, but what has taken place reminds me of the federation of Cain and Abel. We have had one colony, the bigger colony, trying to slaughter a smaller colony. We have been sitting here now for a good many days at the expense of the communities which we represent,
and the rights of both South Australia and New South Wales are clear and distinct. I say, let these colonies go to the Federal Parliament and fight out this matter there instead of doing it here, and let us come to a vote straight away instead of continuing this humbug.

Mr. KINGSTON (South Australia). -

I rise for the purpose of ascertaining, so far as I can, the position of the different colonies in regard to this question. I understand that the right honorable member (Mr. Reid) says, on behalf of the colony which he represents, that it is possible that he may not move his amendment again, but that if he continues in his present mind he will move it. I understand, further, from the utterances of my right honorable friend from Victoria, that it is his intention to propose an amendment of the same kind, so that in any case we shall have to fight against this proposal, whether it is moved by the right honorable member (Mr. Reid), or by a representative of Victoria. Under these circumstances, is it tolerable that we should be asked to abandon the attitude that we have taken up?

Mr. REID. -

No one has asked you to do that.

Mr. KINGSTON. -

I have never intended to abandon it, but I want the position made clear.

Mr. ISAACS (Victoria). -

Suppose, upon reconsideration, the amendment of the honorable and learned member (Mr. Glynn) is struck out, and that the amendment of the right honorable member (Mr Reid) is afterwards carried.

The CHAIRMAN. -

I understand that the right honorable member (Mr. Reid) is not going to move his amendment now.

Mr. ISAACS. -

But I understand that it will be quite competent for him to move it immediately after the amendment of the honorable and learned member (Mr. Glynn) is disposed of, if he chooses to do so?

The CHAIRMAN. -

He has asked leave to withdraw it.

Mr. ISAACS. -

But if the right honorable gentleman moves his amendment, and it is carried, will it be necessary to get leave from the Convention to again consider the amendment of the honorable and learned member (Mr. Glynn)?

The CHAIRMAN. -

Certainly. The committee has obtained leave to reconsider a decision which they have arrived at, and once they have reconsidered that decision
they cannot consider it again without a second time getting leave from the Convention.

Mr. KINGSTON (South Australia). -

The only question I am going to ask is—Would it not be competent, after the discussion of Mr. Glynn's amendment, for the Attorney-General of Victoria to move such an amendment as Mr. Reid has moved?

The CHAIRMAN. -

Certainly.

Mr. REID. -

But I have no intention of doing so, only on the recommittal of the clause.

Mr. KINGSTON. -

I said the Attorney-General of Victoria—I did not say the Premier of New South Wales.

Mr. BARTON (New South Wales). -

I take it that this is the position of affairs: Supposing Mr. Glynn's amendment is struck out, Mr. Reid having first got permission to withdraw his, there may be a motion for recommittal or reconsideration of the clause. Upon that, Mr. Reid would have an opportunity of moving his amendment, but at that stage Mr. Glynn would also have the opportunity of moving his amendment again. So that, after all, the danger which Mr. Kingston foresaw to the interests of his own colony would not arise.

Sir JOHN FORREST. -

We should have the debates all over again, though.

Mr. BARTON. -

I do not think so. I think that the statistics given by my right honorable friend (Sir John Forrest) this morning would probably prevent any repetition of the debates. I think that the statement I have just made makes the matter perfectly clear, and that we may as well proceed to deal with Mr. Glynn's amendment.

Sir GEORGE TURNER (Victoria). -

I hardly agree with the leader of the Convention with regard to the position of affairs at the present time. We were discussing Mr. Reid's amendment, when we were suddenly stopped, and reported progress. Then we were directed to consider another question.

Mr. BARTON. -

Not directed, but told that we had power to consider it.

Sir GEORGE TURNER. -

Yes, we were told that we had power to consider another question. We desire now to reconsider that other matter; but we have before us Mr.
Reid's amendment, and we cannot very well consider the question of striking out Mr. Glynn's amendment until Mr. Reid's amendment is withdrawn.

Mr. BARTON. -
You will have to give Mr. Reid leave to withdraw.

Sir GEORGE TURNER. -
Yes, in order to enable Mr. Glynn's amendment to be dealt with. But, as soon as Mr. Glynn's amendment is dealt with, without any recommittal at all, it is perfectly competent for Mr. Reid, or any other member of the Convention, to move the amendment that we were discussing at the time we reported progress.

Mr. BARTON. -
There would have to be a motion to reconsider or recommit, because, supposing Mr. Reid gets leave to withdraw, and Mr. Glynn's amendment is struck out, the consideration of clause 52, for the present time, is at an end.

Sir GEORGE TURNER. -
Why so?
Surely not.

Mr. BARTON. -
Because the question that would be put is that the clause as amended be agreed to.

Sir GEORGE TURNER. -
And then somebody could move a fresh amendment.

Mr. BARTON. -
But I take it that there is no desire on the part of anybody at this stage, to move another amendment.

Sir GEORGE TURNER. -
This is the position, as I understand it, and I would like it to be clearly understood by the Convention: As soon as Mr. Glynn's amendment is dealt with, it ought to be competent, and it seems to me that it is competent, for Mr. Reid or anybody else to move an amendment in the terms of Mr. Reid's present amendment.

The CHAIRMAN. -
It is competent for any member of the Convention to move an amendment at the end of the clause which is not inconsistent with the provisions of the clause as they have been passed.

Mr. WALKER (New South Wales). -
I am one of those laymen who have been waiting very patiently for the lawyers to finish what they have to say on this subject. It seems to me that, in justice to the South Australians, we ought to vote for the retention of Mr. Glynn's amendment. Then I would vote for Mr. Reid's amendment. It
appears to me that after six and a half days' discussion we will be precisely as we were if we carry only Mr. Glynn's amendment.

Mr. SYMON (South Australia). -

It seems to me that on this point of procedure we are getting into a fog.

The CHAIRMAN. -

No; the position is perfectly clear.

Mr. SYMON. -

What is the position?

The CHAIRMAN. -

Mr. Reid has asked leave to withdraw his amendment. Any one member can object, but if leave to withdraw is given, then the question will be that the amendment of Mr. Glynn be reconsidered. If that is disposed of, I shall put the question that the clause as amended stand part of the Bill. On that question any honorable member can move any amendment at the end of the clause not inconsistent with the clause. There is no difficulty about the position. It is perfectly clear.

Mr. Reid's amendment was withdrawn.

Mr. Barton's motion was agreed to.

Mr. BARTON (New South Wales). -

I beg to move that the following words, inserted in the clause, be struck out:

For the purposes of sub-section (1), waters shall be deemed navigable for trade and commerce which, either by themselves or in connexion with other waters, are in fact navigated permanently or intermittently for trade and commerce with other nations or among the several states.

Mr. KINGSTON (South Australia). -

I trust that the words of Mr. Glynn's amendment will be allowed to remain, and the reason I take this position is that it simply makes what we are told is the position under the Constitution perfectly clear. I appeal to the leader of the Convention to say whether he is treating all the representatives of the various colonies with that liberality and fairness with which he generally treats us? I would ask the honorable member to consider what is the position? We all attach the greatest weight to his every word and utterance, and I shall continue under all circumstances to do so. I have been very much impressed with what I have heard from him at a variety of times, and I was to a very considerable extent guided in my action in connexion with this matter by what he said as regards what would be the construction put on this Constitution without the words of Mr. Glynn's amendment. What we have done under existing circumstances is
simply to put in words which make it abundantly clear that the construction for which he has so ably contended shall be the construction accepted by the Federal Courts. That is all we have done, and nothing more. And I ask him what reason can there be for altering his attitude in reference to it on any other clause of the Bill? He has resisted us time after time in our efforts to define the relative rights of the colonies with reference to irrigation and water conservation. Are they to be decided by the Inter-State Commission, the Federal High Court, or the Federal Parliament? But he has told us practically "Don't be alarmed, you have no cause for fear, this is the meaning of the Bill." Well, we put that meaning in so many words, and he did not raise the slightest objection to the insertion of those words. They are words which were practically borrowed from the amendment of the Attorney-General of Victoria (Mr. Isaacs), and to which no exception was previously taken by the leader of the Convention in the least, or by those who were more conspicuous in acting with him. Those, words were accepted by the Right Hon. the Premier of Victoria also. All we have done is to make that clear which the leader of the Convention said with great force was previously clear, and, under these circumstances, I ask him why should he now alter his attitude? Something has been said about the difficulty we shall have in recommending this Constitution to our respective colonies. I do not want to exaggerate those difficulties in the slightest degree, but I can assure the Convention that if I go back to my colony and tell them that the construction of the Constitution we have framed at this Convention will protect them in connexion with their rights, they will be sure to ask - "What authority have you for that statement?" I shall be able to say - "We have the authority of the leader of the Convention." They will further desire to know - "Did everybody agree with his opinion?" I shall have to reply "No." They will then ask - "Were they high authorities who differed from the leader of the Convention?" and I shall have to say - "They included the Right Hon. the Premier of New South Wales." Their rejoinder will obviously be - "Under these circumstances, why didn't you make it perfectly clear?" My answer to that must be - "We did make it perfectly clear. We put into the Constitution, so that all who run may read, the very principles which the leader

of the Convention told us would be the conclusion which the High Court would come to on the subject." And the rejoinder I shall be met with will be-"Why were they not kept there?" To which my answer will have to be-"Because the leader of the Convention suggested that those words should be struck out." So that the subject will be left in doubt and difficulty. Now, I venture to submit that a subject of such vital importance, to which we
have devoted six days of discussion, ought not to be left in doubt and
difficulty. We ought at least to know what conclusion we have arrived at. If
we cannot tell amongst ourselves, if it is going to depend on the following
of American cases, which really have no binding effect on the court that
we propose shall judge and determine this question, we shall be left in a
sort of slough of difficulty, from which, as Constitution builders, we ought
to do our very best to extricate the future people of this Federation.

Mr. BARTON (New South Wales). -

I suppose I am called on at once to answer my honorable friend as to why
I object to this amendment, not having objected to it when it was first
carried. Well, I have answered that question several times in advance. I
told the Convention—and I have not the least doubt my word to this
Convention is trusted—that I did not object to this amendment at the time,
because I did not fully grasp the purport of it, and that, after more fully
considering it, I now understand it in a different way. Now, there are two
things which arise on this amendment. First, I think one objection to it is
that, for a certain purpose, it takes out of the hands of the High Court the
decision of what is or what is not a navigable river, and I say that it is only
consistent with the attitude I have maintained throughout, with regard to
the trade and commerce clause, that I should leave the ascertainment of
what is a navigable river entirely to the High Court. But this amendment
substitutes a declaration for the ordinary scope of the High Court in respect
of part of its powers of adjudication, and to that extent I have objected to
the amendment ever since I grasped its purpose. There is another objection.
The amendment tends to introduce further obligations. While, on the one
hand, it substitutes a declaration for the ordinary powers of adjudication of
the High Court as regards rivers, it introduces another factor which may to
a large extent invoke further and more difficult questions for the High
Court to adjudicate on, and that is in the use of the word "waters." Mr.
Glynn proposes that waters shall be deemed navigable under certain
circumstances. What "waters" does that mean? In the first place, does it
include lakes? Because, so far as a lake within a state is not part of the
highway of a river, the lake is entirely within the jurisdiction of the state,
and is not, on the subject of navigation, under the laws of the
Commonwealth, unless you make it so by an amendment of this sort.
Again, the operation of the word "waters" is very difficult in another way.
There is not only the question as to whether it means "rivers" or not. If you
said "rivers shall be deemed navigable" under certain circumstances you
would have a clearer expression than you have in using the word "waters,"
because "waters" may be deemed to include the whole course of the river,
and if the river is navigable in part only, we may increase the element of
doubt and difficulty of judicial interpretation by inserting limitations and declarations like this.

Mr. ISAACS. -

I think I had the word "rivers" in my amendment.

Mr. BARTON. -

Yes. To sum up my remarks, I my say, first, as to the question of consistency, I have several times explained that it is quite consistent on my part that I should rely on this as a principle, that the High Court shall be deemed the arbiters who are to state what are, and what are not, navigable rivers, and how far they are navigable. The whole of that question is left to the High Court in general words, but if you impose these limitations, you will remove so much of the powers of the High Court from them, and the present amendment, which covers a lot by the use of the word "waters," may impose on the High Court difficulties which were never intended to be brought before them under the trade and commerce clause. So that, whether I look at the amendment one way or the other, I have an objection to it, and I think that it is only right that I should be relieved of all charges of inconsistency in maintaining the ground of principle that I took at the beginning—that is, that the trade and commerce clause is enough for us, and that the High Court should at all times, when the question arises, decide what is a navigable river.

Sir EDWARD BRADDO (Tasmania). -

I think we might have come to a decision, and a satisfactory decision, on these matters, within five minutes or so, if the pronouncement of my right honorable friend (Mr. Reid) had been more definite in its terms—if he had given an unqualified engagement to withdraw his amendment.

Mr. REID. -

Good gracious! that is the very thing I would not do, not for you or a thousand Conventions. Really, upon my word, you are driving it pretty hard.

Sir EDWARD BRADDON. -

It is that unqualified promise to withdraw the amendment of Mr. Reid which would justify the supporters of Mr. Glynn's amendment in agreeing to its withdrawal now.

Mr. REID. -

Very well, you must not calculate on it.

Sir EDWARD BRADDO. -

Then I shall vote for Mr. Glynn's amendment.

Mr. GLYNN (South Australia). -
In answer to Mr. Barton, I did not frame the definition of my amendment until after the most ample deliberation, and after having submitted it to two or three New South Wales representatives for their opinion. Some of the objections raised by members of the Convention representing New South Wales were covered by a word changed by the leader of the Convention. In the first instance, I used the word "navigated" in the original amendment; not "navigable." My reason for doing so was this: I thought that there might be a river in New South Wales which was perhaps navigable for a mouth or two in the year, but never navigated, and as I did not wish to bring such a river under the federal jurisdiction, except so far as subsection (1) would do so, I used the word "navigated instead of "navigable."

Mr. BARTON. -
I am inclined to think, on second thoughts, you were right there, too.

Mr. GLYNN. -
I certainly think so. In making those alterations I only wanted to meet the just sense of the committee, regardless of whether the alterations were suggested by representatives of New South Wales or the Attorney-General of Victoria. I am still willing to agree to any modification which will not frustrate the object I have in view, if the terms of my amendment are considered ambiguous, which, after a careful examination of the American decisions, I do not think they are. My amendment was framed to cover what some might consider the prejudices of New South Wales as regards possible encroachments on rivers which do not form, either by themselves or by their connexion, navigable rivers-channels of commerce. Therefore, I allowed my amendment to be changed. In the first instance, I did not use the word "waters," but the word "river," as follows:

A river shall be deemed to be navigable if at times its waters, by themselves or their connexion with other waters, form and are used as a continuous channel for commerce with other nations or among states.

In that amendment the word "river" is the dominating or governing factor of the whole proposition-it is the substantive which covers what is predicative of it afterwards. In order to meet the views of the representatives of New South Wales

I altered my amendment into the form in which I have submitted it to the Convention. I will call honorable members' attention to another point of the question. It is evident that, with a care and anxiety which does them great credit, some of the representatives of New South Wales have striven to drag the Darling out of the federal control by hook or by crook.

Mr. LYNE. -
You are trying to drag it in.
Mr. GLYNN. -
Look at clause 95. Does that clause give to the state or the federal authority the jurisdiction over the Darling?

Mr. WISE. -
It is certainly our desire, but you extremists make it almost impossible for us to take federal action.

Mr. GLYNN. -
At Adelaide the discussion was not at all up to the point of seriousness which the importance of the question deserves. The honorable member (Mr. Wise) himself, by two interjections, said that what was wanted was that a definition should be put in, but now he changes to the other side of the contest. Conduct of that sort from members of the Convention justifies the statement that was made by a great statesman—that a politician, instead of being a pillar of state, is a weathercock, exalted for his levity and versatility, and of very little use, except to indicate the shiftings of every fashionable gale.

Mr. REID. -
We do not understand that.

Mr. GLYNN. -
I have great hope of passing this amendment, so long as the right honorable gentleman does not understand it. He is evidently falling back, however, on his original intention to cut down without any definition the scope of sub-section (1). It is his manifest intention to tie the hands of the Federal Judicature, whether there is a definition or not, as to the extent they can go in the application of American decisions, and to do so by direction beforehand that they are not to go the length of the Federal Judicature in America. I certainly a that this amendment shall be retained. I honorable members look at clause 95, they will find that the Darling does not come within the scope of the Judicial Commission at all—that the river question may be reopened there if this amendment is not put in. One of the Parliaments—South Australia—has asked for an amendment of this clause, to make the whole arterial system of the rivers come within the jurisdiction of the commission. I will press the amendment to a division. It is a fair compromise, and it is one which, I am sure, notwithstanding the opinions of the delegates from New South Wales, will receive very large support in New South Wales itself.

Mr. BARTON. -
Might I mention that if you leave the matter, as it is left, to the operation of the trade and commerce sub-section, I have a strong desire to take away the limitation with reference to rivers.

Mr. GLYNN. -
All this shows the necessity for careful consideration. If clause 95 were passed in its present form, it would completely abrogate the existing rights of South Australia.

Mr. MCMILLAN. -

It was carried with reference to sub-section (31) as it then existed.

Mr. BARTON. -

It was all right when sub-section (31) stood, but it will have to be reconsidered now.

Mr. GLYNN. -

I understand the reason why it was put in, but it certainly does not fit in with the wisdom of the committee at present. As I always prefer to hear my own opinions expressed by some other people, the committee will excuse me for quoting the final paragraph of an article which appeared in the Sydney Daily Telegraph of Wednesday last. That article seems to have been written with a sort of instinctive knowledge that Mr. Reid's amendment was to be tabled.

The CHAIRMAN. -

It would not be in order for the honorable member to quote any newspaper comments on our proceedings.

Mr. GLYNN. -

This is a comment on the general policy of the federal movement. Of course, it could not possibly be a comment on a thing which had not yet taken place, although, as I said, there seems to have been an almost instinctive knowledge that Mr. Reid's amendment was to be submitted. The article says-

The contention that the Darling should be used exclusively for irrigation, and not treated as a navigable river, would not only deny to South Australian and Victorian traders the right of using the northern arm of the stream above Wentworth, but it would deprive the lower portion of that stream of part of its natural water supply. To the greater part of the river, which flows from the Queensland border to the Southern Ocean, New South Wales would have exclusive rights, simply because at Wentworth its name was changed from the Darling to the Murray. We may take it for granted that no Federation would permit this, nor is there any purpose consistent with federation for which we require it. The right of New South Wales to conserve the overflow waters which come down in flood time for irrigation is one thing; the right of stopping the normal flow of the river is another. That the latter right would be any use to this colony, even if we had it, is doubtful, since it is on the conservation of the waste water that
irrigation depends, not on the depletion of the navigable channel. This channel must be kept navigable by some one, and the proposal to put the responsibility on to the Federation, instead of being one to "rob us of our river," is really one to relieve the colony of a burden. The Federal Government would bear the expense of a work that would otherwise devolve upon New South Wales. Whether the Federation should carry out its control of the rivers by an Inter-State Commission, as proposed, or otherwise, is only a question of secondary importance. An institution of this kind to assess the different states in proportion to their interest in the rivers might be found useful or even necessary, but that is a matter which could safely be left to the Federal Parliament. The thing that the Convention has to do is to provide a Constitution under which the navigable channels of federal rivers shall be federal property. What the Federation may do with them will then be for itself to determine.

Mr. LYNE. -
That is an article from the foreign trade paper.

Mr. GLYNN. -
The honorable member (Mr. Lyne) will again introduce his local politics into this national question. I only know this newspaper as a New South Wales organ, and it is contrary to the spirit of federal broadness with which this debate should be conducted to introduce local politics. I would ask is this question a South Australian question alone? Do not honorable members think that there is a great deal of force in what Mr. Holder has said, that the interests of Victoria are quite as much concerned as those of South Australia? Do they forget what was, said in Mr. Mathieson's evidence and in Mr. Pendleton's evidence to the Finance Committee, that by the destruction of the river traffic an investment of £200,000 in Melbourne would be destroyed? Mr. Pendleton also said that, whereas some of the trade goes to South Australia, a great deal of it goes to Swan Hill and Echuca, and that the bulk of the trade goes through Melbourne to be shipped to Europe. This has been raised as a question between South Australia and New South Wales, whereas the interests of Victoria are quite as much bound up in this amendment as those of South Australia. I ask that the amendment should be retained. It cannot be said to have been hastily considered, as it was two days in print, and it is an amendment which, without putting any limitation on the federal powers of the Judiciary, or making any extension of the powers of the Legislature, will satisfy the reasonable desires of South Australia.

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

The committee divided—
Ayes ... ... ... 22
Noes ... ... ... 22
AYES.
Berry, Sir G. Isaacs, I.A.
Braddon, Sir E.N.C. Kingston, C.C.
Clarke, M.J. Lee Steere, Sir J.G.
Cockburn, Dr. J.A. Peacock, A.J.
Dobson, H. Quick, Dr. J.
Douglas, A. Solomon, V.L.
Gordon, J.H. Trenwith, W.A.
Grant, C.H. Turner, Sir G.
Hackett, J.W. Walker, J.T.
Higgins, H.B.
Holder, F.W. Teller.
Howe, J.H. Glynn, P.M.

NOES.
Abbott, Sir J.P. Lewis, N.E.
Briggs, H. Lyne, W.J.
Brown, N.J. McMillan, W.
Carruthers, J.H. Moore, W.
Crowder, F.T. O'Connor, P.E.
Deakin, A. Reid, G. H.
Downer, Sir J.W. Symon, J. H.
Forrest, Sir J. Venn, H. W.
Fraser, S. Wise, B.R.
Hassell, A.Y.
Henry, J. Teller.
Leake, G. Barton, E.
The CHAIRMAN. -
In what I conceive to be the interests of the federation of these colonies, I vote with the Noes.
Question so resolved in the negative.
Sir GEORGE TURNER (Victoria). -
I desire to ask Mr. Reid whether he proposes to move the amendment standing in his name?
Mr. REID (New South Wales). -
In the interests of the subject of the amendment, I made up my mind to take a certain course, because I found the New South Wales delegation split up, and, at least half the delegation prepared to vote against me. I do
not, as a rule, press things at the wrong time, when I am sure to be defeated, and, under the circumstances, I felt it necessary, in the interests of the amendment, that it should be postponed. I hoped also that I should find some method of reconciling my present fears with the policy of the leader of the Convention. I have a genuine desire, if I can, to do that, but if I find it impossible to bring my mind to the same attitude as that of Mr. Barton in the matter, it will be my positive duty to re-open the question at a later stage. The proceeding will then be a simple one. Those honorable members who are not in favour of carrying my amendment can refuse to recommit the Bill, and we need not have another ever-lasting river discussion. The question will simply be, shall we go into committee again in order to deal with Mr. Reid's amendment? If there is a majority against the amendment of which I gave notice, they will say no. I think I have taken a course in the interests of public business as well as in the interests of federation. Of course, if honorable members opposite are determined to move the amendment now, I will vote with them, but I do suggest to them that it would not be in the interests of the cause we all have at heart to do so at the present stage.

**Sir GEORGE TURNER (Victoria).** -

I regret I cannot agree with the right honorable member. It is evident from the way in which he puts the matter that hereafter we shall not get a straight-out vote on the question. He says that those who desire to defeat the amendment will be able to refuse permission to recommit. Many honorable members might reconcile it with their consciences to vote against the proposal to recommit, whilst they would not be prepared to vote against a straight-out amendment. In the interests of the producers a decision ought to be come to one way or another. We have discussed the question long enough, and we need not re-open it, but we should have it on record whether the Convention is prepared to put the interests of navigation before the interests of the producers.

**Mr. ISAACS.** -

It is a vital matter.

**Sir GEORGE TURNER.** -

It is, and we should have a decision upon it. I beg, therefore, to move-

That the following be added to the clause:-That no state shall be prevented from using or authorizing the use of any of the waters of navigable rivers for purposes of irrigation or water conservation.

This is Mr. Reid's amendment, with a slight alteration, necessitated by the fact that Mr. Glynn's amendment on which it was based has been struck out. If it is carried it will affirm the principle, and it will be necessary at a later stage to add words to define navigability.
Mr. DEAKIN (Victoria). -

I am entirely with the Premier of Victoria in the object that he proposes to gain by the amendment, although I am in doubt as to whether this is a time at which the right honorable member will obtain that support for it, or some modification of it, that it really deserves. The whole issue can now be summed up in the two antithetical propositions which have been submitted. The proposal to leave sub-clause (1) as it stands appears to impose upon the Federal Government and upon the Federal Parliament the obligation of dealing with those questions which affect the rivers of Australia solely with a view to trade and commerce, or, in other words, solely with a view to the carriage of goods and the navigability of those rivers. The amendment of the Premier of New South Wales, which has now been adopted, with a verbal variation by the Premier of Victoria, means that exactly the reverse principle of interpretation would apply, and that irrigation would acquire paramount importance in all places, at all times, and under all circumstances, in any interpretation which the High Court would feel called upon to give in any matters dealing with the rivers of Australia. These two views represent the opposite poles, and yet it is quite possible, having regard to the growth of Australia, to the inevitable change of circumstances, and to the vast increase of knowledge of our water resources-leading us as we may hope to a wiser use of our water than we have made in the past-that at some time, and at some places, navigation would be the paramount interest, whilst in the same places, at a later stage, and in a more developed condition of the country, irrigation would be paramount. It may well be that in one part of the stream where navigation is being maintained without loss to irrigation, navigation should always remain the paramount interest, and it also may well be, and must be in the majority of cases, that irrigation will gradually more and more and finally everywhere become the paramount and indeed the sole consideration. It seems to me that either the proposal to retain the clause as it stands or the proposal which has now been fathered by the Premier of Victoria may bear harshly and injudiciously upon the future river development and improvement of Australia. I would suggest to both parties-to those who, like the representatives of South Australia, feel that navigation is for the time being their chief interest, although they recognise the future of irrigation and to the representatives of Victoria and New South Wales, who hold that in most parts of the country irrigation is now the great interest, and navigation is secondary if not tertiary-that a sub-section might be framed which would allow of the decision as to which should be the
paramount interest being determined on the facts of each case at the time. There are grave difficulties. In making this suggestion to-day to a number of honorable members, in order that it might be thought over, I put it before them in this rudimentary condition, and have not yet endeavoured to elaborate it into a form of words.

Mr. SYMON. -
Do not you think the High Court would take this into consideration?

Mr. DEAKIN. -
I am coming to th

Mr. WISE. -
The honorable member forgets that sub-section (8) of clause 73 gets over all that difficulty.

Mr. DEAKIN. -
The issue need not arise between states.

Mr. WISE. -
Yes, it would, if the legislation of one state injured the other.

Mr. DEAKIN. -
That may not be the case.

Mr. WISE. -
Then there is no difficulty.

Mr. DEAKIN. -
There may be a very great difficulty. Suppose that either through individual action or through state action a question arises as to the diversion of water in the state, and that the High Court has to consider whether that diversion is justifiable, what would be the criterion which the court would apply It would look to this Act, and would say-"What we are charged to do is to maintain the trade and commerce of the Federation. That is the first principle of the Federation, and that can only be maintained by navigation. This proposed diversion, good and useful in itself, perhaps enormously more valuable than navigation, is not one of the matters referred to us; it is not a matter which we are directed to take into account, and consequently, although we recognise that, on the facts, the diversion either for conservation, or what we call in Victoria stock and domestic purposes, or for irrigation-although we recognise the enormous importance of this work, yet, as it may interfere with navigation, we are bound to hold that it cannot be carried out."

Mr. DOBSON. -
It is a very narrow view.

Mr. DEAKIN. -
It may be said that it is a very narrow view, and it is. When the difference is pointed out between our circumstances and the circumstances of America, in which, when a Constitution closely resembling this as regards the sub-clause regarding commerce was first formulated, irrigation was not foreseen, we may well doubt whether a Constitution which has worked well in east of that country, but which worked very unsuitably in the west the best for us to adopt without any reference to the uses of the water. Can it be left without even a reference in the Constitution. If it be necessary, I will go to the full length with my colleague (Sir George Turner); but take this opportunity to suggest that if we had time to consider the situation, we should find it possible to introduce a sub-section which would make it clear to the High Court that it was called upon to consider questions of irrigation and water conservation as well as questions of navigation; and on the facts—that is, on the evidence as to what the state of things was at the time—as to what the interest of that particular part or the whole of Australia demanded—to decide which should be the paramount user-navigation or irrigation.

Mr. KINGSTON. -
Is not that a question of policy?

Mr. DEAKIN. -
Not wholly; it is a question of fact. The broad question is what should be done which will be most advantageous to those who use the water for one purpose or the other. It narrowly approaches a question of policy, but there is a dividing line. The question as to which is the most meritorious use of the water at that particular time and place is purely a matter of evidence. The quantity of water available, the time in the year for which it is available, the amount of goods to be carried upon it, and a variety of circumstances, are all matters of fact. On the other hand, as to irrigation, the quantity of water, the suitability of the land for irrigation, the means of transport for produce, are pure questions of fact. It is generally admitted that the boundary dispute between Victoria and South Australia is one of the matters which might be remitted to the Federal Court. Is not that a question of policy? Has not that been an important question of policy in the past?

Mr. KINGSTON. -
No, it is a legal definition of a parallel of latitude.

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Mr. DEAKIN. -
Many will think that it involves a question of policy.

Mr. OCONNOR. -
It would be the construction of a document.

Mr. DEAKIN. -

No. The document is clear, but the difference is as to the interpretation. Take the interjection of my learned friend (Mr. Wise), that every dispute between states may be referred to the High Court. If the word "matters" embraces every dispute which occurs between states, it may easily be that matters of policy may be referred to the High Court.

Mr. ISAACS. -

Railway rates.

Mr. LYNE. -

It cannot be that, because you decline to allow railway matters to be referred.

Mr. DEAKIN. -

I do not quite follow the interjection at the moment, nor is it necessary for me to do so. I say, in reply to those who urge that such an issue may possibly be an issue of policy, that issues which may embrace, at all events, quite as much policy may possibly have to go before the High Court.

Mr. WISE. -

It has been held in the United States to mean "all controversies, whatever may be their nature or subject."

Mr. ISAACS. -

Providing that they can show a law for it.

Mr. OCONNOR. -

Provided that they are capable of judicial decisions.

Mr. ISAACS. -

The courts cannot legislate-they interpret the laws.

Mr. DEAKIN. -

I take it that this question as to which is to be the user of the water at any given place is a question of fact, a question of evidence.

Mr. SYMON. -

You could not possibly settle that in the Constitution.

Mr. DEAKIN. -

I do not propose to try to settle it in the Constitution. What I say to many of my fellow representatives who are anxious to leave the decision of the question of the use of the rivers to the High Court is that the mere fact that a question of policy may be involved need not deter us from leaving to that court the determination of the question which should be the paramount user of the water at the particular time.

Mr. WISE. -

They can do that without our putting in express words.
Mr. DEAKIN. -
Possibly; but there can be no harm in adopting the suggestion of Sir George Turner, who desires to carry confidence to the settlers in the western parts of New South Wales, and perhaps in Victoria.

Mr. MCMILLAN. -
All your argument has been against the honorable member as far as I can follow you.

Mr. DEAKIN. -
If my honorable friend will examine the report of my speech tomorrow, or give me an opportunity privately to expound my views, I will convince him that my proposition is not only consistent with what I have hitherto advocated, and with what Sir George Turner suggests, but is also one on which the representatives of New South Wales and South Australia may meet. It is a proposition which need carry no alarm to either. It is that we should put in the sub-section such words as would indicate to the High Court that in dealing with any questions arising out of the first sub-section so far as they affected rivers, it should be competent and proper for the court to consider the question as to how far any proposal in regard to the streams would affect irrigation or water conservation and distribution for stock and domestic purposes, as well as navigation.

Mr. WISE. -
We have been struggling for a week to find these words.

Mr. DEAKIN. -
Most honorable members have been trying to do a great deal more; they have been trying to define the user beforehand, so as to bind the court to take either navigation or irrigation as the paramount use of the water. The form of words I suggest would leave it open to the court to decide which should be paramount—irrigation, water conservation, or navigation.

The only objection to that proposal is that it involves, as it undoubtedly does in some aspects, some questions which may be termed questions of policy. Nevertheless, they are questions which may be settled as questions of fact. If there is that confidence in the High Court which honorable members say they have, why should they fear to allow that body to decide which, in the circumstances of a particular place, or area, should be the paramount user of river water? If that power be already vested in the court, as some think, why object to put it in the forefront of the Constitution, in order to remove the objection which may be entertained by the agricultural population, naturally timorous, by their training compelled to be cautious, and liable at all times to take a depressed view of their own possibilities.
Why should we refuse to reassure them if, by so doing, we commit neither South Australia to forfeit any claim she thinks she has to the water, nor New South Wales to forfeit any control she has over her Darling streams, but place it in the power of the High Court to decide, on the question being raised, which should in a particular place or time be the paramount user of the water?

Mr. WISE. -

The facts are so varied and so uncertain that every form of words which has been or can be suggested will probably be a limitation on the powers of the Supreme Court, and not a direction to it.

Mr. DEAKIN. -

I do not think they need be. It is quite competent for my honorable friend, and I have every confidence in him-

Mr. WISE. -

I have tried and failed.

Mr. DEAKIN. -

Let us simply bring before the High Court the question of irrigation and conservation, and leave it open simply on its merits. I would not attempt to decide in advance and for all cases which shall be paramount, but leave that to the High Court. Do not allow them to say that because there is no reference in this Constitution to irrigation and water conservation they are practically not to consider either, and that navigation being their sole charge everything is to be sacrificed to it. That is a construction which I cannot support, but it is a possible construction, and should be provided for. I do not wish to occupy the attention of honorable members any longer. This is only the third time I have spoken, although it is a subject with which I am as deeply concerned as with any other practical question before us. Without further developing the proposition, I submit it to my honorable friends from South Australia and New South Wales, in the hope that it will satisfy their constituents, that without setting aside their rights in any particular they may remit this question to be considered in a fair manner by that High Court, to which the leader of the Convention is always content to appeal. I am prepared to follow him, provided that the language of the sub-section is made a little more luminous and widened by the addition of words which will imply a reference of water conservation and irrigation to that tribunal.

Mr. DOBSON. -

I move-

That the committee do now divide.

The motion was negatives.

Mr. BARTON (New South Wales). -
I have only to say, with regard to the suggestion of the Right Hon. Sir George Turner, that after what I have already stated, and after the vote given for striking out the amendment of the honorable member (Mr. Glynn), narrow as that majority was, I feel bound to adhere to the position I took up, and to vote against this amendment. I was pleased to hear the Right Hon. Mr. Reid state that he had withdrawn his amendment, and that he would take another opportunity of considering whether he should again bring it forward. I think we may well leave the question to that consideration. I do not think that my right honorable friend is likely to bring it forward again, although he may think it necessary to bring it forward under the circumstances. I think it better to take that consideration, and now dispose of the matter by agreeing to the clause as amended.

Mr. ISAACS (Victoria). -

I do not wish to take up much more time, and I should like on this occasion, as on all occasions, to fall in with the views of the leader of the Convention; but I feel that the eyes of Australia, and the eyes of Victoria certainly, are watching to see what is the determination of the Convention, and what is the mind of the Convention on this very important matter.

Mr. REID. -

We never know what the mind of this Convention is for three hours.

Mr. ISAACS. -

We have been debating this question for days, and many of us have been reproached. If we defer our decision, we shall merely open the way to further debate. That is to say, under the very best circumstances. But what may happen under the other circumstances? We may be deprived of the opportunity of ever coming to a clear decision on this question. That would be a calamitous result. During the debate on this question in the Victorian House of Assembly, I was very much impressed by a view taken by a very prominent member of that Assembly, when he stated more than once that although there were many lawyers upon the Convention, and many interests represented, yet he failed to find—I did not agree with him in this, but it was his assertion—any argument or stand taken on behalf of the producers of the colony. That statement has been watched very jealously. Apart from that statement, I think it is our manifest duty to make it clear without hesitation, and it seems to me without delay, that there shall be nothing in the way of conserving the water of Victoria for irrigation and conservation in preference to navigation. I do not want any doubt cast on that matter. I think a great deal of interest in this federal question will be lost, and a great deal of opinion will be turned the other way, by the mere
fact of delay. We ought to come to a decision, and I trust in the right
direction, and that we shall insist upon placing the interests of the
producers—which are very serious in Victoria, as well as elsewhere—in the
first position as regards the use of the water. I do not want to take up time
answering certain legal Positions urged—I do not mean by the leader of the
Convention, as I quite agree with his views to a very large extent, and
almost wholly from a legal stand-point but I do think, whatever view may
be taken of those legal positions, it is absolutely essential that we shall
make clear and certain the right of the states to use their water for irrigation
and conservation in the interests of the producers. I think we should only
lose and not gain by deferring the determination of the question.

Mr. REID (New South Wales). -

Since my honorable friend insists upon taking the opinion of the
Convention at the present time, which I think is very unfavorable for the
success of his motion—in view of the duty which devolves upon us all to
vote upon propositions according to our conscientious belief—I cannot deny
the wisdom of the proposition which the honorable member puts forward. I
have not concealed my belief that, as this proposition is dealt with, so will
federation be dealt with, at least in one colony, and, as the Right Hon. Sir
George Turner has taken upon himself the responsibility of asking for a
straight vote now on the question, I certainly shall give him all the support
I can.

Mr. MCMILLAN (New South Wales). -

I shall say only one word, as my action might otherwise appear a little
inconsistent. I intend to vote against this proposal, because I was always
willing to confine the restriction in this matter to certain well-known rivers
in certain parts of the colonies; but I certainly shall not
be found giving my adhesion to a sweeping clause like this, which I
believe strikes at the very principle of federation.

Question-That the words proposed to be inserted be so inserted—put.
The committee divided—
Ayes ... ... ... ... ... 8
Noes ... ... ... ... ... 35
Majority against the amendment 27
AYES.
Carruthers, J.H. Reid, G.H.
Deakin, A. Turner, Sir G.
Isaacs, I.A.
Lyne, W.J. Teller.
Quick, Dr. J. Peacock, A.J.
NOES.
Abbott, Sir J.P. Henry, J.
Barton, E. Higgins, H.B.
Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Kingston, C.C.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Cockburn, Dr. J.A. McMillan, W.
Crowder, F.T. Moore W.
Dobson, H. O'Connor, R.E.
Douglas, A. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fraser, S. Trenwith, W.A.
Glynn, P.M. Venn, H.W.
Gordon, J.H. Walker, J.T.
Grant, C.H. Wise, B.R.
Hackett, J.W. Teller.
Hassell, A.Y. Downer, Sir J.

Question so resolved in the negative.
The clause, as amended, was agreed to.

Mr. BARTON (New South Wales). -

We now, in the ordinary course of events, arrive at the financial clauses of the Bill. Honorable members will perhaps be glad to hear that there is a draft in print of the clauses founded on the suggestions of the Finance Committee, and that draft is now in the hands of the committee for consideration. I understand that by to-morrow or the following morning the clauses will be in their final shape so far as to enable them to be submitted to the Convention. In the meantime I propose that we should postpone the consideration of Chapter IV. - that is, the clauses from 81 to 98 inclusive-which will enable us to go on to the remaining part of the Bill. I therefore beg to move-

That the consideration of Chapter IV. be postponed.

If we get over Chapter V. before the financial clauses come back from the printer, I shall ask the Convention to next consider the clauses relating to new states.

The motion was agreed to.

Clause 99 was agreed to.

Clause 100. - All laws in force in any of the colonies relating to any of the matters declared by this Constitution to be within the legislative powers of the Parliament of the Commonwealth shall, except as otherwise
provided by this Constitution, continue in force in the states respectively, and may be repealed or altered by the Parliaments of the states, until provision is made in that behalf by the Parliament of the Commonwealth.

Mr. BARTON (New South Wales). -

I propose to make one or two drafting amendments at this stage, as to do so will be a useful occupation of the time of the committee. I beg to move, first of all-

That after the word "All" (line 1), the following words be inserted:- "except as otherwise provided by this Constitution."

That is to say, I propose to remove the words quoted from the place where they are to be found lower down, and to put them after the word "All."

Mr. HIGGINS. -

What will be the effect of this amendment?

Mr. BARTON. -

The words now occur lower down in the clause, which, as it reads at present, will have the effect that the words "except as otherwise provided by this Constitution" will apply only to the phrase with which they are connected, namely, "continue in force in the states respectively," and not to the further words "and may be repealed or altered by the Parliaments of the states." But if the position of the words be altered as proposed by me they will affect the whole clause.

The amendment was agreed to.

Mr. REID (New South Wales). -

I should like to submit what seems to me to be a very important matter for the consideration of the leader of the Convention. This clause, as honorable members will see, is one of vital importance. At first sight I was strongly opposed to it, but I see that it is necessary that some such clause should be inserted, inasmuch as there will be state laws in force on federal matters until the Federal Parliament chooses to legislate; a period of
uncertain duration—perhaps of long duration in some cases. Certainly it is necessary that a state law shall be in force until the federal law shall be enacted. It is also necessary that this clause should be inserted, because it may happen that a state law will deal with a matter which the Federal Parliament has not legislated on, and in such a case the state law should remain in force. Of course it was seen that questions might often arise as between state laws and Commonwealth laws, and the point I wish to emphasize is that the clause should be limited as to subjects within the legislative powers of the Commonwealth. I suggest that it should read—

When a law of the state upon a subject within the legislative powers of the Commonwealth is inconsistent with the law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

Mr. ISAACS. -

It could not be inconsistent otherwise.

Mr. REID. -

Take the matter of irrigation and navigation. The question of irrigation is not within the legislative powers of the Commonwealth, though navigation clearly is. Suppose there was a Commonwealth law dealing with navigation and a State law dealing with irrigation, as they both affect the same it the law of the Commonwealth upon some other matter infringes upon a state law affecting a matter of exclusively state concern the state law must go under.

Mr. SYMON (South Australia). -

I would suggest to the leader of the Convention that the amendment suggested by the Premier of New South Wales is not necessary. It is implied that the law of the Commonwealth is a law within the legislative power of the Commonwealth.

Mr. HIGGINS. -

Otherwise it is not a law.

Mr. REID. -

It is a law until it is declared not to be a law.

Mr. SYMON. -

Clause 101 is merely declaratory. If there is any inconsistency between a law of the state and a law of the Commonwealth it is for the High Court to determine which shall prevail, and the court will, of course, be bound to consider whether the law of the Commonwealth is, or is not, within the legislative power of the Commonwealth. If it is not, it will be null and void. The clause is necessary to establish in the Constitution the principle that where the Commonwealth legislates within its legislative power its laws must prevail.
Mr. ISAACS (Victoria). -

It was decided in the case of Norton v. Shelby County that an unconstitutional law of Congress is no law. Any law of the United States which is unconstitutional is illegal, because it is forbidden by the Constitution, and may, therefore, be disregarded. If the law of the Commonwealth is constitutional it will necessarily over-ride the law of the state. The clause will not give a law of the Commonwealth either validity or invalidity.

Mr. REID. -

Then it is not wanted.

Mr. SYMON. -

It is merely declaratory. The clause was agreed to.

Clause 102. - (Powers to be exercised by Governors of states.)

Amendment suggested by the Legislature of Tasmania-

Before "all" insert "The powers and authority of the Executive Government of each state shall be exercised by the Governor thereof, and."

Mr. BARTON (New South Wales). -

I doubt very much if the clause requires the insertion of a provision of this kind. The Constitutions of the several states provide for these matters, and except so far as this Constitution expressly touches theirs, there is no occasion for the declaration of anything contained in them. I take it, too, that the next clause saves the Constitutions of the several states in the widest form.

The amendment was negatived.

Mr. GLYNN (South Australia). -

I should like to ask the leader of the Convention whether it would not be possible to provide in this clause that the powers and functions at present vested in the Governors of the states should continue to be so vested? The intention of the clause is to declare that nothing in the Constitution shall be taken to impliedly abrogate any of the powers or functions of these Governors, but what it really says is that these powers and functions shall not be altered except by or under the authority of the various Parliaments. I suggest that the words "as if this Act had not been passed" should be added to the clause.

Mr. BARTON. -

I will take the matter into consideration.

The clause was agreed to.

Clause 103. - (Saving of Constitutions.)

Mr. BARTON (New South Wales). -

I wish to make the clause read in this way:-
The Constitution of each state of the Commonwealth shall, subject to the provisions of this Constitution, continue as at the establishment of the Commonwealth until altered by or under the authority of the Parliament of the state, in accordance with the provisions of its Constitution.

That is a mere simplification of the clause.

The CHAIRMAN. -
I think it would be better to strike out the clause, and to insert the amendment as a new clause.

Mr. GLYNN (South Australia). -
I would ask is the clause necessary? There is nothing in the Constitution which gives the Federal Parliament power to alter the Constitutions of the states. The clause may merely stereotype some of the evils in the existing Constitutions. Now, by conventional usage, there is a capacity for growth in all these Constitutions.

Mr. TRENWITH. -
A Constitution remains as it is until altered.

Mr. GLYNN. -
But there are additions to Constitutions which are independent of Acts of Parliament. We have, in addition to the British Constitution, an Act of Parliament, but that does not destroy those other peculiarities of the Constitution, which are the result of repeated breaches of all rules. We can have an alteration of the Constitution without the intervention of the British Parliament. The clause provides that the Constitutions of the several states of the Commonwealth shall continue as they were at the establishment of the Commonwealth "until altered by or under the authority of the Parliaments thereof," so that the Constitutions of the states may be altered by the Parliaments of the states or by the Imperial Parliament.

Mr. BARTON. -
But only "in accordance with the provisions of their respective Constitutions."

Dr. COCKBURN (South Australia). -
I have always argued against the latter part of this clause, because it is stereotype the mode of altering our state Constitutions. When this Commonwealth is called into existence the power of the various states with regard to all legislation of an external character—all legislation affecting shipping and immigration, and

other legislation which concerns the empire at large—will be taken away from them, and I do not see why, under the new Constitution, the Parliaments of the various states should not have the power of altering their Constitutions in any way they desire.
Mr. BARTON. -

There is nothing to prevent that.

Dr. COCKBURN. -

At present, if any state wants to alter its Constitution, even as regards a purely local affair relating, say, to the manner of the exercise of the suffrage, it has first to have an absolute majority in its own Parliament, and then to go through the tedious process of a reference to the Imperial authorities. Now, seeing that under this Constitution all matters which really concern the outside relations of the state will be removed from the legislative powers of the state, I do not see why the states should not have the power to alter their Constitutions at their own will. They will only have power to deal with purely local concerns. I certainly think that we might very well strike out all the words after "Parliaments." That would accomplish the object I have in view.

Clause 103 was struck out.

Mr. BARTON (New South Wales). -

I think it might be well to adopt the amendment suggested by Mr. Symon. There is a small portion of the amendment I left out inadvertently, I now beg to propose it, as follows:-

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

Mr. TRENWITH. -

If this clause were not in the Bill at all, would not the Constitution still remain the same?

Mr. BARTON. -

I am not quite sure of that, and there are a great many people who, reading a Federal Constitution, are apt to call out, as we constantly hear them crying out in the colony from which I come-"They want to take from us our rights and liberties under our Constitution, and give us nothing back." That is to say, there is a considerable demand for an express declamation on the face of the Federal Constitution that the states shall keep their Constitutions, and also have power to alter them if they want to do so.

Mr. KINGSTON. -

You might stop at the word "altered."

Mr. BARTON. -

I think Mr. Symon's suggestion is the correct one.

Mr. ISAACS. -
The states that are established after federation will not want that.

Mr. BARTON. -

Yes, because they will come in under such terms as may be arranged between them and the Commonwealth, but they should come in under the same guarantee as those who originally joined, as far as their Constitution is concerned.

Mr. Barton's new clause, in lieu of clause 103, was agreed to.

Clause 104 - The provisions of this Constitution relating to the Governor of a state extend and apply to the Governor for the time being of the state, or other the chief executive officer or administrator of the government of the state, by whatever title he is designated.

Sir JOHN FORREST (Western Australia). -

I have a new clause to propose in regard to the office of state Governor.

The CHAIRMAN. -

It would be better to leave all the new clauses, except the new clauses proposed by the several Parliaments, until we have gone through the Bill. That is the practice in some Parliaments, and I think it would be more convenient if we were to adopt that course here.

Sir JOHN FORREST. -

Many new clauses have been dealt with to-day besides those suggested by the Parliaments of the colonies. Is that not so?

The CHAIRMAN. -

No, we have not put in any such new clause except as a matter of drafting.

Mr. BARTON. -

And they are really embodiments of amendments of clauses.

Clause 104 was agreed to.

The CHAIRMAN. -

The House of Assembly of South Australia have suggested the insertion of the following new clause, to follow clause 104:-

A member of the Senate or House of Representatives shall not be capable of being chosen or of sitting as a member of any House of the Parliament of a state.

Mr. HIGGINS. -

Did we not deal with this question in the early part of our debates in Sydney?

Mr. BARTON. -

No, we did not get so far as this in Sydney.

Mr. HIGGINS. -
The question was discussed.

Mr. BARTON. -
No, this is the converse of the question we discussed on that occasion.

Mr. KINGSTON (South Australia). -
I trust that this amendment will not be agreed to. We are framing an Imperial Act. If the local states do not choose to enact a provision of this kind, they need not do so, and it seems to me that for us to provide they shall not legislate on the question would be an unwarrantable interference in local matters.

The amendment was negatived.

Clause 105. - The Parliament of a state may at any time surrender any part of the state to the Commonwealth, and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the state shall become and be subject to the exclusive jurisdiction of the Commonwealth.

Amendment suggested by the Parliament of Tasmania-
Omit "the state" (line 2), and insert "its territory."

Mr. BARTON (New South Wales). -
I should like to hear some explanation of this amendment.

Sir EDWARD BRADDOCK (Tasmania). -
I do not think I ought to be called upon to explain any of the Tasmanian amendments, inasmuch as I was not present in either House when the amendments were made. I should prefer that some honorable member who was present and who heard the arguments pro and con. should give the explanation.

The CHAIRMAN. -
This is only a verbal amendment.

Mr. BARTON. -
"Its territory" means the same thing as "the state," and we had better keep what we have got.

The amendment was negatived.

Clause 106. - After uniform duties of customs have been imposed, a state shall not levy any impost or charge on imports or exports, except such as may be necessary for executing the inspection laws of the state; and the net produce of all imposts and charges imposed by a state on imports or exports shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Amendment proposed by the Legislative Assembly of South Australia-
After "customs" (line 1), insert "and excise."

Mr. BARTON (New South Wales). -
On this clause there was considerable discussion in Adelaide as to the words which should be used to describe the charge that should be levied on
imports or exports. Honorable members will remember that there was considerable difficulty in finding apt words which would prevent taxation legislation by a state, and at the same time not prevent the state from making such charges as might be necessary for services connected with the inspection laws, whether an article was entering or leaving the state. The words used are-"a state shall not levy any impost or charge on imports or exports except such as may be necessary for executing the inspection laws of the state." The clause might be safer if it read-"any impost on exports or imports with the exception of any charge which might be necessary for executing the inspection laws." I desire to draw the attention of the committee to the matter at the present time, because this is not so much a question of drafting as of the real intention of the committee with regard to the extent to which it will limit the power of the state-

The CHAIRMAN. -

The first amendment we have to consider is that suggested by the Parliament of South Australia to insert, after "customs" (line 1), "and excise."

Mr. BARTON (New South Wales). -

The amendment, I would suggest, is unnecessary. It may be that in framing its first Tariff the Commonwealth will not impose any excise duties, but it must impose customs duties, which must be uniform. The phrase the Drafting Committee have used throughout is-"after uniform duties of customs have been imposed."

Mr. ISAACS. -

That phrase is sufficient.

Mr. BARTON. -

Yes. Assuming that in imposing duties of customs the Parliament exercises its powers of imposing duties of excise, that would not make this phrase a misdescription. The insertion of the words "and excise" would seem to imply a direction to the Commonwealth to impose excise duties at the same time as customs duties. That is a matter that must be left to its discretion.

The amendment was negatived.

Amendment suggested by the Legislative Council of New South Wales:-
Omit all the words after "state" (line 4) to the end of the clause.

Mr. BARTON (New South Wales). -

As far as I can gather, the Legislative Council of New South Wales wish by this amendment to strike out a salutary provision, that is the provision that, if a state chooses to levy any sort of impost on imports or exports, the
proceeds shall not go to the state but to the Commonwealth. That takes away from the state any financial interest in infringing the free trade of the Commonwealth. The intention which actuates the amendment seems to be that there should be a power left in any state to defeat the financial legislation of the Commonwealth. Of course, I am not responsible for the amendment. It has only to be looked at to be negatived. If you leave to the states the power, not only to levy impost of this kind, but to put into its coffers the proceeds of them, you give the States an interest in defeating the financial legislation of the Commonwealth.

Mr. HIGGINS. -

Would the clause allow a state to make regulations as to the tick pest in the case of cattle coming from one state to another?

Mr. BARTON. -

I do not think it is the intention of the clause to prevent any charge that may be made for executing the inspection laws.

Mr. ISAACS (Victoria). -

I mentioned the other day that it had been decided in the United States, in the case of Brown v. Houston, 114 United States Reports, 622, and in other cases, that the prohibition of this clause does not extend to goods carried from one state to another. It applies exclusively to articles imported from foreign countries. It would, therefore, have no relation to cattle coming from Queensland.

Mr. BARTON. -

So far as it is an impost.

Mr. ISAACS. -

The clause will not refer to that at all. In the United States it was decided on the words "imports or exports," and Mr. Justice Nelson delivered a long judgment. There is a definition in the United States Constitution that this may be done by the states with the consent of Congress. We have struck that out. The object was that no state should put on any customs or other duties on any goods coming from abroad, excepting for inspection or for sanitary purposes. A state must recoup itself for the expenses incidental to inspection, and the states are therefore given power to put on such charges as are necessary to cover the cost of inspection. In order to insure that a state does not go beyond this power, and to test its bona fides, if the charges originally imposed exceed the cost of inspection the state is required to pay the surplus into the coffers of the Commonwealth. The state has, therefore, no inducement whatever to make too high a charge. And further, if it chooses, under the guise of such a law, to put on a heavy duty and be content to pay the surplus into the coffers.
of the Commonwealth, the object being to keep out foreign goods, the Commonwealth has power to annul the law altogether. Now, we have carried that principle into this clause. In America they have made no provision in the corresponding clause for keeping out goods, cattle, and so on as between the states. There is a general police power, and cases have arisen with regard to Texas cattle and the pest there, and very strange conflicting decisions have been given. I think, from what I understand to be the intention of Mr. Holder, we ought to have power, if it is not clearly contained elsewhere, to use our police force to keep out pests, whether they come from another colony, or whether they come from abroad, leaving full power to the Commonwealth Parliament to annul those laws if it thinks them to be prejudicial or carried beyond the fair intent and purpose of the clause. What I want to do is to make it clear to the committee that, as the clause stands, if the American decisions were followed, it would not include the power to keep out, say, Victorian grapes from South Australia, on account of phylloxera; or, if Queensland is in the Federation, to keep out Queensland cattle—of course, if Queensland were not in the Federation it would apply—and it would not enable Western Australia to keep out Victorian apples or codlin moth. It is only fair to point that out lest some honorable members should think that it goes further than it does.

Mr. HOLDER (South Australia). -

I quite agree with my honorable friend (Mr. Isaacs) in the opinion that we ought to have a law to enable the states to impose some charge for inspection on the borders, so that both animal, vegetable, and other pests may be kept out. In such cases I should object to see such a limitation as is included in the last two lines of the clause. I think it is quite fair that any profit arising out of any such charges should be paid over to the Commonwealth, but I do not think it ought to be possible, if a majority of the states are producers of certain things, and have certain diseases in those places, that they should be enabled by virtue of their majority to compel another state which may be free from those diseases to admit their produce within its borders. I hope that some provision will be made to allow inspection charges to be made on goods passing from one state to another, and that in such cases, at least, we shall not have the power given to the federal authority which is contained in the last two lines of the clause.

Mr. FRASER (Victoria). -

That view of the matter would just mean that the Federal Parliament would neglect its duties. Surely, if the Federal Parliament is doing its duty, and if the officers of the Commonwealth are doing their duty, it will be to their interest to circumscribe any pest, and to keep it within certain limits. If a pest or a disease is dangerous, the Federal Parliament will circumscribe
it as quickly as possible, because it will be their bounden duty to do so. For instance, take the tick pest. The Federal Parliament, of course, would draw a cordon round the district in which it was raging, and would not allow the post to extend into other districts. And they would do that just as well—I think they would do it better and more effectually—as the state would, otherwise scares would be raised without any justification, and a great deal of trouble might be caused without any warrant for it. In these cases, if the arguments of Mr. Isaacs and Mr. Holder are adopted, then the state will have power to create difficulties, and when it is the bounden duty of the Commonwealth - 

Mr. DOUGLAS. -

It is only when they do not pass a law that they can.

Mr. FRASER. -

Surely every one will recognise that it is the bounden duty of the Federal Parliament to deal with all sorts of dangers in the Commonwealth, and to deal with them more, effectually than a state can do. The Federal Parliament is the larger power, as it controls the whole Federation, and therefore it is its bounden duty to see that no part of the Federation is subject to any disability through pest or any other matter.

Sir EDWARD BRADDON (Tasmania). -

I think the amendment suggested by the Legislative Council and Assembly of Tasmania will probably meet all that is necessary in this case, and be more effective than any amendment of which I have yet heard. As regards what has fallen from the honorable member (Mr. Fraser), I would point out that it is impossible in all instances to make this question one of federal concern. The various states must take under their control and management certain matters which peculiarly belong to them, and which belong to them very often because of the local law, which will not be the law of the Federation. The clause as proposed by the Tasmanian Parliament provides for levying customs duties to meet the charges:—

For executing the inspection laws of the state, or by way of payment for services actually rendered in improvement of ports or harbors, or in aid of navigation.

I think that clause ought to recommend itself to the committee. The local authorities are to collect so much as is absolutely necessary for this very serious purpose, and are to hand over to the Commonwealth any surplus left after providing for this work, and, inasmuch as that covers everything so far as has been recommended, I would urge that this clause be inserted in lieu of the clause we are considering.
Dr. COCKBURN (South Australia). -

We do not want to federate all our diseases, but at present, as far as I have been able to ascertain, there is no power either on the part of the state or on the part of the Federal Parliament to take such steps as may be necessary to prevent the passage of disease, which we are all agreed should be limited, as far as possible, from one state to another. I raised the question in Adelaide and Sydney that at present there is absolutely no power to prohibit the extension, say, of a disease like the tick; because it is not only necessary to prevent the introduction of diseased animals, but you have to make a prohibitory line over which no stock of any kind can pass from an infected district into a clean district. So in regard to phylloxera, it is not sufficient to prohibit the introduction of diseased vines, simply because you cannot possibly state by inspection whether there may not be among a number of healthy vines one diseased vine. It is absolutely necessary, in a case of this sort, to prohibit the introduction of the article named. I asked the leader of the Convention in Sydney whether he could point out any such power; but, as far as he could say at that time, there is no power either on the part of the state to protect itself against the introduction of a disease, or on the part of the Federal Parliament to prohibit the introduction of disease in this way from one state to another.

Mr. HIGGINS. -

Clause 89 appears to be in favour of your view—all the trade and commerce shall be absolutely free.

Dr. COCKBURN. -

That means that trade is to pass untrammelled.

Mr. HIGGINS. -

It is very hard to say how widely you can extend that clause.

Dr. COCKBURN. -

In Sydney, the leader of the Convention suggested that clause 89 might be modified in some way to limit its application, and, instead of saying that trade shall be absolutely free, that the clause should read—

So soon as uniform duties of customs have been imposed trade and intercourse throughout the Commonwealth is not to be restricted or interfered with by any taxes, charges, or imposts. I think that implies a different application.

Mr. BARTON. -

I favour your clause, but it would weaken the operation of clause 89.

Dr. COCKBURN. -

In Adelaide I contended that the states should have this power of self-protection which is necessary to their industries. I failed in carrying
that view, and in Sydney I contended that some power should be vested in the Federal Parliament to protect the states from disease. If there is no power under this Constitution, and unless we alter the clause as it stands here, or make provision in clause 52, we shall find that we have wiped away the power we have at present of confining diseases of cattle and vegetables to some particular part of Australia which is at present infected, and by these means disseminate them throughout our colonies. I think such an occurrence cannot be viewed without the deepest anxiety on the part of those interested in production throughout the colonies. I ask the leader to take this matter into consideration, and the Drafting Committee might, if they are not at present prepared to do so, devise a means of meeting the difficulty. I think the preferable plan would be to give the states this power, but if that is not adopted the power should be given to the Federal Parliament.

Mr. BARTON (New South Wales). -

I remember well that this question was raised in Adelaide by the honorable member (Dr. Cockburn), and there is a great deal in it. The section in the American Constitution is as follows:--

No state shall, without the consent of Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts made by any state on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress.

Then it goes on to other subjects, such as maintaining armies and levying war. A case which the honorable member (Mr. Isaacs) mentioned appears clearly to go the length which he suggested, that is that this section as it exists in the American Constitution, or the parallel clause, does not deal with inter-state commerce but only with imports from or exports to foreign countries. That might be got rid of, as far as this clause is concerned, by a small amendment. For instance, after the words "imports and exports," we might insert "inter-state or foreign" or similar words. That will show clearly that the power was intended to be reserved to the states to deal with importation even from other colonies of such pests as have been mentioned. It might be as well between now and the next occasion upon which we deal with this clause to draft an amendment to meet the position.

Mr. Isaacs has referred me to a decision in America, in the State of Minnesota v. Barber, 136 U.S., 313, which goes this length:--

The statute of Minnesota providing for inspection within the state of animals designed for meat, by its necessary operation practically excludes from the markets of that state all fresh beef, veal, mutton, lamb, or pork, in
whatever form, if taken from animals slaughtered in other states, notwithstanding the same may be sound and healthy. The result is that it thus directly tends to restrict the slaughtering of animals whose meat is to be sold in Minnesota to those engaged in such business in that state. This discrimination is an encumbrance on commerce amongst states, and is unconstitutional. It cannot be regarded as a rightful exertion of the police power of the state. A burden thus imposed is not to be sustained simply because the statute imposing it applies alike to the people of all the states, including the state enacting it.

That is a statute which applied to every animal, whether sound and healthy or not, entering the state and designed for meat. That does not apply to the case which arises under the clause with which we are now dealing. What we want here, I take it, is to see that the states retain power to deal with these pests not in the way of prohibition-and the law which was referred to in that case was a prohibition, and was therefore declared unconstitutional. But we want here a provision that the states shall be able to exercise their powers as individual states at proper places such as the ports and borders. That will not be an infringement of free-trade within the Commonwealth. The way to look at it is: Is it desirable that this power shall be placed in the Commonwealth or among the powers of the states? I am inclined strongly to the latter view. I do not think the word quarantine, for instance, which is used in the sub-section of the 52nd clause, is intended to give the Commonwealth power to legislate with regard to any quarantine. That simply applies to quarantine as referring to diseases among man-kind. I do not think it is intended to enable the Commonwealth to deal with such matters as the tick disease. It has been pointed out by the honorable member (Mr. Fraser) that the Federation should have that power. As far as I am at present advised, that would be a very unwieldy and difficult power for the Commonwealth to use at all. It requires the local knowledge which would only be possessed by the states Parliaments and Governments. I am in favour of the amendment suggested by the honorable member (Mr. Isaacs), and I shall prepare an amendment to make it quite clear that the states shall have power to deal with this matter, not by way of putting on imposts, but simply making charges to enable them to carry out inspection laws.

Mr. HENRY (Tasmania). -

I desire to call the attention of the honorable member (Mr. Barton) to the manner in which this clause will affect harbor trusts and marine boards. I directed attention to this matter in Adelaide. I think this clause will prevent
any state or body authorized by a state from levying any impost or charge on imports. We know that marine boards and harbor trusts are dependent for their revenues upon wharfage rates on imports. Although those rates are for services rendered, I am afraid that under the clause in its present form it would be impossible for a marine board or harbor trust constituted by a state to levy charges on imports. In the amendment suggested by the Assembly and Council of Tasmania there is a provision to meet this difficulty. As the honorable member (Mr. Barton) is going to amend the clause, I hope he will take this question into consideration.

Mr. BARTON. -
A wharfage rate is merely a charge for services rendered, and is no tax on imports.

Mr. HENRY. -
I shall not enter into a verbal controversy with the honorable member, but the language of this clause is that a state shall not levy any impost or charge. A wharfage rate is a charge on imports, and Mr. A.I. Clark prepared the amendment which was passed in our Parliament. That makes it quite clear that the state would have the power, when services are rendered, to levy a charge on imports. I hope that the honorable member (Mr. Barton) and other eminent lawyers will make this matter clear, so that no difficulty shall arise in future which might prevent marine boards and trusts throughout Australia from having the necessary authority to raise their revenue by means of a charge on imports.

Mr. BARTON (New South Wales). -

I cannot lay my hand on the passage now, but in Adelaide I pointed out American decisions which would clearly apply to such a case as this. It was held that a charge of wharfage is not a charge on imports or exports. Here is one case, which is handed to me by my honorable and learned friend (Mr. Isaacs), the case of the Ouachita Packet Company v. Aiken, where it was held that-

A municipal ordinance which provides for rates of wharfage, to be measured by the tonnage of the vessel landing thereat and using such wharf, is not in conflict with the Constitution.

There is also the case of the North-Western Union Packet Company v. St. Louis:-

Where a municipal corporation or a state has by the law of its organization an exclusive right to make wharfs, collect wharfage, and regulate wharfage rates, it can consistently with the Constitution charge and collect such wharfage, proportioned to the tonnage of the vessel, from the owners of enrolled and licensed steam-boats landing and mooring at its wharfs constructed on the banks of a navigable river.
The effect is that wharfage is not an impost on imports, and a tax on imports is not in any sense a charge for services. A charge for wharfage made upon vessels coming into port is purely analogous to that which might be made for storage.

Mr. SYMON. -
But if designed sinisterly it would be declared unconstitutional.

Mr. BARTON. -
Quite so; but if it were a mere charge to enable the expenses of wharfage to be met—that is, for the mere use of a wharf for the time being—that would not be a charge on imports at all, and would not come under the clause. So that the objection would be met in either case. I would suggest that we might for the time being negative the amendment from Tasmania, which is a very long one, and I will see whether it is necessary to make some shorter amendment which will embody generally the same views.

The CHAIRMAN. -
The amendment before the committee is that suggested by the Legislative Council of New South Wales.

Mr. BARTON. -
I think the committee might very well reject that.

Mr. GLYNN (South Australia). -
The purpose of the Parliament of Tasmania will be effected by inserting the words "or by way of payment for services actually rendered in improvement or maintenance of ports or harbors, or in aid of navigation, after the word "state" (line 5). That would accomplish the meaning of the Tasmanian amendment. As regards the words proposed to be struck out by the Legislative Assembly of New South Wales, the position is somewhat anomalous if they are retained. Payment must be made, and the money must go to the Commonwealth; so that a man will have to pay although it will really be illegal to pay. It would be a question of payment under a law passed by the state, which law is bad. The man will

Mr. OCONNOR. -
That does not matter; he will have his action against the state.

Mr. BARTON. -
Yes, because the state took his money.

Mr. GLYNN. -
But the Commonwealth will have possession of the man's money, which should not have been paid at all. As Mr. Henry wishes me to do so, I beg to move—

That, after the word "state" (line 5), the following words be inserted:—or by way of payment for services actually rendered in improvement or
maintenance of ports or harbors or in aid of navigation.

Suppose an improvement were made by New South Wales, by locking one of its rivers, surely it would be possible for New South Wales to charge tonnage on vessels passing through those locks? If such a charge could not be made by New South Wales, the improvement would not take place, for the reason that there could not be payment for services rendered.

Mr. BARTON (New South Wales). -

I ask the committee to be rather chary of accepting the portion of the Tasmanian amendment referred to, because there is a vast difference between a charge for wharfage, which is for the maintenance of a wharf belonging to a state, and a charge in aid of navigation or for ports and harbors; because here you come upon ground on which there may be conflict with the rest of the Commonwealth. The insertion of these words might lead to such a conflict, would be very dangerous, and would not effect the desired result at all.

Mr. GLYNN (South Australia). -

I beg leave to withdraw my amendment in order to give time for further consideration.

Mr. Glynn's amendment was withdrawn.

The amendment suggested by the Legislative Council of New South Wales to strike out all the words after "state" (line,5), was negatived.

The amendment suggested by the Legislative Council and the Legislative Assembly of Tasmania to omit the clause was negatived.

The clause was agreed to.

Clause 107. - A state shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any military or naval force, or impose any tax on property of any kind belonging to the Commonwealth; nor shall the Commonwealth impose any tax on property of any kind belonging to a state.

Mr. GLYNN (South Australia). -

I do not know whether honorable members have fully considered the effect of the last two lines of this clause. The provision I refer to is:-

nor shall the Commonwealth impose any tax on property of any kind belonging to a state.

Under that provision the policy of some states would be to object to the imposition of direct taxation by the Commonwealth. If the leasing system were extended in other states as it is being extended in South Australia, the only property in those states that would be taxable would be the reversion of leases; and if the proposal were made in the Federal Parliament to introduce a tax on land, the states in which the leasing system did not exist

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would say that the proposal was unfair in its incidence so far as they were concerned, because it would press upon them to a greater extent than on the states in which the leasing system had been extended. Therefore, the policy of the states so objecting would be to oppose direct taxation. The result of this would be to raise objections to direct taxation for direct burdens, which is, as it seems to some of us, a good policy.

Mr. LYNE (New South Wales). -
I wish to ask, also, whether the particular two lines to which Mr. Glynn has referred would prevent the Commonwealth from imposing taxation?

Mr. ISAACS. -
On what?

Mr. LYNE. -
Direct taxation.

Mr. BARTON. -
It means Government property—the property of the state.

Mr. LYNE. -
It does not include taxes on private property?

Mr. BARTON. -
Not in the slightest degree.

The clause was agreed to.

Clause 108. - States not to coin money.

Amendment suggested by the Legislative Council of Tasmania—After "money" insert "unless the Parliament otherwise determines."

Mr. GORDON (South Australia). -
I would like to point out a difficulty which might arise under this clause owing to the position of the bond holders of a State Bank such as that of South Australia. Under the State Bank Act the holders of mortgage bonds are entitled to pay off their debts to the bank with these bonds, but, while these bonds might be a set-off as between the parties, if there were a change of right—suppose the bank went into liquidation or assigned its debts—would the mortgage bonds still be legal tender for the payment of these debts?

Mr. BARTON (New South Wales). -
The subject of currency, coinage, and legal tender has been made a subject upon which the Commonwealth Parliament may legislate, and it will be very plain to honorable members that not only ought the coinage of a country living under a Federal Constitution to be uniform, but that its legal tender should also be uniform. The existence in a Commonwealth of a large number of varying descriptions of paper money is not desirable. It is a very wise provision that the credit of the Commonwealth, which might be seriously affected by what a state might do in this regard, should be kept
within the hands of the Commonwealth. Otherwise it would be open to a state to make laws with reference to substitutes for the ordinary currency which would have a prejudicial effect upon the general credit of the Commonwealth. I take it that, so far as we can, we should prevent any such result accruing, and this clause, which is the counterpart of a provision in the American Constitution, is intended to do that. So far as bonds are concerned, I do not think that any difficulty could arise. I do not suppose that the bonds to which the honorable member has referred are actually made legal tender.

Mr. HOLDER. -

Any debts due to the bank may be paid off in the bank's own bonds.

Mr. GORDON. -

There would be no difficulty so long as there was no change of right. If, however, the bank went into liquidation the difficulty might arise.

Mr. BARTON. -

I should not think that any great difficulty would arise. The whole question would depend upon the relation of contract between the parties.

The amendment was negatived.

Amendment suggested by the Legislative Assembly of New South Wales-

Omit "nor make anything but gold and silver coin a legal tender in payment of debts," and insert "unless the Parliament otherwise determines."

The amendment was negatived.

The clause was agreed to.

Clause 109-A state shall not make any law prohibiting the free exercise of any religion.

Mr. HIGGINS (Victoria). -

An amendment of this clause, which has hitherto been passed without discussion, has been standing in my name for some time. I do not think the clause goes far enough. I should prefer the matter to be in other hands, but it is one which has excited a great deal of interest among a great many people, and it becomes all the more important because a strong effort has been made to have a reference to the Almighty inserted in the preamble of the Constitution. In the American Constitution they have gone further, and the first amendment of that Constitution contains these words:-

Congress shall make no law respecting the establishment of a religion, or prohibiting the free exercise thereof.

Some people will think that it is idle at this time of day to pass a law to
prevent the prohibition of the establishment of a religion; but it is not idle in the eyes of a number of people whose votes we should like to secure for the Constitution. The history of the American provision is very curious. I find that in Massachusetts, which was the home of the Puritans, there was a great discussion at the time of the Philadelphia Convention as to whether there should be a recognition of God in the Constitution. If, as seems likely, an acknowledgment of the existence of the Almighty is inserted in the preamble of our Constitution, it will be necessary to re-assure a large number of good people that their rights with respect to religion will not be interfered with.

Mr. GORDON. -

What is the honorable member's amendment?

Mr. HIGGINS. -

It has been circulated for several days, and is to the effect that neither a state nor the Commonwealth shall make any law prohibiting the free exercise of any religion or imposing any religious test or observance. Of course, we all know that a great effort has been made to have an acknowledgment of the Almighty inserted in the preamble. This is a very difficult subject to speak about in mixed assembly; but I must speak plainly, or not at all. This recognition of God was not proposed merely out of reverence; it was proposed for distinct political purposes under the influence of debates which have taken place in the United States of America. At the time of the Massachusetts Convention there was a long discussion as to whether the Constitution should not be rejected, inasmuch as it did not contain any reference to the existence of God, and Professor Fiske, in his work upon The Critical Period of American History, pp. 321 and 322, writes-

Next came the complaint that the Convention did not recognise the existence of God, and provided no religious tests for candidates for federal offices. But, strange to say, this objection did not come from the clergy. It was urged by some of the country members, but the ministers in the convention were nearly unanimous in opposing it. There had been a remarkable change of sentiment among the clergy of this state, which had begun its existence as a theocracy, in which none but church members could vote or hold office. The seeds of modern liberalism had been implanted in their minds. When Amos Singletary of Sutton declared it to be scandalous that a Papist or infidel should be as eligible to office as a Christian—a remark which naively assumed that Roman Catholics were not Christians—the Rev. Daniel Shute, of Hingham, replied that no conceivable advantage could result from a religious test.

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"Yes," said the Rev. Phillip Payson, of Chelsea, "human tribunals for the
consciences of men are impious encroachments upon the prerogatives of
God. A religious test as a qualification for office would have been a, great
blemish." "In reason and in the Holy Scripture," said the Rev. Isaac
Backus, of Middleborough, "religion is ever a matter between God and the
individual; the imposing of religious tests hath been the greatest engine of
tyrranny in the world." With this liberal stand firmly taken by the ministers,
the religious objection was speedily over-ruled.
And now, sir, it will be observed that in the Constitution of the United
States of America there was not any such recognition in the preamble, and
it is proposed that there shall be in our preamble. I am very sorry that those
who first propounded this addition to the preamble did not tell the people
with what object it was to be put in. They, no doubt, were perfectly fair and
honest in their object, but they had read more than most people as to what
had happened in the state of America, and I think, in all frankness, the
people ought to have been told that there was a direct object and purpose in
view. Now, in 1892 there was a decision in regard to the New York
difficulty which has put all the fat in the fire. It was this: There was a law
passed by the state of New York, which was to the effect that there should
be no labour imported from abroad for the purpose of employers in the
state of New York. There happened to be a clergyman imported from
England to fill the pulpit of a church in Broadway, in New York, and it was
urged that this clergyman was a labourer imported from abroad.
Mr. SYMON. -
A labourer from the vine-yard.
Mr. HIGGINS. -
The vineyard idea strikes the honorable member forcibly, no doubt, after
his experience as a vigneron. The result was that the question as to whether
this clergyman had not been imported against the laws of the state of New
York was brought up before several courts and gravely discussed. One
court held that it was a breach of the Act to import the clergy-man from
abroad, but the Supreme Court of the states, when the question was
referred to it, held that it was not a breach of the law, and they also went on
to say that Congress never meant to interfere with the importation of
clergy-men, because that was a Christian country. And for the purposes of
establishing that it was a Christian country all through the states of
America they went into elaborate charters and documents to show that
from the first it had been a Christian country, and of course they were able
to show that most of the states had been founded by denominations for the
sake of their own adherents. But what happened in consequence of that
decision? There has been a recrudescence of religious strifes throughout
the United States, which I could never have believed would have happened—a lifting of banners of those who wish to impose, for instance, a compulsory sabbath all through, in, and upon every state, and a lifting of the banner of those who oppose that movement.

Mr. FRASER. -

Which side are you on?

Mr. HIGGINS. -

I think the honorable member's interjection is beside the question, and wholly unfair. This matter may be put upon broad grounds, and not upon the matter of differences between us. I think that our feeling is that we ought not to do anything under this Constitution which will alienate from giving an earnest "Aye" to this Bill a large body of honest and good people, if we can avoid that without at the same time inflicting irreparable harm on the Constitution. I should prefer to rest on the fact that the powers of the Federal Parliament are limited under the Constitution itself, and that the Federal Parliament has no power to do anything except what is expressly given to it, or what is by implication necessary. But, although that was the case when this clause was put in, if there is inserted in the preamble an express recognition of the Almighty in the Constitution, the position which met the draftsmen of this clause will no longer be applicable, inasmuch as there will be in the preamble of this Constitution a declaration of a religious character, from which, as experience shows, a number of corollaries will be deduced, and upon which attempts will be made, from time to time, to pass legislation of a character which I do not think we intend to give the Federal Commonwealth power to pass. I think that, whatever is done in this matter, if anything is done, ought to be done by the states. I do not think we ought to interfere with the right of the states to do anything they choose, if they think fit to do anything; but I do think that in establishing this Federal Commonwealth we ought to take care to reassure people that there will be no interference with them. There is, I understand, in America, a large body of people called Seventh Day Adventists. There are a few here. Rightly or wrongly, it is not for us to judge, they hold a theory that they are not obliged to keep Sunday. They cannot afford two holidays in the week, and, therefore, they keep Saturday. Well, these people in America are excited beyond bounds at the attempts which have been made since 1892 to establish a compulsory Sunday in the United States. Here, these people are few in number, I believe—I do not know much about them—but I understand that they are exceedingly troubled over the fact that through putting the words in question in the preamble there may be an attempt to enforce the
observance of Sunday upon them, whereas they observe Saturday.

Sir EDWARD BRADDON. -

Why not leave the words out of the preamble?

Mr. HIGGINS. -

Well, as far as I am concerned, in order to gain for the Federal Constitution the votes of a vast number of good people, I am willing to support a proposal for the insertion of appropriate words in the preamble.

An HONORABLE MEMBER. -

But how many votes will you lose by doing so?

Mr. HIGGINS. -

I cannot tell. Honorable members will see that in taking this course I am quite consistent. I want to do what is, at the worst, harmless, with a view to secure a great number of votes in favour of the Constitution. I say that, on the one hand, there has been, rightly or wrongly, a strong pressure brought to bear throughout these colonies in favour of the insertion of some suitable words in the preamble. At the same time, I feel that if we put these words into the preamble, without a safeguard in the Constitution itself, we shall be very likely to alienate a large force against us.

Mr. DOUGLAS. -

I do not think so.

Mr. HIGGINS. -

I am not sure whether the activity of mind in Tasmania is like the activity of mind that is sometimes manifested in large cities, but I can assure the honorable member that there is a good deal more of hostility which will be displayed to this Constitution, unless there is a safeguard inserted, than he thinks for. There is a tendency in these days to interfere more and more with a man's actions in all sorts of directions, to have rules of all kinds with regard to his economical relations. Well, it is not at all clear as to where the line will be drawn. If we interfere with a man's actions in his economical relations, it will be very hard to draw the line and say that he is not bound to act in a certain way with regard to religious observances. The question is an old question. Honorable members have thought it over very much, no doubt; but all I say is that we ought to put in the Bill words that will, at all events, reassure those who object to some of the words in the preamble of this Constitution. There is, however, I am bound to admit, a defect in the amendment I have suggested. My amendment, as printed, is as follows:-

After word "not" insert "nor shall the Commonwealth"; and after word "religion" insert "or imposing any religious test or observance."

I think we must qualify that in some way, because it has been said that it would
void our imposing of the ordinary oaths in the courts and elsewhere.

Sir EDWARD BRADDON (Tasmania). -

I have an amendment to move on behalf of Tasmania, and also an amendment of my own. The clause we have before us says that a state shall not make any law prohibiting the free exercise of any religion. It is quite possible that this might make lawful practices which would otherwise be strictly prohibited. Take, for instance, the Hindoos. One of their religious rites is the "suttee," and another is the "churruck," - one meaning simply murder, and the other barbarous cruelty, to the devotees who offer themselves for the sacrifice.

Dr. COCKBURN. -

The Thugs are a religious sect.

Sir EDWARD BRADDON. -

Yes. If this is to be the law, these people will be able to practise the rites of their religion, and the amendment I have to suggest is the insertion of some such words as these: -

But shall prevent the performance of any such religious rites, as are of a cruel or demoralizing character or contrary to the law of the Commonwealth.

The leader of the Convention is, I believe, in a hurry to conclude the evening's proceedings. I will leave the amendment with him, in the hope that he will be able to make something of it.

Mr. BARTON (New South Wales). -

The Finance Committee arranged to meet at five o'clock to-day. As we have reached our usual hour, I beg to move Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

PAPERS.

Sir JOHN FORREST (Western Australia). -

A few days ago I laid on the table a paper containing financial and statistical facts relating to the colony of Western Australia. Since then an addition has been made to the paper. I believe that under the standing orders, it is not in order to amend or add to any document that has been laid on the table. I will, therefore, lay this amended paper on the table, and I beg to move that it be printed.

The motion was agreed to.

Mr. BARTON (New South Wales). -

Papers by the Hon. Edward Pulsford, M.L.C., have been printed by order of the Convention. I find that, there are some additional papers by this
gentleman that would be of considerable interest to honorable members, and I will lay them on the table. I beg to move that they be printed.

The motion was agreed to.

The Convention adjourned at five minutes past five o'clock.
Tuesday, 8th February, 1898.


The PRESIDENT took the chair at half-past ten o'clock a.m.

MONEY BILLS.

Sir RICHARD BAKER (South Australia). -

I ask leave to lay on the table a paper on the powers and practices of the two Houses of Parliament (South Australia) in reference to Money Bills. It was prepared for the Constitutional Committee in Adelaide and printed, but, as that committee have never brought up their minutes before the Convention, it would not be bound with the Convention papers. In order that it may be included, I beg leave to move that it be printed.

The motion was agreed to.

PRINTING OF AMENDMENTS.

Sir JOHN FORREST (Western Australia). -

In Sydney I gave notice of a new clause which has been printed on a separate paper, but it does not appear in the list of amendments. Would it not be better to insert it among the other amendments for the information of honorable members?

The PRESIDENT. -

As attention has been called to the matter, no doubt it will be attended to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 109-

A state shall not make any law prohibiting the free exercise of any religion.

The CHAIRMAN. -

No amendment has yet been moved.

Mr. HIGGINS (Victoria). -

I spoke on this clause Yesterday evening. I now want to say that, after careful deliberation, I think the wording of my amendment ought to be rectified before it is submitted to the Convention. The existing clause is-

A state shall not make any law prohibiting the free exercise of any religion.
There is no application to the Federal Parliament at all in the clause as it stands. I intend to propose amendments which, if adopted, will make the clause read as follows:-

A state shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance.

**Mr. OCONNOR.** -

The Commonwealth will have no power to do that.

**Mr. HIGGINS.** -

I explained yesterday evening that, in the Constitution of the United States, there is a prohibition on Congress making any law for this purpose.

**Mr. SYMON.** -

No.

**Mr. HIGGINS.** -

With all respect to the honorable member, there is.

**Mr. SYMON.** -

Prohibiting religion?

**Mr. HIGGINS.** -

Yes. If you look at the first amendment of the Constitution you will find that there is no prohibition on a state doing this thing, but there is a prohibition on Congress against either making a law prohibiting the free exercise of any religion, or for the establishment of a religion. I add, here, "or imposing any religious observance." It is quite true, as Mr. O'Connor says, one would have thought that in the absence of an express power given to Congress to do these things, there would not be power to do them, but I had the opportunity yesterday afternoon of indicating the course of the decisions of the courts to the leader of the Convention, and he knows how very largely from single expressions used in the Constitution there have been inferential powers deduced. In consequence, for instance, merely of a decision of the Supreme Court that that country was a Christian country, there was a law passed and carried into effect prohibiting the opening of the Chicago Exhibition on Sunday, so that there is no doubt this will provide against a real subsisting danger, and I am moving this amendment with the view of reassuring a number of honest people here who, having regard to the experience of America, are gravely objecting to the insertion of any words in the preamble of the Constitution. I can foresee that that preamble will be carried, and I wish to provide against having a number of people voting against the Constitution on the ground that it will introduce a number of difficulties which, in this new country, ought to be laid for ever. I beg to move my first amendment-

That the words "nor shall the Commonwealth" be inserted after the word
Mr. GORDON (South Australia). -

I think there was a good deal of force in the remarks that fell from the Right Hon. Sir Edward Braddon yesterday afternoon, shortly before the Convention adjourned. So long as this prohibition only extends to the mere mental exercise of faith, I am with Mr. Higgins; but I do not think that the prohibition should extend to interference with the exercises of faiths that are carried to lengths which are objectionable from a sociological point of view. I do not know whether any such extreme cases as those mentioned by Sir Edward Braddon would occur in this community, but it is quite likely that the faith healers who have been punished in England for failing to provide medical attendance and medicines for their sick might come here, and I would like to know whether a prohibition of this sort will interfere with faith healers who think that the cure of their sick should be made, not a matter of medical advice and medicine, but a matter of faith and prayer?

Mr. OCONNOR. -

They are subject to the English law.

Mr. GORDON. -

Yes, they are; but whether they are subject to the common law or the statute law of England, I do not know. What I would like to know is will this provision prevent such people, if they come here and act in the same way as they have acted in England, being prosecuted here?

Mr. SYMON. -

It might do so.

Mr. GORDON. -

Then I think we ought to safeguard it to this extent, directly the exercise of religious observances injures the community or any person in the community, I think that both the state and the Commonwealth ought to have the right to interfere.

Mr. SYMON (South Australia). -

I agree with the honorable member. Of course, what we want in these times is to protect every citizen in the absolute and free exercise of his own faith, to take care that his religious belief shall in no way be interfered with; but one would think from reading this clause, which appears to me objectionable in every possible way

Mr. HIGGINS. -

Do you mean the clause in the Bill?

Mr. SYMON. -

Yes, I am with my honorable friend in desiring to have the clause
amended. The idea of the clause is good enough—that is, the preservation of absolute freedom of religious belief, but the mode in which it is carried out in this clause seems to me to be obnoxious. The clause is either a great deal too wide, or it is not wide enough. It is a great deal too wide in saying that no law shall be enacted. I am not referring merely to the state, in what I am now saying, because undoubtedly it ought to be the Commonwealth rather than the state. However, it seems to be, prima facie, an interference with the legislative authority of the state itself. But putting it both ways—a prohibition against the state and against the Commonwealth making any law prohibiting the free exercise of any religious faith is, I think, a little beyond what any of us is prepared to go. Would it, for example, prevent or raise doubts as to whether the Commonwealth could pass a law prohibiting the exercise of such a religious creed as that mentioned by Mr. Gordon? We know what took place in Wales, in connexion with the faith healers, where most abominable cruelties were practised in the name of religion, and whilst no one ought to be allowed to interfere with the faith of these people—the creed they profess—still, the law, in the interests of the community and of humanity, ought to put a stop to the exercise of that faith in such a way as it was exercised in those cases. We are living in a very advanced age, not in medieval times, and there is no necessity for a prohibition of this kind, but if there be a prohibition there should also be a provision showing what is meant by religion, and what is meant by free exercise. Then again, whilst this is to be a prohibition against the state or the Commonwealth enacting a law interfering with the free exercise of religion, is it to be implied that the state or the Commonwealth may pass a law interfering with persons of no religion—Agnostics, Atheists, and Deists?

Mr. GORDON. -

A Deist has a religion.

Mr. SYMON. -

Some people would not admit that a Deist has a religion.

Mr. GORDON. -

A Jew is a Deist.

Mr. SYMON. -

Well, I am not skilled in the refinements of theology, but I ask the leader of the Convention whether it is necessary that the present clause should remain in the Bill at all? The points referred to by Sir Edward Braddon last night are of the very highest importance. We may be willing to admit people professing Oriental faiths, but unwilling to permit the exercise of those faiths as those people would wish to exercise them in this country, detrimental in every possible way to
the cause of religion and of freedom itself. I would suggest to Mr. Higgins whether it would not be better to do away with this clause altogether, and limit the prohibition to the imposition of any religious test?

Mr. HIGGINS. -
Say "observance."

Mr. SYMON. -
I do not know whether "observance" does not go too far.

Mr. HIGGINS. -
"Test" might include oaths administered in our courts and elsewhere.

Mr. OCONNOR. -
"Observance" might include Sunday observance laws.

Mr. SYMON. -
I do not like the word observance it seems to me to go a little too far. I think that the object we have in view will be sufficiently met if we prohibit the imposition of any religious test as a qualification for any public office of trust. That is as it existed in the original Constitution of the United States. If we do that, I think we are giving a sufficient assertion in this Constitution to the principle that religion or no religion is not to be a bar in any way to the full rights of citizenship, and that everybody is to be free to profess and hold any faith he likes but the Commonwealth must be the judges of when it is proper to interfere with its open exercise

Dr. COCKBURN (South Australia). -
I do not think that either the clause or the amendment should occupy the attention of the Convention very long. I consider the whole clause an anachronism, and that it applies to a state of things that can never occur in these days. At the time the American Constitution was framed, the framers of that Constitution had in mind certain events which they wished never to be repeated, and which never will be repeated in our civilization. I do not see why the states should not have the same rights of self-preservation under a Federal Constitution as they have at the present time. There is no atrocity which the human mind can devise which has not at some time or another been perpetrated under the name of religion, and the states should have the power to prevent such occurrences as those referred to by the right honorable member (Sir Edward Braddon) and others which might be mentioned ad libitum. There are a number of sects in different parts of the world whose religious observances embrace every form of horror one can imagine. I think that the clause should be struck out, and that the states should be allowed to retain the right to do what they think necessary to preserve and maintain their civilization. With regard to the amendment of the honorable member (Mr. Higgins), I think the honorable gentleman himself admitted yesterday that it would prevent a state from making laws
against Sunday trading for example.

**Mr. Higgins.** -
No; it would only prevent the making of laws for a religious reason.

**Dr. Cockburn.** -
Who could determine the intention of the state? The amendment would simply prohibit the enactment of these laws.

**Mr. Higgins.** -
My desire is to prevent the Federal Parliament from dictating to the states in these matters.

**Sir Edward Braddon.** -
Are we not getting on very well as we are?

**Dr. Cockburn.** -
I think so. I think that we should recognise that the clause is an anachronism, and should leave it out of the Constitution.

**Mr. Barton (New South Wales).** -
I am rather doubtful about the amendment, because, notwithstanding the American decisions to which the honorable member (Mr. Higgins) has referred, I can scarcely conceive it possible that the insertion of a provision in the preamble acknowledging the existence of the power of the Deity could ever induce the High Court or the Court of Appeal in the old country to hold that that imported a power to make laws regarding religion. I think it is, quite clear that the Commonwealth will have no power to make any law regarding religion, even if no amendment such as that which has been suggested is agreed to. The Commonwealth will have no powers except such as are given to it either expressly or by, necessary intendment. It will have only such powers as are given to it in so many words, or as are necessary for the exercise of these powers. If we apply this principle, we must see that the Commonwealth will have no power to make laws regarding religion. The reason why the prohibition in the first draft of the Bill which was prepared in 1891 was confined to the states was that it could not, by any possibility, be concluded that it was necessary to extend such a provision to the Commonwealth, because no power was given to the Commonwealth to deal with the matter of religion. The position is the same now, and I do not think it will be substantially altered if the blessing of Divine Providence is invoked in the preamble. A preamble does not give power to anybody. The decision of the United States Court which has been referred to was something to this effect. Congress had passed a law prohibiting the importation of any person for labour or service. Of course, that law was really intended to prohibit the importation of manual labourers; but a religious corporation made an agreement under which a
preacher was brought over, and a question was raised as to the legality of the agreement. The Supreme Court in the United States decided that the arrangement was legal, because the prohibition of the Act of Congress only applied to manual labourers; but it further decided, because of expressions in various charters given to plantations which afterwards became states, and in grants such as those given to Sir Walter Raleigh and others for the encouragement of colonization, that the United States was a Christian and a religious nation. Having decided this matter to their satisfaction, the Judges proceeded to say that upon that ground also the arrangement was a lawful one. The latter part of the decision was what lawyers call an obiter dictum.

Mr. HIGGINS. -

But that decision has been acted upon.

Mr. BARTON. -

Yes, since then, as is pointed out in a little handbook which my honorable friend lent me. But the question for us to consider is whether a court like the Federal High Court or the Privy Council would ever come to such a conclusion. One would think it highly improbable. The real question that may arise under this Constitution is whether the Commonwealth can make a law establishing or prohibiting the free exercise of any religion. I take it that in the absence of a provision in the Constitution conferring that power upon the Commonwealth it will be impossible for the Commonwealth to do so. For this reason I think we need scarcely trouble ourselves to impose any restrictions. Under a Constitution like this, the withholding of a power from the Commonwealth is a prohibition against the exercise of such a power. If the amendment of the honorable member were adopted, the clause would read:-

A state shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or imposing any religious test or observance.

Mr. ISAACS. -

Would that prevent the Commonwealth from insisting upon Sunday being kept as a day of rest?

Mr. BARTON. -

The honorable and learned member (Mr. O'Connor) pointed out that it might prevent the passing of a law for Sunday observance. The real question for-as to decide is whether the clause should or should not remains. The only difficulty I have upon the point is this: I do not anticipate any trouble from the want of a prohibition upon the states forbidding them from dealing with religious questions, but we must always
recollect that humanity has a habit of throwing back to its old practices. Since a couple of hundred years ago we have been tolerably free from sumptuary laws. But there is in many quarters a great disposition to take to these laws again, and we may before many years have passed be overwhelmed with them.

Dr. COCKBURN. - And it might be a good thing.

Mr. BARTON. - It may be a good thing. Who knows that there may not be a similar throwing back in regard to religious laws?

Dr. COCKBURN. - That may be a good thing, too.

Mr. BARTON. - Yes; those who say that the people are always right might say that it was a good thing. My honorable and learned friend will have many successors, and so shall I. But if the enlightenment of this day supposes itself to be right in saying that the free exercise of religion should not be prohibited, the question arises, should not a provision to that effect be placed in the Constitution? The trouble arises when you try to insert a proviso modifying this prohibition. For instance, if it were desired to prevent the application of the clause to any fiendish or demoralizing rite, that might be done by inserting the words "so long as these observances are inconsistent with the criminal laws of the state," because if there were no criminal law in existence at the time with which these observances were inconsistent, it would be possible for the state to pass such a law, and so, to use a common expression, euchre the whole business. I think, however, that we can do remarkably well without the clause at all.

Sir JOHN DOWNER (South Australia). - I agree with the honorable and learned member (Dr. Cockburn) that the clause is an anachronism, and it is inconsistent with federation. The principle of federation is that the states shall retain all such powers as they do not hand over to the Commonwealth, but this clause attempts to legislate for the states. Still they have not hitherto required any law of this kind. The Commonwealth cannot exercise any authority in the matter, because you have not bestowed it upon the federal authority.

Mr. HIGGINS. - Clause 109 commences-"A state shall not make any law." I agree with the honorable member that that provision should not be there. I am willing that the prohibition should extend only to the Commonwealth.

Sir JOHN DOWNER. - I do not think that is necessary, because the Commonwealth will have
only such powers as are expressly bestowed upon it, and by no straining of
collection can you find that the Commonwealth has been given any
power to legislate with regard to religion.

Mr. SYMON (South Australia). -

I would like to ask my honorable friend (Mr. Higgins) if he is prepared to
withdraw his amendment with a view to striking out the clause, and
inserting a declaration of this sort:-

No religious test shall be imposed as a qualification for any public office
or trust in the Commonwealth or in a state?

I think that a declaration of that sort will be necessary if we insert the
words that it is proposed to insert in the preamble.

Sir EDWARD BRADDON (Tasmania). -

Although I moved an amendment yesterday with a view to making the
clause reasonably safe in regard to so called religious practices, I confess
that I should prefer to see it struck out altogether. Even with the
qualification suggested by me, I do not know whether some occurrence
which we should all deprecate might not take place and make us regret that
the clause was ever put into the Bill.

Mr. HIGGINS (Victoria). -

I am very glad that I have called attention to this clause. I thoroughly
agree that as it stands it is an anomaly, and that there should not be a
prohibition upon the states. All I said was that if you prohibited the states
from making laws respecting religious observance, and if you inserted in
the preamble a recognition of the Almighty,
it was fit that you should extend a similar prohibition to the
Commonwealth. It would answer my purpose absolutely if the clause only
enacted that the Commonwealth should be prohibited from passing a law
of this kind. A number of honest people will have a great deal of difficulty
about voting aye for the Constitution if there is no prohibition against the
making of laws affecting religion by the Parliament of the Commonwealth.
What they ask is:"Why cannot we follow the example of the United States
of America?" They point out that there is far more reason for a prohibition
in our Constitution, because it is proposed to insert in the preamble a
recognition of the Almighty.

Dr. COCKBURN. -

But the Almighty does not belong to any special religion.

Mr. HIGGINS. -

I do not want to argue that question. I admit that there is a great deal of
force in what the honorable gentleman says, but I have to speak most
delicately on this subject, and I cannot go any further. Although it is quite
true that a reference to the Almighty does not refer to any particular religion, still a reference to the Almighty in the preamble involves a recognition of Him, and it involves to a certain extent a religion. It has been found in the United States that, even though there is no reference to the Almighty in the preamble, yet it has been held that it is a Christian country, and, therefore, there was a federal law which prevented the opening of the Chicago Exhibition on Sunday. Honorable members will understand that it is not a question whether it is proper to open exhibitions on Sunday but that law was framed and enforced, and people were compelled to obey it on account of the dictum of the Supreme Court that it was a Christian country. Now, if you can enforce a good thing you can also enforce a bad thing made by the same power. All that I want to put to the Convention is this: That although I should have thought in the absence of express powers that the Commonwealth could not legislate on this subject, still I cannot but see, having regard to the decisions in the United States Court, that there is danger in an implied power. In the preamble of the United States Constitution they say-

We, the people of the United States, in order to form a more perfect union, establish justice,

Under the head of "general welfare," coupled with the statutory powers, they have extended the power of the Commonwealth hugely. If you are going to confer absolute power to promote the general welfare you do not know how far that will extend. First of all, the plea was to promote the general welfare; then there is power to make all laws which are necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government or proper officers of the states. Then, if you have coupled with that a declaration by the Supreme Court that this is a Christian nation, there is power to enforce Christian observances. The leader of the Convention has urged what I knew would be the chief objection to what I propose, that is, that there is no express power given; but I say that, in the face of the decisions given in the United States, it is not safe for us to assume that there may not be an inferential power in this preamble. There are hosts of people in Australia looking at that preamble to see it any safeguard will be put in. As far as I am concerned, I shall be willing to take out all this provision prohibiting the states from doing what they think fair. I think that the importance of preserving to the state the residuary powers is overwhelming; but I say that we ought to do at least the same as was done in the United States. There they provided that the Federation shall not make any law prohibiting the free exercise of any religion, or for the establishment of any religion; then I want to add "or imposing any religious observance."
conclusion, it has been said that this would prevent the imposing of a day of rest. My amendment would not.

Dr. COCKBURN. -
A general day of rest.

Mr. HIGGINS. -
It would not; it would simply prevent the imposing of a day of rest for religious reasons.

Dr. COCKBURN. -
You want to break down religious sanction.

Mr. HIGGINS. -
A number of laws have been held to be unconstitutional in America because of their reasons and because of their motives. There was a funny case in San Francisco, where a law was passed by the state that every prisoner, within one hour of his coming into the prison, was to have his hair cut within one inch of his head. That looked very harmless, but a Chinaman brought an action to have it declared unconstitutional, and it turned out that the law was actually passed by the Legislature for the express purpose of persecuting Chinamen.

Mr. BARTON. -
That took place under the next clause in this Bill, which is a similar enactment.

Mr. HIGGINS. -
I did not say that it took place under this clause, and the honorable member is quite right in saying that it took place under the next clause; but I am trying to point out that laws would be valid if they had one motive, while they would be invalid if they had another motive. All I want is, that there should be no imposition of any observance because of its being religious.

Sir JOSEPH ABBOTT (New South Wales). -
The honorable member has stated that there are host of people who are anxiously watching what is being done with this preamble, because it may lead to certain laws being passed; He has not stated of whom the host is composed, or where it exists; but I gathered from his remarks yesterday that he was referring to the Seventh Day Adventists, a very powerful body in America, who have recently set up here and in New South Wales. That body denies the right of the State to impose any law whatever which will prevent them from working on any particular day. I believe they are earnest good people, but, in defiance of our laws, they persist in working on the day which we set aside and call Sunday. They set aside another day, Saturday, and call it the Sabbath. If that is to be allowed throughout the
whole community, how can there be a uniform day of rest? And what greater harm can befall the people than to say that any sect can set themselves up and defy the State to set apart any particular day as a day of rest, whether for religious purposes or otherwise? Take the case of the Jews. Whilst they observe their own Sabbath on Saturday they never in any shape or form attempt to interfere with the recognised Sabbath of the rest of the community. The Seventh Day Adventists have defied the law in that respect. If we allow one body to do that, instead of having any uniform and universal Sabbath or day of rest, we may have six or seven such days established.

Mr. Higgins' amendment was negatived.

Amendment suggested by the House of Assembly of Tasmania, to add at the end of clause-

Nor appropriate any portion of its revenues or property for the propagation or support of any religion.

The amendment was negatived.

Sir EDWARD BRADDON (Tasmania). -
I do not intend to press the amendment which I gave notice of yesterday. The clause was negatived.

Clause 110-A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth, nor shall a state deny to any person within its jurisdiction the equal protection of the laws.

The CHAIRMAN. -
On this clause there are various amendments proposed. The Assembly of New South Wales and the Legislative Council of Tasmania propose to omit all the words from "make" in the first line to "state" in the fourth line, and the Legislative Council of Victoria propose that we should insert, after the word "Commonwealth," in the third line, the words "or impairing the obligation of contracts." If I put the whole of the amendments suggested by New South Wales and Tasmania that were carried, it would not be competent to put the amendments suggested by Victoria. Therefore, I propose to put as a test question the amendment proposed by New South Wales and Tasmania so far as to leave out all the words to the word "Commonwealth," The question now is, that the words proposed to be left out stand part of the question, viz. - "Make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth."

Mr. BARTON (New South Wales). -
I should like to have a little time to consider this question. The effect of
the amendment proposed by the Legislative Assembly of New South Wales would be that a state, as far as the Commonwealth is concerned, would be in a position to make or enforce any law within its Constitution abridging the privileges or immunities of the citizens of other states. This is a provision inserted in the Constitution for the equality of citizens of the Commonwealth-for the prevention of those of them who happen to reside in one state having their citizenship abridged as compared with citizens of the same Commonwealth residing in another state.

Sir JOHN FORREST. -
Would citizen mean an alien?

Mr. BARTON. -
No, unless he has become a citizen by naturalization.

Mr. ISAACS. -
There is no definition of "citizen" in this Bill. In the United States there is a definition.

Mr. BARTON. -
There is no deviation of the word "citizen" here, but I take it that a citizen is either a natural-born or a naturalized person possessing the ordinary political privileges of the Commonwealth, or of a state. The question is whether we should here allow anything which would enable a state to deprive citizens of the Commonwealth simply because they reside outside the borders of that state of any of the privileges and immunities which other citizens of the Commonwealth would possess.

Mr. GORDON. -
What sort of privileges put a concrete case?

Mr. BARTON. -
It is hard to put a concrete case; I think you will find some reference to cases in Baker's Annotated Constitution of the United States. But I do not want to trouble the committee at any length. It seems to me that we ought to maintain in some form of words the purpose which exists in this clause, otherwise it would, be open to a state, by imposing disabilities of one kind or another upon citizens of another state-we will not say in respect of the holding of land, but in respect of this or that privilege-to raise an inequality amongst the citizens of the Commonwealth, which would never be the intention of a Constitution such as this, and which would tend to defeat its purpose.

Mr. ISAACS. -
Could we not strike out the words "of other states"?

Sir JOHN FORREST (Western Australia). -
I have no doubt that the Commonwealth will legislate in regard to these matters, but in the meantime it seems to me that there will be a difficulty in
regard to coloured aliens and to coloured persons who have become British subjects. In Western Australia no Asiatic or African alien can get a miner's right or go mining on a gold-field. We have also passed an Immigration Act which prohibits, even undesirable British subjects, from entering the colony. I do not know how this clause will act in regard to these matters but it seems to me that the word "citizen" should be defined. In Western Australia an alien can hold land in just the same way as he could if he were a British subject—no doubt that is the case in other colonies, probably in this colony—and he would probably think himself a citizen, whatever nationality he belonged to, having resided for a long time in the colony, and having acquired property therein. It is of no use for us to shut our eyes to the fact that there is a great feeling all over Australia against the introduction of coloured persons. It goes without saying that we do not like to talk about it, but still it is so. I do not want this clause to pass in a shape which would undo what is about to be done in most of the colonies, and what has already been done in Western Australia, in regard to that class of persons. It seems to me that should the clause be passed in its present shape, if a person, whatever his nationality, his colour, or his character may be, happens to live in one state, another state could not legislate in any way to prohibit his entrance into that state. I think there is a great deal to be said against the state being allowed to do that, but until the Federal Parliament legislates in regard to it, it certainly ought to be in the power of the state not only to maintain the laws existing, but also to legislate further if it should so desire.

Mr. CARRUTHERS (New South Wales). -

In the Legislative Assembly of New South Wales I was asked on all sides to explain what this clause meant, and I must confess that then, as now, I was incapable of giving an explanation as to what the first portion of the clause did mean. Because the members of the Assembly, as well as myself, were unable to fathom the meaning of the clause, it was proposed that that part of it which we could not understand should be omitted. I would ask the leader of the Convention to give us some instances of the immunities possessed by citizens of other states which a state might abridge by any law. I confess that it is hard for me to discover what immunities—I can discover others which may be created—are possessed by a citizen of Victoria which the state of New South Wales can abridge by any of its laws. I cannot conjecture an example of these immunities, nor do I know of privileges possessed by citizens of Victoria which are abridged by any law of New South Wales.

Sir JOHN FORREST. -
There might be.

Mr. CARRUTHERS. -

I can understand, in regard to Western Australia-

Sir JOHN FORREST. -

And here, too. A Chinaman of this colony you would not allow to go into your colony, perhaps, and surely that would be abridging his right?

Mr. REID. -

Surely we would have the right to abridge his rights.

Mr. CARRUTHERS. -

I want to know what immunity a Chinaman naturalized in Victoria possesses which he is deprived of by any law of New South Wales, or what privilege is denied to him? I can unde

Convention never contemplated. No one can doubt that the language of the clause is vague and ambiguous. The Constitution should be so framed that he who runs may read, that there should be no pitfalls on account of ambiguous phraseology. I confess that I like the proposal which has come from the House of Assembly of Tasmania, which gives in clear language something that would show what this clause, perhaps, is intended to show:-

The citizens of each state, and all other persons owing allegiance to the Queen and residing in any territory of the Commonwealth, shall be citizens of the Commonwealth, and shall be entitled to all the privileges and immunities of citizens of the Commonwealth in the several states, and a state shall not make or enforce any law abridging any privilege or immunity of citizens of the Commonwealth, nor shall a state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws.

That language to me is clear and intelligible, but I must confess that as clause 110 is now drafted it is very difficult of comprehension. Is it directed at any system of taxation? Is it directed at those persons who hold property in one colony but reside in another? And are we to give a power to one colony to grant an immunity to its citizens from taxation at the hands of a neighbouring state? It may be, possibly, that the construction of the clause may be strained to that effect, or we may have some construction put on the clause to limit the right of Western Australia to regulate immigration to that colony. I do not pass these remarks in any cavilling spirit, but I think that the clause is one which may very well be taken in hand again by the Drafting Committee, so that we may have some clear intelligible expression of what may be the desires of the Convention after they have been expressed.

Mr. TRENWITH (Victoria). -
It seems to me that this clause is altogether unnecessary. It seems to me that everything which can be acquired by it is obtained in clause 101. There we declare that the law of a state which conflicts with a law of the Commonwealth has no effect. Now, when the Federal Parliament has legislated upon any point in connexion with citizenship, the states cannot legislate in conflict with that federal law. That seems to me all that is required. Take the question of naturalization, which is probably a question about which a difference would arise. As a separate state, a colony naturalizes an alien, and when he leaves that colony he has to be naturalized in the colony he goes to. When we have created a Commonwealth, we shall have a Commonwealth citizenship, and when aliens are naturalized, they will be naturalized as citizens of the Commonwealth. But if a state desires to make some restrictions with reference to some class within its territory, and there is no objection to it on the part of the Commonwealth, it seems unwise that we should put here a bar. If there turns out to be an objection on the part of the Commonwealth, beyond doubt the Federal Parliament will legislate on that subject, and then the state law, if it conflicts with the federal law, will have no effect. It seems to me that we have all the protection we require without this intensely ambiguous clause. I would, therefore, suggest that, inasmuch as it is unnecessary, it should be struck out. I can see no better purpose to be served by the clause than is served already in a simpler form by clause 101. With a view to test the feeling of the committee on that point, I propose to move that the clause be struck out.

Mr. DEAKIN. -
No; you must vote against it.

Mr. ISAACS (Victoria). -
There is a very great deal of force in what my honorable friend (Mr. Trenwith) has said as to whether this clause is or is not necessary. The origin of the clause, which is certainly very modified, is the 14th amendment of the American Constitution.

Mr. DEAKIN. -
Which has given them a great deal of trouble.

Mr. ISAACS. -
Which is very much better, and which has been to a large extent paraphrased more, in accordance with our own requirements by the House of Assembly of Tasmania.

Mr. SYMON. -
That is the better amendment.
Mr. ISAACS. -

Yes, it is very much better than the others, but I do not know that it is wanted at all. And when one recollects how the 14th amendment came into the American Constitution, one is a little surprised to think that it is necessary to put such a clause in this Bill. It was put in the American Constitution immediately after the Civil War, because the Southern States refused to concede to persons of African descent the rights of citizenship. The object of the amendment was purely to insure to the black population that they should not be deprived of the suffrage and various rights of citizenship in the Southern States. It provides who should be citizens, not of the states, but of the United States. I will read the words of the amendment:-

All persons born or naturalized in the United States, and subject to the jurisdiction thereof-

The words "and subject to the jurisdiction thereof" were put in so as to exempt the Ministers of State of foreign countries, and their children, and so on.

are citizens of the United States, and of the state wherein they reside.

It started by defining who a citizen was.

Mr. KINGSTON. -

What is the definition?

Mr. ISAACS. -

It is as follows:-

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Sir EDWARD BRADDON. -

That is the Tasmanian amendment.

Mr. ISAACS. -

Yes, it has been adapted by than Tasmanian Assembly to suit our altered circumstances but I want to point out that it only became necessary to pass that 14th amendment in the United States in order to provide in the Constitution for the change that was wrought by the Civil War. The rights of citizenship for the blacks and the abolition of slavery had been won by hard fighting, and this Article 14 had to be rammed down the throats of the Southern States by the military provision which I referred, to in Sydney. This, together with the 15th article, which goes with it, had to be passed. The object of it was as I have stated, and that was recognised by the United States courts in the case of Strauder v. West Virginia, 100 United States Reports, page 303. We can understand that a Constitution should say who
shall be citizens of the United States or citizens of the Commonwealth. We can also understand that having constituted a citizenship of the nation, no state should be permitted to abridge that citizenship, and take away any of the privileges or immunities pertaining to citizens. What are these privileges and immunities? That very question was dealt with in what are known as the Slaughter House cases in 1872, 16 Wallace, 36, and in certain other cases. This is what the court said-

The right of a citizen of this great country, protected by the implied guarantees of its Constitution, to come to the seat of government to assert any claim he may have upon the Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions, free access to its sea ports through which all operations of foreign commerce are conducted, also to the sub-treasuries, land offices, and courts of justice of the several states. Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government for his life, liberty, and property when on the high seas, or within the jurisdiction of a foreign country; the right to peaceably assemble and petition for redress of grievances; the privilege of the writ of habeas corpus; the right to use the navigable waters of the United States, however they may penetrate the territory of the several states, and all rights secured to our citizens by treaties with foreign nations; and the right of a citizen of the United States of his own volition to become a citizen of any state of the Union by bonâ fide residence therein.

Mr. GORDON. - That covers a great deal more than the question of the coloured races.

Mr. ISAACS. - It was intended to protect the blacks. Nobody denied these rights to the whites.

Mr. GORDON. - A large number of decisions which do not touch the question of the coloured races have arisen under that clause.

Mr. ISAACS. - For 70 or 80 years, as long as the whites only were concerned, nobody found the necessity of such a clause, but, when the blacks were concerned, the Southern States refused to allow them to vote. They do that at the present time to a large extent contrary to the law, and this provision was made to secure to the blacks the rights of citizenship. While they were about it they put it in language quite large enough to cover a great deal more, than the African citizens of America. Mr. Hare, in his volume on
Constitutional Law, says, on page 517, in dealing with the question of the blacks:

The main object of this amendment is clear. It was to render all persons born or naturalized in the United States, and especially the recently emancipated negroes, citizens of the United States and of the state wherein they reside, endowed with the rights incident to that two-fold relation, including those conferred by the second section of the Fourth Article, and also to afford the possessors of such citizenship an effectual guaranty against arbitrary or unequal legislation on the part of the several states.

That has operated no doubt, as Mr. Gordon has said, in several cases in a way quite unexpected. There is no power on the part of any of the states of the United States of America to draw any distinction such as we have drawn with regard to factory legislation, and the question was decided in a case, the name of which is significant, Yick Wo against Hopkins, 118 United States Reports, where a Chinese established his right in spite of the state legislation to have the same laundry licence as the Caucasians have. You can draw no distinction whatever, and it is as well that we should understand the full purport of the clause. In regard to that part of it which says that all citizens shall have equal protection it was held that no distinction could be drawn. You could not make any distinction between these people and ordinary Europeans. You could lay down all the conditions you liked to apply all round, but you could not impose conditions that would in effect, no matter how the language was guarded, draw a distinction between them and ordinary citizens.

Mr. GLYNN.

We have not got Article 4 of section 2 of the American Constitution under which the decision you have referred to was given.

Mr. ISAACS.

This decision was given under the amendment I have spoken of.

Mr. GLYNN.

That amendment must be read with Article 4, Section 2.

Mr. ISAACS.

That article is as follows:-

The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states.

Mr. GLYNN.

That is not in our Bill.

Mr. ISAACS.

It really is there, because our Bill provides that the state shall not make or enforce any law abridging any of the privileges or immunities of the citizens of the other states. At all events, the 14th amendment is the one
under which these decisions were given.

Mr. HOLDER. -
We have no definition of citizen.

Mr. ISAACS. -
No, not of the Federation. The question of the citizenship of a state is one that will have to be worked out. It might be held to be an ordinary member of the state, and it might not be confined to naturalized persons.

Mr. GORDON. -
It might be a question of domicile.

Mr. ISAACS. -
Yes. It is not wise to use the word "citizen" without any definition. They took care to define it in the United States. We might use a term that would be found to be of wider import than was intended, but, however that may be, it seems to me that it is illogical to provide that a state should not make or enforce any law abridging any privilege or immunity of citizens of other states. We ought to take out the words "other states," and say that no state should abridge any privilege or immunity of any citizen of the whole Commonwealth.

Mr. WISE. -
That is not the object. This clause has no connexion whatever with the amendment of the United States Constitution.

Mr. REID. -
Will you tell us the object?

Mr. ISAACS. -
I will wait to hear what the honorable member has to say.

Mr. REID. -
Can the state laws affect any one not in the jurisdiction of the state?

Mr. ISAACS. -
It is puzzling to me why a restriction has been made in this way, that the state is not to be at liberty to abridge the privileges or immunities of the citizens of other states.

Mr. SYMON. -
It is the essence of the Constitution that the state shall have that power within its legislative jurisdiction. Every state can do that.

Mr. ISAACS. -
Yes, within its legislative jurisdiction, and that consideration gives immense force to what I said at starting, and what Mr. Trenwith said. We are giving to the Federation certain powers of legislation, and we are reserving all others to the states. If the Federation chooses to exercise its legislative powers within its sphere, it can over-ride anything a state does.
Mr. SYMON. -

There is no object in the limitation of the federal jurisdiction.

Mr. ISAACS. -

None whatever; and if the state is to have reserved to itself all other powers, I cannot understand the bearing of it. I thought it my duty, therefore, to bring under the notice of the Convention the reason why it was introduced into the American Constitution. It was to cut down the powers of the state as exercised by refusing citizenship to the blacks. There have been quite a number of decisions on the subject, but it would be profitless to refer to them further. I have endeavoured to point out as briefly as I can how this matter stands, and I think it will be found in the end, subject to anything that Mr. Wise may have to say, that the basis of it all is the 14th amendment of the United States Constitution.

Mr. WISE (New South Wales). -

I do not like to speak with any confidence after such a strong expression of opinion from one so well qualified to give an opinion as the Attorney-General of Victoria, but my recollection of the reasons which led to the first part of the clause being inserted in the Draft Bill of 1891 leads me to say that the words were intended to limit the legislative jurisdiction of the states by such necessary restrictions as were thought desirable to give the Federation power to settle disputes between states arising from the exercise of the legislative authority within each state. I very much regret that Mr. Clark's memorandum, a portion of which I read yesterday, has not been returned. In the concluding part of that memorandum he draws special attention to these words, and points out that they were a necessary complement to the implied surrender of the right to claim redress by diplomatic or other means which was made by every state when it entered into an equal federation with other states. He lays down in express terms the principle which Judge Shipman used as the basis of his judgment in the case I cited yesterday from 22 Blatchford, 131, that is to say, if a state passes a law the effect of which is to injure the territory or property of persons outside the state—that may not be the intention, but if the direct effect is to inflict injury upon the territory or property of citizens in another state—then that law, although in so far as it only affects citizens within the state that passes it, it is *intra vires* of the Constitution, it becomes *ultra vires* in so far as it inflicts injury on the inhabitants of another state. That, I believe, was the intention, although I feel some diffidence in insisting upon it. This was the view which formed the basis of the judgment of Mr. Justice Shipman.
The state of Connecticut had authorized certain works which injured property in the adjoining state of Massachusetts, and it was held that that was a matter in which the Federal Court, in the interests of the Federation, was entitled to exercise jurisdiction.

Mr. ISAACS. -

Every text-book writer ignores that case; I cannot find it anywhere.

Mr. WISE. -

The object of this was by no means to deal with a set of circumstances such as have arisen in the United States, which could not have arisen here, but to deal with other matters; and it seems to me that the clause as it stands would be a powerful instrument to prevent an abuse of powers by a state, not for the purpose of injuring the citizens of that state, but for the purpose of injuring the citizens of other states.

Mr. ISAACS. -

Can you give a concrete case?

Mr. WISE. -

Well, take the case of imposing a poll tax on citizens passing from one state to another. Such a law as that would at present be within the competency of the legislation of any colony.

Mr. SYMON. -

Not if this Constitution becomes law.

Mr. WISE. -

It might be dealt with by another clause, and would also be dealt with by this clause 110. I am not dealing now with the latter part of the clause, because I admit that that is open to other objections. I am confining my attention to the first portion. The instance I have given is of course an extreme one, but it is such cases as that which, according to my recollection, it was intended should be dealt with by the first portion of this clause. I very much regret that Mr. Clark's memorandum is not in the hands of honorable members, because it deals with the first part of this clause and shows what importance Mr. Clark attaches to it as one of the draftsmen of the Bill of 1891.

Mr. ISAACS. -

How would the entry into one state by a citizen of another state be an immunity or a privilege of that citizen?

Mr. WISE. -

Let me give another illustration. Suppose an extra probate duty were imposed on Victorians who had property in New South Wales, or vice versa.

Mr. REID. -

Or an absentee tax.
Mr. WISE. -
Yes, or an absentee tax.

Mr. SYMON. -
It would be competent for the states to do that.

Mr. WISE. -
No; I mean an absentee tax making those who reside in one part of the Union pay higher—say pay a higher probate duty or legacy duty—than those who reside within the state imposing the tax.

Mr. ISAACS. -
How could that be a privilege or immunity of the citizens of the other states?

Mr. WISE. -
It would be putting an exceptional disability upon the citizens of another state, to which the citizens of the state imposing the tax were not subject.

Mr. ISAACS. -
But how is it a privilege or immunity of the citizens of another state that they should not be taxed as absentees by a particular state?

Mr. WISE. -
It is an immunity at present.

Mr. ISAACS. -
Then you can never tax a man living in another state?

Mr. WISE. -
You cannot impose exceptional treatment upon the citizens of another state; that applies to everything. It is difficult to contemplate a concrete case, but that the words themselves have a definite and clear meaning any one can see; and whether that clear power should be taken away or not is a matter of very serious consideration. It does appear to me that this clause is a powerful instrument in the hands of the federal authority to prevent any state acting in an overt manner, permitting overt acts of hostility against citizens outside its jurisdiction. For that reason I hope that the clause will be allowed to stand.

Mr. OCONNOR (New South Wales). -
The honorable and learned member (Mr. Isaacs) is I think correct in the history of this clause that he has given, and this is one of those instances which should make us very careful of following too slavishly the provisions of the United States Constitution, or any other Constitution. No doubt in putting together the draft of this Bill, those who were responsible for doing so used the material they found in every Constitution before it, and probably they felt that they would be incurring a great deal of responsibility in leaving out provisions which might be in the
least degree applicable. But it is for us to consider, looking at the history and reasons for these provisions in the Constitution of the United States, whether they are in any way applicable; and I quite agree with my honorable and learned friend (Mr. Carruthers) that we should be very careful of every word that we put in this Constitution, and that we should have no word in it which we do not see some reason for. Because there can be no question that in time to come, when this Constitution has to be interpreted, every word will be weighed and an interpretation given to it; and by the use now of what I may describe as idle words which we have no use for, we may be giving a direction to the Constitution which none of us now contemplate. Therefore, it is incumbent upon us to see that there is some reason for every clause and every word that goes into this Constitution. Now, I agree with Mr. Isaacs, that the 14th amendment of the United States Constitution was directed entirely to the question of the citizenship of negroes who were freed men, and it was necessary to implant something of that kind in the American Constitution, because of the fever heat which had been excited, and which was then subsiding, over the war which had convulsed the country. But how can that condition of things, or that necessity which arose then, have any hearing on our position? I take it that the best way to look on this matter is to try and forget all about the 14th amendment of the United States Constitution, and regard it as though we were framing this Constitution without any knowledge of any such provision. It seems to me that the first portion of the amendment of the

Mr. HIGGINS. -

They have declared that in the amendment of the Constitution of the United States; but we have not got it here.

Mr. ISAACS. -

That shows the history of it.

Mr. OCONNOR. -

That shows the history of it, as Mr. Isaacs suggests. I am pointing out that there is no necessity for it in our Constitution-no necessity to point out that every person in the states is a citizen of the Commonwealth. There is no necessity for it, because citizenship follows from the rights you give every person in every portion of the Commonwealth under the Constitution. Now, is there any right which it is necessary to state that you give? I see that this provision that we are discussing now makes some reference to privileges or immunities of citizens. Quite sufficient has been pointed out to show that that might work in an exceedingly complicated way-in a way we have no conception of at the present time-if it is inserted in its present form. The only possible differences or disabilities in the states now, as affecting different classes of citizens, are those which exist in
regard to aliens and coloured races. But already in clause 52 we have agreed to the insertion of a sub-section which enables the Commonwealth to deal with that matter, and there can be no question about it that in course of time the different laws that exist in the states dealing with such coloured races will be similar, and that such races will be dealt with uniformly, so that whatever privileges

or disabilities exist in one state with regard to these people will exist in another state. There is only one portion of the Tasmanian amendment which I think should be preserved, and I prefer it in the form in which it stands as submitted by the Legislative Assembly of Tasmania. I think that the only portion of it which it is necessary to preserve is this-altering the wording slightly so as to make it read as I think it should read-

A state shall not deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws.

So that any citizen of any portion of the Commonwealth would have the guarantee of liberty and safety in regard to the processes of law, and also would have a guarantee of the equal administration of the law as it exists. I think Mr. Isaacs will bear me out, that in the United States it has been decided that the title to equal treatment under the law does not mean that you cannot make a law which differentiates one class of the community from another; but, as has been decided, it means that in the administration of the laws you have made, all the citizens shall be treated equally. And that should be so. Whatever privilege we give to our citizens, the administration of the law should be equal to all, whatever their colour. The case I refer to is one of the Chinese cases-I forget the name of it.

Mr. ISAACS. -

The case of Yick Wo v. Hopkins.

Mr. OCONNOR. -

It may be that case, or it may be another, but, at any rate, the case I mean bears out the position I have stated. There are two provisions which, it seems to me, are clearly necessary for the protection of the whole of the citizens of the Commonwealth in regard to the legislation of the states. These two are-first, that the "state shall not deprive any person of life, liberty, or property without due process of law"; and the next is that the state shall not "deny to any person within its jurisdiction the equal protection of its laws." I suggest that the best way of dealing with this question would be to strike out the clause as it stands now, and substitute for it the latter part of the Tasmanian clause which I have read. The former portion of that clause I do not think it is necessary to insert. It says-
The citizens of each state, and all other persons owing allegiance to the Queen, and residing in any territory of the Commonwealth, shall be citizens of the Commonwealth.

I do not think that is necessary.

and shall be entitled to all the privileges and immunities of citizens of the Commonwealth in the several states;

I think that that might lead to difficulties, and it is not necessary.

and a state shall not make or enforce any law abridging any privilege or immunity of citizens of the Commonwealth.

I think all that might be left out, but I am of opinion that the latter portion of the clause, which I have previously quoted, should be substituted in place of clause 110 as it now stands.

Mr. BARTON (New South Wales). -

The suggestion just made by my honorable and learned friend (Mr. O'Connor) amounts to an adoption of the New South Wales amendment first, and then the adoption of a certain number of the words of the Tasmanian amendment. So that the provision which would be adopted if the suggestion of my honorable and learned friend were carried would be this: The words proposed to be struck out by the Legislative Assembly of New South Wales would be struck out, and in their place would be inserted the words-

"deprive any person of life, liberty, or property without due process of law, or."

It does seem to me, after the discussion we have had, that the object we have in view will be sufficiently attained by the adoption of this amendment. I do not think that the first portion of the clause-which has stood since 1891 without comment-is necessary in the peculiar condition of these colonies. Nor do I think that any such circumstances have arisen as would justify these colonies in inserting in the Constitution such words as were inserted in the American Constitution to meet the case of the freed men, of which words the early part of this clause is an application, and to some extent a constriction. So that I don't think we need put ourselves in any trouble about these earlier words. My position has been, from the beginning, that there is a necessity for some provision or other which would prevent citizens of the Commonwealth from being under any undue restriction or inequality. But taking the amendment my honorable friend (Mr. O'Connor) has suggested, I think that object is sufficiently provided for; and I agree with him that it is an absolute necessity that we should see that in this Constitution we do not insert any words about the meaning of which we are not quite sure, for they may
receive a construction from a court hereafter which we never intended should be applied to them. I accept the amendment for striking out the words that have been mentioned, and, if it is agreed to, I shall move a subsequent amendment.

Mr. WISE (New South Wales). -

I would ask the leader of the Convention to consider one further point. Take a concrete instance, such as I was asked to give just now: Suppose the Legislature in one state passed a law to say that citizens residing in another state should not own real property within the legislating state. That is an instance that may occur, and which has occurred in the United States. For example, say the New South Wales Parliament-to take my own colony-passes a law that no Victorian shall hold real estate in New South Wales. We have that power now. It is not at all likely to be exercised, but it has been exercised in the United States, as between several states. Now, I ask, do we wish to preserve that right to the different provinces after federation? For my own part, I do not.

Mr. ISAACS. -

Do you say that an individual qua citizen of New South Wales is entitled to hold property in Victoria? Is it a privilege or an immunity?

Mr. WISE. -

I do not say that the words carry out what is suggested, but I do say that the words of the Tasmanian amendment make the matter perfectly clear, and I should prefer the whole of the amendment as suggested by Tasmania. They cover all the cases that may arise, and put a full and, in my opinion, necessary limitation on the powers of the provinces to exercise their legislative authority to the injury of any citizen of the Federation. I would ask the leader of the Convention whether his amendment, as it stands now, does anything more than protect the person of a citizen of another state, and secure that he shall be dealt with according to the due process of law, as regards any offence he has committed or any punishment to which he is likely to be subjected? We want to go further than that, and to secure that the property of citizens of the Commonwealth is to be as free from any invidious or hostile act levelled against it by the Legislatures of the several states as their persons. The amendment of the Parliament of Tasmania puts that in a perfectly clear way. It provides that citizens of the Commonwealth, by virtue of their citizenship, shall be entitled to the privileges and immunities of citizens in the several states, and that no state shall have power to abridge by its legislation these privileges or immunities. In other words, there is to be an equal citizenship. That is a necessity for federation, if federation is to be a reality and not a sham. I am not at all wedded to the clause as it stands. There is immense force in the
suggestion of the Attorney-General of Victoria (Mr. Isaacs) just now, that the words "privilege and immunity" are not sufficient.

An HONORABLE MEMBER. -

How would that affect a tax on absentees?

Mr. WISE. -

It would give full power to impose a tax on absentees outside the Commonwealth, but not within it. There should be no absentees within the Commonwealth after federation. I do not see, how, after federation, a man can be regarded as an absentee at Sydney when he lives in Melbourne. If we are to have federation, the idea that when a man moves from one part of the Commonwealth into another he becomes an absentee, or ceases to be an Australian, is one that must vanish, and we ought, as far as our Constitution will permit us, to do everything to make it vanish quickly. It is a survival of the old idea that there is a distinctive citizenship in a Victorian, and a distinctive citizenship in a New South Wales man. That is the idea which I am endeavouring to destroy by supporting the amendment of Tasmania, that Australian citizenship, and that alone, shall be recognised in every part of the Federation. The way to secure that is to provide in the clearest terms, as Tasmania suggests, that no local Parliament can have any authority to, in any way, abridge the citizenship of an Australian.

Mr. REID (New South Wales). -

I really think that the constant attempts which are being made to interfere with the rights of the states, in matters which are left to them expressly, is becoming quite alarming. There are a number of general words already in this Constitution which, I fear, may be used so as to almost destroy the independent powers of legislation of the states, with reference to every conceivable subject that they have left to them. I will deal with that later on, but, at present, look at the illustration which my honorable and learned friend (Mr. Wise) has just given. The states are supposed to be left in absolute independence of the Commonwealth as to their many powers of internal taxation. Now, my honorable friend wants, by vague words in this Constitution, to bridle the powers of the states in connexion with that matter. Why stop where he does? Why should any subject of the empire be treated as an absentee, simply because he is out of New South Wales?

Mr. WISE. -

He does not happen to be under one Government, as he would be after federation.

Mr. REID. -
That is the fallacy. As to all matters of internal taxation he will be under the local Government, not under the Commonwealth Government. I, personally, would not mind unification at all, but this is an attempt to affect to give independence to the states, while, at the same time, over-riding them in every point of the jurisdiction that is left to them. I really do not think that anything is likely to occur in the Commonwealth of an obnoxious character, for instance, as to aliens. In New South Wales we allow aliens to hold real property—we have a law of an extremely liberal character there, and I do not think that it is likely that in any state in the Commonwealth there will be any extreme laws on the subject. But really, if we go on as we are doing, I shall have to employ some antiquarian to discover where the rights of the states are. They certainly won't be in this Constitution. The power of local taxation for local purposes is left absolutely within the jurisdiction and discretion of each state, and the illustration of the honorable member (Mr. Wise) shows how dangerous it is to leave in words which were put in for one purpose, and which would be used for another purpose. I hope the very wise suggestion of the honorable member (Mr. O'Connor) will be followed in this matter.

Mr. SYMON (South Australia). -

I think the honorable member (Mr. Wise) has expanded the spirit of federation far beyond anything any of us has hitherto contemplated. He has enlarged, with great emphasis, on the necessity of establishing and securing one citizenship. Now, the whole purpose of this Constitution is to secure a dual citizenship. That is the very essence of a federal system. We have debated that matter again and again. We are not here for unification, but for federation, and the dual citizenship must be recognised as lying at the very basis of this Constitution.

Mr. WISE. -

Would you give each state power to discriminate against the property of citizens in other states by taxation?

Mr. SYMON. -

The honorable member, I presume, is referring to the absentee question.
Let us take that question. Of course, there is power of direct taxation under this Constitution, but we contemplate that the exchequer of the Commonwealth will be filled for a very long time from the Customs, and the power of direct taxation of the states is not interfered with. Surely they have as much right, then, to have a progressive system of taxation on one basis as upon another—to say that taxation shall increase with the extent of property or wealth, or to say that it shall increase if a man does not live in the colony. Take the rating, for instance. The local rating varies according to the value of property, and so on. Why should it be considered, if the absentee principle is a valid one in connexion with taxation, that a man is not to be an absentee in New South Wales because he resides in Victoria, when you are dealing with a matter of local taxation in New South Wales? Why should he not be considered as much an absentee if he resides in Victoria as he would be if he resided in England? I do not see any difference between the two cases when you remember the Constitution that we are framing. If we introduce this amendment we are depriving the states of what we wish to confer upon them. Each state is entitled, at least I have always so understood, within its own legislative jurisdiction, to legislate as it pleases, and to deal with its own citizens, or any one who comes within its boundaries, in the same way as if this Constitution was never established. That is the freedom of each particular state, and that is the freedom which we desire to preserve. We do not interfere with the citizenship of the Commonwealth in any degree whatever.

Mr. MCMILLAN. -

Take the case of the land, for example.

Mr. SYMON. -

Yes. Mr. Wise asked why should New South Wales or Victoria—to take a case which is extremely unlikely to occur—prohibit a citizen of the neighbouring colony from acquiring property in the legislating colony, or only allow him to acquire it under adverse conditions? But why not? The whole control of the lands of the state is left in that state. The state can impose what conditions it pleases—conditions of residence, or anything else—and I am not aware that a state has surrendered the control of the particular administration of its own lands, or of anything that is left to it for the exercise of its power and the administration of its affairs. I would much prefer, if there is to be a clause introduced, to have the amendment suggested by Tasmania, subject to one modification, omitting the words—"and all other persons owing allegiance to the Queen." That would re-open the whole question as to whether an alien, not admitted to the citizenship here—a person who, under the provisions with regard to immigration, is prohibited from entering our territory, or is only allowed to enter it under
certain conditions—would be given the same privileges and immunities as a citizen of the Commonwealth. Those words, it seems to me, should come out, and we should confine the operation of this amendment so as to secure the rights of citizenship to the citizens of the Commonwealth. I think, therefore, that with some modification the amendment suggested by Tasmania would be a proper one to adopt.

Mr. KINGSTON (South Australia). -

I confess my sympathies are altogether with the remarks of my friend (Mr. Wise), and I think that the suggestion that it would be improper to interfere with such a tax as an absentee tax applied in one state to the citizens of other states is not well founded.

Mr. REID. -

Does that state right exist at present?

Mr. KINGSTON. -

Undoubtedly it does.

Mr. REID. -

Then what right have you to take it away?

Mr. KINGSTON. -

Because we are creating a Commonwealth in which I hope there will be a federal citizenship.

Mr. REID. -

Then take the responsibility of it.

Mr. KINGSTON. -

I say we are creating a Commonwealth in which I hope there will be a federal citizenship, and I shall be glad indeed to see the powers of the Federal Parliament enlarged to enable that body to legislate, not only with reference to naturalization and aliens, but also with reference to the rights and privileges of federal citizenship.

An HONORABLE MEMBER. - What is the meaning of citizenship?

Mr. KINGSTON. -

It is not defined here, but it ought to be defined in the Constitution, or else we ought to give power to the Federal Parliament to define it. And, after having defined what shall constitute Australian citizenship for the purposes of the Commonwealth, we ought to carefully prevent any state legislating in such a way as to deprive any citizen of the Commonwealth of any privileges which citizenship of the Commonwealth confers within its borders. I have the honour to come from a state which has already adopted a system of absentee taxation, but I do not hesitate to say, speaking on my own individual account, that I think the continuance of that system, applied
to citizens of the Commonwealth resident in other states of the Commonwealth, would be a great mistake and an unfederal act.

Mr. HIGGINS. -

If a rich South Australian went to live in Tasmania, on account of the cool climate, would you allow the imposition of the absentee tax on him?

Mr. KINGSTON. -

I do not think it ought to be imposed on him.

Mr. ISAACS. -

Then you think that your state should not have the right to impose an absentee tax on a South Australian residing in Tasmania if it chose?

Mr. KINGSTON. -

I think that for the fostering of the federal spirit we ought to abolish, once and for all, these distinctions between the citizens of the different states, and I know of nothing more likely to strike at the root of that good feeling on which alone the Commonwealth can securely rest than the imposition of special taxation by South Australia against citizens of New South Wales who happen to own property in South Australia, or vice versa.

Mr. REID. -

We have no absentee tax in New South Wales.

Mr. KINGSTON. -

No; but from the remarks the Premier of New South Wales has made I am inclined to the opinion that he favours the state having the right to put on such taxation if it pleases. I do not think that, after we have adopted federation, the state should have such a right any more than it should have the right of passing a law disqualifying the citizen of another state from holding land within its own borders, simply because he happens to be resident outside the boundaries of that province, although residing within the confines of the Commonwealth.

Mr. OCONNOR. -

Then you will have to specifically give him the right to hold land in any state.

Mr. ISAACS. -

Yes; this clause would not touch that case.

Mr. KINGSTON. -

What I understand those who are contending for the amendment of this clause to say is that a state should have the right to select the citizens of some other state within the Federation for special disqualification if it pleases.
Oh, no, this does not touch that.

Mr. KINGSTON. -

I have listened with a considerable amount of care to what has fallen from other speakers, and I understand that they contend that any state has a legal right to impose an absentee tax.

Mr. REID. -

Yes; but not that that right will be exercised.

Mr. KINGSTON. -

Then what do you want it for?

Mr. REID. -

That is a matter you must talk to me about in the local Parliament; it is rubbish to talk about it here.

Mr. KINGSTON. -

Really, Mr. Chairman-

Mr. REID. -

I beg your pardon, Mr. President.

Mr. KINGSTON. -

Well, after that apology, I do not think I ought to proceed to say what I was going to say; but I do trust that the right honorable gentleman will bring forth "fruits meet for repentance," and that we shall not have any more of these little ebullitions, which might be expected outside, but not here. As to these matters, I am prepared to do what I can for the purpose of establishing a common citizenship within the Federation, and giving to each citizen throughout the Commonwealth, irrespective of provincial boundaries, common rights, taking away from the states the power which it is suggested should be retained by each state of singling out the citizens of other states of the Commonwealth for special legislation or special disqualification. I go further, and I say that a matter of that sort is a fair subject to introduce into this Constitution-this federal compact. The terms of our arrangement are that we are not to do anything of that sort, but that we are to lay it down that no state shall deprive citizens of the Commonwealth of life or property, "except by due process of law." That is the term proposed to be employed.

Mr. ISAACS. -

Well, what is the meaning of it?

Mr. KINGSTON. -

First and foremost of all, I too ask, as the Attorney-General of Victoria asks, what is the meaning of it? But I go further and say-what right have you to provide in this Federal Constitution for a thing of that sort as affecting the states any more than you have in the original Constitutions of the states? There is no state Constitution, under which any state exists at
present, in which we find any such provision. And there is no necessity for it. It seems to me to be a matter of purely state concern, and which, at this period of the nineteenth century, it is seriously suggested may be necessary, in order to prevent some high-handed and monstrous action on the part of the states, for which our past history gives no grounds for expectation.

Mr. ISAACS. -

The object of that provision in the American Constitution was only to protect the blacks.

Sir JOHN DOWNER. -

The argument is the same in this case as on the religious question—there is no necessity for such a provision.

Mr. KINGSTON. -

Quite so; we should leave it alone. It is a fair thing in this federal compact to provide a common citizenship, and I am prepared to assist honorable members to do that, but as to making this clause declaratory of the intention of the framers of this Constitution that the states shall not be allowed to act in that way as regards their own citizens, when there is no ground whatever for suggesting that they will do anything of the sort—a provision of that character is in no way necessary. By taking that step, we shall adopt a course, in framing the Federal Constitution, which is in no way justified, and which ought to be abandoned.

Mr. DOUGLAS (Tasmania). -

As I understand, the clause now before us is as. follows:-

A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth.

That is the first portion. Now, I ask, if you impose on the citizens of one Estate a law not applicable to the citizens of another state, is not that interfering with the privileges of the citizens of that part of the Commonwealth? The second part of this clause provides—

nor shall a state deny to any person within its jurisdiction the equal protection of the laws.

If Victoria imposes on me a special tax because I happen to reside in Tasmania, owning property in this colony, am I properly protected under this clause? Surely the meaning of the clause as it now stands is that the protection of the Commonwealth shall extend to all citizens of the Commonwealth, in whatever province they may own property, and in whatever province they may reside. I submit that the word citizens "here ought to be properly defined. I am at a loss to understand whether it means citizens of a particular state or citizens of the Commonwealth.
Mr. SYMON. -
Citizens of the Commonwealth.

Mr. DOUGLAS. -
Then, how can a state impose a special tax on a citizen of the Commonwealth because he happens to reside in another portion of the Commonwealth? The thing is absurd on the face of it. If we are to federate, let us federate in a proper spirit. What is the use of talking about the Federation if a citizen in one part of the Commonwealth may be treated differently from a citizen in another part of the Commonwealth? Unless the true spirit of federation is infused into this Constitution, we had better have no federation at all, and the sooner we depart to our respective homes the better.

Mr. REID. -
Hear, hear.

Mr. DOUGLAS. -
Yes, and then New South Wales will have all she wants. Let us have something straightforward. If we are to have a federal community, do not restrict us in this sort of way. I beg to move, as an amendment, that this clause be omitted, with a view to the insertion, in lieu thereof, of the following clause, suggested by the Legislative Assembly of Tasmania:-

The citizens of each state, and all other persons owing allegiance to the Queen and residing in any territory of the Commonwealth, shall be citizens of the Commonwealth, and shall be entitled to all the privileges and immunities of citizens of the Commonwealth in the several states, and a state shall not make or enforce any law abridging any privilege or immunity of citizens of the Commonwealth, nor shall a state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws.

The CHAIRMAN. -
So that honorable members may consider all the amendments, I think the best course would be to withdraw the amendment now before the Chair, and allow the Tasmanian Assembly's suggestion to be considered, seeing that it involves the insertion of words from the very beginning of the clause.

Mr. WISE (New South Wales). -
In order to bring the matter to a point, I beg to move that leave be given for the present amendment to be withdrawn, with a view to the insertion, at the commencement of the clause, of the words "The citizens of each state," from the amendment suggested by the Legislative Assembly of Tasmania. On that a test vote can be taken. Then the proposal to strike out the three lines of the Tasmanian suggestion, to which Mr. Symon has taken
objection, may be dealt with. If the mover of the amendment will withdraw
his proposal, that course can then be taken.

The CHAIRMAN. -

There is no mover of the amendment from Tasmania; it is a suggestion
from the Legislative Assembly of that colony.

Mr. WISE. -

Then I beg to move the insertion, at the commencement of clause 110, of
the words "The citizens of each state," on the understanding that if those
words are carried we can then further amend the Tasmanian suggestion by
striking out those three lines to which Mr. Symon objected.

Sir JOHN FORREST. -

Do we want this clause at all?

Mr. ISAACS. -

No.

Mr. REID. -

No; we do not want the clause at all; strike it out.

Mr. GLYNN (South Australia). -

I desire also to move the insertion, after "citizens of the Commonwealth,"
of the words "and of the states." The Tasmanian amendment is directed
almost altogether to the preservation of the Commonwealth citizenship
within the states, and for that purpose it scarcely seems necessary, as the
states cannot, under the Federation, abrogate the federal citizenship. But
there is no protection to citizens of one state having the same right as
regards citizenship as the residents in another state.

An HONORABLE MEMBER. -

That would never do. It would prevent an absentee tax being imposed by
a State.

Mr. GLYNN. -

Why not? Why should we not prevent an absentee tax being imposed by
a state?

Mr. REID. -

You are interfering in local politics with a vengeance.

Mr. GLYNN. -

The Federal Parliament can legislate to prevent the imposition of an
absentee tax by a state.

Mr. REID. -

Can it?

Mr. GLYNN. -
As soon as direct taxation is imposed by the Federal Legislature, taxation must be uniform throughout the Commonwealth. That legislation must prevail. There cannot be a conflict between direct taxation imposed by the Commonwealth and direct taxation imposed by the states, after the Commonwealth has imposed direct taxation.

Mr. ISAACS. -

No, that does not meet the point. The Federation will impose taxation for its purposes, and the state will levy taxation for its purposes.

Mr. GLYNN. -

If the Tasmanian amendment was amended to provide for the inclusion of the effect of the Fourth Article of section 2 of the American Constitution—that is, a declaration that citizenship in one state shall apply right through the Commonwealth to citizenship in the other states, well and good, but otherwise you could really treat the citizens of one state as aliens and foreigners in another state, or, even while resident in that state, as aliens with regard to the ownership of property in that state. Section 2 of Article 4 of the American Constitution provides that—

The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

Mr. HIGGINS. -

That was in the original Constitution of the United States.

Mr. GLYNN. -

And also in the articles of federation, but there was no provision in the articles as regards naturalization, and the result was that they had different terms of naturalization in one state as compared with another. For instance, a year's residence in one state entitled an alien to naturalization, whereas in another state fourteen years residence was required, but a citizen in the state in which only one year's residence was required to obtain naturalization could become a citizen in the other state in which fourteen years residence was required, although he had been only one year in America. The question must be federally determined. Still, it would be open, without the American clause, which is not in our Constitution at present, for this Constitution to land us in the position in which they were landed in America, as described in the following quotation:-

In a Union composed of many states, great difficulties would arise if the citizens of one state were treated as aliens or foreigners in all the other states. Commercial transactions, the right to make contracts, or to hold lands, and travel, intercourse, and traffic between the several states, would be seriously embarrassed and obstructed. It was to prevent the occurrence of such evils that the Constitution wisely extends to the citizens of each state the privileges and immunities of citizens in the other states.
I think the best thing to do is to state that there will be a universal citizenship both as regards the Commonwealth and as regards the states.

Mr. GORDON (South Australia). -

If the contention of the honorable member (Mr. Glynn) were carried into effect it would lead us very much further than the American decisions ever went. It was decided in the Slaughter House cases, which have been referred to by the Attorney-General of Victoria, that the word "citizen" applies only to a citizen of the United States. Suppose the citizens of one state had the right to sell liquor freely, while prohibition was in force in another state, if effect were given to the contention of the honorable member, a citizen who had the right to sell liquor freely in his own state would carry that right with him if he went into the state in which there was prohibition.

Mr. WISE. -

That is expressly dealt with by a special amendment.

Mr. GORDON. -

I will give another illustration which occurs to me. Suppose in one state a whole class had an absolute exemption from service upon juries, would a member of such a class, if he went into another state, carry that immunity from service with him? Would not such a provision upset the whole policy of any state?

Mr. REID. -

Still it would be very federal.

Mr. GORDON. -

I think the two illustrations I have given put the matter in a concrete state, and prove how undesirable it is to give effect to the contention of the honorable and learned member (Mr. Glynn). I think that the words of the Tasmanian amendment should be adopted, if the whole clause is not struck out.

Mr. HOWE (South Australia). -

I understand that the Premier of South Australia contends that there should be no absentee taxation upon residents within the Commonwealth; while the honorable and learned member (Mr. Symon) contends that each state should have the right to impose such taxation.

Mr. SYMON. -

That each state should exercise its own judgment in the matter.

Mr. HOWE. -

Well, I prefer to be guided by the broad views of the Premier of South Australia. In South Australia we have a tax on absentees, but that tax has
not proved a success. I believe that we are the only state in Australia which has such a tax. It was considered that persons residing out of the colony, who drew large sums of money in the shape of rents and in other ways from properties within the colony should contribute a little more to the revenue than is paid by the ordinary taxpayer. Such a proposal looked very fair upon the face, but when an absentee tax was imposed it was found that its only result was to increase the rentals of increased taxation falls upon consumers and wage-earners residing within the colony.

The CHAIRMAN. -

The committee is not now discussing the question of absentee taxation.

Mr. HOWE. -

Well, I thought this a very opportune time to get in these remarks. I congratulate the Premier of South Australia upon his broad views as to what will constitute citizenship in Federated Australia, and I prefer to follow him rather than to follow that eminent legal luminary (Mr. Symon).

Mr. REID (New South Wales). -

This matter has now assumed a very serious aspect. My honorable friend (Mr. Howe) has thrown quite a flood of light upon the patriotism of the Premier of South Australia. We all know that a large number of South Australians are interested in mines which are situated in other colonies. For instance, we in New South Wales - and it generally comes round to some little federal enterprise of this kind - happen to have a very wealthy mine at Broken Hill, but the register of shares is not kept in the colony, and, according to the decisions, the property is therefore not in the colony.

Mr. KINGSTON. -

That was discovered by a South Australian.

Mr. REID. -

Probably; one could rely upon a South Australian to discover anything of that sort. The result of these decisions was that persons drawing wealth from this mine, from which the New South Wales Government receive, I think, 5s. per acre per annum, found themselves out of the reach of taxation, and their estates after their death were absolutely beyond probate duties. Now, under a system of direct taxation, the New South Wales Government gets something like £15,000 a year from the Broken Hill mines. This, no doubt, is a very fine federal enterprise, to create distinctions and to abridge our jurisdiction in dealing with the wealth produced in our own colony. Personally, I am not at all in favour of an absentee tax. It cannot be said that the New South Wales income tax is such a tax. I wish, however, to direct the attention of honorable members to
the very dangerous track we are going upon in not being satisfied to leave to the states that which we profess to leave to them. We profess to leave to the states their powers of local management in certain respects, but we are constantly trying to meddle with concerns which do not belong to us, and which will not belong to the Federal Commonwealth. I am afraid that this action will create a very unhappy impression in the various colonies. We are all in favour of giving equal citizenship and the equal protection of the laws to all the members of the Commonwealth. It is quite novel in Australia to hear any talk upon this point, because I think this has been universally conceded here. I am prepared to vote upon the lines laid down by the honorable and learned member (Mr. O'Connor) in guaranteeing equality to all the citizens of the Commonwealth; but do not let us, by side devices, interfere with matters that we should leave to the management of the states.

Mr. SYMON (South Australia). -

The honorable member (Mr. Howe) is under a very grave misapprehension, not only as to my views, but also as to the real issue before the committee. The issue before the committee is not whether we should impose a tax upon absentees.

Mr. HOWE. -

I understand that.

Mr. SYMON. -

Nor is it whether we should repeal the inefficient absentee tax. existing in South Australia. The issue is whether we are to destroy the autonomy of the states in certain respects. I am, and always have been, utterly opposed to absentee taxation, and the views which I expressed were brought out by an illustration which was used to show the effect of the clause. The honorable and learned member (Mr. Wise) made use of two illustrations, in dealing with which I merely pointed out that there was no earthly reason why the states should not have power to deal with these matters. I never suggested any divergence from the views of my honorable friend (Mr. Howe), and I am glad that he is with me in thinking that this useless absentee tax should be swept away.

Mr. OCONNOR (New South Wales). -

I rise for the purpose of pointing out the position in which we stand, and to express the hope that, having discussed this matter so fully, we may soon come to a division. The honorable and learned member (Mr. Wise) has proposed an amendment which, if carried, will involve the declaration that the citizens of each state are citizens of the Commonwealth. I have already dealt with the general aspect of this provision, but I should like to ask the committee what is meant by the term "citizen"? What rights shall
we give to a man as a citizen? If we do not give any definite rights, what is the use of placing in the Constitution a provision which will be a fruitful source of litigation?

Mr. ISAACS. -
You must also define "citizen of the state."

Mr. OCONNOR. -
Yes. In regard to what the right honorable member (Mr. Kingston) has said, I should like to say that the citizenship which is aimed at in this amendment is not to be attained by a provision of this kind, but by the comity and friendship which must ensue when we are all one people. Any declaration of the rights of the citizens, and any interference with the local rights of the states in regard to the questions referred to, would be very mischievous. I therefore intend to vote against the amendment of the honorable and learned member, and then to move the amendment which I have already indicated. One word as to the first part of my amendment, which is to the effect that a state shall not deprive any person of life, liberty, or property without due process of law. In the ordinary course of things such a provision at this time of day would be unnecessary; but we all know that laws are passed by majorities and that communities are liable to sudden and very often to unjust impulses—as much so now as ever. The amendment is simply a declaration that no impulse of this kind which might lead to the passing of an unjust law shall deprive a citizen of his right to a fair trial.

Mr. ISAACS. -
That is a very dangerous proposal—that the Supreme Court should control the Legislatures of the states within their own jurisdiction.

Mr. OCONNOR. -
It only provides that each citizen of the Commonwealth shall be tried by due process of law. Why should a state be allowed to pass a law depriving a citizen of this right?

Mr. KINGSTON. -
What does the honorable and learned member mean by the term "due process of law"?

Mr. OCONNOR. -
The amendment will insure proper administration of the laws, and afford their protection to every citizen.

Mr. SYMON. -
That is insured already.

Mr. OCONNOR. -
In what way?
Mr. SYMON. -
Under the various state Constitutions.

Mr. OCONNOR. -
Yes. We are now dealing with the prohibition against the alteration of these Constitutions. We are dealing with a provision which will prevent the alteration of these Constitutions in the direction of depriving any citizen of his life, liberty, or property without due process of law. Because if this provision in the Constitution is carried it will not be in the power of any state to pass a law to amend its Constitution to do that. It is a declaration of liberty and freedom in our dealing with citizens of the Commonwealth. Not only can there be no harm in placing it in the Constitution, but it is also necessary for the protection of the liberty of everybody who lives within the limits of any State.

Mr. SYMON. -
Have we not that under-Magna Charta.

Mr. OCONNOR. -
There is nothing that would prevent a repeal of Magna Charta by any state if it chose to do so. Let us suppose that there were any particular class of offences, or particular class of persons who, at any time, happened to be the subjects of some wild impulse on the part of a majority of the community, and unjust laws were passed-

Mr. SYMON. -
Has anything ever happened that would justify such a proposition?

Mr. OCONNOR. -
Yes, they are matters of history in these colonies which it is not necessary to refer to.

Mr. SYMON. -
Would it not require an amendment of the Constitution to repeal Magna Charta?

Mr. OCONNOR. -
What Constitution?

Mr. SYMON. -
This Constitution. Do you think Magna Charta would be repealed by an Act of the Federal Parliament?

Mr. OCONNOR. -
I do not think so, and I did not say so. But I say that, under the Constitution of the states, as we are dealing with the Constitution, a State might enact any laws which it thought fit, and even if those laws amounted to a repeal of Magna Charta they could be carried. I admit we are only dealing with a possibility, but at the same time it is a possibility which if it eventuated, as it might, would be very disastrous, and there is no reason
why we should not prevent it.

Mr. FRASER. -
    We might provide a safe-guard, at any rate.

Mr. OCONNOR. -
    Yes; therefore I intend to support both branches of the amendment to the extent I have stated.

Mr. ISAACS (Victoria). -
    I understand the only question before the Chair now is practically the adoption of the Tasmanian amendment?

The CHAIRMAN. -
    Yes.

Mr. HIGGINS (Victoria). -
    I am sorry there was not a clear intimation given of the intention to practically wipe out this clause altogether, because then we might have gone fully into it. I feel that if a division is taken at the present stage there will be a great deal of cross voting. I have been trying to consider the effect of clause 110; and having listened to the debate, and remembering what I read a year or two ago upon the subject, I think we ought to hesitate before we strike out the clause. Looking at the Tasmanian amendment, which seems to be the one actually before the Chair, I think that it has been most thoughtfully framed, I think that it instils a broad federal spirit, and I do not think it will have the evil consequences that have been referred to by some speakers. For instance, the honorable member (Mr. Gordon) made a most impressive speech in the interests of his liquor-drinking friends. He said if a man is allowed to drink liquor in one state he must be allowed to drink liquor in any other state.

Mr. GORDON. -
    I said that was what I thought would be the effect of Mr. Glynn's amendment.

Mr. HIGGINS. -
    I apprehend you would apply that to the Tasmanian amendment.

Mr. GORDON. -
    If the honorable member had been attending to what I said he would know that I did not refer to that.

Mr. HIGGINS. -
    We have so many propositions before us that I think it would be better to keep to the Tasmanian amendment. There is no possible danger under the Tasmanian amendment of any such right being given to a man going to another state.
Mr. GORDON. -
I quite agree with that.

Mr. HIGGINS. -

Then, in regard to an absentee tax, I hold, with great submission, that these Tasmanian amendments will not prevent the imposition of an absentee tax. I say that, although I think it would be most lamentable if there were an absentee tax inflicted by one colony upon the residents of any other colony. Still, apart from the merits of the question altogether, this clause does not prevent that. As I understand the question now with regard to the Tasmanian amendment, it would not prevent an absentee tax being imposed by the residents of one colony upon the residents of another. It refers to the privileges and immunities of the citizens of the Commonwealth. There is a double citizenship, and citizens of the Commonwealth have certain privileges and immunities; but there is no privilege or immunity from taxation conferred on a citizen of any state. Judge Cooley, one of the chief inspirers of Mr. Bryce, says

Mr. GORDON. -
We had that very quotation before.

Mr. HIGGINS. -
I was not aware of that, and, therefore, it is not necessary for me to give the quotation.

Mr. ISAACS. -
The difference there is that a citizen of the United States is not defined as a citizen, but as being a person having a certain qualification.

Mr. HIGGINS. -

My learned friend and myself are at one on that point, but there are two citizenships. I think the Tasmanian amendments have been drafted most carefully, but what they have been addressed to is that your privileges as a citizen of the Commonwealth as distinguished from your privileges as a citizen of the state are not to be abridged. I would, therefore, suggest that as this proposal to alter the clause has been sprung upon us suddenly, we ought not, at this stage, to strike it out, but proper notice I should be given.

Mr. ISAACS. -
We can recommit the clause.

Mr. HIGGINS. -
It might be recommitted, but I think that the burden ought to lie upon those who want to strike it out. According to Mr. Bryce, the 14th amendment of the American Constitution is treated as declaring finally the privileges of citizens as between the several states. It was no doubt enacted
with a view to the then recent slavery disputes, but now it has a much wider purview. I appeal to the House not to strike out this clause, because we have not had sufficient notice, and if need be we should recommit it.

Question-That the words "The citizens of each state" be inserted at the beginning of the clause-put.

The committee divided-
Ayes ... ... ... ... 17
Noes ... ... ... ... 24
Majority against the amendment 7

AYES.
Clarke, M.J. Higgins, H.B.
Deakin, A. Howe, J.H.
Dobson, H. Kingston, C.C.
Douglas, A. Lewis, N.E.
Downer, Sir J.W. Moore, W.
Fysh, Sir P.0. Symon, J.H.
Glynn, P.M. Walker, J.T.
Grant, C.H. Teller.
Henry, J. Wise, B.R.

NOES.
Abbott, Sir J.P. Lee Steere, Sir J.G.
Barton, E. Lyne, W.J.
Berry, Sir G. McMillan, W.
Briggs, H. O'Connor, R.E.
Carruthers, J.H. Quick, Dr. J.
Cockburn, Dr. J.A. Reid, G.H.
Crowder, F.T. Solomon, V.L.
Forrest, Sir. J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Gordon, J.H. Venn, H.W.
Hackett, J.W.
Holder, F.W. Teller.
Isaacs, I.A. Peacock, A.J.

Question so resolved in the negative.
[The Chairman left the chair at three minutes to one o'clock p.m. The committee resumed at six minutes past two p.m.]

The CHAIRMAN. -
It is proposed to omit from clause 110 the words-
Make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth.
Dr. COCKBURN (South Australia). -
I do not think that these words are required. The words owe their introduction into the Constitution of the United States to circumstances of a purely adventitious character, which can never be expected to occur in Australia. The words form no part of the original American Constitution. They were introduced, as an amendment, simply as a punishment to the Southern States for their attitude during the Civil War.

Mr. ISAACS. -

No; to effectuate the results of the war.

Dr. COCKBURN. -

To inflict the grossest outrage which could be inflicted upon the Southern planters, by saying-"You shall not forbid the negro inhabitants to vote. We insist on their being placed on an equal footing in regard to the exercise of the franchise with yourselves." I do not believe that this amendment was ever legally carried. I believe it was only carried by force of arms, by placing the voting places practically under martial law.

Mr. ISAACS. -

I explained how that was done.

Dr. COCKBURN. -

That is correct, is it not?

Mr. ISAACS. -

Yes.

Dr. COCKBURN. -

It was no part of the original United States Constitution, and it never has legally become a part of that Constitution; it was simply forced on a recalcitrant people as a punishment for the part they took in the Civil War. We are not going to have a civil war here over a racial question.

Mr. ISAACS. -

That was one mode of amending the Constitution.

Dr. COCKBURN. -

By martial law?

Mr. ISAACS. -

Yes.

Dr. COCKBURN. -

We do not want to imitate that example. We do not want a clause in our Constitution which could only be carried in America by force of arms. We cannot imagine a condition of things in which we would wish to make such an amendment of our Constitution. I do not believe we shall ever have such a condition of things here as will necessitate such a clause in the Constitution. As it formed no part of the original Constitution of America, as it was only introduced by force of arms and not according to
the legal limits of the Constitution, I do not think we should pay it the compliment of imitating it here.

Mr. ISAACS. -

The honorable member can vote for the present amendment to strike out certain words.

Dr. COCKBURN. -

I am going to vote for an amendment to strike out words whenever I get the opportunity.

Mr. WISE (New South Wales). -

I would like to make a suggestion in order to facilitate business. It is that we should temporarily pass the amendment suggested by my learned friend (Mr. O'Connor), which I understand has the approval of the leader of the Convention, if the latter will give an assurance that the matter will be thoroughly looked into by the Drafting Committee.

Mr. BARTON. -

Undoubtedly.

Mr. WISE. -

It seems to me to be a matter of very great importance. It has not received the attention it deserves, and it is not quite possible for us in committee to go into the whole matter fully.

My. KINGSTON. - We may temporarily strike out the clause with the view to the insertion of a new one.

Mr. WISE. -

I do not advocate that course, because to my mind the retention of the clause is of very great importance. I look upon the clause as necessary to prevent the state Parliaments from being used as instruments of nullification. Some assertion of that principle is desirable in the Constitution, though the precise words of it are a matter of doubt and a matter of drafting. I would suggest that we should pass the amendment of Mr. O'Connor on the committee undertaking to bring it up again for further consideration if they think fit on the recommittal of the Bill.

Mr. ISAACS (Victoria). -

I hope we will not do that. I think it is far more than a question of drafting. I think, whatever course we take, we ought to try to have the matter explained as much as possible at the present moment. If we pass the words which my learned friend (Mr. O'Connor) has suggested, we shall be raising up adversaries of the Constitution on all hands. The phrase-'the equal protection of the laws' looks very well, but what does it mean? It was part and parcel of the 14th amendment of the American Constitution; it was introduced on account of the negro difficulty. It is not something separate from the other portion, and of this Dr. Burgess says, at page 217
of the first volume of his work:

The phrase "equal protection of the laws" has been defined by the court to mean exemption from legal discrimination on account of race or colour. This provision would probably, therefore, not be held to cover discriminations in legal standing made for other reasons; as, for example, on account of age or sex, or mental, or even property qualifications. The court distinctly affirms that the history of the provision shows it to have been made to meet only the unnatural discriminations springing from race and colour. If a discrimination should arise from any previous condition of servitude, I think the court would regard this as falling under the inhibition. The language of the provision implies this certainly, if it does not exactly express it.

And the case itself, which was decided in 1879, shows perfectly clearly that it has no application to our Australian circumstances. The head-note is-

1. The 14th amendment of the Constitution of the United States, considered and held to be one of a series of constitutional provisions having a common purpose, namely, to secure to a recently emancipated race, which had been held in slavery through many generations, all the civil rights that the superior race enjoy, and to give to it the protection of the general government, in the enjoyment of such rights, whenever they should be denied by the states. Whether the amendment had other, and if so what, purposes, not decided.

2. The amendment not only gave citizenship, and the privileges of citizenship, to persons of colour, but denied to any state the power to withhold from them the equal protection of the laws, and invested Congress with power, by appropriate legislation, to enforce its provisions.

3. The amendment, although prohibitory in terms, confers by necessary implication a positive immunity, or right, most valuable to persons of the coloured race-the right to exemption from unfriendly legislation against them distinctively as coloured-exemption from discriminations, imposed by public authority, which imply legal inferiority in civil society, lessen the security of their rights, and are steps towards reducing them to the condition of a subject race.

Mr. HIGGINS. -

It protects Chinamen too, I suppose, as well as negroes?

Mr. ISAACS. -

It would protect Chinamen in the same way. As I said before, it prevents discriminations on account of race or colour, whether those discriminations
be by Parliament or by administration. And in the case I referred to, Yick Wo v. Hopkins, it was held by the Supreme Court that the ordinance of the San Francisco Legislature was void, and they went on to say further, even if a legislative provision is fair and apparently equal on the face of it, if it is so administered as to introduce this discrimination, it will be declared void.

Mr. HIGGINS. -
  The Act itself.

Mr. ISAACS. -
  Yes; if it admits of that infringement, and if it is so interpreted by the Supreme Court of the state as to mean that such a discrimination may be introduced, though not necessarily, it will be held to be void. That will be found on page 220 of Baker's Annotated Notes on the Constitution of the United States. If that is so, to put it in plain language, our factory legislation must be void. I put that one simple statement before honorable members, and I would ask them how they can expect to get for this Constitution the support of the workers of this colony or of any other colony, if they are told that all our factory legislation is to be null and void, and that no such legislation is to be possible in the future?

Mr. KINGSTON. -
  That is the special clause relating to Chinese.

Mr. ISAACS. -
  Yes.

Mr. GLYNN. -
  Cannot there be special legislation on the subject under clause 53?

Mr. ISAACS. -
  I forget what was done with that clause.

Mr. OCONNOR. -
  Some portion of it now appears under clause 52.

Mr. ISAACS. -
  If it is so, the question of whether we are going to prevent factory legislation of the kind I referred to will demand very serious consideration. Clause 52, by the transposition that has been made, will afford an opportunity for discriminating legislation if the Federal Parliament choose to take advantage of it.

Mr. GLYNN. -
  If the Federal Parliament does interfere, why preserve state legislation?

Mr. ISAACS. -
  If we retain this clause as it stands, we shall have done no good by transferring a part of clause 53 to clause 52.

Mr. GLYNN. -
  It is inconsistent.
Mr. ISAACS. -

Yes, because we decided in transferring the provision in clause 53 to clause 52 to leave the states full power to legislate until overborne by federal legislation. If we retain this provision that no state is to be permitted under any circumstances to pass such a law, then what we have decided to be concurrent legislation becomes exclusive legislation on the part of the Federal Parliament. On that ground, and for the reasons I have stated, I say that we ought not to insert this provision as to the equal protection of the laws. That is a phrase that at once commands approbation, but when it comes to be practically applied it raises up almost insuperable difficulties. With regard to the other part of the clause, about due process of the law, there is an equal difficulty. I understand that Mr. O'Connor proposes to introduce that portion. What necessity is there for it? Under our state Constitutions no attempt has ever been made to subject persons to penalties without due process of law.

That provision was likewise introduced into the American Constitutions to protect the negroes from persecution, and dozens of cases have been brought in the United States courts to ascertain what was meant by due process of law. At one time it was contended that no crime could be made punishable in a summary way, but that in every case there would have to be an indictment and a trial by jury. That was overruled, and it was held that you might have process by information. If we insert the words "due process of law," they can only mean the process provided by the state law. If they mean anything else they seriously impugn and weaken the present provisions of our Constitution. I say that there is no necessity for these words at all. If anybody could point to anything that any colony had ever done in the way of attempting to persecute a citizen without due process of law there would be some reason for this proposal. If we agree to it we shall simply be raising up obstacles unnecessarily to the scheme of federation. I hope, therefore, that Mr. O'Connor will not press his amendment.

The amendment was agreed to.

Mr. OCONNOR (New South Wales). -

I beg now to move-

That the following words be inserted after the word "not"-"deprive any person of life, liberty, or property without due process of law."

Dr. COCKBURN (South Australia). -

Why should these words be inserted? They would be a reflection on our civilization. Have any of the colonies of Australia ever attempted to deprive any person of life, liberty, or property without due process of law?
I repeat that the insertion of these words would be a reflection on our civilization. People would say:"Pretty things these states of Australia; they have to be prevented by a provision in the Constitution from doing the grossest injustice."

Mr. OCONNOR (New South Wales). -

I have mentioned before the reasons, and they appear to me to be very strong, why these words should be retained. The honorable member will not deny that there should be a guarantee in the Constitution that no person should be deprived of life, liberty, or property without due process of law. The simple object of this proposal is to insure that no state shall violate what is one of the first principles of citizenship.

Mr. KINGSTON. -

Is there not that guarantee now?

Mr. OCONNOR. -

I do not think so. We are making a Constitution which is to endure, practically speaking, for all time. We do not know when some wave of popular feeling may lead a majority in the Parliament of a state to commit an injustice by passing a law that would deprive citizens of life, liberty, or property without due process of law. If no state does anything of the kind there will be no harm in this provision, but it is only right that this protection should be given to every citizen of the Commonwealth.

Sir JOHN FORREST. -

Would not the Royal assent be withheld?

Mr. OCONNOR. -

I do not know that it would. The Royal assent is practically never refused to any Bill that deals with our own affairs, and it is highly improbable that it would be refused under any circumstances.

Mr. ISAACS. -

Suppose a state wanted land for railway purposes, and took it compulsorily, there being a provision in one of the statutes that the amount to be paid should be determined by arbitration, would not that be taking the land without due process of law?

Mr. OCONNOR. -

No, it would not; and, as an honorable member reminds me, there is a decision on the point. All that is intended is that there shall be some process of law by which the parties accused must be heard.

Mr. HIGGINS. -

Both sides heard.

Mr. OCONNOR. -

Yes; and the process of law within that principle may be
anything the state thinks fit. This provision simply assures that there shall be some form by which a person accused will have an opportunity of stating his case before being deprived of his liberty. Is not that a first principle in criminal law now? I cannot understand any one objecting to this proposal.

Dr. COCKBURN. -
Very necessary in a savage race.

Mr. OCONNOR. -
With reference to the meaning of the term due process of law, there is in Baker's Annotated Notes on the Constitution of the United States, page 215, this statement-

Due process of law does not imply that all trials in the state courts affecting the property of persons must be by jury. The requirement is met if the trial be in accordance with the settled course of judicial proceedings, and this is regulated by the law of the state.

If the state law provides that there shall be a due hearing given to the rights of the parties-

Mr. BARTON. -
And a judicial determination.

Mr. OCONNOR. -
Yes, and a judicial determination—that is all that is necessary.

Mr. ISAACS. -
What is the good of it? It is an admission that it is necessary.

Mr. OCONNOR. -
Surely we are not to be prevented from enacting a guarantee of freedom in our Constitution simply because imputations may be cast upon us that it is necessary. We do not say that it is necessary. All we say is that no state shall be allowed to pass these laws.

Mr. ISAACS. -
Who asks for the guarantee?

Dr. COCKBURN. -
The only country in which the guarantee exists is that in which its provisions are most frequently violated.

Mr. OCONNOR. -
I think that the reason of the proposal is obvious. So long as each state has to do only with its own citizens it may make what laws it thinks fit, but we are creating now a new and a larger citizenship. We are giving new rights of citizenship to the whole of the citizens of the Commonwealth, and we should take care that no man is deprived of life, liberty, or property, except by due process of law.

Mr. GORDON. -
Might you not as well say that the states should not legalize murder?

Mr. OCONNOR. -

That is one of those suppositions that are against the first instincts of humanity.

Mr. GORDON. -

So is this.

Mr. OCONNOR. -

No, it is not. We need not go far back in history to find cases in which the community, seized with a sort of madness with regard to particular offences, have set aside all principles of justice. If a state did behave itself in that way, why should not the citizens of the Commonwealth who did not belong to that state be protected? Dr. Cockburn suggested in so contemptuous a way that there could be no reason for this amendment, that I got up to state again what had been stated before.

Dr. COCKBURN. -

Not contemptuous.

Mr. OCONNOR. -

I know the honorable member meant nothing personal, but I thought it necessary to state the reasons of what, had it not been for the honorable member's statement, would have seemed to be a perfectly obvious proposition. Mr. Clark, of Tasmania, thought the amendment of importance, and pointed out that it had been put in the United States Constitution. It should also be put in this Constitution, not necessarily as an imputation on any state or any body of states, but as a guarantee for all time for the citizens of the Commonwealth that they shall be treated according to what we recognise to be the principles of justice and of equality.

Sir EDWARD BRADDON (Tasmania). -

The amendment suggested by the Parliament of Tasmania would have modified this clause so as to, perhaps, make it acceptable. That amendment having been rejected, I cannot but think that it would be advisable to strike the whole clause out. I think the clause as it stands is calculated to do harm rather than good. It will cause friction between the states and the Commonwealth, and also involve considerable interference with the rights of the several states. If it is to be decided that a state shall not enforce any law abridging the liberties of other citizens of the Commonwealth, and it be understood that those citizens are to have this indulgence while within the state, that will involve some danger. The latter part of the clause, which says that the state shall not "deny to any person within its jurisdiction the equal protection of the laws," must involve confusion, and may involve
serious disagreement. That is the way it strikes me.

Question-That the words "deprive any person of life, liberty, or property without due process of law" proposed to be inserted be so inserted-put.

The committee divided-

Ayes ... ... ... ... 19
Noes ... ... ... ... 23

Majority against the amendment 4

AYES.
Barton, E. Lewis, N.E.
Briggs, H. Lyne, W.J.
Brown, N.J. McMillan, W.
Carruthers, J.H. Moore, W.
Dobson, H. Reid, G.H.
Douglas, A. Symon, J.H.
Fraser, S. Walker, J.T.
Grant, C.H. Wise, B.R.
Henry, J. Teller.
James, W.H. O'Connor, R.E.

NOES.
Berry, Sir G. Higgins, H.B.
Braddon, Sir E.N.C. Howe, J.H.
Cockburn, Dr. J.A. Kingston, C.C.
Crowder, F.T. Leake, G.
Deakin, A. Lee Steere, Sir J.G.
Downer, Sir J.W. Quick, Dr. J.
Forrest, Sir J. Solomon, V.L.
Fysh, Sir P.0. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Gordon, J.H. Venn, H.W.
Hackett, J.W. Teller.
Henning, A.H. Isaacs, I.A.

Question so resolved in the negative.

Mr. GLYNN (South Australia). -
I now intend to move-

That after the word "deny" the following words be inserted, "to the citizens of other states the privileges and immunities of its own citizens.

The CHAIRMAN. -
If the clause were left in that form it would be simply non-sense, because the words "nor shall a state" are left in.

Mr. GLYNN. -
Then I beg to move, first of all-
That the words "nor shall a state" be struck out.

If this be carried, I shall move the insertion, after the word "deny," of the words "to the citizens of other states the privileges and immunities of its own citizens."

Mr. ISAACS. -

That is the substance of what we have struck out.

Mr. GLYNN. -

The clause is really a one-legged one as it stands now. There is no substance in it. My amendment raises the question which was discussed this morning, and on which Mr. Isaacs took up a strong stand on the one side, and Mr. Kingston on the other-namely, that no state should be allowed to give privileges to its own citizens if it was not prepared to extend them to the citizens of other states. If some such amendment as I now propose is not made, it would be competent for New South Wales to declare that a citizen of Victoria on going to Broken Hill shall not have the same privilege of taking out a miner's right as a citizen of New South Wales has. In might induce a sort of back-handed protection.

Mr. SYMON. -

That would be prohibited under the trade and commerce provision.

Mr. GLYNN. -

I do not think so. That provision exists in America also, and, notwithstanding that, it has been decided that special laws may be passed by a state affecting the citizens of other states, as to entering into contracts, thus imposing a general limitation on the citizens of other states not applicable to the state's own citizens.

Mr. ISAACS. -

Suppose a Chinaman went from South Australia to Western Australia, would he be entitled to a miner's right?

Mr. GLYNN. -

It depends upon the state law. We have decided that state laws are to hold good until federal legislation applicable to these special races is passed.

Mr. TRENEWITH. -

You want to put a restriction in the Constitution.

Mr. GLYNN. -

There is no question of putting a restriction in the Constitution.

Mr. TRENEWITH. -

Leave the Federal Parliament to deal with the matter.

Mr. GLYNN. -

Races have been provided for already. Honorable members have races
too much in their heads, I think. They are provided for under clause 53. I am dealing with the case of individuals apart from races altogether, and I say that, as regards individuals, it is inconsistent with the theory of citizenship that we are establishing, that a state should put all sorts of penalties on the citizens of other states. I think that, in this matter, we should make citizenship as wide and as basic as we possibly can under the fundamental principles of the Constitution.

Mr. TRENWITH. -
For that reason, support the striking out of the clause altogether.

Mr. GLYNN. -
But we should put something else in. I think we should insert the amendment I have proposed. If we do not put these words in, Western Australia can pass a law saying that a Victorian in Western Australia shall not be able to obtain a miner's right; and that is the sort of back-handed protection we should not permit under the Constitution, because if it be permitted we shall defeat the trade and commerce clause by enabling a state to impose special disabilities upon the men who carry on commerce.

The amendment to strike out the words "nor shall a state" was agreed to.

The CHAIRMAN. -
It is proposed to further amend the clause by inserting, after the word "deny," the words-
"to the citizens of other states the privileges and immunities of its own citizens."

Sir JOHN FORREST (Western Australia). -
It seems to me that we do not altogether understand—at any rate I do not—the effect of this proposed provision. It has just been pointed out to me that under it many things might occur that we do not at the present time anticipate. For instance, there is a regulation in regard to professions in existence now in the various colonies. Solicitors cannot practise in one colony unless they conform to the laws of that colony. Other professions are in the same position.

Mr. GLYNN. -
This amendment would not affect that position at all.

Mr. GORDON. -
That has been decided.

Mr. REID. -
I think we had better agree to strike the clause out.
The amendment was negatived.
The clause was struck out.
Clause 111 was agreed to.
Clause 112-The Commonwealth shall protect every state against
invasion, and, on the application of the Executive Government of a state, against domestic violence.

Mr. GORDON (South Australia). -

I beg to move-

That the word "invasion" (line 2) be struck out, and the word "attack" substituted.

Why should the protection of the Commonwealth be confined only to invasion? We are not likely ever to be invaded, but we are exceedingly likely to be attacked.

Mr. BARTON. -

Any attack is an invasion in the sense in which the word is used in this clause.

Mr. GORDON. -

The gunning by a cruiser standing off a city is not an invasion, but it is an attack.

Mr. BARTON. -

It is an attack which is part of an invasion; if the attack succeeds invasion follows.

Mr. GORDON. -

I think "attack" is very much better. Of course, if the word "invasion" covers the ground, well and good; but while "attack" covers "invasion," does "invasion" cover "attack"? Originally, the amendment I intended to move used both the words "attack" and "invasion."

Mr. REID. -

You can repel an invasion 100 miles from the coast.

Mr. GORDON. -

But how does the honorable member know that an invasion is intended?

If there was a war between two countries, and a cruiser from the one country was approaching the other, you would know that it was not on a visit of brotherly love.

Mr. GORDON. -

They may not intend to invade the chances are that they do not intend to invade, but to attack.

Mr. BARTON. -

Do you think that the Commonwealth, if a hostile fleet appeared for the purpose of attacking, and not invading, would keep the batteries silent and the Australian fleet at anchor?

Mr. GORDON. -
Something may turn upon this. By this clause the Common-wealth is only bound to protect every state against invasion. If the Commonwealth neglected its duty, and South Australia was invaded, South Australia would have a claim against the Commonwealth. But, it appears to me, that it should have an equal claim against the Commonwealth if it was simply attacked, and not invaded. However, if the leader of the Convention thinks that "invasion" covers "attack," I am willing to leave the matter to the Drafting Committee, but I have some doubt on the point.

Mr. BARTON (New South Wales). -

I am perfectly satisfied that when the guns are booming there will be no discussion about the meaning of the two words.

Mr. GORDON. -

Ought the construction of this Act to be left until the guns are booming? I thought the object was to prevent the guns booming at all.

Mr. HOLDER (South Australia). -

I think there is something in the point raised by my honorable friend (Mr. Gordon). We have previously used separately the terms "naval" and "military." Now, an attack would be naval, while an invasion would be military.

The CHAIRMAN. -

Does the honorable member (Mr. Gordon) press his amendment?

Mr. GORDON. -

No. If the leader of the Convention relies on his booming guns I am content.

The amendment was withdrawn.

Amendment suggested by the Legislative Council of Victoria-

After "state" insert "or where in the opinion of the Governor-General it is necessary for the preservation of the public peace."

Mr. GORDON. -

I object most strongly to this interference with the state. The state is the proper party to ask for protection, and not the Governor-General, who is not a resident of the state, and may be badly advised.

Mr. BARTON. -

The state should be entitled to demand protection.

The amendment was negatived.

Clause 112 was agreed to.

Clause 113. - Every state shall make provision for the detention and punishment in its prisons of persons accused or convicted of offences against the laws of the Commonwealth and the Parliament of the Commonwealth, may make laws to give effect to this provision.

Mr. GLYNN (South Australia). -
I think the words "or detention" should be inserted after "the detention." At present the clause reads-"The state shall make-provision for the detention and punishment in its prisons of persons accused or convicted," &c. We do not want to punish "persons accused." I beg to move-
That the words "or detention" be inserted after "detention."
The clause will then read-"For the detention or detention and punishment," &c.

Mr. Barton (New South Wales). -
I do not think that amendment would quite do. I could understand the clause being amended so as to make it read-"detention or punishment of persons accused or convicted." The object of the clause, as it stands, is to keep together the terms "accused or convicted," so, that the relation, both of accusation and conviction, to the laws of the Commonwealth may be made clear. The clause only applies to accusations or convictions in respect of laws of the Commonwealth, and, therefore, these words "accused or convicted" are kept together just before the words "offences against the laws of the Commonwealth." I think that if my honorable friend (Mr. Glynn) would alter his amendment so as to make it read "detention or punishment," there can be no misreading of the clause.

Sir John Downer (South Australia). -
I think the words should stand as they are. You have to make provision for both things.

Mr. Glynn. -
Not for the punishment of accused persons.

Sir John Downer. -
Provision has to be made both for detention and punishment. I think the clause is clear enough as it stands at present.

Mr. Symon (South Australia). -
I believe that my honorable friend's (Mr. Glynn's) feeling is that, by leaving the words as they are, the clause might be interpreted to enable the federal authorities to demand from the state the detention and punishment of persons who were not convicted, but I do not apprehend that there is the slightest difficulty on that score. I do not think any court would interpret the words to mean the punishment of a person accused and not convicted.

Mr. Glynn (South Australia). -
My contention is that, as the clause stands, the words are to be read conjunctively in relation to the word "accused." The clause says that each state shall make provision for the detention and punishment of persons accused or convicted. You must read the word "punishment" in relation to "accused," as well as to "convicted." The clause should read-"For the
detention, or detention and punishment, as the case may be, of persons accused or convicted," &c.

Sir EDWARD BRADDON (Tasmania). -

I think the clause might be amended to get out of the difficulty which has been pointed out. As it stands at present, it provides that the state shall make provision for the detention and punishment in its prisons of persons accused or convicted. Now, evidently, the detention is for those who have not yet been convicted, and the punishment is for those who have been convicted, and I think that those two classes ought to be separated.

Mr. BARTON (New South Wales). -

I have an amendment which I think will meet the case, and enable us to get on. I beg to move-

That the clause be amended by striking out the words after "detention" down to "Commonwealth," and substituting in lieu thereof the words "in its prisons of persons accused of offences against the laws of the Commonwealth, and the punishment of persons convicted of such offences."

Mr. GLYNN (South Australia). -

I would point out that, under the clause as now proposed to be amended, a state might make provision for whipping persons convicted, but not for detaining them in prison.

Mr. ISAACS. -

Detention may be part of the punishment.

Mr. GLYNN. -

But the punishment may not be detention, it may be flagellation. Are you going to allow a state to make provision for the character of the punishment for an offence against the Commonwealth?

Mr. Barton's amendment was agreed to.

Clause 113, as amended, was adopted.

The CHAIRMAN. -

We will now go back to Chapter IV., dealing with finance, which was postponed.

Mr. BARTON (New South Wales). -

I beg to move-

That the consideration of Chapter IV. be further postponed until after the consideration of Chapter VI.

Mr. HIGGINS. -

When are we to have the finance statement?

Mr. BARTON. -

The Finance Committee are now considering the drafting of the clauses, and they meet today, I believe. I need hardly remind the honorable member
(Mr. Higgins), that this is a matter which requires the greatest deliberation, and I think every necessary time must be allowed to the Finance Committee.

The motion for the postponement of Chapter IV. was agreed to.

CHAPTER VI. - NEW STATES.

Clause 114-The Parliament may, from time to time, admit to the Commonwealth any of the existing colonies of [name the existing colonies which have not adopted the Constitution], and may from time to time establish new states, and may, upon such admission or establishment, make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

On this clause a great many amendments have been suggested, which it is somewhat difficult to put so that they can all be considered and voted upon, The Council and Assembly of Western Australia have suggested to omit the words "The Parliament may from time to time admit to the Commonwealth." The Council and Assembly of Tasmania have suggested to omit after "Parliament" the word "may," and insert "shall." Now, in order that both these amendments may be voted on, I will put as a test of the amendment suggested by Western Australia, the omission of the words "The Parliament." I can subsequently put the question whether the word "may" or the word "shall" shall be used.

Sir JOHN FORREST. -

Does not the Parliament of Western Australia propose the omission of these words with the view of substituting other words?

Mr. BARTON (New South Wales). -

I may point out that the object is to make the clause read in this way:-

Any of the existing colonies may, on adopting this Constitution, be admitted to the Commonwealth, and shall thereupon become and be a state of the Commonwealth.

The amendment is in two parts, and this is the first part. I myself do not see any reason for changing the drafting of the Bill.

The amendment to strike out the words "The Parliament" was negatived.

The amendment to omit the word "may," with the view of substituting "shall," was also negatived.

The CHAIRMAN. -

The next amendment is one suggested by the Legislative Council and the Legislative Assembly of Tasmania, for the insertion after the word "Commonwealth" (line 2) of the words "in accordance with the provisions
of this Constitution."

The amendment was negatived.

The CHAIRMAN. -

The Legislative Councils and Legislative Assemblies of New South Wales and Western Australia have suggested that we should omit all the rest of the clause after "new states." I shall now put, as a test question, as to whether the rest of the clause be left out or not, that the words "may from time to time establish new states," stand part of the clause.

Mr. GLYNN (South Australia). -

Before considering that question, I desire to ask the leader of the Convention whether Queensland, if it subdivides, can come in? The right of adm

Mr. ISAACS. -

The clause provides that new states may be established from time to time.

Mr. GLYNN. -

Does that not apply to new states within the territorial jurisdiction of the Commonwealth?

Sir JOHN FORREST. -

No; you can take in New Guinea if you like.

Mr. GLYNN. -

I would like the opinion of the leader of the Convention on the point.

Mr. BARTON (New South Wales). -

This matter has not escaped the attention of the Drafting Committee, but so far they do not see that it is necessary to make any-alteration in this particular. The clause provides that the Parliament may, from time to time, admit to the Commonwealth any of the "existing colonies." That is, any of the colonies in their existing condition, and it also provides that the Parliament may, from time to time, establish new States. If an existing colony is sub-divided and becomes, say, instead of the colony of Queensland, three other colonies, although embracing the same territorial area as Queensland, they can be admitted to the Federation under the provision allowing the Parliament to establish new states. The admission phrase is designedly used so as to enable it to apply only to those colonies which might at first enter the Federation, and with their existing autonomy, and the remainder of the clause is intended to apply to the other colonies. However, I will give the matter reconsideration, although I think it is probable that the present wording will suffice.

Sir JOHN FORREST (Western Australia). -
Do I understand correctly that any of the existing colonies of Australia can come in upon the terms of this Constitution, but that any new states constituted hereafter will come in under the latter portion of this clause? I take it that an existing colony coming in afterwards would not come in perhaps on the same terms as a colony that came in in the first instance. Is that the intention?

Mr. BARTON (New South Wales). -

The intention is to allow to the Common-wealth, and to the state which has not at first joined the Federation, an opportunity of considering the terms of the admission of that state. Of course, it is very probable that, on the early admission of such a state as Queensland, no terms whatever would be proposed. On the other hand, if new interests grow up, and new states sought admission to the Commonwealth, these terms and conditions would become very important. It is absolutely necessary to repose power in the Commonwealth to prescribe terms and conditions to meet cases which none of us can foresee.

Sir JOHN FORREST. -

Every one will agree to that, because it cuts both ways. A colony which does not enter in the first instance, however, may be able to enter on more favorable terms.

Mr. BARTON. -

Or on less favorable terms, as the Parliament of the Common-wealth may prescribe.

Mr. HOLDER (South Australia). -

Am I correct in assuming that, even though Queensland is not represented in this Convention, it will be competent for that colony to come in as one of the original states, if her Parliament passes addresses to the Imperial Parliament at the same time as the Parliaments of the other colonies?

Mr. BARTON (New South Wales). -

I think there can be no doubt as to the competency of the Imperial Parliament, which is a sovereign Parliament, to include Queensland in the blank space where the colonies joining in the Federation have to be enumerated. Of course before that is done, it is very probable that some means will be taken to see whether the other colonies, through their respective Governments, are anxious for the admission of Queensland. It might be that some official inquiry of that kind would be made, or that inquiry might not be made. The Imperial Parliament could admit Queensland without making any such inquiry, but all precedents teach us that such an inquiry would be made, and upon the satisfactory answer to that inquiry, the petition of Queensland would be acceded to, I take it, so
long as it was presented before the time when the Bill was submitted to the Imperial Parliament.

Mr. SYMON (South Australia). -

The point which Mr. Holder raised is a very important one, and if there is any doubt about it the clause ought to be made clear. In the preamble of the Bill there is no limitation.

Mr. BARTON. -

No, it is left to the Imperial Parliament to enumerate in the Bill the colonies which are to form the Federation, according to the addresses adopted by their respective Parliaments.

Mr. SYMON. -

But there is no barrier to prevent Queensland adopting this Constitution any more than there is to prevent any of the colonies represented here from doing so.

Mr. BARTON. -

Quite so; that is involved in what I previously said.

Mr. HIGGINS (Victoria). -

The only question before the Chair is as to whether the words "may from time to time establish new states" are to remain in the clause.

The CHAIRMAN. -

Yes, and that is put as a test question as to whether we are to strike out the rest of the clause.

Mr. HIGGINS. -

As attention is riveted on those words, I will do what I have not done as yet throughout the Convention, namely, direct the notice of the Drafting Committee to the way in which this clause is drawn. I cannot see why the word "establish" is used there, and I would suggest to the Drafting Committee, very respectfully, that if Queensland were divided into three colonies before the people of that part of Australia applied for admission to the Federation, it would be quite a false statement to say that the Federal Commonwealth establishes those three colonies.

Mr. ISAACS. -

No, the clause speaks of establishing them as new states, not as colonies.

Mr. HIGGINS. -

I only want to take care that there shall be no mystical distinction urged hereafter as between "establish" and "admit." Those three colonies would be established by the Imperial Parliament. I think that the true wording of the clause is that the Federal Parliament may admit any existing colonies or any new states hereafter created.
Mr. SYMON. -

Why not say "establish or admit"?

Mr. HIGGINS. -

Yes; I cannot see the force of the distinction that is drawn between "establish" and "admit" in this connexion. There is a force in our ordinary parlance. However, I will not move an amendment, because the drafting of the Bill is in the hands of very competent persons, and but for the fact that these words are being specially dealt with, I would not have risen to say that the word "establish" here is not the correct word to use.

The question that the words "may from time to time establish new states" stand part of the clause was resolved in the affirmative.

Amendment suggested by the House of Assembly of South Australia-
Omit "including the extent of representation in either House of the Parliament."

Mr. BARTON (New South Wales). -

I think these words might safely be retained. Looking at the provisions in the Bill for the preservation of representation, I think it just as well that in a clause of this kind, which gives power to the Commonwealth to make terms for the admission of new states, power should also be given to deal with the question of their representation. I think this is one of the safeguards which should speak to the Parliament of the Commonwealth, as well as to us who are framing the Constitution. The principle that the Commonwealth when once established, in making terms with those who seek admission, should have the power to deal also with representation may wisely be implanted in the Constitution.

Dr. COCKBURN (South Australia). -

I think that the Commonwealth should be able to make terms with new states seeking admission, but I do not think that it should be able to deal with a matter of such vital importance as their representation in the Senate or the House of Representatives. I look upon the principle of equal representation in the Senate as one of the cardinal features of the Constitution. There is no such power given to the American Congress as is proposed to be given here, and if we, who claim equal representation in the Senate as our dearest right, allow it to be surrendered in the case of others we must look to our own position. This is a question of principle. I say that if Queensland enters the Federation as a whole, or as more than one state, each new state should enter upon the same terms in respect of representation. I look upon this as an essential feature of the great example of federation afforded by the United States, which has stood the test of time, and which excites the admiration of the civilized world.
Mr. ISAACS. -
It has caused a great deal of dissatisfaction.

Dr. COCKBURN. -
I have never heard of it. The dissatisfaction which exists in regard to the United States Senate is as to the mode of appointing the Senate, not because of the equal state representation there. I have searched into the matter very carefully, and I have spoken to representatives of American thought upon this point, and I find that there is no strong body of public opinion opposed to the principle of equal state representation.

Mr. ISAACS. -
There is a strong objection to giving Nevada one representative to every 21,000 of her population, while New York has only one representative for millions of her population.

Dr. COCKBURN. -
Remarks may be made about an anomaly of that kind, but the fact that such an anomaly is necessary to maintain the principle only shows how strongly the people of the United States are attached to the principle. Unless we strike out these words we who plead for equal representation in the Senate endanger our own position.

Mr. HOWE (South Australia). -
Do I understand that if Queensland were divided into three states each of these states would have six representatives in the Senate?

Dr. COCKBURN. -
If the Parliament of the Commonwealth admitted them.

Mr. HOWE. -
That looks very well on the face of it; but I think the power of dealing with representation should be left to the Federal Parliament.

Dr. COCKBURN. -
It is left to the Federal Parliament, because if Queensland chose to split herself up into homeopathic parts the Federal Parliament could refuse to admit those parts as states.

Mr. KINGSTON (South Australia). -
Is it intended under this clause to allow the Parliament of the Commonwealth to carve new states out of existing states?

Mr. BARTON. -
It seems to me that that must be the intention.

Mr. KINGSTON. -
I would suggest that this power should be exercised only with the consent of the Parliaments of the states.

Mr. BARTON (New South Wales). -
If the right honorable member will look at clause 117, he will see that no
state can alienate any part of its territory without the consent of the state Parliament. While the Federal Parliament is empowered to establish new states, there is a condition imposed which prevents territory from being available for a new state until it has been conceded by the Parliament of the state to which it belongs.

Mr. WALKER (New South Wales). -

As the leader of the Convention has referred to clause 117, I would draw attention to the fact that the great obstacle which prevents Queensland from joining the Federation is that at the present time the colony may be subdivided upon petition to Her Majesty the Queen, and a large proportion of the people there are afraid to come under a Constitution which might take away Her Majesty's prerogative in this respect, and prevent any division of the colony without the consent of the state Parliament. That was really the reason why the Queensland Federal Bill was not passed.

The CHAIRMAN. -

These remarks will be more in order when we are dealing with clause 117.

Mr. WALKER. -

Yes; but the leader of the Convention having referred to the clause I took the liberty of mentioning the matter.

Mr. KINGSTON (South Australia). -

I am obliged to the leader of the Convention for this direction to clause 117; but I suggest that it might be preferable if in clause 114 we made it additionally clear that the power of establishing new states should not be exercised without the consent of the Parliament of the state affected. I only ask the honorable and learned member to consider the matter further. I have looked at the provisions of the clause to which he has called attention, but this is such a large power that I think its real extent should be placed beyond doubt.

Mr. LYNE. -

Does not the right honorable member think that it is placed beyond doubt by clause 117?

Mr. KINGSTON. -

I do not.

Mr. LYNE (New South Wales). -

To be consistent upon this matter, I intend to vote in such a way as will allow new states to join the Commonwealth upon the same terms as existing states, though at the same time I am altogether opposed to the principle of equal state representation. If, however, equal state representation is allowed to Tasmania, South Australia, and Western
Australia, I cannot see why new states should not be given the same privilege. This only shows to what a great extent the principle of equal representation can be carried.

The amendment was negatived.

The CHAIRMAN. -

The amendment having been negatived, I shall not put the consequent amendment suggested by the House of Assembly of South Australia.

The clause was agreed to.

Clause 115. - (Provisional government of territories.)

Mr. BARTON (New South Wales). -

There is a question as to whether the word "provisional" should remain. Where the territory is not part of an existing state, of course the Parliament might raise that territory into a state after a certain term of government; but when the territory is part of an existing state that can only be done by the consent of the state or its Parliament. As to these territories the word "provisional" is probably not an incorrect description, but the question arises whether it is a necessary word. The administration and government of a territory, are words quite sufficient to describe the process as it goes on. It might not be wise to use this word "Provisional," implying an entirely temporary government, because there might be territories which, after they became part of the Commonwealth, might not for many years, if at all, become states.

Mr. HIGGINS. -

The word is not used in the Constitution of the United States.

Mr. BARTON. -

I fancy it is not. I think it was only introduced in the Bill of 1891. I beg to move that the word "provisional" be struck out.

The amendment was agreed to.

Amendment suggested by the Legislative Council of New South Wales- Omit the words "any territory surrendered by any state to and accepted by the Commonwealth, or."

The amendment was negatived.

The CHAIRMAN. -

There is another amendment suggested by the House of Assembly of South Australia, to add at the end of the clause the following words:-

No federal territory shall be alienated in fee simple, nor shall it be leased for a longer period than 50 years, except upon payment of a perpetual rent, which shall be subject to periodical appraisement at intervals of not more than ten years.

Mr. GLYNN (South Australia). -

I promised the honorable member who moved this amendment in the
South Australian Assembly to amend it in a direction that he agreed would be desirable. As it stands, I believe it is in substance the amendment moved in Adelaide by the honorable member (Mr. Wise); but it would prevent an exchange of land. It also introduces two forms of leases—one for 50 years, and the other in perpetuity. I beg to move—

That the amendment be amended by leaving out all the words after "fee simple," with the view to insert the following words:—"except by way of exchange for other territory, nor leased, except in perpetuity at its fair annual rent, subject to periodic appraisement at intervals of not more than fourteen years, in a manner to be determined by Parliament."

The amendment will amount to this: That there is to be no alienation in fee simple, and any alienation must be in the form of a lease in perpetuity, at a rent to be periodically appraised, in a manner to be determined by Parliament.

Mr. HIGGINS. — Suppose it is not Crown land at all?

Mr. GLYNN. — It applies to federal territory.

Mr. HIGGINS. — It might be federal territory, and yet part of it might be owned by private individuals.

Mr. GLYNN. — That is a question affecting the original amendment, which I merely wish to amend. After the federal capital is decided upon, the Federal Parliament might have a large quantity of land which might not be used for building, the leasing of which might in the future yield an enormous amount of rent, which could be applied in diminution of taxation.

An HONORABLE MEMBER. — Let the Federal Parliament deal with that.

Mr. GLYNN. — Unless we put in this provision, goodness knows when the Federal Parliament might adopt the principle. I am not speaking on the principle at present; I believe in it, but I am not going to re-argue the question.

Mr. BROWN (Tasmania). — This is one of the numerous questions which might very well be left to the Federal Parliament. It opens up the whole question of perpetual leasing, which might be discussed for months. This is clearly a question for the Federal Parliament to decide. The various colonies will be represented in the Federal Parliament on this question, as on others which have been
discussed here at very great length. The representatives of the different colonies will have an opportunity of airing their theories about the occupation of land, and it would be a waste of time to discuss the question now. I have not taken part in past discussions, for the very reason that I am now giving why we should not discuss this question. It seems to me that we have spent a great deal of time in deliberating upon questions which might very well have been left for the decision of the Federal Parliament. It seems to me to be specially appropriate that we should leave this subject to the Federal Parliament. No doubt the honorable member (Mr. Glynn) is quite earnest in his desire to establish the theory which he holds as to the occupation of land, but I hope that he will be content to leave it to be dealt with hereafter, and that he will not ask us to enter upon such a very wide discussion.

Mr. Glynn's amendment was negatived.

The amendment suggested by the House of Assembly of South Australia was negatived.

The clause, as amended, was agreed to.

Clause 116 (Alteration of limits of states) was agreed to.

Clause 117-A new state shall not be formed by separation of territory from a state without the consent of the Parliament thereof, nor shall a state be formed by the union of two or more states or parts of states, or the limits of a state be altered, without the consent of the Parliament or Parliaments of the state or states affected.

Mr. WALKER (New South Wales). -

As I have already remarked, I hope that the leader of the Convention and the Drafting Committee will see their way to alter this clause so as to provide for a contingency which I should be sorry to see arise. The event of Queensland coming into the Federation will depend upon Her Majesty's prerogative being maintained with regard to the division or separation of that colony. At present Her Majesty can sub-divide that colony upon a requisition from the inhabitants. We should, if possible, continue that power, so that if Queensland should come into the Federation, Northern and Central Queensland could, by petition to Her Majesty, have that portion of the colony, if they so desire, separated into another colony, and at the same time remain within the Commonwealth. I will not detain the committee, because, on this matter, I am only putting forward a suggestion. I do not propose to move an amendment. I think I am not equal to framing an amendment in legal phraseology, but I believe the leader of the Convention is perfectly competent to speak on this subject, having been interviewed, to my knowledge, by the chairman of the Separation
Committee in Rockhampton, from which committee, by-the-bye, the Convention received a petition in Adelaide setting out the peculiar position of Central and Northern Queensland. I, therefore, ask Mr. Barton if he will kindly see whether it is possible to draft a clause by which Queensland may more readily come into the Commonwealth than I fear she otherwise would do?

Mr. BARTON (New South Wales). -
This is a very prickly subject, because if you endeavour to keep alive the present power of delimiting and subdividing Queensland without the consent of its Parliament, and import this into the Constitution, the danger arises whether, if you secure the assent of either Northern and Central Queensland to the Constitution, you may not alienate a large majority in Southern Queensland. Again, the difficulty would arise, and I confess it is still a difficulty, that if you keep in this Constitution a provision which necessitates the assent of the Parliament of a colony before that colony can be subdivided, that gives the majority in Southern Queensland powers over the minority in Central and Northern Queensland which they do not wish to be denied, and it might make the Constitution distasteful to them. As far as I am concerned, I do not like to handle the subject. It may be that before much time has elapsed Queensland will have got rid of this difficulty and will have agreed to some form of separation.

Mr. FRASER. -
They are getting rid of it now.

Mr. BARTON. -
The way of dealing with this question that my honorable friend (Mr. Walker) proposes is, I am afraid, not a way of getting rid of the difficulty. I will make him this promise: I will draft for him some such provision as will meet his views in reference to this matter. I will not move the amendment myself, but if it is the wish of the Convention to recommit the clause later on there will then be an opportunity for him to move its insertion.

Mr. WALKER. -
I thank the honorable member.

The clause was agreed to.

Chapter IV. was further postponed until after the consideration of Chapter VII.

CHAPTER VII. - MISCELLANEOUS.
Clause 118-The seat of government of the Commonwealth shall be determined by the Parliament.

Until such determination the Parliament shall be summoned to meet at such place within the Commonwealth as a majority of the Governors of the
states, or, in the event of an equal division of opinion amongst the Governors, as the Governor-General shall direct.

Amendment suggested by the Legislative Council of New South Wales-

After "shall be," in line 2, omit remainder of clause, insert "in Sydney, in the colony of New South Wales."

**Dr. COCKBURN (South Australia). -**

Before that amendment is put, I should like to move a prior amendment, namely, to substitute for the word "Common-wealth" the word "Australia." I want the seat of government of the Commonwealth to be known as the capital of Australia, not that I have any objection to the word "Commonwealth"-I believe in the word "Commonwealth," which I wish to see retained-but because I want to see the word "Australia" used as coterminous with the word "Commonwealth." I want to see every inducement given to every state to come into the Commonwealth, in order that they may become and remain a component part of Australia. I do not want to offer any inducement to any state that she will gain prestige or increased status by standing out. I do not want, when the Commonwealth is established, to see Australia divided into two parts-the Commonwealth of Australia and a colony.

**An HONORABLE MEMBER. -**

You will never hear of a colony.

**Dr. COCKBURN. -**

I do not know. We do not want Australia known as being divided into two parts. We want the word "Australia" to convey the highest expression of Australian life, that is to say, the Commonwealth. I want everybody who is a citizen of the Commonwealth to be able to say-"I am a citizen of Australia," without any ambiguity whatever. I do not want anybody who hails from Australia to be asked-"What part of Australia do you come from? Do you come from the Commonwealth, or from such-and-such a colony?" I want the two words to be identical in meaning and synonymous. At the same time I do not want to eliminate the word "Commonwealth," or say anything derogatory of the word "Commonwealth," because I believe that word has a meaning which carries out our wishes.

**Sir JOHN FORREST. -**

You cannot legislate against other people. Suppose Queensland remains out, it will still be entitled to call its part of the territory Australia.

**Dr. COCKBURN. -**

She will still remain Queensland, and we will remain Australia. I am not
speaking in reference to Queensland or to any particular state. I am speaking in reference to any state which chooses to stand out from the general understanding and to remain a distinct and separate state.

Sir JOHN FORREST. -
You want to collar the name.

Dr. COCKBURN. -
I do not want to collar the name-it is our right.

An HONORABLE MEMBER. -
Look at clause 4.

Dr. COCKBURN. -
Probably clause 4 will be the better clause in which to move the amendment. It is a matter which I think we will have to consider. I would like to see the amendment made here, because, I think, it is a matter which very closely concerns our national life. Of course an alteration will have to be made in clause 4, and the alteration I would suggest, if I am permitted to say what the result of making the alteration will be-

The CHAIRMAN. -
We must not discuss over again what we are going to call the Constitution. The question before the committee now is what we are going to call the capital.

Dr. COCKBURN. -
I do not want to reverse the vote which has been arrived at, and with which I am absolutely in sympathy. I simply want to make Australia and the Commonwealth synonymous terms. And if clause 4 is the correct place in which to move an amendment, I would suggest that instead of the words "the seat of government of the Commonwealth" we should use the words "the seat of government of Australia."

An HONORABLE MEMBER. -
How are you going to enforce it?

The CHAIRMAN. -
I do not think we ought to go back to clause 4.

Dr. COCKBURN. -
I will not go back to that clause; I will move the amendment here, and it is not antagonistic to any vote which has been arrived at, because I think it is the proper place to make the amendment. All I am asking is that our seat of government-our capital city-shall be known, not as the seat of government of the "Commonwealth," but as the seat of government of "Australia." I do not mean to speak at any length, not because I do not want honorable members to agree with me, but because I think, when they look
at the matter, they will themselves see that it is the correct thing for us to do, that we have a right to do it, and that this clause is the proper place in the Bill to do it. I only want honorable members to take the matter into their consideration. I do not want to spring a surprise on the committee, or to ask honorable members to vote on the matter, of which perhaps they have not considered the bearings. I believe that when the committee takes the whole matter into its consideration, it will agree with me that the words "Commonwealth" and "Australia" should be synonymous terms, and that we should leave no loophole or ambiguity with regard to what the meaning of Australia is to be in the future. We mean Australia to be our Commonwealth-our Federation of States.

Mr. MCMILLAN. - Would it not do to use the words "and shall be the capital of Australia"?

Dr. COCKBURN. - I am not wedded to any form of words. I am only anxious to give expression to what I think will be the general feeling, and the legitimate aspiration of the people of the Commonwealth.

Mr. SYMON (South Australia). - The honorable member may rely very strongly on my support, but the amendment should be made in clause 3 or clause 4.

Mr. BARTON. - Clause 4 is only a definition, and I propose to strike that definition out. There will be an opportunity of moving the amendment on clause 3.

Mr. SYMON. - That would be the proper place for the amendment, and I would ask the honorable member not to press it now. If we were to put it in here, it would be a contradiction in terms, because if clause 3 remains, the name of the Federation we are creating is not Australia, but the Commonwealth of Australia. If there were three or four colonies standing out, each of those colonies would have a right to object to our arrogating the name of Australia. If the name of Australia is to be adopted-and I give my strongest adhesion to that proposal-the amendment should be inserted in clause 3.

The CHAIRMAN. - It seems to me that we are discussing a question that has been already settled by the committee. If clause 3 is the proper place for the amendment, it can be dealt with on that clause.

Dr. COCKBURN. - I shall be quite willing to move the amendment then. I thought that this was the proper place for it.

The CHAIRMAN. -
The question before the Chair is the amendment suggested by the Legislative Council of New South Wales, to insert the words "in Sydney, in the colony of New South Wales."

Mr. LYNE (New South Wales). -
I do not intend at this stage to speak at length on this question. It will be understood that if there was any prospect of the amendment being carried I would support it very strongly. Many objections have been raised to the federal capital being at any spot close to the seashore, or in a position where it could easily be attacked. Before discussing the question of Sydney being the capital, I should like to hear what other honorable members have to say. If this proposal is negated, I intend to submit a further amendment, of which I have given the Chairman notice, to the effect that the capital shall be in the state of New South Wales.

Sir EDWARD BRADDON (Tasmania). -
I desire to move an amendment on the amendment.

Sir JOHN FORREST. -
Hobart.

Sir EDWARD BRADDON. -
That is it. It is no better joke than the suggestion that Sydney should be the capital of the Commonwealth. Nature has fixed upon Hobart as the capital. Everything points to it or some other place in Tasmania as the capital.

Sir JOHN FORREST. -
You must build a bridge across.

Sir EDWARD BRADDON. -
All that would be done by the Commonwealth.

An HONORABLE MEMBER. -
Would not Launceston do as well?

Sir EDWARD BRADDON. -
I will not say anything against Launceston. I desire simply to move that the capital be at some suitable place in the state of Tasmania, and I am sure that honorable members who aspire to seats in the Federal Parliament will support me. They will know that in going to perform their duties at the centre of government they will be making no sacrifice of health or personal comfort.

Mr. HIGGINS. -
It may be 105 in the shade in Hobart.

Sir EDWARD BRADDON. -
No, it cannot reach that. I beg to move-
That the amendment be amended by striking out "Sydney," with a view
Sir GEORGE TURNER (Victoria). -

I have an amendment which will, I think, come before this amendment. I propose to insert a word before "Sydney." We undoubtedly have in this colony of Victoria a place which is well suited, by nature and by what has been done for it, for the federal capital. We possess buildings well adapted to the purpose, and we have a climate unrivalled for changes in any part of the Australian colonies. I have the honour of representing in the local Parliament a portion of this great colony of Victoria, and I should be wanting in my duty, having regard to other proposals submitted by honorable members who were just as serious probably as I am, if I failed to put forward the claims of Victoria or some part of it to be the federal capital. I propose to insert before the words "in Sydney" the words "St. Kilda."

The CHAIRMAN. -

I am afraid I cannot put that amendment, unless the Right Hon. the Premier of Tasmania withdraws his proposal.

Mr. SYMON (South Australia). -

There is one colony which, in this discussion, has been overlooked, and it has greater claims, I think, in some

Mr. DEAKIN. -

"Where every prospect pleases."

Mr. SYMON. -

And where we hope-when the Federal Parliament sits there-the latter part of the quotation will not apply. I shall therefore move at the proper time that Mount Gambier be selected as the federal capital.

Sir WILLIAM ZEAL. -

What about the earthquake at Mount Gambier?

Mr. SYMON. -

Well, a recurrence of that event would be a pleasant variety at any rate, it would not be so alarming as the earthquakes my honorable friend sometimes creates in this chamber.

Dr. COCKBURN (South Australia). -

I suppose that the whole discussion on this question is more or less of a jest, and I think I must take a turn when there is a joke going on. But seriously, sir, this matter will have to be left to the Federal Parliament. If, however, we are going to argue it seriously now-if the Convention were-in a state of mind in which it could be argued seriously-I should like to point out that, from the geographical point of view, the centre of gravity of
Australia lies at one definite point.

Mr. FRASER. -

Where is that?

Dr. COCKBURN. -

Adelaide, which is situated on the water-way that is the most important water-way to the centre of the continent. Whereas there would be great difficulty in regard to the federal capital being situated either at Sydney or Melbourne, I do not think the same objection would hold good with regard to Adelaide. I think, speaking off-hand, that although Sydney and Melbourne would resent the necessary conditions of the federal capital being located at either place, Adelaide would consent to them. But there is another point to be taken into consideration. Judging from our debates, what has proved to be the most important part of Australia? Undoubtedly the River Murray. The Murray has proved itself to be as it were the thread which has held our discussions together. I would also like to point out, by way of analogy, that all the capitals that have for any lengthened period occupied an important place upon the page of history have been cities situated on important rivers. On these grounds, I should like to put in a claim first of all on behalf of Adelaide, and failing that for some city situated on the River Murray.

The amendment to strike out the word "Sydney" was agreed to.

The amendment for the insertion of the words "in some suitable place in Tasmania" was negatived.

The CHAIRMAN. -

The amendment now before the Chair is Mr. Lyne's amendment for the insertion of the words "in the colony of New South Wales."

Mr. LYNE (New South Wales). -

Honorable members seem to be in a rather laughing mood in regard to this question. Now, I am not in a laughing mood.

Mr. PEACOCK. -

Are you ever in a laughing mood?

Mr. LYNE. -

I am as serious in regard to this question as I have been in regard to any other, and I venture to think that the whole of the arguments are in favour of having the federal capital in New South Wales. I would not press just now a proposal that the capital should be in Sydney, because I believe that there is a great deal in the argument I have heard that Sydney is a likely place of attack. The same objection operates against the selection of Melbourne, and to an even greater extent against Hobart. All these places
would be easily open to attack in case of war. But the colony of New South Wales would be satisfied to leave the selection of the federal capital to the Commonwealth, if it were determined that the place should be within the territory of New South Wales. We have, as every one knows, many sites where the climate is good, which are suitable in regard to position, and which possess all the qualities that are requisite to make any one of them an ideal spot for the federal capital. I venture also to think that the position of New South Wales, if at any future time Queensland comes into the Federation, makes her the more suitable colony to contain the federal capital. There can be no complete federation without Queensland, with the possibilities before that great country, and even if we frame a Constitution which will be acceptable to the other states, the time will not be far distant when Queensland will come into it. That being so, in selecting the position of the capital for Australia we should choose a site which will be suitable to Queensland, as well as to the other colonies, and for that purpose there can be no colony more fitted than the colony of New South Wales. We have been invited to visit Ballarat on Friday, and some one has whispered to me that this is to give the representatives a good opinion of Ballarat, with a view to its being selected as the site for the federal capital. I only hope that the climate of Ballarat is better than the climate of Melbourne has been for the last few days. If not, it will have a very poor show of being selected as the federal capital; and I should also think that the heat we have had here will place Melbourne out of the running altogether. I do not wish to debate the question at any length, because the suggestion I have made must, I think, commend itself to every member of this Convention. Albury has been mentioned as a suitable place. The climate there is not so good as it is at other places in New South Wales, but for many reasons it is a good spot. There are also many other suitable localities in New South Wales. There is a wise provision in this Bill, that there should be an area of territory around the federal capital, where-ever it may be, which shall be federal territory. It would be most difficult that that should be provided either in Sydney or in Melbourne, or in any other large city of Australia. I am also of opinion that it would not be a wise thing to select a spot where there is at present no settlement, as was done in the United States of America. We could easily select a spot where we have a settled population at present. Holding these ideas, I hope that this Convention will not treat the matter lightly, because it is an important matter for us to consider. I trust that honorable members will consent to some spot in New South Wales being selected. I have heard many honorable members say that they will agree to that. Let us now see by their votes whether they will do so.

Sir WILLIAM ZEAL. -
Will you name the place?

Mr. LYNE. -

No; I should not like to name the place at the present time.

Sir JOSEPH ABBOTT (New South Wales). -

I hope the clause will be left exactly as it stands. If my vote could establish the capital of the Commonwealth in New South Wales, I certainly would not give my vote to that effect. I hope that the time will come when New South Wales will be selected as the place for the capital of the Federation, but from the point of view of the Convention, it matters very little to New South Wales whether the capital is there or in Western Australia. In this respect, I think that the position of New South Wales is exactly the same as the position of the state of New York, the capital of which is Albany. The capital of the state of New York contains 91,000 inhabitants—that is, the legal capital of the state of New York—but the city of New York, with Brooklyn, which forms part of the same city, contains 2,500,000 inhabitants. Wherever you fix the capital of Federated Australia, I feel sure that the facilities of trade will fix the capital where those facilities are the greatest, and I am not at all concerned as to where the capital will be fixed as a matter of law, because I know where it will be as a matter of fact.

Mr. LYNE. -

You do?

Sir JOSEPH ABBOTT. -

Yes; insomuch as there is no other city with the facilities of Sydney, the capital will, de facto, be Sydney, although it may, de jure, be in Western Australia. I think it is a small thing to quarrel about, or devote our attention to at present. Representing New South Wales, I am perfectly prepared to leave it to the Federal Parliament to determine where the capital of the Commonwealth shall be.

Mr. REID (New South Wales). -

I confess that I cannot follow the observations of the honorable member who has just said that he represents New South Wales, and, at the same time, I think this is not a subject upon which there should be any prolonged debate. I put it to the Convention that the colony of New South Wales is entitled to the passage of this amendment. At the same time, I do not wish to press my view upon any honorable member of this Convention. It is a matter which each member must decide for himself. I cannot conceal from myself my own belief that the great burden, the chief burden, of this future Federation will be upon the colony of New South Wales. I cannot conceal
from myself the fact that the main object of this federation is to bring New South Wales within the reach of the other colonies for the purposes of intercourse and trade—very proper purposes—and, from her position in the group of the Australasian colonies, I believe that she is entitled to the passage of this amendment. I think that all those members of the Convention who are of the same opinion as myself ought to help Mr. Lyne to remove this matter from the region of doubt; but, I say again that it is not a matter on which I will presume in the slightest degree to expect any member of this Convention to be guided by me. I simply ask for a conscientious vote on this question.

Mr. MCMILLAN (New South Wales).—

I hope that there will be no vote on this question. I hope that the amendment will be negatived. I quite agree with Sir Joseph Abbott that this is entirely a matter for the Federal Parliament to determine. That has always been agreed upon, and certainly whatever hope New South Wales has in the future of having the federal capital within her borders, I do not think her chances will be improved by a discussion of the question at the present time. There is no doubt that to us this question of the capital of the Commonwealth is involved very greatly in the coming in of Queensland to this Federation. To my mind—I only give my own view—there is no doubt that if Queensland comes in, the federal capital, if we have regard to convenience and everything, will find its natural position somewhere in New South Wales, and I hope also that the capital of the Commonwealth will be located on one of the tablelands of one of the colonies, whichever may be chosen, so that it may have a healthy situation. I think, however, that it would be lamentable for us to divide on a question like this, on which we are sure to be in a minority.

Mr. HOWE (South Australia).—

I should like to know whether the mover of the amendment intends to press it to a division?

Mr. LYNE. —

Most decidedly I will.

Mr. HOWE. —

Then I feel that it behoves me, as a representative of South Australia, to say a few words on the question. I am sorry that the mover of the amendment did not listen to the words of wisdom which fell from Sir Joseph Abbott. I consider that at this juncture it would be highly inadvisable to try to get a vote on the amendment, because it would place those who are in sympathy with New South Wales in this matter in a false
position. My sympathies are entirely with the mother colony.

Mr. LYNE. -
Then vote for the amendment.

Mr. PEACOCK. -
This is not the place to determine the question.

Mr. HOWE. -
I say that the mother colony-

Mr. KINGSTON. -
The senior colony.

Mr. HOWE. -
I choose to designate New South Wales as the mother colony, and I hope I will not offend my right honorable colleague by doing so. I have always done so. I say that we should consider the position of the mother colony. She has natural resources, I believe, far and away, according to her area, beyond those of any of the other colonies existing at the present time.

Mr. FRASER. -
Queensland is running her a very tight race.

Mr. HOWE. -
She has beautiful up-lands, a grand river system, and there are many places within her borders eminently suited for the federal capital; but while I say all this, and while my feelings are favorable towards the mover of the amendment and the amendment itself, I feel that this is one of those questions which, unless we are going to cause greater dissension in this camp than has ever existed before, should be left entirely to, the Federal Parliament. Consequently, I ask the honorable member, if it is not yet too late, to reconsider the matter, and not put his friends in a false position, but withdraw the amendment, and leave it to an even higher tribunal than this to deal with the matter.

Mr. REID (New South Wales). -
I really feel, from the tone of the Convention, that this amendment is going to be negatived.

Mr. FRASER. -
That is so.

Mr. HOWE. -
You should not press it to a vote.

Mr. REID. -
Yes, I feel that now; and the main object with me in supporting my friend—and I will support him to the finish, if necessary; it is a matter for his decision—my object in asking this Convention, at this time, to carry Mr. Lyne's amendment is, I can assure honorable members, although it may seem to have rather a provincial complexion, entirely in the interests, from
our point of view, of the success of this movement. I, therefore, did not press my views upon any other honorable member, because I could not press on honorable members the fact that the settlement of this question now would, in my opinion, give an immense help to us in New South Wales in securing their forgetfulness of many points in this Constitution which we and they have a strong objection to. But, now that we have brought the matter before the Convention, and now that I feel that the Convention does practically refuse to insert these words, I think that my friend (Mr. Lyne) may well save the members of the Convention from a vote which, in many cases, might be a most invidious one to give; and which might cause those who will eventually support, perhaps, the claims of the mother colony if this matter is not pressed now, not to appear in that light. At the same time, I confess my disappointment that the matter has not been received in a more favorable spirit.

Mr. HOWE. -

What about St. Kilda?

Mr. REID. -

Now I am quite prepared, under the circumstances, since I see that the feeling of the Convention is what it is, to say that I think my friend (Mr. Lyne), feeling that we have no chance of carrying this amendment, might, to that extent, save members of the Convention from going to a division on this matter, as we have practically got our answer without a division. At the same time, I very much regret that the amendment is not going to be successful, but if my honorable friend presses the matter to a division, I shall be compelled to vote with him, on the grounds which were alleged by so many members in a recent debate, with so much earnestness, that we ought to vote according to our conscientious convictions.

Mr. BARTON (New South Wales). -

There are several reasons why my honorable friend (Mr. Lyne) should withdraw his amendment. Of course, in a body like this, it is a strong reason for withdrawing an amendment if one finds that a proposition involving a matter, not of principle, but of expediency, is sure to be defeated. I wish to put another consideration to my honorable friend, which I am sure he will think a strong one. It is this: If he persists in forcing his amendment to a division, it will assuredly be taken that honorable members who represent the other colonies, and who vote against the proposal, are against the establishment of the federal capital in New South Wales.

Mr. LYNE. -
I believe that they are.

HONORABLE MEMBERS. -
No.
Mr. BARTON. -
Whatever their honest opinions may be—however strongly they may hold that, while the situation of the federal capital should be determined by the Federal Parliament, it would be just and right that it should be in New South Wales—out-of-doors they will be accounted to have voted against having the federal capital in New South Wales. While honorable members will be voting against the amendment upon the ground that this is not the place to determine the matter, it will be considered that they are voting against the claims of New South Wales. The effect of this will be very serious hereafter, when the claims of New South Wales come to be debated, because it will be argued that those who have voted against the amendment, many of whom may be in the Federal Parliament, have already expressed a disinclination to see the capital established in New South Wales, and they will be taunted with inconsistency if they afterwards give another vote.

Sir GEORGE TURNER. -
They will have a record put up against them.
Mr. BARTON. -
Yes, and that so far from helping my honorable friend will be most mischievous. I am strongly of opinion that when the proper time comes for the settlement of this matter it should be decided that the federal capital shall be in New South Wales, and I may even vote for the amendment; but I ask the honorable member not to press it to a division, because a defeat will not only be mischievous at the present time, but will also diminish the chance of the success of his proposal in the future. If the motion is rejected, I think it ought to be explained everywhere that the bringing of it forward was a serious handicap upon the chance of New South Wales, and I am sure my honorable friend would not like to take the responsibility of having imposed this handicap.

Mr. LYNE. -
The honorable and learned member throws that out as a threat, but I am prepared to take all the responsibility which attaches to my action.
Mr. BARTON. -
It is not a threat, but I wish the honorable member to recollect how tremendously the defeat of this proposal may be used, not only against him, but what is worse, against the object he
has in view. I take it that I shall be supported in this advice by nearly every 
member of the Convention, including the majority of the New South Wales 
representatives. The Premier of New South Wales has tendered the same 
advice as I am giving, and other representatives of New South Wales have 
done the same. I am sure that other honorable members think that, when 
the proper time comes, the honorable member's view will be carried into 
effect, and, in my opinion, those who hold that view—and I am sure they are 
not few—will concur with me in the suggestion that the object the honorable 
member wishes to attain will have far more chance of success if he 
withdraws the amendment, and trusts to the sense of equity which will 
prevail with the Federal Parliament to grant absolute justice to New South 
Wales, than if he forces the amendment to a division.

Sir JOHN FORREST (Western Australia).—

I, too, would like the honorable member to withdraw the amendment. If 
he persists in forcing it to a division I shall vote against it. At the same 
time, I should not like it to be thought that I am opposed to the claims of 
New South Wales. The matter, however, is one which in my opinion 
should be left to the Federal Parliament. No doubt a great many honorable 
members hold strong views in regard to the position which the federal 
capital should occupy, but since 1891 they have always been content to 
suppress them and to leave the matter to the Federal Parliament. We have 
met four times to consider the drafting of the Constitution, but until now no 
motion of this kind has been made.

Mr. LYNE. -

Yes, a similar motion was moved at the Convention of 1891.

Sir JOHN FORREST. -

Well, it was not much listened to, and I think that we should leave the 
matter to the Federal Parliament. Everyone knows that I have no feeling 
against the great colony of New South Wales. On the contrary, I should 
like to help those who are representing that colony as much as possible, 
because I recognise that they have an arduous task before them. At the 
same time, we must not forget that we are here specially at the invitation of 
New South Wales, and it ill becomes that colony to urge to the furthest 
extent a claim of this kind. I think she should be content, seeing that she 
will have the largest representation there, to leave the matter to the Federal 
Parliament. If the amendment is forced to a division, I shall vote against it; 
but I wish it to be distinctly understood that my vote will in no way 
indicate my view as to what should be the position of the federal capital.

Mr. LYNE. -

If the right honorable member is in the Federal Parliament, will he vote 
for the establishment of the federal capital in New South Wales?
Mr. CARRUTHERS (New South Wales). -

I join with the leader of the Convention and the Premier of New South Wales in urging the honorable member to withdraw the amendment. No one feels more strongly than I do that if a test vote could be taken upon the merits of the proposal it should be taken now; but I fear, with the leader of the Convention, that the votes which are given will not be given for or against the claims of New South Wales, but will be given upon the question whether we should in any way tie the hands of the Federal Parliament in the choice of its own capital. I do not believe with those who think that this is a matter which should be left to the Federal Parliament, but, at the same time, I do not think that the claims of New South Wales should be jeopardized by any unwise proceeding at this juncture. So far as New South Wales is concerned there is a very strong feeling upon this point. Without again importing into the discussion the possibility of risking the federation, because I hope there will be no risk after the explanation which will be given to the people of New South Wales by the leader of the Convention and by the Premier, I would point out that the treatment which that colony has for many years received from the people of the neighbouring colonies has bred the feeling, though it has not been expressed by retaliation at the borders, that the people of the other colonies are unfriendly towards New South Wales. That feeling largely predominates in the public mind, and it has not been created by New South Welshmen. It has been created by our fellow colonists in the other colonies.

Mr. HOWE. -

The feeling does not exist in our colony.

Mr. BARTON. -

We should not do anything here to increase that feeling.

Mr. CARRUTHERS. -

I quite agree with my honorable friend, but I wish to point out that that feeling does exist, and that we ought to be careful to avoid doing anything to intensify it. Therefore, it should be made manifest at this juncture, if the motion is withdrawn, or if a division is taken, that in no way what-ever is the result to be taken as prejudicing the fair claims of the mother colony hereafter, and I say she has fair claims-

Mr. HOWE. -

We all admit that.

Mr. CARRUTHERS. -

To have this question decided in her favour in the Federal Parliament. Another motive which, no doubt, has actuated my honorable friend in
moving this amendment is the probability that, if federation is accomplished at an early date, Queensland, which is our natural ally on this question, will not be represented. We shall have to face this question, which is one of the greatest points of federation, in the absence of our naturally. You may ignore it as you like, and you may be as sentimental as you like, but it will be a distinct advantage to any colony to have the federal capital situated within its limits.

Mr. REID. -
No one denies that.

Mr. CARRUTHERS. -
When this question is decided, in the absence of Queensland we shall be in the position of being the most distant of any of the colonies. If Sydney is proposed as the capital, it will be the most distant place for the members from all the other colonies to attend. Naturally we can see that, under such circumstances, it will be a distinct gain to federation, as far as its prospects in New South Wales are concerned, if we have this obstacle in the path removed. But, if we cannot get it removed, we must only act as sensible men, and not increase the difficulties by any injudicious action on our part at the present time. I would therefore urge the honorable member (Mr. Lyne) not to prejudice the claims of our colony by pressing the question to a division, and to accept the advice so ably given to him by the honorable member (Mr. Barton) to withdraw the motion, it being made manifest that the question is to be an open one, free from any prejudice which might be excited by action at this juncture.

Mr. OCONNOR (New South Wales). -
I am entirely in sympathy with the object of the honorable member (Mr. Lyne), and I can well see that a settlement of this question now would make our work much easier than is likely to be the case in New South Wales, and no doubt it would aid Queensland in deciding whether or not she should enter the Federation by-and-by. At the same time, it is because I have that feeling on the question, that I agree with the advice now tendered to Mr. Lyne, not to put an issue before us which at present cannot be decided on its merits. It is quite evident that a decision now will not be upon the merits of the question, and the result of a division would do infinite harm to the cause which Mr. Lyne has at heart, and which we all have at heart.

Mr. SYMON. -
It would increase your difficulties.

Mr. OCONNOR, -
For that reason, believing as I do that Mr. Lyne has the cause of federation at heart, I say he can do no greater service to it than by
recognising the present position and withdrawing his amendment.

Mr. SYMON (South Australia). -

May I also add an earnest appeal to the honorable member (Mr. Lyne) to withdraw his amendment. I join with the honorable member (Mr. O'Connor) in saying that we all recognise the anxiety which Mr. Lyne has displayed in relation to the cause of federation in the interests of his own colony, while at the same time seeing that justice was done to the states. We all know the great interest he has taken in the question of equal representation, and that no member of the Convention has given greater attention to the subject than he has. On that very account I appeal to him to recognise, feeling as he does the difficulties standing in the way, and which no one has been more anxious to point out than himself, that he, by pressing this motion to a division, is creating another difficulty which does not now exist—a difficulty which arises from the fact that the amendment is that the federal capital shall be in New South Wales territory. If that is negatived, it will be in terms a declaration that the federal capital shall not be in New South Wales territory, whereas, if we leave the matter as it stands, it will be left to the Federal Parliament to decide.

Mr. BARTON. -

Any similar motion made by a member from any other state would be similarly defeated.

Mr. SYMON. -

That is the case. I was sorry to hear the honorable member (Mr. Carruthers) say that a feeling exists in New South Wales that she has been treated in a hostile manner by the other colonies.

Mr. LYNE. -

That feeling does exist.

Mr. SYMON. -

I am bound to accept the statements of those honorable members, but the very fact that such a feeling does exist leads one to the conclusion, which I think Mr. Lyne will also come to, that it is well to avoid everything which would irritate or increase that undesirable state of feeling.

Mr. LYNE (New South Wales). -

When I moved this motion I was fully prepared to take all the consequences. I recognise that there is a great deal of truth in what has been stated by the honorable member (Mr. Carruthers) as to the feeling in New South Wales. Instead of my position being such as the honorable member (Mr. Barton) describes it, that I would have to take all the onus of moving this amendment—
Mr. BARTON. -
I did not say you would have to take all the onus. I said it would be a heavy onus to undertake when such objections are made.

Mr. LYNE. -
You can put it in that way if you like, but if I wanted to gain any little fleeting popularity in New South Wales, I recognise that it would be a most popular thing to press this question to a vote, and I would not have to defend myself at all. In addition to that, whether it is pressed to a vote or not, the manner in which it has been received by this Convention will have precisely the same effect. It has been received in an antagonistic spirit.

HONORABLE MEMBERS. -
No, no.

Mr. LYNE. -
What chance would New South Wales have of securing that the federal capital shall be within her borders if Queensland is not in the Federation, especially after what we have seen during the last ten days in this Convention?

HONORABLE MEMBERS. -
Oh, oh!

Mr. LYNE. -
Will any honorable member tell me that New South Wales has the slightest chance with Queensland not in the Federation of having the federal capital within her borders? As far as I can judge, there will be but very little chance.

An HONORABLE MEMBER. -
You have had things all your own way for the last ten days.

Mr. LYNE. -
I must say that I like to see members of the Convention go to a vote. I do not like them to say that they will hereafter vote for having the capital in New South Wales, when there is an opportunity of providing for that in the Bill so that it cannot be altered.

Mr. SOLOMON. -
Let us stipulate for the first Premier, and let it be Mr. Reid.

Mr. LYNE. -
And we shall stipulate that the first Treasurer shall be the honorable member (Mr. Solomon). However, that is quite a different matter. My
object was to assist, if I possibly could, the cause of federation in New South Wales. I tell honorable members that the difficult fight which we shall have there would be very much lessened if the proposal I have made were placed in this Bill.

Mr. REID. -

There is no doubt about that.

Mr. LYNE. -

I know that whatever the result may be it will be a very difficult fight. Therefore, I do not think that honorable members should accuse me of moving this amendment with the intention of having a deterrent effect on federation.

Mr. BARTON. -

No one said that.

Mr. LYNE. -

My object was, and is, to make the path a little smoother to the representatives of New South Wales than it will be; and I venture to think that unless New South Wales, which has the key to the whole position, is in the Federation, there is not likely to be a Commonwealth. It is well for other colonies to talk about federation, but they will not have federation, I feel sure, unless the mother colony, which has the key, is a member of that Federation. I thought that in asking honorable members to insert this provision in the Bill I was giving very great assistance to obtaining that key which would open the door to the federation of all the Australian colonies. I understand that I shall be defeated by a large majority, that I will have about five votes with me on this question. I do not desire to place the representatives of New South Wales in an awkward position, although I dislike, when I have moved an amendment of this kind, to withdraw it; but I recognise that perhaps it is judicious on an occasion of this kind to withdraw it. I have said what I desire to say; I have tested the feeling of the Convention as well as though a division had been taken. I do not think the expressions made use of here to-day will help us. If honorable members who have spoken to-day had said that when they were in the Federal Parliament, as some of them will be, they would support a proposal to have the capital in New South Wales, that would have been an entirely different thing.

Dr. COCKBURN. -

That would be a bit previous.

Mr. BARTON. -

No one said a word to the contrary.

Mr. LYNE. -

I recognise what the words which have been uttered to-day mean; they
mean nothing. I do not want them to mean nothing. I want them to mean, that when their authors enter the Federal Parliament, they will support New South Wales in her effort to have the federal capital located in that colony. I cannot conceive what induced the remarks of the honorable member (Sir Joseph Abbott). I cannot conceive why he should turn on the colony in the manner in which he did as to the capital. It is well to say that the capital of any country is that capital which is made by trade. I recognise that, but I also recognise that in the nominal capital—the parliamentary capital—we are likely to have a very strong city if not the strongest city in the colony, of any other colony where it may be fixed. As I have been so pressed by the leader of the Convention—and I do not wish to place him in a more awkward position than I can avoid—and by others who desire not to vote on the question, and, recognising that I should be in a very small minority, I do what I seldom do—I ask leave to withdraw the amendment.

Mr. HOLDER (South Australia). -

Before the amendment is withdrawn, I should like in two or three words to thank the honorable member (Mr. Lyne) for agreeing to withdraw it. I should have felt myself to be in a very false position indeed if he had at this juncture forced a division on the question. I may tell him, as he seems somewhat down-hearted at the reception of his amendment, that had an amendment been moved to fix on Adelaide, or any place in South Australia, for the federal capital, I should have opposed the proposal as I opposed his proposal, and I think every representative of every colony will be able to say precisely the same. The honorable member may rest content that the reception of this proposition now is not in any sense an unfavorable reception of any position in New South Wales as the site of the capital, but simply a pronouncement of the opinion, which is generally held, that this is not the proper time to decide the question.

Mr. BARTON (New South Wales). -

Before the amendment is withdrawn, I should like to endeavour to remove an impression from the mind of my honorable friend (Mr. Lyne). He said that what had taken place during the last few days convinced him that the interests of New South Wales were scantily attended to, or considered, in this Convention. I think I have been as interested and as careful an observer as any one has been, and I must say that, so far as matters have gone, I cannot find that the material interests of New South Wales have been received with any less sense of justice than the material interests of any other colony. I think it is my duty to this Convention to make that statement. I do not know what may happen; but, if what happens
in the future is in accordance with what has taken place during this Convention, then I have no fear that the material interests of New South Wales will be treated in any way differently from those of any other colony. I have to offer my best congratulations to my honorable friend for having agreed to withdraw his amendment, the effect of which, I think, might have been much more pernicious to the object we have in view in carrying federation than the withdrawal of it can possibly be. I am quite sure, also, that any amendment for the specification of any place or colony for the location of the capital would have been treated with a direct negative, precisely the same as this amendment would have been.

The amendment was withdrawn.

Mr. REID (New South Wales). -

I hope that the leader of the Convention-in fact, I think he is considering the matter-will consider whether it is necessary, I cannot say at present I think it is, to make any provision for a temporary seat for the Executive.

Mr. BARTON. -

Yes, I am considering that.

Mr. REID. -

It is a matter which will require a little consideration. Of course, the Parliament cannot meet for some considerable time after the Executive has come into existence.

Clause 119-The Queen may authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such of the powers and functions of the Governor-General as he deems it necessary or expedient to assign to such deputy or deputies, subject to any limitations or directions expressed or given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Amendment suggested by the House of Assembly of South Australia—

Omit "or any persons jointly or severally."

The CHAIRMAN. -

There are several other suggestions from the House of Assembly of South Australia which are consequent on the acceptance of this suggestion.

Mr. BARTON. -

I think we had better leave the clause as it stands.

Sir JOHN FORREST. -

What is meant by the expression "jointly or severally"?

Mr. BARTON. -
It does not amount to much.

Sir GEORGE TURNER (Victoria). -
I want to ask my honorable friend (Mr. Barton) to consider whether this clause will allow the appointment of deputies while the Governor is in the colony.

Mr. BARTON. -
I think it does.

Sir GEORGE TURNER. -
I have some doubt on the point. I hope my honorable friend will consider it when he is considering the question of drafting.

Mr. BARTON. -
I will take it into consideration with the Drafting Committee.

The amendment was negatived.

Amendment suggested by the House of Assembly of South Australia-
Omit all words after "Queen" (line 11) to end of clause.

Sir JOHN FORREST (Western Australia). -
I should like to ask the leader of the Convention what is the meaning of the expression "jointly or severally"? It seems so absurd to me that several persons should act for the Governor-General, that I really cannot understand what the term means. Surely the commission must be issued to some person, and in rotation-perhaps to several, but not to all at once.

Mr. BARTON (New South Wales). -
I think the whole clause is really intended to operate more particularly when the Governor-General is within the Commonwealth, and that it relates to the appointment of a deputy or deputies, for instance, in relation to places which may be at a distance from the seat of government, or in which particular functions may be required to be carried out at a particular time.

Sir JOHN FORREST. -
Legal duties?

Mr. BARTON. -
These are the words:-
such of the powers and functions of the Governor-General as he deems it necessary or expedient to assign to such deputy or deputies.

It does not mean the handing over of his whole powers and functions, but only of particular ones to be performed in a particular part of the Commonwealth. That will generally be a commission issued to some person, or a deputation, as it is called, to several persons, empowering them to act for a limited time and for limited purposes. It is simply a clause of convenience, and it is similar to one which exists in the instructions to
the Governors of several colonies.

The amendment was negatived.

The clause was agreed to.

Clause 120. - In reckoning the numbers of the people of a state or other part of the Commonwealth, aboriginal natives shall not be, counted.

Amendment suggested by the Legislative Council of New South Wales-

After "natives" insert "and aliens not naturalized."

The CHAIRMAN. -

An identical amendment is suggested by the Legislative Council of Tasmania.

Mr. BARTON (New South Wales). -

This is not like the clause which comes under the provision relating to both Houses dealing with the reckoning of the number of electors. This has reference to the reckoning of the number of people of the states or other parts of the Commonwealth. There are various other clauses, dealing with finance and other questions, under which it becomes necessary to count the people of the states. This clause is, not the same as the clause to which the people of New South Wales probably thought it had some relation.

Mr. ISAACS. -

Clause 24.

Mr. BARTON. -

No, I think it is a later clause, and it related to matters connected with elections. This has reference solely to the reckoning of the number of people of a state when the whole population has to be counted, and where it would not be considered fair to include the aborigines.

Mr. ISAACS (Victoria). -

The honorable member may be right, but, if so, the clause should be made clear. Clause 24, which deals with the House of Representatives, sets out that, until Parliament otherwise provides for the method of determining the number of members, there shall be one member for each quota of the people of the state.

Mr. BARTON. -

There is a qualification for electors.

Mr. ISAACS. -

Yes, and the clause goes on to say that the quota shall be ascertained when necessary by dividing the population of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of members of the Senate.

An HONORABLE MEMBER. -

Then there is clause 25.
Mr. ISAACS. -
Clause 25 refers to the whole number of the people of the states.

Mr. BARTON. -
It relates to determining the number of members.

Mr. ISAACS. -
Yes, the number is to be determined by the number of people of the state.

Mr. BARTON (New South Wales). -
It was intended all along that the number of representatives should be determined by the number of people in the state. The quota is a matter that of course will be a subject of discussion. I understand that Sir George Turner desires to have clause 24 recommitted, and I shall certainly not oppose the recommittal. All the provisions relating to the quota are, and are intended to be, distinct from the provision that we now have before us. Under clause 25, in ascertaining the number of the people of the states, so as to determine the number of members to which the state is entitled, there is to be deducted from the whole number of the people of the state the number of the people of any race not entitled to vote. In other parts of the Bill, where the provision is merely for statistical purposes, it is only considered necessary to leave out of count the aboriginal races. The two provisions are for different purposes, and I think the thing is tolerably clear. After hearing Mr. Isaacs' suggestion, I shall go through the clauses again and see if there is any ambiguity.

Sir EDWARD BRADDON. -
What do the words "or other part of the Commonwealth" mean?

Mr. BARTON. -
Territory.

Sir EDWARD BRADDON. -
Would it not be as well to insert "territory"?

Mr. BARTON. -
There would be no harm in inserting "territory" but the words used are more comprehensive. This clause would apply perhaps to the reckoning of the number of people in the capital city, which would be a district rather than a territory.

The amendment was negatived.

The clause was agreed to.

ORDER OF BUSINESS.

Mr. BARTON (New South Wales). -
I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again. I will ask honorable members to adopt a suggestion I have to
make. The finance clauses will certainly not be ready for discussion to-
morrow. They may be in the hands of honorable members tomorrow, and it
may be possible to open the discussion on them on Thursday. We have still
to deal with the finance clauses, clause 121 relating to amendments of the
Constitution, and the schedule, but I shall move for the reconsideration of
several clauses. I would ask honorable members to make up their minds
this evening as to the clauses they desire to have reconsidered. There will
afterwards be the recommittal stage, but reconsideration is possible at the
present stage. If I am in order, I propose to further postpone the finance
clauses, so as to permit of the reconsideration of clauses as soon as we
have dealt with clause 121. I would make a further suggestion to honorable
members, that the discussion should only be re-opened on clauses
involving matters of principle.

Mr. GORDON. -
Will new clauses come in their order?

Mr. BARTON. -
I think the new clauses will probably be taken after clause 121.

The CHAIRMAN. -
The new clauses will be dealt with after we have gone through the Bill.

Mr. BARTON. -
They will probably occupy to-morrow. I would ask honorable members
to consider the suggestion I have made, so that we may know in time what
clauses are to be reconsidered. I do not think there will be any difficulty
about the reconsideration of the dead-lock clause, and I shall not ask any
honorable member to put this in his list, because I shall take it to be the
desire of the Convention to reconsider it.

The motion was agreed to.

The Convention adjourned at eleven minutes to five o'clock.

[P.715] starts here
Wednesday, 9th February, 1898.


The PRESIDENT took the chair at half-past ten o'clock a.m.

REPORT OF THE FINANCE COMMITTEE.

Mr. REID (New South Wales). -
I have the honour to bring up a report from the Finance Committee on Chapter IV., and beg to move-
That the report of the Finance Committee be printed.
The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Mr. BARTON (New South Wales). -
The Finance Committee's report has just been laid upon the table, and no doubt honorable members will require a little time to consider it. The last draft of the clauses is now in the hands of the chairman of the Finance Committee, and I believe that very soon they will be in a position to be distributed. Of course, under the circumstances, we cannot expect honorable members to go on with the finance clauses to-day, because even if they were distributed within the next couple of hours honorable members will require time to consider them. I therefore beg to move-
That the consideration of Chapter IV. be postponed until after consideration of Chapter VIII.

We can go on with the remaining clauses of the Bill, and then we had better take the new clauses of which notice has been given.

Mr. DEAKIN (Victoria). -
There is only one point to be urged in connexion with the course proposed. The finance clauses will speak for themselves, but it might be advisable at an early date for the chairman of the Finance Committee or some honorable gentleman responsible for the clauses to give an outline of them, with any explanation thought necessary. That might be done at an early stage. It is possible that in such an explanatory statement as that, information might be given to honorable members which might have the result of expediting business and of saving time in the interpretation of the clauses. Could not what I suggest be done at two o'clock to-day?
The motion for the postponement of Chapter IV. was agreed to.

CHAPTER VIII. - AMENDMENT OF THE CONSTITUTION.
Clause 121. - The provisions of this Constitution shall not be altered, except in the following manner:

Any proposed law for the alteration thereof must be passed by an absolute majority of the Senate and of the House of Representatives, and shall thereupon be submitted in each state to the electors qualified to vote for the election of members of the House of Representatives, not less than two nor more than six calendar months after the passage through both Houses of the proposed law.

The vote shall be taken in such manner as the Parliament prescribes.

And if a majority of the states and a majority of the electors voting approve the proposed law, it shall be presented to the Governor-General for the Queen's assent. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails.

But an alteration by which the proportionate representation of any state in either House of the Parliament, or the minimum number of representatives of a state in the House of Representatives, is diminished shall not become law without the consent of the majority of the electors voting in that state.

The CHAIRMAN. -

I intend to put this clause in paragraphs, as several amendments have been suggested.

Mr. ISAACS (Victoria). -

I would like to ask the leader of the Convention about

one word in the first line of the first paragraph. The paragraph states that-

The provisions of this Constitution shall not be altered except in the following manner:

I would like the honorable gentleman to consider whether that will include additions to the Constitution. This is a very important question. The clause is one of the most important-in many respects the most important-in the Bill; and whether an "alteration" of the Constitution would include the addition of some clause or other provision to the Constitution, not amounting to an alteration of any existing provision, should be considered.

Mr. BARTON (New South Wales). -

I am inclined to think that "additions" might be included in "alterations," as additions would alter the provisions of the Constitution. I think the matter might be made more certain. If the point is considered of importance, I will move to strike out the words "the provisions of:"
Mr. ISAACS. - Perhaps the honorable gentleman had better consider it.

Mr. BARTON. - Yes, I will consider it.

Mr. KINGSTON (South Australia). - I would suggest to the leader of the Convention that while considering the point raised by the Attorney-General for Victoria he might also consider the propriety of altering the title of the chapter from "Amendment of the Constitution" to "Alteration of the Constitution," so as to make the title and the clause agree.

Paragraph (1) was agreed to.

The CHAIRMAN. - The Legislative Assembly of Victoria has suggested that the word "absolute" in line 2 of paragraph (2) be omitted, and that the word "and" in line 4 be also omitted, with a view of inserting other words. I shall first of all put the question-

That the word "absolute" proposed to be struck out stand part of the paragraph.

Mr. MCMILLAN (New South Wales). - It seems to me that such an enormous change as that of an alteration of the Constitution should certainly require an absolute majority of each House of Parliament. We do not want to make the Constitution too rigid, but, on the other hand, we should not go to the opposite extreme. I do not approve of the rigidity of the American Constitution, and I think that we should have a means of making an alteration if thought desirable; but, at the same time, it seems to me that a matter of such paramount importance should receive the assent of an absolute majority of both Houses of the Legislature.

Mr. DEAKIN (Victoria). - At one of our previous meetings I called attention to the term "absolute majority, and there was a short discussion and a division on that occasion. I do not propose, if view of the result of that division, to request the Convention to reconsider the point, because this is a comparatively minor matter as contrasted with the larger amendment which I hope to see made in this clause.

The amendment to strike out the word "absolute" was negatived.

Amendment suggested by the Legislative Assembly of Victoria-

Omit "and" (line 4), and insert the following words:-"or in case of difference between the two Houses be referred in manner provided by this Constitution to the direct determination of the people. If passed by a majority of the Senate and of the House of Representatives, the proposed
The CHAIRMAN. -

I am of opinion that the latter sentence of this amendment ought not to be put, as the committee has already decided that the word "absolute" shall not be struck out. I, therefore, intend to put the first part of the amendment separately. The question now is-

That the word "and" proposed to be omitted attend part of the paragraph.

Mr. ISAACS (Victoria). -

This proposal has been agreed to by the Victorian Legislative Assembly, and I venture to hope that it will be accepted by this Convention. Clause 121 does not raise the much-debated question whether it is right or wrong to refer to the final determination of the people the decisions of their Legislature as to amendments of the Constitution. That position is conceded on all hands. It is agreed already, by the wording of the clause and by its spirit, that although the trusted representatives of the people in both Houses agree, and perhaps unanimously agree, to a proposed law for the alteration of the Constitution, yet notwithstanding that, and notwithstanding all the benefits of representative government, the proposed law in such a case shall not receive any validity until it has been sanctioned by the people who are behind the Legislature. I need hardly say for myself that I regard that as a very wise provision.

Sir WILLIAM ZEAL. -

Then what is the use of having a Parliament?

Mr. ISAACS. -

My honorable friend asks what is the use of having a Parliament. Not much sometimes, especially if you find the two Houses disagreeing, and it is worse than useless if they stand in the way of the will of the people.

Mr. REID. -

Hear, hear.

Mr. ISAACS. -

This provision of clause 121 requires that after both Houses have agreed to a proposed alteration of the Constitution it shall go before the people for their final ratification. What the suggested amendment of the Victorian Legislative Assembly amounts to is: Suppose one House is of opinion, and continuously of opinion it may be, that a certain change is desirable in the interests of the people, and the other House does not agree-who is to decide the question finally? Is it the House that negatives the proposal, or is it the House that affirms the proposal, or is it, as we think, neither of them, but the people themselves? That is the question that has to be answered. It is a question that has not been answered in America; it is a question that has
been answered in Switzerland. There will be a clause before the
Convention dealing with ordinary deadlocks, and, in connexion with that,
we shall have to debate, as we have done before, whether there should be
any reference to the people under any circumstances. That particular doubt
and difficulty does not arise here, because we have already agreed
unanimously that there shall be a reference to the people when both Houses
agree. Now, what I want to know is, what possible argument can there be
against this position—if you are going to refer to the people, when both
Houses agree, why should you not refer to the people when one House
insists that the people desire a certain provision, and the other House
denies that?

Mr. GLYNN. -
That cancels the representative voice of the Senate.

Mr. ISAACS. -
It is objected that this would cancel the representative voice of the
Senate—that is to say, in other words, that the states are to be over-ridden by
the people. My honorable friend forgets that that is impossible, because, in
this proposal, the reference is both to people and states.

Mr. SYMON. -
The reference is not to the representative voice of the people, but to the
direct voice of the people.

Mr. ISAACS. -
To the direct voice of the people, both as a population and as states.

Mr. SYMON. -
You want a double referendum.

Mr. ISAACS. -
Is not that in the clause already?

Mr. SYMON. -
But you want it twice over.

Mr. ISAACS. -
I do not want it twice over. There is a provision that if both Houses
agree, there shall be a reference as to final acceptance of the provision,
both to the people as population, and to the states as states—both population
and states are protected. All I desire to say in supporting the Victorian
Assembly's suggestion is this, that if either House—I do not care which—
brings forward a proposal, and the other House does not agree with it, then
there shall be an opportunity, if the House originating the proposal desires
to refer the proposal to the people, as a people; and to the states, as states.
This protects the states, and it protects the people;

while it avoids a catastrophe which may easily arise afterwards. It avoids
what I shall point out to be the now admitted inherent defect in the American Constitution. It has been asserted on the floor of this chamber that there is no dissatisfaction with the American Constitution; but I shall bring a mass of evidence from leading statesmen in the United States, in Canada, and in England, to show that that statement is not correct. I will ask honorable members whether, in the face of that evidence-unbiased evidence—we are going to allow this Constitution to go down loaded with inherent defects, which it may be practically, if not totally impossible, to remove hereafter?

Dr. COCKBURN. -

Every one admits that there is great dissatisfaction in America with the mode in which the senators are elected.

Mr. ISAACS. -

But the authorities I shall quote go much further than that. I am going to ask those honorable members who object to the referendum on principle—who object to it on the ground that it is appealing from wisdom, so called, to folly, so called; who say that it is an appeal from the well informed to the ill informed; from knowledge to ignorance—I am going to ask them, if that is the ground of their objection, why do they consent at all in this clause to have a ratification of the act of their Legislature—their united Legislature—by going before the people? Do not they see that they are giving their whole argument away? When they say that although the Senate and the House of Representatives may agree to a proposed amendment of the Constitution, they will yet permit, as they have permitted by the words of the clause as they now stand, the people, as a people, or the states, as states, to override the will of the Legislature—that the majority of the states may over-ride, not only the Legislature, but the body of the people; or that the body of the people may override the states by a negative voice—when they permit that to be done, do they not see that all their arguments about appealing from knowledge to ignorance, and from wisdom to folly, are mere idle talk?

Mr. SYMON. -

No because this refers to, an alteration of the Constitution, which must be assented to by the people.

Mr. ISAACS. -

If that is the honorable member's point, I will ask him to vote for this amendment, because all I ask for is this—an alteration of the Constitution, assented to by the people of the states and the people of the Commonwealth.

Mr. SYMON. -

And with the assent of the Legislature.
Mr. ISAACS. -

The honorable member now comes to the crucial point. His argument is that we must not permit the people of the states and the people of the Commonwealth to have their own way, unless those individuals whom the people have elected for general purposes permit them to do so.

Mr. GLYNN. -

They can try other representatives three years afterwards.

Mr. ISAACS. -

The honorable member must know that representatives are elected not on one particular question but on a variety of questions—that they are elected very often for their own personal qualifications. He must know that the main issue is frequently obscured; and if he is going to be consistent let him vote for eliminating this reference to the people altogether. If the representatives are to be trusted, let them be trusted altogether. If they can be trusted to say, No," they can be trusted to say "Yes." And if the people can be trusted to say "No," surely the people can also be trusted to say "Yes." Now, I may say that I attach a very great deal of importance to this clause, and I am sure that we all do. No words of mine can put the matter more strongly than those of the celebrated American writer, Dr. Burgess, of whom, I believe, Mr. Dobson is a devoted admirer. That writer says, on page 137 of the first volume of his work, Political Science and Constitutional Law, speaking of the amendment clause of the Constitution:

This is the most important part of a Constitution. Upon its existence and truthfulness, i.e., its correspondence with real and natural conditions, depends the question as to whether the state shall develop with peaceful continuity or shall suffer alternations of stagnation, retrogression, and revolution. A Constitution which may be imperfect and erroneous in its other parts, can be easily supplemented and corrected, if only the state he truthfully organized in the Constitution, but if this be not accomplished, error will accumulate until nothing short of revolution can save the life of the state.

Mr. DOBSON. -

How could four small states progress if they could be overwhelmed by two large states?

Mr. ISAACS. -

Who suggests that?

Mr. DOBSON. -

Your amendment does.
Has the honorable member read it? My proposal is this: If the two Houses disagree, the reference shall not be to the population only. It shall require a majority of the population to pass the proposed law, and also a majority of the states. I want it clearly understood that this does not mean the people of the Commonwealth merely. I intend that the reference shall be in the same manner as if the two Houses had agreed. I want the states to be protected in this, just the same as the people. This is no attempt to gain, by a mass vote, any change of the Constitution to the detriment of the states. The only point of difference between us is—Shall the people be consulted only when the Houses agree, or in precisely the same way when the Houses disagree? With those warning words of Dr. Burgess before us, what do we find?

Mr. GLYNN. -

What he suggests is not in the referendum, but a decision by the two Houses of Parliament sitting together.

Mr. ISAACS. -

There is no such provision with regard to an amendment of the Constitution.

Mr. GLYNN. -

On page 151 there is a suggestion by Dr. Burgess as to how amendments shall be effected in the future.

Mr. ISAACS. -

My honorable friend will be able to cite anything he pleases. I do not agree with his view of Dr. Burgess' statements on that question. I do accept the principles which I am putting forward.

Mr. SYMON. -

But we thought that Dr. Burgess was the authority on which you were resting those principles.

Mr. ISAACS. -

I shall have an opportunity hereafter of answering any objections which maybe made, and I shall take that opportunity, as this is one of the most important, if not the most important, portions of the whole Constitution. We may make mistakes in other parts; this is our means of correcting those mistakes. If the people think that there are errors and faults in the Constitution which are irremediable, they may be tempted to reject it; but, if they find that there is a fair chance of remedying those evils, they may be fairly asked to accept it. Now, the honorable member (Dr. Cockburn) has said that the dissatisfaction in America is simply as to the mode of electing senators. I will refer him, first of all, to an authority whom no one will gainsay as a standard authority on this question, Professor Goldwin Smith. I will take him as an authority from Canada.
Dr. COCKBURN. -
That is not dissatisfaction in the United States; that is in Canada.
Mr. ISAACS. -
Professor Goldwin Smith is accepted as an authority on these questions.
Mr. FRASER. -
Not in Canada; he is detested in Canada.
Mr. ISAACS. -
Professor Goldwin Smith says-
The Constitution of the United States is practically unchangeable. Sixty years passed without any amendment. Not only is the process one of extreme difficulty, but there is a lack of any authority to initiate organic change.
I want honorable members to recollect those words-"a lack of any authority to initiate organic change." The extract continues:-
In the case of the anti-slavery amendments passed at the close of the Civil War, the initiative was taken by a political earthquake. Constitutions, like every other work of man, wear out; as Bacon says, what men do not alter for the better, time, the great innovator, alters for the worse, but you might almost as well evoke an Avatar Vishnu as call for an organic amendment of the American Constitution. The article which gives Nevada an equal representation in the Senate with New York is practically immutable.
It will be seen how observant men-men not mixed up in United States politics, men of philosophical as well as statesman-like views-who notice the working of the federal system in the American Constitution, as well as in Canada, are able to express an opinion clear and unmistakeable as to matters far beyond the mere question of the mode of electing senators. Now that I have gone to Canada let me go to the United States, and let me point out what the Hon. J.G. Carlisle, an ex-Secretary of the Treasury, says on this subject. He writes, as late as November, 1897, of what he calls "Dangerous defects of our electoral system." He points out, in reference to what has always been regarded as one of the brightest features in the American Constitution-the popular election of President-that it is a myth. He points out that, although there are 45 states, a President can, under the Constitution, be elected without a majority of the people, and without a majority of the states, and he says that this can only be cured by an amendment of the Constitution, and that that is absolutely impossible. He refers to cases in which they succeeded, and in another of which they proposed to amend the Constitution by indirect means, namely, by the
reconstitution of the United States Supreme Court. Then the Right Hon. Leonard Courtney, who has been Under-Secretary of State in England, says, on the same subject:-

Far the best way out of the difficulty would doubtless be to amend the Constitution, but this is almost an impossible process. The dead hands of the founders of the Republic have tied up their successors in bonds, happily few in number, from which extraction is from time to time effected by such means as Mr. Bryce has explained, as General Grant and Congress sanctioned, and as the Democratic platform advocated.

**Mr. HIGGINS.** -

It is more difficult to make an amendment of the Constitution in America than it will be here.

**Mr. ISAACS.** -

Very little more difficult. Mr. Courtney also says-

"Dwelling apart and at ease ourselves-
That is in England.
we must sympathize with the struggle to pass from under restrictions which, if operative, compel injustice, and we may perhaps be lenient in judgment if the way of escape is not the most direct conceivable. The great danger of the United States in the future may perhaps lie in the difficulty of obtaining the relief by constitutional means from the proved inexpediency, if not injustice, of constitutional provision. The significance of resulting changes must not, however, be overlooked. The founders of the Constitution laid down the principle of representation of states according to population, and taxation upon the same basis. The principles that command respect to-day are representation according to population, and taxation according to wealth."

The Hon. J.G. Carlisle says the same thing. He points out that it is impossible, absolutely impossible, to get an amendment of the American Constitution. Now, when we have got evidence from both sides of the Atlantic—from the United States and Canada, and from England—as to the absolute impossibility of effecting, by constitutional means, any organic change in the American Constitution, we are forced to ask ourselves how much better off we are here? The American Constitution requires a two-thirds majority of the House. Supposing we had that provision, we should want twenty members in the Senate. As it is, we want an absolute majority—that is to say, sixteen—so that there is a difference of four. That is not a very great difference on a question affecting the Constitution, and yet we have to pass the gauntlet of the two Houses. In America that is the difficulty. We know
from actual experience that it is the difficulty. We know that the 12th amendment, about the election of President and Vice-President, was introduced on account of what was known as the Jefferson scandal, in 1883. Within a few years they sought to alter it. They knew it was unsatisfactory, and the majority of the Legislatures of the states passed resolutions to alter it. The House of Representatives complied with it, but the Senate refused; but from that time until the present, although, as Mr. Carlisle says, everybody is persuaded that some day a catastrophe will occur, the Senate has steadily refused to put before the people a proposal to amend the Constitution. That is the difficulty. How much better are we here? Instead of twenty votes we should require sixteen. Will any honorable member tell me that if the Senate or the House of Representatives, as the case may be, choose to say-"We will oppose this amendment of the Constitution, notwithstanding that the other House ask for it, and has repeatedly asked for it, that it is never to go to the people?" **Mr. WISE.**

Does the honorable member suppose that if the people wanted the amendment they would not return senators who would support it?

**Mr. ISAACS.**

Does the honorable member suppose that, although the people seriously want it, they may not return Houses of different views? Or does he suppose that if the election of representatives is to determine the question, and if no disturbing element of personality is to come in, that we shall ever have any differences between the Houses? If the honorable member takes the latter view, there can be no harm in putting into the Constitution a provision to meet such difficulties as we know have actually occurred in practice. We know that representatives are elected upon grounds wholly independent of the particular questions that arise at the time. Mr. Wise knows that if a man goes before his constituents even after a double dissolution he may be returned, irrespective altogether of the particular questions in debate. Let us take a case. Assuming that Mr. Wise was a member of the Senate-and I am sure that he will be a member of either the Senate or the House of Representatives-and that as a member of the Senate he defends his state on a particular question. There is a dissolution of the House, and he is opposed by some individual who differs from him on the merits of the question. Does any one suppose that his opponent will be elected? My honorable friend would go before his constituents with an unanswerable argument. He would say to them-"You have perfect confidence in me on all other subjects." You elected me not very long ago. I have served you faithfully and well. I ask you not to disagree with me on this subject, but if you do, are you going to displace me? I may have been mistaken, but I have stood
faithfully by you as a state, and I have sought to maintain your interests. Are you going to be guilty of the blackest political ingratitude by turning me out?" His opponent would come forward and say-"I want to displace Mr. Wise because, on this one question, I disagree with him. You may have no confidence in me on other subjects, but on this one subject I ask you to elect me." My honorable friend would come back triumphant, and when he came back after this double dissolution his position would be strengthened tenfold. He would have no right to waive his personal opinions. He would be able to say that he had a mandate from the people, and that he would be a traitor to them if he violated his pledges. This would make the position more complex and more unbearable.

Mr. WISE. -
You assume that there is to be no such thing as responsible government. That is the basis of the whole argument.

Mr. ISAACS. -
The honorable member will perhaps explain why he voted at all for any reference to the people. We are going to have responsibility, but responsibility to whom? My honorable friend says responsibility to Parliament. I say responsibility to the people. And if the two Houses differ, and if after a double dissolution they each come back fortified in their own view as to what the people require, are we still to say that the victory is to lie with one House or the other, and that the people are to have no voice in determining the matter-that they are to have one privilege, and one privilege only, namely, that of electing the men who are to govern them?

Mr. MCMILLAN. -
You are dealing with the principle, and not with the method.

Mr. ISAACS. -
I am speaking merely of the principle. It would be idle for me to put forward a series of proposals as to the method. I want the matter to be clearly understood, and perhaps it would be better if the Chairman only put the words "or in case of difference between the two Houses be referred." We could afterwards insert other words to meet the position in detail. I want no misunderstanding about this. I am not arguing now for a reference to the people only, as the people ignoring the states, nor for a reference to the states, ignoring the people. I desire to protect up to the last point the interests of the states and of the people.

Mr. MCMILLAN. -
If there is a continued dead-lock.

Mr. ISAACS. -
Yes, if there is a continued dead-lock there would be the same reference
to the people as has already been agreed to. If it is right to ask the people to say yes or no when their two political agents agree, it cannot be wrong to ask them to say yes or no when their two political agents disagree.

Mr. Wise. -
It is wholly unnecessary.

Mr. Isaacs. -
It may be, and, therefore, it would be a matter of detail whether the House which originates the question should refer it or not. I would not make it necessarily compulsory. I would leave it entirely to the House which originates it, after full debate, and after the means of conciliation had been exhausted, to either let the matter rest or to ask the people to finally decide it. I only ask, in the interests of the whole Federation, for some outlet for ill-feeling that might otherwise arise. I only ask for some ultimate means of preventing catastrophe. I only ask those honorable members who say "Trust the Federal Parliament" to go further and meet the inevitable by trusting the people who are behind the Federal Parliament. Let us trust the people whose interests are all in all to us, who have to pay the taxes, whose life, whose liberty, and whose property are at stake, and not necessarily stand by the rigid system of electing men for general purposes and of allowing those men to say finally whether the people shall ever have a voice in the matter or not. I would point out that a question affecting the Constitution is different from all other questions. It may be right-I do not think it is—to say that on ordinary matters of legislation Parliament should have its own way. On matters of Constitution it is surely right to let the people have an opportunity of expressing their opinions one way or the other.

Mr. Douglas. -
If both Houses agree?

Mr. Isaacs. -
Clause 121 already says that.

Mr. Douglas. -
You want to alter it.

Mr. Isaacs. -
No, I do not. The honorable member, perhaps, misunderstands me. I do not want to alter that provision at all. What I say is, that if it is right that there should be a reference to the people when both Houses agree, on the sole principle that the people should have a voice in determining the Constitution under which they are to live, or refuse to live, surely it is right that they should have the same opportunity when both Houses disagree. I cannot see, for the life of me, what legitimate grounds any opponent of this view has to stand on. I can understand people getting up and saying—"It will
lead to hasty legislation, and the alteration of the Constitution. It must not be hastily dealt with. Stay the impulse of party passion." Do we see no party passion at the present time? Have we seen none during the last few weeks on the continent? Have we seen none in the Senate and House of Representatives in the United States, and in the Mother of Parliaments-the House of Commons? Have we seen none in our colonial Legislatures? I do say that, putting all that on one side, the moment it is conceded, as it has been, that the people have a right to have a voice in saying whether they shall live any longer under the present Constitution or shall have a new Constitution, where the two Houses of the Legislature have agreed, why should they not have the same right of giving their verdict upon the identical same question when one House of their Legislature says "Yes," and the other says "No"?

Mr. DOBSON. -
Because the fact of the Senate which is elected by the people disagreeing shows that the public are rather unripe to decide the question.

Mr. ISAACS. -
Then the public are ripe enough to elect men, and have knowledge enough on a particular question to elect men who are supposed to represent the people's will; but the people have not sense or knowledge enough to say "Yes" or "No" for themselves. Is that the idea?

An HONORABLE MEMBER. -
Yes.

Mr. ISAACS. -
If so, if I may say it without disrespect, it is utterly illogical and untenable. My honorable friend must see that the House of Representatives represent the people.

Mr. DOBSON. -
You argue that they do not.

Mr. ISAACS. -
That is not my position.

Sir EDWARD BRADDON. -
The Senate represents the people.

Mr. ISAACS. -
The House of Representatives represents the people.

Sir EDWARD BRADDON. -
Equally.

Mr. ISAACS. -
But if one says "No," and the other says "Yes," who is to decide?
Mr. DOBSON. -
It shows that the people are undecided on the point.

Mr. ISAACS. -
No; it shows that one side must be wrong as to what the people wish. Therefore, we should go to the people themselves and ask them. If my honorable friend is right I will go further, and say if both Houses agree it shows that the people are clearly of opinion that an alteration ought to be made.

Mr. DOBSON. -
It ought to be so, but you do not say that it is.

Mr. ISAACS. - Then why go to the people on a referendum afterwards? Does not my honorable friend see that if he accedes to the view that if both Houses are agreed you still will have the referendum? Does not that concede that both Houses may be wrong?

Sir EDWARD BRADDON. -
The idea is not to make an alteration of the Constitution too easy.

Mr. ISAACS. -
No one suggests that that should be done, but what is to be the limit of "too easy"? Is it to withstand the people for ever? Can my honorable friend say, for an instance, what is to be the development of our representative system here? If we have senators elected from the whole state, can he foresee that the people will have an opportunity of electing the representatives they wish? Can he foresee that wealth may not act with undue weight? Can he foresee that we shall have representatives in accord with the general body of the people? Can he tell us whether a poor man will ever have an opportunity of being elected to the Senate? Can we tell how these things will develop? We may have a Senate and a House of Representatives with these huge constituencies, more especially if we retain the quota of two to one—we shall in all probability have two Houses on distinctly conservative lines; we shall have two Houses in which it will be almost impossible for a man of moderate means to find a seat. Yet he tells me that because we have periodical election by the people on a popular basis, therefore you necessarily have the views of the Legislature echoing the will of the people.

Sir EDWARD BRADDON. -
The Senate may be the more democratic body of the two.

Mr. ISAACS. -
It may, and it may not. Both Houses may be democratic; both Houses may be conservative. What I want to preserve in this Constitution is to guard against all possible eventualities, and against any possibility of the
states and of the Federation equally doing any injustice—I am not drawing any distinction in favour of one or the other in this regard—in order that the people who are behind the Houses, who are really the Federation, shall not be baulked if they desire to express in a direct fashion their own will. I do not desire to go into the merits of the referendum as a general question. I am prepared to do that hereafter when we come to the clause; but I do say that it is conceded here that the referendum is right.

**Sir JOHN DOWNER.** -

No; it is cumulative.

**Mr. ISAACS.** -

I do not care whether it is cumulative. It is conceded, and the only ground on which it is conceded, be it cumulative or not, is that the people have a right if they choose to revise, to ratify, to reverse if necessary, the acts of their legislators.

**Sir JOHN DOWNER.** -

It is a Veto; nothing more.

**Mr. ISAACS.** -

You can call it what you like; it may be a veto, and it may be an affirmation. If they say "No," it is a veto, if they say "Yes," it is an affirmation. My honorable friend says-"Do not trust the people by themselves; they are ignorant, foolish, unwise, and uneducated."

**Mr. SYMON.** -

You say the same thing, because you are willing to leave it to the Legislature at first, and only in case of a difference you go to the people. Your amendment is illogical.

**Mr. ISAACS.** -

My honorable friend will show that directly if he can. If my honorable friend wishes to abolish Parliament altogether, I am willing to hear his argument.

**Sir EDWARD BRADDON.** -

You are abolishing Parliament.

**Mr. ISAACS.** -

I beg the honorable member's pardon. The people under this Constitution are to act in the first place by their agents. If those two agents agree then in ordinary federal legislation the matter is settled, but in an amendment of the Constitution it is not settled. The principal who appoints the agents says-"Your act shall not be valid until I ratify it"; but when those two agents differ—those two attorneys under power differ—then, I say, come back to the principal who has appointed them both. The argument on the other side is-"No, the people shall not have the privilege of doing more than appoint their agents. If those two agents agree, they still come back to the
principal in respect of the Constitution; but if they do not agree on other subjects, then they, do not consult the principal. The people have nothing to do but to pay taxes and to obey the laws passed by their Legislature."

Mr. GORDON. -

It is an irrevocable power.

Mr. ISAACS. -

It is an irrevocable power, and the people cannot act. If we choose to leave our Constitution in that state, very well. I can only say that we shall be introducing enormous difficulties in the way of the acceptance of many of the provisions of the Constitution which otherwise the people would have been content to accept, even though they disagreed with them. Therefore, if my honorable friend desires to go further; if he desires to introduce what is done in Switzerland, and introduce the initiative, there will be strong matter for debate. All I say is, that we ought not to leave it in the power of any one House to legislate-I do not care which House it is-and to be able to say once and for all that it can interpose a bar against the people making a change in their Constitution.

Sir JOHN DOWNER (South Australia). -

I agree with the interjection of my honorable friend (Mr. Symon). The position taken up by the Attorney-General of Victoria is quite illogical. Mr. Isaacs appears to assume that the Houses of Parliament will not represent the people. He forgets that they are elected by the people, elected on the same suffrage-only one House represents the states and the other represents the general body of the people.

Mr. HIGGINS. -

Surely he has not forgotten that; he has put that as plainly as possible. He has not forgotten it.

Sir JOHN DOWNER. -

The course which Mr. Isaacs suggests is practically to destroy one of the Houses.

Mr. ISAACS. -

My honorable friend is not fair in saying that; it is not right.

Sir JOHN DOWNER. -

I think Mr. Isaacs has not in his mind that the Senate shall be able through any action of theirs to claim a general referendum. I think what he has in his mind is that the House of Representatives shall be able to do that, and so bring the opinions of the bulk of the people under their control. Even if it were so, where is the efficacy-and use of it? Mr. Isaacs does not propose a general reference; he proposes a reference to population.
Mr. ISAACS. -
The same referendum as is needed for an alteration of the Constitution.

Sir JOHN DOWNER. -
Exactly; and he proposes that on the assumption—which, I venture to say, is absolutely without justification—that whenever the two Houses disagree, that is, whenever the states and the general population disagree, one or other of them does not represent their constituents. It is a most illogical proposition. The states, as represented by the Senate, and the people, as represented by their members, may and will disagree. There is nothing in the slightest degree improbable in that. In fact, it is a circumstance that must undoubtedly arise. Supposing you do take Mr. Isaacs' view, I want to know where the benefit will be? It proceeds on an unjustifiable assumption. That is, that if they disagree, one or the other does not represent its constituents.

Mr. ISAACS. -
That is the law in Switzerland, and it is not illogical there; it has worked well.

Sir JOHN DOWNER. -
I beg leave to differ from the honorable member.

Mr. WISE. -
It would be very good if we had not responsible government.

Sir JOHN DOWNER. -
Exactly; that makes all the difference.

Mr. SYMON. -
It does not exist in Switzerland. In Switzerland, the question goes direct to the people.

Mr. HIGGINS. -
They can get the verdict of the people even if the Houses differ.

Sir JOHN DOWNER. -
When honorable members finish their discussion I may be able to proceed. Our Constitution is founded on a different basis altogether, and we are in the same breath asked to insist upon having responsible government, to which we are accustomed, and the Swiss Constitution, which is inconsistent with responsible government. I look upon this proposition, that on a vote of either House the voice of the people shall be taken immediately and directly, as an absolute invasion of the first principles on which this Federation is established. Of course, the people's voice will rule. I agree with my honorable friend there. The people it is who elect the Senate; the people it is who elect the House of Representatives, but they are not the same people; that is to say, they have a different basis of representation, although their qualification as voters is
the same. There can be no possible gain that I can conceive, but there is a
direct invasion of the primary principles on which we ought to act if we are
establishing a Parliament with all care, and if we make provisions for its
representing the voice of the people. We are now asked in the same breath
to say that when one of these disagreements happen, which we expect to
happen—because we do not want one House to be an affirmatory voice of
the other-away shall go all the
provisions we have made to protect the relative rights of the people in the
states, and either House can send both Houses at once to their constituents.
In the ordinary course of events, there will be regular elections in one
House, and periodical elections in the other. They both go to their
constituents pretty constantly, and if you say that they are not representing
the voice of the people, I ask in reply—Who sent them there? If they are
acting against the views and opinions of those constituents, their
constituents will very soon let them know. And the duration of their term
of service is not long enough to cause any serious mischief, but it is long
enough for safety and caution, to give a popular wave of feeling an
opportunity of dispersing, if it is not well founded. And the very basis on
which we put all our state Constitutions, the very theory with which we
require two Houses with different terms of office, to be a check on each
other, and to prevent the voice of the people, which, in the long run, must
rule, not of necessity ruling too quickly, we propose to convey by this
alteration, which my honorable and learned friend suggests, and on an
assumption for which there can be no justification, that the very fact of the
two Houses disagreeing, although they represent different constituencies,
would prove that one or other of them does not represent the voice of the
people. Sir, if the two Houses did represent the same constituencies there
might be much more argument for the contention of the honorable
member. The position, for instance, of the Legislative Assembly and
Legislative Council of Victoria would much more assist his argument?
Those two Houses of Parliament represent one colony, with a different
voting qualification possibly, but not much different, representing persons
who are supposed to have practically the same interests. In that case there
would be much more room for his argument that if there is a difference
between the two Houses of Parliament, the one or the other cannot truly
represent the voice of the people. But who would think of altering the
Constitution of Victoria, so as to have one House instead of two, or so as to
provide, on any matter of altering their own Constitution, that when the
two Houses disagreed a general vote of the people should be taken? My
honorable friend would never dream of asking or contending for that in his
own colony, where it might be much more logically contended for, and yet he asks us to apply it to the Commonwealth, where one House of Parliament is the people's House, representing the whole of the people of Australia, and the other House is the States House, which represents the states as entities. I hope that my honorable friend's suggestion will not be accepted. I think its adoption will deal a vital blow to Mr. ISAACS. -

Why?
Sir JOHN DOWNER. -
Because the honorable member is one of those who insist on responsible government applying to this Constitution.
Mr. ISAACS. -
What has that got to do with the question?
Sir JOHN DOWNER. -
Responsible government must, of course, put the greater power into the House of Representatives, whereas in Switzerland the Houses are practically co-ordinate.
Mr. ISAACS. -
What has that got to do with the question whether the people of Australia shall say yes or no to this Constitution?
Sir JOHN DOWNER. -
The honorable member said it was agreed that the people should be referred to. We, as a precaution, for purposes of greater safety, provide that the Constitution shall not be altered without two things being done—that is, without an Act of Parliament, and without a vote of the people as well.
Mr. ISAACS. -
It is not an Act of Parliament without a vote of the people.

Sir JOHN DOWNER. -
The honorable member says it is admitted that a vote of the people must be taken. What is admitted is that no fundamental change should be made in this Constitution without Parliament and the people saying it shall be done, or without Parliament passing an amending law, and the people do not say the amendment shall not be made. It is a power of veto, inserted for greater safety, and to prevent Parliament altering a Constitution which concerns the people, without the consent of the people, whom Parliament may not represent in its action in the matter. I sincerely hope that this amendment will be rejected.
Mr. DEAKIN (Victoria). -
The proposal which the honorable and learned member (Mr. Isaacs) has
submitted on behalf of the Legislative Assembly of Victoria appears to me to possess, at all events, one general merit which may well claim the attention of this Convention, inasmuch as it seeks to enlarge the, to my mind, far too restricted scope of the 121st clause. No one desires that amendments of this Constitution should need to be frequent, or should be frequent, and no one desires that the amendment of the Constitution should be too easy. It should be possible at any time when the mature judgment of the people has expressed itself for an amendment of the Constitution to be obtained, but it should not be possible, at a moment's notice, to obtain so serious an Act as that which would alter for all time the Constitution of the country. That we all admit. So much by way of premiss, as calling attention to the fact that in this Constitution we have but one road, and that a very narrow road, by which it will be possible for the electors to obtain an amendment of the Constitution. My learned friend, in his speech, has cited a number of American precedents, which, with a certain allowance, all go to support his thesis—that the power of amendment of the Constitution in the United States has been found far too narrow, and that this power of amendment would very likely be found too narrow in Australia. Of course, the interjection of Mr. Wise with reference to responsible government touched an aspect of the question to which my honorable colleague has hardly allowed sufficient weight. I can quite see that this proposal, valuable as it is, would be much more valuable in the United States, and would hold out much greater hope to them of utility than it will do under a Constitution such as ours, in which responsible government is established. Under the United States Constitution, so far as amendments of the Constitution are concerned, to borrow a popular saying—"What is everybody's business is nobody's business." Amendment may be the aim of the House of Representatives, but if the Senate take a different view, there is nothing, to bring them into harmony. It may be the proposal on which the highest executive officer of the Government, the President, has obtained his office, but unless both Houses agree with him he is helpless, because he has no means of bringing pressure to bear on them. If, in the same way, the states Legislatures, which return the Senate, look at the issue from their state point of view, and decide that an amendment of the Constitution is necessary, and carry it by a majority of their representatives in the Senate, there is not, the necessary means by which they can acquire a majority in the House of Representatives also. There is no sufficient provision for obtaining unity of action between these several powers. But the conditions under which responsible government arise under such a Constitution as ours will occasion an entire transformation. Both Houses are linked together by the Executive, which is made
answerable to Parliament. Consequently, the demand for reform of the Constitution that may be raised without satisfactory fruition in the United States could never be raised in any of our countries enjoying responsible government without the Ministry of the day being compelled to act upon it; compelled to use all its potencies-and they are many-to bring both Houses into agreement, and by the exercise of its authority secure the submission to the people of a direct issue on this question. It can always obtain this by means of a general election. We can thus obtain a verdict, which, if decisive, would be one before which the members of Second Chambers would be finally compelled to bow. Of course, this amendment applies equally to any proposed reform of this Constitution desired by the Senate and its supporters in the several states; and, for my own part, I can foresee under this Constitution occasions in which demands for the reform of the Constitution would come from the states, and be strongly supported in the Senate. This amendment secures them an appeal to the electors. The equity of the amendment of the Victorian Legislative Assembly now proposed is manifest, inasmuch as it is equally open to either House of Parliament to take action under it. For the reasons I have given as to the operation of responsible government, it appears to me that this provision is likely to be taken advantage of under this Constitution, but rarely. I can scarcely suppose that cases of the kind which would require this form of amending the Constitution could arise except at long intervals of time. At the same time, I am clearly of opinion that whenever it does arise this proposal not only involves no injustice, but also every provision for the fullest consideration of all the rights involved, whether they be the rights of states or of parties-that could possibly be demanded. Consequently, I shall be found supporting the proposal of my honorable friend, although I may seem to him to minimize its importance and efficacy. After his elaborate speech it is unnecessary to enter into the discussion of the case he has put so well, more especially after my warning as to the wide difference between American conditions and our own. It appears to me that too great a stress must not be laid on any particular instances that can be cited from that country. But there is one aspect of the question which I wish to commend to his consideration, as an additional argument in his favour, although, perhaps, supporting my view as to the less wide scope and less frequent fruit to be anticipated from it. The present proposals which are embodied in the earlier part of this measure for the settlement of dead-lock between the two Houses of the Federal Parliament would apply to any measure introduced for the amendment of the Constitution. There is only one new condition added, the one to which I
called attention at an earlier stage-the requirement that, in regard to a
measure for the amendment of the Constitution, an absolute majority of
both Houses is needed. Well, in this case, an absolute majority of the
House which desired a reform of the Constitution would be needed, in
order to bring the proposal for the amendment of the Constitution within
the scope of this particular sub-section of clause 121. But if the other
House then rejected that proposal for the reform of the Constitution, one of
the two proposals which we have embodied in the Constitution for the
settlement of differences between the two Houses would immediately
come into play.

Mr. ISAACS. -

Oh, no. The clause provides that the provisions of this Constitution can
only be altered in a certain prescribed manner, or rather cannot be altered
except in that manner.

Mr. DEAKIN. -

But what is the manner?

Any proposed law for the alteration thereof must be passed by an
absolute majority of the Senate and of the House of Representatives, and
shall thereupon be submitted in each state to the electors qualified to vote.

Upon which the honorable member contends that, if a law was passed by
an absolute majority of the Senate, and rejected by the House of
Representatives, the provisions as to the treatment of dead-locks would not
apply.

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Mr. ISAACS. -

Certainly they would not apply, because you have negative words which
say that, as to amendments of the Constitution, you must follow a
prescribed course and no other.

Mr. SYMON. -

But if you have a disagreement between the two Houses of Parliament
you must solve it in the way prescribed by the Constitution.

Mr. DEAKIN. -

So I should say.

Mr. ISAACS. -

Do you say that the two Houses, sitting together, are to alter the
Constitution?

Mr. SYMON. -

Not to alter the Constitution, but to pass a law.

Mr. ISAACS. -

What law?
Mr. SYMON. -
The law that is to be submitted to the people.
The CHAIRMAN. -
Will honorable members kindly allow Mr. Deakin to proceed?
Mr. DEAKIN. -
Clause 56B, as honorable members know, commences-"If the House of Representatives passes any proposed law," and the next sub-section of the same clause also begins-"If the House of Representatives passes any proposed law," and I take it, subject to the contrary opinion of my learned friend, to which I pay the greatest respect, that probably those words include a law for the alteration of the Constitution. I should say, from the language of those two provisions, that if a measure proposing a reform of the Constitution, passed by an absolute majority of the Senate, and then sent to the House of Representatives, were rejected by the House of Representatives, then certainly the provisions of clause 56B would come into play—there is nothing to prevent it—at all events as regards the dissolution of the House of Representatives, whether it be by the alternative dissolution, or by the double dissolution. There is nothing whatever to limit the scope of 56B.

Mr. ISAACS. -
So far.
Mr. DEAKIN. -
Exactly. So that the use of these sub-clauses of 56B will be that they will, in the first instance, have a strongly moderating influence upon the House of Representatives, which I am assuming is at difference with the Senate, and will make it incumbent upon this House to be very careful to ascertain that the electors are behind them before they reject such a measure. Then we will suppose that either the alternative or the double dissolution takes place. If by this means the House of Representatives is brought into harmony with the Senate, and passes the measure about which there was a dispute by an absolute majority, the honorable member will see that all the requirements of clause 121 have been fulfilled.

Mr. ISAACS. -
But suppose that after the double dissolution the Houses still differ?
Mr. WISE. -
If the people do not care enough about the proposed amendment to take the trouble to return a Parliament in favour of it, why should it be carried?
Mr. DEAKIN. -
I fail to see how my honorable friends opposite can make even a show of opposition to a proposition of this kind. It allows the people of the states as states, as well as the people of the Commonwealth as a whole, to deliver
their final verdict upon an issue which must, after all this machinery has been brought into play, have been thoroughly discussed for many months, and upon which the electors must have made up their minds.

Mr. DOBSON. -

The honorable and learned member would make the amendment of the Constitution as easy as the passing

Mr. DEAKIN. -

When my honorable friend comes to speak, he will perhaps point out what step has been omitted from this process which is required in the passing of an ordinary law. Every step that is required to be taken in the passing of an ordinary Act of Parliament must be taken to secure an amendment of the Constitution.

Mr. DOBSON. -

And something more.

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Mr. DEAKIN. -

Yes, and something more is required. There must be an absolute majority in favour of the amendment in both Houses, and a majority of electors in the states and the Commonwealth.

Mr. DOBSON. -

The honorable and learned member only wants a majority in one House.

Mr. DEAKIN. -

I beg the honorable gentleman's pardon. Though 56B is brought into play there must be an absolute majority of both Houses. Even if advantage is taken of 56B the amendment of the Constitution, instead of being more easy, will be more difficult than the passing of an ordinary Act. Then we come down to the extremely narrow margin of cases in which, 56B not being employed, this particular course would be sought to be taken without the alternative or the double dissolution.

Mr. ISAACS. -

The honorable member suggests that this process of referring the matter to the people when there is a dispute between the Houses should only be resorted to after the double dissolution?

Mr. DEAKIN. -

No. I am pointing out to my honorable friend that, in addition to his proposal, there is another means under 56B by which the same end might eventually be accomplished. That is no argument against his proposal, and I am only pointing it out in reply to the objections which have been urged against it. I would go further myself. One weakness in the clause for the amendment of the Constitution is the entire absence of initiative on the part
of the states. I think it is well worth the consideration of those who have
state rights at heart, whether, if the Parliaments of a majority of the states
united in passing a proposal for the amendment of the Federal Constitution,
some means should not be provided whereby that proposal, irrespective of
any action of the Federal Parliament, might be remitted to the people of the
whole Commonwealth.

Mr. MCMILLAN. -

That is quite another question.

Mr. DEAKIN. -

Yes; but it is following out the view I take that there should be other
means of using the appeal to the people provided in clause 121 than those
which now exist. I am pointing out that, as this power of amending the
Constitution is limited, it not only limits what so many honorable members
appear to regard with apprehension, that is, the power of amendment when
sought to be exercised by the general body of the people, but it deprives the
states themselves of all right of initiative.

Mr. MCMILLAN. -

This does not give an initiative in any sense.

Mr. DEAKIN. -

No, but it would be a reasonable demand to make on behalf of state
rights that, if both Houses in a majority of the states passed identical
measures for the amendment of the Federal Constitution, they should have
the power of remitting their proposal to their own electors and to the
electors of the Commonwealth.

Mr. ISAACS. -

But this provision will give the states power to do that through their
accredited representatives, the senators.

Mr. DEAKIN. -

Yes, and that is an argument in support of its equity.

Mr. DOBSON. -

If the honorable and learned member thinks his proposal reasonable, how
can he consider that of the Attorney-General of Victoria to be equally
reasonable?

Mr. DEAKIN. -

Because, although the amendment of the Constitution should not be
made too easy to either party-to the body of the people upon one side or to
the states upon the other-additional means should be given of sending a
proposal for the amendment of the Constitution to the ultimate tribunal
which we have established in every case, the decision of the electors. I am
prepared to couple what my honorable and learned friend is asking for with
a further concession.
Mr. DOBSON. -
Yet the honorable member is not content to provide for a simple majority of both Houses.

Mr. DEAKIN. -
I am; but it appears to me to be desirable, in connexion with the amendment of the Constitution, so long as sufficient time is allowed for deliberation, and a sufficient number of steps have to be taken to insure full discussion, that we should not limit the appeal to the people upon amendments to one single method. I would rather see several means of setting in motion the regular and constitutional process by which proposals for the amendment of the Constitution might be considered by the people either at the desire of majorities of the Commonwealth Parliament, or of either Federal House, or of a majority of the states Parliaments. It appears to me that the extension of the power which my honorable and learned friend proposes is very desirable and equitable. If we lay to heart the experience of America, we shall find that men of all parties unite in agreeing that a cardinal defect of the American Constitution is the difficulty of having any amendment submitted to the electors of the republic.

Sir WILLIAM ZEAL. -
Does the honorable member think that a defect?

Mr. DEAKIN. -
It is not that the processes provided for in the Constitution are necessarily bad, but there is no practical means of using them, and they have remained unused except in times of war.

Mr. SYMON. -
Responsible government will cure that.

Mr. DEAKIN. -
Responsible government will not wholly cure it. We should not be blind to the fact that the greatest Federal Constitution in the world has been confronted with serious difficulties and discords because its amendment can only be accomplished by a single iron-bound method.

Mr. SYMON (South Australia). -
It is exceedingly pleasant to hear this matter discussed, and the arguments upon both sides balanced, with so much judicial fairness as has been exhibited by the honorable and learned member (Mr. Deakin); but I think that if he had pursued the judicial method a little further he would have felt himself bound to give judgment against the proposed amendment. He said, in an indirect appeal to us, that he could not see what show of opposition we could make to this proposal; but he must have forgotten for
the moment the absolutely conclusive arguments with which he furnished us for the entire destruction of it. He showed that the proposal of the honorable and learned member (Mr. Isaacs) is utterly and entirely unnecessary.

Mr. DEAKIN. -
I do not think so.

Mr. SYMON. -
I do not say that the honorable member said this in so many words, but his argument showed that it is entirely unnecessary to have a provision of this character, which rests for any possible merit or virtue upon the assumption that there might be a difference between the two Houses as to a proposed law which would land us in a kind of cul de sac. The honorable and learned member (Mr. Deakin) has shown, and I humbly declare my entire agreement with him, that the provisions avoiding dead-locks seem to apply as effectually to a difference between the two Houses with regard to a proposed amendment of the Constitution as to a difference in regard to anything else within the scope of their legislative authority.

Mr. ISAACS. -
The honorable and learned member ought to strike out clause 89 altogether.

Mr. SYMON. -
My honorable and learned friend must not be petulant. We maybe wrong; but I am fortified by the remarks of the honorable and learned member (Mr. Deakin). As the matter now stands, can any constitutional lawyer deny that the provision with regard to dead-locks will be just as effectual where a proposal for an alteration of the Constitution is concerned as where any other proposed law is concerned? It does not amend the Constitution—it merely gets rid of the difference between the two Chambers. I am rather disposed to think that in the interests of the states that is a defect, and that the ordinary dead-lock provisions should not apply to a matter so vital as a proposed amendment of the Constitution.

Mr. HIGGINS. -
They were not meant so to apply.

Mr. SYMON. -
Probably not; but it is worthy of consideration whether we should not exclude from the operation of the dead-lock provisions a proposal to alter the Constitution. The only justification I can see for the proposed amendment is that it is intended to get rid of what I have described as a cul de sac, and, when there is a difference between the two Houses, to cut the
Gordian knot by referring the matter in dispute to the people.

Mr. ISAACS. -

Does the honorable and learned member contend that in the case of a proposed amendment of the Constitution the two Houses should sit together and pass the law by a three-fifths majority?

Mr. SYMON. -

I think so.

Mr. ISAACS. -

Oh!

Mr. SYMON. -

But, what then?

Mr. ISAACS. -

That is my reading of it.

Mr. SYMON. -

You are not to deviate from the provisions of this clause as to proportions and so on. What I say is that there is not the slightest reason why the provisions with regard to the ordinary dead-lock, if it is desired, should not apply to a difference of opinion. I do not think they ought to apply in principle; I do not think they ought to apply in practice. Passing away from that for a moment, I interjected that my honorable friend's amendment is not logical, and he quite properly said that he should be glad if I would show that it was not logical. The provisions in regard to the amendment of the Constitution are that the alteration is to be made by a reference, through the Parliament, to the people under the provisions of clause 121. I do not say that these provisions are ample; I do not say that they are sufficient; I do not say that they may not require amendment. My learned friend (Mr. Deakin) said that one general merit of the amendment is that the suggested narrowness of the provision for the amendment of the Constitution would be widened. With that I do not propose to deal, because we all may consider that there should be some facilities given that do not exist. I do not hold that view at present, but that general merit appears to me to be greatly over-balanced by the disadvantages which attach to this amendment. At present, the proposal in the Bill as it stands is that an alteration of the Constitution shall be submitted through the Parliament to the people with certain safeguards. There is not a single honorable member but agrees that we ought not to make too easy fundamental amendments of the Constitution. The other method is that we shall go direct to the people. But where is the logic, where is the consistency, of having neither one nor the other, but having a reference through the Parliament, and then if there is a disagreement a reference direct to the people? The whole of my honorable friend's speech, if it amounted to anything, or was of any value,
amounted to this—that the proper thing to do is to sweep away the necessity for taking the opinion of the Parliament at all, and to go direct to the people.

Mr. ISAACS. -
And who is to start first?

Mr. SYMON. -
The responsible Government—the Executive.

Mr. ISAACS. -
You must have a starting point.

Mr. SYMON. -
Every one of us sees that we must have a starting point, but you do not require to take a majority of the two Houses for that. Why not leave it to the Executive?

Mr. ISAACS. -
I do not want a majority of the two Houses. I want a majority of one House.

Mr. SYMON. -
Why not leave it to the responsible Government of the day? Why should we leave it to one House? Why should we introduce this, which is really neither fish, flesh, fowl, nor good red herring?

Mr. REID. -
Then what can the other be?

Mr. SYMON. -
If you say "Leave it, to the Parliament," that I can understand, and that I believe one of my honorable friends will show is the suggestion made by the authority my learned friend quoted—Burgess. I can also understand a proposal that the responsible Government of the day, responsible to Parliament, liable to have their acts called in question by the Parliament, should have the right to take an amendment of the Constitution direct to the people.

Mr. KINGSTON. -
Are you willing for that to be done?

Mr. SYMON. -
I am not willing for that to be done. The other course is logical, but it is utterly illogical and a destruction of the principle underlying this Constitution if we refer it to the Parliament, and then, because the Senate on a matter of the most vital state rights happens to hold out, it is to be over-ridden by a majority of the House of Representatives, and—perhaps at a critical time, just before a general election—the whole thing is to be thrown to a referendum, when these very party questions—these very
personal questions, to which my learned friend alluded as happening in an ordinary election will just as emphatically and just as forcibly occur in connexion with the referendum.

Mr. ISAACS. -

That can all be prevented by a reference to the people.

Mr. TRENWITH. -

How can it, when there will be no persons involved?

Mr. SYMON. -

Every member of the Senate will be a person concerned; every member from every state who has sought to vindicate the rights of that state will be involved, and he will go back to his state, and you will have that question of a fundamental alteration of the Constitution not fortified by an absolute majority of both Houses, but made an entirely party question, instinct with all the hot passion of the moment, dealt with by the people in the states upon grounds which will probably prevent them coming to a just and meritorious decision. My learned friend will understand that I am not using the expression with reference to his personal advocacy of it, but this proposal is really an insidious attack on the rights and powers of the Senate. The result will be to paralyze the Senate in dealing with any fundamental alteration of the Constitution.

Mr. FRASER. -

Better to have no Senate at all.

Mr. SYMON. -

Really it would be better to have no Senate at all. Suppose they differ from the House of Representatives, what will they do?

Mr. ISAACS. -

Suppose the Senate initiates the reform, and the Assembly rejects it?

Mr. SYMON. -

I am quite willing to admit the difficulties that arise, but that is not the case in my honorable friend's mind.

Mr. DEAKIN. -

Do you not remember the dictum of the old English Judge-"The Devil himself doth not know what the mind of man is?"

Mr. REID. -

He was not as clever as our friend from Adelaide.

Mr. SYMON. -

I can back my friend (Mr. Reid) against that gentleman any day in many respects.

Sir EDWARD BRADDON. -

That gentleman had no legal training.

Mr. SYMON. -
I do not say for a moment that my learned friend has advocated the amendment with that deliberate intention. But we must all reckon with our past history. I know the zeal and assiduity with which he has sought to secure all possible restrictions on the Senate.

Mr. ISAACS. -
Not unfair ones.

Mr. SYMON. -
In my learned friend's estimation, no doubt, most fair and just ones, but in my estimation, I hope I may say so, most unfair and most unjust. I do not object at all to an old proposal—this is the old old tale coming newly dressed, put in a different shape. We had it in Adelaide, we had it in Sydney, and now we have it again here. This is the beginning of it, and I dare say we will have it in different forms. I observe that my friend (Mr. Higgins) is smiling. He has, no doubt, something with which he will try our patience.

Mr. HIGGINS. -
You will smile then, of course. Are you speaking with a due fear of Sir John Forrest before your eyes?

Mr. SYMON. -
No, I am speaking with a due fear of my learned friend—a much more dangerous man. At any rate, I could understand such a proposal to refer this matter of amendment directly to the people. I could understand leaving it entirely to the Houses of Parliament to decide it by a majority. Either of these two courses I think would be fairly matters of debate, but when my learned friend proposes to mutilate, it may be to narrow, as some honorable members think, the harmonious and consistent provisions inserted here, by a plan which would paralyze and destroy the influence and power of the Senate, then, I say, it is a proposal which we ought to reject without further ado.

Mr. ISAACS. -
Why does it hamper the influence of the Senate to say that their constituents shall be consulted?

Mr. SYMON. -
My friend must see that the very essence of representative government is that if the constituents do not approve of the action of their representatives they have a remedy in their own hands, and if the Senate is recalcitrant, just as if the House of Representatives in the instance put by my honorable friend (Mr. Trenwith) is recalcitrant, the constituents have the remedy and the control entirely to themselves. Nobody can say for a moment that it is
not entirely in conformity with the principles of responsible government that that method should be pursued to its fair and legitimate conclusion before any other methods are attempted. My learned friend (Mr. Isaacs) said that a difficulty was that, as it now stood, it might be possible to prevent the people from being consulted. How can such a proposition be maintained for a moment, when both these Houses—the whole of the representatives at the end of three years, half the senators at the end of three years—have to go to their constituents; and when, if it was an important fundamental amendment, one in which the constituents of the states would be so greatly interested, as my honorable friend says, that they might probably vote for the amendment, then they would take care that their representatives in the Senate who were adverse to that amendment would not be returned again?

Mr. ISAACS. -

Then the Houses will not differ.

Mr. SYMON. -

Very well. What is the objection to the provision?

Mr. ISAACS. -

There is no objection to it. If the Houses will not differ, my proposal will not come into force; but if they do differ, then it is necessary.

Mr. SYMON. -

My learned friend is putting a pressure on one or other of the Houses not to differ, because one House will not differ if it is likely to be sent to its constituents. Your Senate would not differ. It would say—"We do not want to go and canvass the whole of our colony upon a matter of this kind." So far as the general provision is concerned, it really amounts to this—that it will be an easy way, before a general election, to manufacture an election placard. The Government of the day, perhaps some irresponsible member, may propose, in the House of Representatives or in the Senate, an amendment of the Constitution, and yet a majority of the other House may disagree, and then we shall have, to use a common expression, a rare to-do, and we shall have the Government of the day taking it up or neglecting it, in either of which cases those who constituted the majority will be able to go with a flourish of trumpets and an election placard throughout the constituencies.

Mr. ISAACS. -

Will not that happen just as well where the two Houses agree—just carrying the proposition by a bare majority? Will not the opponents of it do exactly the same thing?

Mr. REID. -

You are responsible for a good deal. You set him going again just when
The difficulties of responsible government are very great, and we cannot foresee all of them. I quite admit, with my learned friend, that there are difficulties in the way of any solution of this question. But what I say is that it is an assault on the rights and powers of the Senate, and if we carry any such amendment as this-whatever may be said about narrowing or widening the powers of amendment-we will do violence to the framework of the Constitution.

Mr. REID (New South Wales). -

I shall strive to express anything I have to say in about five minutes. Although I admit that it is a matter of very great importance, I entirely join issue with my learned friend (Mr. Symon) in looking at this matter as one affecting either the interests of the Senate or the interests of the House of Representatives. The object is to relieve the Senate from a comparatively helpless state in reference to an amendment of the Constitution, and to place it, as representing the states, in the position of being able to appeal to the states on a question of an amendment of the Constitution. The view I take is that, instead of degrading the Senate, it puts it in a position of absolute equality with the House of Representatives in a matter which has hitherto loosely been supposed to belong more to the House of Representatives than to the Senate. What this Senate is we do not need to be told. The Senate will be a a popular body springing from the people of the states; and surely the representatives of all the states, if they agree that a certain amendment of the Constitution should be proposed to the people, should not be blocked by the representatives of the nation in the House below. Surely cash has an equal right to put an issue of that kind for the deliberate decision of the electors. Trivial proposals will, of course, stand self-condemned. The expense and the inconvenience of taking the sense of the electors of the Commonwealth over the enormous territory we will have will completely kill any trivial proposals for the amendment of the Constitution. If the proposals are serious ones, why should not the Senate have the absolute right, by an absolute majority, of asking the opinion of the people upon a proposed amendment of the Constitution? Surely the states, as represented by the Senate, have a right to take such a verdict with regard to the proposed change. I think nearly all the writers of late years on the Constitution of the United States have pointed to this difficulty of even proposing an amendment of the United States Constitution as a serious inconvenience. We know, as a matter of fact, that during the long time the
Constitution has been in existence, the amendments made in it have been very few indeed.

**Mr. TRENWITH.** -

And the desire for them very many.

**Mr. REID.** -

No doubt. It does not follow that propositions for amendment would be carried, but at any rate the wisdom of seeking the opinion of the nation and the states, each having an independent voice, would follow even if the difficulty of submitting an amendment to them were greater than it is. I think that the history of the experiment which we have made in this country is decidedly encouraging to this Convention, and must lead us to believe that the collective wisdom resulting from a united appeal is vastly higher than an appeal to an independent electorate. It has been so in connexion with the elections to this Convention—except in regard to the mistake made in returning me. So far as the other representatives are concerned the remark I have just made applies. Now, the States House, as separate from the other branch of the Legislature, may well have occasion to ask for an amendment of this Constitution. In the future we know that our work, perfect as we may try to make it, will suggest the necessity for amendment. There is nothing more certain than that. Therefore, without saying another word, I will state that I do not look upon the proposal of Mr. Isaacs as a radical proposition. I look upon it as a proposal which gives the Senate a powerful right, a right of appealing directly to the states and the nation upon a matter relating to a proposed amendment of the Constitution. It is, therefore, a proposition that we can discuss without any fear of radical ideas or tendencies. I would only make this one other remark. I favour this amendment subject to one stipulation, and that is that the proposed amendment of the Constitution, if it do not pass both Houses, shall have to pass one House in two consecutive sessions, so that the matter shall be brought into thorough prominence before the people. It may be found under a provision of that kind that the reception by the people of the proposal made would be such in the first instance that it would be abandoned altogether on it being found that public opinion was against it. We should then hear no more of it. But, on the other hand, if after thorough ventilation public opinion in the states favoured the proposed amendment, the amendment might be passed again, and we should, at any rate, secure a full interval for deliberation.

**Mr. ISAACS.** -

I have no objection to that, or even to fixing a minimum of time between two sessions.
Mr. REID. -

That is not necessary, because in the clause as it stands, after the second session, an interval of two months must elapse before a vote can be taken. Coupling these two matters together, I recommend this amendment to the Convention, not as a radical proposal, but as one which will add to the powers of the Senate, and enable the Senate to take the people into their confidence if at any time the representatives of the states think an alteration of the Constitution necessary.

Mr. GLYNN (South Australia). -

The main objection which I have to the proposition of Mr. Isaacs is, first of all, that it allows the House of Representatives to prevent the voice of the Senate being of any avail. Because the position would be simply this: If an amendment were proposed in the Senate, and on going to the House of Representatives it were objected to by the House of Representatives, what would be the result? The amendment would have to be submitted to a mass referendum; so that the House of Representatives would always be in the position of being able to reject the proposals of the Senate, and preventing their coming to the dual referendum.

Mr. ISAACS. -

You misunderstand the proposal.

Mr. GLYNN. -

The proposal of the honorable member is that the first referendum is to be a mass referendum.

Mr. ISAACS. -

No; there is to be one referendum only.

Mr. REID. -

One referendum in which the matter would appear in two ways: Expressing the opinion of the states as states, and then of the people as one nation.

Mr. ISAACS. -

You count the votes of the people and the votes of the states separately on one occasion.

Mr. GLYNN. -

At any rate, my misunderstanding of the clause shows that it is ambiguous.

Mr. ISAACS. -

The honorable member perhaps did not hear what I said. I asked the Chairman only to put one portion of the words.

Mr. GLYNN. -

I remember that perfectly, but did not understand it was to clear the ambiguity. The ambiguity, however, goes to this extent also—what is to
become of the proposed amendment on the reference being given? The proposal of Mr. Isaacs is open to, but not clear upon, the construction that the amendment of the Constitution becomes law without any reference back to the Senate at all. The amendment does not say that the proposed alteration of the Constitution must go back to the Senate or the House of Representatives supported by the confirmation of the people, or that it ipso facto becomes law, I quite agree, however, that Mr. Isaacs is right in his argument, which he has put with such force and supported by such precedents, as to the necessity for a further provision being made with regard to proposed amendments in the Constitution. We should be careful not to suffer the wisdom, of the present to determine the actions of the Commonwealth for many years to come. Mr. Isaacs has pointed out the difficulty which has arisen in the United States of America. Only five important amendments have been made in the Constitution of the United States throughout the whole course of 110 years; because the first ten amendments made were merely declarations of right, and not, strictly speaking, amendments at all. They were alterations referring to the security of civil and religious liberty and such matters, which were proposed as conditions precedent to the adherence of several of the states to the Union. Five amendments were subsequently carried, but they were carried under most extraordinary circumstances. Four of them were carried by means of the force of the military power of the North, and one of the five-namely, that known as the 14th amendment of the Constitution, which was referred to, in the course of the discussion yesterday, an amendment extending civil liberty and immunities to all races—was carried by what is considered by area of the writers on the Constitution to have been an illegal act. The difficulty always has been to obtain the adherence of three-fourths of the Parliaments of the states. In one case, that of Ohio, the adhesion to the proposed, amendment was first of all given, and the state then withdrew it again; but the Secretary of State, of the Union stated (thereby usurping the functions of the Judiciary) that the consent of Ohio could not be withdrawn. So that, according to some of the writers, one of the five amendments I have referred to was carried illegally, whilst the four others were carried under the domination of the military power of the North. I find that there has been a misapprehension on my part concerning the amendment of Mr. Isaacs, and that I am in concurrence with the honorable and learned gentleman as to the main object which he desires to achieve—greater facility of alteration—although I cannot, for reasons which I will proceed to explain, accept his amendment. But I am prepared to suggest
another one of my own, which will I think effect the same purpose. Mr. Reid has suggested that some power of initiation should be given. In the Constitution of the Confederate States it was proposed to allow three states of the Union to suggest an amendment, and that then there should be a constitutional convention of the whole of the states sitting together, and that if they adopted the amendment it should be put to the States House, and a majority of two-thirds (not of three-fourths) should carry it. The Constitution of the United States was practically placed in a straight jacket, and it was the splitting-caused by the difficulty of alteration-of the people of America into two parties-the strict constructionists, and those who adhered to the extension put in force by the Supreme Court-which led up to the Civil War. I think we should accept the experience of America as to the wisdom of not putting in too hide-bound a form of provision with regard to amendments of the Constitution. But it seems to me that, although the amendment now in the Bill would effect an improvement upon the state, of affairs in America, yet it is one which, involving a dual referendum, I cannot agree to without an effort to render it more elastic. Now, I do not know what the number of voters in Australia is at the present time, but I can speak as to the population, and I suppose that the proportion of voters would be approximately, in each of the colonies, proportionate to population. The population in the five colonies here represented was about 3,200,000 in June last year. If the majority of states—say, Tasmania, South Australia, and Western Australia—desired to reject an amendment in the Constitution you would have this position: That it would be within the power of 350,000 people (the sum of three majorities) to disallow an amendment which had been affirmed by both Houses of Parliament, and accepted by them by absolute majorities.

Mr. ISAACS. -

And also by the majority of the people?

Mr. GLYNN. -

I say that that power is not sufficiently fluid. Beyond that I can-not accept the principle of the referendum for the reason, first, that it has the weight of authority against it. Mr. Isaacs quoted, as if supporting his position, from Dr. Burgess, whose writings come down to the year 1896, upon this question. Now, Dr. Burgess makes the suggestion that if the Houses of Congress sitting together carry a proposal for an amendment in two successive Parliaments, and it be in like manner affirmed once in the Parliament of each state, the weight of the votes of each Parliament being the same as in Presidential elections, the amendment should become law.
My objection to the principle of the referendum is that it undermines the principle of representative government. According to the principle of representative government the voice of the people is represented by the delegation of their powers to men selected by them as specialists; but it seems to me that Mr. Isaacs wishes to refer matters of great complexity and difficulty to the uninstructed wisdom of the populace in all cases, although many of the matters so referred would be amendments of the Constitution involving far-reaching consequences.

Mr. ISAACS. -

You seem to object to the people ratifying personally this Constitution.

Mr. GLYNN. -

No, I do not, as here they would have the simple issue of federation or not; but the wisdom of centuries, operated upon by the law of the survival of the fittest, has pronounced in favour of the principle of representative government, and it is now proposed to go back to the old system of referendum, such as prevails in Switzerland. The honorable member will be aware that in the United States, up to the year 1818, suggested amendments of the Constitution had to be passed by both Houses of Parliament in the states, and then had to be ratified or rejected by the people through conventions. But Massachusetts, in 1818, adopted the principle of the referendum, after passage by two Parliaments. Subsequently they appeared to have found the faults arising from this system, and several of the states in which amendments have been made in their Constitutions have proceeded on the principle of allowing majorities, simple or absolute, of the Houses of Parliament, both before and after election, to settle the question whether there is to be an amendment of the Constitution or not. Delaware, for instance, has resolved that a two-thirds majority before election, and a three-fourths majority after election, will carry an amendment, without a referendum to the people at all.

Mr. ISAACS. -

That is the only state that has not the referendum.

Mr. GLYNN. -

It marks an advance from the old system. They first had a system with no referendum. In 1818, following the lead of Massachusetts, they began to abolish, to some extent, the system of conventions, and more recently the states, in recasting their Constitutions, are exhibiting a preference for the voice of Parliament by an absolute or other majority, as against the voices of the states themselves. I submit that the honorable and learned member's American analogy in support of the referendum falls to pieces, and his authority-Burgess-also does not support him as to the method to be adopted. What I would suggest is to have an alternative method of
amending the Constitution. We might adopt the method at present in vogue, and also an alternative method, which I have suggested by an amendment that is in print. This is, that if an amendment of the Constitution is carried by a majority in the Senate-a majority including at least one-half the representatives for each state-and if it is also carried in the House of Representatives by a majority including one-third of the representatives for each state, then, if it is again carried, after a periodical election of the Senate, by similar majorities, it should become law without any reference to the people. If that amendment is carried, you will have the predominance of the majority of votes, and thus, to a great extent, conciliate those who believe in the principle of majority government. But, at the same time, you will give a quality to that majority which will preserve, to the extent that is advisable, state rights, because you will not allow any majority to carry an amendment in which each state has not, in the Senate, representation to the extent of one-half. Moreover, the carrying of the amendment by these majorities in the first instance will not be final, as the postponement until after the periodical election of the Senate will allow time for further consideration. Such a proposal is in thorough consonance with the federal idea. What will be the result if we do not make more elastic provision for the amendment of the Constitution? We are creating a Judiciary which will become legislators. Undoubtedly, in America, the Judiciary have been legislators to a very large extent. I would like legal members of the Convention to read an article in the Law Times of the 13th February, 1897, by a lawyer, on the effect of the undue expansion by the Judiciary, contrary to the lines of the Constitution, of the American Constitution. The article is by Mr. Seymour D. Thompson. He points out that, owing to the great difficulty of amendment, practically the elasticity of the Constitution is determined by the character of the judicial bench-that with a man like Marshall, of extraordinary forensic power as well as great liberality of thought, you have an expansion, which is necessitated by the changed conditions of the people, which could not have been anticipated 50 or 60 years before. But Mr. Thompson also points out that there are a great many evils arise from the existing state of things. He says-

To promote this expansion of power, we have seen the Legislature of a state prohibited from repealing a public grant, got from its predecessors by the most notorious corruption. We have seen the Legislature of a state prohibited from making a useful modification of the charter of an eleemosynary corporation, long after the death of all its founders; and, subsidiary to this, we have been taught the doctrine that an executed gift is
a contract within the meaning of the Federal Constitution. We have seen
the sovereign power of taxation bargained away by corrupt Legislatures to
private corporations, and future Legislatures prohibited for all time from
resuming the power. We have seen, under the name of preserving the
inviolability of contracts, rights got by bribery from venal Legislatures
endowed with sanctity and immorality, and placed for ever beyond the
reach of the people. We have seen useful and necessary revenue laws of the
states, and of the United States, suspended and nullified. We have seen the
executive officers of our Governments, both federal and state, subjected to
compulsory judicial process. We have seen corporations aggregate
declared to be "citizens" within the meaning of the same instrument, for the
purpose of enlarging the jurisdiction of the courts of the United States, and
seizing a portion of the jurisdiction rightfully belonging to the states. We
have even seen the Supreme Federal Tribunal arrogate to itself, with a
general public acquiescence, the jurisdiction of deciding between two
contestants which is the lawful Governor of one of the states-a question
which, from its very nature, eludes federal jurisdiction and control.

Now, these are manifest evils of the difficulty of the restricted power of
amendment, because the difficulty is so great that you cannot cure these
defects pointed out by this legal writer. It was this which caused Jefferson
to exclaim that he saw the Federal Judiciary, in the enlargement of its
powers, advancing with noiseless steps, like a thief, over the field of
jurisdiction. I would caution you against inserting only such a power of
amendment that, hereafter, changes shall be measured only by the "dead
hand;" that, while you should give some permanence to the fundamentals
of the Union, and remove beyond the influence of passing phases of
opinion and the caprice of party politicians, principles which, although not
fundamental, are broad and basic, you should remember, at the same time,
that there are other provisions which are not basic, but are more transitory;
and which, with the changes that will occur in the social conditions,
relations, and modes of thought of the people

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may require to be recast. While taking security for fundamentals, the
degree of elasticity in the Constitution ought to be determined with regard
to conditions that are more or less of a transitional nature. We should rather
prefer to risk change with regard to those that are more stable, than to
impose an undue rigidity with respect to those that are more temporary in
their character. We ought not to create the evil of making the Judges not
merely interpreters, but the extenders of the Constitution, and we ought to
give the Constitution such a degree of elasticity as will render it capable of
being moulded to the changed conditions as time goes on, and prevent the
dangerous alternative of judicial expansion.

Mr. HIGGINS (Victoria). -

I am not surprised at the honorable Member (Mr. Glynn), misunderstanding the effect of the amendment suggested by the Victorian Assembly, because, certainly, it struck me in the very same way at first, until I heard the explanation from my honorable friend the Attorney-General of Victoria. But, as I understand it now, it is in brief this: That supposing the Senate or the House of Representatives should wish to have an amendment of the Constitution, and the other House does not agree to it, then there shall be a referendum to both states and people, as to whether the amendment shall be law or not.

Mr. ISAACS. -

That is it.

Mr. HIGGINS. -

If that is the proposal, I shall vote for it. I think the Premier of New South Wales is quite right when he says that it is not a radical matter at all. It is not a question of liberal politics or conservatives politics, but simply a question of common sense, and it is a device that may be used either by the Senate or by the other House. If the Senate should wish to have an alteration of the Constitution, and possibly it will, I do not see why, assuming that there have been due safeguards taken, it should not have the matter referred to the states and to the people as here proposed. But, in passing, I may say that I myself think there ought to be a distinction between two classes of changes in the Constitution. I think the states are right in insisting that the powers which are conferred by clause 52 of this Bill should not be increased without very great precaution indeed. I think an alteration with regard to the rest of the Constitution, what I may call the machinery part, ought to be much easier than the forms for altering the Constitution with regard to the powers conferred by the states on the Federal Commonwealth. If a number of the states come together and say- "We are willing to surrender certain powers to the Central Government," I take it that we ought not to impose on them, against their will, without very great precautions, the surrender of other powers. I only throw that out now, because I want to see whether it would be worth while, for me, hereafter, to move an amendment in that direction. In supporting the amendment of the Attorney-General of Victoria, I do not support it in the least as being an extraordinarily liberal change. I support it simply as being a device that could be used both by the, Senate and the House of Representatives. The honorable member (Mr. Symon) said that the system proposed is not in vogue in Switzerland. Now, I have had the advantage of referring to a book, which the Attorney-General of Victoria has put into my hands, and,
after looking through that book, I have no hesitation in saying that, in substance, the proposal of the Attorney-General of Victoria is to be found in the Swiss Constitution of 1890 and 1891.

Mr. DOBSON. -
They have no responsible government there.

Mr. HIGGINS. -
With all respect, it is for the honorable member to show that responsible government makes any difference to this question.

Mr. DOBSON. -
Surely it does.

Mr. HIGGINS. -
I think not. In regard to Switzerland, I will refer to Articles 118, 119, 120, and 122 of the Act of 1890.

Their effect, without reading them in full, is this—that when the two Houses differ, not only is there a duty to have a change of the Constitution remitted to the states and to the people, for acceptance or rejection; but there is the additional power that if 50,000 people from any part of the republic should wish to have it referred to the people in the states, they can have it referred.

Mr. DOBSON. -
Does the Swiss referendum apply to amendments of the Constitution?

Mr. HIGGINS. -
There is not the least doubt of it. In the book which the Attorney-General of Victoria handed to me, it is shown that the Act of 1890 applies to a total revision of the Constitution, and then, because they found it convenient, they applied the system afterwards to a partial revision of the Constitution. Article 120 provides that, if either the Council or the Federal Assembly passes a resolution for the total revision of the Federal Constitution and the other House does not agree, or if 50,000 Swiss voters demand a total revision, the question whether the Constitution ought to be revised or not is to be submitted to a vote of the Swiss people. Article 122 says that the amended Federal Constitution shall take effect when it has been adopted by a majority of Swiss citizens who take part in a vote thereon, and by a majority of the cantons.

Mr. MCMILLAN. -
The provision in the Swiss Constitution is not on a line with this clause.

Mr. HIGGINS. -
If I have not succeeded in showing that I have not done anything. The idea is exactly the same, which is that if the two Houses cannot agree upon
a measure, it should be remitted to the people, who have today "Yes" or
"No." If the majority of the people and of the cantons say "Yes," the
amendment takes place. With regard to responsible government, there is a
distinction that has occurred to me, and it was referred to by Mr. Reid. I
have for some time been a strong adherent of the referendum, but I have
never been in favour of the referendum being used until the members
elected have taken the responsibility of saying "Yes" or "No" on a
question. I know that there is great danger of members saying: "We will
pass the measure in this House; it will do no harm, and the other House
will reject it, and we can send it to the people." I object to any action of
that sort. The advantage of representation is that any measure goes through
the refining process first in the minds of men who have been elected for
that particular responsible purpose. I should, therefore, having regard to
our system of government, be strongly in favour of a suggestion that was
thrown out lightly by Mr. Reid, which is that before a question is remitted
to the people it should be passed not in one session of Parliament only, but
in two sessions, with a reasonable interval between. A provision of that
sort would be wholesome in its operation. I am not in fear of hasty
legislation, but I am greatly in fear of honorable members shunting their
responsibility and saying: "It will all go to the people." I want members to
face their responsibility, and I want the people to have the advantage of a
long discussion before they commit themselves. I want them to have the
advantage of what appears in the newspapers, and of what takes place in
Parliament, and on the platform.

Sir EDWARD BRADDON. -
They will have that opportunity under the Bill as it stands.

Mr. HIGGINS. -
No.

Mr. TRENWITH. -
There will be too long a delay.

Mr. HIGGINS. -
I intend to vote for the amendment proposed by my honorable friend
(Mr. Isaacs), but I hope that words will afterwards be introduced either by
Mr. Reid or by some other honorable member to provide that before the
referendum is taken the measure shall be passed in two sessions.

Dr. COCKBURN (South Australia). -
As one who is strongly in favour of

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maintaining in every way the States House, I scrutinized this proposal very
carefully at first, but, on looking into it, I see that it does not in any way
strike at the influence of the Senate in the Federation. As long as we have a
double referendum there is nothing whatever to fear from my point of view.

Mr. ISAACS. -

It protects the states and the Senate.

Dr. COCKBURN. -

If the Senate represents its constituents on any question of an amendment of the Constitution, it has nothing to fear from an appeal to its constituents. On the contrary, it has everything to gain, because, without being subjected to the inconvenience, and I may say the expense, of a general election, the members of the Senate will have the advantage of obtaining a direct vote of confidence by means of the referendum. I am in favour of the referendum wherever it is possible with justice to app

Mr. LYNE. -

Would not this amendment provide for a referendum of the whole people and not of the states?

Dr. COCKBURN. -

No. I understand from Mr. Isaacs that he has no such intention. It would probably be safer to say, instead of "in the manner provided by this Constitution," "in the manner provided by this section."

The CHAIRMAN. -

An amendment has been handed to me by the honorable member to insert, after "people," the words of the Commonwealth and of the states."  

Dr. COCKBURN. -

Under the Constitution as it stands there is only one form of referendum, but no doubt it would be better to say "as provided by this section." In the support I have given, and shall continue to give, to the Senate, I have never regarded that branch of the Legislature as a conservative House. I do not want to see either House a conservative House that will stand in the way of the will of the people. I do not think there is any fear whatever of the Senate being the more conservative body. That House which has the largest infusion of South Australian democracy in proportion to its numbers is likely to be the democratic House. Several honorable members have said that the referendum should only take place after the due enlightenment of the people by means of a discussion in Parliament. Under this amendment there will be no referendum without very considerable discussion, and if Mr. Reid's suggestion is adopted there will be still further discussion in both Houses. That difficulty is, therefore, got rid of. After mature consideration, I intend to support Mr. Isaacs in his contention, but I would remonstrate with the honorable member in regard to a statement be made at the opening of his very able remarks. His remarks are always able and most convincing; but why did he start with the assumption that I was
going to oppose? I desire briefly to refer to the statements he made with regard to the difficulty of amending the American Constitution. The honorable member knows too well for it to be necessary for me to inform him that this difficulty does not necessarily point to any analogous difficulty here. We only require an absolute majority of the Houses, whereas in America a two-thirds majority is necessary. Then again, we only require a majority of the states on the referendum, whereas in America there must be a three-fourths majority. These analogies do not therefore hold good. The honorable member's argument with regard to any general feeling of dissatisfaction as to the position of affairs in America under which Nevada has a vote did not satisfy me either. That relates to a different clause of the Bill altogether than that which the honorable member now seeks to amend, and the acceptance or rejection of the amendment would, so far as that matter is concerned, make no difference. I have still to be convinced that in America there is any solid dissatisfaction with that clause in the Constitution which provides that each state shall have equal representation in the Senate, even if the maintenance of that principle does lead to such an anomaly as that of Nevada having a vote. I still ask the honorable member if he can bring forward—and I shall be only too glad if he can—any substantial evidence that there is in the United States any large body of public opinion opposed to equal representation in the Senate?

Mr. ISAACS. -

I quoted a number of authorities in Adelaide.

Dr. COCKBURN. -

There is dissatisfaction with regard to the mode of election of the Senate, but I do not believe that there is any considerable proportion, much less a majority, of the people, who, to overcome any anomaly, would be willing to strike out the clause which provides that no alteration in the representation of the Senate shall be made without the consent of the states concerned.

Mr. HIGGINS. -

I could give you numerous newspaper extracts.

Mr. REID. -

I hope the honorable member will not introduce the question of the equality of the states now.

Dr. COCKBURN. -

No, I will not. I was very much struck with the remarks made by Mr. Reid on this question. I was glad to hear him say that the Senate would be a popular House springing directly from the popular vote.
[The Chairman left the chair at four minutes to one o'clock p.m. The committee resumed at six minutes past two o'clock p.m.]

Mr. MCMILLAN (New South Wales). -

It seems to me rather difficult to judge of this matter on its merits. There are two large sections of this Convention— one section who are anxious, as I think my honorable and learned friend (Mr. Isaacs) is, in every possible place in this Constitution to put the principle of the referendum; and there is another section who think that the principle of the referendum should only be adopted as the last resort, and under some very peculiar circumstances. It has been said that there is a very little difference in this amendment, and that it does not mean much, but there is a great deal of difference in the manner in which you apply the referendum under various circumstances. There is a tremendous difference between asking the people to say yes or no to a piece of legislation, or an amendment of the Constitution, which has had the sanction of two Houses, and has gone through that constitutional course, and asking them in the first place to become the arbiters between the two Houses, and in the next place to practically legislate for themselves, because you say you will throw before the electors of the country a matter which is absolutely in dispute, which has not had the sanction of the two Houses of Parliament, to which they look as the essence of their Constitution for a decision upon all matters. The only reason that I can see for the amendment of Mr. Isaacs, and which probably to some extent induced him to move it, is that it will provide for the want of an initiative. There is no doubt it is quite possible that under this Constitution the voice of the people might require to be heard in some great matter with regard to the amendment of this Constitution. There is no doubt that this amendment does to a certain extent effect that object, only in an indirect way. It might practically come to the same thing; but I think it would be far more straightforward on our part to introduce that as a question to be debated on its own merits, because we cannot get away from this fact, that the referendum is not a

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matter which has laid fast hold on the people of these colonies. What I said once or twice before, dealing with certain matters such as compulsory arbitration, provision for the poor of the country, applies in this case—that is, we have no right to introduce into this Constitution any experimental legislation. We must look to the future to guide us, as it has guided all British communities, as to the safety of going away from the broad lines of our own Constitution. I consider that this amendment does strike a blow at the vital principle running through the whole of this clause. This clause takes it for granted that we are still under responsible government, that we
are still under a system of bi-cameral government, and that the people look almost in every case to complete harmony between these two Houses for their own protection before anything is devised as a matter of legislation. I do not think it is necessary to say very much more. At the same time, I do think that this principle of the referendum ought not to be dragged in where it is not absolutely necessary. Therefore, if I have to give my decision at all, I think it is safer to leave the clause as it is. It is not a matter that requires long speeches or specious argument. The principle is simply before us whether in this case we desire the people to be arbiters between the two Houses in case of difference.

Mr. ISAACS. -

That is the question.

Mr. MCMILLAN. -

We are framing a Constitution which, while it is framed on popular principles, is a Constitution which we believe will last for all time, and a Constitution in which, while you have every scope for liberal enterprise in future, ought to be to a certain extent conservative in its instincts, and we ought not to fritter away this conservative element by any principles introduced into the Bill. These are my views, and I think, as a matter of safeguarding the Constitution and carrying on for the present on the lines on which we have always moved, I shall be obliged, with all due consideration for the very able argument of Mr. Isaacs, to vote against his amendment.

Sir EDWARD BRADDON (Tasmania). -

This clause was framed and adopted at Adelaide after very full consideration, and with a full determination on the part of members of the Convention generally that any alteration in the Constitution should be made not too easy. It cannot be said that any reference to the people on this great question is required by reason of urgency with regard to the Government of the day. The Government could not be hampered in its functions by the refusal of either House to adopt any amendment whatever of the Constitution-

Mr. ISAACS. -

Why not?

Sir EDWARD BRADDON. -

Because all that is required for carrying on the government would surely be apart from this matter of a change in the Constitution. The Right Hon. Mr. Reid mentioned, as one argument in favour of the suggested amendment, that with the addition that he proposed to make it would give the people of the colonies an opportunity of considering, both through the press and by means of public discussion, the desirability or otherwise of
this amendment. That is to say, the people would be educated to give a just vote upon the subject when they were called upon to do so. That argument applies just as much to what will happen under the clause. If one House of the Parliament objected to an amendment of the Constitution proposed by the other House, the people between one session and the next would have ample opportunity to discuss the matter, the newspapers would enlighten them as to the nature and the desirability of the proposed change, and, if the voice of public opinion were loudly in favour of the change, one House would be sure to give way. We have to remember that the great body of the people will be just as much represented in the Senate, man for man, as in the House of Representatives. Either the Senate or the House of Representatives would yield to its constituents—the whole people of Australasia—and this would save any further reference of the matter to the people. I believe in the clause as it was passed in Adelaide, and I shall support it as it stands.

Mr. OCONNOR (New South Wales). -

I intend to support the clause as it stands. I do not think that the ground which I take in doing so need necessarily depend upon my views in regard to the referendum. I have already expressed the view, and I firmly believe, that the referendum is an expedient which should be adopted only under very extraordinary and special circumstances, such as the circumstances to which it would be applied under the clauses dealing with the amendment of the Constitution, and then it should be applied only after the fullest possible opportunity has been given for the Houses to exercise their opinion and their responsibility. I object to the proposal, because it is of the very essence of the process by which the Constitution is to be amended that both Houses of Parliament shall, first of all, express their opinion upon a proposed amendment. Of what use is it to provide that any proposed amendment shall go before them, if because they do not agree with respect to it they are to be immediately deprived of their right of decision in regard to it? What is the use of sending it to them, if, supposing they do not at once agree, it is to be afterwards referred to the people? We cannot be too careful in making it plain upon the face of the Constitution, which guarantees the maintenance of the rights of every state entering the Federation, that the Constitution will not be lightly interfered with. It would be a derogation of that principle if we were to place the alteration of the Constitution in the hands of a majority, which might be obtained at any time under the influence of some popular excitement. I had not the pleasure of hearing the speech of the Attorney-General of Victoria, but I understand that the reason he urged in favour of his amendment was that the time
consumed in waiting for an agreement of the Houses upon a proposed amendment of the Constitution might be a serious obstruction to the passing of that amendment. My answer to that argument is that I hope we shall provide in the Constitution some means by which, if the Houses cannot agree, they will be sent to those whom they represent to get a fresh mandate from the people. If they come back from the people unable to agree upon such an important matter as a proposed amendment of the Constitution, the country will not be ripe for such an amendment. The Constitution, which will be a guarantee to every one of the states of the permanence of the agreement they have made, ought not to be disturbed unless there is such a large preponderance of feeling throughout the country in favour of an amendment that it can be carried under the provisions we have already inserted in the Bill. It is true that the American Constitution is somewhat too rigid in its methods of amendment, but we have gone a long way beyond the American Constitution. I cannot understand that there should be any difficulty, considering the processes which will have to be gone through in order to secure that the Houses shall represent the opinion of the country, in obtaining the agreement of the Houses in a matter of such common interest as a proposed amendment of the Constitution. It was suggested by the honorable member (Mr. Higgins) that a distinction might be made between the amendments of different portions of the Constitution. In theory, a good deal might be said for such a distinction. No doubt many amendments of the Constitution would not affect legislative or territorial rights, but would be mere matters of procedure. But, in practice, how are you going to draw a line which will separate them?

Mr. HIGGINS. -

Clause 52, and perhaps clause 53, might be dealt with separately from the rest of the Bill.

Mr. OCONNOR. -

One can never tell what importance even an amendment affecting a matter of procedure may have to the contracting parties.

Mr. HIGGINS. -

It is not a question of importance, because all amendments would be important—it is a question of delegating certain subjects to the Central Government. The states ought not to be bound to delegate other subjects except with their own consent or with great precautions.

Mr. OCONNOR. -

As has been suggested in the course of the debate, this is not an occasion
for long speeches. We shall probably have to deal with the general principles of the referendum when we come to the dead-lock clauses. I thought it necessary, however, to express my opinion upon this subject as concisely, but still as definitely, as possible. I do not think there is anything we should be more careful about than to secure the permanence of the Constitution which we are creating, and I think we shall be acting unwisely, in the interests of those who will compose the future Commonwealth, if we allow the Constitution to be altered before it has been ascertained in the surest way possible that the majority of the people desire the alteration.

Mr. DOBSON (Tasmania). -

The chief objection I see to the amendment is that the clause is a most admirable one, and everything that the most democratic member of the community should require. The Constitution embodies the bargain and the terms upon which the different states will enter the Federation. The Attorney-General of Victoria and those who think with him are not content with the very wise and simple provision that before any amendment of the Constitution is made it shall be suggested by the two Houses of Parliament, although all that is required is a bare majority in each House. The honorable and learned member wishes to provide that if one House objects to a proposed amendment the people may be asked what they think about the matter. Surely if only one House considers an amendment necessary, while the other emphatically asserts that it is not necessary, there is no occasion to submit the question to the people. Am I not entitled to argue that, as both Houses spring from the people—as they are both elected upon manhood suffrage—a disagreement between them would show that the people had not made up their minds upon the question in dispute? It would be little better than a farce when the intelligent persons who represented the people could not agree about a question of this kind to go back, I will not say to the ignorant, but to the less enlightened electors, and ask them to decide it. This proposal strikes at the very root of our system of government, wherein the people admit that they have not the experience, the intelligence, or the time to govern themselves, and, therefore, they depute representatives to do it for them. Two most important questions have been raised during the debate, and I think we ought to answer them both in the same way. The first is—Do the provisions against dead-locks in connexion with ordinary legislation apply to dead-locks occasioned by a proposal to amend the Constitution? It has been asserted that they do, but I confess that I did not read the Constitution in that way. I thought that the chapter relating to the amendment of the Constitution was a chapter in itself, until it was pointed out to me that a proposal to amend the
Constitution could be treated in the same way as an ordinary Bill when brought under the operation of the dead-lock clauses.

Mr. ISAACS. -
   How could it?

Mr. HIGGINS. -
   It could not. The dead-lock clauses only apply to laws passed by the Parliament.

Mr. DOBSON. -
   But some honorable members argue that they would apply to a proposal to amend the Constitution.

Mr. HIGGINS. -
   No, because the Constitution is not passed by the Parliament.

Mr. DOBSON. -
   Well, I hope the provisions for amending the Constitution will be kept entirely by themselves, and that they will set out in most specific terms the process by which amendments can be made. The honorable member (Mr. Higgins) made a very important suggestion, which the honorable and learned member (Mr. O'Connor) has dealt with to some extent. His proposal was that if you are going to have a very easy way of amending the Constitution you should divide amendments into two classes. I was very much struck with the suggestion, but I see that there would be a difficulty in drawing a distinction between these two classes. I shall not, however, consent to the amendment of the Attorney-General of Victoria. If it were carried, all that would be necessary to do to secure amendment of the Constitution would be to get a clique in one House to pass a resolution in favour of it, and then, notwithstanding the objections of the other House, appeal to the people upon it. Why, sir, the honorable member is actually giving us a popular initiative in reference to the fundamental amendment of the terms of our Constitution. Is that reasonable? Is there any common sense in it? At a time like that, disagreement between the two Houses will show that the people were not ripe for settling it. Look how many questions we have at the present day in which the quotation that Mr. Deakin gave us from that far-seeing Judge comes in-"When the Devil himself could not ascertain the minds of the people." I wish that the representatives of Victoria would bear that little quotation in mind more frequently, because on most questions the people's mind is not made up until those questions have been dealt with legislatively and practically for one, two, three or four years. Take the social legislation with regard to the factory laws now going on in this colony, for example. Will any one tell me that that question is ripe to be submitted to the people? Why, sir, I say
to our friends of Victoria that that question is not ripe to be submitted to the foremost men of their colony. And a number of such questions are coming on just now in Victoria—notably the half-holiday question—in which I take a great interest. I observe that, on that question alone, 400 summonses have been issued within the past few days. The people of Victoria, like the people of New Zealand, are engaged in experiments in reference to factory and social legislation, and it will be monstrous that, the moment a disagreement arises between the two Houses of Parliament, we should provide that they must go back to the people and ask the people to make up their minds about the question at issue, when even the more intelligent men in Parliament have not been able to do so. I think that the adoption of the amendment would weaken the Senate, that it would cut at the principles of constitutional government, and would be a most dangerous provision to put in the Constitution. The clause as it stands, in my opinion, is a most admirable one, and if the leader of the Convention is going to sum up this debate in his usual clever judicial style, I hope he will point out to the Convention that there are abundant reasons why we should reject this amendment.

Mr. KINGSTON (South Australia). -

I shall be found recording my vote in favour of the amendment of the Attorney-General of Victoria. I did not intend to speak, but, after listening carefully to the debate, I felt that the point which has just been made—that the provisions relating to dead-locks do not affect alterations of the Constitution—rendered it absolutely necessary that we should provide some comparatively facile means by which those alterations can be made. The greater part of our deliberations during the session in Sydney was occupied in devising some means for the solution of dead-locks. A scheme was arrived at, which will probably be amended and improved here; but when we are told that that scheme, whatever its shape may be, will not apply to amendments of the Constitution, then it means that it will not afford a solution of the difficulties of a crucial character, which are likely to occupy the attention of the Federal Parliament. Now, there is no matter on which feeling is likely to run higher than on questions of the amendment of the Constitution. What is the good of providing for the solution of a difficulty of a minor character, as regards ordinary matters, which seem to me likely to sink into comparative insignificance as compared with questions of alterations in the Constitution, when you leave untouched a matter of this sort? And yet, in the one case, you are at great pains to provide a means of declaring which view shall prevail—the Senate or the House of Representatives; while, as-regards questions greater to all,
in which public feeling is likely to be strongly divided, not only do you not provide the means of alteration of the Constitution, but you introduce greater difficulties. In the case of the alteration of the Constitution, if we intend to adhere to the provision as it is now proposed, the position will be this: Before the people, either by dual referendum or by national referendum, can have a word to-say on the subject, the two Houses must be agreed, and their agreement must be of such a character that it will be certified to by absolute majorities.

Sir JOHN FORREST. -

Well, that is all right.

Mr. KINGSTON. -

I think that probably under those circumstances a reference to the people might be absolutely unnecessary; but to declare that until that agreement is arrived at there shall be no possible reference to the people seems to me to be contending for a position which cannot be seriously-supported. The view I take of the matter is this: These two Houses ought to be maintained in their respective positions as exponents, as regards the Senate, of the will of the peoples of the states; and, as regards the House of Representatives, of the will of the people of the nation. But in all questions where one House it may be, as put by the Premier of New South Wales Mr. Reid), the Senate-proposes an amendment which is rejected by the other House, and again, after an interval carries that amendment-

Sir JOHN FORREST. -

Oh, you have that in your mind, have you?

Mr. KINGSTON. -

I have both positions in my mind, and I ask the Premier of Western Australia to deal with the matter in a similar way, and not to look at it from the position of one House or the other, but from the position of both. And if it is proposed here to give a right to the Senate which was denied to the House of Representatives, or to give to the House of Representatives a right which was denied to the Senate, I should be found dissenting from it. But the proposal is that, when either House differs from the other in a matter affecting the Constitution, and after a reasonable interval again affirms its position, instead of the dead-lock continuing, there shall be a power of appeal to the constituents of the two Houses to say what shall be done under the circumstances. Why find fault with that proposal? Does Sir John Forrest desire that the Senate should reject an amendment of the Constitution favoured by the peoples of the states?

Sir JOHN FORREST. -

Both Houses of the local Parliaments are continually changing their Constitutions.
Mr. KINGSTON. -
That may be, and if, through any alteration of the Constitution of either House, the difficulty is other-wise solved, well and good; but is it to be tolerated that the House of Representatives or the Senate, in defiance of the will of its constituencies, whichever House it may be, should prevent an alteration of the Constitution desired by the one House or the other being given effect to?

Sir JOHN FORREST. -
The Constitution ought not to be alterable too easily.

Mr. KINGSTON. -
I thoroughly agree with my right honorable friend that the Constitution ought not to be alterable too easily, but to say that it cannot be altered at all, to that the general provisions as to deadlocks shall have no application whatever to questions involving the amendment of the Constitution, and that a reference to the people by the dual referendum shall only take place when it is practically unnecessary-when the two Houses agree-is to put forward a proposal that cannot be supported.

Sir JOHN FORREST. -
That state of things exists at the present time in all these colonies.

Mr. KINGSTON. -
There are a variety of conditions in existence at the present time in the various colonies which we desire to amend. No doubt the Premier of Western Australia-rejoicing, as he does, in a brand new Constitution containing all the latest improvements-does not see the necessity for this provision in the same light as I do, but in a few years the Constitution of his own colony may require amendment, just as the Constitutions of other colonies not go favorably situated in that respect as Western Australia require amendment now.

Sir JOHN FORREST. -
We can get on very well without this.

Mr. KINGSTON. -
But the position that is put by the Attorney-General of Victoria is that on a question of the amendment of the Constitution, when both Houses of the Federal Parliament are hopelessly at issue, there should be a right of appeal to the constituencies of each, and, it seems to me to be so reasonable a proposition that I shall be found recording my vote in favour of it.

Mr. BARTON (New South Wales). -
I do not intend to keep the committee at any length on this subject. I have endeavoured to look at this matter in the way in which some of my friends
who think differently from me view it, with the object which one always has in view—that we should endeavour to bring our opinions together as closely as possible. But I have not yet been able to see that an amendment of this kind inserted in the amendment clause of the Bill would be an improvement of the Constitution. I do not wish to put the matter on many grounds; but there are one or two broad grounds on which I think it may well be put. The Constitution, as it is at present drawn, provides that there shall be an absolute majority of the Parliament and a majority of the electors when the question is referred to them—a majority that will denote in that case that the greater number of the whole of the electors, and the greater number of the electors of the majority of the states, will be concurring powers. Now, it is said that this is too difficult a method of altering the Constitution, and we are asked to consider the difficulties that have arisen in America, because of the difficulty of amending the Constitution of the United States. Well, what is the American provision? It is to be found in Article 5 of the Constitution of the United States, and it practically amounts to this—that there shall be a two-thirds majority of the Houses. That is to say, out of every 30 there shall be a majority of 20 members, not as we propose out of every 30 a majority of 16 members; that after that has taken place there shall be a three-fourths majority of the states, shown either by their legislation or by conventions of the people. That, I think, is a brief description of what it amounts to. So with regard to that Parliament, the majority must be one of two-thirds in each state, or in the alternative there must be an application of the Legislatures of two-thirds of the several states. Then, on this application, a Convention is to be called-

For proposing, amendments which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

With a certain proviso as to the first and fourth clauses in the ninth section of the First Article.

Mr. DEAKIN. -

One of those has never been used.

Mr. BARTON. -

No, but there are the difficulties in the way of the amendment of the American Constitution—first, that the matter cannot move without a two-thirds majority of both Houses of the Federal Legislature, or the
applications of three-fourths of the Legislatures of the states. And when one or other of those motive processes has taken place, there can then only be a success of the amendment if the states approve by a majority of three-fourths, shown either by their legislation or by conventions of the people. That is not only a complicated process, but it is one of extreme difficulty. Let us contrast it with the method proposed in the Constitution—that there shall, in the first instance, be an absolute majority of the two Houses, not a two-thirds majority, and that there shall afterwards be a numerical majority of the electors shown as to the whole body politic and also as to a majority of the states. In either of these positions, without speaking of the difficulty of the alterations in the American Constitution, the Australian process is very much more easy than the American process for the purpose of enabling amendments to be made, in that it only interposes between the proposal of the amendment and the taking of the vote such stages as will insure the deliberation, first of Parliament, and next of the people. These seem to me to be the principles at the bottom of the amendment clause in the Constitution. It is now proposed to make this more easy still, and in what way? The proposal really amounts to this: That the matter shall be settled by the majority of the electors of the Commonwealth, and the majority of the states voting through their electors, whether the Houses of Parliament agree or disagree.

Mr. ISAACS. -

They must have one House with them.

Mr. BARTON. -

Whether the Houses of Parliament, I repeat, agree or disagree. It is said that they must have one House with them. The proposals are numerous about which you get at least one House to agree, and you very often find, not often on questions which involve a distinction between liberalism and conservatism, that the modes of reasoning which commend themselves to one House are not those which commend themselves to the other. Consequently, you get into this position under this amendment, that provided you can get a majority in one House of Parliament, it does not matter whether your Houses of Parliament agree or disagree. That is to say, if once a vote of a majority can be taken in one House with the interposition suggested by the honorable member (Mr. Reid), if that is adopted, that the thing shall occur in two consecutive sessions, then a vote shall be taken by the people. I object to this proposal; having applied my best consideration to it, I cannot get out of my objections to it. The first objection seems to me to be this—that with the one condition of getting a vote in one House of Parliament—a vote repeated if you like—it then does not matter whether the Houses of Parliament agree or disagree. It is only one
degree removed from saying that it does not matter whether there is a Parliament or not.

Mr. HIGGINS. -

It must be a big thing for the Ministry. A Ministry cannot leave open such a question as this.

Mr. BARTON. -

The Ministry may take sides one way or the other. They have always to take sides about everything unless they can make a question which ought to be a Ministerial question sometimes an open question.

Mr. HIGGINS. -

I mean in two sessions.

Mr. BARTON. -

The Ministry may seek to avert, if you like, some impending disaster to themselves and their policy by an amendment of the Constitution, and if one of the means of seeking to avert disaster is to endeavour to obtain an amendment of the Constitution, then an,

apportionment of such enormous means to so little a thing as the life of the Ministry makes the proposal still more objectionable.

Mr ISAACS. - No one rests it on that.

Mr. BARTON. - Of course no one rests it on that. But we have to consider in all these cases what are the probabilities of misuse, and there one can see a very strong probability of misuse; the more a Ministry is fighting for its life the more misuse there is likely to be made of the proposal. That seems to be one objection: That provided you get the one condition precedent, which in many cases is not a difficult one, of securing a majority of one House, and, if Mr. Reid's proposal is accepted, having that majority repeated, then from that point it does not matter whether you have a Parliament or not. I have been against the referendum on general grounds. I have been against the referendum on the ground that it is a proposal which tends to eat away the foundations of responsible government. I will not go at length into my objections to the referendum on that ground; that ought to be reserved for another part of the Bill, I think, but I must state, for the purpose of my argument, that I adhere to that objection to the referendum as applied to all ordinary legislation-of course, the objection does not inherently apply to the referendum as proposed in the amendment clause of the Bill when an endeavor is made to make the people an arbiter between the two Houses, as to a concurrent proposal of legislation, or as to the question whether legislation shall be moved or whether it shall stand. I have always taken the position that I object to the referendum, not from any inherent objection to the voice of the people
being taken, but because the referendum is, under such circumstances, when coupled with the provisions of responsible government, a means of eating away the very foundations of responsible government, and rendering responsible government a myth. That may, or may not, be a right position, and it remains to be argued under another part of the Bill, but holding that opinion I have to apply it to the condition of the present proposal, and in the application of it. I find there is a further difficulty in the way of my agreeing to this proposal, because if, as I have pointed out, it is true that, provided that you get the consent of one House, perhaps once repeated, then it does not matter whether there is a Parliament in the way or not. Then the other objection, which applies to the referendum as a means of making responsible government through Parliament futile, must apply with tenfold force to a process which goes to the length of making it immaterial whether there is that very basis of the institution of Parliament or not. So that, if the objection to a referendum is sound on the ground that it tends to undermine responsible government, where the very source of responsible government is the Parliament, and if it tends to undermine the Parliament, it is ten times more objectionable. Now, that is an objection which has no application to the clause as it stands. It applies to the amendment, because with reference to the clause as it stands, taking the matter in that broad way in which you must consider political proposals, a proposal to amend the Constitution is not, in general, a question of Ministerial responsibility, and so the proposal that the people should decide on an amendment of the Constitution after it has acquired the sanction of Parliament is one which is generally independent of the ordinary objections to the referendum.

Mr. SYMON. -

The people are only asked to set their seal to what Parliament has done.

Mr. BARTON. -

That is the position of affairs; the people are asked to say whether they ratify what Parliament has done. In the first instance, the responsibility of Parliament must be exercised, and that responsibility must be exercised under conditions which show that it cannot be exercised in haste, and those conditions are imposed in this Bill. The lowest condition under which haste can be avoided in Parliament is here embodied; that is to say, the condition of an absolute majority, and not a condition, as in America, of a two-thirds or three-fourths majority. Finding that the amendment is radically different from the proposal in the Bill because it tends to make the existence of Parliament immaterial, while under the provision in the Bill the existence and the action of Parliament as a body are a condition precedent; finding
that there is that radical difference between them in that respect, and
finding also that there is this radical difference between them that the
proposals in the Bill do not, in their essence, tend to undermine the
principles of responsible government, while the proposal in the amendment
not only tends to undermine them, but also tends to undermine the whole
institution from which responsible government flows—holding both these
opinions it seems to me that the reasons are cogent against the,
amendment, and I cannot give it my support.

Mr. SOLOMON (South Australia). -

I would be extremely sorry to see any amendment such as either that
proposed by the Attorney-General of Victoria, or that to be proposed by the
Premier of New South Wales, introduced into the clause. It seems to me
that any attempt to amend this clause is an insidious attempt to whittle
away the rights and the powers which have been granted by this
Convention. What are the terms and conditions on which we have taken
upon ourselves to enter into what may be called a partnership in this
Federation? The whole of these will be contained in the four corners of this
Constitution as it leaves our hands. We fought for some weeks, on different
occasions, as to the state rights - as to the equal representation of the states
in the Senate - and in fighting that particular question all of us who
represent small states gave way a very great deal, when we were content
merely with equal representation in the Senate; recognising, as we did, that
in the House of Representatives, the House where the colonies will be
represented on the basis of population, where the Executive Government
will be, and which will hold the strings of the purse - the larger colonies
will have an over-whelming majority. Now, sir, having given way to some
extent what we know is a dangerous power to the larger colonies; having
shown a federal spirit; believing that the personnel of the Parliament will
be sufficient to protect the smaller states from any wrong in the future, it is
now proposed in an under-handed way, by a side-wind, to take away the
whole of these rights we have been fighting for, and to give the House of
Representatives the opportunity to alter this deed of partnership without the
Senate having anything like a control over it. It is all very well for the
Attorney-General of Victoria to say that the alteration of the Constitution,
whatever it may be, may originate in the Senate. Can any one here imagine
that such a thing will be possible? Can any one imagine that the Senate will
attempt to originate a proposal of this kind? Why, sir, the very ground-
work of this federation that the smaller colonies are agreeing to enter upon
is that the Constitution that we are now fighting for, peg by peg, and word
by word, will be one which will stand, not one which is to be readily
altered, not one which is to be tampered with on the slightest provocation,
or on any provocation at all; but one which cannot be altered except on such terms as will secure a proper and full consideration of it, not only by the people, but by both Houses representing them. In most colonies it is provided that, in the event of an attempt to alter the Constitution Act, the amendment must be passed by the representatives in both Houses, and by an absolute majority.

**Mr. KINGSTON.** -

That is only as regards the constitution of either House.

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**Mr. SOLOMON.** -

A proposal to alter the Constitution Act must be passed by an absolute majority of both Houses.

**Mr. KINGSTON.** -

It is the constitution of either House with us.

**Mr. SOLOMON.** -

In that case the representatives of both Houses are more immediately amenable to the control of the people than the representatives will be in the Federal Parliament, and even there, where the whole interest will only be perhaps a matter of sentiment, where only one side will be interested, we have safeguarded the Constitution in that way. Now we seek to safeguard the Federal Constitution by stipulating that before there shall be any amendment of the deed of partnership, it shall be passed by both Houses of Parliament, one representing the various states on a population basis, and the other protecting the states against a majority in that House. Then, even after the two Houses have agreed, for fear that the people themselves who sent us here shall agree in too much haste to an alteration of the Constitution, we provide that they, as a whole, shall have the opportunity by a referendum to give their voice, yes or no, to the proposed alteration. It seems to me that, if we are going to commence at this stage of our proceedings to whittle away these very rights we have been fighting for right through, to alter the whole Constitution, or to give an opportunity to alter the Constitution in the way suggested by this amendment, we shall be doing a most dangerous thing. What are these alterations of the Constitution likely to be? It is almost impossible for us to prophesy what questions may arise, but when we give power to alter the Constitution virtually to one House, backed up as it may be by a popular cry-virtually to the House of Representatives, because that is what it means—it means taking away, to a great extent, the power of the Senate. If we hand over these powers, as suggested by the Attorney-General of Victoria, we have to consider to what extent this amendment may lead us. It is quite possible
that a majority in the House of Representatives may consider that the protection we have given to the various states by means of equal representation is too great.

Mr. KINGSTON. -
That is expressly safe-guarded in the latter part of the amendment.

Mr. SOLOMON. -
I do not say that the proposal will be made that the states should not have equal representation, but I do say that a proposal leading to the same sort of thing might be made, and would cut away the bargain we are making—that is to say, some insidious amendment might be proposed by the House of Representatives, and public opinion be worked upon for the purpose of carrying it.

Sir WILLIAM ZEAL. -
So it would be.

Mr. SOLOMON. -
I think it is extremely probable.

Sir WILLIAM ZEAL. -
That is the intention.

Mr. SOLOMON. -
It is possible that it would be attempted to take away the power of the states in the Senate.

Mr. ISAACS. -
The honorable member overlooks the fact that the majority of the States have to concur, and they have quite as much protection in that respect as is given to them by equal representation in the Senate.

Mr. SOLOMON. -
I have not so much confidence in the referendum as the Attorney-General of Victoria has. I do not think that if the people of the states were properly placed in the possession of the facts and of the dangers there would be any fear, but, judging from the feeling which arises in the various colonies now when there is a dispute between the two Houses of Parliament upon a matter of local politics, we can form an estimate of what would be the effect in the event of a dispute between the Senate and the House of Representatives in the Commonwealth Parliament. I know that in nine cases out of ten where an appeal is made to the country
getting a verdict in favour of the Lower House. And so it would be in the Commonwealth if the proposal of the Attorney-General of Victoria were carried. How simple it would be in the hands of clever men who desired an alteration of the Constitution, to whittle away some power of the Senate, by making the dispute appear to be a fight between the Upper House and the Lower House, a fight between conservatives and democrats representing the people. I venture to say that in such a case the issue would not really represent the true and well-considered opinion of the whole of the people. At any rate, without prophesying what the result would be in such a case, I think it behoves us here, especially those who represent the smaller states, to hesitate very much before consenting to giving up one iota of the safe-guards we have attained in the clause under consideration. This is entirely a new phase of our experience in this Convention. We have been content before to fight out the question of state rights.

Mr. ISAACS. -

It is not a new question. It was debated and voted upon previously.

Mr. SOLOMON. -

But at that time the principle of state rights had not been so much approved of as it is now, and the question had not been before the various Parliaments of the colonies. Therefore, the discussion now has an added importance given to it beyond what it had in the earlier stages of the proceedings of this Convention. I do appeal as strongly and as earnestly as I can to those honorable members who represent the smaller colonies to safeguard this principle of equal representation in the Senate, and to stick to the clause, which has been carefully considered as it stands in the Bill. I appeal to them to follow the advice given to them by Mr. O'Connor and by the leader of the Convention, which is certainly on the side of the protection of the smaller states, and to avoid all possible danger. I hope that neither the amendment of Mr. Isaacs nor the amendment of the Premier of New South Wales—which merely seeks to alter Mr. Isaacs' amendment a little, and perhaps may influence a vote or two—will be adopted. I appeal to the representatives of the smaller states not to be led away by these arguments in any possible way, but to stand solidly by the Bill as it is, and not allow any portion of the rights which have been fought for and granted to be whittled away.

Mr. HOWE (South Australia). -

I rise to respond to the appeal which has been made by the honorable member who has just spoken. I consider that the clause as it stands is ample for the protection of the people of Federated Australia, and I cannot help thinking—while I must admit that this amendment emanates from one of the most clearly-cut intellects in this Convention—that I look upon it with
some little suspicion, inasmuch as the learned and able member who proposes it intends, I believe, to advocate equal representation.

Mr. ISAACS. - "Equal" representation?

Mr. HOWE. - Perhaps I should have said proportionate representation.

Mr. ISAACS. - What is your ground for saying so?

Mr. HOWE. - I know the tenacity of purpose of the honorable member, and that he is one of those whom nothing less than an earthquake can extinguish when he has set his mind upon a certain course. I fully expect, therefore, that he will bring forward such a proposal as I have indicated. It is admitted on all hands that we must have some departure from the American Constitution so far as its rigidity is concerned in regard to securing amendments of the Constitution. Well, we have done that. Here our Senate will be elected by the whole of the people of Federated Australia. It is quite different in America, where the representatives are elected in an altogether different way, and the voice of the people is scarcely heard in their election. Here the Senate will be elected by the whole of the people of Federated Australia, and every three years one-half of the members will have to submit themselves for re-election, in addition to which there will be special vacancies. There will, therefore, be a free flood of new blood continually from the body politic, and I do not see any reason for altering clause 121. I know that Mr. Isaacs and other honorable members representing Victoria are very much alarmed in consequence of the difficulties they have experienced in giving expression to the popular will in their colony. The Upper House has been somewhat of a stumbling-block in the way of progress.

Sir WILLIAM ZEAL. - Not at all. You know nothing about it if you say that.

Mr. HOWE. - It is asserted, and those who have watched Victorian politics must have come to the conclusion, that the Upper House and the Lower House in Victoria have not been exactly a happy family.

Sir WILLIAM ZEAL. - Yes, they have, of late years.

Mr. HOWE. - That is a revelation to me. It is the great dread of this obstacle that has impelled the Attorney-General of Victoria to move this amendment, but, as
I have pointed out, the election of the Upper House of the Federation will be on an entirely different basis. There is to be no limitation or property qualification for the Senate. The House of Representatives and the Senate are to be elected by the whole of the people, and, consequently, I cannot imagine disagreements arising such as have arisen in the Victorian Parliament. A great deal has been said about the referendum. The referendum, so far as I understand it, is one of those instruments that should be exercised only in times of great emergency, and as seldom as possible. Switzerland has been held up to us continually by honorable members as being a land of liberty. When we were boys we read all about that, but what do we find now? In this vaunted land of liberty, the referendum is in full force, and recourse is had to it even to determine a question of the salary of a high official, amounting, perhaps, to £600 a year. The whole of the 4,000,000 people are asked to exercise their votes on the question of whether the salary shall be £601 a year or £599 a year. The population there is within a small area, and it is easily got at, so to speak. In a wide continent like Australia it would be very expensive indeed to put the referendum into operation. I contend, therefore, that the referendum should be the last resource.

Mr. ISAACS. - That is all that is proposed.

Mr. HOWE. - No; you make it applicable in any dispute between the two Houses, and I agree with the contention of Mr. Solomon that it would be a gradual whittling away of the power of the Senate. What is the position in this vaunted land of liberty-Switzerland? One would imagine that its people are superior to ours. Any one who takes an interest in this country must know that, notwithstanding its vaunted liberty, the people allow their women to become scavengers in the streets of the principal cities.

Mr. ISAACS. - What has that to do with it?

Mr. HOWE. - It may not have much, but it shows that civilization and the referendum do not run together. I should like very much if I could to vote with the Attorney-General of Victoria. I recognise in him a man of true liberal spirit, but I think the experience of his colony has somewhat frightened him. It is in consequence of the obstacles he has met with in the Upper House that he submits this amendment. He looks upon the Federal Senate as much the same House as the Upper House of Victoria, whereas the conditions will be altogether different. There will be a constant
stream of new blood flowing into the Senate and into the House of Representatives, and they will both represent the people. For these reasons I regret that I have to record my vote against the amendment.

Mr. ISAACS (Victoria). -

I very much regret that honorable members who have spoken against the amendment suggested by the Legislative Assembly of Victoria have not seen their way to support it. When they come to look at the matter calmly and quietly they must, I think, admit that it offers not the slightest danger whatever to the smaller states. Every honorable member, from whatever state he comes, will see that the state he represents is as carefully and as thoroughly guarded by the referendum that is proposed—the dual referendum—as it is guarded in the Senate, and that the people whose interests are concerned are quite as able to preserve them personally as by means of their representatives in the one House of the Legislature. If it were proposed for an instant that this should be a national referendum pure and simple, I could understand the position taken up by my honorable friends (Mr. Solomon and Mr. Howe), but how can it possibly weaken the Senate or the interests of the smaller states any more than it can weaken the House of Representatives or the interests of the larger states? That is more than I can understand. I have not heard one word throughout the whole debate which in any way justifies such a position. I do understand the views of those honorable members who have urged that it is inconsistent with responsible government, but I do not agree with them. I will explain in a very few words why. It is said that responsible government in this sense means that the representatives are to act and to take the full responsibility of their actions. The course that I propose is much less disastrous to responsible government than the course adopted in the clause itself. At present the two Houses may agree to any proposed amendment of the Constitution. Honorable members may say—"Well, after all, let us assent to this we have not the ultimate responsibility; the people have the right to reject it either in the states or in the Commonwealth, and we may divest ourselves of the ultimate responsibility. Our saying yes is not final." I can understand that. That is the objection that is urged in England and elsewhere against the adoption of the Swiss referendum in ordinary federal matters, not where the Houses disagree, but after they have agreed. But when we come to say to the two Houses—"You are to battle this out as best you may, and if you do not agree you will then have to consider whether you should persist in the differences. If you do persist you must accept the fall responsibility of your position and let the people decide between you"—that, to my mind, instead of being adverse to responsible government, is carrying responsible government to the very highest point.
Sir JOHN FORREST. -
We have got that now.

Mr. ISAACS. -
If we had we should not ask for it—the amendment would be unnecessary. It seems to me that the argument that it is adverse to responsible government has no application. Then it is said that this is a much more liberal proposal than is contained in the American Constitution. It is more liberal, but that again is not the question. The question is whether it is sufficient for the people of Australia in order to prevent dead-locks on the most important, the most vital, matters that can ever come before the Legislature. The Premier of South Australia has pointed out with incontrovertible force that, while we have carried a mode or modes of settling dead-locks in much less important matters, we have absolutely left untouched the whole question of dead-locks on amendments of the Constitution. Now, are we to go before the people of Australia and say—"Here is your Constitution, a matter that has been very expensive in time, trouble, and money. Provision is made for many things, in some degree for settling dead-locks on comparatively minor questions, but, after the best discretion and judgment that your legislators can bring to bear upon this question, if you still desire, or a great body of you may desire, an alteration in that Constitution, it may turn out from the development of that Constitution, or difficulties of election, or election on personal grounds, and other matters that you may not have an opportunity afforded you of expressing your will on that vital question," many electors, I feel perfectly confident, will hesitate to give their votes for the acceptance of a Constitution which presents a bar such as I have described to its ultimate amendment. I can well understand how many of us, and many well-wishers of federation outside this Convention, could go before the people in the various states, and say to them—"There are provisions here with which we do not agree. There are provisions which we would like to have altered, but we think you are safe in accepting them, because there is a provision in the Constitution that if, after full and fair trial, you find it almost unbearable, you will have a means of escape." But that is denied by those who oppose this amendment.

HONORABLE MEMBERS. -
No, no.

Sir WILLIAM ZEAL. -
We do not want to have dead-locks manufactured.
Mr. ISAACS. -

I will point out how, because there is no provision whatever to be inserted if this amendment is lost for a settlement of any dead-lock on any Constitution question.

Mr. WISE. -

It is not possible that any dead-lock could ever arise.

Mr. ISAACS. -

Let us consider that. It is very easy to make such an assertion, but it is difficult to prove it.

Mr. WISE. -

The answer is that if the people desire an amendment of the Constitution they will return members disposed to make that amendment. If the matter is sufficiently important to require, an amendment of the Constitution the people will return men who will amend it.

Mr. ISAACS. -

Then there will never be any difference between the Houses, and my honorable friend might say the same thing about any other question.

Mr. WISE. -

They may have a dead-lock for a few weeks.

Mr. ISAACS. -

According to Mr. Wise, there is no necessity to provide for any deadlocks. The people are going to be at one. Therefore, there is no necessity for any Senate, because the House of Representatives will represent the whole people, or there will be no necessity for the House of Representatives, because the Senate will represent the whole of the people. There will never be anything but unanimity between the Houses.

Sir EDWARD BRADDON. -

The honorable member did not say that.

Mr. ISAACS. -

That is the effect of it.

Mr. WISE. -

Not at all.

Mr. ISAACS. -

I will show how, and I will refer to an argument which was used by the Right Hon. Sir Edward Braddon. He says this proposed amendment has not the merit of urgency. Let us look matters in the face. Suppose, as has actually happened in America-this is not conjectural, but an actual case-that it should be decided by our Supreme Court that a law passed by the Parliament that taxation for federal purposes was unauthorized by the Constitution by reason of any provision in it, that it was not uniform for instance, giving a definition of "uniform" that we did not anticipate, will
Sir Edward Braddon tell me that if there were two parties in the state, one House wanting the Constitution to remain as it was, and the other House wishing an alteration, that it should never go to the people? Does Sir Edward Braddon say that?

Sir EDWARD BRADDON. -

It would not if we did our business properly; there would be no occasion for it.

Mr. ISAACS. -

However well we may do our business, it is still open to a judicial interpretation, and the greatest urgency may arise, as has happened in America. In fact, matters of greater urgency may occur in the amendment of the Constitution than in ordinary federal legislation. Therefore, that seems to me to be an answer to the argument. Mr. Wise tells us that we cannot have any dead-lock. I hold in my hand a paper, for which I am indebted to a gentleman connected with the press, and to which I wish to call attention. It is The Speaker of January, 1898. Writing on the question of Australian federation, Professor Goldwin Smith writes from Toronto to the editor. He says-

The framing of a Constitution for a nation with a federal structure also presents great difficulties, as the Australians have found. If you have two elective Chambers with co-ordinate powers, you run the risk of a dead-lock such as they have had at Washington. The nominee Senate of Canada has no real power.

There we have a man quite outside our sphere of controversy. He is perfectly unprejudiced with regard to Australia. He has no party feeling with regard to us, and he gives us a warning as to this matter of dead-locks. On this question the Senate, of course, has co-ordinate powers.

Mr. GLYNN. -

Another theorist, Bagehot, said the same thing 40 years ago.

Mr. ISAACS. -

Then the honorable and learned member (Mr. O'Connor) said-and I quite agree with him so far-that the referendum ought to be used only under extraordinary circumstances. I agree with that, and the proposal is that it shall only be so used. I care not what details you insert within the bounds of reason, so that you may make that appeal as difficult as circumstances warrant. But when you say in one breath that it should only be used under extraordinary circumstances, and then in the next breath say "I am going to exclude it altogether from the Constitution," it is quite another matter.

Mr. OCONNOR. -

It is not excluded altogether.
Mr. ISAACS. -

It is in this respect.

Mr. OCONNOR. -

It is the process that comes on after the Houses have determined.

Mr. ISAACS. -

No; with great respect to Mr. O'Connor, it is, as I explained before, simply a ratification. Nothing but a ratification. But what I want to provide against are quarrels, prolonged and sustained disputes and controversies, between the two Houses. The struggle always is, we have been told on high authority, to make the national law conform with the national will. How can we do that if we erect the two Chambers of Legislature, which ought to be our servants, into our masters? Really the fight here to-day has been simply this. That we have taken Parliament, an institution of representative government, to be "the be-all and the end-all" of this Constitution, while we relegate to an inferior position the rights and wishes of the people behind it. One of my honorable friends said that parliamentary government had been a matter of centuries. We know perfectly well that it is not so—that it was only after the Revolution of 1688 that the power of the Crown was transferred to the Parliament. It was only in the beginning of the eighteenth century that Parliament became the master, and in England Parliament remained the master until 1832. Since then there has been a gradual but a sure shifting of power from the Parliament to the people, and it was well said in the House of Commons some years ago that the people were getting tired of the deluge of debate, and were looking forward to the consultation of constituencies. This is a tendency which we cannot resist.

Every day we see the right of the people to be consulted upon their own affairs becoming more and more acknowledged. Who will stand here or anywhere and deny that right? My honorable friends who take up the position that the Federal Parliament is to be all-powerful, that the end and reason of the Constitution is to erect a representative body of that kind, are, I think, standing in the way of the development of the people. I agree that the Constitution ought to be stable, but I deny that we should sacrifice the national energy to its stability. While it is a very great thing that the Constitution should not be rudely touched or hastily altered, we must admit, if we are fair to our consciences and to ourselves, that, after all, the Constitution is being made for the people, not the people for the Constitution, and we ought not to hesitate when we are asked to pro-vide a means of outlet for angry feeling, or to insure that the political development of the Commonwealth shall keep pace with the social and commercial development of the people. We should not be afraid, as a
learned writer has said, to tear a parchment more or less in the interests of the people. I am sorry that the amendment should have been resisted. If it had been accepted we should have been in a better position to go to the people, and, notwithstanding the difficulties contained in it, ask their acceptance of the Constitution with all our heart and soul. If the amendment is rejected we shall be compelled to fight upon many matters which we could otherwise have afforded to have let go untouched. In reply to the honorable member (Mr. Howe), who spoke about there being an intention on the part of honorable members to go for proportional representation, I say that I have from the first fought very hard to obtain equal representation in the Senate, in order to secure the adhesion of the smaller colonies, but I have fought for it as a concession to them, and I have no hesitation in saying that up to the present time no corresponding concession has been offered by honorable members representing the smaller states.

Sir JOHN FORREST (Western Australia). -

I think the time has arrived when we should come to a decision upon this matter. We have spent the whole day in discussing it, and the honorable and learned member has given us two excellent speeches in support of the views he entertains, although he must acknowledge that the large majority of honorable members are not in accord with him. Seeing that this is the case, I think the debate has been unduly prolonged. If every honorable member who found himself in a hopeless minority were to persist in arguing his case at great length, instead of being here a week or two we should be here for several months.

Mr HIGGINS. - The right honorable member forgets that he is at present in Melbourne, not in West Australia.

Sir JOHN FORREST. -

We are accustomed to the cry that if the amendment were passed it would greatly assist some honorable members in their advocacy of the adoption of the Constitution, but on the other hand it might have the reverse result in regard to other honorable members. We cannot get away from this fact, that in the Constitution under which we live, of which the great British Constitution is the prototype, there is no provision against disagreements of the two branches of the Legislature, and we have not found that the people require all this machinery for the prevention of dead-locks, but which I think would rather encourage dead-locks. We have found that they are quite content to rely upon the good faith, the good feeling, and the sense of fair play which exists in all British communities. The object of the proposal of the honorable and learned member is to enable the popular House, as it is called, to override the Senate. If I were
inclined to be frivolous, which I never am, I should suggest to him that whenever a difference occurred between the two Houses the dispute might be referred to the decision of the press of the country, or to the Ministerial organ.

Mr. REID. -

Which is the Ministerial organ in Victoria?

Sir JOHN FORREST. -

I do not know. I hope that we may now come to a division, seeing that there is no chance of the proposal being carried.

Mr. REID (New South Wales). -

I thoroughly agree with my right honorable friend that, as a general rule, this is not the place for long speeches. I spoke very briefly upon this proposal this morning, and I am going to speak very briefly upon it again now. I wish to point out to my right honorable friend and to other honorable members that, whatever our individual opinions may be in regard to the proposal, the Attorney-General of Victoria, in showing the earnestness which he has displayed in regard to it, has really only shown the zeal which he feels for the success of the federal enterprise. Every member of the Convention takes credit for a desire to promote the success of federation, and surely the best way of doing this is to make an earnest endeavour to frame a Constitution which will recommend itself to the great body of the people of Australia. Although the right honorable member (Sir Edward Braddon) speaks with great authority for Tasmania, he must recollect that the inhabitants of Tasmania, however intelligent they may be, will form but a small part of the people of the future Commonwealth.

Sir EDWARD BRADDON. -

I did not speak for the people of Tasmania only.

Mr. REID. -

Nothing convinces me more of the fact that those who are looked upon as the advocates of the rights of the states feel that they have obtained a remarkably good bargain, than do their persistent attempts to throw every obstacle in the way of securing the genuine expression of public opinion in the future.

Sir JOHN FORREST. -

That is not fair.

Mr. REID. -

As an observer of our proceedings, I feel that it is my duty to make these remarks, but I admit that every honorable member, even if he advocates what I conceive to be extremely illiberal views, is only striving for that which he believes to be for the benefit of the whole Commonwealth.
must all feel that, however greatly our ideas on these matters differ, it is quite possible that those who differ from us have thoroughly sincere motives and designs.

Mr. LYNE. -

But did not you support equal state rights?

Mr. REID. -

Exactly. I supported equal state rights in the interests of federation, because I felt that on no other basis was federation possible. And having, I won't say granted that concession, for I admit that equal state rights in the Senate is, as far as we have gone, one of the first principles of the federal enterprise, and therefore, without any grumbling, I have accepted that principle, and I have never sought to question it; but having done that, I am concerned to find that when a proposal is made which gives the Senate absolutely equal rights with the House of Representatives, and which gives the House of Representatives only the same privileges which the Senate will enjoy, I am very sorry that, there being a public opinion to which I have to appeal-

Mr. SYMON. -

The general election.

Mr. REID. -

Other Premiers are in a happier position, I have no doubt, but in New South Wales there is such a thing as public opinion, and there are absolutely methods of making that public opinion felt in that colony. That being the case, I am very anxious indeed to make this Constitution of such a shape that the great body of the people throughout Australia will feel-"Well, if this Constitution is in some respect or other wrong, there is some feasible method of bringing it right." Surely that would recommend the Constitution to the intelligent men in any colony.

Sir JOHN FORREST. -

So there is.

Mr. REID. -

I desire to point out to my right honorable friend that it will not do to make the observation which one honorable member made to Mr. Isaacs at the table a little while ago—that the people, if they want to change the Constitution, can send representatives to the Federal Parliament to bring the change about. That position is given up in this Constitution. Supposing the people sent such representatives in, and both Houses agreed to a Bill, that does not amend the Constitution. There is another process, that of referring it to the people of the colonies. Now, take the case of a difference between the two Houses. We have not left it in the good old-fashioned
style in which they could wrangle, like Kilkenny cats, until there was
nothing of them left; we have not got things in that sound constitutional
position in this Constitution. We have provided that when that deplorable
state of things occurs, if it ever does occur, the two Houses shall do a very
undignified thing, at all events, as regards the Upper House, namely sit
together, the Upper House with the Lower House, and consider their
differences. That is in this Constitution. It is not left to the good old
constitutional method of fighting it out at the polls. So that our
Constitution, as we have it at present, has departed from those ancient
land-marks which, according to some, were divinely planted, and ought to
endure for ever. Now, unfortunately for that idea, the intelligence of
humanity is growing, in spite of some opinions and of some examples to
the contrary, and the feelings of the people are becoming a little stronger,
and their intelligence a little keener. They have come to see that often, after
the most admirably balanced parliamentary machine has been constructed,
it breaks down in vital points at critical moments in such a way that the
will of those, for the expression of whose will this machine was
constructed, have no earthly chance of being heard. Now, the people are
awakening to this old delightful state of things, and see that it is a mere
mockery of intelligent men to talk of giving them a free Constitution,
when, by other parliamentary institutions, you range a thousand obstacles
in the way of their object being attained. And whilst I have gone great
lengths in my desire to see this great enterprise successful, day after day I
feel myself—and I wish to speak with the utmost frankness—in an atmosphere
which is absolutely foreign to the feelings of the great majority of the
people of Australia, as far as I know them.

Mr. DOBSON. -

No.

Mr. REID. -

Oh, I have no doubt I am wrong—the honorable member for Tas-mania
has spoken. At the same time, I wish respectfully to state that this proposal
is a crucial test in my estimation, because it is put forward in the most
reasonable form, it is put forward in a form in which the States House, as
representative of the majority of the states, is given an opportunity of
testing state interests which may be affected in the proposed amendment of
the Constitution. It gives the states power, and state interests a chance of
appealing for an amendment of the Constitution straight from the Senate to
the people, and yet, because of this unconquerable fear of free atmosphere
being let into politics, this unconquerable aversion to allowing the will of
those in whose name we legislate to be put on the statute-book-

Several HONORABLE MEMBERS. - No, no.
Mr. ISAACS. -

That is at the bottom of it.

Mr. REID. -

I do not wonder at the ejaculations which are evoked by such a phrase as "the will of the people," and yet, in solemn truth, every line of every law we have got in this country is written on the statute-book in and by the authority of the people of this country. And, although that is a basic principle of our Constitution, we find that, on this occasion, when an honorable member seeks to give even the States House a right to pass by the House of Representatives and go straight to the people of the states, as well as of the nation, under conditions which prevent a chance in the Constitution, unless a majority of the states agree to it, objection is raised to the adoption of that course. Now, I admit, considering the structure of this Constitution which permits of this reference to the people, and which compels a reference to the people, that if there were no provision in this clause that there should be a reference to the people, a very serious question would concurrently arise, one of vital principle, a vital issue between the referendum and party government, or what some think proper, constitutional government. If that question arose, I confess I should have much greater respect from those who differ from me, but under this particular clause that question does not arise, because the p

Sir JOHN FORREST. -

We have given it you; that is how it comes to be in the clause.

Mr. REID. -

My right honorable friend is a man whom we all love, but we find that it goes very little further. I did not find my right honorable friend supporting me to a finish, as I had hoped he would do, the other day.

Sir JOHN FORREST. -

Yes, we do.

Mr. REID. -

I had always, as the right honorable member knows, a very great admiration for him, and one of his greatest merits is the fact that he does respect the time of the Convention. I feel that I owe it to him, having shown me such an excellent example, not to prolong my remarks any further. I am glad that my remarks have been so pungent that my friends who differ from me will be pleased to see me resume my seat. Putting aside that vital question, which I admit is a most arguable one, about the introduction of the referendum, seeing that it is there, I will ask the Convention to give, under proper safeguards, after passing the proposal in two consecutive sessions, this right to either House; and one of my
The strongest reasons for asking this is that the mere expense of that provision in this Constitution may prevent almost the beginning of a bad feeling between the two Houses-almost the beginning of those evils which spring from a personal collision between these two great legislative powers in the state. Each would feel under a great responsibility in connexion with an amendment of the Constitution, and, under these circumstances, I do not see a better chance for liberalizing the Constitution in a fair way in harmony with the lines you have laid down than I see in this amendment.

Mr. WISE (New South Wales). -

I had intended to give a silent vote against this proposal, because I had thought that it was one on which we might all vote, having regard only to its merits and to its place in the Federal Constitution. But some of the speeches have convinced me that a silent vote against the proposal is very liable to be misunderstood. Some of the speeches have sounded like echoes from the dead controversies in almost prehistoric days in this colony, others have sounded as if they were indications of what we are told are going to be coming events elsewhere.

Mr. HOWE. -

Next June.

Mr. WISE. -

I shall treat the proposal as a question regarding the Constitution only. I shall refer only to those arguments which have a direct application to federal matters, and omit to pay any attention to arguments of a more local application. There is no question whatever in this amendment as to the acceptance or the rejection of the referendum. The clause as it stands, for which we will be voting if we reject this amendment, is an affirmance of the principle that the people have the right, by a direct vote, to determine what shall be the limits of representative government under the Constitution. They are the only persons who can say under what Constitution they will live.

Mr. ISAACS. -

If they are permitted.

Mr. WISE. -

But in another part of this Constitution we have provided—and I fancy that the determination has met with universal approval throughout the continent—that the Constitution which is to be submitted for acceptance or rejection shall be one based on what we understand is the theory of responsible government. All that the people are asked to say is will they have the Constitution so framed, or will they reject it? If they accept it, as we hope they will do by their vote during the next two months, we are in
this position—we have started a form of government that we believe to be
the best, a form that we understand, a form that the people of Australia
have accepted, and we say—"If you want to make any alterations in the
Constitution so accepted, you shall make those alterations in a way which
is not inconsistent with the fundamental principles of that Constitution,
namely, responsible government and Ministerial responsibility. How can it
possibly be said that this amendment offers a crucial test whether a man is
a liberal or not? How is it possible, except by the grossest abuse of
language, to say that those who are opposing the amendment are guided by
an unconquerable fear of the free atmosphere of discussion?
Mr. SYMON. -
A most unworthy observation to make.
Mr. WISE. -
Let us see what it means. If the amendment is not carried, what will
happen in the eventuality feared by my learned friend (Mr. Isaacs) I
suppose an amendment of the Constitution is proposed in one House and
does not receive the necessary support in the other House? If the
amendment is one of importance, can we understand any Ministers, at least
Ministers who appreciate the doctrine of Ministerial responsibility,
refusing to submit such an important question as an amendment of the
Constitution to the direct issue of a general election? If they decline to
accept the duty cast upon them, they will be unworthy of their positions,
and if the result of the election is that the members who are returned to the
Senate or to the House of Representatives, which ever it may be, still
adhere to their opinions and are against the amendment—what does that
prove? It proves clearly one thing only, namely, that the people are so
indifferent to the proposed change in the fundamental instrument of
government that they do not care to insist that the members they returned
shall vote one way or the other on it. Now, if they are as indifferent as that,
what idle words we have heard from various quarters in this chamber, that
by insisting that there shall be a parliamentary determination on a proposed
amendment before there is a direct vote we are putting an obstacle to the
direct expression of the will of the people. How would this really work out
in practice? I cannot imagine any Ministry—depending, as a responsible
government must depend, on the support of the House of Representatives—
allowing an amendment of the Constitution to be moved in the House of
Representatives of which they do not approve; but if such an amendment is
moved and carried through that House by the necessary majority, and
thrown out in the Senate, then the Ministry, unless Ministers are going to
alter very much in their high notions of self-respect and personal honour,
would insist on the opinion of the constituents of both the Senate and the
Mr. REID. -
May I ask you-

Mr. WISE. -
I will put another case you.

Mr. REID. -
May I ask you -

Mr. WISE. -
I want to put this case to the honorable member, and I will answer the question when the cases have been stated. Although the words have not been spoken, there has no doubt been a covert idea on the part of many who have spoken in favour of the amendment that it will be a popular idea to put a safeguard in the Constitution that the Senate is somehow to be humiliated. Now, supposing the Senate proposes to amend the Constitution, and to amend it in a way that the Ministry, which commands the support of the majority of the House of Representatives, disapproves of, and supposing the amendment is carried, what is the result? It is that this unpopular undemocratic Senate, this assembly of rich men, has an instrument put into its hands to require the Treasurer, when it pleases, to spend £50,000 at least in getting a referendum, to decide whether the Constitution is or is not to be amended, in a matter in which it may have a hopeless chance of carrying its views.

Mr. ISAACS. -
If they have a hopeless chance of carrying their views, will they ask it?

Mr. WISE. -
I do not believe that it will ever be used one way or the other. I think that the whole amendment is one of the most trivial importance. It has only been raised into fictitious importance because the discussion has not ranged directly round the amendment, but irrelevant matters relating to past as well as future history have been introduced.

Mr. REID. -
Is it intended finally to leave in the Constitution that the Senate shall be dissolved?

Mr. WISE. -
At present it is. If the Senate is not to be dissolved, if the power to dissolve the Senate is to be struck out, I shall take a different attitude with regard to this question.

Mr. REID. -
My Position is based upon the view that the Senate should not be
dissolved. I spoke entirely in that direction. If the Senate is to be dissolved, a considerable alteration would be made in my view.

Mr. WISE. -

My faith in the right honorable gentleman's democratic sympathies is beginning to be weakened when I find him opposed to the dissolution of the Senate. I expected that I should find him solid on that point at least. However, I wish to make quite clear that my observations are based upon the assumption that the Constitution in that respect is to remain as it is printed to-day, that is to say, that the Ministry of the day shall have power to dissolve both the Senate and the House of Representatives. But I want to point out that, if this is carried, it will place it in the power of either House—whichever House was opposed to the Ministry of the day, which would probably be the Senate, because we cannot suppose for an instant that the Ministry would remain in power if the House of Representatives were opposed to it—to pass a resolution for the purpose of amending the Constitution, and that would compel the Government to go to the extent of squandering public money for the purpose of having a referendum upon the subject.

Mr. ISAACS. -

If the honorable member's view is that both Houses represent the people alike, why should he assume that one House will oppose the Ministry and the other will not?

Mr. WISE. -

Because there may be differences upon other matters than amendments of the Constitution—upon matters of local politics, for instance.

Mr. BARTON. -

If both Houses are likely to be in favour of the Ministry, why does Mr. Isaacs anticipate so much disagreement?

Mr. ISAACS. -

I do not assume they will be.

Mr. WISE. -

What does the amendment give us if it be carried? I want to point out what a trivial matter it is supposing it were lost. What is the meaning of it? The only result if it were lost would be that there would be a delay of about six months before the amendment of the Constitution could be made; and the question is whether we should allow the referendum to be taken before we have ascertained whether the people feel that strongly on it as to bring both Houses into harmony, or whether we should insist upon having a referendum at the first outbreak of hostilities, before making any attempt to
adjust those difficulties.

Mr. ISAACS. -
No one has suggested that.

Mr. WISE. -
I have listened with great attention to the speech of the Attorney-General for Victoria, who is always very lucid, and I gathered that the proposal is that if one House proposes to amend the Constitution and the other does not agree, there is to be a referendum.

Mr. ISAACS. -
At some stage.

Mr. WISE. -
At once.

Mr. ISAACS. -
No; no one has suggested that.

Mr. GORDON. -
There is no qualification in the amendment as it stands.

Mr. WISE. -
What is the referendum? If the two Houses do not agree the referendum is a dissolution, and if the people are so united they would return members to make the amendment desired; and if they will not return members to make the amendment which is proposed, it is clear that such a fundamental instrument as the Constitution should not be amended. I am in favour of having a referendum provided for in the Constitution, in order that it may be shown what form the Constitution shall take, but that is the full length to which I would go in this direction. I am opposed to any suggestion which will make it possible for the people to exercise their will in a manner inconsistent with the form of government which this Constitution is designed to provide, that is to say, constitutional government. If I could see any substantial gain to be obtained by the proposal I should be glad to support the honorable and learned member, but I see that the only gain is that the demand for an amendment of the Constitution would be pushed forward a few weeks. By adopting this amendment we shall not be obtaining a substantial reform, while we shall, at the same time, be losing what is a great benefit—the responsibility of the Ministry and the responsibility of Parliament.

Question-That the word "and" proposed to be omitted stand part of the paragraph-put.

The committee divided-

Ayes ... ... ... ... 31
Noes ... ... ... ... 14

Majority against the amendment 17
AYES.
Abbott, Sir J.P. Henry, J.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Leake, G.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Crowder, F.T. McMillan, W.
Dobson, H. Moore, W.
Douglas, A. O'Connor, R.E.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fysh, Sir P. O. Venn, H.W.
Glynn, P.M. Walker, J.T.
Grant, C.H. Wise, B.R.
Hackett, J.W. Zeal, Sir W.A.
Hassell, A.Y. Teller.
Henning, A.H. Barton, E.
NOES.
Berry, Sir G. Peacock, A.J.
Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Reid, G.H.
Gordon, J.H. Trenwith, W.A.
Higgins, H.B. Turner, Sir G.
Holder, F.W.
Kingston, C.C. Teller.
Lyne, W.J. Isaacs, I.A.

Question so resolved in the affirmative.

Amendment suggested by the Legislative Council of New South Wales-
To omit the words-"to the electors qualified to vote for the election of members of the House of Representatives, not less than two nor more than six calendar months after the passage through both Houses of the proposed law,"  
with a view to the substitution of the following:-  
"to the state Parliament, in the manner proper for the passage of Bills, not less than two nor more than six calendar months after the passage through both Houses of the Dominion Parliament of the proposed law. And if a majority of two-thirds of the members present in each House of the state Legislature in each state shall approve of the proposed law it shall be presented to the Governor-General for the Queen's assent."

The amendment was negatived.
Paragraphs (2) and (3) were agreed to.
Amendment suggested by the House of Assembly of South Australia-
To omit the following words:-But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails.

The amendment was negatived.

Paragraph (4) was agreed to.

Mr. HIGGINS (Victoria). -
I have an amendment to move in Paragraph (5) of the clause, of which I have given notice, and it is one that appears to me to be of the very gravest importance, having regard to the feeling that prevails on the subject in certain colonies. If the last last paragraph is carried in its present form, there is reason to fear that a great mass vote will be given against the Bill, and that is a consummation that I should very much deprecate. The position is this: That this last Paragraph makes absolutely rigid for all time the equal representation of the states. I do not intend, as honorable members heard my views both in Adelaide and in Sydney, to go again into the merits of equal representation. I do not, as a rule, like to take up the time of the Convention with what is a fruitless quest. This clause says that there is to be no alteration with regard to equal representation without the consent of the state affected. If there should be seven states in a Federation, and in the course of years it should turn out that six of these states had between ten and twenty millions of people, while the seventh had only between ten and twenty thousand people, the six states could not by any possibility or by any process, no matter how exhaustive, make a change in the Constitution. There could be no change, no matter how unjust the consequences were, without a revolution, and perhaps bloodshed, which would break the Constitution. You put too big a strain upon the Constitution when you leave to the people the alternative either of revolution or of submission to what may be a very grave injustice. We do not now know what will be the conditions. We have our minds fixed too much upon the present conditions of what people call colonies, but what are really simply map divisions. What you call South Australia is not, strictly speaking, a colony. There is an aggregation of certain people in the south, there are a few people in the north, and there is a great unoccupied territory between.

Mr. SYMON. -
That is the sort of argument that proves that mind is matter and matter is mind.

Mr. HIGGINS. -
I am not gifted in metaphysics, and I do not intend to pursue the subject of matter and mind. We must pay some attention to the varying conditions of this continent. There may be a tremendous population in parts where iron and coal are plentiful, and where factories are numerous. On the other hand, when the mines in a district have been worked out the population may be diverted. But no matter what changes took place we could not alter this provision in the Constitution. To put it in its simplest terms, even if New South Wales had a population of 20,000,000 and another colony had a population of only twenty persons, these twenty persons could return the same number of senators as New South Wales.

Mr. MCMILLAN. -

Do you think ten years will make a difference?

Mr. HIGGINS. -

If the honorable member desires to make it twenty years, I shall not object, but I want to have nothing absolutely rigid or unchangeable in the Constitution. From the point of view of ethics, I cannot see what right we have in this generation to dictate absolutely as to what future generations shall do. In England and elsewhere they are watching what we are doing with regard in this Convention, but I have here a short extract from the London Spectator of the 11th September last, which shows how amazed outside and independent critics are that we are repeating the anomalies and deformities of the American Constitution. The Spectator says-

An able article in the Westminster Gazette of Wednesday shows that Australia is at last becoming interested in the federation question. It is greatly to be hoped that Australia will realize that she can never take the place she ought to have in the empire unless she accepts federation. The Australian Commonwealth will be a really great and powerful State. Our only interest in the matter is that a Constitution should be adopted that will be worthy of Australia's future. To obtain such a Constitution Australia must be careful to avoid adopting the principles which have proved so harmful in America. To begin with, and this is the absolutely essential point, she must not adopt a Constitution which is practically unalterable, like that of the United States. She must not put herself into a strait-waistcoat, but into an easy-fitting jacket, capable of being altered and let out as occasion may demand.

The people of New South Wales are, we think, right in demanding that the various states, great and small, shall not have an equal representation in the Senate, but one proportionate to population.

By that time in September the vote had been taken in New South Wales,
and by a majority of 59 to 4 in the Assembly they had repudiated equal representation.

Would not a reasonable compromise be one member for each state, and, in addition, one member for each 250,000 or 200,000 inhabitants in the state?

That is very like the compromise which was suggested in Adelaide, and also in Sydney.

That a referendum to the people of the Commonwealth is the best proposal for settling disagreements between the two Houses of Parliament we have no sort of doubt. If Australia adopts the suggestion, she will lead the Anglo-Saxon world as regards the solution of this standing difficulty in all states possessed of a Legislature with two Houses.

Of course, that is only the opinion of an anonymous writer in a newspaper, but a newspaper which has some weight.

HONORABLE MEMBERS. -

Hear, hear.

Mr. HIGGINS. -

Quite so; I give my honorable friends the full benefit of that. It is evident from a remark which I hear from the Right Hon. Sir Edward Braddon, that he has not followed the quotation. The point I am making is this: That the Constitution of the United States in this respect is practically unalterable, and they deprecate that. I am not dealing with equal representation, except that I read the quotation in full. What they object to in the American Constitution is that it is practically unalterable. For this purpose, I recognize the decision of the Convention by 41 to 5, and they have, without any doubt, affirmed the principle that there shall be what is called equal representation, but what Sir Henry Maine calls the most unequal representation he ever heard of equal representation of the states. I do not now at all contest that decision. I regard that as being settled by this Convention finally as far as we are concerned. The Convention has shown irrevocably on two distinct occasions that, as far as the members of this Convention are concerned, they will have what is called equal representation of the states in the Senate. But I think that those honorable members who have voted against me in the matter, and against the honorable member (Mr. Lyne) and others, will also recognise this, that that proportion of 41 to 5 is not the proportion of public sentiment in favour of the provision. Honorable members will recognise that in New South Wales and in Victoria, and, as I am beginning to find, also in South Australia, there is a growing feeling that this is a dangerous provision, and there is also a growing feeling that, even if it should be tried for a few years, it
not be rendered, like the law of the Medes and Persians, unalterable under any circumstances, because they feel, rightly or wrongly, that it goes against their dearest prejudices. It conflicts with the accepted principle of majority rule and liberal parties in the large and small states, and therefore there is no danger whatever of the interests of the small states being subordinated to the interests of the large states." That is what they say. I will assume for the present that that argument is absolutely wrong. Still we have to deal with facts and sentiments that operate in the great masses of the people of Australia, and I ask those who want federation to join with me in, to a certain extent, conciliating the views of the masses in Australia. If the principle of equal representation is right, it will appear all the better as time goes on. If you believe that the principle of equal representation of the states in the Senate is a correct one, then as you gain experience the more correct the principle is the more beautiful and harmonious it will appear as the years go by. Therefore, there is no danger that equal representation will be changed as experience is gained. Of course we know it has been said that in America it has been a failure. It has been thrown over in Canada and Germany we all know. But still I will assume for the present, that in our reverting to the American precedent we are doing right. Well, if you are doing right, if it is correct, it will appear right to men twenty years hence, or even ten years. hence. What I wish to do, therefore, is to move-

That after the word "But" the following words be inserted:- "For a term of ten years from the establishment of the Constitution."

I would be willing even to put in the word "twenty" instead of "ten," if by any means I could get any conciliatory compromise.

Sir EDWARD BRADDOX. -

Put in 100 years.

Mr. HIGGINS. -

I hope this will be treated with the seriousness which it deserves. It is very easy for Sir Edward Braddon, coming from Tasmania, a state which has what it wants in this respect, to speak scoffingly of this proposal, but I can assure him that it will be a very hard thing in New South Wales and Victoria, if not in South Australia, to persuade the masses of the people to accept this Constitution. I can assure honorable gentlemen that assuming they will accept equal representation, it will still be very hard to persuade them to accept equal representation from which there will be no escape under any circumstances. What I want is not to alter equal representation, not to interfere with that principle as laid down so emphatically by this
Convention, but I simply want to give the next generations which follow us the same liberty to control the Constitution as we have ourselves. Why should we say that all wisdom for the purpose of constructive federation is deposited in the present generation?

Mr. REID. -

The idea is that it was deposited in some extinct generation. The present generation is all right on this point.

Mr. HIGGINS. -

Why should we assume that the present generation is wiser than generations to come in this matter? I do not believe in any rigid provision, even in favour of quite a contrary provision.

Mr. HOLDER. -

We do not assume any special wisdom; we regard this as one of the terms of a compact.

Mr. HIGGINS. -

Why should you not allow those who are interested in the contract to alter it?

Mr. HOLDER. -

They may by consent do so at any time.

Mr. HIGGINS. -

No; they are going into the contract upon the assumption that this provision is only to be altered with the consent of the states interested, but you will not be able to get that consent. I ask why then should the other states be bound by the Constitution? Twenty years hence the principle of equal representation will have had time to reveal itself in all its beauty. From what has been said this morning it is perfectly clear that it will be very hard to change the Constitution. Suppose after twenty years it is desired to change the Constitution in this respect, the consent of the majority of the people of the Commonwealth and of the majority of the states must be secured. But in the Senate you may have the representatives of South Australia, Tasmania, and Western Australia opposed to the representatives of Victoria and New South Wales.

Mr. GORDON. -

The honorable member is now prophesying, but twenty years hence South Australia may have a larger population than Victoria.

Mr. HIGGINS. -

I do not think a prophet ever speaks in the conditional mood, unless it is Mr. Wragge. Practically, any alteration will be impossible, unless the inconvenience has become so overwhelming that even the smaller states see that it must no longer continue. It has been pointed out by the text-
writers that the principle of equal state representation is an anomaly. I will not urge that it is an anomaly; I will assume that it is right. But if it is right, you may safely leave the people of the future to look after themselves, because you may be sure that they will stick to it. It argues great want of confidence in the expediency of the principle that honorable members should be afraid to leave it to the judgment of future generations. I beg to move—

That after the word "But" (line 24) the words "for a term of twenty years from the establishment of the Constitution" be inserted.

Mr. GORDON (South Australia). -

I think that the honorable member has overlooked the saving possibility which underlies this Constitution. He forgets that the breath which makes it—the Imperial Parliament—can unmake it. If such a ridiculous state of things as the honorable member contemplates came about, the request of the people of Australia that the Imperial Parliament should dissolve the Union would bring about a cure. So long as any good reason existed for the continuance of the terms of the original contract no interference by the Imperial Parliament would be likely; but if these terms became unbearable in their incidence, if the condition of affairs became so ridiculous that 10,000 people had the same representation as 10,000,000, we may confidently believe that the common sense of the Imperial Parliament would, at the request of the vast majorities in the injured colonies, step in and rectify matters. But we have no right to enter this Union upon any assumption than that which may reasonably be based upon the condition of things as they now exist. I think that my honorable friend has wasted a good deal of alarm and eloquence upon a subject which need not be further discussed.

Mr. REID (New South Wales). -

Having assented to the principle of equal representation as one of the conditions without which we cannot have federation, much as I regret some of the matters connected with the development of the Constitution, I feel that I cannot depart from my original position. At the same time, I fear that this principle may develop startling anomalies in the future history of the Commonwealth, such as exist in the United States to-day, where a handful of people from one state have equal power in the Senate with several millions in another state.

Mr. GORDON. -

But the American Republic has no such arbitrator as we shall have in the Imperial Parliament.
Mr. REID. -

I do not anticipate any fearful results in the shape of social convulsions from the adoption of this principle. The worst thing about it is that, from the nature of the case, it will be impossible to change it. If the republicans or the democrats proposed as part of their fighting platform that equality of representation should be taken from the smaller states, their party would be at once shattered into a thousand fragments. The slightest suggestion of such a proposal would destroy any party entirely. We must take this principle for ever, though I regret it very much, but it is impossible to have federation without it. I should like, however, to see those whom we are trusting for ever under very trying circumstances show some little consideration for honorable members on the other side, and for the legitimate rights of the majorities in the Commonwealth.

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

The committee divided-

Ayes ... ... ... ... ... 2
Noes ... ... ... ... ... 34
Majority against the amendment 32

AYES.
Lyne, W.J. Teller.
Higgins, H.B.

NOES.
Abbott, Sir J.P. Howe, J.H.
Barton, E. Isaacs, I.A.
Braddon, Sir E.N.C. Kingston, C.C.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Cockburn, Dr. J A. McMillan, W.
Crowder, F T. O'Connor, R.E.
Dobson, H. Peacock, A.J.
Douglas, A. Quick, Dr. J.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fysh, Sir P.0. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Grant, C.H. Venn, H.W.
Hackett, J.W. Walker, J.T.
Hassell, A.Y.
Henry, J. Teller.
Holder, F.W. Gordon, J.H.

Question so resolved in the negative.
Paragraph (5) was agreed to.

The CHAIRMAN. -

The question now is that clause 121 stand part of the Bill.

Mr. KINGSTON (South Australia). -

I would suggest to the Drafting Committee that it might be well to make clear what is meant by the word "passed" that is used in this clause, which provides that any proposed law for the alteration of the provisions of the Constitution must be "passed" by an absolute majority of both Houses of the Federal Parliament, and so on. I presume that it refers to the stage after the third reading of a Bill when the motion is put "That the Bill do now pass."

Sir GEORGE TURNER. -

We do not put that motion in the Legislative Assembly of Victoria.

Mr. BARTON. -

I should take it to mean the final stage of the Bill.

Mr. KINGSTON. -

As long as its meaning is made perfectly clear, well and good. I do not think it is necessary to require an absolute majority at all stages of the Bill. The practice in South Australia in regard to a measure amending the Constitution is to require an absolute majority on the second and third reading would be no room for doubt or question on the point.

Mr. BARTON (New South Wales). -

I quite see the force of what the President has said on this point. Of course, "passed" might be taken to mean as having gone through the stage called passing the Bill, according to the usage of the House of Commons and the practice of some of the Legislatures here, but I believe there are some of the Legislatures here who do not go through that stage at all. I take it that this word "passed" is not used in the technical sense here, but in the sense of evidence of the passing of the Bill.

Mr. OCONNOR. -

It means "finally passed."

Mr. BARTON. -

Yes, I think it clearly means that.

Mr. KINGSTON. -

Supposing you make it read, "passed its final stage."

Mr. BARTON. -

There will have to be several drafting amendments made in this clause. On reconsideration we find that there are several points to which different meanings might be attached, and which might be made a great deal clearer
and terser. This suggestion will be taken at that stage, with a view of seeing whether there are any means by which it may be made to indicate more clearly that the final stage of the Bill is meant.

**Sir GEORGE TURNER.** -
I should say that the second and third readings should require an absolute majority.

**Mr. KINGSTON.** -
No, the final stage of the Bill is what is meant.

**Mr. GLYNN (South Australia).** -
Following out the suggestion I made this morning, I will formally move the insertion of the new paragraph of which I gave notice (and which appears in the printed amendments), so that the matter may have consideration. I beg to move the addition to the clause of the following:-

A proposed law passed in each of two successive sessions of Parliament, with a periodical election of half the Senators between, by in the Senate a majority including half the members for each state, and in the House of Representatives a majority including a third of the members for each state, shall be presented to the Governor-General for the Queen's assent.

The idea is to have a method alternative to the principle of absolute majorities and the referendum, so that if a vote is so composed that it contains representatives in the Senate to the extent of one-half the representatives of each state, and in the House of Representatives to the extent of one-third of the representatives of each state, and if, after a periodical election, a similar vote was given, and the Bill passed both Houses, then it might become law without sending it to the referendum.

**The CHAIRMAN.** -
Is not that a matter we have already settled?

**Mr. GLYNN.** -
I think not. It is proposed as an alternative, not as negativing what has already been done, but as an alternative to its adoption in certain cases.

**The CHAIRMAN.** -
I do not think the honorable member can move that amendment in this clause, which is a clause providing the mode of amending the Constitution. The words which the honorable member has just read would apply to every law.

**Mr. GLYNN.** -
No. I propose to put it in here so as to restrict it to laws amending the Constitution.

**The CHAIRMAN.** -
But this would apply to any proposed law which had nothing to do with the Constitution necessarily.
Mr. GLYNN. -

I will, if necessary, put in the words "for the amendment of the Constitution."

Mr. BARTON. -

Do you propose to add this to the last paragraph of the clause?

Mr. GLYNN. -

Yes, it will necessitate some verbal amendments in the clause. I would like to point out that I am somewhat fortified in making this suggestion by the fact that Mr. Inglis Clark, the late Attorney-General of Tasmania, has made a somewhat similar suggestion. I will move it formally, so as to get the suggestion on record, but I will omit the words "a proposed law," and commence the printed amendment, which I have already read, with the words-

Provided always that the proposed law for the amendment of the Constitution.

Mr. BARTON (New South Wales). -

I must oppose the amendment on this ground: Whatever my opinions are of the referendum as an engine in the process of ordinary legislation, I have no doubt in my own mind that for the making of a Constitution, or for the alteration of that Constitution, so that it becomes in part different, it is a wise and a right thing that there should be a vote of the people taken. For that reason I think that an amendment which dispenses with the vote of the people in certain cases is not desirable. Granted Parliament has fulfilled its functions, and had the requisite majorities. then there ought to be in such a case a ratification by a popular vote. For that reason, I oppose the amendment.

The amendment was negatived.

The clause was agreed to.

The schedule was agreed to.

Mr. BARTON (New South Wales). -

I take it that now that honorable members have been supplied with the amendments in the financial clauses which are proposed to be made, they will be prepared to hear a statement of the meaning of those clauses from the chairman of the Finance Committee to-morrow. A general desire has been expressed that that statement should be made if possible to-day, but the long discussion on the clause providing for amendments of the Constitution has, of course, prevented that from being done. I understand from my right honorable friend (Mr. Reid) that he will be prepared to make a statement of the nature indicated to-morrow, and it will then be for honorable members to say whether they will proceed with the
consideration of the financial clauses. Having in view the fact that they are now supplied with the clauses—and I may state that the report of the Finance Committee amounts practically to the same thing as the draft clauses, which are distributed now; and having in view the fact that there will be a part of to-day and a part of to-morrow to consider these clauses, I will put it to honorable members whether it will not be an advisable thing, before we touch new clauses, to dispose of the remainder of the Bill, and the only chapter of the Bill now undisposed of before we come to the reconsideration stage and the new clauses is the fourth chapter, which contains the financial clauses. I would suggest that this is the proper place in the Bill for them to be taken, that they should come on tomorrow, and that the discussion should proceed to-morrow. It will be a considerably long discussion, I have no doubt, but honorable members who are not prepared to vote at the beginning, will find that there will be ample time to make up their minds during that discussion. I would suggest, therefore, that, after my right honorable friend's statement to-morrow, the committee should proceed to debate the clauses. I beg to move—

That the Chairman now leave the chair, report progress, and ask leave to sit again tomorrow.

The motion was agreed to.

Progress was reported.

NOTICE OF AMENDMENTS.

Sir JOHN FORREST (Western Australia).—

I would like to suggest to the leader of the Convention whether it would not be convenient that all the amendments and additional clauses to be proposed on the recommittal of the Bill should be put in print as soon as possible. Of course, we cannot carry that idea too far, because there may be amendments proposed on the spur of the moment, but I think it would be very convenient to every one if, as far as possible, those who have amendments to propose would place them on the notice-paper. We would give more attention to the amendments if that course were followed than we are likely to give if they are proposed in committee on the recommittal of the Bill. I shall be very much obliged to my honorable friend if he will comply with my suggestion as far as it is possible.

Sir GEORGE TURNER (Victoria).—

I would suggest to our leader that as soon as he possibly can he will intimate to the Convention what clauses he proposes to allow to be recommitted. There may be some clauses which some of us may desire to have recommitted, but he may object to their recommittal, and therefore it will be just as well that we should know, at his earliest convenience, what
clauses he will consent to recommit.

Mr. BARTON (New South Wales).-

If honorable members will give notice of their motions to recommit or to reconsider, I shall be prepared as each comes on to intimate whether I think it is a wise thing to reconsider the clause or not. These matters are not in my hands; they are in the hands of the Convention entirely.

Sir JOHN FORREST. -

You would not recommit the whole of the Bill, would you?

Mr. BARTON. -

My will on that subject is not a matter of very great consideration, I take it, except that I shall be able to indicate to any honorable member cases where I think it will conduce to expedition and success if we do reconsider some matters; but what I do urge upon honorable members is that they should, as soon as possible, place on the notice-paper a notice of the clauses which they desire to have reconsidered. I shall have a list made out of those which I think ought to be reconsidered. My list will be a very short one as far as I am personally concerned, because there are very few clauses that I propose to recommit, until we come to the drafting stage, which is a more technical one, and with which we are not concerned now.

Sir JOHN FORREST. -

Will the Bill be recommitted for the purpose of considering alterations to certain clauses, or will it be recommitted generally?

Mr. BARTON. -

There will be a reconsideration stage in committee reached after we have dealt with all the clauses in the Bill and the new clauses, and honorable members will then, under the South Australian practice, be able to propose the reconsideration of any clauses. Besides that stage, as an amendment to the motion to adopt the report of the committee, there will be an opportunity offered to move the recommittal of the Bill for the reconsideration of certain clauses, so that honorable members will not lose their opportunities. I only suggest, for the convenience of the Convention, that notice should be given by honorable members as far as possible of any amendments which it is proposed to move.

Sir RICHARD BAKER (South Australia). -

According to the standing orders of the South Australian Assembly, when the Chairman puts the question that the Bill be reported it is competent for any honorable member to move either that the whole Bill be reconsidered, or that a specific clause or specific clauses be reconsidered, and on that motion the committee comes to a conclusion, and it reconsiders the whole Bill, or the specific clause or clauses, as the case may be.

Mr. SYMON (South Australia). -
I apprehend that the honorable member (Mr. Barton) will have no idea of consenting to a recommittal of the whole Bill on any such motion, but that a question on each clause which any honorable member desires to have reconsidered shall be specifically put to the committee, and then we shall have an opportunity to determine whether it shall be reconsidered before the clause itself is examined, otherwise we might be launched into a new inquiry.

FINANCIAL CLAUSES.

(New South Wales). - I wish to lay on the table a print of the financial clauses. Honorable members will have in their hands a report of the Finance Committee. The print I am now laying on the table is practically the same thing, but it will show to them the order which the Drafting Committee suggest the clauses should take in the Bill. Beyond that there is no substantial difference, but honorable members may like to have in their hands

a copy of the clauses, which simply show the clauses with the desired amendments, instead of showing the text of the clauses it is proposed to deal with.

Mr. LYNE. -

I have not seen a copy of the report yet.

Mr. BARTON. -

As a matter of convenience, I lay a copy of the document containing the financial clauses on the table, and I beg to move-

That the document he printed.

Mr. LYNE. -

Is there a copy of the report available?

Mr. BARTON. -

I believe it is coming back from the printer directly. It had to be revised.

Mr. REID (New South Wales). -

It is highly desirable that the report itself should be sent out to honorable members as soon as possible. There was a final revision of the report a little time ago, and I expect that it will be up from the printing-office presently. Perhaps the Clerk will be good enough to see that arrangements are made for a copy to be sent to honorable members at their residences the moment it is available for distribution.

Mr. BARTON. -

Here is a copy of it.

Mr. REID. -

I have already laid the report on the table. It is now simply a question of distributing it to honorable members.
The motion was agreed to.
The Convention adjourned at five p.m.
Thursday, 10th February, 1898.

Return: Federal Finance - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

FEDERAL FINANCE.

Sir GEORGE TURNER (Victoria) laid on the table (pursuant to an order of the Convention, dated 21st January) a return showing the annual expenditure of which each colony represented in the Convention would be relieved in respect of certain services and works.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Clause 81 (Chapter IV., Finance and Trade). - All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Commonwealth in the manner and subject to the charges provided by this Constitution.

Mr. REID (New South Wales). -

I understand that it is the wish of the Convention that I should make a brief statement of the work done by the Finance Committee upon this chapter. I will make the statement as short as possible; but I shall be prepared to answer any questions that may be addressed to me as I go along if there is any point which does not seem to be sufficiently clear. Honorable members will see from the report of the Finance Committee that they propose to leave clauses 81, 82, 85, 86, 88, 94, 95, 96, 97, and 98 as they stand. They suggest no alteration in them. Now, I will take up the clauses in which we do make alterations. The first of these is clause 83. The amendment made is not a very important one. It is to omit the words "and by warrant countersigned by the Chief Officer of Audit of the Commonwealth." This amendment is suggested for two reasons. The first is that it may be that in the early days of the Commonwealth there will be no such office as that of Chief Officer of Audit in existence; and the second is that it is more a matter for Commonwealth legislation than for provision in the Constitution. The next clause (84) we propose to replace by two clauses, which are marked C and D in the report of the committee. If honorable members will refer to the original clause, they will find that whilst the drafting is different the new clauses are substantially the same as it, with
one exception. We thought that it would be well to fix a time within which all state bounties, if they are to be granted, should be finally settled. The effect of the provision in the now clause is that no bounty, or agreement for a bounty, shall be of any force after federation if it was made later than the 30th of June, 1898. The reason that the committee fixed next June is this, that in one of the colonies a matter of bounty, which has been a subject of negotiation for a long time, has pretty well reached a stage in which the Government are bound to complete it. We propose to give these few months so that all existing negotiations may be brought to an end, if they are to come to anything in the shape of a bounty at all. This is the only substantial alteration in the old clause 84. Of course, without express words, the duration of bounties actually granted under laws existing before that date will not be affected, although the laws under which they were given will go.

Mr. HIGGINS. -

The state may go on giving bounties if the agreement is made before that date.

Mr. REID. -

Yes. If the agreements are made before that date they will remain good, although the laws or the powers under which they are made will be destroyed by the passing of this Bill. Clause 87 is omitted. Its contents are not removed from the Bill, but they are provided for by drafting in the clause I have just referred to, and also secured by clauses 99 and 100. The clause has not been altered in any way. It appears in another form. We found it necessary, in connexion with clause 89, to add a paragraph which honorable members will see, and the object of which is, I think, very well known. The customs duties of the colonies at present upon particular articles differ very much in rate. In one colony there are very few duties. It was felt that, upon the imposition of a uniform Tariff, and upon the establishment of perfect free-trade between the colonies, enterprising merchants would place themselves in a position to put the trade of the different colonies for the time being upon an unfair and unequal footing. Large quantities of goods might be imported into the Commonwealth, via New South Wales, without payment of the duties to which they would be subject if they had been imported into other parts of the Commonwealth. We think that this addition to clause 89, with possibly a verbal alteration to make its effect more clear, will secure the Commonwealth, and each of the states of the Commonwealth, against any abuse of that description. Clause 90, we suggest, should be taken out altogether, and a new clause substituted. This new clause does not differ in principle from the clause which we propose should be omitted, but it re-arranges it to a certain
extent, and clears up a difficulty which might arise in administration after the Commonwealth was established. Whilst it would be perfectly clear that the actual expenditure in the services transferred on the basis existing at the time of the transfer would be charged in a certain way, there would be some doubt left as to how new works—for instance, buildings or new developments made by the Commonwealth—should be charged. We came to the conclusion, and we did not think it a matter of very great consequence so far as administration is concerned, that, as to such new developments under the Commonwealth, they should be taken to follow the principle under which the expenditure incurred in the exercise of the original powers of the Commonwealth is dealt with. For instance, supposing the Commonwealth built some permanent structures post-office, a telegraph-office, or perhaps some important fortification of a permanent character—it manifestly would not be fair to charge such works to the particular locality, especially as the system of distributing expenditure will, at the end of five years, give way to the ordinary per capita distribution. We have removed that difficulty, which would have arisen if the matter had not been dealt with. Then the committee suggest the omission of clause 91, limiting the expenditure, and do not propose anything in its place. Honorable members will understand that this report, naturally enough, does not represent in all respects the unanimous opinion of the committee upon some important points. There has been a difference of opinion in the committee, but of course perfect liberty has been left to those members who differ from the general conclusion to advocate their views in their place in the Convention. I am happy to say that these differences have not been many, and that the preponderance of opinion on every occasion has been very great. There has been, so far as I can recollect, no close division upon any one of these recommendations.

Mr. LYNE. - Do I understand that it is proposed to strike out clause 91?

Mr. REID. - Yes, that is the decision of the committee. As I have said, it does not at all follow that it is the decision or wish of every member of the committee. There is a difference of opinion on that subject.

Mr. BARTON. - You will find a clause numbered 91 in the paper.

Mr. REID. - The proposal is that clause 91 should go, with nothing to take its place. That is the effect of the decision of the committee.

Mr. HIGGINS. -
Is it struck out because it is thought to be impracticable to limit the expenditure?

Mr. REID. -

It simply amounts to this: That some honorable members, and I am one of them, considered that it was of vital consequence to compel, even in a rough-and-ready way, a very economical start in dealing with finance in the Federation. On the other hand, there is a very strong argument the other way. I still retain my opinion that it would be wise to leave this clause in, but I think I may say that a very large majority of the committee were of the contrary opinion. With regard to clause 92, honorable members will see that we have gone on different lines in a new clause. The first paragraph of clause 92, as it stands in the Bill, which made it necessary that a Tariff should be constructed to return to every one of the states an amount not less than that which each of those states had received from its own customs duties in the year preceding federation has been struck out. Then the whole scheme for the distribution of the surplus Customs revenue outlined in the original clause 92 has been, upon consideration by this committee, found to be so objectionable that we have departed from it. I may say here that the committee have, as every one in the Convention, and I think outside of the Convention, must have, the very strongest desire to make the operation of intercolonial free-trade as thorough and speedy as possible. We have all felt that that was one of the cardinal points of this enterprise, and some of us, not a large number, did think that even at the risk of losses here and there we should come to a very speedy distribution on a per capita basis. But a number of us, on the other hand, in view of the very great diversity of opinion which exists amongst competent persons as to the extent of these inequalities, and the amount of injustice that might be done under a system of distribution per capita, felt it our duty to place this matter upon such a basis that there will be no room for any of those suspicions or charges which are rife, to the effect that under the scheme which is outlined in the original clause very grave injustice might be done to one or other of the colonies. I may say, with reference to New South Wales, that this matter has assumed a very serious aspect. There is a very strong body of opinion in that colony to the effect that under the method which is in the original clause she would be subjected for some, if not for many, years to an enormous loss. Then we had before us the admitted difficulty of the case of Western Australia. There is no controversy there. Every one admits that in the case of Western Australia a per capita distribution would work the grossest injustice to that colony; go having in view the great importance of
leaving no just ground for these suspicions or charges or expectations, with
a strong feeling that it was of the first importance to re-assure the people of
the different colonies upon this vital point, with very great reluctance, fully
conscious of the obstacles to intercolonial free-trade which would be
involved, we nevertheless felt that we were compelled by the necessities of
the case, and in order to insure justice and restore confidence, to decide
that the system of bookkeeping should be maintained for a period of five
years.

Mr. HIGGINS. -

After uniform duties have been imposed?

Mr. REID. -

Yes; it will be necessary under our proposal that the accounts should be
kept on the borders and at the ports of intercolonial trade. Of course, we
all, feel that this system will not be a perfect scheme; we all feel, as to
many items, that they will never come into this account at all, and that it is
impossible to keep a mathematically accurate account under the
circumstances; but still we were so impressed by the difficulties of any
other method, and we felt that any other method would give so much scope
for attack upon this Constitution, that we were most reluctantly compelled
to recommend this system to the Convention. For five years, therefore,
there will be a system of bookkeeping. Of course, we all know that the
substantial grievance with reference to intercolonial free-trade at present is
not so much the necessity of passing an entry as the necessity of paying
heavy duties. That is a serious inconvenience, and the one that people most
complain of. Passing entries is an obstacle, but only a trivial one. The
keeping up of these border custom houses is a regrettable necessity, but it
will not involve very great expense. With reference to this account, we
have taken care to so frame the clause that each colony will, so far as it is
possible to keep an accurate account, get credit for all the Customs revenue
it is entitled to, because under this system it will be possible to follow
goods to their place of final consumption, which will be the colony entitled
to take the credit. I admit here again that it will not be possible to follow
every package of these goods.

Mr. LYNE. -

How can you do it for two years, as you provide in one clause?

Mr. REID. -

That is a somewhat different matter from the one I am now speaking
about. I think I will be able to show later on that that can be done, although
I quite admit that if any one were to say to this Convention or to the public
that this method will bring out mathematical accuracy, he would be saying
a very foolish thing, for it will do nothing of the kind, and I should be very
sorry to put any machinery in motion that would. It would certainly lead to
greater espionage and trouble than even the present system of intercolonial
duties. We were quite confident that no suggestion we could make would
be absolutely satisfactory to any one, except that, if we failed, it might be
to those who are opposed to federation. Therefore, we faced the
difficulties, and we frankly confess that it is impossible to bring before this
Convention a scheme which can be received with anything like
enthusiasm. Some people have been looking for flashes of financial genius
in connexion with this matter, but the conditions of these problems, make
genius a very unreliable guide.

Mr. BARTON. -

Nothing but the gift of prophecy would do it.

Mr. REID. -

And even that I am afraid would land us in the wrong box, because the
plain matter of fact is that, under the different policies and different rates of
duty which have prevailed throughout this future Commonwealth,
conditions have grown up widely dissimilar in the different

colonies. Even if that were not so, there is so strong a conviction that it is
so that it is necessary to respect that conviction. This financial part of the
Commonwealth is the part at which federation will be exposed perhaps to
the keenest criticism. We do feel that under this somewhat obnoxious
method of keeping books for five years, at any rate, we will secure this
very great advantage that we can all go to our respective colonies and
answer these various theories about the different rates of consumption in a
final and satisfactory manner. By this taking of accounts we shall come to
know in each of these five years the actual facts to begin with, and the
incidence of the operation of the new state of things during the remainder
of the five years' period. Now, we do not carry our confidence so far as to
say that, even at the end of this five years' period, it may not be necessary
to distribute the revenue by some other method than per capita. We
earnestly hope, and I think a number of us believe, that at the end of five
years matters will have come to such a point that the maintenance of this
system of bookkeeping will be absolutely unnecessary; that the trend of
trade towards a normal and equal state of things through the
Commonwealth will become so manifest that it may be possible to throw
the books aside, and either at once to begin on a per capita basis, or fix
some other basis which would be satisfactory to all, and enable us to enjoy
unrestricted intercourse between the different colonies. We thought it wise,
therefore, not absolutely to close down the matter at the end of five years,
but with the facts and experience of five years open to the Commonwealth,
and to every critic in the Commonwealth, we feel satisfied that then the Federal Parliament may absolutely be trusted to place this matter for all time upon a satisfactory footing. We propose, therefore, to leave it to the Federal Parliament, after this experience of five years' bookkeeping-

Mr. ISAACS. -

Will it be possible to carry out this system of bookkeeping without tracing the destination of the goods from the moment of their introduction from any state down to their consumption by the consumer?

Mr. REID. -

That difficulty will be met in this way: On the importation of goods the presumption will be that they arrive for consumption. Of course, the honorable member is now speaking of a state of things under which there is a uniform Tariff throughout the Commonwealth. The presumption, therefore, is that the state into which these goods are received is the state in which they will be consumed, but that presumption will, of course, be open to adjustment and correction by the actual history of those goods. Whilst it will be impossible, I fear, except by tracing the entries passed by individual firms engaged in intercolonial trade, to follow each package of goods, and especially the contents of each package after their contents are broken up, still there being no motive on the part of the trader to deceive—this is entirely taken away owing to the Tariff being uniform—it is simply throwing upon the persons engaged in trade the not very onerous duty of honestly stating the fact that a portion of the goods or the whole of the goods which they are sending away at a particular time were imported from another colony. That will be the only requirement on business houses, and I think that the business houses who are exposed at the present time to the great strain of shipping in the face of the different Tariffs of the Australian colonies, will be so grateful for the relief they will receive that they will not in any unfair spirit object to take the trouble to put on an entry the history of the movements of the packages which they are sending to another colony. As I have said, there will be absolutely no motive for deceit. It will be just as simple to tell the truth as not.

Mr. HIGGINS. -

Supposing imported goods are merged into some other product for instance, imported tobacco leaf mixed with colonial leaf?

Mr. REID. -

Well, that is a matter which we feel can be dealt with. It simply involves a certain amount of trouble in the office of the person shipping the goods—the trouble of describing on the entry so much Victorian value, or whatever
the element of colonial value is, and so much foreign value, or so much New South Wales, so much Tasmanian, so much Western Australian, or so much South Australian value, as the case may be. It only involves a little trouble in the house shipping the goods, where the facts will be pretty well known, and the trouble of stating on the invoice how much of that mixed value is Victorian and how much is value belonging to some other part of the world. Of course, it will be a rough-and-ready method, but, being a rough-and-ready method all round, it will in the end approximate to substantial justice as closely as anything can possibly do so. There is at the present moment a system in force in countries with protective duties in which all these difficulties are solved. For instance, in an application for drawback on goods manufactured in Melbourne from imported materials liable to customs duties, there is some machinery in the Custom-house under which the officers of Customs know, or are pretty sure of knowing, that they are not giving the drawback beyond the element of imported materials in the Victorian manufacture—the element from abroad. That system is in force in the Melbourne Custom-house now and in all other protected countries. But the sort of person who requires anything like mathematical accuracy will be disappointed by any solution of this financial and commercial problem. All we can do is to bring the matter into sufficient shape to satisfy every reasonable mind. Now, going away from that point, I may say that after we had practically concluded our labours in this matter, Sir John Forrest, the Premier and Treasurer of Western Australia, brought under the notice of the Finance Committee a matter which we felt to be one of very great difficulty. Sir John Forrest showed to us that, although his Tariff is, I believe, not a very heavy one, still, as a matter of fact, the Customs revenue of Western Australia at the present time is derived to an enormous extent from duties upon Australian produce. So seriously is this the case that out of a revenue for, I think, the year 1896, of something between £1,000,000 and £1,100,000, the duties on the products of colonies which will be included, we hope, in the Federation—that is excluding Queensland for the present—the duties which were derived in Western Australia, during that year, from the products of the other colonies represented here, amounted to no less a sum than £389,000 out of a revenue of over £1,000,000. Well, we see at once that that is more than one-third of the whole Customs revenue of Western Australia, and we can also see that it is a matter which the Premier and Treasurer of Western Australia was absolutely entitled to bring under our notice, because, although the new Tariff might adjust this difference within reasonable bounds, still, it was a matter of such vital concern to the finances of that colony, that we could scarcely expect them to leave the
question entirely in doubt. And we have had a great deal of difficulty in
dealing with the matter. I do not say that even on this the Finance
Committee was unanimous, but the vast majority of the committee felt that
this proposal which we now submit to the Convention should be adopted.
There is one advantage about it that it does not involve any further trouble
in the way of intercolonial freetrade: it is a mere matter of calculation upon
the simple facts of trade in the future. It will not add to the inconvenience
of intercolonial trade in any way. It will not require any additional
bookkeeping; it will be simply a matter of calculation in the
offices of the Commonwealth upon the facts of trade as they develop.

Mr. HIGGINS. -

And it is to last for five years?

Mr. REID. -

Yes, it is to last for five years only; that is all. Honorable members, no
doubt, pretty well understand the clause, but I think I can put its effect in a
very simple way. Let us suppose that the first year of the Commonwealth's
Tariff is 1901. The facts of the trade of that year will be discovered and
chronicled—that is to say, at the end of that year it will be possible to
ascertain, indeed we will know at once, what the revenue actually received
in Western Australia, on the basis of the uniform Tariff, is. That will
appear at once, at the end of the year, as a simple matter of fact, but after
that fact is discovered it will be necessary then to apply to the Tariff of
Western Australia, which existed just before the uniform Tariff was
created, the actual facts of the year I have mentioned, in order to ascertain
whether, if the provincial Tariff had been in force that year, the Customs
revenue of Western Australia would have been greater than it actually was
under the uniform Tariff. If it was found that the revenue of Western
Australia under its provincial Tariff would have been greater than the
revenue actually was under the uniform Tariff, the two amounts would
appear on calculation, and then the difference between the two, as applied
to the actual revenue of the year I have mentioned, would be the
proportionate net loss of Western Australia under this new state of things.
Then, in order to strike an average, the same process would have to be
repeated in the case of each of the other colonies. We may throw New
South Wales out of this account at once, because, of course, under any
possible Tariff—any Tariff that we can conceive—there is no doubt the
New South Wales revenue would not be less than it is under the very
simple Tariff we have now. We have brought the Customs taxation of New
South Wales down to the minimum, and consequently, under the uniform
Tariff, the Customs revenue of New South Wales would reach a larger
amount than it is under our provincial Tariff. Therefore, New South Wales would not be an element in this calculation at all. The only elements would be states which were found to have lost Customs revenue on the same process being applied to their case as had been applied to the case of Western Australia. And then, having thrown Western Australia into those states, with her proportionate loss, we arrive at an average net proportionate loss for the whole of the losing states. Knowing the Western Australian loss, and knowing the average loss of all the leading states, it would then be the duty of the Commonwealth to hand over an amount, if any, to Western Australia, which would be put in this position: That its average net loss was the same as the average net loss of the whole of the losing states, including Western Australia, combined.

Sir GEORGE TURNER. - Supposing there was a profit to Western Australia in one year and a loss in the next, would they have to bring the profit into account?

Mr. REID. - Oh, decidedly.

Mr. ISAACS. - This clause does not say so.

Mr. REID. - If it does not say so, it can easily be put right.

Mr. BARTON. - That was not among the instructions to the Drafting Committee, very possibly because it was thought that such a contingency was not likely to arise.

Mr. REID. - It could not possibly arise; but I am perfectly agreeable that words should be inserted to make the clause quite clear on that point, because there is never any harm in providing for any contingency in a matter of that sort. The object of separating the five years as we have done is that it would never do to keep Western Australia waiting till five years elapsed to get an adjustment. Even with an adjustment every year, it will be some months after the end of the year before the adjustment can actually take place. Now, I can see, from the facts shown by the Premier and Treasurer of Western Australia, and looking at the facts of the other colonies, that during the whole of the five years there must be some amount to be made up, but I do not think, spread over the Commonwealth, that it will be an amount which we need seriously take i

Mr. HIGGINS. -
If Tasmania loses more than her fair proportion of Customs revenue, would you not treat her exceptionally in the same way?

Mr REID. - Well, I may say that so strong is my objection to this proposal at all, that I did all I could, and will do all I can, to prevent its extension. I do not think that in the case of Tasmania there will be a sufficient difference to warrant us in making this exceptional treatment apply to that colony I have no hesitation in saying that the finances of Tasmania are, as we all know, at present on so small a scale that I would not seriously object to some proposal which would ease the financial position of that colony-some proposal of limited application; and I feel sure that no colony would wish to come into this arrangement unless absolute necessity compels them to do so. I do not think Tasmania would come to us on any ground of emergency unless it was an absolute fact in their financial history which they were compelled to take notice of.

Sir GEORGE TURNER. -

If you extend this exceptional treatment, you will have to make it general—you will have to make it apply to the colonies all round.

Mr. BARTON. -

What sort of a Tariff would that involve?

Sir GEORGE TURNER. -

We shall suffer as much as Tasmania.

Mr. REID. -

Referring to the interjection of my honorable friend (Mr. Barton), I may remark that this exceptional treatment would not affect the Tariff. But let me point out to my right honorable friend the Premier of Victoria that, as far as we in New South Wales are concerned, we could listen with perfect equanimity to the proposal that this should be extended to all the other states, because this would not affect us at all. We would not be an element in the calculation, because under no conceivable circumstances could we have a net loss of Customs revenue under the uniform Tariff.

Sir GEORGE TURNER. -

But you would have to help to make up the losses of the losing states.

Mr. REID. -

I do not know what my honorable friend (Mr. Lyne) will say to that. Does he support that view?

Mr. LYNE. -

I am not prepared to support any proposal which will make us responsible to pay for what we do not receive.

Mr. REID. -

As this matter has to be calculated, it will go on the total effect of the two Tariffs. Taking the total effect of the two Tariffs, there, is no conceivable
Commonwealth Tariff that won't yield a larger total Customs revenue to New South Wales than her present Customs revenue. That may not be so in regard to particular items, but there is no conceivable total, as between the Commonwealth and New South Wales, under which New South Wales would figure as a loser of revenue. In the case of Western Australia, if the result of the Commonwealth Tariff is to give Western Australia as much Customs revenue as she had before, it won't matter at all what articles the revenue is derived from, Western Australia does not say-"We want money to replace these identical duties that we have lost." They do not take up such an unreasonable position. They simply say-"It is clear that, with the Tariff of the Commonwealth, our financial system will be subjected to a sudden shock and crisis; we wish some safeguard against that, and, so long as the Customs Tariff of the Commonwealth, whether by duties on articles we do not tax or not, leaves us in the total result anywhere near where we were, we have no cause of complaint or of claim." Their claim will only arise if their fears are verified by the result, and if they are confronted with a state of things under which perhaps their Customs revenue in 1901 will be 25 per cent. less in the total than the Customs revenue under the provincial Tariff in 1900.

An HONORABLE MEMBER. -
Who pays the difference?

Mr. REID. -
The difference will be a matter of calculation between the states that lose. That is to say, every state that suffered a loss under this system would have its loss defined in figures upon the same process as that employed in the case of Western Australia. That having been done in the case of each of the losing colonies, Western Australia would be put amongst the losing colonies, a total would be struck, the proportion between the total losses and the total revenue on the first year of the uniform Tariff would be shown, the average of that would be taken, and then in the case of Western Australia, if her average loss was higher than the average of the losses of the other colonies, herself being included with all the other colonies-if, I say, her individual average showed a higher rate of loss, then an amount would be paid to Western Australia which would bring her down to the common level of loss, so that she should only lose on the same rate as every other losing colony was losing.

Sir GEORGE TURNER. -
We have to help to make up a portion of the loss of Western Australia.
Mr. Reid. -
I did not perhaps quite state the case fully when I said that New South Wales was not affected. She is affected, because, when the total amount is ascertained that is to be paid to Western Australia, the amount will be paid out of the funds of the Commonwealth; so that the amount will have to be paid out of the funds of New South Wales, as well as out of the funds of the other colonies. New South Wales, therefore, will be a bearer of this burden in common with the other colonies. But, as I have said already, her figures won't enter into the calculation in any way. An average of loss can only be struck by putting the states together which do lose. If we were to put New South Wales into the calculation, and make the loss less by putting her gain against it, I am afraid the result would be that the difficulty in the case of Western Australia would not be met at all, because the gain of New South Wales, if the Tariff is anything like a high one, would be so great that it would probably wipe out the whole of the proportionate losses of the other states, and, therefore, there would be no substantial relief given to Western Australia at all.

Mr. Lyne. -
The matter then remains in this way: That New South Wales cannot possibly receive anything, but she may have to pay something.

Mr. Reid. -
There is no doubt that is so.

Sir George Turner. -
But New South Wales will count as one of the states in finding out what the losses of all the states would be.

Mr. Reid. -
All I can say is this, that if that is done, we really offer nothing to Western Australia. Even if the Commonwealth Tariff be a strictly revenue Tariff, as I hope it will be, it will even then, give us in New South Wales probably a much larger Customs revenue than we have.

Sir George Turner. -
It can only be those states which actually make a loss that can be considered; otherwise, Western Australia would get an immense benefit.

Mr. Higgins. -
The clause should read-Average proportionate net loss in the states which lose."

Mr. Reid. -
It might be safe to make that more precise.

Mr. Barton. -
We were under the impression in drawing the clause that all the states were to be included.

Mr. REID. -

The effect would be, as I pointed out at the time, that if New South Wales came in with her gain, it would practically nullify the arrangement with Western Australia, because taking her figures of gain as against the figures of losses, I believe that the gain of New South Wales—I do not think, of course, that it is a gain to be taxed, but I am speaking of the gain to the New South Wales Treasury—would amount to a sum (I have worked the figures out a little myself) which would pretty well obliterate all the losses of all the other states, and the result would be that we would be as we were, and we would be offering Western Australia nothing at all. Now, I do not propose to do that. Although I am not personally responsible for this clause at all in the sense of approving of it, still, if this is to be done, we must do it in a fair and straightforward way. We must not affect to help Western Australia, and practically establish a basis which gives her no guarantee at all. All these are matters which will require to be very, seriously considered by the Convention. I am at present simply endeavouring to make clear the lines upon which the Finance Committee has gone. Coming along to clause 93, it is proposed that that clause shall be struck out, under the circumstances that I have mentioned. We would have been very pleased indeed to have left that clause in. We strongly hope that at the end of five years the per capita system will be the basis of distribution. We feel sure that if the Commonwealth experience makes it at all fair, it will be chosen by the Commonwealth as the basis of distribution. But, believing all these things, we still thought that it would be better to leave this matter to be dealt with by those who will have a responsibility in dealing with it, in the light of the actual experience which they will have gone through during those five years.

Mr. DOBSON. -

Did the committee consider the advisability of fixing a period after which it must be per capita?

Mr. REID. -

Having arrived at the conclusion suggested in the clause proposed to be substituted for clause 93, we felt that it would be better, really, to leave that matter entirely to the Federal Parliament; because every one would be anxious to arrive at the time when all these accounts will disappear, and when the simple question will be a basis of population. The Federal Parliament and the Federal Treasurer will naturally be so anxious to arrive at that basis, as the permanent basis, that, I think, we can safely leave this matter in the hands of the Commonwealth Parliament.
Mr. KINGSTON. -
    It is always liable to be altered under this.
Mr. REID. -
    No doubt that is a very serious objection. I can assure honorable
members that the Finance Committee will be only too glad if, with the
assistance of all the members of this Convention, we may be able to
improve these suggestions. We have done our best, and I feel sure that, by
the time honorable members have given us the benefit of their suggestions,
we shall be able to finally settle the provisions of this chapter in such a
form as to satisfy the public, at any rate, that justice will be done.
Mr. LYNE (New South Wales). -
    After listening to the very long and exhaustive explanation of the Right
Hon. the Premier of New South Wales—an explanation which, I may say,
was absolutely necessary in connexion with this document; which appears
to me, so far, very much like a Chinese puzzle—I would suggest that the
debate might be adjourned.

HONORABLE MEMBERS. -
    No; no.
Mr. LYNE. -
    I think it is almost impossible to follow the long speech of the Premier of
New South Wales in all its
details. There may be some members of the committee who understand
something about this document through having seen it before, but I
certainly think it would be better to adjourn the debate to enable honorable
members generally to understand it. As far as I am concerned, there are
some points that I do not quite understand at present, even after listening to
the explanation which has been given by the right honorable member. I
should like to know whether the leader of the Convention feels disposed to
adjourn the debate, or desires to go on?
Mr. BARTON (New South Wales). -
    I certainly think it would be better not to adjourn the debate at the present
stage. Of course, finance is always a complicated subject, but, whatever
may be taken to-day, but, subject to that, I think a continued debate will
afford the best explanation of these provisions.
Mr. LYNE (New South Wales). -
    I am sorry that this debate is not to be adjourned, and I should not say
anything at all in reference to the matter now except that I am not likely to
be present later in the day. Whatever takes place in connexion with the
subject, I hope that no division will be taken, except perhaps upon
amendments, for two or three days.

Mr. BARTON. -

I will ask the committee not to divide on the whole scheme before Monday.

Mr. LYNE. -

I will not detain the committee long, but I will just refer to a few points which have struck me while listening to the Premier of New South Wales. In the first place, one of the most fatal points, it seems to me, in connexion with this scheme is the striking out of the protection to the state Treasurers. The committee have absolutely struck out the safeguard we placed in previously, so that the state Treasurers should be assured a certain sum at certain periods from the Federal Treasurer to enable them to carry on the business of the state.

Mr. WALKER. -

That will not affect New South Wales.

Mr. LYNE. -

I think it will, and it will affect every other state as well. It will affect them so far as the minds of the people are concerned when it is realized that the states will be absolutely helpless directly the uniform Tariff is entered upon. For each state will be absolutely helpless under these provisions, and may be called upon to raise the whole of its revenue from direct taxation. That, as far as I can judge, is one of the grave alterations that has been made in the financial proposals previously contained in the Bill. I will ask the representatives of the various states-I will refer to Tasmania particularly-whether they are prepared to place themselves absolutely at the whim of the Federal Treasurer-

Mr. HENRY. -

No; the Federal Parliament.

Mr. LYNE. -

As to what money they shall receive. Tasmania will be placed in that position. If I remember rightly, in Adelaide no one was stronger for providing the Treasurers with some security than the present Treasurer of Tasmania. I refer to that colony particularly, because she can as little afford to lose money a any other colony.

Sir PHILIP FYSH. -

I did not say what you have attributed to me.

Mr. LYNE. -

I am as clear as can be with regard to the point, because Sir Philip Fysh himself stepped in and made a proposal to the effect I have stated when we were just about to come to a conclusion. Of course, if the Treasurer of
Tasmania is prepared to say: "We do not want anything from the Federal Parliament, and are prepared to raise the whole of the money we want from direct taxation," I am not; and I do not think the people of New South Wales will be either. The Finance Committee has also struck out the provision that there shall be a restriction of the expenditure to be entered into by the Federal Parliament. I think the amount fixed was £1,500,000; I may be wrong, but I think that was the amount.

Mr. FRASER. -
You are quite right.

Mr. LYNE. -
The proposition now is to strike out that limitation, so that the Federal Treasurer or Government can enter into any expenditure they like. They also have to go to the cost and the trouble of keeping a record of the cost of collecting the customs in each state, and to debit each state with that cost, whilst, at the same time, they are not called upon to pay one penny to the states if the Federal Government requires the money collected for federal purposes. If honorable members and the people of the states are prepared to accept a proposal of that kind, I am very much mistaken. Reference has been made to Western Australia, and the position of the colony appears to me to be an extraordinary one. New South Wales, and New South Wales only, is placed in this position: That under no circumstances can she receive from the Commonwealth fund any amount to assist her revenue, but if any other states, or all the other states, show a low under the uniform Tariff—if it is a low Customs Tariff that is imposed under the Federation—then New South Wales has to pay her share to make up the difference.

Sir GEORGE TURNER. -
So have the other colonies.

Mr. LYNE. -
I say that New South Wales cannot receive, but she has to pay.

Sir GEORGE TURNER. -
None of the others can receive but Western Australia.

Mr. FRASER. -
The other colonies will never do what Mr. Lyne states.

Mr. LYNE. -
They will have to do it. If Western Australia is receiving, as I heard her Treasurer say some months ago, £8 per head from the Customs, and if the uniform Tariff only produces 30s or £1 a head, the other states will have to make up the difference.

Mr. GLYNN. -
She will only be repaid what she pays into the Commonwealth.

Mr. BARTON. -
Western Australia does not ask for the whole difference.

Mr. LYNE. -

I understand that if Western Australia receives only 30s. under the uniform Tariff, and if, on the goods which will be imported under the uniform Tariff, and to which that Tariff is to be applied, she shows a loss of about £6 per head, the other states will have to make up the loss.

Mr. GLYNN. -

She will make it up herself.

Mr. LYNE. -

Nonsense! How can she make it up herself? I am putting what seems to me to be a great possibility, and I should say that the other states would not be willing that Western Australia only should be treated in that way. Now, I never could see why there should be the great objection that was raised originally in Adelaide to fixing a minimum return for each of the states in the manner first proposed.

Mr. DEAKIN. -

Hear, hear.

Mr. LYNE. -

In the first instance it was proposed that the three years 1893, 1894, and 1895, in which all the states had customs duties and raised revenues pretty well approximate in proportion to amount (except in the extreme case of Western Australia) should be averaged; and from these three years so taken a minimum should be ascertained, by dividing the total customs duties by the population. That system would not have involved any bookkeeping; and I say unhesitatingly that it is a great blot on the system now proposed that it involves a system of bookkeeping for five years as between the states, while it secures nothing certain to the Treasurers of the various colonies. The matter was worked out in committee in Adelaide, and we came to the conclusion that under the system there proposed we should have had a uniform minimum for return to the various Treasurers after deducting the gross expenses of the Commonwealth. We should then have been able, on entering upon the Commonwealth, to wipe away the whole of our Border Duties without risk of the trouble, annoyance, and expense, and I might almost say the impossibility, of following goods that are imported from the port of importation to the states where they are sold. I should like to know how it is possible to follow down with anything like a reasonable guarantee of certainty the goods that go from one state to another? I think the Premier of New South Wales is altogether wrong when he says that under this system the merchants will have no objection to keeping a history of the goods
passing through their warehouses. I will undertake to say that you will not have a merchant in one of the colonies who will take the trouble of doing so. The merchants will derive no benefit from it.

**Mr. MCMILLAN.** -

You have a bad opinion of merchants.

**Mr. LYNE.** -

Well, I always had; of course I speak jokingly as to that. Suppose goods are imported from outside, it is not to be expected that a merchant wants to keep a history of them. They may be imported under circumstances which may make him wish to see the last of them as quickly as possible, and he will not follow them up to see where they go to for the purpose of a bookkeeping system between the states.

**Mr. REID.** -

The Commonwealth Parliament will have power to provide for a history of the goods being furnished before they go forth.

**Mr. LYNE.** -

Then it will be more trouble for those records to be kept than it is under the Border Duties.

**Mr. REID.** -

Oh, no.

**Mr. LYNE.** -

Well, nearly so.

**Mr. BARTON.** -

Which system would you prefer?

**Mr. LYNE.** -

There is no necessity for the bookkeeping system. What I am arguing now is that it is only a bogey in the minds of some people that we could not arrive at a minimum per head to return to the states. And that is all that is wanted.

**Mr. REID.** -

Would you accept a *per capita* from the start for New South Wales?

**Mr. LYNE.** -

Yes; and I do not think it would make a shilling per head difference. I think that if to-morrow we had a Border Tariff in New South Wales, the purchasing power of Victoria being equal to the purchasing power of New South Wales, the importations into Victoria would be practically the same as those into New South Wales, except for the fact that Victoria is far more advanced in manufacturing her own goods, and there might consequently be a larger quantity imported into New South Wales for a time on that account, and that account only.

**Sir GEORGE TURNER.** -
New South Wales imports goods from Victoria.

**Mr. LYNE.** -

She does to a great extent.

**Sir GEORGE TURNER.** -

And will do so more largely henceforth.

**Mr. LYNE.** -

At present we import large quantities from Victoria in the south-western part of our colony. But the point is, that the purchasing power in all the colonies will be very much the same. It is nonsense to say that it will be higher in one state than in another for a continuous time, and except for the fact that we in New South Wales do not manufacture as we should in comparison with the other states we should not purchase now more per capita than any of the other states do. As I said at the commencement, the explanation given of the financial clauses h

**Mr. MCMILLAN (New South Wales).** -

I did not intend to speak at this early stage, but I think that our object now is to save time as much as possible, and if I can throw any light upon the matter, and thereby economize time as far as the ultimate discussion is concerned, it is my duty to speak at this stage. I do not think that any scheme that could emanate from the mind of man would be satisfactory altogether, but I do claim that the Finance Committee has done its work well; and, although there may be a difference of opinion upon this crucial matter to Western Australia, I think that the committee have taken such a safe and generous course that there will be very little exception taken to the scheme when we arrive at a conclusion. Ever since the Federal Enabling Bill was passed in New South Wales I have given a fair amount of consideration to the financial problem, and I honestly confess that from the time I had the honour to first address the Convention in Adelaide very little light has been thrown upon the subject, so far as I am concerned. I always said this question must practically be left to the Federal Parliament, and, but for the bookkeeping system, that is the course which has been recommended by the Finance Committee. Some remarks were made by the honorable member (Mr. Lyne) to which I should like to refer. When this question was before us there were only three courses open. First, there was the giving of a guarantee to the states—a course which the honorable member now very curiously advocates seeing that it does not affect New South Wales at all.

**Mr. LYNE.** -

Yes it does.
Mr. MCMILLAN. -
Only in a direction in which we do not want it to affect that colony. It would add infinite complexity and complication to the position.

Mr. LYNE. -
The honorable member knows better than that. It is nonsense to talk like that.

Mr. MCMILLAN. -
There is no personal consideration which influences me in connexion with this matter, and no local politics are introduced here. I am merely dealing with the position broadly and clearly, as I have dealt with it all along, and I shall not recede from the position which I took up on the floor of the Convention, and when I was a member of the Finance Committee.

Mr. LYNE. -
The honorable member knows that it makes a difference.

Mr. MCMILLAN. -
The two other courses which were open for adoption were the bookkeeping system and the course of leaving the whole question to the Federal Parliament. The honorable member does not see that the introduction of the bookkeeping system does away with the necessity of giving guarantees.

Mr. LYNE. -
It does not.

Mr. MCMILLAN. -
If, out of the five colonies, two or three followed one fiscal system and the others another, there might not be an easy way out of the difficulty, but, inasmuch as four of the colonies are absolutely committed to protection, there is no necessity for a guarantee, because necessarily those colonies will have the larger share in shaping the future Tariff, and will be absolutely safe without a guarantee.

Mr. LYNE. -
Yes, but if you raise twice as much by customs duties as you raise now, there is nothing to prevent the Federal Government from spending it all.

Mr. MCMILLAN. -
We all saw that for a time the bookkeeping system would get us out of our difficulties, but we wished to adopt it only in the last resort. We strained every endeavour to get away from this absurd system, but now we have come back to it, and it is proposed in effect that everything except the bookkeeping shall be left to the Federal Parliament. I am not anxious to disturb any clause that has been carefully thought out by the committee.
unless it is absolutely necessary to do so, but I should like to have seen some proviso introduced under which, if the Federal Parliament could come to some agreement with the Parliaments of the states, the bookkeeping period could be cut short. Of course, we know that under all British Constitutions, and among British people, it is not at all times necessary to create specific machinery, because the occasion creates the machinery. There is no doubt that, at any rate during the early period of our federal life, there must be close connexion between the Federal Treasurer and the Treasurers of the states, because the finance question is the one great link between the Commonwealth and the states. In all other matters we have either given the control exclusively to the federal authority or have left it with the states, but in regard to the finances we have left a very strong link between the federal authority and the states authorities. I do not know whether from a legal point of view, it is possible or necessary, but I should have liked to have seen some kind of machinery provided by which the Federal Treasurer could call together the Treasurers of the states Governments for the purpose of dealing with these matters. Although five years is a short time in the life of a nation, it is possible that circumstances may arise under which it may be advisable, with the consent of the states, to end this wretched system of bookkeeping in a shorter period.

Sir GEORGE TURNER. -

We fixed the term at five years to give certainty to the people of New South Wales, so that they should not be afraid of being badly treated.

Mr. MCMILLAN. -

That is all right. I felt that there was the most generous feeling in the Finance Committee as to the difficulties and perplexities of New South Wales. What the committee has done is this: They have cleared away all the difficulty and complication which would have prevented the representatives of New South Wales from going back to their colony and saying that the financial clauses ought to be received. Certain honorable members, and certain very able people outside, have tried most assiduously to prove that the vexed question of the disposal of the surplus would be solved if the railways and the state debts were handed over to the Commonwealth. But I want again to point out that no such arrangement touches the root of the difficulty. The distribution of the surplus stands absolutely by itself, and should not be confused by any other issues. I am very glad that the committee, in their wisdom, have seen fit to strike out the clause which limits the expenditure of the sovereign power. I should have considered such a provision most unfederal. It seems to me that, since those who will represent us in the Federal Parliament will be chosen by ourselves, we need not fear that the expenditure of the Federal Government
will be larger than will be absolutely necessary. To limit such expenditure for the first two or three years would be an absolutely useless precaution, while my experience of all Treasurers except myself is that if we had introduced some such qualifying phrase as "except for national exigencies" it would have been taken advantage of. I am inclined to think the new paragraph to be added to clause 89 will be of very little benefit whatever. There is to be a surveillance of the goods previously imported under the old Tariffs so as to avoid the glutting of one market and the cheating of the revenue afterwards. As a business man, I do not think that the remedy will prove effective, because I do not see how you can discriminate, and I am opposed to making my fellow men liars by Act of Parliament. On many occasions the most honest and discriminating men will not be able to answer the questions.

Mr. FRASER. -

It would only apply to goods coming across the borders.

Mr. MCMILLAN. -

Yes; but I say that you cannot discriminate; while if men want to rob you they will rob you. I think it would be just as well to strike that provision out. You cannot make such an enormous change as we are going to make without creating a great deal of disturbance and chaos.

Mr. HIGGINS. -

Have you any alternative to propose?

Mr. MCMILLAN. -

I have no proposal to make. If you are going to impose duties you must fix a certain date for their imposition, and abide by the inconvenience caused. It soon passes away, but you must pay the piper. I think that the paragraph which provides that the Central Government should be paid pro rata, according to population, in connexion with new post offices and other works arising out of the services transferred, is only fair and reasonable. Now I come to the Western Australia question. So far as I can see, if you want a piece of machinery to recoup to Western Australia its loss—if you want to differentiate between that colony and the other colonies—the machinery provided will do. We only got the report of the Finance Committee yesterday afternoon, and I must say that I have not had time to consider this clause, but so far as I am able to grasp it it seems to me a simple piece of machinery for doing what is wanted. I have no objection to the position of Western Australia being considered. So far as New South Wales is concerned, with the probability of an enlarged volume of Customs receipts, any contribution will be a mere bagatelle to us. It is rather for the
other colonies to say whether they will bear this burden. I take it that the Premier of New South Wales is perfectly willing to stand sponsor for his colony in any loss we may make. Therefore, this question does not affect us very materially, and I am sure that a very much larger sacrifice would be freely undertaken to get Western Australia into the Union.

Mr. GLYNN. -

Has not the provision the fault of applying an old Tariff to a new importation?

Mr. MCMILLAN. -

No. I have not examined it with absolute closeness, but I think it hits the rough justice of the provision, if we are to recognise that justice; but I am willing to be enlightened upon the point by more acute members of the Convention. The only other point to, which I think it necessary to refer, taking it for granted that the bookkeeping system must be adopted, is the clause with regard to the taking over of the public debts of the states, which I am sorry has been allowed to stand in its present form. I have before dissented from the principle of this clause. I think that we must either make some complete and generous arrangement for taking over the debts of the colonies upon equitable principles, which, in my opinion, is impossible, or we must leave the matter to be dealt with subject to the approval of each state. I do not think this clause is workable. It says-

The Parliament may take over the whole, or a rateable proportion, of the public debts of the states as existing at the establishment of the Commonwealth.

And so on. The loans contracted by the states have been floated at different rates and under different conditions. Are you going to allow the Federal Parliament to make a law for itself in regard to these states in taking over the loans? Of course I know, as a matter of practical working, it is probable that no Federal Treasurer would attempt to take over these loans unless he could have some reasonable arrangement with all the colonies, because I think if any one colony's loans are taken over all ought to be taken over as a practical matter.

Mr. FRASER. -

It is pro rata.

Mr. MCMILLAN. -

That does not affect the question of the interest and other matters connected with these loans.

Mr. DEAKIN. -

Do you want words introduced which will allow those elements to be
considered?

Mr. MCMILLAN. -

I object absolutely to any arrangement by which the Federal Parliament may take over those loans without the consent of the states.

Mr. DEAKIN. -

Are you afraid of being robbed of your debts?

Mr. MCMILLAN. -

No. That, of course, has been said before.

Mr. DEAKIN. -

I said it.

Mr. MCMILLAN. -

But, at the same time, it involves details, and involving those details which may be made very onerous to some of the states, I want to be perfectly clear on this question of loans. I believe in one consolidated loan system for the colonies, but there are many questions arising out of it connected with new loans, and the principle on which those new loans shall be raised, just as there are questions arising out of taking over the existing railways and the construction of new lines. My view is that all these matters should be left to the working of the future. I believe that if you leave these matters entirely for the states to give their free and full consent on a reasonable proposal, there is much more likelihood of these assets or liabilities being taken over and being worked under federal control. The principle I have always held, without being a constitutional authority, is that you must in every case, where you hand over a power to the Federal Parliament, make that power supreme; whatever is left to the local Parliament, that must be absolute and supreme. But in this case you allow, at its own sweet will, the Parliament of the Federation to come at any time it likes and say:"We will take over these loans on our own conditions."

Mr. FRASER. -

But without the power they could not take them over at all.

Mr. MCMILLAN. -

But they have the power here to take over the loans, without the consent of the states, or the states agreeing to any particular arrangement. As a practical matter, I believe it would work out the same, but I think, at the same time, it is not a fair thing in this Constitution. I think it would be impossible for this Convention at the present time to make any concrete scheme for the taking over of either the railways or the debts. I hold that there is a great deal to be said in favour of both these proposals, which, as a business man, I should like to see, when we further develop the whole railway system of Australia, under one control, but I feel that this is just
one of the things in which we may go too far. We are not likely, in the case of the railways, to get the concurrence of the states to this Constitution if we give federal control over them, and, as I consider that the railways and the debts are so intimately connected, I think that the debts ought to be left exactly in the same position as the railways, that they can be dealt with by the Federal Treasury, subject to the consent of all the states. The fact is this-you have a complex network of interests connected with the railways and the debts. The railways are the great revenue-producing asset of the money we have borrowed—probably in the whole of the colonies two-thirds of the debts and I do not believe that any system to be proposed in the future which will separate these two things will be entirely satisfactory.

There seems to have been a sort of idea that you can get rid of your surplus by simply allocating a certain amount of your debts. But that is a very foolish thing to think, because this Commonwealth is growing; the position with regard to our debts and with regard to every financial thing in twenty years will probably be doubled, and the plan of allocating certain debts would only get over the difficulty for a certain time. It seems to my mind that this bogey, or rather this charge—for it is not exactly a bogey by which we solve this financial difficulty, has been more or less penetrating the minds of honorable members, and led them astray, in the consideration of this great question of debts and railways. I shall certainly oppose that clause as it stands. I shall not ask for the insertion of a provision requiring the consent of each state with the idea that the debts of one state will be taken over, and not the debts of the others, because I think the practical effect would be that unless a Federal Treasurer could get all the states to agree he would not touch the debts at all.

Sir GEORGE TURNER. -

One state out of eleven or twelve could block the whole thing.

Mr. MCMILLAN. -

I cannot imagine that sort of thing. I cannot imagine that any fair scheme drawn up in regard to these colonies will be blocked by any one state unless it is very unfair to that state; and as I think that the questions of railways and debts are closely intertwined, I believe it is possible that some general scheme as to the debts and railways may be unfair to one colony, and that colony will be perfectly justified in not agreeing to it when its peculiar position is understood.

Mr. GLYNN. -

The relative values of all the debts can be easily ascertained.

Mr. MCMILLAN. -
I do not say for one moment that you cannot have a scheme. There is no matter in connexion with the development of our Commonwealth that cannot to a certain extent be solved by reasonable men, by reasonable compromise. We are not here to judge a question of 6s. 8d. one way or the other. I do not think I need take up the time of the committee any longer. I do not honestly think that this financial debate, after having had the report of this committee, should be very long. The only question which is new is the question of Western Australia. Every other matter has been debated and argued time after time, and it seems to me that after free and liberal discussion has taken place, and nobody of course ought to be gagged, we ought to come to a vote on these proposals as the result of the best efforts of the best men we have been able to get together for that purpose. If these men fail, then the Convention fails. It seems to me that unless there is some matter of vital principle which would in the opinion of an honorable member practically ruin the chances of the Constitution before the people of his colony we have a right to take this scheme almost in its entirety. The question of Western Australia is new, and it ought to be thoroughly thrashed out. The question of Tasmania arises, and so far as I am concerned I shall be glad to see anything done that can get that colony out of its difficulties, because I can clearly see, from the papers that were distributed by Sir Philip Fysh, that the margin on which they have to work is the smallest possible. They have strained direct taxation in that young country to the very utmost. There is only a certain limit to Customs, because if you attempt to go beyond a certain limit you destroy your own efforts. If we have a colony in which a sum of £50,000 or £100,000 is a matter of vital concern to its statesmen, then I think we ought to consider that colony of 150,000 persons in the midst of a community of 3,500,000 persons. There must be generosity in this Convention, and there must be generosity in the Federal Parliament. We do not deal on strict lines with anything in our local Government. We do not decide, if a breakwater is wanted at the mouth of a river, whether the whole of the people in that locality could not be bought out for the price of the breakwater. We say-

"There is a certain necessity to protect the people of that part of the colony; we trust to the future growth and development of things, and we will deal generously and freely, without any consideration of mere paltry, pounds and shillings." The same principle must actuate us in this financial affair. Even if this scheme bristled with more objections and greater injustice than it does, we should accept it if it is the only possible thing to do. The Federal Parliament must deal with the finances of the future on broad and liberal lines. We must
recollect that so far as finance is concerned, it is practically a unification of this young empire. And, therefore, feeling as I do that the men who represent us will be practically ourselves, that this feeling for federation, for loyalty to all parts of Australia, for generous treatment of one by the other, is growing rapidly and surely in our midst, I leave the whole matter, as it had been arranged here, with confidence to the Federal Parliament.

Sir PHILIP FYSH (Tasmania).

The very kind expressions of opinion which have been offered by the two representatives of New South Wales (Mr. Reid and Mr. McMillan) lead me, as a Tasmanian, to express the hope that the financial proposals, as they now come from the Finance Committee, may receive a very cordial reception from the Convention. Whatever serious doubts may have been on my mind while sitting on the various Finance Committees, in respect to the possible position of Tasmania, and the federal financial position, they may be somewhat removed if the spirit which has actuated the speakers this morning is moving all the members of the Convention. Therefore with the full hope, when we find Western Australia being dealt with so liberally under these proposals, that wherever necessity may be shown to arise, similar sympathy will be expressed and shown in a practical spirit, I am disposed to accept the proposals of the Finance Committee, and to believe that they have done a good work, and that as a whole the proposals can hardly be improved upon by the Convention. I would like to call the attention of honorable members to the history, short though it may be, of the Finance Committee of each Convention. When their memories are refreshed as to what was done in Sydney in 1891, at Adelaide in 1897, at Sydney in 1897, and in Melbourne in 1898, in respect to the difficulties which confronted the Finance Committees, and which I believe are now overcome in these proposals, I believe the Convention will arrive at the conclusion that the alternative of those proposals cannot be accepted. The Finance Committee of 1891, after many sittings, proposed that the system of interstate accounts should be lasting, and it also purposed to charge the whole of the expenditures of the Commonwealth against the various states in the proportion in which the expenditures were made within the states. It will be in the recollection of those who attended the Convention of 1891, and of those who have made themselves familiar with the Commonwealth Bill of 1891, that the Convention altered these financial proposals, and made the expenditure chargeable per capita. The inequality or inequity of such a proposal has been exposed by Sir Samuel Griffith and others on many occasions. It possibly was one of the reasons why the financial proposals of 1891 did not find that acceptance which some of us hoped they would find. Then, after some years of experience, the press having
kept us alive to the inequity of the proposals of 1891, we met at Adelaide. I am not revealing secrets when I say that day after day, for seven days, some twenty gentlemen sat round the finance table while proposals were made, and yet day after day the report of our chairman had to be relegated to the waste-paper basket. After seven days again the Finance Committee came to the conclusion that the counting house must be brought in, and that there was no equitable solution of the financial difficulty excepting that associated with inter-state accounts. The proposals of the committee came before the Convention, and the then Premier of New South Wales, although himself a party to the proposals, and Mr. McMillan, although the chairman of the Finance Committee, said that, while they could not get rid of the system of inter-state accounts, they were not at all in love with it. Mr. Reid, at the Convention, made a suggestion that the difficulty might be overcome by keeping accounts for a certain period and then attempting to adjust the various proposals by a sliding scale for five years. We have tested that plan. It has been tested by the press, and by various of our statisticians, and Treasurers, and has been found wanting. The Finance Committee were unable to face the finance difficulty at Sydney, but here we have sat for many days, and after all the experience of the last five years, with the information furnished by our statisticians before us, we have again been forced back to the original proposal that the counting-house shall come in and that interstate accounts shall be kept. The inter-state accounts are only to be kept for a period, and it appears to the Finance Committee that there is no other way of equitably solving this problem. The keeping of accounts for five years will give to the Federal Executive and to the Federal Parliament an index of what each state has been contributing during each year, and will enable the Federal Parliament to discharge the very onerous duty that is imposed upon them of thereafter finding some other equitable means of distribution. I notice that Mr Lyne strongly objects to the system of accounts, but I would ask him, as the Convention will no doubt ask itself, what is the alternative? The only alternative is the *per capita* distribution of all our revenue and all our expenditure. There are honorable members present whose opinion was strongly expressed at the meetings of the Finance Committee that we were not actuated by a federal spirit if we were not prepared to agree to a distribution of revenue *per capita*. But the difficulties of that proposal will be seen by any one who has given consideration to the abnormal conditions of finance in Western Australia, where at the present time £6 per head is collected from Customs, or to the extraordinary position in New South Wales, where from 20s. to 25s. per head covers the Customs revenue. In
Tasmania the average is 40s.; in South Australia it is somewhat less; and in Queensland it is 56s. It must be apparent from these facts that a uniform Tariff collected and paid into the one pocket—the Federal Treasury—cannot equitably be divided per capita over the whole of the Commonwealth.

Mr. LYNE. -

The difference is owing to the difference in the Tariff.

Sir PHILIP FYSH. -

The honorable member is mistaken. Special circumstances very materially affect the amount contributed per head. That has been shown in a small degree with respect to narcotics, spirits, and tea and sugar, figures having been worked out which give the per capita contribution. In Western Australia and in Queensland there is a larger proportion of men-folk than in the other colonies, and we know they are the principal consumers, and that they contribute most to our Customs revenue so far as narcotics, spirits, tea, and sugar are concerned. The revenue from these articles throughout all Australia comes ad valorem goods, irrespective of the maximum specific duties on other goods.

Mr. LYNE. -

The height of the duty makes some difference.

Sir PHILIP FYSH. -

Yes; but, as I have explained, the amount collected per head is in proportion to the number of men-folk in the district where you levy and collect your duties. It will be seen, therefore, that we have been driven back to the accounts system. I regret it, although this is the system that I have advocated consistently from the beginning. I have sat upon the various Finance Committees, and I have always taken the view that the Convention could only overcome this difficulty by adopting, at any rate for a period, the accounts system. I should be delighted if some honorable member could propose some other scheme that would be equitable. I have not been able to discover any other myself, nor has any other been suggested to me. By the proposals made by the Finance Committee we shall get rid of this system of keeping accounts in five years, and it will then be left to the Federal Parliament to deal equitably with the states. No provision is made that the Federal Parliament shall thereafter distribute the revenue per capita. The Federal Parliament will have to exercise its own judgment, and, seeing that it will be composed of members elected from the various states, we may say that in trusting this matter to it we shall simply be trusting ourselves. The clause with reference to the imposition of uniform duties is left intact, because the foundation of our Federation to the
commercial men of the colonies is commercial unity. They desire that trade throughout the whole of the colonies should as speedily as possible be free. Without freedom of trade such a Federation fails in one of its first and most essential conditions. We have been struggling against each other for a great number of years, and it has been very truly said of us that we have been seven nurseries of petty strife. Nothing has led to more ill-feeling between us than the knowledge that, whilst we have been professedly inviting the keenest competition, we have been interposing barriers against any interchange of trade. Under this Federation we shall get rid of all our Border Tariffs in two years. In the meantime, the revenue will be collected by the Federal Executive, and the surplus returned to each state will be in proportion to the amount collected. What system could be more equitable? What more could any state desire than that it should practically be left as it is? For two years, instead of paying the revenue into our own exchequer, we shall pay it into the Federal Exchequer, and it will be returned to us less the amount expended in its collection. The result will be that each state will be left in the position it is in at the present time. No Treasurer will have any occasion to complain. He will not lose or gain, but he will lose or gain in two other respects. It is in regard to these two features of the proposals that are made by the Finance Committee that the Treasurer of each state will have to consider in what way his particular state will be affected, and in what way he can make up any deficiency that may arise. The deficiency will be caused first by reason of the state contribution to the new or original expenditure that will be incurred of about £300,000; and, secondly, by reason of the new or original expenditure which will be incurred in order to make good to Western Australia any loss that she may sustain under the arrangement now suggested. The cost of federation to the various states will, therefore, be £400,000 a year. But we must not lose sight of the other point, which each of us will have to consider seriously, that is, how far our state revenues will be affected by intercolonial free-trade. The movement of intercolonial trade has been very strange during the last five years. We have a record of the movement of that trade in 1890, which was supplied to the Convention in Sydney in 1891. That showed that there was about £850,000 of duty per annum collected by the various states upon colonial products, of which £850,000 nearly £300,000 was upon sugar, the product of Queensland. But the movement to which I was about to refer was that which affects Western Australia. Her share of duty out of the £850,000, collected within her borders on intercolonial products within that year, amounted to £90,000. Within two years we find that she was collecting £180,000 upon the same necessaries of life; and in 1896-7
we now have in formation supplied by the Statistician of Western Australia pointing out that her collection of duty upon intercolonial products amounted to £380,000 a year, or about 35 per cent. of her Customs revenue. These are the items which will concern every state Treasurer. Tasmania will have to bear her share of £40,000, and a matter of very serious consideration it will be, plus the extra expenditure to which I have already referred. Fortunately, under the present proposals of the Finance Committee, we get rid of a very serious contribution which, under the existing Bill, we should have to pay; that is, the difference between our state expenditure on the various services transferred and the Commonwealth expenditure when it will be thrown into a _per capita_ distribution. We were left, unfortunately, in the position of losing about £60,000 a year by that transfer. Now, under the more equitable proposals at the present time-That is: the proposal first to last for two years, and then for five years more, under the system of bookkeeping we shall certainly be in a better position as regards that £60,000, but we shall still stand in an unfortunate position, although not so serious as anticipated by Mr. Coghlan in his papers. The serious difficulty will confront the Treasurer of Tasmania, whoever he may be, of making good the large amount of deficiency, first in paying the _per capita_ share of the new expenditure, and second, the loss on the Tariff on account of intercolonial freetrade. Having got rid of the first two years, I will presume that the Federal Parliament shall have enacted a uniform Tariff, a presumption which I suppose I may take for granted will not be questioned. Although you may lay the duty upon the Federal Parliament of imposing this uniform Tariff it possibly might fail, but we have to ask ourselves is it likely that it will fail? When we know that its failure to impose a uniform Tariff will not only leave it high and dry without any revenue but will also leave all the other states of Australia without any Customs revenue, it must be apparent that, although we cannot enforce this responsibility on the Federal Executive, yet it is enforced by reason of the magnitude of the questions involved in the event of their failure. Seeing that those who will be elected hereafter to the Federal Parliament will be representatives of the people, knowing the necessities of each state, we can certainly trust the Federal Parliament to secure within two years the necessary uniform Tariff. I have no doubt upon the matter myself, and I should not hesitate to recommend those who may look to me for advice in a matter of this kind to accept under these circumstances whatever the responsibility may be of going into a Federation with the very extreme view that there is just a possibility of the Federal Parliament not agreeing to a Federal Tariff within two years. We shall assume, therefore, that the Tariff has been framed; thereafter for five
years the revenue will be collected throughout the states on this new and uniform Tariff giving intercolonial free trade, and I think very probably giving to the states a maintenance, as nearly as possible, of the same average amount of duty which we are collecting at the present moment. It may be premature to speculate upon possibilities, but for all that, I think that it is our duty to look to possibilities, and when I know that there are Western Australia, South Australia, Tasmania, and Victoria, which are sure to be among the federated states, all of them having an absolute necessity for the full amount of revenue which they are receiving at the present time, I shall assume that if there be one state, which is desirous of cutting down the revenue to a very small sum that that one state will not prevail against the absolute necessities of the great number of states who, in fact, would not only be embarrassed, but rendered insolvent, by the fact that the revenue was not maintained by means of a good revenue Tariff—a Tariff for revenue purposes, but not for protective purposes. I will not import the question of protection into the debate; it is quite out of the question; but, for revenue purposes, the Federal Parliament will find it absolutely necessary to raise some such amount as we are finding for ourselves at present, or many of us will be left in the very serious predicament of not being able to pay our way. We shall, therefore, during those five years receive back just in the same proportion as we pay, and we continue the equity of the system to which I have referred already. We ask nothing from New South Wales or any more wealthy state. Victoria in her need asked nothing. We recognise to the full that one of the bases of our negotiations here is the principle laid down in the resolutions first moved by our leader that there shall be no surrender by any one of any right, and I presume that that meant that we are not asking any state to surrender any revenue which it may receive. Therefore that is one of the bases of our negotiations. Neither Tasmania nor any one else desires New South Wales to surrender anything. We say deliberately that New South Wales shall benefit to the amount of every penny which she collects within her own borders, and we shall take care of her even outside of her own borders if we can. Then there is the proposal which I think my honorable friend (Mr. McMillan) misunderstood. Clause 89 goes further to my mind than he explained. It is intended to add to clause 89 the new paragraph which is in print. Before uniform duties of customs have been imposed, if goods are exported into another colony, if they have paid nothing, say, in New South Wales, having been imported under her free-trade Tariff this year, and next year the uniform Tariff of the Commonwealth imposes a 20 per cent. duty, and those goods are sent down to Tasmania, Tasmania will collect 20 per
cent. thereon. If they be goods which came into Victoria, and paid 10 per cent. duty this year, under the Commonwealth they will be responsible for 15 per cent. duty; then being shipped to Tasmania for home consumption the merchant importing them into Tasmania will have to pay 5 per cent. duty. First, I shall presume that every state Treasurer will, within the two years whilst the merchants and importers are waiting for the coming excitement of the Federal Commonwealth Tariff, take care to protect the revenue in some way, because unless the state Treasurer does, within six months of the coming into operation of the uniform Tariff, which may be 20 per cent. ad valorem, protect the state revenue by the imposition of some duty which he thinks will be closely allied to that which will be the federal duty, we shall find ourselves in this position. The merchants of Australia will load up the markets very considerably in a particular year when a low duty prevails, as in Victoria on some articles which are to be manufactured, and when there is no duty in free-trade New South Wales. Then the Federal Tariff for the first year will be penalized to that extent. That is so serious a point that I fancy the Treasurers themselves will bear it in mind. Take New South Wales, for example. The merchants there have loaded their stocks very heavily this year under the free-trade Tariff; when those goods are exported, they will be subjected to the Commonwealth Tariff.

An HONORABLE MEMBER. -
That will only apply to a few commodities.
Sir PHILIP FYSH. -
It will apply very largely to everything in the shape of ad valorem duties; they will all be

subject to variations of that kind. I know, if I were in trade, I should load up in New South Wales very considerably with all those goods which are free, because I would be quite sure that they could not remain free under the Federal Tariff.
Mr. MCMILLAN. -
Surely the honorable member would not do such an improper thing?
Sir PHILIP FYSH. -
I would; and any mercantile man would be a fool if he did not do so.
Sir JOHN FORREST. -
You would load up our place with sugar.
Sir PHILIP FYSH. -
Very naturally that would be done when one might be perfectly sure that the duty on sugar will be increased from £3 to £6 per ton.
Sir JOHN FORREST. -
Both sugar and tea.

Sir PHILIP FYSH. -
Certainly; the right honorable member has supplied the very example I wanted. The merchants there knowing that sugar is an article which must be more heavily taxed hereafter, would be certain in Western Australia to bring in a six months, if not a twelve months supply, under the low Tariff.

Mr. MCMILLAN. -
The honorable member seems to know all about it.

Sir PHILIP FYSH. -
I know all about it, just as my honorable friend does. It is one of those profits in trade to which all traders are entitled, and it frequently does very little more than equalize the losses which are made when Tariffs are reduced. This clause will not only meet that purpose, but it was designed to meet another purpose, and I hope that the Right Hon. Sir George Turner and the honorable member (Mr. Holder) will follow me. This clause was designed to meet another purpose, and, although it is not fully expressed, I am going, when we come to consider the clause - having previously consulted some members of the Finance Committee - to move the insertion of certain words which will make it meet that other purpose. We have provided for five years' bookkeeping with respect to all goods entering into one colony, where the duty is paid, and finally passing into another colony for consumption, so that the latter colony, where the goods are consumed, shall receive the credit for the customs paid on those goods, even though it was paid in another country. That is a very necessary provision. But there is no provision as far as this particular class of goods is concerned. Therefore, if the goods are subject to a duty of 20 per cent. ad valorem under the Commonwealth Tariff, and they have only paid 10 per cent. on importation into New South Wales, for example, when they are sent to Tasmania for consumption, only 10 per cent. is to be collected on them in Tasmania, which colony will, of course, be entitled to the other 10 per cent. Now, some provision must be made in that clause to meet that particular purpose, because that is to be with us the purpose of the clause more than anything else. There are one or two other points on which I might speak; but I will limit my remarks to the question with respect to Western Australia, because we shall have opportunities in connexion with each clause of discussing their special necessities and their special provisions. I think, therefore, I will confine myself to clause 92, which provides for the special arrangement with Western Australia. Sir John Forrest will be able to state his own case, on the part of that colony, and I therefore need not espouse his cause, but will content myself with speaking generally as to the
case of the states which may be seriously injured in their revenue by reason of intercolonial free-trade. It will remain for the Convention to give its very serious consideration under this clause to the desirability of either inserting "Tasmania" or of acting under the suggestion of Mr. Reid, and making some other special provision for that colony.

Mr. MCMILLAN. -

Would it not satisfy you if we put Tasmania on the same footing as Western Australia?

Sir PHILIP FYSH. -

It is not for me or for the representatives of Tasmania to say what will satisfy that colony. It is utterly impossible for any of us to gauge the possibilities of the changes which will take place when we have free-trade throughout the colonies.

Mr. MCMILLAN. -

I am only speaking of the Constitution we are framing now.

Sir PHILIP FYSH. -

Well, personally, I am so enamoured of the one great purpose which we have in view, which is to secure union and free commerce in these colonies, that I would recommend almost any reasonable sacrifice to the people whom I represent.

Mr. FRASER. -

That is the right spirit.

Sir PHILIP FYSH. -

And that is the spirit I find existing amongst all the Tasmanian members of this Convention. We will all strive to our utmost to induce the people of Tasmania to come into the Federation-I must not say at any price, that would not do, but if it is at all possible. And even if we have to make some sacrifices, I believe that our losses will be made good in some other way. That is the spirit in which I now address the Convention, and, therefore, I support the proposal with respect to the special treatment of Western Australia. It would be a thousand pities if we had to wait for some later opportunity for the fullest development of this Commonwealth. It is a thousand pities that Queensland is not immediately to be one of us. I think that Western Australia, if we agree to this proposal, ought to become one of us, and I should like my honorable friend (Mr. Lyne) to follow the observations I am about to make with regard to that provision, because I feel that a few words of explanation, in addition to those which have already been given, may elucidate what seems to Mr. Lyne to be a complex piece of machinery, but which Mr. McMillan accepts as an arrangement
which is as clear as could possibly be made between commercial men. In Western Australia a certain Tariff is in existence prior to the establishment of the Commonwealth and the introduction of its uniform Tariff. The Tariff of Western Australia yields a certain amount of revenue. It includes duties on butter, cheese, bacon, chaff, and potatoes coming from the other colonies. Taking the Customs revenue of Western Australia for 1896 as the basis, that colony will lose, under the first year of the uniform Tariff—assuming that all duties on articles of intercolonial produce are abolished—no less than £389,000. The proposal is that in each of the five years following the establishment of a uniform Tariff a statement will be made up to show what under her own Tariff Western Australia would have received in customs dues, and the difference between the two sums is the amount she would lose by the adoption of the Commonwealth Tariff. Now, what are we going to do to requite Western Australia in respect of that loss? We make up a similar account in respect of each of the states, and throw all the accounts into one, from which we find that all the losing states, including Western Australia, have lost a certain amount of revenue by reason of this new Tariff. Then we ascertain the difference between the two, and whatever that amount is, is due from the Commonwealth to Western Australia.

Mr. LYNE. -

But they all have to lose something.

Sir PHILIP FYSH. -

Let me follow that out. Western Australia will not lose, in my opinion, a very considerable amount, because she admits her imported machinery, her tea, her sugar, and various other important articles at present duty free.

Mr. MCMILLAN. -

She will lose nothing that intercolonial free-trade will not make up for.

Sir PHILIP FYSH. -

None of the colonies can presume to expect that, under the uniform Tariff of the Commonwealth, they will import machinery, tea, sugar, and various other important articles free, as is at present done in Western Australia. And if Victoria, Tasmania, and Queensland only imposed duties of 12 1/2 per cent. ad valorem, like Western Australia, on many other imports, it would land all those colonies in bankruptcy—all except New South Wales. Of course, as importation is increased consequent on lower duties the revenue would increase, but it would take some considerable time to restore the equilibrium in that way, and in the meantime all the colonies except New South Wales would be landed in bankruptcy. I certainly believe that low duties, in the long run,
frequently produce as much or more revenue than higher duties, but while
the transition is taking place we should suffer from loss of revenue. As the
Treasurer of one of these colonies, I believe that for that period we must be
protected, and, therefore, we provide that the proportionate loss of revenue
from customs duties, consequent on the introduction of the uniform Tariff
and intercolonial free-trade, sustained by Western Australia shall be made
good by the Commonwealth. Now, I do not believe that Western Australia
will lose £389,000 through the introduction of intercolonial free-trade,
because part of her loss will be made good by the imposition of duties on
goods at present admitted free. It is more likely that the amount which the
Commonwealth will have to provide for Western Australia will be
something like £100,000. But whatever the result may be, Western
Australia will have this satisfaction: That she is not to be placed, under
federation, for the first five years in a worse position as regards Customs
revenue than she is at the present time.

Sir JOHN FORREST. -

No; but she will not be put in a worse position than any other colony
joining the Federation.

Sir PHILIP FYSH. -

But Western Australia will get secured to it the same amount of Customs
revenue as it now enjoys, or rather as it would then enjoy if its own Tariff
had continued in operation instead of the uniform Tariff of the
Commonwealth being brought into existence.

Sir JOHN FORREST. -

Oh, no.

Sir PHILIP FYSH. -

Western Australia is to receive from the Commonwealth the difference
between the revenue she actually obtains under the uniform Tariff after
federation, and the amount she would have received from the same
importations had her own Tariff continued in operation. I believe that
freedom of trade between the colonies will prove to be so advantageous in
a short time, that the people of Tasmania, and of the other colonies,
recognising its benefits, will be glad that they have joined the Federation,
and will not have cause to think that they have paid more than a reasonable
sum for those advantages. There are only one or two other points I desire to
comment on. There is one point which was mentioned by Mr. Lyne, and
another which was put by Mr. Reid, that ought to be set right. We have
certainly failed to continue the provisions with respect to the limitation of
expenditure, and with respect to the guarantee of an annual surplus. Now, I
corrected Mr. Lyne when he was speaking by interjecting that the proposal
to secure that surplus was not mine. That proposal, and a very good
proposal it is too, came from the Premier of Victoria. It seemed to me to be a very necessary proposal.

Mr. LYNE. -
You started it.

Sir PHILIP FYSH. -
I did not start it, but never mind, I am acknowledging that it is a good proposal. Still, with later experience and more light we may surely learn wisdom as we proceed, and I think that we have learnt this much: That if South Australia, Victoria, Western Australia, and Tasmania must maintain, in order to continue their solvency, a revenue pretty nearly equal to that which they receive at present—and I believe that those states will have in their own hands the power to compel the Federal Executive to make such proposals to the Federal Parliament as will secure to them such a revenue—then no Federal Treasurer dare show his face in Parliament with a Tariff which will not take into consideration the necessities of the various states. It has been well put by Mr. McMillan that the Treasurer of the Federation will be perpetually in touch with the state Treasurers.

Mr. FRASER. -
He ought to be.

Sir PHILIP FYSH. -
He will thereby be enabled to frame his proposals according to the necessities of the case, and he will have to do so, because he will be brought face to face with the representatives of the states in the Federal Parliament. Therefore, the Federal Executive may be relied on to produce before Parliament a Budget which will protect the solvency of the various states. I shall not be led into discussing the very important subject with which Mr. McMillan closed his remarks, namely, the question of taking over the debts of the colonies. I asked the Finance Committee to consider a clause dealing with that subject, but I was properly persuaded by them that it would be better to have the subject dealt with in the Convention. The Finance Committee have, therefore, not further considered that proposal. I observe that Mr. Glynn has a very similar proposal already in print, and when I have compared my proposal with his I shall either give notice myself of a fresh proposal with respect to the question of the debts of the colonies, or support Mr. Glynn's, its purpose being that the Federal Parliament may take over those debts—that we shall embrace in the contract between the states and the Commonwealth a condition that the Commonwealth shall take over the whole of the debts of the colonies joining the Federation.
Mr. HIGGINS. -
Will not the bond-holders get the benefit of that arrangement?

Sir PHILIP FYSH. -
I am quite prepared to discuss that point, although I do not wish to enter upon the question now, but I will content myself with the remark that, whatever benefit may accrue to the bond-holders in consequence of the Commonwealth taking over the debts of the colonies, there will be an equal benefit to the colonies themselves.

Sir GEORGE TURNER. -
We can discuss that question by-and-by.

Sir PHILIP FYSH. -
With these remarks I will resume my seat, cordially indorsing what has been done, recommending it to the Convention as, I think, the only alternative to which we have found no other during the past six years while we have had this matter before the people. No one has yet found an alternative which will be satisfactory to the greater number of the people. We shall have dissatisfaction with these proposals expressed

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Sir GEORGE TURNER (Victoria). -
I am somewhat surprised at the apparently perfect unanimity among members of the Convention with regard to the scheme which has been submitted by the Finance Committee. Probably that may be taken as a very high compliment to the work performed by that committee, but it must be surprising, when we recollect that the scheme now brought forward is practically the scheme which was submitted by the Finance Committee in Adelaide, and which was quietly put under the table. The only difference between these schemes, so far as the question of distributing the surplus is concerned, is that at Adelaide we determined that at the end of five years we would follow the per capita mode of distribution, while here we leave the mode of distribution absolutely in the hands of the Federal Parliament. Now, sir, there appear to me to be one or two difficulties in connexion with this proposed scheme which we ought to carefully and thoroughly investigate before we finally approve of and accept it. One difficulty is, that under this scheme we leave the state Treasuries absolutely at the mercy of the Federal Parliament. We make no provision whatever to return to the states either a fixed sum, or a proportion of the revenue which has to be collected, and, while no doubt among ourselves it is well to say-and it is probably true that the Federal Parliament will not take any steps or impose
any Tariff which will bring in such a low amount as to risk the solvency of any of the states, it may be somewhat difficult to impress that fact on the minds of the people who hereafter will have to give their vote, "Yes" or "No," with regard to this measure. It is perfectly clear to us that the Federal Parliament must make the states safe otherwise, it will endanger the existence of the Federation itself. We know that; and, if this scheme be adopted, we will have to endeavour to impress, that fact as strongly as we possibly can on the minds of the people in the various states. But I would have liked, for the sake of the people themselves, so that they might have had the knowledge that for five years, at all events, their state Treasurer could not be put in a difficult position-I would have liked to have seen some provision in this Constitution which would have required the Federal Parliament to so frame the Tariff, to so limit the expenditure, and to so collect the money, as to give back to the various states practically what they are now receiving. We cannot, and must not, conceal from ourselves that unless that be done, the state Treasurers will be placed in a very difficult and very awkward position. It has been said before, and it will bear repeating, that in nearly all the colonies, Western Australia and New South Wales excepted, taxation has gone almost to the full length that it is possible for the Treasurers in the colonies to carry taxation; and, if there are to be heavy deficiencies in the Treasury accounts, then I, for one, know of no means by which we in Victoria would be able to raise the necessary amount of money, save and except, we get permission, which was refused us some little time ago, to impose a pretty heavy land tax, to enable us to bring in the amount. Then with regard to the amounts which will have to be raised by this Federal Tariff. At the present time we have in each of the colonies a Tariff suiting our own requirements. New South Wales has merely a revenue Tariff. We, in Victoria, have what we believe to be, a scientific Tariff for our protective purposes, with an immense free list. Western Australia, while aiming somewhat at protection, has practically a revenue Tariff; other colonies have varying Tariffs, under which they raise different amounts per head of the population. I think the members of the Convention will agree with me, that the Federal Parliament will be bound to return to the states an amount equal to what they are now collecting. But, unfortunately, that is not a uniform amount. It is an amount varying in every state, and our Tariff is to be a uniform Tariff. If we so base that Tariff as to be able to return to the state with the greatest consuming power the amount that it is collecting at the present time, we will leave the state with the least consuming power in the position that it will not be able to get back nearly the amount it is
collecting at present. If we follow the other course, and if we so impose the Tariff as to give the state with the least consuming power an amount equal to what it is collecting now, we will give to the states with greater consuming powers a large surplus-collected in all probability from their people which they will have a difficulty in expending unless they enter upon extravagant works. So that we must not forget the fact that the mere statement that we are to impose a uniform Tariff will not end our difficulties, because that Tariff will be very strangely constructed if it will be such as to give back to each colony what they are receiving now. It must give back to some of them far more than they are collecting at present, and give back to others far less than they are collecting. I do not know that, in this Convention, we can possibly deal-with that difficulty; but it does come before us when we are considering the question as to whether we ought or ought not, for a period of five years, to make some provision by which a certain amount, at all events, would be returned to each of the states, so that the Treasurers and the people of the states might know that no further claims for taxation would be made upon them. We cannot overlook the fact that we have to bear a portion of the extra expenditure, amounting to some £300,000 odd, and that also, whether it be a saving to the people or not, the Treasurer of the state will lose the amount of the intercolonial duties. To us, in Victoria, those duties-including the duty on sugar from Queensland-come to £300,000. If we are to lose that £300,000, or a considerable portion of it, and if we are to find our share-£100,000 or £110,000-of the federal expenditure, we will have to raise by some means, unless we can get it from the Federal Tariff, a sum of probably £450,000. Of course, I always look forward to Queensland coming into the Federation.

Mr. WALKER. -

Will there not be an excise duty on sugar?

Sir GEORGE TURNER. -

That we do not know, but, even if so, we will have to raise £300,000, and it will be nearly as difficult to raise that amount as to raise £400,000. Therefore, I should be glad if it were at all possible for us to make some provision in this Constitution which would compel the Federal Parliament to so impose the Federal Tariff as to bring in sufficient money to give to each of the states the full amount they are collecting at the present time, thus providing for the loss of intercolonial duties, and leaving them (as I think we might fairly leave them) to pay their fair share of the expenditure. Mr. McMillan has raised some difficulty with regard to the five years fixed in this proposal for the purpose of bookkeeping. I object strongly, and always have done, to any system of bookkeeping in connexion with the Federation, because we cannot conceal from ourselves the fact that that to a
great extent will postpone the full benefits to be derived from a uniform Tariff and intercolonial free-trade. I would much prefer to see the period of five years considerably reduced. If we are to have bookkeeping at all I would like to see the period limited to a much shorter time. But when that was mentioned to our friends from New South Wales, they objected that unless the people of New South Wales knew that for a definite period this system of bookkeeping would be carried out, that definite period being not less than five years, great difficulty would arise in inducing those people to vote for the scheme. Therefore, we were practically-in this matter as in regard to other matters also-forced to agree to a compromise suggested by the representatives of New South Wales. Mr. McMillan also says that clause 89 will be useless. I do not know whether he is referring to the part of the clause

which provides that where goods have been imported into one colony before the imposition of uniform duties, and are exported to another within two years after the imposition of such duties, duty is to be charged when the goods are landed in the other colony; because I do not know that that clause will be either useless or unworkable.

Mr. MCMILLAN. -

I did not say that it would be useless. I said it would be difficult to carry it out.

Sir GEORGE TURNER. -

It will be somewhat difficult, but at the same time I believe that we must have some such provision.

Mr. MCMILLAN. -

I do not deny that.

Sir GEORGE TURNER. -

Because if we do not have that provision goods will be imported into New South Wales and then exported to the other colonies, and the duties on them will be lost altogether. We know very well that many people consider that if they are "getting at" the Customs they are not committing any very great crime; but I think that the Federal Parliament will be able to model its law with regard to the Federal Tariff so as to impose some severe punishment if persons are found out in endeavouring to annul this provision. It is an absolutely necessary one in the interests of the Commonwealth's finances, and also in the interests of those colonies where manufactories have been established for some considerable time. Now, my great difficulty in connexion with these financial schemes is this-I feel that we are entering into a federation, and that as soon as we have imposed a uniform Tariff that federation should be absolutely complete. To be
absolutely complete, it appears to me that we should have one purse, and one purse only, and that the proper course to pursue is to say that when we have imposed a uniform Tariff all our expenditure should be on a *per capita* basis, and that our balances, whatever they be, should be distributed also on that basis. We should have no bookkeeping in any shape or form, but immediately the uniform Tariff came into operation that particular division of the funds should also come into operation, in order that we may have a complete federation. But there again we meet with the difficulty arising in New South Wales.

**Mr. WALKER.** - And in Western Australia.

**Sir GEORGE TURNER.** - Western Australia I have always admitted to be in an abnormal position, and it must be dealt with separately from the other colonies. I never take Western Australia into consideration in dealing with any question with regard to finance, because I admit that it is in such a position that it must have separate treatment. But I do not agree that New South Wales is in a separate position to anything like the extent that Western Australia is. But in order to assist that colony I agreed in Adelaide to a sliding scale, because gradually that would work out any anomalies which might possibly exist. I believe that for a little while after the imposition of the uniform Tariff, New South Wales may, perhaps, contribute a little more *per capita* than the other colonies would, but that after a year, or a couple of years, the difference would cease; and I agreed, by way of compromise, to a period of five years, which I thought was ample for all the requirements of New South Wales.

**Mr. WALKER.** - Suppose Queensland came into the Federation, how would she stand on a *per capita* basis?

**Sir GEORGE TURNER.** - I have never closely investigated the case of Queensland, but I dare say that the uniform Tariff would work out almost the same in that colony.

**Mr. WALKER.** - Queensland gets about £3 10s. per head per year.

**Sir GEORGE TURNER.** - That depends on the nature of the Tariff. A Tariff is framed to suit the requirements of a colony. We, in Victoria, could frame a Tariff that would give us more than we now collect, but it does not suit our policy to do so. No doubt, the Queensland Tariff is framed to collect as much revenue as possible, and
not to encourage, as we do in Victoria, the protected industries of the colony. I fail to see how, when we have established a uniform Tariff, any great difference in the consuming power of the people can exist, or how there can be any great difference in the amount which would be paid in each colony under the uniform Tariff. With regard to New South Wales, although I admit that she might for a time pay a little more per head than we should in Victoria, that would be almost counter-balanced, and New South Wales would make it up by having her expenditure distributed on a per capita basis. Sir Philip Fysh has pointed out that very large saper capita basis, instead of with the actual figures of the colony’s expenditure.

Mr. HIGGINS. -

Is it larger than that of the other colonies?

Sir GEORGE TURNER. -

Yes, I think New South Wales would save considerably over £100,000 a year by distributing her expenditure on a per capita basis instead of as at present, because New South Wales has a heavy expenditure in connexion with her post-office and her defences. Figures were quoted—I do not intend to use any here to-day—by various members who spoke in Sydney, and other figures appear in statistics which have been circulated, which show that if you take a number of items, such as spirits, narcotics, tea, coffee, and similar articles, you will find that the consuming power in Victoria is greater, perhaps, than in New South Wales; and I believe that if you work the matter out you will find that there is very little to choose between the two colonies. Now, I would have liked, if it were possible, to have had the whole matter treated on a per capita basis. But I feel sure, from the expressions of opinion given by various members of the Convention, that I could not carry any such proposal as that without injuring the cause of federation. But, as the matter now stands, we propose to leave for a period of five years this bookkeeping system. I do not think it is possible under that system to trace all the goods passing from one colony into another. It seems to me that it is utterly impracticable to do anything of that kind. But an Sydney and Melbourne are distributing centres, that will rather act to the benefit of New South Wales and Victoria, and detrimentally to those colonies which take goods from us, because the duties will, in all probability, be credited to these colonies, instead of to the colonies in which the goods are actually consumed. A system might be adopted by which you might put a check upon all the goods imported, but to say that any system of bookkeeping which the Federal Parliament may adopt will enable you to trace all the bulk goods and the broken goods that might and will pass from one colony to another, seems to me to be utterly impossible. So that now we propose to adopt for five years a bookkeeping system,
under which each colony will get a return of its supposed collections after being debited with its actual expenditure and its *per capita* proportion of the expenditure of the Commonwealth. We are leaving it absolutely entirely to the Federal Parliament to say how much that body will collect. We place no restrictions upon it. The Federal Parliament may, if it think fit, collect simply enough to pay its own working expenses, and leave to the states the task of raising the rest. We then leave to them absolutely and uncontrolled the amount of the expenditure they will incur; and by that means we leave the states absolutely at the mercy of the Federal Parliament, as to what return they will get year by year on giving up the most elastic source of their revenue. We have to do that under this proposed system. The question is whether we are justified in doing that, and if we are, whether we shall be able to sufficiently explain the matter to the people of our various colonies as to induce them to see it in the light in which we see it. There is no provision in this Constitution with regard to drawbacks, but I assume that that will be a matter entirely within the power of the Federal Parliament when passing the Federal Tariff, because I think it will be found that there will be some necessity for a system of drawbacks when goods are passing from one colony to another. Another matter is with regard to bounties, and this is a somewhat serious question for the colony of Victoria. We are told that if we enter into this Federation no colony shall in the future be at liberty to give any bounty for any purpose unless the agreement to do so be entered into prior to the 30th June of this year. I should be very glad if it were at all possible to have a provision made leaving it to the states, at all events, for certain purposes—agriculture, dairying, and similar purposes—to have power to give these bounties. We know that, in the past, the giving of bounties in the different colonies has had the result of establishing a profitable trade with the old country, and we know that it will be very difficult to persuade the Federal Parliament to grant these bounties, which must be uniform throughout the whole of the Commonwealth. While I see that there is a slight danger that, by granting bounties, We might to some extent take away the benefits of intercolonial free-trade, I believe, nevertheless, that we should still continue to give the colonies power to grant what I believe to be a necessary assistance for the development of many of our industries, at the same time giving the Federal Parliament control in order to prevent a colony from passing any law or granting any bounty which might be inimical to the interests of intercolonial free-trade. I shall be perfectly prepared to accept some proposal such as that, because I do not think any colony would desire to have the power to grant bounties for improper purposes; and I think that if
we take away, as it is proposed under this Constitution to take away, the power of granting bounties at all, you will be doing a great injustice to some of the colonies, and to the export trades which they have been building up for the last few years. The committee have endeavoured to deal fairly and equitably with the colony of Western Australia. The proposal of the Finance Committee, as it had been already explained, is that we should by some means endeavour to ascertain what that colony will lose by the removal of intercolonial duties and by the changes in the Tariff, and that we should compare that loss with the losses of the other colonies, and then repay to Western Australia whatever loss she may sustain over and above the average loss of the other colonies. The amount paid to Western Australia will have to be made up by contributions from the whole of the colonies, so that Western Australia will have to pay part of it. But the difficulty with us is this: That, whereas in New South Wales they will be receiving a considerably larger revenue, out of which they will be well able to pay their contribution to Western Australia, we in Victoria, with intercolonial free-trade and the changes which will be made in the Tariff, will suffer considerably. But, notwithstanding our own loss, we shall have to put our hands into our pockets to help to make up the loss sustained by Western Australia.

Mr. WALKER. -
But you will get an open market for your goods.

Mr. REID. -
And a very good market.

Sir GEORGE TURNER. -
We shall get an open market for our goods, but it appears to me that, so far as Western Australia is concerned, we shall not have a very much larger market than we have at the present time. We do a very large trade with Western Australia in a large number of articles, and I think that, whatever customs duties may be in existence, Western Australia will continue for a considerable time to deal with Victoria, South Australia, and probably New South Wales, instead of importing largely from abroad. If we could have adopted a scheme whereby the losses of all the colonies would have been pooled and provided for equitably and rateably, the difficulty I speak of would have ceased to exist; but I was forced to admit that the people of New South Wales would raise strong objections to the adoption of a proposal of that kind.

Mr. REID. -
Hear, hear.
Sir GEORGE TURNER. -

Seeing that these objections would have had a considerable foundation, I was bound to agree to the proposal which is recommended by the Finance Committee. If, however, it is proposed to bring in any of the other colonies, if Tasmania is going to say-'We are in an abnormal position, and must have similar treatment to that given to Western Australia,' I shall have to take up the position that all the colonies must be placed upon an equal footing. We have always admitted that the position of Western Australia entitles her to some consideration.

Mr. McMILLAN. -

What does the right honorable member estimate the probable amount which will have to be paid to Western Australia?

Sir GEORGE TURNER. -

My honorable friend knows, as well as I do, that it will be impossible to answer that question Until the Uniform Tariff is actually in operation. The representatives of Western Australia say, I believe correctly, that they will lose £380,000 per annum by the removal of intercolonial duties; but they will gain a large amount from duties which will probably be put upon articles which now enter the colony free, and, as the losses of the other colonies will be considerable, I hope that the amount which we shall have to make up to Western Australia will not be a very large one. As I interjected this morning, we must also take care that if Western Australia gains anything in any one year that is set off against a loss in any subsequent year. There may not be this gain, but, of course, one cannot tell. After having considered this matter in connexion with the work of the Finance Committee at different times, I am forced to the conclusion that it is impossible to adopt any scientific scheme of finance. We must deal with the subject in a rough-and-ready manner.

Mr. WALKER. -

And trust one another.

Sir GEORGE TURNER. -

We must trust the Federal Parliament to deal fairly and equitably with all the colonies. I have no doubt that when the first five years after the union expire, pressure will be brought to bear by some of the colonies, so that they may obtain better terms. That has been the experience in Canada, and I should be glad, if it were possible, to prevent it from being our experience. I believe that the proper course to take would be to go the full length of declaring that the distribution shall be per capita from the start. That is apparently impracticable, but I hope that the committee will consider whether we should not adopt part of the scheme which we adopted at Adelaide.
Mr. WALKER. -

After five years.

Sir GEORGE TURNER. -

I am quite willing to agree to the continuation of the bookkeeping system for five years if we cannot reduce the term to three years, but after that we should not leave the system of procedure to be adopted in any doubt. We ought to declare in the Constitution that, at the end of whatever period we fix, the whole receipts and expenditure of the Federation shall be treated upon a per capita basis.

Mr. WALKER. -

You would not have a sliding scale at the end of five years?

Sir GEORGE TURNER. -

No. I should not be willing to have five years' bookkeeping, then five years of the sliding scale, and then a distribution per capita. We should provide that after five years what is admitted upon all hands to be the true and proper mode of dealing with the question, and the mode in which it would be dealt with were it not for the fiscal arrangements in New South Wales, that is, the per capita distribution, shall be adopted. I think we should implant a clear direction to that effect in the Constitution. To guard against any danger of injustice I shall be prepared, after that direction has been implanted in the Constitution, to allow a provision to be inserted giving to the Federal Parliament the power to make an alteration. It may be said that to give the Federal Parliament the power to make an alteration is equivalent to leaving the whole matter in its hands; but I do not think it is. It would be said if any alteration were proposed-"The instructions given in the Constitution are that the surplus shall be distributed upon a per capita basis," and it would require very strong arguments indeed to induce the Federal Parliament to adopt any other mode of procedure.

Mr. MCMILLAN. -

Do you not think that the per capita distribution would be the most obvious principle to adopt if the conditions allowed of its adoption?

Sir GEORGE TURNER. -

I do not know that. Some of the colonies will be gaining an advantage by the account keeping.

Mr. MCMILLAN. -

The right honorable member would simply put in a declaration to the effect that the Convention is of opinion that this principle should be adopted.

Sir GEORGE TURNER. -

I would embed in the Constitution a provision to the effect that, we think
the proper mode of distribution is *per capita*, but I would not rigidly insist upon the adoption of that mode of distribution, because the arguments I have heard here lead me to the conclusion that it would not be wise to make any of the provisions of the Constitution too rigid, since if they will not bend they may break. I am prepared to give the Federal Parliament the power to alter the system of distribution, knowing that it will be difficult for it to do so in the face of the direction implanted in the Constitution. I feel that the financial question has been one of grave difficulty, and at one time it appeared to be insurmountable. The scheme prepared by the Finance Committee does not meet with my

Mr. HENRY (Tasmania). -

After the favorable criticisms of the scheme of the Finance Committee to which we have listened it is refreshing to me to bear the somewhat adverse criticism of the Right Hon. Sir George Turner. I am one of those who do not agree with the general recommendations of the committee. I have consistently opposed the bookkeeping scheme, though I admit unreservedly that, like others, I am prepared to make a concession to what I regard as the unfounded prejudice of New South Wales, and to the pressing necessities of Western Australia. I think it desirable that we should consider what the bookkeeping scheme really means. If we reflect that to secure anything like justice to the respective colonies an accurate account must be kept of the various goods passing into the several colonies and moving from one colony to another, if we realize the difficulty of discriminating between goods of colonial manufacture made from colonial produce, and goods of similar manufacture made from raw articles which have paid duty, and the difficulty of determining the amount of duty paid upon the manufactured goods, we shall see that the scheme is full of objections and must lead to great irritation and annoyance. The more I consider it from a federal point of view,

Mr. ISAACS. -

I wish that were more universally admitted.

Mr. HENRY. -

It seems objectionable to cut up the continent into sections and endeavour to ascertain what each particular section contributes to the
common purse. I admit the force of the prejudices and the necessities to
which I have alluded, but I think it my duty to point out the grave
objections which I have always seen in the bookkeeping system. Why are
we asked to keep the accounts? Simply to secure greater equality, and in
the interests of the two colonies. The first colony is New South Wales, and
the second is Western Australia. We all from the first admitted the special
circumstances of Western Australia, and the necessity for dealing in a
special way with her finances so that she could enter the Federation. But I
deny emphatically that the circumstances of New South Wales justify this
bookkeeping system. This leads me to the consideration of the figures
supplied by Mr. Coghlan, the Statistician for New South Wales. At Sydney
I took occasion to criticise his figures, and it seemed to me that there was a
general assent on the part of the Convention, and even by the
representatives of New South Wales, that his figures were not reliable as a
basis. We have been treated now to an additional sheaf of pamphlets from
Mr. Coghlan, with a somewhat modified result, but still, from my point of
view, with the same objectionable conclusions—that is to say, fallacious
conclusions as regards the contribution from each colony.

Mr. MCMILLAN. -

You don't consider him a prophet.

Mr. HENRY. -

I not only do not consider Mr. Coghlan to be a prophet, but I consider
that he has employed fallacious data, which has led him to fallacious
conclusions in this matter of finance. Honorable members will remember
the first pamphlet he issued. The honorable member (Mr. Wise) has asked
on what data Mr. Coghlan has based his calculations. If I understand Mr.
Coghlan aright, he has merely dealt with the imports of the respective
colonies as a whole for a common period, and has reasoned from those
imports that, as New South Wales imports so much in excess of the
imports of the other colonies, therefore it follows that, under a uniform
Tariff, New South Wales would, relatively to her imports, contribute so
much more revenue. That is the fallacy which has misled him, and which
has led, in my judgment, to the introduction of what I cannot help
characterizing as this irritating and mischievous proposal to keep accounts
between the several states for a period of five years in the matter of
Customs. What are the conclusions Mr. Coghlan arrives at? I will only deal
with the two great colonies of New South Wales and Victoria. In his last
pamphlet he estimates that under a uniform Tariff New South Wales would
contribute £2 1s. 11d. per head of the population, while Victoria would
contribute £1 7s. 8d. per head of the population, or an excess contribution
of 14s. 3d. per head by New South Wales under a uniform Tariff. If my
memory serves me aright, Mr. Coghlan's previous calculations made New South Wales a greater contributor than Victoria by 17s. per head of population.

Mr. MCMILLAN. -

That is a mistake he made.

Mr. HENRY. -

The only difference is that in one case he had taken one year's imports, and in the other case he had taken several years imports. Even his own conclusions show that the imports of a colony may vary, and his calculations vary with the imports.

Mr. MCMILLAN. -

There were some errors in the calculations, too.

Mr. HENRY. -

Possibly there were some errors, though I was not aware of any. With a knowledge of the habits of the people of New South Wales and Victoria, of the wages ruling, of the purchasing power of the people, of the wealth of the two communities-with abroad knowledge of these facts before me, my common sense revolts at the conclusion that Victoria would contribute 14s. 3d. per head of the population less than New South Wales. It is very obvious to me that Mr. Coghlan is wrong. Feeling in my own mind-from taking a common-sense view of the position-that Mr. Coghlan's conclusions were fallacious when they were submitted to us in Adelaide, on my return to Tasmania I asked our respected statistician (Mr. R.M. Johnston), than whom there is no abler man in these colonies, to furnish me with some particulars that would better measure the power of the people of the colonies to contribute through the Customs than that supplied by Mr. Coghlan. After some considerable consultation with Mr. Johnston on the subject, we adopted the articles of spirits, beer, wine, tobacco, tea, coffee, sugar, and molasses, and he ascertained the consumption of these particular commodities by the several colonies for a certain period. I gave honorable members the result of his figures in Sydney, showing, as far as my memory will serve me, that there is a difference of only 1s. per head of the population as between New South Wales and Victoria in the consumption of these articles.

Mr. MCMILLAN. -

I am not sticking up for Mr. Coghlan now..

Mr. HENRY. -

They appealed to me as fair, as a means of measuring the consuming power of the people of the respective colonies.
He does not touch the question of manufactured goods.

Mr. HENRY. -

No, it is simply a measure of the consuming power of the people. Since I came to Melbourne my right honorable friend (Sir George Turner) has kindly furnished me with a further set of figures prepared by Mr. Fenton, the Statistician of Victoria, taking out the same articles, but for a different period, namely, from 1891 to 1895. The previous calculation I had was for the period of one year. I am well aware that, even as regards this question of imports, it is a very simple matter to get into a serious error through taking the figures for only one year. Therefore, in order to correct the figures, or to check the figures I already had, I asked Sir George Turner to allow his Statistician to take out the actual quantity of spirits, beer, wine, tobacco, tea, coffee, and sugar consumed by the respective colonies for the period from 1891 to 1895.

Mr. HIGGINS. -

And these were very bad years in Victoria, too.

Mr. HENRY. -

I have taken the Tariff of Tasmania and applied it all round, because on all these articles we have certain duties. For instance, it would not have done to take the Tariff of Western Australia, where they have no duties on tea and sugar. It does not affect the general result much what Tariff you take so long as you have duties on all the articles—I do not think it will affect the relative amounts much. It will interest honorable members to hear what the result of these figures is. I find that for the period I have named Victoria contributed £1 7s. 11d. per head, New South Wales £1 9s. 6d. per head, South Australia £1 4s. 4d. per head, and Western Australia £3 2s. 9d. per head.

Sir JOHN FORREST. -

What!

Mr. HENRY. -

The right honorable member will know that it is not the actual contribution.

Sir JOHN FORREST. -

I know that. It is only the proportion.

Mr. HENRY. -

It is merely the proportion. Tasmania contributed £1 3s. 1d. per head. These figures, as given to me for that period, are practically in agreement with the figures I already had.

Mr. MCMILLAN. -

New South Wales agrees with that perfectly. We allow that in matters of
consumption we are about equal.

Mr. HENRY. -

I have some interesting figures dealing with that question. It will interest the honorable member and other members to hear what the general result of these figures is. On the basis of a Tasmanian Tariff these figures will give revenue of not less than £4,200,000. Assuming that we have a revenue of £6,000,000 to make up, it is obvious that on making up the difference between £4,200,000 and £6,000,000, no such discrepancy can possibly arise as is claimed. That is the answer, I think, to Mr. McMillan's point.

Mr. MCMILLAN. -

I do not agree with Mr. Coghlan's figures. I only say that they indicate so much.

Mr. HENRY. -

My object is to show that all this trouble we have had—the introduction of this bookkeeping system—has been based on a fallacy. I think to attempt to measure the consuming power of a community merely by its imports, under a uniform Tariff which no one can forecast, is misleading, to say the least of it. I notice that in a very interesting letter, Mr. Pulsford—and I regret that I was not able to find another letter which I am told he wrote—gives what appears to me to be a most conclusive answer to this, when he compares the imports of Great Britain with the imports of America. The imports of Great Britain are about double the imports of the United States, and the population is one-half. If we were to take Mr. Coghlan's principle of arriving at the contributing power of the people under a given Tariff, then we would see that the people of Great Britain would contribute four times as much as the people of the United States were able to do under a uniform Tariff.

Mr. HIGGINS. -

Suppose you are absolutely right?

Mr. HOWE. -

Who killed Coghlan? Henry!

Mr. HENRY. -

In connexion with this question of imports, I think every man who has studied the imports and exports, especially in connexion with the borrowing of the colonies, knows the intimate relation that the increase of both our public debt and our private debt bears to the imports. I am well aware, and every one who has studied this question knows, that in proportion as you increase your borrowing, so will your imports go up, because you bring out your borrowed money in the shape of goods. This obvious fact led me to look into the question of the relative public borrowing of Victoria and New South Wales; we all know how intimately
the one involves the other. Looking back over a period of fifteen years, I find that New South Wales has increased her debt, roughly, by £40,000,000, while Victoria has increased hers by only £24,000,000. It is obvious that the increased borrowed money came out from England in the shape of goods, and to that extent increased the imports of New South Wales. Even within the last five years—Sir George Turner kindly gave me the figures for which, in going over the details, struck me as being somewhat significant and worth calling attention to. I find that in New South Wales, in 1896, gold and silver, specie and bullion, copper, tin, and lead, to the value of £2,750,000 were imported.

Mr. WALKER. -
From Queensland.

Mr. HENRY. -
A great deal of the gold was from Queensland, and some of the silver and lead from Tasmania. These minerals are sent out again, and both the imports and the exports of New South Wales are in this way swollen. But surely the importation of two and three-quarter million pounds worth of gold and silver, specie, and lead does not add to the contributing power of the people through the Customs and Excise. It may seem rather a pity that I should take up so much time in dealing with a question of this sort. I thought the matter had been settled in Sydney, but there is this sheaf of pamphlets reviving it. I trace the support of this bookkeeping system right through from Adelaide to Melbourne to Mr. Coghlan's fallacious figures.

Mr. HIGGINS. -
Supposing that you are right, but that it is impossible to persuade the people of New South Wales that they will not lose, what then?

Mr. HENRY. -
I said that, as a practical man, I was addressing myself to a practical question. Although I am opposed to it, I recognise that the prejudice in New South Wales is so strong that we must concede the bookkeeping system. I was exceedingly pleased to hear Mr. McMillan suggest that the period for which it is to remain in operation might be lessened. I do hope that that will be done, or, at all events, that power will be given to the Federal Parliament, if they find that it is unjust in its operation, and that it causes so much irritation to the people of Federated Australia that it becomes intolerable, to shorten the period.

Mr. SYMON. -
Make the minimum two years.

Mr. HENRY. -
Yes. I intimated to the Finance Committee that it was my intention in the Convention to move that the period be reduced to two years. Give the Federal Parliament power, if you will, to continue it for an indefinite period. I have sufficient confidence in the Federal Parliament to believe that they will only continue it so long as they consider it advisable or necessary in the interests of the people. There is one other point that I find in my notes, and it is a point of some interest. It is claimed that because Victoria is a protective colony and New South Wales a free-trade colony, the consumers of dutiable goods in Victoria will contribute less to the federal revenue under a uniform Tariff than the consumers of dutiable goods in New South Wales. I am very desirous of having my mind enlightened on this question. I am open to conviction, but I confess that up to the present time I have failed to see why, simply because Victoria has in the past pursued a protective policy, her people are to contribute less under a uniform Tariff than the people of New South Wales. We all know that the merchants of New South Wales will, in all probability, have large stocks of goods when the uniform Tariff comes into force, and the people of New South Wales will get the advantage of these goods free of duty. There is every probability that the consumers of the same goods in other parts of Federated Australia will pay duty. For the first year or two, therefore, the free-trade colony may contribute less to the federal revenue than the protective colonies. The view I take of it is this: That once we have what we all desire, perfect freedom of interchange between all parts of Australia, Melbourne and Sydney will become in effect one in the matter of goods, the only difference being the freight. Let honorable members take any commodity that occurs to them. I will assume, for example, that the uniform Tariff imposes a duty of 20 per cent. on tweed trousers. If that duty excludes the manufactures of England or other countries, it is obvious that the extension applies to Sydney just as much as to Melbourne. They will both stand on equal terms, and the users of tweed trousers in both will be in the same position. I raise this question because I am desirous to hear some honorable member demonstrate how a dweller in Victoria, which will be a part of Federated Australia, will contribute less to the revenue under a uniform Tariff than a dweller in New South Wales.

Mr. HIGGINS. -

Would not Victoria import more than at present if, as is probable, the Federal Tariff is lower than her own?

Mr. HENRY. -

That might be so. I am speaking of the time when the Federal Tariff is in
full operation. For a brief period there will be some disturbances; but there has been rather too much made of this point. The traders of New South Wales will be just as sensible of the advantage of giving their customers the cheapest articles obtainable as they are now, and there will be a market for Victorian manufacturers in New South Wales. I apprehend, however, that New South Wales will rapidly overtake Victoria as a manufacturing country. There is a somewhat important point in connexion with the bookkeeping system that I would like to put to the Convention. I would ask this question: What object is to be served beyond that of satisfying the prejudices of New South Wales by fixing the period at five years? It is obvious to me that for all time there will be inequality. We cannot by the adoption of this system remove inequality. You will always have the rich and the poor amongst you, and in all human probability there will be some discrepancy between the contributions from the various divisions of Australia. Assuming that at the end of the five years you have acquired certain knowledge as to the contributions of the various colonies, where are you then? Are you any nearer your goal?

Mr. WALKER. - Yes.

Mr. HENRY. - The honorable member will perhaps be able to demonstrate that. From my point of view, you are no nearer your goal, because I hold that the changing conditions of the several colonies are such that no man can predict what the period of five years will bring forth in this matter of Customs contributions. It may be that in a lengthened period, when the country is largely populated, say, in the course of 50 years, the communities will be so settled that we shall have very few poor states, and there will be no great disparity between the poor and the rich states. But, having regard to the fact that the disparity in the contributions of the several colonies arises entirely from the number of males in the respective colonies, and, having regard to the fact with which we are all familiar, that we have in Australia a certain floating male population, according to the various mining rushes, we are constantly liable to have changes in the relative contributions of the Several colonies. Therefore, at the end of five years you have ahead of you just the same inequalities and so-called injustice. From my point of view, you might as well out up New South Wales and separate Broken Hill from the agricultural portions of the colony and trace out the individual contributions of the members of the state as attempt to separate, when we are one great country, the different states into sections and say-'This section contributes so much less than another, and we will not give this section so much as we will give the
other." Are we to be a Federated Australia or not in this matter of accounts? This proposal that, because one section of the community contributes a little more than another, we are to have this system of bookkeeping inflicted upon us for a lengthened period is so foreign to the true federal spirit that I cannot help protesting against it with all my power. If our object in this bookkeeping is to avoid inequalities in this matter, what does it involve? It involves bookkeeping for ever, while we are a Federation, because I hold that we shall be constantly exposed to these inequalities; there is a recurring risk for all time in this Federation of having these inequalities. Therefore, to attempt over a short period like five years to get the data which is to guide us is to proceed on fallacious lines, and can never give us the information we want. In Tasmania, we have a rich mining population, that is, it is rich so far as contributing largely to the Customs revenue is concerned, owing to the higher wages which they receive, and the greater number of males amongst them as compared with our agricultural population. We cannot ascertain the data, it is only speculation; but, from a knowledge of the habits of the community, it is probable that, while the miners pay from £3 to £5 per head to the revenue, our agriculturists do not contribute more than £1 per head. Are we to say to the agriculturists—"We are going to deprive you of certain rights, and privileges"? The more I think over it the less tenable the proposal seems to be. I now come to the case of Western Australia. We all admit frankly the great difficulty that exists in bringing that colony into the Federation, and the necessity for dealing with it in some particular way, but it has now to be admitted that the bookkeeping in itself is insufficient, and we find that there are special terms set forth in the Western Australian clause. I do not like the provision which is made, and I am not sure that when the thing is thoroughly understood and worked out in practice it will effect for Western Australia the object aimed at. But if it does effect that object, what will be the result? As regards Tasmania, it is almost certain that the surplus that will be returned to Tasmania, under this financial scheme, will be altogether insufficient for her financial necessities I think that is admitted all round. Nevertheless, we are asked, under this Western Australian provision, to contribute out of our insufficient surplus something to make good the loss which may be sustained by a rich colony like Western Australia. The honorable member (Sir Philip Fysh) swallowed this in a very complacent way, notwithstanding the grave injustice of the proposition that a relatively poor colony like Tasmania—because our financial necessities—are extreme—should be called upon to contribute out of
her insufficient surplus—something to make up the loss to be sustained by Western Australia. That is the serious objection. I desire most earnestly to see Western Australia come into the Federation, and I should like to join in any reasonable scheme to keep Western Australia right. But both as regards Tasmania and Western Australia, I would prefer that the leaders of this Convention on constitutional questions should I draw up some general clause giving the Federal Parliament the necessary power to deal with a state under exceptional circumstances, so as to preserve it from financial shipwreck. If the Federal Parliament saw that a member of the Federation had imposed sufficient direct taxation on the people of the state, and had, economized in a rigid manner, and yet was threatened with financial shipwreck, the Federal Parliament should have the power in some way to step in and save that state from shipwreck. If some such provision could be introduced it would satisfy Tasmania, and perhaps Western Australia, better than the present provision, which I should like to say to my honorable friends from Western Australia can never be understood until we see the operation of this clause in practice. No one can foretell what the loss will be to the respective colonies, or how the average will come out. We cannot tell whether there will be anything to return to Western Australia until the facts of experience can make that clear; whereas, if we provide that under particular circumstances the Federal Parliament could take steps to prevent the shipwreck of any particular state it would satisfy me much better.

Mr. HIGGINS. -

Do you say that the Federal Parliament would have a sufficiently strong interest to keep each of the colonies solvent, and see that its finance was all right?

Mr. HENRY. -

In any case, I say that this Federation can never allow a colony to become insolvent. It is possible that the eminent lawyers in the Convention may be able to fell us that there is already power under this Bill to provide for such contingencies; only I can see myself that these financial proposals for the first five years are rigid, and if carried out will prevent the Federal Parliament coming to the aid of a necessitous state. It is to provide against such a state of affairs that I should like to see some provision put in to give the Federal Parliament power in this respect. I know that there are difficulties and dangers in the way of such a proposal, but I also see a danger of the states at present. I do not know that I need quote Mr. Coghlan in detail.
An HONORABLE MEMBER. -

Oh, he is dead.

Mr. HENRY. -

No. I hope that no honorable member in this chamber thinks that I am talking in any disrespectful way of Mr. Coghlan, or that I question in any way his arithmetical accuracy. I recognise his great ability and talent as a statist, but like every other important man, he may make an error.

Tasmania will have to choose between standing out of the Federation and entering it with the certainty of being unable to meet her obligations.

Now, this pamphlet, by such an authority as Mr. Coghlan, has been circulated throughout Tasmania, and has found its way into the local press. In Tasmania we have enemies of federation, as you have in all the colonies, and I ask honorable members to consider what an instrument this pamphlet has placed in the hands of enemies of federation as regards Tasmania. I am sure that honorable members will credit the Tasmanian representatives with a sincere desire to see federation established, although Tasmania is sometimes talked about in a somewhat contemptuous way as only a fractional part of Australasia. I would like to acknowledge the very generous treatment which Tasmania has received to-day, especially at the hands of Mr. McMillan and of Mr. Reid, who showed a disposition-as I thought for the first time-to consider the necessities of Tasmania. I am sure that Tasmania is just as self-reliant and has as great a future before her as any colony of the group, although she is a small community. I do not wish to come here to boast, but I venture to say that Australia needs Tasmania just as much as Tasmania needs Australia, and I can say quite sincerely that I believe there is an honest desire on the part of a large number of the people of Tasmania to share in the National life of Australia. But we are not going to come into the Federation at all costs. It will be the duty of the public men representing Tasmania here to tell their people fairly and squarely what they regard as a proper arrangement.

Sir WILLIAM ZEAL. -

You will have all the markets of the Continent of Australia open to you if you join the Federation, which you have not now.

Mr. HENRY. -

I must remind the honorable member that the bulk of our products, and the increasing bulk of our products; are commodities which we have to send to England-gold, silver, lead, copper, and wool. Those are the commodities which very largely comprise the exports of Tasmania, and our mineral products will very probably, in a comparatively short period of time, constitute

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two-thirds of our entire exports. Therefore, of what interest is it to us to have open markets for those commodities in Australia, seeing that our market for them is in England?

Mr. MCMILLAN. -

What about potatoes?

Mr. HENRY. -

We are very glad to sell our potatoes to our New South Wales friends, who need them so much, and they are very glad to buy them. But I repeat that Tasmania is just as necessary to Australia as Australia is necessary to Tasmania.

Mr. LYNE. -

Why? What for?

Mr. HENRY. -

I will tell the honorable member, for, although he is a native of Tasmania, it would appear that he does not know the importance of his native colony to this great Federation. I am now going to quote from a report furnished by Major General Edwardes, so recently as 1889, on the question of the defences of Australia. Remembering that defence is, next to freedom of trade, one of the paramount inducements for federation, honorable members will see that this question as to the relative position that Tasmania will occupy in regard to defence is an important one for Australia. Now, what does Major-General Edwardes say on the subject? He says that the isolation of Western Australia is a very important thing for Australia as a whole. Then he goes on to state-

If, however, the isolation of Western Australia and Port Darwin is a menace to Australia, the position of Tasmania is still more dangerous from an Australian point of view.

That is to say, it is a greater menace to Australia than even Western Australia. Major-General Edwardes proceeds-

Situated as it is within three days steaming of Adelaide, one from Melbourne, two and a half from Sydney, and four from New Zealand, it might even become necessary to send troops from the other colonies to protect it in time of war. No enemy could seriously threaten Australia until he had established a convenient base near at hand, and such a base he would find in Tasmania, with its numerous harbors and its supply of coal.

Sir WILLIAM ZEAL. -

What about our Imperial fleet?

Mr. HENRY. -

I am not going to enter, on this question of defence, into an argument with my honorable friend (Sir William Zeal) about the Imperial fleet. I rely on the Imperial fleet, under the old English flag, as much as any one, but
the duty of protecting herself will devolve on Federated Australia, and the best authority we have had to guide us on the subject (Major-General Edwardes) has pointed out the necessity for Tasmania being a part of Federated Australia. That is my position on the matter. Now, sir, I come to the question of Tasmanian finance. Briefly, it may be stated thus: That there is no probability of the Federal Tariff giving Tasmania as much Customs revenue as she requires. From calculations made by our statisticians am not going to trouble honorable members with figures—we shall require about £2 6s. 3d. per head to give Tasmania back what she will lose in Customs revenue through joining the Federation.

Mr. HIGGINS. -
You have a very small free list.

Mr. HENRY. -
Yes, a very small free list. About 90 per cent of the goods imported into Tasmania are liable to customs duty. Our colony has the heaviest Customs Tariff of any.

Mr. DEAKIN. -
It is most comprehensive.

Mr. HENRY. -
Yes, it is too comprehensive altogether, but it is our financial necessities that have led us to impose so many customs duties. We have had to meet our obligations, and pay our heavy interest bill, and there was no choice but to raise the necessary revenue by imposing duties of customs. Now, if we have to give up Customs revenue, if we have to give up what was so well called by Mr. McMillan this elastic instrument of taxation, are we to have any assurance as to what we are to get back, or are we to rely merely on what the Federal Parliament will do in the way of imposing duties of customs? There is every human

probability that the Federal Parliament will not impose so heavy a Tariff as will be necessary to give Tasmania the Customs revenue she requires. Now, we are already burdened with self-directed taxation—land tax, income tax, and so on.

Mr. HOWE. -
You will have an increased value when you are a part of the Federation.

Mr. HENRY. -
No doubt; but, for the first two or three years that will not be perceptible and there will be no chance of chancing the taxation system of the colony for that time. I fear that we shall be loaded with a serious deficit under this proposition. But I am glad to know that our Customs, revenue is steadily improving, that our population is increasing, and that we have a great
future before us in respect to our mines; so that it is just possible that the effect may not be as bad, as we now fear that it will be. Only it is the risk that presses upon us—the sense of responsibility as to what we shall say to our people upon this important matter of finance, as to whether we shall be able to say that we believe that there will be such a large deficit that we shall have to put on an income tax that will touch every man in the community with no exemptions at all, and that we shall have to increase our land tax. If we have to go back and tell our people that, I fear that we shall be playing into the hands of the enemies of federation, and it will be a serious question for Tasmania whether she should not stand out for the five years' period, taking the risks and waiting for the developments of events. Therefore, I ask the serious consideration of honorable members to the point whether some plan cannot be devised that will give the Federal Parliament, under exceptional circumstances, power to aid a colony if its finances are seriously embarrassed in consequence of entering into federation. I must, as one of the representatives of Tasmania, disclaim any idea whatever of taking or accepting any relief from the other colonies. We are a self-reliant people, and can pay our own way. But I want the Federal Parliament, seeing that we are handing over our customs duties, to have power to assist us in the event of the entrance into federation being disastrous to us, leaving the Federal Parliament power to made the necessary terms and conditions, but rendering them able to give us such assistance that we may be able to go back to our people and say—"The Federal Parliament will have the necessary power to help us, and we may be satisfied that in case of need they will do so," I feel that I have taken up more time than I have a right to do upon this subject, but I should like to say one or two things with regard to some of the remarks of Sir George Turner. The right honorable gentleman said that in striking out clause 92—and honorable members will recollect the fight we had to get that clause inserted—we shall be making a mistake. The clause provides that the Federal Parliament shall provide a specific sum of money, calculated on the aggregate of the customs duties returned to each colony the year before the imposition of the uniform Tariff, Now, that was a definite provision. But it is proposed to strike out that clause, so that there will be no definite obligation laid upon the Federal Parliament that such a sum shall be provided for distribution. I would, however, like to say to my right honorable friend that I think there war, no man in this Convention who was more pronounced than I was as to the necessity for laying a definite obligation upon the Federal Parliament, if we hand over our customs duties to them, to return to us a sufficient surplus. I was most pronounced with regard to that. I had—being then comparatively fresh to the subject—very
positive views upon the question. But I have lived long enough and seen enough of this question since to enable me to say that I am content if the clause be struck out. And I will tell Sir George Turner my reason. He seems to regard the omission of some provision of this sort as a mistake, but I see clearly enough that the financial necessities of four out of the five federating colonies represented in this Convention are such that it is inevitable that the representative men from the several colonies, both in the Senate and in the House of Representatives, will have it laid upon them as a paramount and imperative duty that if they see that their colonies have not sufficient revenue they must protect the state Treasurers. That is what I rely upon in regard to this matter. I look to the necessities of the several colonies, and I think that Sir George Turner may rest assured that those necessities will lead them to combine, and to see that there is a sufficient amount of Customs revenue provided for the protection of the state Treasurers.

Sir GEORGE TURNER. -

If the Federal Parliament will do that, there is no harm in putting in a clause that will help us to get the Bill accepted by our people.

Mr. HENRY. -

Well, any provision of that kind I shall be happy to assist the right honorable gentleman in getting inserted. In regard to the question of the loss of intercolonial duties through intercolonial free-trade, I do not follow those honorable members who, in discussing the question of the revenue which the respective states will lose

Mr. FRASER. -

It can be made up in some other way.

Mr. HENRY. -

That is exactly what I was about to say. In dealing with the Western Australian position it becomes necessary to consider the loss by intercolonial free-trade, but when honorable members talk of the loss of duties to the respective colonies through intercolonial free-trade I fail to follow them, because I take it that where loss of duties takes place, we give up all to the Federal Government, and it is merely a question with the Federal Treasurer as to what particular articles he is going to raise his revenue from.

Sir GEORGE TURNER. -

By taxing foreign imports.

Mr. HENRY. -

There is little doubt that he must raise it by levying upon foreign imports,
and I have shown that on those commodities consumed by the people generally we can raise £4,200,000. There will, therefore, be no difficulty whatever. I venture to say tha

Mr. FRASER. -

The revenue can be raised easier than now.

Sir GEORGE TURNER. -

Yes, but by killing our industries.

Mr. HENRY. -

I understood Sir George Turner to point out that the several states should retain control over the imposition of bounties. Now, that is obviously impossible, in my judgment, because-

Sir GEORGE TURNER. -

I advocated the granting of bounties, subject to control by the Federal Parliament.

Mr. HENRY. -

If the Federal Parliament controls them, it has power to legislate in any direction it pleases; but it is obvious that it would never do to give the states the power of controlling or fixing bounties, because then there would be an end of the free interchange of commodities. For we all know that under a system of bounties a particular fiscal policy might be set up. I do not think that that position is tenable at all. Another point upon which much might be said, is with regard to the public debts of the colonies, but, of course, that will be discussed in due season, when we come to deal specifically with the matter. I shall not go into it here, especially as the Finance Committee have not included the subject in their report. I thank honorable members for the patience with which they have listened to me upon this somewhat dry subject.

Mr. WALKER (New South Wales). -

On behalf of the Finance Committee, I may say that it is very pleasant to find that, at all events, some of our critics have spoken somewhat favorably of the scheme which has been propounded. Personally, I indorse every word of the scheme, thoroughly and completely believing in it as an equitable scheme. It seems to me that what we want is to devise an equitable plan, by means of which each of the colonies will get back what it pays, less its proportionate share of the expenses; and how that can be ascertained otherwise than by a system of bookkeeping I have yet to learn. With regard to the remarks of the last speaker as to what object there is in adopting the bookkeeping system, I would ask which is better-to "buy a pig in a poke," or to proceed after examination? We have now no data to enable us to say what amount shall
be distributed by way of surplus, but after five years of bookkeeping we shall have an idea as to what amount each colony contributes. Taking my honorable friend's last remarks, it seems to me that the five years' bookkeeping will be of advantage to Tasmania, because by all accounts, owing to her mineral resources, that colony is going ahead by leaps and bounds, and her average income during the first five years of the union will probably be very much greater than the amount she received during the last five years. The honorable member asks what is the object of the bookkeeping system? My reply is that the system has been introduced to do that which is fair and just. Some years ago, two or three other gentlemen met Mr. Tyson, the millionaire, in Townsville, and suggested to him that they should federate. Each of these gentlemen was willing to put all he had into a pool, and to consent to a per capita distribution afterwards. But Mr. Tyson could not see the advantage of the proposal, and it never came to anything. Now, I am as strong a federationist as most honorable members; but I ask how can you expect New South Wales, Queensland, and Western Australia to make an arrangement such as was suggested to Mr. Tyson? I trust, however, that common sense will prevail in the settlement of this matter. Although we are to have a uniform Tariff there is no reason why the Federal Treasurer should not recommend alterations in that Tariff if he finds that the income derived from it is not sufficient to keep the finances of the colonies in a proper state. I agree with the honorable member (Mr. Henry) that Tasmania ought to have separate and distinct treatment from the other colonies. The figures with which he has favored us show that to keep her finances in a healthy state, Tasmania will require a Customs revenue of £2 6s. 3d. a head. On a population basis of 3,600,000, assuming that Queensland will come into the Federation, that would mean that the Customs revenue of the Commonwealth would have to be £8,325,000 a year. Would it not be better for the Commonwealth, instead of raising Customs revenue to that amount, to subsidize Tasmania for a few years? Supposing £50,000 a year would suffice for the first year, the amount might be reduced upon a sliding scale by one-fifth each year, and surely in the cause of federation the other colonies would not object to assist the sister colony in this way. I would now like to take the opportunity to combat one or two of the views which have been advanced by our critics. The honorable member (Mr. Lyne) found fault with the proposed arrangement for making up to Western Australia some portion of the amount she will lose by the remission of the intercolonial customs duties; but I think that this arrangement is a perfectly equitable one, and one which should recommend itself to the Convention. In my opinion Western Australia is behaving generously in this matter, because at the end of five
years she may receive only a *per capita* proportion of the customs duties collected by the Commonwealth, and I trust that this portion of the scheme will not be altered. The honorable member appeared to think that as soon as the Federal Tariff came into force Western Australia would only contribute 30s. a head, but I cannot understand how he made that mistake. It does not follow that because the average all round would be that, that Western Australia would not contribute more. The honorable member seems to have made some confusion between the contribution of Western Australia and what she would receive under the *per capita* distribution. I might point out that when the Federal Tariff comes into force we shall, in all probability, have duties on sugar and upon tea. These articles, I understand, are now admitted into Western Australia free, so that the revenue would gain to the extent of the sums collected in this way, and by any duty placed upon products which are not now dutiable. We need not fear that the colony will come upon the Commonwealth for anything like the enormous sum of £389,000, which it is alleged is received from intercolonial duties. I believe the honorable member (Mr. Holder) will be able to enlighten us as to the confusion re exports from South Australia to Western Australia, and the colonial produce sent there by South Australia direct. If this is a specimen of the way in which mistakes have arisen, we must look upon the estimate of £389,000 as a good deal beyond the actual facts. The honorable member (Mr. McMillan) alluded to clause 89, which deals with the importation of goods into the colony before the coming into force of the Federal Tariff. In my opinion it is to the advantage of New South Wales that accounts should be kept for five years rather than for three years, because during the first year after the imposition of the uniform Tariff her income is likely to be reduced owing to previous abnormal importations. I highly approve of the honorable member's suggestion that the Federal Treasurer should be able to call the states Treasurers to form a council of advice, so as to prevent as far as possible any undue interference with local finances. We shall all be represented in the Federal Parliament, and why four of the colonies should have any fear in regard to the future I do not know. The colony which has most to fear is that which I represent, but we are actuated by the federal spirit, and are prepared to modify our fiscal system for the benefit of Australia at large. I do not suppose that we are more generous than other people.

**Mr. MCMILLAN.** -

Yes, we are.

**Mr. WALKER.** -
Well, I think that human nature is much the same throughout the continent; but New South Wales, in consenting to the alteration of her fiscal system, is making a great sacrifice in the cause of federation.

Mr. BARTON. -

New South Wales has not yet consented to the alteration of her fiscal system,

Mr. WALKER. -

I agree with the honorable member (Mr. Henry) that the conclusions which Mr. Coghlan draws from his statistics are most misleading; but I cannot believe that the difference in consumptive power between Victoria and New South Wales is represented by one shilling per head per annum. If it be so, the bookkeeping will show it, and will also settle a great many other disputes. I cannot see why the bookkeeping system should not be adopted. It will be less troublesome than the present system of Border Duties. There will be no inspection of goods or declarations of value, and after the first few years it will be largely a matter of statistics. In Sydney I took the liberty of suggesting a way of getting over the difficulty. In my opinion, the trouble of preparing invoices in triplicate will be less than that occasioned by the passing of entries, the making of declarations, and the inspection of goods.

Mr. ISAACS. -

A great deal more trouble than that will be occasioned.

Mr. WALKER. -

Well, surely, federation is worth taking some trouble for. Roughly speaking, the new expenditure for the Federation represents about 2s. a head, so that each colony can calculate for itself what its share of the cost is likely to be. Tasmania, I understand, has a population of 170,000 persons, and if federation costs Tasmania only £17,000 a year, surely she will not begrudge that money. I trust that a clause will be inserted allowing the Federal Parliament to treat Tasmania exceptionally, on the ground that her Tariff is so high that it is much cheaper for the Federation to subsidize her for a short term than to have to submit to such an enormous Tariff. Sir George Turner referred to a uniform Tariff for a period of five years, and hoped that at the end of that time it would be arranged that there should be a per capita division of the surplus. I have no great objection to the Federal Parliament being told that if the contributions are at all approximate it might be well to have that method. My impression is that there are three modes of meeting the difficulty. The first mode is the continuation of the bookkeeping system, which none of us desires; the second mode is the
sliding scale, which it seems to me might meet the case; and the third mode is the unequal distribution, on the basis of statistics obtained during the period of five years. The honorable member (Mr. Lyne) objected to the clause limiting the expenditure being eliminated. If we have confidence in the Federal Parliament, I think we ought to leave it a discretion in the matter. As regards the clause relating to the correct amount to be given back to each state, it is very evident that the finances of New South Wales will be greatly disarranged if such a large Tariff has to be submitted to as will guarantee that, because, after all said and done, there may be a considerable loss of revenue by intercolonial free-trade. What that may be we do not know. I think we had better await experience before we undertake to provide for it. Another advantage of the bookkeeping system, I think, is that it will attract Queensland to come into the Federation. That colony was very much afraid of the sliding scale, but when she sees that Western Australia and Tasmania are willing to come in, the moral force of the movement will be such that ere long she will come in, possibly as an original state. Some reference has been made to the consolidation of the debts. I am not sure that the present is the right time to refer to the question, but I have a calculation here, made by an actuary, showing that the extra expense likely to be incurred by the Federation will be much more than covered by the saving of interest in the consolidation of debts. In Sydney I had the honour of reading to the Convention a letter from a London expert in regard to the modus operandi of consolidating the debts. He said it would be a matter of actuarial calculation of a very deep and intricate nature, and on the strength of that I consulted a leading actuary, who is also a strong federationist, and he has taken the trouble to supply me with some figures. I will give a short summary of the figures he has supplied. He has taken the London prices in the Investors' Manual of all the public debts of these colonies. He has taken all the debts maturing after a certain date, because it was not worth while to consolidate the debts maturing before that date. He has taken debts aggregating £166,100,241, on which the annual charge is £6,383,363. He shows that by giving every person the full market value of all these stocks it would increase the capital sum by £17,838,297, and bring the total up £183,938,538. He allows for a sinking fund extending over 50 years, and the saving in the annual charges is £865,207. But to provide a sinking fund for the increase of £17,838,297 in the capital debt extending over the period of 50 years, the annual charge will be £158,145. The net annual saving during the period will be £707,062, presuming the new stock is issued at par. But if it is issued at 5 per cent. premium, the annual net saving will be £982,970, and at the end of 50 years, after the last contribution to the sinking fund is made, the
sum will be increased by £158,145, so that a saving of over a million is shown. In corroboration of that statement the Victorian Statist has shown that as our loans mature there ought to be a saving of £1,516,000 a year. It may be said that these figures are problematical. But I mention them now to give heart to those who are always bemoaning the great expense which is going to be incurred by the establishment of federation.

Mr. GLYNN. -

Mr. WALKER. -

Yes; but you give them an option which they need not exercise unless they like.

Sir WILLIAM ZEAL. -

But suppose they won't sell?

Mr. WALKER. -

Then you are no worse off than you are now. I will only detain the committee to say that the bookkeeping system has this great advantage, that we should then be dealing with facts, and as a countryman of Mr. Henry says-

"Facts are chiels that winna ding,
And downa be disputed."

Mr. HOLDER (South Australia). -

I cannot quite say, as the last speaker said when he began his speech, that I agree with every word and proposal in this scheme; I do not, and yet I do not hesitate to recommend it to the Convention without any alteration, because I believe that while there are objections to portions of the scheme, there are greater objections to any other scheme of which I have any knowledge. I as a member of the Finance Committee, recommend this scheme to the Convention, not as a perfect scheme, but as the best scheme of which the successive Finance Committees have had any knowledge. I suppose all other members have done as I have done. We have read all the press criticisms available. We have read all the very many pamphlets issued on the subject. We have made ourselves acquainted by personal discussion, by reading the reports of the debates, and in all other possible ways, with the various phases of public opinion. And yet I say, after all these suggestions have been considered, and all the plans have been dealt with, I am prepared to recommend this scheme as possessing fewer objections to vital points than any of the many other schemes referred to. Now, honorable members will not wish me to spend more time than is absolutely necessary in dealing with the points before us, and in making
them as clear as possible. I shall therefore strive to compress into the shortest time an exposition of the various points concerning which the Convention does not yet seem, judging by the speeches delivered, to be quite clear. I should have preferred very much if some other members of the Convention had spoken rather than that the members of the Finance Committee should have followed each other as they have done. I should have preferred to wait until I had heard what were the difficulties of those honorable members who were not on the Finance Committee.

Mr. ISAACS. -

We have not had time to read the report, much less to consider it.

Mr. HOLDER. -

Reports that have been wonderfully accurate have appeared in the newspapers from time to time as to what the proposals of the Finance Committee were going to be. In yesterday morning's Argus, to say nothing of any other newspaper, there was a remarkably accurate forecast of our recommendations.

Mr. HIGGINS. -

How were we to assume that some member of the committee gave the information?

Mr. HOLDER. -

No member of the committee, so far as I know, did give the information.

Mr. HIGGINS. -

We were not going to take any mere newspaper guesses.

Mr. HOLDER. -

Newspapers have a wonderful way of finding out what is going on, and they are generally successful in their guesses. I agree with what Mr. McMillan said to-day. Not only are the facts as I have stated, but there is nothing in the report, with the exception of one matter referring to Western Australia, that has not been before us since we met in Adelaide, and for a much longer period. The Bathurst gathering has been mentioned. That gathering debated at great length the plan we have before us to-day, and, except for the Western Australian suggestion, there is nothing for which the Finance Committee can claim any patent right. What has been suggested and debated before is simply formulated now, and there is really no new matter in the report of the Finance Committee that calls for any long discussion. I should have been glad if it had not been necessary for the members of the Finance Committee to address themselves to this question as they have done. I might have been able to answer criticisms or dealt with any point which it appeared from the debate had not been made clear. I have not that
opportunity, and I must proceed just where I find myself. I said in Adelaide
that to discover a solution of the financial problem which would be
mathematically and conspicuously accurate was impossible. I also said that
the problem was insoluble. I believe to-day that it is insoluble. Our
recommendations admit that it is. Instead of trying to find any nostrum by
which the whole difficulty could be settled we have referred the matter to
accounts, and we have said that after five years' accounts have been taken
the Federal Parliament, not even bound by the experience of those five
years, shall be absolutely free on the information it has before it to do what
it considers to be best for all succeeding years. Whatever financial
acuteness we possess, we lay no claim to being prophets. We are not
prepared to say what the financial conditions of Australia or any of the
states will be five years hence, and we might very well have come to that
conclusion long ago. How it could be possible to forecast the financial
position of the Commonwealth, or the financial relationship of the states to
the Commonwealth in five years, I know not. I should be sorry to attempt
to predict exactly what they would be in one year hence.

Mr. BARTON. -
No man could possibly do it.

Mr. HOLDER. -
No. Supposing that five years ago we had been face to face with this
problem, is there one of us who would have had foresight enough to have
predicted what has taken place in Western Australia? What has happened
in the past may happen in the future, and we know not in which state. We
may as well, therefore, give up at once all attempts to predetermine the
financial position of the future.

Mr. ISAACS. -
We are not much agreed as to what it is now.

Mr. HOLDER. -
I think we could come to a fair agreement as to the present position. I
should like the honorable member to indicate the particular point on which
we are not agreed. We disagree when we begin to prophesy, but we agree
fairly well when we discuss actual present facts. I do not know any actual
present fact concerning which there is any difference of opinion worth
mentioning. If we have pronounced the problem to be now insoluble, we
have suggested a way in which the various difficulties may be dealt with as
they arise. We have provided a scheme which is lengthy—I wish it had been
shorter—and which involves a number of points to which I must refer. I
shall deal now, not only with the objections which have been taken, but
also with those which can be taken to the scheme. It is only fair to state
what the objections are, although I believe that the time for making much
of objections has passed, and that in this, the final stage of the work of the Convention, we ought rather to seek to harmonize and to minimize difficulties, to remove them out of the path than to make much of them. In order that I may, if possible, suggest some ways by which the difficulties can be removed, I am going to refer boldly and straight forwardly to those which occur to me.

In the first place, perhaps the greatest obstacle in the way of the ready acceptance of this scheme is that already mentioned—the seven years' bookkeeping. We are to have bookkeeping for the two years which will probably elapse before the uniform Tariff is brought into force, and also for five years thereafter. I very much regret that this has to be done. The freedom of intercolonial trade is one of the charms of this Federation. Its realization is one of the chief benefits which the people of Australia will obtain from it, and I regret exceedingly that, owing to the necessity of bookkeeping, we shall have to lose some of the advantages of that freedom of trade during the seven years. At the same time, it is only fair to say that many of the difficulties which now hinder the free flow of trade and commerce will be removed, in spite of the fact that bookkeeping is to be resorted to. It is one thing to pass entries and to pay duties, and another thing to pass entries upon which no duties hang. I want to emphasize a point that, to my surprise, some honorable members dissented from when Mr. Reid was speaking. It is the fact that when there are no duties to pay on entries there can be no inducement whatever to anybody to pass false entries or to make any misstatement regarding any importation. No matter what he may say or omit to say, it will not make a penny difference to him. So far as I can see, the temptation to undervalue or to misstate facts will be removed, and the difficulty and the friction arising from the collection of statistics on the border will not be nearly so great as it has been in the past, when the payment of duty depended on the entry.

Sir GEORGE TURNER. -
Can you rely on any of your export entries now?

Mr. HOLDER. -
No; and I do not believe that in the returns obtained from the states by the keeping of accounts we shall have anything approaching mathematical accuracy. But while parcels carried by hand, and small parcels sent in other ways, will escape the proper check, all bulk goods will be checked and the fair thing will be done. For if some goods pass without entry from New South Wales to Victoria, some goods will also pass without entry from Victoria to New South Wales, and these items may be taken to balance each other. The larger items being checked, the fair thing broadly speaking,
will be done between state and state. But I quite admit, in answer to the interjection of Sir George Turner, that mathematical accuracy in this bookkeeping system there is none.

Mr. BARTON. -

And there is speculative inaccuracy in everything else.

Mr. HOLDER. -

No doubt there is. Now I come to the next obstacle referred to—that is the method of the allocation between the different states of the expenses of the Federation. It is said to be a very complicated system; that we charge the new expenses of the Federation per capita, and that we charge the cost of the works and services taken over to those states wherein the expense is incurred. It is said that this method involves some awkward and difficult calculations, and it is asked why have we not provided for an apportionment of the expenditure per capita right through, so that as soon as possible we might become, as far as expenditure is concerned, one people, one nation? There are good and sufficient reasons, at least for a time, for maintaining this difference. In some colonies the works and services taken over return a considerable profit. In South Australia our posts and telegraphs return us some £20,000 a year over and above the expenditure. There are, in some of the other colonies, other departments producing a profit. There are, on the other hand, works and services which when taken over will involve not only a loss, but, proportionately, a large loss. I do not see why we should lump all these together in a rule-of-thumb fashion, and charge outright the whole of this expenditure per capita. It is therefore fair, in respect to all these works, that to these places where the special expenditure is due, that special expenditure should be charged. Again, the qualification which appears in our recommendation appears very necessary. I can quite conceive the necessity of appointing certain officers who shall be, for instance, at the head of the Defence Force, who find no place now in any of the states, whose duties are enlarged, if not to a large extent created, by the federation of the colonies, and whose work is, therefore, in the interests of the whole Federation. It would surely be unreasonable if, from the mere accident of these persons residing in any particular part of the Commonwealth, their salaries and the cost of their offices should be allocated to that particular part of the Commonwealth. Their services are in the interests of all, and their work for the good of all, and the cost of their offices should be charged per capita over the whole of the committee. I need not refer to the matters to which the Right Hon. Mr. Reid referred this morning, such as military defence at Port Darwin, Thursday Island, and Albany. The necessity for military defence in
Tasmania was pointed out in the very able speech of the honorable member (Mr. Henry), and military defences involving large expense at any of these points of strategic value ought not to be charged to the particular states in which they are incurred. Being incurred for the good of the whole Commonwealth, the charges ought to be allocated to the whole Commonwealth on a *per capita* basis.

**Mr. ISAACS.** - In this scheme are they not to be part of the original powers?

**Mr. HOLDER.** - Yes, and therefore they are charged *per capita* to the whole Commonwealth.

**Mr. ISAACS.** - That is what you advocate.

**Mr. HOLDER.** - Yes. It appears to me, therefore, to be necessary that these charges in connexion with works and services taken over, and charges for any of the new services I refer to, should be charged *per capita* over the whole of the Commonwealth, and that we have done. As to the other branch of the charges, will any one suggest with any persistence that the costs of the Commonwealth, such as those connected with the new Administration, with the High Court, or the proceedings of the Federal Parliament, should not be charged *per capita*? Surely in these matters it is also necessary that the *per capita* method should be adopted. They fall into two classes-first, works and services taken over; they go to the state in which the expense is incurred. The second class, consisting of the cost of new offices and of defence works and other matters, which are for the benefit of the whole Commonwealth, together with the cost involved in providing the new and original machinery of the Federal Government, are charged *per capita*. In view of these facts, the objections to what is said to be the complicated method of dividing the expenditure must fall to the ground. I now pass on to the next objection taken to the scheme before us, and that deals with a much more debatable matter—I mean the Western Australian case. The case put by Mr. Henry this afternoon for Tasmania is altogether different from that put before us by the Western Australian delegates. The case of Tasmania, which might under certain circumstances also be the case of other colonies, is that she is impoverished. I do not use that word in an offensive way, but merely to express the facts of the case. It is pleaded that we should treat the case of Tasmania as a special one, particularly, it is said, when we have treated that of Western Australia in a special manner. But the plea of Western Australia is not poverty; the plea to which the Finance Committee listened was this: A very large proportion of the goods
which they consume are not brought from abroad, but from the states proposed to be in eluded in this Commonwealth. The
consumption of colonial manufactures and produce in Western Australia is considerably more than double, in its proportion, what is consumed in other colonies. Therefore, Western Australia does present a condition to which Tasmania, or any other colony, affords no parallel. Western Australia is in this position, that owing to the surrender of duties upon goods of colonial produce and manufacture she must, taking that fact into consideration alone, lose a very much larger sum than from that cause can be lost by any of the other states. Of course, it is more than probable, I think it is certain, that against the loss sustained by Western Australia through the renunciation of duties upon goods of colonial produce and manufacture, there will be set the larger revenue which on certain items she will gain under a uniform Tariff. For instance I think in nearly all the other colonies there is a beer excise duty; there is none in Western Australia. That would probably return £40,000 a year in Western Australia. In nearly all the other colonies they have duties on tea and sugar; it is almost certain that under a uniform Tariff there will be duties on tea and sugar. Should they be imposed, Western Australia will obtain from items on which there is nothing charged at present £120,000 a year, so that on those three items, without spending time in mentioning others, there is a probable revenue to be realized by Western Australia in excess of any revenue which she gets to-day from these three items of about £160,000. The gain upon these items, and probably upon other items, must be set against the loss which Western Australia will suffer under intercolonial freetrade. Still, after all allowance has been made for such items, the fact that Western Australia trades so much with other states will cause her to lose a great deal of money in proportion to the loss sustained by other states. That arises from the fact that she trades with us rather than with outsiders. I do not think she should sustain a loss for such a cause; we should rather place her in a better position because she trades with, us. Is not her trade worth something to us? The Right Hon. Sir George Turner asked why should we all contribute something from our revenue to make up the loss of Western Australia? My answer to that question is, if we do not I do not think we can fairly expect Western Australia to come into this Federation. If she did not come into the Federation there would be customs duties at all her ports against the goods and manufactures of the Commonwealth. We practically say to her, under these proposals-"If you will come into the Federation, and keep your ports open free of duty to the produce and manufactures of the other states, then for five years the other states will give you a subsidy equivalent to the loss
you suffer over and above the loss suffered by the other states as a return."
That is a fair thing for Western Australia, and I think it is a fair thing to the
other states, who, in return for the money they pay, will secure free-trade
with Western Australia.
Mr. DEAKIN. -
Is not that true of all the colonies?
Mr. HOLDER. -
Yes, but it is true to a very much larger extent, and to a very much larger
amount in proportion, of Western Australia.
Mr. DEAKIN. -
But the difference is one of degree, and not of principle.
Mr. HOLDER. -
The honorable member has a very acute mind, and I must have put my
views very clumsily if I have given him that impression. In the other
colonies the surrender they make is about equal, but when we have
balanced each other's surrenders, Western Australia stands far and away
beyond all the rest as suffering a larger loss in proportion than any one of
the other colonies—a loss vastly out of all proportion—and it is that excessive
proportion of loss that we propose to compensate her for, and not the
whole of her loss. I think that that justifies
the special treatment of Western Australia which the Finance Committee
have recommended.
Mr. DEAKIN. - But the point I sought to make—not that there is very
much in it—is that it is not a question of principle, but a question of
expediency, owing to the particular circumstances.
Mr. HOLDER. -
I think there is some principle in it, while at the same time I agree with
Sir John Downer that there is also some expediency in it. It partakes of
both principle and expediency. The principle is in the fact that we are
acting fairly in meeting the excess of loss by Western Australia; and the
expediency of it is that by making up that excess of loss, the other colonies
get a very great and increasing market for their produce and manufactures
in Western Australia. But it may be said that we have already a market in
Western Australia, and that we shall retain that market in spite of her
somewhat heavy customs duties on some of our goods. The fact that we
have the market of Western Australia at present, despite her heavy
Customs Tariff, is regarded by some as a proof that we shall continue to
have it in the future. But I dispute that. I believe that just as these colonies,
one after the other, have become independent of middle houses in respect
of their importations from abroad, and just as they have gone to the
cheapest rather than the nearest market, one by one, so Western Australia will come to the same stage, probably, until her own producers, whom she is encouraging wisely and well, meet her needs. Very many of the goods which Western Australia has, up to now, obtained from these colonies, because they are near, and because of the relationships that subsist between houses in these colonies and branch houses in Western Australia, will, in the near future, to a large extent, be obtained from abroad unless we retain the market of Western Australia for our own products and manufactures by some such means as these. We are gaining something very material by bringing Western Australia into the Commonwealth, and getting her ports free and open to the goods of our producers and manufacturers. Again, there is a marked difference between the cases of Western Australia and Tasmania. The case for Tasmania was put very strongly by Mr. Henry, but he has not given due weight to the present facts in Western Australia. Western Australia has an enormously large revenue from Customs and Excise, out of proportion to the other colonies, because she has within her borders an unusually large proportion of adult males, as compared with the rest of the population—an enormously greater proportion of adult males than any of the other colonies.

Sir JOHN FORREST. -
About 50 per cent.
Mr. HOLDER. -
It is a very large proportion, I know. I have the figures here, but I did not wish to load my speech with them. Now, that enormous proportion of adult males is the explanation of the large Customs revenue per head of Western Australia; but as the women and children composing the wives and families of adult males also go to Western Australia, the excessive proportion of the adult male population will fall.
Mr. ISAACS. -
According to the statistics that proportion is lowering now.
Mr. HOLDER. -
No doubt it is, and it will steadily decrease as time goes by. Now, the bookkeeping system, whatever its demerits, has this merit—that it will exactly meet the requirements of the case. As the excessive proportion of adult males in Western Australia diminishes, so her participation in the surplus of the Commonwealth Customs revenue will get nearer and nearer to an equality with that of the other colonies. Now, we know that remarkable developments are taking place in the mining industry of Tasmania. Those developments have led, are leading, and must continue to lead, to very much the same condition of affairs in Tasmania as we now see in Western Australia.
Mr. HENRY. -

Oh, no; we have too good a climate there, The men bring their women and children with them.

Mr. HOLDER. -

For some time, while railway works are going on and mineral development is taking place, and large sums of money are being spent in labour and materials, there will be an influx of adult males into Tasmania out of proportion to the women and children in that colony; but all these things will equalize themselves as time goes on. For a time there will be that disproportion, and therefore, for a time, Tasmania may expect a boom in her Customs and Excise. But when that occurs, very much of the weight of Mr. Henry's plea for Tasmania will be gone. At the same time, I am quite willing to do anything that can be done fairly and reasonably to meet the needs of Tasmania. There are one or two difficulties which seem to me to stand in the way. The proposal with regard to Western Australia, as it appears in our recommendations, was originally suggested to be applicable to all the states. That is to say, that after we had provided for a certain method of the return of the surplus according to the revenue, there was a proposal that there should come in a special arrangement providing that any state which suffered more than the average amount of loss of Customs revenue through the introduction of the uniform Tariff should be subsidized to such an extent as to bring that loss down to the average amount of the loss sustained by the other colonies. That would have met the case of any state whose loss was exceptional, but honorable members will see that to put in any such provision as that applicable to all the states would take the very life and force out of the other proposal that the surplus should be returned according to revenue, and it is no use providing in one clause that the surplus shall be returned according to revenue, and then in another clause that some other principle must prevail. Either the surplus must be returned according to revenue, or upon some other basis; we cannot have two principles in the Bill. I contend that the provision we make to meet the needs of any state or states must be special and not general. Mr. Henry suggested that a provision should be inserted in this Constitution to protect any state which might find itself in financial difficulties.

Mr. ISAACS. -

Before you leave the case of Western Australia, I would like to ask, for information, can you tell me why it is provided that the basis upon which a special advantage is to be given to Western Australia is to be the Tariff
immediately before the imposition of uniform duties, giving Western Australia two years after she becomes a member of the Commonwealth to fix her Tariff?

Mr. HOLDER. -

The reason of that is is this: That we might have taken the Tariff of to-day, or of any fixed date, and have said that that should be compared with the Federal Tariff; but to have done anything of that kind would have been to suggest that Western Australia would be likely to play some tricks upon us.

Mr. ISAACS. -

We have done that in regard to bounties.

Mr. HOLDER. -

Well, the provision in regard to the bounties gives a very good opportunity for any colony that wishes to play tricks with the Federation to do so. There are four months ahead. That shows that we are prepared to trust each other, and that there is no necessity for putting in any provision which would seem to imply that we mistrust Western Australia.

Mr. ISAACS. -

There is no mistrust about it.

Mr. HOLDER. -

The trend in Western Australia is towards a diminution of customs duties. We all know that the Premier of Western Australia, during a recent session of Parliament, promised to take off certain duties, and, as I said before, the trend is in the direction of taking off and reducing duties. And is there any reason why, if there be a higher Tariff there to-day than there will be within two years' time, or at any other time in the future, we should compare the facts of the uniform Tariff with the facts of a Tariff in Western Australia higher than it is necessary to compare the Uniform Tariff with? We should take the Tariff which is the ultimate form of the expression of Western Australia's thought in that particular, and compare that with the Federal Tariff.

Mr. ISAACS. -

You think, then, that Western Australia may reduce the advantage which is given to her by this clause?

Mr. HOLDER. -

What I say is that Western Australia is now reducing her Tariff, and I do not think she is at all likely to alter her local policy because of the possibility-which may be more or less remote-of the incoming of federation. Referring to the remarks which have been made as to Tasmania, I would observe that I do not think that Tasmania should ask us to put a
special provision in the Constitution to the effect that the solvency or the financial strength of any state should be guaranteed by the federal authority.

Sir EDWARD BRADDON. -
But the revenue of the states should be guaranteed.

Mr. HOLDER. -
Well, I will mention presently why I think that the revenue should not be guaranteed. If we put any clause in the Constitution to that effect, it means that the federal authority may stand more or less behind any state in its financial difficulties, and that will be a direct inducement to careless financing.

Mr. HENRY. -
Would not the Federal Parliament do so in any case?

Mr. HOLDER. -
No doubt; but the less we say about it the better, because the more we say that the Federal Parliament will be likely to stand behind any state in its financial difficulties the more the states will be liable to think that there is a big and powerful body behind them if they get into financial trouble, and so we shall be striking a blow at the absolute self-reliance of the states. I think that any such provision would have that tendency.

Sir EDWARD BRADDON. -
What guarantee have we against careless financing on the part of the Federal Parliament?

Mr. HOLDER. -
I will refer to that point in a moment. But still, while I have said what I have said, I am impressed with the importance of doing all we can to secure the adhesion of Tasmania, and to prevent any financial calamity that we can foresee coming upon that colony or any colony; and if Mr. Henry can provide or suggest to the Drafting Committee any plan which will avoid the dangers I fear, and accomplish the ends he and I alike would be glad to gain, no one would support him more earnestly than I would.

Mr. DOBSON. -
Can you not give us a guarantee that our expenditure shall not be more than so much per head?

Mr. HOLDER. -
I do not see how that could be done. We could not insert a provision declaring that Tasmania should not pay more than so much per head, without inserting a provision which would also apply to every one of the colonies; that is to say, without providing that in no case should any state pay more than so much per head. But if we did that, we might as well give up the bookkeeping system, strike out all provisions with regard to the
surplus, and, in fact, give up the whole scheme. That one solution, if it
could be adopted in the Constitution, would solve the whole difficulty. But
I do not think we are prepared to accept that; and if the other colonies
were, New South Wales certainly would not accept such a solution of the
difficulty. Replying to Sir Edward Braddon, I understand the right
honorable gentleman to ask whether we could not guarantee to the states a
certain amount, I think there are three objections to that proposal. The first
was admirably answered by Mr. Henry in his speech. He pointed out that
there are not two states with

financial difficulties, and two without any, so that there might be a balance,
and the weaker states might go to the wall; but that, out of five colonies
here represented, four would absolutely need, under the conditions
prevailing, to secure an adequate revenue by the federal authority returning
an adequate surplus to the states. Supposing that if we have four to one,
one of those four being a larger state, I do not think that the smaller states
need be under any apprehension that their interests will not be guarded.
And that will work in two ways. The preponderating votes of four states
against one in both Houses will secure not merely that the revenue of the
Commonwealth shall be large, but that that Government shall be so
administered, and the expenditure of it so limited, as that as large a sum as
possible shall be returnable to the states. I think that that will guarantee
economy on the part of the federal authority, guarantee the keeping down
of expenses to the lowest limit, and guarantee the return to the states of as
nearly as possible as much as they obtain from customs duties to-day. I ask
another question on this head: Are we attempting the formation of a
Federation whose Parliament shall be composed of Russians, whose
administration shall be alien, and who shall care nothing for us at all?
Surely not! If we were so doing it would be better for us to form a
Constitution much fuller of guarantees and limitations than that which we
are forming. But we are forming a Federation under which our affairs will
be handed over to whom? To ourselves! Surely we do not need all these
guarantees and limitations. We are not even handing over our affairs to
others of our own flesh and blood, but to ourselves; and I do ask that those
who are so anxious to see these guarantees and limitations will realize that
fact, and will see in it the strongest guarantee and the most perfect
safeguard they can desire to secure.

Mr. HIGGINS.

May not the needs of these four state Treasurers induce them to press for
a revenue-producing Tariff rather than a protective Tariff?

Mr. HOLDER.
I do think that the needs of the four states referred to will necessitate the Federal Government, no matter whether they be protectionist or free-trade, making a Tariff which will produce £6,000,000 a year. The Tariff may be framed either upon protectionist or free-trade lines, but no matter how framed the Federal Treasurer, whoever he may be, will be under the necessity of having a Tariff which will produce a little over £6,000,000 a year.

Mr. HIGGINS. -
But it may interfere with protectionist policy.

Mr. HOLDER. -
I do not think so.

Mr. HIGGINS. -
It may.

Mr. HOLDER. -
At any rate, whether the fiscal policy be free-trade or protectionist, or whether it partake of the nature of both, what I am sure of, and I am as sure of this as I can be of anything, is that the Federal Tariff will be so framed as to produce just over £6,000,000 a year; that is, what the Tariffs produce to-day in the five states here represented. I do not think that the Federal Tariff will produce less, and I believe that the increase of duties upon foreign goods will make up for the loss of duties on intercolonial trade, so that we shall have as much to distribute then as we collect now in the, various states.

Mr. ISAACS. -
How do you make up £6,000,000 for federal needs?

Mr. HOLDER. -
By so framing the Tariff that it will produce £6,000,000.

Mr. ISAACS. -
Yes, but why do you say that £6,000,000 will be required?

Mr. HOLDER. -
Because I do not think that the federal expenditure can be met and a sufficient sum returned to the states upon any less total revenue. The absolute needs of at least four of the states represented here will require that the total sum available for meeting the federal expenses and for distribution among the colonies shall not be less.

Mr. ISAACS. -
I can understand the honorable member if there is to be a compulsion upon the Commonwealth to return a certain amount.

Mr. HOLDER. -
There will be this compulsion, that four out of the five states represented here cannot remain solvent unless the Federal Tariff produces that amount, and these four states will be able to out-vote the fifth state in both the Senate and the House of Representatives.

**Mr. MCMILLAN.** -

This will put them where they are now.

**Mr. HOLDER.** -

Yes, with one qualification, to which I shall refer presently. There is another point with which it seems necessary to deal. Is it not clear to us all that the prosperity of the Federation will depend upon the prosperity of every state in the Union? Can the Commonwealth be prosperous and pay its way if one of the states of the Union is in a hopelessly involved condition? I think not. Therefore, for the protection of its own prosperity, for the security of its own good name and as the Federal Government will want to borrow money it must be careful of its good name—it will have to raise not less than £6,000,000 by Customs taxation.

**Mr. DOBSON.** -

Will it not require a Tariff almost as high as the Victorian Tariff to produce £6,000,000?

**Mr. HOLDER.** -

That will depend upon the class of goods upon which you place duties, and upon the number of items upon the free list.

**Mr. DEAKIN.** -

Some honorable members seem to think that a much larger sum will be required.

**Mr. HOLDER.** -

If you are going to meet the needs of the weakest colony of all, and are going to accept Mr. Coghlan's figures as correct, you will want a Tariff which will produce £8,000,000 or £9,000,000; but I do not accept his figures as correct except as a matter of pure calculation. I do not dispute, though I understand that the honorable member (Mr. McMillan) does, the arithmetical accuracy of the calculations, because I have not checked them; but Mr. Coghlan makes the fatal assumption that the facts of trade as they exist to-day, with free-trade in New South Wales, high duties in Victoria, and varying duties in the other colonies, will be the same when the duties throughout the Commonwealth are uniform, and we have intercolonial free-trade. We will imagine for argument's sake that an average duty of 15 per cent. is imposed throughout the Commonwealth. Does anybody believe that with such duties in force, as large a volume of foreign goods will come into New South Wales as come in to-day? No. Does anybody believe that there will not be a larger volume of foreign goods coming into Victoria?
To assume, as Mr. Coghlan does, that the facts of trade will be the same to-
day as under vastly different conditions in the future is to assume what no
reasonable man ought to assume, and the basis of his calculation being a
wrong one, his conclusions must be wrong. Therefore, what he says as to
the probable insolvency of Tasmania, the difficulties of South Australia,
and the heavy losses of Western Australia, falls to the ground. There may
be something in his statistics indicating the probable direction of trade, but
the vane upon the top of the steeple, while it indicates the direction in
which the wind is blowing, does not make the wind blow. If a Federal
Tariff should be imposed to produce a little over £6,000,000, New South
Wales will contribute a much larger amount than she contributes to the
£6,000,000 which are raised now. We are supposing, for the sake of
argument, that the Tariff will be a 15 per cent. Tariff. Under these
conditions New South Wales will contribute more than she does now, and
the return to her must be larger, because of her larger population, and the
return to the other states proportionately less. It was this consideration
which led me to say, in reply to the interjection of the honorable and
learned memb

the Tariff would have to produce a little over £6,000,000 a year.

Mr. MCMILLAN. -

It is that which is at the bottom of the trouble of Tasmania.

Mr. HOLDER. -

It is at the bottom of the whole financial trouble. It causes the difficulty
which met us in Adelaide, in Sydney, and here, and which is evident in
every newspaper article and pamphlet. I do not think that the revenue
derived from importations into New South Wales would be so enormous
under a uniform Tariff as some people imagine, because a very large
quantity of manufactured goods and produce now imported from abroad
would be imported from this and the other colonies. These goods would
come in free, and thus contribute nothing to the revenue. On the other
hand, there would be a larger importation into Victoria, because of the
lowering of the Tariff, and in all probability a larger contribution to the
revenue. I have been told a good many times, and with some truth, that the
way to increase the revenue is to reduce customs duties, that it is possible
to make the customs duties so high as to shut out articles altogether, and
thus lose revenue. I must now pass rapidly on to the next point to which I
wish to refer. I think I have dealt sufficiently with the ease of Western
Australia, and I have pointed out that the force of her plea lies not in her
poverty, but in the fact that she trades with us instead of with strangers, and
that we must meet her by giving her a concession to which the whole
population of the Commonwealth will contribute per capita. The next objection which may be taken to our scheme might be raised with regard to the proposal relating to bounties. I admit the force of much that is said in regard to the proposal to allow bounties to be given or agreed upon until the end of June next. It might be possible to abuse this concession. I think that the colonies which most desire to see bounties established are South Australia and Victoria, and if they pleased to do so no doubt they could pledge everything wholesale, and make such arrangements beforehand as would very materially derogate from the freedom of trade which we desire to bring about. But we trust each other, and we do not believe that either South Australia or Victoria will so shape their policy in reference to the promise of bounties as to derogate from the freedom of that trade which ought to exist between us here in these colonies. That is another matter in which we trust each other, rather than bind each other down by, a hard-and-fast rule, and saying that no bounties given after a certain date shall be of the slightest value, no matter how far various states may be pledged to them. The next objection is that there is no limit to the expenditure, as there was in the Bill as it left our hands in Adelaide. If there was one small clause more than another-not involving principles probably so much as other clauses did-which was offensive, it was that clause which tied, or attempted to tie, the Federal Parliament in leading strings. We were going to call into existence a body to which we were intrusting large powers, and yet this body was to be tied in leading strings by being told that it must not incur any new expenditure more than £300,000 a year, and must not spend in works and services taken over more than £1,250,000 in excess of their earnings. It seemed to me all through a very unworthy and profitless attempt to do one of two things-either to tie the Federal Parliament in leading strings, or to throw dust in the eyes of the electors, and because I thought so I am very glad to see that the clause does not appear amongst the recommendations of the committee. I do not abandon what that clause was intended to achieve, but we hope to secure that economy, not by this method but by the better method to which I have referred. We rely on the application of the votes of four-fifths of the states entering the Federation to secure the economical management of the whole of the affairs of the Federal Government. I have dealt with all the objections which I remember at

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the moment to the scheme we have brought up. It may seem to be a very formidable list of objections, but, I ask, is there any other scheme against which a more formidable list of objections cannot be brought? What are the other schemes we have had? In 1891, except for the two years before
the uniform Tariff was to come into force, practically the recommendation was to trust the Federal Parliament. If I were to start to state the objections which have been raised by one and another to that plan, I think I should take a good deal longer than I have taken. We should not be able to recommend that, I am sure, without any limits to the electors whom we represent. Then it has been proposed that we should keep books in perpetuity, that we should maintain for ever a system of bookkeeping between the different states. I could very soon raise more objections to that than have been raised to the plan before us.

**Mr. HIGGINS.** -
That has not been advocated.

**Mr. HOLDER.** -
It has been advocated in the press with a good deal of persistency in some places.

**Mr. HIGGINS.** -
Not in this Convention.

**Mr. HOLDER.** -
No. Then, as regards the sliding scale, I think when things had worked themselves out, and five years had passed, we should have become aware that it, after all, would have suited us very well. There are, however, some 300,000 or 400,000 very solid objections to the sliding scale. I do not know how many more objections there are, for I forget just now the number of electors in these states. The vote of every elector who could not be made to see through all the intricacies and the final results of such a scheme is a solid reason why we should not adopt the scheme. Equitable I believe it to be, as well as fair and right in its operation, but if the electors cannot be brought to assent to it, we must abandon that which, if pressed on the people, would wreck the federal movement. I have occupied a good deal of time, but I have sought to use no word which did not appear to me to be necessary to use. I have not dealt with all the interesting points in these recommendations, but I think I have said enough to show that it is possible to answer to a considerable extent the various objections to the scheme. I hope I have said enough to show that, whatever objections may be urged against this scheme, there is no other scheme which is free from them, that our search to-day is not for a scheme which is ideally perfect, not a scheme to which no one can find an objection, but a scheme which we can most fairly and with the most reasonable anticipation of success recommend to those whom we represent, for their final acceptance, and that scheme is, I believe, the one which the Finance Committee has brought down. I would have liked to have seen the term for the bookkeeping reduced below five years; but five years is a very short period in the life of a nation. I would
have liked to have seen the *per capita* distribution brought in earlier; but there is no blinking the enormous injustice which would be done by it to Western Australia, to say nothing of any other state. Therefore, we must waive that. I do not like, from other points of view, leaving this financial problem to be fought out after the first five years are passed in the Federal Parliament, with the possibility every year of a vote having to be taken for the allotment of the surplus to the various states. I can see that that involves a possibility of states being bought and sold in the Federal Parliament. But that is one of those matters in which I trust the Federal Parliament. If we can trust each other here to-day not to buy and sell the several states we represent, cannot we trust those who will be as honorable as we are, who will be of ourselves? Cannot we trust them five or seven years hence to be as fair and as honest as we claim to be here? I think we can. I believe we shall have to trust them, because it seems to me that to lay down any rigid plan is to wander off into the region of prophecy again, and we cannot safely do that. I hope, therefore, that the recommendations of the Finance committee, faulty though they may seem in some eyes, will yet be substantially acceptable to the Convention, and that it will be prepared at an early date to pass on to other important matters which yet remain for our decision.

**Mr. BARTON (New South Wales).** -

Although I am, on the whole, in favour of the recommendations of the Finance Committee, and prepared, if necessary, to vote for them, subject to such modifications as may be made in the clauses, still I think it would not be a good thing that we should endeavour to close this debate today. Its relative importance, compared with that of other subjects, is so great that I think it would not be a good thing that we should endeavour to close this debate today. Its relative importance, compared with that of other subjects, is so great that I think it would not be a good thing that we should endeavour to close this debate today. Its relative importance, compared with that of other subjects, is so great that I think it would not be a good thing that we should endeavour to close this debate today. Its relative importance, compared with that of other subjects, is so great that I think it would not be a good thing that we should endeavour to close this debate today. 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could not well be carried on in their absence. At four o'clock, or at the
termination of any speech shortly before that hour, I propose to adjourn to-
morrow.

The motion was agreed to.
Progress was reported.
The Convention adjourned at five p.m.
Friday, 11th February, 1898.

Notice of Amendments - Return: Customs and Excise - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

NOTICE OF AMENDMENTS.

Sir JOSEPH ABBOTT (New South Wales). -
Did I understand the leader of the Convention yesterday to ask that proposals to recommit clauses and also amendments thereof should be given notice of publicly or otherwise?

Mr. BARTON (New South Wales). -
I expressed a desire that honorable members should give notice of their proposals in order that they might be printed and circulated.

The PRESIDENT. -
It will not be necessary for honorable members to give notice of their proposals publicly, but if they are handed in they will be printed.

CUSTOMS AND EXCISE.

Mr. BARTON (New South Wales). -
I have here a return showing the average annual amount of customs and excise duties that would have been receivable under the Tasmanian Tariff from certain articles entered for consumption in five Australasian colonies, during 1891-5, and I beg to move that it be laid on the table and be printed.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on-

Clause 81 (Chapter IV., Finance and Trade). - All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Commonwealth in the manner and subject to the charges provided by this Constitution.

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Dr. QUICK (Victoria). -
I do not intend to pose as a financial expert, but I think it is incumbent upon every member of this Convention who has given any attention to the general outlines and principles of this great and important financial problem, to state his opinions; not that those opinions will necessarily be
adopted at the present time, but, at any rate, to show that every possible feature and phase of this great financial question has received attention in this Convention. Otherwise it might afterwards be said that this problem, which has engaged the attention of all the friends as well as the enemies of federation for many years past, has been suddenly disposed of by a scheme being adopted without due consideration. Now, I join with those members of the Convention who yesterday expressed their general approbation of the scheme which has been propounded. I was very pleased indeed to hear several leading members of the Convention, who may justly claim to speak with authority on matters of finance, say that they see their way clear to express general approbation of this scheme. At the same time, they expressed certain reservations, and admitted that this scheme, although it represents the final conclusion of our committee of experts, is not in every respect satisfactory. That seemed to be generally conceded. I do not know whether there is any reasonable chance of making any suggestion which might tend to modify this scheme. Probably it will be hopeless, considering the state of the opinion of members of the Convention generally, to upset the scheme as submitted by the Finance Committee. Now, while I express my general approbation and satisfaction at this scheme, I feel bound to call attention to one or two points that have not been properly adjusted, which I consider is a matter for regret. I think I can at the outset congratulate the members of the Bathurst Federal Convention, of which my honorable friend (Mr. Walker) was a leading member, in drawing attention to the fact that the financial scheme recommended by the Bathurst Federal Convention has been in the main, adopted and embodied in this Constitution. In the main, I say. There are several exceptions to that statement to which I wish to draw attention. At any rate, it may be mentioned, as a tribute to the industry and thought contributed by that Convention to the federal problem that, in the main, the outlines of its recommendations have been adopted. I will point out, however, that even that scheme, as adopted, admits of criticism. Of course it must be admitted that that scheme, or rather the modified scheme embodied in these proposals, can only be regarded as a temporary expedient. As the result of my consideration of the financial aspect of federation, I have been driven to the conclusion that there are two conditions required to make a perfect financial scheme. The one condition is, in my opinion, that the states ought to be substantially indemnified for and in respect of the revenue they surrender; and the second condition is that any final adjustment of the finances ought to be based on a complete federalization of revenue and a complete federalization of expenditure. Therefore, this separate account system must only be regarded as a temporary expedient, or as a means to
an end—that of getting over preliminary difficulties, and arriving at a
generalization which may lead the Federal Parliament to a more perfect
scheme for the federalization of revenue and expenditure. I say that the
fundamental condition of a true scientific settlement of this financial
question is that the states ought to be indemnified against the surrender of
revenue. Now, I will draw attention to this important factor of the financial
problem. It may be asked, what is the revenue surrendered? Well, I think it
is not fair to select any particular year, and say that that is the revenue
surrendered, because the revenue fluctuates from year to year. It was in
view of that consideration that I asked for a return at Adelaide, showing
the annual amount of revenue collected in each of the Australian colonies
during the last ten years. That return will be found in one of the printed
dapers, No. 8. Now, I think that a return based upon the revenue received
during ten years may give a fair and reasonable idea of the value of the
revenue-producing power surrendered by the states to the Commonwealth.
The scheme adopted at Adelaide selected one particular year—the year
before the introduction of the uniform Tariff—to ascertain the basis.
Mr. MCMILLAN. -
It would be rather difficult, in a continually progressive community, to
follow your suggestion.
Dr. QUICK. -
I admit that, but you can thereby get at the actual value of the revenue
surrendered for ten years.
Mr. MCMILLAN. -
But you may have changes of fiscal policy, as well as changes of natural
conditions, to take into account.
Dr. QUICK. -
A period of ten years would include changes of fiscal policy, changes of
natural conditions, and changes of revenue. The return therefore gives a
fair idea of what the states will have to surrender to the Federal Parliament
in the shape of revenue. Shortly summarized, it shows that the average
Customs and Excise revenue, not including post and telegraph and other
incidental sources of revenue, for ten years, in New South Wales amounted
to £2,132,185 per annum, and in Victoria to £2,360,000 per annum—a much
larger sum.
Mr. MCMILLAN. -
You cannot argue from these figures unless you know under what policy
the revenue was obtained.
Dr. QUICK. -
The figures I have given show the amount of revenue that will have to be
given up by the two colonies named. South Australia will have to give up £568,000, Western Australia £349,000, and Tasmania £321,000. If these states surrender these enormous sums to the Federal Government, ought they not to be indemnified in some substantial legal manner in the Constitution? Otherwise what security have they for the continuance of their local sources of expenditure? I am aware that it has been said that we must trust the Federal Parliament; but upon the face of this constitutional instrument that we are framing there will be nothing whatever to bind the Federal Parliament to raise revenue in excess of its own requirements. The point that strikes me is this: Ought we not in this federal instrument, which deals with such a vast surrender of financial resources, to make some provision to secure to the states an indemnity equivalent to the revenue surrendered by them? On the other hand, ought we, as is now proposed, to leave the states practically at the mercy of the Federal Parliament? I know that there are difficulties, but we ought to face this problem first. The colonies are to give up these large amounts, and they are told that they must trust the Federal Parliament. Of course we feel quite justified in using that argument; but what will the statesmen of the future have to say? They will say that this federal instrument has left the finances of the various states at the mercy of the Federal Parliament.

Mr. MCMILLAN. -
Do you not think that the statesmen of the future will know the conditions under which we are working.

Dr. QUICK. -
Yes, but I am afraid that this provision will lead to a tremendous scuffle and struggle in the Federal Parliament, because the states representatives will try to secure for themselves that portion of the revenue which they have surrendered, while the states Treasurers will be left in a condition of doubt and uncertainty, and of dependence upon the federal authority. The danger is that this deprivation of revenue, and the uncertainty which it will cause, may lead to some extent to the degradation of the states. It will to some extent remove them from the position of independence and certainty which they enjoy at the present time. Whilst we wait to build up a Federation, we do not want to do anything which will lower the honour, the dignity, and the individuality of the states.

Mr. MCMILLAN. -
Does not the honorable and learned member see that any guarantee would have to be doubled in twenty years?

Dr. QUICK. -
I am aware that the amount of the indemnity should not be fixed for all
time. The revenue-earning power of our customs duties increases from year to year, and consequently it might be advisable to provide that the amount of the indemnity should be readjusted every ten years.

Mr. SYMON. -

Would not that lead to a scuffle and trouble every ten years?

Dr. QUICK. -

That would not be so bad as an annual scuffle.

Mr. SYMON. -

Is not an annual scuffle better than the possibility of doing injustice now?

Dr. QUICK. -

I cannot see where there could be any injustice in giving the states an equivalent for the revenue they have surrendered. I do not want to suggest any line of policy which would be specially embarrassing to any particular state. Speaking on behalf of the colony of Victoria, I was very pleased to hear the true federal note uttered by the Right Hon. Sir George Turner yesterday; but I think it well that attention should be drawn to the fact that, under the present scheme, this colony stands to lose more than any other state represented in the Convention, because we derive more revenue from Customs and Excise than is derived in any other state. Our friends from Tasmania complain that they too will be great losers.

Mr. HOLDER. -

Lower duties often mean an increase, not a decrease, in revenue.

Dr. QUICK. -

Yes, but the scheme mentioned by my honorable friend is based upon the assumption that only £6,000,000 will be required by the Federal Government. If that amount were raised by a 15 per cent. Tariff all round there would probably be a great falling-off in the revenue of Victoria.

Mr. HOLDER. -

I do not think that that is at all certain.

Dr. QUICK. -

I hope that the honorable member is right, but, according to Mr. Coghlan's figures, which have been placed before of revenue, it should be subject to such terms and conditions as to economies and retrenchments as the Commonwealth Parliament saw fit to enforce. Suppose the colony of Victoria came out in the first few years with a loss of £500,000, she would be placed in a serious position, but the loss might be reduced by local retrenchments in its parliamentary, vice-regal, or other departments. The local Government might have difficulty in carrying these retrenchments and economies, but if the Federal Parliament was to indemnify them against loss, it should be able to say-"You shall have this indemnity if you effect certain retrenchments."
Mr. REID. -

Could you retrench any more in Victoria-you have been at it a long time? I fancy that you have got down to the bone now.

Dr. QUICK. -

There are certain departments, such as the parliamentary and vice regal departments, from which under federation less work would be required, but, unless the local Government were strengthened in its motive for retrenchment, economies might be very difficult to carry out. Whilst I am strongly in favour of an indemnity, to protect not merely Tasmania and Western Australia, but also Victoria and South Australia, I would not make the indemnity absolute. I would make it conditional, and I would place it in the power of the Federal Government to discuss the matter with the Treasurers of the various states. Referring now more particularly to the recommendations of the Finance Committee, I will point out one or two directions in which I think there might be some improvement, without in any way impairing the efficiency of the scheme proposed, or the principle upon which it is founded. I mentioned just now that the five years' separate account system is largely founded upon the Bathurst scheme, but there are one or two divergencies to which I desire to draw attention. Clause 90 provides-

Until uniform duties of customs have been imposed, there shall be shown, in the books of the Treasury of the Commonwealth, in respect of each state:-

I. The revenues collected from duties of customs and excise and from the performance of the services and the exercise of the powers transferred from the state to the Commonwealth by this Constitution:

II. The expenditure of the Commonwealth in the collection of duties of customs and excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth by this Constitution:

III. The monthly balance (if any) in favour of the state.

From the balance so found in favour of each state there shall be deducted its share of the expenditure of the Commonwealth.

There is also a clause in the Bill which provides for the taking over of certain departments by the federal authority immediately upon the establishment of the Commonwealth, and it is further provided that, both during the two years before the coming into force of the uniform Tariff, and in the five years following, during which the bookkeeping or the separate account system is to be in force, each state is to be debited with its actual expenditure, without any discrimination between what may be
regarded as essentially local expenditure and what may be regarded as purely federal expenditure.

Mr. OCONNOR. -

That is provided for in the proviso.

Dr. QUICK. -

The proviso to which the honorable member refers is that which states that-

Any expenditure of the Commonwealth not incurred only for the maintenance or the continuance of a department of the service of any one state as existing at the time of the transfer, but originated by the requirements of the Commonwealth in respect of services or powers transferred, shall be taken to be incurred by reason of the original powers given to the Commonwealth by this Constitution.

What I wish to draw attention to is that whilst the expenditure in conducting and administering the Customs and Excise departments may fairly be treated as local expenditure, as may also expenditure in connexion with posts and telegraphs, and may fairly have debited against it local state expenditure-

Mr. REID. -

That is to be so for five years.

Dr. QUICK. -

I agree with that; but what I do not think is right is that naval and military defence during the five years is to be treated as mere local expenditure.

Mr. REID. -

We have arranged for that. The wording of one of the clauses provides that any permanent work shall be treated under the original powers of the Constitution, which means that the expenditure shall be borne *per capita*.

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Dr. QUICK. -

The provision uses the words-

Any expenditure of the Commonwealth not incurred only for the maintenance or the continuance of a department of the service of any one state as existing at the time of the transfer,-

Does that cover it?

Mr. REID. -

Read on.

Dr. QUICK. -

but originated-

Mr. REID. -
That would be new expenditure.

Dr. QUICK. -

by the requirements of the Commonwealth in respect of services or powers transferred, shall be taken to be incurred by reason of the original powers given to the Commonwealth by this Constitution.

Does that provide for what I am contending for!

Mr. REID. -

Suppose the Commonwealth in carrying out its duty in reference to federal defence should think proper to originate a fortification somewhere, that would be undertaken under the original powers of the Constitution, and the expenditure would be borne per capita.

Dr. QUICK. -

So I understand; and if that be true, and no doubt it ought to be as regards new requirements for federal defence, the same provision ought to apply as regards existing works and the maintenance of them for the purposes of federal defence. It is all true federal expenditure, and ought to be borne as such from the beginning of the system. Defence expenditure is peculiarly federal expenditure.

Mr. REID. -

As to past expenditure, unless you treat all that is represented by works as within the scope of federal finance, you open up a question which would be far more troublesome than the money would be worth. Who is to decide which is a work that we should pay for, and which is a work that a colony itself should pay for? You could not separate the objects.

Dr. QUICK. -

I do not think there should be any discrimination in matters of federal defence. In my opinion, all matters of federal defence should be charged as against the Commonwealth, under the exercise of its original powers, from the beginning. Of course, I do not know how it would work out.

Mr. REID. -

In regard to works it will be so.

Dr. QUICK. -

I know; but why should not the Finance Committee suggest that all defence expenditure should be federalized from the beginning? Why wait for the five years? It does not affect the raising and distribution of revenue. It will be most embarrassing should any state desire to keep down its expenditure upon defence at a time when expenditure might be absolutely necessary for the defence of the state. My contention is that the Commonwealth should have the supreme control of expenditure for defence from the very beginning, because there is no more vital source of
Mr. REID. -

There was a good deal of support to your view in the committee, I might mention.

Dr. QUICK. -

I am glad to find that the point was not overlooked. Indeed, it was only to be expected that it would be considered. I would strongly urge the federalization of defence expenditure from the beginning.

Mr. REID. -

That is the true principle, no doubt.

Dr. QUICK. -

Every man, woman, and child in the community is vitally interested in expenditure for the purposes of defence.

Mr. REID. -

In money it would be a very small matter, because in the smaller colonies a comparatively small amount of money has been expended, although in the larger colonies a larger sum has been expended.

Dr. QUICK. -

I do not think there is any objection on that score. Therefore I would suggest whether the committee should not put naval and military defence under paragraph (b) of sub-section (2) of clause 90. The same argument will apply with equal force to ocean beacons and buoys, ocean light-houses and light-ships, and quarantine, because the citizens of the Commonwealth are uniformly interested in having a good system in regard to these matters. I think we should accustom ourselves to the system of federalization as far as possible from the beginning; and I feel certain that unless that be done in regard to defence, at any rate, this scheme will receive very hostile criticism outside, and probably the Convention may be accused of a want of breadth of view, as well as of a want of patriotism. There is no financial difficulty arising in regard to the distribution of the surplus in the matter of federal defence, and therefore I would suggest that the matter should be considered as one of importance. Undoubtedly, the proviso to which Mr. O'Connor has directed my attention is a very good one. It goes a long way to meet some of the points I have mentioned.

Mr. HOLDER. -

It is a half-way-house to complete federation.

Dr. QUICK. -

Yes; and I am glad that it has been put in, because it points out that, as regards new enterprises in connexion with the transfer of departments, they
will be federalized from the very time of the accomplishment of them. That will remove anything like local opposition, such as might arise in a particular state against local expenditure because local expenditure would increase the local debit, and, therefore, decrease the local participation in the surplus. Consequently, the representatives of that particular state might, in order to increase the surplus share of their colony, go in for parsimonious economy. The provision referred to will remove that objection. The only other important clause which I desire to call attention to is clause 93. It sets forth what is to take place after the five years of bookkeeping. That, of course, raises a very important consideration. One can see on the face of it that the clause embodies a compromise, and leaves to the development of the future the system which shall be adopted. I join with Sir George Turner in the expression of the hope and belief that the system to be adopted after the probation period will be the true federal system, namely, the distribution of expenditure and of surplus according to population. We should do all we can to accelerate the time of the accomplishment of a true federal system. The clause leaves room for some doubt. It says that the distribution shall be-

On such basis as shall be fair to the several states, and in a proportion and after a method to be determined by the Parliament.

On the face of it, that looks extremely equitable and fair, and one cannot but hope that the Federal Parliament would, as in duty bound, deal with every state in a spirit of fairness and equity. But at the same time I do not see why we should not be able to embody in the provision something a little mo

Mr. OCONNOR. -

Would it not be a dangerous thing to give the Commonwealth power to make a bargain with any state?

Dr. QUICK. -

I do not know that it would. It might be useful for the Government of a state to be able to inform its local Parliament that they would have a greater share in the federal surplus by carrying out certain local economies.

Mr. MCMILLAN. -

Would it not be difficult of interpretation?

Dr. QUICK. -

I do not know that it would. Of course, the suggestion is necessarily founded on the stipulation I started with. I do not think that the Federal Parliament should indemnify the states without imposing limitations making the indemnification subject to such terms and conditions as it might be thought wise to impose. Of course this, like all other

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matters connected with this great problem of finance, is surrounded with considerable difficulty, and I do not pretend to say for a moment that the proposal I have put before the committee is perfectly possible of accomplishment. I join with Sir George Turner in saying that, notwithstanding the objections and difficulties which I see in regard to the scheme which has been presented to the committee, and which is no doubt the result of anxious labour and consideration on the part of the Finance Committee, I, for one, shall be pleased to heartily join in recommending it to the favorable consideration of the people of Victoria.

Mr. SYMON (South Australia). -

I do not rise for the purpose of following my honorable and learned friend (Dr. Quick) through the very interesting details with which he has dealt in his speech, but rather for the purpose of expressing my general adhesion to the scheme which has been submitted to this committee. But I should like to say that I join with Dr. Quick in hoping that if it can be brought within the scope of the clauses here drafted the expenditure for military and naval purposes of the Commonwealth will be federalized. I should like also to express my own personal indebtedness to the speakers who have preceded me, who have dealt with the subject in detail, and with a very great deal of experience and knowledge of the conditions in their own states with regard to this question. I regret that I did not hear all the speeches; but I did hear that of my honorable friend (Mr. Henry) and that of my honorable friend (Mr. Holder), and I think we may all congratulate ourselves that speeches of so much interest and thought should have been brought to bear on this subject.

Mr. KINGSTON. -

Hear, hear.

Mr. SYMON. -

I also join with my honorable and learned friend (Dr. Quick) in sincerely congratulating the members of the Finance Committee on having been enabled to present to the Convention the report which we have before us, and on the scheme which they have been able to evolve. It seems to me, speaking generally, that that scheme is founded upon just and sensible principles. It seems to me that it breathes the spirit—at any rate, it breathes the desire—to be fair and just all round, and that, I think, is an excellent omen for its ultimate acceptance, with perhaps minor modifications. It is also a very good omen for the consideration which it will receive from this Convention. In two respects I was struck, on reading the report of the Finance Committee, with the fairness of spirit exhibited. The first was with regard to the treatment to be accorded to Western Australia. I think that where we find a condition of things such as exists there, and such as has
been explained on behalf of the Finance Committee, it is only a just and proper thing that exceptional treatment should be applied; so that the possibility of severe injustice or severe inequality may be avoided. The other point which struck me, as indicating the great fairness of mind brought to bear on the subject by the Finance Committee, was the provision which had been inserted guarding against those difficulties which might possibly arise owing to imports into a free colony, before the uniform Tariff came into operation, being used in such a way as to work unfairly to the commercial interests of another colony. That is a provision which I am exceedingly glad to see embodied in this report, and to which I shall give, at the proper time, my entire assent. Now, it has always struck me that one of the most valuable contributions to this financial discussion, from the very commencement of our labours, was that expressed in the very shortest possible form by my honorable friend (Mr. McMillan), when he said that the financial problem was insoluble. I did not take him to mean that it was impossible to feel that we, in this Convention, are doing justice, if we irrevocably settle in the Constitution the basis upon which the surplus revenues shall be distributed or returned to the various states some seven years hence. In other words, that we should feel that we were doing an injustice, if we assumed to lay down, finally and definitely, the time at which the per capita contribution—which I believe with Dr. Quick is that which is most federal and which most commends itself to our judgment—should be brought into operation. After all, the question involved in the scheme that is now under consideration is not so much the mode of distribution, although upon that, undoubtedly, the Federal Parliament will have a free hand; but it is as to the time at which the federal method of distributing this surplus shall be brought into operation. It is no reflection on the Finance Committee—it is no reflection either on their genius or their financial ability—it is no reflection on this Convention, that we shrink from facing the responsibility of laying down in the Constitution a rigid rule of that kind. There are men on the Finance Committee as capable as any men in the world of accomplishing this task if it were possible; but the difficulty is that we do not possess, at this moment, the data or the materials by which we can be guided. The whole subject is purely speculative, and, in point of fact, in the proposals which have now to a large extent gone by the board the proposals of 1891, and the proposals at the Adelaide session last Year—we were really invited to a work of-prophecy, and not a work of practical statesmanship. Financers, like diplomatists, ought to strive to deal
with as few matters as possible that are unknown in solving their problems, and you can no more, in dealing with a financial question, prophesy, "unless you know," than you can in any other matter affecting our daily lives. I am glad that in the scheme now proposed the attempt has been abandoned to lay down that any rigid basis of distribution shall come into operation years hence, with a changed condition of things whose outcome we cannot possibly know and cannot possibly foretell. Therefore, to the principle underlying this proposed scheme, I shall give all the support I can in connexion with the settlement of this print in our Constitution. As to the plan proposed, it was said by my right honorable friend (Mr. Reid) yesterday that it was "rough and ready." Now, it seems to me that that applies rather to the circumstances, that it is rough and ready, not so far as the principle of the plan is concerned, but so far as collecting or obtaining the information to which the principle is to be applied. The principle, it seems to me, is perfectly clear and precisely defined. The only difficulty is that statistics in this, as in other things, are not obtainable with perfect accuracy. It seems to me certain that everybody will get his own, perhaps not in each particular case, but all round. The one may lose a little here; but if he loses a little here, he will gain a little there; and so in the long run the probability is that things will equalize themselves, and there will be an average of fairness, even so far as amounts are concerned, which will prevent the possibility of injustice being done. Now, my honorable friend (Dr. Quick) has put the principle that each colony should be substantially indemnified for the revenue surrendered. To that, in substance, I assent. That is what we ought to strive for—that there shall be restored to each state as nearly as possible what it has contributed, less its share of the federal expenditure. That seems to me to be a sound principle, and I think it is the principle on which we have all been proceeding, and on which the Finance Committee, in their treatment of the subject, and in the report which they have presented, have also proceeded.

Mr. ISAACS. -

Do you mean to fix that in the Constitution, or to leave it—to the Federal Parliament?

Mr. SYMON. -

I am coming to that. I may state that I am dealing with this matter not as a financier, but looking at it, as nearly as I can, from the point of view of principle; and I intend to say a word on that point in a moment. The principle to which I have referred is actually carried out up to the imposition of the uniform Tariff. Then, if the contributions of all the states
were equal, per capita, and the proportion of the federal expenditure was imposed per capita, no difficulty whatever would arise. But it is admitted that the contributions are not equal per capita. Now, there are two observations which suggest themselves to me on that head. So far as that inequality depends on the varying conditions of consumption, modes of life, and so on—just as in England one county or one town does not contribute, per capita, as much to the Customs as another county or another town—so far the inequality cannot be guarded against. This is one of the incidents of union. It is one of the incidents which it is impossible to overcome, and, if we are a federal state, of which the basis financially is one national system of customs and excise duties, that particular incident must constantly apply, with the result that it will produce an inequality which no mortal man can overcome. But, so far as it depends—and this is the point to which I wish to invite the attention of honorable members—on the establishment of federation and the uniform Tariff it can, and may, to a certain extent, be obviated. It is hoped that the inequalities may adjust themselves after a series of years—that, in other words, the influence of the temporary disarrangement will cease; and that when the disturbances occasioned by federation and the uniform Tariff are at an end, that particular source of inequality may be partially, if not altogether, overcome. Now, we cannot do this by any attempt at prevision, so as to declare the time when these difficulties will be partially or wholly overcome, or sufficiently overcome, to enable us to say that a fair result has been arrived at. Therefore, the committee suggest that the determination, not so much as to mode of distribution, for a reason that I will mention directly, but as to the time when the mode of distribution shall be determined, shall be left to the Federal Parliament, because I take the essence of this recommendation to be that we are to proceed for the purpose of acquiring all necessary data for a minimum period of five years. That is to say, the Federal Parliament is to have primarily the power, and to have imposed on it the duty, of determining whether the results of those five years are enough to enable them to say that any particular method of distribution will be more just than another.

Mr. MCMILLAN. -

It is a temporary bridge to enable us to get over the difficulty.

Mr. SYMON. -

My honorable friend, by a metaphor, has well explained the matter. It is a temporary bridge which may cross the gulf which we are all seeking to get across; but the bridge may be found to be insufficient in length, and may have to be extended. That is an excellent description of what the position would be under those circumstances. Then it is suggested that, as it is
simply a minimum, the time be abridged so as to still more enlarge the discreion of the Federal Parliament.

Mr. MCMILLAN. -

Hear, hear.

Mr. SYMON. -

Now, if any honorable members who are much more familiar with how these financial questions work out than I can possibly pretend to be are satisfied with an abridgment of that minimum period, I am perfectly content to go with them, and shall go with them if anything of the sort is proposed, because it simply comes to this: A large body of us in this Convention are agreed that the fairest and most federal mode of distribution is per capita. The probability is that the Federal Parliament will take the same view, and, if they do, or if we feel there is some reliance as far as method is concerned, that that will be the method most likely to be adopted in the fulfilment of the federal idea, it seems to me that the discretion we are leaving to the Federal Parliament is merely to say when they consider the data will be sufficient, and when they consider this per capita distribution ought to be brought into operation. I take no exception to the bookkeeping. I never did. I never saw the inconvenience and embarrassments which some honorable members felt in connexion with maintaining the bookkeeping system. It will involve some expense, perhaps the keeping in repair of the border custom-houses, or the places, at any rate, where the officers needed for getting information may live. But, as far as the expense is concerned, it is a mere bagatelle, and looking at the object we have in view, the duration of it is a mere drop in the bucket when you consider that this federation is to be for all time. Therefore I never could understand the objections as to the bookkeeping, and so far as regards the difficulties in relation to obtaining f

Mr. MCMILLAN. -

The objection is the obstruction to traffic and business.

Mr. SYMON. -

No doubt, and I think that is the only objection. The only real and serious objection is that it causes delay and inconvenience; but even that seems to me to be a very small matter in comparison with what we look for as the result that is to be ultimately obtained. There is another matter, and I commend this to the attention of the honorable and learned member (Dr. Quick). I have always felt that if any attempt were made to give effect to the principle which he has enunciated, and with which I also agree, that it ought to be done by an addition of something of this character without
unduly hampering in any way the opinions of the Federal Parliament. I would suggest the addition of some such words as the following to the provision, leaving the mode of distribution and so on to the Federal Parliament:

Having regard to the principle of giving back to each colony a fair approximation to what it contributes, less its share of the federal expenditure.

Dr. QUICK. -

Hear, hear.

Mr. SYMON. -

I do not quite feel that I should go to the extent my honorable friend has indicated in the form of words which he has suggested, because I think it would be perhaps laying down a rigid rule which might be found very inconvenient, but possibly some such form of words would express the principle upon which this Convention is proceeding, a principle to which I think the Federal Parliament would give in its adherence without its being expressed. Still, for the encouragement of doubters, as Dr. Quick says, it might perhaps be well to have that on the face of the Constitution, not as something binding in detail, but something suggesting the principle by which the Federal Parliament might be guided, indicating to them, at any rate, the principle we have in view.

Mr. HOLDER. -

Any such indication would to some extent limit their freedom.

Mr. SYMON. -

I feel the weight of the honorable member's objection, especially on account of the great care and attention he has bestowed on the subject. I merely suggest these words, at any rate, in preference to what Dr. Quick has proposed, as something which would be more likely to express the principle rather than as a limitation to the Federal Parliament in matters of detail.

Mr. OCONNOR. -

Is not that the principle that must be followed?

Mr. SYMON. -

As my honorable friend puts it to me, there cannot be anything else except an affirmative answer, but the view I am expressing, and which is in the mind of Dr. Quick, is the view which has been impressed upon us in other matters-that we have to consider those outside by whose votes this Constitution has to be accepted. If we can, without derogating from the high trust we repose in the Federal Parliament, give expression to a
principle of that kind, it might be an advantage to do it. I do not say that I will, when further advised, support it, but something in that shape would be the least out of place in the fabric of this Constitution. I have no apprehension and I now come to the point to which the honorable and learned member (Mr. Isaacs) directed my attention—regard to leaving this matter to the Federal Parliament. It is true, and that is the objection that may be taken to it, that even after the Federal Parliament decide upon the mode of distribution it is liable to be altered. The subject may be brought up again, and there may be those struggles to which Dr. Quick has referred, and the basis may be open to be altered. But so far as the discretion vested in the Federal Parliament is concerned, I believe that they will be as wise, as just, and as fair as we can possibly be. The highest duty of the Federal Parliament will be to maintain the honour of the Commonwealth. If I thought myself and I say so with the most perfect earnestness—that the Federal Parliament would be likely or ready to fall into such an abyss of dishonour and corruption as would be implied in the objection which the honorable member (Mr. Holder) exceedingly well paraphrased yesterday, as meaning that the states might be bought and sold, then I, for one, would resist the establishment of this Federation to the utmost of my power. It is because I do not believe that the Federal Parliament would be guilty of such a degree of turpitude that I am willing to support the Constitution as we are now framing it, and that I am willing to leave this, among other matters, to the arbitrament and settlement of the Federal Parliament. There is one remark I should like to make as to the provision of clause 93, and to call Mr. O'Connor's attention to it. Clause 93, which confers upon the Federal Parliament the discretion of dealing with this distribution when it has the data before it, says the distribution is to be month by month amongst the several states, and on such a basis as shall be fair to the several states, and in a proportion, and after a method to be determined by Parliament. Now, I invite the consideration of my honorable friends on the Drafting Committee to these points in connexion with that. I am very doubtful whether that would not import the Federal High Court into the settlement of this matter. If you say "on such a basis as shall be fair to the several states," then you immediately open up the question which was so forcibly pointed out in connexion with the removal of the Judges, as to whether or not you are withdrawing from the Federal Parliament the final determination of the subject.

Mr. ISAACS. -

The word proportion may raise the same question.

Mr. SYMON. -

That may be the case. I direct attention to it, because I do not think any
honorable member will accuse me of not seeking to magnify the powers and functions of the High Court. I think it everywhere essential that those powers should be co-extensive with liberty. But this distribution is a political question. It is a question of public policy, and, therefore, whilst I desire that every right that savours of what is judicial should be dealt with by the High Court, I am utterly opposed to any question of policy being remitted to that tribunal. Of course, my doubt may be unfounded. At any rate, if there is a doubt words should be used which will remove it, and will settle this point once and for all. The matter is one which ought to be entirely within the jurisdiction of Parliament, which is the arbiter on all questions of policy, and be taken away from a tribunal to which such questions are utterly foreign.

Mr. OCONNOR. -

Since the honorable member mentioned the matter to me yesterday we have prepared an amendment which will, I think, prevent the words from having that meaning.

Mr. SYMON. -

I should, I think, strike that provision out. There are portions of the Constitution in which we may naturally and not improperly use such words as fair and just, but inserted here they seem to imply that the Federal Parliament, unless controlled by some other body might possibly commit an act of unfairness in regard to the allocation of these moneys amongst the different states. It is unnecessary, it might work great injury, and it is inconsistent with the respective functions of the legislative and the judicial powers. So far as the exceptional treatment of Western Australia is concerned, I do not know what view honorable members from that colony take but exceptional treatment on the basis indicated by Mr. Reid yesterday I am quite willing to accord. But then, as Dr. Quick has pointed out, and it must be obvious to everybody, there are other risks. There are risks all round, but each colony takes the risk, and the great object we should have in view is to minimize, as far as we possibly can, these risks. I was greatly impressed, yesterday by what Mr. Henry said as to the position of Tasmania; and I was even more impressed by, what Mr. Reid said, in the very fair and liberal view which he took of their unique financial position, if I may so express it. It was gratifying to hear Mr. Reid declare that, in a matter of the magnitude of that with which we are dealing, £30,000 or £40,000. from the Commonwealth to keep a particular state out of grave financial stress would be a mere bagatelle, not to be thought of for a moment. If we seek for an adjustment that will bring, us to the uttermost
farthing we shall never reach it. We shall simply be pursuing a will-o'-the-wisp that will lead us to destruction. I think that Mr. Henry is unduly apprehensive. I do not know whether he was present on what I may call the convivial or hospitable occasions the other evening, when we listened to a speech from Sir Edward Braddon, in which he declared that if Tasmania, had not already achieved she was rapidly achieving a foremost place amongst the mineral-producing, states of Australia. Now, if that is the case, is it not probable that within a very few years we shall have an immensely increased population in Tasmania? With all those favorable conditions, which have proved so satisfactory, financially, to Sir John Forrest in Western Australia—with the consuming power of all those heavily-customed articles amongst a preponderating male population—may not Tasmania, instead of sinking behind in the per capita collection of customs, go ahead of some of the other and older colonies? Tasmania's position, so far as regards exceptional treatment, is not on the same footing as Western Australia. It is quite different. Different reasons apply to it, and there is room for a great deal of consideration in reference to the remarks made by Dr. Quick as to the suggested indemnity. I think it would be, impracticable to have an indemnity. It would not only be impracticable, but it might be vicious in its operation. At the same time, it is worth considering whether there should not be in this Constitution some power enabling the Federal Parliament to go to the financial relief of a state.

Mr. KINGSTON. -

It is risky.

Mr SYMON. - I admit it is risky, but the question is worthy of consideration.

Mr. MCMILLAN. -

If you reduce the period to three years, the Parliament would have a free hand at the end of the three years.

Mr. SYMON. -

Yes; and I am not sure that the Constitution as it stands is not elastic enough to permit of the Federal Parliament coming to the rescue of a state in a financial difficulty. It ought to be, and probably is, within the power of the Constitution to preserve a state from bankruptcy, just as much as from extinction in any other way. We have a clause in this Constitution which obliges the Commonwealth to protect the states against foreign aggression and domestic violence. That is clause 112, and financial stress may be very nearly as disastrous to a state.

Mr. LEWIS. -
Ought not that to be expressed?

Mr. SYMON. -

If there is a doubt on that subject, it might and ought to be expressed. I am not sure that it need be expressed, and for this reason. It would be within the power of the Federal Parliament to come to the rescue of a state against foreign aggression, and the serious point is whether we should not gravely consider the advisability of having a power in the Constitution to enable the Commonwealth to come to the relief of a state in time of financial disaster. The destruction of a state may just as much be involved in financial trouble or in bankruptcy as in a foreign invasion. The whole object of the Commonwealth is to maintain the existence and the prosperity of the different states. In all probability the representatives in the Federal Parliament would not stand idly by and see any state reduced to financial straits, but would find some method under the Constitution of preventing such an unfortunate result.

Mr. KINGSTON. -

It might encourage reckless provincial finance.

Mr. SYMON. -

I am not at all oblivious to the difficulties that might arise, and to the objections to it. It might, of course, produce less care and less prudence in the financial arrangements of the states; but, on the other hand, each state would have the fear of the Federal Parliament before its eyes, and we know that the Federal Parliament would not take any steps which would have the effect of inducing such extravagance as would be likely to bring about an appeal to the Federal Exchequer. I do not desire to add anything further. I do not propose to enter into any details as to the figures. I have endeavoured to refer to the principles which I think underlie this scheme, and those principles commend themselves to my mind so far as I am able to appreciate them. I have made these observations in order that I might be clear as to what this scheme meant. The exceedingly interesting and instructive remarks of my honorable friend (Dr. Quick) this morning have assisted very much to make clear what really is the intention of this method. I hope, and I believe, that this scheme will be favorably received and favorably considered. On the face of it it seems to me to be a combination of prudence and of boldness. It has got rid of all the trouble involved in our endeavour to finally determine and settle now the question of how this money should be distributed at a distance of seven years from the time at which we are operating, in a country in which the changes are frequent, where ups and downs are constantly occurring, and where no man can tell what the outcome may be a year hence of either the political policy, or the social or commercial progress, at the present moment. I
believe this scheme will receive general acceptance, and that it will do much, perhaps more than we can at this, moment realize, to finally settle this question, and to bring about the early accomplishment of the great issue upon which we are engaged.

Sir JOHN FORREST (Western Australia). -

I think, sir, that I should offer some observations with regard to this very important matter, although the very favorable manner in which the recommendations of the Finance Committee have been received leaves me but little ground for criticism. It must be gratifying to those who have taken so-much trouble in the preparation of this scheme to find that their recommendations have received so much support. Every one will admit that the question is a difficult one. Statistical calculations are not reliable in dealing with such a matter, because we have to assume so many things. One statist may be able to prove one result by assuming certain things as likely to be facts, and another statist may be able to prove exactly the opposite. I must at once say that my thanks are due to honorable members of the Finance Committee and of the Convention for the reasonable and generous way in which they have sought to meet the admitted difficulty that exists in regard to Western Australia. I have no desire to speak on this matter at all, so far as that part of it which relates to Western Australia is concerned. I am not, on this occasion, going to urge strongly the recommendations of the committee. Unless they meet with the approval of honorable members, I should prefer to leave the matter without any special advocacy on my part. I must admit, however, that the recommendations of the committee are based upon some suggestions that I made, modified by the suggestions of other honorable members. I felt that there was a great difficulty, and every honorable member of the Finance Committee admitted that there was a difficulty, in regard to the financial position of Western Australia. I have no desire to speak on this matter at all, so far as that part of it which relates to Western Australia is concerned. I am not, on this occasion, going to urge strongly the recommendations of the committee. Unless they meet with the approval of honorable members, I should prefer to leave the matter without any special advocacy on my part. I must admit, however, that the recommendations of the committee are based upon some suggestions that I made, modified by the suggestions of other honorable members. I felt that there was a great difficulty, and every honorable member of the Finance Committee admitted that there was a difficulty, in regard to the financial position of Western Australia. I am, I may say, in accord with the views expressed by this committee. Leaving out, for a moment, that part which refers to Western Australia, we have adopted, I think, the only course which is likely to give satisfaction here, and to meet with support outside. As has so often been said, it is impossible for us now to provide for what may be necessary some years hence. The conditions of all these colonies are rapidly changing; that one which may now appear to be lagging behind, or to be the poorest, may, in a very short time, be well in the running, or even in advance of the whole of the others. I should have preferred if the Finance Committee had not made the case of Western Australia a special one. I am still of the opinion, and it was my suggestion, that some general plan might have been devised; in fact, the plan which is
contained in this report would, I think, have done very well if it had been made applicable to all the colonies. That, however, did not find favour with others, and therefore I was obliged to agree to Western Australia being treated in a special manner. I see no necessity for this difference being made. I believe that Western Australia, although her case is exceptional, has no right to be treated in a different way from all the other colonies. I think that this plan, if applied to all the colonies, would have been just and fair to all, and would have been equally just and fair to Western Australia. There have not been very many observations made during this debate which call for any criticism from me. Those who are opposed to the provision being made which is recommended by the Finance Committee, and who desire that Western Australia should form a part of Federated Australia, must remember that we have a very heavy task before us. We are, I think, in a very different position from any other colony in Australasia, for we are in a position where federation is least advantageous to us. It is more difficult to impress on the people of Western Australia that there will be any advantage at the present moment in federation than can be the case in any other colony, and for various reasons. We have only recently entered into our patrimony. We have only had self-government for seven years, and those years have been years of unexampled prosperity. During that period our population has increased from 50,000 to over 160,000, and our revenue from £400,000 to nearly £3,000,000 a year, while our trade has increased from £1,500,000 in 1890 to over £10,000,000 in 1897; and, what is still more satisfactory, the tide of prosperity seems to be still on the flood. I only mention these facts to show the difficult task those who are advocating that Western Australia should join in this Federation have before them. We have at present but few exports to send to these colonies except gold, and that, of course, is an export which is welcome not only here but throughout the world. We have certainly some of the best hardwoods known in the world, but in all these colonies you have excellent hardwoods-in my opinion not so good as ours, but still quite good enough for most of your requirements. It may be urged-"But then there is the great question of defence. Australia, as a federated dominion, will be able to defend you from outside aggression" But those who are opposed to us will say-"How can Australia defend us? our defence must come from across the seas. The only power which can defend us is the navy of the great nation to which we belong. There are 1,000 miles of unoccupied country lying between Perth and Adelaide; there are no means of communication by land except by pack-horses and camels, and, therefore, the only aids of defence
will have to come from across the sea, and we know that there is no navy in existence at the present time, except the navy of Great Britain, which can defend us." I hope that no one will think, because I mention these facts, that I am opposed to federation; I only mention these facts to show the difficulty we are in. We shall be told that there is, no necessity for Western Australia to federate. But worse than that, we shall be told that there is no advantage in federating, unless it be the advantage of being a part of a nation. If, in addition to all these arguments, we also have to meet the objection that we shall lose a third of our Customs revenue-between £300,000 and £400,000 a year-and also to face the producers of the colony and to tell them that not only will we lose a third of our revenue, but that the loss of the revenue will be adverse to their interests, and that they will lose the protection which the customs duties now give them; I think every one will admit that our difficulty will be increased. Of course we can tell them, as was suggested in a journal to-day, "although you lose the protection which you have now, although you lose that revenue, it really will not be lost, it will be in your pockets, and you can raise the revenue by direct taxation on land." That, of course, will be an excellent argument for me to address to the farming community of Western Australia!!! These are the reasons why I think some special consideration will have to be shown to Western Australia. It is no advantage to us whatever that this clause should be made to apply specially to Western Australia. It would be more agreeable to me, and quite as advantageous, if its application had been made general to the whole of Australasia. I am glad to be able to record that the case of Western Australia as a special case has been fully recognised by every one on the Finance Committee, and I think must be fully recognised by every one in this chamber. I have shown the position we will have to face in Western Australia. It may be said that the representatives of these colonies will also have to face like difficulties. I will show you that that is not so. While we shall not be able to show that there will be any material gain, as far as I can see-and if I am wrong, I only hope and pray that some one will tell me, so that I may have that argument to use-while we shall not be able to show that there will be any material gain, I think the representatives of these colonies, every one of them, will be able to show to the people they represent that federation is going to give them material gain. We all know that Victoria has, under protection, for a quarter of a century, built up manufactures to such an extent that she is now longing for the time to come when she will have an outlet for those manufactures, and that free-trade throughout-the-Australian colonies will give her the markets she now
absolutely requires To a smaller extent that is the case in other colonies, if not in manufactures, certainly in products. New South Wales with her immense, products, South Australia with her products is looking with eagerness all over the continent to see where she can get free admission for her products. The bar to the admission of the products of those colonies into other colonies is their protective or revenue Tariffs I would ask honorable members whether this desire for free markets on the part of the people of Victoria, South Australia, and New South Wales is a greater incentive to federation than their desire for nationhood? I put this question directly to every one in this Convention—which desire of the people of those colonies is the greater, the desire for the free markets of Australia or the desire for nationhood? I leave them to answer the question. The incentive for free markets does not, however, apply to Western Australia in the same way as it applies to every other member of this group. We are great consumers; we do not produce anything like what our people require That is not the case with any of you. You produce more than you consume, and your desire is to find markets for your surplus I do not want any one to gather from my remarks that the people of these colonies have no feeling of patriotism no desire to begin to form a nation to be a great power in the Southern Hemisphere—to build up another Great Britain. That of course, is a splendid idea—an idea that I think every true Australian must have within him—but I believe that the material interests of the people of this country are a stronger incentive to bring about Federation than the desire to become one nation which we hear so much about. Well, my object in putting this position as forcibly as I can, is to show, that the incentive of material interests is not at present with the people of Western Australia. You, cannot show them that it is. I have thought this matter over very carefully, and all I have ever tried to do is to show the people of Western Australia that they would not lose by federation. I have never attempted for a moment to try to show them, that, at the first, they will be gainers by federation. I will ask honorable members who speak after me to show, if they can, that my arguments are erroneous, and that what I have stated in regard to Western Australia also applies equally to other parts of Australia. Now, sir, what does the proposal that has been put forward by the Finance Committee mean? It means that, by the operation of the uniform Tariff, and the operation of intercolonial free-trade, Western Australia shall not lose during the first five years more, in proportion to her Customs and Excise revenue, than the average, proportional loss of all the colonies from the same cause. That is all I take it to mean—that we shall not lose more on that account than the average loss of all the other colonies.

Mr. HIGGINS. -
Suppose two of the colonies lose nothing, do you reckon them in?

Sir JOHN FORREST. -
Yes, whether they gain or lose.

Mr. WALKER. -
Will you exclude New South Wales, because she will gain.

Sir JOHN FORREST. -
No. The losses and gains will be taken, and an average will be struck.

Sir GEORGE TURNER. -
That was never intended. It was never intended to bring in the gains.

Sir JOHN FORREST. -
But otherwise you will be giving a large, amount to New South Wales. She will certainly

If you bring in New South Wales gains Western Australia will get nothing at all.

Sir JOHN FORREST. -
I really ask the honorable member not to exert himself in the cause of New South Wales. Under any circumstances, New South Wales will come out very well.

Mr. SOLOMON. -
I have been spending a fortnight looking after your cause.

Sir JOHN FORREST. -
I am much obliged to the honorable member, but I do not think we will find very much opposition to this arrangement from those who represent New South Wales. It may be said that Western Australia will not lose. If that is the case, there will be no harm done, but I think every one will admit that Western Australia is likely to lose a great deal. The effect of this clause is that Western Australia is guaranteed that for five years her proportional loss of Customs revenue will not be greater than the average proportional loss of all the federated states. As I have said before, I am not here to press this arrangement on the Convention. I do not intend to say one word more in advocating this arrangement. It is for honorable members to say whether it is an equitable arrangement, whether it is based on what is right and just, and, if they say it is not, then I shall say no more
about it. Now, it may have occurred to some honorable members, after listening to what I have said, that I have made some observations in the course of my speech which would mean that it is altogether disadvantageous to Western Australia to enter this Federation, and that, therefore, it is almost certain - at any rate very probable - that she will not enter it. But I think that is not the case. I think that there are ways in which all these colonies can be assisted, and in which they will be attracted towards the cause of federation. I am sure that, in making these observations, no one will accuse me of having any interested motives, because Western Australia is in this position, that her debts are not excessive, while her population, her revenue, her trade, and everything else are increasing. We have had no difficulty whatever up to the present time in meeting our engagements. But I think that the one great lever that can be used by the Convention to make this Constitution attractive to some of the colonies which may be lukewarm in the cause of federation is that the debts of the colonies should be federated. That will give relief to some of the colonies, and very probably will be a great inducement to others to join the Federation. It seems to me that one of the great practical objects, one of the great results that we expect to achieve-at any rate, it is one that I expect will be achieved from the federation of these colonies, leaving out of consideration all those patriotic sentiments, ideas, and reasons which prevail with all of us, I hope-is that we will strengthen to an immense degree our financial position in the world. Therefore, if we wish to make this Constitution attractive, we must give ample and full powers, even more full than they are in the Bill before us, for the consolidation of the debts of Australia. By that means I believe we will do a great good to every colony in this group; we will have a unified stock, which will be readily saleable, and which will result in a very large saving to the people of all the colonies of Australasia. That is the great practical object which, in my opinion, will be one important result of federation. And, of course, there are other objects to which I have on other occasions referred. One is that federation will lift us up as a people, will give us a higher political life, will broaden our views and sympathies, and make us more important in the estimation of the world. Those also, of course, are objects which we all desire to attain, and in the achievement of which we shall all assist. I hope that I have shown that Western Australia is in such a position that she does not come here to ask for anything to which she is not entitled. The committee have brought forward these recommendations not, as might be supposed, after strenuous advocacy from me, and not, as might be supposed, in order to meet strong
objections on my part. The task which I and my honorable colleague had to perform was a simple and easy one. We had no difficulty whatever in showing the committee the peculiar position in which Western Australia is placed by great advance and prosperity. Even now, under these conditions, Western Australia will be a larger loser than any other colony through joining the Federation. Therefore, knowing that, and feeling that these recommendations have come forward, I might say almost without advocacy on my part, I now leave the matter with honorable members. I shall not say another word in regard to the claims of Western Australia in this matter, and if the committee, after viewing all sides of the question, come to the conclusion that this proposed arrangement is not reasonable, or is not just to all the colonies, then my only hope is that with one accord they will strike it out.

Mr. GLYNN (South Australia). -

I am sure we are all exceedingly glad to have heard the sturdy and exhilarating speech of Sir John Forrest, who has put, from the federal point of view, in exceedingly clear language, the position of Western Australia, and has accentuated his sense of the desire we all knew he possessed to promote the federal movement, although he may have been conscious, perhaps, that, for the present, the advantage from union would not be as great to Western Australia as it would be to the other colonies of the Australian group. I intend to make a few observations on some detailed portions of the scheme, with that deference which is due to the great ability of previous speakers, and also to the fact that we have had some of the ablest financiers of the colonies on the Finance Committee, who have had access to data which is not accessible to us. But, just as it is between the endless jar of right and wrong that justice resides, so the truth of this matter may lie between the different views that have been expressed, may be the resultant of these opposite opinions, and discovered by a review of the position of things as it now confronts us. I would like to make a suggestion in regard to one or two clauses, more for the purpose of having my doubts cleared away, than of making any dogmatic assertion that those clauses are not clear or fair in their incidence. The provision made by the intended clause 89 is that goods imported into any state before uniform duties of customs have been imposed, and thence within two years exported into another state, are to be charged with the duty which is in force in the state into which they are exported, minus any duty previously paid. What occurs to me, as a matter requiring perhaps a little consideration, is that the Federal Executive will be in almost exactly the same position on the introduction of the uniform Tariff as a local Treasurer is at present on such an occasion. The Tariff will be drawn up after consideration by the
Executive, and the moment it is delivered to parliament, the duties proposed to be imposed by that Tariff will be immediately leviable. So that it occurs to me that there is really no necessity for this clause.

Mr. HOLDER. -

What about the goods brought in before that, into New South Wales, for instance?

Mr. GLYNN. -

The importations before that will be the ordinary importations.

Mr. SOLOMON. -

They might be extraordinary, in view of the impending uniform Tariff.

Mr. GLYNN. -

I appreciate that point also, but I am merely pointing out another aspect of this question. At the same time, I think that there will not be very large importations into New South Wales in view of the impending uniform Tariff, the character and details, of which importers cannot assume.

Mr. SOLOMON. -

But it is almost certain to be higher than the existing Tariff of New South Wales.

Mr. GLYNN. -

The average of the duties may be higher, but how can New South Wales importers ascertain, with any degree of accuracy, the amount of the duty on any particular article imported under the uniform Tariff?

Mr. HOLDER. -

They can practically guess it now.

Mr. GLYNN. -

I question that prophecy also. We have two classes of Tariffs that may be proposed. There may be a free-trade Tariff, or there may be a protectionist Tariff, but the protectionist Tariffs of the colonies differ in character considerably. A free-trade Tariff is of course essentially different from a protective Tariff. In England, there are only about 40 lines upon which duties are imposed.

Mr. HOLDER. -

There are only about half-a-dozen in New South Wales.

Mr. GLYNN. -

Yes; and how can you with any degree of approximation ascertain beforehand what the general character of the Federal Tariff will be, beyond that it will probably be protective?

Sir PHILIP FYSH. -

You may take that as a certainty.
Mr. GLYNN. -

I understand perfectly why the clause has been put in, but I say that it is the result of fears as to importations which are not strongly justified by the probabilities of the case. I merely make this remark as a suggestion, because it is inadvisable to keep up artificial expedients of this sort, unless a great injury is likely to result from the absence of them. It was very well pointed out yesterday that the re-exports from one colony to another will be exceedingly difficult to follow, and Mr. Pulsford, in a pamphlet which has been sent by him to the Convention, indicates several lines in regard to which you could not say that the re-export was from another colony, or from outside the Federation. With regard to clause 90, the honorable and learned member (Dr. Quick) has very properly mentioned that in his opinion the defences of the colonies should be federalized from the very start. But, under the provisions of clauses 90 and 91, the defences and services like the post and telegraph service will not be really federalized for about seven years, because the bookkeeping system is to apply, not only to the Customs revenue and expenditure, but to all the departments the control of which is to be handed over from the states authorities to the federal authority. Although there may be a slight difference in the expenditure upon defences per head in the various colonies, that difference is to a large extent due to the differences in efficiency, and by amalgamation the comparative inefficiency of, say, the Tasmanian defences will be made up by the increased efficiency of the New South Wales defences. While Tasmania will be paying a little more towards the maintenance of the defences of the Commonwealth, she will receive, as a compensation, the advantage of the greater efficiency of the amalgamated defences. Then with regard to telegraph services. I suppose the provision contained in the clause was inserted in view of the exceptional position of South Australia in regard to her post and telegraph services. That position is one of advantage, but I, as a federalist, am prepared to surrender it in order to secure the greater advantage of federal union. According to the statistics presented to the Convention in Sydney, South Australia is the only colony which makes a profit on her post and telegraph services.

Sir EDWARD BRADDON. -

No; Western Australia and Tasmania both make a profit out of those services.

Mr. GLYNN. -

That is not shown by the figures to which I allude.

Mr. SOLOMON. -
Those figures are out of date.

Mr. GLYNN. -

Well, that fact is an evidence of the uselessness of dogmatizing as to what is likely to occur in the future. If in six months there has been this variation in the receipts of one department of the service it is difficult to estimate what will take place in the future. I refer to these figures, however, as they are the last comprehensive statistics which are available to me.

Mr. HIGGINS. -

The honorable member would not federalize the expenditure until he also federalized the revenue.

Mr. GLYNN. -

I would federalize the post and telegraph services and other similar departments, excepting, of course, the Customs department, from the very start, though undoubtedly South Australia would have to surrender an advantage which is not to the same extent possessed by any other colony in the group. According to statistics presented to the Sydney Convention, at the close of the financial year 1896-7, South Australia had made a profit of £15,000 upon her post and telegraph services. When these services are amalgamated throughout the Commonwealth we shall have to surrender that profit, and we must also bear our share in the total loss of £267,000, which it is estimated will occur. Why is it that South Australia is in this exceptional condition? It is because of its present anti-federal position. Its rates are, I think, on the whole, higher than the rates prevailing in most of the other colonies, and it has a great advantage by reason of its geographical position.

Mr. PEACOCK. -

Is not the South Australian service credited with work done for other departments? That is not the case with the services of the other colonies.

Mr. GLYNN. -

I am not sure about that. My contention is-and I am speaking from the point of view of those who argue against South Australia-that the advantage which the colony, has at the present time is the result of de anti-federal attitude and of its geographical position. That is emphasized by the interjection of the honorable member. Referring to the statistics prepared by the Victorian Statistician, and embodied in a Blue-book presented to the Convention, I find that, in 1895, South Australia received from telegrams £89,000, New South Wales £126,000 and Victoria £95,000. If you take into account the differences in population, you will at once see that the receipts of South Australia must be due to its exceptional rates, and to its position in relation to the other colonies. Recognising this, however, I am
prepared to consent to the amalgamation of the post and telegraph services from the first, feeling that there would be a compensation in other directions. For this reason I agree with the remarks made by the h

instance, lines such as beer, spirits, and three or four others, from which about 50 per cent. of its total Customs revenue is realized. The consumption of whisky, alcoholic liquor, and narcotics in Western Australia is abnormal, but this abnormal consumption is not likely to keep up for more than another three or four years. We see by the statistics presented yesterday by the Right Hon. Sir John Forrest that within the last few years there has been a declension in the proportion of males to females in Western Australia, and that must, to a large extent, affect the consumption I speak of. The lines to which I have referred will, therefore, cease to be so productive of Customs revenue in the near future as they are at the present time, and the character of the Tariff must be changed to meet this falling-off in revenue. I merely mention this matter for consideration in connexion with clause 92, in order that it may be ascertained whether we are really balancing upon the best method.

Mr. ISAACS. -

The percentage of Customs receipts to the whole revenue was 48-63 in 1894, and during the last half year, 37-87.

Mr. GLYNN. -

Yes; and it has been pointed out by Mr. Johnston that if you take the mean consumption by males of five or six lines, for the five years ending 1896, you will find that it has declined about 10s. per head. Therefore, if the revenue is to be kept up by a change in the Western Australian Tariff, you cannot ascertain, under the method suggested by clause 92, what the proportionate loss of Western Australia will be. As regards clause 93, I certainly think it is a mistake to allow the Federal Parliament to re-open the question of the payments to be made to the states. Honorable members will see, by looking at the list of proposed new clauses and amendments, that I have made a suggestion for the opening up of the financial question at the end of five years, when it is to be dealt with finally. The clause I proposed to insert for the amendment of the Constitution was this:-

The proposed law for the amendment of the financial clauses of this Convention shall, if passed by absolute majorities of the Senate and the House of Representatives within five years after the establishment of the Commonwealth, be presented to the Governor for the Queen's assent.

The effect of that provision would, I think, be this: That you would have some security against undue tampering with the adjustments made at the start, because any change would have to be made by absolute majorities,
and would be final. Such a change would have to be made before the end of five years, but it might be made after the end of two years. You could make your adjustments with a view to possible changes within the next ten years, but the question could not be reopened after the expiration of five years. You could at the end of that time take into account the fact that the conditions of Western Australia were abnormal, though in my opinion they are likely to tend to an approximation to the conditions prevailing in the other colonies of the group. If, however, they were still abnormal, you could make allowance for that. I say that that seems to me preferable to leaving it possible, at the end of five years, for the whole question of finance to be opened, and re-opened again interminably, at the dictation of perhaps one or two states. What is the state of affairs in Canada from the states appealing periodically for subventions? The result, as has been pointed out by Professor Goldwin Smith, is that men go to the Dominion Parliament simply as local members, for the express purposes of seeing what they can get for their states; and this has resulted in a most extraordinary and corrupt system of log-rolling. I hope we shall not give any chance of the Canadian experience being realized here.

Mr. ISAACS. -

They are always asking for better terms.

My. GLYNN. - Undoubtedly that is so. In listening to the debate yesterday, it struck me that there were one or two propositions that could be advanced in reference to this question, of federal finance. Recognising the great ability of those who have spoken previously, the ability of the Finance Committee, and also of the writers who have addressed themselves to this question, nevertheless, I think that those who contend for mathematical accuracy of balancing are forgetting the enormous advantages which will follow from the policy of union. If, as I am inclined to do, we realize that we are not partners who are settling up the accounts of a period of partnership, when figures are everything; but colonies about to enter into a partnership, when figures are comparatively little and policy is everything, we shall not be so likely to frighten the public into thinking that federation is a matter of loss rather than a matter of gain. We should remember that federation, from its economic aspect, is a partnership that by supposition, or as a corollary to the admission of its desirableness, will render the financial and other resources of the state more effective. I think, again, that we are entitled to emphasize the fact that, viewed even apart from the economies to which it must lead, and considered merely as many are wrongly considering it as an amalgamation of certain revenues and
expenditures, no balance-sheet is capable of showing anything beyond the results of a single year. I think that all recent inquiries into the subject tend to arrive at that result. You cannot predicate more than what will be the result of a single year. Again, I am entitled to say that even if the working of financial amalgamation could be inferred from the balance-sheet, of a single year, there would probably be as many different inferences drawn from it as there are men to draw them; and all calculations based on existing revenues would, even if-which is next to impossible-they were correct inferences from existing data, be upset by the Tariff of the future, of which we may guess the general character, but cannot predict either the details or working. Finally, I will say that if we prolonged our calculations till doomsday, the uncertain factors of the problem would prevent us from attaining more than an approximation to a satisfactory adjustment; there being in the way two great difficulties—one the attainment, and the other the recognition, of a fair adjustment. As to the last, the attainment and recognition of a fair adjustment, that question was suggested to me by the excellent and able speech of my honorable friend (Mr. Holder) yesterday. He has pointed out that there are many merits even in the old scheme which might recommend it for acceptance, but he has pointed out also that we have not only to deal with the fairness of the scheme, but with the possible recognition of its merits by the electors of the various states. I think that what Mr. Holder has said upon that point is quite correct. You will have probably hundreds of thousands of opinions as to the fairness of the scheme. People may not be able to recognise the fairness of the adjustment made, no matter how near to a fair adjustment we may arrive. We can never have an ideal scheme, and if we did people would never recognise it as ideal. Probably there is not one man in 5,000 who can do more than rely on the recommendations made to him by the representatives of his colony in this Convention and his political leaders, as to whether any particular scheme is to be regarded as a just scheme or not. How can we expect electors to say whether this scheme or that settles the difficulties of financial amalgamation? We cannot. But we can show them that federation will result in large economies; that it will result, for instance, in great economies in the abolition of preferential rates. Have not the three Railways Commissioners of the colonies interested in the railway problem, time after time,

pointed out this fact: That there are great losses of railway revenue through the system of cut-throat competition prevailing now upon our railways, and that there will be a great gain from the new policy which we hope to inaugurate? Then, again, there must be an enormous advantage
economically from the simplicity of the Tariff which will come into operation under the Federation; and, once more, the results of co-operation will lead to advantages which we cannot too often draw the attention of the public to. Now, as regards the possible approximation to normal conditions of the colonies of the group within five or ten years, I would say this: I have already mentioned the abnormal consumption of Western Australia in regard to five or six lines, such as beer and tobacco. If you compare the consumption of Western Australia with regard to spirits, beer, wine, tobacco, sugar, and molasses-tea might be included also, but I think that the duty on tea has now been abolished-with the consumption of the other colonies, you will see that the consumption of Western Australia in 1895 and 1896 has been, in regard to beer, 50 per cent. over the mean consumption of the other colonies. Her consumption of wine has been two and a quarter times as much as that of the other colonies, and her consumption of tobacco 60 or 70 per cent. more. But these conditions cannot in the nature of things endure. In less than eighteen months there has been a decline in the purchasing power of Western Australia. There will probably be always there the flush of purchasing power which we see in mining centres which we see in Broken Hill, for instance-and there is always a large consumption of these particular lines due to the irregularity of living in new settlements, especially mining settlements. But as water becomes more plentiful and more pure, as family life extends and conditions become more domesticated, men will tend to settle down to more ordinary lines of life, and the consumption of these products must then diminish. So that I say that Western Australia cannot keep up the abnormal consumption I have mentioned of alcohol and tobacco, which is suggested by these statistics. And that also leads us to the hope that in future years there will be in Western Australia something like an approximation to average conditions.

Mr. Higgins. -

Do you think that a man drinks more when he has not got a wife to help him in the drinking?

Mr. Glynn. -

I do. I am speaking from experience, too. I do not know what the honorable member's experience has been, but I think that the personal equation settles the question. In the absence of females and children the rate per head being only on consumers is necessarily high. Of course it is all very well to be critical with regard to the scheme which has been suggested to us-and which, perhaps, upon the whole will give us that approximation to justice which would render federation desirable-but it may be asked-"Have you anything to offer in substitution? "It may be
regarded as presumptuous on my part to offer any solution of the difficulty, but, as coming from a tyro who speaks "with bated breath and whispering humbleness," I will suggest as a plan which has against it 99 chances of acceptance, and has probably but one chance of being adopted, a distribution of the federal revenue which may fit in with the position of Western Australia. The great difficulty, which has been emphasized by previous speakers, has been that while the payments of Western Australia will be absolute, its receipts from the Federal Government will be relative. That is to say, its payments will be absolutely because the proportion of males will determine that, and the amount is not made per capita, but distribution will depend on population. But if you take the proportionate number of males to females and children in Western Australia, and equalize it with the proportion of males to females and children in the other four colonies of the intended group, it seems to me that the Western Australian receipts will be approximately correct. What is there to prevent us from dealing with Western Australia on a proportion which will be the result of averaging the number of children and females, and fixing the average by the proportion of the children and females to males in the five colonies? The point of distribution seems to be the greatest difficulty in the case of Western Australia.

Mr. MCMILLAN. -
Have you printed your suggestion?
Mr. GLYNN. -
No; I have endeavoured to work it out by means of figures, but I shall not attempt to give the result to the Convention now.

Mr. MCMILLAN. -
It seems complicated.

Mr. GLYNN. -
If the difficulty consisting in the per capita distribution rests in the fact that there will be an unproportionate share to be received by Western Australia in proportion to payments, you can rectify that, with some approximation to justice, by equalizing the average of females and children to males with the average in the other colonies.

Mr. MCMILLAN. -
Better make marriage compulsory.

Mr. GLYNN. -
There is no necessity to do that in Western Australia. I do not propose to trespass any further upon the time of the Convention, but I throw this out as a suggestion, which may perhaps help us. I will say, sir, in conclusion,
that I think we should endeavour, as I mentioned at the beginning, to forcibly impress upon the public who follow the course of our deliberations that no matter upon which of the financial adjustments we may decide - and they all bear the impress of a desire for equity - there are compensating factors that the mere balance-sheet can never show, factors that are the chief recommendation of federation, and which, though ignored by the accountant, determine the judgment of the statesman. If it is not politic in the arrangements of states to view too nicely the details of figures, it is because there is another side of the question than that shown by the array of pounds, shillings, and pence, a side in the consideration of which the federal movement originated, and which indicates the great economic advantages of the policy of the union. Sir John Forrest has referred to the advantages of federation. It is these solid advantages, which are much more than compensations, that make federation desirable. They include the unification of fiscal policy, the widening of commercial intercourse, the greater reality and reputation of national solvency, the probable uniformity in some 30 odd lines of general legislation, the use of our great state resources, such as railways, as in all cases aids to industrialism rather than instruments of destructive competition, the sense of mutual dependence and co-operation, the bolder front against aggression, and the greater growth and more real significance of the Australian sentiment. If these be lost sight of in the complicated and deceptive details of financial profit and loss, the fate of federation may be imperilled by a mistaken statement of its results.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two p.m.]

Mr. GRANT (Tasmania). -

I do not propose to detain the committee very long, as I only intend to make a few remarks. First of all, I wish to express my sympathy with the remarks of Sir John Forrest, in referring to the position of Western Australia; and I certainly cannot but echo his sentiment, that it was rather objection able that, in this Bill, Western Australia should be singled out for special legislation. I can well understand that, to a generous mind, it must be objectionable to find such special significance being given to any one particular colony. I think we may all take to heart the words of Sir John Forrest, that there is no occasion for Western Australia to be singled out for special legislation. I can well understand that, to a generous mind, it must be objectionable to find such special significance being given to any one particular colony. I think we may all take to heart the words of Sir John Forrest, that there is no occasion for Western Australia to be singled out for special legislation; and that the same treatment as is proposed to be applied to that colony should also be applied to the other states. With regard to the financial clauses of the Bill, I may say that, having listened with great
interest to the able speech of the Right Hon. Sir George Turner, I indorse almost every word which he uttered; and, therefore, my remarks will be brief on that account. Every point which my honorable friend took has my concurrence, and, I believe, the concurrence of most of my colleagues in the representation of Tasmania. Taking the finance clauses as a whole, I think the Finance Committee may consider that they have performed a very commendable piece of work, and in a spirit loyal to the Federation. The exceptions which I have to take to their proposals are few, and I cannot but acknowledge the great consideration which they have given to the matter, and the federal spirit which underlies all their suggestions. It is easy to see, on looking through the recommendations, that the true federal spirit has thoroughly pervaded them, while the opinions of each member of the committee have had due weight, the result being that, I think we may say, a very complete piece of drafting has been submitted to us, which, I trust, will in the main receive the approval of the Convention. Coming to the clauses in detail, I notice that the Finance Committee propose that, in clause 83, the words "and by warrant countersigned by the Chief Officer of Audit of the Commonwealth" be omitted. Those words were very much objected to at a previous meeting of the Convention, as it was pointed out that they might give rise to much difficulty; and I, therefore, indorse the recommendation of the Finance Committee that they should be struck out. In connexion with clause 84, Sir George Turner called attention to the subject of bounties, which has been much discussed on previous occasions. There seems to be a very strong feeling, on the part of some members of the Convention, that the granting of bounties should be absolutely and entirely with the Federal Parliament, and that states should have nothing whatever to do with this matter. Sir George Turner very ably urged that there may be certain local productions which deserve consideration at the hands of the state, but which are really too small to be dealt with by the Federal Parliament. They may be industries of a village or a small town, certainly not matters which, I think, the Federal Parliament will be inclined to deal with. I can see no reason why, with the approval of the Federal Parliament, as expressed by an Act of Parliament, bounties of a purely local character, for purely local products, should not be granted; and I trust, when we come to consider this clause, that we shall provide that the Federal Parliament may permit all state Parliaments to grant bounties for articles of essentially local production, when this does not conflict with the general fiscal system. In dealing with the future, I think we should recognise the great importance of stimulating production, and of giving all possible assistance to the various producers to find out the articles that they can supply the markets with, and to enable them to supply those articles, as
far as possible, on terms advantageous to themselves, while, at the same
time, not conflicting with the fiscal policy of the Federal Government. As
to clause 89, I agree with previous speakers that it would be impracticable
to carry out the paragraph which is proposed to be added to the clause, and
which provides that—

But goods imported into any state before uniform duties of customs have
been imposed, and thence exported into another state within two years after
the imposition of such duties, shall on arrival in the latter state be liable to
the duty (if any) chargeable on the importation of such goods into the
Commonwealth, less the duty (if any) which was paid in respect of the
goods on their importation into the former state.

I think that, looking at the matter from a practical business point of view,
that the proper working of this proposal is absolutely impossible. It
means tracing the history of every ball of cotton, every piece of tape, every
bag of sugar, and all the various little details of a storekeeper's stock. It
would be utterly impossible to trace the history of those articles through
the two years during which this provision is intended to have operation. In
regard to piece goods of various kinds used in local manufacture, and all
the various other classes of goods which are liable to be exported, it is
really impossible that any identification of these goods could be carried out
through a period of two years, so as to insure that a proper return was made
by the exporter, and the proper rate of duty charged. I think there is the less
reason for this provision, inasmuch as I believe that the bogey of New South
Wales importing very largely during these two years for the purpose of
avoiding the duty when exporting is not a very important consideration. I
do not say that no consideration should be attached to it, but I do not think
that it is very important, because we must take into account that the parties
who import goods are subject themselves to various drawbacks in doing so.
They have to take into account interest on the money expended in
purchasing the articles which they are holding, damage, depreciation, or
deterioration of goods, the contingency of the alteration of the market
value, insurance, cost of storage, and other charges which go very largely
indeed towards making up the profit. This would very seriously militate
against their making the full profit of the difference in duty, if, indeed, it
would not leave them on the wrong side of the ledger. Therefore, I think
we might very well give up a clause which appears to me to be totally
impracticable, and we might well leave it to the future to determine
whether articles will be exported into New South Wales and then re-
exported to other places, to any extent which would seriously interfere with
the collection of revenue. In clause 90 it is proposed that the expenditure of
the Commonwealth shall be altered from the provisions recommended by the Finance Committee, that is, from a charge *per capita* to that of the actual expenditure incurred by the various states. I think on the whole that would be desirable. Although at first sight a charge *per capita* would appear to be the fairest and most federal, perhaps, if we are to have bookkeeping, it is just as well that the matter should be carried through in a proper and systematic manner, and that the charges in connexion with the collection of revenue, and the administration of the Federal Government in the various states, should be the cost actually incurred in those states. It is a proposal to which we cannot fairly take exception, and therefore the Finance Committee have done well in recommending that change for our acceptance. Clause 91 has received much consideration from various speakers with regard to the number of years that the bookkeeping should be maintained after uniform duties of customs have been imposed. I quite agree with the Right Hon. Sir George Turner and the Hon. Mr. Henry that a period of five years seems to be unnecessarily long. I would rather have seen the period made two years, but three years might be taken as a fair compromise. I hope that the Convention will be willing to give up the large expense and trouble of collecting these statistics during the long period of five years, and will be satisfied with the more moderate term of two or three years. I look upon these statistics as being of little value. As we have been reminded by Sir George Turner, we know that the returns given of the export of goods when not subject to any duty have been most absurd. It was pointed out many years ago, in England, that the returns of exports for statistical purposes only were not within about 200 per cent. of being correct. In my own colony we know very well that the returns made by merchants with regard to goods exported which are not subject to duty or fines have been very wide of the mark. I have no doubt that the statistical returns which will be made without payment of duty upon value during the five years will not even approximate to the truth. Therefore, the less we have of them the better, and the sooner we abandon the cost of collecting such statistics the better it will be for all parties. We should look at the matter in a far more federal spirit, and we should confine the bookkeeping to the least practicable period. At the same time, I know that the term now proposed is a compromise, and that when the matter was first considered in Adelaide a much longer term than five years was contemplated. I therefore do not say that I would oppose a term of five years if it commends itself to the general sense of the Convention, but taking into account the unreliable character of the information which we shall obtain during the term of five
years, in all probability getting worse year by year, I think it would be well to reduce the term, and save the expense. We should also be acting in a more federal spirit with regard to this important matter of Customs examinations and collections. Clause 92 contains perhaps, the most important departure from the finance scheme as we had it submitted to us previously. Under that clause the Treasurers of the various colonies were, according to the former scheme, guaranteed a return of revenue out of the Customs collections sufficient to provide for their necessities. At the time, that was a most taking scheme as far as the members generally of this Convention were concerned. I do not doubt that if the matter had then been finally-settled, we should have been very glad to have adopted those terms, and would have thought that they would have been acceptable to the community generally. I do not disagree with the Finance Committee in the alteration they have made, but I agree with Sir George Turner that it might give rise to difficulties with our constituencies when they come to pronounce on the result of our labours. No doubt it is somewhat alarming that the exigencies of the various states have to be trusted entirely to the Federal Parliament. I do not feel any great concern in trusting the Federal Parliament to do what is right and just to preserve the solvency of the various states, but I must say, and perhaps it is taking a narrow view of the matter, that it would have been better if some clause had been introduced by which the Treasurers of the various states would have their revenues protected at the initiation of the Commonwealth. If any course can be proposed under which such a guarantee of the solvency of the states can be virtually given, I should be happy to support it. I must say, however, that the Finance Committee have looked at the matter in a broad and federal spirit, and perhaps in the right spirit, in trusting the Federal Parliament to do what is just in protecting the interests of the various states. We seem to be all agreed without exception in this Convention, that Western Australia requires some special treatment with regard to finance. It was not necessary that the Right Hon. Sir John Forrest should so deprecate references to Western Australia, because in the minds of every member of the Convention I think there was one fixed idea, and that was that Western Australia should be specially treated. At the same time, I am certainly grateful to Sir John Forrest for the proposal that each of the states should reserve the same treatment, and I do not know that any serious difficulty would arise if that were done. I think, as before stated, that when we come to submit the matter to our constituencies it would go far to recommend the proposed Commonwealth Bill to them if we were able to state that there were no financial difficulties likely to be encountered, because the revenues of the various states were fully protected. As it is, if no clause be
introduced to guarantee the state Treasuries, we shall have to ask our
constituencies to entertain a very large measure of belief in men whom, at
present, they do not know. They know the members of this Convention
whom they have elected, but they do not know who may be in the new
Federal Parliament, and, therefore, they may have some mist rust in having
to leave the whole question to the Federal Parliament with the exception of
Western Australia, which certainly deserves; to be protected in this very
important matter. If any clause can be suggested which will protect the
Treasuries of the states in any degree, I think that it will be conducive to
the interests not only of the various states but of the Commonwealth itself,
and it would also involve the Federal Parliament in less controversy and
less difficulty at its initiation than it will now experience, when it will
practically have the whole of the finances of the states, as well as of the
Federation, thrust upon it. I hope the 93rd clause, as suggested by the
Finance Committee, will meet with the approval of the Convention. We
felt on each previous occasion when finance was discussed that we should
largely have to trust the Federal Parliament. I am glad to see that the
Finance Committee have given voice to what, I think, was the general
opinion of the Convention, that is, that after the expiration of the period
during which we provide for a certain amount of bookkeeping in order to
provide information which it will have obtained, to do justice as between
the various states. I fully indorse the clause, and I trust that it will be
approved of by the Convention. This brings under consideration the
statistics which we have had presented to us by the very able statistician of
a neighbouring colony. I cannot but regret with the Hon. Mr. Henry that
that statistician should have intervened in this matter, somewhat to the
prejudice of Tasmania. I have no doubt that it was done from the very best
of motives, and after consultation with our own statistician during the time
he was in Sydney. At the same time, the effect of these statistics cannot but
be mischievous to Tasmania and injurious to us when we return to that
colony and try to enlighten the public as to the effect of federation. These
statistics, as pointed out by many very able speakers, are wholly fallacious
in their result, as being based on data which that statistician could have no
possible knowledge of, and which is not in the possession of any member
of the Convention at the present time. We have not at present come to a
decision, as to the taking over of the debts and the railways of the colonies,
but I hope that when we come to those clauses the Convention will be
favorable to their being taken over so soon as the Federal Parliament may
feel competent to deal with them. I would have preferred, as I stated at
Adelaide, that we had made it a cardinal point in the Draft Bill that the
debts and the railways should be taken over. If we take over the one we must take over the other. I hold that they should be taken over by the Federal Parliament within a certain time, but that does not find favour with the Convention as a whole. Therefore I do not propose, even when the clause is under consideration, to press my views in that respect. But, at the same time, looking at the matter in a practical common-sense way, it will be absolutely necessary for the eventual smooth working of the Federation that the whole of the debts and the railways should be taken over. I cannot conceive that any satisfactory working of the railways can be effected unless they are under federal control. I hope that if we give the Federal Parliament power to constitute an Inter-State Commission, that commission will be composed of the general managers or chief commissioners of the various railways. They, knowing the little tricks of each other in regard to traffic arrangements, will be able to frustrate any attempt to give an improper advantage to one system of railways as against another. The question of the control of railways has been discussed at length on previous occasions. No satisfactory answer has been given to the question of how any loss could be met, or how, any ordinary

Inter-State Commission could effectually control the railways to the end that there should be perfect equality of trade. That is impossible, unless the general control of the railways be confided to the states, and presided over by a commission thoroughly versed in all the peculiarities of railway management. Clause 98 provides that Parliament may take over the whole or a portion of the debts of the states. I hope that that will be altered so as to provide that Parliament shall take over the whole of the debts of the states. Just as I contend that no portion of the railways should be taken over without the whole being taken over, so also I think that no portion of the debts should be taken over without the whole being taken over. I do not say that they should be taken on the same basis, but on a fair and equitable basis. I do not think that any trouble will arise when the matter comes to be dealt with; nor do I doubt that before many years have elapsed the Federal Parliament will exercise the powers conferred upon it with regard to this matter. The result will be not only a very large saving in interest, but also a very considerable increase in the finances of the Federation. This will afford material assistance to the state Treasurers, as it will mean the return to them of a very much larger surplus than would otherwise be available. I will not trouble the Convention by dealing with generalities, but must say for myself and for those with whom I am working that we are thoroughly honest in our desire that this federation should be accomplished on the most broad and liberal lines possible, so that no one state or no one
individual should have cause to feel aggrieved. The Draft Bill has received very careful consideration from all the members of the Convention, and I feel confident that when we come to give it the final touches it will be satisfactory not only to ourselves but to the various constituencies that we represent.

Mr. KINGSTON (South Australia). -

I join with previous speakers in congratulating the Finance Committee, not only on the industry and ability with which they have formulated their proposals, but on the lucidity with which they have placed them before the Convention. Under the circumstances I do not intend to be long, but I would like to state shortly how their proposals strike me. It seems to me that they may be divided into two classes, one of a temporary and the other of a permanent character. As to those which are of a temporary character, affecting the period before a term after the imposition of uniform customs duties, I attach no very great importance to them. As has been well put, by other honorable members, what are five or seven years in the life of a nation? We ought to do what we can for the purpose of softening the shock of the change to the provincial Treasurers, and to the colonies generally. I think we are proposing to treat our friends from Western Australia very fairly, and I am glad that the Right Hon. the Premier of Western Australia approves of the recommendations made. But I was a little struck with a suggestion he made, and the force of which I think he hardly appreciated at the time. It was, that in endeavouring to make the loss from intercolonial free-trade uniform, and putting it that Western Australia was not to lose more than any other colony, we should have to take into consideration the fact that New South Wales would not lose anything at all.

Sir JOHN FORREST. -

I did not say that. It was an interjection by some other honorable member.

Mr. KINGSTON. -

I thought my right honorable friend agreed to it. Under the circumstances I shall say nothing more on the point. All that is desired is that no one colony should suffer a greater loss in proportion than the others, and, no doubt, the proposals of the Finance Committee will meet that case. Then, as regards the proposition that certain statistics should be kept, and a certain basis of distribution followed, for a period of five years after adoption of the uniform Tariff, that, it seems to me, simply amounts to a provision for the collection of statistics for the future guidance of the Commonwealth in doing what is fair. I was a bit startled by a statement made by my honorable friend (Mr. Grant) that where no duties
are charged it is impossible to secure that accuracy that might be desired, or that would be necessary to afford a reliable index. Where duty is charged, the desire of the importer is to undervalue his goods as much as possible.

Mr. WALKER. -

That is so.

Mr. KINGSTON. -

Yes, I think there is no doubt about that; and under this scheme, when there are no duties charged, the condition of affairs will be just the opposite, because it will be to the benefit of the import-consuming colony to make the figures appear as large and as favorable to that colony as may be.

Mr. HIGGINS. -

To the taxpayer in the consuming colony the temptation will be to make them bigger.

Mr. KINGSTON. -

No doubt the temptation, such as it is, will be in the direction of over-valuing, but I do not attach very great importance to that point, because the regulation of this matter will be in all cases intrusted to federal officers, who will see that the interests of the Commonwealth are guarded, and at the same time that the affairs of the provinces are properly adjusted. So much for the temporary provisions. To the clauses that are to come into force after the expiration of this period, I attach the greatest importance. It is put in so many words that the matter of the distribution of the surplus is to be left altogether to the discretion of the Federal Parliament. That is a very important proposal. I am one of those who in all things necessary are prepared to trust to the uttermost the Federal Parliament, but I have some little doubt as to whether the amount of confidence which we are asked to repose in the Federal Parliament in this matter is necessary in the national interest. I am sure of this, that it is altogether against the provincial interests that it should be so reposed if it is not necessary, and for this reason: It makes the financial condition of the provinces absolutely depend on the good-will of the Federal Parliament, and that means the good-will of the Federal Treasurer. It places the question of the solvency or insolvency of the states absolutely at the mercy of the Federal Parliament.

Mr. WALKER. -

The Senate will protect the states.

Mr. KINGSTON. -

It is put that it will require the consent of the states. Here is a provision which it is suggested shall remain in operation for five years. The Federal Parliament are given power to alter it afterwards, no doubt, because it is
thought that it may be found to be unjust. But the position would be this, that if you could not get a majority in the Federal Parliament this provision which it is contemplated may be unjust would continue. If you can get the necessary authority an alteration may be made that may be altogether for the worse. The question I wish to put for the consideration of honorable members is this: Is it absolutely necessary that we should endow the Federal Parliament in the way proposed in the Bill? The calculations, so far as I have been able to follow them, show that under the customs duties at present existing, or under a Tariff on lines similar to those which are in force in some of the colonies, £6,000,000 will be at the disposal of the Federal Parliament and the Federal Executive. They will only want for federal purposes, looking at the matter in one way, £1,500,000. If we take into account simply the net cost of the exercise of the federal powers, they will only want £300,000. We shall, therefore, find in connexion with this Federation, what we have never found before in any similar Federation, an Executive compulsorily endowed with a surplus of between £4,000,000 and £5,000,000. This surplus, in the natural order of things, with the increase of our population and trade, will increase to a very great extent from time to time. The Federal Parliament will have the sole power of distributing the surplus according to its own will and pleasure to the several states, giving so much to one and denying it to others, whilst they will be subject to no control, not even the, control of the High Court, which some honorable members suggest should be withdrawn. Now, I would venture to ask honorable members if that is a desirable state of affairs? We have heard a good deal on the subject of surpluses. No doubt it is a difficult thing for provincial Treasurers to conduct provincial affairs at a time when they have some trouble about making both ends meet. But it seems to me that there is nothing which conduces more to the reverse of sound finance and good government than an overflowing Treasury. I think that when a Treasurer has to consider his ways and means most seriously he exhibits most discretion in the expenditure of the sum which he receives. But here we will have; as I say, a Federal Government permanently endowed with a revenue of between £4,000,000 and £5,000,000 per annum, which it does not want. What will be the result to the provincial Treasurer under such circumstances? I venture to predict that, so far as the Federal Treasury is concern, extravagance will ensue, and extravagance will ensue under such circumstances that, to some extent, the constituents of the Federation will not be affected; although to a certain extent their interests are involved in those of the states, and every penny which is wasted will be to the hurt and detriment of the finances of the province.
Mr. FRASER. -
To the disarrangement of them, probably.

Mr. KINGSTON. -
To the disarrangement of them; and I think a good many of us know pretty well what in recent troublous times a disarrangement of the finances of the province meant.

Mr. MCMILLAN. -
What is the alternative?

Mr. KINGSTON. -
I am pleased indeed that my honorable friend agrees with me to the extent that it is an undesirable thing if there can be no satisfactory provision made on the point. I deal with the question with considerable diffidence, because I know that wiser heads than my head, the best abilities of men long skilled in finance, have given consideration to these questions, and the proposals we are now discussing are the results of their best deliberations. I am inclined to think that it might be to the advantage of all, and certainly the result would be to afford security to the provincial Treasurers, to make some provision for a rateable division of the Customs revenue. When the Federation only wants, if may be, 1s. in the £1 of the total revenue received from Customs, in the natural order of things, to be permanently endowed with this much greater sum is a temptation to waste and extravagance. It is not as if that was their sole means of raising money. On them is conferred the absolute unlimited means of raising taxation by any other form or method which they think fit to adopt. There was attempted previously an artificial limit on the power of expenditure by the Federal Government. I think that attempt has been wisely abandoned, particularly in view of the fact that it might be necessary in cases of emergency to incur expenditure of a character and an extent which it is impossible to foreshadow. We can form a rough estimate now at to the possible wants of the Federation, and, as regards those wants which we do not estimate, they will have the other power of taxation. What, I ask my honorable friend (Mr. McMillan), will be the objection to endowing them with a proportion of the Customs revenue rather than with the whole of it?

Mr. MCMILLAN. -
You fix the volume of the Federal Tariff. You see the £1,500,000 is fixed to a certain extent, and, if you make that the proportion of the whole, you absolutely fix the volume of the Federal Tariff.

Mr. KINGSTON. -
Surely not, when they have other forms of taxation to rely on?
They will never go beyond Customs; nobody dreams of such a thing.

Mr. KINGSTON. -

Is it not possible to fix a limit which will, at the least, amply endow them, whilst not endowing them to the extravagant extent proposed in this scheme?

Mr. MCMILLAN. -

If you take £6,000,000 as the possible amount, £1,500,000 has to go to the states. If you make a proportion of that £6,000,000 you fix the absolute Tariff of the future at £6,000,000 at the least, otherwise you give no relief.

Mr. KINGSTON. -

All I was suggesting was that not a certain specific amount, but a third, an interest, a fraction, should be fixed on the most liberal scale which could possibly be desired for the wants of the Federal Parliament, and which would at the least avoid the temptation to extravagance from the wealthy endowment which is proposed here. On the other hand, it might be met by conferring on the Federal Parliament all the revenue to be received from certain sources—say, from the customs duties on spirits and narcotics.

Mr. WALKER. -

If you took over the debts it would settle the matter.

Mr. KINGSTON. -

I only make these suggestions for the purpose of inviting the attention of honorable members to some of the difficulties which have struck me. I think it is the duty of all honorable members to point out, and that at the earliest opportunity, such matters as occur to them as being likely to interfere with their earnest advocacy of the scheme which we hope shortly to place before our various peoples.

Mr. HIGGINS. -

I thought that the giving over of the Customs and Excise revenue as a whole had been settled, and was outside the area of our present discussion. It is a very important matter; but I understood that it was settled.

Mr. KINGSTON. -

We must undoubtedly give them the control of the Customs, and we must undoubtedly provide for a uniform Tariff.

Mr. HIGGINS. -

But the whole of the money!

Mr. KINGSTON. -

I do not understand that until this Bill is passed through its final stage we have adopted any provision which will exclude the possibility of amendment, and I am sure that that position is recognised by all. But put the Bill in the shape in which you have it, and the result will be that there is, at least temporarily, withdrawn from the control of the provincial
Treasurers one of the chief sources of provincial revenue; and there is no assurance given of a return which will enable the provincial Governments to cope with provincial requirements other than the confidence which we will naturally have, perhaps, in the Parliament we are about to create. I do not say for a moment that I will not be able to advocate a scheme of this sort, but I should prefer, and I know the people of the colonies would like, to see something which would render them less absolutely at the mercy of the Federal Executive. Why, sir, I could depict, and every one who has had any experience of provincial Government could depict, the pressure which will be put on the Federal Government, having this amount of money at their command, to spend it, and to spend it lavishly, and to an extent which may not be for the good of the Commonwealth. However that may be, I am far from saying that I will not most earnestly advocate this proposal at the right time. But I do trust that the difficulties which occur to me, and which no doubt occur to other honorable members, will receive every consideration, and that if some scheme can possibly be devised which will give the provincial Governments-

Mr. FRASER. - What do you suggest?
Mr. KINGSTON. - I have suggested all I can on the subject at the present moment, I regret to say. If some scheme can possibly be devised which will give the provincial Treasurers a more satisfactory assurance of no unnecessary interference with their finances, I shall be glad to see it done. My honorable friend asks me what more do I suggest. I do not know that any Federal Executive should, for all time, be placed in the position of having the power to decide on the solvency or insolvency of the states. Having this surplus of four or five million pounds, increasing in the natural order of things, for distribution amongst the states at their own will, and subject to no restriction, I am almost inclined to think that it would be better to provide that at some period, at the least, a per capita distribution should be insisted on. As regards the interval which should elapse, it is difficult to say what it should be; it is a matter of detail. But there is this other matter, and it was a question which occupied the attention of this Convention at considerable length when we were discussing the constitution of the Parliament. We were told, and I thought, there were few instances indeed in which there would be any clashing of state interests. Keep the clause in the shape in which you have it, and there is a perpetual clashing of state interests on the subject of the distribution of a very considerable and important sum of
money.
Mr. HIGGINS. -
Not between large states and small states.
Mr. KINGSTON. -
Not between large states and small states, but between all states. A source of friction will be introduced into the Commonwealth for all time.
Mr. MCMILLAN. -
It is not impossible that the Federal Parliament may solve it.
Mr. KINGSTON. -
It is impossible that the Federal Parliament may solve it beyond the possibility of alteration. Any Bill that they pass will be subject to alteration, but place it in this Constitution, and there is not this continual source of friction.
Mr. FRASER. -
But the amount to be returned should not be difficult to arrive at at any future time.
Mr. KINGSTON. -
There are two difficulties. There is the difficulty, first, of the amount to be returned.
Mr. FRASER. -
Approximately.
Mr. KINGSTON. -
No, absolutely. It will depend on how much the Federal Treasurer, with the approval of Parliament, chooses to spend. And there is the other and still greater difficulty of the parties to whom it is to be returned, and the proportions which each shall receive. Referring to the interjection of my honorable friend (Mr. McMillan), it may be that the Federal Parliament will solve it for a period by an Appropriation Bill of an almost permanent character. Then the evil will be less, but it seems to me that, in view of the power which the distribution of this money will confer on the Government of the day, it is highly probable that it will not be appropriated for a period, but may be made the subject of an annual appropriation.
Mr. FRASER. -
And patronage.
Mr. KINGSTON. -
And patronage, contest, difficulty, and bitterness.
Mr. FRASER. -
That is the danger.
Mr. KINGSTON. -
All which things, it seems to me, we should do our best to avoid in laying the foundation of a Federal Constitution, and it is for this reason that I have
thought it my duty to draw attention to the matter.

Mr. HIGGINS (Victoria). -

Important as is this subject, I think it will be generally admitted that our solution of the problem will not affect any large mass vote in favour of or against federation. But there is no doubt that it is the duty of us all to try to come to some solution. I have felt throughout that, although I had given a great deal of time to the consideration of this question, it was a matter which, more than any other, depended on expert skill and the experience of responsible Ministers, especially, Treasurers. Most of our Premiers are Treasurers, and I felt that this was, of all the subjects in the Bill, the one on which we, who are not experts, ought to be guided by those who had the responsibilities of Treasurer-ship, either now or in past times. But it comes to this, then, that this new solution is put before us, and this solution may be described shortly as putting the solution of the problem upon other people. We shunt the solution on to another body after five years, and, no doubt, after having got certain statistics. Well, sir, I do not object to that, if we can get a reasonable and workable scheme in the Constitution, but if I were disposed to be satirical, I might refer to Mr. Micawber's way of settling difficulties. When one bill became due Mr. Micawber handed in another bill, and said-"Thank God, that's settled," and waited till the time it, in turn, became due. But there is no doubt that, in the meantime, in order to meet a certain timidity on the part of politicians in New South Wales, there is to be a system of bookkeeping as to the degree of consumption in New South Wales and elsewhere. And, as to that system of bookkeeping, I said in Sydney, and I say now, it is the only way, if you are to concede to the timidity of the politicians of New South Wales, in which we can possibly get to some figures on which we can work. But there is no doubt that all the colonies, in this financial matter, are taking a big leap in the dark. We are trusting a great deal to the Federal Parliament. I felt the force, the immense force, of what the Premier of South Australia has just said, that, for the states to leave to the Federal Treasurer the question of whether they are to be solvent or not is a very great trust. Mr. Henry has faced the position in his masterful speech yesterday. He says he is perfectly willing to leave that matter to the working out of our system of government. He says that the representatives from the different states will be pinned down at the hustings to pledge themselves to see there is enough money raised, by means of customs duties and otherwise, to enable the Federal Treasurer to return the necessary means to the several states, and also that the representatives from the different states will be pledged at the hustings to pin down the Federal Government to a reasonable economy. There is great
force in that, but still the honorable member will admit that this is a big leap in the dark. I do not know that anybody has put this matter in the way in which it appears to me; but I venture to submit that the difficulties of our financial scheme are owing principally to the unprecedented borrowing of our Australian colonies. There is no country in the world that has borrowed so much-

Mr. KINGSTON. -
And spent it so well.

Mr. HIGGINS. -
There is no country in the world that has spent so much upon public works; but our borrowing is unprecedented in the world. That

Mr. HENRY. -
But compare us with countries that have constructed railways as largely as these colonies.

Mr. HIGGINS. -
I do not know of any other countries that have constructed railways as largely as these colonies. I know that the Canadian Government have been enterprising, and have constructed many public works.

Mr. FRASER. -
But not railways.

Mr. HIGGINS. -
The Canadian Government has the Canadian-Pacific Railway.

Mr. FRASER. -
Oh no, they have not.

Mr. HIGGINS. -
Mr. Grant has been there, and he helped, I believe, in the construction of Government lines. At all events, he knows that the Canadian Government has built railways. I am not finding fault with the system. It is not for me to find fault with the system which has been in force, but I say that the Canadian Dominion had, a year or two ago, a debt of only £12 per head of the population, and here in the Australian colonies our average debt is between £60 and £70 per head. Now, I am comparing two states which are almost on the same level.

Mr. HENRY. -
Is the comparison fair?

Mr. HIGGINS. -
It is the fairest I know of. I admit it would not be fair to compare us with the states of America, where all the railways are built by private enterprise, so I go for a comparison to a British colony, which is progressive, and which must borrow in order to extend settlement.
Mr. GLYNN. -

Nine-tenths of the Canadian Pacific Railway was built on the system of land grants, and not by the Canadian Government.

Mr. HIGGINS. -

Well, I may be getting a little off the track. I only say that our financial difficulty is principally owing to the heavy interest bill we have to pay, and that heavy interest bill is owing to our unprecedented borrowing in the past. And, with regard to our unprecedented borrowing, I must say that a great deal of what we call the consuming power of the persons in the states of this Commonwealth depends upon the borrowing of those states. I might remind honorable members that in 1889, which was one of our boom years, or, at least, a year in which we still felt the effect of the boom, and when we, in Victoria, were borrowing very largely, we imported £24,000,000, and exported only £12,000,000, worth of goods and produce. Well, it is a mere question of how much you borrow, as Mr. Henry pointed out, which determines what your consuming power is. It is in that light that I want to enforce this point. I say it is a dangerous thing to return the surplus to the states, at all events, for any long time, on the basis of their consuming power. You will find the operation of that system is to put a premium on borrowing—because all these states will feel "the more we borrow and the more population we attract, the more consumption there will be, and the more money we will get back from the federal revenue." I am convinced, as far as my research has gone on this subject, that the only true federal system is a per capita distribution; and what I want to see inserted in this Bill is an amendment of the very last clause that appears in the Finance Committee's report. I want to find an amendment which will put in the Constitution a provision that after five years there shall be a, per capita distribution. If there is one fact clear throughout the Australian colonies it is this: That the people in the various colonies are very similar in their habits of life, in their modes of eating, drinking, and clothing—their manner of living—and if you take the agricultural and the mining communities, you will find that they spend, throughout the colonies, very much the same. And I say this, that just as you refuse to draw the line between Broken Hill and Berrigan in New South Wales, or between Gippsland and Bendigo in Victoria, with regard to the expending power of the people, so you ought to refuse to draw the line between the comparative consumption in Tasmania and the comparative consumption in New South Wales. Now, I take it that, for this purpose, we may regard the members of the Convention as ignoring, with all respect, not the figures but the conclusions of Mr. Coghlan on this matter. I do not know of any more complete pulverizing of Mr. Coghlan's arguments than has been
given, not only by the Hon. Mr. Pulsford of New South Wales, but by Mr. Henry yesterday in this Convention. I take it that Mr. Coghlan bases his conclusions upon assumptions which never have been and never can be proved, and he has not taken into account a number of conditions which may vary from time to time. Mr. Henry pointed out yesterday-and I was very much struck by his remarks, because I was not aware of the circumstance before—that within the last nine years New South Wales has borrowed twice as much as Victoria. Of course while this borrowing goes on her consumption must be larger than that of Victoria. I think that Mr. Henry struck the right note when he said—

Are we to be a Federated Australia or not in this matter of accounts? This proposal that, because one section of the community contributes a little more than another, we are to have this system of bookkeeping inflicted upon us for a lengthened period is so foreign to the true federal spirit that I cannot help protesting against it with all my power. If our object in this bookkeeping is to avoid inequalities in this matter, what does it involve?

If bookkeeping is a proper system to employ for five years, why should it not be continued for ever, unless it is intended merely to obtain statistics for the purpose of re-assuring New South Wales?

Mr. WALKER. -

That is exactly what it is intended to do.

Mr. HIGGINS. -

Mr. Henry continues:-

It involves bookkeeping for ever, while we are a Federation, because I hold that we shall be constantly exposed to these inequalities; there is a recurring risk for all time.

I should be glad if that federal spirit could be shown in other parts of the Constitution, so that we might obliterate the boundaries between the colonies for other purposes as well. We are getting nearer and nearer to that stage, and perhaps ultimately we may reach it. There is a danger with regard to this proposal to make the five years' distribution according to consumption to which I would like to draw attention. Supposing any one colony finds that by some accident she is gaining money by the arrangement, it will be hard to get her to consent to a change.

Sir PHILIP FYSH. -

But that would be impossible.

Mr. HIGGINS. -

If you allow the bone to get into the dog's mouth it is very hard to get it out again.
Sir PHILIP FYSH. -
We are not going to let any colony get more than it collects.
Mr. HOLDER. -
Accounts give no advantage to any one.
Mr. HIGGINS. -
If the people of a colony feel that they are losing less under the account system than they might lose otherwise they will object to a change. I do not oppose the system, but I see that there are dangers connected with it. In this connexion, I would ask, if the representatives of New South Wales insist, in virtue of Mr. Coghlan's assumptions, that there should be some modification of the scheme to secure their protection, ought they not also to pay attention to his assumptions in regard to another matter? According to Mr. Coghlan, if the system of distribution according to consumption is carried out, Victoria and Tasmania will go insolvent; but no precaution is taken against that contingency. The scheme makes provision against possible loss by Western Australia, at present the wealthiest colony in the group, but does nothing to prevent what, if the conclusions of Mr. Coghlan are correct, will follow its adoption—the absolute financial ruin of Victoria and Tasmania.
Mr. SYMON. -
What would you suggest?
Mr. HIGGINS. -
I do not accept Mr. Coghlan's conclusions, but I regret that they have been given effect to in regard to the five years' bookkeeping.
Mr. HOLDER. -
Not at all. We have done the very thing that he said was useless.
Mr. HIGGINS. -
Do I understand that the honorable member thinks that, apart from Mr. Coghlan's figures, New South Wales would suffer an annual loss if there were a distribution per capita?
Mr. HOLDER. -
For a short time. How long I cannot tell.
Mr. HIGGINS. -
I admit that for the first twelve months a little more might be paid by New South Wales than in after years.
Sir PHILIP FYSH. -
The bookkeeping system dates back to 1891, which is long prior to the appearance of Mr. Coghlan's figures.
Mr. HIGGINS. -
The system provided for in the 1891 Bill has been given the go-by. The
idea in 1891 was that the expenditure of the Commonwealth should be charged to the federal states in proportion to their population, not according to the amount expended in each state. That made a vast difference, but now they say if you so far federalize the revenue as to distribute it *per capita*, we shall be willing to have the expenditure charged *per capita*. The provision in the 1891 Bill embodied the monstrous proposal that until a change in the Constitution was made the expenditure should be charged according to population, although the revenue was distributable according to collection. The bookkeeping system now proposed is to be enforced for five years, with the possibility of continuation afterwards. The bookkeeping provided for in the 1891 Bill was part of the Constitution, and incidental to it the expenditure of the Commonwealth was to be charged to the states in proportion to population, although the revenue was to be distributed according to the amount collected. The idea now is not to federalize the revenue and expenditure until at least five years have passed, and then to leave the matter to the Federal Parliament. But, having regard to the almost universal opinion that the condition of the people of Australia is similar everywhere taken upon the whole, although a mining population consumes much, and an agricultural population little, I think that the distribution *per capita* is the ultimate solution of our difficulty. The argument of the Premier of South Australia that you should put such a provision in the Constitution as would prevent the possibility of a fight at the end of five years, or from year to year thereafter, has a great deal of force.

Mr. HOLDER. -

If you adopted such a provision you might fix an absolute injustice in the Constitution.

Mr. HIGGINS. -

If we found that an absolute injustice had been implanted in the Constitution, the Constitution could be amended. At the present time, however, it is recognised that a distribution *per capita* will give justice.

Mr. MCMILLAN. -

Suppose the provision were found to be absolutely unjust, but to work favorably so far as some of the colonies were concerned, what a fight there would be against any change.

Mr. HIGGINS. -

Well, but the honorable member hardly realizes that there is a certain fact the other way. Suppose the five years were ending, what would happen? If the *per capita* were fair, no doubt there would be a strong argument in favour of having it, but I am told that if there is anything unfair about it there will be no means of rectifying it. I say that we should act according to
our present lights, and assure the states that in entering the Federation there will be no distinction made between those states which consume much and those which consume little. At present it seems to me that there is a distinct premium on over-borrowing in this Constitution. To pass on to the question of Western Australia, as Sir John Forrest said, it is admitted universally that that colony must be dealt with separately; but I shall strongly advocate (and vote accordingly if I have the opportunity) the same principle being adopted with regard to the other states. It will be easy to ascertain the proportionate net loss on the same system for all the states, and having ascertained the average, we could pay back to each state whatever the difference was between the average and the excess loss. Apart from Mr. Coghlan's figures altogether, it appears to me to be obvious that Tasmania cannot enter the Federation unless something of that sort be done. Are we to exclude Tasmania from the Federation?

What is sauce for the goose is sauce for the gander—although I do not mean to say that Western Australia is a goose or that Tasmania is a gander; but I cannot see why there should not be the same measure meted out to Tasmania as to Western Australia. Western Australia is at present the most prosperous of all the colonies.

Mr. HOLDER. -

The difference is based on a different reason.

Mr. MCMILLAN. -

On the Scriptural principle—"To him that hath shall be given."

Mr. HIGGINS. -

I am afraid that that principle has operated too much in this Convention, as well as elsewhere. But it will appear an anomaly to the Tasmanian people that even if, by virtue of the operation of this new Tariff, they lose more in proportion than is lost by the people of Victoria or of South Australia they are to have no compensation, although the people of Western Australia are to have full compensation. I admit that there are extra reasons in the case of Western Australia, which Mr. Holder has referred to.

Mr. HOLDER. -

Not extra reasons; there are other reasons.

Mr. HIGGINS. -

There is a point as to this distribution which struck me when Mr. Reid was explaining the new amendment with regard to the proportion of net loss. I will submit that, in ascertaining the net loss, it should be the proportion of net loss of all the states that lose that should be taken into
consideration. Otherwise, we may be saddling the Commonwealth with very great payments indeed. I think that an amendment should be moved to say that we shall take the average upon all the states that lose.

Mr. WALKER. -
I think that is provided for.

Mr. HIGGINS. -
The clause says "the proportionate net loss, if any." That does not refer to the net loss in each case.

Mr. REID. -
There is no provision where there is a gain. The clause can be made clearer if necessary.

Mr. HIGGINS. -
I shall refer again to that point when the clause is reached. There is also a point which occurred to me that I see that Mr Symon has put. It is with regard to the last of the new clauses. I think that if that clause be retained in its present form it will lead to a great deal of difficulty and acrimonious legal discussion. I take it that if you are going to leave it to the Federal Parliament to settle the mode in which the distribution of the surplus shall be made, you should leave it to the Parliament absolutely, and should not insert the words "on such basis as shall be fair to the several states."

Mr. WALKER. -
Would you suggest a sliding scale?

Mr. HIGGINS. -
No. I say that if you leave these words in-and I speak as a lawyer-I can easily conceive of a distribution of the surplus which will be fair, having regard to all the circumstances, but which will not be absolutely proportionate or absolutely equal, and I can conceive that if the surplus were not so distributed, perhaps some state might be brought to financial ruin; but a man of another state might say that the distribution was not constitutional, and not in accordance with the words used here: "as shall be fair to the several states." It was owing to similar words in the Constitution of the United States of America, that the income tax was stopped. Inasmuch as the Constitution said that any direct taxation imposed should be in proportion to the number of inhabitants of a state, it was held that the income tax, which had graduations and exemptions in connexion with it, was not a fair tax. If you are to trust the Federal Parliament, you ought not to put it in the power of any particular person to impeach an appropriation by virtue of these words being in the Constitution. With regard to bounties-and this is the last matter to which I intend to refer-it was at my instance that the exceptions as to bounties for mining for

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gold and silver or other metals was inserted in Adelaide. I think that there is a great deal of force in what Sir George Turner said on this particular point. You ought not to prevent a state from giving bounties, providing those bounties are not so adjusted as to prevent the operation of intercolonial free-trade. There should be a power, as there will be a number of new special industries arising, for a state, if it think fit, to give a bounty to a new industry, so far as that bounty will not interfere with intercolonial free-trade.

Mr. HENRY. -
Who is to determine that?

Mr. HIGGINS. -
I should do what Sir George Turner has suggested, that is, allow the different states to give what bounties they like, subject to such regulations and restrictions as the Federal Parliament may make. I grant this, that, prima facie, every bounty should be good; but, if it infringed the regulation made by the Federal Parliament for the purpose of securing intercolonial free-trade, or if it were proved even to be devised for the purpose of interfering with intercolonial free-trade, then that bounty should be void. I take it that could be done. It would hit almost exactly the line I took with regard to the rivers, which was, that you ought to allow the states to irrigate, to conserve, and to do everything else they liked up to a certain point, but that the Federal Parliament could then interfere and say-"You shall not go beyond this line; you shall not conserve and irrigate so as to interfere with other rights." I should have been very glad indeed if the same principle had been applied to the rivers as is now proposed to be applied to bounties. I understood the leader of the Convention to invite all honorable members to speak to this question, inasmuch as the financial clauses hang so much together that he wants to know what sort of scheme to push through as a whole. He wants to see what are the general sentiments. I have, therefore, as far as in me lies, tried to meet the honorable member's intention. I feel strongly, and the more I think of it, the more strongly I feel, that we should try to establish a per capita basis of distribution at the end of five years. I say then, with regard to this financial question, that, although this is a difficult and important matter, I do not think that there is any great mass of voters who will say "Yes" or "No" to federation by virtue of any scheme which we may adopt. I feel sure that of all parts of the Bill this part is the one which can best be left to experts, who have the responsibility of the administration of the finances of their own colonies.

Mr. DOBSON (Tasmania). -
I think the Finance Committee have given us such a fair and practical scheme that, with a few modifications, it will find its way into the
Constitution. I only rise to say a few words about the different aspects which are presented to us. First, a national or federal aspect, and secondly, the aspect as it affects my own colony. I take it that if there is one subject more than another in which we delegates are supposed to look after the interests of our colonies it is in the terms of the bargain with reference to finance, on which we are asked to enter into this federal partnership. As to the federal aspect of the matter, I agree with every word that the honorable member (Mr. Higgins) has just said as to the unwisdom of leaving this important matter of the starting of our finance for all time to come to the Federal Parliament. I think, as that honorable gentleman has said, that we should put in this Bill a limit after the five years' bookkeeping is over. We should put into the Constitution another five years or another three years, in which you would give the Parliament full play, but at the end of that time we should become one people not only in name, but in interest and purse. We should then do away with self-interest, and the race between state and state for the premier position. If you do not put that in your Federal Constitution-and it seems to me this has not been pointed out by any other honorable member, although the Hon. Mr. Kingston has gone to some extent in that direction-no one can foresee the perplexities, the confusions, and the animosities into which we shall be plunged by asking the Federal Parliament to do for us what we appear not to have the courage to do ourselves.

Mr. HOLDER. - They will have the information, while we have not.

Mr. DOBSON. - I admit that is a most powerful argument, and if you were talking to another Convention, or to men with judicial minds, who would take into consideration not only what was fair to each state but what was in the interests of Federated Australia, putting state interests on one side altogether, I would agree with the honorable member. But I ask myself, who will be the men who will compose the Federal Parliament? They will be exactly the same class of politicians as we have in our states Parliaments.

Mr. HOLDER. - And therefore you mistrust them.

Mr. DOBSON. - I am not going to trust them in this matter, and I will give my reasons. Whatever the Constitution may be-conservative, democratic, or radical-I shall be loyal to my fellow workers, and go back to my own colony and speak whenever I am required or asked to do so, in order to urge the
electors to adopt the Constitution. Now, putting all questions of conservatism or liberalism aside, I shall be obliged to say—Here is Tasmania, with its smaller purse than the larger colonies, and it cannot afford to enter the Federation. My poverty and not my will may compel me to say—"For a time we must stand out." I now come back to the question I have already asked—Who will be the men composing the Federal Parliament? You will have the enlightened politician, the representative in every sense of the word, who would never consent to become the delegate of any constituency. Then you will have your politician who goes in as the mere delegate of a constituency. You will have the politician who desires to be a national representative, but in a rash moment on the hustings he will give one pledge—and probably the one pledge will be on this financial question—which he ought not to give. You will have other men who are always trying to catch the popular breeze and to dodge the unpopular breeze, who wish to find out before they vote how their constituents want them to vote—and that is a very important aspect of a politician's life. You will also have the politician who has once been lashed by the press, and who does not wish-to be whipped again. He will wait to see how the cat jumps before he votes. Let me say at once that I am not prepared to trust the Federal Parliament on a question of that sort as implicitly as I would trust it to do what is fair and right in matters of general legislation. Let me give an illustration of what I mean: Five men are entering into a partnership; they put in a certain amount of capital, and they arrange how they are going to draw out the profits for five years. At the end of five years they are going to leave it to a new adjustment.

Mr. HOLDER. -

They are going to adjust it according to their better knowledge.

Mr. DOBSON. -

At the end of the five years' term one will say—"I have brought all the best clients"; another man will say—"I got you that magnificent piece of business"; a third man will say—"I did the block, and kept up the good name of the partnership with the outside public"; the fourth will say—"I have done all the hard work, and I have always been found in the office"; the last man will jump up and say—"Confound you all, I have got all the brains." So you will go on, if you hand over this question to be settled by the Federal Parliament. You will have delegates from each colony trying to point out why the per capita distribution is unfair, and why we should not have a common purse. There will be a boom in one colony, and that colony will say that it must have the lion's share. Another colony may be suffering temporary depression, and
Mr. MCMILLAN. -

Does the honorable member think that no conditions could occur in which it would be necessary to give a certain larger sum to any particular colony or state?

Mr. DOBSON. -

I think it is very likely that such a condition could occur, and I am very much in favour of considering most carefully the proposal of the honorable member (Mr. Henry) to put such a provision in the Constitution. But to leave it an unsettled question is quite another matter. I believe that if you did not put it in, the Federal Parliament would do so if they saw that one colony was in danger of repudiating its debts. What would be the good of them if they were afraid to overcome difficulties of that kind? I should be glad to see such a power put in the Constitution, but I am not in favour of the Convention shirking its work, and leaving the whole thing to the Federal Parliament, where you will have self-interest in operation to a greater or less degree.

Mr. HOLDER. -

Can the honorable member forecast the future seven years?

Mr. DOBSON. -

I cannot forecast the future.

Mr. HOLDER. -

Then do not settle the future for the Federal Parliament.

Mr. DOBSON. -

At the same time, I can forecast one thing. We are entering into a federal partnership—we are about to become one people. You are going to sweep away barriers as regards customs duties, but you are going to uphold barriers as regards their supposed wealth, comparing one colony with another. By what you are doing you are advising each state to measure its wealth with the other states, and to get an advantage over each other by what the Federal Parliament does; and if the Federal Parliament, in its wisdom, or patriotism, or selfishness, gives one colony the premier position—suppose it is New South Wales—that colony will hold itself up against the colony of Victoria, and say—"Did we not tell the truth all the time? Are not our manufactures and our wealth greater than yours? If we could not persuade you—if our free-trade people could not persuade you—that you were wrong the Federal Parliament have shown that we were right by what they have done. They have concluded that we are a more wealthy colony, and that you are a poorer colony, and they divide the federal
revenue in unequal shares."

Mr. WALKER. -

The Senate is your safety.

Mr. DOBSON. -

I have great belief in the Senate, and possibly it would be our safety; but I am taking into consideration the fact that the Senate is to be elected on the principle of one man one vote, and also the fact that if the people of a richer colony do not feel inclined to allow the Federal Parliament to give any contribution whatever out of their funds to a poorer colony, a great many senators will find their way into Parliament simply because they pledge themselves on this financial question. I have not the power or the ability to point out what I dimly see, that the greatest hostility and confusion may and will arise by imposing this work on the Federal Parliament. I recognise that we have to give way to the forces around us. New South Wales is a richer colony, and we have to make concessions to it. I suppose also that we shall have to hold a candle to the devil, and do something for Western Australia, which is at present an exceedingly rich colony. I admit that

Western Australia has made out a good case for exceptional treatment. I was particularly struck with the suggestion that there ought to be in this Constitution a guarantee to each state that it will receive the revenue necessary to keep up the services of that state. I think also that we should engraft in the Constitution, as was proposed by Mr. Henry, a provision to enable the Federal Parliament to help any colony in a time of distress. There was a clause in the Bill giving a guarantee to the state Treasurers, but it has been struck out. I am inclined to think, with all humility, that it would be wise to re-insert that clause. I know that Mr. Holder gave various reasons to show that the guarantee was unnecessary. I can quite understand that the one aim of the Federation of Australia, being made up of five or six, more or less, prosperous colonies, should be to see that every colony and every citizen is flourishing and prosperous. It will never dream of allowing any one colony to get into a position of financial distress through its blundering or its want of foresight. But are there not thousands of electors who are despondent? Are there not scores of politicians who are despondent, and who want to be re-assured on this point? If there is a guarantee in the Bill that the state finances will never be less than in the year before that in which they enter into the Federation the Constitution will be more readily accepted by the people.

Mr. SOLOMON. -

Does not that mean dictating what the fiscal policy will be?
Mr. DOBSON. -

No; I was going to use the opposite argument. You ought not to tie the hands of the Federal Parliament in any way whatever, as to the mode in which they give the guarantee. I should be the last to suggest any guarantee of the kind, if it meant that the Federal Parliament were to frame a Tariff that would bring in £6,000,000, or £7,000,000. The guarantee should be of such a nature that it would give the Federal Parliament an absolutely free hand in determining the Tariff. No one save a man who has been in business all his life knows the injury that may be done to trade and commerce by the framing of a Tariff by persons who do not thoroughly understand every branch of the subject. It is of the utmost importance that the highest intelligence and the widest commercial experience should be employed in the framing of this Tariff, and there should be nothing in the Constitution which would fetter or restrict the Federal Parliament in any way in the performance of this very serious duty.

Mr. SOLOMON. -

If they do not raise the necessary sum of money in that way, would they not have to impose direct taxation?

Mr. DOBSON. -

The colonies are growing in population and in wealth every day. We cannot have a uniform Tariff for the next three or four years, and I hope that it will not be necessary then to, revert to direct taxation to keep up the state Treasuries. I desire now to say a few words as to how this scheme will affect Tasmania. It will cost that colony £16,000 or £18,000 a year to pay its share of the federal expenses. It will lose £40,000 a year by inter-colonial free-trade, but to some extent that amount will have to be made up either by the Federal Tariff or in some other way. Then comes the question whether Tasmania, with its small population and its comparatively small resources, should be dragged into further expenditure which it could not afford. I mean the extra expenditure in carrying on our services. Although I heard, with very great satisfaction and pleasure, the suggestion made by my right honorable friend (Mr. Reid), in Adelaide, to give Tasmania a little gift of £20,000 or £30,000 a year, the people of Tasmania are not so wanting in self-reliance as to accept a chaffing offer of that kind. I gathered from what the right honorable member said yesterday that he was still anxious, as many honorable members are, to consider the claims of Tasmania as a small colony. We do want to be helped over this stile. We do not ask for any exceptional terms that are unfair, but surely we may ask for exceptional terms that are fair. We are anxious to enter into this Federation, but we have all along believed in the
old Roman maxim that economy is a great remedy, and we have carried on our services with the utmost economy—much more economy than has been practised in any of the larger colonies. We ask you to admit us to the Federation without dragging us into extravagant and unnecessary expenditure which we cannot afford and do not want. We can make out a good case for the insertion in the Constitution of a little clause, saying that our expenditure shall not exceed more than so much per head. As our population increases our contribution will increase. We are getting a revenue of £350,000 a year from our customs duties, and doing it at one-half the expense of any other colony. Why should we be compelled to incur any extra expense?

An HONORABLE MEMBER. -
You will not be for the first five years.

Mr. DOBSON. -
No, and that is a wise provision. Other states may increase their expenditure on the local services. We may decrease it or keep it where it is. Why should we be dragged against our will into an extravagant expenditure? Defence is a different question, and I admit that there we ought to bear our full share of the federal expenditure. It is a matter for serious consideration whether we can afford to do that. I do not say that we cannot, but I do say that if we have to ask the people of Tasmania to join this Federation at a cost of anything over £20,000 per annum, they will want us to make out a debit and credit account, showing the gains on one side and the losses on the other. We, like Sir John Forrest, will probably shrink from making out such an account. I think it is rather unfederal to put it in that way, but, at the same time, I think that one might go throughout one's colony and point out the many advantages—the money advantages, the trading advantages, and the other benefits—which to a very great extent counterbalance the expenditure which we will have to make. But our finances are in such a state that we cannot afford more than about £20,000 a year for the pleasure, profit, and advantage of entering into this great federal partnership.

Progress was then reported.

The Convention adjourned at nine minutes to four o'clock p.m., until Monday, 14th February.
Monday, 14th February, 1898.

Evening Sittings - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

EVENING SITTINGS.

Mr. HOLDER (South Australia). -

I desire to ask the leader of the Convention whether it is proposed to sit late upon any nights this week, and, if so, upon how many?

Mr. BARTON (New South Wales). -

I am not quite prepared to give an answer to that question just now. A good deal depends upon the progress we make during the next few days. But I am very much disinclined to ask honorable members to sit at night until the necessity for so sitting becomes imperative, because I have found, from experience at Adelaide and Sydney, that after a long day's sitting honorable members become very tired at night; and I think it would be impossible for any one to assert that we do as good work then as we do at the earlier sittings. Of course, there is a desire, especially on the part of those honorable members who are members of Governments, to get back to their colonies-

Mr. HOLDER. -

Some of them will have to get back soon.

Mr. BARTON. -

But if we can accomplish our work within a fortnight or three weeks-

Sir JOHN FORREST. -

Say a fortnight.

Mr. BARTON. -

I think we shall have done very well indeed. If I see a prospect of that I shall not ask honorable members to sit at night at all.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Friday, 11th February) was resumed on-

Clause 81 (Chapter IV., Finance and Trade). - All revenues raised or received by the Executive Government of the Commonwealth, under the authority, of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Commonwealth in the manner and subject to the charges provided by this Constitution.
Mr. ISAACS (Victoria). -

I do not propose to occupy the attention of the committee at any length, but there are one or two matters to which I desire to address myself, and about which I wish to have explanations made, with a view of obtaining a correction of some ideas that I possess on this subject, and which I have no doubt, if there be a fallacy concerning them, the members of the Finance Committee will readily clear away. I agree with those honorable gentlemen who have said that we are much indebted to the Finance Committee for the great care they have displayed in placing before us this scheme, whether it be accepted or not. I think they have made a very good attempt to, in some respects, clear away difficulties that presented themselves previously. I rise principally with the view of pointing to one or two matters that have not been made so clear to my mind as I should have wished. I think it is our duty to draw attention to those of our views, whether they be right or wrong, which are not in accordance with the views of others, and I desire to do so as shortly as possible with regard to the finance scheme as presented to us by the committee. That scheme may, I think, be considered as divided into three epochs. The first is before uniform duties have been imposed. As to that epoch, I do not think there is any difficulty whatever. The matter is very plain and simple. We have merely constituted a federal authority to collect the duties and to deduct the expenses concerning the collection, deducting also the proportionate share of each colony from the residue, and returning the balance to the states. There is no difficulty in that. The next epoch is a period of five years after the imposition of the uniform customs duties. In relation to that, I am sure that, at the beginning, one difficulty that certainly existed had to be surmounted, that difficulty being one that arose from New South Wales being practically a free trade country. Because she left the position in this way: That there was an open gateway in the Commonwealth, by means of which goods could be introduced prior to the imposition of the uniform Tariff, and after the Tariff, as matters stood previously and the result that would have followed from the first was a disorganization of the industries of those colonies that were protected, and secondly, the disorganization of the finances of the Commonwealth. Both those difficulties, I think, have been fairly and effectively met by the provision that duties shall be paid in all cases where goods that have been imported into one colony prior to the uniform Tariff shall, within two years after the imposition of such Tariff, be exported to another state, the duty then chargeable being the amount to which the goods were liable on the importation of such goods into the Commonwealth, less the duty paid on the importation of the goods into the former state. That protects other colonies from the fiscal stand-point, and
leaves New South Wales in the position that if there is any
loss of revenue she has to bear it in the first five years. Passing that by, we
come to the question of the bookkeeping, and incidental to that to the
position of Western Australia. Now, the position of Western Australia is a
matter about which I cannot find myself in accord with those who have
gone before me in this debate. I should specially like the attention of such
honorable members as Mr. Holder, Mr. Reid, Sir George Turner, and Mr.
Henry, and others who addressed themselves to this question. Because it
seems to me that there is a reason why Western Australia should not have
the special and exceptional treatment that it is attempted to give to her by
the provision to which I have alluded. As I said before, I feel a great deal
of diffidence in expressing my view upon the matter, because I do not for a
moment, attempt to put my views of finance on a par with those of
honorable members who have preceded me; but I will state as plainly as I
can the difficulty that occurs to my mind, and I should be glad if they
would clear it away. It is provided with regard to all the colonies, including
Western Australia, that during the first five years after the imposition of
uniform duties, where goods have been imported into one colony or have
paid excise duty in one colony, and are thence imported into another
colony for the purpose of consumption in the second colony, the second
colony shall be credited with the full amount of duty upon those goods.
Why is that? I think it is eminently fair, but why is it so provided? It is
because the people in the second colony have actually paid the duty.

Mr. FRASER. -
They have consumed the goods.

Mr. ISAACS. -
I say they have actually paid the duty.

Mr. BARTON. -
By consuming the goods.

Mr. ISAACS. -
Exactly; by consuming the goods they have paid the duty. Although there
has not been one penny taken out of the state Treasury, yet the country has
paid the duty, because the individuals of the country have paid the duty.
Therefore, we say that, as the individuals of the country have paid the duty,
the Treasury is to get the credit for it. Now, in the case of Western
Australia, take the obverse of that position. If it be a fact that where the
individuals of a country have paid the duty it is to be deemed that the
country has paid, I suppose it will be admitted that where the individuals of
the country have been saved the duty, the country itself has not lost it.

Mr. HENRY. -
Quite right.

Mr. ISAACS. -

Now, what is the position of Western Australia? We are told that the total customs duties under the present regime amount to £1,100,000, and that £389,000 of that comes from Border Duties, that is, duties on goods coming from other colonies. We are told that the Treasury of Western Australia is going to lose that sum. But that simply means that the inhabitants of Western Australia will not pay it. In other words, the sum of £389,000 will remain in the pockets of the people of Western Australia.

Sir JOHN FORREST. -

No one denies that.

Mr. ISAACS. -

If no one denies that-

Mr. MCMILLAN. -

It is one of the conundrums we have to solve.

Sir JOHN FORREST. -

I admitted the fact myself.

Mr. ISAACS. -

If the people of Western Australia are to be credited on the one hand with duties that the individuals pay, why are they to be recouped through their Treasury for money which the Treasury does not get, it is true, but which those inhabitants have in their pockets?

Mr. MCMILLAN. -

It is simply a matter of arrangement made to induce Western Australia to come into the Federation.

Mr. ISAACS. -

I am told that it is merely a matter of arrangement, but, hitherto, it has been put as a matter of a question of justice, and I am asking myself where is the justice of asking the inhabitants of the other colonies, that lose in the same way, to recompense the Treasury of Western Australia for losses which the people of Western Australia do not really suffer?

Mr. HOLDER. -

They only recompense the excess above the general average.

Mr. ISAACS. -

It does not matter what it is. If the Treasurer of Western Australia loses somewhat why should he come to the other colonies to get from them what he loses as Treasurer when the Western Australian people have the money in their own pockets?

Mr. GLYNN. -

Your Victorian manufacturers will get some of the money, in
consequence of the smaller duties paid on their manufactures.

Mr. ISAACS. -

There is no duty in the question at all.

Mr. MCMILLAN. -

Mr. Glynn means that your manufacturers will get cheaper prices.

Mr. ISAACS. -

We are now only dealing with the £389,000 Border Duties, and not with the other £700,000 odd. I am assuming that the Tariff of Western Australia in other respects does not make any difference. But with regard to the Border Duties, it is true in one sense that the Western Australian Treasury does not get a certain amount of money. And why? Because it is in the pockets of the Western Australian people. And what I want to know is: Why are the people of Victoria, Tasmania, South Australia, and, for the matter of that, New South Wales, to recompense out of their own money the colony of Western Australia, because Western Australia does not choose to ask her own people for the money they are saving? I say that you cannot defend it on principle.

Mr. FRASER. -

Because the other colonies export and import, and there is no such trade in Western Australia; it is all importing from the other colonies there.

Mr. ISAACS. -

If my honorable friend thinks that is an answer I will not place my financial knowledge in contes

Mr. BARTON. -

There is this qualification: That if it is true that the exporter of dutiable goods from abroad pays part of the duty the other colonies will save something, too.

Mr. ISAACS. -

I am putting the matter in this way: That if it is fair to credit Western Australia with duties that are paid in one colony first in respect of goods ultimately consumed in Western Australia, why should we not take the converse view? Why should we give Western Australia all the benefit of that rule and none of the disadvantage?

Mr. FRASER. -

They get a rebate if they export to Western Australia.

Mr. ISAACS. -

My honorable friend does not see the point. Each honorable member will of course consider his own colony, but I cannot see one particle of justice or reason in asking the people of this colony, who are going to sustain a loss from a Treasury point of view, to help the Treasury of Western Australia.
Mr. MCMILLAN. -
You allow that the Treasury loses. Supposing that Western Australia is in a state of development in which it cannot very well impose direct taxation, how is the Treasury going to make up its loss?

Mr. ISAACS. -
I say that if the Western Australian people are to keep the benefit in their own pockets, and not to make up some portion of the loss incurred by the Treasury, it is not fair to ask the other colonies to make up the loss for them.

Mr. HOLDER. -
Victoria has 40 per cent. of the trade, and it will profit by the abolition of Border Duties.

Mr. ISAACS. -
They have that 40 per cent. of the trade now, and the Western Australian people have to pay the extra duties now imposed. Are the Western Australian people only to get the benefit of the changed position?

Mr. MCMILLAN. -
Victoria will retain a bit of the profit.

Mr. ISAACS. -
If that is so, I shall be very glad of it, but I do not see any justice in saying that Western Australia shall retain all the profit and a little bit more.

Mr. HENRY. -
Victoria will have a better chance of retaining the large proportion of the trade that she has now.

Mr. ISAACS. -
I cannot see the justice of the arrangement. I had not heard the point put, and I thought it my duty to put it. I should like to hear some arguments advanced upon which I could fairly ask the people of this colony to accept the position. I cannot see that it is a fair position to allow Western Australia
to say-"It is quite true we are to get £389,000. The money that is lost to our Treasury will be retained in the pockets of the people. We do not ask our people to contribute one penny of it. They are to get the whole of the benefit of the £389,000."

Mr. GLYNN. -

The manufacturers who export will get some of it, and the Federation will get some of it.

Mr. ISAACS. -

The £389,000 is paid in Border Duties, and the assumption is that it is added on to the prices in Western Australia. If that is so, it is plain that Western Australia would not have to pay it.

Mr. HENRY. -

They may pay the same amount owing to an increased importation.

Mr. ISAACS. -

They may, but I am assuming that the Tariff makes no difference in that respect. This claim is based purely on the Border Duties, and I am treating it from that point of view.

Mr. HENRY. -

It covers loss of general revenue.

Mr. ISAACS. -

I do not think that is quite a fair way in which to put the argument. This is the statement in the Finance Committee's report:-

The Premier and Treasurer of Western Australia pressed upon the attention of the committee the peculiar position of his colony in relation to her Customs revenue, which largely consists of duties on intercolonial products (£389,000 in a total Customs revenue of about £1,100,000), and in order to meet this difficulty the following clause is submitted for consideration.

I think I am perfectly right in saying that it is with a view of meeting the loss caused by the abolition of the Border Duties that this arrangement is proposed, and I repeat that until I hear some fair reasons advanced for displacing the conclusion I have arrived at I shall feel myself under a very great difficulty indeed in voting for a proposal that, I think, contains no element of justice whatever. With regard to the other portion of the scheme, I desire to draw attention to one or two matters, and the first is the bookkeeping. I do not like this bookkeeping. I think it will cause a large amount of inconvenience, and will prove to be in some measure impracticable. It will be almost impossible in many cases to trace goods that have been altered in condition and that have become almost untraceable in various respects, both as to the duty paid and the shape they have taken. There will be a tremendous amount of difficulty in carrying out
this scheme, but I am perfectly willing, seeing that at bottom it is equitable, to surrender my views on this point to those honorable members who have devoted so much attention to it, and to whose knowledge of the subject I unhesitatingly and unaffectedly defer. As they have come forward to assure us that this is the best possible way of reaching the position, I am quite prepared to accept the proposal. But I do say this: That I am not in accord by any means with the root position that is assumed by these suggestions, either in respect of the

second period, that is, the five years immediately succeeding the imposition of the common Tariff, or of the subsequent period. In my opinion, the recommendations of the Finance Committee do not meet the difficulties that presented themselves in previous schemes, such as the sliding scale and other modes of meeting the necessities of the states. They have glossed over these difficulties. They have deferred them, and done so in a way that may lead to a considerable amount of trouble in the working of the Federation. We ought to consider these proposals with the other provisions of the Constitution. We may say, on the one hand-"Leave it to the Federal Parliament to work it out," but we have, on the other hand, to ask ourselves what are the other provisions with regard to the Federal Parliament? When we look at those other provisions, and consider how differences may arise, we have to revert to the question of the financial position, and we have to say what sort of questions we are going to leave the Federal Parliament to determine. In the first place, I agree entirely with those honorable members who say that there ought to be some definite provision that will act as a guarantee to the states, and will enable the state Treasurers in every case to form something like a fair notion of the position he and his colony are going to stand in. Here I see nothing but indefiniteness.

Mr. HOLDER. -

Unless you have the gift of prophecy you cannot be definite.

Mr. ISAACS. -

Necessarily; and from the very circumstances of the case, we must leave the whole control of Customs and Excise to the Federal Parliament. If it were a mere question of revenue we should not do that. It is, however, a question of intercolonial and international trade, and there must be uniformity. We cannot secure that uniformity without giving an uncontrolled discretion to the Federal Parliament. From a fiscal standpoint, it is unchallengeable. From a revenue standpoint, it assumes a different aspect. There is no reason whatever why the Federation should have the whole of the revenue. This difficulty has been felt in other
countries. My right honorable friend (Mr. Kingston) made a statement the other day that was challenged, with regard to giving the whole proceeds of Customs and Excise to the Federation. In suggesting that there might be some limitation, he was not without precedent. In Germany there is a united Customs Tariff, and the whole of Germany, with some inconsiderable exceptions—such as the city of Hamburg, and one or two other portions of the empire—is in the Customs Union. With these exceptions, the control of Customs and Excise is in the hands of the Federal Government. The Federal Government raise something like £18,000,000 sterling per annum by these means; but it is only allowed to retain about £6,500,000.

Mr. KINGSTON. - How do they fix it?

Mr. ISAACS. - It was fixed by a law passed in 1878.

Mr. HOLDER. - By the Federation?

Mr. ISAACS. - Yes.

Mr. HOLDER. - That is what we expect will be done here.

Mr. ISAACS. - I am pointing out that the difficulty has been felt, and has been provided for in other places. The £6,500,000 may or may not be sufficient to meet the wants of the Federal Government. If it is not, there is a provision under which the states are called upon to make further contributions, called the matricular contributions.

Mr. KINGSTON. - Is it a proportionate contribution or a fixed sum?

Mr. ISAACS. - I cannot go into the whole of the details. The Federal Parliament may do the same thing here, but I doubt whether they can do it in the first five years in the face of these provisions.

Mr. HOLDER. - They can do it directly afterwards.

Mr. ISAACS. - Yes. But I would point out that in Germany the Federal Parliament have to provide enough for their own wants—and this is the serious point—for the wants of the states. Here we have left the Federal Parliament absolutely at large. On the one hand, there
is no provision that will guarantee to the states a sufficient amount to meet their necessities, and, on the other hand, is there any provision that will prevent the Federal Parliament from stepping beyond its Commonwealth jurisdiction? The true function of the Federal Parliament, so far as revenue is concerned, is to provide enough money for federal purposes, and not to provide money for state purposes at all, excepting in so far as it is commanded to do so by the Constitution. When I asked Mr. Holder the other day what guarantee there was that the Federal Parliament could raise £6,000,000 sterling, which is the present requirement, roughly speaking, of the states, he said"There will be four states whose necessities will compel the Federal Parliament, and they can over-ride the Bill." That was a very good answer so far as it went. The states will always be the arbiters of their own necessities. If we are to be told that the four states can compel the Federal Parliament to provide for the necessities of the states, as such, where is the limit to be fixed? Are we always going to run the risk of the Federal Parliament being made the means of raising taxes for carrying on the state Government, because there is no limit to it?

Mr. HENRY. -

How can you prevent it? - It is a difficult question.

Mr. MCMILLAN. -

It simply arises out of the fact that you give over to the Federation the most extensive machinery of taxation-the Customs.

Mr. ISAACS. -

I am aware of the difficulty, but I should like to see a provision which would impose the duty on the Commonwealth of providing for some time, at all events, for the necessities of the states, and guarding for the future against the difficulties which I have referred to.

Mr. HENRY. -

That clause has been struck out.

Mr. ISAACS. -

Of course that did make some provision. I was saying that the reply given by Mr. Holder shows at once the strength and weakness of the whole position; it shows that we are attempting to gloss over the difficulties; that we are going to leave the difficulties to the Federal Parliament; that we are going to have a scramble and a scuffle in the Federal Parliament amongst the states, and that each state will be left to get as much as it can in its own interests.

Mr. GLYNN. -

Supposing the Federal Parliament does not raise sufficient revenue, will not the states have sufficient capacity for taxation in other directions?

Mr. ISAACS. -
There is no increase of capacity to get taxation, they are restricted in certain directions and left unfettered in other directions; but their capacity is not increased, it is rather limited by the knowledge that the Federal Parliament can come down and tax them in any way it chooses. That is the danger I see. You not only leave the Federal Parliament untrammelled, but exposed to continual pressure by the states to produce enough money, not only for federal but for state purposes, while we are asked to leave the states perfectly free to contract debts and increase them, and to enlarge their liabilities and necessities. It leaves the Federal Parliament as the one source by which pressure can be exerted on the various states to get money raised. I foresee that the states Parliaments will occupy a most unexpected position hereafter; it leaves the matter in a most indefinite and unsatisfactory position. I want to call attention to a matter which was referred to very pointedly and correctly by my honorable and learned friend (Mr. Dobson). He said the necessities of the states would in all probability compel candidates who were standing, for the position of senator more particularly, to pledge themselves on the financial question. They will go into the Federal Parliament determined, so far as they can do so, to get certain concessions, terms, and advantages from the Federal Parliament.

Mr. PEACOCK. -

Does not every candidate for the local Parliaments do that now—for instance, with regard to roads and bridges?

Mr. ISAACS. -

My honorable friend must remember that the position is different in this respect, that in one state we deal only with that state, we deal with one people who pay the taxation; here it will be a question of state against state, and I agree with what has been said as to what will be the inevitable result. When we have two Houses, one of which represents 700,000 people, and the other represents 2,500,000 to begin with, are we not likely from the very inception of this Federation to have most bitter struggles as to the division of the money? Are we not likely to have most dreadful onslaughts on the Treasury on one hand, and bitter contests as to which House shall determine the appropriation of this money and the taxation? I can see no more fruitful sources of collision and dead-locks than these very financial proposals. That is one of the demerits of this scheme.

Mr. KINGSTON. -

The scramble for the surplus.

Mr. ISAACS. -
Yes. If you fix the amount for the first few years you take away one of the greatest probabilities of dead-locks; if you say to the Federal Parliament that they shall provide a certain amount in a certain way for the first five years you do allow the Federation to go into its first year's work with very much less chance of collision in the way that has been pointed out.

Mr. MCMILLAN. -
Will not all these difficulties come to an end in five years? Does it affect the logic of the question?

Mr. ISAACS. -
I understand that the bookkeeping and other provisions for five years are to enable us to see more definitely where we are going; to enable us to feel our feet and understand each other better. I think if we added to this provision something more definite which would give us these advantages, and which would take away the liability to an initial scramble, we should do very much better. I am not going to oppose this if the majority think it right, but I hold it is a pity that these proposals have not been subjected to public criticism for a longer period. I do not say that by way of blame or fault-finding, because I have no such intention, but it is regrettable that we have not had an opportunity for public criticism of these proposals.

Mr. SOLOMON. -
We have not gained much from public criticism during the last six months on the financial problem.

Mr. ISAACS. -
We have not had these proposals before us for six months. I have noted that, as speaker after speaker has addressed himself to this question, there are difficulties pointed out which did not at first arise.

Mr. MCMILLAN. -
Most of those difficulties came before the Finance Committee.

Mr. ISAACS. -
I have not the slightest doubt about that. I am sure that the personnel of the committee could not have been improved upon; but the outside public have not had an opportunity of considering these proposals.

An HONORABLE MEMBER. -
They have seen the debates for many months past.

Mr. ISAACS. -
I think my honorable friend will agree with me that we have never had these proposals before the public.

An HONORABLE MEMBER. -
The bookkeeping proposal was before the public for twelve months.

Mr. ISAACS. -

There are several salient differences between the proposal now submitted and what was before the public; there is the provision for Western Australia, and also the provision for collecting duties during the first two years.

Mr. MCMILLAN. -

The differences are not vital.

Mr. ISAACS. -

One of them is vital to Victoria, but we have disposed of that. When we consider this question of the financial problem, we must consider it in relation to the rest of our Constitution. I foresee that we shall be landed in difficulties, tussles, and contests for money in the Federal Parliament, which will enable the people of the smaller states, as represented in the Senate, to practically command the whole financial situation if they choose. We are told that their necessities compel them to take this stand. I hope some means will be found for providing a remedy for them in any event, but also for taking away the probability of it. I should like to see some provision by which security can be given to the state Treasurers, something like a definite provision which will give the state Treasurer some security in making up his Budget and Estimates. On the other hand, I sincerely hope some provision will be made by which what may be called the other terminus of the question will be made more definite. If that is done, the proposals will be much more acceptable.

Mr. FRASER (Victoria). -

I had not the remotest intention of speaking, but after the remarks of the Attorney-General of Victoria, I am constrained to say a few words. With regard to the intercolonial revenue derived by Western Australia, the honorable member will see that the duties amount to more than £380,000 out of a total revenue of £1,100,000. Those duties are, however, derived from the produce and manufactures of other colonies. If Western Australia sent an equal amount of produce and other articles to the other colonies, the trade would about balance itself, as is now the case with the remaining states. I do not say that there is an exact balance between the other states, but there is a balancing going on which is getting closer year by year. For instance, Queensland sends fruit here in large quantities, while we send other products to Queensland. We send vegetables to New South Wales, who also sends us some products, and in this way a balancing goes on. When people settle on the lands in Western Australia, they will be able to export to the other colonies, and then the large amount of revenue at
present derived from intercolonial trade will be very much less, so that there is really nothing in the argument of Mr. Isaacs. Western Australia can place duties on other articles than produce and manufactures of the other colonies. It may be very difficult to do so, but no doubt it is possible. There is a huge consumption of chaff, hay, oats, and other articles of that kind in Western Australia. It is only by imposing an all-round Tariff that Western Australia is able to get the revenue which it requires. It is only just that the people of Western Australia should not be called upon to lose more than one-third of their revenue, and that some more equitable arrangement should be made. What is that equitable arrangement to any member of the Convention who is anxious for federation? It is only a drop in the bucket when it is divided amongst other colonies. If the revenue of Western Australia keeps on increasing by leaps and bounds, as it is doing at present, that colony will not be entitled to the refund which it is proposed to give. Therefore, the argument of the honorable member on that score falls to the ground. When the people of this colony export foreign goods to Western Australia they get a rebate, and they do not pay 1s. of duty. The duty, of course, is collected in Western Australia, where the goods are consumed. A merchant would be a very extraordinary business man if he exported goods from his warehouse after paying duty here. He does nothing of the kind. The goods are exported in bond. Even if they do pay the duty here there is a rebate granted, so that the Western Australian people pay the duty in that case. As to the guarantee to the state Treasurer, no doubt, that is a very serious matter. I myself would like to see some clause in the Bill to give the people of the states, and especially the states Governments, some guarantee that they should know with certainty that they would have sufficient money refunded to them to pay the interest on their indebtedness. But I argue with myself in this way. There is a House of Representatives representing the states, and there is a Senate representing the states. In the House of Representatives there will be, say, twelve members representing a state, and in the Senate six members representing the same state. Now, are those members going to allow their state to be robbed?

Mr. ISAACS. -

But you must see that, although the House of Representatives can pass any Bill it likes, if the Senate does not pass it the state cannot get the money.

Mr. FRASER. -

Surely the representatives of a state in the House of Representatives, and in the Senate, will take good care to see that their state is fairly treated, and
you cannot expect more than that. Then there is the bookkeeping system. All of us would like to see the bookkeeping system got rid of if it were possible, but I do not see how that is possible, and I must admit, as a business man, that it is the safest, surest, and least objectionable of all the schemes that have been submitted to us. With the bookkeeping system, the amount of money that should be returned to the various states is known approximately. There can be no doubt about the approximate amount. We need not split straws over a few pounds one way or the other. Canada has suffered in this way to some extent; but would the people of Canada go back on federation because of that slight difficulty? Nothing of the kind. There is not a man, woman, or child in all Canada that would dream of going back because of this little difficulty. So, I hope, it will be with us. The country of Australia is infinitely richer than the Dominion of Canada, and, therefore, federation will be more advantageous to the people of Australia, as a whole, than even it has been to Canada, because, the wealthier the country, the more advantage is gained by federation; and the poorer the country, the less advantage is realized from federation. Hence, Australia being a marvellous country for wealth, will gain much more by federation than almost any other country that could be named. What, then, Mr. TRENWITH. -

Will this system let the Treasurer of a state know how much he will get back at the end of the year, before that time comes?

Mr. FRASER. -
The bookkeeping system will let the states Treasurers know, approximately, the amounts they are entitled to.

Mr. ISAACS. -
Not at all; you want both the bookkeeping system and the decision of the Federal Parliament, to say how much will go back.

Mr. FRASER. -
For the first two years the exact sum received is returned, less the federal expenditure.

Mr. ISAACS. -
That is before the uniform Tariff.

Mr. FRASER. -
After the uniform Tariff, the business is carried on pretty, well on the same lines, the only difference being that there is the uniform Tariff. Now, I am one who believes that a uniform Tariff may probably bring in more revenue than we are aware of, because there will be such a boom all over Australia. I have interests in many parts of Australia, and I can say that there is no danger to any colony from the introduction of a uniform Tariff. Suppose one colony prospers a little more than another through federation-
I could name some that perhaps would gain more than others—still the gain to every individual colony will be so great that they will forget all about these difficulties. At any rate, the gain to Canada has been marvellous, and has enabled the people there to do wonders, which they never contemplated doing before. Is the Attorney-General of this colony going to rise, and harp and carp over the difficulties that may occur? Surely that is not the spirit in which this matter should be considered.  

Sir WILLIAM ZEAL. -

And there is no alternative proposal submitted.  

Mr. FRASER. -

No. If I chose I could find fault easily enough with these proposals, but I think the individual who finds fault is bound to propose a better scheme, and I do not think a better one can be discovered. When we find Treasurers and ex-Treasurers of the various states-men in whom we have the greatest confidence, men of great experience and capacity-unanimous in saying that this is the safest and best method that could be adopted, I think that lay members or professional members—I am now speaking of barristers—of this Convention may very well say "Ditto." I hope that there will be no more carping of this kind. I think that this scheme is on perfectly safe lines, and I only rose to say that I believe there is no danger attending it. Of course, I would not object if the state Treasurer had some little assurance given to him; but I am willing to accept any reasonable proposal, because I believe the advantage of federation will be so great that the people will be universally joyful after its consummation. Therefore, I hope that we will strive to the end of achieving that result throughout this discussion.

Mr. HOLDER (South Australia). -

The Attorney-General of Victoria (Mr. Isaacs) has asked three questions, which, I think, demand an answer. He has raised three difficulties, which, I think, are the only serious difficulties in the way of the acceptance of this scheme that have been raised since these proposals were submitted to us. Those difficulties I shall take in the order in which he raised them. The first is the question of Western Australia, and I admit freely, as I admitted the other day in reply to an interjection by the honorable member (Sir John Downer), that the scheme in reference to Western Australia is not logically defensible, any more than is the bookkeeping scheme; but I submit that the proposal is defensible on the ground of expediency at least, and I think, from some points of view, on a somewhat higher ground. What is the position? I will give some figures for the sake of placing the matter in concrete form before honorable members. We will assume—for all these
figures are but an assumption—that the average loss of the colonies of South
Australia, Western Australia, Tasmania, and Victoria, through the
operation of the uniform Tariff, is 10 percent of their revenue from
Customs and Excise, and that the loss to the colony of Western Australian
exceeds that average by 10 per cent. more; that is to say, that the loss to
Western Australia alone is 20 per cent. Then we have this state of matters
to deal with: Western Australia loses £200,000 of her revenue, while the
other colonies only lose, proportionately, a sum representing half of that
amount. I must point out, however, that these figures which I am
suggesting are the net figures, and that, before we arrive at them, we must
set any gains under the new Tariff against any possible losses. For
instance, as I mentioned the other day, there are no excise duties on beer in
Western Australia, no duties on sugar, on tea, or on a number of other
articles of lesser importance which almost certainly will, under the Federal
Tariff, be dutiable.

Mr. OCONNOR. -
And bring in a very large revenue.

Mr. HOLDER. -
Yes. As I have previously mentioned, three lines only beer, tea, and
sugar—would produce £160,000, and probably some other items of revenue
would further increase the augmented revenue to be derived under the new
Tariff by Western Australia. But, after all these have been taken into
account—and not only taken into account in Western Australia, but in
every other colony—in Victoria, for example, where the probabilities are
that a reduction of some of the present high duties would result in
increased importations, and, consequently, increased revenue—when, I say,
all these increases have been taken into account, there still remains the
discrepancy that Western Australia loses 20 per cent. of her revenue from
Customs and Excise, while the average loss of the other colonies is only 10
per cent. Under these circumstances, does it not appear to honorable
members that Western Australia is justified in the request that this 10 per
cents extra loss should be made up in some way? I admit that, while it is a
loss to the Treasury, it is not a loss to the people; and that is no less true of
every other colony than it is of Western Australia. If in Victoria and the
other colonies, as undoubtedly would be the case, a large sum is lost
through the operation of intercolonial free-trade, the loss will only be a loss
to the Treasuries of those colonies, but it will be a gain to the people. In
spite of that fact, however, it is a loss to the state Treasury, and it cannot be
supposed for a moment that, with a loss like this staring Western Australia
in the face, demanding the imposition of direct taxation of a very
considerable amount in order to make it up, Western Australia would come into the Federation. I do not think that is to be expected for a moment. We are, therefore, face to face with these two alternatives. First, to make some concession-you may say for expediency sake only-to Western Australia, in order to bring her in, and to give us the benefit of free entrance to her ports; or, as the other alternative, we must contemplate her staying out altogether.

Mr. ISAACS. - Why should we contemplate that in Western Australia they will not recognise the justice of making up this loss themselves? Why should Victoria, for example, have to make it up?

Mr. HOLDER. - I am coming to that in a moment. I will answer all the points which the honorable member made in his very able speech. My first answer is that, as I have shown, Western Australia must either obtain some such concession, or she must impose heavy direct taxation, or else stay out of the Federation altogether; and I think the probability is that she would determine to stay out rather than face heavy direct taxation. If her loss were no heavier per cent. than the loss of other colonies, I should say that she ought to bear it. There is no more reason why Western Australia should be assisted to bear the average loss than there is why Victoria, Tasmania, or South Australia should be assisted to bear that loss; but, when we contemplate something far in excess of the average loss, then to the extent of that excess we are contemplating a special case, and special cases need special remedies. It is a special remedy to meet a special case that is suggested in the clause with reference to Western Australia in the proposals now before us. The honorable and learned member (Mr. Isaacs) wished to know why we should require the other states to contribute to make good the loss of Western Australia, and I wish to show why I think there is very good reason for our doing so. Surely the benefit which is realized through the introduction of colonial produce and manufactures into any state is not only a benefit to that state but also a benefit to those who do the trade with her. At the present time Victoria, I believe, does a little over 40 per cent. of the entire intercolonial trade with Western Australia; and, if that be so, surely Victoria will benefit very largely.

Mr. ISAACS. - But does she not get that benefit now?

Mr. HOLDER. - If Victoria will consent to transfer the whole of her intercolonial trade with Western Australia to South Australia, I believe that South Australia would willingly meet Victoria's share of the loss that would arise under the present proposal.
Mr. TRENWITH. -

You mean you would pay other people's taxes out of trade profits?

Mr. HOLDER. -

I do not follow the interjection.

Mr. TRENWITH. -

Your suggestion is that the added trade would compensate for the cost that would be entailed.

Mr. HOLDER. -

I recognise that trade is a very important matter to any colony or state, and that we are all prepared to do a great deal to secure trade. For South Australia to secure the trade which Victoria now does with Western Australia would be worth a good many thousands of pounds to her, and, as I have said, I believe South Australia would freely pay Victoria's share of the loss in order to get that trade. Victoria, by having that trade, is realizing a very large advantage through her intercourse with Western Australia, which, I assert, judging from past experience, she will, to a large extent, lose as time goes on, unless Western Australia joins the Federation. We cannot believe that Western Australia will continue to do so very large a proportion of her trade with the other colonies for a long period of time. Why should she continue to do more trade with the other colonies than they do with each other? At the present time she does more trade with the other colonies than they do with each other, because, instead of forming business connexions with foreign parts, she has gone to places convenient and near at hand. But she will not long continue to do that, and the time is not far distant when, owing to her development, she will seek the cheapest markets, even if they are at the other end of the world. When that day comes, Victoria and the other colonies which do a large trade with Western Australia now will lose a great deal of that trade.

Mr. MCMILLAN. -

This has been the history of all the colonies.

Mr. HOLDER. -

Yes, without a single exception. I do not want South Australia and Victoria to lose this trade, and, therefore, I hope that Western Australia will join the Union. When Western Australia has her ports free to all the colonies, and closed, more or less, according to the nature of the Tariff, to all other parts of the world, there will be no fear that the whole of Australia will not always possess her trade. Every Australian producer and merchant will then get the benefit of the trade of all Australia. That is what I want, and I think that the payments which the other states are asked to make to
Western Australia under these proposals are justified by the special conditions of the case from the Western Australian point of view, and also from the point of view of the other states, who by no means fail to get an equivalent for their fair and reasonable contribution. The Attorney-General of Victoria and the Premier of South Australia both referred to a matter of very great importance, and that is the possibility in time to come of a periodical scramble for the surplus revenue of the Commonwealth. We all regret that, to some extent at least, the states must be dependent upon the Federation for their very life, owing to the impossibility, so far as we can yet see, of devising any plan by which the revenue of the Federation may be kept down to something very little exceeding its needs. But I do not imagine that there will be anything like an annual scramble. Just as we have sometimes contemplated the possibility of forming a scheme in this Convention to meet times which we know are seven or eight years ahead, I think that the Federal Parliament, with much more advantage, will be asked from time to time to adopt schemes for the equitable distribution of the surplus, and while we

Mr. ISAACS. -

That cannot be done for the first five years.

Mr. HOLDER. -

No, and I think it is just as well that we should have time to get acquainted with each other and with the machinery of the Constitution in the meantime.

Mr. ISAACS. -

That is just the time when we want more security.

Mr. HOLDER. -

We have it. Under the Constitution there can be no scrambles for seven years.

Mr. ISAACS. -

Immediately uniform duties are imposed, a scramble will commence.

Mr. HOLDER. -

I thought I had to convince an honorable member who had mastered the details of the scheme, which would have been somewhat difficult, but I find that I have an easier task. I see that I have to convince one who has missed a fact, the statement of which will be an answer to his objections. The fact is that, under the scheme, for the two years preceding the uniform Tariff, and the five years following, the distribution of the surplus is absolutely provided for. Therefore, there can be no scramble for seven years. During seven years we shall have an entire absence of any of these sources of strife, and we can in that time become acquainted with each
other and with the federal machinery, and be prepared afterwards to make equitable provision for the future.

Mr. ISAACS. -

Will the honorable member state what is to be the total amount to be raised by the Commonwealth in the five years following federation?

Mr. HOLDER. -

I think I replied to that question last week, when I said that the needs of four out of five states were absolutely imperative.

Mr. ISAACS. -

That is what I meant when I said there would be a scramble. There will be a scramble to get a certain amount of revenue raised, so that the states may by the bookkeeping process get back a sum which will satisfy them. The scramble will come before the end of the seven years.

Mr. HOLDER. -

The scramble to which I now understand the honorable member to refer is that in connexion with the framing of the Tariff. Whatever provisions you put into the Constitution, there will always be a big scramble in regard to that matter.

Mr. ISAACS. -

There will be a scramble so as to secure a sufficient return under the bookkeeping system to satisfy the needs of the states.

Mr. HOLDER. -

I thought at first the honorable member was referring to the scramble between state and state, so that each might obtain an advantage over its neighbour.

Mr. ISAACS. -

That would be a different scramble altogether.

Mr. HOLDER. -

I have no doubt that, in connexion with the framing of the first Tariff and afterwards, there will be struggles between free-traders and protectionists, between those who want to raise revenue through the Customs only and those who want to raise it by direct taxation.

Mr. ISAACS. -

And a scramble to secure the raising of a sufficient sum to satisfy the needs of the states.

Mr. HOLDER. -

I think that that can hardly be called a scramble, because out of the five states the maintenance of the solvency of four will require the raising of a sum practically equivalent to the amount raised at present.

Mr. FRASER. -

The danger is that too much will be raised.
Mr. HOLDER. -

I think that the Commonwealth will be fair. The federal authorities will not raise much more money than they can help, and so we shall have practically a little over £6,000,000 raised annually by customs and excise duties. The raising of that amount—I do not think I can put it more effectively than I put it last week—will be guaranteed by the needs of four out of the five states. These states will possess four-fifths of the representation in the Senate, and much more than that representation in the popular branch of the Legislature. The next scramble to which I come is the fight between the different states, at the end of seven years, to secure all they can for their own Treasuries. If we may imagine that the states will act as individuals will act, we can be sure that each state will look after itself in this matter.

Mr. ISAACS. -

That is the second and most important scramble.

Mr. HOLDER. -

My first point is that the Federal Parliament, in which we shall all be represented, will be in a far better position to settle the matter than we are in to-day. The honorable member wants us to settle it now. Surely it is not so easy to settle it now as it will be to settle it when the day comes for the arrangement to have force.

Mr. FRASER. -

With all the experience they will have then?

Mr. HOLDER. -

Yes, and with all the knowledge. If the honorable member had the settlement of it, he would insert in the Constitution, which is not to be amended except by a double referendum and all the rest of the machinery, a provision to the effect that when the time comes for the distribution of the surplus it shall be distributed per capita. But, instead of going forward seven years, suppose we go back seven years. Suppose that seven years ago we had met in convention, and had then determined, as we might fairly have done, that the distribution of the surplus should be per capita, where would Western Australia have been to-day? The Western Australians would be contributing nearly £8 per head, and receiving £2, while the people of South Australia would be contributing a little less than £2 per head, and getting back £2. Money raised in one state would be obviously paid away to other states, and we should to-day be face to face with a tremendous agitation.

Mr. HENRY. -

It would have been the same if the bookkeeping system had been
adopted.

Mr. HOLDER. -

No; certainly not. But if this *per capita* distribution had been adopted, we should to-day have been face to face with a tremendous agitation for an alteration of the Constitution. Every Western Australian representative would have been pledged to secure an alteration of the Constitution which would put a stop to this monstrous injustice. Who is to say where the boom will be seven years hence? We hope that Queensland is coming into the Federation, and I can conceive of no part of Australia where a boom is more likely than Queensland. If seven years hence there were a boom in Queensland, and the Queenslanders were contributing then as the Western Australians would be contributing to-day, Queensland, supposing the *per capita* distribution were in force, would be upon the verge of a rebellion. I think we had better leave the distribution of the surplus to the Federal Parliament, to be dealt with, not, I hope, from year to year, but for a term of years, with this possibility—that, if special circumstances arose making the distribution which had been arranged inequitable, the Federal Parliament should be free, without a threatened revolution, to deal with the whole matter at once, and to adjust the inequality. It has been suggested that, to make the state Treasurers secure, a hard-and-fast provision should be inserted in the Constitution requiring the return of a fixed proportion of the revenue to the states. I do not think I am revealing any confidences, or doing anything other than I am free to do, when I say that both in the Adelaide Finance Committee and in the Melbourne Finance Committee I have been influenced by that thought. Some three or four weeks ago I put into writing a provision which I conceived would meet the needs of the case. My provision runs as follows:-

The Commonwealth shall return to the several states, in such proportions as may in the opinion of the Parliament be equitable, either in meeting the loss (if any) on the works and services taken over, in relieving the states of obligations in respect of loans, or in cash payments, at least seven-twentieths of the total annual revenue from Customs and Excise.

We will take the total Customs revenue to be a little over £6,000,000, and the total expenditure of the Commonwealth about £300,000, which accords with the figures supplied to us in Adelaide. If the federal authority were allowed to absorb one-twentieth of the £6,000,000 raised by customs duties it would have the £300,000 which it required.

Mr. ISAACS. -

That would not be nearly enough.
Mr. HOLDER. -
So far as the calculations are concerned, I defy any one to pick a hole in them.

Mr. MCMILLAN. -
Did not the honorable member object to limiting the expenditure of the Commonwealth?

Mr. HOLDER. -
I will deal with that matter presently. So far as the interjection of the Attorney-General of Victoria is concerned, the figures I have given are from the point of view of calculation absolutely correct.

Mr. ISAACS. -
£300,000 would be enough?

Mr. HOLDER. -
Absolutely. So far as the policy of the amendment is concerned, I shall have something to say about it presently. The total Customs and Excise revenue may be taken as a little over £6,000,000, one-twentieth of which amount is £300,000, which is precisely the sum that, according to the Bill as it left us after the Adelaide session, might be absorbed by the original expenditure of the federal authority. Then we provide that the balance, £5,700,000, shall be returned to the states, and we set out three ways in which that money may be returned. It may be returned to the states, first, by meeting the loss on works and services taken over. According to the estimates supplied in Adelaide, that loss would amount to £1,200,000. It may be applied, secondly, as time goes on, in relieving the states of obligations in respect of their public debts, by the payment of either interest or principal. In this case there would be no cash balance to be returned. It would all be absorbed. That can only come about, however, through mutual agreement between the states. And, thirdly, it may be returned to the states in cash payments. If the balance is to be returned to the states, it should be paid in these ways. That would amount, as I have said, to not less than £5,700,000.

Mr. ISAACS. -
For what period was that?

Mr. HOLDER. -
I put no period; I meant it to be a perpetual obligation.

Mr. ISAACS. -
To start when?

Mr. HOLDER. -
At the end of the seven years. That would meet all the arguments which Mr. Isaacs has mentioned. Honorable members will see, too, that if the loss on works and services taken over increased, or if there were any further
works and services taken over, that would be provided for automatically, and, as the revenue from Customs and Excise may be expected to increase, the amount at the disposal of the Commonwealth would steadily grow, and would meet the demands of the Commonwealth.

Mr. MCMILLAN. -

The honorable member makes a fixed and rigid proportion for all time.

Mr. HOLDER. -

Yes; I accepted this view in Adelaide, and continued to hold it until the meeting of the Finance Committee in Melbourne. I tes

Customs and Excise, but there are some persons who do not. Some free-traders, for instance, are sanguine enough to believe that a free-trade policy will be adopted by the Federation, and that the revenue will be less than £6,000,000, and they urge that if we put this proposal into the Constitution, we practically say that the Federation shall not adopt a free-trade policy, but must adopt another policy. Now, I do not want to say that the Federation shall or shall not adopt a free-trade policy. I want to leave the Federation free, but to leave it free it is argued "You must not put this into the Constitution." And there is a good deal in that argument. Another objection raised is that, if we say that the states shall have nineteen-twentieths of the Customs and Excise revenue returned to them, and that the federal expenditure shall only have one-twentieth, what is to prevent the federal authorities saying "We do not want a revenue of which we can only have one-twentieth, so we will not trouble about Customs and Excise, but we will go in for raising our £300,000 of revenue by means of something of which we have the sole control"? And, of course, it is said, nineteen-twentieths of nothing would not be much good to the states. There would be no guarantee for the solvency of the states in such a contingency as that. A guarantee resolving itself into the possibility of the states receiving nineteen-twentieths of nothing would certainly be valueless. Although I have still some little regard for this suggestion, I do not at present intend to propose it, in view of those arguments against it.

Mr. MCMILLAN. -

I can conceive of another objection. Supposing a very large expenditure had to be incurred by the Commonwealth for a special national purpose, although it might have nothing to do with the states, you would have to raise so much extra to distribute amongst the states, in order to provide for that special expenditure, although the extra revenue would not be wanted.

Mr. HOLDER. -

If I granted the weight of the honorable member's suggestion, I should have to admit that possibly, owing to a large expenditure for defences and
other purposes, the Commonwealth may make the states insolvent. That is what the interjection may amount to.

Mr. MCMILLAN. -

That is scarcely a fair answer.

Mr. HOLDER. -

I will give another. My answer is that if any large expenditure has to be incurred by the Commonwealth on the defences—in the erection of forts, arsenals, &c. it would undoubtedly be taken out of loan money, and, therefore, would not come into this consideration at all.

Mr. MCMILLAN. -

Supposing £6,000,000 is a sufficient revenue, but supposing you get £7,000,000 by your Tariff, and it is necessary to use the £1,000,000 for a general national purpose, such as defence, according to your theory you would have to raise the Tariff in order to distribute the balance among the states, or you would not be able to use what the Commonwealth required.

Mr. HOLDER. -

I can conceive of a special emergency of the Commonwealth requiring £1,000,000 of money, but an expenditure of £1,000,000 over and above the ordinary expenditure of £300,000 contemplates nothing short of a national emergency, and I should be very sorry to contemplate that. But even then there is the answer that defences are a part of the works and services taken over, and if there were a national emergency it would be quite competent, without contravening one single letter of this proposal, for the necessary expenditure on defences to be taken out of the Commonwealth funds.

Mr. MCMILLAN. -

Do you intend to make any proposal in this direction?

Mr. HOLDER. -

I do not intend to do so at present, but I wish to hold myself free to make a proposal if occasion demands. I think all the argument is in favour of leaving the proposals in the form in which the Finance Committee have brought them up, but if there must be some limitation, this is the best of which I have any knowledge. A good deal more can be said for this than for other limitations which have been suggested in the past, and if some limitation is required, I will propose this.

Mr. ISAACS. -

If it is correct, relying on the necessities of the occasion, to return £4,500,000 out of £6,000,000, why not rely on the necessities of the states being secured out of Customs and Excise revenue?

Mr. HOLDER. -

I think we can; but if that argument has weight against my suggestion, it
has still greater weight against the argument of the representative of Victoria.

Mr. ISAACS. -
I am not using it as an argument against your suggestion, but as clearing away one of the objections.

Mr. HOLDER. -
It does clear away that objection; but it destroys altogether the necessity for this suggestion, and, therefore, leaves me where I was before. I have pointed out the objections that have been urged against my suggestions, and I hope I have satisfactorily dealt with them, or, at all events, that I have put points which are worthy of the consideration of the Convention.

Sir EDWARD BRADDON (Tasmania). -
I join with those who have gone before me in congratulating the Finance Committee on their work. It is good work, for which we must be grateful, and the value of which we must recognise, even if in every particular we may not agree with it. My principal reason for rising is to endeavour to show, somewhat more hopefully than one of my colleagues who preceded me, the position in which Tasmania stands in regard to this Federation. One of my colleagues (Mr. Dobson) has put it in this way-"Here is Tasmania, with a smaller purse than the larger colonies, and it cannot afford to enter the Federation. My poverty and not my will may compel me, for a time, to stand out of the Federation."

Mr. DOBSON. -
Those are not my words, without qualification. I said that if we are to be dragged into extravagant expenditure, much greater than we are now accustomed to, Tasmania may have to stand out of the Federation. You give one part of what I said without the other.

Sir EDWARD BRADDON. -
Of course I did not give the whole of the honorable member's words, but there is a sentence, and there are one or two others in the honorable member's speech, which hardly represent Tasmania. We do not stand as a colony seeking to be allowed in on sufferance-as a poor member of the group to be assisted out of our financial difficulties. I believe that, at the present moment, apart from the question of size, Tasmania is in as sound a position as any colony of the group. I need not go into the question of our revenue, but it is more than sufficient for us at the present time, and, provided that we had some sort of guarantee to give to our people that our finances would be protected in the future, I believe that Tasmania would be as willing as any colony in the group to enter the Federation, and to enter it as an independent state. The people of Tasmania are no more blind to the gain that we shall all make by federation than the people of any other state.
Whatever small sacrifices we have to make for the support of the Federal Government, the Federal Parliament, and the Federal Executive generally, there are great gains to be obtained by the freedom of our markets, which would immediately result as the consequence of our joining the Federation. But I think that the representatives of Tasmania ought to be assisted in this way—we should be allowed to go back to our constituents with such assurances as will induce them to follow us when we seek to lead them into federation. Honorable members know that Mr. Coghlan, who is accepted as an authority and is one of the leading statistists of these colonies, has pronounced the opinion, without any hesitation or any qualification whatever, that, if Tasmania enters this Federation, she must become insolvent. Of course it seems over-bold to question such an authority, but I make bold to question it myself. I do not think that Mr. Coghlan's view is correct, and I do not think the way in which he has applied his figures to the facts of the case will bear him out in that prophecy. But the prophecy exists, and we, who will be asked our opinion about federation on our return to our own colonies, are certain to be asked what we have to say to that prophecy.

Mr. BARTON. -

Mr. Coghlan bases his calculations on something that is bound to disappear, and that is the operation of five Tariffs.

Sir EDWARD BRADDON. -

I recognise that, but everybody who reads will not recognise it in the same way. One question which we are bound to be asked is how will our local finances be left if we merge our colony into the great Federation. We shall be asked if we can tell our constituents how they will stand then. What sort of answer can we make in the absence of anything like a guaranteed minimum revenue? We will have nothing to show, and therefore I hope when we come to the clauses dealing with this matter we shall obtain that assurance, and be able to go back confident that we will not be leading our people into a difficulty if we advise them to say aye when the Constitution Bill is placed before them for their acceptance. I hope that in the consideration of the Bill we may yet do something more in regard to making it mandatory on the Federal Parliament to take over and consolidate the debts of the various states in the Union. We all know how great the gain must be, even that gain which will be made by saving in the management of the consolidated debt, by having one system of management instead of many systems. There is no question to my mind that there will be relatively an immense saving in the interest charged if the Federal Parliament and Government deal with the matter in a judicious
way. When I was in England in June and July last, I spoke to some bankers to whom I had spoken on the subject before. I asked them their opinion on this question, and what they thought would be the result of exchanging for our provincial bonds the bonds of the Commonwealth, and the opinion which was expressed, and which was unanimous so far as my inquiries went, was that the greater marketability given to the Commonwealth stocks would necessarily involve a considerable enhancement of their value as compared with the stocks of the various states, and such a value as would justify a hopefulness of our being able to exchange our local stocks for Commonwealth stocks at a good price. I think we may do this without any danger of giving the profits to the holders of our present stock, instead of to the country, by a suitable arrangement in the Constitution that the stocks which are now current shall not be transferred—shall not be converted—until after the acceptance of the converted stock by the stock-holders, wherever they may be. In that way it would only be when the holders of the state stock came into agreement with us there would be any question by them of the prices of the federal stock. And when they agreed to accept, by way of exchange, the Commonwealth stock for the state stock—the stock bearing the security of the whole of the Commonwealth, instead of the security of one individual state—it would only be then that a price would be fixed, and that price ought to be a very favorable one to the Commonwealth, and would relieve the Commonwealth of a considerable amount of interest. I have said all I think it necessary to say at the present time in the preliminary discussion of these financial proposals. I shall await with some anxiety, and with some little hope, the action taken by the committee in regard to one or two matters of special importance—the matter of securing an immediate revenue to the states, and some form of consolidation of our loans, which I think will go a long way towards satisfying the people of the states, especially the smaller states, and will be of itself in the nature of a guarantee of the financial position of the different states. I am sure that nobody more than the Premier of Victoria foresees the possibility of extravagance on the part of the Commonwealth Treasury, with unbounded revenue at its disposal. Only if we can assume that by some fortunate contingency the Treasurer of every state in the Commonwealth will be in the Federal Government can we hope for any efficient and satisfactory protection of the revenue which the various states will be looking to as a means for carrying on their affairs. Therefore, I hope that as to these points t

Amendment suggested by the Legislative Council of Tasmania—After "revenue" insert "and moneys."
Mr. BARTON (New South Wales). -

I think it might be safer to insert these words, I believe the words "and moneys" were in the Bill of 1891, and that they were struck out in Adelaide. It almost seems to me that it would be safer to use the more comprehensive term.

Mr. TRENWITH (Victoria). -

I do not wish to deal with the suggestion of the Legislative Council of Tasmania, but I desire to say a few words on the general question. I think the question has been well discussed, but several points suggest themselves to me as worthy of consideration. The one which has attracted most attention this morning is the different treatment of Western Australia, in the event of that colony coming into the Commonwealth, from that which is to be meted out to other colonies. The representative of South Australia (Mr. Holder), in defending the proposal, admitted that it could not be logically defended, but he endeavoured to show that it was justifiable as an expedient to get Western Australia into the Federation. That seems to me to be an insufficient reason for adopting an inequitable provision. If it is urged that one colony, or some colonies in the group, will not come into the Federation unless some conditions are conceded to them which cannot be logically defended, it seems to me that it will be better to contemplate the possibility of that colony, or of those colonies, standing out until the citizens thereof arrive at a more just determination. Western Australia at present is in the position that nearly the whole of its revenue, or a very large proportion of its revenue, comes from customs duties.

Sir JOHN FORREST. -

A third only.

Mr. TRENWITH. -

A very large proportion.

Sir JOHN FORREST. -

Not a large proportion.

Mr. TRENWITH. -

A third is a large proportion. At any rate, a third of the revenue of Western Australia, according to the right honorable member, comes from revenue duties. If a uniform Tariff is adopted by the Federal Parliament, and it should happen that in returning to Western Australia its proportion of the amount it paid, it leaves the colony without sufficient revenue to carry on the Government, there seems to me to be no justification for saying that other colonies, which have probably also been left short of the money necessary to carry on their Government, should make up what they require for the carrying on of their Government, and also make up a proportion to pay to Western Australia. If, as was pointed out by the
honorable member (Mr. Isaacs), the Western Australian revenue does not benefit, the money is not paid, and the Western Australian people must have it. If they have it, and it is necessary for the purpose of carrying on their Government, they should be asked to pay it, as they are now being asked to pay it. There can be no very great injustice in that, and if they consider it a hardship that in the Federation they should be asked to meet the expenses of their own Government, how much greater hardship must it be to other states to be asked to meet the expenses of their Government and some of the expenses of the Government of Western Australia? That is the logical position which this proposal puts other states in. I must respectfully submit, in the interests, not merely of Victoria, but of the other states which propose to become a party to this agreement, that it is highly undesirable. It is inequitable, and no question of expediency, it seems to me, would justify it. The honorable member (Mr. Holder) pointed out that Victoria would derive a very large amount of revenue from the trade of Western Australia. Undoubtedly, any colony which trades with another derives a benefit from it. But both colonies derive a benefit. Western Australia will derive a benefit, I assume, from the trade which Victoria does with it, or else it will not undertake that trade.

Mr. HOLDER. -

And she will help to make up the loss.

Mr. TRENWITH. -

I interjected when the honorable member was speaking-"Would you ask to take out of ordinary trade profits some money to pay the taxes of another colony?" My honorable friend could not then see the application of the question, but I venture to say, if he urges that because we get the trade we should be prepared to make up the amount suggested in these proposals, he must imagine that the trade done gives more than fair trade profits, because he proposes, in fact, that we should take out of the trade profits, because of the advantage of that trade, something to pay taxes for the people of Western Australia. This, I venture to say, is altogether indefensible, and I hope will not be adopted. With reference to the question of the guarantee to the Treasurers, I feel that it is extremely important, particularly at the inception of this Federation, that the various Treasurers should know what they will get back. I think, therefore, that there should be a provision in the Constitution that a certain fixed and known amount, based upon what they have been receiving for some reasonable period before the change is made, shall be agreed upon, so that the respective state Treasurers may know exactly what they will have to receive from the Federal Parliament. That
seems to me to be desirable, and it is easily possible, without presupposing
that the Federal Parliament will know exactly how much they will raise by
the new system of taxation, because the Federal Parliament will have
borrowing powers, and if it should happen that the system or the degree of
taxation which it initiates does not bring in sufficient money for the first
year or two, it can pay the money over to the states, making fresh
arrangements in subsequent years by the re-adjustment of taxation to
recoup itself. It is while the states and the Commonwealth are gaining
experience in connexion with the matter, about which beforehand they can
have very little knowledge, that their financial arrangements should not be
unhinged, and if it is proposed by any means to give a guarantee to the
state Treasurers, I shall certainly feel bound to vote for it. Mr. Holder has
submitted a suggestion that he conceived some time ago, that nineteen-
twentieths of the revenue should be guaranteed to be returned to the
respective states in proportion to the amount they had contributed. He
showed some very good reasons for his suggestion. Mr. Holder's argument
upon the point was a very forcible one. The suggestion was made, I think,
in Adelaide, that some definite sum based upon the revenue which the
various Treasurers had been receiving for one, two, or three years previous
should be guaranteed to them for the first five years, in order that they
might learn how to make up the revenue, just as the Commonwealth
Parliament might learn how to adjust the

requirements of the Commonwealth. There is another point which I hope
will not be lost sight of, and that is the question of bounties. It is obviously
proper that the Federal Parliament, having control of Customs, should also
have control of excise and of bounties. But it does not seem to me to be
necessary that the Federal Parliament should be the only authority that
should provide for the payment of bounties. It is highly probable that there
will arise conditions within the states that will render it desirable that
bounties should be given for the development of certain forms of
industries, which bounties the states will be willing to pay, but which the
Commonwealth Parliament would probably not undertake, whilst,
however, the Commonwealth would see no objection to the states paying
them. Therefore I would suggest that there should be some provision-and I
hope that some of the lawyers in the Convention will formulate words that
will give effect to it-by which bounties may be paid by the respective
states, if they see fit to pay them, with the consent of the Federal
Parliament. Thus the Federal Parliament will have control and will have
the power to prevent any objectionable form of bounty, but the states will
also have the power to create a bounty for some special purpose which
probably the Commonwealth will not undertake, but which the state would perhaps think it desirable to undertake. I think, on the whole, that the financial proposals are the best that could be conceived the best, at any rate, that I can conceive and meet the necessities of the case. It is utterly impossible that we can definitely and accurately beforehand state what will be the financial conditions under the altered circumstances which we are about to create. And while I am distinctly in favour, after a reasonable period, of the *per capita* distribution of any surplus that there may be, I still see that there is great, force in the argument that we may trust the Federal Parliament to do its best according to the circumstances that may exist at any particular time. I also think it is desirable that the bookkeeping system which we are prescribing shall, if the Federal Parliament think proper, be continued. It may happen, even at the expiration of five years, that circumstances will have taught the Federal Parliament that the bookkeeping system has been so satisfactory that it may be continued for a year or two longer; or it may happen that experience will not have made sufficiently clear the state of affairs to enable the Federal Parliament to decide what system of redistribution should be adopted. It should be left, therefore, to the Federal Parliament, which we may reasonably assume will be as able and as honest as this Convention is, and which will certainly have more experience to guide it than we have to continue or discontinue keeping system as it may think proper.

*Sir JOHN DOWNER (South Australia).* -

I have not said anything in the course of this debate, because I was of opinion that everything that could be said had been said at our previous meetings. Having heard or read the debates that have taken place at this Convention, I am confirmed in my original opinion, because no fresh light has been thrown upon the subject by any of the speeches of honorable members who have preceded me. We have had a recognition of the difficulties which we all recognised before, and the position that faces us is, that we either have to come to the conclusion that federation is impossible, or that we shall ultimately have to trust the Federal Parliament to do what is fair and just. And we may, at all events, assume that the Federal Parliament will be as honest and as desirous of being fair as we are. For there is no question—it may be five years or it may be eight years hence—that the Federal Parliament will ultimately have to assume control, and that the Treasurers of the various states will ultimately have to trust to them in respect of the difficulties arising from the possible dissolution of local systems by the transference of the state powers of levying customs and excise to the Federal Parliament. It does appear to me to be on the face
of it illogical to assume that ultimately the Federal Parliament will not be fair and honest and desirous of doing what is fair and just to every state, or that it will do any injustice to any state. And so with regard to the argument as to extravagance. From my own point of view, I was always of opinion that the clause limiting the expenditure of the Federal Parliament should not be in the Bill at all. I thought it was a mistake. I thought there should be no guarantee upon this score, except the guarantee that is given by the very Constitution, and that guarantee rests not in the limitation of expenditure which we cannot define or apportion, but in the limitation of the subjects of jurisdiction given to the Commonwealth, and the impossibility of extravagant expenditure resulting from the limitation of the area of legislation and action of the Federal Parliament. There is the real guarantee. You must take it that the Federal Parliament will be fair and honest and intelligent, and that they will do what is right and just to everyone concerned. But it will be said-"What guarantee have we that the Federal Parliament will not be extravagant in their expenditure?" I say that the way to provide against that is to give the Federal Parliament only such subjects in the control of which they cannot be extravagant in their expenditure; and, if we are not prepared to give them these, we are not prepared to trust them at all. I want to know, however, where, in this Constitution, any great expenditure can come in, either in the first five, seven, or eight years, or at any subsequent time, except, possibly, it may be in regard to defence; and, as to that, no one will be desirous of limiting the expenditure of the Federal Parliament in case of need? That was the position which I took up in Adelaide when it was proposed that there should be a guarantee that the Federal Parliament should not expend more than a certain sum. The proper limitation is to give the Federal Parliament only certain subjects within its jurisdiction, and not attempt to define its expenditure within that jurisdiction. I say, again, that we have ultimately to trust the Commonwealth Parliament, and should do so immediately. But it will be said that some provision should be made in order to satisfy the local Treasurers that they will not be placed in any great difficulties immediately. I suppose that the local Treasurers who take that view are actuated by the consideration that probably they will not be in office seven or eight years hence. The position, at all events, is quite unreasonable, for I say again that it is, on the face of it, illogical to say that you are going to trust this Federal Parliament ultimately with all jurisdiction given in the Bill, but that immediately you are going to raise cries of distrust. My view, therefore, is that the provision in the Bill - which is the same provision, practically, which we have had all through with the exception of the special treatment of Western Australia - is the only possible elucidation of the
difficulty. I should not have minded if we had left out the interim provision altogether. I should have been willing to trust to the Commonwealth at once, without this interval of time during which accounts have to be kept. But we have to keep in view the interests of the great cause to which we are devoted, and I, for one, am prepared to sacrifice my own views upon points of this kind for the purpose of securing public confidence. As to guarantees, I think they are impracticable. Try and frame them and work them out, and see if you can find any that will stand the test of serious consideration. We have had it shown that none can, and I am sure that we do not want to put on the face of this Bill a provision which purports to be beneficial to the people, and which is really only a delusion and a snare, pretending to give them something whilst giving them nothing, and possibly in its result hampering the freedom of the Constitution, that must be left largely to its own evolution. As far as the special treatment of Western Australia is concerned, I listened with pleasure, as I always do, to the Attorney-General of Victoria. There was great force in his speech. It sounded thoroughly logical. It only omitted to take into consideration the present circumstances of Western Australia. Western Australia is an old colony, and yet it is a new colony. In age, it is one of the earliest of the Australian colonies, but in development it is distinctly the latest. Even now it is in a state-I hope it will not prove one of transition—but in a state which affords no element of guarantee of what may happen in the future. Western Australia is decidedly asked to make special sacrifices that she cannot properly appreciate, but which the other colonies can appreciate. The other colonies—and I agree entirely with the few words that fell from Mr. Fraser, I think he put the matter well—all have their exports and imports, their mutual trade transactions, to assist them. Western Australia's transactions are all on one side, and her population is a transitory one at present, and not fixed. I can very well understand, therefore, that without any infringement of the logical principles which the Attorney-General of Victoria laid down, the intention of this Constitution being to do what is just and fair to all, the circumstances of Western Australia may admit of some special consideration. Are we offering Western Australia too much? Victoria, it appears to me—having listened intently to the arguments—has the least possible cause of complaint of any of the colonies, and even if Mr. Isaacs' contention were established, federation will be a vast benefit to Victoria. Western Australia undoubtedly gets all the advantage of this proposed special treatment, because, as Mr. Isaacs said, her people will get their goods more cheaply. That may possibly be so. The effect of this Tariff will probably be to limit Western
Australia in a large extent to local markets, and it cannot be said that she is giving up nothing to the Federation. What she does say is-"We will handicap ourselves, as far as our dealings with the outside world are concerned, for the sake of coming into the Federation." As to the general principle, I conceive that Western Australia is entitled to some consideration. With reference to the details of the scheme, I think that formulated by the Finance Committee is as good as any that can be got. If it is not, if it does involve a little more expenditure than an accountant who had all the figures before him might consider to be justified, are we to allow of any substantial delay in the founding of this great Commonwealth because of a question of whether £100,000, more or less, is to be paid here or there? I sincerely hope that this discussion, unless some honorable member has some new views to propound, will not be protracted to any great length. We have had the same subject before us at each meeting of the Convention. We have discussed it at great length. It has been shown to demonstration that nobody has any fresh light to throw upon it, and we have now reached a stage at which we ought to say yes or no to the question of whether we will have this scheme or not.

Mr. ISAACS (Victoria). -

With regard to clause 81, I quite agree with the honorable member (Mr. Barton) that the words suggested by Tasmania should go in, but I would draw attention to the fact that in its wording the clause will require considerable alteration. It is limited in this way, that the revenues and moneys are to form one Consolidated Revenue Fund, to be appropriated for the "public services" of the Commonwealth in the manner and subject to the charges provided by the Constitution. The charges, I take it, are found in the next clause.

Some of the provisions recommended in the Finance Committee's report are to the effect that a portion of this money is not to go to the public services of the Commonwealth, but to be returned to the states. I call attention to this, in order that the clause may be brought into harmony with whatever is determined with regard to the Finance Committee's report. Before sitting down I will express my acknowledgment to Mr. Holder for having put his points so clearly, ably, and well in reference to the difficulties I suggested in regard to Western Australia. The matter amounts to this, that Western Australia says that she will not make up out of her own people's pockets, and out of the benefits they receive, the amount necessary to recoup the Treasury, and that while she takes up that stand irrevocably, we are to yield to what we recognise as not logically
defensible. I do not consider that a fair answer. Western Australia ought to recognise the justice of the position, and to come into the Federation taking all the benefits and risks in the same way as the other colonies. If the losses of the Treasury are great, the benefits to her people individually are proportionately great. With reference to the scramble, I think it will be seen that there will be a scramble both in the five years immediately following the institution of the uniform Tariff, and afterwards. The only difference is that the scramble comes first in the one case, and afterwards in the other case. In the one case the efforts of the various states will be directed to securing such a Tariff as will afford, under the bookkeeping system, the surplus required to meet the necessities of the states. Mr. Holder put the position as ably and fairly as was possible, and I feel indebted to him for it.

Mr. BARTON (New South Wales). -

I understand Mr. Isaacs to suggest that the words "public service of the Commonwealth" are not sufficiently large to cover the proposed return to the states.

Mr. ISAACS (Victoria). -

Yes, I would like the honorable member to consider that point.

Mr. HOLDER (South Australia). -

I do not know what could be gained by inserting the words "and moneys." If the intention is to bring in the loan fund that would be a mistake. We should not confound the loan fund with the consolidated revenue.

The amendment was negatived.

The clause was agreed to.

Clause 82. - The Consolidated Revenue Fund shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, which costs, charges, and expenses shall form the first charge thereon; and the revenue of the Commonwealth shall, in the first instance, be applied to the payment of the expenditure of the Commonwealth.

Amendment suggested by the Legislative Assembly of New South Wales-

To omit all the words after "thereon."

Dr. QUICK (Victoria). -

I desire to draw the attention of the Drafting Committee and of the Convention to the words-

The Consolidated Revenue Fund shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, which costs, charges, and expenses shall form the first charge thereon.
I would ask the Drafting Committee to consider whether this would not form a permanent special appropriation of all the costs, charges, and expenses for the "collection, management, and receipt thereof." With these words in the Constitution would it be necessary to have an annual Appropriation Bill, including the cost of collection and management of the revenue? I am aware that in the main the wording of this clause has been taken from our Constitution Acts, and no doubt that accounts for its reproduction here. Some years ago, in a troublesome period in the history of Victoria, there was a strong party who contended with considerable force, and indeed I think there was strong legal authority in their favour, that these words constituted a special appropriation of all the costs and expenses of collecting and managing the consolidated revenue, and that therefore there was no occasion for an annual Appropriation Bill providing for the appropriation thereof. It is true that, by the subsequent clause 83, provision is made that no money shall be drawn from the Treasury except under appropriation made by law, but it might be contended hereafter that all the costs of collecting and managing the revenue are made special appropriations by the words contained in clause 82. I do not think it is desirable that any doubt should remain on this subject, and that it should be open to be said that there is a special appropriation of the costs, charges, and expenses of collecting and managing the revenue. All this money will be paid out of the consolidated revenue, and I submit that it ought to be paid and provided for by annual Appropriation Bills. No Treasurer and no authority whatever in the Commonwealth should hereafter be in a position, owing to any doubt as to the wording, to contend that the costs and charges of collecting and managing the consolidated revenue are permanent appropriations, and are withdrawn absolutely from the control of the Commonwealth Parliament.

Mr. BARTON. -

You say it was contended that an annual Appropriation Bill was unnecessary.

Dr. QUICK. -

Yes.

The amendment was negatived.

The clause was agreed to.

Clause 83. - No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law and by warrant countersigned by the Chief Officer of Audit of the Commonwealth.

Amendment suggested by the Legislative Council of Tasmania-

To omit the words "countersigned by the Chief Officer of Audit of the
Commonwealth," with a view of inserting the words "as the Parliament may direct."

The CHAIRMAN. -

The Finance Committee also suggest the omission of all the words after "law."

Mr. BARTON (New South Wales). -

I should like to take the opinion of the Convention upon the suggestion made by the Finance Committee. The object is to do away with the necessity of having a warrant countersigned by the Chief Officer of Audit of the Commonwealth. I think these words were first inserted in Adelaide. At any rate, the clause was amended in Adelaide, and the intention all along was that there should be some officer whom the courts could take hold of in the event of a breach of the Constitution. An honorable member has suggested that this end could be well served by passing a Bill. I am not so sure of that. I am not at all sure that it would not be desirable to fix in the Constitution some person to perform these special acts who could be dealt with by the court by way of mandamus and injunction. I would suggest, therefore, to the committee, that at this stage it would be rather unwise to leave these words out of the Bill.

The CHAIRMAN. -

I am reminded that, inasmuch as this is not an amendment suggested by a Legislature, it ought to be moved by someone.

Mr. BARTON (New South Wales). -

I did not propose to go much further with business before lunch, because the chairman of the Finance Committee will be here then, and he can move any amendment he desires. I have a copy of the amendments, but I think they ought to be left to the Finance Committee; I am not in charge of the finance provisions in any way. While generally agreeing with them, I think any information could be best expounded by the chairman.

Mr. ISAACS. -

These were words put in in Adelaide?

Mr. BARTON. -

Yes.

Sir GEORGE TURNER (Victoria). -

In the absence of the chairman of the Finance Committee I will take the responsibility, and I beg to move-

That the following words be omitted:-

"and by warrant countersigned by the Chief Officer of Audit of the Commonwealth."
The Finance Committee considered that it was quite sufficient for us to say in the Constitution that no money shall be drawn from the Treasury of the Commonwealth except under appropriations made by law. Then we leave it entirely to the Federal Parliament, as the exigencies of the case may, from time to time, require to pass a law providing all the necessary ch

Sir JOHN DOWNER (South Australia). -

The Drafting Committee, who were, I think, responsible for these words, very carefully considered the relative conditions of the Legislature in America and as they will be in this Commonwealth under the Crown. They inserted this clause so as undoubtedly to give the High Court jurisdiction over some body or other, and by that means prevent an abuse of the Constitution.

Sir JOHN FORREST. -

What would they do with him? Would they put him in prison?

Sir JOHN DOWNER. -

They would prevent him acting, or they would make him act, as the case might be. In America this question could not arise. There the Supreme Court can enjoin anybody who invades the Constitution. There is no king or queen who cannot be enjoined, and on whom the Supreme Court cannot operate. In America the revenues are not in the hands of a sovereign, who cannot be enjoined or ordered. The American revenues are in the hands of those who can be served with a writ of mandamus.

An HONORABLE MEMBER. -

They can be impeached.

Sir JOHN DOWNER. -

Yes, but they are also liable to other writs. The Drafting Committee may have arrived at an erroneous conclusion, but we gave the best that we could. We did not take the view of Sir George Turner that there need not, of necessity, be an officer of audit; we rather thought, as a matter of course, that business could not be carried on without an Audit department, and we thought that in the Audit-office all would not be equal, but that there would be a chief officer. Probably in a clumsy way, but in the best way we could think of, we endeavoured to provide machinery so that the Constitution should not be set at defiance even by the Crown.

Mr. HIGGINS. -

How would this give more power than exists at present?

Sir JOHN DOWNER. -

By naming a person who can be enjoined. You cannot enjoin the Crown.

Mr. ISAACS. -

Was it intended to guard state rights?
Sir JOHN DOWNER. -
It has nothing to do with state rights; it is to guard the Constitution.

An HONORABLE MEMBER. -
It is to give control over expenditure.

Sir JOHN DOWNER. -
It is intended to give the High Court the authority which the Supreme Court in America has to prevent invasions of the Constitution, but upon a proper application.

Mr. HIGGINS. -
The court has that power even if it is not mentioned.

Sir JOHN DOWNER. -
The court has to be set in motion by somebody, and there must be somebody to command. Under the colonial law at present, you could not issue any prerogative writ against an officer of the Crown.

Mr. HIGGINS. -
If he is doing an illegal act, you can enjoin any officer.

Sir JOHN DOWNER. -
I would not like to state that proposition so broadly as my honorable friend does. On the contrary, my experience being more under common law than equity, and those writs having more regard to common law, I may say that I have found the greatest difficulty in discovering whom to fire against. I found the question of the Royal prerogative standing very much in the way. In many proceedings we have found it almost impossible to discover whom we should go against. At all events, that was the point of view that operated in the minds of the Drafting Committee in inserting this clause. It had no relation to local rights or influences.

Mr. HIGGINS. -
Is it not your object to fire against or to prosecute the man who pays the money and not the man who audits the accounts?

Sir JOHN DOWNER. -
We want to prohibit the man who pays the money wrongly.

Mr. BARTON. -
And to prevent a person giving authority to pay the money.

Mr. HIGGINS. -
The audit comes after payment.

Sir JOHN DOWNER. -
No doubt, but we wanted to enjoin at the very earliest possible stage, and that was at the stage when the direction was given to pay the money. If honorable members can suggest any better way of doing the same thing, or,
if they do not see the difficulty, I shall be glad to hear them, but there are difficulties, and we thought of many instances where a coach and four might be driven through the Constitution, by reason of there being nobody whom the Queen's Court of Australia—that is, the High Court—would be able to exercise jurisdiction over. We do not consider that this is a matter of form at all; it is one of great substance.

Sir JOHN FORREST (Western Australia). -

It seems to me this provision is unnecessary. I do not see why the expenditure of public money under the Federation should not be governed by the same rules as under the British Constitution, or the Constitution of any state. To propose that the High Court should have control over financial operations is impracticable and absurd.

Mr. BARTON. -

That is not proposed for a moment.

Sir JOHN FORREST. -

I understand that that will be the case if money is spent without legal authority.

Mr. FRASER. -

Unauthorized expenditure.

Sir JOHN FORREST. -

According to this provision the Treasurer of the colony, or the Governor, if this money were paid under the Governor's warrant, could be brought up before the High Court. If that is the intention it is ridiculous.

An HONORABLE MEMBER. -

Do you think that they ought to be able to spend all the money they like?

Sir JOHN FORREST. -

Yes, subject to the control of Parliament; Parliament will take care of the matter, as it does now.

Mr. HOWE. -

Suppose Parliament is told that the money is spent.

Sir JOHN FORREST. -

They will be told that. It is no use trying to frame a Constitution which will not work. Suppose a great disaster came upon, the country—say an invasion by a foreign enemy—would the first thing that the Treasurer would do be to call Parliament together to get authority for the expenditure? No; he would authorize the expenditure at once, and rely upon Parliament to approve of what he did. That is what is done now everywhere, and I am certain that it is impossible under our form of government to carry on business unless that is done. Of course if things are in a very quiescent condition it may not be necessary to spend money without authority.
Mr. BARTON. -

It would be breaking the Constitution to spend money without authority.

Sir JOHN FORREST. -

Of course that is the case, and the honorable member, who has been a member of a Government, knows that there is no Government in Australia which has ever been able to carry on without doing so. It has to be done under every Constitution. The Government must be trusted, and the Government under this Constitution will have to be trusted. You may make the law as rigid as you like, but Governments will break it, and will have to do so unless they are unfaithful to their duties. I am not an advocate for spending money without authority, but I know it has to be done, and it is for Parliament afterwards to say whether those who spend the money shall or shall not continue in their positions. To state in this Constitution that the Treasurer or the Governor may be brought up before the High Court to answer for their doings with respect to the public expenditure is ridiculous, and it would not be tolerated by Australasia. At present the Government has to answer to Parliament, and Parliament only, and I hope that in this Constitution we shall continue that plan.

[The Chairman left the chair at one o'clock p.m. The committee resumed at four minutes past two p.m.]

Mr. MCMILLAN (New South Wales). -

The weight of argument is in favour of these words being struck out. The history of audit shows that the Auditor-General is the servant of Parliament, and not of anybody else; and it seems to me that, to make such a rigid rule in the Constitution as this, would be entirely against all the views we have generally held with regard to financial matters. Of course, Parliament might make provision for a very large advance account, which would be available under certain conditions, but, on the other hand, it would be very unwise to make an advance account which was more than necessary for ordinary circumstances. As honorable members know, we do not expect that the Federal Parliament will be sitting all the year round. The Parliament might be sitting for three months in the year, and during the remaining nine months the whole country might be in a state of convulsion through foreign invasion, or internal dissension. Therefore, to say that the Government should have no right to distribute funds for certain urgent and unforeseen necessities would be against all common sense, and, after all, finance is business, and business is common sense, and depends upon the conditions and exigencies of the moment. Again, it appears to me that the interpretation of this clause would practically make the Auditor-
General an officer of the Supreme Court. He would be, to all intents and purposes, practically an officer of that court, and he would be raised above parliamentary control, and above the control of the Executive, a thing which, I think, is absolutely foreign to our ideas of finance. Again, as has often been said in this debate, the system of responsible government in this Constitution alters entirely the view with which we must look upon most of the questions that are concerned. Moreover, we must recollect that we are not making a Constitution whose finance will have to deal with the mere parochial state. We are making a Constitution for the Continent of Australia, which will, in course of time, be a great nation, practically independent, and, therefore, we must make it sufficiently elastic to enable the Federal Parliament, or the Executive, to act rightly and rule justly. I must say that, at first, I did not see this clause in the light in which it has been recently exhibited; but I find that, in this Convention, a layman is always learning law, and we never know the legal bearing of a clause until it has been exposed by a learned member of the profession. I think it would be better, in this matter, to leave the Constitution elastic, and to trust to the common sense of the Federal Parliament.

Mr. CLARKE (Tasmania). -

The argument of the last speaker shows, to my mind, conclusively the necessity that exists for a great many lawyers being included in every Convention of this sort; because my honorable friend (Mr. McMillan) has just admitted that, until a clause is explained by a leading lawyer of the Convention, very few members of the Convention know the meaning of it.

Sir GEORGE TURNER. -

And after it has been explained by two, none of us know the meaning of it.

Mr. CLARKE. -

I have listened very attentively to the speeches of Sir John Forrest and Mr. McMillan, and to those of a number of other honorable members, and it seems to me that the main reason that they are against the retention of these words is that they would militate against the due carrying on of the affairs of the Commonwealth in a case of great national emergency. Now, I freely admit that—as has been stated by Sir John Forrest—in England, in cases of great national emergency, the Government has not looked at all to the law of the case, but has done what it thought was right, and afterwards looked to Parliament to condone its illegal action. In a Federated Australia, if any such case arose, the Government of the Commonwealth would do the same thing, and would look to the Federal Parliament to absolve them.
afterwards from the illegality of their action. But I would point out that the words that are inserted here are not intended to apply solely to cases of great national emergency, but to apply also to times of peace; and in times of peace, when there is no great question agitating the nation, why should the Constitution which we are now framing not be rigidly and religiously observed? I advocate the retention of the words, because they will secure the observance of our Constitution, and the carrying out of our laws, during the greater portion of the life of the Australian nation, because we must recognise that the Australian nation which we are about to found will be a nation that will have a far greater period of peace than of war; and, therefore, as we look forward to times of prosperity and peace, I think the law ought to be observed. In my opinion, the words should be retained, because they will secure that the Constitution which we are now founding will be observed in one of the most important matters—monetary matters and I therefore advocate the retention of the words.

Sir PHILIP FYSH (Tasmania). -

If the honorable member who has just spoken had had some practical experience in dealing with Audit Commissioners, and with the rigid terms of Acts of Parliament, he would have discovered—as I find, from the speeches of honorable members who have held Executive offices, that they have discovered—that the rigid construction or rigid drafting of a Constitution like this, making the Auditor-General what the press sometimes calls him, "the watch-dog over the Administration," is not only exceedingly inconvenient, but may at times result in very serious mischief.

Mr. DOUGLAS. -

How is that?

Sir PHILIP FYSH. -

I do not know anybody more than the honorable member who has just interrupted me who has, in his periods of office, had to act more on Ministerial responsibility rather than on a rigid interpretation of Acts of Parliament. I have heard him say, and have rejoiced at his saying it, that as a public man, administering the affairs of a Government, he would do what he thought was right—what he thought was absolutely necessary in the exigencies of the occasion—rather than look to see whether he could get the Audit Commissioner's warrant. Having to obtain the Auditor-General's warrant may, under some circumstances, lead to serious difficulty; and an Administration which was weak and timid enough to be afraid of taking the responsibility might be confronted, from time to time, with emergencies which called upon them
concerned, even although they might have to appeal to Parliament thereafter to support the action they had taken. In my own experience, we have been confronted in Tasmania with small-pox; and, had we rigidly adhered to any such a clause as this, which might be in the Constitution Act, in the Audit Act, or in the Audit regulations, we should have left that foe to find its own way through the people, and have altogether disregarded the responsibility which should attach to administrative functions.

Mr. CLARKE. -

But you observed the law.

Sir PHILIP FYSHER. -

We observed the law by asking Parliament to absolve the Administration from the consequence of its breach of the law.

Mr. ISAACS. -

"The safety of the people is the highest law."

Sir PHILIP FYSHER. -

Why should we place a detail of this nature in the Constitution—a detail which it was formerly supposed was provided for by the local audit regulations or would be provided for by a Commonwealth Audit Act which must be passed? When the Commonwealth Parliament frames an Audit Act, it may perhaps be inclined to insert some such provision with regard to the authorities who shall sign warrants for the payment of moneys as we are now discussing. It occurs many times in every year that Treasurers are called upon to take the responsibility of issuing cheques, although the Auditor-General may have reported that there was no special fund against which such cheques could be charged. Why insert in the Constitution a provision which must be broken by many a strong Administration for the benefit of the public, while a weaker Administration will have to observe the law to the injury of the public? I have observed that the members of the Drafting Committee have from time to time contended that the Constitution is a matter of great principles. It is the contract between all the parties to the union, and to insert in such a contract some such detail as that the Auditor-General should sign a warrant before a cheque is issued appears to me to be doing something which it is unnecessary to do. If we insert such a provision we shall only load the Constitution, and embarrass the Ministers who will have to act under it. Let me repeat that a strong Administration will always disregard a provision of this kind, and obtain the support of Parliament for its action. Every one who has undertaken Ministerial responsibilities must know that many cases occur in which one feels it to be his duty to give instructions for the issue of cheques, even where the Auditor-General's signature cannot be procured. This difficulty is overcome by the audit regulations themselves. Men make provision for
the observance of the law, but they find it equally necessary to make provision for the non-observance of the law. Hence we have emergency votes, votes with respect to lapse of time, and votes with, regard to an excess of appropriation. I am not aware of any Parliament in Australia that has checked an Administration with regard to its Supplementary Estimates, except when there has been some extravagance bearing evidence of neglect of the public interest. I am perfectly convinced that the proposed restriction is inadvisable, and I trust that the recommendation of the Finance Committee will be given the weight to which it is entitled.

Mr. ISAACS (Victoria). -

The object of having these words in the clause is to enable any person who thinks that the money is about to be drawn from the Treasury illegally to go to the Supreme Court and obtain an injunction against the responsible officer of the Commonwealth. I am afraid that such a provision would strike a serious blow at responsible government, and would introduce in a very violent form what is complained of frequently, and in an increasing degree, in America-government by injunction. If we are to intrust to the Federal Parliament such enormous powers as those which they will have in respect to the collection of revenue, surely we can trust them to see that the money when appropriated by law is properly disbursed. No Ministry could live for an instant if it did anything against the will of Parliament. I think these words are wrong in principle. I also think that occasions might easily arise when it would be impossible to draw one shilling from the Treasury if a complaint were made to the Supreme Court. For instance, if the Chief Officer of Audit happened to be ill or away no other person could do his work. It would be impossible to pass an Act of Parliament to substitute any one for him. So long as he lived and retained his office his warrant would be indispensable. If you provide that the Commonwealth Parliament may get over the difficulty by appointing some one else, you make the provision useless, because Parliament would say-"We will have a Chief Officer of Audit, but we will give him such a tenure of office as will enable the Ministry to dispose of him whenever they like." You would then have an officer filling a most responsible position without any security of tenure. On the other hand, if you gave him security of tenure, such as the Judges or our Commissioners of Audit have, you might, under conceivable circumstances, cause great difficulty to arise. Apart from these considerations, I think it would be a mistake in principle to introduce the provision. When we are introducing a system of government which shall resemble as nearly as possible the British Constitution, it is a mistake to fetter the hands of Parliament in
regard to what is after all a matter of machinery, and a matter which Parliament is specially charged to look after—the expenditure of the money of the Commonwealth.

The amendment was negatived.

Dr. QUICK (Victoria). -

I wish to suggest the addition of the following words to the clause:

But section 82 shall not be deemed to constitute such an appropriation.

During the adjournment, I have been asked by several honorable members to what event in Victorian history I referred in the few remarks I made dealing with the last preceding clause. I have just hunted up the papers, and I find that that clause is exactly upon all-fours with section 45 of the Constitution Act of Victoria, which is as follows:

The consolidated revenue of Victoria shall be permanently charged with all the costs, charges, and expenses incident to the collection, management, and receipt thereof, such costs, charges, and expenses being subject, nevertheless, to be reviewed and audited in such manner as shall be directed by any Act of the Legislature.

Section 46 of the same Constitution Act then goes on to provide for certain other special appropriations, beginning with the words:

There shall be payable in every year to Her Majesty, her heirs and successors, out of the consolidated revenue of Victoria, &c., &c.

Upon the construction of that section a dispute arose in this colony in the year 1865, and the then Governor (Sir Charles Darling) invited the opinion of the Crown law officers, George Higinbotham and Archibald Michie, two distinguished constitutional lawyers, upon it. He put this question to them:

1. Is not the 45th section of the Constitution Act in effect an appropriation of the amount of "all the costs, charges, and expenses incident to the collection, management, and receipt of the revenue," such expenditure to be reviewed and audited as directed by the Legislature?

Then he goes on to express his own opinion. He also asks:

Is there any practical or legal difference between the words "The consolidated revenue of Victoria shall be permanently charged," and the words "There shall be payable in every year out of the consolidated revenue of Victoria"?

The words "There shall be payable to the Queen, out of the consolidated revenue fund of the Commonwealth," occur in two sections of this Federal Constitution—the sections providing for the Governor-General's salary and the section providing for the salaries of Ministers of the Commonwealth.
These words are similar in appropriating force to the words "The consolidated revenue shall be permanently charged." That was why the Governor of the day asked if there was any practical or legal difference between the two sets of words. I will now invite honorable members' attention to the opinion of the Crown law officers, which is dated September, 1865, and which will be found at pages 947 and 948 of vol. 2 of Papers presented to Parliament by command during the session of 1878:-

We are of opinion that the 45th section of the Constitution Act is in effect an appropriation of the amount of "all the costs, charges, and expenses incident to the collection, management, and receipt of the revenue," such expenditure to be reviewed and audited as directed by the Legislature. We are confirmed in this interpretation of the 45th section by the very plain and unambiguous language of the 55th section, which, referring, amongst others, to the 45th section, runs thus: "After and subject to the payments to be made under the provisions hereinbefore contained" (not under the provisions of any Appropriation Act)," and to any pensions now payable, &c., "all the consolidated revenue arising from taxes, duties, rates, and imposts levied by virtue of an Act of the Legislature, and from the disposal of the waste lands of the Crown, shall be subject to be appropriated to such specific purposes as by any Act of the said Legislature shall be provided in that behalf." . . It follows from the above that no annual Appropriation Act would appear to be necessary for enabling the Government to pay the costs, charges, and expenses incident to the "collection, management, and receipt of the revenue."

Referring to the point as to whether there was any difference between the two sets of words which I have already quoted, they say -

It is not very easy either to apprehend or express the difference, if any there be, between the words "The consolidated revenue of Victoria shall be permanently charged," and the words "There shall be payable every year out of the consolidated revenue of Victoria."

**Mr. BARTON.** -

Do the words "permanently appropriated" occur in the Victorian Act?

**Dr. QUICK.** -

No; "permanently charged." I hope the time will never come when any Ministry will endeavour to act upon such a special appropriation, but I suggest this addition to the clause to remove doubts about the construction of words about which there can undoubtedly be a difference of opinion. I am sure that no member of the Convention desires that the Constitution should contain a permanent appropriation of all the salaries of the public servants engaged in the collection and management of the revenues. If the
words which I propose to add do not quite meet the occasion, I would ask the Drafting Committee to take the matter into their consideration.

Mr. BARTON (New South Wales). -

Perhaps it would be better to leave the matter for the consideration of the Drafting Committee. I have taken down the words of the honorable member's suggestion, and we will consider them very carefully Dr. QUICK. - In view of the honorable member's promise, I will not move the amendment I intended to move.

Mr. GLYNN (South Australia). -

Does not the leader of the Convention think it desirable to provide for the establishment of the office of Commissioner of Audits? The reason for the provision recently suggested, but which was struck out, was that there was no check provided in the Bill upon the expenditure of the executive officers of the Commonwealth. The question still remains to be decided whether there should not be such a check. At present, I understand, there are Commissioners of Audit in all the colonies, and they hold office upon practically the same terms as the Judges. The states are interested in the expenditure of the Commonwealth Executive just as much as is the Commonwealth Parliament, because the amount to be returned to the states depends upon the character and the extent of the expenditure of the Commonwealth Executive. A check is provided in America by a regulation which requires the publication of a return showing the receipts and expenditure; but, inasmuch as we have no provision of that kind, would it not be advisable to make arrangements in some part of the Bill to give protection to the states and to the Commonwealth by the establishment of Commissioners of Audit?

Mr. BARTON. -

The honorable member suggests that provision should be made for audit and review?

Mr. GLYNN. -

Yes. No doubt such a provision would be out of place here, but it might be put in as a separate clause at the end of the chapter dealing with finance.

Mr. BARTON. -

I will see that the matter is taken into consideration.

The clause was agreed to.

Clause 84. - The Commonwealth to have exclusive power to levy duties of customs and excise, and offer bounties after a certain time.

Mr. BARTON (New South Wales). -

Honorable members will notice that the Finance Committee suggest that
a paragraph be taken out of clause 84 as it stands, and erected into a separate clause, which I think a very convenient arrangement. They also suggest several other amendments, and I should like to know from you, Mr. Chairman, what would be the correct way of dealing with them? I should like to know whether we should make the suggested transfer now, and then move the amendments which have been suggested, or move the amendments first, and provide for the transfer afterwards?

The CHAIRMAN. -

I have considered the question. Although I had some doubts upon the matter at first, I now feel that we are bound to consider the amendments suggested by the local Parliaments. Clause 27 of the Victorian Australasian Federation Enabling Act—and all the other Parliaments have passed similar Acts—is as follows:—

On the re-assembling of the Convention, the Constitution as framed prior to the adjournment shall be reconsidered, together with such suggested amendments as shall have been forwarded by the various Legislatures, and the Constitution so framed shall be finally adopted with any amendments that may be agreed to.

I do not think we can be said to have considered the suggested amendments of the local Parliaments if they are not put from the Chair, and, therefore, although it may perhaps take a little more time, I think it would be better to follow the course we have adopted from the very first, and deal with the amendments as they occur. When the question is put—"That the clause as amended stand part of the Bill," the committee will be at liberty, if they think fit, to strike it out, and put in its place any other provision which they think would be more suitable.

Sir GEORGE TURNER (Victoria). -

It seems to me that that course, sir, will necessitate our going over the ground a second time. Would it not be competent for an honorable member to move that all the words after the first word of the clause be omitted with a view to the insertion of other words? That would render it unnecessary to put amendments suggested by the local Parliaments from the Chair.

The CHAIRMAN. -

I do not think that the course which we have hitherto adopted will take much longer than the course which the honorable member suggests, and I think it would be better to continue the existing arrangement.

Mr. BARTON (New South Wales). -

It will be competent for honorable members to move their own amendments in the intervals between the amendments suggested by the various local Legislatures. That being so, I beg to move—

That the words "After uniform duties of customs" be inserted before the
word "The" (line 1).

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "the sole power and authority" be omitted, and that the words "exclusive power" be substituted.

The amendment was agreed to.

Mr. ISAACS (Victoria). -

I should like to learn exactly, if I can, the meaning of the words "subject to the provisions of this Constitution." Are we providing definitely that Parliament is to have the exclusive power of doing this, or is that power limited by anything?

Mr. BARTON. -

That is a provision which has remained in the Bill all the time.

Mr. ISAACS. -

It is; but when you talk about exclusive power, you make it subject to something else.

Mr. BARTON (New South Wales). -

It is provided elsewhere in the Constitution that duties of customs shall be uniform. That is one thing that would necessitate the interpolation of some such words as those to which the honorable member has alluded. I beg to move the omission of the words "customs duties, to impose duties," and the insertion of the words "duties of customs and" in lieu thereof.

The amendment was agreed to.

Amendment suggested by the Legislative Assembly of Victoria-

Omit "and to grant bounties upon the production or export of goods."

Sir GEORGE TURNER (Victoria). -

I do not know that I desire to take away from the Parliament the power to grant bounties, but I do desire to continue in the state the power to grant bounties which the Federal Parliament think are not unwise, unjust, or unfair to other states.

Mr. DEAKIN. -

Not unfederal.

Sir GEORGE TURNER. -

It has been suggested that if the state retains the power to grant bounties it might, under that power, negative, to a great extent, the benefits of intercolonial free-trade. We do not want to do that, but we do know that in some of our colonies, more especially in the colonies of Victoria, South Australia, and probably also Tasmania, it is absolutely necessary, for the
well-being of our farmers and producers, that the state should come to their assistance, and help them in the early stages of their industries. And if we are not prepared to do that we will kill many industries which we really desire to foster and encourage. We none of us desire the states to have a power which will enable them to take away the benefits of intercolonial free-trade, which we all desire to see embedded in the Constitution, but I feel that we are in this difficulty, that unless we can show many of our producers and our country people that they are in a position where they may obtain the benefit of help from the state, they will say "We know our position as it is, but we do not know what our position is going to be under this Commonwealth, and so we will have none of it." That is the plain language in which many of those interested in the continuation of these bounties put their case at present, and I believe it will be put in stronger and more forcible language when this question is being discussed by the people. Now, in our colony, and indeed in all the colonies, every vote is of importance, and we should not put against federation individuals, or, as I believe we are doing here, a considerable section of our people. Why should we not—if we choose, and can do it without injustice to other states—encourage production among our own people? Why should we not encourage them to enter into new industries, which will be beneficial to them and to our colony? I think we shall be doing a gross injustice to a large number of our farming and producing classes if we take away from the state the power to grant these bounties, and vest that power in a body before which they will not have the same opportunity of bringing their claims as they have before the local Parliament.

Mr. DOBSON. -

With the exception of bonuses to mining, what bonus could any state give without interfering with free-trade?

Sir GEORGE TURNER. -

I cannot say at the present moment what industries there might be to which bonuses could be granted by a state without injuring some of the other colonies, but because we cannot tell at the present moment what industries may be established with benefit to those engaged in them, and with advantage to the state, it does not follow that in years to come industries may not arise that can be fostered by means of bounties, in, say, Victoria, without injuring the other colonies. We have such industries as the oil industry—I do not know how that would affect Tasmania or South Australia. We undoubtedly have developed the butter industry by means of bonuses, and other colonies are now following our example. We commenced to develop that industry by the grant of bounties,
and having developed the trade, having opened it up, other colonies stepped forward and said: "We are glad you have opened up this trade, and we are going to follow in your footsteps." No doubt until the trade was opened up the necessity for bounties in other colonies did not exist, but if Queensland or Western Australia thought that by giving a bounty they might, within their own borders, develop an export trade with other countries without in the slightest degree injuring any of the colonies in the Federation, why should they not be able to do so? It would be somewhat difficult for the various colonies to bring all their respective claims before the Federal Parliament, which will have a large amount of work to do, more especially at the commencement, in dealing with such questions as the Tariff, the division of the surplus, and so on, and probably it will put off, from time to time, dealing with matters which affect only one colony, or, it may be, perhaps two. I fail to see why we should take away from any of the colonies the power to grant bonuses, so long as that power is not used in such a way as to injure other states in the Commonwealth.

Mr. DEAKIN. -

Leaving the Federal Parliament supreme.

Sir GEORGE TURNER. -

I am perfectly prepared to leave the Federal Parliament supreme to decide whether injustice is or is not being done. The idea which I have formed as to what we ought to do, is to add

Provided that any state may grant bounties for the protection of agricultural, horticultural, viticultural, or dairying industries, subject to the same being at any time annulled by the Federal Parliament.

I am not going to say that these are the words which the draftsman would use, but they embody the ideas which have been passing through my mind on the questions which have been brought before me by a large number of country representatives, who say that unless some such provision is made it will be very hard, seeing the other difficulties which they have to contend against, to get country people to vote for the Bill. No doubt the last words of my amendment would create a risk, but that risk you must be prepared to take in the colonies.

Mr. DOBSON. -

Ought you not to go further and get the authority of the Federal Parliament to grant them?

Dr. COCKBURN. -

No, you won't get that.

Sir GEORGE TURNER. -

No. I do not want the words for that, because there is full power already in the Bill for the Federal Parliament to grant bonuses and bounties. They
must be uniform, so that every colony would have an opportunity to come and take advantage of them. Of course the Federal Parliament has to pay the bonuses. What we are anxious to get, in the interests of many country producers, is that the state shall have the power to grant these bounties, finding the money out of the state revenue independently of the Commonwealth, and doing that only so long as the state is not injuring the Commonwealth.

Mr. DOBSON. -

Ought you not to get the federal authority first to say whether your bounty is legal or not?

Sir GEORGE TURNER. -

If we had to wait until we could got federal authority, we should be in the position of a private member who is trying to get a Bill through the local Parliament, session after session, year after year. The people would get sick and tired of waiting, and take their labours in some other direction. We are taking away from our people in Victoria, by uniform customs and intercolonial free-trade, a tax which, in some of the colonies, is looked upon as obnoxious, but which, by many of our producers, is looked upon as their salvation. We are also doing many things which our country people do not like. I therefore think, if we possibly can, we should conserve their interests to some small extent. What I ask for is very little indeed. It is simply that the state may have power to do it so long as it is doing no injustice to the Federal Parliament or to the rest of Australia.

Mr. DOBSON. -

Suppose that Parliament did annul it, your traders might have had six months' benefit of it.

Sir GEORGE TURNER. -

They might have, but my honorable friend will see that the state Legislature and the Government of the state would be very careful and cautious, with these words in the Bill, to ascertain as fully as they possibly could that the bounty they were about to grant would not do an injustice to the rest of the Commonwealth.

Mr. DOBSON. -

Care and caution should be exercised by the federal authority, not by the local authority.

Sir GEORGE TURNER. -

If we want to do that there is ample power for that purpose in the Bill, and I do not want these words. But in consideration of the time which it would take to get the authority of the Federal Parliament to deal with the
question, I am most anxious to allow the state to proceed with these bonuses till the Federal Parliament chooses to step in and stop them. Just as under clause 52 we allow the state to continue to legislate on certain questions, till the Federal Parliament steps in and prevents them from going any further, so here I claim as a right for our producers, whose interests must be considered, that they ought to have some such provision as this in the Constitution Bill.

Mr. OCONNOR. -

I quite sympathize with the position of the right honorable member (Sir George Turner), and I can well understand that there is a great deal of valuable support which might be conciliated by an amendment of this kind. But, at the same time, we are all more or less in the same difficulty in regard to these matters, and the very amendment he suggests, which might be such an aid to him, would be a very great obstacle to us in New South Wales. I speak of New South Wales only as an example, but I take it that one of the main benefits we all anticipate from this federation is that trade shall be freed from shackles and impediments of every kind, and that producers shall be put on an absolute equality, so far as they can be placed on air equality, throughout the Commonwealth. Now, what position are these persons in who have had the advantage of this bounty system up to the present time? Under the Bill as it stands, all bounties granted before the 30th June will inure, and the persons who are benefiting now will benefit to the fullest extent by the time that uniform duties of customs are imposed. Under ordinary circumstances, I suppose it is hardly possible that uniform duties of customs can be imposed before, say, two years after the establishment of the Commonwealth—it cannot be very much less than that period. During all that period there will be a notice to those who are holding these bounties, and benefiting under them, that this assistance will come to an end at the end of two years. And in addition to that, immediately that uniform duties of customs are imposed those persons, in common with the rest of the producers in the Commonwealth, will have the advantage of having the whole of the Commonwealth for a market instead of a portion of it only. Therefore, those who have been in the position of receiving a benefit from these bounties will have the benefit taken away, not by any sudden process, but by a gradual process, of which they will have notice, and in exchange for them they will have the advantage at once of the enlarged market which the freedom of trade necessarily produced under this Constitution will give them. But I would like to ask the right honorable member how it is possible that bounties upon any of the kind of products
be mentioned could be imposed without affecting the position of producers in other parts of the Commonwealth? The right honorable member used the word "injustice," but whether the bounties are operating unjustly or unfairly is not the test. You cannot say that they are operating in that way, perhaps; but at the same time they may be taking away from the producers of the Commonwealth one of the very advantages which was the consideration for their entering into the Federation.

Mr. HIGGINS. -
Suppose you can grow a thing in Tasmania, and you cannot grow that thing in New South Wales or Queensland, How then?

Mr. OCONNOR. -
In the case the honorable member puts, I dare say the operation would not be of very much moment; but take the much more common case of an article which may be produced anywhere in the Commonwealth. Does the honorable member believe for one moment that, taking an article of common production, if you give a bounty for its production here, and there is no bounty given for its production in the rest of the Commonwealth, the person who gets that bounty is not put in an advantageous position as against every other producer of the same article in the Commonwealth.

Mr. DEAKIN. -
The Federal Parliament will simply annul it.

Mr. OCONNOR. -
I will point out to the honorable member in a moment that no person in the Commonwealth ought to be put in the position of having to go to the Federal Parliament, and carry a Bill through that Parliament to declare an injustice, and thereby stop something which ought never to have been done, according to the principles which are at the bottom of our union and our freedom of trade and commerce.

Mr. HIGGINS. -
Would not the courts stop it before the Federal Parliament acted?

Mr. OCONNOR. -
How could the federal courts stop it?

Mr. HIGGINS. -
If it was an interference with free-trade between the colonies.

Mr. OCONNOR. -
Not if there is an express provision in the Constitution that it shall inure till Parliament interferes Mr. HIGGINS. - That is too strong.

Mr. OCONNOR. -
I have held the belief all through our discussions that we ought to appeal to the court in these matters as little as possible. Keep your court only for the decision of solemn constitutional questions, and avoid, as far as
possible, placing before your court the decision of matters which may be merely matters of policy, as this would be. I think the honorable member will see that, unless you put some words into the amendment which would make the decision of the question whether a bonus is or is not operating unfairly, rest with the court, the court would have no jurisdiction to interfere, and I understand that the amendment of the right honorable member (Sir George Turner) proposes to let these bounties stand till they are declared by the Federal Parliament to be unfair or unjust.

Mr. HIGGINS. -

That goes too far.

Mr. OCONNOR. -

In answer to the interjection of my honorable friend (Mr. Deakin) just now-"Will they not be able to appeal to the Federal Parliament if these bounties are operating unfairly?" I say that they ought not to be put to that. There will always be a difficulty in carrying any measure of that kind through a Parliament. The vested interests involved in the maintenance of these duties no doubt are very large, and would operate exactly in the same way as other vested interests do in the obstruction of measures before the Parliament. No producers in any part of the Commonwealth ought to be put in the position of having to apply that remedy to do away with a state of things which is altogether contrary to the principles on which we enter the Federation. I am quite aware that some of the vested interests may be interfered with by taking this step, but, after all, are not vested interests interfered with all over the Commonwealth by the taking of this step, and is there any use in shivering on the brink of it? Must we not take it, and take it undoubtedly without inflicting any injury on vested interests more than is absolutely necessary? But, after all, is not the bold course the best course-to make up our minds that we are going to have freedom of intercourse right through the Commonwealth? That means not only that your custom-houses shall be done away with, but that every producer in every part of the Commonwealth shall be put on exactly the same footing in regard to the production and the sale of an article. That cannot be if these bounties are to be retained. The exceptions have already been made, and I think they are reasonable. The bounties will continue, as I pointed out, for two years. Bounties conferred after 30th of June, 1898, will be considered to be void, and the principle of the new clause, which is suggested amongst the financial clauses, is really the principle I am now advocating, that is to say, that there should be a notice to all producers in the Commonwealth that after a certain date they are to rely on the immense benefits which the opening of the whole of the markets of the
Commonwealth to every producer therein will give them, and that they are not to rely on any other assistance after that date. Let us follow the principle right down in the amendment of the Finance Committee. Let us make up our minds that the principle on which we are founding the Constitution—one of the first principles of our union, one of the first advantages we can take back to our people—is that it will give them freedom of intercourse and put producers in every part of the Commonwealth on exactly the same footing. Let us not depart from that principle. Let it begin to operate immediately uniform duties of customs are imposed, and do not let us put any producer in any part of the Commonwealth in the position of ever suffering an injustice which the giving of this bounty in any other part of the Commonwealth will inflict on him, or put him to the burden of asking the Federal Parliament to declare that a bounty is an injustice, and should no longer continue. The right honorable member (Sir George Turner) may see fit to press his amendment. I quite sympathize with his position and the difficulties he is in, but, at the same time, it appears to me that our best course is the bold course of making up our minds to stand by the principle which is embedded in the Constitution, and to give up the idea of any easing off such as he proposes.

Dr. COCKBURN (South Australia). -

I very gladly support the Premier of Victoria in this matter. I consider that he is taking a step which is absolutely necessary in the producing interests of Australia. Almost all the arguments of the honorable member (Mr. O'Connor) will be met by the inhibitory power which it is proposed to place in the hands of the Commonwealth. That will be sufficient to prevent any state from doing anything which is derogatory to the principles of equality of trade among the different states. I would like to point out that even the opening of intercolonial markets for the producer will not suffice to solve the problem that faces him, because it is well known that with any limit to the market there is always a liability to such a glut as practically spoils the enterprise of the producer, and takes away all hope of a profitable return for his labour. And it is just such fears as that, and in order to regulate production and afford a guarantee to the producer that he will have a reward for his labour, that render it necessary to make provision for export of surplus produce to the markets of the globe. And so with regard to our larger sphere of operations the same principle will obtain, and we shall have to make provision, not only for free interchange among ourselves, but also such provision as may be necessary to enable the producers jointly to exploit the world's markets.

Mr. HENRY. -
The Federal Parliament will do that.

Dr. COCKBURN. -

The honorable member has spoken of the difficulty of getting the Federal Parliament to exercise its inhibitory power when the principle of equality of trade is threatened by a bounty. How much harder will it be to gain the ear of the Federal Parliament when an industry is in its initiatory stages, and when the difficulties of production in a particular industry are only known to a part of the Commonwealth?

Mr. OCONNOR. -

It will not be difficult, because every citizen will benefit by the enlarged trade.

Dr. COCKBURN. -

We do not want to stifle the initiative of a state in reference to production. We want to have the full advantage of whatever the future has in store for us. We want to say to every producer:"Exercise your power of initiative and we will not hinder the states in helping you." To say that the states are no longer to exercise their power of initiative in this matter, but that the Federal Parliament is to take the initiative, is to postpone assistance to the producer to a day when that assistance will never be realized. Assistance to industries has to be given, beginning when they are commencing on a small scale. It is only on a small scale that you are able to prove the advantages arising from a new industry. And how can you expect to get a huge body like the Federal Parliament to interest itself in a small industry in the corner of a colony? For instance, the first colony that came forward and foresaw the advantage of stimulating the butter industry was Victoria, and the result has been beneficial not only to Victoria but to all the other colonies. The action that Victoria took with regard to the butter industry has been recognised throughout the continent as not only a good thing for that colony, but for all the group. But if the butter producers of Victoria had in the beginning had to prove their case to the Federal Parliament, the time for the stimulation of the industry by a bonus would probably not yet have come. It is, only by one colony proving that an export of this kind is advantageous that a general consent can be obtained. The experiment must be tried and proved successful on a small scale at first before you can get a large body of public opinion to support it.

Mr. FRASER. -

Has not the butter industry been established in Canada?

Dr. COCKBURN. -

I admit that something has been done there in the way of butter export and the establishment of creameries.

Mr. FRASER. -
More than we are doing.

Dr. COCKBURN. -

I question that. But I should like to know what colony has been injured by the initiative taken in the establishment of the dairying industry by Victoria? Instead of any of us being injured by it we have all benefited. Victoria has pioneered the way in this industry. The pioneers of any industry ought to receive some public recognition for their enterprise and expenditure, because the man who feels the way in the world's markets, and opens up a road into them, has a right to expect that you will give him some recompense for constructing a road on which all can travel with advantage. The difficulties in the way with regard to this matter will be got rid of by providing that the federal authority-I do not care whether it is the Federal Parliament or the Inter-State Commission-shall have power to inhibit any step taken by any of the states which may appear to be derogatory to freedom of trade. We want neither to do anything to stop the initiative of the states, nor to discount the great future of the Commonwealth with reference to freedom of trade between the states. With regard to the proposal made by the Finance Committee that there should be some power retained by the states of granting bounties providing agreements are made to do so before the 30th June next, I do not see that anything is to be said in favour of that provision which cannot be said in favour of inserting a general power in favour of the initiative of the states. The provision suggested by the committee would mean that the states which were favorable to the granting of bounties would probably endeavour to crowd into the next six months agreements for every form of bounty they conceived could possibly be of value to them; and that would be more derogatory to the principle of freedom of trade than the present proposal, because there would be no power on the part of the federal authority to inhibit them. If agreements are entered into before the 30th June next, no matter how hostile they may be to the principle of freedom of trade, they are to be sanctioned.

Mr. OCONNOR. -

They will be formed before the Constitution is established.

Dr. COCKBURN. -

But why should they be sanctioned simply because they happen to be entered into before the 30th June next?

Mr. OCONNOR. -

Because you cannot interfere with the freedom of the states to make these agreements, except under the provisions of this Constitution.

Dr. COCKBURN. -
You are offering a special inducement to the states to do what they can to institute bounties, although they may be hostile to the very principle of our federation.

_Sir John Forrest._

But the states will not do that.

_Dr. Cockburn._

But they will do it if this power be inserted; or, at all events, they may do it.

_Sir Edward Braddon._

That would show a very fine federal spirit!

_Dr. Cockburn._

Then do not place the states that want to retain the initiative in the development of the productive resources of Australia in such a position that they will be tempted to do such a thing. You say to the individual states—"No matter how anti-federal the agreements which you may enter into, we will allow them to be perpetuated if made before a certain date, but we forbid you in the future to do what may be legitimately necessary to develop your producing interests." I cannot see what objection there can be to allowing the states to grant bounties subject to the conditions that have been mentioned. I think the proposal is an eminently reasonable one.

_Sir John Forrest._

It would destroy intercolonial freedom of trade altogether.

_Dr. Cockburn._

Surely the right honorable gentleman can see that free-trade will not be destroyed if the Federal Parliament has power to intervene. The Federal Parliament will take care to maintain the principle of free-trade.

_Mr. Howe._

It will lead to the states putting on protective bonuses to operate against each other.

_Dr. Cockburn._

No, that is a mistaken view. We want to have nothing inserted in this Constitution that would enable the states to exploit one another's markets. I was going to suggest to Sir George Turner that this provision should be limited solely to exports outside Australian boundaries, and should not authorize bounties for trade within the Commonwealth. A good deal of the objection has arisen from the fear of honorable members that the local markets of one state may be glutted by imports under bounties from another state. There is no such intention, I am sure, in the mind of Sir George Turner. The object of the amendment is to encourage the formation of channels of trade to the world's market. No state can be injured by any action of another state which has this result. Each state
that takes the initiative in such a matter is forming an additional road to the world's market, upon which the federal authority may eventually find it desirable to travel. If you take away this power from the states you will find that the Federal Parliament will be too large a body to take the initiative itself. If you destroy the power of building the model on the small scale, you prevent the possibility of any great public work ever being executed. There are parts of Australia that are fitted to be the birthplaces of particular industries. The states in which these favoured localities are situated should be left to take such steps as may be necessary for the encouragement of these industries, so long as they do nothing derogatory to free-trade. Other states will follow their example, and by-and-by the Federal Parliament will find it to its interests to move in the same direction. Strike out this power of initiative on the part of the states, and you take away one of those powers that will make for the future greatness of Australia. This is an elastic power of development that should be retained, and that can be retained without the slightest risk of the violation of any of our principles. Sir George Turner's amendment will serve the purpose more effectually than the amendment proposed by the Finance Committee. I hope that the amendment, modified in such a way as to provide that the bounties shall only be granted on products exported to places outside the Commonwealth, will be carried. From the first, and both in Adelaide and in Sydney, I raised my voice in favour of this system, and I did so as one who, from the peculiar nature of the work he has to do as Minister of Agriculture, recognised the necessity of it. I hope that the Convention, not with any idea of getting the vote of the producing interest-not only with that view I will say, but with a view of leaving it open to the states to grasp the opportunities of the future will carry Sir George Turner's amendment.

The CHAIRMAN. -

Sir George Turner's amendment is not before the committee now. The amendment before us is to strike out the words "and to grant bounties upon the production and export of goods." If these words are retained that will settle the matter. Perhaps Dr. Cockburn would like me, in stating the question, to divide the amendment?

Dr. COCKBURN. -

Yes; and I would also like you to exercise the discretion which has proved so beneficial to the committee by not putting the question until some discussion has taken place as to the best form in which the amendment can be submitted.

Mr. MCMILLAN (New South Wales). -

It is not my desire, any more than it is the desire of other honorable
members, to introduce the question of free-trade or protection. I know that there has been great activity amongst the Ministers of Agriculture of different provinces, and that the honorable member who has just sat down feels very strongly with regard to this subject. If I recollect rightly the debate which took place in Adelaide, the whole question then was with regard to the export of produce. It was argued that the fact of giving a bounty upon the export of produce could not in any way interfere with free-trade within the colony, but it was proved, almost to a demonstration, that a bounty on the export of produce was practically the same as an import duty. We are all to be supposed to have equality of trade. Each colony, each producer, and each manufacturer is to be placed exactly on the same footing. But if this amendment is entirely confined to exports, will any honorable member who looks into the matter thoroughly say that such a bounty is not practically a bounty upon production within the colony? Will not the whole of this bounty go to help the internal trader, the producer, and seller to undersell the man in another colony? Under our system he is to be in a position of equality with every other exporter. His exports are to be governed by the state of the mark.

Mr. DEAKIN. -

That is the whole question.

Mr. MCMILLAN. -

Honorable members are very clever. I quite see the cleverness and ability of the proposal to continue this custom until the Federal Parliament alters it. The Federal Parliament will have enormous work to do. It is not very easy to alter a system like this. The Ministers of the Crown, especially under the difficult circumstances that will surround them, will not be inclined to face so disputable a question. And then I would ask honorable members to look at the danger of this proposal. At the very time when we are going to get all the benefits of intercolonial free-trade, when we are beginning to put into operation the very biggest factor of the Federation, it will be within the power of the state Governments, by enormous bounties, to create the effect of import duties. There is no doubt about that, and it would be an enormous flaw in this Constitution if we allowed it to be introduced. No matter what the effect would be in certain industries, if we are to have what, in the simple language of this Bill, is called equality of trade, this system must be renounced, so far as local legislation is concerned.

Mr. DEAKIN (Victoria). -

It appears to me that the honorable member's (Mr. McMillan's) address
relates wholly and solely to what every advocate of the system of bounties will admit is a possible use, and in the case of a Federal Government a possible abuse, of the system. But to assume, as he does, that it is not possible to permit to the states any concurrent power in the way of granting bounties which would not be injurious, and necessarily injurious to any member, of the Commonwealth, is a fundamental fallacy. Consequently I was, and am, able to indorse in the general way in which they were put, the observations of the honorable gentleman. I concur with him that any claim made by the states to the right to grant bounties must be so safeguarded in the granting, and the method of its use, as to effectually prevent its abuse, in the manner in which the honorable member seems to think is its only possible exercise. That is to say, we are required to satisfy this Convention that the conditions under which that power would be exercised will be such as to effectually prevent any advantage being gained by the producers of one colony over the producers of any other colony, and such as would not derogate in any sense from the freedom and equality of trade. If that be the case, I admit that the proposal as framed by the Right Hon. Sir George Turner is open to some objection. So far as it places a power in the Federal Parliament to disallow bounties which appear to have an anti-federal operation, it is, as all will admit, an efficient power. But it certainly is a reasonable argument to contend that the Federal Parliament—a body of such magnitude—will be slowly moved, and that it is possible that in the interim some injury might be done to the producers in some part of the Commonwealth by the activity of a state in another part of the Commonwealth aiming at supporting specific classes of its producers. But that only raises the question whether an effective tribunal cannot be found which would act more promptly when federal interests were imperilled. In any opinion, such a tribunal can be found, and can be trusted to exercise, on behalf of the whole Commonwealth, the necessary powers. I would suggest as a possible tribunal the Government of the Commonwealth itself, in whom might be vested the power of disallowing, until the Federal Parliament had an opportunity of considering the question, any bounty which in their opinion would have an anti-federal effect; that is, any bounty which tended to prejudice that free and equal trade throughout the Commonwealth, which constitutes the commercial basis of the whole structure. I am not wedded to that particular form of tribunal, but if we provide some tribunal powerful and prompt enough to prevent any injury to the producers of any part of the Commonwealth by the exercise of its veto, we escape the peril which alone has intimidated certain honorable members who have addressed themselves to this
question. Now, let me put the question from the other point of view. In this matter the dividing line, notwithstanding the disclaimer of Mr. McMillan, is drawn now, and will always be drawn, between politicians in the various states who approve and those who disapprove of state interference. In the Federal Parliament both parties will be strongly represented. Is it not asking an undue sacrifice of state rights to require of us when we join a Federation, giving every guarantee necessary to secure freedom and equality of trade, that the bulk of the people who in certain states are in favour of state interference are to have their local action hampered by the fact that people in other states are not in favour of state interference? It must be remembered that the people of states not in favour of state interference are not asked to make any sacrifice. It is not asked that the bounty shall come out of their pockets. If they are protected against any indirect injurious effect or unfair competition such as might arise if it were not safeguarded, but which could not arise if you place such a tribunal as I suggest in a position of supremacy, what right have they to say that the people of a more enterprising—or, if you like, more experimental—state shall not have the privilege of developing with their own money industries which may be confined to their particular state or two particular states out of the whole of the Commonwealth? Because the conditions of pastoral and agricultural life are somewhat alike in all the states, some honorable members assume that an industry which flourishes in one colony might very possibly be transported to every other colony. Even so, we have before our eyes the manifestation of a principle which will become more and more manifest in the course of time, that is, the principle of the segregation of industries and the springing up of particular industries in localities which are specially favorable to them. I am surprised to find that Mr. McMillan, and other free-traders, should now ignore the operation of that general principle of industrial development which they so often use as a powerful buttress for their fiscal arguments. I am surprised at their overlooking the natural and inevitable operation of that principle within the bounds of the Commonwealth. Within the Commonwealth we shall establish free-trade, and under free-trade, as they will admit, the inevitable tendency is that the districts most suitable for particular industries will become the centres from which these industries will be conducted, and in which alone they will probably be conducted on any large scale. If that be the tendency with all industries, more particularly will it be the case with special industries. What honorable members are asking is that all the states shall surrender the privilege of assisting industries, which may in the beginning, and which perhaps for all time, will be confined to that
particular state, though they will never be sufficiently established all over the Federation to be able to get assistance from the Federal Government.

Mr. OCONNOR. -
Might you not say the same with regard to your protective duties?

Mr. DEAKIN. -
No; because protective duties are imposed in absolute independence of any other state, and without the possibility of prohibition. The broad distinction is this: The Premier of Victoria has indicated his willingness to place in a particular tribunal the supreme power to negative every anti-federal bounty that might be put in force, and to negative it promptly before any injury could be done to the rest of the Commonwealth. That being so, having obtained an absolute guarantee of safety to the whole Federation, why go on to insist upon crippling the local industries of particular states?

Sir EDWARD BRADDON. -
But you would establish the bounty first, and have the prohibition afterwards.

Mr. DEAKIN. -
No, the two things could be contemporaneous. You would have to get an Act passed empowering the Government to give a bonus.

Mr. REID. -
You could pass an item in an Appropriation Act.

Mr. DEAKIN. -
But that would be an item in an Act.

Mr. REID. -
Still, it is not an Act of the troublesome character of special legislation.

Mr. DEAKIN. -
It serves my purpose if it is admitted that it must be placed in some Act. It cannot be placed in any Act without the delay and discussion involved in getting such an Act passed. During that time the Federal Government may have so made up its mind that the proposition for a particular bounty may be annulled upon the very day, or upon the next day, of its introduction, by the intimation that the granting of that bounty is prohibited pending the action of the Federal Parliament. It is idle to say that any bounty could have a prejudicial effect within a week, a month, or a year. In these colonies all bounties have in view the long life of the industry which they are intended to develop, and proceed by easy stages to assist that development. They can, therefore, be readily annulled before coming into force. Are we to render the path of federation more and more difficult in each colony? We have had requests put forward in the Convention from time to time on behalf of different colonies-
Mr. REID. -
But never listened to.

Mr. DEAKIN. -

They have been listened to in several cases, and, in the case of the colony which the right honorable gentleman represents, not only listened to but conceded in several instances. The whole system of accounts provided for in the clauses relating to finance and trade was inserted to please-

New South Wales, and not desired by any other colony of the group.

Mr. REID. -

I fancy that that system was adopted upon its merits.

Mr. DEAKIN. -

Yes, and as the best solution possible. But every honorable member who has spoken, including the representatives of New South Wales, has admitted that the bookkeeping provision was required by New South Wales alone.

Mr. WALKER. -

And Western Australia.

Mr. DEAKIN. -

No doubt she accepted it, because she got satisfaction under it, but nevertheless, on the testimony of the Finance Committee, it was adopted to satisfy New South Wales. The right honorable member (Sir John Forrest) indicated that he did not regard this as the only means of attaining his end, and he speaks for his colony with the highest authority. When we have the requests of individual colonies properly considered, why should not the request that I am now making, and which is strongly supported, not by one colony alone, but by two colonies—South Australia and Victoria—be conceded?

Mr. HOWE. -

I suppose the whole population of those colonies support it.

Mr. DEAKIN. -

I do not say the whole population. The representatives of majorities in those colonies support it.

Dr. COCKBURN. -

Quite right.

Mr. DEAKIN. -

And the representatives of very powerful minorities in every other colony support it. This request that the right of the states to continue bounties which shall not be anti-federal

Mr. REID. -

There is a very warm federal feeling at Ballarat.
Mr. DEAKIN. -

I believe that Ballarat is an intensely federal city. My point is this: Why should we unnecessarily raise antagonism to federation? Honorable members must see that if ample federal security be given, those who ordinarily object to the granting of bounties can have no fear.

Mr. GLYNN. -

Such a provision would raise antagonism between the Commonwealth and the states at once.

Mr. DEAKIN. -

I do not agree with the honorable member, but that is a later difficulty. I am discussing the probability of the adoption of the Constitution by the electors, and pointing out that those who are opposed to state interference cannot upon federal grounds object to such a proposal so long as some federal authority is provided capable of preventing the granting of any anti-federal bounty. All supporters of state interference will hail this proposal with approbation, and, if it is denied, they will regard the denial as unnecessarily limiting state powers. They will say, as the honorable member (Dr. Cockburn), with his practical experience, has so well put it, that the Federal Government may reasonably be expected to gain much valuable experience by watching the operation of local bonuses in particular states; and when these bounties commend themselves to the Federal Government by federal considerations, they can be repealed by the Federal Government as state bounties and granted as federal bounties, at the federal expense, for the benefit of all the citizens of the Commonwealth.

Mr. FRASER. -

Can two parties be giving bounties at the same time?

Mr. DEAKIN. -

No; that would not happen. The Federal Government would repeal the local bounties and grant federal bounties upon its own terms, having state experience to guide it.

Mr. BARTON. -

Why cannot the granting of the bounty in the first instance be left to the judgment of the Federal Parliament?

Mr. DEAKIN. -

Because there are so many instances in which embryonic industries existing only in parts of the Commonwealth will fail to attract the attention of the Federal Parliament for many years.

Mr. HENRY. -

Will the honorable member give us some illustrations?
Mr. DEAKIN. -
I have some in my mind's eye, but to discuss them would lead too far.
Mr. MCMILLAN. -
Suppose there were a large bounty given in respect to a special product in Melbourne, would not an opportunity be afforded to ship that product to Sydney at a lower price than at which the same article produced locally could be sold?
Mr. DEAKIN. -
Certainly. I am not able to hold the opinion of the honorable member (Dr. Cockburn) that the giving of these bounties for purely export purposes is a sufficient guarantee for the maintenance of that free and equal trade throughout the Commonwealth which must be the supreme principle of federation. I admit that the only state bounties which the Federal Parliament can allow to exist will be such as will not interfere directly or indirectly with free and equal trade throughout the Commonwealth. The honorable member indicates that he does not think there are such industries. He does not conceive of industries which may be developed in one colony without affecting other colonies.
Mr. BARTON. -
What would be such industries?
Mr. DEAKIN. -
Such industries as would be profitable only in a particular locality or a particular state. Such an industry might be one not now existing in any colony.
Dr. COCKBURN. -
Take the pearl-shell industry in the Northern Territory.
Mr. REID. -
That would make a good Victorian industry.
Mr. DEAKIN. -
My right honorable friend's sarcastic interjection proves my case. Why should Victoria, because she cannot produce pearl shells, object to the Western Australian Government giving a bounty for the encouragement of the search for pearl shells upon her northern coast? I do not think that this is the best illustration that could be given, but it is a good illustration. If it were proposed to make such a bounty a federal bounty, the representatives of Victoria in the Commonwealth Parliament could urge that the industry was not federal, and that the only industries which the Federal Parliament should encourage were industries which were scattered throughout the several states of the Union.
Mr. HOWE. -
Would not the Commonwealth be proud to develop such an industry as
the pearl-shell industry?

Mr. DEAKIN. -

It is not an industry to which I myself think the Federal Government might be expected to offer special encouragement. If you take time, you may get the Federal Parliament to move in regard to a great many industries, but you must wait a longer time to convince the Federal Parliament than would be required to convince a state Parliament. If the Federal Parliament sees, after an industry has been developed, that it will never prosper beyond the bounds of a single state, it will not consider it worthy of a federal bounty, though it may still consider it worthy of a state bounty. The state bounties would, no doubt, be confined to certain special industries, and perhaps confined to special states during the whole period of their history. And if that be so, and if you have an efficient guarantee that federal interests will not be impaired, why object to this concession, which will be greatly prized by the whole of the agricultural population of Victoria, by a large proportion of the agricultural population of South Australia, and by a not inconsiderable part of the population of the other colonies? Why place this additional obstacle in the path of federation, when, with an efficient guarantee, this concession may be made to the states without injury to the Commonwealth?

Mr. REID. -

How would this affect the agriculturists of Victoria?

Mr. DEAKIN. -

In several directions. The granting of state bounties has enormously improved their condition. But for the dairy industry, which was developed by means of state bounties, large numbers of the prosperous farmers of Victoria would have been insolvent.

Mr. REID. -

Are they so unenterprising as that?

Mr. DEAKIN. -

They are so enterprising that they have managed to keep the lead of the farmers of the other colonies before they had the assistance of the butter bounties and since.

An HONORABLE MEMBER. -

When were those bounties first granted?

Mr. DEAKIN. -

They were granted by the Victorian Parliament in 1889.

Mr. BARTON. -
Then they have been on long enough.

Mr. DEAKIN. -

Yes, those have been on long enough, and they have been discarded. It is not a question of butter bounties, because we are not paying butter bounties in Victoria now. Those bounties have ceased, having answered their purpose.

Mr. HIGGINS. -

If the Victorian farmers had had to wait for the Federal Parliament to take action in that case, they would never have got those butter bounties.

Mr. DEAKIN. -

Possibly never at all. This issue involves a cardinal distinction between honorable members in the Convention and between people outside the Convention. It is idle to enter into the merits or demerits of state bounties here, because it is a question we cannot hope to settle here. There is a broad line of demarcation between us, but if we can satisfy the opponents of any state interference by inserting sufficient guarantees for the exercise of this power without injury to the Commonwealth, shall we risk the support of thousands and tens of thousands of electors who approve of state bounties? If we do, I venture to say we shall be taking an unwise, and, if I may be permitted to say so, an unfederal action.

Mr. REID (New South Wales). -

All through the different Conventions and deliberations we have had there has been a general consensus of opinion that matters relating to fiscal policy should be handed over to the Federal Parliament. This amendment of the Premier of Victoria is simply a proposal that that settlement of the fiscal question shall be met by a rider, which will leave to each colony the right to attempt, at any rate, to maintain its own fiscal policy, in spite of the general fiscal policy of the Commonwealth. There can be not the slightest doubt of that, and it does strike me that gentlemen who tell us they have confidence in the opinions of the vast majority of the electors of Australia, as men who are really sound protectionists, should be the last to want guarantees for the adoption of their principles in the legislation of the Commonwealth. The mere fact that this proposal is made marks, I think, a very instructive stage in the progress of the fiscal question and of the way in which it is regarded throughout Australia. The Finance Committee, by a very large, an overwhelming majority, settled this matter in the way honorable members see it in the clause, and, at the same time, we felt that the fullest liberty should be given to each colony that might have some project of the kind under negotiation—that the fullest latitude should be allowed to each colony to carry out honorably any obligation it might have undertaken in reference to any particular form of bounty. We therefore
agreed that each state should have the full right up to the 30th of June next
to enter into any agreement, no matter how long it might last, in the nature
of a bounty. Well, I think that is surely giving the different states latitude
enough. Honorable members will see that one grave objection to this
proposal is that it will

really lead to a renewal of the old fiscal war. As the Commonwealth Tariff
is being shaped, the different Governments and the different states will see
the form it is going to assume, and there will be a desperate scramble
through the omission of these words, and the powers their omission will
confer. Any state that wants to maintain a protective industry will
immediately grant a bounty for that industry when they find that the
wisdom of the Commonwealth Parliament cannot be relied on to protect it.

Mr. HOWE. -

Supposing the representatives of the smaller colonies laid their heads
together in the Federal Parliament, they could very easily get a majority
against the other colonies.

Mr. REID. -

That might happen. But when Mr. Deakin used the phrase "the whole of
the agricultural population of Victoria," and declared that those people
were intensely interested in this question of state bounties, I thought of the
special kind of bounty that might turn up and take the place of the present
stock tax, namely, a bounty of 30s. per head on every fat bullock, Victorian
bred, that was sold in the Melbourne meat market.

Mr. FRASER. -

Or calf.

Mr. REID. -

A bounty which would apply to one class could be made to apply to all
the others. Now, such a bounty would be immediately setting up something
which would perpetuate, even in the attempt to carry it out, all the bad feel

Dr. COCKBURN. -

Would it not be an inducement to your people in New South Wales to
send beasts to Victoria?

Mr. REID. -

No, because the beasts would have to be fattened in Victoria before the
bounty could be obtained. Does not the honorable member know that there
is a stock tax in Victoria? It does not speak well for the number of cattle in
South Australia, if the knowledge of that tax has not spread there yet.

Mr. FRASER. -

There is a stock tax in South Australia, too.

Mr. REID. -
I should have thought so. Well, when Mr. Deakin used the phrase "the whole of the agricultural population of Victoria" and told us that they are hanging on to this proposal, I could not help thinking of the stock tax, because that is the only thing which could have prompted this proposal.

Dr. COCKBURN. -
Your illustration will not work out.

Mr. REID. -
Very possibly not, but there would be attempts to use this power to the disadvantage of the other states.

Dr. COCKBURN. -
Then the Federal Parliament or the Inter-State Commission. would interfere.

Mr. REID. -
Yes, and what a clumsy sort of federation we are establishing in that case. We are first beginning to frame the Constitution of the Commonwealth on the highest pinnacle of brotherliness, we are providing that all the trade and commercial intercourse of the Australians shall be on absolutely fair and equal conditions, and then we are beginning to refine it, in order to protect some interest against possible want of attention on the part of the Federal Parliament.

Mr. BARTON. -
Look at clause 95-No derogation from freedom of trade.

Mr. REID. -
This Bill is full of declarations which go to show that there is to be absolute equality of trade and commercial intercourse.

Mr. HIGGINS. -
We are all in favour of that.

Mr. REID. -
Yes, with a rider.

Mr. HIGGINS. -
There is not a single exception.

Mr. REID. -
Does not the honorable member know that the amendment of the Premier of Victoria would be a rider to this equality of trade and intercourse?

Mr. HIGGINS. -
It would neither be a rider nor an over-rider.

Mr. REID. -
How dear this is to the lawyer's mind-something to do that you can undo. But that is not the way we are endeavouring to build up the foundation of commercial intercourse in
Australia. These are the very evils that the colonies have been suffering from ever since they had separate Parliaments—ever insisting on building up and pulling down. Now, that spirit would spread and become intensified in the Commonwealth. We will, no doubt, have very bitter struggles in Australia before the fiscal policy of the Commonwealth is determined on, and how much those struggles will be embittered and intensified if, side by side with them, there are in Parliament attempts to place the colonists of one state upon a more advantageous plane than the colonists of another state possessing exactly the same industries!

Mr. Howe. -

It is simply a travesty of free-trade.

Mr. Reid. -

Talk about unfederal projects! This seems to me to be the most unfederal project we have had submitted to us since the Convention began, because it seems to spring either from the want of a full appreciation of all the evils which Australians have suffered from these warring policies, or from an infatuated desire to continue them. The one thing, I fancy, the average Australian is looking forward to in connexion with this Commonwealth is that this eternal fiscal question, with all its difficulties, shall be settled once and for all by the Federal Parliament, and that the Federal Parliament shall have the duty of settling it. If we are to have this power vested in the states, the Federal Parliament can very well say—"Oh, very well, we will leave the states to go on and fix up their own policies in connexion with this matter, because we will have the right by-and-by to annul any bounty which does not meet with our approval." Now, there we have all the evils of the old state of things reproduced in the Federal Parliament. Suppose that the bounty which it was proposed to annul was a Victorian one, we should have the representatives of Victoria clamouring for the maintenance of the bounty, saying that if the Federal Parliament annulled it it would be doing a distinct injury to Victoria. We would have in the Federal Parliament a never-ending war about this or that advantage prevailing in this or that colony, which the settlers in some other part of Australia were not enjoying, and, in order to do justice to all, we would have to get back to the old dismal state of things in which there was a ring fence put round everything in the hope that it would grow more quickly. I am prepared, and all of those who believe as strongly as I do are prepared, to take our chances in the Federal Parliament. If we find a majority of the Federal Parliament against us on any point of fiscal policy, what will our plain duty be? It will be to agitate throughout the Commonwealth for a change of public opinion in order to bring the Federal Parliament to our point of view. And so with our friends. If they find that the Federal Parliament in
this great enterprise of settling this fiscal question does not do its duty to colonial industry, does not give a proper scale of bounties which will apply, and have the great merit of applying all round, so as to create no unbrotherly feeling, then there is a legitimate sphere of agitation to bring the Federal Parliament, by means of the constituencies, into a proper frame of mind, so that a proper form of policy shall prevail. At any rate, we will secure that the policies shall be uniform, and that no man in Australia shall feel in his business that the legislation of the Commonwealth is put on lines prejudicial to himself. It is to secure certainty, stability, and an Australian breadth of treatment in these matters that this Constitution is designed. Although it does not do to speak too positively against any proposal which is made, because we may be sure that there may be very good reasons in its favour, still I do feel that, under the circumstances, we shall be taking a backward step if we throw this matter into the state of confusion it is in at the present time. And when my honorable friend (Mr. Deakin) says-"If the state bounty is an anti-federal bounty it call be annulled," I do not see how any bounty of a state can be otherwise than anti-federal.

Mr. DEAKIN. -

That is the whole point.

Mr. REID. -

If, for instance, the fiscal policy that my learned friend still, to a certain extent, adheres to—if it does not justify itself soon, I know he is going to forsake it—if that fiscal policy represents the deliberate convictions of a majority of the Commonwealth, do we suppose that the majority who honestly entertain these fiscal views is not a safe body to appeal to for any genuine industry which wants assistance? If the majority in the Federal Parliament scouts these artificial aids to industry, you have nothing to hope from them till you convert a majority to that view. But if, on the contrary, they are, as my honorable friends opposite hope and believe, sound on that question, then I say it shows a great want of confidence in the Federal Parliament if they believe that while they entertain these proper principles of fostering a single industry, they will prevent assistance from being given out of the Federal Exchequer as a national thing, as a national enterprise, towards any new industry in any part of the Commonwealth. And indeed I think, in the interests of those new industries, this matter is better left to the Federal Parliament, because, if the majority of the members are in favour of that form of encouraging colonial industry, they will find it difficult to defend themselves if they use their power in an unfair or unequal way. I think that if the policy is adopted in the Federal Parliament, and a colony
can show to the Federal Parliament a legitimate industry for which it is particularly useful, it can surely hope that the Federal Parliament will do it justice. At any rate, we will have this certainty, if we throw the matter into the hands of the Federal Parliament, that whatever is done is done upon broad national grounds in the interests of the nation. The fatal point of the proposition of my honorable friend is that we should have a national tribunal to encourage industry oil a national basis side by side with the power in each colony to endeavour to carry out its own experiment for the benefit of its own particular citizens. There is no harmony, I think, in a Constitution based on those lines. There is no doubt whatever that those of us who hold as I do will look upon this as a very great blemish on the Constitution. We are prepared, as honorable members knew, to take all the risk, which seems to be great, that all our views will be discountenanced in the Federal Parliament, that every cherished maxim of political economy will be rejected, but still we feel that in the interests of this Federation we must take that risk, that we must remove these evils from the Australian communities. Under these circumstances, if those of us who are said to be in a minority are prepared to take all the risks of the Federal Parliament, I think that those who have always been so confident that their principles will prevail should be prepared to leave it also to the Federal Parliament. The strong point of objection to this proposal is that it leaves in the hands of two different authorities the same thing, and the proposal that in handing over this power to the Federal Parliament the states should still maintain it shows a want of confidence beforehand in the working of the Federal Parliament. Since we have given to the 30th of June, 1898, which is a period of five months; since the wise men of Victoria and the wise men of South Australia, who must be taken to know pretty well the natural resources of the different parts of their territories, have this period within which they can make an agreement which will be legally binding, however long it may be, they should not ask us to make a serious departure from the broad lines on which these clauses have been framed. I take the strongest possible view against such a thing being done, and I think, even in Victoria, there would be a feeling of disappointment if it were thought that such things could be done. It must never be forgotten that it is quite possible, in days to come, that in the colony I represent there may be a Prime Minister and a Cabinet who take the views which are now held in. Victoria, and this very power which Victorians and South Australians seem to think it is in the interests of their colonies to assert to-day-

Mr. DEAKIN. -
And every colony.

Mr. REID. -

We must each judge for ourselves, and our people are accustomed to judge for themselves. In the future my own colony may happen, in such circumstances, to be the colony which will throw most difficulties in the way of a uniform state of trade and intercourse; so that in the shifting accidents of political life, whilst to-day I am looking at my friends opposite as possible sinners in this matter, it might well be that in years to come my own colony might be the chief offender. We all want to prevent any one of the colonies, and any one of the Governments of these colonies, from entering into any kind of device to get behind the absolute equality of trade and commerce and production, which is the vital principle of this Constitution.

Mr. ISAACS (Victoria). -

This proposal has been objected to on various grounds, and by some honorable gentlemen who have preceded me it has been opposed on the ground that we should allow no assistance whatever to the producer, but that every one should stand on an equal footing. Although that objection has not been expressed by every speaker, I think it has been at the bottom of almost every one of the arguments which have been advanced against the proposal of my right honorable chief. I take it that he has been to some extent misunderstood. It has been supposed that he is desirous of the state having power to give bounties on every article of manufacture and production, and I think it has been in the minds of some honorable gentlemen who have spoken adversely to the proposal that he desires that the state shall have uncontrolled power in respect to these bounties. The clause provides that the Commonwealth Parliament shall have exclusive power in respect to bounties. Sir George Turner does not propose to amend the clause otherwise than to give the state concurrent power with the Federal

Mr. HENRY. -

You would have two powers dealing with the same thing.

Mr. ISAACS. -

That is so, but it is also so with regard to numberless instances in this Bill. If the Federal Parliament, however, chooses to legislate on the subject, its mandate is paramount. We do not propose to alter that. We say that the industries which are the subject of the amendment proposed are matters not so much of intercolonial interest in their origin as matters pertaining to the development of particular states-matters of primary production. In that light it seems to me that the state should have power to stimulate production, subject to the paramount right of the Federal Parliament to
over-ride its provisions in that respect, if it should come to the conclusion in its absolute discretion that the bounties granted by the state were contrary to inter-state or intercolonial policy.

Sir EDWARD BRADDON. -

What are the industries?

Mr. ISAACS. -

They are agriculture, horticulture, viticulture, and dairying.

Mr. DEAKIN. -

I would not confine the power at all.

Mr. ISAACS. -

I think that if Sir George Turner has erred at all it is in limiting the scope of his amendment. I think we should leave the state free in regard to all matters of primary production, subject to review by the Federal Parliament. I should like to point out to those honorable members who have said-"Can you imagine a bounty on an industry that does not affect inter-state commerce?" that they have recognised the same principle by a provision inserted already in clause 52, namely, the power given to the Federal Parliament to grant bounties. Do they say that the Federal Parliament cannot grant bounties without interfering with inter-state commerce, and that after uniform customs and excise are established bounties necessarily interfere with interstate commerce? If they do say so, then they should strike out the provisions in clause 52. But I do not know any Constitution in the world in which exclusive power in respect to bounties is given to the Federal Parliament.

Mr. GLYNN. -

But federal bounties will be applicable everywhere in the Commonwealth, and will leave the law of the survival of the fittest untouched.

Mr. ISAACS. -

They may; but the circumstances of our continent are so various, our climates are so different, and the qualities of our soil are of such diverse kinds, that it is very difficult to suppose-

Mr. FRASER. -

Circumstances are the same in respect to climate and soil in Canada.

Mr. ISAACS. -

Although in name you may make a bounty applicable all over the continent, it will in reality apply only to a particular part.

Mr. GLYNN. -

The same argument will apply in regard to protection.
I do not want to have the issue confounded at all, but I would point out that, by leaving the provision as it stands we shall be including this power for the first time in any Constitution. If we put in a power for the state to grant bounties subject to the rights of ultimate control by the Federal Parliament, we then enable the state, out of its own funds, to stimulate its own peculiar industries, not to the disadvantage of other colonies at all, but to the great advantage of the state concerned, whilst the Federal Parliament will have power to repeal or to over-ride the provision if it think fit. My honorable friend and colleague (Mr. Peacock) has just now placed in my hand a very instructive piece of evidence with regard to this matter. It is an article in The Speaker, of 9th October, 1897, headed "Sugar in the West Indies." The article is to be found on pages 394-5. It deals with the report of the Royal Commission on the West Indian Islands, and makes reference to the policy of the United States in regard to the production of sugar. The article Says-

The Sugar Trust induced the Senate to insert in the Wilson Bill a duty of 40 per cent. ad valorem on sugar. This led not merely to an increase in the production of cane sugar in the south, but to the introduction of the beet-sugar industry into some of the western states, where it has been further stimulated by state bounties.

So that we see perfectly well that this provision, which is so declaimed against as inimical to federal control, is actually in force in America, where they certainly have carried the principle of interference with state legislation, by means of decisions of the Supreme Court, very far, and are extending it to an increasing extent.

Mr. HIGGINS. -

Does that mean "state" in the sense of the Federation, or the individual state?

Mr. ISAACS. -

I refer to the individual state. That is made clear by what I have read from the article.

Mr. PEACOCK. -

The article is in regard to the Royal Commission on the West Indian Islands, presided over by Sir Henry Norman.

Mr. ISAACS. -

The article goes on to say that-

Sir Henry Norman agrees with the planters who ask for countervailing duties. But Sir Edward Grey and Sir David Barbour have an overwhelming case in refusing to recommend a course which the last Conservative Government found to be impracticable. A countervailing duty would involve much greater interference with trade than most protective duties. It
means an inquiry into the country of origin of
every ton of sugar which enters at our ports, so as to levy the 1s. 3d. on
German, the 4s. 6d. on French, and so on. In the case of America, we
should even have to inquire whether the sugar came from a state which
pays bounties.

So that it is perfectly clear that in America they value the principle which
we are asking to have inserted here. It is not found to be inimical to the
federal spirit, and there cannot be the least doubt that if we do go the very
small way that we are seeking to go, we shall have gone a long way in
disarming opposition to this Bill, and in influencing the state not to fear
that the Federation will prevent it from legitimately developing its own
resources. We are told that we should wait for the Federal Parliament. On
the other hand, we are told that the Federal Parliament will be too busy to
consider the repeal of a law which a state passes.

Dr. COCKBURN. -

Even when large vested interests are concerned?

Mr. ISAACS. -

Yes. And yet we are told to wait until the Parliament can deal with the
matter from the opposite standpoint. We have also to consider that when a
proposal comes before the Federal Parliament for a bounty in respect to,
say, some South Australian industry, or contemplated industry, opposition
will be offered by other states, possibly on the ground that it will interfere
with their trade. They will say-"Why should we spend federal money in
developing South Australian industries?" and the proposal may fail for
reasons of that kind. On the other hand, the Federal Parliament might say-
"If your state is willing to spend its own money in developing this industry,
we have not the slightest objection." That is the position we want to take
up. We desire, before it is too late, to have it established on the face of the
Constitution that we may develop our natural industries to the fullest
possible extent, not inconsistent with the higher duties of federal life, and
we give for the protection of the federal life full power to the Federal
Parliament to upset anything we may do that is contrary to the spirit of the
Constitution.

Mr. TRENWITH (Victoria). -

The Right Hon. the Premier of New South Wales attacked this proposal
as if it were a distinct attempt to abrogate the provision in the Constitution
for perfect freedom of intercourse. There are numbers of industries for the
development of which particular parts of the continent are peculiarly
suited, and in which they would be extremely profitable. Incidentally they
might be advantageous to other parts of the continent, but not so
advantageous to the whole Commonwealth as to induce the Federal Parliament to give bonuses for their encouragement. Clearly, no harm could be done to freedom of intercourse by saying in such a case that the state might spend its own money in developing such an industry. We have been talking for a long time about silk culture. We have not yet successfully established it, and it seems highly improbable that the Federal Parliament would undertake to give a bonus for that purpose. It is not at all improbable that a state might feel disposed to encourage silk culture within its own limits. It would not, however, have the power to do so if the clause were left as the Finance Committee submitted it to us. If the clause were amended as suggested by the Right Hon. Sir George Turner, the state could use some of its own funds for the encouragement of that industry. If it were successfully developed, so far from being a cause of injury to any other part of the continent, it would be a distinct benefit, and it would not in any way restrict the freedom of trade and commerce. If the Federal Parliament had, as I think it ought to have, and will have if this amendment is carried, control over bonuses or bounties, that is all that is required to secure immunity from warring bounties. The honorable members representing Victoria are as much opposed to warring bounties, or to any conflict between the colonies, after federation has been achieved, as any persons can be, but it does appear to us that in framing this Constitution we should retain as far as possible the power of the states to do anything that can be done without injury to the federal principle. It is for that reason that we should put into this Constitution a provision empowering any state to spend money in the development of its own territory, so long as it does so in such a way as will not be prejudicial to any of the other states. When we were discussing the rivers question, Mr. Reid laid a great deal of stress upon the rights of New South Wales to so administer its rivers as to develop its agricultural industries, and I assume that he contemplated the expenditure of state money for the purpose of creating irrigation works. If a state may use state money in that way without prejudice to perfect freedom of trade, why should it not do so in others? There are a hundred and one ways in which a state can use state money for the development of domestic industry without injury to any other state, and without interference with freedom of trade. If that is so it is extremely desirable that the necessary power should be given. Sir George Turner's amendment gives perfect control to the Federal Parliament—perfect control, not necessarily administration, that is the difference. The Federal Parliament can control any movement on the part of any state to do anything unfriendly or unfederal to any other state, and if this amendment
is carried it can permit a state to give encouragement to any industry that will not injure any other state. There are many industries that it would be worth the while of a state to develop, but that would be so insignificant or so isolated in their character that they would not appeal successfully to the Federal Parliament.

Sir EDWARD BRADDOCK. -

What are they?

Mr. TRENWITH. -

I have instanced one—silk culture. Wattle bark is grown in Victoria and New South Wales, and I think also in South Australia, and that is a very valuable article of commerce. It is, however, being destroyed very largely by reckless strippers. It might be advisable for a state to offer a bonus for the planting of wattle trees. I cannot conceive that such a bonus could in any way injure any other state. If it proved to be a success, the Federal Parliament might apply the principle to all parts of the Commonwealth; but at its inception it could do no injury, because it would not in any way restrict the freedom of trade, and would lead to the development of a source of national wealth. These are two instances. Others might be mentioned, but I would submit that, if no such instances did occur, the only result would be that there would be no state bonuses. The power under the Constitution to give bonuses would not necessarily lead to their being given, except inasmuch as they could be given with advantage to a particular state, and without injury to the Commonwealth.

Sir EDWARD BRADDOCK. -

Then the Commonwealth could give the bounty.

Mr. TRENWITH. -

I agree that the Commonwealth could give the bounty, but I am pointing out that there might easily occur instances where the development of an industry would only be applicable to a small portion of the continent for climatic or other reasons, and it might be inapplicable to any other part of the Commonwealth. In that case, it would be highly improbable that the Commonwealth Parliament would spend the money of the Commonwealth to develop only a small portion of the continent; but it is quite probable that the state in which that small portion was situate would be very pleased to spend its own money to develop the industry, and in such a way that it would not injure, but would probably benefit incidentally, the other states of the Commonwealth. I feel that there can be no possible danger in this proposal. It does not propose to give a state power to over-ride the Commonwealth, or power, without regard to other states, to do something in its own
interests. It only says that the states may have power, while the Commonwealth Parliament has control, to give bonuses or bounties that are not objected to by the Commonwealth. Surely that can do no injury. I know that a great deal is thought of it in Victoria, rightly or wrongly, and it does not matter which for our argument. If there is a strong feeling that this power ought to remain within the state—if it is, so to speak, a state right which ought not to be taken away unless it can be shown that it is prejudicial to the well-being of the other states—it is an important question in connexion with carrying this measure in the various colonies.

Mr. DOBSON. -
   You are admitting too much.

Mr. TRENWITH. -
   I do not care. For the purposes of my argument I will admit everything I fairly can.

Mr. DOBSON. -
   If the thing is wrong, do not let us put it into the Constitution.

Mr. TRENWITH. -
   That is a different thing altogether. I did not urge that we should put it in rightly or wrongly. I urged that we should put it in if it could do no injury, and if there were a large number of people who are wrongly of opinion that it is important. I did not say that we should put it in if it is wrong. I do not hesitate to say that there are a very large number of people in this colony and South Australia, and possibly in other colonies, who think that there is a danger of giving up to the Commonwealth Parliament too many of the powers of the states. It is an opinion which I do not hold, but still it is strongly held that there is a danger in creating this new power which may be so far away from the people, and it is felt by many that the Parliament will be so far away that they will have little chance of influencing that body. Therefore, the people are jealous of handing over to it absolutely the power of controlling interests that they consider are very important. This power can be given in the way suggested, so that it may possibly do good to the states, and cannot possibly long continue to do harm to the Commonwealth. Whenever it is found that a state institutes a bounty or bonus prejudicial to the Commonwealth we know that the Commonwealth will at once legislate to restrain that state, and there will be an end to the evil. But if, as I believe will happen, bonuses may be given which will not have the slightest influence on the other states, then the Commonwealth will not interfere, and the state right will be preserved, so that the states themselves may develop their own industries with their own money, if it can be shown that it does no injury to the other states.

Sir EDWARD BRADDO (Tasmania). -
The honorable member (Mr. Deakin) argued at some length, and with great eloquence, to prove that these bonuses are, as a matter of fact, the most beneficent instruments of free-trade, and to establish the fact that concurrent legislation with regard to these bonuses, the states legislating on the one hand, and the Commonwealth Parliament legislating on the other, could go on satisfactorily.

Mr. HIGGINS. -

Not on the same articles.

Sir EDWARD BRADDON. -

No; but he wished to prove that concurrent legislation in this particular could exist without detriment to that freedom of trade which it is desired to protect. But I think that the honorable member, in the course of his arguments, provided an excellent answer. He pointed out how, if one of the states legislating for a bonus for its own particular state at its own expense, legislated so as to incur the objection of the Federal Government, that could be annulled by the action of the Federal Government, and annulled so as to involve no waste of time in the procedure. If that could be done, I would submit that if the states proposed to the Federal Government some system of bonus of which the Federal Government could approve, there would be no delay about its getting permission.

Mr. TRENWITH. -

There is the whole difference: The Federal Government will have to provide the bonus out of its own money, while in the other case the state will provide the money.

Sir EDWARD BRADDON. -

I do not want to charge the state with this, which is a matter of federal concern. There will be no such delay in that case as could imperil the prosperity of the colony: that desired the bonus.

Mr. DEAKIN. -

It is only a power; it is only an option; and it does not compel a state to give a bonus.

Sir EDWARD BRADDON. -

No, but I want words put in which would prevent a state doing that which may be a danger to the whole system of Commonwealth Government. It has been said by the honorable member (Mr. Trenwith) that these bonuses might only be sought for by some particular portion of a particular state for an article which did not exist or need protection anywhere else.

Mr. TRENWITH. -

And which might not be possible of development elsewhere.

Sir EDWARD BRADDON. -
Mr. Deakin had instances in his mind's eye, but he did not produce them. Mr. Trenwith has produced some examples—for instance, sericulture. He says that is something which might exist in one colony alone, and that it would therefore need to be fed by a bounty only in that colony. All the conditions that lend themselves to the production of silk are to be found, I venture to say, in all the colonies of Australasia. I do not know whether any colony is to be excluded by reason of its inability to grow the mulberry, but in nearly every colony, and as far south as the southern extremity of Tasmania, the mulberry can be grown, and the eggs of the silkworm hatched and silk produced.

Mr. TRENWITH. -
Suppose that Tasmania alone wished to develop sericulture, should she be prevented from giving a bonus because the other colonies did not care about giving bonuses?

Sir EDWARD BRADDOON. -
If Tasmania desired to establish sericulture she would establish it as she has established other industries, by the perseverance of her people, not by the giving of a bounty. In no instance in Tasmania has any industry been aided, fostered, or encouraged by bounties. Other encouragements have been given, but the bounty system has never been adopted.

Mr. TRENWITH. -
That is no reason why it should not be adopted next year.

Sir EDWARD BRADDOON. -
Well, if when the Commonwealth is established we have a good case for the granting of a bounty—and I should be sorry to advocate such a thing—we could ask the Federal Parliament for it. If we did not get it I should admit—and I dare say a good many others would agree with me—that we did not require it.

Mr. TRENWITH. -
The question is: Could there be any harm in Tasmania granting a bounty if the Federal Parliament refused to grant it?

Sir EDWARD BRADDOON. -
I do not think that any good would result. If a bounty is required there will be the necessary machinery for securing it. That is the whole case against those who advocate concurrent legislation in this matter. I think the argument has been used that as a matter of fact the granting of these bounties means the imposition of duties, and, inasmuch as we intrust the imposition of duties to the Federal Government alone, we should leave the granting of bounties to them.

Mr. HIGGINS (Victoria). -
I have a proposal which, I think, will practically meet the difficulties of
both sides. It seems to me that a number of us are tilting at windmills. There is no wish on the part of any one to interfere with intercolonial free-trade, and the extremely vehement argument of the Premier of New South Wales was quite beside the point, having regard to the expressed intention of the Premier of Victoria. If there were any desire to interfere in the slightest degree with intercolonial free-trade, either directly or indirectly, I should not vote for this proposal; but, as I understand the idea of the Premier of Victoria, it is that if a bounty can be given by any state without interfering with intercolonial free-trade that state shall be allowed to give it. The form of the honorable member's amendment, however, has justly provoked criticism, and led to a lengthy debate. Of course it is of no use to lock the stable door after the steed is stolen, and when a bounty is granted by any state it will take a long time to move the machinery of the Commonwealth to stop it or to interfere with it. On the other hand, if you required the assent of the Federal Parliament to any proposal on the part of the states to give a bounty the process would be too cumbersome. The essence of modern commerce is promptitude. It may be desirable to seize an auspicious moment to get a product into vogue and into use, and while I should like to see all matters of this kind passed under the review of the Federal Parliament, I think a simpler course would be, seeing that we are creating an Inter-State Commission, which could act with promptitude, to provide that a state may, with the consent of the commission, grant what bounty it likes.

Mr. HENRY. -

The Federal Parliament would still have power to set aside the permission granted by the Inter-State Commission.

Mr. HIGGINS. -

Yes; and I am willing that the Federal Parliament should have that power. The point taken against the amendment of the Premier of Victoria was that a state might do a great deal of damage by giving a bonus before the Federal Parliament could interfere. I suggest that the states should be allowed to give bounties when they have the consent of the Inter-State Commission. There is already in the Constitution a provision allowing the states to give bounties for the discovery of metals, &c. That provision was introduced during the Adelaide session on my motion, and I think that there is no intention to strike it out. If an exception can be made with regard to one class of products, it is quite possible that there may be other products to which it will also be applicable. I would suggest that to the words-

This section shall not apply to bounties or aids to mining for gold, silver,
or other metals,
  the following words be added:-
  or to bounties or aids to any industry, with the consent of the Inter-State Commission.

Mr. GLYNN. -

Surely we are not going to make the members of the Inter-State Commission legislators.

Mr. HIGGINS. -

If we in Victoria had had to wait for the consent of the Federal Parliament before we could try the experiment of butter bonuses we should never have had such bonuses. There are two classes of cases in which a bounty can be well applied without infringing the federal principle. To one class belong industries to which only one colony in Australia has a suitable climate or soil. The second class includes industries which might be developed in more than one state, but in regard to which only one state desires to experiment. I do not see why a state should not be allowed to experiment, provided that, so soon as any other state desired to develop the industry experimented upon, the question of bonuses should be remitted to the Federal Parliament. I was very much amused by the attitude taken up by the Premier of New South Wales in regard to this matter. I understood his great argument with regard to the rivers to be that the land policy belonged to the state, and that the conservation of water was part of the land policy-ergo, the whole question of rivers should belong to the state. I ask whether the development of particular industries on the land is not a part of the land policy? Why should not the state be allowed to dictate its own land policy throughout, provided always there is sufficient precaution taken to prevent the infringement of free-trade and commerce between the states? I would remind honorable members that clause 96 provides that-

The Parliament may make laws constituting an Inter-State Commission to execute and maintain upon railways within the Commonwealth, and upon rivers flowing through, in, or between two or more states, the provisions of this Constitution relating to trade and commerce.

Upon the same principle an Inter-State Commission could execute and maintain upon the lands the provisions of this Constitution as to trade and commerce. The Convention has heard about half-a-dozen Victorians speaking on this matter, and I can assure honorable members that those Victorian representatives speak with due regard to a very big vote. We have two classes in Victoria opposed to the federal scheme. The biggest will be with regard to the Constitution, but there is a very large class who
will be opposed to federation on the ground that Victoria is a colony of special industries, a colony where there is a smaller area than in most of the other colonies, where there is a larger population per square mile than in any other colony, and where there is more scope for attempting to establish special industries. I have watched particularly the attitude of our Victorian farmers towards federation, and I have carefully considered the speech of Mr. McLean, one of the Victorian Ministers, and a gentleman who knows more about Victorian agriculture and the wishes of the Victorian farmers than any other man I know, and I feel that I should be grievously lacking in my duty if I did not, with such power as I have, try to re-assure the farmers of Victoria that their interests are being considered in this respect. I would not advocate this proposal if I felt that it would do any injury to the farmers in any other part of the Commonwealth. I can assure the Convention that the Victorian farmers are watching this matter very closely, and probably honorable members have received a circular from a league which has been established to protect their interests. It is true that we lawyers cannot do much in such a matter, except to ascertain and represent the views which the farmers hold. I think it was Sancho Panza who said:"A fool is wiser in his own house than a wise man out of it." No doubt honorable members may not expect a lawyer to give much information with regard to the agricultural industry and the wants of those who are engaged in it, but I have tried to study the requirements of our agriculturists, and to ascertain their wishes. And I feel that we can have this provision in the Constitution, giving a reasonable power to the states, with due safeguards, and that by means of it we will reassure a large body of the farmers.

Mr. HENRY. -

Show us how Victoria could grant a bonus on any agricultural product without injury to the agriculturists of the other colonies.

Mr. HIGGINS. -

Well, assume that Victoria wished to try an experiment with scent plants, or oil plants, or even with sugar beet-root. Of course, a bounty on sugar beet-root in Victoria might interfere with the cane-sugar growers of other colonies, so I will put that away. But assuming that Victoria wants to try an experiment with scent plants or oil plants, and the other colonies say:"Oh, those are small industries; we do not want them: we have our bullocks and our wool;" well, seeing that no other colony was producing scent plants or oil plants, and Victoria was willing to go to the cost of making the experiments, what interest would the other colonies have in stopping that project? Of course, as soon as those industries were introduced into other colonies, I admit that Victoria should stop the grant of bounties to the people engaged in those industries within her own borders.
Mr. HENRY. -

Would it not be possible for Victoria to obtain the consent of the Federal Parliament?

Mr. HIGGINS. -

I think it would take too long a time to get the consent of the Federal Parliament. The alternative way in which I put it is this: I should prefer that any state should have power to grant a bounty with the consent of the Federal Parliament, rather than not at all; but, inasmuch as that is too cumbersome a process, I suggest, as an alternative, that the state should have power to grant bounties with the consent of the Inter-State Commission, which is supposed to see to the carrying out of the provisions of this Bill with regard to trade and commerce.

Mr. DOBSON. -

It is too large and too important a power to leave to the Inter-State Commission.

Mr. HIGGINS. -

Then it should be "with the consent of the Federal Parliament." But, with all respect to the honorable member, if the Inter-State Commission is to see that the provisions as to trade and commerce-establishing absolute free-trade and absolute free commercial intercourse between the different states-are carried out upon the railways and upon the rivers, I do not see why they should not be intrusted with this matter as to bounties for special agricultural and other products.

Mr. DOBSON. -

The one is a technical matter relating to rates and such things, and the other is a broad question of policy.

Mr. HIGGINS. -

Is not the question of railways and free-trade and commerce by means of railway rates a broad question of policy? I confess I cannot see the distinction which the honorable member seeks to draw. I think that if you trust the Inter-State Commission with those large things that are intrusted to them by clause 96, we should trust them in this matter, too; but rather than have no provision in the Bill for this purpose I should prefer to see it in, setting forth that "the state may, with the consent of the Federal Parliament," grant these bounties, only I feel that that is rather a cumbersome course of procedure. However, I make this suggestion to my right honorable friend for his consideration.

Mr. DOUGLAS (Tasmania). -

We will assume, in this case, that the state Parliament has power to grant
these bounties. In Victoria, whose representatives are going in for these bounties, there are some half-dozen bounties, not one only, already established. Now, if the state Parliament has the power to grant these bounties, and the Federal Parliament objects to such things, look what a state of affairs will be brought about when you have the Federal Parliament fighting in one direction, and the local Parliament fighting in another direction. What is the object of this proposal? Will not its adoption interfere with free-trade and commerce between the several states? The honorable member who has just spoken tries to apologize for the position he has taken up by saying-"Oh, if this power of granting bounties is given to the local Parliaments, I want to put some sort of restriction upon its exercise," and we are to get into all sorts of difficulties because some class or other wants to get a bounty on a particular product. We ought to leave this matter in the hands of the Federal Parliament. It is one of those things that ought, it appears to me, to be left in the hands of the Federal Parliament. Victoria, on account of its peculiar position in regard to certain industries which have been established by giving bounties in one direction and another, thinks that the Federal Parliament would not go in for granting bounties of so universal a character, but, of course, it would, if in the wisdom of the Federal Parliament it was deemed desirable to do so. Why not trust the Federal Parliament in this matter as in others? Why be suspicious of the Federal Parliament? One moment honorable members talk about nationality, and the next moment some of them say the state must have the power to give a bounty to a man who makes a pair of shoes, or something of that sort. What next will they want to do? These bounties may be of a trifling nature at first, and yet the whole of Australia may be overridden by a lot of bounties, without our knowing how this policy is going to affect our trade and commerce in the future. If the matter is left to the Federal Parliament, it will be argued out on broad lines of principle and policy. No doubt a particular industry may get advantage for a time from the grant of a bounty, but this is surely a matter which should be left in the hands of the Federal Parliament. The question was thrashed out in Sydney as well as in Adelaide, and it ought to have been considered as settled, but now it is brought up again, and the honorable member who has last spoken wants the Inter-State Commission to arrange these things. Why, sir, if we assent to such an arrangement, we shall be virtually revoking one of the main principles of this Bill. We must leave the matter as it is, and let the Federal Parliament deal with it. After all, everything must be referred to the Federal Parliament, and we cannot revoke the authority of that body. It
would be highly inadvisable to insert in this Constitution a provision which would bring the state Parliaments and the Federal Parliament into conflict. The Federal Parliament must be the filial authority to settle a matter of this kind. The honorable member quoted from Don Quixote, who went tilting at windmills, but he is just trying to get us in the position of Don Quixote, as we shall be if we accede to his request that we should support this proposal, because it is a quixotic proposal altogether, and it is to be hoped that the Convention will not agree to it.

The amendment to omit the words-
"and to grant bounties upon the production or export of goods" was negatived.

The CHAIRMAN. -

It is now proposed, by the Right Hon. Sir George Turner, to add the following words to the paragraph:-

Provided that any state may grant bounties for the promotion of agricultural, horticultural, viticultural, or dairying industries, subject to the same being at any time annulled by the Parliament.

Sir GEORGE TURNER (Victoria). -

I understand that several honorable members think that my proposal is rather too wide. The proposal of my honorable friend (Mr. Higgins) is rather more restricted, and he will move it as an amendment to the last paragraph. With the permission of the committee, I will withdraw my amendment.

The amendment of Sir George Turner was withdrawn.

Paragraph (1) was agreed to.

Paragraph (2). - But this exclusive power shall not come into force until uniform duties of customs have been imposed by the Parliament.

Mr. BARTON (New South Wales). -

I wish the committee to omit this paragraph, as it is already provided for now by the words which have been inserted at the beginning of the clause.

Mr. DEAKIN (Victoria). -

The South Australian Assembly suggests an amendment here.

The CHAIRMAN. -

It is only to insert "and excise."

Mr. DEAKIN. -

Yes, but it carries with it an important consideration, which I urged in Adelaide, and which I wish again to urge on the consideration of the Convention. Honorable members will recollect that by clause 55, subsection (3), we have distinguished between laws imposing duties of customs and laws imposing duties of excise, and I venture again to urge upon the Convention the wisdom, if not the necessity, of our linking
together in one measure laws imposing duties of customs and laws imposing duties of excise. In connexion with many articles embraced, even in our local Tariff, and certain to be embraced in the Federal Tariff, such as spirits, a duty on the imported article has always been accompanied by a duty of excise on the article of local manufacture; that is necessary to preserve a proportion between these duties. Suppose a law imposing duties of customs to levy, as it invariably does, a heavy duty on spirits and wines, then every advocate of ultra-protection would have an additional argument for obstructing in every way, and if possible defeating, the measure for imposing duties of excise. But unless the duties of excise were passed the very heavy duties placed on spirits would operate as an enormous protective duty, far greater than any reasonable protection which ought to be extended to that industry. I take that as the most glaring instance, but other instances exist. There are other alcoholic liquors besides spirits. The duty on imported beer is always balanced by an excise duty on beer which is the produce of the colony. Under these circumstances, it appears to me highly desirable that the Federal Government should pursue the practice which has always been pursued in the colonies of placing the duties of excise and duties of customs in the same measure. It has been the uniform practice in Victoria.

Sir JOHN FORREST. -
We have passed that, you know.

Mr. BARTON. -
What I am pr

Mr. DEAKIN. -
As I have nearly finished what I had to say, let me add a sentence or two, in order to avoid repetition. While I have endeavoured to weigh in the interim the arguments of those who urged that duties of excise should be dealt with in a separate Bill, I have been unable to see any advantage in that plan. The one argument which appeared to have most force was that it enlarged the veto of the Senate, since if the duties of customs and the duties of excise were placed in separate measures, the Senate would have two vetos instead of one. But, inasmuch as the duties of excise on certain articles are inextricably intertwined with the duties of customs, it appears to me that this very small gain to the Senate carries with it a very much greater detriment to the public interests, and that in the interests of the whole Commonwealth it is highly desirable that whenever a duty of excise is to be imposed on any article which is the subject of a duty of customs they should both be dealt with in the same measure, so that the measure
should be accepted or rejected as a whole.

Mr. BARTON (New South Wales). -

I take it that when we give a power to the Parliament of the Commonwealth to make laws, we should generally trust them sufficiently to assume that they will exercise that power reasonably, and therefore we may perhaps assume that when they impose a customs duty on spirits, they will also impose an excise duty on spirits; but they should not be tied hand and foot by any provision such as is suggested.

Mr. DEAKIN. -

I do not desire to make it an absolute requirement. I should be satisfied if it were put as an alternative. Give them power to deal with them, either in one Bill or in separate Bills.

Mr. BARTON. -

They have power in the Constitution to impose such duties of excise as they can get Parliament to assent to.

Mr. DEAKIN. -

But not in the same Bill as duties of customs.

Mr. BARTON. -

But they are not forced to propose them in the same Bill as duties of customs; they can do it in separate Bills. In the Money Bills clause we say-

Laws imposing taxation, except laws imposing duties of customs on imports or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Mr. DEAKIN. -

That is absolute.

Mr. BARTON. -

While the Parliament has not the power to put customs duties and excise duties in the same Bill, what it has power to do is to pass Bills for these two purposes in the same session, and by way of consecutive Bills; so that, if it is part of the policy of the Government, and they have a majority, they can carry out that policy by passing two Bills instead of one Bill. What I had thought for a moment was suggested by my learned friend was something which has been suggested by a commission appointed by the Government of Victoria. Their suggestion was that the Federal Parliament should be practically forced to impose duties of customs at the same time as it imposed duties of excise, not necessarily in the same Bill, but at the same time. They suggested, as is suggested in South Australia, that the words "and excise" should be added wherever the power to impose duties of customs is given. I take it that this Convention would think twice before
asserting to any such proposal, because we must leave the Federal Parliament a free hand to determine what shall be its duties, to determine whether it will impose duties of customs in the first instance, and, if so, what those duties shall be. But if we are to put into the Bill the words "and excise" wherever a reference is made to the imposition of uniform duties of customs, that is practically forcing the hands of the Federal Parliament, to deal with taxation in a particular way, and that I suggest to the committee is what we should never do.

Mr. DEAKIN. -
I leave them quite free.

Mr. BARTON. -
I thought for a moment that the suggestion of my learned friend went to that length, but I see now that it does not.

Mr. DEAKIN. -
I only want to give them the alternative.

Mr. BARTON. -
I think the time to adjourn has arrived. I will ask honorable members to vote for the excision of this paragraph, which is now no longer wanted, and we can deal with the other matter to-morrow.

The paragraph was struck out.

Progress was then reported. The Convention adjourned at five o'clock.
Tuesday, 15th February, 1898.

Evening Sittings - Leave of Absence to Mr. Brunker - Commonwealth of Australia Bill. - Bounties.

The PRESIDENT took the chair at half-past ten o'clock a.m.

EVENING SITTINGS.

Mr. HOLDER (South Australia). -

I wish to point out to the leader of the Convention that it is probable that some honorable members will have to return to their homes very shortly. It is extremely important that we should have a full attendance at the final stage of this Convention, and I would ask our leader whether it would not be advisable to arrange for two late sittings this week?

Sir GEORGE TURNER (Victoria). -

My colleagues and myself feel as anxious as any one to get the business of the Convention completed, because we are getting into arrear with our own work. I am afraid, however, that if we sit at might, after having been sitting here for many hours during the day, we shall not facilitate business. I would make this suggestion, which I think would give us just as much extra time as we should get by night sittings, that instead of rising at five o'clock we should sit on till six o'clock, and also sit on Saturdays.

Dr. COCKBURN. -

Put a time limit on speeches.

Sir GEORGE TURNER. -

I should not object to that.

Mr. DOBSON (Tasmania). -

I desire to confirm what the Hon. Mr. Holder has said. Many of us are anxious to get away to our homes, and what I fear is that the Convention may be wound up with eight or ten members absent. I am sure that our leader is as anxious as anybody to yet on with the work. The Drafting Committee have had a great many hours of serious labours which most of us have not taken part in and know nothing about, but if our leader could see his way to commence night sittings almost at once, say to have one night sitting this week, if not two, and two next week, there would be a probability of members being present when the Convention reaches its final stage. No one can say what simple clause may detain-I will not say delay-us. No one can say how long the debate on the question of dead-locks may last, and when a decision is come to it may not be a final one. Some conservative or democratic
member who does not like the clause may spring a new proposal upon us. I do not see any probability of the Convention concluding its business in less than three weeks without night sittings. The suggestion of Sir George Turner is worthy of consideration, but I think we ought to sit at night.

Sir JOHN FORREST (Western Australia). -

I desire to say a few words in urging on honorable members the necessity of bringing our labours to a speedy termination. If honorable members were to speak at less length, much more rapid progress would be made. We are not commencing our work. Nearly every question that comes before us has previously been thrashed out both in Adelaide and Sydney, and there is no necessity now for long laboured speeches. We want to hear what an honorable member has to say in as few words as possible, and not to listen for an hour to a repetition of arguments that have already been used and with which we are familiar. If honorable members will make up their minds to speak shortly, and to the point, we shall get on much more quickly. During the last few days very little progress has been made, and yesterday was one of the most tiresome days we have had. A number of long speeches were delivered, with really very little result, and this interminable talk must make everyone weary of the work we are engaged upon. I do hope that honorable members will assist in trying to have the Convention concluded with a full complement of members present. I will remain as long as I can. I am very anxious to be here throughout the whole of the sitting, but my presence is required in my own colony, and I do not think it will be possible for me to remain longer than the end of this month.

Sir RICHARD BAKER (South Australia). -

I would urge on the leader of the Convention and on honorable members generally the desirability of having some night sittings. I felt from the commencement that we should endeavour to get on with our work with assiduity, but I did not think, although I spoke about it privately, that it would be right or proper to sit at night when the Finance Committee had such important work to do. All the committees have now concluded their labours, with the exception of the Drafting Committee, whose work goes on for ever. I think we may now appeal to them whether they cannot agree to our having one or two sittings at night each week. We have already been informed by the Hon. Mr. Barton that the Drafting Committee have got their work up to date, and, therefore, the strain which would have been placed on them, had we commenced with night sittings, no longer exists. Like my right honorable friend (Sir John Forrest) I do not make long speeches, and I think I have said all that is necessary from my point of view to urge on the Convention the desirability of bringing our labours to a speedy termination.
Mr. BARTON (New South Wales). -

I have the fullest sympathy with those honorable members who wish to see the labours of the Convention brought to a close as speedily as is reasonable. At the same time, I have a strong conviction that we may be doing a great deal of harm to the movement we are professing to support if we gave the slightest indication that we are completing our work with a rush. Every honorable member knows to what adverse comment the Adelaide session of the Convention was exposed, owing to the fact that the sittings of the Convention were hastened at the end. There had to be some haste, that is to say, we had to sit a good deal at night, in order that certain honorable members might be enabled to get away in time to attend the Jubilee celebrations in England. When arrangements were made for the present session of the Convention it was supposed that the time available would be ample, and there were a number of us who looked forward to the probability of the sittings lasting for two months. I did, myself, for one.

Mr. HOWE. -

The solution lies in shorter speeches.

Mr. BARTON. -

It may; but I am not sure that the popular favour with which the federation movement is regarded will be increased if you take the extreme step of imposing a time limit on speeches. That is a step that would be calculated to have the most harmful results.

Sir JOHN FORREST. -

The newspapers do not report the speeches.

Mr. BARTON. -

They do report them, and they would certainly take care to report the fact that there was a time limit. I am afraid that every evil that arises out of what is called rushing the sittings would arise out of a time limit on speeches. On the other hand, I do not wish to sit on Saturdays, because not only would the same impression be created, but the work would be absolutely too fatiguing. I am going to ask the Convention to allow me to absent myself during the greater part of this morning, because I am too fatigued for the work, which will be undertaken by one of my colleagues. The Hon. Mr. Dobson has anticipated what I intended to say. What we might reasonably do is this: We might hold a night sitting this week, and two night sittings next week. If the progress of matters is so slow as to indicate the necessity for three night sittings, I shall consent to it. Matters have improved considerably, and I think we shall make sufficient progress this week to remove the fear of more than two night sittings next week. Some members of the Convention are not as robust as others. I cannot say
that of myself. I am as strong as most men, but there are some honorable members who would suffer considerably if they had to work for seven hours in the day and for three hours at night. I shall ask honorable members to adhere to the sitting from half-past ten to five o'clock. I think an hour's cessation before the evening's meal is little enough. Then I shall ask them to re-assemble at about half-past seven o'clock, and to sit for about three hours. If we are in the middle of anything important we may continue sitting for a little longer. By doing that I think we shall sufficiently expedite the work.

Mr. PEACOCK. -

On which nights will we sit?

Mr. BARTON. -

For this week I should say Thursday. I think that would be a convenient night. I would propose to sit next week only on Tuesday and Thursday nights, unless there was abundant evidence of the necessity of sitting also on Monday, Wednesday, and Friday nights.

LEAVE OF ABSENCE.

Sir GEORGE TURNER moved -

That one week's leave of absence be granted to the Hon. Mr. Brunker, on account of illness.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 84. Paragraph (3). - Upon the imposition of uniform duties of customs all laws of the several states imposing duties of customs or duties of excise, and all such laws offering bounties upon the production or export of goods, shall cease to have effect.

Amendment suggested by the House of Assembly of South Australia -

To insert after "customs" (line 2) the words "and excise."

Mr. BARTON (New South Wales). -

I have a new paragraph to propose, but I think it will come after paragraph (3). I wish to move the omission from this paragraph of the word "duties" before the words "of excise."

Mr. DEAKIN (Victoria). -

I understood that the leader of the Convention was to consider, between the sitting last night and this morning, the question that was raised with reference to the exclusion, under clause 55, sub-section (3), of duties of
excise from the same measure containing duties of customs. If the Convention, for some reason not apparent to me, desire to retain the distinction between Bills dealing with duties of customs and duties of excise, I would, at all events, suggest that articles which are subject to both duties of customs and duties of excise ought to be dealt with in a single measure. The whole policy of a Government with regard to those particular articles may turn on the combination in certain proportions of the duties of customs and the duties of excise.

Mr. MCMILLAN. -

Does the amendment make it necessary for them to be in one measure?

Mr. DEAKIN. -

A prior clause prevents them from being in one measure, and I intend to ask for the recommittal of that clause with a view to its amendment in the direction I desire. The amendment suggested by the Legislative Assembly of South Australia raises the question, and it seems to me that it might fittingly be dealt with at this stage. To my mind, articles that are to be subject both to duties of customs and duties of excise should be dealt with in one measure, which measure must either be accepted or rejected. It should not be possible to defeat the whole policy of a Government by agreeing to, say, its duties of customs, and rejecting its duties of excise. The fiscal policy of a Government is established by the difference, if any, between the duties of customs and the duties of excise on certain articles, and it appears to me, from every point of view, desirable that these duties should be capable of being dealt with in one measure.

&. - What does my honorable friend suggest?

Mr. DEAKIN. -

The South Australian amendment appears to imply the capacity for dealing with both classes of duties in one measure.

Mr. BARTON. -

No; it would prevent the provisions of this paragraph from coming into force unless both customs and excise duties were introduced in one Bill.

Mr. DEAKIN. -

That may appear to some honorable members to be going too far, and I have indicated how much less might be accepted and would meet the difficulty.

Mr. MCMILLAN. -

As things stand now, must both classes of duties be dealt with in one Bill?

Mr. DEAKIN. -

No, they cannot be so dealt with under any circumstances. It is to that restriction that I object.
Mr. MCMILLAN. -

I think we have no right to dictate to Parliament in matters of policy in regard to which the future may bring about developments which we cannot foresee.

The CHAIRMAN. -

We cannot put in anything antagonistic to clause 55.

Mr. BARTON (New South Wales). -

The honorable and learned member (Mr. Deakin) thinks that clause 55 should be amended, and I understand that if it is not amended he will probably favour the suggestion of the South Australian Assembly. The subsection with which we are dealing says that as soon as uniform duties of customs have been imposed all the state laws imposing duties of customs and excise and offering bounties shall cease. If the words "and excise" were added, as suggested by the Assembly of South Australia, none of the state laws of customs and excise or offering bounties could be put an end to until the Federal Parliament passed an Excise Bill as well as a Customs Bill. That is a limitation which

I do not suppose any honorable member wishes to impose upon the Federal Parliament. The difficulty arises under the provision in sub-section (3) of clause 55-

But laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

This provision has been the subject of considerable discussion, and the opinion of the Convention upon every occasion has been that financial measures should be separated as far as possible, for the purpose of preventing dead-locks; that the more Governments are enabled to mix up matters of policy in a financial measure, the more they are likely to contribute to disagreements between the Houses of Legislature. I am inclined to think that the policy of the Convention is a sound one, and that there is no undue restriction. In ordinary cases it may be an excellent thing to allow the Commonwealth Government a free hand.

The CHAIRMAN. -

Does the honorable and learned member think that he is in order in discussing this matter now?

Mr. BARTON. -

I was simply answering the suggestion of my honorable friend. While it may be a fair thing to put as few restrictions as possible upon the policy of the Commonwealth Government, still there is a limit to the extent to which utilization of policy might provoke disagreements between the Houses, and
it is that limit which the Convention has endeavoured to impose. I suggest that we should negative the amendment of South Australia, and leave the clause as it is. If, when the time for reconsideration comes, the honorable member (Mr. Deakin) wishes to have clause 55 reconsidered, I will assist him.

Mr. GLYNN (South Australia). -

I would like to explain that the amendment suggested by South Australia was suggested at the instance of an honorable member who cited the report presented by Mr. Wollaston and four others to the Victorian Government, in which it was pointed out that the loss of sugar duties upon the establishment of a uniform Tariff would be £504,700, Victoria losing £266,000, New South Wales £145,000, Queensland £700, South Australia £45,000, Western Australia £10,000, and Tasmania £38,000. They realized that an all-round excise duty of £3 a ton should be imposed upon sugar. Otherwise, it was pointed out, the £45,000 lost by South Australia would go into the pockets of the producers of New South Wales and Queensland. But the net has been cast too wide, and the hand of the Federal Parliament is forced to impose excise duties upon many articles upon which excise duties should not be imposed. If the South Australian Parliament had considered the matter more fully, they would have seen the imprudence of this arrangement. I think it would be better to leave the whole matter to the Federal Parliament, and to negative the amendment.

The amendment was negatived.

Mr. BARTON (New South Wales). -

I beg to move-

That the word "duties" (line 2) be omitted; and that the word "or" be substituted for the words "and all such laws" (line 4).

The amendments were agreed to.

Sir GEORGE TURNER (Victoria). -

I understand that the leader of the Convention desires to insert certain words in paragraph (3), but I desire to obtain an expression of opinion with regard to the effect of the paragraph. It says that laws offering bounties upon the production or export of goods shall cease to have effect. These words seem to me very wide indeed. If a law under which a payment is made ceases, where will be the power in the state or in the Commonwealth to continue the payment of bounties already granted?

Mr. BARTON. -

The ceasing of the law will not affect any contract made under it.

Mr. ISAACS (Victoria). -

I strongly support the suggestion of Sir George Turner. Before we deal with the sub-section now under consideration, I should
like to point out the effect of the saving provision in the next sub-section. The sub-section with which we are now dealing provides that as soon as the uniform Customs Tariff is enacted all state laws of customs and excise, or offering bounties, shall cease to have effect. That is to say, no one will have the right to pay a shilling under those laws. Then follows the new sub-section suggested by the Finance Committee:—

But all grants of, and agreements for, any such bounty made by or under the authority of the Government of any state after the 30th day of June, 1898, shall be taken to have been of no effect.

The combined operation of the two sub-sections, it seems to me, will be this: That after the 30th of June, 1898, no grant or bounty will be valid.

Sir EDWARD BRADDON. -

No grant can be made after that date.

Mr. ISAACS. -

Yes, and any grant made before that will be valid only up to the time of the imposition of uniform customs duties by the Commonwealth. After that time any grant made by a state, at any time and under any circumstances, will fall to the ground. I think that that is too much.

Mr. MCMILLAN. -

That is not intended.

Mr. ISAACS. -

Well, that is the effect.

Amendment suggested by the Legislative Assembly of Victoria—

Omit "and all such laws offering, bounties upon the production or export of goods."

The CHAIRMAN. -

In this case I will simply put to the committee the question of omitting the words "offering bounties upon the production or export of goods," because the words "and all such laws" have already been struck out.

The amendment was negatived.

The paragraph was agreed to.

Mr. BARTON (New South Wales). -

Before we come to the next paragraph I should like to insert the following words, which, it is suggested by the Finance Committee, should stand as a separate paragraph. I therefore beg to move that the following paragraph be inserted after paragraph 3:—

But all grants of, and agreements for, any such bounty made by or under the authority of the Government of any state after the 30th day of June, 1898, shall be taken to have been of no effect.

Sir GEORGE TURNER. -
Will that provision render valid the bounties which have already been granted?

**Mr. BARTON.** -

It strengthens the implication that those which have been granted are valid. I understand the point of the honorable and learned member (Mr. Isaacs), but I think the law on the subject is this: While upon the imposition of uniform duties of customs any law of any state offering a bounty will cease to have effect, any contract made under that law will still remain alive.

**Mr. ISAACS.** -

What is the necessity for the next sub-section?

**Mr. BARTON.** -

The wish of the Finance Committee is to render void all grants or bounties and agreements for bounties made after a certain date, so that after the federation of the colonies becomes practically certain there may not be a policy carried into effect by any state which may conflict with the purpose of the union. We discussed this matter in Adelaide, and I think I remember quoting a passage from Maxwell on Statutes in regard to it to the effect that anything done under a statute up to the time of the repeal of that statute will last after that repeal, so long as it is by way of a contract conferring vested interests. I think most of my legal friends will agree with me that the law upon the subject is tolerably clear. The new paragraph would invalidate an agreement for the granting of a bounty made after the 30th June, 1898, but would strengthen the implication that those made prior to that date are valid and subsisting contracts.

**Mr. ISAACS.** -

What is the effect of the law between 30th June, 1898, and the date of the law imposing a uniform Customs Tariff?

**Mr. BARTON.** -

It is clear that if this is carried all agreements for the payment of bounties would cease if effected after that date.

**Mr. ISAACS.** -

Suppose that a bounty is given between 30th June, 1898, and the imposition of uniform customs duties, what effect would this have except to authorize payments of bounties?

**Mr. BARTON.** -

I take it that there will be no validity left in any case, except with respect to contracts made previously, and if they are freshly made after 30th June, 1898, they would have no effect.
Mr. ISAACS.-

I do not think I made myself clear to the honorable member. According to the new sub-section, all such customs and bounties laws are to be invalid, from 30th June, 1898, so far as they give power to make agreements for bounties. Under this sub-section it is clear that any agreement to pay bounties if made after the 30th June, 1898, will have no effect. Therefore, so far as the power to make grants and agreements are concerned, those laws cease to have any effect after 30th June, 1898.

Mr. BARTON.-

That seems to be intended.

Mr. ISAACS.-

Then some further effect is intended to be given under the preceding sub-section by the imposition of uniform customs duties. That further effect, it seems to me, must only be the power to make payments under them.

Mr. BARTON.-

I should say that it can be dealt with by the Drafting Committee.

Mr. MCMILLAN (New South Wales).- 

I agree that what the honorable member has referred to is merely a matter of drafting. I think it is quite clear that the insertion of a few words would put that matter right; but there is a much greater objection to the paragraph than the honorable member has mentioned. The Premier of New South Wales said in a general strain that they made no limitation whatever to the contracts that might be made up to the 30th June, 1898. In other words, you might complete a policy in a certain direction, and that policy might be retained for twenty or thirty years. That is to say, you might give the option of renewal of a contract in a hundred and one ways, and you might fix that as the policy of the state for the future. There ought to be some qualification of that power. can see quite clearly that it is necessary, in order to do justice to certain colonies, that this clause in some shape should be introduced. But I think there ought to be a limitation in time, at the end of which the Federal Parliament would have the right to close all these contracts, even if it were done under a system of compensation. I look with alarm at this provision, in view of possible contingencies, which may not occur, and I have no doubt the Ministries in those colonies which deal with bonuses would not do anything unfair and unreasonable so as to handicap the Commonwealth; but, at the same time, I do think that there ought to be some limit imposed in this clause which would make an end to these contracts at some time or other. I do not know, of course, what the period is now for which certain contracts have been entered into, but it is possible that the Finance Ministers of the different states would be able to inform us. If the leader of the Convention agrees with me that there should be
some definite limit to this power of contracting, so that the Federal Parliament could at last, within a reasonable period, come into its full rights with regard to them, I would ask him if there could not be some words inserted limiting, upon certain conditions, the contracts now in force? Probably Sir George Turner can tell us what would be a reasonable limit in view of existing contracts. I think this is a very important point, and it would be a blemish on the Bill if something of this kind were not inserted.

Sir GEORGE TURNER (Victoria). -

I am afraid that if we attempt to insert a time limit in this clause we shall make it practically valueless. We must not forget that, so far, the Convention appears to be strongly against the proposal which I submitted by way of amendment yesterday, or any modification of it. I will give Mr. McMillan an instance of what might happen in Victoria during the next few months, and I will ask him how it would be possible to place a limit of this kind in the Bill, and yet carry out what is fair and legitimate work on the part of our Government. We are anxious to assist the wine industry, and one mode of assisting it is to form a company in order to establish a central cellar. That company can only be established on a sound basis by the Government being prepared to give some guarantee. We have been asked to guarantee that the company will be able to pay 4 per cent. annually on a certain portion of its capital which will be obtained in England, and the payment is to be guaranteed for twenty years. We believe that in giving that guarantee we are running no risk, because our information shows that the company will be able to pay more than the stipulated rate of interest. But if it is said that the Federal Parliament at the end of five years may cancel that bargain, is it to be thought for one moment that anybody will take up shares or advance money on the faith of our guarantee, knowing that that guarantee runs the risk of being superseded at any time within a limited number of years?

Mr. MCMILLAN. -

Even a term of twenty years would be better than nothing.

Mr. DOBSON. -

Is that a bounty within the meaning of this clause?

Sir GEORGE TURNER. -

I do not know that it is. I am only showing what we are doing. I doubt very much whether it is a bounty.

Mr. DOBSON. -

It may never have to be paid.
Sir GEORGE TURNER. -
That is quite true. Then we have agreed to encourage the sugar-beet industry by advancing a company £50,000 over a period of 30 or 35 years.
Mr. HENRY. -
That is by way of loan.
Sir GEORGE TURNER. -
Yes. The word "bounty" is used because it has the widest possible meaning.
Mr. MCMILLAN. -
Would the honorable member be willing to limit anything to be done between now and the 30th June?
Sir GEORGE TURNER. -
I look upon this sub-section as a mere farce. If I had my way, I would provide that until the Federal Parliament comes into existence the state Parliaments should be allowed to go on granting bounties. Why should we put in a date which will be probably twelve months before the Act comes into operation? I felt that a large majority of the Finance Committee were against me, and I was compelled to give way, but I think they are wrong. I do not think it is any use providing for a period of four months. When you are negotiating about bounties, or giving assistance of that description, it is very hard to do anything effective within four months. I am afraid that this clause will kill all that we are anxious to do, and it puts another difficulty in the way of inducing our people to vote for the Federal Bill. As the majority is against me, I have to give way and do the best I can to get the Bill carried, but I hope no attempt will be made to put a time limit in the clause, because I see no necessity for it, and it may prejudicially affect any bargain which we propose to enter into.
Mr. OCONNOR (New South Wales). -
I am glad Sir George Turner has put a concrete instance before us, because it enables us to deal with the difficulty. With regard to the case which the honorable member has put before us relating to the wine industry, it appears to me at first sight to be very doubtful whether that is a bounty at all. It only shows the variety of ways in which it may be possible to altogether avoid those rules with regard to bounties. I am not complaining of that, because if a state can assist its producers in any way without infringing upon this Constitution, there is no reason why it should not do so. But

I will take the case put—that is, an agreement entered into to guarantee interest on a loan for twenty years. The passing of the Constitution Act cannot affect the validity of that agreement or destroy its effect during the
term of twenty years. It will remain a contract binding on the Government.

Sir GEORGE TURNER. -

Mr. McMillan desires to put a time limit in the clause, and I was replying to his proposal.

Mr. OCONNOR. -

My feeling is that we ought not to interfere with any vested interests or machinery. That is to say, when a contract is actually made, and is in existence, and persons are acting under it, I do not think it ought to be interfered with.

Mr. MCMILLAN. -

I do not propose to do that. I proposed that Sir George Turner should declare what was the longest limit which would be reasonable, and that we should fix that limit, so as to get at a time when the Federal Parliament would have full control.

Mr. OCONNOR. -

The difficulty about that is that there are a variety of periods during which the contracts are running. I do not suppose that they are all for twenty years?

Sir GEORGE TURNER. -

No; there are some for three and some for five years.

Mr. OCONNOR. -

It seems to me that the true principle is this: Wherever rights have been acquired under a contract under one of these bounty laws those rights should be continued absolutely as they are. In my view the words spoken of by Mr. Isaacs will have the effect of still keeping alive any of these contracts. This contract for a guarantee of interest for twenty years is kept alive notwithstanding the passing of the Constitution Act, which will not alter the obligations of the Government of Victoria under that contract.

Mr. ISAACS. -

An Act of Parliament might alter it.

Mr. OCONNOR. -

An Act of their own Parliament might alter it if passed in that express way. As the honorable member knows, one of the first principles in the construction of statutes is that you cannot by implication take away an existing right under a statute. Even if you repealed the statute under which the right is acquired, any rights that accrued before the repeal of the statute are preserved.

Mr. ISAACS. -

To clear away the doubt which I have, will the honorable member tell me what is the effect of the Act between 30th June, 1898, and the imposition of the uniform Tariff Act?
Mr. OCONNOR. -

I wish first to finish with the particular case I am dealing with. I say, with regard to the case put by Sir George Turner, that even if the Act under which the agreement was made were repealed, if the contract itself subsisted, then the contract would be binding upon the Government, and they would be obliged to appropriate money to meet the obligation.

Sir GEORGE TURNER. -

Without a saving clause in this Bill?

Mr. OCONNOR. -

I do not think that is necessary.

Sir GEORGE TURNER. -

We always do it in our Acts.

Mr. OCONNOR. -

I do not think it is necessary, but there would be no objection to put such a clause in the Bill to make the matter perfectly clear. The honorable member (Mr. Isaacs) just now asked me a question with regard to what would be the state of matters between the 30th June, 1898, and the commencement of the uniform Tariff. I take it that the law will be this: That after the 30th June any contract which had been made before that date would still subsist up to the time of the passing of the uniform Tariff; or, if there was any contract which had been legally entered into before the 30th June, which had a currency even beyond the commencement of the uniform Tariff, I think that ought to be preserved also; and I believe it would be preserved under the words of this provision.

Mr. ISAACS. -

And what different position would that state law for bounties be in, after the imposition of the uniform Tariff, from what it was in six months before?

Mr. OCONNOR. -

I did not quite catch the question.

Mr. ISAACS. -

What would be the difference in the effect of that state law six months before the imposition of the uniform Tariff and six months afterwards?

Mr. OCONNOR. -

There would be no difference at all.

Mr. ISAACS. -

Then what is the meaning of the words stating that on the imposition of uniform customs duties these laws shall cease to have any effect?

Mr. OCONNOR. -
I take it that some of these laws regarding bounties, which give the Government the right to enter into a contract subsisting for a certain number of years, will still exist, but there are other laws, I take it, which operate in this way—that they amount to an offer to give a certain amount of bounty for every article that is produced. That operates only from week to week, or from month to month, as the offer is accepted by the production of the article. I take it that this is intended to apply to matters of that kind—that after the imposition of uniform duties, any law which enables the Government to give a bounty on the production of an article ceases.

Mr. ISAACS. -

Then, if an industry was started on the faith of an Act of Parliament providing for a grant, and that grant was made before the 30th June, it must stop on the imposition of the uniform Tariff?

Mr. OCONNOR. -

Unless the Act has enabled the Government to enter into some binding obligation, and the Government has done so, before that period.

Mr. PEACOCK. -

How will the public understand this question at all if lawyers disagree on this important point?

Mr. HIGGINS. -

It is a very important question.

Mr. OCONNOR. -

I think the honorable member (Mr. Higgins) will understand, from his experience of the law, that there are differences of opinion about these matters, and we only want to ascertain what the law really is. I have a very clear view about it myself, and I think the view I have is in accordance with what we will all admit to be the justice of the case. Further, if there was any doubt at all about the preservation of rights which have been acquired under any bounty laws made before the 30th June, 1898, I think that point should be made perfectly clear in the Constitution, so that those rights should be preserved. But after that date any statute which merely gives the right from day to day, as the offers under the statute are accepted, should, of course, cease on the imposition of uniform customs duties. I call the honorable member's (Mr. Isaacs') attention to a passage in Maxwell on the Interpretation of Statutes, page 299, which states—

It is chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions, or impair contracts, that the rule in question prevails. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of
respect to the Legislature, to be intended not to have a retrospective operation.

Then Maxwell gives a number of instances to illustrate this principle, which is very well known.

Mr. REID. -

Express words are required to make anything retrospective, to impair a contract.

Mr. OCONNOR. -

That is well known, and this provision, when it says the Act is to cease and have no effect, cannot possibly touch the validity of any contract which has been created while the Act was in full force and effect.

Sir GEORGE TURNER. -

Should you not also provide for accruing rights?

Mr. BARTON. -

I will see that the clause is made quite clear with regard to all existing rights.

Dr. COCKBURN (South Australia). -

There can be no doubt whatever that the honorable member (Mr. O'Connor) is quite right that any actual agreements or contracts, made with specific persons or companies, would remain in force; but that is not the point raised by this amendment, and I do not think that is the point raised by the Right Hon. Sir George Turner, in what he proposes to do for the development of the wine industry of Victoria. I do not take it that he means only to enter into certain contracts with companies or individuals, which would give them a monopoly if he was prevented from giving the same terms to others. What I believe the Government of Victoria would wish to do, in developing an industry of this character, would be to make a general agreement to give certain facilities, not to any one individual, which would be monstrous, but to anybody who chose to fulfil the conditions of the offer; but such general terms would not be held to be a specific contract under this clause. Of course there is no doubt that if the Government of Victoria enters into a contract with any individual or company, that would have to stand, and any law that abolished it would be monstrous; I do not care whether it was an Imperial Act or not.

Mr. MCMILLAN. -

But what about entering into new contracts?

Dr. COCKBURN. -

I take it that these are not contracts at all. These are grants or agreements for a bounty-the bounty not to be paid to any individual named, but to be
paid to any individual or company that fulfils the conditions.

Mr. MCMILLAN. -
Take the case of a guarantee. Do you say that the state Government should be allowed to do that after the 30th June for other people?

Dr. COCKBURN. -
Certainly; I take that to be the intention of this clause.

Mr. DOBSON. -
To enter into a guarantee with other people?

Dr. COCKBURN. -
There is no guarantee with any individual at all in this case. I have been watching this development in Victoria with some interest; but I do not take it that the Victorian Government intend to enter into any contract, only with an individual or a company. They wish to encourage the establishment of central depots for blending and maturing wine, receiving must, and so on; but they do not mean to enter into a contract only with some individual or company.

Mr. HENRY. -
Yes, that has been stated.

Dr. COCKBURN. -
Of course I may be under a mistake, but I think the people would at once protest against any advantage being shown to any individual who happened to come in before the 30th June that could not be availed of by others who were willing to subscribe to the same conditions. The state should simply offer to give assistance to any of the general public or persons in the trade who desire to take advantage of the offer; otherwise the proposal would be a monstrous one.

Mr. SOLOMON. -
In the same way, you should have the right, in South Australia, to continue the bounties to others that you have given in the past, with regard to the wine industry.

Dr. COCKBURN. -
Certainly; and if the colonies are to go ahead they must have that power. It must be done. You must not cripple a live colony, lest it should get ahead of those who travel at the rate of corpses. The honorable member (Mr. Solomon) must admit that it would be absolutely disastrous if we were to say that, in the future, no encouragement is to be given to any particular industry. The assistance will have to be given somehow, whatever this Constitution may say on the subject. The common sense of Australia will insist upon it, when some of the ideas of those who still maintain the laissez faire principle are exploded, as they will be shortly. The common sense of the Commonwealth, if we try to tie any ligaments round the
proper development of industries, will insist on those restrictions being removed.

An HONORABLE MEMBER. -
That will be the whole Commonwealth.
Dr. COCKBURN. -
But the whole Commonwealth, as was well said yesterday, will never take the initiative in this respect.
Mr. SYMON. -
Why not?
Dr. COCKBURN. -
We know, from past experience, that large bodies of men do not take the initiative; that the initiative lies in the localities where the conditions are specially favorable, and where the industry first springs into birth.
Mr. SYMON. -
The interest of the Commonwealth would be to advance the prosperity of each state.
Dr. COCKBURN. -
When the industry becomes large enough to engage the attention of the Commonwealth, perhaps the Parliament may be moved in such a way as to give a bounty; but I do not think any bounty would ever be given out of the Commonwealth revenue, when an industry concerned only a particular locality, or a particular state. I do not think that is at all likely. It is a matter for the state to pay a bounty, not for the Commonwealth. It is not sufficiently a concern of the Commonwealth, but only a concern of one state, and, perhaps, only of a particular locality. We have got into our present difficulty through a clumsy attempt to do, by a side-wind, what ought to be done freely by the will of the Convention-to give any state the right to continue to afford assistance to the development of its industries; provided it does not conflict with the general principle of equality of trade. This clause, as far as it goes, is certainly most absurd in its operation. It is as much as to say to live states that are going ahead like Victoria and also, I may say, like South Australia-"You have four months to act in: Now make all the agreements that you possibly can, no matter what they are; formulate something to cover all the ground in this matter, in which you are vitally interested." The result is, that attempts will be made to cover all the ground, so that all sorts of arrangements may be made within this short time. Then see how absurdly the thing would work out. No matter how inimical these conditions might be to equality of trade, if they are made
within this sacred interval of four months, they are to last for ever. Now, I ask is it not much wiser to say, that no matter when these agreements are made-past, present, or future-if they conflict with equality of trade, we should give some power to the Commonwealth to interdict them. I do not want to raise a discussion on the whole question of bounties, but I would like to say this: Suppose we, in South Australia, chose to give a bounty for the development of the ramee fibre, or for the production of india rubber, what harm should we be doing to any of the colonies of Australia?

Mr. SYMON. -

Why not ask the Federal Parliament to do it?

Dr. COCKBURN. -

I know how difficult it is, even in a state Parliament, to get a body of men to take the initiative in any matter when first the necessity arises. It is very difficult indeed to get mother's milk for the infant industry just when it is required. It is no use saying-"In six month, if you live, you will get it."

Mr. SYMON. -

There should not be so much difficulty as that when there is such great dairy development at present.

Dr. COCKBURN. -

Of course the opposition of the honorable member (Mr. Symon) is opposition on clearly defined ground. He does not believe in the state doing anything of this sort. He is one of the old school of laissez faire.

Mr. SYMON. -

One of the modern school.

Dr. COCKBURN. -

A number of honorable members who are opposing this are not opposing it because they fear that this power to give bounties, which obtains in the United States, would be in any way an interference with the equality of trade between the colonies, but simply because they do not believe in the state giving any assistance to any industry at all. If a division is taken on this matter, as I hope will be the case, we shall see that that division practically is between those who are in favour of the state stepping in and encouraging production, and those who are opposed to the state doing anything of the sort.

Mr. HOWE. -

That is a shameful remark to make.

Dr. COCKBURN. -

It may be shameful in so far that it is not always well to speak the naked truth in the eyes of the honorable member, but I do not see any harm in making a remark which I defy any one to contradict.
Mr. MCMILLAN. -
Is that argument—the mere expression of opinion that people belong to the old school?

Dr. COCKBURN. -
Well, the development of Australia is not going to take place by a continuation of the policy of the old school. This is a new country, and its resources could never be developed by carrying out the traditional policy of an old country. However, if I am involved in any such statement as the honorable member has attributed to me, I am not unwilling to express my approval of the action of the honorable member in calling my attention to the fact.

Mr. HIGGINS. -
The strongest free traders have never been against bounties.

Dr. COCKBURN. -
My experience of free-traders has been that, when it was a question of passing protectionist duties, they have said—"Oh, give us bounties instead," as a means of defeating the protectionist duties proposed, but when taken at their word, and bounties were substituted, their opposition was equally pronounced.

Mr. OCONNOR. -
Have we not discussed all these questions before?

Dr. COCKBURN. -
We have.

Mr. HOWE. -
This is provincialism nothing else.

Dr. COCKBURN. -
I do not want to get into a contention with the honorable member, and I do not wish him to get into a contention with me.

Mr. HOWE. -
I will not get into a contention with you, if you do not impute motives to those who hold views against yours on this question.

Dr. COCKBURN. -
Well, probably the best way in which the honorable member can object to anything I have said is to show the absurdity of my statement, and not to assert that I have imputed motives. Let him give a proper answer to my arguments on this question, which is a question of principle, and a question of vital interest. This provision is simply a clumsy attempt to do a right thing in a wrong way. It is absurd from every point of view. It will not meet the requirements of the case. It is a sort of sop to provincialism. It is ridiculous to say that any state shall be able to do whatever it likes for the next four months, no matter how inimical its action may be to the
development of trade and commerce between the colonies perhaps for all time.

Mr. HOWE (South Australia). -

As a rule, I am sure honorable members of the Convention will give me credit, like the majority of other honorable members, for listening quietly to the arguments urged for or against the provisions of this Bill, and making very few interjections. I would not have interjected now but for the last speaker imputing motives to those who were going to vote on the contrary side to himself. I believe that I am imbued with genuine federal ideas. I have voted for every bonus proposed by any Government in the Parliament of South Australia since I became a member of that Legislature; but we are not assembled here to consider provincialism as against federation, and while I have always endeavoured by every vote I have given in the provincial Parliament to protect colonial or provincial industries, yet I think those who sent me here, and they were chiefly the producers of South Australia—if it had not been for the great producing vote of South Australia, I would not have been a

member of this Convention-sent me here to help to frame a Federal Constitution on the basis of inter-colonial free-trade. Consequently, when the honorable member imputed motives to men like myself, who have always been true, provincially, to the cause of the producers, I naturally felt a little bit hurt at those remarks. Because, on every platform from which I have addressed gatherings of the people of South Australia, when seeking their suffrages to represent them at this Convention, I found that there was a consensus of opinion in favour of intercolonial free-trade, pure and simple, being made one of the chief factors of the Federation. Any obstacle that is sought to be placed in the path of the free interchange of commodities between these colonies, it is my duty, I reckon, to oppose. I have no fear that the great and vigorous producing interests will be imperilled at all by being placed in the hands of the Federal Parliament, because the Federal Parliament will be thoroughly representative of the people, which is more than we can now say of all the provincial Parliaments. The provincial producers are more likely to receive fair play at the hands of the Federal Parliament than at the hands of many of the provincial Parliaments at the present time, because, as I have said, the whole of the people will be represented in the Federal Parliament. Now, as to the matter of bounties, it seems to me that if we allow each state to grant bounties on the products of that state, this will become a matter of very serious contention between the various states. Those who advocate this policy say they are quite willing that its operation shall be regulated by an
Inter-State Commission, or some other tribunal created to deal with this matter, but the very fact of their making such a suggestion shows that they believe, in their own minds, there is a tendency to evil in the proposed policy—a danger that its operation will impede the free intercourse of commerce—or they would not recommend that a tribunal should be appointed to determine whether this policy is going to be injurious to the free exchange of commodities between the various states. For that reason, when the division takes place, I shall be found voting in the interests of federation, and in the interests of the producers of the whole of Australia—I shall be found recording my vote as against that of the Hon. Dr. Cockburn.

Dr. COCKBURN. -

It is not the first time you have done it.

Mr. HOWE. -

No; and I should like to do it again.

Mr. GLYNN. -

It is not the only time you have differed.

Mr. HOWE. -

No; but, at all events, I have always advocated that which I believe from my heart to be the best and soundest policy. There is no half measure about my position. I have never stood on a platform and endeavoured, by the use of oratorical language—nor would I ever do so, if I were possessed of the gift of oratory—to throw dust in the eyes of the listeners; but I have always had the good of the producers at heart, and their confidence in me—in my own colony, at all events—has always stood me in good stead. I do not like any honorable member to assume here an important position that he does not really occupy in his own province, and tell those who differ from him in opinion on the subject under discussion that they are not true to the responsibilities which the electors have intrusted to their care. When the division takes place I shall certainly, in the interests of federation and of unrestricted commerce, be found voting against Dr. Cockburn.

Mr. PEACOCK (Victoria). -

Our two friends from South Australia having settled their differences, we will possibly now be able to proceed to the consideration of the question raised by my right honorable friend the Premier of Victoria. I was guilty of making an interjection to one of the members of the Drafting Committee (Mr. O'Connor) while he was addressing the Convention, but I desire to assure him that I did not mean it in any insulting way. What I was particularly anxious about—and that is why I supported Sir George Turner's proposal by my interjection—was that the terms of this Constitution may be made so perfectly clear on
this point that when the Bill is sent to the electors they will be able to understand its purport, and record their votes accordingly. It is all very well for us sitting here to say that we understand how this particular part of the Constitution is going to affect the various colonies, but the people will naturally consider how it is going to affect them individually, and they will record their votes for or against the Bill, according as it is put before them by those who support or by those who oppose federation.

Mr. HIGGINS. - That is Mr. O'Connor's object--to make the clause clear.

Mr. PEACOCK. - The Drafting Committee have promised to make it perfectly clear, and, therefore, I will say no more about the matter. With regard to the discussion on the question of state bounties raised yesterday, and revived this morning, it seems to me, after listening to the speeches of honorable members, that the difficulty we are placed in in connexion with this and many other questions is that we cannot shake off, for the time being, our own character as representatives of our respective colonies. Now, in passing, I may be allowed to say that I was glad to hear Mr. Howe state that he was not a provincialist. I really thought that he was the other day when we were discussing the river question.

Mr. HOWE. - I never spoke on the rivers question.

Mr. PEACOCK. - But you voted on the question. Well, that is our position; we cannot for a time disassociate ourselves from our characters as representatives of the different colonies, remembering that we are framing a Constitution under which the same people who sent us here will be able to exercise, through the ballot-box, their power in the Federal Parliament But I want to put the matter from another point of view, as it strikes me. It seems to me that some members of the delegation have urged that Victorian representatives have advocated Sir George Turner's proposal from a purely Victorian point of view. Representatives of other colonies, particularly free-traders, are assuming that, by some side-wind, the Victorian representatives and some members of the South Australian delegation are anxious to try to defeat the main principles on which the Constitution must rest, namely, pure intercolonial free-trade. Now, I do not hesitate to say that there is an impression gaining ground in Victoria--and I believe that from the discussion yesterday and this morning that impression, so far as our colony is concerned, will be deepened that we are giving too much attention to the interests of the mercantile community, in our deliberations, and too little consideration to the great producing interests throughout the proposed
Commonwealth. Of course, in saying this, I am speaking for my own colony, but I am satisfied that the discussion which took place yesterday will do a large amount of harm. Now, as a matter of fact, not one of the Victorian or South Australian representatives who spoke yesterday want to see anything in this Constitution which will interfere with the principles of intercolonial free-trade. We know that intercolonial free-trade is absolutely essential, and that it is the main reason why we have been brought together in this Convention by our respective peoples. But why should we, in this Constitution, forbid the states to make any experiments such as have been made in South Australia and Victoria if they desire to make those experiments, and if they do not interfere with that principle of intercolonial free-trade? The Premier of New South Wales, who is one of the cleverest men in this Convention, it seemed to me, yesterday, drew a herring across the trail, when he wanted to make out that those who supported Sir George Turner's proposal were trying to interfere with this principle of intercolonial free-trade, and when he said that bounties would be given in one colony in order to interfere with the trade of another colony having the same industries and interests. Now, we do not desire to do anything of the kind.

Mr. SYMON. -

But you want to have the power to do it.

Mr. PEACOCK. -

No; we want to have a certain power left in the state Parliament. We desire that the state Parliament shall have the right to give bounties to help on any particular interest, if it so desires to make the experiment, although the Federal Parliament may not desire to try the experiment itself, as long as in doing that the state does not interfere with the principles of intercolonial free-trade. Let us assume, for the sake of argument, that this Constitution was in operation, and that we had the Federal Parliament in existence before the Victorian bonuses in connexion with the dairying industry were given, and that the people of Victoria desired that their local Parliament should give bonuses in connexion with the dairying industry. There is not a man here but will admit that in our own colony and in South Australia, which has copied our example, as well as in Queensland, the dairying industry has been the means of saving one of our great producing interests during the past few years; but if this Constitution had been adopted, without such an amendment as Sir George Turner has proposed, the Parliament of Victoria would not have been able to do anything in that particular direction, with the result that we should not have established the
dairying industry and the exportation of butter on it present large basis. Would not that have been a loss to the whole Commonwealth, as well as to the particular colonies immediately concerned, and will any one say that the giving of those bonuses in connexion with the dairying industry of Victoria and other colonies has interfered with the principles of intercolonial free-trade? Now, it seems to me, judging from the discussion yesterday, that there is a tendency on the part of the Convention not to assist those who desire to leave some power of this kind in the state Parliaments. I would urge my honorable friends in the Convention (and I am quite as sincere in regard to the principles of intercolonial free-trade as they are) to give some consideration to the great producing interests; so that if any state Parliament desires to grant a bounty, so long as it does not abrogate the principle of inter-colonial free-trade, it may be within its power to do so. The large producing interests which are supporting this scheme make it desirable that consideration should be given to their request in connexion with this question. The Convention can put in any proviso they think necessary to protect the principle of equality of trade, vesting the power in that respect in the Inter-State Commission, the Federal Executive, or the Federal Parliament. I should have preferred Sir George Turner's amendment to be carried yesterday; but, although that was not done, I urge the Convention not to overlook the point, and to pay heed to the fear - which is justified to a large extent by statements made here yesterday - that the greatest consideration is being given to the mercantile community, but not sufficient to the requirements of the producing interests. We all know that whatever the views of the merchants are with reference to protection, they are enthusiastic supporters of this Bill, and will go for it under any circumstances. But we should not at the same time drive away the great producing interests, but should leave it within the power of the state Executive to give some help to them. As Dr. Cockburn said just now - he may have been rather blunt in his way of saying it - there is the fear I have mentioned with regard to our producing interests; and I do not desire to have anything inserted in this Constitution which will lead those who are engaged in them to see that there is no power given to the local Parliaments to help them. Probably numbers of people will be under the impression that it will be too difficult, with our scattered populations, to bring any pressure whatever of a successful character to bear on the Federal Parliament to induce them to grant bounties. I fully agree that the principles of intercolonial free-trade should be amply protected, but I am satisfied that that can be done whilst the Commonwealth at the same time gives the state Parliaments power to grant
some assistance to the producing interests so far as the export trade is concerned. I desire the Convention not to overlook this request. If they do they will not only be doing an injury to the cause in those colonies which have export trades to maintain, but also in others which will try the experiment of encouraging trade by means of bounties, whether we federate or not.

Mr. REID (New South Wales). -

I should like to point out to my honorable friend who has just resumed his seat, that those who are opposing this amendment are not opposing the producers of Australia. It is simply a question whether there should be two tribunals dealing with the same thing.

Mr. TRENWITH. -

It is so with regard to all concurrent legislation.

Mr. REID. -

My honorable friend must recollect that there is a vital difference between this proposition and the matters dealt with in clause 52. Up to this point the Convention has been pretty well agreed that, in matters affecting trade and the conditions of production in any part of Australia, no trader or producer should be put in a position of advantage as compared with the producers or traders of other colonies. If you fix a bonus for the encouragement of exports, it will be admitted at once that it will create a strong feeling on the part of those producers in the Commonwealth who do not share the benefits of the bonus. Suppose that the butter bonus were revived in Victoria. The effect of giving a bonus for the export of butter from a colony is to increase the price of the article in the colony. The shipping of quantities of butter would have a tendency to increase the price of the article in this colony, whilst the producers of butter in other colonies would not have the same advantage or be in the same position, and would have to send their butter down to Melbourne in order to sell it at the same price which the local producer obtained.

Sir GEORGE TURNER. -

If our butter were sent away yours would be sent here to take its place, and would sell at a higher rate.

Mr. REID. -

That depends on a number of considerations. My honorable friend overlooks the effect of the formation of rings. For instance, it is notorious that when the butter bonus was given in Victoria the effect was that the money so given was almost entirely pocketed by middlemen in Melbourne, and the farmer and producer got very little of it at all. But the only thing I wish to impress upon the Convention is that it does not at all follow that the Commonwealth Parliament will not do its duty to the producers. The
great objection urged to this proposal is that while all the other producers,
those who do not believe in bounties at all, are putting themselves at the
mercy of the Commonwealth entirely, taking the risk of having to live
under a fiscal system of which they do not approve, our friends in Victoria
are not prepared to take the same risk. They want, as far as they possibly
can, to reserve the power of maintaining their own fiscal policy if the
policy adopted by the Commonwealth should be out of harmony with their
ideas. Let us suppose that the Commonwealth, as the result of this
Constitution, does not believe in the bonus system. Does not this
amendment really spring to some extent from

the fear that that may be the case? But it is the position which all other
members of the Commonwealth are bound by. So that, just as we in New
South Wales are prepared to be absolutely bound by a protective system of
duties, should it turn out that a majority of the Commonwealth are in
favour of such duties, Victorians also should be prepared to take the same
risk in regard to the fiscal policy of the Federal Parliament. We take the
risk of having to live under a policy which opens up the possibility of
having a system of protective duties, and that, to an enormous number of
people in New South Wales, is one of the most deterrent agencies
operating against the cause of federation there. I repeat that the risk that the
Federal Parliament will inaugurate a fiscal policy which is abhorrent to a
number of people in New South Wales has a strong deterrent effect,
notwithstanding the realization of the good that would be accomplished by
means of federation. But if these people, notwithstanding their feelings, are
prepared to come into the Commonwealth and take the risk-if they are
prepared to come in with the possibility of having to pay their share of
bounties and duties which they detest-surely those who seem numerically
in a much stronger position should be prepared to take a similar risk. As for
the exercise of power for granting bounties, if the Commonwealth saw fit
to adopt that system-and undoubtedly a great number of people would be
in favour of bounties who would not be in favour of protective duties; there
is a mark of distinction between the two things, as is obvious to any one
who thinks about the matter-the bounties would be granted to all alike; and
if it should be seen that the grant of a bounty would have an advantageous
national effect, we may rely upon it that just as the people of New South
Wales would be treated fairly if they asked for a bounty, say in the case of
iron, so the producers of other colonies would be treated fairly if they
desired a bounty for some other article of production. We are prepared to
take our risk, being satisfied that if the Federal Parliament should adopt the
bounty system, it will be administered in a fair way, and that the
Commonwealth will pay attention to the circumstances of all the colonies. But my feeling is that, if this amendment be carried, there will be a strong feeling throughout Australia that the old system is to go on after the Commonwealth is established, and that the local Parliaments will have power to practically annul the provisions with regard to intercolonial free-trade. That will give rise to all sorts of complications, because, even though we decide that the Federal Parliament will have power to annul particular bounties, we may be sure that there will be a strong temptation to indulge in all sorts of manoeuvres to secure local bounties from annulment by federal legislation. It is a subject upon which there will be a great deal of distrust and bitterness of feeling if things are not made equal all round. It is a system that will be equal all round which we are prepared to enter into. We are prepared to take the risk of living under a system of protection, which we abhor. And if we are prepared to take risks our friends should do the same. If their belief that the Commonwealth will be governed by a full protective majority is to be realized, the interests of the people of Australia, if those interests are helped by bounties at all, will be well looked after, because the prevailing policy will be a policy of bounties. If the Victorians are satisfied that their policy will be the policy of the Commonwealth, they should leave their interests to be dealt with by the Commonwealth with even more security than we do ourselves, who believe that the protective policy is inimical to the genuine interests of the country. I regret, therefore, that I cannot comply with the appeal of my honorable friend (Mr. Peacock). I look upon this as a vital matter. We, in New South Wales, are prepared to give up all chance of living under the fiscal policy which we prefer, in the interests of federation. We ask our friends to give way on the same point. If we take the risk, other colonies must be prepared to take the risk in the same way.

Sir GEORGE TURNER. -

But you take power to give bounties on your iron industry, because the clause says that the provision with regard to bounties is not to apply "to bounties or aids to mining for gold, silver, or other metals."

Mr. REID. -

Well, I am astonished to find that that is so. I never thought of that point when the clause was being prepared. Of course I see now at once that it would apply as Sir George Turner says, but I was so blind with regard to the subject which the right honorable gentleman refers to that I never thought of it. Is the right honorable gentleman, however, certain that it would apply?

Mr. OCONNOR. -
Yes, it would.

Mr. REID. -

Well, if it be so, honorable members will see the advantage of leaving it absolutely open to all the colonies to benefit from bounties in the same way, because all the colonies will be absolutely equal so far as the provision quoted by Sir George Turner is concerned. But if power is given to allow bounties to be granted by the local Parliaments, the provision suggested by my right honorable friend may raise up all sorts of sore points in the Commonwealth on this matter, upon which people are really very keen. The keen point, as my right honorable friend will admit, of federalists throughout all Australia is absolutely this—the rising of the Commonwealth is to be the death of these local struggles to get an advantage for one colony over the others, or for one colony to place its producers in a position of advantage over the producers of other parts of Australia; and it is because we look upon that as a vital point that I cannot, unfortunately, yield to the suggestion of my honorable friend (Mr. Peacock).

Sir GEORGE TURNER. -

We do not want an advantage over the other colonies. I never suggested it.

Mr. REID. -

But the right honorable gentleman will see that his proposal will conduce to giving an advantage to some producers over others. We, in giving up our freedom to carry out our industrial destinies in our own way, ask my right honorable friend to do the same on behalf of Victoria—to absolutely give up the freedom of his colony to carry out its industrial destinies according to its own policy, in order to submit to the broad federal policy. We may do this, feeling satisfied that the affairs of the Commonwealth will be administered in a fair and national manner, that everything affecting the colonies will be treated equitably, and that justice will be done to every member of the group. That is what we all aim at, I think, in this matter—that we should arrive at a state of things in which the Commonwealth Government will, if bounties be given, treat the producers of the nation on equal level terms. In carrying that out it may well be that incidentally a certain enterprise in a particular colony would be singled out, because perhaps that colony would have facilities for that industry which no other colony would have. Incidentally, therefore, it might be a local advantage, but just as in one respect one colony would have a local advantage, so in another respect the National Government would give the local advantage to another colony where some other industry perhaps possessed conditions which would not exist in the rest of the colonies. I quite see the reasons
behind my honorable friends' appeal to the Convention. I quite appreciate them. I believe they are dictated by an honest desire to make this Bill more acceptable to the people of Victoria, and, therefore, I have the utmost respect for the position of my honorable friends as a truly federal one from their point of view. But, on the other hand, I have to safeguard the interests of people who have different opinions, and who are prepared absolutely to surrender their views to the discretion of the Commonwealth majority.

Mr. LEWIS (Tasmania). -

This discussion began in a very interesting and very important drafting suggestion made by the Attorney-General of Victoria, and has now developed into a general debate on the broad question of the giving of bounties by states or by the Commonwealth. With regard to the Drafting Committee, I concur in the opinion expressed by the honorable member (Mr. Peacock) that this should be made absolutely clear. I do not think that the clause as it comes from the Finance Committee is clear. It provides practically that grants of and agreements for bounties made before a certain date shall be binding, but it also states that laws offering bounties, for which possibly money has been expended and will be expended, but for which the contract is not absolutely complete, cease and have no effect on the imposition of uniform duties of customs. Now, that was not the intention of this commission, and it is a question which I hope will be taken into the serious consideration of the Drafting Committee, so that we shall know that laws that offer bounties and that are in force at a certain date - I do not mind what the date is - shall be binding and in force at all times, and will be available to anybody to take advantage of when he complies with the terms and conditions of the laws under which they are granted. We have heard many suggestions for dealing with this question, and they all acknowledge the absolute right of the Federal Parliament to a complete supervision over bounties, in order to maintain the great principle of absolute equality of trade and commerce in the Commonwealth. But the amendments all show the difficulties that surround it. While the Premier of Victoria, in his amendment, acknowledges that the bounties must be under the supervision of the Federal Parliament, he agrees that state bounties may be anulled by the Federal Parliament after practically the mischief has been done. I can imagine nothing which will more conduce to the unpopularity of the Federal Parliament than that it should be called upon to annul a bounty offered by a state out of its own funds, and, possibly, after a large amount of capital has been expended, and a large amount of trouble undertaken, in order to secure the advantage of the bounties. And nothing
is more likely to lead to the embarrassment of the Federal Parliament. I can quite conceive cases in which they would prefer to allow a slight interference with absolute equality of trade and commerce rather than be a party to forcing a state to be guilty of what would morally be a breach of contract. Then, again, the proposal of Sir George Turner would defeat its own object. There would be an entire absence of security. No one would embark his capital, no one would enter into any engagement, no one would undertake any business to secure this bounty if he had overhanging him the fear that the Federal Parliament could at any time repeal that bounty. There would be an entire absence of security, which would defeat the very object which the representatives of Victoria have in view.

Sir GEORGE TURNER. -
I am going to put it in a more acceptable form presently, when I am in order.

Mr. LEWIS. -
The proposal to refer it to an Inter-State Commission does not commend itself to my mind. The Inter-State Commission will probably be composed of gentlemen well versed in railway rates; they will be, in fact, railway experts, and not the proper persons to deal with the distribution of bounties. Now, the grant of a bounty is a question for a Parliament to decide, and not for an Inter-State Commission. It is a question of policy rather than a question of rates, or anything that is likely to come under the ken of an Inter-State Commission.

Sir GEORGE TURNER. -
To expedite the matter, would you leave it to the Federal Government instead of to the Federal Parliament?

Mr. LEWIS. -
I have a compromise to propose which I hope will meet with the approval of the right honorable member, and that is that the state should be allowed to offer bounties from its own funds, first having obtained the approval of the Federal Parliament.

Sir GEORGE TURNER. -
That will take years to get.

Mr. LEWIS. -
The right honorable member's own proposal acknowledges that the Federal Parliament should have some supervision over the distribution of bounties by the states. I think that the sanction should be got before the bounties are given rather than that the Parliament should have the power after they are given, and after contracts are entered into and engagements made, to sweep away the bounties. If we acknowledge, and I think we all
do acknowledge, that the Parliament should have the control sooner or later, let them exercise that control at first rather than at last. It was urged yesterday by, I think, the learned members (Mr. Higgins and Mr. Deakin) that an appeal to Parliament at the outset would be a cumbersome method. I do not agree in that contention. There will be representatives, and a large number of them, from each state, and if a state is ready to give its money in fostering a certain industry, and if its representatives are united in urging the Federal Parliament to sanction that expenditure, surely they will find a means and an opportunity to obtain the sanction of Parliament at the earliest moment.

Mr. HOWE. -

But suppose the Parliament refuses to give its sanction?

Mr. LEWIS. -

Of course the Parliament is the guardian of the freedom and equality of trade and commerce, and we must trust them to approve of no grant of a bounty by any state which will interfere with the equality of trade and commerce. We have trusted them in many points, we must trust them also in this point, and however cumbersome this system may be-I do not admit that it is cumbersome-it will be far outweighed by the greater security which will be given by the sanction of the Federal Parliament to the granting of this bounty, and so inducing capitalists to put in their money to develop a particular industry rather than that the state should offer the bounty subject to be annulled at any time by the Federal Parliament. I throw that out as a compromise, and I hope it will be accepted, and will solve the difficulties that are felt by various honorable members who have spoken-those who wish the state Parliament to have an absolute right of granting bounties, subject to being annulled by Parliament, and those who would not like the state Parliament to have any power to give bounties.

Mr. MCMILLAN (New South Wales). -

I should not have spoken again on this question, as I am anxious to save time but the more the discussion has gone on the more improperly, it seems to me, this clause is drafted at the present time. Now, if I understood aright, what was the mind of the Convention previously? It was not that we should make any clause to allow a bounty system to go on ad infinitum, but that we should preserve all contracts that might be made of a specific character.

Mr. REID. -

Existing contracts.

Mr. MCMILLAN. -

All contracts of a specific character. It is not a contract, from my way of looking at it, if a Government introduces a measure giving a bounty on certain products. For instance, take a bounty on butter. It does not
necessarily bind itself to give the bounty for a period any more than a Government that puts on a certain import duty binds itself that it will not take that duty off for a certain period. I look upon this clause as most dangerous. From that point of view, I think it ought to be entirely redrawn. Of course, I can see clearly that Sir George Turner wants to so negative absolutely the previous clause that, the Federal Parliament notwithstanding, nothing shall interfere with any bonus system which may be introduced up to the 30th June.

That seems to me to open out an enormous area.

Mr. REID. -

The clause was never intended for that. It would not include the class of cases the honorable member refers to. These words only include a specific agreement between a Government and any person.

Mr. MCMILLAN. -

But the honorable member was not here when some of the speeches were made. There were speeches made-and that is my reason for rising again-in this Convention to-day which presuppose that all bounties, all general agreements, should be practically sanctioned and held alive. I will give the honorable member an instance.

Mr. REID. -

It will not be under this unless they are reduced to a specific agreement between the Government and an actual person.

Mr. MCMILLAN. -

That is what I want to make clear. I will give the honorable member an instance, as he was out of the chamber at the time. One honorable member said that they were just about negotiating a guarantee of 4 per cent. to some specific company in the wine business. Then a speech was made by another honorable member, which seemed to imply that that was the general policy adopted, and that any other company that desired to make the same proposal would have the same guarantee, and so on, as regards any other companies.

Mr. REID. -

That would not be valid under these words. An agreement with a given company would be valid if made on or before the 30th of June next, but no general words to enable a fresh agreement to be made after that date with persons unknown would be any good.

Mr. MCMILLAN. -

I only want to know clearly what the law is, because it is very evident that that is not the view taken of it by honorable members.
That is the effect of the words.

Mr. MCMILLAN. -

Very well, I take it that if a law is passed in the ordinary way by the state Parliament offering a bounty, and that has not gone into a specific contract, but is merely a matter of general legislation, the Federal Parliament can intervene and stop that.

Mr. REID. -

It dies. All these general laws die.

Mr. MCMILLAN. -

I am only anxious that that should be thoroughly understood. The whole trend of the debate has been against that principle, and it is better that we should at this stage know that that is the real position. But I think I am right with regard to what is in the minds of the delegates for Victoria. They think that they will have a perfect right to impose a general policy which, although it might not be a specific contract with individuals, would have to be carried out, notwithstanding the position of the Federal Government.

Mr. REID. -

It would not come within these words.

Mr. MCMILLAN. -

Then I am perfectly satisfied. I do not like the thing from beginning to end, but we must bring the discussion to a close, and I will vote for the proposal on that understanding.

Mr. SYMON (South Australia). -

The matter of substance is so very important that perhaps I may be permitted to make an observation or two, rather with a view of expressing what is in my own mind as to the meaning of this clause than of dealing with the very large question of bounties. I take it that the meaning of sub-sections (2) and (3) in the Finance Committee's report is that on the imposition of uniform duties of customs all general laws giving bounties are absolutely to disappear. In the interval between the establishment of the Commonwealth and the imposition of uniform duties, these laws remain in force, but every specific contract or agreement with an individual or with a corporation disappears at an earlier date, namely, the 30th June, 1898.

Sir GEORGE TURNER. -

If it be so, it is very serious. It will kill us in Victoria.

What I mean is that every contract made after that date is to be of no effect. Every contract made up to that date remains in effect during the term for which it is expressed to be in force.
Mr. ISAACS. -
Is that so?
Mr. SYMON. -
That is what appears to me to be the intention.
Sir GEORGE TURNER. -
Although the law offering the bounty ceases?
Mr. SYMON. -
Yes; the general law under which the power is given to enter into that agreement ceases, but the agreement under it is kept alive by virtue of this sub-section. That is what I take to be the meaning and intention of it. I give my assent to the very broad views expressed by the Right H
Mr. REID. -
We give them until the 30th of June to complete any negotiations.
Mr. SYMON. -
Yes, and to enter into any further contracts under the existing law that they may think fit to make. It is obvious that there must be some limit, and some very short limit, because we know the pressure that may be put upon local Governments for the purpose of getting a continuity of these things, which, in effect, may be good for a particular colony, but ruinous to the interests of those living over the border. I say, therefore, that the period for which this privilege is extended ought to be as limited as it can be. That is what strikes me as to the meaning of these two sub-sections, and they are perfectly consistent. There is nothing inconsistent in declaring that the law shall cease at one period, and that an agreement shall not be operative if made after a certain other period. These two things together are absolutely essential if we are to carry out the policy of giving the entire control of bonuses, in common with customs and excise, to the Federal Parliament. Whilst I say that, I doubt very much if the amendment suggested by my honorable friend (Mr. Lewis), in his very thoughtful speech, would help the matter. The object of this provision is to throw into the scope of the federal legislative power the control of these bounties. The whole issue is, as to whether the control of these bounties shall remain with the states or be in the hands of the Federal Parliament. You cannot have both. It seems to me to be absolutely impossible that you can allow both the state Parliaments and the Federal Parliament to deal with bounties. Perhaps the words my honorable friend has adopted might have the effect of suggesting that the state Parliaments still retain some power, but it would be an illusory power, because before a state Parliament could do anything to which validity would attach it would have to get the prior sanction of the Federal Parliament.
Mr. LEWIS. -
All the state does is to find the money.

Mr. SYMON. -

To that part of it I should have no objection, but I think we may fairly leave that and the whole control to the Federal Parliament. I would ask my honorable friend (Mr. Peacock) to consider whether he is not proceeding upon an erroneous assumption when he says it may be suggested out-of-doors that in this Convention we are doing everything for the mercantile community and nothing for the producers.

Mr. PEACOCK. -

And the manufacturers.

Mr. SYMON. -

Yes. There is not a line or syllable in the Bill to warrant any such contention. This very clause, on the face of it, has written in large letters the protection in a general sense and the advancement of the interests of the producers.

Mr. PEACOCK. -

Would you object to the modification Sir George Turner suggested that the state might give bounties with the consent of the Federal Executive?

Mr. SYMON. -

I think I should object to that. It would be like keeping the word of promise to the ear and breaking it to the hope. It would give those who would be likely to object on that mistaken ground nothing whatever, and it would be a pity to introduce words which would cause great embarrassment to the Federal Executive. We must remember that the Federal Executive would merely be the representative of the Federal Parliament, as this is to be a responsible Government. It would greatly embarrass them, and it would not give the states that independent control of bounties for which my honorable friends from Victoria apparently contend. There must either be an unrestricted control of bounties on the part of the states, or an unrestricted control on the part of the Federal Parliament.

Mr. PEACOCK. -

State bounties are given in the United States.

Mr. SYMON. -

I have not examined that part of the United States Constitution, but if it is so, it is a defect. On the face of this Bill we place a provision to enable the Federal Parliament to grant bounties on the production or export of goods. What more can be sought I do not know. And what more than that can be expected by the producers of every colony? Not only has the Federal
Parliament the power, but it is practically, on the face of the Constitution, invited to exercise that power. The placing of these powers in the Bill is an invitation to the Federal Parliament to exercise them, and no doubt the Federal Parliament will do what is just. When an honorable member gets up and suggests that it is desirable to retain this power to the state Parliaments because the Federal Parliament is difficult of access, and is not likely to consider the interests of the states, I repudiate such an argument, and say that if it were to prevail we should not want federation at all. The Federal Parliament is not to control an abstraction. It is to control and forward the prosperity of every state in this Union. Otherwise, we must look upon it simply as a body created for the purpose of doing mischief. I look upon it as a body created for beneficent purposes, and one of those purposes is to encourage production in every state of the Union to the utmost of its power, and, if a majority of the Federal Parliament can be convinced that financial aid is necessary, to the utmost of its financial strength. The honorable members representing Victoria are all animated by a desire to disarm opposition. I know that, and I acknowledge the difficulties but I am sure that with their power of exposition, aided by the federal spirit which actuates them, they will have no difficulty in convincing the doubters, and in satisfying the perhaps would-be opponents of federation, that every possible precaution has been taken to safeguard the interests of the producers as well as the manufacturers and the merchants—in fact, to safeguard the interests of every citizen of the Commonwealth. I hope, therefore, that these provisions will be adopted. I believe them to be the best, in principle at any rate, which have yet been advocated, and they not only declare that the interests of production are to be secured, but they declare that in that special and exceptional class of production connected with mining this clause does not apply. Their wisdom is, I think, only equalled by their prudence and their consistency with the great objects of federation, and I trust that they will be passed.

Mr. TRENWITH (Victoria). -

The honorable member (Mr. Symon) says that this is a question of giving absolute and complete control of bounties either to the states or to the Federal Parliament. That is an assertion that has not been made clear to me, at any rate, by any arguments that have been submitted, and the evidence that the Convention does not think so is given in the fact that we have made an exception in connexion with mining. If there is any interest in reference to which this might be regarded as a federal rather than a state question, it is mining, because mining is carried on in a greater or lesser degree in each of the Australian colonies. There are interests that are
peculiar to the respective colonies. There is the iron industry, which has reached a considerable degree of development in New South Wales, whilst up to the present time it has not been developed in any degree, as far as I am aware, in any of the other colonies. It happens that the development of the iron industry by the state of New South Wales is possible under this clause, and therefore this is only useful as an instance in which, without any injury, but indeed with positive gain, to the other states, New South Wales might very properly give a bonus. But while that is so, though the Commonwealth adopted the policy of bounties, and gave them in connexion with interests that were somewhat general in their character, there would be considerable difficulty in passing through the Commonwealth Parliament a Bill to give a bounty for an industry located in one state only.

Mr. BROWN. - Why?

Mr. TRENWITH. - Because the representatives of the other states, which have no direct interest in the matter, would be, if not antagonistic, at least only lukewarm in regard to the proposal, and while they might admit in a general way that to give bounties for the development of a national industry was a legitimate thing to do, they might urge that the Commonwealth Parliament was not at liberty to spend the Commonwealth money in developing an industry in one state alone.

Mr. BROWN. - Do we find that selfish spirit prevailing in our local Parliaments?

Mr. TRENWITH. - Yes, in a greater or less degree. Appeals from all sections of the community are heard by Parliament more quickly than an appeal from only one section. For this reason I urge the necessity for inserting these proposals, and the absence of any danger connected with them. The Premier of New South Wales said that it appeared to be thought by some honorable members that the Commonwealth Parliament would be opposed to the granting of bounties. If that were the attitude of the Commonwealth Parliament, these provisions would not hamper it, because it is only proposed that bounties shall be given by the state with the consent of the Commonwealth Parliament.

Mr. FRASER. - The Commonwealth Parliament will not be opposed to the granting of bounties.

Mr. TRENWITH. - I think it highly probable that it will not, and that is why I feel so earnest
about the matter. I feel that the general principle will be adopted by the Commonwealth Parliament, as it is being adopted by the states, but progress will be much less rapid if the Federal Parliament alone has the power to grant bounties. I feel that the progress of the states, and consequently the progress of the Commonwealth, may be very materially accelerated if power is given to the states to grant bounties. The honorable and learned member (Mr. Symon) must know that there are a number of things which can be done by the states and by the Federal Parliament-by either at their discretion. But if something is done by a state or states in regard to which the Federal Parliament subsequently passes legislation, it is very properly provided that the legislation of the Federal Parliament shall supersede that of the states. Honorable members who profess free-trade proclivities in connexion with the methods of taxation and the control of trade appear to be afraid that this is a covert effort to obtain bounties which may be used for the restriction or prevention of freedom of intercourse. I am probably as pronounced a protectionist as there is anywhere, but I have always felt that there should be,

wherever practicable, absolute free-trade between the colonies. I, for one, would be the last to render absolute freedom of intercourse between the colonies impossible, if we can have some common system of protection against countries outside Australia, which is achieved by this Constitution. It may be—but I think it highly improbable—that the policy adopted by the Commonwealth will provide for freedom of intercourse with all the countries of the world. Notwithstanding this, no one is more earnest in the desire to see absolute freedom of intercourse established between the colonies than I am, and that I think is the desire of the people of Victoria. I was going to give another illustration, which seems to me particularly pertinent as showing the desirability of leaving this power to the states, with the consent of the Federal Parliament—and, I will go the length of saying, not before the consent of the Federal Parliament is obtained. In New South Wales they have for some time been producing kerosene. I have not heard of any other part of Australia where kerosene can be produced.

Mr. GORDON. -

The honorable member has not then heard of the deposits in South Australia.

Mr. BROWN. -

And in Tasmania, too.

Mr. TRENWITH. -

Then it would seem that a federal bounty might be given for the
development of this industry. My impression, however, is that New South Wales is the only colony where an effort has been made to produce kerosene. If the New South Wales Government saw fit to give a bounty for the development of the kerosene industry, that could not interfere with freedom of trade throughout the colonies, and, so far as it affected the other colonies at all, it would benefit them by encouraging the local production of an article very largely used throughout the Commonwealth. It benefits Victoria very materially that a mine so rich and prosperous, so rich and so full of possibilities as Mount Lyell, should have been developed in Tasmania. The development of that mine indeed has benefited the whole of Australia, and so it would be with the development of any local industry—unless there was some counterbalancing disadvantage, such as a restriction of intercourse. Of course, the Commonwealth Parliament will be able to give a bounty when they think a bounty necessary, and they may in time be induced to do anything that a state would consider it proper to do; but while a state would move quickly, the Commonwealth Parliament would move slowly. It must always be remembered that if this provision is made for the granting of state bounties the states will not be able to do what the Commonwealth Parliament could not do, or would consider it wrong to do; but the state might do to-day, and at once, what the Commonwealth Parliament would take a long time to do.

Mr. GORDON (South Australia). -

It was upon my motion, at the Sydney Convention in 1891, that the exclusive power to offer bounties was vested in the Federal Parliament, because it is obvious that, unless some such qualification as has been suggested by the Premier of Victoria were adopted, to leave to the states the power to grant bounties might seriously interfere with the freedom of trade between the colonies. I think that if some such provision had been made at the time it would have been accepted. Upon the principle that the greater includes the less, if the Federal Parliament has the right to offer bounties, it will have the right to give the states leave to offer bounties, having in its purview the interests of the whole Federation, and knowing that the interests of no part of the Commonwealth will be injured. It appears to me that the suggestion of the right honorable gentleman might be adopted. By the tacking on of a few words to sub-section (86A) the whole end we have in view might be achieved.

The CHAIRMAN. -

The debate has wandered very considerably from the question before the Chair, which is simply the insertion of a new paragraph suggested by the Finance Committee. We have not yet come to the
amendment suggested by the Premier of New South Wales.

Mr. GLYNN (South Australia). -

It has been pointed out by the Attorney-General of Victoria that this sub-section simply preserves the existence of contracts entered into prior to the 30th of June, 1898, but if these contracts may end with the repeal of the grant, which will be repealed upon the coming into force of uniform duties of customs, the meaning of that is that you only give life to these contracts until uniform duties of customs are imposed. So that, while a contract may be made for twenty years, it may be put an end to after two or three years. The point is whether the clause should not be recast. The honorable and learned gentleman very properly suggested that the paragraph is expressed negatively instead of affirmatively. I think that the whole difficulty would be got over if an affirmative expression were provided, so as to give vitality to all contracts entered into prior to June, 1898, to the full length of their term.

Mr. ISAACS (Victoria). -

I am perfectly satisfied with the assurance that we have had from the leader of the Convention, but I wish to move an amendment which will practically fall in with the observations of the honorable and learned member (Mr. Glynn). I beg to move-

That the amendment be amended by the insertion, after the word "but,"
of the following words, "the provisions of this section shall not apply to any grant of or agreement for any such bounty made by or under the authority of the Government of any state before the 30th day of June, 1898.

Mr. SYMON (South Australia). -

The effect of the amendment, as I understand it, is that all laws with respect to the granting of bounties in force at the time of the establishment of the Commonwealth will remain in full force until the imposition of uniform duties; that all grants and agreements made under those laws before the 30th June, 1898, remain in full force and effect, notwithstanding the departure, so to speak, from the laws on the imposition of uniform duties; that in the interval between the 30th June, 1898, and the imposition of uniform duties, those laws remain in full force and operation in each state, so that each state may grant these bounties, may enter into agreements, and may do everything it pleases in the interval, except that agreements and grants arranged for during that interval cease on the cessation of the law, and the only agreements and grants that are preserved after the cessation of the law are those made before the 30th June, 1898.

Mr. ISAACS. -

There are no words expressly preserving them, and that is the danger.

Mr. SYMON. -
I was going on to say that my honorable friend's amendment is intended to make that absolutely clear. I agree with it. It is well that it should be known publicly that each state can go on during those two years granting those bounties and facilitating the operations of its producers just as before, except that at the end of two years they cease. That gives a sort of locus penitentiae. Only those grants and agreements which were made before the 30th June, 1898, remain in full operation.

Mr. Isaacs amendment was agreed to.

The new paragraph, as amended, was agreed to.

Paragraph (4). - The control and collection of duties of customs and excise, and the control of the payment of bounties, shall nevertheless pass to the Executive Government of the Commonwealth upon the establishment of the Commonwealth.

Mr. OCONNOR (New South Wales). -

In order to carry out the recommendation of the Finance Committee I propose the omission of this paragraph. It is proposed to make a separate clause to provide for this matter, which will be 86A. I propose to omit the paragraph, if that can be done.

The paragraph was struck out.

Paragraph (5). - This section shall not apply to bounties or aids to mining for gold, silver, or other metals.

Mr. OCONNOR. -

Upon this paragraph there is an amendment necessary on the recommendation of the Finance Committee. I beg to move-

That before the word "This" the word "neither" be inserted, that the words "nor the preceding" be inserted before the word "section," and the word "not" be struck out.

The clause will then read "Neither this nor the preceding section shall apply."

The amendment was agreed to.

Sir GEORGE TURNER (Victoria). -

When we were discussing this question, our desire was to assist mining enterprise, but I do not approve of the words as they now stand in the clause. There is always a difficulty about the construction of the words "other metals," and there is a question as to whether they do not mean ejusdem generis. Minerals would not be included under this definition, and I think it would be much better if we made the clause read so as to apply to mining for metals or minerals.

Mr. KINGSTON. -

Why not stop at the word "mining"?
Sir GEORGE TURNER. -
That would meet my view, and I beg to move-
That all the words after the word "mining" be omitted.

Mr. OCONNOR (New South Wales). -
The clause as it stands was the result of a long discussion in Adelaide. It was held that bounties granted for the production of metals stood in a different position altogether from bounties granted for the production of goods which might be the objects of commerce between different states. It is because a bounty on the production of metals would have no effect on the price that this clause was agreed to. The honorable member has suggested that instead of gold, silver, and other metals, the words "other minerals" should be introduced. There is an objection to the word "mineral," because that would apply to coal.

Sir GEORGE TURNER. -
Why not give a bonus for the production of coal?

Mr. OCONNOR. -
Coal is in a different position altogether to the other metals. The policy of the Convention was based on the reason that coal is an article of commerce between the different states.

Sir JOHN FORREST. -
But New South Wales has got all the coal at present.

Mr. OCONNOR. -
Coal is in a different position altogether. We have enacted that there shall not be a bounty on produce of any kind, and that applies all the more strongly to the production of such an article as coal.

Sir GEORGE TURNER. -
This means that we are not to develop our coal resources at all. You are going too far.

Mr. OCONNOR. -
The honorable member will see that this sweeps away entirely the whole object of handing over the control of bounties to the Federal Government. If you give a bounty for the production of coal, you might as well give a bounty for the production of butter or any other natural product.

Dr. COCKBURN. -
So you ought to.

Mr. OCONNOR. -
The reason why you are not allowed to give a bounty for the production of butter, or any other article of that kind produced in a state, is because the bounty would interfere with the price and the sale in commerce between the states, and exactly the same consideration would apply to a mineral like coal, which is the subject of sale. The case of gold, silver, or any other
metal is quite different. It is not the subject of trade and commerce between the different states, and that is the reason why the two things are put in separate classes. I only make that remark because Sir George Turner has suggested that the matter should be dealt with in a particular way. Exactly the same objection may be raised to leaving out all the words after the word "mining." It ought to be put beyond all question that the only mining bounties to be excepted are bounties dealing with gold, silver, and metals, so as to draw that line of distinction. The object in Adelaide was not to interfere with the grants of the different states made for prospecting purposes. In all the states these prospecting grants are given to develop the particular localities, and it was thought that they might as well continue to be given.

Sir JOHN FORREST. -

For coal especially.

Mr. OCONNOR. -

So that there should be no interference with the general policy in framing this Constitution.

Sir JOHN FORREST. -

Why should it not apply to coal?

Mr. OCONNOR. -

Coal stands in a different position altogether. The Convention at that time recognised the difference, and I hope the committee will pass the clause as it stands.

Sir GEORGE TURNER (Victoria). -

I regret that the honorable member (Mr. O'Connor) has taken up this position. I will press my amendment to a division. Step by step New South Wales seems to be gaining everything, while the other colonies are getting nothing. I have a very great deal of patience, but I must tell my honorable friend that my patience is nearly exhausted.

Mr. OCONNOR. -

This applies to every colony. Why say that New South Wales gets an advantage?

Sir GEORGE TURNER. -

New South Wales has apparently got her coal resources developed. We cannot develop the coal resources which we probably have without assistance from the state. Is New South Wales going to play the part of the dog in the manger, and say to us-"You shall not develop your coal"?

Mr. WISE. -

Are you willing to allow us to give bounties to manufactures?

Sir GEORGE TURNER. -
I would allow you to give any bounties you like if they do not interfere with other states. Giving bounties to manufactures is somewhat different to developing the natural resources of the colonies. We know that in our colony, in South Australia, and probably in Tasmania and Western Australia, we cannot develop our coal industries unless the Governments are prepared to give assistance. Are we to kill these industries altogether? We are doing nothing for the benefit of our natural industries in this Convention. We are doing nothing for our producers. We are only helping our merchants and manufacturers. The majority of our people will say that under these circumstances it is better for us to stand out of this Federation altogether.

Mr. SYMON. -
Do not say that.

Sir GEORGE TURNER. -
I am afraid they will say it.

Mr. OCONNOR. -
Is not your proposal the same as putting an import duty on coal?

Mr. WISE. -
Exactly the same.

Sir GEORGE TURNER. -
We shall be debarred from assisting any company which desires to prospect and eventually to mine for coal. This will prevent us from giving £500 or £1,000 to help such a company. We are at liberty to do that in the case of gold, silver, and other metals; but we may discover a large number of other minerals besides coal in the different colonies.

Mr. WISE. -
Is the honorable member prepared to limit the bounties to grants in aid for prospecting and discovery? That was the attitude which was taken up in Adelaide. Then it would include coal if you like. If the grants are to be in aid of production that is altogether different.

Sir GEORGE TURNER. -
A grant for prospecting and discovery would, in many cases, hardly be sufficient. We must be prepared to do something to help persons to develop the coal industry. I cannot get away from the fact that, step by step, we are going a long way to kill all the natural industries in our colony, which it ought to be the desire and intention of the Government to develop. I ask my honorable friends from New South Wales, who have gained, step by step-
In New South Wales the people are jealous, and say you are robbing us at every turn.

Sir GEORGE TURNER. -

I have not seen anything that any of the other colonies are getting. I am not going to delay the Convention by going over all the points which New South Wales has gained; but I say now, as I said at first in Sydney, that I believe New South Wales in five years' time will be the colony that will get the most advantage from federation. I have no hesitation in saying that that is now my matured opinion, after giving the question every consideration. I ask Mr. O'Connor not to oppose my amendment, but to allow the colonies the same right to assist in developing the coal industries as it is proposed to give them in developing metals. I will insist upon putting my amendment, in order to test the feeling of the Convention.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two p.m.]

Mr. HIGGINS (Victoria). -

On this particular amendment I shall have, with great regret, to vote against my right honorable, friend, the Premier of Victoria, if the amendment is pressed to a division. I can see that the amendment will be a derogation from freedom of trade within the Commonwealth; and anything which tends in that direction, as I said last night, I shall have nothing to do with. The effect of the amendment, if it is carried, will be that there will be power in Victoria and other colonies to exclude Newcastle coal-to practically give bounties on the production of coal in Victoria which will exclude coal from Newcastle; and that I take to be distinctly a derogation from freedom of trade and commerce within Australia. I hope the committee will clearly apprehend the particular amendment now before the Chair. The amendment is that a state may, without any restriction whatever, give any bounty it thinks fit upon anything. Now, the only exception which was made in Adelaide was upon my motion, and it was that the state might give bounties or aids for any metals—not minerals—but gold, silver, and other metals. There was no danger of any interference there with inter-state commerce; but when it comes to a question of minerals, without any restriction whatever, I say that proposal can be worked, within the law, for the purpose of aiding our Korumburra and other mines; and, much as I should like to see the Korumburra mines prosper, I certainly think we must take the bad with the good. We are going to have the great benefits of intercolonial freedom of commerce, and we must submit to abstain from giving the state power to grant bounties and aids in favour of coal and other minerals.

Sir GEORGE TURNER. -
Our people may think we are paying too dear for those great benefits.

Mr. HIGGINS. -

Of course, it is for our people to consider whether it is worth while to submit to that noble principle, as I consider it to be, of freedom of transit of goods between the different parts of this Commonwealth of Australia. I am quite sure that our people are as strongly federal in spirit as the people of any other colony in the group, and I am certain that they are willing to accept all the consequences of inter-state freedom of commerce. I hope it will be clearly understood that it is only this particular amendment that I take exception to. Last evening I suggested—and I am very glad to see that the Premier of Victoria has accepted that suggestion—a modification of his proposal with regard to bounties given with the assent of the federal authority. As to that, I shall support him with all my heart and soul. I think all the arguments that have been urged against that proposal, upon the ground of interference with inter-state commerce, are beside the point. I do not think they have touched the argument of the Premier of Victoria at all. The idea in that proposal is simply that a state may grant a bounty on anything provided the federal authority consents, and of course the federal authority will see in giving its consent that there is no interference with inter-state commerce. The Premier of Victoria is quite right in urging that there are plenty of articles, plenty of products, on which a bounty can be given without any interference whatever with interstate commerce, and I shall support him in that matter as heartily as I can. But as to the present amendment, I submit that, however desirable it may seem to us to help our own industries, it is an amendment which will have the effect of derogating from one of the chief commercial advantages to be derived from federation, and that is, absolute freedom of goods crossing the border. At Adelaide, the Premier of Victoria never urged what he now declaims about. In his speech just now he said that New South Wales is getting all her own way, and that she is getting it more and more, but at Adelaide she got this particular point.

Dr. COCKBURN. -

We saw it was no good opposing it.

Mr. WISE. -

It was not objected to. I have the debate here.

Dr. COCKBURN. -

I objected, in committee, and also previously—not as to coal particularly, but generally.

Mr. WISE. -

It is coal we are talking about now.
Mr. HIGGINS. -

When the Premier of Victoria says that we are giving up more and more to New South Wales, the answer is that this thing was conceded without any objection on his part at Adelaide, and if it was right then it is right now.

Mr. WISE. -

Conceded! It is only a declaration that you won't ask something more from us.

Mr. HIGGINS. -

The honorable member may take the expression in that form if he thinks fit. I only wish to put my position before the committee. I believe that the people of Victoria are eager for freedom of trade between the colonies, and that they are willing to take it, even with the condition that they cannot give special bounties in aid of the coal or other industries. I have thought it necessary to explain my attitude in this matter, because, as representing a Victorian constituency, and as having been elected by Victorians, I feel the responsibility of my vote on this amendment.

Mr. MCMILLAN (New South Wales). -

I go further than the point of objecting to this amendment; I think there is grave danger in discussing this question at all.

Mr. KINGSTON. -

Discussing it?

Mr. MCMILLAN. -

What I mean is, that I think it is going a step beyond all reason with regard to this matter of bounties. I think that any attempt to lead up to such a discussion, involving the equality of trade in the great coal-mining industry of New South Wales, would do a great deal of harm in connexion with the debates of this Convention. Of course, I am not saying that the matter should not be debated; but it really seems to me that, if the Prime Minister of Victoria could withdraw this amendment, after the speeches which have been made upon it—because I do not think there is any possible chance of its being carried—the effect would be better. Of course, the right honorable gentleman will thoroughly understand that I do not say this in any impertinent or dictatorial tone, but simply because it appears to me that the fact that we are asked to allow a bonus to be given to the coal trade of Victoria, which would have so manifestly the effect of an import duty on coal, and be so derogatory to all the principles of that equality of trade which lies at the very basis of this Constitution—it does seem to me, that the effect of even a discussion of this kind would be bad in the interests of federation.

The amendment was negatived.
Mr. HIGGINS (Victoria). - I understood that Sir George Turner was going to add certain words to this paragraph. I do not wish to take it out of his hands if he desires to do that.

Sir GEORGE TURNER (Victoria). - I have a feeling, from my late experience in the Convention, in moving this proposal, that it is almost hopeless.

Several HONORABLE MEMBERS. - No, no.

Sir GEORGE TURNER. - My honorable friend (Mr. Wise) may smile, but I can assure him that I am in real earnest.

Mr. HOWE. - Right; we must concede something.

Sir GEORGE TURNER. - I am glad to hear that, because I have not found anything conceded yet.

Mr. WISE. - You have had everything your own way.

Sir GEORGE TURNER. - I have had nothing conceded to me yet.

Mr. WISE. - You are so reasonable that you have asked for nothing.

Sir GEORGE TURNER. - That is just my failing. If I had been like some of the representatives of other colonies, and asked for something unreasonable, I might have got some reasonable concession.

Mr. MCMILLAN. - You are the most reasonable man in the Convention.

Sir GEORGE TURNER. - I propose to add-

This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth.

Mr WISE. - Strike out the words "the Governor-General in Council or of."

Sir GEORGE TURNER. - Of course; strike out the only part of my amendment that I am anxious to get, and take what is practically of little, if any, use, and my honorable friends are willing to concede it. I put in the "Governor-General in Council or the Parliament of the Commonwealth," because I say this: That if we have to go with all these applications to the Federal Parliament-a body
which will meet probably for three months out of the twelve, a body which, for a time, at all events, will be dealing with very large and important questions—the Federal Parliament will have little, if any time, even if it has the inclination, to deal with this question of bounties in cases where it affects only one colony. And if the proposal for a state bounty is to be brought forward by a private member in the Federal Parliament, he will be in a far worse position than a private member in one of our local Parliaments, and we all know what little chance a private member in one of our local Parliaments has of carrying a motion or of passing a Bill. Now, if we are to leave it in this way, that some representative of any colony that requires a bonus is to bring it before the Federal Parliament as a private member, I say that such concession as that would be worse than useless to us, because it would be simply misleading those of our people in Victoria who might think that they were getting what was of real benefit and advantage to them. And if the committee strike out the words "the Governor-General in Council," and it is to be left simply to the Federal Parliament, then I will vote against the proposal myself as being worse than useless—as being misleading. But if we are to be permitted to go before the Governor-General in Council—the Government of the day—during the time Parliament is not sitting, and if we can make out a good case for the bounty that our people desire, and can show that no injury will be done to any other colony by allowing that bounty to be given, why not give power to the Federal Executive to consent to the grant of that bounty? We are not asking that the Federal Executive should deal with federal moneys belonging to the Commonwealth, but simply to consent to the spending of money of a particular state by that state for the benefit of certain industries in that state, so long as that benefit is not injurious to any other part of the Commonwealth. I fail to see any reason whatever why we should not give that power to the Governor-General in Council. It is a power which that body will be slow to exercise. This proposal of mine does not go to anything like the length to which I think the Convention ought to go in this direction for the sake of many of the colonies, but, seeing that it is the only thing I have any hope of carrying, I am willing, accepting the suggestion of my honorable friend (Mr. Higgins), to submit my amendment in this altered form. By going to the Governor-General in Council a state can have its application for a bounty speedily settled one way or the other. If it has to go to the Federal Parliament, while the consent of that body is being obtained the industry it desires to assist may die. People who propose to invest their capital and energies in a certain industry, on consideration of
receiving assistance from the state, will not wait month after month and year after year for a bonus of £3,000 or £4,000 to assist them in establishing that industry. And yet they may have to wait that time if the consent of the Federal Parliament is to be absolutely necessary to authorize the grant of that bounty. Those people will say-"We prefer to take our capital and our abilities to some other country, where we can get prompt assistance." I put in "the Federal Parliament" for this reason, namely, that should the Government of the day say "No" to a state's application for its consent to a bounty, the state will still have the opportunity of going to the Federal Parliament and asking the Federal Parliament to say that the Government of the day should give its consent. I submit that this is really a very little concession to give to the producers of Victoria and other colonies, and that the Convention ought to be willing to accept my amendment.

Mr. WISE (New South Wales). -

Before this amendment is carried-

Mr. SYMON. -

Before it is put, you mean.

Mr. WISE. -

I say before it is carried-and I confess that I have at present quite an open mind on the matter-I would like this consideration to be clearly before the Convention: If the power to consent to a state bonus or bounty is put in the hands of the Governor-General in Council, which, of course, means the Ministry of the day, do we not deprive the various states, through their representatives in the Senate, of the opportunity of expressing any opinion on the question? The Ministry of the day will, of course, be responsible only to the House of Representatives. It may be that the Ministry represent one or perhaps two of the more influential states who are largely interested in the development of a particular industry, and the development of that industry may be prejudicial to competing industries of the same class in two or three of the other colonies, which, although in a minority in the House of Representatives, would be in a majority in the Senate. Now, inasmuch as the objection to state bounties is well based on the doctrine, which I believe to be sound, that you cannot have state bounties without running great risk of interfering with the freedom of commerce between all the states, it becomes apparent at once that all the states are interested in the question whether a bounty should be given or withheld. Therefore, to allow a bounty to be given by a state with the consent of Parliament, as proposed by Mr. Lewis, is perfectly fair, because that proposal insures that every state, not only the large states, who will have the predominance in the House of Representatives, but also the smaller states, who will have the
predominance in the Senate, will be able to express its opinion clearly as to whether the proposed bounty should be granted or not. But if you leave it to the Government of the day, you run the risk of taking away from the smaller states, which might be vitally interested in the question, the opportunity of saying whether that bounty should be granted or withheld. I am quite in sympathy with the original view of the Premier of Victoria in holding that there should be no obstacle placed in the way of granting aids to the discovery of metals or minerals, but I am utterly opposed to the idea of bounties for production. If such bounties are necessary, they ought to be given only under circumstances of great difficulty, after full discussion, and after the opinion of every state whose commerce may be affected has been taken in the most effective manner possible.

Mr. ISAACS. -
How is it that this is done in America?

Mr. WISE. -
They do it very slightly in America.

Mr. ISAACS. -
They do it as much as they like there.

Mr. WISE. -
The Constitution of America is such that they have not been accustomed to duties between the different states there as we have been here. In America one state does not prosper by cutting out the commerce of another state. Unfortunately, we have had only that idea here, and it is an idea that has unquestionably been promoted by my honorable friends in Victoria. For myself, I will put every possible obstacle in the way of any state injuring the interests of neighbouring states, and therefore I feel that these bounties should only be allowed with the consent of the House of Parliament representing the majority of the people, and with the consent of the Senate, in which each state that may be affected will be represented.

Mr. ISAACS (Victoria). -
I earnestly appeal to the committee to pass this proposal of my right honorable friend the Premier of Victoria.

Mr. WISE. -
Will you consent to strike out the words "the Governor-General in Council or of"? I will vote for the amendment if you do.

Mr. ISAACS. -
Why, that is the efficacious part of the proposal, and it is simply idle to talk about striking that out and passing something that will be worse than useless, because it will be absolutely illusory. We were told in a recent
debate on the river question, that our honorable friends from New South Wales were not here to give away what would really amount to the lands of their colony. Now, I say that, in this matter, we are asked to give away the whole future development of our primary resources. We are asked, practically, to place in the hands of those who may not be at all interested in the matter, the question of whether we are to develop our mineral wealth by means of bounties.

Mr. WISE. -

Why should you find it any more difficult to develop your resources than the people in any other part of Australia?

Mr. ISAACS. -

The honorable member knows that in these matters personal and private enterprise is notable to undertake some of the gigantic operations that are necessary to the development of our resources.

Mr. WISE. -

But you would be in no worse position than the rest of Australia.

Mr. ISAACS. -

I think all Australia ought to be in the same position in this respect.

Mr. WISE. -

Exactly; then leave it to the Federal Parliament.

Mr. ISAACS. -

No, that is not at all necessary. I think that all Australia ought to be in a position in which each state can help itself and its citizens, providing it does not do anything to the detriment of the general welfare, and I am perfectly willing to let the Federal Parliament have power to annul anything which, in its judgment, is contrary to the general welfare. But, in the meantime, we ought not to be required to move that body in order to obtain some benefit that is purely provincial, and that we are willing to pay for out of our own provincial pocket. I think that that is a reasonable and necessary request, which ought to be acceded to without any difficulty, without any hesitation, and with the best grace possible. When we say that we acknowledge that the Federal Parliament will have the power to annul anything that it considers detrimental, whether in fact it is so or not, to the trade and commerce provisions of this Constitution, I think we have reasonably surrendered all that can be fairly expected of us, and all, I believe, that our people are willing to surrender in this regard.

Mr. DOBSON (Tasmania). -

If Sir George Turner and Mr. Isaacs desire this amendment to be carried they must-I say it with all humility—strike out the words "the Governor-
Sir GEORGE TURNER. -

I will withdraw the amendment if those words are struck out.

Mr. DOBSON. -

I think the honorable members are indulging in the language of exaggeration when they say, "if you strike out the Governor-General in Council the amendment is absolutely useless." I can imagine no more hostile, and may I say, useless criticism against the Federal Parliament than that. The other day Sir George Turner moved in the direction of allowing any state to grant bounties subject to their being annulled by the Federal Parliament, and in impressing those views on the Convention, he did not say that it would take a year or two to get the Federal Parliament to annul any state bounty which that body deemed objectionable, having regard to the interests of the states generally. Now, however, the right honorable gentleman reverses the whole thing, and objects to doing this in the only possible businesslike way we call devise, namely, by saying that a state shall not put on a bounty unless the Federal Parliament gives its consent. If the consent of the Federal Parliament is to be required, then the honorable members say their proposal is worse than useless, because, they urge, the Federal Parliament will not be able to find time to attend to the matter promptly, but will keep the state waiting.

Mr. HOWE. -

They say it will only sit three months out of the twelve, and that sort of thing. Why should not the Federal Parliament sit six months of the year, if necessary?

Mr. ISAACS. -

If either the Federal Parliament or the Federal Government dissents from our proposal it will not come into force; but under the other arrangement both bodies will have to assent, or it cannot come into operation at all.

Mr. DOBSON. -

In the interests of free-trade, of equality of trade and commerce throughout the states, ought not the control of these bounties to be absolutely in the hands of the Federal Parliament? If the words "the Governor-General in Council" are struck out, although I have been interjecting against this proposal all through, I will vote for it in order

Mr. ISAACS. -

What is the use of that to us? They have got what we are asking for in America.

Mr. DOBSON. -

Look at the confusion we shall get into if you do not strike out the words "the Governor-General in Council." The Governor-General in Council may
wrongly grant a bonus which does infringe on the equality of trade, but being a popular Government—as our honorable friends in Victoria are now, I am sure—and having a large majority in both Houses, Parliament might consent to what was being done because of the popularity of the Ministry. But, take the reverse case. The Government may not be particularly strong, but may grant a bonus which is absolutely correct and right, will help to foster production, and will not interfere with equality of trade. But being a weak and unpopular Government, and being on the verge of defeat, the Houses of Parliament may absolutely negative or refuse to confirm what has been done, although it may be quite right. We all know what party government is, and you are going to make this the subject-matter of party government. If you are to have any bonuses whatever, why not give the Federal Parliament the onus of confirming or refusing to confirm a bonus which is proposed?

Mr. SYMON (South Australia). -

I hope that this amendment will be rejected. I agree that the essence of it is the consent of the Governor-General in Council, but the latter words are simply thrown in, without having any particular effect upon the amendment. They do not carry the matter further than the first provision, which we have already dealt with. The Federal Parliament is to have power to deal with these bonuses, and to put in a provision to say that they shall be granted by the Governor in Council is an absurdity. You grant bonuses out of the coffers of the state. It can be done in a different way, but it is not necessary to put it in this Constitution at all, because if the Federal Parliament were asked by a state to give its sanction to the granting of a bonus out of the coffers of the state it would be a matter of bargain between the state and the federal authority, and it is not necessary to provide for that in the Constitution.

Mr. OCONNOR. -

Under the Constitution, all those matters are in the hands of the Federal Parliament.

Mr. SYMON. -

If it is intended to extend that, and to make it clear that the Federal Parliament may, in addition to giving bonuses out of the Federal Exchequer, authorize a state to give bonuses out of its own funds, that should be done in express terms. I want to confine my attention to what I take to be the real gist of this amendment. It is to enable any state to grant bonuses if it has the consent of the Federal Executive. That I take to be the meaning of it; and the fatal objection to it, as it seems to me as a
representative of one of the smaller states, is that it will absolutely exclude those who may be most deeply interested, namely, the corporate states, from having any voice in the granting of these bonuses. Because if the Governor-General in Council, which means the responsible Government, grants a bonus, that Government will be responsible, and responsible only, under the Constitution we are framing, to the House of Representatives. A majority in the House of Representatives, in defiance of the voice of the majority of the states, may sanction a bonus which may be inimical to the interests of other states. That is not a condition of things which we can contemplate with equanimity. There are, no doubt, difficulties, that have been pointed out by Sir George Turner, in bringing any matter before the Federal Parliament. But the same difficulties also occur in bringing a matter before the state Parliament. You cannot have it done in a day.

Mr. WISE. -
Besides, this is a matter in which we should hasten slowly.

Mr. SYMON. -
You may have a delay in regard to a bonus to assist a particular industry for, say, a session. Bonuses are not granted simply on the ipse dixit of the Government of the day, although granted upon their responsibility. From the point of view of the smaller states this proposal would be absolutely fatal, and it is objectionable from the point of view that the granting of bonuses in this way would have the effect of aggrandizing a particular industry in one state at the expense of another.

Mr. FRASER (Victoria). -
I am sorry that I cannot agree with the Right Hon. the Premier of this colony in regard to the matter under discussion. I should be very willing to vote for the state having some right in regard to this matter, but to give the Government of the day a right, independent and almost in defiance of the Commonwealth Parliament, would, in my opinion, be a very great danger. It would be quite possible for a Government in a minority perhaps in the House of Representatives to say to the representatives of New South Wales, and perhaps also of South Australia and Victoria-"Here, we will give you half-a-million of money to develop your iron mines." That might be done just on the eve of a general election.

Sir GEORGE TURNER. -
My honorable friend altogether misunderstands the position. I am only asking for permission for the state to spend its own money with the consent of the Governor-General in Council and the Federal Parliament.

Mr. FRASER. -
But that might lead to serious injuries to other states. Why not leave the matter to the Federal Parliament altogether? I am quite willing to go that length, not that I admit the necessity for it at all, because I hold that the Commonwealth, if it is going to answer the purpose which we believe it will do, will act as Canada did, and be lavish in regard to its bounties. I do not think there is any danger or fear that the Commonwealth will be at all slow in coming to the assistance of any industry which in any colony needs assistance by means of bounties. However, I see the danger of bringing in the Executive Council to deal with matters like this, and if there is a division I shall feel bound to vote against the amendment. If, however, it be proposed that the matter be left for the Commonwealth Parliament to deal with, although I do not think it will do any good, I shall vote for that.

Sir JOHN FORREST (Western Australia). -

I must say that I am altogether in accord with the views expressed by the Premier of Victoria in regard to this subject. It seems to me that we are asking too much if we ask that a state shall give up altogether the means within its resources of developing its territory. I can, of course, see objections to leaving this matter altogether in the hands of the Commonwealth, because the Commonwealth might be unwilling to spend its funds in striving to develop the resources of a particular state. It might be difficult to induce the Commonwealth to spend a large amount of money in prospecting for coal, or for mineral oils, or for gold, or for anything else in a distant state, or it might be difficult to induce the Parliament of the Commonwealth to try and foster a new industry in any state. The state should be left as free as possible in striving to bring into existence new industries for which its soils may be particularly suitable. Therefore, I think, so far as permitting the state to do what it likes in the direction of encouraging the development of its own resources we shall be doing-

Mr. SYMON. -

We shall not do that.

Sir JOHN FORREST. -

That is what we are trying to do. I object to preventing a state from developing its territory or to leaving that development to be undertaken by the Federal Parliament. That course would involve great trouble and delay. We know the difficulty of getting two Houses of Parliament to deal with a small question, and to have to refer such matters to the Federal Parliament would involve their being altogether deferred. The Governor in Council is not an arbitrary body. It is not a body that represents the individual persons comprising it.

Mr. SYMON. -
Would you not give the same voice to the Senate as to the House of Representatives?

**Sir JOHN FORREST.**

If the Governor in Council wanted to take a certain course it would virtually have to have the consent of both Houses. The Governor in Council represents both Houses of Parliament.

**Mr. SYMON.**

Only one.

**Sir JOHN FORREST.**

That may be so in some cases, but I think the Senate would be likely to be on the side of encouraging the states in the management of their own business; therefore it would not be necessary to obtain their consent so much perhaps as the consent of the House of Representatives. I take it that the Governor-General in Council merely represents the country during the time the Government is in office.

**Mr. SYMON.**

The Governor-General in Council is not responsible to the Senate.

**Sir JOHN FORREST.**

Not in the same degree as to the House of Representatives I admit, but that the Governor-General in Council is altogether independent and indifferent to the wishes of the Senate I altogether deny. The Governor-General in Council generally has to act in accordance with the wishes of both Houses, and I altogether join issue with those who think that the Governor-General in Council is an arbitrary body which is only going to act as its individual members desire. In my opinion, it is reasonable that if the Governor-General in Council does not prove to be what it should be, there should be some appeal, and that appeal should be to the Parliament; which means that Parliament should be altogether supreme.

**Mr. SYMON.**

Why not leave this matter to the Federal Parliament altogether?

**Sir JOHN FORREST.**

Because that procedure is cumbrous and slow. It would take a good deal of time, and would not, I think, be efficacious. It seems to me that there is a disposition amongst honorable members representing some of the colonies to hold to all they have got, and not to give up anything that they can avoid giving up. It seems to me that the Scripture is being fulfilled in this case-"To him that hath shall be given, and to him that hath not shall be taken away even that which he hath."

**Sir EDWARD BRADDON (Tasmania).**
I can hardly understand the attitude taken up by the Right Hon. the Premier of Western Australia, inasmuch as he has always been an earnest supporter of state rights, and has always indicated that he would seek every means of upholding the protection of the states through the Senate.

Mr. SYMON. -

And he is now going to take state rights away.

Sir EDWARD BRADDON. -

Precisely. The Executive of the day will, certainly be representative more of the House of Representatives than of the Senate. It will have its majority, we may assume, in the House of Representatives, and may be in a minority in the Senate, and what we seek to do apparently by this amendment is to place it in the power of the Executive to ignore the Senate, and to do that of which the Senate would not approve if it were appealed to. I think the effect of this must be most deplorable in bringing the Executive of the day in direct opposition to a large section of the Parliament.

Sir JOHN FORREST. -

They would not do that if there was any doubt about it.

Sir EDWARD BRADDON. -

They might very well not have any doubt about it, but still find that they ought to have a doubt about it, because that doubt came to be fulfilled. I am quite prepared to support any reasonable amendment which will give to a state the right of aiding any of its own industries out of its own funds, with the sanction of the Federal Parliament.

Sir JOHN FORREST. -

With the sanction of the Governor-General in Council?

Sir EDWARD BRADDON. -

Not with the sanction of the Governor-General in Council, but with that sanction which we ought to regard surely as the highest form of sanction for any dealing with our laws, more especially in respect to this matter, as to which we have

Sir JOHN FORREST. -

You will take away everything.

Sir EDWARD BRADDON. -

No; we will not. I hope I will not take away everything. We are proceeding to take away from the power of the Federal Parliament, which consists of two Houses, any one of which we, especially the smaller states, have the greatest possible interest in, and an interest which might be injured by the action we are seeking to take.

Mr. BARTON (New South Wales). -

As I did not speak on the proposal which was made yesterday, I hope I
shall not be wasting time if I say a few words about the present one. It is proposed by Sir George Turner to make this addition to the clause:

This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth.

I cannot help saying that I am against the amendment root and branch. We propose in our Constitution—and the clause I am about to mention has been, I think, twice dealt with since we began to sit in Adelaide—to give to the Federal Parliament legislative powers over customs and excise and bounties, but so that duties of customs and of excise and bounties shall be uniform throughout the Commonwealth. That represents the double decision of this Convention. We propose, in clause 89, to provide that so soon as duties of customs have been imposed trade and commerce throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free. We propose in the second branch of clause 95 to provide that—

Any law or regulation so made by the Commonwealth or any state, or by any authority constituted by the Commonwealth, or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth, shall be null and void.

How we can take a provision of this kind and say the others are worth having been made I cannot understand. We certainly should not lay ourselves open to the reproach of being neither fish, flesh, fowl, nor good red herring. If we are to have intercolonial free-trade let us have it. I am a protectionist, sir, but if we are to have intercolonial free-trade—and I cannot conceive a Federation without the entire operation of intercolonial free-trade—then, by so much as we seek to derogate from that free-trade by such proposals as this one, we actually destroy one of the primary conditions of the Federation. We cannot get away from that position. It is very well to say that there is to be a certain degree of development which a state can undertake without infringing upon intercolonial free-trade. I can quite grant that, with regard to a certain class of bounties, such as for the production of things which are not general commodities, such as gold and silver. But I cannot grant it with regard to any matter of production which may be a matter of separate production in two or more states.

Mr. PEACOCK. - Is it not done in the United States?
Mr. BARTON. - Whether it is or is not done in the United States is not the question. I
have repeatedly urged that certain things are worthy of some consideration, because in other great Federal Constitutions they have been implanted; but that argument has very frequently been repudiated by honorable gentlemen from whom such a proposal as this one comes.

Mr. SYMON. -

We are not to take these things if they are wrong.

Mr. BARTON. -

After all, though we do not presume to have the wisdom of the framers of the Constitution of the United States, we can lay claim to the additional experience of the meantime, which can save us from matters we may now consider to be mistakes. Surely it is no argument to tell us then, that simply because a thing is in another Constitution we ought to follow it. Tell us that there is a good reason for it, and then the fact that wise men have adopted it before us may be a confirmation of the reason; but unless you come to that conclusion, unless you can give us a good reason why we should derogate from the very policy which is at the root of this Constitution, then we must not follow any attempt-not insidious perhaps, not insidious certainly in its intention, but it will be insidious in its operation-to override the principle of that freedom of trade. If we are to have a Federation within which you can impose duties of customs between the goods of the various colonies, well and good. That is a Federation which some people would be in favour of. I, for one, would stand away entirely from my advocacy of federation if I thought that it involved that. But how can I reconcile my opposition to a Federation of that kind with the inclusion of principles which fairly and squarely may not be the means of as large a derogation from freedom of trade as these duties of customs would be? If we lay down in our Constitution Bill that there shall be no derogation from freedom of trade throughout the Commonwealth,

what we mean is that it shall not be in the power of Judge or Parliament to sanction a derogation from it, and when we have a proposal which would allow us to sanction a derogation, from that freedom of trade at the will of the Parliament we are simply giving a negation in one part of our Constitution to the great principle which really lies at the bottom of it-that neither judicial nor parliamentary authority shall derogate from free exchange throughout the Commonwealth. If you tell me that there is any substantial difference between the position of a man who has a 6d. a pound bounty on his butter-I mean as related to the position of a similar producer in another colony-and the position of a man who has a 6d. a pound duty on his butter, I should like to have that difference explained in the attempt to convince me how it is that the one man does not have a substantial
advantage over the other.

Mr. WISE. -
If you give a bounty on butter why not a bounty on boots?

Mr. BARTON. -
Of course. If this freedom of trade means anything, it means equality of trade, and it is not only in no degree concerned with, but is absolutely radically affected by, any provision in your Constitution which destroys that equality. Take the position of a state which is not so rich as another one. One state, under a provision of this kind, might be led to assist its producers almost to any conceivable extent, so long as that state was strong enough to have a preponderating influence in the Executive Government or the Parliament. What about the cost to the other state, which having similar industries to protect—and it is protection—has not the funds wherewith to protect them; and, therefore, has to stand, not only the ordinary impact of the monetary and populous influence of that state, but also the impact of its money being applied to a protection—and it is a protection—which the other state cannot enjoy?

Sir JOHN FORREST. -
You cannot trust the Parliament.

Mr. BARTON. -
I trust the Parliament within the sphere of the legislative powers you give it, but I have never been an advocate of intrusting the Parliament with power to destroy a fundamental principle of this Constitution, and that is the answer to my right honorable friend. Trust the Parliament within its legislative powers and those legislative powers must first be within the Constitution; but plant a principle in your Constitution and then trust your Parliament to derogate from it and destroy it—never. That is a very fundamental difference. You might as well give power to the Parliament, without any consultation with the electors or any one else, and without prescribing an absolute majority, to undo every principle we have implanted in the Constitution.

Sir JOHN FORREST. -
It is so in the United States.

Mr. BARTON. -
My honorable friend comes in again with the United States. Have I not already pointed out that the United States Constitution is to us a lesson only so far as reason and experience have shown the value of its lesson? How can we say that, in communities situated as this one is, in colonies having gone through the processes of fiscal competition which these colonies have gone through, you are to intrust them, simply because you find that power existing somewhere else, with the power to undo the fiscal
policy of the Commonwealth, so long as they can find an Executive Council or a Parliament complaisant enough to allow them to do it, or sufficiently terrorised by them and their power to be forced to do it?

Mr. HIGGINS. -

Can you point to any injury done in the United States owing to the power of a state to give bounties?

Mr. BARTON. -

If we do trust the Federal Parliament, we should then trust it within the margin of its legislative powers, and if the honorable member and other members trust it within the measure of its legislative powers, then the right thing to do is to trust it to know as well when to protect an industry by an import tax as when it should protect it by a bounty. And if you are to ascribe to that Parliament, as you do by placing these powers to impose customs duties and excise duties in the Constitution, the power of balancing with the greatest nicety in regard to every one of your industries by the imposition of customs duties, and in the balancing of those duties of excise, if you concede to it power for that purpose, then it is a sorry and a curious distrust which will not concede to it the power to recognise a national industry by way of bounty. If it is to have the knowledge sufficient to enable it to know when a customs duty may be imposed, as to enable it to know when there should be a free-trade or protectionist policy-and that is the widest sphere you can possibly intrust to it-if you are going to trust it to know whether it should protect a particular industry by a customs duty so as to balance the protection it gives to that industry to some extent, or to the whole extent, by an excise duty, you impute to it then a knowledge which you deny to it of being able to deal in the same way by bounty with your industries as they can be dealt with by customs and excise. To say it can do one and not the other is in effect a contradiction of terms. Now, what is the position in matters of this sort? You place an import duty on a product. What is the object of it? I am not going to adopt the argument because I am a protectionist-of those who say that in placing that import duty on it you are taxing the whole community for the benefit of a particular industry. It seems to me that you are singling out-even if the industry exists only in one part of the Commonwealth-an industry of your Commonwealth, because you consider that the placing of an import duty on it is justifiable on the consideration that the state can recognise and support that industry as an entity within its bounds, that is to say, that the existence of the industry, wherever it exists, may be a matter worth while to study, to make some sacrifice for. That is precisely the principle which
underlies the bounty. I cannot see how you can distinguish between a customs import duty and a bounty in relation to the object you have in view, which object must in either case be this—that the Commonwealth chooses to give a particular advantage to an industry for the good of the whole. If that is true with regard to a customs duty, it is true in regard to a bounty. If it is, eligible to the Commonwealth to back up a particular industry and say—"This industry is fitted for encouragement," then that is the first choice the Commonwealth makes, and it is only after it has decided that it is fitted for encouragement it will then decide that it is fitted for a customs duty or a bounty. So that, before the Commonwealth can exercise the powers which you have given to it for the purpose of putting on customs and excise duties, it will have exercised a judgment which will enable it to know whether the particular industry is better fitted for customs duties or a bounty.

Mr. SYMON. -
The customs and excise must be uniform throughout the Commonwealth.

Mr. BARTON. -
Yes, and we provide that the bounties shall be uniform.

Sir JOHN FORREST. -
You may not have the funds.

Mr. BARTON. -
The right honorable gentleman suggests that the Commonwealth may not have the funds. I will come to that position. We propose to insert provisions in this Bill—and I understood from the debate on Thursday, Friday, and yesterday, that they were in a fair way of being carried—under which it is inevitable that the Commonwealth will have a large surplus. We are beset on all hands with arguments that there should be special treatment of certain states, because the ordinary share of the surplus will not be enough for them. Some of us were impressed with those arguments. But do they not point to the conclusion that the Commonwealth will have a surplus with which it can deal with these matters, whilst in some of the states there will probably not only be no surplus, but a necessity for further assistance. We provide in this Bill practically that the Commonwealth shall have a large surplus. Of course we do not tie the hands of the Commonwealth. But we know that any Tariff the Commonwealth is likely to impose, whether it is free-trade or protectionist, will be such as will, for the sake of the states, result in a considerable surplus. What then becomes of the argument that the Commonwealth might not have the money? Which is most likely to have the money, the Commonwealth or the state?
Sir JOHN FORREST. -

My argument is, that the Commonwealth might be unwilling to spend the money for the advantage of a particular state.

Mr. BARTON. -

That is to say, that the Commonwealth may be so conscientious in its desire to hand back to each state its share of the surplus that it will not spend a little money on an industry, but will leave it to the state to spend that money, I do not think that that will be the tendency of the Commonwealth, and it ought not to be. The Commonwealth must recognise its duty. If it adopts a free-trade policy it will have nothing to do with bounties or protective duties. If it adopts an external protectionist policy-and I hope it will-then in dealing with the question of customs duties on imports it must consider the question of whether a customs duty should be imposed, or whether a bounty should be granted instead of it. The difference is this, that when the Commonwealth grants a bounty it will grant it as uniform throughout the Commonwealth, whilst if the state grants a bounty it may do so quite independently of Commonwealth bounties, or of the effect it may have generally. In the latter case it may be granted in such a way as to result in the destruction by equalization of the fiscal policy of the Commonwealth in the one particular state. With every regard for the difficulties of others, and with every regard to the fact that we must recognise those difficulties, and must not deal in any thoughtless way with each other, I cannot but come to this conclusion—and I should not oppose this amendment so strongly unless I had come to this conclusion in an emphatic way—that this would, under certain conditions of Government and of Parliament, be a liberty to a state to undo, as far as it was particularly concerned, the policy of the Commonwealth, and in undoing it, whether that policy was free-trade or protectionist, to give itself an advantage over other states. The other states would then be practically placed in the same position as they were before intercolonial free-trade was established. That is not a position that I can look forward to with any satisfaction, and if a provision of this kind were inserted in the Bill it would largely affect my hope and confidence in the future of federation.

Mr. GLYNN (South Australia). -

As a South Australian I might, if I were to view this matter from a narrow provincial stand-point, be as anxious as the Right Hon. Sir George Turner to retain to the states the right of granting bounties. We have coal mines in South Australia which want developing, and time after time pressure has been brought to bear on candidates for Parliament to get a bounty granted or a protective duty imposed for the purpose. If we were to take up the position of Sir George Turner, it would only be on a complete...
misunderstanding of what we are seeking to do by federation. That point has been so admirably put by the Hon. Mr. Barton that I will not say anything in support of it. But I would like to call attention to the anomalous position in which we should be placed if we passed the amendment. If the Federal Executive consents to the granting by a state of a bounty, it will once and for ever have parted with the power to repeal what it has done. It will have given a power to the states that might completely destroy the effect of federal legislation. If the content is given by an Act of Parliament it will be held that it cannot be withdrawn. If a subsequent Act was passed withdrawing that consent, the court would, I think, hold that Act to be *ultra vires*, on the ground that a contract had been entered into. The only proper position the advocates of the bounty system could take up would be to say that this power should be concurrent. They do not say that. If it is a concurrent power, the objection taken by the Right Hon. Sir John Forrest fails. His objection is that the Federal Parliament may not interfere, and he asks why should the negligence of the Federal Parliament put a ban on the power of the states to grant bounties. By making the power concurrent, the states could grant bounties until the Federal Parliament did interfere. The advocates of the bounty system do not assume that position. The position they are assuming will land us in the most extraordinary anomalies. Some honorable members have pointed to the analogy that exists under the American Constitution. They have not explained why the granting of bounties by the state is possible there. The idea of granting bounties could not have entered into the minds of those who framed the Constitution. There was no question then of bounties. What was sought was to destroy the obstacles to trade between the thirteen colonies, and to destroy the effect of the recent navigation laws of England. They never thought of granting bounties, and there is no provision in sub-section (1) of section 8 of the American Constitution giving Congress power to grant bounties at all. In consequence of that omission, which was the result of the peculiar circumstances of the time, the states have power to grant bounties.

Mr. PEACOCK. -

Has it done any harm?

Mr. GLYNN. -

That is a matter of evidence. But what I want to point out is that the analogy does not apply. This is an attempt to derogate from the powers of the Federal Parliament to establish free-trade, and it is not a matter simply as between New South Wales and Victoria, as Sir George Turner has represented. It is just of as vital interest to us, and if we took up the attitude
assumed by Sir George Turner it would be on a complete misunderstanding of the objects of this federation.

Mr. KINGSTON (South Australia). -

A good deal has been said on the subject of state rights, and the argument has been brought forward for the express benefit of the Right Hon. Sir John Forrest, in order to induce him to change his views on this question. I take it that the most important state right is the right of every state to manage its own affairs, so long as it does not interfere with the welfare of the Commonwealth.

Mr. REID. -

You did not say that on the rivers question.

Mr. KINGSTON. -

I did, and I shall be happy to repeat it, if we are called on to discuss the rivers question again. What is the position at present? It is proposed to take away absolutely from the states the right to grant bonuses, and to confer on the Federal Parliament the right to grant bonuses payable out of the revenue of the Commonwealth. In future there will be no power to provide for the granting of bonuses payable out of state revenue. There are, undoubtedly, in the various colonies industries which might well be encouraged by the granting of bonuses paid out of the state revenues. These industries are of a petty and provincial character, and would not affect the welfare of the Commonwealth as a whole; but, so far as the states themselves are concerned, they are worthy of encouragement, and have been successfully encouraged in the past by these aids which it is now sought to take away. The proposal is that when it is certified, either by the Federal Parliament or by the Federal Executive, that a bonus may be granted out of the state Treasury, that bonus may be so granted. We are told that the Federal Executive cannot be trusted, but I am inclined to think that the gloomy forebodings of honorable members in regard to matters of this kind are without foundation. If the Federal Executive is not to be trusted with these matters, how is it to be trusted with much larger matters of administration, which we have already remitted to it? Although I shall do my best to assist the Premier of Victoria in carrying the amendment in its largest form, I shall not reject it if it is amended by the excision of the words allowing a reference to the Federal Executive. It would then, of course, provide a smaller measure of relief, and be less beneficial in its results, than if it is accepted as a whole; but it must be remembered that the Constitution as it stands does not provide at all for the encouragement of state industries by the expenditure of state revenue. I welcome the amendment in its largest shape, but I trust that the
right honorable member will not abandon it even if part is struck out. Something has been said about the experience of the United States of America. It has been well pointed out in the columns of a great journal that no prohibition of state bounties is imposed in the American Constitution, and the honorable member (Mr. Glynn) has suggested the reason for that. In the course of my reading I have not come across any criticisms suggesting that the American Constitution is defective upon this point. I trust that under circumstances such as these, when we have the history of so great a nation to guide us, we will not lightly take from the states beyond all hope of recovery the power which many infant colonies have exercised undoubtedly to the greatest advantage of their various industries. The last paragraph of the clause makes an exception in favour of bounties for the development of mining for certain metals; but let us consider what will be the position if the Bill is passed as it stands. We, in South Australia, have excellent copper mines. I can appeal to you, Mr. Chairman, upon this subject with the greatest confidence. We produce the best copper in the world, although, on the other hand, our coal mines are not quite so good. New South Wales has magnificent coal mines, but her copper—I say it almost with bated breath in the presence of the patriotic Premier of that colony—hardly equals ours.

Mr. REID. -

Yours is more easily converted into brass.

Mr. KINGSTON. -

It would be competent for New South Wales to grant a bounty to protect her coal industry to an unlimited extent, but we in South Australia could do nothing of that kind to protect our copper industry.

Mr. WISE. -

I understand that since the late fire they want to develop the coal industry in Victoria for building purposes.

Mr. KINGSTON. -

I leave my honorable friends in Victoria to speak upon that subject. I trust that we shall be guided in this matter by the history of other countries, and that we shall have regard to what we know of our own necessities. It is being forced upon up day after day that in many respects it is highly desirable to take infant industries under the special protection of the state. I grant that where these industries are of national concern they should be dealt with by the Federal Parliament, but there are others of less importance which may be made the subject of the benevolent care of the states themselves, and I trust that we shall hesitate before depriving the states of the power of fostering industries, which they have hitherto enjoyed and wisely exercised.
Mr. LEAKE (Western Australia). -

So exhaustive has been the debate upon this question that I should not have risen to speak had I not found myself in conflict with at least one of my colleagues.

Mr. PEACOCK. -

As leader of the Opposition you are usually in conflict with him.

Mr. LEAKE. -

I cannot help that; but we endeavour not to introduce local politics here. The arguments of the leader of the Convention seem to me to state the position exactly. When he declares, as he did in emphatic language, that the passing of an amendment would be a blow at the first principle of federation-intercolonial free-trade - it seems to me that no further argument is necessary for its rejection. Another argument of his was also impressive, and that was that the amendment would practically place the Parliament of the Commonwealth in the position of being able to over-ride the Constitution by its bare vote. I would go a step further, and suggest to the Convention that the amendment places the power of over-riding the Constitution, not only in the hands of the Federal Parliament, but also in the hands of the Federal Executive. It makes the Federal Executive paramount, and gives it power to approve of bounties which may be antagonistic to intercolonial free-trade. It is easy to speak at great length upon this subject, but I shall accept the suggestions of honorable members who have preceded me, and be brief. I express these opinions, not so much with the idea of influencing any vote, but to give my reasons for voting against the amendment.

Mr. HIGGINS (Victoria). -

I have a proviso, which I suggest with the concurrence of the Premier of Victoria, and which will, I think, take away all ground of objection from those who say that this is an attempt to interfere with freedom of trade between the different parts of the Commonwealth. In my opinion, the right honorable gentleman's amendment had no such scope; but "to make assurance doubly sure, and take a bond of fate," I beg to move -

That the amendment be amended by the addition of the following words: - "Provided that the bounty or aid has not the effect of derogating from freedom of trade or commerce between the different states of the Commonwealth."

Mr. HOWE. -

Who is to decide whether it derogates from freedom of trade?

Mr. HIGGINS. -

The Federal Parliament or Federal Executive, before it allows the bounty,
will have to go into the question whether it is an interference with trade or not. That is the way with all these questions. If it goes to the last resort the matter will have to be fought out, and in that case, very properly, the only judge is the Federal Court. You must have some ultimate authority, and the only means of ultimately trying these things is the Federal Court. I should be very happy if you could avoid that.

Mr. HOLDER. -

If you bring in the High Court it will kill the whole thing.

Mr. HIGGINS. -

I am not bringing in the High Court. The High Court is there. It is the hinge upon which the Constitution turns. It faces you at the ultimate boundary of your Constitution. If you transgress the Constitution, or attempt to do so, there is the High Court in your way. The universal system in America is to have a question thrashed out in Congress, as to whether it is an evasion of the Constitution or not. It is very well fought out there, and in 99 out of 100 cases there is no need to appeal to the court. I answer the honorable member frankly when he asks me who is the ultimate judge. I may state, also, with regard to America that there seems to be some misapprehension. Mr Isaacs, yesterday, quoting from The Speaker, mentioned an instance of a bounty being given by a state. I was surprised at it. I cannot find any verification of the fact that a bounty is given by a state, but I find in the American Constitution that there is not one word about Congress giving bounties. There is a power to levy and collect taxes, duties, imposts, and duties of excise, which must be uniform throughout all the states, but there is no such clause as we have in this Bill that the Federal Parliament may grant bounties. If there is any authority on the matter, apparently it is by virtue of the section in

Subjects of a local nature and intended only as aids to commerce, and
which are best provided by special regulations, may be exercised by the states without conflicting with the commercial powers of Congress.

Although I say it with the reservation that I have not been able to verify the extract by a reference to the original authority, if that is a correct version there is not the least doubt that a state has power to grant bounties, provided the bounty does not interfere with the provision enabling the Federal Parliament to regulate trade and commerce. Therefore, with the concurrence, I understand, of the Premier of Victoria, I suggest the addition of the words I have mentioned. I admit that it will make the clause a little cumbersome, but I want to provide explicitly that there is no intention whatever on the part of my right honorable friend and ourselves to interfere in the least with trade and commerce. If that is not convincing enough, I know nothing that will convince. The honorable member (Mr. Leake) has been affected by the words of the leader of the Convention on this matter. He stated that that honorable member said that this will interfere with freedom of trade and commerce, and, ergo, we ought to refuse to pass it. This will not interfere, and it cannot interfere, with the freedom of trade and commerce.

Mr. HENRY. -

Might not a bounty be granted by the Governor-General in Council which would interfere with freedom of trade and commerce?

Mr. HIGGINS. -

The honorable member has asked a very pertinent question. I frankly admit there is some force in the argument that the Governor-General in Council might strain the rule, unless he had the Federal Parliament behind him. But suppose the Governor-General in Council gave consent to a bounty which would have the effect of derogating from freedom of trade and commerce in the Commonwealth, he would be liable to be hauled over the coals in the House. He is liable to the ordinary responsibilities of a Minister. More than that, even if the whole House is with him, there is an ultimate sanction in the Federal Parliament, which will see that the law is observed.

Mr. HOWE. -

I understood Sir George Turner to say that he objected to referring the matter to the Federal Parliament on account of the great delay. Now, you propose it shall go to the High Court, which will cause greater delay.

Mr. HIGGINS. -

The honorable member has totally misunderstood the position. I propose no court. I find the court there. I do not move it, I do not give it one more extra power; but the honorable member asked me who is to decide whether a bounty derogates from the freedom of trade and commerce, and I
answered him as frankly as I knew how. I say, in the first place, the question will be settled by the Ministry of the day. Then it is to go through the ordeal of discussion in Parliament.

Mr. HOWE. -
It need not go to the Parliament.

Mr. HIGGINS. -
According to one suggestion, you must go to the Parliament, but in most cases, if there is any question of policy involved, the consent of the Governor-General in Council will be discussed in Parliament. It will be raised on motion in Parliament, and it will be a matter for the parliamentary majority to support him or not. Constitutionally, he will not give his consent unless he is in the majority.

Mr. REID. -
What will be the position if the Governor-General in Council approves and the Parliament disapproves?

Mr. HIGGINS. -
I apprehend the effect will be that the Federal Parliament will be able to pass a law which will over-ride this particular grant.

Mr. REID. -
That is not the object of the amendment.

Mr. SYMON. -
Would not the effect of your amendment be to make the Federal High Court sit in judgment on an executive act of the Governor-General in Council?

Mr. HIGGINS. -
With all respect, no. The Governor-General in Council, as the honorable member knows as well as any one, has to obey the law as well as every one else.

Mr. SYMON. -
But suppose the Governor-General in Council grants the bonus, and suppose its operation derogates from freedom of trade, then the Federal High Court will sit in judgment on an act of the Governor-General in Council which involves a question of policy.

Mr. HIGGINS. -
Does not the honorable member recognise that even the legislation of the Federal Parliament is subject to the decision of the Federal High Court?

Mr. SYMON. -
But not a question of executive administrative policy.

Mr. HIGGINS. -
The Federal High Court goes still further than that. It has the function of
deciding whether the Acts of the Parliament are valid or not, and why
should it not have the function of deciding whether the acts of the Ministry
are valid or not?

Mr. SYMON. -

That was not the intention in determining the functions of the Federal
High Court.

Mr. HIGGINS. -

Our British system is that every official under Her Majesty is amenable
to the law—that everybody is under the law.

Mr. SYMON. -

But this is a question of Ministerial responsibility.

Mr. HIGGINS. -

Of course it is; but supposing the Ministry were to consent to a bonus or
bounty which interfered with freedom of trade, then the Federal High
Court could be asked to interfere, and it therefore has the ultimate decision
of the matter. If the court decided against a bonus or bounty, I rather think
that the money would have to be refunded.

Mr. SYMON. -

Supposing the House of Representatives approves of the action of the
Ministry, and the Federal High Court dissents?

Mr. HIGGINS. -

Well, as the Federal High Court has to determine, in case of dispute,
whether the Acts of the Parliament are wrong, so the court has to decide
whether the acts of the Ministry are wrong. All this bringing in of the
Federal High Court—I do not say in the mind of the honorable member, but
in the minds of several honorable members—is with a view to make this
particular proposal unpopular. I do not want to drag in the Federal High
Court.

Mr. SYMON. -

But can you help it?

Mr. HIGGINS. -

I say that, in 99 out of 100 cases, the Federal High Court, will not be
appealed to; but if you ask me what body is to have the ultimate
determination of the matter, I say the Federal High Court must be that
body.

Mr. DOBSON (Tasmania). -

In order to bring the debate to a prompt issue, I will move an amendment
of Sir George Turner’s amendment, which will have the effect of testing the
feeling of the Convention on this matter. I beg to move—

That the words "of the Governor-General in council or" be struck out.
I think that a large majority will be in favour of striking out those words, but I do not venture to predict how the vote will go on the question of allowing state bonuses with the consent of the Federal Parliament. I listened with very great attention and respect to the words that fell from the leader of the Convention, a gentleman whom we all regard not only as our leader in this Convention, but as our "guide, philosopher, and friend" in things generally. Mr. Barton not only spoke strongly, but he said he felt strongly on the matter. Still, I think he rather overstated his case, because one of his contentions was that the amendment of Sir George Turner would give power to a state to absolutely override the settled fiscal policy of the Federal Parliament. Now, how can that be, when the state cannot move in the matter without the consent of the Federal Parliament?

Mr. ISAACS. -

And when its action may be afterwards annulled by the Federal Parliament.

Mr. DOBSON. -

Under the amendment, as I read it, you cannot take a step without the consent of the Federal Parliament. It must be borne in mind that we have got away from the amendment in which honorable members representing Victoria sought to give to the states the right to grant bonuses, subject to those bonuses being annulled by the Federal Parliament and under the present amendment a state cannot take a single step in the direction of granting a bonus without the consent of the Federal Parliament. Therefore I do not quite foresee—possibly it may be owing to my ignorance of federal principles—all the evils which Mr. Barton predicted as likely to follow the adoption of this amendment. And just as he feels warmly on the subject, so do our friends from Victoria. I do not say that I, as a representative of Tasmania, feel very warmly about it, because, although I am intensely interested in the development of this attempt to employ state aid in furthering production, I must say that I regard the granting of bonuses as an injustice. I submit that if you grant a bonus to one industry, every industry in the country has a right to expect the same thing, and I am of opinion that the granting of a bonus to any particular industry is an injustice to all the tax-payers of the colony. I would say, in answer to Dr. Cockburn, if you want to achieve industrial greatness under the Federal Government you will do it far more by rearing your industries under natural laws than by creating hothouse plants. I hardly think that the words suggested by Mr. Higgins are wanted. I quite see the reason he has proposed them, but we ought not to make a foolish provision of one of the clauses of this Constitution Bill in order to please people outside. I regard the words suggested by Mr. Higgins as absolute surplusage, and I think their adoption
would be a blot upon the clause. However, I do not intend to move any amendment on those words, although, as I have said, I think they will be a blot on the drafting of the clause if they are allowed to be put in.

Question - That the words "of the Governor-General in Council or" proposed to be struck out stand part of the proposed new paragraph-put.

The committee divided-
Ayes ... ... ... ... 26
Noes ... ... ... ... 21
Majority against the amendment 5

AYES.
Barton, E. Kingston, C.C.
Berry, Sir G. Lyne, W.J.
Briggs, H. O'Connor, R.E.
Cockburn, Dr. J.A. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Downer, Sir J.W. Reid, G.H.
Forrest, Sir J. Symon, J.H.
Gordon, J.H. Trenwith, W.A.
Grant, C.H. Turner, Sir G.
Hackett, J.W. Venn, H.W.
Hassell, A.Y. Zeal, Sir W.A.
Higgins, H.B.
Holder, F.W. Teller.
James, W.H. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Howe, J.H.
Braddon, Sir E.N.C. Leake, G.
Brown, N.J. Lee Steere, Sir J.G.
Carruthers, J.H. Lewis, N.E.
Crowder, F.T. McMillan, W.
Douglas, A. Moore, W.
Fraser, S. Solomon, V.L.
Fysh, Sir P.O. Walker, J.T.
Glynn, P.M. Wise, B.R.
Henning, A.H. Teller.
Henry, J. Dobson, H.
Question so resolved in the affirmative.

The CHAIRMAN. -
We have now to deal with the proviso. The question is that the words
proposed to be added be so added.

Mr. WISE (New South Wales). -

If ever there was a question upon which we ought to give our votes clearly understanding what we do, and upon which it is important that there should be no false votes given, it is this. Mr. Higgins' amendment, although I appreciate the spirit in which it is moved, appears to me to be eminently one which is calculated to mislead the public. We ought to face this question fairly. If we wish that the state should retain the power to give bonuses, let us honestly provide that that power shall be given; but if, on the other hand, we desire that in the interests of federation the power to give bonuses shall be confined to the Federal Parliament, let us vote with equal fairness on that side. The amendment of my honorable and learned friend (Mr. Higgins) obscures the issue. It will mislead a number of people outside, making them believe that they are going to get something which, in fact, they will never obtain.

Mr. HIGGINS. -

It is not intended for that purpose.

Mr. WISE. -

I know that; but to say that it is left for the Federal Court to determine whether the bonus which may be granted by the state may be sanctioned by the Executive of the Commonwealth is not only derogatory to the trade and commerce clause, but, as a matter of fact, no bonus will be granted upon which any body of capitalists would ever think of acting. You cannot expect that men will invest their money in an enterprise stimulated by a bonus which is subject to such conditions as these. You are telling the people that you are going to retain power to grant bonuses, whereas, if we think the matter out, every one of us will know that the power is utterly nugatory, because it is so hedged round by conditions that no man would think of spending a single sixpence in any enterprise for which a bonus so limited was to be given. I protest against this Convention demeaning itself by giving a vote upon a question of this kind. Let us face the matter fairly. I, for one, am perfectly prepared to vote against every effort to give the power to grant bonuses to the states. There are others who take a different view of the question. I do not believe in carrying the practice of putting conciliatory provisions in the Constitution too far. We may, and ought to, regard the prejudices of people outside, and we should go very far in order to recommend the Constitution to those who are supposed at present to be opposed to federation, by meeting their views in so far as we can possibly do so. But we may go too far in that respect, and we ought not, so it seems to me, to adopt any clause which we cannot ourselves honestly support, because by putting it in the Constitution we think it may go a long way
towards recommending the Constitution to people who might otherwise vote against it. If we put in this Constitution provisions of which we do not approve, how can we recommend it to the people? We must trust somewhat to the intelligence of those outside. We must hope that they will say we have done our best to reconcile conflicting interests in the several colonies. But we must also recognise that there are people whom we can never reconcile, do what we may, and with regard to whom, if we remove one of their objections to federation, a hundred others will at once crop up. We must have the extremists against us. Let us meet these extremists openly. We shall have the extreme protectionist, who wants to keep to each state the right to impose protective duties. Let him be against us. Then we shall have against us the extreme free-trader, who will oppose federation because he fears that under it a protective Tariff will be imposed. Let him be against us. But do not attempt to reconcile these people by inserting a clause which will not solve, but which I fear will be found in the future to be only a witness to our own fear of facing, a difficult question.

Question-That the words-"Provided that the bounty or aid has not the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth"-proposed to be added be so added-put.

The committee divided-

Ayes ... ... ... ... 17
Noes ... ... ... ... 30
Majority against the amendment 13

AYES.
Berry, Sir G. James, W.H.
Cockburn, Dr. J.A. Kingston, C.C.
Deakin, A. Lewis, N.E.
Gordon, J.H. Peacock, A.J.
Grant, C.H. Quick, Dr. J.
Hackett, J.W. Trenwith, W.A.
Hassell, A.Y. Turner, Sir G.
Holder, F.W. Teller.
Isaacs, I.A. Higgins, H.B.

NOES.
Abbott, Sir J.P. Howe, J.H.
Barton, E. Leake, G.
Braddon, Sir E.N.C. Lee Steere, Sir J.G.
Briggs, H. Lyne, W.J.
Question so resolved in the negative.

Question-That the words of Sir George Turner's amendment—This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council, or the Parliament of the Commonwealth,
be added to the clause-put.

The committee divided
Ayes .......... 19
Noes .......... 27

Majority against the amendment 8

AYES.
Berry, Sir G. Kingston, C.C.
Cockburn, Dr. J.A. Lyne, W.J.
Deakin, A. Peacock, A.J.
Forrest, Sir J. Quick, Dr. J.
Gordon, J.H. Trenwith, W.A.
Hackett, J.W. Turner, Sir G.
Hassell, A.Y. Venn, H.W.
Higgins, H.B. Zeal, Sir W.A.
Holder, F.W. Teller.
James, W.H. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Howe, J.H.
Braddon, Sir E.N.C. Leake, G.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Carruthers, J.H. McMillan, W.
Crowder, F.T. Moore, W.
Dobson, H. O'Connor, R.E.
Douglas, A. Reid, G.H.
Downer, Sir J.W Solomon, V.L.<
Fraser, S. Symon, J.H.
Fysh, Sir P.0. Walker, J.T.
Glynn, P.M. Wise, B.R.
Henning, A.H. Teller.
Henry, J. Barton, E.
Question so resolved in the negative.

Sir JOHN FORREST (Western Australia). -
I should like to say that the tactics which have been employed by some honorable members during the last division-

Mr. REID (New South Wales). -
I rise to order. I wish to know whether we are to have a general lecture on the conduct of honorable members of the Convention in a division which is over?

Sir JOHN FORREST. -
It is deserved, though.

The CHAIRMAN. -
I do not think it will conduce to the benefit of the cause we are assembled here to promote for an honorable member to make remarks on the conduct of other members.

Mr. PEACOCK (Victoria). -
The only thing I should desire to say-

Mr. REID. -
Is it in order?

Mr. PEACOCK. -
I am speaking to the clause. I only desire to say a few words, and I shall speak with as little feeling as possible. I hope the public outside will take careful note of the last two divisions. I can quite understand-

Mr. REID (New South Wales). -
I rise to order.

Mr. KINGSTON. -
It is in order.

Mr. PEACOCK. -
The honorable gentleman must be very much frightened if he cannot stand any strictures on his conduct.

Mr. REID. -
I am not a bit afraid, it is rather the opposite; I have a bit of laurel round my brow.

The CHAIRMAN. -
What is the points of order?

Mr. REID. -

The honorable member (Mr. Peacock) is engaged in criticising the divisions of this committee, and I submit that we are not subject to that criticism at this stage.

The CHAIRMAN. -

No honorable member can animadvert on a vote given by the committee, or say that that vote is wrong unless he moves to repeal it, which he may do at the proper time.

Mr. PEACOCK. -

Do I understand from your ruling, Mr. Chairman, that I cannot make any remarks with regard to the clause?

The CHAIRMAN. -

The honorable member is in order in making any remarks with regard to the clause.

Mr. PEACOCK. -

I am sorry that there is no opportunity afforded to me or to any other honorable member who holds views similar to my own of debating the question except by moving that the clause be recommitted. I can understand the position taken up by those who are opposed to state bounties, and also by those who consistently said that the Right Hon. Sir George Turner's amendment was wrong in principle. I cannot understand the position of those honorable members who believe that it is neither right for the Governor-General in Council nor for the Federal Parliament to deal with the matter, but who voted for the Governor-General in Council with the object of defeating the amendment.

The CHAIRMAN. -

The honorable member is not in order in stating why honorable members voted as they did.

Mr. BARTON (New South Wales). -

If any explanation is needed, all I can say is that I cannot understand why the honorable member takes such a strong objection to my action in voting with him.

Mr. PEACOCK. -

We heard the whispering that was going on.

Mr. BARTON. -

I thought it was a law of Parliament that only one person could hold possession of the Chair at once. The Right Hon. Mr. Reid, the Hon. Mr. O'Connor, myself, and other gentlemen voted to retain Sir George Turner's proposition as he made it himself, and I understood that he expressed a preference for it in that form.
Sir JOHN DOWNER. -
He said he would not have it otherwise.

Mr. BARTON. -
We voted to retain the proposition, and then we negatived it.

Mr. PEACOCK. -
That is making the matter worse.

Sir JOHN FORREST. -
Is the honorable member in order?

Mr. BARTON. -
I have finished upon that point. With regard to Mr. Peacock's last remark, I cannot understand why it is dishonorable or improper tactics to accept a challenge that is thrown out by an opponent, to take him at his word, and to, defeat his proposition, as we very properly did.

Mr. KINGSTON (South Australia). -
I do not understand that there is an opposition here, or any opponents on one side or another. We are all here for the purpose of doing what we conceive to be the beat in the interests of this Constitution. I think we have a right to object when anything in the shape of tactics is adopted.

Mr. REID (New South Wales). -
I rise to order. I wish to know whether even the most exalted personage in this Convention is to be allowed to transgress a rule you have made I The right honorable gentleman is evidently referring to a recent vote, and I shall certainly have to claim a right to reply to these remarks.

Sir GEORGE TURNER. -
We should like to hear the justification.

The CHAIRMAN. -
The question before the Chair is that the clause, as amended, stand part of the Bill. I have already ruled that it is not in order to refer to the motives which actuated honorable members in voting on former divisions. I must ask the right honorable member and other honorable members not to transgress that rule.

Mr. KINGSTON. -
Mr. Chairman, I bow most cheerfully to your decision, but I do trust that if we adopt the clause as it stands an early opportunity will be afforded to us of ascertaining what really is the wish of the majority of the committee on the question of whether the Federal Parliament should have power to authorize the state Legislatures to grant bonuses. I do not think, owing to an unfortunate combination of circumstances

Mr. ISAACS. -
Of what?

Mr. KINGSTON. - Of circumstances

Mr. ISAACS. - Oh!

Mr. KINGSTON. - That that opportunity has hitherto been afforded.

Mr. REID (New South Wales). - I also hope that, in future, in dealing with this matter there will be no possible cause for even, these irregular observations. The Right Hon. Sir George Turner and his friends could have voted the other way, and have saved their position, but they chose to stay with us.

Mr. SYMON (South Australia). - I hope no early opportunity will be given of entering into a matter which seems to produce so much irritation to honorable members opposite.

Mr. PEACOCK. - Justly so, and you know it, too.

Mr. SYMON. - That is a matter of opinion, and, of course, I do not want to add to the irritation which they exhibit by expressing a difference of opinion.

The CHAIRMAN. - The question is, that this clause stand part of the Bill, and it is altogether irregular and out of order to discuss the point of whether or not, at some future stage, we will reconsider the clause.

Mr. SYMON. - The one sentence which I uttered, and in which I was interrupted, was as to whether the clause should stand, and as to whether some early opportunity should be given of reconsidering it. I hope that no such early opportunity will be given or taken, but that the clause will be allowed to stand, with the consent of the honorable members representing Victoria. My right honorable friend stated this morning that if the provision with regard to the Executive Council were struck out, he would himself have voted against the clause.

Sir GEORGE TURNER (Victoria). - I do not intend to impute motives to any honorable member, no matter what I may think, but with regard to the clause as it now stands, I feel somewhat inclined to vote against it altogether. We have dealt to-day many severe blows at the federal cause.

Mr. SYMON. - Oh, no.

Sir GEORGE TURNER.
And I believe we have only lately dealt the most severe blow to the federal cause that has been given to it since we first met in Adelaide.

Mr. REID. -

This must be the stock tax.

Sir GEORGE TURNER. -

It is not the stock tax. Perhaps if I added a little bit to that tax I might describe the right honorable gentleman and something that has happened here lately. I do not intend to do that, because I should be out of order. My difficulty—and I desire to consider the question as carefully as I can—is whether I am now justified in the interests of federation in voting for the clause at all. We give the Federal Executive power to deal with many matters. I am quite satisfied that it should have exclusive power to deal with customs and excise, but I am quite satisfied also that we should give to nobody exclusive power to deal with bounties. Whilst this clause contains much that is good, it contains something that is very bad. The doubt in my mind is whether what is bad in the clause does not more than counterbalance what is good. I do regret that the clause stands as it is at the present time, and I hope yet to have an opportunity before the Convention closes its labours of reconsidering it. That is about the only ground on which I will vote for it—that we will have another opportunity, when we will be able to get a fair and straight vote, and to show the people in this colony, at all events, that we are prepared to protect their interests to some little extent.

The clause, as amended, was agreed to.

Mr. BARTON (New South Wales). -

In order that the paragraph omitted from clause 84 may stand as a substantive clause, I beg to move—

That the following words stand as a clause of the Bill—

On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

Mr. GORDON. -

I thought that the new clauses were to be taken after we had dealt with the clauses which are to be reconsidered.

The CHAIRMAN. -

We are now dealing with the whole system of finance and adopting a new scheme, and, if we did not take the new clauses suggested by the Finance Committee as they come, we could not do that.

Mr. GORDON. -

I have no objection, so long as honorable members who, like myself,
have new clauses to move, are assured that other new clauses will not be taken until the proper time comes.

**Mr. BARTON (New South Wales). -**

I might explain that this is not a new clause; it is merely a transposition of part of clause 84, which it was thought by the Finance Committee should occupy a place in front of the other provisions of that clause.

The new clause was agreed to.

**Clause 85. -** Upon the establishment of the Commonwealth, all officers employed by the Government of any state in any department of the public service the control of which is by this Constitution assigned to the Commonwealth, shall become subject to the control of the Executive Government of the Commonwealth; and thereupon any such officer shall, if he is not retained in the service of the Commonwealth, be entitled to receive from the state any gratuity or other compensation payable under the law of the state on abolition of his office; but if he is retained in the service of the Commonwealth he shall be entitled to retire from office at the time and upon the pension or retiring allowance permitted and provided by the law of the state on such retirement, and the pension or retiring allowance shall be paid by the state and by the Commonwealth respectively in the proportion which his service with the state bears to the whole term of his service, and all existing and accruing rights of any officers so retained in the service of the Commonwealth shall be preserved.

Amendment suggested by the Parliament of Tasmania-
After "state" (line 3), insert "or by any authority constituted by a state."

The amendment was negatived.

Amendment suggested by the Legislative Assembly of Western Australia-
Line 10, after "Commonwealth" insert "and unless he is appointed to some other office in the, state."

**Sir JOHN FORREST (Western Australia). -**

The reason why the amendment was suggested by the Legislative Assembly of Western Australia was that it was considered that it might be a hardship to retire an officer upon a pension when there was some other office in the state which he could reasonably fill.

**Mr. BARTON (New South Wales). -**

I do not quite follow the reason for this amendment.

**Mr. ISAACS (Victoria). -**

Under the clause as it stands the Commonwealth may either take a man into its service or leave him out. If he is left out, the state must pay him a
pension.

Mr. BARTON. -

The unfortunate result of the amendment would be that if an officer were receiving a salary of £500 or £600 a year the state, instead of pensioning him if his services were no longer required, could save money by appointing him to an office worth £50 a year.

Sir JOHN FORREST (Western Australia). -

To meet the case, I beg to move-

That the amendment be amended by the insertion of the words "of equal emolument" after the word "office."

The amendment was amended accordingly, and agreed to.

Amendment suggested by the Parliament of Tasmania:--
Line 20, add "a" to "proportion."

Mr. BARTON (New South Wales). -

I will ask the committee to keep the clause as it stands, because I have an amendment prepared which, I think, will meet the whole case. I propose to make the clause read in this way:-

If he is retained in the service of the Commonwealth all his existing or accruing rights shall be preserved, and he shall be entitled to retire from office at the time and upon the pension or retiring allowance permitted and provided by the law of the state on such retirement, and the pension or retiring allowance shall be paid by the state and by the Commonwealth respectively in the proportion which his service to the state bears to his service with the Commonwealth.

Mr. GLYNN (South Australia). -

Is there not some ambiguity about these words:-

If he is retained in the service of the Commonwealth he shall be entitled to retire from office at the time and upon the pension or retiring allowance permitted and provided by the law of the state on such retirement?

To what time does the clause refer? The date of the establishment of the Commonwealth, or the date of the actual retirement?

Mr. BARTON. -

An officer will be entitled to complete his service up to the time at which, under the law of the state, he would be entitled to retire.

Mr. GLYNN. -

The law of the state might be changed in the meantime. The point is, is an officer to be entitled to retire upon the compensation to which he is entitled at law at the time of the establishment of the Commonwealth.

Mr. BARTON (New South Wales). -

I do not think a law passed to affect an existing state of things in that way would be given an ex post facto operation.
Sir JOHN FORREST (Western Australia). -

I should like to point out to the leader that the amendment suggested by Western Australia, which in similar to that suggested by Tasmania, is intended to provide for this difficulty. An officer formerly employed by the state may enter the service of the Commonwealth, and during a long period when he is in the service of the state his salary might be only, say, £200 a year. Many years after he enters the service of the Commonwealth he may attain to a salary of £1,000 a year. Under this clause a portion of his pension based on £1,000 a year would be charged to the Commonwealth and the state, according to the proportion of his services in each. It will be seen that the state will then be burdened with a much larger portion of the pension than ought to be the case. That has occurred in our own colony. Therefore, I think it would be well to insert the words proposed by the Western Australian Assembly, which are to the effect that in calculating such pension or retiring allowance the proportion payable by the state shall be calculated on the salary at the time he was transferred to the Commonwealth, and the balance, whatever it may be, shall be paid by the Commonwealth. Otherwise, it will be seen that the state might be charged with a very large amount of pension for which it had received no services. I drafted the words of the amendment by our Assembly myself, and I believe they will entirely carry out the object in view. I hope they will commend themselves to honorable members, and particularly to our leader.

Mr. LYNE. -

Do I understand the honorable member to mean that up to the retirement of the officer from the service of the state, the state must be responsible for the pension or retiring allowance which has been incurred up to that time?

Sir JOHN FORREST. -

Yes.

Mr. REID. -

Suppose the Commonwealth does not establish a system of pensions at all

Sir JOHN FORREST. -

Then the state is only liable for the time during which the officer has been in its service.

Mr. BARTON. -

That is provided for in the clause.

Sir JOHN FORREST. -

Has the honorable member followed me with regard to the rest of my statement?
Mr. BARTON. -

Yes.

Sir JOHN FORREST. -

It is an important matter, and a case of the kind has occurred in our own colony, where it was sought to put a burden on Western Australia for services at a much higher salary which were rendered years afterwards.

The amendment to strike out "proportion" and insert "proportions" was negatived.

Mr. BARTON. -

I am prepared to pass the clause as it stands, and to consider the amendments which have been mentioned in the Drafting Committee.

Amendment suggested by the Council and Assembly of Tasmania-

After "state" insert "and his service with the Commonwealth."

The amendment was negatived.

Amendment suggested by the Western Australian Assembly-

After "service" insert "and in calculating such pension or retiring allowance the proportion payable by the state shall be calculated upon the salary paid to the officer at the time of his transfer to the Commonwealth."

The amendment was negatived.

Amendment suggested by the South Australian Council-

At end of clause add "No pension or retiring allowance shall be payable to any servant of the Commonwealth who is not entitled to such pension or retiring allowance under the law of the state from which he has been transferred."

Mr. BARTON (New South Wales). -

This raises a large question of policy. When first looked at, it might appear to be only a provision in the nature of drafting, but it is really imposing a serious trammel upon the Commonwealth. It is a question of policy whether or not pensions should be granted. We had a strong argument the other day upon a question of policy as to whether or not old-age pensions should be granted. It was strongly urged that there should be a power of granting old-age pensions. That was rejected on the argument that it was a matter not for the Commonwealth to deal with, but for the several states in connexion with their social and domestic policy. But the question as to how you should deal with the public officers of the Commonwealth is purely a question for the Commonwealth itself. It stands in a very different position, because, unless the Commonwealth provides for pensions for its own servants, there is no other power on earth to do so. I am not standing here to argue that there ought to be pensions for the servants of the Commonwealth, or that there ought not to be. It seems to me very extraordinary if we cannot say that those who come after us, who
will be the electors of the Commonwealth, will be perfectly competent persons, just as competent as we are, to decide what shall be the policy of the Commonwealth in this matter. It would be departing from our ordinary principle in dealing with this measure if we were to give all these wide powers of legislation to the Commonwealth, and then turn round and say that the Commonwealth shall not deal with any question of pensions for its servants.

Mr. GORDON. -

By the clause as it stands you are binding the Commonwealth.

Mr. BARTON. -

You are to a certain extent, for this reason, that if you do not give power to the Commonwealth in this matter, they will have no power at all to do justice. What is sought by the amendment is to deprive the Commonwealth of any power of dealing with this subject, when under its general powers it will have the duty of dealing with its public servants; will have the control of departments, and the power of legislating with respect to those departments; and under another provision in the Bill it would be able to deal with everything incidental to the carrying out of its powers. It would, therefore, be entitled to deal with this question of pensions. It need not legislate unless it liked. That is the proper position. Give these powers of administration and legislation, and leave the Commonwealth a free hand to legislate as may be necessary in relation to those powers. But this amendment goes back on our tracks and asks us to do what would be entirely contrary to the policy of the Bill. If we carry this amendment we will simply be saying that the Commonwealth shall not be allowed to determine whether there shall or shall not be pensions. On that ground I object very strongly to the amendment.

Mr. REID (New South Wales). -

I would direct the serious attention of the leader to the point as to whether this clause would not force a system of pensions on the Commonwealth in respect to officers taken over. My reason for doing so is in the interests of the officers themselves. It might happen that, in the first Commonwealth Parliament, there will be members who have a very strong feeling of opposition to pensions, and the necessity of taking over a pension system might militate very much against the unfortunate officers who happen to be in the employment of the states. The feeling might be so strong that the Commonwealth Government might start with officers of its own. I should not like the Constitution to be passed in such a way that those officers might perhaps be put in that position, whereby their
prospects would be imperilled owing to the necessity of giving them pensions if taken into the service of the Commonwealth. I know that in some quarters of Australia there is a strong, perhaps a growing, feeling against pensions.

Mr. GORDON. -

We have not got one pension in South Australia.

Mr. REID. -

No. As the result of that strong feeling, these officers may perhaps be put in a very unfortunate position. They might not be employed by the Commonwealth, if employing them compelled the Commonwealth to recognise the pension system.

Sir JOHN FORREST. -

It would be hard on the states, too.

Mr. REID. -

In redrafting the clause that point should be considered, for I am afraid that it might work against some of those officers, especially the older officers, who might not be taken over by the Commonwealth in view of the pensions accruing to them.

Mr. GORDON (South Australia). -

When this clause was considered in Adelaide I was strongly against the policy of the whole provision. It certainly does, to a large extent, bind the Commonwealth to a line of policy. It would be perfectly proper to allow the Commonwealth to grant pensions, if it so pleases, but this clause, which binds the Commonwealth to grant pensions that are now accruing in various colonies, will lead to a most undesirable state of things. All our Post-office officials in South Australia, who are not to get pensions, will be doing the same work as officers of the corresponding departments in other colonies who are to get pensions. Now, I think that the Commonwealth ought to be allowed to start with a clean sheet as regards pensions, and that each state ought to commute the pensions of its officers who are transferred to the Commonwealth, so that the Commonwealth may take over those officers clear of all liabilities. Then the state will assume the liabilities it has undertaken, and the Commonwealth may grant pensions or not, as, in its wisdom, it thinks fit. Why should officers of our post office, or our Defence department, from the Commandant downwards, and officers of all the departments that will be transferred to the Commonwealth, be required, although getting no pensions or retiring allowances, to do the same work, for the same or perhaps less remuneration as officers of the same classes in other colonies who are to get pensions and retiring allowances? I venture to submit that such a policy
would lead to a most undesirable state of things—that it would create a great
deal of dissatisfaction, jealousy, and confusion, because the
Commonwealth will have to take over five different policies of as many
different colonies in regard to their public servants, or, at any rate, as many
as enter the Federation, and the Commonwealth will thus have a complex
and mixed service with respect to pensions and retiring allowances, which
would be most undesirable.

Mr. MCMILLAN. -
Because one man gets a pension which he is entitled to, what has that got
to do with another man who is not entitled to a pension?

Mr. GORDON. -
The honorable member would not like to be working without a pension
side by side with a man who was doing the same work and was entitled to
a pension.

Mr. MCMILLAN. -
If the officer who has a pension accruing is only paid compensation in
respect thereof up to the time of his transfer to the Commonwealth, what
objection can you have?

Mr. GORDON. -
That would be perfectly correct, but this clause makes no such provision.

Mr. MCMILLAN. -
But I understand there is to be a redrafting of the clause on those lines.

Mr. GORDON. -
If so, I shall then be willing to support it. If not, and if the clause is
allowed to remain practically as it stands, I shall vote against it.

Mr. OCONNOR (New South Wales). -
I would like to point out to Mr. Gordon that if we wish to understand this
clause we must go back to the object of it. Its object is not to confer
pensions, but to set right the gross injustice which must accrue to the
servants of the several states who join the Commonwealth, which will take
over their services, and will thereby put an end to their services with the
states. No doubt in taking over those servants of the states, it will be very
much to the interests of the Commonwealth, in most cases, to continue
their services, because those servants know the work of their respective
departments, and their knowledge and experience will be of inestimable
value to the Commonwealth in the early stages of its existence. Therefore,
it will be for the benefit of the Commonwealth in most cases that the
services of those men should be taken over. Now, the Commonwealth, in
dealing with those men, might have to face a different condition of things
in each of the colonies. In some of the colonies the officers receive
pensions, but in others they do not. The only reason why compensation, in
the nature of a pension, is to be given is this: A man serving the Government in South Australia, where there are no pensions to public servants, has no right to a pension, either accrued or accruing; therefore, in taking him over, the Commonwealth puts him in no different condition. By breaking his service with the state, the Commonwealth takes away no right from him. But another man who is serving the Government of another colony under conditions which give him the right to a pension, is put in this position, that he cannot refuse to accept service with the Commonwealth, and as the time at which he has a right to a pension has not actually accrued, he cannot demand anything from the state. If the Commonwealth takes possession of the department in which he is employed, and thus prevents his pension right from accruing, it is only common justice, under those circumstances, that his case should be considered, and if the Commonwealth takes over his services, not for his benefit, but for its own advantage, he certainly should not lose his right to a pension. That is the reason why—as those two classes of public servants exist—we must treat them differently. In the one case, where there is no pension accrued or accruing, the officer taken over by the Commonwealth loses no right, and therefore there is no necessity for compensation; in the other case, where there is a pension right accruing, you take away that right, and therefore the officer should be pensioned, always remembering that these officers are taken over, not in their own interests, but in the interests of the Commonwealth.

Mr. REID. - But this question ought to be considered: In some of the colonies the public servants pay so much per cent. of their salaries into a pension fund. Now, in those cases this awkwardness will arise—are they to get from the Commonwealth their full pension rights without the liability to further contribute anything to a pension fund?

Mr. OCONNOR. - The Commonwealth will have to settle for itself what compensation it will give them.

Mr. GORDON. - This clause fixes it.

Mr. OCONNOR. - Of course it must be calculated on the basis of the pensions to which the officers in question are entitled under the laws of the states. With respect to the question put by Mr. Reid, I presume there will be no more difficulty in ascertaining the proportion which the Commonwealth will have to pay than the state would have in ascertaining the same proportion if the state wished
to pay the officer his pension. In some cases the amount of the contribution would have to be deducted. Where the public servants pay into a fund, the percentage payment is deducted from their salaries.

Mr. REID. -

The clause, as drafted, gives officers who have previously contributed to a pension fund the right to a pension from the Commonwealth, after they are taken over, without the liability to contribute anything for the remainder of their service. That is a point to be considered.

Mr. OCONNOR. -

As a matter of fact, they have already contributed up to the point at which they have been taken over by the Commonwealth. However, that is a detail which it seems to me it would be quite impossible to provide for in the Constitution, but I think that in dealing with these officers, whose rights are taken away through no fault of their own, we can well afford to treat them not only fairly but generously; and although there may be a case which possibly does not come under this provision, I think that, in the great operation of taking over the whole of these departments and their officers with them, that is a matter which need not cause trouble either to the states or to the Commonwealth. I think, therefore, that it is rather misleading to suppose that this is a matter dealing with pensions or establishing a system of pensions in any way. It is simply a matter of fair compensation to officers who have been deprived of their rights through no fault of their own.

Mr. HOLDER (South Australia). -

I think this matter can be looked at from three points of view. There is, first of all, the point of view of the civil servants who may be taken over by the Commonwealth; secondly, there is the point of view of the state; and, thirdly, the point of view of the Commonwealth. We shall not properly understand the matter unless we look at it from all these points of view. From the point of view of the civil servant, I suppose we shall agree that he should have all his rights preserved to him. Though we have no pension list in South Australia, we have a retiring allowance, which is to be paid to certain officers on their retirement from

the service; and if any officers were taken over from the South Australian service, as undoubtedly many would be, they would be taken over with any rights which they possess to-day; or if taken over from any of the other colonies, as undoubtedly would be the case, they would be taken over with all their rights. That disposes of the matter from the point of view of the civil servants. To do less than that would be to do them a gross injustice, which this Convention, I am sure, would never for one moment
contemplate. From the point of view of the state, if the suggestion of Mr. Gordon were adopted, that on the service of officers with the state ending, and their being taken over by the Commonwealth, the state should commute any right to retiring allowance possessed by the servants so taken over, that would involve a very heavy burden being cast suddenly upon the states.

Mr. GORDON. -

Not upon South Australia.

Mr. HOLDER. -

Yes; upon South Australia. There would be in each colony some hundreds, if not thousands, of officers taken over, and I am sure that in South Australia if, in entering into the Commonwealth, the Treasurer had to find retiring allowances to be paid to several thousands of men, he would have to raise a very large sum of money somewhere.

Mr. GORDON. -

Nothing like the amount you contemplate.

Mr. HOLDER. -

But I know perfectly well what I am speaking about.

Mr. OCONNOR. -

The money would not become due till the service terminated.

Mr. HOLDER. -

But under Mr. Gordon's proposal it would become due upon the officers becoming officers of the Commonwealth. And it is to be remembered that many of the officers taken over would be heads of departments, such as the heads of the Customs department, naval and military officers, and the heads of the Post and Telegraph department.

Mr. GORDON. -

There would not be much due to Defence officers and officers in the Post and Telegraph department in South Australia.

Mr. HOLDER. -

But in the other colonies there are very large sums due and, to refer again to South Australia for a moment, there is one officer at the head of the Postal department to whom a very large sum is due, and another at the head of the Customs department. Altogether a large amount—many thousands of pounds—is due in South Australia, and a great many thousands more in the aggregate in the other states. I do not think it would be a fair thing, from a state point of view, to suddenly make a call upon the states for these moneys. Nor do I see why they should commute pensions. They have a right to the services of these officers so long as they choose to retain them, which in many cases would be for a number of years, and the officers would be able to do good work for the money which they would get. Why,
then, should a state be called upon to commute pensions which would not become due in the ordinary course of things for many years, and then only in return for further years of service? I do not think it would be fair to make a commutation of these pension claims a condition precedent to the officers being taken over by the federal authority. I agree with the proposition that there should be no policy of pensions under the Commonwealth. We have managed to get rid of the pension system in South Australia, and I think the Federation would be unwise if it adopted a system involving a heavy pension list.

Mr. BARTON. -

I think it is an unlikely thing that it would do so.

Mr. HOLDER. -

I think so, too, but we should leave the federal authority free, either to keep clear of pensions, or to adopt the pension system, if it choose to take what appears to me to be an unwise course. Concerning these officers taken over, I see no injustice at all. Why should an officer feel that he is hardly dealt with if he retains the rights he previously had without any addition or subtraction? Why should any of those taken over from South Australia feel it a hardship to have to work beside officers taken over from some other colony, so long as they are allowed to maintain their right undiminished and unincreased?

Mr. ISAACS. -

It is the same in the states now. We have officers who are entitled to pensions working beside officers who are not.

Mr. HOLDER. -

Quite so. I hope the clause will not be materially altered. I rise to protest against it being altered in the direction of casting on the states a heavy cash obligation, which I do not think they should be called upon to meet.

The amendment was negatived.

Mr. DEAKIN (Victoria). -

One very small point remains to be made. The provisions of this clause relate only to those officers of the Commonwealth who become officers of the Commonwealth consequent upon their departments being taken over. But it may also be the desire of the Commonwealth, in connexion with some of its new organizations, or in regard to its parliamentary machinery, to obtain the assistance of men of experience in the states. Now, no provision is here made for the protection of the rights of such officers whose service the Commonwealth may desire to acquire.

Mr. BARTON. -

That is a different case.
Mr. ISAACS. -
They are not compulsorily taken over.

Mr. DEAKIN. -
But it may be worth the consideration of the Drafting Committee.

Mr. BARTON. -
It seems to be rather a matter of policy.

Mr. DEAKIN. -
It is, but it is likely to relate to some men who may be among the chief officers of the Commonwealth, and who may be taken over in connexion with certain departments. There are in our different services officers who have held high offices in certain departments, and have been transferred to some other departments.

Mr. BARTON. -
You are alluding to officers who may be taken over on the transfer of departments?

Mr. DEAKIN. -
Exactly. - The other cases are those as to which the Commonwealth has to make new departments, and it may choose to administer those departments by means of officers taken over from the civil services of the other colonies. There is no provision for protection for the officers who may be so appointed, who may be willing to be taken over, and whom their states may be willing to spare. There should be compensation made to them for the sacrifice of their existing rights.

Mr. BARTON. -
The Commonwealth can make such terms as it sees fit.

Mr. DEAKIN. -
Undoubtedly; but if a particular officer be an officer of some years' standing, as he may be-

Mr. BARTON. -
If he have pension rights, the Commonwealth would have to take notice of them as a matter of justice.

Mr. DEAKIN. -
The question is whether the state should be able to escape all its obligations, and whether the Commonwealth is to assume them all.

Mr. BARTON. -
I will consider the point.

Mr. DEAKIN. -
That is what I desire.

Mr. ISAACS (Victoria). -
The idea that permeates the amendment suggested by Western Australia is whether the state should have power, in case the Commonwealth does
not take over certain officers, to retain their services in some other departments, instead of necessarily paying compensation. But I would like to draw the attention of Mr. Barton to the position of these words in the clause. I think the words ought to be placed somewhere else, because, as they stand now, it seems to me, on consideration, that the Commonwealth would not have the power to take over the officer if the state chose to retain him.

Mr. BARTON. -

They are struck out.

Mr. ISAACS. -

No, they are inserted. Unless he is appointed to some other office, the Commonwealth may take over his services. The idea is right, but the provision is clearly in the wrong place. I am not quite clear about the compensation which the officer is entitled to receive if he is not retained by the Commonwealth or the state. What he is entitled to get is the compensation payable under the law of the state on abolition of his office. I am not acquainted with the laws of the various colonies. There are cases where an officer is entitled to compensation on the abolition of his office. But there may be cases where an officer is not entitled to compensation on the abolition of his office, but has an inchoate right to go on and earn his pension in a few years more. I think it is a matter deserving of our consideration, whether there may not be many cases of officers who will be deprived of their present right to compensation because it does not happen to be compensation merely on abolition of office.

The clause, as amended, was agreed to.

86. All lands, buildings, works, vessels, materials, and things necessarily appertaining to, or used in connexion with, any department of the public service, the control of which is by this Constitution transferred to the Commonwealth, shall, from the establishment of the Commonwealth, be taken over by and vest in the Commonwealth, either absolutely, or, in the case of the departments controlling customs and excise and bounties, for such time as may be necessary.

The fair value thereof, or of the use thereof, as the case may be, shall be paid by the Commonwealth to the state from which they are taken over. Such value shall be ascertained by mutual agreement, or, if no agreement can be made, in the manner in which the value of land, or of an interest in land, taken by the Government of the state for the like public purposes is ascertained under the laws of the state at the establishment of the Commonwealth.

Amendment suggested by the Legislative Assembly of Western
After the word "used" (line 3) insert the word "exclusively."

Sir JOHN FORREST (Western Australia). -

In Western Australia, and, I suppose, in the other colonies, there are departments—for instance, the Post-office department—to be taken over which occupy only a portion of the public buildings. It might not be in the interests of the state, and the state might not desire to part with a big block of public buildings. Therefore we propose that, unless the building is exclusively used for a purpose taken over by the Commonwealth, the Commonwealth should not have the right to take it over. In our case, for instance, we have one principal block of large buildings used by the post-office and all the departments of the Government. It would be very inconvenient indeed, if the Commonwealth took over the whole of that block of buildings, and it would be equally troublesome, perhaps, to take over a portion of the building.

Mr. ISAACS. -

You will get the value of the building.

Sir JOHN FORREST. -

I know that we will, but even with the value of the building I do not know that it would be altogether convenient to take it over.

Mr. SYMON. -

They would arrange all that.

Sir JOHN FORREST. -

This clause says that they shall take it over.

Mr. SYMON. -

They would not take it over if it were a white elephant.

Sir JOHN FORREST. -

It would not be a white elephant, and the state might desire to retain it.

Mr. BARTON (New South Wales). -

I may point out to my right honorable friend (Sir John Forrest), if he will allow me to interpose in his speech, that if the Commonwealth does not find it necessary to take it over—and it would not find it necessary to take it over in the case he puts-

Sir JOHN FORREST. -

Why not?

Mr. BARTON. -

My right honorable friend has instanced the case of a large Post-office department, which is part of a large block of public buildings. I think in that case, it would be quite possible to
so much of the buildings as were used for the specific purpose of the Post-office, leaving the rest, so far as t

Mr. ISAACS. -
Does not this make an investiture in the Commonwealth?

Mr. BARTON. -
It does make an investiture in the Commonwealth. There is that difficulty occurring, and I am inclined to think that it may be necessary to amend the clause to a certain extent.

Sir JOHN FORREST. -
Say with the consent of the state or something of that sort.

Mr. BARTON. -
You cannot say with the consent of the state, but you may make it necessary for the Commonwealth to pay the proper valuation of that which its necessities require that it should take over, and I do not know that you should bind the Commonwealth to a greater extent than that.

Sir JOHN FORREST. -
You want to have it all one-sided.

Mr. BARTON. -
No.

Sir JOHN FORREST. -
You can leave it if you like.

Mr. BARTON. -
I do not think it is a one-sided thing to make a man pay for what he gets, but the Commonwealth is not bound to take over those things which it does not want. My view is that we ought not to bind it to take over such matters. It ought to be in a position to exercise some option-some discretion—but not in respect to such matters as are necessary for the actual taking in of the early revenue, which will, in the first instance, be confined to Customs and Excise. We have found a great difficulty from the very beginning in dealing with the clause. Not only has the Convention found it a great difficulty, but my honorable friends who are assisting me with the drafting find the same difficulty as to whether there should be a complete and compulsory investiture in the Commonwealth of everything used by a state in connexion with transferred departments, or whether there should be some provision for an option on the part of the Commonwealth to take over a portion at a fair valuation.

Mr. SYMON. -
That is practically what the clause does.

Mr. BARTON. -
That is really more a matter of policy than anything which Sir John Downer, Mr. O'Connor, or myself has to do with. I am inclined to think
that it might be made a little clearer that there should be an option to the Commonwealth to take over only such things as are absolutely necessary, that the state should have no more disturbance than it is necessary for the Commonwealth to disturb them. But, on the other hand, the feeling of the Convention in Adelaide when they touched this clause— they did not touch it in Sydney— was rather strong in making the clause go its whole length. I am inclined to think that the policy I have suggested is the right one. The buildings which are not exclusively used are the only ones you may want to deal with. It has been suggested, I think, inferentially, by Mr. Symon, that while there is apparently a statutory investiture there is the maxim that any one can renounce a law which is introduced for his own benefit. As the clause is introduced for the benefit of the State in its larger extent, it will be competent for the State to renounce that benefit. Unless, after all, there is some proceeding between the state and the Commonwealth there can be no difficulty under the clause. I do not think we should insert the word "exclusively." I think it is better to leave the clause to be dealt with, and I will make a suggestion, notwithstanding that it is a matter of policy, to the Convention in connexion with the whole matter.

Sir JOHN FORREST. -
Don't make it too tight.

Mr. BARTON. -
Not make it too tight?

Sir JOHN FORREST. -
Not on one side.

Mr. BARTON. -
A great many of the clauses, I am afraid, are too loose.

Mr. SYMON (South Australia). -
I would point out to my right honorable friend (Sir John Forrest) that if the word "exclusively" is inserted it may cause very great inconvenience. You might put the Commonwealth under the obligation of taking over the management of particular departments—Customs and so on—and have no premises in which to carry on the work, because you might have half of your buildings used, not exclusively, but for various purposes such as have been indicated. It might be a very awkward position indeed. The only question is whether we may well leave it to be adjusted between the Commonwealth and the states as to what parts of the buildings should be taken over when they are used for different purposes, or whether we should leave the state in a position to say—"Well, now, you had better not take over this part of the building used for several departments, but we will give you
another building, on the other side of the street, which may be exclusively used for your particular work."

The amendment was negatived.

Mr. KINGSTON (South Australia). -

I was going to suggest, following the remarks of previous speakers, that some difficulties may arise if you provide for compulsory vesting. I would suggest to the leader of the Convention that he might make this provision read-"may from the establishment of the Commonwealth be taken over by the Commonwealth, and, if so taken over, may vest." All I would suggest is that it should not vest without election on the part of the Commonwealth. If you pass the provision as it stands at present it is open to that objection.

The paragraph was agreed to.

Mr. BARTON (New South Wales). -

I now beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

BOUNTIES.

Sir GEORGE TURNER (Victoria). -

I desire to mention that, at the proper time, I shall ask that clause 84, having reference to the question of bounties, be reconsidered.

The Convention adjourned at two minutes past five o'clock p.m.
Wednesday, 16th February, 1898.

Petitions - Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITIONS.

Mr. DEAKIN (Victoria). -

I have the honour to present a petition from John Robertson, of Moonee Ponds, Victoria, relative to the banking, currency, and legal tender clauses of the Bill, and I beg to move that it be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

The Petition of John Robertson, of Moonee Ponds, in the Colony of Victoria.

Apropos of the currency, banking, and legal tender clauses in the Commonwealth Bill now before you, your petitioner would respectfully draw your attention to the following matter, and would request your careful consideration of it:-

1. The Australian banks hold, on the average, of gold some £25,000,000, more or less.

2. The great bulk of this gold is, to all intents and purposes, fixed capital of rather a dead kind. It would be quite safe so to denominate at least £18,000,000 of it.

3. By the use of well-proved devices and principles adopted from English and Scotch banking, it is possible to replace these superfluous millions of gold by prime interest-bearing securities of assured stability and liquidity of value.

4. It is possible to make this change in a safe, simple, and equitable manner, and without the State engaging in banking business properly so called, and without interfering with the gold standard of value or the general use of gold for cash purposes, and the settlement of balances.

5. It is possible, further, to do this without the printing of legal tender notes, and without interfering with free banking or the free coinage of gold.

6. Your petitioner placed in outline the exact principles on which these things could be done before the Victorian Banking Commission of 1894-5, partly in print, partly in writing (the latter not being printed).

Your petitioner is of opinion that the achievement of the reform he urges on your consideration, and which could be equitably achieved in say five years, would facilitate and compel free, economic, and stable federation by...
furnishing a common interest and a most infallible indicator of where the balance of interest lay in any given case. He believes, further, that the existence of an Australian Federal Bank would greatly facilitate the work of federal government, and also for these reasons urges the matter on your consideration.

And, as in duty bound, will ever pray.

Dr. QUICK (Victoria). -

I have the honour to present a petition on behalf of the president and executive officers of the Victorian Christian Endeavour Union, comprising a membership of over 20,000 residents of the colony of Victoria. The prayer of the petition is that the Convention will introduce into the Federal Constitution a definite recognition of Almighty God as the Ruler of Nations and the Supreme Source of all Righteous law, rule, and authority. I beg to move that the petition be received.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 86, as follows:-

All lands, buildings, works, vessels, materials, and things necessarily appertaining to, or used in connexion with, any department of the public service, the control of which is by this Constitution transferred to the Commonwealth, shall, from the establishment of the Commonwealth, be taken over by and vest in the Commonwealth, either absolutely, or, in the case of the departments controlling customs and excise and bounties, for such time as may be necessary.

The fair value thereof, or of the use thereof, as the case may be, shall be paid by the Commonwealth to the state from which they are taken over. Such value shall be ascertained by mutual agreement, or, if no agreement can be made, in the manner in which the value of land, or of an interest in land, taken by the Government of the state for the like public purposes is ascertained under the laws of the state at the establishment of the Commonwealth.

Amendment suggested by the House of Assembly of South Australia-

After "over" (paragraph 2) insert "and payments may be made by the assumption by the Commonwealth of an equivalent part of the public debt of the state."

Mr. GLYNN (South Australia). -

I hope the committee will consent to this amendment. The object of the South Australian Assembly is to avoid the difficulty which will face the
Federal Parliament at the very start if it has to pay something like £9,000,000 or £10,000,000 for the departments that are to be taken over from the states. In Sydney, at the instance of Mr. Walker, a return was presented to the Convention showing that if the whole of the departments were taken over at a fair value, and the Commonwealth had to pay cash for those departments, the amount required would be £10,260,980.

Mr. HOLDER. -

But the Commonwealth would be sure to relieve the states of debt instead.

Mr. GLYNN. -

Well, I want to make that obligatory on the states, should the Commonwealth desire it. It is just as well that we should see that it is to be done in that way, because there is no obligation on the states to do it in that way at present. The states, the Constitution as now drafted, could call on the Federal Parliament to pay cash for the departments taken over. That is the effect of this clause as it stands, and the object of the South Australian amendment is to relieve the Federal Parliament of the obligation to pay cash. The proposal made is to pay a fair value for all the departments except the Customs department, which are by the Bill excepted from purchase, are to be taken over, I suppose, by a leasing of the premises. If you deduct, therefore, the value of the Customs departments, which is put at £733,175, the balance to be paid by the Commonwealth to the states will be, in round numbers, £9,500,00. Now, that is a very large outlay for the Parliament of the Federation at the very start. It will necessitate the floating of a federal loan, a thing that we ought to avoid at the very inception of the career of the Commonwealth. It will also lead to this inconvenience, that there will be given over to the states Treasurers adventitious sources of revenue, which will not affect or would not be taken into account in relation to their annual balances. Taxation could not, in anticipation, be remitted for a year or so. Now, these adventitious sources or revenue-these windfalls-very often lead to extravagance; at all events, it is not wise, if we can possibly avoid it, to hand over a sum, say, in the case of New South Wales, of between £3,000,000 and £4,000,000 for the various departments which are to be taken over by the Commonwealth. The suggestion made by the South Australian Legislative Assembly is that payments may be made by the Commonwealth assuming an equivalent part of the public debts of the states whose departments are taken over. The Commonwealth could not, of course, take over a capital amount of debts equal to the value of the departments taken over, because the debts have varying currencies, and
varying rates of interest. You must, therefore, convert the debts taken over into this equivalent value. Of course, honorable members will see that a loan of £1,000,000, with a twenty years currency, at 4 per cent. So that the object of the South Australian amendment is not that the Commonwealth shall take over a capital amount equal to the amount of the purchase money of the departments taken over by the Commonwealth, but that an equivalent amount of the debts of the states shall be assumed by the Commonwealth. What the amount shall be is a matter of mathematical calculation, which could be done in half-an-hour.

Sir GEORGE TURNER. -
Do you want to make it compulsory to do this?

Mr. GLYNN. -
No, not compulsory. The object of the amendment of the South Australian Assembly is to allow the payment for the state departments taken over by the Commonwealth to be made, if the Federal Parliament so desire, by the Commonwealth assuming equivalent amounts of the debts of the states. As the clause at present stands, the states could demand payment in cash, and oblige the Federal Parliament, at the very start, to float a loan so as to raise money to pay the states in cash. The object of this amendment is that the payment may be made by taking over an equivalent amount of the public debts of the states.

Mr. MCMILLAN. -
But you don’t propose to make it mandatory, do you?

Mr. GLYNN. -
No, not mandatory. If the second paragraph of the clause is amended as proposed, the first sentence will read as follows:

The fair value thereof, or of the use thereof, as the case may be, shall be paid by the Commonwealth to the states from which they are taken over, and payments may be made by the assumption by the Commonwealth of an equivalent part of the public debt of the state.

Mr. BARTON. -
Substitute or for and in the amendment, and then it will be clear that the payment could be made in cash or by taking over an equivalent amount of debt.

Mr. GLYNN. -
Very well, if the leader of the Convention wishes it, that amendment can be made. I do not know that it is absolutely necessary. The clause might be made to read that the amount shall be paid by taking over an equal value of state debt or otherwise. That would leave it optional. The object of putting
it in that way is that up to the minimum value of the departments of the
state-say, Tasmania—there might be an amalgamation. The value of the
Tasmanian departments taken over by purchase would be something like
£350,000. Now, there might be an amalgamation or cancellation of
purchase moneys up to that point, because there will be no loss there. That,
therefore, would leave, instead of £9,500,000 to be paid by the
Commonwealth, something like £8,000,000, because five times £350,000,
the amount of the lowest value of these departments in Tasmania, deducted
from the total amount to be paid the Commonwealth, would leave the
amount a little less than £8,000,000, and to that extent there might be a
calculation of purchase money, but the excess over the valuation of the
Tasmanian departments taken over must be paid for either in cash or by the
Commonwealth assuming an equivalent amount of state debt. The
suggestion I make, therefore, is that you should amalgamate the purchase
moneys up to the lowest amount, which is that of Tasmania, and pay the
balance of the valuation money either in cash or by taking over a
proportionate amount of state debt. It has been objected to the compulsory
taking over of the states debts—it was objected in Sydney with considerable
force, although I do not acknowledge that it is a conclusive answer to
compulsion—that you might be giving up a benefit to the bond-holders. The
federal security being greater than the state security, there would really be
a premium surrendered to the bond-holders if there is a compulsory taking
over of state debts by the Commonwealth, because the value of their bonds
would go up according to the additional value of the federal security as
compared with the state security. Bond-holders would also have a greater
knowledge of the character and value of the stock they were dealing in
owing to the fact that it would be Australian stock. Of course, that
objection would not apply to this amendment, be taken over as against the
value of the departments would be only about £8,000,000. Therefore no
bond-holder could say—My bond is the one to be taken over. Arrangements
could be made with the bond-holders to pay a slight premium, giving the
Federal Parliament security over their particular bonds. There would be no
danger in regard to the premium because you could select a particular sum
to be taken over and make terms with the bond-holders. In fact, £8,000,000
of debt might be put up in England as being changeable from a state
liability to a federal liability. The objection that might be made to a loss of
premium by taking over an amount of debt compulsorily does not hold
good here, because with the large indebtedness of the Australian colonies,
only a particular portion of bonds would be taken over; the particular bond-
holders would be selected by the Federation, and they could be made to
pay a premium for the privilege granted to them of taking federal security
instead of state security.

Mr. SOLOMON. - Would it not be better and less complicated if the Federal Parliament floated a loan, and allowed the state Parliaments to pay off what portion they liked?

Mr. GLYNN. - I do not think so. It would have the evil I have suggested, of beginning the career of the Federal Parliament by floating an outside loan and incurring a debt. In the one case you have to float a loan and pay interest on an extended currency, but by adopting the course I have suggested you would be wiping off the purchase money by a method more resembling deferred payments. As a matter of fact, it will amount to that. I think it will be better to adopt this suggestion, and I trust that the committee will accede to it. Otherwise, the liability will be so great at the beginning of the Commonwealth that we shall be landed in embarrassments. This has been made clear by the gentlemen who form the accounts committee appointed by the Victorian Government. They say that some debt should be taken over, and the suggestion is also made by them that payment should be made by instalments extending over a series of years, at 3 per cent. compound interest. I believe that by agreeing to this amendment the committee will get rid of other embarrassments. I might also mention that it would be well if the leader of the Convention would look into the effect of this on the new clauses.

Mr. BARTON (New South Wales). - It would be well, I think, if the Treasurers would express to the committee their views with regard to the point put forward by Mr. Glynn. There seems to me to be a good deal in the suggestion, and while it might allow something to be done to prevent what might be the proper means of forwarding the transfer, there is a good deal to be said for making an arrangement whereby the states may be relieved of interest on public debt, applicable to lands, buildings, or works taken over. Otherwise, the Commonwealth is bound to pay the fair value thereof, as the clause stands. But I take it that it would not be the intention that the Commonwealth should be bound to pay cash for its lands, works, and buildings, but that as far as possible it should pay what the states had undertaken the obligation of paying, with this difference, that it would be responsible for not merely the cost of the works, but for the fair value of them, which might be more or less of the original cost. At any rate, I think there is a good deal in the suggestion that the clause should not be left as it stands, but that some provision should be made of a character akin to the suggestion by Mr.
Glynn, although I would not bind myself to those words.

Sir GEORGE TURNER (Victoria). -

I quite concur that it is not wise to adopt the clause as it stands, but it seems to me that it is not wise to put in any complicated system as to what should be done. I would leave the matter as open as it is possible to leave it, letting the Federal Parliament and the states make their own bargains with regard to terms. No state Treasurer, if he were at all sensible, would ask the Federal Parliament to pay him two or three millions of money right off. What could he do with it if he got it? If he had that amount of money in hand the chances are ten to one that he would not be able to take up any loans, nor would he be able to put the money aside for that purpose. Pressure would be brought to bear upon him to spend it for reproductive works, and when loans fell due the money would not be available. What I would suggest is this—if the Federal Parliament has to pay in cash it must raise the money. Raising the money at once would mean that interest would have to be paid. Now, the states would have to pay that interest, because the amount of it would be deducted from the surplus returnable to them from time to time.

Mr. HOLDER. -

They would have to pay twice.

Sir GEORGE TURNER. -

The result would be that we should be paying the English bond-holders interest on the loans out of which these works were probably constructed, and also paying interest upon money borrowed by the Federation. The state would have the money paid to them by the Federation on account of the works, but what would they be able to do with it? They might put it in the bank; but judging from our past experience we should not get any interest upon it then.

We should thus be paying interest twice over. The course that would probably be pursued if the state and the Federal Parliament were left to make their own arrangements would be that they would come to terms such as that, if in five or ten years time the state had loans becoming due, the Federal Parliament would issue its own stock for an equivalent amount, and hand it to the state.

Mr. BARTON. -

Giving to the state the value in stock of the Commonwealth.

Sir GEORGE TURNER. -

Giving the value in stock of the Commonwealth; and when the loan which the state desired to take up became due, the Commonwealth stock would be realized, and the money applied to taking up the particular loan.
That is one way. I have no doubt, however, that the Treasurers of the states could agree to some other plan with the Commonwealth Treasurer which would be as effectual and more simple. There is no doubt that the Federation would have to create a stock of its own. It must, almost from starting, incur debts, and the creation of stock is a necessity. They will not be able to carry on out of revenue merely. No doubt when a stock is being created, various means may be suggested by the financial men of the day for carrying out this system in a fair and satisfactory manner. I would urge, as a suggestion to the Drafting Committee, that the wider we leave this matter the better will it be. Let it be left absolutely to the Federal Treasurer, who will not seek to incur any more expenditure for interest than is absolutely necessary; and the states Treasurers, if they are sensible men, certainly will not desire to have two or three million pounds handed to them in cash, unless they know that they can employ it for paying off the debts of their states.

Mr. HOLDER (South Australia). -
I wish to add my testimony in the same direction as Sir George Turner has spoken. We are framing a Constitution, and all these matters which are not of permanent concern at all will be better if left to be the subject of bargaining between the states and the Commonwealth at the beginning of our federated career. That will be better than creating a cast iron fixed system. I want to see this provision left as open as possible, so that there may be room for negotiation. Let it be said that the state shall be paid in cash or securities as may be agreed upon. If that be done, I have no doubt the right course will be taken, and it will be far better than imposing a cast-iron provision which, if it comes into operation, might work in a different way to what we intended it should do.

Mr. BARTON. -
If this amendment is negatived I will prepare an amendment which will meet the case and be as wide as possible.

Mr. HOLDER. -
I hope that the Convention will accept the suggestion of the leader of the Convention.

Mr. ISAACS (Victoria). -
I think that the views of the finance committee appointed by the Victorian Government (to, which Mr. Glynn has referred) are well deserving of consideration upon this particular point, and I do not think that sufficient attention has been given to that report considering the importance of what the committee have to say upon this very subject. I think that, for the sake of convenience of reference, it may be well for me to quote a passage. This is what the committee say (page 262 of the
We desire, however, to make some remarks upon the method of handing over the bulk of the properties, namely, those pertaining to Defence, Post and Telegraph offices, &c. The value of these we cannot ascertain; but the value of the whole of the properties to be handed over was, according to some figures supplied to the Sydney Convention of 1891, £10,500,000; and is, according to an estimate made by the Assistant Government Statist, £10,450,000, including lands. The deduction of the value of the Custom-houses would not make a great difference; but we do not think these figures represent the present value, and believe that about £6,000,000, worth of property would be handed over to the Commonwealth at its inception. The purchase money for these properties would be due on the date of the establishment of the Commonwealth, when the Treasurer would have no funds. The only way out of the difficulty would be for the Commonwealth to raise a loan to meet its obligation to the states, which loan would, in a sense, be a second mortgage on the same security. Supposing this method to be adopted, the payments to the states would be greatly deranged by the receipt of large sums of money, and the Commonwealth would begin under very bad auspices. The difficulties are so great that we cannot conceive this method of paying for the properties being adopted. Further, we have considered the possibility of the states being reimbursed by the Commonwealth taking over a portion of the debt of each state equal to the value of the properties transferred. This method was adopted in Canada, and proved practicable; but we can find no provisions in the Bill under which a similar course could be taken here.

It should be recognised that, whether buildings, &c., are transferred or not, they remain, in a sense, the property of the state. The cities of Sydney and Melbourne cannot be deprived of the benefits of their post-offices, forts, or other public buildings, unless the Commonwealth should sell them, and this could easily be provided against. The only change made by a transfer without any payment whatever would be that the Central Government would have the duty of maintaining them, and the states would be relieved of that expense.

Presuming, however, that payment of the value is a settled policy, we would hazard a suggestion that, in order to embarrass the Central Government as little as possible, and to provide against a derangement of the state finances by the receipt in a lump sum of the capital value, the properties should be acquired by a system of deferred payments. Such a system we are ready to submit if required, but it is not within the limits of our instructions.
I had a conference with the members of the finance committee upon the subject, and they made a further suggestion, which is to be found recorded on page 265 of the Blue-book. They there say in their memorandum—which is signed by Dr. Wollaston, the permanent head of the Customs department:—

In reference to this subject I would venture to submit, however, that there does not seem to be any adequate reason why the states should expect the Commonwealth to purchase these properties. What difference will it make to Victoria, for instance, if our Post-office in Bourke-street be nominally federal property? It will still be our Post-office, and used as such; it cannot be taken away or disposed of. If the Commonwealth closed it they would have to build another. All that could be argued is that these buildings have been built out of loan moneys, and form security therefor. As regards such, the most that could apparently be fairly required would be that on transfer to the Commonwealth the latter should pay the interest on the loan money expended thereon.

Then they give a short extra memorandum embodying a scheme. They say—

The following scheme is submitted for the transfer of property from the states to the Commonwealth, as being better in its working than that proposed in the Bill, and not so likely to disarrange the finances of the various states:—

Assuming that 3 per cent. is the fair annual value of the properties, it is suggested that the Federation should pay to the states 4 per cent. on the capital value thereof until such time as the extra 1 per cent. would, if funded, with compound interest at 3 per cent., amount to the purchase money. This, it is reckoned, would be in a little over 47 years. In other words, the Federation would, under this scheme, pay to the states 4 per cent. on the capital value of the properties taken over from them for 47 years, and those properties would then become the absolute property of the Commonwealth.

I have referred to this because I think that it is really deserving of serious consideration, and ought to be discussed. I agree with those honorable members who find fault with the clause for being far too rigid. I understood Mr. Barton to say yesterday that the clause would be reconsidered, with the view of depriving it of that extreme rigidity. I understood it would be so dealt with in regard to this question of fair value just as in other respects. It is quite plain that if cash has to be paid at once, and no loan is to be borrowed out of which it is to be paid, it would have to be raised out of taxation. It would be absurd to tax
Mr. LYNE. -

Ought not the money authorized in that way to be handed back to the states to be taken off their existing debt?

Mr. ISAACS. -

If it is raised by taxation, the people will not be prepared to raise £10,000,000 in addition to the ordinary expenses of government both of the states and of the Federation. It would be so burdensome that it could not be borne. It is a matter which ought to be looked at by the committee. There is another view which the Drafting Committee might, I think, take in the framing of this clause. There is, I understand, now under their consideration the question whether a clause should be put in enabling the Commonwealth to acquire property. In connexion with that, no doubt they will consider the question of eminent domain, and how far the power intended to be given by this clause exists independently of that. When this clause comes to be refrained I hope the committee will give attention to this aspect of the case—that it should be framed only in terms by which the power of eminent domain, which is inherent in the sovereign power, will not be limited.

Mr. MCMILLAN (New South Wales). -

I do not want to add to what has been said. I think Sir George Turner put the clause plainly before the committee. Everything which has been said in this debate shows more and more how useless it will be to put a concrete scheme into the clause. After all, what will the different states require? Simply security for payment of the interest; then the time will come when by arrangement their debts will be reduced by a certain amount when the debt falls in. There are innumerable schemes which can be adopted; for instance, the Commonwealth might issue Treasury-bills to the different states purely as a matter of security. The only difference I see that might arise is that under the Public Purposes Land Resumption Act, which we have in our colony, there is a fixed rate of interest which is to be charged in the interval between resuming the land and completing the operation of acquiring the property.

Mr. REID. -

It would be too large in this case.

Mr. MCMILLAN. -

That is why I think there would be anomalies.

Mr. REID. -

There would be.

Mr. MCMILLAN. -

That is why I think some fixed rate of interest should be put in. At any
rate, something should be put in which would remove this rigid construction. This arranges very properly for a modus operandi which has been very effective in different colonies in order to arrive at a valuation; but it also includes a proposal for the payment of a certain rate of interest. That might be very awkward in dealing with this matter. The whole clause might be recast in some way. I agree with Mr. Holder that we should adopt some simpler plan; we should simply leave the arrangements to be made between the states and the Federal Government, and that would answer all purposes, because we cannot imagine that anything unreasonable would be done. I am certain that no colony wants a large amount of money connected with its loan funds to be paid down at once; it would be more embarrassing than otherwise.

**Mr. BARTON.** -

I would suggest that we should recast the amendment so as to leave scope for the redrafting of this clause.

The amendment was negatived.

The clause was agreed to.

Clause 87. - Until uniform duties of customs have been imposed, the powers of the Parliaments of the several states existing at the establishment of the Commonwealth, respecting the imposition of duties of customs, the imposition of duties of excise, and the offering of bounties upon the production or export of goods, and the collection and payment thereof respectively, shall continue.

Until uniform duties have been imposed, the laws of the several states in force at the establishment of the Commonwealth respecting duties of customs, duties of excise, and bounties, and the collection and payment thereof,

shall remain in force, subject to such alterations of the amount of duties or bounties as the Parliaments of the several states may make from time to time; and the duties and bounties shall continue to be collected and paid as theretofore, but by the officers of the Commonwealth.

**The CHAIRMAN.** -

The amendments suggested by South Australia have been already disposed of by the committee, and therefore I shall not put them.

**Mr. BARTON (New South Wales).** -

The omission of this clause is a suggestion of the Finance Committee, with which the Drafting Committee entirely concur; in fact, I think, the suggestion first came from the Drafting Committee, and it was afterwards acceded to by the Finance Committee. The first part of this clause is sufficiently provided for by clause 99, and the second part is sufficiently
provided for by clause 100, for by clause 99 all powers which belong to the Parliaments of the colonies at the time of the establishment of the Commonwealth which are not vested in the Commonwealth by its Constitution remain vested in the Parliaments of those colonies. According to clause 100, which is parallel to the second portion of clause 87, all laws in force in any of the colonies on matters declared by the Constitution to be in the legislative power of the Commonwealth are to continue in force in the states, and may be repealed or altered by the Parliaments of the states until provision is made by the Parliament of the Commonwealth, so that all constitutional powers, among which the power of making customs laws, being concurrent powers, are embraced, are actually continued in and remain in the Parliament of each colony until the imposition of uniform customs duties; that is to say, until the Commonwealth has legislated on the subject. With reference to the laws of the colonies-and that is parallel to the second part of the clause-those laws are also preserved by clause 100, so that there is no use, as far as I can discover, for this clause, except with reference to payments of duties and bounties, and they are to be attended to by the officers of the Commonwealth. The portion of clause 44 which we erected into a separate clause-86A-provides for that sufficiently:-

The collection and control of customs and excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth on the establishment of the Commonwealth.

So it appears quite clear that, as regards the collection and control of excise, customs, and bounties, this clause is unnecessary. With regard to the power of making laws it is unnecessary, and with regard to existing laws it is also unnecessary. For every reason the Drafting Committee is quite satisfied that this clause is unnecessary. I have all the more pleasure in saying this, because I think I suggested the second part of the clause in 1891.

Sir GEORGE TURNER (Victoria). -

I quite agree with the leader of the Convention that we ought not to have repetition in the Bill. But we cannot forget that on several occasions this clause has been the subject of warm discussion with regard to a few words in it. It will be very serious indeed to the states if we find later on that while we are waiting for the imposition of uniform customs we cannot alter our existing customs laws. In Victoria, I hope that we have no intention of interfering with our customs laws for two or three years; but it might so happen that through force of circumstances we should have to raise money even temporarily, and we might desire to put on some tax or charge through the customs for a year, or two or three years, and if after this Bill has become law, and has been passed by the English Parliament, we find
that we are absolutely blocked from making any alterations or from putting on any new charge through the Customs it will be a very serious matter indeed to us. There must have been some strong reason in 1891 for inserting this clause. It has been continued up to within the

last few days, when the Drafting Committee suggested to the Finance committee that there was no particular necessity for this clause in consequence of the other clauses which had been passed. Of course, we must be guided to a large extent by the Drafting Committee, but I wish to point out, and put it on record, that it would be very serious if we find later on, when we desire to make some alteration in the customs laws, that we are blocked for want of some such provision as this.

Mr. BARTON. -
   We have quite satisfied ourselves on the point.

Sir GEORGE TURNER. -
   There is no doubt the draftsman of the Bill of 1891, apparently on the suggestion of Mr. Barton, thought that these words were necessary for the purpose.

Mr. BARTON. -
   I thought that they were necessary, but Sir Samuel Griffith thought that they were not. I find now that he is right.

Sir GEORGE TURNER. -
   As far as I am concerned, I am willing to be guided by the members of the Drafting Committee in a matter of this kind; but I only repeat that, if it does turn out afterwards that this clause is necessary, some of the colonies may be placed in a very serious position.

Mr. LYNE. -
   I should like to have some more information before this clause is omitted; perhaps the leader of the Convention will give us some information?

Mr. BARTON. -
   The effect of the Bill will be exactly the same without this clause as it will be with it. It is a mere redundancy.

Mr. LYNE. -
   I have read the clause.

Mr. BARTON. -
   Has the honorable member read clause 99 and clause 100 in connexion with it?

Mr. LYNE. -
   Yes. I do not pretend to be able to interpret those clauses as well as my honorable friend, but there seems to me to be some doubt as to whether
clauses 99 and 100 will cover this clause. The best way to ascertain how this proposal will affect the states is to consider what will take place supposing the Bill is accepted by the people and passed by the Imperial Parliament in the two years before the uniform Customs Tariff is, agreed to. Supposing that Victoria or New South Wales, or any of the other states, wish to reduce or increase their customs duties, I fail to see that there would be any power for them to do so.

Mr. BARTON. -

Yes, under clause 99. Powers which are vested in the Parliament of the colony, and which by the Constitution are not exclusively vested in the Commonwealth, remain in the power of the state.

Mr. LYNE. -

That is the point. This Constitution Bill continues every right, as far as I understand, existing at the time it is approved of by the British Parliament.

Mr. BARTON. -

Will the honorable member have regard to the word "exclusively"? The customs legislation is not exclusively vested in the Commonwealth, so that up to the time that the Federal Parliament passes the uniform customs laws the colonies can pass such laws as they like.

Mr. LYNE. -

I am quite prepared, as the Premier of Victoria is, to take the interpretation placed upon these clauses by the leader of the Convention, but I would suggest that when the Drafting Committee revises the whole Bill they should look into this matter again, so that there may be no possible misinterpretation or misunderstanding. I do not think that it is intended that the states shall not interfere with their Customs Tariffs for two years, or until the uniform Tariff is established. That is all I wish to be certain about, so that there shall be nothing to prevent the alteration or variation by any of the states of their Customs Tariffs in the interval between the passing of a Constitution Act and the passing of a uniform Customs Tariff Bill by the Federal Parliament.

Mr. OCONNOR (New South Wales). -

This matter has been the subject of most careful consideration by the Drafting Committee, because we all recognise, as Sir George Turner has said, the extreme importance of making it very plain that the po

All laws in force in any of the colonies relating to any of the matters declared by this Constitution to be within the legislative powers of the Parliament of the Commonwealth shall, except as otherwise provided by this Constitution, continue in force in the states respectively, and may be
repealed or altered by the Parliaments of the states, until provision is made in that behalf by the Parliament of the Commonwealth.

That states precisely the same thing, no more and no less than is provided for in the second paragraph of clause 87. The second paragraph of this clause merely repeats as to a particular matter the general statement made in clause 100, and to have a repetition of that kind would be simply a blot in the form of the Constitution, and could convey no additional validity whatever to the power that is preserved. The first portion of clause 87 is provided for in exactly the same way in clause 99. That provides expressly:

All powers which at the establishment of the Commonwealth are vested in the Parliaments of the several colonies, and which are not by this Constitution exclusively vested in the Parliament of the Commonwealth, or withdrawn from the Parliaments of the several states, are reserved to, and shall remain vested in, the Parliaments of the states respectively.

I think that the honorable member (Mr. Lyne) in looking into the matter will see that there is not the slightest risk, but that the provisions of clause 87, which we admit ought to be in the Constitution, are contained in clauses 99 and 100.

Mr. LYNE (New South Wales). -

I take it that the limit of two years for the imposition of uniform customs duties was placed there to prevent any unnecessary delay in the adoption of a Uniform Tariff, and I venture to think that if the Bill is accepted by a sufficient number of states, it will not be two years, or ought not to be two years, before there are uniform customs duties.

Mr. REID. -

There will be a period of six months to start with before the Federal Parliament can be brought together.

Mr. LYNE. -

Possibly so. In discussing this matter in the Finance Committee at Adelaide, when it was first proposed, I know that the reason for inserting the provision was to prevent undue delay in getting a uniform Customs Tariff. Two years was considered at the time to be the outside period for the imposition of the uniform Customs Tariff, and I do not think that more time should be necessary. Of course, however, we have to depend in a great measure on the interpretation placed upon these clauses by the Drafting Committee, who understand the reason for the insertion of every word in the clauses; and as the leader of the Convention and Mr. O'Connor have both assured the committee that there is no danger in the proposal they have made, I, for one, am quite content to leave the matter in their hands.
Mr. SYMON (South Australia). -

I think it is only right, as this is a matter of great importance, that any of us who have given attention to the subject should state our adhesion to the view which has been expressed by my honorable friends (Mr. Barton and Mr. O'Connor), and should give their assurance any possible support that we can. I entirely agree with the view expressed by those honorable members. The matter can be put in one sentence—the event which determines the control of the states over their customs duties and bounties is the imposition of the uniform Tariff. Until that event happens they have, under clauses 99 and 100, all the powers they possessed before the establishment of the Commonwealth. It is the exclusive granting of the power to the Federal Parliament which determines the cessation of the powers to the states; and that does not happen until the imposition of the uniform Tariff, and until then, therefore, the powers of the states in relation to these matters remain in force.

Mr. REID (New South Wales). -

I may state that I satisfied myself on that point before I made the statement in the Finance Committee's report, to the effect that these two clauses provide for what is desired. The clause was struck out.

Clause 88. - Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Mr. MCMILLAN (New South Wales). -

This is a clause the object of which is very patent to everybody, but it seems to me that in many respects it is a very questionable clause. We all hope that, within two years at most after the establishment of the Commonwealth, there will be a uniform customs law. But, underlying this clause or proposal there is a suspicion—I think an unworthy suspicion—that this great matter, which is the main factor, together with defence, of the whole Federation, would be tampered with—that there might be influences brought to bear upon the Commonwealth Parliament by certain states who do not want to come to a uniform law of customs. There are two reasons why the clause seems to me unnecessary. In the first place, I think it will be clear to all of us that, after having got together the absolutely necessary machinery of the Federal Government, the first question, under all circumstances, must be the discussion of the Tariff. Then why should we strike a blow at this system of deliberation, caution, and adjustment which is so essential to all our legislation? Further, it seems to me that it is a very difficult thing to fix a particular time. I know that in America the session of
Parliament ends by law on a certain date, no matter what stage the business may have reached; but that has always seemed to me to be a very drastic kind of regulation. Here we are asked to fix a certain time for the imposition of uniform duties of customs. It is not that I think that two years would be too long, but the fixing of any time is what I object to. We are told-"Here is a certain fixed time, at which you must either finish your work, or you must throw the whole country into confusion.". And it is just possible that with the various interests which, for the first time, will become arrayed against each other-the interests which may be more or less hostile between the two Houses-the state interests as they are called-may be somewhat in conflict with other interests; and we must recollect, too, that we do not want, under the Federal Parliament, to have a Tariff on which the shadow of change may rest every year. We want a Tariff which will be of such a character as to give stability to all interests that may be concerned in it. Therefore, it does seem to me-I do not know what to call it, unphilosophical or unparliamentary-at any rate, against the very essence and spirit of our institutions, to make a drastic regulation at starting that uniform duties of customs must come into force within a certain time. We cannot foresee the difficulties that may arise, and I say most plainly that, although I think everything ought to be fixed up in two years, it would be better to be for three years engaged in this work and that is very unlikely-than to have a mere temporary arrangement, in which there was not, it might be said, a cessation of hostilities, but simply a truce. Therefore, while I quite appreciate the whole spirit and intention of this clause, as it was proposed in the Finance Committee, I still think it is a very questionable provision. I admit that I gave it my adhesion in the Finance Committee, seeing that there was a majority in favour of it, and I shall also give it my adhesion now, if there is a majority in favour of it. Still, I think it is a very doubtful provision, and one very alien to the whole spirit on which these clauses have been drafted, as to matters which are entirely the prerogative of the Federal Parliament. I think it will be broader, and, if I may use the word, more statesmanlike, to omit this clause, and to leave to the Federal Parliament full and unfettered discretion in this matter, as we have done in the case of all other powers handed over to it.

Mr. REID (New South Wales). -

I want to go just a little further than the honorable member (Mr. McMillan) has gone, and to point out that the main reason why, at any rate, New South Wales is coming into this Federation is that there shall be intercolonial free-trade all over this continent. This is the vital object for
which we are coming into this Federation, and I believe that remark applies with absolute truth, and with equal force, to every other colony that is represented in this Convention. There is an unanimous—so far as you can have unanimity in national affairs—an unanimous desire that when we go to our constituents we shall be able to give them something like a definite assurance as to when they are to enjoy the benefits of intercolonial free-trade. Now, I think my honorable friend has sufficient knowledge and experience of the vast difficulties of framing a Tariff, even for a single colony, not to fail to realize how these difficulties will be intensified a thousandfold when we have to settle a Tariff out of all the diverse elements of electoral Australia that will command the majority of two Houses of Parliament, especially of two Houses elected on the basis on which these two Houses will be elected. The conclusion has been forced upon my mind that, unless there is the necessity of legal compulsion to frame a Tariff within a reasonable time, the people of Australia may find themselves year after year, through this or that difficulty, left without the vital benefit for which they united. The clash of opposing interests, and, apart from political forces, the force of private interests, all engaged in this subject, will be so tremendous that, unless we brand on the very face of this compact the necessity of finishing this work within a given time, I tell you honestly that there is no guarantee that we shall have intercolonial free-trade within ten years.

Mr. MCMILLAN. -

What will be the actual time, in the first instance, which you think will be needed for a settlement of the Tariff?

Mr. REID. -

This will mean, first of all, that any Government coming into power will find the duty staring them in the face of piloting through the Federal Parliament a Tariff within two years.

Mr. MCMILLAN. -

But there will be the six months immediately following the establishment of federation.

Mr. REID. -

During that time the brains of the Ministers need not be dormant. The Executive can set to work planning a Tariff from the first instant of its existence.

Mr. MCMILLAN. -

But there can be no discussion for six months. The real work will come with the discussion.

Mr. REID. -

Yes; but I think it would take any Ministry six months to put before the
public of Australia a well-considered Tariff, even if that Tariff were only a revenue Tariff. So far as a protective Tariff is concerned, I think that the honorable member (Mr. Lyne) would be the first to admit that it would require the fullest inquiry, in fairness to protection itself. After these six months there would be eighteen months for parliamentary discussion. My feeling is that this provision will keep Parliament sternly alive to the necessity for giving Australia intercolonial free-trade. It is not a uniform Tariff so much as that free intercourse between the colonies which a uniform Tariff will give that we require. Until the uniform Tariff comes into existence the various colonies will be in a state of conflict, even under the banner of federation. That would be an unnatural situation for the members of a Federal Commonwealth, and the sooner it was terminated the better it would be for every one.

Mr. MCMILLAN. -

The honorable member (Mr. Lyne) agrees with the right honorable gentleman, but for a different reason.

Mr. REID. -

So long as he agrees with me, I do not care what his reasons are. It is vital to the industrial interests of Australia that this matter should be settled as soon as possible. Every man engaged in manufacture, in production, and in commerce will be thrown upon his beam ends until he knows what the fiscal policy of the Commonwealth is to be. Upon that ground alone, in mercy to the people, we should do what we can to compel the Federal Government and the Federal Parliament to make the work of framing a uniform Tariff their first great work. Unless we put a direction of this kind into the Constitution I am afraid-and I think the very fear should be enough to influence us-that, whilst nominally we may be one people, we may be left exposed, year after year, to the play of warring policies and clashing interests, until at last the bright promise of our federal union will have entirely disappeared. It is not so much the need for a uniform Tariff, as all that it means to the Federation, that leads me to earnestly appeal to the Convention to retain the clause as it stands.

Mr. LYNE (New South Wales). -

The honorable member (Mr. McMillan) says that I am in favour of this restriction for different reasons from those which operate with the Premier of New South Wales. Possibly, to some extent, that is so, but if the imposition of a uniform Tariff were delayed, if the other states tried to block it, it would be compulsory upon New South Wales to put on a high Tariff in order to force the Federal Parliament to do something.
Mr. REID. -
That would be a calamity from the federal point of view.

Mr. LYNE. -
Yes. It is my desire to prevent any undue delay, and to make it imperative that a uniform Tariff shall be agreed upon at the earliest possible date, especially after the remark of the honorable and learned member (Mr. Symon) that the control of the Customs will not take effect upon the coming into force of the Constitution, and not until the uniform Tariff is agreed to. That is a very strong reason why there should be an imperative direction to the Federal Parliament to come to terms in reference to this matter as soon as possible. I recognise that some time will be required by the Ministry of the Commonwealth to enable them to frame a Tariff for submission to the Federal Parliament, and I do not think they could do better with the six months following the coming into force of the Constitution than to use it in framing the best Tariff they can conceive. If six months is given by the Ministry to the preparation of this Tariff, surely eighteen months will be sufficient for its discussion by the Federal Parliament. I think that six months discussion will be quite sufficient. I also recognise that the Tariff must be, or at any rate should be, the first thing to engage the attention of the Federal Parliament.

Mr. MCMILLAN. -
The session will not conclude until the work is completed.

Mr. LYNE. -
That may be so, unless circumstances arise to prevent it. Some of the states may think that they cannot afford to lose their Tariff for any length of time, and that may be a reason for not unduly prolonging discussion. If the clause is passed as it stands, I think it will give a great safeguard to all the states. That is practically the only reason why I favour the restriction which it contains. If there is one thing more than another for which we are anxious, it is intercolonial free-trade. As the honorable member (Mr. McMillan) said, intercolonial free-trade and the federation of our defences are the two chief things that we desire to see carried into effect as early as possible.

The clause was agreed to.

Clause 89. - So soon as uniform duties of customs have been imposed, trade and intercourse throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Amendment suggested by the Legislative Assembly of Western Australia.

Line 3, omit "throughout the Commonwealth," insert "between the
Honorable members will recollect that when in Adelaide I placed considerable importance upon the necessity of altering the wording of this clause. I drew attention to its enormously wide verbiage, and to the dangers which I considered attended its adoption in its present form. I pointed out that the term "trade and intercourse" included everything relating to commerce and trade-taxes, licences of all kinds, publicans' licences, auctioneers' licences, hawkers' licences, municipal licences. It is in consequence of the almost unlimited meaning attaching to these words in the United States Constitution that the Supreme Court there exercises such unbounded control over the subject. I am not going to repeat in detail what I said in Adelaide, because honorable members will find it in the report of the debate. But I wish again to press the matter upon the attention of the committee, and I have to state, with a good deal of pleasure, that Sir Samuel Griffith, in his able paper upon the question, has drawn attention to the same point. His observations upon the subject are these:-

I venture, before passing from this subject, to suggest a doubt whether the words of section 89 (which are the same as in the Draft Bill of 1891) are, in their modern sense, quite apt to express the meaning intended to be conveyed. It is, clearly, not proposed to interfere with the internal regulation of trade by means of licences, nor to prevent the imposition of reasonable rates on state railways. I apprehend that the real meaning is that the free course of trade and commerce between different parts of the Commonwealth is not to be restricted or interfered with by any taxes, charges, or imposts. Would it not be better to use these or similar words?

He then considers what should be done if it is intended to include interference with the railway rates. I should like to point out why the danger of the expression to which I have drawn attention is so very great. The words "trade and intercourse" are almost unbounded in their meaning when you apply them to the relations of trade and commerce, and, under the proper heads, Baker's Annotated Constitution is full of instances showing how far-reaching these words are. Then, take the words "throughout the Commonwealth." The meaning of those words is not restricted to between the states; they refer to every part of the Commonwealth, and I would refer honorable members to earlier portions of the Bill where the same meaning will have to be given to them. If honorable members will turn to clause 52, which deals with the powers of the Parliament, they will find that in sub-section (2) the Federal Parliament is empowered to legislate in regard to customs, excise, and bounties, which shall be uniform "throughout the Commonwealth." That is, within every
state and every part of a state. "Throughout the Commonwealth" is the largest expression that can be used. In the next sub-section it is provided that all taxation shall be uniform throughout the Commonwealth. An income tax or a property tax raised under any federal law must be uniform "throughout the Commonwealth." That is, in every part of the Commonwealth. In clause 89 we find the same words again, and there can be no reasonable doubt that their meaning is the same in one clause as in all. Clause 89 provides that all trade and intercourse of every kind throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free. Free of what? Free of everything.

Mr. LYNE. -
    Not free of freight charges.

Mr. ISAACS. -
    No. They are charges for services. The clause means that the Commonwealth is not to put a restriction upon trade in any way whatever, not merely by means of customs or excise duties, but you are to leave every person absolutely free of any limitation of his common law right of carrying on his trade. As I have said, Sir Samuel Griffith has pointed that out again, and I do think we shall be taking a wrong course if we leave so important a matter in doubt. It is very important, even at the present time, because it means in licence-fees alone some £350,000.

Mr. LYNE. -
    Why do you say licence fees?

Mr. ISAACS. -
    Because that is trade and intercourse. If a man goes into an hotel and says-"I want to purchase liquor from you," that is trade and intercourse. If the hotel-keeper is told that he must not sell the liquor unless he pays the licence-fee he will turn to this clause and say-"You have no right to charge me a licence-fee."

Mr. LYNE. -
    Do not you give all these licence-fees to the local bodies.

Mr. ISAACS. -
    If that construction is possible under the clause there will be no power in the local body, the state Parliament, or the Federal Parliament to authorize such a charge.

Mr. LYNE. -
    I quite see that; but it is a fact that you do give licence-fees to the local bodies.

Mr. ISAACS. -
That may be so. It all depends on the law of the particular state.

Mr. OCONNOR. -

Do not the words "whether by means of internal carriage or ocean navigation " restrict the operation of the clause to transit?

Mr. ISAACS. -

I should say not, and even if it did it would apply within the states to hawking. What we want to do is to establish free-trade between the different parts of the Commonwealth, and I would press my honorable friends to consider again the words of Sir Samuel Griffith.

An HONORABLE MEMBER. -

What page?

Mr. ISAACS. -

Page 354 of the Victorian Blue-book. I am perfectly willing to leave the matter to the Drafting Committee. It is important now, and it will increase in importance as time goes on. We do not know what questions may arise, and the meaning of the clause is bound to be tested almost on the first opportunity in the Federal Court. We should be in a very sorry plight if a decision were given following the American decisions which carried us much further than we anticipated, and there had to be a referendum of the states and of the people to get the clause altered. We want to get inter-state freedom of trade, and I am sure that we are capable of expressing that intention. I am willing to leave it to the Drafting Committee, but, as a basis, I think Sir Samuel Griffith's words are very good.

Mr. BARTON (New South Wales). -

I should not like, anxious as I am that the work of the Convention should proceed, to see a step of this kind taken without the opinions of honorable members being ascertained upon it. It is not a matter that can be disposed of at once. I admit that my honorable friend (Mr. Isaacs) has put his contention with force, as he puts everything, but a great deal may be said in favour of the present form of the clause. Whether the expression used is open to the danger of being construed so as to apply to matters affecting the internal regulation of trade within the states is a point upon which I have not made up my mind, and upon which I desire to preserve an open attitude. This term has remained in the draft from the beginning. It is, I think, Sir Samuel Griffith's own term, although he offers some criticism upon it now, and it corresponds with the uniformity provision,
Any law or regulation made by the Commonwealth, or by any state, or by any authority constituted by the Commonwealth, or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth, shall be null and void.

Mr. ISAACS. -

Would not that be almost sufficient in itself?

Mr. BARTON. -

I want to put the matter judicially, and I admit that the existence of these words in clause 95 may somewhat strengthen the honorable member's contention. I was going to suggest, when the time came, that clause 95 should be omitted in favour of a clause to read somewhat as follows:

Any law or regulation of commerce or trade made by the Commonwealth, or by any state, giving a preference to one state or any part thereof over another state, or any part thereof, shall be null and void.

I think that that would be rather in accord with the view the honorable member has put.

Mr. ISAACS. -

That raises a much larger question-that of railways.

Mr. BARTON. -

No doubt; and that is a matter that will have to be discussed. I express my anxiety that this question should be the subject of some discussion, because it is of such supreme importance. Looking at it fairly, my views are rather in favour of Mr. Isaacs' contention. There might be greater safety in adopting some provision of the kind he suggests. We ought to be very chary about adopting any provision that would interfere with any internal regulations that do not pertain to trade and commerce. The regulation of trade or commerce specified in subsection (1) of clause 52 is with foreign countries, and among the several states. It is therefore defined in the first subsection as inter-state commerce. The question is whether we should consent to a form of words remaining in this clause which might have the effect of extending the operation of inter-state commerce to matters of internal regulation within a state which, as long as they do not necessarily affect the commerce between one state and another, are entirely under the cognisance of that particular state, and it is not the purpose of any Federal Constitution to interfere with trade of that character. If we once grasp that fact, the contention of my honorable and learned friend is again strengthened. I leave the matter now to be discussed, and I am perfectly prepared to accept the general sense of the Convention. My inclination is in favour of Mr. Isaacs' view.

Dr. QUICK (Victoria). -

I am very glad to hear the tone in which the leader of the Convention
received the observations of my honorable friend (Mr. Isaacs), because, like himself, I have been considering these words since the Adelaide meeting of the Convention. The more I consider them the greater weight I feel disposed to attach to the honorable member's criticism. In order to express what is really intended, it would be better to use the words "between the states" instead of the words "throughout the Commonwealth." The latter words seem to be sufficiently comprehensive to include every locality within the Commonwealth, and they might be construed to include a prohibition of auctioneers' and pedlars' licences. I am sure that no such thing is intended. Whilst we are anxious to provide for absolute freedom of trade on the frontiers between the colonies, there is no desire to interfere with the local regulation of trade once the packager, of goods, wares, and merchandise have arrived within the state territory. It would certainly be inimical to the success of this Constitution if an impression got abroad that there was to be any prohibition of local regulations, such as auctioneers' and pedlars' licences. These are reasonable regulations of trade upon the arrival of goods, wares, and merchandise within the state territories.

Mr. MCMILLAN. - Is not the other expression more comprehensive?

Dr. QUICK. - It is too comprehensive. It follows the packages beyond the frontier. What you want to secure is free passage across the frontier.

Mr. BARTON. - Free passage across the frontier and freedom from all preferences.

Dr. QUICK. - Yes; freedom from all preferences or obstructions. The danger is that the words "throughout the Commonwealth" would attach restrictions or disabilities to the local authorities. The words "between the states" seem to give expression to what is intended. We should not leave room for doubt hereafter. I therefore support the suggestion made by the Attorney-General of Victoria, and I am pleased to notice the tone in which it has been received by the leader of the Convention.

Mr. GLYNN (South Australia). - I desire to call attention to the fact that in Canada the provision is "the regulation of trade and commerce." That comes closer to the spirit of clause 89, and it appears in the section in the Canadian Act which corresponds with clause 52 in this Bill.

Mr. BARTON. - Clause 52 says, the regulation of trade and commerce with foreign
countries and among the several states.

Mr. GLYNN. -

The Canadian Constitution stops short at the word "commerce," and may mean any part of the Dominion of Canada. In Wheeler's book on the Confederation of Canada a number of decisions are given as to the effect of this provision. One of them was that a local licence which amounted to prohibition of trade was illegal. That throws considerable light on the meaning of clause 89 in our Bill. In America the provision applies to the regulation of trade between the various states, and under that it was held that it was quite competent for a state to make trade regulations between the different parts of its own territory. It we fall back on the American system, we may put it in the power of one colony to, grant trade concessions that may derogate from the freedom of trade between the various states. As between one part of New South Wales and another, concessions might be granted on traffic, although the goods did not cross the border. These concessions would have the same effect as if they extended beyond the border, because they might apply over a considerable distance, and only cease at a point within 2 or 3 miles from the border.

Mr. OCONNOR (New South Wales). -

I think that the object of this clause is clearly only to infer that there shall be no duties of customs, or charges of that character, upon the transit of goods from one state to another. I do not think it means anything more than that. I quite agree with the criticisms of Mr. Isaacs as to the generality of the clause. I have read the valuable criticism of Sir Samuel Griffith, and it appears to me that we might very well adopt something in the nature of his suggestion as to defining the meaning of this sub-section. That is, we might use some such words as "the free course of trade and commerce between different parts of the Commonwealth is not to be restricted or interfered with by any taxes, charges, or imposts."

Mr. ISAACS. -

Section 121 of the Canadian Act provides that-

All articles of the growth, produce, or manufacture of any one of the provinces shall from and after the union be admitted free into each of the other provinces.

Mr. DEAKIN. -

That is narrower still.

Mr. OCONNOR. -

The reference Mr. Isaacs has just made would be completely followed by the adoption of some such words as Sir Samuel Griffith suggests. I would urge that this clause should be passed in its present form, and that the Drafting Committee should undertake to
alter its wording in the way Sir Samuel Griffith recommends.

Sir JOHN DOWNER (South Australia). -

I like the clause as it stands. There is nothing more important than to have a clear and explicit declaration like this in the Constitution. It is unmistakable. The clause declares that-

So soon as uniform duties of customs have been imposed trade and intercourse throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Any limitation that needs to be placed on that should be placed on it as a limitation. If the clause covers licence or anything else that ought not to be covered by it, then insert a limitation accordingly in the Bill, but do not alter this provision, which contains a cardinal principle of our Commonwealth in favour of absolute free-trade within its borders.

Mr. ISAACS. -

Make it "between the states."

Sir JOHN DOWNER. -

No; it should remain as it stands-"throughout the Commonwealth." Those words are quite clear.

Mr. MCMILLAN. -

The Commonwealth is all one territory.

Sir JOHN DOWNER. -

Exactly. As far as the jurisdiction of the Commonwealth is concerned, all the states are one. They are formed into one Commonwealth, and when we say "throughout the Commonwealth," we mean throughout this aggregation of states. In this clause you have a broad general declaration, which is good for all time, whereas if you endeavour to put in an accurate definition of what you precisely mean it would probably be found as the result that something has been left out, something that we have not thought of at the present time. I say, rather let us leave these broad general words to stand exactly as they are, and if we can think of any necessary limitations at present let us put them in. Above all things, do not take out of the Bill what I consider to be one of its best declarations-that after this Commonwealth Tariff is established, there shall be no possibility of tampering with the absolute freedom of trade throughout the Commonwealth.

Sir GEORGE TURNER. -

We are all willing to provide for absolute free-trade between the states-for inter-state free-trade-but this means a lot more than that.

Sir JOHN DOWNER. -

I cannot foresee. I cannot pretend to have the gift of prescience which
would enable me to know how ultimately a coach and four may be driven through this Constitution. But I say let those who want limitations propose their insertion in the Bill. I would prefer to leave the main enactment in this clause exactly as it stands. It may be that the words of Sir Samuel Griffith represent all he can think of. Perhaps they may represent all that can be wanted at any time; but it is just possible that something may be omitted from them something which might derogate from this freedom of trade which we intend to have throughout the Commonwealth. Then, I ask honorable members to consider this: Although the clause says that trade and intercourse throughout the Commonwealth shall be absolutely free, you have to look through this Constitution at the other provisions, which show clearly what is the intention. This is a broad central declaration; the rest you gather from a perusal of other provisions of the Bill. I think the fears of Mr. Isaacs in the particulars he mentioned are not well founded.

Mr. HIGGINS. -

There was no occasion for this clause in the Constitution of the United States.

Sir JOHN DOWNER. -

No; but many times during the discussion of this Bill we have been referred to this clause as being a strong clause—a clause strengthening this Constitution as compared with the Constitution of the United States. Because it is in this Constitution, and it is not contained in the Constitution of the United States, this clause has been referred to over and over again as one of the broad declarations clearly made in this Constitution, but which has got to be inferred from the Constitution of the United States. It is a broad declaration that was necessary for the foundation of the Bill, and which makes any superstructure that may be built upon it absolutely safe and secure. I hope that, on consideration, this clause will be allowed to stand as it is. If limitations are necessary, let them be put in as limitations, but let the broad declaration in this clause remain.

Mr. DEAKIN (Victoria). -

I think it is fortunate that we have had the advantage of hearing one of the legal members of the Convention say all that possibly can be said in support of the terminology of this clause. The vagueness of the reasons offered by the honorable member who has objected to the proposed amendment, on the ground that we do not know what may happen, should be noted. He is not able to point to anything that would happen which would not be met by the proposed amendment. It is ample to meet the case. Perhaps the honorable member was not present when the leader of the Convention called attention to the fact—and it appeared to me a final answer
to all his objections—that this clause requires to be read with clause 95, and that, taken together, they afford complete protection against any possible interference with freedom of trade and intercourse. Clause 95 puts an absolute prohibition on anti-federal action by any state, and might be considered in itself ample for all requirements. It sets forth that—

Any law or regulation made by the Commonwealth, or by any state, or by any authority constituted by the Commonwealth, or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth shall be null and void.

That in itself, it appears to me, is ample for all requirements. At the same time, to meet the view, which the honorable member very reasonably expressed, that in this Constitution we should put beyond all doubt a prohibition that is a matter of inference and construction in the American Constitution, we add, in addition to clause 95, this provision. With the verbal amendment suggested nothing is withdrawn from the force and efficacy of the clause as it stands. This clause will put beyond all question the determination of this Convention, and of the future Constitution, that trade and intercourse in all parts of this Commonwealth shall be absolutely free. And that end being attained by the amendment, what need have we to go beyond that, as evidently we do, by using words in this connexion which elsewhere in the Bill are used with a wider jurisdiction? Why use a vague expression which may possibly seriously interfere with state administration in some minor departments, which have been up to now, and always will be, expressly left to the states?

Sir EDWARD BRADDON (Tasmania). —

I should like to hear the honorable leader of the Convention say whether this clause as it stands might not interfere very materially with the carrying out of certain state laws in regard to the internal trade of a state? That is to say, whether it would not absolutely, as a fact, prevent any one state from exercising its law in regard to hawking goods about the country? It might very well be that one state would have a law absolutely prohibiting hawking in every shape and form. Well, clearly, such a law as that would seriously interfere with the provision which says that any goods transported from one end of the Commonwealth to the other shall be absolutely free. Now, there is another point which will be of some importance to a large body of people, and that is the question of alcoholic liquors - the question whether they are free under this clause as it stands to pass from one state into another, and from one part of that state to another part, without any regard whatever to the local laws relating to alcoholic liquors.
I think that we ought to be satisfied on these points, and satisfied that if we leave the clause as it now stands there will, at any rate, be some proviso inserted which will safeguard the states in the carrying out of any of their state laws over which the states are to be supreme even under federation.

Dr. COCKBURN (South Australia). -

Quite apart from the question of trade between state and state, is it not necessary that the Commonwealth itself should have some power for the restriction and the regulation of trade? The words "absolutely free" are infinite in their application, and they seem to me to take away from the Commonwealth the power to restrict and regulate trade within the confines of the Commonwealth.

Mr. DEAKIN. -

We are not at those words yet; we are considering the words throughout the Commonwealth."

Dr. COCKBURN. -

But the whole clause is before the committee, and it goes a great deal further than any of its advocates clearly intend. I support the remarks of Mr. Isaacs in urging that some such limitation should be inserted, not only with the view of seeing that the clause goes no further than is desirable in the restriction of the states, but also in order that it shall not tie the hands of the Commonwealth itself, but shall allow it to impose such restrictions and regulations of trade throughout the Commonwealth as may, from time to time, in the interests of the people, appear to be necessary.

Mr. BARTON (New South Wales). -

In answer to my right honorable friend (Sir Edward Braddon), I have no hesitation in expressing my opinion. I thought I had expressed it clearly before. There is at any rate the possibility, even taking this clause with other parts of the Bill, that it might be so read as to interfere with a state's own right of regulating that kind of internal trade which is quite unconnected with interstate commerce. It is for that reason that I thought there was so much force in the remarks of Mr. Isaacs. I should not like to be taken to concur in any suggestion that it is intended that there shall be any power in the Commonwealth to restrict trade in any part of the Commonwealth. I think it should be laid down in terms which no Parliament can over-ride that there shall be absolute unrestricted trade between all parts of the Commonwealth.

Mr. ISAACS. -

Does the leader of the Convention propose to take the sense of the committee upon the substance of the words—that the words "throughout the Commonwealth" be left out, and that the words "between the states" be inserted—leaving it to the Drafting Committee to redraft the clause
Mr. BARTON. -

Yes; I will take the vote of the committee upon that matter.

The amendment suggested by the Legislative Assembly of Western Australia, to strike out the words "throughout the Commonwealth" and to substitute the words "between the states" was agreed to.

The CHAIRMAN. -

It is suggested to add some words to the end of the clause. There are three suggestions—one from the Legislative Assembly of New South Wales, one from the Legislative Council and Legislative Assembly of South Australia, and one from the Legislative Assembly of Western Australia. They are practically identical.

Mr. BARTON (New South Wales). -

There is a suggestion from the Drafting Committee which I think should come first. Accordingly I beg to move—

That the following words be added as a new paragraph at the end of the clause:

But goods imported into any state before uniform duties of customs have been imposed, and thence exported into another state within two years after the imposition of such duties, shall on arrival in the latter state be liable to the duty (if any) chargeable on the importation of such goods into the Commonwealth, less the duty (if any) which was paid in respect of the goods on their importation into the former state.

Sir GEORGE TURNER (Victoria). -

I notice that Mr. Holder is absent. Now, that honorable gentleman made a very valuable suggestion this morning with regard to the wording of this clause. "Goods imported into any state" will mean goods imported after the Commonwealth is formed. Because before the Commonwealth is formed we have no state, and our desire and intention—that is, as far as Mr. Holder and myself are concerned—is that whether goods are imported before or after the formation of the Commonwealth, they should come within the operation of this clause. Therefore, it will be necessary, to carry out Mr. Holder's desire and mine, to add certain words, making the clause read—

Goods imported into any state either before or after the establishment of the Commonwealth.

I do not know whether there can be any objection to an amendment of that kind. I believe, however, that the amendment would carry out the desire of the Finance Committee. I should be very glad if the leader of the Convention could see his way to make such an amendment as I have
suggested. With regard to the proviso itself, it provides also that where goods are imported and exported, if the rate of duty is higher in the colony to which they are exported than in the colony from which they have been sent, the extra duty shall be paid. But there is no provision—and I should like to see one—for the case where the rate of duty is higher in the colony from which the goods are imported. In such a case there should be a provision allowing the colony from which the goods are exported to give drawback. We can understand that if goods were imported into New South Wales, where they would have practically no duty at all to pay, and were then exported to Victoria, where the uniform duty was in existence, they should be charged with that uniform duty, or the difference between that duty and what was chargeable in New South Wales; but if the goods were imported into Victoria, where the duty may be higher than the uniform duty, and if those goods were then exported to another colony, there should be liberty to grant drawback if the colony from which they are exported so desires.

Mr. MCMILLAN (New South Wales).—I quite see the desire and intention of the Finance Committee in this proviso, but I am absolutely opposed to it on practical grounds. Let us look at the position we have to face. The only obstruction to commerce between the colonies is to be the bookkeeping system, and as that does not involve any cash payment or responsibility of that kind it will, of course, be carried out with the least possible friction. Border Duties are not only vexatious on account of the money payment which they involve, but from the free-trade point of view, on account of the delay of business which they occasion. Now, you ask innumerable Customs officers, many of whom may not be altogether men of an experienced character, to adjudicate on complicated matters, and to determine whether goods coming through are not dutiable under certain conditions referred to in this clause. I say, in the first place, as a practical man of business, that it will be altogether inoperative; and, in the second place, although it is inoperative from the practical point of view, there will continue the strain and stress and obstruction and worry, which are things that we want to get rid of under a system of free intercolonial intercourse. This is more a matter of practical business prescience, if I may use the expression, than of anything else. I do not want to reflect on the honesty of my fellow citizens, but I am confident that many of the most honest of men will not know what goods will come under conditions of this kind. Although a great deal of difficulty may accrue at the start of this new system, and although the revenue of certain of the colonies may suffer, still we have to make the plunge, and we may as well do it without causing the great inconvenience and delay which a
provision of this kind will necessitate. If we want to have intercolonial free-trade absolutely and completely upon the imposition of the Uniform Tariff, then, I say, for goodness' sake knock out this proviso, which for two years will continue the irritation, the obstruction, and delay of all kinds in regard to goods coming over the borders.

Mr. DEAKIN. -

What would you substitute?

Mr. MCMILLAN. -

Nothing at all.

Mr. PEACOCK. -

Good heavens!

Mr. ISAACS. -

New South Wales would be an open gateway for all goods which she pleased to allow to come in free. It only wants this to end the matter.

Mr. MCMILLAN. -

My honorable friend (Mr. Peacock), for whose opinion—and other qualities—I have more regard than for that of any other member in this Convention—

Mr. PEACOCK. -

Now, you are trying to "get at" me.

Mr. MCMILLAN. -

We must recollect that this is entirely a new provision which has been sprung upon us, after all the wisdom which was devoted to the elucidation of the problem in Adelaide. I do not want honorable members to think that I misunderstand the object of the provision, or the righteousness of the intention, but I say, as a practical man of business, that it will be inoperative, and will not only be inoperative, but will be obstructing and irritating, and will work against that principle of complete freedom of intercourse which we look upon as one of the blessings of federation.

Mr. ISAACS. -

How can you think of suggesting such an injustice to Victoria, unless New South Wales is prepared to put her Tariff up?

Mr. MCMILLAN. -

I have always been willing to allow that the absolute free-trade policy of New South Wales—in which I absolutely concur myself—has, to a certain extent, become a very discordant element in regard to bringing these colonies together. I quite allow of that.

Mr. REID. -

Superior merit always is perplexing.
Mr. MCMILLAN. -
I quite allow that if Mr. Lyne were in the position that Mr. Reid now occupies, or if he should happen to get in the position between now and-

Mr. REID. -
The imposition of the uniform Tariff.

Mr. PEACOCK. -
Put that in the Constitution.

Mr. MCMILLAN. -
No; between now and the establishment of federation, a great many of the difficulties which now exist might be cleared away.

Mr. LYNE. -
Hear, hear.

Mr. PEACOCK. -
That is the most hearty "Hear, hear" that we have had since the beginning of the Convention.

Mr. MCMILLAN. -
But although the policy of New South Wales has more or less become a difficulty in the adjustment of our affairs, still, what I find fault with is that in attempting to solve the difficulty you introduce what, with all respect, is, I say, an absolutely ridiculous proposal—a proposal which will not have any effect in practical working except the effect of keeping up, for two years, the system of border custom-houses throughout these colonies, making it necessary to insist upon that system of espionage and o

Mr. ISAACS. -
You know that it is a vital thing; you know that it is impossible for us to accept this Bill without it.

Mr. MCMILLAN. -
If so, I give way. I was not a member of the Finance Committee, and, therefore, I am not imbued with all the feelings which came before that body in the discussion of this matter, nor do I know what strong views may have been taken by representatives of the other colonies. Otherwise, I might not have risen to question the wisdom of this proposal. I am merely giving my opinion as a private member of the Convention; and I do think that this attempt to do justice to Victoria will be altogether inoperative.

Mr. HOLDER (South Australia). -
It may seem perplexing when I say it, but still I do say that nothing will be done under this provision, whilst at the same time it will be most effective. Nothing will be done under it, because it will be exceedingly difficult to put in operation the provisions of it; but, at the same time, it
will have the effect which it is intended to have, because it will prevent the occurrence of the evils it is intended to prevent. Take the case of Western Australia, where sugar is now admitted free of duty. It would be quite possible for a merchant to ship a quantity of Mauritius sugar into Western Australia free of duty just before the uniform Tariff came into operation, and for that sugar to be subsequently imported into the other colonies, where duties on sugar were formerly imposed. That would have the effect of injuring the revenues of the colonies concerned in fact, their revenues might be ruined if my proposal were not inserted.

Mr. OCONNOR. -
And also the revenue of the Commonwealth.

Mr. MCMILLAN. -
How long do you think it is necessary for the provision to remain in force?

Mr. HOLDER. -
Probably one year would suffice, but I do not think any harm will be done by putting in two. The chief effect of the clause will be that the possibility of putting it into operation will prevent merchants from loading up; they will not load up in Sydney or anywhere else when any line is free, they will wait until they see what the uniform Tariff is, and they will pay under that as they ought to. I have a doubt, however, whether the clause gives effect to the intention of the Finance Committee. I understand that in my temporary absence, Sir George Turner mentioned the point. The clause begins-"But goods imported into any state before uniform duties are imposed." I think that would limit the importation to the time when any portion of the Commonwealth became a state; but goods might be imported a few days before the colony became a state-that is, on the establishment of the Commonwealth. I think the clear intention of the Finance Committee was that any goods imported into a state before it became a state should be dutiable under the Federal Tariff if those goods passed to another state.

Mr. OCONNOR. -
How far back would you go?

Mr. HOLDER. -
Practically we would not go back at all; the shadow of this clause will have the necessary effect. If no limit be fixed, but if it be left open, and if the word "state" be made larger, it would prevent the abuse I have referred to. I beg to move-

That after the word "state" the following words be inserted "either before or after the establishment of the Commonwealth."

Mr. REID (New South Wales). -
The fact that the uniform Tariff would probably not come into force for
eighteen months after the establishment of the Commonwealth will, I think, give a sufficient period of time in conjunction with the two years during which the protection will exist afterwards. I am afraid, and in this respect the leader of the Convention desires me to say he agrees with me, that any attempt to interfere with the state of things before the Commonwealth comes into existence may be regarded as objectionable in the Houses of Parliament through which this Bill must eventually go. We think it would be much safer on the whole to be satisfied with the protection which will undoubtedly exist from the fact that, from the date on which the Commonwealth is established, on which day the colonies will become states, down to the actual operation of a uniform Tariff-and I think that that period must be more than a year, and probably eighteen months-there will be a sufficient protection, coupled with the subsequent period of two years.

Mr. ISAACS. - The alteration suggested could not do any harm.

Mr. REID. - We do not wish to put in anything that may be taken out in the old country. I think a year before the uniform Tariff is established ought to be a sufficient period. I do not think that even the most enterprising speculators will be likely to import goods into any part of the Commonwealth more than a year before a certain event, especially as these importation will be made with the other provisions staring them in the face in connexion with the subsequent two years. That will, I think, paralyze the little tricks of trade.

Mr. ISAACS. - That would not affect them.

Mr. REID. - It would not affect the period my honorable friend aims at, but I think the fact that we will protect our neighbours from the curse of cheapness for about twelve months, at any rate, will be sufficient protection under the circumstances. I certainly object to the amendment and I do not think it is necessary.

Mr. ISAACS (Victoria). - I shall support the amendment. First of all, it takes away any question that might be raised as to when the goods are imported. Suppose the goods are brought to the border of Victoria from New South Wales, and the Commonwealth officers enter into the consideration of the question as to whether or not this section applies. They will be told that these goods were imported a day before the establishment of the Commonwealth, and
therefore this clause does not apply. Therefore, at the very threshold, a very important question arises, and it may give rise to all sorts of controversies, and even litigation. The revenue of the Commonwealth may be in doubt on this question, and certainly the industries of Victoria would be in doubt. As my honorable friend says, there is not the slightest danger of any speculator in New South Wales trying to import goods so as to let them arrive, say, a week before the day of the establishment of the Commonwealth. It can do him no harm whatever.

Mr. Reid. -

If You think it is a serious matter we will certainly pass the whole of it. All our desire is to satisfy you.

Mr. Isaacs. -

I think the amendment will carry out our object if you put in the words "or colony" after the word "state."

Mr. Reid. -

There is an awkwardness in the amendment, because there can be no state before the establishment of the Commonwealth.

Mr. Isaacs. -

That is why I suggest the insertion of the words "or colony," but I think it can be left to the Drafting Committee to put it in proper shape, and I have much pleasure in supporting the amendment.

Mr. Glynn (South Australia). -

There is much force in what has been stated by the honorable member (Mr. McMillan). I do not see any necessity for the clause, which may open the way to several evils. I would ask honorable members whether the protection afforded to the states at present would not be sufficient? Supposing that a general election took place in a colony and a policy of protection was affirmed? At present it is considered by the colonies that there is sufficient protection against these importations in the fact that the moment the Tariff is declared the duty is payable at the Tariff rates. Where is the difference between the position of a single state at present under such circumstances, and the position in which the Federal Parliament will find itself? We are assuming that the character of the Tariff will be protectionist. If the protection to the Treasurer, afforded at present in the case of a state is sufficient, I fail to see why it should not be sufficient in the case of a Federation.

An Honorable Member. -

It is not a question of protection; it is a question of financial adjustment.

Mr. Glynn. -
I understand that one object is to save the Treasurer, and the other object is the adjustment of accounts between the importing and the consuming states. I maintain that the Treasurer of the Federation will be protected quite as much as the Treasurer of a colony is at present, when a protectionist Tariff is imposed after a general election.

Mr. FRASER.- Suppose a certain market is flooded with free goods what would you do then?

Mr. GLYNN.- I would not object to this additional protection being given if there were not other probable evils which I will point out. To emphasize the first position I take up, I ask, how are you going to trace the goods? For instance, take leather. It may be imported in bulk and subsequently it may be changed into uppers. On the exportation of the uppers, how are you going to say what quantity of those uppers is taxable? Again, supposing uppers were imported, they might be changed into boots, and in eight months might be exported to another colony; how are you going to say whether or not those boots are liable to duty? They might be exported, not by the manufacturer, but by other persons. Looking at this clause in conjunction with the subsequent clause dealing with goods which are re-exported, you may be paying in some cases too much and in others too little. To show that I am not speaking without book, I will refer honorable members to Table No. 12 in the appendices to the proceedings of the Adelaide Convention. We have figures there dealing with the estimates of customs duties paid on the products of each colony on importation to other colonies. These figures are given on the assumption that the exports were of a certain quantity and value. My argument is this: If it is difficult to trace the quantity and value of exports of colonial products from state to state on the existing data, it will be equally difficult to trace the quantity and value of imports from abroad which become exports to other colonies. What have we in the shape of evidence? We have two departments in different colonies giving a calculation as to the duties actually levied. What I am going to quote is an estimate as to the amount of customs duty paid on the products of each Colony on importation into other colonies. For 1894, the estimate as regards New South Wales, given by Mr. Coghlan, is £113,421; the estimate given by the Victorian Customs department is £148,826; then for 1895, Mr. Coghlan's estimate is £234,942; that of the Victorian Customs department is £135,550. Taking the estimate for Victoria, Mr. Coghlan gives the figures for 1894 as £234,152, while the Victorian Customs department gives the figures as £204,685. In 1895 according to Mr. Coghlan, the figures were £198,695; according to the
Victorian Customs department, £257,913.

Mr. SOLOMON. -
That arises from a want of uniformity in keeping the accounts.

Mr. GLYNN. -
That may be the case, but these figures were submitted to the Convention for our guidance.

Mr. MCMILLAN. -
There is the innate difficulty in the matter.

Mr. GLYNN. -
I quite agree that that is t

not entitled to on the basis of consumption. Now, I refer honorable members to No. 15 of Table 12, which shows the loss of revenue by each colony had Australian products been admitted free of duty. We find that in 1894, according to Mr. Coghlan, the loss of New South Wales would be £407,021, whereas the Victorian Customs department estimates that the loss would be £318,985.

Mr. HOLDER. -
The honorable member is dealing with colonial products and manufactures, whereas we are proposing to deal with foreign goods.

Mr. GLYNN. -
I admit that, but the figures I am giving are the only data available for the purpose of argument. If there is such a discrepancy with regard to colonial exports and imports, it is probable that there will be exactly the same discrepancies with regard to foreign goods.

Mr. FRASER. -
No, it is much easier to deal with foreign goods than with colonial products.

Mr. GLYNN. -
I doubt that, when it comes to re-exportation. We find from this table that in 1895, according to Mr. Coghlan, the loss of New South Wales would be £148,816, whereas, according to the Victorian Customs department, it would be £341,892. Then take Victoria. We find the estimate for 1894 from one authority given as £145,000, and from another as £186,000. For 1895, the figures are £425,000 and £220,000, respectively. Now, when these mistakes are made on the exports from one colony to another of native products, then, by parity of assumption, I say there will be very great mistakes made with regard to goods imported into one colony on their re-exportation to the other colonies. But I would refer honorable members to the figures given by the Right Hon. Sir John Forrest, a few days ago, as to the position of Western Australia, as regards imports direct
from home and through the other colonies. The protection which we are asking for is protection through the other colonies on foreign products. That is what we are asking to protect the revenue in regard to. Now, that is a very diminishing quantity, so that, if there is a slight opening for evil, there is the probability of that evil diminishing gradually. We find, according to the figures given by Sir John Forrest, that the total imports into Western Australia, for 1895, amounted to about £3,750,600. Of that sum the British and foreign imports, through other colonies, amounted to £789,000. But, if you take 1896, the year afterwards, the total is £6,500,000; while the British and foreign goods, imported through other colonies, instead of being doubled are less £722,000. So that I am entitled to say that you are providing for a diminishing chance of evasion. I would not say a word against this clause, if there was not an opening for the corresponding errors which I have pointed out, on the basis of the Victorian figures; but I say that the clause is not necessary—that the state protection already afforded, if applied to the Federal Parliament, will be quite good enough; and, if you pass this and the subsequent clause (91), you will be paying one state far more than it is entitled to on its consumption, and in other cases you will be paying far less. If these errors are open, I ask where is the necessity for this clause, considering that the protection is not required, and that it may lead to all sorts of harassing interference at the border?

Sir PHILIP FYSH (Tasmania). -

I am under the disadvantage of not having heard Mr. McMillan on this subject, as I was busy in connexion with another matter which drew my attention. I presume, however, it will not be considered assumption on the part of some honorable members of this Convention who have been associated with the import trade for a great number of years if they claim to speak with some experience on this subject. I hope that I shall not be at issue with Mr. McMillan, as his experience and my own must be somewhat similar; but I am prepared to dismiss entirely all figures which have been placed before us that profess to give us some idea of the interchange of goods between the various colonies. I do not think that is at all necessary in connexion with this subject, because this is a subject which deals entirely with the transfer from one colony to another of what we may, for convenience, call foreign products, not intercolonial products or intercolonial manufactures. This clause deals with the imports from abroad into Australia in a given year—the year prior to the uniform Tariff—goods which, during the first two years of the existence of the uniform Tariff, shall pass from the state where they
were first imported into another state where they are to be entered for home consumption. Now, I will guarantee to produce at the Customs-office of every one of these states men who will be able, very promptly, to certify whether the goods be of foreign export or not. I do not think that there is anyone of the permanent officers in connexion with the Customs who would not be able to say whether goods passing from one state to another were of foreign importation or not.

Mr. MCMILLAN. -

Broken bulk?

Sir PHILIP FYSH. -

Yes. There can be no difficulty whatever where the goods are in the original packages, or even if, as is mostly the case in intercolonial transactions, the packages are composed of a great number of articles, some of which are foreign goods, and some of which are of colonial manufacture. The drawback regulations of Victoria deal amply with such cases, and the drawback officers are satisfied that they get an approximate statement of facts. Even though some of the exporters may gain an advantage in connexion with drawbacks, the Customs officers are satisfied that approximately the amount of exports in connexion with goods which have been imported, and have paid duty, is known. Now, it becomes absolutely necessary to the smaller states-South Australia, Western Australia, and Tasmania-that the goods imported into Victoria and New South Wales-into New South Wales, where they will have paid no duty, and into Victoria, where many of them may have only paid a 5 or 10 per cent. duty—it becomes absolutely necessary for the three other colonies, which are largely supplied from Victoria and New South Wales, that, if they are to secure the advantages of their home consumption, an account shall, at any rate for a period, be kept of what goods come across their borders that have been imported into other states.

Mr. MCMILLAN. -

I will guarantee that 75 per cent. of the whole thing would be evaded.

Sir PHILIP FYSH. -

The honorable member who gives expression to that opinion has no doubt a very large experience.

Mr. REID. -

Not of that sort of thing, surely.

Sir PHILIP FYSH. -

I mean that he has had a large experience with respect to the importation of goods. If I have had 40 years' experience, he has had, at any rate, twenty years' experience.

Mr. MCMILLAN. -
The mistake you are making is in thinking that everybody will be as honest as you are yourself.

Sir PHILIP FYSH. -

It is not a question of honesty or dishonesty.

Mr. MCMILLAN. -

Oh, yes.

Sir PHILIP FYSH. -

I say, as an expert, that it is not a question of honesty or dishonesty, or if it be necessary to admit that some one may try to evade the law, I am going to point out, presently, that there is no object in trying to evade it. But I say that even in Tasmania, small though it be, we have at Hobart and Launceston men who would immediately detect any fraud of that kind; men who, have been associated with the trade for years, and who, I will guarantee, would, with respect to £1,000 worth of goods thrown before them, immediately brush aside those which were foreign, and leave those which were intercolonial. They would do this almost with their eyes shut.

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Mr. HENRY. -

Do you mean mixed goods?

Sir PHILIP FYSH. -

That is another case—where the goods are partly foreign and partly local manufacture. Say, for instance, that Victoria may import a lot of flannels, and that they are manufactured here into men's clothing. Our drawback regulations, if the duty was paid on the flannels, would separate the flannel from the manufactured articles, but any one of our experts would readily pick out the article which was of foreign manufacture, and the article which was of local manufacture. But there is no cause to suppose that there would be fraud, because fraud only arises where there is a monetary motive, and if the exporter from New South Wales or Victoria has no advantage, by reason of an improper entry, as he would not have, what object could he have in attempting fraud, or in making a false entry?

Mr. HENRY. -

He might have the advantage of selling his goods, when he would not otherwise be able to do so.

Mr. LYNE. -

If he got the material without paying duty.

Sir PHILIP FYSH. -

That does not enter into the question. The question we are dealing with is the export, say, from New South Wales, of a bale of calico, which has paid duty, to Tasmania.
Mr. REID. - Have you a duty on calico in Tasmania?

Sir PHILIP FYSH. - We have; and I shall presume that a similar duty would be in the uniform Tariff. Now, is there likely to be any fraud by an exporter from New South Wales of that particular bale of calico? He has no advantage in making a false entry, and the whole thing rests upon that. So far as the three smaller states are concerned, it is absolutely necessary, for the protection of their revenue, that some such proposal as this shall be inserted. At the present moment I shall assume that Tasmania secures, certainly, 25 per cent. of ad valorem goods through the instrumentality of stocks lying in New South Wales or Victoria. If, therefore, for the two years after the uniform Tariff, Tasmania has to consume the stocks from those two colonies, where will our revenue account be; and what will be the use of our keeping interstate accounts? No use at all. We shall be consuming articles on which no duty had been paid in New South Wales, or articles, on which 10 per cent. had been paid in Victoria. The clause, therefore, is not only necessary for the protection of the smaller states in their revenue accounts, but it is also absolutely necessary, I think, that we should add some further words to it. To goods which have been imported into New South Wales, and have paid no duty, there need be no reference in the clause at all, and, therefore, the first "(if any)," I would suggest, may be omitted, because if there has been no duty paid there need be no trouble. The goods will pay in Tasmania the full Commonwealth or uniform Tariff, and, Tasmania having collected the full uniform Tariff thereon, will get the benefit. But, so far as Victoria is concerned, where it says that the duty shall be collected "(if any) "on the difference between the Victorian Tariff and the Commonwealth Tariff, which may be 10 per cent., Tasmania will only get credit for the 10 per cent. which she collects. While in Victoria the duty will have been reserved to the amount of 10 per cent. on a particular article, and Tasmania will be the consumer of articles which, under the Commonwealth Tariff, are liable to 20 per cent., Tasmania's revenue will only get credit for 10 per cent. Under those circumstances, I think it will be necessary that some few words should be added to the clause as we proceed. In the meantime, however, I would urge the absolute necessity, for the protection of the smaller states, of some such provision as this, because without it, while the Commonwealth Tariff or revenue will be fairly made up, the smaller states will be considerably jeopardized in their revenue by reason of the fact that the duties are collected in other states, while the goods are consumed in the smaller states.
[The chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. OCONNOR (New South Wales). -

We must all recognise that the settlement of the financial question which has been arrived at by the Finance Committee, and which is now before us, has been arrived at only after the most careful and anxious consideration of the question, extending over the seven years following the sittings of the Convention of 1891. During this time every possible effort has been made to solve the problem, but the difficulty has always our colonies.

Mr. ISAACS. -

Do not say that. We know that the right honorable member (Sir George Turner) did not approve of everything here.

Mr. OCONNOR. -

Perhaps he did not approve of everything, but he stated very properly and frankly that he recognised that he could not have his own way in everything, and that if the compromise which had been arrived at was accepted by the Convention he would accept it. I think that that is the attitude of all the Treasurers. Whenever a compromise takes place no man gets exactly what he wants, but if the representatives of the colonies think this the fairest arrangement that can be made, no doubt the Treasurers will agree to it. I think that the clause should be supported as part of a general scheme which the colonies, other than New South Wales, consider of some importance, and because some provision is necessary in order that the revenue of the Commonwealth shall not suffer by making use of the Tariff of any particular colony. Therefore, without going into any detailed criticism as to whether it will or will not work, or as to the extent to which it may be difficult to find out where goods have been consumed, I am prepared to accept the clause practically as it stands. At first sight, no doubt the amendment of the honorable member (Mr. Holder) appears contrary to one's ideas of what legislation should be. There is no doubt that it is retrospective. The Constitution, which is to take effect upon the establishment of the Commonwealth, will by it be made to apply to goods which have been imported into the colonies before the establishment of the Commonwealth. Nevertheless, I think the objection rather apparent than real. In the first place, I doubt whether the amendment will affect very many cases, or any large quantity of goods; but, even if it does, I cannot see that very much injustice will result from it, because it will apply only to goods which commence to move after the imposition of uniform duties. If the clause is really to be effective for the purpose intended, this provision must, I think, be inserted. Therefore, I am willing to take the amendment as part of the general scheme which has been arrived at by way of
compromise, and which my honorable friends opposite are anxious to embody in the Constitution.

Mr. HOLDER (South Australia). -

I am willing to agree to the insertion of the words "or colony." It is the principle with which I am concerned. The phrasing of the clause might, I think, be left to the Drafting Committee.

The amendment was withdrawn.

Mr. HOLDER (South Australia). -

I beg to move-

That the proposed new paragraph be amended by the insertion, before the word "state" (line 1), of the words "colony, province, or."

The amendment was agreed to.

Mr. ISAACS (Victoria). -

I understand that the Hon. Mr. Holder is going to move the insertion of the other words.

Mr. HOLDER (South Australia). -

I think the other words are unnecessary, but I leave the whole matter to the Drafting Committee. We have affirmed the principle, and they will be responsible for the form.

Mr. ISAACS. -

I am not sure the other words are unnecessary, and I hope that the Drafting Committee will consider the point.

Sir PHILIP FYSH (Tasmania). -

The clause speaks of the duty chargeable (if any)" on goods imported into the Commonwealth. I do not think the words (if any)" are necessary. If goods imported into New South Wales do not pay any duty, and they are exported to Tasmania they will then pay the full duty. The words (if any)" are used a second time, and correctly used.

Mr. OCONNOR. -

I think the words referred to are necessary, but the honorable member's suggestion will be considered.

Sir PHILIP FYSH. -

Then I desire to call attention to certain words which are not in this clause, but which do appear in new clause K. That clause provides that the duties of excise paid on goods manufactured in a state, and thence exported to another state for consumption therein, shall be taken to have been collected in the state in which such goods have been consumed. These words are an instruction to the Federal Executive to secure to the state in which the goods are consumed a credit for the duty upon those goods.
There is no such instruction in the clause we now have before us. I beg, therefore, to move the addition to the new paragraph of the following words:-

And the full amount of duty chargeable on the importation of such goods under the Commonwealth Tariff shall be taken to have been collected in the state to which such goods have been so exported.

The state might otherwise receive only 5 or 10 per cent. duty, whereas the duty imposed by the Commonwealth might be 20 per cent.

Mr. REID. -

I do not think these words are at all necessary. The new paragraph was very well considered by the Finance Committee.

Sir PHILIP FYSH. -

That point was not.

Mr. REID. -

The words in the clause cover that point.

Sir PHILIP FYSH. -

I should like the right honorable member to point out in what way it is covered. What I desire is that the state shall get the full benefit of the full Commonwealth Tariff.

Mr. ISAACS. -

This clause is not intended to deal with that matter.

Sir PHILIP FYSH. -

In my opinion it should deal with it.

Mr. OCONNOR. -

Is not it provided for in clause 91?

Sir PHILIP FYSH. -

No; that is the expenditure clause. It is provided for in the clause it is proposed to substitute for clause 92.

Mr. HOLDER (South Australia). -

I do not think it would be wise to add the words suggested to this clause, as it refers to a different question, but the honorable member has called attention to a matter that has been overlooked. The honorable member could best achieve his purpose by moving the insertion in clause 90 of words similar to those contained in sub-section (1) of clause 92. The same principle which applies after the uniform Tariff comes into operation would then apply to the two years before the uniform Tariff.

Sir GEORGE TURNER (Victoria). -

I could not agree to that. Until the uniform Tariff comes into operation, we are to go on as we are. After that, we are to have a new system.
Sir PHILIP FYSH (Tasmania). -

I have no special preference as to where this provision is made, but I think it necessary that it should be made. I will withdraw the amendment for the present, with a view of submitting it again in the manner suggested by Mr. Holder.

Mr. SYMON (South Australia). -

The honorable member ought to consider whether the provision be suggests will have any application at all to the period of two years. It ought not to have.

The amendment, was withdrawn.

Sir GEORGE TURNER (Victoria). -

I drew the attention of the leader of the Convention this morning to the necessity of making some provision with regard to allowing a colony to provide for drawbacks where the duty paid in the colony is higher than the duty chargeable under the uniform Tariff. I am quite satisfied that the Federal Parliament has the power inherently in framing a Customs Tariff, and that might be sufficient. I should be glad if the Drafting Committee would take the matter into consideration. If they cannot meet the difficulty, I will, at a later stage, move the insertion of certain words.

Mr. REID. -

Does the right honorable member mean that the Commonwealth, out of its own funds, is to repay this money?

Sir GEORGE TURNER. -

No; the state, out of its own funds.

Mr. REID. -

That is well worthy of consideration.

Mr. LYNE (New South Wales). -

There is no doubt-and the remarks that have been made confirm one in that impression-that the whole of this trouble has arisen in consequence of the present Tariff in New South Wales. It is to get over the difficulty that that Tariff creates at the present time-and it is creating a great deal of difficulty-that this proposal is made.

Mr. SOLOMON. -

Not entirely.

Mr. LYNE. -

Yes. If New South Wales had a reasonable protectionist Tariff no such provision would be introduced.

Mr. SYMON. -

You cannot have a reasonable protectionist Tariff.

Mr. LYNE. -

The honorable member's free-trade proclivities are so strong that no
protectionist Tariff could in his estimation be reasonable. But I ask the committee whether this proposal would be introduced if it were not for the Tariff of New South Wales? I think it would not, and I say that it is a proposal that is most vicious in its character.

Mr. SYMON. -

Is it a menace to the integrity of New South Wales?

Mr. LYNE. -

It is, and in this sense: That if it is carried, and it seems probable from the expressions of opinion that it will be carried, it will operate altogether against the honest traders. The honest traders will do all they can to keep a record of the goods re-exported from other colonies, but those who wish, and there will be plenty of them, to evade the provision will not keep any record. When the Right Hon. the Premier of New South Wales was explaining these provisions he said it would be very easy indeed to induce the merchants to keep a record of all the goods exported from one state to another, so that they might be traced right down to their distribution. That is an absolute absurdity, and almost an impossibility. Take the case of broken packages. In those cases it will be almost impossible to ascertain what duty has been or should be paid. In New South Wales and other states imported goods may be used for the purposes of manufacture. The manufactured articles will be exported to other states, and how will it be possible to divide the product exported in the way that will be necessary for the purposes of the record? That is impossible, and it will tell altogether against honest trade between the two states.

Mr. SOLOMON. -

That would not affect New South Wales, where there are very few factories.

Mr. LYNE. -

It would affect New South Wales to some extent, at any rate. The factories of New South Wales are not as numerous as I think they should be, and as they would be if we had a different state of things. Still, there are a few factories th

Mr. REID. -

But not in the future.

Mr. LYNE. -

Yes, in the future, too. However, I do not wish to enter into that question at present. We are told that the Customs officers of Hobart, Launceston, and Strahan could easily tell what goods should be allowed to enter Tasmania free of duty, and what goods should be charged duty.
Sir EDWARD BRADDON. -
I said that they could easily tell which were English or foreign goods.

Mr. LYNE. -
Well, that is practically the same thing. But how could the honorable member tell the difference in goods crossing an imaginary line between two colonies? Why, take even the River Murray, which is a part of the boundary between Victoria and New South Wales. It may be all very well to tell the difference between goods passing through Albury, Echuca, and other places where there are Customs officers, but hitherto there has been a very great deal of difficulty on the part of the Customs officers to check the goods that have crossed the border. In those cases it is entirely different from the case where the goods are sea-borne and enter a seaport, so that the argument of my honorable friend does not apply.

Sir PHILIP FYSH. -
Victoria has had to protect herself against New South Wales and the other colonies.

Mr. LYNE. -
I know, and there has been, and still is, a great difficulty in doing that. A staff of Customs officers has had to be kept up from one end of the Murray to the other, and if this proposal is carried through, that staff will have to be kept in existence, so that the states might just as well keep on their Customs Tariffs. Even if you have Customs officers at Echuca, and other of the larger crossing places, there will be nothing to prevent these goods being taken over the Murray at other parts. Therefore, it will entail a very considerable expense to the Federal Customs department to keep up the existing Customs staffs along the various borders of the colonies.

Sir GEORGE TURNER. -
You have to keep up those staffs for the purpose of keeping the accounts.

Mr. LYNE. -
Well, I very much regret that we are adopting this practice of bookkeeping, and I have been opposed to it all through. Some honorable members seem to have gone almost a little off their heads on the question of bookkeeping. They appear to rush at a set of books as if they were something to glorify. But I say that we want to get rid of the system of bookkeeping, to which I am altogether opposed, and the Premier of Victoria was also at one time opposed to it, and very strongly opposed to it.

Sir GEORGE TURNER. -
So I am still.

Mr. SOLOMON. -
What alternative do you propose for the proper distribution of the
That question does not arise under this clause, and I have referred to it previously. There is a very simple method that can be adopted instead of maintaining this clumsy and cumbrous system of bookkeeping for several years, I rose more particularly to enter my protest against this proposal, which will hamper trade to a large extent for the next few years, if we enter into this. Federation, instead of relieving us of all the trouble that we have at the present time. It is the desire of all the colonies to place freedom of trade in the forefront, and to get rid of Border Duties.

Mr. SOLOMON. -

That is it; not so much to get rid of the bookkeeping as to get rid of the Border Duties.

Mr. LYNE. -

The object is to get rid of restrictions of every kind on our borders. That is one of the main objects of the federation movement; and if an arrangement was made to-day between the various states to have intercolonial free-trade there would be very little crying out for federation of any kind. It proves, therefore, that that is the main and staple thing that is inducing the people of the colonies to ask for federation at the present moment. They desire to have intercolonial free-trade, to have intercolonial commerce free in every way, and if you carry through this proposal, you, will hamper that freedom of trade and commerce very much for the next, four or five years.

Mr. HOWE. -

What is four or five years in the history of a nation?

Mr. LYNE. -

I do not know that four or five years is very much in the history of a nation, after that nation is formed, but if we can reduce these restrictions on trade and commerce between the colonies without injury to the various states, it is our duty to do so. I say that we can do it equitably. All the trouble of this matter is in consequence of the present Tariff of New South Wales.

Mr. HOWE. -

No doubt.

Mr. LYNE. -

If that Tariff was altered, we would have no necessity for any provision in regard to restrictions of this kind, and, even for the sake of federation, I hope it will be only a very short time before we adopt some system which will remove this obstacle out of our way altogether.

Sir GEORGE TURNER (Victoria). -
I quite agree with my honorable friend (Mr. Lyne) that if New South Wales would put on a reasonable protective Tariff, we would not require this clause, and if the honorable member could give me an undertaking that before these uniform duties of customs come into operation they will follow out what appears to me would be a proper practice in the colony which he represents, I, for one, would feel inclined to support him in striking out this clause.

**An HONORABLE MEMBER.** -

Perhaps Mr. Reid and Mr. Lyne will put their heads together for that purpose.

**Sir GEORGE TURNER.** -

I am afraid that if the two honorable members consult together, we shall not get anything. If it could be left to Mr. Lyne, I have no doubt he would meet our wishes, and put on such a protective Tariff as would render this clause unnecessary, but for fear that Mr. Lyne will not have an opportunity of carrying out that good work we must provide in this Constitution for some reasonable protection. If we have not a clause of this kind we all know what will happen. As has been pointed out, the merchants in Sydney and other places will simply stock Sydney full of goods, under the present Tariff of New South Wales, and immediately we have intercolonial free-trade those goods will come into the other colonies without paying any duty on the borders. Those colonies will, by that means, lose an immense amount of revenue which they ought to collect, and which will be taken into consideration in calculating the surplus they have a right to expect, and many of the manufacturers of Victoria will be seriously injured. I think that this provision does not go far enough, even as far as New South Wales itself is concerned. Some step ought to be taken to prevent this illegitimate trading and profit-making at the expense of the Commonwealth.

**Sir JOHN FORREST (Western Australia).** -

I really cannot understand how this debate has occupied so long a time. It seems to me that the provisions in the recommendations of the Finance Committee must appeal to every one as being just and fair. I can speak disinterestedly, as coming from a colony where there is a considerable free list—a colony which might, if this clause were not in the Bill, be made the repository of a very large quantity of goods which would come into Western Australia free of duty, and afterwards be sent to the other colonies within the Commonwealth.

**Mr. SYMON.** -
This clause is directed to support equality of trade, rather than the mere freedom of trade.

Sir JOHN FORREST. -

I think I thoroughly understand the meaning of the clause. It means that goods can be imported free into the free-trade colony of New South Wales or into Western Australia, where there is a large free list, and on the introduction of the uniform Tariff, which every one seems to think will be a protective Tariff -

Mr REID. - No fear, it will be a revenue Tariff.

Sir JOHN FORREST. -

Well, we will say a revenue Tariff - I do not care what you call it - then those goods could be sent to the other colonies without paying the duties that would have been imposed prior to the introduction of the uniform Tariff. Take the case of Western Australia. Merchants would be able to import tea and sugar there in large quantities, and would afterwards be able to supply all the colonies with tea and sugar without paying the duty which other persons in those colonies, importing direct from the tea and sugar producing countries, would have to pay. Take also machinery, and many other articles. This thing applies in only a small degree in Western Australia, it is true, but in a very much larger degree in New South Wales. Now, I ask is it a fair and reasonable thing? Are we going to frame this Constitution in such a way that it will play into the hands of rich capitalists, who will get all the advantage of the profits thus made? It seems to me to be absurd to do so, and, although I can see in it an advantage to Western Australia, I cannot make myself believe that it is right or fair. Therefore, I think that a clause of this sort is absolutely necessary. At the same time, I do not see that we need to take so long to discuss it. It appears to me to be perfectly fair and reasonable that a clause of this sort should be in the Bill. I believe that every member of the Finance Committee agreed that this is a reasonable provision, and why should we spend a whole day in discussing it?

Mr. LYNE. -

Sir George Turner said just now that you were opposed to it.

Sir GEORGE TURNER. -

Opposed to this clause?

Sir JOHN FORREST. -

I have never heard him say so. I hope we will either pass this clause on the voices forthwith or go to a division on it.

Mr. HENRY (Tasmania). -

I hope no one will charge me with coming into the category of those who waste time in this Convention. I do not think that any one can justly do so,
but I have a specific purpose in rising now in reference to this clause. I am
very much of the view of Mr. McMillan as to the unworkable character of
this provision, and as to its in Utility generally, but I am not in accord with
the statement of Mr. O'Connor that this provision is in the nature of a
compromise. I regard it rather as an expedient to meet a practical
difficulty, and it is because we are aware that the Finance Committee
recognise there is this difficulty about having free goods dumped down in
Western Australia and New South Wales, which would cause a loss of
revenue to various other states, that the bookkeeping system is proposed. I
take it that a loss of revenue will inevitably result to the states which have
free Tariffs. There is no doubt that the merchants of Western Australia and
New South Wales, if there is no alteration in the Tariffs of those colonies
in the meantime, will unquestionably lay in a stock of free goods, and the
result will be a loss of revenue to those colonies, as well as to colonies into
which those goods are afterwards imported. The object of the Finance
Committee was to minimize that difficulty as much as possible, and
prevent injury to the revenue of the various states. I am not going to waste
time by going over arguments that have already been used, for I have
studiously avoided the repetition of arguments, but I think that this
proposed clause should not be operative for more than a one year. I believe
that no merchant will import heavily into either Western Australia or New
South Wales with the prospect or on the calculation of holding those goods
for a period of more than twelve months.

Mr. Howe. -
Make it two years.

Mr. Henry. -
It is two years in the clause now, but I think that one year would be
ample to meet the circumstances sufficiently. It would do away with a
year's period of irritation, annoyance, and difficulty in keeping records of
goods passing between the colonies-that is, in ascertaining the duties
payable to the respective colonies under this clause. Therefore, my object
is to test the feeling of the committee as to whether this provision should
continue in force for a longer period than one year. I beg to move-

That the word "two " be struck out, with a view of substituting the word
"one."

Sir George Turner. -
One year is not long enough.

Mr. McMillan (New South Wales). -
I think there is a very great deal to be said in favour of the amendment of
Mr. Henry, on the most practical grounds. I can scarcely conceive of any
trade operations of the kind going beyond twelve months.

Sir GEORGE TURNER. -

Then where is your objection to the two years provision?

Mr. MCMILLAN. -

I object to it because, as the right honorable gentleman will see, it will involve keeping up the system of border espionage for another year, and prevent free communication between the two colonies. I fail to see any cause why the object of Victoria would not be gained if the restriction in question were only kept in existence for one year.

Mr. WALKER. -

What about jewellery?

Mr. MCMILLAN. -

That can be smuggled in under any circumstances, but with ordinary goods the whole operation can be got over in twelve months.

Question-That the word "two" proposed to be struck out stand part of the clause-put.

The committee divided-

Ayes ... ... ... ... 32
Noes ... ... ... ... 9

Majority against the amendment 23

AYES.
Abbott, Sir J.P. Isaacs, I.A.
Barton, E. Kingston, C.C.
Berry, Sir G. Leake, G.
Braddon, Sir E.N.C. Lee Steere, Sir J.G.
Briggs, H. Moore, W.
Brown, N.J. O'Connor, R.E.
Carruthers, J.H. Peacock, A.J.
Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Reid, G.H.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fysh, Sir P.O. Turner, Sir G.
Gordon, J.H. Venn, H.W.
Hackett, J.W. Zeal, Sir W.A.
Higgins, H.B.
Holder, F.W. Teller.
Howe, J.H. Walker, J.T.

NOES.
Clarke, M.J. Lyne, W.J.
Dobson, H. McMillan, W.
Glynn, P.M. Wise, B.R.
Grant, C.H. Teller.
Lewis, N.E. Henry, J.

Question so resolved in the affirmative.

Sir PHILIP FYSH (Tasmania). -
Before the clause is finally passed, I desire to call the attention of the Drafting Committee to a necessary alteration in its construction. The alteration I think is a necessary one, and one which I believe the Convention would desire to make. It is very certain that under the clause as it now stands, the duties on goods imported into Victoria, with her 30 to 40 per cent. ad valorem duties, will, under the uniform Tariff, if that be only 20 per cent. ad valorem, cause the state in which the goods are consumed to lose the benefit of the new Tariff.

Sir GEORGE TURNER. -
I have asked the Drafting Committee to provide for an allowance to be made for drawback.

Mr. WISE. -
Will the state pay, back the revenue it has received?

Mr. DEAKIN. -
It is this individual state which will give drawback, not the Commonwealth State.

Sir PHILIP FYSH. -
If that provision be made, then the colony consuming the goods will get the benefit of the full Commonwealth Tariff.

Sir GEORGE TURNER. -
That is only fair.

Sir PHILIP FYSH. -
I draw attention to the matter, because I think it is desirable that the Convention should have its attention drawn to the necessity of some verbal amendment being made in the clause.

The paragraph was agreed to.

The CHAIRMAN. -
The next amendment is one suggested by the three colonies of Western Australia, South Australia, and Tasmania, with reference to alcoholic liquors. I shall put only the amendment suggested by Western Australia, as it seems that there is very little difference between the three suggestions by the three colonies I have named.

Amendment suggested by the Legislative Assembly of Western Australia-
At the end of clause add—Nothing in this Constitution shall be construed to prevent any state from regulating the importation of opium or alcohol under conditions which are applicable, as nearly as possible, to the laws relating to opium and alcohol within the state.

Mr. OCONNOR (New South Wales). -

This matter is, I think, already provided for in sub-section (1) of clause 52.

Mr. DEAKIN (Victoria). -

I take this opportunity of asking once more whether the provision referred to by Mr. O'Connor is in its proper place? It seems to me that while the provision should certainly remain in the Bill, it would be better expressed if placed apart from sub-section (1) of clause 52, to which it is intended in no sense to refer.

Mr. OCONNOR. -

It should be placed in the clause affecting the powers of the states.

Mr. DEAKIN. -

That is a matter for separate consideration.

The amendment was negatived.

The clause, as amended, was agreed to.

Clause 90. - Until uniform duties of customs have been imposed, there shall be shown, in the books of the Treasury of the Commonwealth, in respect of each state—

I. The revenues collected from duties of customs and excise, and from the performance of the services and the exercise of the powers transferred from the state to the Commonwealth by this Constitution:

II. The expenditure of the Commonwealth in the collection of duties of customs and excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth by this Constitution:

III. The monthly balance (if any) in favour of the state.

From the balance so found in favour of each state there shall be deducted its share of the expenditure of the Commonwealth in the exercise of the original powers given to it by this Constitution, and this share shall be in the numerical proportion of the people of the state to those of the Commonwealth, as shown by the latest statistics of the Commonwealth. After such deduction the surplus shown to be due to the state shall be paid to the state month by month.

Mr. REID (New South Wales). -

I propose to suggest the insertion of a new clause by leaving in at the commencement the words "Until uniform duties
of customs have been imposed," and then inserting the proposals of the Finance Committee, which, I may mention, have been verbally altered from the text which honorable members hold in their hands. The words as I read them, however, are what the Finance Committee desire to have inserted. I beg to move-

That all the words after the word "imposed" (line 2) be struck out, with a view of inserting the following words:--

I. The Commonwealth shall credit each state with the revenues collected from duties of customs and of excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth under this Constitution.

II. The Commonwealth shall debit each state with-

(a) the expenditures the Commonwealth in the collection of duties of customs and of excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth under this Constitution.

(b) the proportion of the state, according to the number of its people, in the expenditure of the Commonwealth incurred by reason of the original powers given to it by this Constitution.

But any expenditure of the Commonwealth, originated by the requirements of the Commonwealth, in respect of services or powers transferred, and not incurred solely for the maintenance or continuance in any state of the services as existing at the time of the transfer, shall be taken to be incurred by reason of the original powers given to the Commonwealth by this Constitution.

III. The Commonwealth shall pay to each state, month by month, the balance (if any) in favour of the state.

The CHAIRMAN. -

Before the discussion goes any further I desire to point out that there are two amendments suggested in this clause. One is suggested by the Legislative Assembly of South Australia, and another by the Parliament of Western Australia. But I do not propose to put them, because they have already been practically disposed of. The question before the Chair now is-

That all the words after the word "imposed" (line 2) be struck out.

Sir GEORGE TURNER (Victoria). -

The report of the Finance Committee suggests that the Commonwealth shall "credit each state with the revenue collected therein from duties from customs and of excise." The committee are dealing now with the period before uniform duties are imposed, and, as I understood Mr. Reid, the amendment is simply that the Commonwealth shall credit the state with the revenues collected from duties of customs and excise. We were careful to
put in the word "therein", to make it perfectly clear that each state is to be credited with the duties collected in that state, and I shall be glad to know why that word has been left out?

**Mr. OCONNOR** (New South Wales).

Because it is really unnecessary there; it is merely a question of drafting. The clause as it is cannot possibly mean anything else than that the duties collected in a state are the duties to be credited to that state. There is no objection to put in the word "therein."

**Mr. REID.**

May it be taken with concurrence that the word "therein" is in the proposed amendment?

**The CHAIRMAN.**

Yes.

**Mr. GLYNN** (South Australia).

As this is one of the fundamental changes made by the Finance Committee, I should like to make a suggestion on points open to consideration. Sub-section (2b) provides for a per capita sharing of the expenditure; that will be very beneficial to Western Australia. We have in the subsequent clause made provision that, as a per capita distribution of the surplus would be unfair to Western Australia, a special provision should be made to meet that case. But here we find, when it comes to a question of expenditure, Western Australia is not to receive consideration from the paying point of view. Look at the position with regard to other colonies. We find that Tasmania-with a revenue about one-fourth that of Western Australia, but with a population practically the same-will have to pay the same share of this new expenditure as Western Australia. That seems to me to be unfair. If exceptional provision is made for the payment of the surplus, on the ground that a per capita distribution would be unfair, I cannot see why a special provision ought not to be made for expenditure.

**Mr. REID.**

If the Western Australians do not ask for it, surely you do not.

**Mr. GLYNN.**

It affects the whole; there is Tasmania, for instance.

**Mr. REID.**

They do not ask for it.

**Mr. GLYNN.**

I would not raise the objection if I were not prepared to offer a solution. I mentioned before that the difficulty of distributing the surplus could be got over by averaging the proportion of females and children to males in all the
colonies. I cannot see any objection to that.

Mr. MCMILLAN. -
   It would be expensive.

Mr. GLYNN. -
   There may be some humour in that, but I do not see it.

Mr. REID. -
   It is not meant for humour.

Mr. GLYNN. -
   The statistics show the proportion of males to females and children. You would then take the average proportion for the whole Commonwealth, and you could strike an average on that for each state. All you have to do is to allot the surplus according to the average proportion of males to females and children.

Mr. MCMILLAN. -
   Would it not be better to equalize matters by the importation of females?

Mr. GLYNN. -
   I see there is a little humour oozing out after all in a matter that lends itself to it, but I shall refrain from taking notice of it, notwithstanding my nationality. If that would be a fair basis for distributing a surplus, it would also be fair in the allotment of the expenditure. The difficulty in Western Australia is that the families are not in Western Australia, but in Victoria, and in other colonies, whilst the bread-winners are in Western Australia. If what I propose be carried out, there would be an additional benefit, because Western Australia would get a larger portion of the surplus in respect of people now living in the other colonies.

Sir JOHN FORREST. -
   How could you arrive at the number of bread-winners who are in Western Australia?

Mr. GLYNN. -
   It could be ascertained easily from the statistics or the census. An average could be arrived at for the whole of the five colonies, and on that average the allotment could be made. Honorable members may not see the point of what I am urging, but it ought to be very carefully considered. All that you have to do is to allow the same proportion of females and children to males in Western Australia as actually exists in the other colonies. If you do that, the allotment of the surplus per capita cannot possibly injure Western Australia.

Mr. SOLOMON. -
   If that were the only cause of discrepancy it would be all right, but that is not the case.

Mr. GLYNN. -
That is the chief obstacle to a per capita distribution of the surplus.

Mr. SOLOMON. - Not at all; there is the question of wages, which are 100 percent higher than in the other colonies, and therefore the spending power is greater.

Mr. GLYNN. - That affects production.

Mr. SOLOMON. - It affects the revenue.

Mr. GLYNN. - Decidedly; but it does not matter what the revenue is, it has to be paid whether the population is 160,000 or 260,000, and is not revenue on a per capita basis. I am dealing with the allotment of the surplus and its distribution on a per capita principle. Although the bread-winners reside in Western Australia, many of their families do not, and the discrepancy could be got over in the way I mention.

Sir GEORGE TURNER. - That would get rid of the bookkeeping difficulty.

Mr. GLYNN. - No, it would not get rid of the difficulty raised by New South Wales.

Mr. WISE. - It would get rid of the housekeeping difficulty.

Mr. GLYNN. - Undoubtedly. I offer this suggestion as a solution of one of the difficulties which face us. It would be premature for me to offer any opinion on the housekeeping difficulties. It would undoubtedly get over the difficulty presented by paragraph (b) of sub-section (2) of clause 90. We are adopting a population basis, which does not represent what ought to be the contribution of Western Australia to the expenditure on account of the original powers vested in the Federal Parliament. I can see no objection to the application of the principle I have pointed out. On another point I would like to call attention to the fact that, by not federalizing to the fullest extent (as regards defence, as suggested by Dr. Quick) on all the lines taken over, as well as Customs and Excise, you are destroying for some years-certainly for two years, and probably for seven years-the benefit of an amalgamation of those lines. Under these circumstances it will be impossible to reduce salaries and promote economy in the departments, because you have to keep each department as it stands when taken over by the Federal Parliament, or the states may object. The bookkeeping is to be kept up, so that you really postpone for seven years the benefit of
amalgamation of these lines. Why not do what was done in Germany, which would permit of an amalgamation at once? The German system federalized the Post and Telegraph departments from the start with regard to revenue and expenditure, but they made a provision for the allotment of any surplus on the federal working of those departments in proportion to the profits made in each state between 1861 and 1865. They took the surplus of each state from 1861 to 1865, and they determined upon an average in what proportion the various states should share for a period of eight years in the surplus realized by the federal working of the Posts and Telegraph department. That would be perfectly fair, and it did not, as this bookkeeping does, postpone the operation of the federalization for seven years. Under the system we are about to adopt we cannot, perhaps, interfere with any officer in order to promote economy; we cannot have a uniform rate for postage and telegrams as long as the bookkeeping is kept up. The German system would be the best one to adopt. I think we ought to add at the end of the clause the following proviso:—

Provided that nothing in this section shall be construed to prevent the Commonwealth from adopting uniform or other charges in respect of the services or powers transferred to the Commonwealth, or diminishing the cost of maintenance or continuance of any department.

If that is put in, the greater part of the objection I have urged to the amalgamation of these departments on account of the bookkeeping will fall to the ground.

Mr. REID (New South Wales).—

I can assure the honorable member (Mr Glynn) that all these matters were taken into consideration, and at one time we saw a prospect of reconciling the statistics of the colonies in the way he mentions but some honorable members showed so many practical difficulties in the way of following the movements of population, which would be necessary in order to equalize the product, that we found we had to fall back on this system. I am sorry that we could not find it possible to adopt the suggestion of the honorable member.

The amendment that the words after "imposed" be struck out was agreed to, and the words proposed by Mr. Reid were inserted.

The clause, as amended, was agreed to.

Clause 91. - During the first three years after the establishment of the Commonwealth, notwithstanding anything contained in the last section, the total yearly expenditure of the Commonwealth, in the exercise of the original powers given to it by this Constitution, shall not exceed the sum of £300,000; and the total yearly expenditure of the Commonwealth in the performance of the services and the exercise of the powers transferred from
the states to the Commonwealth by this Constitution shall not exceed the sum of £1,250,000.

Mr. REID (New South Wales). -
I propose the omission of this clause. The next clause in the draft before honorable members will fit in with the following clause (92) in the Bill.

Mr. LYNE (New South Wales). -
I should like to have some explanation.

Mr. WISE. -
It is all right.

Mr. LYNE. -
It is all wrong.

Mr. REID. -
I am with you there.

Mr. LYNE. -
Then why do you not stick to it?

Mr. REID. -
I was overborne.

Mr. LYNE. -

I can see that it is useless to oppose anything the Finance Committee has agreed to, because in that caucus they have agreed to everything, and members of the Convention seem to follow them like sheep. In reference to this matter, I think it is to be regretted that the limit of expenditure is to be struck out. It is one thing which will conduce very much to opposition to the Bill in the various states, because there is a strong and growing feeling that this Federation will be very extravagant indeed. If the limit of expenditure had been allowed to remain, that feeling could have been overcome by those advocating the Bill. In the interests of the acceptance of the Bill in the various states, this proposal

Sir JOHN FORREST. -
Oh!

Mr. LYNE. -
The right honorable member (Sir John Forrest), if any one says a word he does not agree with, wants to get on and rush things through, but we cannot do things quite so rapidly as they do in Western Australia. Perhaps Western Australia does not care much how this Bill is dealt with, as she may not intend to take advantage of it; but I am speaking for a colony which does desire to take advantage of it, if possible; and I am quite certain that the excision of this limitation will have a very bad effect in the minds of the public of New South Wales.
Mr. WISE (New South Wales). -

I do not think that the public of New South Wales are nearly so foolish as the honorable member (Mr. Lyne) would make them out to be. No one believes that the first Federal Ministry is likely to be unduly extravagant; but, if they were, no one believes that they would be restrained by a clause of this sort in the Constitution, because there are a hundred ways in which, if they thought it necessary to spend money, they could spend it without contravening a clause of this kind. The public know that if they constitute a Federal Ministry, they must trust it with the full control of every executive act. A clause of this kind would only mislead those who wished to be misled, while it could not mislead any man of intelligence in any part of the community.

Mr. LYNE (New South Wales). -

After the remarks of the honorable member (Mr. Wise), I think it is necessary for me to say a word or two. I think I know the feeling and temper of the people of New South Wales on this matter a little better than the honorable gentleman does, and I say, unhesitating, that every word he has stated is contrary to the true state of feeling in New South Wales.

Mr. DOBSON. -

No.

Mr. LYNE. -

The honorable member (Mr. Dobson) knows nothing about it, nor, I think, about the feeling in Tasmania either.

Mr. HOWE. -

He is a renegade.

Mr. LYNE. -

I do not say anything about him being a renegade, but I know that he is a very strong conservative, at any rate. However, I do not wish to say anything about Tasmania. I was referring to the statement of Mr. Wise that no person with a grain of sense could be misled by this clause if it was kept in the Bill.

Mr. WISE. -

If a war were to break out, and it was necessary to expend money, would any Ministry be confined by this clause?

Mr. LYNE. -

The clause does not refer to the spending of money for defence at all. That is an entirely different matter, as the honorable member knows. The clause was inserted at Adelaide, in order to give some confidence to the public that there would not be that extravagance which, it is believed, will
surround the Federal Government.

Mr. PEACOCK. -

The Premier of New South Wales suggested it, I believe.

Mr. REID. -

Yes, and I believe in it now.

Mr. LYNE. -

The right honorable member (Mr. Reid) suggested it, and, I think, very rightly so, too. There is a strong feeling in the minds of the public that there will be unnecessary extravagance, and it will have a very grave effect on obtaining the successful acceptance of the Bill if this is struck out.

Mr. REID (New South Wales). -

I wish to say that, although I gave way on the Finance Committee as to this clause, I certainly am of the opinion expressed by the honorable member (Mr. Lyne). I believe, whatever we in this Convention may think, that the people of Australia will look to the question of expenditure, inasmuch as they, and not we, have to find the money, as one of the serious questions of this Federation; and I must say that the rate payers and taxpayers of Australia will do well to look to those matters, as people in all British communities never fail to do. We are establishing a Commonwealth taxing power, we are leaving intact a state taxing power, we have in most parts of the colonies a municipal taxing power, and, with the establishment of a new taxing power, I think-though I hope not-this question may, in the ordinary nature of things, exercise the people of Australia very seriously. It was in order to re-assure such a feeling, if it did prevail-and I am afraid it will-that I thought it well to put in certain limitations, which would, at any rate, guarantee that the expenditure of the Commonwealth, for the first few years, should be on a strictly economical basis. Of course we understand that if any great emergency, such as war, broke out, that would over-ride every other consideration; as it always has done under all the Constitutions in the world. Moreover, that expenditure would not be a revenue expenditure, which is the only expenditure limited in this clause-it would be a loan expenditure. I am as earnestly of the opinion expressed by Mr. Lyne as he can be, but in the Finance Committee I was overborne by a large majority, and I believe there is a majority of the Convention against me, too. At the same time, I do think that Mr. Lyne is treated with great injustice when his argument is regarded so lightly.

The clause was struck out.

Clause 92. - During the first five years after uniform duties of customs have been imposed, the aggregate amount to be paid to the whole of the states for any year shall not be less than the aggregate amount returned to them during the year last before the imposition of such duties.
I. Subject to the last paragraph, for a period of five years after the imposition of uniform duties of customs, the total amount of duties of customs and excise collected in each year in any state, or estimated as hereinafter provided, as the case may require, shall be repaid to such state of the Commonwealth, after deducting from the amount, in proportion to the population, the share of the state in the total expenditure of the Commonwealth not provided for by other means of revenue. The repayment shall be made month by month to the several states, in, as nearly as practicable, the proper proportions.

II. For the purpose of ascertaining the proportion of revenue from customs and excise collected in each state, there shall for the first year after the imposition of uniform duties of customs be shown in the books of the Treasury of the Commonwealth the total amount collected in each state for duties of customs and excise.

III. During such first year the duty chargeable under the uniform Tariff upon goods which are imported into any state (whether duty has or has not been actually paid thereon), and during that year exported to any other state for consumption therein, shall be deemed to have been collected in, and shall be credited to, such other state only, and all duties of excise paid in respect of any goods manufactured in any state, and so exported to another state for consumption therein, shall be deemed to have been collected in, and shall be credited to, such other state only:

IV. For the purpose of estimating the amount of the customs and excise arising in each state during each of the four years next after such first year, an average shall be taken by dividing the total customs and excise collected in the whole Commonwealth during such first year by the total population of the Commonwealth, as shown by the latest statistics of the Commonwealth; and the result shall be deemed to be the amount contributed by each person:

V. Where the amount credited to any state during such first year is in excess of the amount of the average so ascertained, there shall in each of the next four years be deducted therefrom one-fifth part of the excess; and where the amount so credited is less than such average, there shall be added to the amount one-fifth part of the sum by which the amount so credited is less than the average; and the sums so ascertained shall be the estimated amounts to be repaid in each of the four years to the states respectively.

The CHAIRMAN. -

Before putting this clause, allow me to state the position. There are a great number of amendments suggested by various colonies on this clause,
but, on reading them carefully through, I think they have all been already disposed of, as the committee has already arrived at conclusions which are inconsistent with any of the suggestions made. Therefore, I do not think it is necessary to put any of them.

Mr. REID (New South Wales). -

I beg to move-

That all the words after the word "imposed" (line 2) be struck out, with a view to the insertion of the following words: "and thereafter until the Parliament otherwise provides-

I. The duties of customs chargeable on goods imported into a state, and thence exported to another state for consumption therein, and the duties of excise paid on goods manufactured in a state, and thence exported to another state for consumption therein, shall be taken to have been collected in the state in which such goods have been consumed.

II. The Commonwealth shall credit each state with the amount of the duties collected, and so taken to have been collected, in that state, and with the revenues collected in the performance of services and the exercise of the powers transferred from the state to the Commonwealth by this Constitution.

III. The Commonwealth shall debit each state with expenditure ascertained as prescribed by sub-section II. of the preceding section.

IV. The Commonwealth shall pay to each state month by month the balance (if any) in favour of the state.

Mr. MCMILLAN (New South Wales). -

I have no doubt the right honorable member (Mr. Reid) will temporarily withdraw his amendment, if there is a prior amendment to propose.

Mr. REID. -

Certainly.

Mr. MCMILLAN. -

I simply rose to point out that the whole phase of this question has been more or less altered since the report of the Finance Committee in Adelaide, because we are here really giving everything absolutely to the control of the Federal Parliament, except during these five years. There is no specific guarantee, there is nothing of the character of a complicated question. That being so, and this being more directory than anything else, it is a question well worthy of consideration whether this period should not be reduced to three years.

Mr. LYNE. -

You mean the bookkeeping period?
Mr. McMILLAN. -

Yes; it does not follow that if we reduce the period to three years the bookkeeping system will not go on for a further period if necessary. We are simply erecting, as was said the other day, a temporary bridge; not altogether to give the Parliament a certain period in which it should have data for its own consideration, but so that it should have breathing time to consider the whole question, and, if the Parliament finds that three years is not a sufficient period to get out the necessary data upon which to graft some further considerations in the future, then it would be very easy for it to extend the period of bookkeeping. But it is very questionable whether we ought, in such a rigid way, to make it mandatory on the Parliament that this must go on for a period of five years. We have all agreed that the difficulty of this financial problem arises out of the fact that we are dealing with an unknown quantity, that unknown quantity being the uniform Federal Tariff. It is just possible, owing to certain circumstances and conditions in the character of the Tariff, that many of the difficulties that seem to attend the position now will disappear. At any rate, within a year of the uniform Tariff there will be a flood of light upon the whole question, because this Tariff will be framed on federal principles, and, further, you will have all the machinery of your Federal Government, with all the best abilities of this continent, and with the conditions exactly before them, to consider the whole situation. In order to test the feeling of the committee I will move-

That "five" (line 1) be struck out, with the view of substituting "three."

By this amendment I am not, in any way, attempting to say that it may not take five years' bookkeeping to get out the data; but I wish to make the time as short as possible during which the Federal Parliament will be bound by this mandate to carry on a system which all of us consider is, after all, only the best solution of an evil that we cannot counteract.

Mr. Reid's amendment was temporarily withdrawn.

Mr. WALKER (New South Wales). -

I hope the committee will adhere to the period of five years. It seems to me that the first year of the uniform Tariff will not give at all reliable data to go upon. In the course of five years the present abnormal state of Western Australia will, to some extent, be mitigated. Again, Tasmania, in five years, owing to the manner in which her mineral resources are being developed, will have a much better average; and we know that Tasmania, at present, is the colony which is apparently being treated least favorably under the proposed scheme. I think there is no doubt of that, and when the time comes I will give Tasmania my support in asking for some subsidy during the five years.
Mr. REID. -
Subsidy; no, douceur.

Mr. WALKER. -
So far as the colony which I have the honour to represent is concerned, the returns for the first year of the five will be absolutely misleading, because of the enormous importations of goods which will take place immediately prior to the establishment of the uniform Tariff while over a period of three years the statistics will show our average contributions to be less than they really will be in the long run.

Mr. MCMILLAN (New South Wales). -
As a matter of personal explanation, I wish to say that the amendment which I have just moved appears on the notice paper under the name of Mr. Henry. Of course, had I known that before, I should not have moved it.

Mr. HENRY (Tasmania). -
I am only too glad that the honorable member takes the same view of this question as I take, and that he has anticipated me in regard to the amendment of which I have given notice. The clause contemplates the continuation of the bookkeeping system for the period of five years, and for any term beyond that which the Parliament may decide upon. Practically this means that we shall in all probability have to wait seven years before we obtain absolute freedom of trade. I believe I am right in saying that a considerable majority of honorable members are opposed to the bookkeeping system, and that it has been accepted as a compromise to meet the existing state of things. That we know is the feeling which exists among a number of prominent representatives from New South Wales and Western Australia. I am not now going to enter into the question of the propriety of adopting this compromise. It is sufficient that we accept the scheme as a compromise. It is quite conceivable that after five years the people of Australia and the Federal Parliament may find the bookkeeping system so costly and so irritating that they will desire to discontinue it, and the amendment would give the Federal Parliament the power to say at the end of three years-"This system has continued long enough, and in the interests of freedom of trade it is time that it came to an end." I desire to secure federation and freedom of trade amongst the colonies above all things, and, although freedom of trade will be considerably restricted by this irritating, annoying, and costly system of bookkeeping, it is a choice of evils, and I reluctantly feel that we must accept it. I hope, however, that honorable members will see the advisability of giving the Federal Parliament the power to discontinue the system at the end of three years if they think fit I should like to say a few words with regard to the remarks of
the honorable member (Mr. Walker) and others, who maintain that the experience acquired during the bookkeeping period will be of value to the Federal Parliament in determining the mode in which the surplus should be distributed.

Mr. WALKER. -

We hope that it will.

Mr. HENRY. -

I demur to that. No experience that can be acquired in five years will be helpful in determining the mode of distributing the surplus.

Sir PHILIP FYSH. -

That is an argument in favour of continuing the bookkeeping system for a longer period.

Mr. HENRY. -

No. Those who aim at perfect equity in the distribution of the surplus must be willing to agree to a perpetual system of bookkeeping. The only experience that you will acquire by the bookkeeping system will be a demonstration of the fact that there must be inequalities in the contributions of the several colonies. It seems to me inevitable that there will be such discrepancies, although I contend that in the main, considering the habits and conditions of the people of Australia, we shall not be very far apart in our relative contributions. I believe, however, that for all time, under a uniform Tariff, some of the colonies will be contributing less per head of the population than others. No man can get a real grasp of the reasons for this disparity in contribution until he has mastered the fact that, with people of the habits of the people of Australia, it is the proportion of males to the whole population that determines the contribution to a Customs revenue. We know that in Australia these conditions are always changing. We have in this part of the world a floating population; many people are continually moving from one colony to another. In one colony there may be a large preponderance of males to-day, while within a short period that preponderance may occur in some other colony. At the present time it is occurring in Western Australia. In that colony the proportion of adult males is 51 per cent., while in South Australia it is only 25 per cent. I am very much interested to note that the figures, which I worked out, based upon the consumption of a certain number of articles, to show the contribution per head in each colony, bear a distinct relation to the adult population of each colony. I say again, emphatically, that

while there is a disparity in the male adult population of the colonies there will always be a disparity in the contribution to the Customs revenue. This disparity, however, will be subject to change as the conditions of the
colonies change from time to time. It is inconceivable to me that the bookkeeping system, under which alone you would secure perfect equity and justice in the distribution of the surplus, could continue for all time, but I think that you can arrive at some basis of distribution at the end of three years as well as at the end of five years. I admit the force of the remark of the honorable member (Mr. Walker) in regard to the position of New South Wales. There is every probability that in the first year after the establishment of the Commonwealth that colony will contribute, less to the revenue than will be contributed by the other states because of the heavy stocks which will be hold by the merchants and traders there in anticipation of the coming into force of the Constitution.

Mr. MCMILLAN. -
In the first year New South Wales will contribute less than her normal contribution.

Mr. HENRY. -
Yes. I hope that honorable members will see the propriety of not tying the hands of the Commonwealth Parliament too rigidly by saying to them "You shall continue the bookkeeping system for five years," and that we shall give them the power, if the people of the country protest against the annoyance of the system, to bring it to an end after three years.

Mr. REID (New South Wales). -
I do not wish to address the Convention unless there is a prospect of the recommendation of the Finance Committee being altered, because I think that the whole of our trouble will be thrown away if the amendment is adopted. We have all felt the greatest reluctance to adopt this system of bookkeeping for five years, but its object is to give confidence to the taxpayers throughout Australia, and to create the belief that before any rough-and-ready method of distributing the surplus is adopted, an effort will be made to obtain a knowledge of the actual facts of the case by experience. The period of three years would be considered upon our side of the border as likely to give no satisfaction at all. I quite understand the inconvenience to the trading community, which has, naturally impressed the honorable member (Mr. McMillan); but we must expose them to this inconvenience in order to satisfy the feelings of the large body of the people. Are we to give way to the requirements of the commercial community, or are we to arrange for such a period of bookkeeping as will convince the people of Australia that at all events approximate justice will be done to them? We have to choose between these two positions.

Sir GEORGE TURNER (Victoria). -
I am as strongly opposed as any member of the Convention to the bookkeeping system, but I feel that, if we are to have it at all, and if its,
results are—to be of any use to the Federal Parliament, it is better to fix the period at five rather than at three years. For the first twelve months, and probably for the first eighteen months, you will hardly get fair results, because we know that the fiscal policy of New South Wales will allow of large importations being made into that colony in the years immediately preceding the establishment of federation. Therefore, while I should be glad to see the bookkeeping system swept out of existence, I think that if we are to have it as a guide to the Federal Parliament we should have it for a period of five years.

Mr. HOLDER (South Australia). -

I have always been opposed to the bookkeeping system, I do not like it, and I think that there are many arguments to be raised against its adoption. At the same time, when it became inevitable that we should adopt it, I sought to make the period as short as possible. I should have liked to have fixed upon two years, but, having accepted five years as a compromise, I feel bound in conscience to stick to that arrangement. After all, five years is a short time in the life of a nation, and a compromise having been arrived at, I hope that the Convention will accept it as a whole.

Mr. BARTON (New South Wales). -

There is one strong reason why I think the period of five years instead of three years should be adopted. There is a strong disposition amongst adverse critics to attempt to make the public believe that we are accepting the bookkeeping system in order to shunt all the responsibility in regard to the finances on to the Federal Parliament. It is argued that the Convention could deal with this question instead of remitting it to another body. The whole argument in favour of the position taken up by the Finance Committee, and which I hope will be taken up by the Convention, consists in the difference between dealing with a subject upon mere speculation and dealing with it upon sufficient evidence. Those who say, as persons have said in the press and elsewhere, that we are handing over a difficult problem to another body, with the implication that that body has no better means of dealing with it than we have ourselves, are met at once by the fact that we propose to hand the problem over only on the understanding that that other body will have that sufficient evidence which it is impossible for us to obtain at this stage. Looking at the matter in that way, is it not quite plain that the mutable conditions of trade—the great changes which will occur after the change from five or six diverse Tariffs to a uniform Tariff—will furnish evidence every day that will assist in a reasonable final adjustment? Is it not also plain that while the effect of the more sudden change, and that alone, is manifest, that this is not the time to
decide finally upon what should be the distribution of the surplus? What then we have to arrive at, I take it, is some period of time which will put into contrast the mere change that will occur as the first result of the alteration of the Tariffs to a uniform Tariff, and those further settlements of conditions which will supervene upon that sudden change. This affords evidence which will enable the Commonwealth to judge between the period immediately succeeding the change and the period approaching that settlement of conditions which will follow on that. To my mind, it is obvious that three years will not serve this purpose. Much as I respect—and I do respect very highly—the financial sagacity and the strong reasoning power of my honorable friend (Mr. McMillan), I do not think that three years will afford sufficient evidence for giving the foundation upon which alone the Commonwealth ought to rest its final distribution of the surplus. My honorable friend's argument would be a good one if he could show that the Federal Parliament would be as likely to arrive at a just determination upon the experience of three years as upon the experience of five years. I take it the difference would be this: The experience of the first one, two, or three years would probably be the experience of a period during which sudden changes would be making themselves felt. The next period following that year, to say five or six years, would be a period during which the conditions would be assuming a normal aspect, so that the contrast between the change itself and the settlement of conditions would afford evidence to the Federal Parliament on which to determine this distribution for the future. That is briefly the ground on which I feel bound to rest my opposition to any limitation of this period to three years. I confess at once that five years, like three years, would

of the conditions of trade and the effects that follow the imposition of a Tariff, that three years would scarcely be sufficient to test the effects of the uniform Tariff. If that is so, a longer period than three years is necessary. Our view of this matter must be affected by our unanimous dislike of bookkeeping transactions between the Commonwealth and the states. We only impose these limits of bookkeeping until a sufficient period elapses to enable the Commonwealth to obtain the necessary evidence. Until that evidence is obtained all that we can do in the way of an attempt at settlement is not only premature but mere guesswork. Having arrived at a period which does afford something like a sufficient test, we should take that period. Three years would be an insufficient test, but by the end of five years there would be a probability either of the conditions becoming normal, or, at any rate, of their tendency being so observed as that the Federal Parliament would know what the result would be which was to
follow on the Federal Tariff, under conditions apart from sudden change
and of a return to a normal state of things. I believe that the Finance
Committee have acted with discretion in fixing five years, and I shall
support their view of the subject.

Mr. SYMON (South Australia). -

I do not understand the Hon. Mr. McMillan's view to be that three years
will be sufficient or insufficient. The view my honorable friend takes, and
it is one in which I agree with him, is that the determination on that
question ought to be left to the Federal Parliament. You propose to leave
the determination to the Federal Parliament of whether five years is
sufficient. That is merely the fixing of a minimum period, but if the data
then available to the Federal Parliament is not considered enough, it will be
open to them, under the clauses as they now stand, to extend the period for
another five or even ten years. But there is a feeling amongst a large
number of people, and a feeling that might give rise to considerable
criticism of these provisions, that this bookkeeping method is undesirable.
We know that the honorable members who have spoken—the Hon. Mr.
Holder and others, who have given great attention to the subject—have
expressed their dislike to this bookkeeping method, and there is no doubt
there is a great deal of feeling to the same effect outside. If we can
minimize that in some way without limiting or hampering the Federal
Parliament it is desirable that we should do so. The amendment does not
impose any restriction on the Federal Parliament. It merely says that the
minimum period shall be three years, and, therefore, it will be something,
at any rate, with which to meet adverse criticism outside on the matter of
bookkeeping, because we can say that it has been reduced, subject to the
control of the Federal Parliament, to the shortest period consistent with that
condition of mutability to which the leader of the Convention has referred.
The amendment is not submitted with a view of restricting the Federal
Parliament, but of enlarging their discretion, and my own disposition is to
support it.

Mr. REID. -

Enlarging the discretion takes away the certainty.

Mr. SYMON. -

The right honorable member has put what is the strongest argument in
favour of the provision. I agree that if the Convention are satisfied now that
five years is the minimum which ought to be prescribed we should not
shorten it. I assent to that emphatically. If the Finance Committee, by
whom, of course, we are greatly guided, are of opinion that that is the
shortest possible period within which these conditions of change can be got
rid of, that is an unanswerable argument. I admit that, but, subject to that, I
think there is very great force in the view of my honorable friend.

Sir JOHN DOWNER. -

I suppose we are all agreed that we should like to do away with the bookkeeping system. We have recommendations brought up by the gentlemen in charge of the Governments of every one of the colonies, who all, we may fairly well suppose, understand the public feeling in their own colonies. All agree that five years would be more acceptable to the general public than the shorter period. To me, on a question like that, federation is first and the detail nowhere, and I should not dream of seriously disagreeing with the unanimous opinion of the Premiers and Treasurers of all the colonies. They know their own concerns. They know the feeling of the colonies they represent. They know the difficulties they may have to meet, and they know the way in which they will be best surmounted. It being agreed by all of us that there must be an interim in which this objectionable method will have to be pursued, it would be much simpler to take the recommendation coming from the most authoritative source which can exist in the colonies, and particularly as it is a unanimous recommendation, rather than to endeavour to gratify our own private notions, which may be founded on inferior experience and a less understanding of the general views of the population of Australia. I hope that the clause will be passed as it stands.

Mr. McMillan's amendment was negatived.

The CHAIRMAN. -

The amendment now before us is to strike out all the words after "imposed."

Sir GEORGE TURNER (Victoria). -

This clause opens up a very important question, that of how we are to deal with the various states during the period of transition. Honorable members will recollect that during this period the states Treasurers, under this proposal, will have no guarantee whatever as to the amount of money which they will derive from the customs and excise duties of their respective colonies.

Mr. LYNE. -

They will be left high and dry.

Sir GEORGE TURNER. -

We are leaving it, under the proposals as they now stand, to the Federal Parliament to impose such duties as it may think proper. We are also giving it power to expend as much of the money it obtains as it thinks proper, and in such a way as it may deem best, and it is to return to the states Treasurers as much as it may choose. That is the position which we
have to face, and it does appear to me to be a very serious one indeed. It is serious, not alone looking at existing circumstances, but serious when we come to look at the fact that the states will have to provide that large amount of money for the federal expenditure-an expenditure which has not to be provided for now. I believe that Victoria will have to pay probably a third of the federal expenditure, which will mean something over, if not considerably over, £100,000 a year. Then we know also that the Treasurer will lose the amount now collected from intercolonial duties.

Mr. HOLDER. -

The new Tariff will make that up.

Sir GEORGE TURNER. -

Whether we make it up or not by other means, we shall undoubtedly lose the revenue now derived from the intercolonial duties, which in our colony would probably amount to £200,000 a year. The total amount, if Queensland does come in, would be close upon £1,000,000. If Queensland does not come in, I suppose it will not be more than probably one-half that amount. Then we have also to bear this in mind, that it is said that the money represented by these intercolonial duties will remain in the pockets of the people. To some extent that may be true, but it will not remain in the pockets of the people who now pay the duties. Take the item of sugar alone. We cannot for one moment, I think, say that the labourer who buys his two or three pounds of sugar is going to get it any cheaper after the duties are taken off than he does now.

Mr. FRASER. -

He ought to.

Sir GEORGE TURNER. -

The man who buys his two or three bags or his ton of sugar at a time will get a reduction.

We often see notices put up that in consequence of a reduction of duty the price of sugar is reduced.

Sir GEORGE TURNER. -

You may see such notices, and you may possibly see a notice with a large 2s. and a small 113/4d. following it. We cannot suppose that the man who buys his sugar in very small quantities is going to save anything when these intercolonial duties are taken off. While to some extent it may be true that the money will remain in the pockets of the people, as a matter of fact it will not remain in the pockets of the people who have to pay the new duties that will be put on for the purpose of raising the amount the
Treasurer will lose by the cessation of these particular duties.

Mr. REID. -

But your argument is not concerned in that at all; your argument is that the Treasury will have so much less—it does not matter where it goes. Your argument is quite good in either case.

Sir GEORGE TURNER. -

Yes, but I was referring to an argument used the other day, that the money will remain in the pockets of the people.

Mr. SYMON. -

Mr. Isaacs proved that absolutely.

Sir GEORGE TURNER. -

Well I have to differ from my legal adviser occasionally, more especially when I believe he is wrong and I am right. I often have to give way to him, but I like to take an opportunity of disagreeing with him when I can get a fair chance. I was pointing out that these other duties would have to be put on, and the result with us will probably be that a large number of articles now on our free list will have to be made dutiable for the purpose of raising the extra amount which will be required. Then we will probably be also faced with the difficulty that if certain of our duties are reduced by the uniform Tariff, an they may be, if they are not reduced sufficiently low to kill our protected industries and largely increase the imports, we will there also lose a large amount of revenue. Then again, look at our Post-office: We have a 2d. letter postage, and a postage on newspapers. If the Federal Parliament says we shall have a 1d. letter postage, and no postage on newspapers, there again, we, as a state, will lose a considerable amount of revenue. Now, we have to face these difficulties. We have to look ahead and see how we are going to raise the very large amount of money which we will probably lose if these alterations of the Tariff be made. Added to them, under another proposal in this Bill, while suffering those heavy losses ourselves, we probably will have to share the losses of Western Australia to a considerable amount. I saw it mentioned the other day that Western Australia would lose some £380,000, and that the other colonies would have to make that up.

Mr. SOLOMON. -

That is rubbish.

Sir GEORGE TURNER. -

Of course that estimate is not correct. At the start Western Australia may lose, I reckon, £200,000.

Mr. HENRY. -

Even that estimate is quite speculative.

Sir GEORGE TURNER. -
At any rate, Western Australia will have a heavy loss, although a loan gradually reducing as time goes on.

Mr. DEAKIN. -
Have you allowed for the revenue from the new duties?

Sir GEORGE TURNER. -
Yes, allowing for the new duties that would be put on sugar, tea, and other articles, I believe that instead of losing £380,000, which it is said Western Australia will lose, the loss of that colony will probably be reduced to something like £200,000. But of that loss we, as a colony, will have to find our share.

Mr. LYNE. -
So will we.

Sir GEORGE TURNER. -
Yes, but I am speaking of Victoria.

Mr. HOLDER. -
If Western Australia loses £200,000 it will not be £200,000 more than the average loss of the other colonies. You have to take another big slice off that £200,000

Sir GEORGE TURNER. -
Of course Western Australia will have to bear her proportion of the loss. I am allowing for that in the amount I am deducting £180,000—because her proportion would

Mr. HOLDER. -
You have first to take from off that £200,000 the amount of the average loss all round, and then apportion the rest among the states.

Sir GEORGE TURNER. -
Yes; but if we take in the profits of New South Wales, as it is suggested we have to do, then, of course, the amount we will have to pay will be considerably larger. But even if we take the average loss all round off the loss of Western Australia, we will still have to pay a considerable amount. If it be not so, there is no reason why we should put that provision in the Bill. I am confident that unless the amount which Western Australia is going to get is something considerable, her representatives will not have their colony specially mentioned in this Bill as receiving exceptional treatment.

Mr. LYNE. -
They know what they are about.

Mr. SOLOMON. -
They cannot recommend the Bill to their people if we do not insert such a
Sir GEORGE TURNER. -

I am not going to say that I intend to oppose that provision, but I want to see if it be not possible to devise some scheme which will not throw this heavy loss on the colonies at the present time. I believe that these colonies cannot bear it. I believe it will be a matter of utter impossibility if in Victoria we are to lose those various amounts that I have mentioned, and if we have to make up some considerable amount as our share of the special loss of Western Australia. I, as Treasurer, say that I know of no means at present by which this colony can raise that amount of money except one means: We might put on a considerable heavy land tax, which it would be almost impossible to get through our Parliament.

Sir WILLIAM ZEAL. -

If you reduce the minimum of incomes liable to the income tax to the same level as in South Australia, you will get all you want.

Sir GEORGE TURNER. -

No, we should not got more than £50,000 extra. I have calculated that. But we could not carry such an amendment of our Income Tax Act.

Mr. ISAACS. -

It would put the burden on the wrong people, too.

Mr. DEAKIN. -

Put it on the Legislative Council; that is a fair offer.

Sir GEORGE TURNER. -

A scheme has been suggested to me with regard to this bookkeeping—I believe it has also been suggested to other members of the Convention—that for the purpose of avoiding this bookkeeping system altogether, we should, if we possibly can, now devise what would be a fair amount to recoup to each colony on the basis of the population, not on the per capita basis. We, in Adelaide, endeavoured to get rid of the difficulty of the inequality in the start of the per capita system by means of a sliding scale, which I still heartily approve of, and which I would have been glad to have seen adopted. But Mr. Harper, who is a financial man amongst us in Victoria, and also a merchant, assures me, from his experience of doing business in all the colonies, that this bookkeeping system will absolutely fail to get anything like a true record of trade transactions between the different colonies, and he has suggested, and I think it is well worthy of the consideration of the Convention, or at all events of the Finance Committee, if it can be called together again, that we should take the experience of a certain number of past years—three, four, or five years—ascertain the whole of the duties that were in force in all the colonies, and what was the return per capita of the Customs revenue, and then endeavour to modify those
amounts. He tells me that in Victoria the amount would be about £1 13s.,
and while we may have to pay more to the Customs revenue by our free list
being curtailed, or we may have to pay less by alterations of the duties, he
suggests we might take that amount as a fair basis on which to work. Then,
ascertaining that in South Australia they pay a certain amount, that we
should on that either give them a little more or a little less as in the
circumstances may appear to be just, and so deal with all the colonies.

Mr. LYNE. -
That was the first proposal made in the Finance Committee.

Sir GEORGE TURNER. -
I made a proposal somewhat similar to that in the Finance Committee,
but this is the proposal which has been suggested to me by Mr. Harper.

Mr. SOLOMON. -
You proposed to pool it all, didn't you?

Sir GEORGE TURNER. -
Well, there have been so many proposals before the Finance Committee,
and I have heard and read so many, that I am always in doubt whether I or
somebody else proposed it.

Mr. SOLOMON. -
You proposed to pool it all, but you backed out of it afterwards.

Sir GEORGE TURNER. -
This proposal suggested by Mr. Harper is simply for the purpose of
getting rid of the bookkeeping, which we all admit is a nuisance. If it were
possible for the Finance Committee to be called together again-I do not
think the Convention could go into all the details of the scheme and give it
that full investigation which the scheme requires-and if the Convention
could see their way to adopt a scheme of this kind, it would do away with
our bookkeeping system by now fixing for the five years a certain rate per
head, which should be the return to each of the colonies, basing that sum
on the actual returns for the past five years, and making allowance for the
different colonies assisted, dealing fairly, justly, and equitably with them
all.

Mr. MCMILLAN. -
It would put each colony into a very invidious position, especially those
which have to give away something.

Sir GEORGE TURNER. -
Well, I should be glad if an opportunity could be given for the further
consideration of that particular scheme. What I want to point out more
particularly is, with regard to these losses, that many of the colonies cannot
delay the consideration of them. I believe we ought to keep these colonies
in a safe, sound, and solvent condition, and endeavour to make provision by means of which the colonies will be able to have repaid to them practically the amounts they are now receiving. I believe that the losses I have referred to should be made up by the Federation itself. It may be said- "How can the Federation make up the losses unless it takes the amount away from the state revenues?" Well, the Federation sooner or later must borrow, and I think we should be perfectly justified in formulating a scheme which would throw the onus on the Federation for the first five years of recouping to the different states the losses they will sustain, and which they will find out by the account keeping system, allowing the Federation to raise that money, as they will have to raise money afterwards, by means of a loan.

Mr. SYMON. -

That is, to borrow money to contribute to the revenue of the various states?

Sir GEORGE TURNER. -

To borrow money to keep the states in such a condition as will enable them to meet their obligations and pay their way.

Mr. FRASER. -

To borrow money to pay interest-a ruinous process!

Mr. REID. -

I am afraid our securities in the London market will be in a bad condition if we do that.

Sir GEORGE TURNER. -

I am looking at this matter in the light of my knowledge as Treasurer of one of the colonies for the time being, and I am looking to the position the Treasurer of a colony, situated as we are, will be in when he has to make his Budget statement, and has to say to his Parliament-"I cannot tell you what your revenue is going to be; I do not know how much the Federation is going to raise, nor how much it is going to spend, and therefore I do not know how much is going to be returned to this state." There will be a grave fear in the minds of all our people that there will be a heavy loss to the different colonies in consequence of these various changes which are to be made. That fear will certainly be in the minds of our people outside unless we can show them distinctly that it is a fear which has no foundation; and I shall be glad to be satisfied that it has no foundation so far as I am concerned. But, unless this fear is removed, we shall find that one more difficulty will be added to confront those of us who are most anxious to bring about the accomplishment of federation.

Mr. HOLDER. -
Have you ever borrowed money in your colony to pay your way?

Sir GEORGE TURNER. -

No.

Mr. HOLDER. -

Yet you propose that for the Federation.

Sir GEORGE TURNER. -

But we have never been in the difficult position in which we shall be placed by means of these chances. I am not wedded to the scheme of borrowing money if any other scheme can be devised, but I say that unless we can satisfy the people that they are not going to have a heavy loss in consequence of the coming, about of federation, and that we shall not be called upon to make up the amount lost by other means, we shall have a difficult task to persuade them to enter into the Federation. I shall be glad if any other scheme can be devised to get over the difficulty, but it is a difficulty that has confronted me for months past, and I have never been able to satisfy my own mind in regard to it. I shall be glad if some of the financial authorities whom we have in this Convention can show me that I am wrong, and that the fears of the people, that they will be called upon to raise such a large amount of money, are unfounded. At present, however, I foresee the grave difficulties that the people and the state Treasurers will be faced with hereafter; and I do say that for the sake of federation, and indeed for the sake of the solvency of the states in time to come, we should apply ourselves to devising some means whereby the various states will be able to get back at least the amount of money they are collecting at the present time, to enable them to carry on their affairs. We put a guarantee in the last Bill which has been omitted now. That guarantee would have forced the Federal Parliament to raise the necessary money either by customs duties of a larger amount than. they otherwise would raise-which would be one means of getting the money-or by some means such as borrowing. I do not like the borrowing plan myself. I confess that it is one that I should be sorry to adopt if any other scheme were open. I have only suggested that it is one way out of the difficulty we are faced with. I think that we should throw the onus upon the Federal Parliament of raising sufficient money by Customs or in some other way to enable the colonies to carry on to the end of the five years, by which time they will have made provision, either by a natural increase of revenue or by not increasing their expenditure, to meet the difficulties facing them. But I fear that unless we make some such provision the state Treasurers will be placed in an extremely difficult position. I bring the matter forward so that we may face it, and so that we may satisfy the people that their fears are not well founded; but in order to satisfy them of that, I am convinced that we must
devise some scheme for getting rid of what at present appears to me to be a
great difficulty to contend against.

Mr. SOLOMON (South Australia). -

I recognise, with the Right Hon. Sir George Turner, that we have at last
to face this somewhat difficult problem - a problem which has been
avoided at each previous

meeting of the Convention—that is, how the revenue of the Federal
Parliament is to be raised. We have taken it for granted that the whole of
the revenue is to be raised by a uniform Tariff. But, as pointed out by the
last speaker, there is nothing in this Bill—nothing even in the suggestions of
the Finance Committee—to insist upon the revenue which is to be raised in
place of the revenue now to be given up by the various states being
obtained from the taxpayers of the Commonwealth by means of a Customs
Tariff.

Mr. REID. -

And no colony suggests that that should be put in the Bill.

Mr. SOLOMON. -

No colony, perhaps, has suggested it, because it has been taken, to a great
extent, for granted. But the Right Hon. the Premier of New South Wales
will, perhaps, call to his memory that, at the first meeting of the Finance
Committee in Adelaide, there was an argument upon this very point; and
the real reason—because it is no use mincing words at this stage of our
proceedings—why a definite instruction was not placed in this Constitution
as to the mode of obtaining the revenue was because it was thought that it
would be dictating to the people of Australasia what the fiscal policy
should be in the future. That reason was, as pointed out most strongly by
the Premier of New South Wales, a reason which would materially affect
the people of New South Wales as to coming into this Federation. It was
admitted all through that the probability was that the Federal Parliament
would frame a Tariff which, while not, perhaps, being so protective in its
operation as the Tariff of Victoria or the Tariff of South Australia, would
be a revenue-earning Tariff, and which would produce nearly as much, in
the aggregate to the whole of the colonies as is at present produced by the
existing Tariffs of the various colonies. That is to say, that a revenue Tariff
could be framed—and I think that on more than one occasion Mr. Reid has
mentioned that a revenue Tariff might be framed—embracing only a very
few lines, which would return to the Commonwealth a sum of £6,000,000,
or about, or even over, that sum, which would be equivalent to the
aggregate amount collected in the various colonies now. If we had an
assurance that this course would be adopted, that a revenue Tariff would be
framed by the Federal Parliament as the means of raising the revenue which the various colonies are to give up, there would be little occasion for the fear which is now expressed by the Premier of Victoria. But it has been pointed out over and over again that, although it has been taken for granted by this Convention that the Customs which the states are giving up entirely, are to be the means of raising the revenue for the Commonwealth, there is a power in this Bill, in clause 52, which gives the Commonwealth the fullest possible power to raise money by any other mode of taxation. It is just as well when we are on this most important branch of our work that we should face the question and declare straight out—even though it may be a difficult thing to recommend to the people of any one particular state—that we expect the means of revenue to be adopted by the Federal Parliament to be precisely the same means of revenue as we give up to them; that is, the Customs and Excise.

Mr. Reid. -
That means heads I win, tails you lose.

Mr. Solomon. -
No; I think the Premier of New South Wales has admitted that he fully expects that the revenue will be raised in that manner.

Mr. Reid. -
I have never admitted anything as to what the future policy or Tariff of the Commonwealth would be. No man can make an admission on such a subject; because he does not know.

Mr. Solomon. -
I did not say that he had prophesied that there would be any special Tariff, but he has said that he was prepared, at least, for the revenue being raised through the Customs, and not through direct taxation.

Mr. Reid. -
I have never admitted anything of the kind; I have never made any statement on the subject.

Sir George Turner. -
The right honorable gentleman said the reverse on one occasion by an interjection.

Mr. Solomon. -
Well, we have a definite statement from him now that he does not desire to be bound in any way; that the colony of New South Wales, which he represents, does not desire to be bound in any way as to the manner in which the Federal Parliament shall raise revenue.

Mr. Reid. -
Or to bind.

Mr. SOLOMON. -

But as against the other four or five colonies, the policy of which is admitted on all sides, because I do not think there is a member of the Convention representing any other colony who will not say that he does not fully expect that the revenue of the Commonwealth will be raised from Customs and Excise.

Mr. GLYNN. -

Not for ever.

Mr. SOLOMON. -

A shorter period will do for me, say ten or fifteen years. If the members who represent South Australia, Tasmania, and Victoria were to go back to their constituents and to say-"Here is a Constitution under which we have no security that the revenue will be raised from Customs; we are giving up all right by our states to raise any revenue from Customs; we are placing ourselves in the hands of the Commonwealth, and it may raise, if necessary, by direct taxation, £6,000,000," will honorable members say that the Constitution would be accepted?

Mr. LYNE. -

That is what you are doing by this Constitution.

Mr. SOLOMON. -

We are not doing anything of the sort, and that is my complaint. The reason why I indorse the fears of the Premier of Victoria is that I can see that under this Bill we have not laid down one straight principle as to the mode of taxation for a given number of years.

Mr. LYNE. -

That is what I say, and you are getting no guarantee that you will receive back the Customs revenue which you are giving up or that you will get any portion of it returned.

Mr. SOLOMON. -

If not, these very carefully-considered clauses as to the mode of distributing the surplus are of little value beyond the paper they are printed upon.

Mr. LYNE. -

That is what I think.

Mr. REID. -

No one denies that under any conceivable fiscal policy a large amount will be received from Customs. Under the New South Wales Tariff on four or five articles we raise £1,500,000 a year.

Mr. SOLOMON. -

Precisely; but we know that under the New South Wales Tariff, if applied
to the Commonwealth, there would be a deficiency in the revenue of the other states of 40 or 50 per cent. That is really the position, and I think that is the position, although not put in such plain terms, which the Premier of Victoria desired to take up. His argument was very cogent and deserving of the closest attention at this juncture. It was that, whilst we have a series of clauses here given as to how the Customs and Excise revenue is to be collected, and how it is to be distributed in a certain way, we do not place any mandatory clause in this Bill, which will insist upon the Federal Parliament raising any portion whatever of the federal revenue from Customs. On the other hand, there is a sub-section of clause 52 which says the Federal Parliament is to have the right to raise revenue by any other mode of taxation it pleases other than Customs. So we are absolutely giving away the whole sources of our revenue to the Federal Parliament if necessary. Some honorable members may say-"What suggestion do you make in order to give the security which the last speaker asks for?" What security have the states that they will have anything returned by the Commonwealth Parliament which will be nearly equivalent to the amount of revenue that they collect for themselves at present?

Mr. LYNE. -
There is no security at all.

Mr. REID. -
If the limitation clause had been left in you would have had the security, because the Federation then could not spend more than a certain amount per annum.

Mr. SOLOMON. -
I quite admit that; but even though that clause has gone by the board, for various reasons, there is still another means of getting over this difficulty, which appears to me to be the greatest we have to contend with. Every member going back to his constituents will be asked two or three pertinent questions with regard to the finances of the colonies. The first will be: What is likely to be our proportion of the expenditure? That may be easily answered, but not so easily answered as it would have been if clause 87 had not been struck out, because the Federal Parliament now has a perfectly free hand. The next question, say in South Australia, will be: Where are we going to derive the £500,000 of revenue which we shall lose by giving up the Customs?

Mr. LYNE. -
By direct taxation.

Mr. WISE. -
It is purely imaginary that any loss will occur.

Mr. SOLOMON. -
I admit it is uncertain, and it will be that uncertainty which will be a bar to our getting a Constitution of this kind accepted by the people of the various colonies.

Mr. WALKER. -
The Federal Parliament will surely protect you.

Mr. SOLOMON. -
I am not throwing the slightest doubt on the desire of the Federal Parliament to do justice to each colony, but in the Federal Parliament you will have the same difficulty as we have in the colonial Parliaments. The fiscal policy in the Federal Parliament will be one of the hottest and most hardly-fought questions to be decided. The Premier of New South Wales will probably be a prominent member of the Federal Parliament, with a large number of his supporters who at present hold him in office in New South Wales. They will be rabid free-traders.

Mr. WALKER. -
Staunch free-traders.

Mr. SOLOMON. -
I will withdraw the word "rabid."

Mr. LYNE. -
"Rabid" is the best word.

Mr. SOLOMON. -
I know "rabid" is only applied to protectionists. The Premier, supported by perhaps a free-trade majority returning a large percentage of free-trade members to the Legislative Assembly, will do his best, unless in the course of events he modifies his opinions, as leading politicians sometimes do, to insist that the Tariff of the Commonwealth shall be something like the present Tariff of New South Wales. The revenue derived from such a Tariff while it might be sufficient for the requirements of New South Wales, will be insufficient for the requirements of the other colonies.

Mr. LYNE. -
It would not be sufficient for the requirements of New South Wales. It is not sufficient for her requirements now.

Mr. REID. -
It would not be sufficient if there were an extravagant Government in power.

Mr. SOLOMON. -
Suppose such a Tariff were in operation throughout the Commonwealth, what would the other colonies do? Suppose a majority in the Federal Parliament were inclined to agree to a moderate Tariff, such as that which
now obtains in New South Wales, what would be the position of a colony like South Australia? There every possible avenue of revenue has been strained to its utmost limits. We have our land tax, our income tax, our probate duties—all strained to the very last limit that the people will bear. If it were possible for the Federal Parliament to come upon us and ask our people for another £250,000 or £300,000 a year, do you think we should be able to raise that amount? To present a Constitution containing such a possibility to our people would mean its immediate rejection. I have not been led to make these remarks entirely by the suggestion of the Premier of Victoria. This difficulty has been running through my mind for a considerable period, in fact ever since I took part in the meetings of the Finance Committee in South Australia. The only suggestion I have yet heard that is likely to in any way cope with the difficulty is that thrown out by the honorable member (Mr. Holder). He suggested that a clause should be inserted in the Bill providing that the Federal Parliament should return to the various states 95 per cent. of the revenue collected from Customs and Excise.

Mr. HOLDER. - Nineteen-twentieths.

Mr. REID. - That provision would offer the strongest temptation to the Commonwealth Parliament to raise all it could by direct taxation, because it would keep for itself all money raised by direct taxation.

Mr. SOLOMON. - Yes. The provision requires a still further qualification. Supposing, however, that the suggestion were adopted, if the Commonwealth raised the aggregate amount at present obtained from Customs and Excise by the different colonies—£6,000,000 odd—it would be able to expend, roughly, about the sum originally placed in clause 87—£300,000 a year.

Mr. REID. - The Commonwealth could go on levying taxation in other directions.

Mr. SOLOMON. - Exactly. It would be of no more protection to the states to say that the Commonwealth should return 95 per cent. of the amount raised by customs and excise duties than to say that it should return an exact amount, unless a stipulation was introduced as to the way in which its revenue should be obtained.

Mr. REID. - Or as to the total amount of revenue to be obtained.

Mr. SOLOMON. -
We may leave the total amount to be regulated by the amount that we allow the Commonwealth to retain, provided that we do one thing. Undoubtedly, in the sub-section of clause 52 which deals with the right of taxation, we have given the Federal Parliament far too much power. I admit that it must be given the power to raise taxation in any way it thinks fit in cases of emergency—a power to be used only as certain forms of taxation are used in England, in times of war.

**Mr. LYNE.** -

Hear, hear. That is what was intended.

**Mr. SOLOMON.** -

Yes. I have attended many meetings in South Australia in which it was pointed out by myself and other candidates that this power of taxation was intended to be used only in cases of the direst necessity.

**Mr. REID.** -

In New South Wales an exactly opposite interpretation was given.

**Mr. SOLOMON.** -

That shows how necessary it will be for us before finishing, our work to make sure that this clause means exactly what nine-tenths of the members of the Convention intend it to mean.

**The CHAIRMAN.** -

Does the honorable member think that his remarks are relevant to the clause?

**Mr. SOLOMON.** -

Undoubtedly. The clause opens up the whole question of the manner of taxation. We have given to the Federal Parliament the whole of our Customs and Excise revenue, and we have also given them power to raise direct taxation. It appears to me that the only satisfactory way in which we can answer the questions of our constituents as to how they are to be taxed, and how their money is to be spent, is to adopt in the first place the suggestion of the honorable member (Mr. Holder).

**Mr. LYNE.** -

That will not be sufficient.

**Mr. SOLOMON.** -

No; but it will give a guarantee that nineteen-twentieths of the Customs and Excise revenue will be paid back to the states, and that only 5 per cent. of it will be expended by the Commonwealth, which means that during a period of years, at any rate, the expenditure of the Commonwealth will not be extravagant. There will be some knowledge of what federation will cost each state—knowledge similar to that contained in clause 87, which we have eliminated.

**Mr. REID.** -
Five per cent. of £6,000,000 is exactly the amount contained in that clause.

Mr. SOLOMON. -
Yes; but I think the proposal of the honorable member (Mr. Holder) is the better one to adopt. It is no use saying that we shall have a certain amount returned from Customs, and a certain amount retained for the expenses of the Commonwealth, unless we also limit the Commonwealth Parliament as to their modes of taxation. We have given up our Customs and Excise absolutely. Do we all thoroughly appreciate the fact that under clause 52 we are giving up all other modes of taxation also, if necessary, and that we leave as an open question to be fought out in the Commonwealth Parliament the form of taxation the Commonwealth shall adopt? I do not think the majority of the Convention ever intended that.

Mr. LYNE. -
They have not thought of it at all.

Mr. SOLOMON. -
I think they take the sub-section of clause 52 to be an emergency provision. I believe I am right in that conjecture, and that I echo the opinion of a majority of the Convention.

Mr. HIGGINS. -
Do you mean that the power of direct taxation is only an emergency provision?

Mr. SOLOMON. -
Yes. Under clause 52 the Federal Parliament is empowered to raise revenue by any other mode of taxation. That goes further than the members of the Convention intended.

Mr. REID. -
They must be little children. Do you think Sir Samuel Griffith was such a child that, if he intended that provision to be restricted to one purpose, he would not have put that purpose in?

Mr. SOLOMON. -
I cannot say what Sir Samuel Griffith's idea was, but I am sure of this that it has never been appreciated by the people of the colonies or by the members of the Convention, that under this clause all the revenues of the Commonwealth might be raised by direct taxation. A free-trade majority might insist upon that.

Mr. REID. -
Surely the majority of the Parliament is to rule.

Mr. SOLOMON. -
Most of the colonies do raise a certain proportion of their revenue by direct taxation. We have framed a number of clauses to provide for the method of distribution of the surplus revenue, which we all think is to be obtained by means of customs and excise duties. There is no clause in the Bill which says that the revenue shall be raised in that way.

Mr. LYNE. -

There is nothing in the Bill to say that any portion of the revenue shall be raised by Customs.

Mr. SOLOMON. -

This is a point upon which we do want some definite and clear provision in the Bill.

Mr. SYMON. -

That would be settling the policy of the Federal Parliament.

Mr. REID. -

What is the use of taking a vote at the polls if you square it all in the Bill?

Mr. SOLOMON. -

My honorable friend (Mr. Symon) says that that would be settling the policy of the Federal Parliament—but to what extent? Does not the honorable member see that with a comparatively free-trade policy the £6,000,000 now raised in the aggregate throughout the colonies could be raised by the Federal Parliament? To say that a revenue equal to our present revenues should be raised through Customs and Excise would not be dictating to the Federal Parliament that they should have a protective policy. It would simply mean that a revenue Tariff of some kind should be imposed that would bring in in the aggregate £6,000,000. it is admitted by most of the Treasurers present that a Tariff not at all approaching the protective Tariff of Victoria could be framed that would bring in far more than £6,000,000 per annum, and that would not cause any great hardship, but that would bear with equal weight on all.

Mr. SYMON. -

I thought you wanted to declare that for all time the revenue should be derived from Customs.

Mr. SOLOMON. -

No, for a period of years. The point was raised by the Premier of Victoria that there was a

Mr. REID. -
Supposing that a majority of the electors of the Commonwealth are in favour of that method of taxation?

Mr. SOLOMON. -

The strain on my imagination to suppose anything of the kind would be far too severe.

Mr. REID. -

Then why are you frightened?

Mr. SOLOMON. -

I am frightened of this—that the Constitution does not stipulate in any very clear terms how the revenue of the Commonwealth is to be raised. It leaves it an open question whether after having swept away our local customs and excise duties the revenue will not be raised by direct taxation. That is not a proposal that would be accepted by the people.

Mr. ISAACS. -

Have not the people got control of the whole matter? You are forgetting that the Federal Parliament will be elected by the people.

Mr. SOLOMON. -

No, I am not; but I remember this fact, that the branch of the Federal Parliament which will dictate the fiscal policy, and will have supreme power in regard to money matters, will consist, to a very large extent, of the representatives of the larger colonies. I recognise that the difference between the fiscal policy of Victoria and New South Wales will supply a balancing power; but I say that there should be some declaratory clause in this Bill, setting out that it is the intention of the Convention that a proportion—and for a term of years a considerable proportion—at least of the revenue should be derived from customs and excise duties.

Mr. REID. -

Have we any commission from the people to indicate in this Bill that the fiscal policy of the Commonwealth shall be protectionist or free-trade?

Mr. SOLOMON. -

No; and I do not think that this would convey any such indication. I quite understand the attitude taken up by the right honorable member. I know that the question is a very difficult one for him. I know that if he had to return to New South Wales with an admission that the larger portion of the revenue of the Commonwealth would have to be obtained from the Customs his position would be a very difficult one.

Mr. WALKER. -

Not the larger portion, the whole.

Mr. SOLOMON. -

Not the whole necessarily, because a revenue of £6,000,000 could be raised without any protective policy.
Mr. REID. -
The more serious point with me would be this: To go back to the electors of New South Wales, and tell them that I, in this Bill, have assisted in taking out of their hands their prerogative of fixing their own taxation as members of the Commonwealth.

Sir EDWARD BRADDON. -
For what term would you place the obligation on the Federal Parliament of raising the revenue in one way or another?

Mr. SOLOMON. -
For the same t

Mr. SYMON. -
How much from direct taxation, and how much from indirect taxation?

Mr. SOLOMON. -
I do not propose to give the Federal Parliament power to raise revenue by direct taxation, and I do, not think the Convention does.

Mr. SYMON. -
Oh, yes.

Mr. SOLOMON. -
The sub-section in clause 52 has never been put before our people as a mode of taxation for revenue purposes.

Mr. SYMON. -
Oh yes, it has.

Mr. SOLOMON. -
I do not know that. It has always been put before the people as a provision which was only to be used in case of difficulty.

The CHAIRMAN. -
Does the honorable member think he is in order in discussing clause 52, which we have passed?

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Mr. SOLOMON. -
Inasmuch as that clause is intended to be recommitted, and as I myself propose to ask for its recommittal, if no other honorable member does, I think I am in order in referring to it while discussing the question now before the Chair.

The CHAIRMAN. -
When clause 52 is recommitted will be the proper time to discuss it.

Mr. SOLOMON. -
With all due deference to you, Mr. Chairman, I think I am absolutely in order, seeing that clause 52 has a bearing on this question, and is within the lines of the present discussion. However, I do not intend to keep the
Convention any longer. I recognise that there is a very great difficulty to be overcome—I recognise that the guarantee that each state shall receive a revenue equal, or nearly equal, to the revenue realized now, is necessary to recommend this Constitution to a large section of our people, and recognising that fact, I venture to think that the little time I have occupied in discussing this question has not been misspent.

Sir JOHN DOWNER (South Australia). -

As it is now nearly five o'clock, at which hour we usually rise, I think I shall be consulting the wishes of the committee if I move that progress be reported. I therefore beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at eight minutes to five o'clock p.m.
Thursday, 17th February, 1898.

Commonwealth of Australia Bill

The PRESIDENT took the chair at thirty-three minutes past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 92 (Payment to each state for five years after uniform Tariffs), on which Mr. Reid had proposed an amendment to omit all the words after "imposed." (See page 1042.)

Mr. DEAKIN (Victoria). -

I trespass on the time of the Convention with some diffidence, but trust to exhibit my sense of the importance of time by curtailing my remarks. It may be because I survey this financial question in some sense as an outsider that it appears to me to be, in its essence, not a difficult, but a simple problem. The situation with which we are confronted is a proposal for union among several states, each of which is to part with certain of its services. Those services involve a certain outlay on the part of the state, and return in gross, in every colony, a considerable profit over and above that outlay.

Mr. WALKER. -

Except defence.

Mr. DEAKIN. -

I am treating them in gross. Taking them in gross, in every colony the cost of the services proposed to be transferred falls considerably short of the revenue derived from them. Consequently, each colony has up to the present time derived a gain or profit from those services which they are now proposing, for the purposes of union, to surrender.

Sir GEORGE TURNER. -

You are including Customs in the profit.

Mr. DEAKIN. -

Necessarily. I include Customs, Posts and Telegraphs, and every service which the states are asked to surrender. No one pretends that it is necessary for the purposes of union that they should surrender the profit-the gain-which they have been making from these services. As I understand the position, we all admit that, in federating the services, the states must not be deprived of that gain which they have been deriving from them in the past-
upon which their past Budgets have been built, and on which their future Budgets must also be built-unless their whole financial systems are to be dislocated. Consequently, it appears to me that, express it as we may, we do not intend to endow the Federal Government with a large revenue derived at the expense of the states. We propose to endow the Federal Government with the largest powers of raising revenue from the whole people of the whole Commonwealth, but we do that subject to what we admit to be practically a debt from the Commonwealth to the several states-represented by the balance to their credits which they have gained, say, during the period of the last few years from the receipts of the services now proposed to be surrendered. If that be so, is it not something of an ostrich like policy to allow this measure to be placed before the public, relying simply upon what, no doubt, we would be justified in relying upon if we had no other resources—that is, the natural, and indeed, the inevitable working of this Constitution? This Constitution will be intrusted to the elected of the whole of the people of the Commonwealth. The whole of the people of the Commonwealth will have an interest in maintaining the solvency of the several states. A period must pass before the several states adjust themselves to their new circumstances, before they deal with the situation in each state created by a diminished revenue and a diminished service, before they adapt themselves entirely to their new position as subordinate states, instead of being, as they are at present, practically independent states. During that interregnum the Constitution contains already, and must contain to fulfil the merest requirements of good faith, an implied guarantee that the Commonwealth will see that during that period the solvency of the several states shall not be imperilled. Now, if that be the implied guarantee, why is it not possible to make it express and explicit? If that be essential to fair dealing, why should we not adopt the method of plain dealing, and put it on the face of this Bill that for some time which may seem reasonable, the Treasurers of the several states, instead of requiring to frame their Budgets in advance on a merely speculative basis, uncertain as to the absolute return they will receive from the Commonwealth, should be enabled to grapple with the local problems that will surround them? If they are to do this, they must be able to lay before their Parliaments in each financial statement an estimate which shall, at all events, be approximate, of the revenue they expect to receive from the Commonwealth. If the state Treasurers cannot frame their Budgets without this, and the Commonwealth cannot possibly be blind to its obligations in this respect, what reason have we to urge why we should not endeavour in some terms—as general as you please, but sufficiently
explicit-to convey our meanings to those who read while they run? Why
should we not place in this Constitution some general indication of our
foresight of that position? Personally, I should be sorry to see the financial
inter-relations between the Commonwealth and the states prolonged for
any greater period than is necessary. I know that some honorable members
look forward to a permanent financial intercourse between the states and
the Commonwealth, and to a periodical re-adjustment of their relations.

Mr. HOLDER. -
The solvency of the states will not become less important.

Mr. DEAKIN. -
The solvency of the states will never become less important, but it will be
much less threatened after the first few years. The situation will be greatly
cleared, and by various proposals which have been already submitted-those
dealing with the national debts, and also, possibly, national railways-it may
be possible, and must be found desirable, in the course of time, to frame a
financial system which shall practically cut the several states entirely free
from the Commonwealth, or, at all events, leave

them with only certain fixed financial relations with it. We should, as far as
possible, exclude from the consideration of the Commonwealth Parliament
the finances of the states as states, and exclude from the states as states any
consideration of the financial position of the Commonwealth. That is the
position which has been secured in the United States of America. There the
state Legislatures concern themselves in no degree with federal finance.

Mr. REID. -
But we know how that position was gained there. They had an enormous
surplus, and squandered it instead of returning it to the states.

Mr. DEAKIN. -
But if they had not had this surplus, as they need not have had, or if they
had expended it judiciously, say upon purely national works, that scandal
would not have arisen. There is, at all events, a clear fine of demarcation
between state and federal finance in the United States, and I trust that in the
Commonwealth of Australia the same line of demarcation shall be clearly
drawn as soon as possible.

Mr. MCMILLAN. -
I think we could discuss this matter much better on some concrete
amendment or resolution. That would save time.

Mr. REID. -
It is important enough to be discussed generally.

Sir GEORGE TURNER. -
We had better get each other's views.
Mr. REID. -

Yes; it is one of the most important things to settle.

Mr. DEAKIN. -

I largely coincide with the honorable member (Mr. McMillan), but, at the same time, do not think I am the person called upon to frame such an amendment, though quite willing to discuss it if it be submitted by some honorable member more experienced in dealing with matters of finance. To return to the question before us, it appears to me clear that there is in this Constitution an implied obligation on the Commonwealth not to deprive the states of the profit they have been gaining in the past from the transferred services; and if that be so, I fail to see why some agreement should not be arrived at in the Finance Committee as to the particular sum for which the Commonwealth should be liable to each state, at all events, for a fixed period. These states must necessarily grow, and as they grow the Commonwealth revenue necessarily increases; and, as the Commonwealth revenue increases, possibly the state requirements from the Commonwealth may increase also. As increase must arise in the natural course of events, it would not be taking too bold or too hazardous a step to fix the sum of the past profits gained from those services, and hitherto utilized by the several states for other purposes within their own colonies, and to make a return of that sum the minimum return, either for a fixed period, or, if necessary, in perpetuity.

Mr. WISE. -

Why mention any sum at all? Why not leave it to the Parliament?

Mr. DEAKIN. -

I would be perfectly willing to leave it to the Parliament, if it were not a problem which, it seems to me, we could solve equitably and exactly here.

Mr. REID. -

On the lines you mention, do you mean to limit them to five years?

Mr. DEAKIN. -

I would be willing to do so. The only colony I can conceive as requiring to be dealt with in any different manner from the rest of the group, in forming an estimate as to the amount, to be returned, would be the colony of New South Wales. There the difference is not so great as it seems, because the measure of the sum to be returned is determined by the profit gained, and is not determined by the height of the duties by which, so far as the Customs are concerned, that revenue is gained. In this particular regard, and for this purpose, all Tariffs are dealt with as merely revenue Tariffs, and some of the Tariffs-notably that of Victoria-imposes high duties in certain directions not with a view to gaining revenue, but of curtailing

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the revenue derived from imports. There is not, therefore, so great an injustice in using the several Tariffs as a common measure, in determining the profits gained from the state services, as might appear. If New South Wales raised any question on the ground that their Tariff would be measured with the existing protectionist Tariffs, there would be no difficulty in reverting to the time when New South Wales was under a protectionist Tariff. We could then set out exactly in a schedule to this measure the minimum amount to be returned by the Commonwealth to the several states for a period of five years. That would not put the local Treasurers in possession of any extravagant surplus, but would simply enable them to know in advance the sum they must receive from this source.

Mr. DOBSON. -

In order to get the full benefit of your suggestion, ought not the sum to rise every year with the population?

Mr. DEAKIN. -

No; for the first five years the one thing needful is to have a minimum to which the Treasurers may look with confidence, and on which they may base their Budget calculations.

Sir PHILIP FYSH. -

Can they do that now? Does not the sum available vary according to circumstances?

Mr. DEAKIN. -

Does the honorable member compare the position of the local Treasurers now with their position after four or five of their chief services have vanished, and they are dependent on the decision of another body as to the amount they will obtain from them? There is no comparison. The whole situation is revolutionized. If the honorable member is able to predict what the fiscal policy of the Commonwealth Parliament will be, and what it will yield under these entirely new and novel conditions,

Mr. HOLDER. -

It would be easier to make the forecast for Tasmania than for the Commonwealth.

Mr. DEAKIN. -

Yes. I do not take that interjection to be an objection to the course I am urging on the consideration of the Convention. Am I right?

Mr. HOLDER. -

I think it is an objection.

Mr. DEAKIN. -

If the honorable member intends it as an objection, he means that it would be a more difficult task for the Federal Treasurer to so adjust his
Tariff as to be able to obtain the sum rendered necessary by specific guarantees than it would be for the several Treasurers of the several colonies, in ignorance of his policy, to forecast their subordinate Budgets.

Mr. HOLDER. -

No; what I say is that it would be quite impossible for us in this Convention to make a forecast of the Commonwealth finances and to put it in the Bill.

Mr. DEAKIN. -

There is no necessity to do that.

Mr. HOLDER. -

You want us to do it.

Mr. DEAKIN. -

No. The obligation the Commonwealth assumes is only in respect of the profits earned by the transferred services in the past. These services are practically certain to yield as much in the future, and the probability is that they will yield more; but the loss caused by the abolition of intercolonial duties is a definite one, the measure of which can be approximately gauged. The position of the Treasurer of Tasmania, or the Treasurer of any other colony, although simpler in this respect than the position of the Treasurer of the Commonwealth in the earlier years of the Federation, would not be greatly simpler. If the honorable member follows out his own suggestion, he will see that the amount guaranteed would be very small as compared with the sums with which the Federal Treasurer must deal.

Mr. BARTON. -

Does the honorable member propose to give a general liberty to the Commonwealth to assist the states financially?

Mr. DEAKIN. -

I have no objection to that, but am going a little further. I am suggesting a specific determination by the financiers of this Convention of the profit which has been earned by the several services the states are about to transfer. After deducting their cost, there is a certain amount left as profit, and that sum having been determined, if necessary with some special allowance in the case of New South Wales, should be guaranteed to each state by the Commonwealth for a period of, say, five years, to give the local Treasurers a knowledge in advance of the amount they may expect to receive from the Commonwealth during that time of adjustment.

Mr. BARTON. -

That is far better than a general liberty to assist.

Mr. DEAKIN. -

I am happy to have the honorable member's approbation to that extent, I
do not propose to reply at length to the Hon. Mr. Holder, who has studied this question in all its aspects. If he takes into account the relatively small amounts which are to be guaranteed by the Federal Treasurer, and also the enormous resources at his command, he will admit that the task before him, though liable to be somewhat increased nominally by the existence of a specific guarantee, is not really increased if, as I believe, there is already an implied guarantee that the Federal Treasurer must provide for these wants.

Mr. HOLDER. -
I agree with you there.

Mr. DEAKIN. -
Then that fulfils my purpose so far as this argument is concerned. My last argument to the Convention on this matter is that such a provision as I am suggesting does not run counter to the desires of the representatives of New South Wales by coercing the Commonwealth into a particular form of fiscal policy. It is a question of revenue which can as well be met by a revenue as by a protectionist Tariff, and if the implied obligation already exists under the Constitution, and will be recognised by the Commonwealth, those who support a revenue Tariff should not be in any way prejudiced by the adoption of such a proposal.

Mr. OCONNOR. -
Can the honorable member say roughly what the profit on the transferred services is?

Mr. DEAKIN. -
I had it all worked out in detail in Adelaide, but later returns have been presented to the Convention.

Mr. WISE. -
It can be ascertained from the document that was laid on the table the other day. The total comes to about £850,000.

Mr. DEAKIN. -
We used to reckon it at that, but I thought the amount had been altered. If the payment of such a sum be impliedly guaranteed already this provision would cast no fresh burden on the Commonwealth. The obligation can be met by a revenue or a protectionist Tariff.

Mr. REID. -
Or by other means.

Mr. DEAKIN. -
Yes. Although agreeing largely with the views expressed by my honorable friend (Mr. Solomon) yesterday, I disagreed with him absolutely in one particular, and that was in the assumption that direct taxation of any kind is conceivable in the earlier years of the Commonwealth, or in any of
the years of the Commonwealth save under pressure of extreme dire
national necessity. So far as one can forecast the situation, one need ask for
no guarantee on that subject. I feel absolutely certain from past experience
of the feeling of the people of the different colonies that, whatever the
policy of the Commonwealth may be in fiscal matters, the whole sum
required will be raised by means of the Custom-house, whether it be by a
revenue or a protectionist Tariff. There is not the least risk of a proposal for
direct taxation. At the same time, to be frank, it seems to me to be clear
that the Tariff will be protectionist and not revenue. The combination of
the two purposes is not difficult, and especially in the earlier years. Duties
which would
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become protectionist after a lapse of time might, in the first instance, be
largely revenue producing. It appears to me, for these and other reasons,
that the Tariff will be protectionist, but, at the same time, the proposal I am
now submitting bears no more in favour of a protectionist than of a revenue
Tariff. I think I have now said all that is necessary. The suggestion I have
made implies no distrust of the Federal Parliament. We can work out this
problem now, and we ought to do it. I am content to leave to the Federal
Parliament the solution of every problem we cannot fairly deal with here. If
it can be shown to me that there is some element in this problem which we
cannot possibly master, I shall be quite willing to leave it to the Federal
Parliament. I shall leave it to the Federal Parliament with perfect
confidence should my proposal be rejected, but if the situation be as I see
it, why should we palter with the question? Why should we not set it forth
in explicit terms on the face of this Constitution that the states will have
this guarantee, and in that way put heart into a great number of people who
are at present disposed to adversely criticise what we have done? The Bill,
as it now stands, requires for its full interpretation a considerable amount
of constitutional knowledge. Although the members of the Convention and
others will have every opportunity of expounding it, in the light of their
constitutional knowledge, to the public, the measure itself will not, except
to a student of our form of government, convey a great deal of what it
necessarily means. Not only is the very fact of responsible government not
set forth in express terms, but the results, as we know them, of the working
of responsible government are scarcely more than indicated, even to the
practised eye. So with the financial clauses, the necessary working of our
Constitution, given electors whom we know and methods which we know,
must produce a certain definite result, that is to say, a frank recognition by
the Commonwealth of its obligation towards the several states, especially
during the interregnum, and a ready confidence on the part of the states in
the justice they will receive. But it would be of advantage, seeing that the measure is to be distributed broadcast over Australia, and that it will be read by many who are not familiar with these processes, if a guarantee were given to the states in express terms. By expressly endorsing this fair and equitable arrangement now we should place the states in a position of assured solvency, and we should remove a cause of public apprehension.

Mr. MCMILLAN (New South Wales). -

I should have preferred to wait until some actual proposal was submitted to the Convention before I addressed myself to this question. It does seem to me that we are very likely in our desire to get at some certainty on particular points in this Constitution to absolutely forget the principles with which we have to deal. I am quite ready to admit that everything in this Constitution affecting the great principles of federal government ought to be stated as clearly and as completely as possible, so that no interpreter of this law in the future could possibly misapprehend the subject. On the other hand, in some cases, where if you exercise common sense and reason, there is no possible future danger, there has been an attempt, in order to meet a mere shadow of a danger, to introduce into the Constitution matters which are absolutely revolting to the principles of the Constitution itself. Now, let us look at the question just for a moment practically as it will strike those who have to deal with it. One of the first duties of the Federal Parliament will be to frame a Tariff. Is it not an underlying principle of all these financial clauses that the Federal Parliament ought to be absolutely untrammelled in framing that Tariff? Any man who has the honour of being a member of the popular branch of the Legislature will no doubt be a student of our actions and proceedings in this Convention, and be fully seised of the historical facts, of the conditions surrounding the Federation, and of the peculiar conditions of the different states. It is absolutely impossible to suppose that any Tariff will be framed without a full consideration of the financial position of the different states. As I said before, it is not as if our finances were isolated; it is not as if we were giving over to the Federal Parliament one portion of our taxing machinery, or one part of our Customs revenue, say that derived from alcohol. We are giving over the whole of the great machinery of taxation. Having done so, there is, and to my mind there must be for a long time to come until the states become so populous as to be able to support themselves by direct taxation-a strong link between the Federal Government and the state Governments which cannot be ignored under any possible set of circumstances.

Mr. REID. -
They are inseparably bound together from the very nature of the case.

Mr. MCMILLAN. -

Exactly. If we as sensible men, dealing with a broad Constitution like this, are perfectly certain that these interests cannot be ignored, bearing in mind the fact that the conditions of four of the colonies are more or less identical, and that only one colony, so to speak, seems to be an obstruction, it is against common sense and reason that this position should not be considered. Are we about to give over the management of our affairs to some foreign power? Is it not likely that a large number of the men here present may, if federation is consummated within a reasonable period, be members of the Federal Parliament? Will not every man representing the states in the Federal Legislature be saturated with the wishes and the necessities of the state which he represents? We have, on the one hand, common sense and knowledge of all the conditions. What do honorable members want to substitute for this? They want to insert in the Bill a provision of a kind most offensive to men engaged upon legislation-an absolute mandate to the effect that the framing of the Federal Tariff must be done, not upon the lines and conditions which they may think fit to apply, but upon absolute local conditions. It is proposed to tell them, practically under a threat, that they must do-what? This is the crux of the whole matter. That they must create a certain volume of revenue, which practically fixes the Tariff. I am not going to say that they may not manufacture a Tariff upon purely revenue lines, but from my investigation of the matter I consider that not one of the four colonies to which reference has been made is likely to give up its protectionist ideas for some time to come. Does any one imagine that the Federal Tariff will be framed upon purely revenue lines? I do not, and I am not going to tell the people of the colony I represent that it will. I am perfectly certain that New South Wales must sacrifice more or less of her present fiscal system in the interests of federation; but it seems to me that, if you put us in the position of having to tell the people of New South Wales not merely that there is a general probability that a new fiscal system will be produced, but that we have absolutely placed in the Convention a mandate rendering it necessary for the Federal Parliament to make this change, you strike a very hard blow at the success of federation. I do not say that in any tone of threat. I think it is our duty when we come to these crucial matters to say exactly what are the difficulties with which we believe we shall have to contend when before our own people. I hold, as I have always held, that one of the first principles of honesty requires that we shall let the people know the full extent of the meaning of federation. Therefore, and I say it honestly, if I were a member of the Victorian representation - or of any other than that of
New South Wales - I should be perfectly satisfied with the clause as it stands. I believe, taking into consideration the general principles of fairness and honesty which will prevail with the members of the Federal Parliament, not to speak of their mere selfish interests, that the position of the other colonies is assured. What Government could carry through a Tariff at the beginning of the life of the Commonwealth, unless it did that for which everyone was contending? Surely this provision is not upon all-fours with those other parts of the Constitution where it is absolutely necessary that language should clearly define the intentions of the law-makers. For these reasons I must object to any alteration of the recommendations of the Finance Committee. If we do not put in a provision guaranteeing a certain minimum return, we shall be trying to do what is simply impossible. It appears to me that honorable members wish to insert something which shall be between an absolute mandate and a mere direction. What would be the good of a mere direction? If the representatives of Victoria want to be able to say to their people-'There is a provision in the Constitution which will guarantee the solvency of our colony, so that there need be no fear of a deficiency of £300,000 or £400,000 a year, and an increase of local taxation,' will the insertion of the direction in the Bill enable them as honest men to say more than they could say without there being such a direction in the Bill? Of course, it would be different if there were a guarantee. We must either provide for a guarantee, or we must leave the whole matter to the justice and the self-interest of the Federal Parliament. Of course, I am not going to commit myself absolutely until I have a concrete proposal before me; but I do not see how any provision can be of any service unless an absolute guarantee is inserted. Any other provision must only be mischievous in its results.

Mr. ISAACS. -

What distinction do you draw, between a guarantee and a direction?

Mr. MCMILLAN. -

I consider that a direction is not mandatory, that it is simply an indication-a suggestion-of what we would like to see done; in this case, something to remind the Federal Parliament of what it is impossible that they should forget.

Mr. PEACOCK. -

At any rate, what would be the objection to putting such a direction in the Bill?

Mr. ISAACS. -

Is it not proper that we should state what we consider to be their duty in
explicit terms, and assume that they will perform that duty?

Mr. MCMILLAN. -

After all, that is shaving the matter very fine. If it would be satisfactory to the representatives of Victoria to do that, I should be willing to consider any concrete proposal upon its merits, I simply rise now to say that I think that from every possible view of common sense and experience, and because of the conditions of this federation, there is really no necessity for a provision of this kind. It seems to me that honorable members are trying to provide for specifically what must be the ultimate outcome of the conditions under which we are federating.

Mr. DOBSON (Tasmania). -

I did not like to rise to order when we were listening to the speeches of the two able and influential men who have just sat down; but, sir, I feel sure you will confer infinite advantage upon the Convention if you keep honorable members to the points in connexion with the financial scheme which are still left for discussion. I will draw your attention to the four points which I think remain, and which honorable members will do well to discuss separately. At the present time we are only having a second general debate, and although the arguments which have been delivered are admirable, they would have more force if confined to the exact question before the Chair. In the first place, we have to consider the wisdom of adopting the bookkeeping system, crediting each state with the revenue it raises, debiting it with its share of the federal expenses, and paying over the balance. We cannot dispense with the bookkeeping system, and these provisions in connexion with it are so simple that I think we should deal with them in half an hour. The next point to consider is whether we should deal in an exceptional manner with Western Australia. If so, in what manner should we treat that colony, and should we deal with any other colony in an exceptional manner?

Mr. SOLOMON. -

Is this an example of keeping to one point?

Mr. DOBSON. -

The four points follow one another in order. The third point is: Are we to leave this matter to the Federal Parliament? And the fourth point: Shall we provide for a guarantee? Will our discussions not be more intelligible if we deal with these points separately?

Mr. MCMILLAN. -

I understand that there is a desire to provide for a guarantee in this clause.

Mr. DOBSON. -
I have a few words to say about finance, but I would prefer to postpone them until the proper time.

Mr. BARTON (New South Wales). -

As the debate has taken the form of a suggestion to you, Mr. Chairman, I should like, without in any way committing myself to support or to oppose any proposal, to suggest that upon this occasion a little laxity might be permitted. I cannot help feeling that in these financial clauses we are dealing with the most critical portion of the Bill.

Mr. DEAKIN. -

A most critical portion.

Mr. BARTON. -

While I should be against a general direction to the Commonwealth to consider the position of each state, because I think that that would lead to bargaining and corruption, the proposal that the honorable and learned member has made deserves our consideration, and a general discussion of the character that has been entered upon will admirably assist the formulating of the proposal if it is found that it deserves formulating. To formulate it without the advantage of the advice and assistance of financial experts would be a mistake, and this assistance can only be obtained by a general discussion, such as we are now engaged in. I would ask that a similar latitude to that which is taken in a general financial debate may be allowed with regard to this suggestion.

The CHAIRMAN. -

I have felt that sometimes the debate has wandered from the clause, and has taken a larger scope than is strictly warrantable, but I have not attempted to stop it unless honorable members have referred to matters already decided under clauses which have been passed. The honorable member (Mr. Dobson) must see that we are not only discussing the proposals of the Finance Committee, but that we are also discussing the clause as it stands. In the clause there are a large number of other matters in addition to those which are mentioned in the proposals of the Finance Committee.

Mr. DOBSON. -

The four points I have mentioned, to my mind, include all.

The CHAIRMAN. -

It will be seen that it is not only the Finance Committee's suggestions that are open to discussion; it is the clause as it stands. The proposal is to strike out part of the clause, and insert other words. It is very difficult to separate one part of a financial policy from another part, and I do not propose to curtail debate in any way, unless honorable members try to re-open matters which have been settled in other parts of the Bill.
Mr. REID (New South Wales). -

I have listened very attentively to the speeches which have been delivered upon the general proposals with reference to the finances of the Commonwealth, and I can quite understand and appreciate the anxiety which some honorable members have displayed with reference to the future finance relations between the Commonwealth and the various states. There is no doubt that the Commonwealth, in taking the Customs revenue, as it must in order to secure to us the main advantages of federation, takes from each of the states its main source of revenue. Under these circumstances, I can quite understand the anxiety of Treasurers to know how their states may possibly stand after the federal union has been accomplished, but I am afraid that there is mixed up in this matter—perhaps unconsciously, but, in the estimation of people outside, very really—another anxiety, and that is to endeavour by some means or other to compel the Commonwealth Parliament to adopt a certain system of fiscal policy; and the great objection in the way of putting any form of guarantee in this Constitution, especially when it refers to revenue raised by Customs, will be that large numbers of persons may suspect, and with some reason, that whilst certain persons who are said to be in a minority—and on the surface, I think with very great reason—are prepared, notwithstanding their position, to trust implicitly their destinies to the wisdom of the Commonwealth, those who are in a majority, and therefore in a position of greater certainty, are not showing an equal readiness to trust the Commonwealth. If there is reason given to the minority to which I refer, and in fact if any reason is given to New South Wales, for a fear or belief that on this burning question the Convention has gone a little out of its way to give a bias to the Constitution in favour of a policy to which we have had for many years the strongest objection, then I say that my position as the leader of the free-trade party in New South Wales, in endeavouring to secure a majority of those with whom I am acting to accept this Constitution, will become unbearable. I am prepared to take the chances of the fiscal policy of the Commonwealth if I have a fair start, if it is left absolutely a sheet of white paper on the Constitution, as to what form of raising revenue the Commonwealth Parliament may adopt. But if the financial necessities of the states are linked in any way with a certain particular form of raising revenue, and the two are connected in the Constitution, then I say a twist, a bias, a sinister aspect will be given to a Constitution which must be absolutely neutral on that vital point to enable those of us of opposite parties to hope for success in the different colonies.
Mr. ISAACS. -

Does the right honorable gentleman mean that the solvency of the states can only be preserved by a protective Tariff?

Mr. REID. -

I am very sorry indeed, more sorry than I can express, that remarks made outside as to the possible solvency of these states are becoming-I will not say warranted, but are becoming serious, owing to the frequency with which similar language is being used in this Convention by responsible persons. I absolutely repudiate any idea of any of the Australian colonies being insolvent. I absolutely repudiate it in every shape and form. When my right honorable friend (Sir George Turner) was led-I am sure simply by mere accident in extemporaneous speaking-even into hinting at a proposal that there should be some provision made in this Constitution to finance the states, to render by means of borrowed money assistance to the states, I could not too deeply regret the utterances of a man in his high position with regard to such a pernicious idea. There is nothing whatever in the history or condition of any one of these colonies to suggest that they need ever be carried on by borrowed money, and let us repudiate at once any such expressions. Let us repudiate altogether the views which have been expressed outside with reference to the solvency of this or that colony of Australia. Nothing can be clearer to us, knowing all the facts as we do, than that although the different colonies may occasionally be exposed to vicissitudes-although all of us have for years past been exposed to a terrible strain, owing to the concurrence of droughts and low prices for staple commodities-still, all these troubles put together have served to demonstrate the absolute stability of the Australian people and of their industries. We can all with reason hope that at no distant time the inherent strength of these colonies will propel them into a state of prosperity, reminding us of the days which have passed-a state of prosperity which I hope will not be as fictitious as much of the prosperity of the past proved to be, but a prosperity springing from the legitimate development uld stand. It was with that object that the limitation clause was inserted in the Bill.

Mr. LYNE. -

That is the limitation of expenditure.

Mr. REID. -

Yes; I will not go into details because the clause has been omitted.

Mr. FRASER. -

The new clause 91, in lieu of 92, does not give the states that hopeful guarantee that they should have.
Mr. REID. -

I do not object to my honorable friend making a speech while I am in possession of the Chair. I often do it myself.

Mr. FRASER. -

I apologize.

Mr. REID. -

But I am not at present on that point which is troubling my honorable friend. What I wish to do, without transgressing the rules, is to refer incidentally to the clause as giving precisely that stability which was wanted, and in a form which could be open to no objection on the part of people outside. The great body of the taxpayers in the Commonwealth will not object to iron-bound limits with regard to the expenditure. There is no feeling amongst those who pay the money in favour of unlimited power of expenditure. The disposition of the British taxpayer and the colonial taxpayer is precisely the same, and a limitation clause of the kind which we had in the Bill would have given absolute certainty of finance to every provincial Treasurer, because he would know from month to month, even from day to day if he liked, the Customs revenue received in his state to which he would be entitled. He would simply have to deduct the proportion of expenditure under the clause I have referred to, which his colony would have to pay for the year, and he could form, by a simple sum in arithmetic, not a mere conjecture, but an almost finally correct estimate, as to what the financial position of the state would be with reference to the finances of the Commonwealth. I would impress upon honorable members that objectionable as such a proposal is, if you are drawing up an absolutely symmetrical Constitution—and I quite admit the force of the arguments which led to the omission of the clause—yet we shall see when we come to close quarters on crucial points, that things which perhaps in themselves are not symmetrical or satisfactory, may meet difficulties in such a way as to commend themselves to our acceptance. I would strongly put it to this Convention that that proposal, while comparatively unobjectionable, is an absolutely popular method—popular not according to fiscal creed, but popular throughout the whole Commonwealth equally—knowing as we do the disposition of the taxpayer in British communities. I submit that that method would be universally popular, while, at the same time, it would bring about a very valuable practical result in establishing the Commonwealth. It would enable us to get over this difficulty, not by fettering the policy and the wisdom and the range of federal finance with respect to a policy of raising revenue. Because if any sort of guarantee is to be given which will be of avail it must be a guarantee which will cover the
financial circumstances of each state. And that is the great trouble of this financial problem, if you endeavour to settle it by prescribing a certain return of a certain amount of a certain species of revenue. The difficulty of the Commonwealth Treasurer would be this—under a provision of that sort, by which he must be bound, from which there would be no escape, he would be absolutely compelled in trying to define a Tariff on broad national lines for the good of all, to deform that Tariff by a multitude of proposals inapplicable to the position of the people of Australia, because he would be compelled to regard the financial position on certain iron-bound lines, and to consider the position of certain smaller states.

Mr. DEAKIN. -

How does that apply, when the requirement in the Constitution is only that a sum of money shall be raised, and that the Treasurer may raise that sum of money by any duty or method he pleases?

Mr. REID. -

I confess that if the matter is put as a matter of revenue raising as apart from Customs, I see that a good deal of the force of what I have been saying is removed. I admit that.

Mr. DEAKIN. -

That is the light I put it in.

Mr. REID. -

But still, let us take that position. I still object—and it is in the line of objections which have prevailed all through the consideration of this Bill—to any words being put in this Constitution the effect of which will be, and must be to a great extent, to compel the Federal Treasurer to fashion his policy on lines which have been dictated beforehand. That is the objection which has prevailed in connexion with many important matters all through during the consideration of this Bill. I again say that we should put the colonies in a satisfactory position, by means of a clause which would be universally popular with the voters of Australia, if we directed our efforts at certainly to a point which would meet the problem of uncertainty, and satisfy it, and, at the same time, convince the people of Australia that the finances of the Commonwealth will begin on an absolutely moderate and securely defined scale of expenditure.

Mr. DEAKIN. -

Mr. Holder's amendment was another effort to obtain the same object in the same way.

Mr. REID. -

Although I have the greatest respect for any proposal which the Treasurer of South Australia may make, or even hint at, I would like to point out an objection to any limitation of the sort he suggests. It would absolutely force
the Treasurer of the Commonwealth—well, perhaps I should not say force him, but constitute a very strong temptation to him—to go in for other methods of raising revenue. Personally the argument would not affect me; but I do not think it would be fair that in adjusting or deciding upon what taxation should be raised there should be put in this Bill any provision which would even tempt the Federal Treasurer to pick out any particular form of taxation, not simply because of its own merits, but because it would give him more money for the Commonwealth Treasury than any other form of taxation. And it is on this particular point that we fully realize the way in which we have handed over our finances to this Commonwealth. We cannot avoid it. There is a proposal, I admit, that the Commonwealth should have only the power of retaining a certain class of customs duties, such as the revenue from narcotics and stimulants. But that does not meet the situation, because the revenue from those articles is, I think, vastly more than the Commonwealth could be allowed to spend for Commonwealth purposes. A large portion must go back to the states. I do not at this moment know what the revenue from tobacco and cigars is in all the colonies represented here, but I think it more than probable that that line of revenue would be more than sufficient for the Commonwealth expenditure. But I should be prepared to consider any proposal for handing back to the states all the Customs revenue collected in those states during the five years except the revenue derived, say, from tobacco and cigars.

Sir GEORGE TURNER. -

Suppose that revenue were far short of the Commonwealth wanted, how would you raise the extra money?

Mr. REID. -

I do not think it is possible that the revenue from that source would be insufficient.

Sir GEORGE TURNER. -

But suppose it were?

Mr. REID. -

I do not think it could be so, judging from the revenue we get from those sources in our own colony. I should think the revenue from tobacco and cigars throughout the Commonwealth must come to some £800,000 or £900,000. We are only speaking of the temporary arrangements to be made for five years. But that suggestion would not meet the difficulty of Sir George Turner. Sir George Turner points out that under a certain state of things he would be left to find a certain additional amount of revenue, and that it would perhaps be impossible, or a tremendous hardship, for him to find that amount. I am sorry to have spoken so long, but I come to an
important point upon this matter, and which again emphasizes the main contention I have advanced, that we should leave the matter in the hands of the Commonwealth Parliament. People talk of the states and the Commonwealth as if in this matter they were two bodies. But the taxpayers of the state are exactly the same individuals as the taxpayers of the Commonwealth.

Mr. DEAKIN. -

There are two different Treasuries.

Mr. REID. -

We have the same body of men throughout Australia. Their representatives in the Federal Parliament will represent the same men as are represented in the states Parliaments. The same taxpayers will be represented whether in the states or in the Commonwealth Parliament; and so again the Federal Parliament will legislate for the very same community, for the very same individuals, as are represented in the states Parliament. The point of which is this: It would be impossible for any Treasurer of the Commonwealth having in his keeping the finances, and the interests and well-being bound up in those finances of every man in the Commonwealth, and every state in the Commonwealth, to approach the subject of finance, and to inaugurate a policy of revenue taxation, without the sense of responsibility that from the very nature of the case he had to finance the states as well as the Commonwealth. Now, that will be the position of the Commonwealth Treasurer. He cannot escape from it. A rough-and-ready person, absolutely unfitted for a position of responsibility so great, might come before the Federal Parliament saying that he had not thought out his proposals as they would affect each state, as they would affect-I will not say the solvency-I repudiate the word—but as they would affect the well-being of each state, as well as of the Commonwealth. But can we suppose for a moment that the Federal Parliament would listen to a man who showed by his proposals that he had not been able to reconcile the financial wisdom of the Commonwealth with the financial security of the states? Because the two things are absolutely bound up. The states become the Commonwealth, and the Commonwealth becomes the states; and where the people are the same the responsibility is the same, the interests are the same, is it too much to believe that if we launch this great project of federation no Federal Treasurer can be found who will be able, in proposing a fiscal policy for the Commonwealth, to consider every proper financial interest of the states? I rest my position on that ground. If we are not prepared to trust the Commonwealth to that extent, the whole project
ought to fall through.

Mr. FRASER. -

That is dragging in money matters to a greater extent than is usual in legislative concerns.

Mr. REID. -

But my honorable friend must see that the powers which are given to this Commonwealth absolutely convey to the Commonwealth powers of taxation of a most unrestricted kind, and that power being given, the mere proposal that a certain amount of money shall be handed back to each state is not the slightest guarantee in the world that the finances will be properly administered, is not the slightest guarantee in the world that the Commonwealth Treasurer will bring down a sound financial policy. It is a rough rule-of-thumb process which might embarrass a wise Treasurer, but cannot possibly help him.

Mr. FRASER. -

It might embarrass the states Treasurers.

Mr. REID. -

On that point, I am with every one who wishes that the states Treasurers shall not be embarrassed, and I suggest to my honorable friend that both the states and the Commonwealth can be protected from embarrassment, if, during the early days of the Commonwealth, a rigid iron hand is placed upon the spending powers of the Commonwealth. You apply a power, as I say, in a wise and popular direction when you say to the people of Australia-"Our method of solving this state of uncertainty and doubt will be that we will not a

Mr. LYNE. -

How do you guarantee that?

Mr. REID. -

Well, my honorable friend may perhaps see that if you know what the expenditure of the Commonwealth cannot exceed, the first element of uncertainty is disposed of. Why is there an uncertainty even when you have framed the Tariff? Why must there be an uncertainty even after all the proposals are put in the Bill, if they should be put in the Bill? Because the Federal Treasurer might bring down a fiscal proposal which might on one day insure a return to the states of the amount they want, and then in a month or two, by reckless or foolish or loose finance, might take back all he had given, and throw the states into absolutely the same uncertainty as they were in before. Because, if his power to spend is unlimited, the amount which the states will get back must always be uncertain. Therefore I say, let us come to the point of certainty by fixing a point of economy in expenditure. That is the sort of certainty that will recommend itself to the
people more than any other. I am very sorry to have taken up the time I have done, but I am very anxious indeed that this matter should be settled on lines which will enable me to go to the large body of electors in New South Wales who believe with me in a certain fiscal policy, and satisfy them that although, in the interests of federation, we are called upon to take risks, and serious risks, this Convention has not given a bias to the Constitution which imposes on us a disability to which our opponents are not also exposed.

The CHAIRMAN. -

I may as well point out, at this juncture, that, having struck out clause 91, we cannot re-insert it at the present stage.

Sir JOHN DOWNER (South Australia). -

I have listened with great pleasure, as I am sure every member of the Convention present has done, to the very remarkable speech which we have just heard from the Premier of New South Wales. For my own part, I have had a divided feeling while listening to it. I felt entirely with Mr. Reid during the first part of his address, but I felt just as strongly in antagonism to him in later portions of his speech, in which he contradicted what he said at first. Because, he certainly proved to us in a high and statesmanlike way that, in beginning this Federation, the policy of no particular colony must be thrust into the concern. The Commonwealth, he rightly urged, has got to determine its own fiscal policy. Mr. Reid pointed out with great clearness that all the colonies except his own were colonies that advocated protection, and that they would, of a certainty, be in the majority in the Parliament of the Commonwealth.

Mr. REID. -

I did not say of a certainty. I said a great probability, which is a very great difference. It may fit your argument to make it so.

Sir JOHN DOWNER. -

I beg the right honorable gentleman's pardon for having somewhat misstated his words. I will substitute the statement that "the colonies which advocate protection will very likely be in a majority in the Federal Parliament." "Therefore," Mr. Reid said, "if with my strong views on free-trade, I am still prepared to submit to a Constitution under which there is every probability that a majority will be returned to the Commonwealth Parliament antagonistic to my fiscal views, surely you ought to be satisfied." I agree with every word there, and I think it is quite unnecessary to insert any provision such as was suggested in the very excellent speech that we listened to from Mr. Deakin, because all those provisions operate as handicaps on one colony or another. Such a provision may help this Bill
to be carried in one colony, but it will prevent it being carried in another. It will create dissension where there ought to be agreement it indicates distrust when the very essence of our being is trust and confidence. And all this time, this is only an interim arrangement. After a few years all this is to be swept away, and the Commonwealth is to do as it pleases. But for some four or five years that different state of feeling is expected to prevail. The greater trust which you can ultimately place in the Federal Government and the Federal Parliament will not exist at the initiation, or for five years afterwards, as it will subsequently; and so you have to make that provision in order to quiet the minds of the anxious who are antagonistic to the general principles of the Constitution, and you admit, on the face of it, that this is an anomaly. So I say that I have listened to no speech in the Convention with more admiration than the greater part of the speech of the Premier of New South Wales, in which he proved to demonstration that this matter ought to be left to the Commonwealth, without being handicapped by any prejudices or politics of any particular state. But Mr. Reid did not stop there. Having proved his case, I think, to demonstration, he straightway proceeded to demolish it, because he said that the guarantee which is desired for the states would best be given by providing a limitation of Commonwealth expenditure. But how can that be provided? Take the case of defence, how can you say what the expenditure for defence may be ordinarily or in emergency?

Mr. REID. -

The ordinary expenditure you can estimate—the annual expenditure; emergency expenditure you cannot forecast, but that would come out of loan money.

Sir JOHN DOWNER. -

I would say to Mr. Reid that now you can estimate the ordinary expenditure for defence, but you cannot tell what the development of events may need next year, or the year after that, even in your ordinary expenditure for defence, and still less can you tell what it will be in your extraordinary expenditure for defence. No; I venture to submit that your guarantee against extravagant expenditure must be in the power and authority you give to the Parliament of the Commonwealth, and not in any way by trying to define any amount. Mention the subjects of the jurisdiction of the Federal Parliament, and there you will have a proper limitation of their expenditure.

Sir GEORGE TURNER. -

On those subjects they might spend large or small sums as they think fit;
you would have no guarantee under that arrangement. Take defence, for instance.

Sir JOHN DOWNER. -

In defence you cannot control the expenditure of the Government of the Commonwealth anyhow. If you did, what would come of the autocratic gentlemen in this Convention do if they were in power? Why, they would simply set your provision at naught, and say-"Oh, we will spend the money and trust to the Federal Parliament afterwards, and, failing that, we will trust to the Federal High Court."

Mr. WISE. -

Who is going to pull them up, if they go too far?

Sir JOHN DOWNER. -

The Federal High Court. That is the only tribunal that could pull them up.

Mr. WISE. -

The Federal High Court could not pull them up.

Sir JOHN DOWNER. -

Very possibly not. I know that the right honorable despot opposite will sympathize thoroughly with what I am saying because it is exactly on the lines of his own argument. The Premier of New South Wales demonstrated as clear as the day that we could put no set provision in the Bill such as Mr. Deakin suggests, and straightway he proposed to put a provision in, because he said a provision might be put in limiting the extent of the expenditure of the Commonwealth so as to provide for a certain return to the states.

Mr. FRASER. -

That would not give the same satisfaction at all.

Sir JOHN DOWNER. -

No, perhaps not. I do not know which is the more comfortable way of putting the figures. It appears to me that the results would be identical, although certain phraseology might be more comfortable to one colony. Now, my own view is the view that Mr. Reid expressed in the first instance. I think it is quite impossible to make any provision such as Mr. Holder suggests, or as anybody else can suggest, by which there will be a guarantee of the sum to be returned to the states. That depends, of course, on the policy of the Commonwealth.

Mr. DEAKIN. -

What depends on the policy of the Commonwealth?

Sir JOHN DOWNER. -

The sum to be returned to the states.

Mr. DEAKIN. -

Surely not; surely that is not a question of its policy.
Sir JOHN DOWNER. -
As to what amounts arising from the policy of free-trade or protection, for instance.

Mr. DEAKIN. -
I do not think that free-trade or protection is involved in this matter.

Sir JOHN DOWNER. -
I think it is, indeed. As far as my opinion is concerned, I take it that the fiscal policy of the Commonwealth will be a protective Tariff extra-colonially, and everybody knows that it must be so.

Mr. FRASER. -
It need not be so at all.

Mr. SYMON. -
Not a protective Tariff - a high Tariff.

Sir JOHN DOWNER. -
I will accept Mr. Symon's suggested amendment. He does not like the word protective, so I will say a high Tariff. I say that somehow or another we know it is absolutely certain that, extra-colonially, there will be a high Tariff. Now, you want to provide that legislatively. That is, in effect, what you want to do. In my opinion, it would be inserting provisions in this Bill that would absolutely prevent it being carried, in some of the colonies at all events; I do not say in South Australia, because I do not know that the insertion of such provisions would absolutely prevent the Bill being carried there, but it certainly would do so in some of the colonies which we very much want to see in this Federation, and without which federation cannot take place.

Mr. FRASER. -
Then, if that be so, they do not want federation.

Sir JOHN DOWNER. -
I submit that it would be unwise to insert provisions of that kind, by which those colonies would be told that not only are they not to come in on even terms with the other colonies, but on the same terms as the other colonies with this thing added, that they are bound to adopt the fiscal policy of the others, with which policy they are in entire disagreement.

Mr. ISAACS. -
But you will not contend that the Commonwealth should not see that the states shall be guaranteed their solvency?

Sir JOHN DOWNER. -
I take it that, as a matter of course, the Commonwealth will see to their solvency.

Mr. ISAACS. -
Then what is the objection to saying so?

Sir JOHN DOWNER. -

I would say, in reply to Mr. Isaacs, that there are a number of things which, I think, it is very unwise to say. For instance, a lot of things have been said in the discussions of this Convention that I think it was very unwise to say—-a lot of things which were understood, and which whilst they remained in understanding and were not put in absolute form, there was no difficulty about, but when they came to be put into too concrete a form they created a shook, and evil results.

- - Then you are going to get the vote of the people because they do not know what they are voting for?

Sir JOHN DOWNER. -

That is a perfectly legitimate remark for the honorable member to make on the point. If we could see and tell everything, it would be our business to tell it; but we cannot see everything. Our vision is limited, and it is scarcely worth our while to be raising up a number of troubles in view of exactly similar fears having been raised by exactly similar arguments in other countries, where the actual results have contradicted those theories and arguments.

Mr. WALKER. -

They are raising bogies.

Sir JOHN DOWNER. -

Well, they are bogies—a number of terrors which it will take all our work afterwards to dispel.

Mr. ISAACS. -

The terrors are there; we want to quiet them.

Sir JOHN DOWNER. -

As far as this matter is concerned, it must be admitted that Mr. Reid was right when he said that the substance of this proposal was an attempt to force on a colony with one fiscal policy the fiscal policies of other colonies. He said—"I am prepared to take the risks. Very likely that fiscal policy may be forced on our colony, while you timid ones," he said, "who are in the majority, and who will in all probability have it all your own way, are not prepared to take the risks." I can only say I agree entirely with the first part of the views which Mr. Reid expressed. I think that nothing should be put in further than is already provided, and I also think it would be a most mischievous thing to endeavour to adopt the right honorable gentleman's own suggestion, and put a limitation on the expenditure of the Commonwealth. As a matter of fact, it would be no limitation at all, because if, through circumstances, necessity arose, that provision would be set at defiance.
Mr. DEAKIN. -
In the one case you say nothing in the Constitution, but mean it,
and in the other you say it, but don't mean it.

Sir JOHN DOWNER. -
Quite so.

Mr. ISAACS. -
A limitation of expenditure could only at most affect a few hundred
thousands of pounds, and we are talking of millions.

Sir JOHN DOWNER. -
But whether the result would be the same or not, I do not wish to detain
the committee at greater length. I will simply conclude by saying the
present provision is enough.

Mr. FRASER (Victoria). -
I usually agree with my friend, the Premier from New South Wales, in
his very sound view, but in this case I cannot, this morning, follow him in
many of his arguments. For the life of me I do not see why clause 92, or
the guarantee in clause 92, need be altered at all. I do not see wherein there
is any cause for alarm in any colony. If it be proved or shown that
£6,000,000, more or less, revenue can be derived only from a high Tariff, I
would concede the point. I hold that you could get quite as much money,
and perhaps more, by a revenue Tariff than by a high protective Tariff. If a
high protective Tariff answers its purpose it stops revenue.

Sir JOHN DOWNER. -
Suppose you have no Tariff, how will you raise money? You will have to
raise money by direct taxation.

Mr. FRASER. -
We are now trying to frame a Federation to enable us to do that. I think it
is only right that we should give the states Treasurers some satisfaction.
We cannot pass from one page of our existence to a future page without
great misgivings. When people are about to change from one page to
another they look at the existing page. They are afraid of the future. I
therefore think it is only right that we should give the states Treasurers and
states Parliaments some satisfaction. It is agreed by all the speakers in
favour of the proposal that the new clause is a very simple one indeed. It is
simplicity itself; and I, for one, would not be against adopting it.
Representatives and senators in the Commonwealth Parliament will see
that the states are not-

Mr. WALKER. -
Slaughtered.

Mr. FRASER. -
Are not ruined. It would be the ruination of the states Parliaments, if sufficient money were not given back to pay interest on loans and such like. They could not, as Sir George Turner rightly observed the other day, raise taxation by direct taxes or in any way that could be devised. That would be impossible. To raise money in that way would create a revulsion of feeling, and, instead of having a harmonious Commonwealth, there would be the reverse. I see no danger in the first part of clause 92 to alarm anybody. The clause reads-

During the first five years after uniform duties of customs have been imposed the aggregate amount to be paid to the whole of the states-

It does not say the aggregate amount to each individual state, but simply the aggregate amount to be paid to the whole of the states. Can it be contended that the aggregate amount cannot be raised by an ordinary Tariff? I am certain it can. High protective Tariffs do not raise so very much money. In some cases high protective Tariffs cease to raise money at all, and therefore the argument does not apply. Mr. Reid and others have said that the Commonwealth Parliament would be compelled, under clause 92, to put on a high Tariff; otherwise, a protective Tariff. I do not hold with that at all. If we came to a decision in Adelaide and in Sydney, I do not see why we should now try to go back on it. It appears to me that the longer we discuss matters, and the more sessions we have-if we can call these sessions-we are going wider and wider apart.

Sir JOHN DOWNER. -

Do not say that.

Mr. WALKER. -

The honorable member (Mr. Fraser) is mistaken. We did not consider this point at Sydney, but only at Adelaide.

Mr. FRASER. -

I suppose we did not consider it because we were not alarmed at it, and did not feel it necessary to consider it.

Mr. WALKER. -

There was no time.

Mr. FRASER. -

Time! We considered a lot of things, and might have considered this point had it been thought necessary. But it appears that the oftener we meet the more difficult it is for us to come together on simple clauses whereon there need not be any serious difference. I do not agree that any colony need be alarmed at clause 92 as framed in Adelaide. It gives the states a guarantee that the aggregate amount shall be raised throughout the whole;
it does not say that each state shall get back the aggregate amount it is exactly entitled to. It is absurd to say that the amount of money cannot be raised by a fair revenue Tariff. At the same time, when I find men like Mr. Holder, of South Australia, agreeing to the clause, as proposed to be substituted for the old clause, I certainly would not throw obstacles in the way of the Convention in its wisdom deciding to adopt the new clause. I would not say that it might not be adopted; but there is just ground for the Treasurers, not only of Victoria but of other colonies, requiring a guarantee. Victoria is quite as strong as some of the other colonies. If it came to a matter of debating which is the strongest colony, Victoria has an amount of vital financial strength in it, and need not be alarmed at all. Victoria is not put to great straits yet as to making both ends meet—that is, the same straits as older countries are put to. Even now, with all her retrenchment, Victoria could retrench still more if compelled to do so. There are many ways in which Victorian expenditure could be further curtailed; so that this colony, and also the other colonies, are financially strong. Let us hope that the colonies will be still stronger when they unite. If federation is going to do anything, it is going to give us financial prosperity, as it has done elsewhere; and it will also save expenditure as it has done elsewhere, and, in every other way, help to give confidence to the nation. Confidence in this respect means a great deal. There need be no jealousy in regard to the matter. If there is a large section of the population who have no means of livelihood in Victoria, they have only to walk across the Murray or cross the border into South Australia and find employment there. There will be one Commonwealth. The people of Canada do not say—"We are leaving Nova Scotia and are now going to New Brunswick." Names are forgotten in the Canadian Dominion. Boundaries are simply obliterated, and the people residing in Manitoba, Nova Scotia, or New Brunswick have forgotten the old names which marked the boundaries, and all are under the same benign rule. So it will be here if we forget the present and look to the future. I would rather see the clause as adopted in Adelaide adopted here, or some amendment in clause 92, as now presented by the Finance Committee. The clause, as I said before, is remarkably simple, and simply means that the Commonwealth Parliament shall refund the moneys that the states Treasurers expect. I was wrong the other day in stating that there would be twelve members for each state in the House of Representatives. New South Wales will be entitled to about 26 representatives, and Victoria to 24, or something like that. It is not to be believed, in my opinion, that the members of the House of Representatives and the senators will neglect the interests of their own states. The senators in the Dominion of Canada are elected for life, and perhaps may not be in
the same touch with their constituents as would the senators in the Australian Commonwealth. The Bill provides that half of the senators go to their constituents every three years, and that the members of the other House shall be elected every three years, or probably at shorter intervals. It cannot be conceived that a large body of men who are returned by the electors could neglect the duties devolving on them to see that the state Treasurers are not made insolvent. I am satisfied that this colony and South Australia, probably Tasmania, and also perhaps Western Australia are financially strong. New South Wales appears to be so financially strong as not to mind what course is adopted.

Sir GEORGE TURNER. -
That is quite right.

Mr. FRASER. -
We are not jealous of New South Wales.

Mr. MCMILLAN. -
You are practically a New South Welshman, and you ought to know.

Mr. FRASER. -
I am certainly a New South Welshman, and I am proud of it. At the same time, the financial position of Queensland is not behind that of New South Wales, but is just about as strong, and probably in 100 years will be the strongest of the group.

Mr. WALKER. -
There are great possibilities there.

Mr. FRASER. -
Why should New South Wales object to put one or two words in this clause, just to give confidence? I would not say that the words would make the clause surer, as an honorable member has said, because I think it is sure already, but the words would give confidence and would not do any harm. I therefore would ask that this small concession be made by the Finance Committee.

Mr. HENRY (Tasmania). -
We are now dealing with clause 92, and the important part of that clause—which was fought out, I recollect very well, in the Finance Committee, and insisted on very strongly as giving some assurance to the state Treasurers that the specific amount at all events would be returned to their respective Treasuries—provides that the aggregate amount which the several states have received from Customs in the year prior to the introduction of the uniform Tariff shall be returned in a certain mode. That is the important provision in the clause.

Mr. LYNE. -
That is the clause.

Mr. HENRY. -

That is the clause as it stands. The provision which affords a certain amount of security to the states it is proposed to strike out. I have myself, both in the Legislative Assembly of Tasmania and in this Convention, expressed the opinion that we might with confidence trust to the Federal Parliament, knowing how that Parliament will be constituted, and knowing also the necessities of the various states. In four ou

Sir GEORGE TURNER. -

It cannot be done. It would be very difficult in a colony, and no man could do it in the Commonwealth.

Mr. HENRY. -

It would be most difficult. If there is a possibility, and there is a strong possibility, that the Treasurer's calculations for the first year may be seriously upset, then in the absence of a provision such as this-I am not arguing for the provision, but in the absence of some provision giving the Federal Parliament power to aid the state Treasurers, or throwing the responsibility on the Federal Parliament-there is the risk of several state Treasuries being very seriously deranged and embarrassed. I am quite in accord with the Premier of New South Wales in repudiating the use of the word "insolvency;" I am merely pointing to the grave contingency that the state Treasuries may be very seriously embarrassed. Then the question arises-in the event of the Federal Treasurer's calculations proving erroneous, and the amounts returned to the respective states being altogether inadequate for the necessities of those states, they are left in this anomalous position: They have given up this instrument of taxation which enables them to raise funds necessary to pay the interest on the public debts. They are left, with the whole liability, and they have to take the entire risk of what the Federal Treasurer's calculations may be, as to whether they will get back a sufficient sum to meet their engagements. In cases where colonies are already overburdened with direct taxation, and have retrenched to the uttermost, what then is left to them? It is obvious, to me at all events, that the responsibility should be distinctly laid on the Federal Parliament or Executive. I agree to the striking out of this clause. I am quite prepared to say to my fellow colonists in Tasmania-"Take the risk and strike out the clause, making no special provision for a specific amount to be returned; trust to the Federal Parliament." But I do desire that it shall be made quite clear that the Federal Parliament shall have the necessary power to come to the aid of the state Treasurers if the circumstances justify it. That is my point. If we do not put some provision
in this Constitution making it quite clear that the Federal Parliament has
the necessary power in some unforeseen contingencies to step in and aid
the state Treasurers we must have some provision such as that in the
clause-a provision throwing the responsibility on the Federal Parliament of
providing a sufficient sum for the states' necessities.

Mr. FRASER. -

What could be more simple than the words used in the clause?

Mr. HENRY. -

I have given my reasons why I should prefer some general provision
giving the Federal Parliament power, under certain conditions to be
determined by the Federal Parliament, rather than the provision now in this
clause. This provision in clause 92 would be better than nothing, but I
would prefer wider terms, which would apply under conditions that we
may not foresee. But, while I agree to the striking out of the clause on the
understanding I have named, I am not at all in accord with the reasons for
doing this which were so eloquently advanced by the Premier of New
South Wales. He has told us that his objection to putting anything like a
specific amount in this clause-of course, the amount is not named, but it is
indicated-is based on the ground that it would indicate what the particular
policy of the future Federal Parliament should be in the matter of the
Tariff. Now, I fail to see myself in what respect merely naming a definite
sum to be returned indicates or becomes a mandate to the Federal
Parliament as to what the Tariff shall be; but it is said that if it is
compulsory on the Federal Parliament that this large amount shall be
raised, it is impossible that a policy of free-trade can be adopted by the
Commonwealth. Well, I say, in reply to that, that the financial necessities
of the colonies are such that it is imperative that the amount shall be raised,
and there is no getting away from the fact; whether you put it in this
Constitution Bill or leave it out, the financial necessities of the states are
such that the money must be raised. Of course, it is obvious that we cannot
state in this Constitution Bill whether this amount shall be raised by
Customs or otherwise, and I do not see anything in the clause which
indicates that it shall be raised by Customs. The power is left to the Federal
Parliament to say how it shall be raised. The Premier of New South Wales
laid great emphasis on the argument that if we restricted the expenditure of
the Federal Parliament to £300,000 per annum, that would be the best
provision by way of security to the states.

Now, I must say, with all due respect to that right honorable gentleman's
acknowledged ability, that this argument seemed to me-I do not like to use
the language that occurs to me-
Mr. REID. -
Oh, I don't mind; I am accustomed to much harder language.

Mr. HENRY. -
Well, I must say that it seemed to me to be an absurdity. Here we are entrusting the Federal Parliament with power to raise revenue to an unlimited extent, and we all know that the necessities of the states and of the federal authority will require something like £6,000,000 to be raised, and to say that the difference between £300,000 and £500,000 is going to operate in any way in regard to securing to the states the necessary revenue strikes me as absurd.

Mr. REID. -
If you know what the Commonwealth expenditure is to be for the year you can calculate your share of it, and knowing your receipts from Customs, you can know what your income is.

Mr. HENRY. -
The amount of £300,000 has been fixed as a very liberal amount for the expenditure of the Federal Government, and I would ask how, in the name of common sense, the expenditure of an additional £100,000 could seriously affect the position of the states, even if such an increased expenditure were probable? While agreeing to strike out this clause, I trust that the Convention will see its way to insert some provision that will give the Federal Parliament the necessary power to deal with exceptional cases when they arise.

Dr. QUICK (Victoria). -
I, for one, would very much like to see some provision in the Constitution indemnifying the several states against loss from the surrender of revenue from all sources. At the same time, I would not support or assist any proposal which would bear the sinister aspect suggested by the Premier of New South Wales—which would have an embarrassing effect upon the important colony of New South Wales. But it appears to me that it is within the bounds of possibility that the Premier of New South Wales has overstated the difficulty of the case from his point of view. In the first place, I would draw attention to the fact that at Adelaide he gave his support to the scheme embodied in clause 92.

Mr. REID. -
No, I fought that part of it most bitterly in the committee, and was beaten.

Dr. QUICK. -
I understood that the right honorable gentleman gave his adhesion to it generally.

Mr. REID. -
I always fought against the part fixing the aggregate amount.

Mr. LYNE. -

I think the honorable member (Dr. Quick) is mistaken. The Premier of New South Wales did not support that.

Dr. QUICK. -

I may be wrong, but I remember a speech in the Convention at Adelaide in which the right honorable member (Mr. Reid) said he was prepared to give his support generally to the provision.

Mr. REID. -

I said I was prepared to trust the Federal Parliament. That is not trusting the Federal Parliament; it is the very opposite.

Dr. QUICK. -

I accept the right honorable gentleman's assurance that he did not support the proposal with regard to fixing the aggregate. However, I would venture to direct his attention to the fact that the whole of his opposition to this indemnity or security proposal seems to be based on the assumption that the only revenues which are to be surrendered or transferred by the states to the Commonwealth are those to be derived from Customs and Excise. It is quite true that there will be upwards of £6,000,000 per annum surrendered by the states to the Commonwealth in Customs and Excise, but that amount does not represent the whole of the revenues, or the whole of the sources of revenue, which are to be expressly transferred by the states to the Commonwealth. I find by a return which was laid before the Convention the day before yesterday by Mr. Fenton, the Victorian Government Statist, in reply to a motion brought forward by myself, that other annual revenues to be transferred by the states to the Commonwealth reach a total of £1,863,934. So that nearly £2,000,000 in addition to the £6,000,000 will, under this Constitution, be transferred to the Commonwealth, will be under the control of the Commonwealth, and will be capable of legislative modification by the Commonwealth.

Mr. KINGSTON. -

There is a considerable outgoing in respect of that.

Mr. SYMON. -

The net amount would be about £1,000,000.

Dr. QUICK. -

Amongst these sources of revenue are the postal, telegraphic, and telephonic services, amounting to £1,675,516; ocean beacons, buoys, light-houses, and light-ships, £76,305; currency and coinage-mint, £36,313; bank-note tax, £53,577; bankruptcy and insolvency, £10,794; copyrights,
patents, and trade-marks, £10,776; Agency-General, £653; or a total of £1,863,934. These are sources of revenue-revenue-earning departments-which will be transferred to the Commonwealth, which the Commonwealth will have the control of, and from which the Commonwealth may derive an increased revenue to make up any possible deficiency without necessarily imposing on it the obligation of raising any deficiency from Customs revenue. Now, I would suggest to the Premier of New South Wales to consider this also—whether he would have to say to the people of New South Wales that they are immovably pledged to any particular fiscal policy, merely because some £6,000,000 sterling has to be guaranteed to the states, either in the aggregate or in their several capacities. It seems to be admitted generally that that sum could be raised through the Custom-house, either by protective duties or by revenue duties. In fact, it could probably be raised more easily by revenue duties than by protective duties because the effect of protective duties, if they are successful, is rather to keep goods out of the Commonwealth, and to reduce revenue. Therefore, I do not see how that argument, which seems to overwhelm and embarrass the Premier of New South Wales, ought to induce him to take the strong and determined stand of suggesting that this would jeopardize federation amongst the free-trade party in New South Wales. I am sure that no one wishes to put anything in this Constitution which would embarrass any leading member of the Convention, or any colony. I would, therefore, urge the right honorable gentleman and his colleagues in the representation of New South Wales to consider our position. Take the colonies of Victoria and Western Australia. We stand to lose more than any other colony in point of surrender of revenue, and therefore our position would be more uncertain and precarious than that of any other colony.

Mr. GLYNN. -

You stand to gain more in internal trade.

Dr. QUICK. -

We may gain hereafter. I do not suggest that the indemnity should be a permanent one. It might be confined to a period of five years. That would not pledge the Commonwealth to an indefinite fiscal policy for all time, but it would place the states in a position, in some degree, of certainty. I would ask the chairman of the Finance Committee to consider whether some such addition as this should not be made to the clause which is to take the place of clause 92: The Commonwealth shall during such period

That is the period of five years.

indemnify each state against the net loss, if any, against such debits and credits-

These are the debits and credits specified in the earlier sub-sections.
arising from the transfer of revenue-earning departments and services to the Commonwealth, the revenue-earning value of the same to be determined by the average annual revenue yielded by the same during the five years

That speaks for itself. I throw it out as a suggestion. At the same time, as I said at an earlier stage of this discussion, I do not wish to force my own views in favour of an indemnity, or of some security, on any particular colony, and to have the decision arrived at merely by a division. I would like to see a scheme adopted—either on the lines I have mentioned or on the lines indicated by other honorable members—unanimously, so that the principles embodied in the Bill should not represent the result of a conflict, but the result of conciliation and compromise, which should be the essence of every reasonable proposal in this Constitution, certainly in matters relating to finance. The proposal I have made appears to me to be based on fair and equitable principles. It gives the states credit during the five years' period for all revenue which they receive from all sources. On the other hand, the states will be debited with the expenditure indicated by these sub-sections. Then, if there is any deficiency, as shown in the annual balance sheet—that is, any deficiency as compared with the receipts from all sources during the five years immediately preceding the uniform Tariff—that deficiency will be guaranteed by the Commonwealth, I would point out, also, as showing that such a deficiency need not be made up by an increase of customs duties—that there are various revenue-earning departments capable of earning nearly £2,000,000 per annum which are very elastic, and would probably yield any sum necessary to cover the deficiency without introducing anything like an income tax or a land tax. For instance, there is the bank-note tax which Victoria surrenders, and which yields £19,317 per annum. The colony of New South Wales also surrenders a bank-note tax yielding £26,431 per annum, and South Australia surrenders bank-note tax yielding £7,829 per annum. That shows that any deficiency to make up the indemnity or guarantee need not involve a drastic alteration in the fiscal policy of the Commonwealth. The amount required could be obtained from these other elastic sources of revenue.

Mr. LYNE (New South Wales). - We have listened to a very long debate upon this question, but so far I have not heard any solution of the difficulty. I cannot say that I am at all in favour of the clause as it stands. It is a very cumbersome clause, and should be struck out. I should like to hear from the Treasurer of Victoria, who started the debate, what proposal he has to submit in substitution for the clause that is to be struck out.
Sir GEORGE TURNER. -
Simply that the commonwealth should by some means guarantee to all the states what is proposed to be guaranteed to one state-Western Australia. Whatever our losses are, the states should not be called on for five years to debit themselves with those losses, but they should be made up by the Commonwealth by some means.

Mr. LYNE. -
Then the right honorable gentleman would make the condition applicable to Western Australia applicable to all the states?

Sir GEORGE TURNER. -
That is the only way I see of dealing with the difficulty.

Mr. LYNE. -
I am not sure whether that is a possible way of doing it. I have read with a good deal of interest the proposal made by my honorable friend (Mr. Holder), and I think that it would meet all that the Treasurer of Victoria desires. Mr. Holder suggests that 95 per cent. of the total amount raised through the Customs should be returned to the states, and that is based on an expenditure by the Federal Parliament of £300,000. The Federal Treasurer would have to raise practically the amount that is obtained now by the states from customs duties to enable him to meet an expenditure of £300,000, and to repay 95 per cent. to the states.

Mr. REID. -
There is nothing in the proposition requiring that the total amount raised shall be £6,000,000. The Commonwealth Treasurer would simply return 95 per cent. of the amount, whatever it was.

Mr. LYNE. -
If he returns 95 per cent. he must raise £6,000,000, or he could not meet an expenditure of £300,000.

Mr. REID. -
This proposal would not compel him to do it. He could raise money by other means.

Mr. LYNE. -
I quite admit that it would not be a direction to the Federal Treasurer that he should raise this sum of money by customs duties. The money could be raised from any source, but it would give the state Treasurers an assurance that they would receive a certain amount of money.

Mr. REID. -
They would not know how much. They would not know what 95 per cent. would come to.
Mr. LYNE. -

The proposal is based on the revenue received from Customs at the present time, and it would require 5 per cent. of the total to provide for an expenditure of £300,000. I do not say that this is the best proposal that can be made, It is well known that I have always been in favour of a guaranteed return to the states for a number of years. It has been suggested that there is a sinister motive in this. I have no sinister motive, but I would ask honorable members to place themselves in the position of a state Treasurer. He would not know without some guarantee what money he would receive from month to month, or from year to year, and yet be would have to forecast his financial position for each succeeding year. It is all very well to say that the Federal Parliament will be framed from the electors of the states as they are now. That is correct in one sense, but only in one sense. It will be made up from the electors of the present states, but under very different conditions. If the Federal Treasurer got into financial difficulties at any time the first thing he would do would be to throw the responsibility on the state Treasurers by refusing to pay them the amount of money that they should receive. He would perhaps be able to carry on, but would do so by placing the states in a very unenviable position. I desire to leave as much as we reasonably can to the Federal Parliament, but we should consider the necessities of the states during the first few years of the Commonwealth. I do not think for one moment that there is any possibility of any of the states repudiating any of their responsibilities or becoming insolvent. Still, some of the states might be placed in very great financial straits if they were left dependent entirely on the Federal Treasurer. It was stated to-day by the Premier of New South Wales that no colony paid its interest out of borrowed money. I would like any Treasurer present to tell me how he pays his interest when his revenue is not equal to his expenditure, and he has a deficiency?

Mr. REID. -

I have had no deficiency, so I cannot say. You had a deficiency, and you are the man to tell us.

Mr. LYNE. -

The right honorable gentleman has borrowed money which practically has been used to pay interest during the time he has been in power.

Mr. REID. -

No.

Mr. LYNE. -

The same thing has been done by every other Treasurer, and I happen to know that the right honorable member has done it.

Mr. KINGSTON. -
You have not permanently paid interest out of the loan money.

Mr. LYNE. -

Money has been borrowed to make up the deficiency, and that deficiency included the payment of interest.

Mr. SYMON. -

Perhaps it was set down for some new railway.

Mr. LYNE. -

No, it appeared as being partly for the payment of interest. It was in the general expenditure of the state. I am not speaking now of New South Wales. I say that any state that has a deficiency pays its interest out of borrowed money, and the financiers in Great Britain know it perfectly well.

Mr. DOUGLAS. -

They all do it.

Mr. LYNE. -

I have no doubt that Tasmania has done it as well as others.

Mr. DOUGLAS. -

I am doing it now.

Mr. LYNE. -

I am glad the honorable member agrees with me. I cannot agree with the Premier of New South Wales that the mere placing of a limit upon the expenditure of the Federal Parliament will in any way help in assuring to the states a return of this money. I am in favour of placing a limit on the expenditure, as was done in the Bill before, but that simply prevents extravagance. It does not in any way secure to the states a return of any sum of money, such as they are obtaining at the present time. The Federal Treasurer need not raise more than £300,000, and what I want to see in the Bill is some security to the states that they will receive a considerable sum of money during the first few years of the Federation. I said a few moments ago that there was no sinister motive in this. I believe that you are more likely to receive a large sum of money from a revenue Tariff than from a protective Tariff—that is, from a protective Tariff which would have the proper effect. The Premier of New South Wales need not be alarmed if we provide for the insertion in the Bill of a guarantee for a minimum return to the states, because he will be able to tell his supporters that the Tariff of the Commonwealth will be a revenue Tariff, and a revenue Tariff is now in force in that colony. Personally, I admit that I am of the opinion that in a Federation where you have three or four colonies favouring a protective policy, and only one colony against it, the votes of the three or four colonies are likely to override the vote of the one colony, so that in the
future there must be, perhaps not a very high, but still a protective Tariff. I hope that when the clause is struck out a solution of the difficulty will be arrived at in the direction suggested by the Prime Minister of Victoria. No doubt the clause is objectionable as it stands, and will have to be struck out, and unless we substitute a proposal such as has been suggested, we shall have all this discussion over again. Some people may argue that everything should be left to the Federal Parliament, but I cannot fall in with that view. I believe that the Federal Parliament will do the best it can to mete out justice to the states, but difficulties may arise which will make that impossible, and the states will then feel the pinch of financial necessity, unless the suggestion is agreed to. I am as willing as any one to trust the Federal Parliament, but I cannot trust it blindly, as one or two seem prepared to do. Therefore, I hope that some security will be given to the states. Though I am not as well acquainted with the feelings of the people of Victoria as the representatives of this colony must be, I venture to think that if you leave out of the Bill a provision of this sort it will prejudice the acceptance of the measure in Victoria. I believe that the same thing may be said of New South Wales, of South Australia, and of Tasmania. I hope, therefore, that, without any long debate, we may come to a solution of this difficulty.

The amendment was agreed to.

The clause, as amended, was agreed to.

The CHAIRMAN. -

Before we come to clause 93, I might mention that five new clauses have been suggested by the Parliament of Tasmania, of which four appear to me to depend upon the first, which is called 92A, and which is as follows:-

Upon the establishment of the Commonwealth the whole of the public debts of the states, and all interest thereafter payable thereon, shall become chargeable upon and payable out of the funds and revenues of the Commonwealth, but each state shall indemnify the Commonwealth in respect of so much of the public debts of the state and the interest payable thereon as shall exceed that proportion of the same debts which, if calculated upon the basis of the population of the state, would represent a sum per capita equal to the sum per capita represented by the total public debt of the state which shall he indebted in the least amount per capita of its population.

Sir GEORGE TURNER (Victoria). -

I desire to point out that we are now in the

midst of considering the very important question of the distribution of the surplus. We have determined what shall be done with it during five years,
and I think that we should finally deal with the whole matter before we turn our attention to the question of public debts. T

Mr. BARTON (New South Wales). -

I would suggest that, as it is just upon one o'clock, we should leave these clauses to be digested after lunch. I have been asked to say that to-night, and upon other evenings when the Convention is sitting, dinner will be served in the dining-room at six o'clock. I propose to ask honorable members to sit until half-past five this afternoon, and to resume again at half-past seven.

[The Chairman left the chair at five minutes to one o'clock p.m. The committee resumed at seven minutes past two p.m.]

Clause 93. - After the expiration of five years from the imposition of uniform duties of customs, each state shall be deemed to contribute to the revenue an equal sum per head of its population, and all surplus revenue over the expenditure of the Commonwealth shall be distributed month by month among the several states in proportion to the numbers of their people as shown by the latest statistics of the Commonwealth.

The CHAIRMAN. -

There are three amendments suggested, one by South Australia, one by Tasmania, and one by Western Australia, but inasmuch as they are all amendments which have been already decided in other parts of the Bill I will not put them.

Mr. BARTON (New South Wales). -

There is an amendment proposed by the Finance Committee, and in order to carry it out I beg to move-

That all the words after the first word "After" be omitted, with the view of inserting the following words:-"five years from the imposition of uniform duties of customs all surplus revenue over the expenditure of the Commonwealth shall be distributed month by month among the several states on such basis as shall be fair to the several states, and in a proportion and after a method to be determined by the Parliament."

In moving this, I should like to mention that a suggestion was made by my learned friend (Mr. Symon) the other day, who pointed out that the effect of the words "on such basis as shall be fair to the several states" would leave the question of the fairness of the distribution to the High Court, instead of to the determination of Parliament. Inasmuch as this is a matter entirely of politics and of policy, Mr. Symon suggested that Parliament should be the arbiter with reference to the fairness of the distribution, as well as with regard to the proportion, after a method to be determined by the Parliament. I quite agree with that myself. In fact, before the suggestion was made by the honorable member I had prepared an
amendment to serve the purpose. At present I will propose the Finance Committee's amendment as it stands.

Mr. SYMON (South Australia). -

I propose after these words are struck out to insert the words "not less than" before the words "five years," so as to make five years the minimum and not the maximum.

Sir GEORGE TURNER (Victoria). -

By creating this blank we shall take away what I, for one, consider ought to be the method of distribution after five years. It will take away the per capita distribution. The clause, as we have it before us, provides that after five years the distribution is to be on a per capita basis. The amendment is to leave the distribution absolutely to the Federal Parliament. I have stated several times that I believe, whatever we may provide during the five years, that after that period the distribution should be per capita, even though we should have a modifying clause giving the Federal Parliament some power to vary it if exceptional circumstances arise. The matter has been discussed so often that I shall not discuss it now, but I think it would be wise to take a division on the omission of these words, so as to see whether a majority of the Convention are or are not in favour of the per capita basis. I shall, therefore, vote for the retention of these words, because I believe the basis, after five years, should be per capita.

The CHAIRMAN. -

I shall put the question in this form that the words proposed by Mr. Symon-"not less than"-be inserted before the word "five."

Mr. SYMON (South Australia). -

The object of the amendment is to put the clause in accord with clause 91. I wish to make it clear that both clauses are the same.

Mr. GLYNN (South Australia). -

I intend to oppose the amendment proposed by Mr. Symon, because it is practically affirming the principle of the whole case. During the debate in committee on this question several objections were taken to allowing Parliament to make a distribution of the surplus as it thought fit. If these objections are to be pushed home, now is the time to do so, because if Mr. Symon's amendment is carried it will affirm the whole principle, and it will provide that after the expiration of five years Parliament can do as it wishes. If Sir George Turner's idea is carried out of preserving the old clause, we shall be forced to per capita distribution on the present principle. I would suggest that it would be more feasible to amend the Finance Committee's amendment. After five years from the date of the
imposition of uniform customs duties, which would really mean seven
year's experience, because the new Tariff will probably not be imposed for
two years, it ought to be possible for the Federal Parliament to recast the
method of distributing the surplus for, say, a further period of five years.
That would be twelve years from the foundation of the Commonwealth,
and I think the per capita distribution ought then to cease. The position I
assume is that, instead of enforcing the per capita distribution at the end of
five years, you should give power to the Federal Parliament to say that a
further temporary expedient may be adopted for a further period of five
years. The effect of the clause as it stands is that the Parliament may really
dispose of the surplus in any manner it likes. I object to that. There is a
method fixed in the Constitution for five years-the method set forth in the
clause we have passed. At the end of that time the Parliament can, on any
basis it likes, apportion the surplus among the states. Several honorable
members, in speaking on this point, have opposed the vesting of this power
of distribution in the Federal Parliament, and if they wish to stick to the
position they assumed in speaking, now is the time to agree to the insertion
of words to prevent the Federal Parliament being allowed for any longer
period to say how the surplus is to be distributed among the states. I
suggest this as a via media as between the old system of per capita
distribution at the end of five years, and new system of giving omnipotence
to the Parliament in regard to the distribution at the end of the five years
from uniformity. What I desire is that at the end of the five years from
uniformity the Parliament should hit upon another temporary expedient
thus hit upon should only hold for five years further, and at the end of that
period—which would be ten years from uniformity—there should be a per
capita distribution. I suggest that the words proposed to be inserted should
be amended in this way: At the end of the second line, after the word
"customs," there should be inserted the words—
and thereafter for a further period of five years.

And then, at the end of the clause, other words should be put in, so that
the clause would read—

After the expiration of five years from the imposition of uniform duties
of customs, and thereafter for a further period of five years, all
surplus revenue for the expenditure of the Commonwealth shall be
distributed from month to month among the several states, on such a basis
and in a proportion and after a method to be determined by the Parliament;
after the expiration of ten years from the imposition of uniform duties of
customs, all surplus revenue over the expenditure of the Commonwealth
shall be distributed from month to month among the several states, in
proportion to the numbers of their people, as shown from time to time by the latest statistics of the Commonwealth.

Mr. REID. -

What is the difference between that proposal and the new clause?

Mr. GLYNN. -

It is this. Under the new clause the Parliament can go on for ever regulating the apportionment of the surplus among the states, which consequently may never get a *per capita* distribution. The Parliament may perpetuate the system with regard to Western Australia ad infinitum, or it may apply the same system to any other colony, or it may shift the system we are applying to Western Australia to any other colony having a temporary flush of prosperity, such as Western Australia has got now. The difference between the two is that, whereas the clause would allow the Parliament to adopt some other method which would be applicable only for another five years—that would make the term ten years altogether—and at the end of that time the *per capita* distribution would have to be entered upon.

I make this suggestion because it is extremely probable that there will be at the end of the second five years such an approximation to normal conditions in all the colonies as will justify the resort to the *per capita* principle then. Thus we should have the positive assurance that at the end of ten years the *per capita* distribution of the surplus would be entered upon.

Mr. SOLOMON. -

Would it not be simpler to scratch out five and insert ten?

Mr. GLYNN. -

I do not think it would, because there is a fixed period of five years provided for from the very inception of the Constitution. We have fixed the method of distribution for the first five years.

Mr. SYMON (South Australia). -

I rise to a point of order. The point is whether the honorable member (Mr. Glynn) is speaking to the amendment under consideration?

The CHAIRMAN. -

The amendment actually before the Chair is that of Mr. Symon to insert the words "not less than" before the word "five;" but we have adopted the procedure of permitting a discussion upon the whole clause.

Mr. GLYNN. -

Exactly so, sir, and it is on that assumption I am speaking; besides which the adoption of Mr. Symon's amendment would practically mean the confirmation of words already inserted. Moreover, I want to point out to Sir George Turner that it would be better for him to adopt the method I suggest as a sort of mean between the two methods which have been
discussed.

Sir GEORGE TURNER. -
I shall be glad to accept your suggestion if the Convention will adopt it as a compromise.

Mr. GLYNN. -
If the words I have read be inserted they will insure the application of the per capita method of distribution at the end of ten years from the establishment of uniformity.

The CHAIRMAN. -
The question is that the words "not less than" proposed to be inserted be so inserted.

Sir GEORGE TURNER (Victoria). -
I must confess that I do not understand the meaning of this amendment.

Mr. BARTON (New South Wales). -
I am not quite positive that this amendment will make any difference in the meaning of the clause. Clause 91 says during the first five years and thereafter, until the Parliament otherwise provides, certain things shall be done. The suggestion now is that there shall be a fair basis of distribution in "not less than" five years. It cannot be less than five years according to the Bill as it stands.

Sir GEORGE TURNER. -
I cannot understand the amendment.

Mr. BARTON. -
It is only repeating the effect of the clause as it stands; unless, of course, my honorable friend (Mr. Symon) has some other reason which is not apparent to me.

Mr. SYMON (South Australia). -
The object of the amendment really is to make clause 93 correspond in its effect with clause 91. Of course, if the provision is clear without this amendment, I will not go on with it, but it seems to me that it is not clear without the amendment. In clause 91 the implication is that the five years' term is merely a minimum, and that the Parliament shall at the end of that period deter

Mr. SOLOMON. -
Under your amendment it may be ten years.

Mr. SYMON. -
It may be five, or six, or ten years. So it may under clause 91.

Mr. BARTON. -
But this clause goes on to say-"until the Parliament otherwise provides."
Mr. SYMON. -
That is so, but it is the same here. The Federal Parliament will have the
distribution of the surplus.

Mr. SOLOMON. -
That is the intention.

Mr. SYMON. -
No. The intention is that, when we have ended the first five years, the
Federal Parliament will determine whether it has sufficient data and
material before it to enable it to fix the basis for distribution. If it should
not have sufficient data, it may extend the period of bookkeeping for five
years more.

Sir GEORGE TURNER. -
Five years?

Mr. SYMON. -
Or ten years or twenty.

Sir GEORGE TURNER. -
Or one year.

Mr. SYMON. -
Or one year. The clause says-"until the Parliament otherwise provides." The
only object of my amendment-and of course there is very little
substance in it except to make clause 93 clear-is that it does not
contemplate the establishment of a rigid rule by the Federal Parliament for
the distribution of the surplus immediately upon the expiration of the five
years.

Sir GEORGE TURNER. -
It means that the Parliament must take the matter into consideration at the
end of the five years.

Mr. SYMON. -
It means that I want to make the matter perfectly clear. I wish to make
clause 93 consistent with clause 91, or to avoid the possibility of clause 93
being construed to be in conflict with clause 91; and I want to compel
legislation at the end of five years with regard to the distribution of the
surplus, and to make it absolutely clear that it is our intention that it is to be
left to the Federal Parliament to say whether the time is ripe for changing
the method of distribution from that which prevailed during the five years
to a new method of distribution. In clause 91 the intention is that the
system of bookkeeping shall continue until the Parliament makes a law to
alter it.

Mr. REID. -
Or until the Parliament passes a short Act continuing the existing system
for a fixed period.
Mr. SYMON. -

Just so-until the Parliament intervenes. Clause 93 seems, if not inconsistent with clause 91, at any rate calculated to give rise to some little confusion on the point. But I attach so much weight to the view of my honorable friend (Mr. Barton) that I am quite willing to leave the matter to the consideration of the Drafting Committee, in order that if it be possible by the insertion of these words to make the two clauses more consistent and clear, they may do it. It is with that view that I have called the attention of the committee to the matter, and I think that the amendment embodies the intentions of the committee.

The CHAIRMAN. -

Do you wish to withdraw your proposed amendment?

Mr. SYMON. -

The reason I have taken the liberty of occupying the attention of the committee about it now is because it is very important that we, in this Convention, should understand that the five years' [P.1089] starts here time is not the limit. Some honorable members are under the impression that at the end of the five years the Federal Parliament are obliged to adopt this system of distributing the surplus.

Sir JOHN FORREST. -

That is what clause 93 means.

Mr. SYMON. -

No, it does not.

Sir JOHN FORREST. -

Lawyers differ.

Mr. SYMON. -

No, not on that question. It is not a question for lawyers only. The right honorable gentleman is just as competent to form an opinion on that question, because it is a practical question. I am quite willing to leave the matter to the Drafting Committee. I prefer that the words should be stated, but as Mr. Barton has expressed himself in thorough appreciation of what the point is-and it was in order that there may be no misapprehension on this subject that I desired to impress it on the attention of the committee-I am quite willing to leave Mr. Barton to deal with it as he thinks fit.

Mr. Symon's amendment was withdrawn.

Mr. BARTON (New South Wales). -

I beg to propose-

That after the first word of clause 93 the following words:-"five years from the imposition of uniform duties of customs all surplus revenue over the expenditure of the Commonwealth shall be distributed month by month
amongst the several states on the basis which the Parliament deems fair” be inserted.

I may explain the reason of this amendment. I take it, on second thoughts, that the words "proportion" and "method" are unnecessary, because if the surplus is to be distributed month by month among the states in some way, that involves both proportion and method. So I propose to leave those words out. Then, I propose to make this distribution on the basis which the Parliament deems fair, lest the difficulty which Mr. Symon suggests might arise, and any assumed unfairness should be made the subject of appeal to the High Court, thereby making that court the arbiter of a purely political question. I take it that no member of the Convention desires that that should be done.

Question-That the words proposed to be inserted be so inserted-put.
The committee divided-
Ayes ... ... ... ... 25
Noes ... ... ... ... 17
Majority for the amendment 8
AYES.
Abbott, Sir J.P. Kingston, C.C.
Briggs, H. Leake, G.
Carruthers, J.H. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Cockburn, Dr. J.A. McMillan, W.
Crowder, F.T. O'Connor, R.E.
Forrest, Sir J. Reid, G.H.
Gordon, J.H. Solomon, V.L,
Hackett, J.W. Symon, J.H.
Hassell, A Y. Venn, H.W.
Henry, J. Walker, J.T.
Holder, F.W. Teller.
Howe, J.H. Barton, E.
NOES.
Berry, Sir G. Grant, C.H.
Braddon, Sir E.N.C. Lyne, W.J.
Brown, N.J. Moore, W.
Deakin, A. Peacock, A.J.
Dobson, H. Quick, Dr. J.
Douglas, A. Turner, Sir G.
Fraser, S. Zeal, Sir W.A.
Fysh, Sir P.0. Teller.
Glynn, P.M. Isaaes, I.A.
Question so resolved in the affirmative.

Mr. BARTON (New South Wales). -
I beg to propose-
That all the remaining words of clause 93 be struck out.

Mr. GLYNN (South Australia). -
Before that is done, I desire to draw the attention of the committee to the fact that they seem now to have cut out the possibility of the adoption of the principle of per capita distribution as final at any time.

Mr. REID. -
Nonsense!

Mr. GLYNN. -
Unless the Parliament decides upon it.

Mr. REID. -
Of course, that is exactly what we want.

Mr. GLYNN. -
That is what some honorable members may want, but there are a good many others who do not want that.

Mr. SYMON. -
You can move a proviso.

Mr. GLYNN (South Australia). -
In order to test the feeling of the committee on that point, I will move that, instead of striking out all the remaining words of clause 93, we retain them, and change "five" into "ten." Of course, if that is done, the clause will have to be subsequently recast to make its meaning more clear.

The CHAIRMAN. -
I do not think that that can be done, because it would be inconsistent with the decision we have already arrived at.

Sir GEORGE TURNER. -
Mr. Glynn can propose that, after five years, the distribution shall be on the per capita basis.

Mr. GLYNN (South Australia). -
Then beg to move-
That the following words be added to Mr. Barton's amendment:-"After the expiration of ten years from the imposition of uniform duties of customs, all surplus revenue over the expenditure of the Commonwealth shall be distributed from month to month among the several states, in proportion to the numbers of their people, as shown from time to time by the latest statistics of the Commonwealth."

I think it would be extremely advisable to bring the per capita system of
distribution of the surplus into force at the end of ten years from the imposition of uniform duties of customs, and if we have not then obtained the information necessary to framing a proper basis of distribution, I do not know when we will obtain it.

Mr. BARTON (New South Wales). -

It seems to me the best plan that, after prescribing that the Commonwealth Parliament shall have sufficient experience and data before it—which is the intention of the Finance Committee—our best course is then to leave the matter in the hands of the Parliament. It may be that after they have had five, six, or seven years' experience, they will come to the conclusion that the per capita basis of distribution is a fair one. On the other hand, it may be they will consider that the evidence of a few more years is necessary before determining the plan of distribution. There is no reason why we should tie th

Mr. HOLDER (South Australia). -

I think that the alternatives now before us are either to leave the whole matter free in the Constitution, so that the Parliament of the Commonwealth may do what in its wisdom it deems right and fair; in which case, if it be fair, I have no doubt they will accept the per capita method of distribution—

Mr. REID. -

At the earliest possible moment.

Mr. HOLDER. -

Another alternative is that, no matter what is fair and just, even though the per capita system of distribution may be conspicuously unfair, we shall state in this clause, in spite of that, that they shall adopt the per capita system of distribution, and no other. Now, it seems to me that it would be far better to leave those who will come after us, ten or twelve years hence, to decide this question rather than to take it in our hands and decide it today. If we adopt the latter course, it will seem to be equivalent to saying "We are the men, and wisdom will die with us." I hope that the Convention will not say any such foolish thing as that, this Convention over, all wisdom will be gone, because I am sure honorable members will agree with me that the Federal Parliament, ten or twelve years hence, will be quite as willing and anxious to do what is fair then as we are willing and anxious to do what is fair to-day.

Mr. REID (New South Wales). -

I will only add to what the two preceding speakers have said, that the effect of this amendment might be the very opposite of what is intended. It might, in the
exigencies of politics, be taken to mean that the present or existing system should go on for ten years.

**Sir GEORGE TURNER.** -

We will run that risk.

**Mr. REID.** -

What I wish to point out is that there will be, on all hands, so strong and absolute a desire to bring into force the *per capita* system of distributing the surplus, the moment it is deemed to be fair, that it would be unwise for us to put this condition in the Bill. If, seven years hence, it be deemed fair to adopt the *per capita* system immediately, why should it not then be adopted? Why should we insert this restriction? The *per capita* system is so absolutely fair in itself that it will be inevitably adopted as soon as the Federal Parliament deems it wise to adopt it.

**Dr. COCKBURN (South Australia).** -

The *per capita* system of distribution may be open to objection. Possibly it is, but I do not think it should be left open for the states to battle for better terms.

**Mr. SYMON (South Australia).** -

If we ran trust the Federal Parliament for five, surely we can trust them for twelve years. Some honorable members seem to think that the Federal Parliament will be perfectly honest, fair, and just during the five years, but that immediately on the expiration of those five years their appetite for unfairness will be so strong that we must fetter them in this Constitution. I certainly hope that the amendment will not be pressed.

**Sir GEORGE TURNER (Victoria).** -

There is no question of unfairness or dishonesty on the part of the Federal Parliament, but a large number believe that the *per capita* distribution should come into operation the moment federation comes into operation. That is what I believe. I believe thoroughly that as soon as we become federated we should have one purse only, and we agree to a period of five years' bookkeeping simply for the benefit of some colonies who urge that a *per capita* distribution must act unfairly to them. For a year or two it might act somewhat unfairly to them. I do not want anything unfair. I was perfectly willing to accept a five years' bookkeeping, a sliding scale, or anything else, but I believe that at the end of five years we shall go to a *per capita* distribution. Or, if we cannot get that at the end of five years, I am content to take it at the end of ten years.

**Mr. REID.** -

I hope we will get it before ten years.

**Mr. SYMON (South Australia).** -

I would suggest to the mover that he alter the proposal he made so as to
make the *per capita* distribution not later than ten years. That would leave it open to have the *per capita* distribution between five and ten years.

**Sir GEORGE TURNER.** -

We will accept it at the end of ten years.

**Mr. LYNE (New South Wales).** -

I agree with what has fallen from the Right Hon. the Treasurer of Victoria. I should like to see the *per capita* distribution applied as soon as possible.

**Sir JOHN FORREST.** -

You can't get it.

**Mr. LYNE.** -

I would like it to take place the moment federation is accomplished. I have heard some say that it could not take place until after twelve months, but I hope the Convention will not agree to extending the period to ten years. Five years is a long time—a great deal longer time than a state should be called on to be bound, and go cap in hand to the Federal Treasurer. I do not think the members of the Convention are here to form themselves into a number of state wreckers, although it is approaching that. Every act that has been done is antagonistic to the states, and invests every power in the Federal Parliament. We were not sent here for that purpose, and for my part I shall do all I can to give the states a fair show. I hope the amendment will not be carried.

**Mr. REID (New South Wales).** -

I would like to point out to the honorable member [P.1092] starts here that I believe he is the only person in Australia who does not admit that New South Wales would be exposed to, at any rate, the risk of extreme unfairness by the operation of the *per capita* method. There may be state wreckers here—I hope not—but there may be also federation wreckers, who I believe are the worse of the two.

**Mr. KINGSTON (South Australia).** -

I shall be found supporting the suggestion of my friend (Mr. Glynn). The remarks which have been made by preceding speakers, somewhat in opposition to the suggestion, have only served to convince me that I was possibly wrong in not recording my vote in favour of the amendment proposed, I think, by Sir George Turner. The sooner we get to the basis of distribution *per capita* the better.

**Mr. FRASER.** -

They commenced it *per capita* in Canada.

**Mr. KINGSTON.** -

Yes, and I think it was proposed to introduce it in the Constitution
previously framed. In Federal Constitutions hitherto, distribution *per capita* has been agreed to and has worked well. I trust it will shortly be established in connexion with the Australian Federation, and I shall vote accordingly.

**Sir JOHN FORREST (Western Australia).** -

I am sorry my friend (Mr. Kingston) has changed his mind so quickly in regard to this matter. It seems to me that no one in this Convention desires anything more than that we should get what is just and fair, and we are more likely to get that by the Federal Parliament dealing with the matter some years hence than we are by fixing a certain rule now. Take the colony I represent. At the present time we contribute £7 or £8 per head through the Customs, and it is proposed that we should get back £2 or £3 per head.

**Mr. KINGSTON.** -

How much did you contribute seven years ago?

**Sir JOHN FORREST.** -

I am not talking of the past or the future, but dealing with the present. No one can say how much we may contribute five or six years hence. I judge of the future by the present, and I say at once that it would not suit the people of Western Australia to give £8 per head and receive back £3 per head. That being so, I cannot agree to a *per capita* distribution at the present time. Honorable members who will gain, or think they will gain, by a *per capita* distribution, judging from the present circumstances, are not, I think, acting exactly fairly when they desire to get an advantage. I do not desire an advantage. I only want what is right and just, but it seems to me that some honorable members think they will get an advantage. If that is the case, they should not vote in that direction. I hope that none of us want to gain an advantage in the Convention at the expense of others who will not be similarly benefited.

**An HONORABLE MEMBER.** -

We want federation.

**Sir JOHN FORREST.** -

No one, I think, will vote against federation if he is told that it will be left to the Federal Parliament, in which the people of the colonies will be represented, to do what is right and just. The Federal Parliament will not desire to injure any colony, but rather to assist, and those honorable members who think they will get a little advantage by this *per capita* distribution should not vote for it, seeing that if they get an advantage other colonies must suffer.

**Mr. BROWN (Tasmania).** -

I take it that the vote recorded a little while ago decided the question so
far as the majority of the Convention is concerned as between distribution 
per capita or distribution by the Parliament in such a manner as might be 
thought fair. I felt bound, when this issue was before the Convention, to 
vote as I did. But, inasmuch as I have—not very much publicly or in the 
Convention, but privately-done all I possibly could to preach the gospel of 
trust in the Federal Parliament, I feel bound, when the issue is placed 
before us in this way, to record my vote in favour

of leaving the matter of the distribution to the Parliament of the future. 
There has been manifested all through the debate, in my humble opinion, 
much too great a disposition to distrust the Federal Parliament. For reasons 
that have been reiterated over and over again, and which I need not now 
repeat, we ought to repose more confidence in the sense of justice and 
fairness of the Federal Parliament, and in the absolute necessity for that 
Parliament dealing fairly with the various states. I am, therefore, quite 
prepared to leave the question of the mode of distribution to the Parliament 
of the future.

Mr. DOBSON (Tasmania). -

The mode which this Convention has adopted of performing perhaps the 
most sacred work ever committed to a band of politicians does not, I think, 
do justice to our common sense. We have devoted the whole of the 
morning to a general debate on the question of finance, but when the most 
important question, not only from the financial aspect, from the aspect of 
the Constitution as a whole, comes before us, we positively and absolutely 
divide on it without a word. Then, when the division is taken, several 
honorable members take the floor and seem to apologize for addressing the 
Convention at all.

Mr. REID (New South Wales). -

I rise to a point of order. Have we appointed a lecturer to the 
Convention? Have you, Mr. Chairman, heard the honorable member 
criticising the way in which we speak, when we speak, and saying why we 
should not speak?

The CHAIRMAN. -

I did not gather any remarks from the honorable member which I can rule 
out of order.

Mr. REID. -

You did not hear them, Sir Richard.

Mr. DOBSON. -

I was expressing my surprise that when this most important point of the 
whole of our Constitution was before the committee honorable members 
should divide without a word, and that they now seem to be speaking on
the question in a tone of apology. The whole matter is being decided within a few minutes when I should have thought it deserved a day's debate. We have not been addressing ourselves to this mo

Mr. KINGSTON. -  
That has been altered.

Mr. DOBSON. -  
I say that I understood my honorable friend to suggest that that should be amended.

Mr. WALKER. -  
It has been amended.

Mr. DOBSON. -  
I know it has, but the same fault remains in the amendment. Mr. Symon pointed out that, suppose the decision of the Federal Parliament was not fair, or not in a proper proportionate method, it would be against the interest of the state.

Mr. SYMON. -  
The division leaves the final decision of that point to the Federal Parliament.

Mr. DOBSON. -  
I understood Mr. Symon's suggestion to leave it no more to the Federal Government than before, except to use the words "on a basis which Parliament shall deem fair," and to leave out that question of the proportionate method. I venture to think, with all deference to the much abler lawyers and barristers I see before me, that the word "fair" is about the worst possible word you could use in framing a Constitution. If Mr. Symon had suggested to Strike out the word "fair," and to say "on such basis and after such method as Parliament shall determine," there could be no possible hope of appeal to the Supreme Court as the clause was originally drawn. I still think there is the gravest possible objection to using the word "fair." We know that men when self-interest is concerned will never agree as to what is fair. With all respect to what Mr. Barton may say, I think that the word "fair" is the very last word which should be used. If it has to be left to the Federal Parliament to say on what basis the distribution shall be determined, the word "fair" ought to be left out. What is fairness to one may be gross unfairness to nine-tenths of the electors in two different states. I understood Mr. Barton to speak of our having inaugurated the system of bookkeeping. For what object was that system inaugurated? I consider it was solely because some of the richer colonies thought other colonies would gain an advantage under the *per capita* distribution. It has
therefore been impressed on us, and we are accepting the bookkeeping system for five years in order that we may try and discover where the rich consumers are, where the poor consumers are, which is the colony with the largest revenue per capita, and so forth. Therefore you have engrafted on your Constitution this five years' bookkeeping principle, and you are to wait the result of this five years' bookkeeping before you can say it is fair. You have in the Constitution implied, as plainly as words can speak, that if the five years' bookkeeping bring out the inequalities, or anything like the same inequalities at the end of five years or fifty years, then the per capita distribution is unfair. I say, therefore, that to a very great extent the Constitution does not leave the question of the per capita distribution free and untrammeled to the Federal Parliament. It goes before that Parliament with a bias, and as the opinion of this Convention, which shrank from the per capita distribution at the commencement, which shrank from it at the end of five years, and which will not have it at the end of ten years. The opinion of the Convention impliedly is that they will not have the per capita distribution if the figures show a few irregularities which could be explained away by the errors of statisticians and the want of application on the part of commercial men. Therefore the very thing which the members are aiming after—leaving this important question of the distribution of the surplus to the Federal Parliament—is not gained, because the power is not left in a free and unbiased way. You have the opinion of the Convention which shrank from the per capita distribution, and you have told the Federal Parliament that you have inaugurated a system of bookkeeping. What for? In order that the Federal Parliament may study it and be bound by it, and distribute the surplus for all time on the result of that bookkeeping system? Now, I ask, is that a federal idea? I appeal to my right honorable friend (Sir John Forrest), who, at two banquets I had the honour of attending in his company, brought down the house on each occasion by saying we were one people; one in religion, one in destiny, one in interest, one in everything but purse. We are going to keep up the difference between the consuming power of one colony and the consuming power of another; we are going to be one people in name, but not one people in interest. I can imagine no more fruitful subject of party discussion, or heated debate, or unjust tactics and tricks, if you leave this matter for all time to the Federal Parliament without engrafting on the Constitution a time when we shall be one people, not only in name, but in one purse, in one interest, and in one common good. I have not the gift, I am afraid, of putting my views before the Convention as forcibly as I would like, but when I attempted, as Mr. Reid said, to lecture the Convention, my object was simply to ask them and urge them to discuss
this matter, at all events for a few moments, and let us see where we are going. If there is nothing in my argument, let the matter drop. But my great argument is that you are not putting this untrammelled before the Parliament, you are influencing them by what you are doing, by the books you are keeping, for if they do not study and be guided by those books they will not be doing what is right. Therefore, I think this is a most important question. Looking at the past, what hope have we of the per capita distribution? Do you imagine that in five years' or in ten years' time there will not be inequalities? As an honorable member pointed out the other day, what is the Right Hon. Sir John Forrest doing? In his colony they have made most wonderful mineral discoveries, gold is to be had by going there, and all the male population, or a great portion of it, is flocking from the other colonies to Western Australia. But I know scores of women and children who cannot follow their husbands to the goldfields of Western Australia, and we therefore are keeping them in the other colonies. The males who are flocking away to the West are, of course, creating a boom there. In five years' time the boom in Tasmania may not have reached its height, but may be going on, and on, and on, and the whole of the West Coast may become a gigantic and vast mineral field, and we in Tasmania may possibly approach to a very large consuming power. But I do not say that the rich colonies should for all time seek to keep exactly what they raise, and that the poor colonies are always to be content with what they raise. That is keeping alive the very principles of self-interest which you wish to knock down. Therefore, I shall support the amendment before the Chair; but I very much regret that, although I have listened to a number of speeches dealing with twenty questions this afternoon, I have not heard one able speech on this most important point in the Constitution.

Mr. LYNE (New South Wales). - I have been, and am now, very much in accord with the remarks which have fallen from my honorable friend (Mr. Dobson).

Mr. DOBSON. - We do agree then, for once.

Mr. LYNE. - When you are right I agree with you. But I believe the better course now is to fix, as nearly as we can, the method by which the return shall be made to the states, and I know no better method than the per capita distribution. It has been stated that New South Wales would suffer if we adopted, immediately on the federation being consummated, the per capita distribution throughout the whole of Australia. I think there is very grave doubt of that. But even if there was a little loss for the first year, or, at the
most, two years, I do not think there would be any loss to New South Wales after that time. In two years, at the very outside, I think the conditions of the same class of people, living in the same manner all through the Australian colonies, will be such that their purchasing power and their consumption will be very much the same, no matter in what part of Australia they may live. The word "fair," which has been used in this amendment, and has been voted for so strongly, is a word that will cause a great deal of trouble and dissension in the future. Look at the figures which have been set before us from the various statisticians of the different colonies; no two of them agree. And when that is so, what basis will the Federal Parliament have to go upon in making this "fair" distribution? If it is to go on the basis of the figures as given by the statisticians of the various colonies it will have a very difficult task to arrive at what will be a fair distribution. A remark fell from the Right Hon. Mr. Reid, just now, that there may be in this Convention federation wreckers. If there is a federation wrecker in this Convention, it is the delegate who wishes to import into the Constitution Bill something that he knows his own people will not accept, and there are many things that have been imported into this Bill which will, I believe, be detrimental, to a very great extent, to the acceptance of the Bill in New South Wales, and, probably in some of the other colonies.

I, at any rate, stand here to support the provisions of a Bill that I hope will be accepted, and I do not hesitate in straightforwardly stating when I have any objection to a provision that I think will not be accepted. It is all very well to talk glibly, and speak round the subject, but I think the time has arrived when we should speak straight out on any subject, and say distinctly whether we think our own people will accept any particular provision or not. I have opposed many parts of this Bill, and I think one great point which will cause its rejection probably in some states is that there is being aimed at a Federal Parliament that will be too extensive, too extravagant, and surrounded by all the glory which I think we should wait a few years for. There is a very strong feeling outside this Convention that we might have a much more inexpensive Federal Parliament than it seems to be proposed that we are going to have, taking into account all the various matters that are proposed by the Convention to be brought within its scope. I would earnestly urge members of the Convention not to allow any matter to be imported into this Bill that is not an absolute necessity; those who import into this Bill such matters will be the wreckers, and not those who speak out when they think there is any danger looming in the
Mr. HENRY (Tasmania). -

I should not have troubled the Convention at this time, but for certain remarks which have been made by my honorable friend (Mr. Dobson) with reference to those who voted on this side on the last resolution. Mr. Dobson assumes that those who voted in support of the clause are opposed to a per capita distribution of the surplus. For my own part, I have always, as strongly as I could, supported the per capita distribution, but seeing that we have entered on this bookkeeping system, which is practically agreed upon, and seeing further that it is just possible, at the expiry of the five years' period, that some necessitous colony may require aid, and that the Parliament will then, with all the facts before it, be the best judge as to what each colony shall receive, therefore, although I believe firmly that the per capita distribution will be the solution of the question, and that the per capita system must come ultimately, still I think it is prudent at this stage to say that we will leave the matter in the hands of the Federal Parliament, which at the end of the five years' period will be in full possession of all the facts, and will be the best judge how to deal with the question.

Mr. ISAACS. -

That is leaving an eternal scramble.

Mr. HENRY. -

I admit the force of the objection to some extent, and had the per capita system been approved by a majority of the Convention at this stage, I should have been found supporting it if other honorable members had been prepared to face the position at once. But having entered on this bookkeeping system, and seeing it is possible that some colony may require assistance at the end of the five years' period, it is wiser to leave it in the hands of the Federal Parliament. I do not anticipate that there will be any eternal scramble, as the Attorney-General for Victoria suggests. The solution of the difficulty lies in a per capita distribution, and I have sufficient confidence in the judgment of the Federal Parliament to believe that they will very soon arrive at that conclusion.

Mr. ISAACS. -

There will be a fight every year as to whether it should be a per capita distribution.

Mr. HENRY. -

No; I anticipate that at the end of the five years, or very soon afterwards, the Parliament will decide on the per capita system.

Mr. KINGSTON. -

Anybody may move to alter that.

Mr. HENRY. -
I am aware of that. Circumstances may arise in the history of the colonies that no man can foresee, and I think it would be wise not to tie the hands of the Federal Parliament in a matter of this sort.

Mr. Gordon (South Australia). -

I desire to ask one question, and it is this: What is the object of the bookkeeping system unless it is to supply the Federal Parliament with data on which to make a fair distribution? If we are to bind them at the end of five years, which is a moment in the life of a nation, to a rigid system of distribution, what is the object of the bookkeeping period?

Mr. Fraser (Victoria). -

The sooner the distribution is made per capita the better, and we have only departed from that principle because of the serious difficulties that seem to confront us. In Canada the per capita system of distribution was adopted at the very start, and it has not caused any dissatisfaction. If this matter is left to the Federal Parliament, that may be an inducement to some of the states to be extravagant; they may waste their money, get into financial difficulties, and appeal to the Commonwealth Parliament to rescue them. If the per capita system of distribution is adopted, each state will know what its position is, and the sooner that is done, in my opinion, the better.

Mr. Holder (South Australia). -

In answer to my honorable friend (Mr. Gordon), I desire to say that the object of the bookkeeping is to determine the distribution of the surplus during the five years.

Mr. Solomon. -

Surely that is not the only object.

Mr. Holder. -

The great object of the bookkeeping is to provide for the distribution during the five years. Incidentally, although that is not at all the purpose, it will furnish information that will be of value to the federal authority. I hope that the federal authority will be able very speedily to make the distribution per capita. My only objection to the suggestion now made is that it proposes to stereotype the per capita system in the Constitution. We should then, no matter how inequitable it might prove, be unable to alter it without a referendum. I prefer that it should be determined upon by Act of Parliament, when it could be altered at any time.

Mr. Fraser. -

Do you think it would be inequitable?

Mr. Holder. -

It might be.
Mr. DOBSON. -
Supposing that at the end of five years the bookkeeping shows that the inequalities of consumption are no greater than now?
Mr. HOLDER. -
If they are as great as now, the figures ranging from 25s. up to 39s. a head, or, taking Western Australia, up to £7 a head, I should say that a per capita distribution would not fit in with the facts at all.
Mr. GLYNN (South Australia). -
My honorable friend (Mr. Holder) seems to forget that the bookkeeping system will be discontinued at the end of five or seven years. We are not going to assume that the power vested in Parliament, under clause 91, is to be always exercised. But a system of bookkeeping for five years would be of very little use as furnishing data for the distribution of the revenue 50 years hence. Are we going to assume that 50 years hence there is to be a revival of the bookkeeping to enable further data to be obtained? If so, the Commonwealth will never get out of its swaddling clothes. There is no federal state in which the per capita system of distribution has not been found efficacious. It is adopted in Canada, but owing to the Constitution permitting the possibility of subventions, there is a state of affairs which might be repeated here if this amendment is not carried. Fifty years hence members may be returned to the Federal Parliament simply on the promise that they will try to get a different method of distribution adopted. If that is to be possible, we had better not federate. Sir John Forrest pointed out that eight or ten years hence it might be inequitable to distribute the surplus per capita, because the revenue of Western Australia might be £8, and that of the other colonies £2 or £3, per head.
Sir JOHN FORREST. -
I said now.
Mr. GLYNN. -
We are not going to assume that that will be the state of affairs ten years hence. If the right honorable member has any apprehension, why should he not accept the suggestion I made yesterday, which, although it may seem to be comical, is mathematically correct? That suggestion was that in determining the population of each state the number of females and children should be assumed to be equal to the number determined by the proportion of females and children to males in all the states. If that plan were adopted, there could be no error in the distribution.
Mr. SOLOMON. -
There is another great factor—the earning power of the adults in each state.
Mr. GLYNN. -

The honorable member forgets that that does not apply to distribution.

Mr. SOLOMON. -

It applies to the revenue.

Mr. GLYNN. -

Yes, to the aggregate revenue, but it has nothing to do with the inequalities arising from a *per capita* distribution. I do not want to argue this point. I say that this would be an equitable way of getting over the difficulty suggested by Sir John Forrest. If we are ever to assume that our conditions will be normal, the sooner we pass a provision of this sort the better. I have listened to many speeches, and I have heard the clause denounced by persons who now propose to vote against it. Surely our discussions are not merely academical. They have some definite end. I call on the gentlemen who rely on the experience of Canada as to local subsidies to support this proposal. The Right Hon. Mr. Reid pointed out that if it was carried it might prevent the adoption of the *per capita* method of distribution at the end of seven years. The Hon. Mr. Howe suggested that that difficulty could be overcome by a slight alteration in the wording. I do not think that is necessary, because under the clause already passed the Federal Parliament can adopt the *per capita* method of distribution if they like.

Mr. FRASER. -

Earlier than the five years, even.

Mr. GLYNN. -

Yes, and that objection falls to the ground.

Mr. WALKER (New South Wales). -

There is one point that has not been noticed in this discussion, and that is, that at the end of the five years, when the Federal Parliament have the necessary statistics, they will no doubt adopt some form of sliding scale to prevent the necessity for further bookkeeping. The contributions will then be more equal than they are now. If the members of the Convention who approved of the sliding scale in Adelaide are true to their convictions they will believe that, after the statistics have been obtained, there will be very little difficulty in providing a sliding scale, and after a few years the *per capita* system of distribution can be adopted. I am sure that every one here wishes to see a *per capita* distribution carried into effect, but we wish it to be combined with equity and fair play.

Mr. BARTON (New South Wales). -

As several allusions have been made to the position of Canada in regard to this matter, I would like to point out that the system of distribution in Canada is not solely *per capita*. The British North American Act, section 1792
118, provides that-

The following sums shall be paid yearly by Canada to the several provinces for the support of their Government and Legislature.

Then the provinces are mentioned, with a sum set opposite to each, amounting altogether to 260,000 dollars. The section goes on to say:-

And an annual grant in aid of each province shall be made, equal to 80 cents per head of the population, as ascertained by the census of 1861, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census, until the population of each of those two provinces amounts to 400,000 souls, at which rate such grant shall thereafter remain.

This grant is to be in full settlement of all future demands made upon Canada.

But the Government of Canada shall deduct from such grants, as against any province, all sums chargeable as interest on the public debt of that province in excess of the several amounts stipulated in this Act.

So that there is a very considerable exception to the per capita mode of distribution in the case of Canada, although that mode is much more warranted where a country is practically unified in its early stages than under a federal form of union.

Mr. FRASER.- You cannot call Canada unified.

Mr. BARTON.- I do not say that it is, but there are many things which are unified in Canada, and the Dominion approaches unification more than the Union we are about to create. The honorable member (Mr. Lyne) said that the per capita mode of distribution should be carried out within twelve months or two years. I am not accusing my honorable friend of any desire to wreck federation, but I cannot imagine anything more calculated to prevent the acceptance of this Bill in New South Wales than such a proposal. When one looks at the enormous amount of revenue derived through the Customs by New South Wales, notwithstanding the lowness of her Tariff, it will be seen that the people of the colony would shrink from a measure providing for a per capita distribution within a year or two. Such a proposal would be prejudicial to New South Wales, though in less degree than in the case of Western Australia and Queensland.

Mr. REID.- In total amount the loss of the colony would be larger.

Mr. BARTON.- Yes, but it would not be so much per head as in the case of Western Australia. As the conditions of a uniform Tariff operate, the rate of
consumption of dutiable products will more nearly approach in each colony, but you will not obtain the assent of the people of New South Wales to a *per capita* distribution in the early years of the Federation. I think, however, they would agree to the proposal that when the rate of consumption has more nearly approached in the several colonies, and when evidence has been afforded of the process that is going on, it shall be open to the Federal Parliament to determine a reasonable basis of adjustment. Much as the honorable member (Mr. Lyne) may desire to help the federal cause, I feel certain that our financial proposals would be instantly rejected by New South Wales if effect were given to his suggestion, and I do not know how I, with all my desire for federation, could recommend them.

The committee divided on the question that the words of Mr. Glynn's amendment proposed to be inserted be so inserted-

Ayes ... ... ... 16
Noes ... ... ... 31
Majority against the amendment 15

AYES.
Berry, Sir G. Kingston, C.C.
Braddon, Sir E.N.C. Peacock, A.J.
Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Trenwith, W.A.
Dobson, H. Turner, Sir G.
Fraser, S. Zeal, Sir W A.
Grant, C.H.
Howe, J.H. Teller.
Isaacs, I.A. Glynn, P.M.
NOES. Abbott, Sir J.P. Briggs, H. Leake, G.
Brown, N.J. Lee Steere, Sir J.G.
Carruthers, J.H. Lewis, N.E.
Clarke, M.J. Lyne, W.J.
Crowder, F.T. McMillan, W.
Douglas, A. Moore, W.
Downer, Sir J.W O'Connor, R.E.
Forrest, Sir J. Reid, G.H.
Fysh, Sir P.0. Solomon V.L.
Gordon, J.H. Symon, J.H.
Hackett, J.W. Venn, H.W.
Hassell, A.Y. Walker, J.T.
Henning, A. H. Wise, B.R.
Henry, J. Teller.
Holder, F.W. Barton, E.
Question so resolved in the negative.
The remaining words of the clause were struck out.
The clause, as amended, was agreed to.

Mr. BARTON (New South Wales). -
There is a clause, which in its proper order should have come before the one last dealt with; but as clause 93 was called on, I had to move an amendment upon that clause in its proper order in committee. I shall now, on behalf of the Finance Committee, move clause 92. Honorable members will recollect that clause 91 was struck out. This is the clause relating to Western Australia, and I propose to move it as part of the finance clauses, so that it may be before the committee, and I shall ask, afterwards, that it be transposed with the clause last dealt with, in order that it may take its proper place.

Mr. HENRY (Tasmania). -
I desire to ask whether I can now move a new clause of which I have given notice?

Mr. BARTON (New South Wales). -
It might simplify matters if the honorable member moved his new clause as an amendment on the clause I am now proposing. I understand the honorable member wishes his new clause to be carried in substitution of the Western Australian proposal.

Mr. HENRY. -
No; I desire to move it before the Western Australian proposal, and not necessarily in substitution of it.

Mr. BARTON. -
In that case, I shall not move the Western Australian proposal at present, so that the honorable member can bring forward his proposal.

Mr. HENRY (Tasmania). -
I beg to move-
That the following stand as a new clause of the Bill:-The Parliament may, upon such terms and conditions and in such manner as it thinks fit, render financial aid to any state.

It is generally recognised that there is a strong necessity for the Federal Parliament to have power in the event of any state being seriously embarrassed financially to step in and give aid to that state. It is very important that we should have an assurance embedded in this Bill that the Parliament shall have power in any such contingency to afford the necessary aid. The question has been raised as to whether the Federal Parliament has inherent power under this Constitution to grant such
financial aid. I am not in a position to express any opinion on that question. I leave it entirely to the legal talent of the Convention.

Mr. FRASER. -
Surely Parliament can distribute the money as it likes.

Mr. HENRY. -
I am not clear about that.

Mr. LEWIS. -
They can do so after the five years.

Mr. HENRY. -
Yes; but it is the first five years which will be really the crucial period, in which the states will be passing through a trying financial time. So far as we have gone in these financial proposals, we have tied the hands of the Federal Parliament in a very rigid manner as to the mode of distribution of the surplus. I do not see how the Federal Parliament could possibly employ any portion of the surplus in aid of any particular state since we have tied it down as we have done in this proposal. Honorable members will notice that this amendment is framed in a very wide manner. I am indebted to the honorable and learned member (Mr. Symon) for aiding me in drawing up this amendment so that it should be as wide as possible. These colonies are entering into a great partnership in this Federation. Seeing that the several states are practically handing over to the federal authority the larger portion of their assets, while they are retaining their entire liabilities, it must necessarily be a somewhat hazardous affair for the several states as to how they will come out under this arrangement. So far as we have gone there is no obligation laid on the Federal Parliament to make good the liabilities of these states with reference to the payment of interest on their debts. As a matter of fact, the entire amount contributed by the several colonies in customs duties for a long period has been absorbed in the payment of interest on their debts. If the several states hand over to the Federal Parliament the entire customs duties, and retain the whole of the interest on their debts and other liabilities, we should have some assurance that the Federal Parliament has at all events the power to aid the states. It has been asked—Should the Federal Parliament devote a portion of the revenues of the other colonies to aid a necessitous colony? I am content to leave that matter entirely to the Federal Parliament, because honorable members will notice that this amendment states expressly "upon such terms and conditions, and in such manner, as the Federal Parliament may decide?" I am in accord with the views of Sir George Turner, however lightly they may have been treated at the time, when he contended that it would be quite a consistent thing on the
part of the Federal Government, if there was a serious deficit in the federal finances, which resulted in deficits in the state Treasuries, to borrow the necessary amount in order to make good that loss. Now, it has been stated here that no Government has ever borrowed money for the purpose of paying interest on its public debt. But I am entirely in accord with the views of Mr. Lyne when he said today that the several Governments of these colonies have from time to time had serious deficits, and in order to meet those deficits they necessarily have appropriated a portion of borrowed money to pay their interest. I see no difficulty whatever in the Federal Parliament, in the event of a state being in a necessitous condition, owing to a grave mistake on the part of the Federal Treasurer, having the power, and using it, to borrow a sufficient amount of money to aid the necessitous state. Such a position as that, it seems to me, any state might be placed in. I do not speak exclusively of Tasmania. There might be a serious deficit in the revenue of any other state, except perhaps of New South Wales. It is quite possible that the Federal Treasurer, no matter how great his talent may be, may make a mistake in his estimates of revenue, especially for the first year, when matters will be so seriously deranged as to make it difficult to estimate what the revenue will be; and that may result in a serious deficit for some of the state Treasuries. The state Treasury would then either have to borrow the money to pay the losses of the state (which would no longer have Customs revenue behind it) or the Federal Government would have to do it for the state. Now, seeing that the Federal Government had failed to return sufficient Customs revenue to meet the necessities of the states, it appears to me that it should be laid upon the Federal Government as a duty to make good such losses. Without some such assurance as that the Federal Government may come to the aid of a state in a necessitous condition, where the state has imposed as much direct taxation as it can carry, I fear that some states may be deterred from entering into this Federation. I am not going to deal with the Western Australian provision, which it is just possible may not be approved of by a majority of this Convention. As it stands, I apprehend that there will be some opposition to it, because it has an inherent defect in it, to which the attention of my honorable friends from Western Australia should be drawn. If the provision for dealing with Western Australia be defeated, it will be exceedingly difficult for Western Australia to enter the Federation; but, with such a provision as I propose, it occurs to me that Western Australia might enter the Federation much more safely and with much greater assurance than under the provisions of this Bill. I will not detain the committee any longer, Sir Richard, as I have now expressed my views on this very important matter.
Mr. WISE.-
Do you move the omission of the Western Australia clause?

Mr. HENRY.-

No; I merely suggest that it needs consideration from my friends from Western Australia. I submit my own amendment for the consideration of the Convention.

Sir GEORGE TURNER (Victoria).-

I hardly like this amendment, because it is altogether too wide. Its provision lasts for all time, and it will to my mind bring about continual pressure.

Mr. HENRY.-

Limit it to five years.

Sir GEORGE TURNER.-

If you limit it to five years it will still have the result of bringing about continual pressure on the states by the Parliament to get better terms and conditions.

Mr. SYMON.-

Don't you think the Commonwealth may be liable to the same pressure after the five years, when they have control over the surplus? They may be pressed to come to the aid of the states.

Sir GEORGE TURNER.-

I do not think Mr. Henry's willingness to limit the provision to five years gets rid of my objections. It gets rid of one objection—that with regard to the provision being too wide; but there is still the objection that there will be continual pressure by the states on the Federal Parliament, as there has been in Canada (as our reading tells us), to get what are called better terms. Is it to be assumed that a state is to go cap in hand to the Federal Parliament and say—"We are in such an unfortunate position that we cannot ourselves carry on with the means at our disposal, and we want you to kindly give us some financial aid"? The effect of such an application would be that the condition of that state's stock in the money markets of the world certainly would not be as good as it was before the appeal to the Federation for financial aid.

Mr. DOBSON.-

Would not the state, therefore, strive in every way to avoid asking for aid?

Sir GEORGE TURNER.-

Then this amendment is valueless.

Mr. WISE.-
It is only a guarantee to the public with regard to dangers that are never likely to happen.

**Sir GEORGE TURNER.** -

Then we are going to give a guarantee to the public that we know is worthless?

**Mr. WISE.** -

The whole of the financial apprehensions are baseless. We know that already.

**Sir GEORGE TURNER.** -

We do not know it; we may be of opinion here that it is so. But so far as this provision is concerned, either the state must place itself in the position of appealing to the Federal Parliament for aid, and thus advertising its bad financial position, or, as has been suggested, the state will not dare to make the appeal, for the reasons I have mentioned. In the one case it would mean very severe loss to the state that made the application; in the other it means that what we propose to insert is simply some-thing which we know can never be taken advantage of. I believe in dealing with this question with regard to Western Australia as one on which we can well base a scheme which will be beneficial to the colonies, and of which Western Australia may fairly and justly take advantage without injuring her position in the money markets of the world or otherwise. We have provided with regard to Western Australia that wha

**Mr. SYMON.** -

But that provision is not passed yet.

**Sir GEORGE TURNER.** -

No; the whole question is open. I do not want to propose anything that will take a single shilling out of the coffers of the Treasurer of New South Wales, or interfere in any way with any moneys that colony may be entitled to receive back from the Federation. There always seems to be a fear in some quarters that whatever is to be given by the other states must be found by New South Wales, and cannot come from any other source. We have already determined that during five years there shall be paid to each colony what it collects, less the expenditure in connexion with its collection, and also less its per capita share of the expenditure of the Federation. I do not want to interfere with that. I believe New South Wales will, by the alteration of the Tariff, receive more than she receives at the present time. Of course, she will find the money, and therefore no one objects to her getting that particular money; but I believe that other states will suffer considerable losses, and I want, if I possibly can, in the interests of the federal movement itself, to
guard against those losses occurring during the first five years. I want the state Treasurers to have some interval, this reasonable term of five years, when they will be able to see exactly how the new Tariff is working, and what position the colony will be in at the end of the five years, so that then they will have a reasonable length of time to set their house in order. To do that, I propose to somewhat vary this proposal with regard to Western Australia.

Mr. SOLOMON. -
That proposal is not before the Chair; it is withdrawn.

Sir GEORGE TURNER. -
Well, I am showing, as a reason why I cannot vote for this new clause of Mr. Henry's, that there is another proposal which, in my opinion, is far preferable.

Mr. MCMILLAN. -
Your contention is that they virtually hang together.

Sir GEORGE TURNER. -
Yes, I think they do, because some honorable members may vote for this as ending the whole matter, and if I wait until after this is disposed of before mentioning my proposal, they may say-"If we had known that there was another proposal to deal with the states individually, we would have considered it and probably have voted for it, but, having voted for Mr. Henry's clause, we cannot vote for it now." I contend that I am entirely in order in submitting, as an objection to my agreeing to this clause of Mr. Henry's, that I have another proposal which will better answer the purpose. Of course, I could put my proposal now, by moving the omission of certain words from Mr. Henry's clause, but I do not wish to adopt that course. I can explain my proposal in very few words. My desire is simply this. We have our existing Tariffs. We will have a uniform Tariff after the Commonwealth is established. Under that uniform Tariff many of the colonies, through the effect of that Tariff and of intercolonial free-trade, will lose a considerable amount of their revenue. I desire that those colonies should not lose their revenue, or, rather, that it should be made up to them by the Federal Parliament. How the Federal Parliament is going to raise that money we must leave that body hereafter to decide. I will briefly state the effect of my proposal. I intend to propose that if any state, in consequence of the operation of the uni-form Tariff and of intercolonial free-trade, has received less than it would have received under the Tariff in existence at the time the uniform Tariff was passed, it shall have that amount made up to it by the Federal Parliament. That is, in substance, the purport of my proposal. I will not trouble to read my proposal, because when we come to deal with it as a substantive proposition we can then
consider its wording. That is my sole object, and it is because I consider Mr. Henry's clause is altogether too wide, and is a provision which would never be taken advantage of, that I oppose it, feeling that my suggestion will be a fair way of meeting the difficulty, and a provision which every colony will take advantage of. I therefore suggest that it should have fair consideration while we are dealing with Mr. Henry's proposal.

Sir JOHN FORREST (Western Australia). -

I am not in accord with my right honorable friend (Sir George Turner) in reference to this proposal of Mr. Henry, because it seems to me that this clause is intended to be perpetual, and not to be limited to five years, as I believe the proposal of Sir George Turner will be. Mr. Henry's clause is to be available for all time, and, in my opinion, it is not in any way confused or mixed up with the proposal of Sir George Turner. I was under the impression all along, until the present moment, that the power sought to be given to the Federal Parliament by this proposal belonged to the Federal Parliament.

Mr. SYMON. -

There is no doubt of that.

Sir JOHN FORREST. -

I was under the impression that the Federal Parliament would have inherent power to come to the assistance of any state on such terms as it might think fit.

Mr. MCMILLAN. -

So it has.

Sir JOHN FORREST. -

Then there can be no harm in adopting Mr. Henry's proposal.

Mr. MCMILLAN. -

That is just where the mischief comes in.

Sir JOHN FORREST. -

If the Federal Parliament has not that power, it certainly ought to have it, because we have heard over and over again in this Convention that, should evil times fall on any state, the Federal Parliament would never allow that state to come to disaster. It is all very well to talk like that, but if the Federal Parliament has no power to do that, I do not see what good result will come from such declarations. I think it ought to go without saying that the Federal Parliament which we are erecting should have power to make terms and conditions with any state, in order to save its credit, if unhappily that step should ever be necessary. And, as there may be a doubt about it, I am very much in accord with Mr. Henry's proposal. I can see no harm whatever in it, because we have every one of us said over and over again
that the Federal Parliament will always take a great interest in the welfare of the states, and will take care that no disaster ever comes to any of the states. Of course that must be taken reasonably. States must not be allowed to be extravagant, get into difficulty, and then expect the Commonwealth to come to their rescue. But still, as the words "upon such terms as it may think fit" are inserted, the proposal can do no harm, and there should be no opposition to it. Honorable members may say that this power is inherent in the Commonwealth, but let us make it perfectly clear by inserting this short clause.

Mr. WISE (New South Wales). -

I have consistently opposed throughout all these discussions the insertion in the Constitution of anything in the nature of what I have termed "placards." That is to say, I have opposed the inclusion, of amendments which only express the powers that are already implied, and which amendments are only intended to assuage fears that have no foundation in fact. Now, I regard this amendment as one of those placards, but, contrary to the course I have taken all through these discussions, I intend to support it. We cannot ignore the fact that, owing to a series of circumstances that need not now be particularized, an idea has got abroad that every state is going to be made bankrupt by means of federation. Every state, according to the enemies of federation, will, if we unite, be made bankrupt.

Mr. FRASER. -

Very few people hold that view.

Mr. WISE. -

We know that it is untrue, and we are each of us able, if time is given to us, and if we have people ready to listen to our arguments, to prove that it is untrue; but we cannot ignore the fact that the enemies of union in every state have got hold of a series of figures, most mischievous figures, issued by persons in authority, which lend more or less colour to that fiction.

Mr. FRASER. -

They ought to be brought to book for it.

Mr. WISE. -

Now, it has been said that figures cannot he. I admit it, but liars can figure; and what we have to do is to put a clause in the Constitution which will prevent the figures put forward by any of those enemies of union who may choose to falsify the returns of statisticians having any effect on the uninstructed voter. Now, I believe that if a clause of this sort is limited to five years it will accomplish that purpose. I would not have it go further than five years, as Sir John Forrest is inclined to do.

Mr. SYMON. -
It will never do to limit it to five years.

Mr. WISE. -

If it goes beyond five years we will then be landed in all the difficulties of the Canadian Constitution, which are a constant struggle between the several provinces for what is called "better terms."

Mr. FRASER. -

They have settled down in Canada long ago.

Mr. WISE. -

I think the honorable member will admit that certainly within the last five years there was an agitation for better terms, and the Federation of Canada has been in existence for over twenty years. If, however, we limit it to five years we get over the transition period.

Sir JOHN FORREST. -

We do not want this five years.

Mr. WISE. -

We get over the transition period every one is afraid of.

Sir JOHN FORREST. -

Oh, no.

Mr. WISE. -

After the five years trust to the Federal Parliament.

Sir JOHN FORREST. -

Give the power.

Mr. WISE. -

The power exists.

Sir JOHN FORREST. -

Then make it clear.

Mr. WISE. -

The power exists already.

Mr. SYMON. -

If you limit the power to five years it might take away the general powers.

Mr. WISE. -

I quite see the difficulty but I think it might be modified.

Mr. KINGSTON. -

In what clause do you find the power?

Mr. WISE. -

The power is the necessary implication from the fact of the Union. The power exists from the very circumstance of individual states coming together. The preamble agrees to unite in one indissoluble Federal Commonwealth, and the Federal Parliament, having the power to make laws for the well-being and good order of the whole community,
necessarily implies that no portion of the Common-wealth is to suffer. I quite recognise the force of the interjection of Mr. Symon that, if the amendment suggested by Mr. Henry is limited to five years, there might be an objection. I have not the amendment before me, but I think it would be quite easy to so frame it as to show that the intention is to guarantee to the public that the power may be exercised during the five years without limiting the general power.

Mr. FRASER. -

During the five years we are pretty safe. W

Mr. WISE. -

I agree that the limit of five years is not wanted at all. It is a mere concession to popular ignorance that is being encouraged, I am sorry to say, by the Government Statistician of our own colony (New South Wales). I cannot too heartily agree with the censures and criticisms on the figures of Mr. Coghlan, of which Mr. Henry, a representative of Tasmania, gave such an admirable illustration. I believe those figures have done more mischief to the cause of federation throughout Australia than any figures yet published.

Sir GEORGE TURNER. -

Has not Mr. Nash said that federation on the basis of receiving back according to collection would mean ruin to the southern colonies?

Mr. WISE. -

I think Mr. Nash has been rash in accepting Mr. Coghlan's figures.

Sir GEORGE TURNER. -

Mr. Nash said that long before Mr. Coghlan's figures were published.

Mr. WISE. -

It ought to be satisfactory to the people of the whole of Australia that every delegate in this Convention has, while differing on other matters, rejected the figures of Mr. Coghlan. There is not a representative of New South Wales who supports, and not a representative of Victoria, Western Australia or South Australia who gives the slightest credence to those figures.

Sir JOHN FORREST. -

We think them very good.

Mr. REID (to Mr. Wise). -

Do not say that. Mr. Coghlan's figures are all right.

Mr. WISE. -

No one disputes that the figures are arithmetically right, but they have no relation to the practical facts of the case. These figures ought to make people a little chary of listening to criticisms which are urged by the
enemies of Union, and based on the figures of Mr. Coghlan. One cannot take up the daily press in any colony without seeing those figures quoted everywhere by the enemies of union. It cannot be too widely known that there is no one in the Convention who accepts the conclusions of Mr. Coghlan. If that is so, and I say this with some diffidence as a layman in the matter, is there any financial problem at all? As a layman, I was one of those who readily agreed with the proposal to hand the whole matter over to the Finance Committee. We listened to a debate on the proposals of the committee. We are listening to another debate now when the proposals are being dealt with in detail, and I am bound to say that I have asked myself over and over again what has the Finance Committee done for us? There is no proposal brought up, without some member of the committee rising to suggest another proposal of a diametrically opposite kind. Instead of having the guidance of the Finance Committee, we have a certain number of proposals put before us, and every member of the committee has discussed those as if they were fresh matter.

Mr. HOLDER. -

Notwithstanding that, the Convention has adopted the suggestions of the committee so far.

Mr. WISE. -

In a sense the Convention have; but we have not had what we had the right to expect, namely, that the committee would put their proposals forward without proposing alternatives, and suggest that the proposals should be adopted in globo, as I am certain they would have been. Now, is there any financial problem? Who believes, unless we are going to suppose that the first Ministry of the Commonwealth are going to be either knaves or fools, that the Ministry are going to let a state fall into such a condition of insolvency or bankruptcy that the very existence of the Union would be threatened?

Sir JOHN FORREST. -

Where is the power?

Mr. WISE. -

The power exists from the very fact of the Union.

Sir JOHN FORREST. -

Well, put it clearly into the Bill.

Mr. WISE. -

I would rather not put it clearly in the Bill, if there is any danger, in attempting to express it, of limiting the power. That the power exists no one has expressed a doubt.

Sir JOHN FORREST. -

In what clause?
Mr. WISE. -

No one can believe that those intrusted with the management of the Commonwealth would risk the severance of the Union. The financial problem exists only in the imagination of statisticians, and of those who seize on every argument they can either adopt or invent of preventing the union. As a matter of practical politics, I do not believe any one here has expressed the belief that the problem will ever arise. Whatever temporary inconvenience a state may be put to, that inconvenience will certainly be relieved by good sense and patriotism, or, if we want anything lower, by the self-interest of those who manage the affairs of the Union. Can any one believe a Ministry of the Commonwealth would exist for a single week who, when a state was in difficulties owing to having made larger contributions to the finances than it was in a position to do, refused to make a contribution from the federal revenue necessary to secure the balance of that state's finances? No Ministry which refused that could exist for a week, so that, from the lowest motive of self interest, every colony is secure.

Sir JOHN FORREST. -

You cannot show us a clause where that power is given.

Mr. WISE. -

I am surprised at my right honorable friend, who has always taken a broad practical sensible view of the question, so expressing himself.

Sir JOHN FORREST. -

Look at, clause 81.

Mr. WISE. -

I admit the power is not there in expressed words, and, therefore, I say I would support Mr. Henry in moving that the power should be put in. But I see great danger of putting the power in for all time, because it might be considered a direction to the Federal Parliament or Ministry to distribute whatever surplus there may be to the state irrespective of absolute necessities. If you can frame some clause which will limit the power to five years, and avoid the difficulty which has arisen in Canada, I will give it hearty support.

Sir JOHN FORREST. -

It is not for five years we want it; we want it for 500 years.

Mr. WISE. -

Oh no, we don't. In 25 years we shall all have to come and beg Sir John Forrest to lift us out of our difficulties.

Sir JOHN FORREST. -

Give me the power and I will do so.
Mr. WISE. -

What I insist on is that this discussion has gone what, to a layman, seems rather far, and has raised a whole lot of irrelevant considerations. Free-trader as I am, I most heartily concur in all that fell from Sir George Turner. Free-trader as I am, I am willing to go absolutely into this Commonwealth without exacting a pledge for the preservation of the New South Wales policy. And what does surprise me is to find that there are so many of those who declare that they represent the popular view, that protection is the popular policy, who are unwilling to place the same confidence in Parliament as we are, and who insist that there should be some guarantee given to them that no state shall suffer. I do not hesitate to say that though I count myself a liberal, born and bred in liberalism, steeped in liberalism from my toes to my chin, I would vote with the conservatives to establish protection tomorrow if that was the price of federation. To see all these conservatives insisting on having some provision in the Constitution so as to make protection a necessity, and to see them doing that in the name of union, makes one doubt after all whether the love for union is as strong as they insist, and whether they have not a greater regard for the preservation of their local policy of protection. We are willing to go into this Federation untrammelled, and we ask them to do the same. At the same time, if my honorable friend (Mr. Henry) can see any way of modifying his amendment so as to prevent the evils which have arisen in Canada, and to avoid a continuous scramble for better terms, I shall heartily support it. I do not believe the amendment will express more than is already expressed in the Constitution.

Mr. SYMON. -

Implied.

Mr. WISE. -

Yes.

Sir JOHN FORREST. -

You cannot show me where it is implied.

Mr. FRASER. -

If it is in the Constitution why duplicate it?

Mr. WISE. -

I am only proposing to do it as a concession to Victoria. I understand that the protectionists are not satisfied. They think they are going to lose. We are willing to make that concession to them, and I hope they will show the same trust that we show in the Federal Parliament, and not ask for the concession.

Mr. OCONNOR (New South Wales). -

Although I have listened very carefully to the reasons given by my
honorable friend (Mr. Wise), they lead me to exactly the opposite conclusion with regard to this matter. If there is any truth in the statement that every state is going to be made bankrupt by reason of federation, it shows very plainly either that we ought to have no federation at all, or that our financial proposals are absolutely wrong in their basis. On the other hand, if there is no truth in the suggestion that every state is going to be made bankrupt, why should we put upon the face of this Constitution, which is to last for all time, an assumption that states may be driven to such straits in their dealings with the Commonwealth that they may have to ask pecuniary aid? The words of this amendment are such as plainly imply that the aid which is to be sought is not for the purpose of carrying on the works of the states or the ordinary development of the states. Financial aid must imply some aid given to a state when it is in such pecuniary difficulties that it cannot pay its way.

**Sir JOHN FORREST.** -

It does not say so.

**Mr. OCONNOR.** -

No, but it clearly means that, and it would be a most disastrous commentary upon the efficiency of these financial proposals if it was necessary at the same time to provide for the insolvency of states which might take place under them.

**An HONORABLE MEMBER.** -

Embarrassment.

**Mr. OCONNOR.** -

The honorable member may call it embarrassment or any other euphemism, but it means that we may by these proposals reduce a state to such a condition that it will have to go cap in hand to the Commonwealth Parliament and to ask for financial assistance.

**Mr. SYMON.** -

You do not say that a state would become insolvent for that purpose.

**Mr. OCONNOR.** -

No, I do not say that.

**Mr. REID.** -

It is as nicely expressed as in the 60 per cent. advertisement.

**Mr. OCONNOR.** -

It is nicely wrapped up. Any one who reflects upon the conditions which must exist before this provision can be brought into operation will see that it assumes that the states must be reduced to a condition of pauperism before they can take advantage of it.
Sir JOHN FORREST. -

What would you do if they were?

Mr. OCONNOR. -

I will come to that. Mr. Wise seems to be of opinion that there is some power implied in the Constitution to give such aid. Now, from the consideration and study which I have been able to give to the Constitution, I have no hesitation whatever in saying that there is no such power implied. The Constitution is formed for certain definite purposes. There are definite powers of legislation and definite powers of administration, and the clause that the Right Hon. Sir John Forrest called attention to just now-clause 81 expressly provides that the revenues of the Commonwealth shall form one consolidated fund, to be appropriated for the public services of the Commonwealth in the manner and subject to the charges provided in this Constitution.

Mr. WISE. -

The order and good government of the Commonwealth would come under the term "public services of the Commonwealth."

Mr. OCONNOR. -

I do not agree with the honorable member in his interpretation of the powers of the Commonwealth, especially when dealing with the expenditure of the money of the taxpayers. In such a case there will be a great deal of care taken to keep the nose of the Federal Parliament to the grindstone in the matter of this expenditure. I do not think any expenditure will be constitutional which travels outside these limits. We must remember that in any legislation of the Commonwealth we are dealing with the Constitution. Our own Parliaments do as they think fit almost within any limits. In this case the Constitution will be above Parliament, and Parliament will have to conform to it. If any Act were carried giving monetary assistance to any state it would be unconstitutional, and the object sought would not be attained. That brings me to the question of whether it is desirable that there should be any such power either expressed or implied. I have no hesitation in saying that it would be a disastrous thing for the future of the Commonwealth if there was any such power given.

Sir JOHN FORREST. -

Then what is the good of all this talk about it?

Mr. OCONNOR. -

That means that all the talk ought to be one way. The right honorable member must listen to the views advanced on the other side.

Sir JOHN FORREST. -
The honorable member misunderstands me. I was referring to the many statements that have been made about the Commonwealth taking care of the states.

Mr. OCONNOR. -

Then I beg the right honorable member's pardon. I have no doubt there are many ways in which the solvency and the pecuniary position of a state would be considered. It would be considered in arranging the expenditure of the Commonwealth, and in arranging the return of the surplus, and in any matters of that kind. It does appear to me that, of all the expedients which have been suggested for the purpose of reassuring timid states, this is the worst and the most objectionable. I said just now, when Sir John Forrest made an interjection, that I thought this power should not be in the Constitution, either expressed or implied. I say so, first of all, for the reason which has been so strongly put by the Right Hon. Sir George Turner, that it would lead to a continuous struggle for better terms. I say also that it would be a very bad thing for the finances of the states themselves to find that a kind of rich uncle was created in the Commonwealth, who would always come to their assistance if they got into any real financial trouble. There is no question that that fact would be traded on by any state whose finances were getting into difficulties. Such a state would always be able to say, no matter what happened-"The Commonwealth will not let us go down; there is a power here to keep up our credit, and we will see that that power is utilized."

Mr. HENRY. -

That is not very complimentary to the public spirit of the states.

Mr. OCONNOR. -

Unfortunately, things do happen in states that are not always creditable to the public spirit of the people. We must take human nature as we find it. There is no doubt that a state might be in such straits that it would unconsciously be influenced by the feeling that it had behind it, as a last resort, a power that would save it from public bankruptcy. I have always regarded any dealing between the Commonwealth and the state in matters of money as a thing to be deplored. I should have much preferred some system of finance by which the states and the Commonwealth could have been absolutely independent in matters of account and in matters of money. Unfortunately, that cannot be; but if we must have relations of this kind between the Commonwealth and the states, let them be such that the states will have certain definite rights which they can assert, and the Commonwealth definite rights which it can assert.

Mr. FRASER. -

And duties.
Mr. OCONNOR. -

And duties. Do not let us create a relationship between the states and the Commonwealth in which one state may have the power to exact terms from the Commonwealth, while the Commonwealth may be able to bring pressure to bear upon a state or its representatives. If that is possible under the Constitution, you have at once the germs of corruption and improper influence, which may be used disastrously in the interests of the whole people. If the financial provisions of the Constitution are administered in the spirit in which I hope they will be administered, there can be no danger to any of the states. The representatives of the Commonwealth in the House of Representatives will also be members of the states. The persons who elect them will be members of the states, and will have the same interest in seeing that the state finances are kept in order, that a proper return of the surplus is made, and that no undue strain is put upon the state Treasuries, as they will have in seeing that the financial affairs of the Commonwealth itself are properly conducted. The two things will be so necessarily conjoined that it will be the duty of every representative of the people in the Commonwealth Parliament—a duty for which he will be answerable to the people of the Commonwealth—to see that there is no undue extravagance in the management of the Commonwealth affairs, such as would be likely to bring financial disaster upon the states. These two bodies will work together with, I hope, a mutual regard for each other's interests. The safety and interests of both are involved in the careful conduct of their financial relations. The adoption of an extravagant policy by the Commonwealth will lead to disaster in the states, and disaster in the states must reflect upon the credit of the Commonwealth. Can there be any doubt that when the people of the Commonwealth are brought into union for the management of their common concerns, that management will be conducted in such a spirit on both sides as will prevent the disaster which some timid persons seem to apprehend? I hope that honorable members will reject the proposal, and that the recommendations of the Finance Committee, which seem to me to offer the best solution of our difficulties that has yet been proposed, will be carried practically in their entirety.

Mr. ISAACS (Victoria). -

I agree with the honorable member who has just spoken, and I hope that the proposal will be rejected. I think that it has been suggested because of a little confusion as to the meaning of the Constitution which we are endeavouring to frame. We are taking out of the present powers of the states certain powers which we propose to give to the federal authorities;
but we leave to the states jurisdiction and absolute control in regard to all matters not specifically transferred to the Commonwealth. The Commonwealth is necessarily given powers of taxation, powers of borrowing, and other financial powers which its very existence requires. It seems to me that we ought not to do more in regard to this matter than to give the Commonwealth these powers for Commonwealth purposes, at the same time securing to the states the rights which we intend shall be conserved to them. I think we have made a mistake—I say so, because I do not wish it to be carried further—in not properly guaranteeing the states against the loss that may accrue from the giving up of Customs revenue. I strenuously hold to the opinion that the states ought to be guaranteed against that loss. But when you go beyond that, and introduce a provision allowing any state to come forward and ask, not for rights, but for favours, I say that such a provision is foreign to the Constitution. If we look at what has been done in America, we shall see the abuses to which a course of this kind may lead. We know that the way in which the federal authority deals with its surplus revenue now is a thing that we should avoid. Every year increasingly large sums are spent in providing pensions. If honorable members will look at Harper's Weekly for 25th December, 1897, they will find there a powerful article in condemnation of this system. In that article it is pointed out that the pension list now amounts to nearly 142,000,000 dollars a year, and that there are more than half as many persons drawing pensions as ever enlisted during the war for three years' service. That is one of the reasons why I think there should be a limit upon the powers of the Commonwealth in the direction of requiring a guarantee for the states. Between the years 1830 and 1840 a great number of the states of the American Union which are now free from debt were seriously embarrassed, and the question of giving aid to them came before Congress. How was it dealt with? On page 312 of the fourth volume of Bryant's History of the United States, I find this account of what took place:

A single fact must be observed, from its conspicuous and yet apparently feeble influence

upon the state of affairs. In June, 1836, when the public debt was nearly extinguished, an Act was passed providing that after 1st January, 1837, all surplus revenue exceeding 5,000,000 dollars should be divided among the states as a loan, only to be recalled by direction of Congress.

That was a convenient way of putting it.

This unprecedented problem perplexed the statesmen of the time, but mainly as to the principle of distribution. The ghost that could never be laid stalked again into the balls of Congress. Should the money be divided
according to population? If the slaves were counted, that would be to pay an unequal share to their masters; if they were not counted, the slave states would receive only their just proportion according to the number of citizens. Compromise, as usual, healed the difference at the expense of the North. The electoral vote was made the rule of distribution. Thus Pennsylvania, whose electoral vote was 30, received about $3,800,000; yet its population was nearly 200,000 more than the free population of the six slave states-South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Kentucky-whose electoral vote was 53, and their aggregate share of the surplus fund over six million seven hundred and fifty thousand dollars. The distribution, which extended over a year, amounted to twenty-eight million dollars, and none of it was ever recalled. Before the amount was all expended it was evident that there would be a deficit in the Treasury. The states used the surplus variously: some involved themselves in extensive improvements; some divided the amount received among their citizens in petty sums; never was there a more unsatisfactory business operation.

I do not think that was ever repeated, and they have actually found the problem of dividing their surplus so terribly difficult that they find it preferable to resort to the unsatisfactory method they now have of distributing it in pensions. Really, if you take off a few of their departments, the pension list in America is greater than the rest of their public expenditure.

Mr. HENRY. -

Could you not have a pension list under this Constitution?

Mr. ISAACS. -

Yes; but what I and others wanted to do was to make it part of the duty of the Commonwealth to provide a certain amount for the states out of the revenue taken away from the states. We know that the amount received from the states will be far more than enough to meet the requirements of the Commonwealth. We should make provision where-by the states would be guaranteed some security that they would receive their rights. I am desirous of doing that, but if we fail to do that, we shall make a mistake equally great, and perhaps much more important, if we put an invitation on the very face of the Constitution to the states to do anything they like in their own state territory as to incurring liabilities, and then to trust to the Commonwealth to get them out of their difficulties. Therefore, I think we shall make a great mistake if we adopt this clause. I do not agree that there is on the face of the Constitution a power existing, or at all events intended to exist, to assist the states out of their local difficulties. I do not agree that that power exists. I think there exists on the face of the Constitution a moral duty not to spend more than is necessary for Commonwealth
purposes, and to return the balance in a fair proportion to the states.

Mr. SYMON. -

Do you not think that the Federation could guarantee a state loan?

Mr. ISAACS. -

I do not think they ought to.

Mr. SYMON. -

Do you think they could?

Mr. ISAACS. -

I am not prepared to answer that question, but when we look at clause 52 we find these governing words on the very forefront of that clause-

That Parliament shall, subject to the provisions of this Constitution, have full power and authority to make laws for the peace, order, and good government of the Commonwealth.

We see there that the Commonwealth is named as distinguished from the states. We have our Constitution framed in this way with a Senate to guard what? The interests of the states, so that the Commonwealth shall not intrude one inch into what is retained as the executive rights and jurisdiction of the states. Yet while the Commonwealth has not the power to say one word in the government of the states as to their local liabilities, as to the difficulties they may get into, yet we are told that the Commonwealth is to be invited by express words on the face of the Constitution to assist the states and have a sort of moral compulsion put upon it which would be very difficult to resist, and would lead to the difficulties which have already occurred in America. I urge upon my honorable friends to put what they choose into the Constitution to guard the solvency of the states. Nobody ventures to assert that the states are insolvent, but if you take away their revenue, and leave them their liabilities, they stand an extremely good chance of becoming insolvent. That is what we want to guard against. The best way is to secure them a fair return of the surplus revenue on the face of the Constitution, making it part of the duty of the Commonwealth to do so. That is a better course than to put in a clause here which practically asserts that if some of those states go to the wall financially, we make it a sort of moral compulsion on the part of the Commonwealth to come to their assistance.

Mr. LEWIS (Tasmania). -

The two honorable members who have preceded me in discussing this clause have assumed that this financial aid is to be given only, or at any rate mainly, in the case of the practical insolvency of any state. I understand that what is intended by the clause is, that it should go very much further. It includes the power of the Parliament to guarantee a loan to
a state, or to lend the money to a state, having raised it on its own security. The honorable and learned member (Mr. Glynn) has an amendment on the notice-paper to the effect that a state should not borrow money except from the Commonwealth. It is to empower the Commonwealth to guarantee the loans of a state, or to lend a state the money itself, that this new clause is proposed, quite as much as to enable the Commonwealth to come to the assistance of a state which may happen to be in embarrassed circumstances. Honorable members seem to ignore the fact that under this clause Parliament will have the power to dictate the terms, conditions, and manner in which such financial aid is to be granted. Surely that is ample protection. No state is likely to obtain that financial aid from the Federal Parliament unless its resources are entirely exhausted, and it has no other means of maintaining its credit. I should like to hear it further argued as to whether this power is inherent in the Constitution. I have grave doubts about it myself, and for that reason I desire to see this clause inserted in the Constitution. I know it has not been moved by the honorable member (Mr. Henry) as a concession to popular prejudice, or, as Mr. Wise has called it, a placard. The object is simply to place in the Constitution a statement that the Commonwealth can come to the assistance of a state if it should be required. We have, in the 52nd clause, handed over naval and military defences to the Commonwealth Parliament. It might be fairly argued that having done so the Commonwealth is bound to protect every state from invasion from outside. Yet we have not considered it to be an inherent right of the states to demand protection from invasion, and we have considered it necessary to embody in the Constitution a clause providing that the Commonwealth shall protect every state from invasion. If that is necessary in the case of an invasion of a warlike nature, surely it is necessary to include in the Constitution a clause of a similar nature to protect every state from financial disaster.

Mr. ISAACS. -

A state might create its own liability to financial disaster; but it does not create its liability to invasion by a foreign power.

Mr. LEWIS. -

If the state creates its own difficulty, the Federal Parliament will have it in its power to dictate the terms and conditions upon which alone it will me to the aid of any state.

Mr. ISAACS. -

A state might create its own liability to financial disaster; but it does not create its liability to invasion by a foreign power.

Mr. LEWIS. -

If the state creates its own difficulty, the Federal Parliament will have it in its power to dictate the terms and conditions upon which alone it will me to the aid of any state.

Mr. DOBSON. -

You do not always punish the sinner, even the financial sinner.

Mr. LEWIS. -
Of course, this power is only optional. It is left entirely to the good sense of the Federal Parliament. As has been said over and over again in this Convention, we must trust the Federal Parliament, but at the same time we must give that Parliament the necessary powers to do what we desired it should do, and amongst these powers we should give it a discretion to come to the financial aid of any state, whether that aid is in the form of a guarantee of a loan or a direct loan, or whether it be the financial support of a state which may be in embarrassed circumstances, and which may thereby endanger the credit of the whole Commonwealth.

Mr. HOLDER (South Australia). -

I expressed the opinion a few days since, in answer to an interjection, that the insertion in the Constitution of any such provision as is now sought to be inserted would be attended by the dangers that, in the first place, it might conduce to reckless financing by the states, and, in the second place, would involve a very heavy obligation upon the federal authority. And, at the same time, I said that I thought the assistance which under such conditions would be required by a state was assistance which in the very nature of the Constitution would have to be rendered by the federal authority. As that position has been challenged, I rise now, not so much to discuss the advisability of adopting the amendment before the Chair, as to ask for a further expression of opinion as to the obligations of the Commonwealth towards the states. I would ask Mr. Henry to withdraw his motion, and to rely upon what, I wish to suggest, is already in the Constitution as a power of assistance which might be rendered by the Federation to a state in need. Turning to clause 98, I see that it is provided there that the Parliament may take over "the whole or a rateable portion of the public debts of the states."

Mr. OCONNOR. -

That is, of all the states.

Mr. ISAACS. -

The Federal Parliament, will have to treat all the states alike, and cannot pick out one.

Mr. HOLDER. -

I know that; but I want to mention some words, the meaning of which I do not know, but which must, I think, have some meaning, and, if any, will, I believe, meet the case we are discussing. Four lines from the bottom of clause 98 I find it provided that "the amount shall be charged to and paid by the respective states wholly or in part." If those words mean anything at all, it seems to me that they must mean that they give the federal authority the power to require the whole amount due to be paid by the states, or that the federal authority may determine that a part shall be paid.
Mr. REID. -

No; those words are put in to provide for two cases—whether the whole debt is to be taken over or only a part.

Mr. HOLDER. -

It looks on the face of it that any state may meet the whole or any portion of its obligation, as the federal authority may determine.

Mr. ISAACS. -

Higher up in the clause you will see that it says that, whatever is taken over, the state is to "indemnify the Commonwealth."

Mr. HOLDER. -

If the words I have quoted have the meaning which Mr. Reid says they have, it disposes of my first point. My next point is that in clause 52, it is provided that the Federal Parliament shall have the power of "borrowing money on the public credit of the Commonwealth"; and there is no provision anywhere that I know of in this Constitution to limit the expenditure of money so borrowed. There are limits to the expenditure of revenue. It would be quite impossible during the five years to render special aid to, any state under the clause we have agreed to to-day, because the revenue is appropriated. But the provision I have quoted deals with borrowed money, and I know of nothing in this Constitution which would limit or control the expenditure of borrowed money except the Loan Act of the Federal Parliament which authorizes the loan.

Mr. ISAACS. -

You are referring to paragraph (4) of clause 52?

Mr. HOLDER. -

Yes.

Mr. OCONNOR. -

But that money could not be spent upon any object the Federal Parliament thought fit.

Mr. HOLDER. -

I want an expression of opinion which shall be authoritative on the point. I see that, according to the provision I have quoted, there is power given to the Federal Parliament to borrow money on the credit of the Commonwealth, and I say again that I do not know of any limitation of the expenditure of that money except the limitation which would be specified in the Loan Act authorizing the borrowing of the money. Of course, these words cover the raising of the money for the building of railways for instance, and in such a case the limitation would be the terms of the Loan Act. But is there anything anywhere to prevent a Loan Act being passed by
the Federal Parliament authorizing the raising of a certain sum of money, the proceeds of which loan might be divided according to the terms of the Act among the states according to their needs, or upon some other principle?

Mr. GLYNN. -

The first three lines of clause 52 affect that point.

Mr. ISAACS. -

The money must be expended with regard to "the peace, order, and good government of the Commonwealth," not of the states.

Mr. HOLDER. -

The passage to which Mr. Glynn refers me is as follows:-

The Parliament shall, subject to the provisions of this Constitution, have full power and authority to make laws for the peace, order, and good government of the Commonwealth, with respect to all or any of the matters following.

Well, that includes the borrowing of money.

Mr. ISAACS. -

It is the Commonwealth as distinguished from the state that is to borrow; the money is only to be borrowed for the purposes of the Commonwealth.

Mr. REID. -

Look at clause 81, where it is clearly set out that-

All revenues raised or received by the Executive Government of the Commonwealth, under the authority of this Constitution, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Commonwealth in the manner and subject to the charges provided by this Constitution.

Mr. HOLDER. -

With all due respect, I do not think that that clause applies.

Mr. REID. -

Yes; it covers every appropriation issued from the Treasury.

Mr. HOLDER. -

I do not think so. I think clause 81 deals with revenue.

Mr. REID. -

You receive revenue, and you appropriate money for expenditure.

Mr. HOLDER. -

I do not suppose it is intended that the term "Consolidated Revenue Fund," used in clause 81, shall include both revenue and loan money. We are surely going to keep these two separate.

Mr. REID. -

There is no provision of that sort.

Mr. HOLDER. -
Then I would suggest that words should be inserted in order to provide that loan money and revenue shall be kept separate. I hope we shall have a Loan Account and a Consolidated Revenue Account, and by no means mix up the two. I take it that clause 81 does not refer to any loan fund at all, but simply to revenue. The term "Consolidated Revenue Fund" defines it clearly. Of course, I am not expressing a legal opinion in a chamber of lawyers such as this is. I should be unwilling to do that. I simply rose with the object of putting forward these points with a view of obtaining a statement of authoritative opinion in regard to them. It appears to me that the clauses I have mentioned imply the possibility of some assistance being rendered to a state in difficulties. It seems to me that, as no assistance could be rendered out of revenue, some assistance might be rendered out of loans, or there might be a guarantee of a loan, or some other way of rendering financial aid to a state that might be devised. But I hope Mr. Henry will withdraw his motion, because to state the matter so broadly as that the Commonwealth shall come to the aid of a state might, I am afraid, lead to very serious reckless financing on the part of some states under some possible conditions.

Mr. SYMON (South Australia). -

My honorable friend (Mr. Holder) has put the matter with his usual clearness, and has very convincingly shown that at any rate there is very considerable doubt as to the question which has been exercising our minds, as to whether it would be an implied power in the Commonwealth to come to the assistance of a state in financial straits. And, therefore, if the existence of the power is involved in doubt, it would be exceedingly desirable that some provision—I do not say the provision moved by my honorable friend, who is not wedded to the particular words of his amendment, or any other—should be inserted, so as to make it clear that that power exists. Now, I was very glad to hear Mr. Isaacs express his desire to eliminate from this discussion, although we may use the word "insolvency," all idea of its being suggested that we contemplate the actual insolvency of any particular state. We cannot discuss a subject like this without using the common words "bankruptcy" and "insolvency," and if we have to speak of state bankruptcy, or state insolvency, we do not mean to impute that any state of the Commonwealth, under any set of circumstances, is likely to repudiate its obligations.

Mr. ISAACS. -

Such a thing is absolutely impossible.

Mr. SYMON. -

Therefore, while we use the terms "bankruptcy" and "insolvency" as
applying to a possible state of things which we wish to avert, it is not to be imagined for a moment that we contemplate that such a state of things is going to exist, but we mean that a state may be in such a condition of strait, or the Treasurer of that state maybe in such a condition of administrative embarrassment, that it may be necessary to have re-course to the Commonwealth for assistance in some shape or other. Now, I also desire to say that I do not think it is necessary to determine, and it will be impossible for this Convention to determine, whether or not this implied power exists in the Constitution. There might be, and no doubt would be, a strong difference of opinion upon the subject, and even if we, assembled here, were unanimous on the subject, that fact would not assist the final determination of the question when the exigency arose. But I agree with Mr. O'Connor that undoubtedly in the distribution of the surplus, and in dealing with the financial condition of the states, the Commonwealth would be animated by a desire to see that the states were placed in a position to meet all their engagements. The difficulty which Mr. Henry sees, and to which he directs his amendment, is as to the condition of things during the five years' interval during the bookkeeping period-when there is an express appropriation of the surplus moneys. During that time Mr. Henry fears it is possible, without mentioning any particular colony, that the Treasurer of one of the states might be unable to see his way to meet his public engagements.

Mr. REID. -

He could adopt Mr. Walker's proposal for capitalizing discrepancies.

Mr. SYMON. -

That is one of those delightfully scientific proposals that appeal to the mind of the statistician and the financier more than to the mind of a humble layman, and I am sure that if there is one member of this Convention competent to solve the problem of capitalizing a financial discrepancy it is Mr. Walker. However, I have pointed out what seems to me to be the difficulty to which Mr. Henry has addressed his amendment, and I feel that Mr. O'Connor's argument, powerful as it is in reference to the condition of things after the expiration of the five years, is absolutely without force as applied to the condition of things to which Mr. Henry's amendment is directed. But I go further than that, and I take up the view which was dealt with by Mr. O'Connor on the broad ground-and that is the position to which I wish to direct the attention of members of the Convention-of whether it is politic or right to introduce this amendment into the Constitution. If this power is implied in the Constitution, then the amendment merely asserts and makes
absolutely clear a power which the Commonwealth might exercise if the necessity arose. On the other hand, if it is not implied in the Constitution, it seems to me that it is a power that ought to be in the Constitution, so as to enable the Commonwealth to do what I believe it would be the disposition of the Federal Parliament to do, namely, to come to the aid of any state which sought its interference to protect that state from financial disaster or financial strait. I admit all the possibilities on the two grounds put by Mr. Holder—that there is a possibility of this provision leading to reckless financing on the part of the states, and also the other ground that it imposes an obligation on the Commonwealth, and a difficulty with which the Federal Parliament and the Federal Executive may have to deal. But those two things do not seem to me to outweigh the advantage of having this power clearly expressed in the Constitution, to enable the Federal Parliament to give that assistance which might be absolutely essential to the stability and even to the existence of a particular state. Now, I will suppose the case of a state in which such a condition of things has arisen. But again, I say, I do not believe that such a condition of things would ever occur in any of the states of this Commonwealth. Still, suppose a state got into financial embarrassment, and there was a tendency towards, or a talk of, repudiation, why should not the Federal Executive and the Federal Parliament, in the interests of the Commonwealth, come to the assistance and relief of that state? Would it not be infinitely better that the Commonwealth should exercise a power of that kind than that it should allow a blemish to be put on the honour and good faith of the entire Commonwealth, which would result from any one state repudiating its obligations? I admit that there are disadvantages and inconveniences on the one side, but on the other there is the great principle that it is the duty of the Commonwealth to maintain the existence, the integrity, and the solvency of every state. And I do say that that is the function of the Commonwealth.

Mr. REID. - Then it had better be put in the Bill, and let the people know what they are doing. If they are going to enter into a contract of that sort, the people had better know it.

Mr. BARTON. - If you put that in the Bill, the Bill will be put out.

My honorable friends take a strong view of the matter.

Mr. REID. - Do you really think that if a state gets into any temporary embarrassment it is not strong enough itself to make financial arrangements to relieve
itself from its own embarrassment? If there is a state in that condition I say it is a sort of partner that I do not want to have.

Mr. SYMON. -

There is only one answer to the question of the right honorable member, and that is, I do not believe there is any state which has not the resources and which has not the disposition to meet its own engagements but I decline to assent to the proposition that, by putting this into the Constitution, you are declaring that there are such states as are likely to be placed in that position.

Mr. LYNE. -

They might be if they lose all their Customs revenue.

Mr. SYMON. -

If my honorable friend is in power, he will take care, by a strong protectionist policy, to have no Customs revenue at all, because the duties of customs he will impose will be all prohibitive. That is the legitimate outcome, I think, of a strong protectionist policy.

Mr. REID. -

Hear, hear; there will be no revenue at all.

Mr. SYMON. -

However, I do not want to enter into that question. I know my honorable friend's view of the subject, and I respect it, although I do not approve of it.

Mr. BARTON. -

That is why you respect it, perhaps.

Mr. SYMON. -

I will not adopt that suggestion; it would be unkind. I say again that it would be better to enable the federal authorities to give a guarantee to save a state from being under the obligation of raising a state loan on very adverse terms than that it should be driven into the market as a competitor for money under signal disadvantages. However, the question it seems to me ought to be dealt with upon the broad grounds on which Mr. O'Connor has debated it rather than on any narrow ground, which we cannot settle here, as to whether or not there is an implied power in the Constitution to deal with this subject. It is quite clear that on that point there might be and, I think, undoubtedly would be, strong difference of opinion, and whilst I feel that there are disadvantages both ways, and whilst I pledge myself emphatically to the view that any state of this Commonwealth will have the power and resources to discharge its obligations through all time during the existence of the Commonwealth, still I see no objection to inserting some such power as this in the Constitution.

Mr. REID (New South Wales). -
I desire to suggest that, as we meet to-night, it would be more Convenient to some of us if we adjourned at the usual hour, five o'clock p.m., which has now arrived.

The CHAIRMAN. -

What time is it suggested we should meet to-night?

Mr. BARTON (New South Wales). -

We shall re-assemble to-night at half-past seven o'clock. Of course, I wish to meet the desire expressed by the Convention the other morning that we should get on with the work a little faster by sitting a little longer, but if it is the general desire that we should rise now, I am agreeable, so long as we meet again at half-past seven o'clock, and do about three hours' work.

Mr. LYNE. -

Let us finish this debate to-night.

Mr. BARTON. -

We can finish this debate to-night. Under the circumstances, I support Mr. Reid's suggestion.

The CHAIRMAN. -

As it is evidently the wish of the committee, I will suspend the sitting until half-past seven o'clock.

[The Chairman left the chair at two minutes past five o'clock p.m. The committee resumed at twenty-five minutes to eight o'clock p.m.]

Sir EDWARD BRADDON (Tasmania). -

When we were addressing ourselves to this question at Adelaide, it is in my memory that the Right Hon. the Premier of New South Wales sought to make good any deficiency or relieve a state from any difficulty by an offer of cash to the sum of £20,000, £30,000, or £40,000.

Sir GEORGE TURNER. -

No; he wanted more than that.

Sir EDWARD BRADDON. -

Well, he made that offer without letting us know exactly how he would carry his offer into effect; and that offer was, and I think rightly, repudiated by the colony for which he specially designed it—Tasmania. Tasmania did not then, and does not now, require to come into federation on other terms than those on which other colonies come in. Tasmania desires to come in, not as a pauper sister of the more wealthy colonies, but as a sister equal financially,

Western Australia, it is only fair to make some such provision in the Constitution to meet other cases of hardship in other states. It is quite possible to conceive some serious calamity happening to a state, such as a conflagration, extending far more widely than those which have recently
occurred in Victoria and Tas-mania, and carrying with it such loss to the community as to very seriously hamper that community, and possibly bring a colony to the verge of insolvency.

Mr. BROWN. -

Embarrassment.

Sir EDWARD BRADDON. -

I say to the verge of insolvency-to make it very difficult for a colony, at the time, to meet it obligations; and it would be clearly as much to the injury of the Commonwealth at large as to a particular state, if a state were thrown into a position of that sort, and driven to extremities. Now, at the present time, there is no provision in the Constitution whatever by which difficulties such as that can be met. I cannot but think it would be wise if we made such a provision, which would necessarily be safeguarded by the Parliament of the whole Commonwealth. can see no danger in such a provision, if we are to trust the Federal Parliament, and I do see the necessity of having some such power within the Constitution.

Mr. REID (New South Wales). -

So much has been said upon this question that I will content myself with simply expressing my earnest hope that these words will not be inserted in the Constitution. As I stated in an interjection, I cannot conceive that any of these colonies will ever be in such a position that it will be unable to provide for its own difficulties, upon the faith and strength of its own credit.

Sir EDWARD BRADDON. -

You offered Tasmania £30,000 or £40,000.

Mr. REID. -

That was a personal offer on my own part.

Mr. DEAKIN. -

And now you see what it is worth.

Mr. REID. -

Even if the improbable happened, and if the credit of any member of the Commonwealth in days to come was seriously imperilled, I have so much confidence in the good faith and generosity of the people of Australia, when they are united, that I believe it would not be difficult to amend our Constitution in order to come to the assistance of any state. Then it will be an act of voluntary generosity and brotherhood on the part of those who would be responsible for the liability, and it would be infinitely more honorable to a state than to have to come to a Cabinet for a favour under circumstances of humiliation-for they would be nothing less.

Mr. DOUGLAS. -

Where would the humiliation be?
Mr. REID. -

It certainly would be humiliation for a state to have to do that. I hope my honorable friend (Mr. Douglas) would think it a humiliation that any colony should be reduced to such a pitch of misfortune. Although he seems a little weak about Tasmania to-night, I will guarantee that, with the marvellous mineral resources of that colony, which I have heard of at banquets—the inexhaustible resources of Tasmania—the only trouble we shall have about Tasmania in six years to come will be that she will be like Western Australia—we shall not be able to strike an average that will be high enough for her. Under these circumstances I do hope that we will not put this, I will say, unworthy clause into the Constitution of Australia.

Mr. DOBSON (Tasmania). -

It is quite evident that the Convention have had a good dinner; but I do not think that we can very well frame a Constitution on after-dinner speeches. I regret the numerous occasions on which I have had to differ from the Right Hon. the Premier of New South Wales, but I have now, with the utmost deference, to differ from him again, because I think he has used an extremely good argument why this clause should be engrafted on the Constitution. He tells you to leave it to brotherhood and generosity, and yet he absolutely says—"Supposing the time should come when any state wants financial assistance, we can get the Constitution amended.” On the one hand, generosity, and on the other hand, a state has to wait for a year, or possibly more—during which time it may stop payment—before it can get the Constitution amended. My right honorable friend must see that if the Constitution is to be amended, it is not a question of generosity; it will be a question of law, and, as the right honorable member has absolutely foretold the circumstances under which the Constitution will have to be amended in this respect, I ask him to be consistent and to put this into the Constitution now. It cannot do any harm.

Mr. BARTON. -

Which state do you expect to stop payment?

Mr. DOBSON. -

I do not expect any state to stop payment. I do think it is a mistake when we use these words to illustrate our argument that we should be credited with imagining that any state might do that. But no one can foresee where public opinion is going to drag us or what is going to happen in this changeable world. It is better that we should have a provision of this kind in the Constitution than that in the event of trouble occurring we should have to wait until we could get the people to consent to an amendment of
the Constitution. I submit that the last speaker has used the best argument that we have heard yet why this provision should be in the Constitution.

Dr. COCKBURN (South Australia). -

I did not mean to say a word on this subject, but surely we are not going to form a federation of states that are trembling on the verge of bankruptcy. The thing is too preposterous, and this clause is too preposterous. I do not believe that such a clause could ever find acceptance at the hands of a number of men such as are assembled here. There is no fear of the clause being accepted. If it were it would certainly sap the independence of the states by placing the Federal Parliament as a sort of Lord Bountiful over the states, to whom ad misericordiam appeals could be made.

Mr. DOBSON. -

Does it sap your independence to have a banker and an overdraft.

Dr. COCKBURN. -

The whole proposal is foreign to the spirit of the Constitution. The Constitution lays it down that the Commonwealth is to deal equally with all the states whether it is in the matter of taxation, of bounties, or of trade, and we may as well strike out the provision that all taxation shall be uniform throughout the Commonwealth if we are to contemplate that after the taxation has been raised the proceeds may be handed over to any one colony. The thing will not bear a moment's investigation, and I hope the honorable member will not press his proposal to a division. It is a pity that the amendment has been brought forward. There is no possibility, nor does any one contemplate the possibility, of any of the states being in a worse financial position than they are in at the present time. On the contrary, I believe that their financial position, good as it is now, will be infinitely improved.

Mr. DOUGLAS (Tasmania). -

One would imagine, from the way in which this proposal has been handled, that Tasmania has some apprehension in regard to its financial position. It is not with that view that the clause has been submitted, but simply in order that there should be a provision in the Bill which would enable the Commonwealth Parliament, in case of such an accident happening, to give assistance to any state that was in a position of financial difficulty. Are we not now proposing to aid Western Australia? The Right Hon. the Premier of New South Wales said just now that he would not go into a partnership with an insolvent partner, but he forgot that, in the preamble to the Bill, it is set out that the colonies are indissolubly united. If a state required

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aid the Commonwealth Parliament would have to give it in some way or
another, or that state would have to go out of the Federation. It could not go out of the Federation, because the Bill says that they are to be united for ever. If there was power, there is no doubt that a colony in such a position would be kicked out of the Federation and left to fight its own battles. The clause has been referred to as if it was intended for the benefit only of Tasmania. What has Tasmania to do with it? There is no colony, not even Western Australia, that is in as good a Position at the present time as Tasmania. We have a boundary. You have no boundary. We have plenty there to support man. Look at our crops. We do not get your 6 and 7 bushels to the acre. My honorable friend on my right gets 50 bushels of oats to the acre, and 30 bushels of wheat. You cannot get that in Australia. For men, horses, and everything else, Tasmania is the best colony of the lot. It is all very well for the right honorable member (Mr. Reid) to say that he could scarcely see Tasmania, and it is very pleasant for us to hear these little jokes. But this is a matter of business that we are dealing with now. So far as Tasmania is concerned, you can put in a clause providing that Tasmania shall not have the benefit of this provision.

Mr. BARTON. -

This is merely a matter of benevolence to the other colonies.

Mr. DOUGLAS. -

Of course, New South Wales has her land revenue; but her representatives need not boast. Tasmania will be all right in the end. The honorable member (Mr. Holder) has made some excellent speeches during the sittings of the Convention, but his last speech was the worst I ever heard. He said: "I do not know what the opinion of the lawyers may be on this subject, but I cannot find any particular reason for this provision. I think there are so many things which will lead to extravagance." How can the insertion of this provision lead to extravagance? Will a state run into debt simply to be relieved of its indebtedness?

Mr. HOWE. -

New South Wales might.

Mr. DOUGLAS. -

The only chance is that South Australia might do so. Honorable members are one moment exceedingly anxious that there should be federation, but the next moment they are all at division. We are of opinion that this provision should be inserted in the Bill, because we consider it a necessary one; but, as we are all of the same opinion as the honorable member (Mr. Henry), honorable members unite in saying that we should not have it because it applies to Tasmania.

Mr. HENRY (Tasmania). -

I do not wish to detain honorable members, but I am glad that we have
had this debate, because it has brought out the opinion of the honorable and learned members (Mr. O'Connor and Mr. Isaacs) to the effect that there will be no inherent power in the federal authority to aid a state which is in financial difficulties. The colonies therefore can know exactly what they are to expect, and their representatives will have to advise their fellow colonists that in joining the Federation they take this financial risk.

Sir WILLIAM ZEAL. -

We all take this risk. Tasmania risks no more than any other colony.

Mr. HENRY. -

Yes; we all take the risk if we enter the Federation, and we shall enter it with our eyes open. It has been so frequently said that, in the event of a state becoming involved in financial difficulties, the federal authority would help it, that it is well we should know that the Federal Parliament will not have power to do so. If we have a division upon this question, I anticipate that the opinion of the Convention will be that no provision shall be introduced to give the Federal Parliament this power.

Mr. ISAACS. -

We are of opinion that there ought to be a guarantee.

Mr. HENRY. -

I have read Sir George Turner's amendment, and I shall be very pleased to support that since we cannot have the security that I desire for all the colonies. I do not know that in my remarks I singled out Tasmania. There is nothing further from my thoughts than that Tasmania should sue as a pauper to the Federal Parliament. My intention is that she should simply come to the Federal Parliament and ask for her rights. In handing over the whole of our Customs revenue to the Federal Parliament we deprive the states of the power to adjust their finances, while they still have all their liabilities to meet. That is a very grave position. I hope that before the Bill is finally dealt with, some clause or provision

Sir JOHN FORREST (Western Australia). -

I have listened with a great deal of attention to the speeches made on this subject, but I have not been convinced that we are acting wisely in making no provision whatever for the difficulties which may arise. Of course, everything is plain sailing now. There is no anticipation of any disaster that could actually occur in the future, but to say that we shall frame a Constitution here which gives no power whatever to the Commonwealth to meet the difficulties that may arise does not show a great deal of wisdom. We have heard a great deal during the sittings of this Convention about trusting the Federal Parliament to do a great many things, but it seems that
we are unwilling to trust that Parliament in a matter of very great importance.

Mr. SOLOMON. -

Or to give them the power.

Sir JOHN FORREST. -

I am sure it was news to most of us to-day to hear that there is no inherent power in this Constitution to meet a difficulty of this kind. We have been told over and over again by some honorable members, who I thought spoke with some authority, that the Federal Parliament will be supreme, and will be able to meet any of those difficulties; but to-day we have been told that there is no power whatever in this Constitution to meet any difficulties with regard to financial troubles in any of the states.

Mr. DOBSON. -

Mr. Wise told us again and again that there was power.

Sir JOHN FORREST. -

We must remember that all the states are giving up the great power they have at present of obtaining revenue through Customs and Excise. We are handing over that power absolutely to the Federal Parliament, and after five years we say to the Federal Parliament-"We will trust you to do what is right and fair." But it seems that those who ask us to give up all this will not even admit into this Constitution a power, however small, by which the Federal Parliament will be able to Assist the states. There are a great many ways in which it may be necessary for the Federal Parliament to assist the states. There may be great public works which are altogether beyond the means of a state itself, but which are very necessary in the interests of Australasia. But no power whatever is given here for the Commonwealth to deal with such a matter. There may be a necessity or at all events it may be very advisable-for the Commonwealth to borrow money, which it might do at a cheaper rate than the states could borrow at, and which money it might lend to the states under certain conditions. I hope the Bill will be so altered as to give power to the Commonwealth to do so, allowing it to make whatever terms and conditions it likes. There are many honorable members who look forward to the time when there shall be one unified public debt in Australia, and the states will then probably give up borrowing in London altogether on their own account, and borrow from the Commonwealth instead. Is not that to be permissible under this Constitution? If you make it as tight as it is now, however, there will be no power, as far as I can see, to do anything of the kind. We have all heard a good deal about "Trust the Federal Parliament." Well, I am willing to trust the Federal Parliament. But I do not think we shall be acting wisely in
excluding from the power of the Parliament the ability to assist a state in any great public work, or in borrowing money cheaply, or in any other way.

Mr. MCMILLAN. -

The Federal Parliament will find a way if necessary.

Sir JOHN FORREST. -

Yes, but I suppose there will have to be several referendums, which, perhaps, is what the honorable member wants—or, at all events, some other honorable members want that. It is not the first five years that I am thinking about so much in regard to this matter. It will be plain sailing at the beginning. But I am thinking of the more distant future—of a time further ahead than we can see now. I do hope that the proposal of the honorable member (Mr. Henry), even if it be not adopted in the words he has suggested, will be accepted in spirit, and that some words which may be suggested by the Drafting Committee having the same effect will be inserted in this Constitution.

The proposed clause was negatived.

Mr. BARTON (New South Wales). -

I now beg to propose the insertion of the following clause to follow clause 93:-

93B. In respect of each of the first five years after uniform duties of customs have been imposed, the Commonwealth shall keep an account showing in the case of the state of Western Australia—

I. The amount of revenue which, under the law of that state immediately before the imposition of uniform duties, would have been collected from duties of customs and excise upon the goods actually imported into and produced and manufactured in that state during that year.

II. The amount of the duties of customs and excise collected and taken to have been collected in that state during that year.

The latter amount shall be deducted from the former amount and the balance (if any) shall be taken to be the net loss of that state for that year by reason of the imposition of uniform duties of customs and excise, and by reason of the operation of free trade and intercourse throughout the Commonwealth, and the proportion which such net loss bears to the amount so collected and taken to have been collected shall be taken to be the proportionate net loss of that state.

The proportionate net loss (if any) of each of the other states shall be calculated in like manner, and if the proportionate net loss of the state of Western Australia is greater than the average proportionate net losses of all the states the Commonwealth shall pay to the state of Western Australia a sum which will equalize the proportionate net loss of that state with such
average.

The amount so paid shall be taken to be an expenditure of the Commonwealth in the exercise of the original powers given to it by this Constitution.

Sir JOHN FORREST (Western Australia). -

I think I made it tolerably clear the other day that I am not in favour of this clause, in the form in which it is suggested by the Finance Committee, for the reason that it makes a special case in favour of Western Australia. My desire all along has been that some general clause should have been framed which would have been applicable, not only to Western Australia, but to every other colony in this Federation. That view, however, did not find favour with the majority of the Finance Committee, and, therefore, this clause, making a special provision for Western Australia, found a place in the committee's report. Before I sit down, I propose to move an amendment to the clause, with the object of making its provisions general rather than making them special in regard to one colony, so that the provisions which apply to Western Australia shall apply to every other colony in the Federation. I think I pointed out the other day, but I may as well repeat it here to-night, that Western Australia stands in a peculiar position in regard to federation—in a position altogether different from that of every other colony in the group. One reason for this is that we are not able to point out, in fact no one, here has attempted for a moment to point out—I hope some one will do so if he can—that Western Australia can in any way gain by federation, at the present time. All the colonies represented here have a great incentive to federation, which is absent in the case of Western Australia. They are all looking forward, every one of them, to the free markets of other colonies. Western Australia is not looking forward in any way at the present time, I regret to say, to the free markets of these colonies. I ventured to say the other day that I believed that the incentive to federation on the part of the other colonies represented here, on account of the free markets which would result therefrom, was stronger and greater than their desire for nationhood. I repeat the statement to-night, that the great thing every one of these colonies is looking forward to is an open market for its manufactures and its products. That being so, you have a strong lever in the direction of federation, which is altogether absent in the case of Western Australia. I hope that will not always continue. We are making efforts in order to be larger producers, and I believe as time goes on this difficulty will not exist, at any rate, not to the same extent. I also pointed out that, besides having that incentive absent from the people of Western Australia, there is another
great difficulty in the road. The protection which our farmers have under
the revenue Tariff, which gives them an advantage over the products from
other colonies, is to be removed by intercolonial free-trade. It is a very
difficult task, indeed, which the representatives of Western Australia have
in trying to induce the people of that colony to accept federation at the
present time. If we are to tell them-"Besides all that, you are going to lose
all this money through intercolonial free-trade, and that money will be lost
in a way which will take away from you the protection which you now
have," I think that our difficulties will be still greater than they are. It has
been said by some honorable members-I hope it will not be said again, but
if it is said, I do not care-that the representatives of Western Australia are
here to try and get something out of the other colonies.

Mr. HOWE. -
Who said that?

Sir JOHN FORREST. -
It was said in this chamber by some one to-day.

Mr. DOUGLAS. -
But are you not trying to get all you can?

Sir JOHN FORREST. -
All I can say is that we do not want anything from anyone; we are quite
content as we are. We are a flourishing community, just beginning to enjoy
the blessings of independence. We are not here to ask for a favour from
any one. We do not want anything which is not reasonable and fair, and I
hope no one will attribute to us any such motives as that. It has been
generally admitted that the case of Western Australia is exceptional. This
proposal has come from the Finance Committee, based on a proposal I
made, which was to be general in its application, so that every colony that
happened to be in the same position as Western Australia would benefit to
the same extent. Our object in being here is to try and frame a Constitution
which all can accept. We are not here to get any advantage; we do not want
any advantage over any one else. If honorable members think that anything
in these proposals is unfair to them, or is unduly to our

advantage, I hope that they will not vote for them. Our only object is to try
and make this Bill in some way acceptable to the people of Western
Australia. I think I have shown clearly that we are in a different position
from any other colony. Of course, it may be said by honorable members-
"You are in a different position, and therefore you can stand out. We are
not going to give you any concession. We are not going to try and make a
different arrangement for your people. If you do not like to come in on the
same terms as the others, you can stand out." That is quite legitimate, and
honorable members can express themselves to that effect if they like. The proposal I have to make in place of that of the Finance Committee is nearly in the same terms, except that it is general in its application. It takes into consideration both gains and losses. The wording is almost identical except that we take into our calculation the colonies which will gain, as well as those which will lose. Under the arrangement which honorable members have been good enough to say is altogether to the advantage of Western Australia, we will lose an immense amount. I expect we will lose something like £150,000 a year, even by the arrangement as it is on the paper; that is, so far as I can judge from existing conditions. That is a loss I do not know how I shall be able to dissipate. Probably there may be a proposal by some honorable member which will meet my views even to a greater extent than the proposal I now make. Honorable members will recognise that as this arrangement is only to last for five years, and that then we are to trust to the Federal Government which we hear so much about, no one can say we are desirous of getting an undue advantage. At any rate, if any one dare say I want an advantage I repudiate the statement. I do not want an advantage from any one. All I want is what is right and just. I want to get the Bill into such a shape that I can say something in its favour. I have explained how difficult that is for me at the present time. Our protection to native industries will be gone. You will have our markets, which are worth something. I am sure that to Victoria, South Australia, and New South Wales our markets are worth a great deal.

Mr. LYNE. -

Not much to New South Wales at present.

Sir JOHN FORREST. -

You will have our markets free, whereas now you are confronted with the duties. Besides that, you will be able to compete to a larger extent and this is an argument against our own people-with our home productions, which, under ordinary circumstances, our own people have a right to.

Sir EDWARD BRADDON. -

What about your market for our fruit?

Sir JOHN FORREST. -

The market for your fruit? If you will get rid of the codlin moth, there is no reason why your fruit should not be sent to Western Australia now. Western Australia can produce most of the fruits quite as well as Tasmania. Our country is fitted for all kinds of extra-tropical fruits. We can grow nearly all the fruits that can be grown in Tasmania, only they grow better in Western Australia. In a few years Western Australia will be self-contained, unless the population increases to a very large extent. If that is the case, and I hope it will be, the good market we have been able to give for some
years, and are giving at the present time, to the producers of the other colonies will continue. I beg to move the following as an amendment on the proposed new clause:-

For each of the first five years after uniform duties of customs have been imposed the Commonwealth shall keep an account showing-

I. The amount which, under the law of each state in force immediately before the imposition of uniform duties, would have been collected from duties of customs and of excise upon the goods actually imported into and the goods produced or manufactured in that state.

II. The amount collected and taken to have been collected in that state from duties of customs and of excise.

The difference shall be taken between the former and the latter amounts, and when the former amount is the greater the balance shall be taken to be the net loss of the state for that year by reason of the imposition of uniform duties of customs and of excise, and by reason of the operation of free trade and intercourse throughout the Commonwealth, and the proportion which such net loss bears to the amount so collected and taken to have been collected shall be taken to be the proportionate net loss of that state.

The proportionate net loss and the proportionate net gain (as the case may be) of each of the states shall be calculated in like manner, and if the proportionate net loss of any state is greater than the average of the proportionate net losses of all the states combined (after allowing for the proportionate net gain in any one or more of the states) the Commonwealth shall pay to that state a sum which will equalize the proportionate net loss of that state with such average.

The amount so paid shall be taken to be an expenditure of the Commonwealth in the exercise of the original powers given to it by this Constitution.

I think there are copies of the amendment provided, and it is very probable, perhaps, that some amendment may be suggested by honorable members.

Mr. REID. -

I might suggest to the right honorable gentleman that he had better not give this up until he sees himself in a better position. He may find that in giving this up he gives everything up.

Sir JOHN FORREST. -

Gives what up?

Mr. REID. -

The proposition of the Finance Committee. I advise my honorable friend
not to give this up, until he has got something better.

Sir JOHN FORREST. -

I am not here to try and obtain any advantage by any means whatever, except those that are right; and, if there is a division-if this clause stands as it is in the Finance Committee's report-I shall not vote, and I hope every honorable member who represents Western Australia will also abstain from voting. The only difference between this clause and the one suggested by the Finance Committee is that it is general in its application, and applies to every colony instead of only to Western Australia. It also provides that the balance shall be arrived at after taking into consideration the gains and the losses. I have had it worked out, and it seems to me, taking it altogether, to be a more fair basis to go upon. It will press less heavily I think, on most of the states than the proposal made by the Finance Committee.

Mr. LYNE (New South Wales). -

I will not detain the committee many minutes. I cannot quite follow the effect of this clause, but it appears to me that New South Wales, with its present Customs Tariff, will have to bear all the loss.

Sir JOHN FORREST. -

Oh, no. Western Australia will lose £60,000.

Mr. LYNE. -

In a calculation I saw the other day, it was shown that New South Wales would have to pay the largest proportion of the amount to be provided for Western Australia, and that Victoria would come next. The principle of this clause is the same, but it extends very much further. New South Wales, with its present Tariff, would have to pay a much larger proportion of the amount payable to any state that lost, owing to the establishment of the uniform Tariff, than any other colony.

An HONORABLE MEMBER. -

The Federal Treasurer will pay it.

Mr. LYNE. -

Yes, but the larger proportion of it will be paid by New South Wales to the Federal Treasurer. I said that I would not detain the committee many minutes, because I am very anxious to hear this matter debated so that I may thoroughly understand it. I admit that I do not follow it clearly at present. My impression is that if it is carried New South Wales will have to contribute a much larger proportion than any of the other states of any loss incurred by the smaller states.

Mr. REID (New South Wales). -

I must confess that I disclaim any responsibility

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for the appearance in the Finance Committee's report of this particular arrangement in connexion with Western Australia. At the same time, it is a suggestion which carried with it a very large amount of support, and which was no doubt prompted by an admitted difficulty in the case of Western Australia. But much as I appreciate the difficulty of Western Australia, I feel that it will be an even greater difficulty to reconcile the people of the other colonies to the arrangement which is proposed. This view has different aspects, according to the different opinions which we hold on questions connected with the incidence of a Tariff. If we consider that the result of taking off duties is to relieve some unknown personages beyond the boundaries of a country, and not to relieve the people in that country, that is one view of the matter. If, on the other hand, another view is the correct one, that when you take duties off imports you relieve from a burden the people who consume the articles, the matter is capable of being regarded from a different stand-point. I must be understood as speaking from the latter stand-point. My arguments will have very little weight, or ought to have very little weight, with those who take the opposite view. But speaking as I believe, I look upon the fact that the uniform Tariff, while relieving the necessaries of life in Western Australia from heavy taxes, will directly benefit the people of Western Australia. I admit it may have some other effects besides that; but it will be difficult for us in any other colony to convince the people that the effect of taking duties off in a community is so disastrous to that community that other communities ought to make good the loss. It will be a hard argument to carry in, I do not say our colony, but any colony. At the same time, I admit that the difficulty is a serious one. Our friends from Western Australia have not come here with any chimerical difficulty. It is a subject of great interest, and must be so to them, from the circumstance that over one-third of their Customs revenue must go on the establishment of the uniform Tariff. But I look upon that as an unmixed advantage to the people of Western Australia, although still an embarrassment to the Treasury.

**Sir JOHN FORREST.** -

We shall have to get the money somewhere else.

**Mr. REID.** -

Exactly; and that is where the genius of the future Commonwealth Treasurer will come in. He will manage to adjust his Tariff so that Western Australia will not be subject to any greater proportional loss than any of the other colonies. It will be one of the knotty problems which the Commonwealth Treasurer will have to solve; but it is not incapable of an approximate solution.

**Sir JOHN FORREST.** -
Then there will be no harm in this provision.

Mr. REID. -

But we shall have certain preliminary difficulties to face in our own colonies before federation is accepted, and after the magnificent statements which have been repeated more than once about the revenue, trade, and illimitable prospects of Western Australia, it will be very hard to turn the page over, and appeal to the comparatively indigent populations of the other colonies to consent to a special arrangement on behalf of a colony which we all admit has a broad and grand future. So far as I am personally concerned, I cannot take up that argument. I say that it will be within the power of the Commonwealth Treasurer to so adjust his Tariff that in the case of Western Australia there will be no substantial dislocation of the revenue, although the articles taxed may be materially changed. I do not, however, wish to argue against the proposal too strongly, because I feel that there is a difficulty, and I quite see that the Treasurer of Western Australia was in duty bound to bring the matter very earnestly before the Finance Committee. He satisfied a large majority of the members of the committee that the clause was a proper one to insert, and I merely wish to record my dissent from their opinion. I think, however, that the right honorable gentleman has altered his proposal. I have in my hand a clause which has been hurriedly circulated among honorable members--and which is calculated to give one a cold, it comes so damp from the printers--which appears to differ in its provisions from the recommendation of the Finance Committee.

Mr. SOLOMON. -

It is entirely different.

Mr. REID. -

What is the effect of it? Is it to apply to all the colonies the cure which it was suggested to apply to Western Australia?

An HONORABLE MEMBER. -

Yes.

Mr. REID. -

Well, there ought to be perfect unanimity in regard to it. At last we have hit upon a solution of this great difficulty which will give absolute justice all round, but for one slight circumstance. The unfortunate colony which I represent cannot possibly get any advantage from it.

Mr. ISAACS. -

She can pay.

Mr. REID. -
The present Tariff of New South Wales yields about £1,500,000, and any conceivable Tariff such as my honorable friends speak of would probably throw at least £1,000,000 more into the Treasury chest of Sydney, even after deducting our share of the expenses of revenue. If you take the £2,500,000 from the £1,500,000 there will not be much left.

Mr. BARTON. -
You get a minus quantity.

Mr. REID. -
Yes. If the Commonwealth Tariff comes into operation in 1901, we shall have to calculate the facts of trade in that year by the law in force in New South Wales in 1900, under which-if the law now in force remains unchanged-the Customs and Excise revenue of the colony would be about £1,500,000. You must then take the amount collected, and taken to have been collected, under the Federal Tariff during 1901, which will be about £2,500,000; deducting the one amount from the other, you get £1,000,000 as the net loss of New South Wales. All the other colonies will come along with claims, ranging according to these ingenious calculations from £100,000 to £200,000 each; that must come out of our £1,000,000. And why? Because we have been so wicked as not to have taxed their products in the past. Our friends in the other colonies are to have made up to them what they will lose by ly in order to get even with them. I am sure if we did adopt this policy my honorable friends opposite would hail our return to enlightenment and sound political economy. It is rather amusing to me to see how plaintively those who have received the benefit of our free-trade yearn for us to set up the barriers against them as they have done against us. I do not blame them for what they have done; they had a right to do it, and they believed that what they were doing was to the advantage of their communities. But it cannot be a matter of quarrel with us that New South Wales has thrown open her ports to the other colonies before the establishment of federation. If we had a good stiff tax, say 50 per cent. ad valorem, upon everything they send into our markets, I have no doubt we could make a good deal out of the proposed arrangement. There is no doubt it would offer a strong inducement to the honorable member (Mr. Lyne) to put on additional taxation. It would, however, be an unfortunate beginning to federation if, to get a fair adjustment of the accounts, New South Wales were obliged to harry and oppress the trade of the other colonies. I mention these things to show honorable members that it will be a trifle difficult for us to go back to New South Wales and unfold the nature of this proposal to the people there. We have a land revenue, as the honorable member (Mr. Douglas) has pointed out, but we have plenty to do...
with it, and I am afraid that we are not in a position to consent to the present arrangement. I do not think that even the leader of the Convention, with his acknowledged influence, could induce the people of New South Wales to accept this solution of the difficulty, so that it seems to me, if anything is to be done for Western Australia, it will have to be done on the lines of the Finance Committee's report. That is the only chance of doing anything. Widening the area only makes the trouble wider and the difficulty greater. I do not think the case of Western Australia, which is a very exceptional one, should be staked on the fortunes of this particular amendment. Although I do not approve of the special treatment of Western Australia, still there are facts connected with that case which will enable us to represent it in New South Wales with a certain amount of force which will get over a difficulty of that sort—for difficulties there must be. But when I come to the other colonies which have been taxing our people and taxing our intercolonial trade so heavily, and when I have to say to them that after they have been taxed so heavily by the other colonies they will have to make up a contribution to those colonies for losing the opportunity of continuing that taxation for a few more years, it is a proposition which I am afraid even the most ardent federationist would wince at. I am afraid we shall have to keep on some other lines. I admit it would be a very good arrangement if New South Wales was taxing at the present time, and had been taxing for a long time, Australasian products. I believe we could then get a mutual agreement, but I do not think that honorable members can be very angry with us because of the fact that we have pursued a federal policy a little too soon. That is the difficulty. I should be very glad if we could get out of it in a way less objectionable than will be afforded by the general proposition submitted to us.

Sir JOHN FORREST. -
It seems to me that it would rather mutilate the Bill.

Mr. REID. -
It seems to me that we are to be mutilated.

Sir GEORGE TURNER (Victoria). -
I am glad to see that my right honorable friend is prepared to take his mutilation in such a cheerful way, and that he can speak so lightly of what to most of the colonies is a very serious subject. New South Wales, of course, can afford to treat any loss that might occur in that colony very lightly, because she has her immense land revenue to fall back upon.

Mr. REID. -
This would come out of the Customs.

Sir GEORGE TURNER. -
Even if she made a loss, the Tariff that will probably be passed will give
New South Wales a larger amount of revenue than she is getting at the present time. I may, in passing say that I can hardly see how a Treasurer could complain about having a larger amount of revenue, or how he could think that that was a hardship. But even supposing that that colony did make a loss, as we believe the other colonies will make a loss, it would be a light matter for New South Wales, because she could easily make up the amount out of the immense landed estate she possesses and the revenue she could derive from it.

That is not the case in any of the other colonies, and therefore the position is a very serious one.

Mr. Reid. -

There is no doubt about that.

Sir George Turner. -

The honorable member (Mr. Lyne) and the Right Hon. Mr. Reid appear, to some extent, to think that under this proposal New South Wales would have to bear all the loss; but that is not true.

Mr. Lyne. -

I did not say all, I said the largest portion.

Sir George Turner. -

Only a little more than Victoria. The population of New South Wales is about 10 per cent. more than the population of Victoria, and the loss has to be calculated per capita. If it is a hardship for New South Wales to have to pay this amount, it must be remembered that she will gain a very large amount of extra revenue, and it will be a much greater hardship for Victoria to have to stand her loss, and to have to pay a portion of the loss sustained by Western Australia.

Mr. Reid. -

Do not forget that the reason why we have no loss on the Tariff is because we do not tax you.

Sir George Turner. -

I think that could be easily remedied.

Mr. Reid. -

But we do not follow that line of policy.

Sir George Turner. -

My honorable friend seems to think a great deal of the fact that he does not tax us, but, unfortunately, we are only put in the same position by my honorable friend's Tariff as are Germany, France, and other portions of the world. We have to compete on equal terms with them.

Mr. Reid. -

Good Heavens! What do you want? You have not taken possession of us
yet.

Sir GEORGE TURNER. -

We shall have to do that by-and-by.

Mr. REID. -

I think you will, if you are to swim at all.

Sir GEORGE TURNER. -

My honorable friend insinuated on one occasion that he would buy up Tasmania; then he was going to purchase South Australia; and, I believe, he was then going to annex Victoria. I advise him that he had better with his spare cash invest in British censors, so as to be safe. My honorable friend has told us that the people in Western Australia will save very largely in consequence of having the duties taken off. At present they receive £380,000 or £390,000 from these intercolonial duties. Although the people there may save some small portion of that on account of the duties being taken off, I think the probabilities are that the people will have to pay for most of the goods they import about the same as they do now. I do not see how the people will save any large amount. No doubt some lines may be and will be reduced, but I fancy the people of Western Australia will find, after the duties are taken off, that they will have to pay nearly the same for their goods as they do now. Even if they do save something, it will be very hard for the Government of the colony to persuade the people that they have made such great savings, that they have the money in another pocket, and that they should put their hands into that pocket, and take out some of that money in order to hand it over to the Treasurer. They will then want to know-"What benefits have we gained by federation?" The vast majority will be inclined to say that they have derived no benefit, while they have incurred very serious losses. Mr. Reid tells us that if we have a Federal Treasurer who is a genius be may be able to so frame this uniform Tariff that none of the colonies will suffer any losses.

Mr. REID. -

Substantial losses.

Sir GEORGE TURNER. -

If we manage to discover a genius who could do that, I, as one of the people in these colonies, will be only too glad to see him permanently placed in the Treasury of the Federation. If it be my honorable friend, the present Treasurer of New South Wales, I will be sorry that New South Wales should have lost such an able Treasurer, but I will be glad that the people of Australasia have gained him in order to carry out such a great work; but I doubt whether be will be able to do so.

Mr. REID. -
I have a better man in my eye; it is the man who can capitalize the discrepancy.

Sir GEORGE TURNER. -

It is admitted on all hands that if we are to have a good Federation we must be careful not to do anything that will dislocate the local finances. The more carefully I consider the matter, the more I come to the conclusion that unless we carry some provision which will protect the state Treasuries, so that they will not lose a large amount, we shall dislocate the finances to a considerable extent-I do not say to the extent of insolvency or bankruptcy, nobody ever dreams of that-but to the extent that the Treasurer of a particular state would be forced to put on extra taxation; and I think there are very few Treasurers present here who will be able to devise any scheme of taxation in any of the colonies at the present time, or for many years to come, which they would have any chance of carrying, unless indeed they were prepared to give up at the same time revenue of another kind, devised by means which would be looked upon as more objectionable. Therefore I feel, stronger and stronger every day, that if we are to frame a Constitution which will be acceptable to the people of the colonies, we must be prepared, when we bring the measure before them, to say to them that we feel perfectly certain that such provisions have been made as will not throw further burdens upon them. For they will say-"Of course, you may be going to take off some of these taxes, reducing your 30 per cent. duties to 20 per cent., but we shall not get our goods any cheaper on that account, and shall have to make up the extra amount you lose in other ways." I am quite of opinion, so far as Western Australia is concerned, that if we are to induce her to come into the Federation we must do something to assist the representative men in that colony to bring her in with us. We have been told by Sir John Forrest very earnestly, and I have no doubt honestly, that he and his honorable friends will have a very hard task before them to persuade the people of his colony to join us at all. And when we look at the great distance which divides Western Australia from the rest of the colonies, and remember that there are hundreds and thousands of people there who are hoping to develop their own natural industries and their own manufacturing industries, and that through intercolonial free-trade they will be seriously injured in that respect., I can quite understand the difficulty that will arise, and that Sir John Forrest and his colleagues will have a very hard task indeed to induce their colony to join us. I believe that Sir John Forrest and his brother representatives are very anxious to induce her to enter the Federation; and, therefore, while the proposal with regard to Western Australia may not be theoretically correct, I feel that we are bound to do something to assist that great colony. The
proposal made by the Finance Committee is one which would have given assistance to some extent, but my right honorable friend the Premier of Western Australia has made suggestions for certain alterations in those proposals. One of those alterations, although it may on the face of it seem to be a very little one, is to my mind very serious. The original proposal is that wherever there are losses among those colonies, an average shall be struck, and if the average loss of Western Australia is higher than the average loss of all the colonies, then the other colonies, including those that may make gains, shall have, \textit{per capita}, to make up the extra loss sustained by Western Australia. But my right honorable friend no

are to be set off against the losses in striking the general average. What would that mean? It is stated that in New South Wales there will be a gain of £1,000,000. I do not believe that that colony will gain so much, but perhaps she will gain £500,000 or £600,000. The losses in the other colonies may, with the loss of Western Australia, come to £700,000 or £800,000. Now, if we are to deduct the gains of New South Wales from the losses of all the other colonies, we shall leave a very small sum indeed on which we are to strike the general average, and by that means we shall leave a very large sum indeed to be found by the other colonies to be paid to Western Australia. I think that that would not be at all fair. We probably should have to find very nearly the whole amount of Western Australia's loss, and that, I think, my right honorable friend will see is asking more than any of us would be prepared to concede. But my objection to this proposal-I have urged it before, and must do so again in all seriousness and earnestness-is that we are asking the colonies that are making serious losses themselves, to put their hands in their pockets still further to take money out for the purpose of relieving the losses of what the people of our colonies will probably believe to be the richest colony of the whole group. That is the great difficulty I see in this proposal; and while I, personally feeling that we have to do something, should be glad to assist Western Australia to the extent of the original proposals made in the Finance Committee's report-although I do not think that they are theoretically correct-I could not support the proposal which Sir John Forrest now makes to us. Possibly we may be able to devise some better scheme, which will not specify any particular colony and brand it in our Constitution as being one that will derive advantages from the other colonies to enable it to carry on. I think we should have a general clause, but I do not want for one moment to propose anything which will take away from New South Wales or any other colony any of the money which she may pay in, for the purpose of assisting Western Australia. I know very well that if the
representatives of New South Wales have to go back to their colony and point out that their people are going to pay some £500,000 or £600,000 a year extra in Customs, and that a considerable portion of that has to be paid over to the other colonies, they will probably have as difficult a task to induce their people to adopt the Constitution as our friends in Western Australia will have unless some proposal for their assistance is adopted. Now, I have to come back to what I suggested yesterday in the amendment which I have circulated. I will not say that the draft of it is exactly what it should be, because I have endeavoured to modify the Finance Committee's report, but if the principle be affirmed the drafting of the clause can be altered before it is made a part of the Bill itself.

Mr. LYNE. -

What is the effect of your proposal?

Sir GEORGE TURNER. -

It is simply this: If a colony, by the alteration made in its Tariff, gains extra revenue, the state Treasury of that colony is in no worse position. The people may be in a worse position by having to pay extra duties, but so far as the state Treasury is concerned it is certainly in no worse position. I do not desire to take from the state Treasury any portion of these extra gains. But I say with regard to the other colonies-and I believe that all but New South Wales will make losses-where losses are occasioned by the action of the Federal Parliament in imposing a uniform Tariff, and in consequence of the cessation of intercolonial duties, those losses ought not to be borne by the colonies themselves, but should be made up by the Federal Parliament.

Mr. LYNE. -

A great portion of those losses will be made up by extra money received from New South Wales.

Sir GEORGE TURNER. -

I do not want that. I do not want to have the Federal Parliament take anything from New South Wales.

Mr. REID. -

You cannot help it.

Sir GEORGE TURNER. -

Yes.

Mr. WALKER. -

You leave New South Wales out then?

Sir GEORGE TURNER. -

No. We have already declared that during five years there is to be a bookkeeping system, and each colony is to get back the amount collected
in the state, less certain expenses. Now, so long as we allow that to stand as it is, the Federal Parliament must carry out that provision, and the result must necessarily be that whatever amount New South Wales pays into the Federal Treasury she will get back, after deducting only the expenses in connexion with the collection and the \textit{per capita} cost of the expenditure of the Federation, but without deducting anything on account of the losses of the other colonies.

\textbf{Mr. LYNE. -}

If the other colonies all make losses, and those losses have to be made up in some way, how are they to be made up except by New South Wales?

\textbf{Mr. REID. -}

You cannot make up a net loss out of other net losses.

\textbf{Sir GEORGE TURNER. -}

I am quite aware of that. I do not require my right honorable friend to point out to me that you cannot make up a net loss out of other net losses. But, as the Bill stands now, New South Wales must get back the amount she pays in, less only the expenses incurred in her colony and her proportion \textit{per capita} of the expenses of the Federation; and if those other losses I have referred to are to be made up to the Federation the Federal Parliament will have to devise other means of making them up. If we have a financial genius as state Treasurer, he may be able to devise means of doing so which I cannot see at present.

\textbf{Mr. LYNE. -}

You must make it up from revenue or from borrowed money.

\textbf{Sir GEORGE TURNER. -}

Undoubtedly.

\textbf{Mr. REID. -}

Not if you have this large extra revenue from New South Wales.

\textbf{Sir GEORGE TURNER. -}

My right honorable friend cannot attempt to draw a herring across the trail.

\textbf{Mr. REID. -}

It is more than a herring, I can tell you.

\textbf{Sir GEORGE TURNER. -}

I do not want the revenue of New South Wales to suffer.

\textbf{Mr. REID. -}

You cannot help it, really.

\textbf{Sir GEORGE TURNER. -}

This proposal may not be altogether theoretically correct, but it will rest with the Federal Treasurer to devise some means, and if he cannot devise any other means than borrowing, then, for the purpose of keeping the state
Treasurers in the position we all desire to see them kept in a position that will enable them to carry on properly—the Federal Treasurer would be perfectly justified in borrowing for that purpose.

An HONORABLE MEMBER. -
Or he could put on direct taxation.
Sir GEORGE TURNER. -
I do not want direct taxation to be imposed, because the money would then have to be found by the colonies in other ways. Seeing the difficulties that we are in, we must be prepared to diverge to some extent from the ordinary course, and if we have to leave the Federal Treasurer to devise a means, and he is forced into adopting that particular means, then the Federal Treasurer would be perfectly justified in choosing that mode of raising revenue, if he could not devise any better mode. With regard to paying per capita our share of the interest on the money borrowed—

Mr. SYMON. -
Why not put in your amendment—"Money raised by loan or extra taxation"?
Sir GEORGE TURNER. -
Because we may have a genius as Federal Treasurer who may be able to devise some other means.
Mr. DOBSON. -
What will the English investor say to the Commonwealth borrowing money to make up state losses?

Sir GEORGE TURNER. -
If the English investor understands the position as we understand it, he will not think one whit the worse of us for doing that than he thinks of us for many things that we have done in the past.
Mr. REID. -
Capitalizing the promoters' expenses.
Sir GEORGE TURNER. -
If any honorable member can suggest any better means, I am perfectly willing to adopt his suggestion. It is not the mode I would adopt, if I could see any other, but unfortunately I do not see any other, and I have not heard of any other except that of leaving it to the state Treasurers to make up the losses as best they can. And so sure as we have to go to our people and tell them that there will be losses which they will have to make up out of their pockets, so surely will they vote against all these proposals. Now, is it not better, in order to get this measure carried, that we should take that little
departure from the strict lines of finance than run the risk of having this measure rejected? I do not think we need trouble our minds about the English investor. All that the English investor has to see to is that he has good security.

Mr. DOBSON. -

You say the net loss; ought not you also to say the expenses?

Sir GEORGE TURNER. -

The expenses are provided for in another portion of the Bill. I do not want to detain the committee too long, but this creates a very serious position for many of the colonies. If the position taken up by Mr. Reid is correct, then the Federal Treasurer will be able to frame the Tariff so that there will be no losses at all, and all the colonies will practically derive from this new Tariff about as much as they are deriving now under their present Tariffs. If that happy result can be arrived at, the Federal Treasurer will have no trouble in finding this money, but if he knows that he has to provide against the losses we now contemplate it will make him very careful in framing the uniform Tariff. Then the amount, of loss that the Federal Parliament will have to make up will be very small indeed. Under these circumstances, while prepared to stand by the proposal of the Finance Committee for the purpose of assisting the representatives of Western Australia to induce their colony to come into the Federation, I would much prefer that we should have some general scheme, which would not take away from any of the colonies any more money than they themselves will lose by the scheme in addition to that, if it is at all possible for the financial ability of the Convention to frame it on any lines which will enable the colonies not to suffer the loss which I believe they will suffer. The proposal I have placed before honorable members is the best I can suggest, but I shall be very glad to listen to those who have had greater experience in financial matters than I have had, and they may be able to show us a better mode of dealing with the subject. If they do, they will have my hearty support. If they cannot show a better plan, then, in order to test the question as to whether we should deal with it in the mode Sir John Forrest has suggested, or in the mode I have suggested, I will, later on, take an opportunity of moving my proposal as an amendment on his, so that we may be able to decide between the two proposals as to which we should adopt.

Mr. HOLDER (South Australia). -

I do not propose to discuss at any length the proposals brought up by the Finance Committee respecting Western Australia, because I have already twice debated them in this Convention, and it would be a waste of time for me to go over the same ground again. However, there are two other
proposals before us which demand very close attention at our hands, and which, I think, will be very quickly disposed of if we give them close attention. Therefore I have sought, while Sir George Turner was speaking, to work out a few figures which will indicate the practical effect of those two proposals; and when I have given the figures, I fancy the Convention will see at once that it is impossible for us to accept either the one scheme or the other. Now, to test those schemes, the first thing one has to do is to form some estimate of the probable Customs revenue of New South Wales under any conceivable uniform Tariff, and in order that I might get some basis for that estimate, I have been looking up the Customs revenue of the various colonies derived from wine, spirits, and narcotics as compared with the other Customs revenue. The bulk of the Customs revenue of New South Wales is derived from the duties on wines, spirits, and narcotics.

Mr. BARTON. - Do you take into your calculation both Customs and Excise revenue?

Mr. HOLDER. - Yes, both. In these discussions I do not think it is necessary to use both words-"Customs" and "Excise." We take it for granted that when using the one we mean also the other. The present Customs and Excise revenue of New South Wales is a little under £1,500,000. The greater part of that is derived from duties on those particular goods. Taking the duties in all the colonies, the revenue from wines, spirits, and narcotics is 19s. and some odd pence per head, and on other goods, in round numbers, £1 per head.

Sir JOHN FORREST. - You are not including Western Australia, I suppose?

Mr. HOLDER. - I am taking the average for the five colonies which we hope will be included in the Commonwealth, and, according to the figures, the average for all the colonies is £2 per head; the amount for wines, spirits, and narcotics being, as I have just said, 19s. and some odd pence per head; and on other goods, in round numbers, £1 per head.

Sir JOHN FORREST. - It is £3 10s. per head in Western Australia.

Mr. HOLDER. - Yes, but I am taking the average of the five colonies. In South Australia it is much less, but I think it is better to discuss the general average rather than take any particular state. The point I want to get at is this-taking the general returns of the colonies, the total revenue from Customs and Excise under any conceivable uniform Tariff will be probably just about double
what it is from wines, spirits, and narcotics alone. If that is so, it is quite clear that the revenue of New South Wales under the uniform Tariff will be very nearly, if not quite, double what it is at present. Making allowance for present revenue not derived from duties on wines, spirits, and tobacco, we are quite safe in assuming that the additional duties levied in New South Wales, should the uniform Tariff be anything like the average of our present Tariffs, will not be less than £1,000,000 per annum. I have looked at it very carefully. I should have liked to have made it less if I could. I have given an outline of the basis on which I have worked out the figures, and I do not think they can be got away from. If that be so, we have to contemplate again these facts: The present revenue of New South Wales is £1,500,000. Her revenue under a uniform Tariff, under the supposition I have suggested, will be £2,500,000, or a net increase of 662/3 per cent. That is a big item to begin with. We then take the other colonies. Victoria has a revenue of £1,800,000, roughly. Under the new Tariff, if she loses 10 per cent. of that revenue, as probably she would, that means a loss of £180,000.

Sir GEORGE TURNER. -
It is more than £1,800,000, including Excise. It is £2,200,000 odd.

Mr. HOLDER. -
My difficulty has been that I have not been able to get figures up to the latest dates; nor could I get complete figures for all the colonies for one year. In the papers laid before the Convention at Adelaide, the last year for which the figures are given is 1895.

Sir GEORGE TURNER. -
That was a frightfully bad year for us.

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Mr. HOLDER. -
If I am taking all the colonies for the same year except New South Wales, I am quite right.

Mr. REID. -
It was a bad year all round.

Mr. HOLDER. -
In the case of New South Wales, I had to depart from the year 1895, because her free-trade Tariff was not then in operation.

Sir GEORGE TURNER. -
The Dibbs Tariff did not bring in anything like the amount you mention.

Mr. LYNE. -
£2,200,000.

Mr. REID. -
More than that in 1892.

Mr. HOLDER. -
The interjection of my honorable friend (Mr. Lyne) supports my view.

Mr. LYNE. -
In the first year it brought in £2,600,000.

Mr. REID. -
A 10 per cent. Tariff only.

Mr. HOLDER. -
I am glad to have that corroboration of my estimates. It shows that they were very fair indeed.

Mr. REID. -
The mean of 1893-4-5, for Victoria, I see, on Customs and Excise was £1,945,000.

Mr. HOLDER. -
Really it does not matter so long as I keep the same proportion in view, and do not jump from one year to another in dealing with a given colony. The figures for South Australia are £500,000; Western Australia, £1,000,000; Tasmania, £350,000. The total from the five colonies would be £6,150,000. The losses from inter-colonial free-trade would be probably in Victoria, £180,000; South Australia, £50,000; Western Australia, £200,000; and Tasmania, £35,000. After allowing for an increase, owing to the items taxable under the uniform Tariff which are not taxed to-day, it leaves the total losses in four colonies at £465,000, but a total gain in New South Wales of £1,000,000, or a net gain on the whole five colonies under the new Tariff of £535,000. Now then, I come to an analysis of the two proposals before us. Sir John Forrest wants to depart from the recommendations of the Finance Committee and to substitute in lieu of it a plan which, in the first place, shall take into account the gain in New South Wales, which the Finance Committee has been leaving out of the reckoning. The effect of bringing into the account the gain of 662/3 per cent. is this, to make, roughly, a net gain for all the colonies of 9 per cent.

Sir JOHN FORREST. -
Your estimate is very much greater than that of others; you have a very high estimate of gain for New South Wales.

Mr. HOLDER. -
I have given the basis of my calculation, and it is fully corroborated by the interjections.

Sir JOHN FORREST. -
I have a paper worked out by an actuary, which makes it very different for this year.

Mr. REID. -
The amount is right within about £20,000 or £30,000. I know that from actual facts.

Mr. HOLDER. -

However, the result is that if we bring in New South Wales with her large gain we get a net gain for the whole five colonies of 9 per cent., and, instead of deducting the average loss of the four colonies from the loss of Western Australia, with the view to seeing how much is to be paid to her, that is to say, instead of deducting 11 per cent., which is the average loss of the four colonies from the 25 per cent., and having to make good to Western Australia 14 per cent., we have now, which is what the Finance Committee recommend, to make good to Western Australia the amount which shall raise her gain to the average gain of the five colonies-9 per cent. So that we have to make up to Western Australia 25 per cent-her loss- and 9 per cent. more to bring her up to the average gain.

Mr. REID. -

Let us pass it at once.

Sir JOHN FORREST. -

Our loss would be 40 per cent.

Mr. REID. -

No wonder you would not vote for that.

Mr. HOLDER. -

I am giving the figures as shortly as I can, and in such a way as, if possible, to enable honorable members to follow me in the calculations as I go on. I think I am giving no calculation which

honorable members cannot follow without the aid of pencil and paper. I have shown that the loss of Western Australia may be set down at 25 per cent.; and, if the general position of the five colonies be, not a loss but a gain of 9 per cent., then to bring the loss of 25 per cent. up to a gain of 9 per cent. -

Sir JOHN FORREST. -

How do you make that out?

Mr. HOLDER. -

We practically come to this: We have to make up to Western Australia, first, her loss of 25 per cent., and then raise her to the 9 per cent. average gain.

Sir JOHN FORREST. -

40 per cent. is our loss.

Mr. HOLDER. -

That makes it worse still. We have to bring up Western Australia to 34 per cent. Then there is a further point in the proposal of the right honorable
member. He wants not only to bring Western Australia up to the average, but all the colonies below the average up to it. Which are the colonies below the average? Victoria is 10 per cent. below the average; South Australia is 10 per cent. below the average; and Tasmania is 10 per cent. below the average. So that, a present of the 10 per cent. has to be made to each of these colonies which they are below the line, and the 9 per cent. which they ought to be above that. We have to give them 19 per cent. each.

Sir JOHN FORREST. -

How does South Australia come out?

Mr. BARTON. -

Who pays the piper?

Mr. HOLDER. -

That is the point I was coming to. Where are we to get there amounts? We have to pay a bonus to Victoria, South Australia, Tasmania, and Western Australia. There is only one possible source from which this money can come, and that is the million which is gained by New South Wales.

Sir GEORGE TURNER. -

Do you think it would stand it? Would the million be enough?

Mr. HOLDER. -

I do not think I need say any more. I do not think any further figures will be necessary to prove that we cannot possibly accept that scheme. Then I come to the other scheme, that of my right honorable friend (Sir George Turner).

Mr. REID. -

You don't put the matter in a federal spirit at all.

Mr. HOLDER. -

This scheme is worse than the other, because, while Sir John Forrest wants to bring us, wherever we are down below the line, up to the line of average loss, Sir George Turner wants to do more than that; he wants to give us, not an average loss, but something else, which we should have received had our old Tariffs been still in force. To do that, we have to pay to the various colonies the £465,000 loss which I mentioned just now. We have to pay, to Victoria £180,000; South Australia, £50,000 Western Australia, £200,000; and Tasmania, £35,000.

Sir GEORGE TURNER. -

You admit that we are going to make a loss of £180,000 according to your own figures?

Mr. HOLDER. -

I do not want to go over again matters I discussed on Thursday last and on Monday morning, or else I could answer the interjection.
Sir JOHN FORREST. -
How do you know what the Tariff will be?
Mr. HOLDER. -
These figures would not be assumptions but facts if I only knew that. If it is impossible for us to expect New South Wales, out of her £1,000,000, to make up the 19 per cent. and the 34 per cent., which will amount to a little over £300,000; it is still more impossible to expect New South Wales to pay, not £300,000 or £400,000 but £465,000, to the other colonies. I do not think, we really need go any further.
Sir JOHN FORREST. -
I think we need.
Mr. HOLDER. -
This is not a question of free-trade or protection, or of what New South Wales has done for us in the past or may do for us in the future. It is a question of whether we are likely to federate on a basis that will require New South Wales to pay to all the rest of the colonies the whole cost of federation. Whatever the necessary cost of federation may be-and we will keep it as low as we can-South Australia, and I believe the other colonies, are quite prepared to pay their share, and do not want New South Wales to come in and pay their share for them. There is only one alternative to that, and that is the alternative mentioned by Sir George Turner, that there should be federal authority to pay only the interest on those sums which the other colonies were short. That is, in effect, borrowing the money, for the colonies would have to borrow if the Commonwealth did not, to enable them to pay their way. We have not done that in the past. If now and again there has been a special occasion in one or two colonies to tide over a temporary difficulty by Treasury-bills, those bills have only been issued as a temporary expedient, and have been disposed of in the shortest possible time.
Sir GEORGE TURNER. -
Could this not be considered a temporary expedient to be charged against the states in better days?
Mr. HOLDER. -
That is not what the honorable member suggested.
Sir GEORGE TURNER. -
I have no objection to a modification in that way.
Mr. HOLDER. -
I am entirely opposed to the policy of borrowing money to enable us to pay our way from year to year, and I hope we do not contemplate a Federation, the basis and bed-rock of which is a proposal that money
should be borrowed to make good the deficiencies of the states for the first five years. I think neither of the schemes will do; and, much as may be said against the committee's proposal, I hope now that the special case of Western Australia, will be provided for in the way the committee suggest. One word more. It has been suggested to me, and I pass on the suggestion to the Convention, that if Western Australia feels some delicacy, as I quite understand she may, in accepting a proposal which names her by name, and puts her for all time in the Constitution as being a state which needed special terms, we could overcome the difficulty by striking out "Western Australia" in this clause proposed by the committee, and inserting in lieu thereof words to the effect-"any state which loses more than 15 per cent.," which would cover the case of Western Australia, but would not touch any other state. Western Australia would get the benefit that I believe she is fully entitled to, and avoid the unpleasantry of being named specially in the Constitution. I throw out the suggestion, and if the Convention could see its way clear to accept it it may meet all parties, and do what I think is fair and just.

Mr. MCMILLAN (New South Wales). -

Ordinary members of the Convention must, I think, feel very much bewildered at the stage we have reached. We have had a proposal from the Finance Committee with regard to Western Australia. From the first moment that the proposal was put before us, there has been a general attack on it, more or less, with suggestions by the very gentlemen who framed it, and the destruction of the clause has been attempted by the very gentlemen for whose benefit it was intended. Now, it is very clear to me that if the clause is not carried as the Finance Committee completed it, the whole thing must go by the board. We started a debate on the question of the peculiar position of Western Australia; and where are we drifting? We have had a proposal-which, I put first after that of the Finance Committee-from Sir George Turner, who would practically put the bulk of this loss on one colony. We have then a proposal from Sir John Forrest, which is a sort of Chinese puzzle. I worked out figures very similar to those of my friend (Mr. Holder), and the whole thing is impossible except on the basis from which we started. Then, another element has been introduced in a proposal to make up for the possible losses of some of the colonies in this federal financial arrangement. That proposal is made to help those in their exigencies, and goes back over the whole of this financial debate. So far as I can perceive the opinion of the Convention, there is no chance of that proposal of the Finance Committee being accepted.
Mr. FRASER. -  
Oh, I hope so; what better proposal is there?

Mr. MCMILLAN. -  
Well, if it is going to be accepted, it is a very roundabout way of getting at it. The whole original plan, which was intended for the peculiar exigencies of Western Australia, is now being turned into an attempt to meet the losses of all the states at the expense of one.

Mr. KINGSTON. -  
That has not been carried yet.

Mr. REID. -  
If the other proposals are negatived, the proposal of the Finance Committee will come up then.

Mr. MCMILLAN. -  
I quite understand that; but, at the same time, the tenor of the debate has shown very clearly that the other colonies feel that there is a certain amount of injustice in the same arrangement not being extended to them as has been extended to Western Australia. But, at any rate, as I said when I started, the whole matter has been pretty well thrashed out. It has been proved that the two schemes proposed are absolutely unworkable. There is no doubt that, whether you put this as a charge on the general revenue of the Commonwealth, or whether you make it a per capita distribution, New South Wales will have to pay a large charge of at least £200,000 to assist the other colonies.

Sir JOHN FORREST. -  
We will lose that much ourselves in Western Australia.

Mr. MCMILLAN. -  
That may be, under one of the proposals, but under almost any proposal New South Wales, putting aside her proper share of the losses of Western Australia, will probably have to pay a sum of, at any rate, £250,000 in order to bring about the suggested arrangement.

Sir JOHN FORREST. -  
You will have our trade and open ports.

Mr. MCMILLAN. -  
That payment in scarcely likely to be conceded by New South Wales. It seems to me that it would be better as soon as possible to get back to the original proposal, and to debate it on its merits, in view of the peculiar position of Western Australia.

Mr. ISAACS (Victoria). -  
I am sure we were all very glad to hear the lucid statement of Mr. Holder, but I should like to put one phase of the question in order to elicit from him his opinion as to a matter that is troubling my mind. Under the Finance
Committee's scheme the proposal is, assuming the uniform duties are not put on for two years, that, commencing with the third year and ending with the seventh year of federation, special treatment shall be given to Western Australia. Assuming also, as I think we may, that in the fourth or fifth year of federation the population of Western Australia will be vastly increased, would it not be possible under this scheme that Western Australia would receive more money under the uniform Customs Tariff than she is getting to-day, and yet be entitled to a considerable amount of money from the other states?

Mr. KINGSTON. - How?

Mr. ISAACS. - She is getting to-day in customs duties £1,100,000. With an increased population she might, under the uniform Tariff, get £1,200,000. If you take the actual goods imported, and calculate the revenue on the basis of the actual state Tariff, that might bring the amount up to a hypothetical £1,500,000. Instead of £100,000 she would then get £300,000.

Mr. HOLDER (South Australia). - The answer to the honorable member's question is this: That the scheme is so framed as to work automatically. Should the population or the imports increase, then the sum to which Western Australia would be entitled would increase. Should there be a decrease in population and imports, then the sum to which Western Australia would be entitled would decrease proportionately.

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Mr. ISAACS. - The position I put is possible.

Mr. HOLDER. - It is possible.

Sir JOHN FORREST (Western Australia). - The amendment I have submitted does not meet with favour, and I therefore ask leave to withdraw it. The proposal made by the Right Hon. Sir George Turner has more to recommend it than my honorable friend (Mr. Holder) will admit. He assumes that the Federal Tariff will be so framed that losses will be incurred by all the states. We need not assume that. If we get a genius, such as was described by the Right Hon. Mr. Reid, as Treasurer of the Commonwealth, perhaps a Tariff may be adopted that will give to all the states as much, it may be even more, revenue than they receive at the present time. The fear has been expressed all through the discussion, and especially by those who have the conduct of the finances of...
the various colonies, that the state Treasuries may be so depleted of revenue that the states may have some difficulty in meeting their obligations. Sir George Turner's proposal is not new. It was proposed before. I think it was in one of the provisions we passed in Adelaide or Sydney. At any rate, it was proposed that the return to the various Treasurers should not be less than a certain amount.

Mr. HOLDER. -

In the aggregate. That made all the difference.

Sir JOHN FORREST. -

Yes, but there were many who thought that the word "aggregate" should be left out. The position is not an unreasonable one for the various states to take up. This arrangement is not to continue for all time. It is only to continue for five years after the imposition of the uniform duties, and even if the Commonwealth did make a loss-a contingency which we need not contemplate-it would not be a very serious matter. The Commonwealth could find the small amount required in order to recoup the state Treasuries. It may be asked-where is the money to come from? I dispute the statement that New South Wales would have to find it all. We in Western Australia do not want anything from New South Wales. We can look after ourselves.

Mr. MCMILLAN. -

If the word "aggregate" were left out, New South Wales would have to pay it.

Sir JOHN FORREST. -

We do not want New South Wales to pay it.

Mr. HOLDER. -

 Somebody must pay it.

Sir JOHN FORREST. -

There are ways of finding the money without asking New South Wales to provide it. The Commonwealth will have sources of revenue other than the Customs.

Mr. SYMON. -

What are they?

Sir JOHN FORREST. -

I hope the Commonwealth will have a large area of land surrounding the federal capital, and an immense amount of revenue will be derived-I will not venture to say how much, but certainly more than will ever be required to meet the demands of the states-by the sale of that land.

Mr. WALKER. -

Where is the capital to be?

Sir JOHN FORREST. -
I do not know, but I hope a site will be selected outside of any existing city or town, so that we may lay out as the federal capital a city that will be worthy of the great Australian nation of the future. An immense amount of revenue will be derived from that source.

Mr. SYMON. -

You would not ask the Commonwealth to sell its patrimony for any such purpose as that?

Sir JOHN FORREST. -

Then of course the Commonwealth would have power to raise money for the purpose. I notice the horror with which some honorable members view the fact that we borrow money to carry on our local Governments, but I know that that has been done time after time on this continent, and that it is being done how. How are the deficiencies that exist provided for? They have been provided for by borrowed money, whether in the form of Treasury-bills or otherwise, and the same thing can be done again.

Mr. FRASER. -

That is only discounting the future a little bit.

Sir JOHN FORREST. -

That is all we want you to do now. At any rate, I see no great harm in leaving it for the first five years to the Federal Parliament to make good to the state Treasurers this small sum. If it is well arranged, I do not think it will be much. Whether it is small or great, I should throw the responsibility upon the Federal Parliament of providing the money. If the worst came to the worst, they could borrow it, and make the interest a charge upon the Federal Government. I very much prefer the plan suggested by Sir George Turner to any other that has been submitted. It is simple and easily understood, and it will place the state Treasurers in a position in which they will know that they will get as much during the first five years after the uniform Tariff as they would have obtained if they had remained under their own Tariff. That, it seems to me, is a reasonable proposal, and it would give great confidence to the various states. I beg now to ask leave to withdraw my amendment.

The amendment was withdrawn accordingly.

The CHAIRMAN. -

The question before the committee now is the proposal of the Finance Committee.

Sir GEORGE TURNER (Victoria). -

I shall submit my amendment in order that it may be discussed. I beg to move the omission of all the words after "showing," with a view to the substitution of the following:
I. The amount which, under the law of the state in force immediately before the imposition of uniform duties, would have been collected from duties of customs and of excise upon the goods actually imported into and the goods produced or manufactured in that state.

II. The amount collected and taken to have been collected in that state from duties of customs and of excise.

The latter amount shall be deducted from the former amount, and the balance (if any) shall be taken to be the net loss of the state for that year, by reason of the imposition of uniform duties of customs and of excise, and by reason of the operation of free trade and intercourse throughout the Commonwealth.

The Commonwealth shall pay to each state the amount of its net loss.

Mr. WALKER (New South Wales). -

It seems to me that no one has so far said anything in favour of the proposal of the Finance Committee in this connexion. I think that the remarks of the honorable member (Mr. Holder) have pretty well cleared the ground to give an opportunity for showing that the proposal of Sir George Turner will not be acceptable to the Convention. I now propose to say a few words in favour of the recommendation of the Finance Committee.

Mr. DEAKIN. -

Hear, hear; tell us what it is going to cost.

Mr. WALKER. -

I presume that we all agree that, even if we have to pay for it, we must have Western Australia in the Federation.

Mr. SYMON. -

Not if we have to pay for it.

Mr. WALKER. -

I shall not enlarge upon the subject at the present moment except to show that there are certain alternatives which we must face if we do not accept the recommendation of the Finance Committee. In the first place, we might forego intercolonial free-trade for a period of years so far as Western Australia is concerned. That is an alternative which may be more welcome to honorable members than the proposal of the Finance Committee. The second alternative is the imposition of a Federal Tariff large enough to enable Western Australia and Tasmania to receive amounts equal to those which are now received from their present Tariffs. That would mean that the Federal Government would have to impose a Tariff heavy enough to produce something like £8,000,000 of revenue. The third alternative is that Western Australia will not come into the Commonwealth.
Federation. Now, we must look upon the present situation of affairs much as if we were entering into a partnership. We are acquiring a certain goodwill, and we must be, prepared, if need be, to pay something for it in the interests of all. Victoria, South Australia, and, in a less degree, New South Wales, have all had a valuable market in Western Australia, and it would be of great advantage to the people of these colonies to have a practical knowledge of this market.

Mr. DEAKIN. -

What are we going to pay for it?

Mr. WALKER. -

According to the figures which were put before the Finance Committee, Western Australia will lose something like £380,000 a year if her present Customs Tariff is discontinued. We have heard from other sources that these figures, like a great many of the statistics which have recently been prepared for us, are not quite reliable. We have no guarantee that those who prepared the information for the Western Australian Government really knew if the imports from the other colonies were in all cases the products of those colonies, or products of foreign countries re-exported. The honorable member (Mr. Holder) mentioned that on one occasion in South Australia something like £74,000 was paid as drawback upon goods re-exported to Western Australia. I would also point out that, as the Commonwealth Parliament will probably impose duties upon articles not now bearing duties in Western Australia—sugar and tea, for example—the extra revenue thus derived will materially reduce the loss I have mentioned. The probability is—and I think the right honorable member (Sir George Turner) is much of the same opinion as I am in regard to this matter—that probably £200,000 would more nearly represent the loss which Western Australia will suffer if intercolonial free-trade is brought about. As a representative of New South Wales, I do not think that colony would grudge having to pay one-third of that amount—that is, a little over £60,000 a year—for the great advantage of absolute intercolonial free-trade.

Mr. HOLDER. -

But even if Western Australia lost £200,000, that would not be her loss in excess of the general average loss of the colonies.

Mr. WALKER. -

No. That is a point which I have omitted to mention, and I am glad that the honorable member has drawn my attention to it. You must subtract from the amount I have mentioned the average loss of the other colonies, so that the probability is that the amount which will have to be paid to Western Australia will not exceed £150,000. I think that the advantage of free trade with that colony would not be dearly purchased by the
expenditure of £150,000 a year for five years. The discussion which we have heard only goes to confirm me in the opinion that after the accomplishment of federation it will not belong before the Commonwealth Government and the various states Governments see the desirability of federating the railways and the public debts of the colonies. When that is done I think the saving which will be effected will more than counterbalance any expense which federation would otherwise entail. It seems to me that we are now dealing with a very important part of the Constitution, and the members of the Finance Committee need not be ashamed, I think, of the manner in which their scheme has been received. I trust that our little work will be crowned by its acceptance by the Convention, and that a large majority of honorable members will agree to our proposal in regard to the colony of Western Australia.

Mr. DEAKIN (Victoria). -

If the estimate of the honorable member (Mr. Walker) is correct, and the price which the other colonies will have to pay to Western Australia for free trade with her will be £150,000-an estimate which appears to me a very moderate one—it is possible, and, indeed, highly probable, that, while only that sum will be required for the first year, the payments will be much larger during the following years. To my mind, the prospects of Western Australia are in a high degree promising, and I am of opinion that her prosperity is not about to cease. While it is proposed that the loss of the colony shall be calculated at the rates of her present Tariff as applied to her importations from year to year, the fact has been lost sight of that as her population and her prosperity increase the amount of her importations will increase, and there will be this additional inducement for an increase, that the sweeping away of intercolonial duties will also tend to bring about a larger consumption. So that, while the amount of £150,000 may correctly represent her loss upon this calculation for the first year, it will by no means adequately represent the amount which will have to be paid during, say, the fourth and fifth years of the arrangement.

Mr. WALKER. -

Are the other colonies going to stand still all the time?

Mr. DEAKIN. -

That is immaterial to my argument. I am speaking only of the sum which will have to be paid by the other colonies to Western Australia.

Mr. SYMON. -

The calculation ought to be based upon the present importations of Western Australia.
Mr. DEAKIN.-

I am only discussing the proposal of the Finance Committee and am drawing attention to a matter which has not been referred to. The honorable member (Mr. Walker) spoke of what be termed a first alternative to the proposal of the Finance Committee—that Western Australia should retain for five years her present Tariff, and, though a member of the Federation in other respects, should continue to levy and collect customs duties upon all importations during that time. Naturally there is something in the proposal which is, at first sight, repugnant to those who have seen in the early acceptance of a uniform Tariff one of the greatest advantages offered by federation. We have, however, already commenced to whittle away the advantages of intercolonial free-trade in no inconsiderable degree by the vexatious bookkeeping system, of which the honorable member is so ardent an advocate. If we are, therefore, to refuse ourselves the advantages of complete intercolonial free-trade during a period of five years, is it not a proposition worthy of consideration whether Western Australia should be allowed to retain her power of levying customs, instead of having her possible loss under a uniform Tariff made good by the other colonies? Or, if a uniform Tariff were imposed, it might be possible to allow higher duties to be levied upon certain specified articles, such as narcotics and stimulants, in Western Australia, the extra amount of revenue so raised to be paid to the credit of that state. This question of Western Australia, and of possible Tariff differences, can be more easily considered there than in the case of any other state except Tasmania. Western Australia is separated from us even more than Tasmania is by the sea, on account of the great distance between her nearest settled districts and the settled districts of South Australia, consequently it is not to be feared that any differential duties to be imposed in that colony would lead to the loss of revenue by the surreptitious introduction of goods from other colonies. We are, therefore, able to consider her case exceptionally, with regard to the Tariff. Before we add to the burdens which the states have to carry under this Bill, the possibility of a loss, which Mr. Holder has held out before as this evening, perhaps too definitely; the probability of the states having to contract additional losses by making contributions to a portion of the Commonwealth which does not contribute to our losses—it might be well to consider whether for a period of five years—a long independent Tariff treatment for a period of five years so far as Western Australia is concerned. I believe that is worthy of careful deliberation before we adopt the proposal now before us. The amount to be contributed has been calculated by an honorable member at £150,000.
That, however, will undoubtedly be raised by the calculations of our opponents to more than double.

Mr. OCONNOR. -

What would you do about the transferred services of Western Australia, such as the Post and Telegraph department, in the event of your suggestion being accepted?

Mr. DEAKIN. -

I should require to look at the figures before giving a precise answer on that point. I understand that the other services of Western Australia which would be transferred are now carried on at a loss. There might be no objection to taking over those services if it was desired by the colony and was agreed to by the other members of the Commonwealth.

An HONORABLE MEMBER. -

The services of Western Australia are not carried on at a loss.

Mr. DEAKIN. -

In that case I was under a misapprehension, but the latest figures submitted to the Convention will enable us to deal with that subject. In either case I do not look upon the difficulties as insuperable. However reluctant we may be to allow a differential Tariff over a period of five years, that would be better than to plunge into the unknown with the risk of having any provision inserted, the financial results of which might be consistently misinterpreted without our being afforded an opportunity of giving more than a conjectural reply.

Mr. MCMILLAN (New South Wales). -

Would it not be better to postpone the consideration of this clause until we dispose of the other financial clauses?

Mr. FRASER. -

We had better fight it out.

Mr. MCMILLAN. -

It is a very serious matter for us to carry the proposal now before us. I am ready to do anything in the cause of federation, and in order to save time-I speak with a certain amount of diffidence-it does seem to me that in view of the varied opinions that have been expressed to-night, and the very serious character of the proposal, which has not been championed by the members of the Finance Committee as completely as might have been expected, it would be better to postpone the further consideration of the clause until we have dealt with the other financial clauses. It is possible that there may be some proposal made which will be satisfactory, and, if not, we can go back to the proposal now before us.
An HONORABLE MEMBER. -

There are no other important financial clauses to deal with.

Mr. MCMILLAN. -

Yes, we have to deal with the debts, which will involve a long debate. It is certain that we are now in the last stage of our labours, and it is not likely that what we do now will be reconsidered. I take it for granted that what we do now with regard to the financial clauses will be final, and I would again urge that this clause be postponed until we deal with the other financial clauses. It must be recollected that we came here to-night with one simple issue before us, but there has been a debate which has taken a very wide range, dealing with all the difficulties connected with the subject. Another thing we must recollect is that this is the first new proposal of a drastic character on the top of the proposals which we had at the previous sittings of the Convention. I believe it would save time, and, at any rate, it will save us from coming to a hasty vote on a matter which may be of vital consideration, if we postpone going to a division on the subject. If Sir George Turner would withdraw his amendment, the consideration of the clause might afterwards be postponed.

Sir GEORGE TURNER (Victoria). -

If there is any desire to postpone the consideration of the clause, I have no wish to stand in the way, and I shall be willing to withdraw my amendment.

Mr. DOBSON. -

We cannot settle the question to-night.

Mr. OCONNOR (New South Wales). -

I think the suggestion of the honorable member (Mr. MCMILLAN) is well worthy of acceptance. Mr. Deakin has made a suggestion which I think ought to be taken into consideration. It is impossible to finish this discussion to-night, and I think it was only intended to sit half-an-hour longer than the present hour. I therefore think the best course will be to postpone the discussion.

Mr. HOLDER. -

The next two clauses are not important, and we might deal with them, as they will not take much time.

Mr. OCONNOR. -

If they are not important they will not take much time to-morrow. I beg to move, sir, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at ten o'clock p.m.
Friday, 18th February, 1898.


The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

PETITION.

Sir JOHN FORREST (Western Australia) presented a petition from the Western Australian Christian Endeavour Union, praying that the Convention would introduce into the Federal Constitution a clause recognising Almighty God as the Supreme Ruler of the Universe.

The petition was received and read.

FEDERAL FINANCE.

Sir GEORGE TURNER (Victoria). -

I desire to lay on the table a return in substitution for the return I laid on the table, and which was ordered to be printed, on the 10th February, 1898. I also beg to move that it be printed.

The motion was agreed to.

PRINTING OF AMENDMENTS.

Mr. SYMON (South Australia). -

May I suggest for the consideration of the leader of the Convention that, at the earliest opportunity at which it can possibly be conveniently managed, we might be able to have, before we enter on the reconsideration of clauses, either an entirely or a partially reprinted Bill, seeing that a great many of the clauses have been altered and rearranged?

Sir RICHARD BAKER (South Australia). -

Before the leader of the Convention replies to that question, I would like to suggest that prior to a reprint of the Bill being made—and I think it is very necessary that there should be a reprint—it would be exceedingly advisable to insert the drafting amendments, and also that we might follow the practice pursued in New South Wales of putting the drafting amendments in the Bill in globo, by a suspension of the standing orders.

Mr. BARTON (New South Wales). -

I think that the suggestions that have just been made are worthy of consideration. I think that perhaps it would be an advisable thing that, as soon as the new clauses have been considered, there should be, before the reconsideration or recommittal stage, a formal recommittal of the Bill for the purpose of authorizing the Drafting
Committee to insert drafting amendments in the print of the Bill, so that honorable members may see them in print. That will be a desirable thing, for the purpose of enabling honorable members to see in what way it is proposed to deal with the drafting of clauses. That, of course, would not be final; the recommittal stage would come afterwards.

Sir GEORGE TURNER. -
It would be well to clearly show the alterations by using different type.

Mr. BARTON. -
I would show the matter inserted in black type, and what has been taken out in type crossed by erasure marks. If that is done I think it will be convenient to every honorable member. It would be perfectly understood that there would be no finality at that stage, as before we finally conclude our labours there will be necessity for a short adjournment, to enable the Drafting Committee to recast that part of the work, having regard to amendments made by honorable members. If the suggestions find favour with the Convention, as I think they ought, I will be prepared to adopt them.

Mr. REID (New South Wales). -
I do not know whether the proposals of the leader of the Convention mean that the drafting amendments will be made before we have an opportunity of looking at the amendments. I would suggest that the drafting amendments should be printed in the method described by Mr. Barton, so that every honorable member can see them, and the effect of them, but that they should not be formally moved into the Bill until honorable members have an opportunity, if they see anything that in their opinion requires alteration, of conferring with the Drafting Committee. I think the adoption of that plan might save further alterations. I suggest that the proposed drafting amendments should be distributed in the method described, picked out in different type, and before the Drafting Committee formally move them into the Bill, because it might be that some honorable members would be able to bring some things under the notice of the Drafting Committee before the amendments are passed, so as to save any necessity for further amendments.

Mr. BARTON. -
The drafting amendments will be formally passed on the understanding that there will, be no finality at that stage,

Mr. REID. -
I think they should be first distributed before they are formally passed.

Mr. BARTON. -
That shall be done.

Mr. REID. -
It is our duty to assist the Drafting Committee in the most difficult and responsible task which they have to perform, and when the drafting amendments have been distributed, honorable members might suggest to the Drafting Committee anything they think worthy of consideration. That will enable the Drafting Committee to move their amendments into the Bill with the more confidence.

Mr. BARTON (New South Wales). -

I shall adopt that suggestion of Mr. Reid also. I shall see that the drafting amendments so far put into shape by the Drafting Committee are handed round before the reprint of the Bill spoken of is issued. There are a great number of those amendments. Honorable members have understood me, from time to time, to appeal to the Convention for any assistance or suggestion in the work of the Drafting Committee, and I have only to repeat now that any such assistance will be welcome.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on Mr. Barton's proposal for the insertion of new clause 93B (see page 1122), and of Sir George Turner's amendment (see page 1140).

Mr. MCMILLAN (New South Wales). -

Before the clause that we were discussing last night is withdrawn or postponed, I should like to crave the indulgence of the committee while I say a few words. I must confess to a certain amount of embarrassment yesterday evening. I did intend to say something in the earlier part of the debate, but we were so bombarded by a perfect tornado of suggestions from the Finance Committee itself, that certainly the whole course of the stream was altered. Now, I only rise particularly to make one or two suggestions which can be taken into consideration afterwards, but I might, for one moment, bring the committee back exactly to the position from which we started. I take it that we are all agreed that this debate implies some special arrangement for Western Australia, in order to do justice to that colony in its peculiar circumstances. I take that as the position which we all agree to, and that we are willing to entertain any reasonable proposal, so long as it will not be fatal to federation, because I think it would be better that Western Australia should be left out of the Federation for the present than that anything should be done that would endanger the scheme as a whole. Now, after all, why is it that we are giving certain consideration to Western Australia? It is because there is a large volume of colonial imports into that colony—exports from the other colonies—the duties
on which Western Australia would lose, and because we think that the doing away with all imposts on our borders intercolonially is an enormous advantage to the other colonies. Now, what colonies will gain by that process? Certainly the colonies that export to Western Australia. And before we go into any scheme, it is well to see what is the bed-rock of justice in this matter. I do not mean to say, for one moment, that, in dealing with this Constitution broadly, we have a right to look at everything from the point of view of the absolute sense of justice or scientific proportion, but it is just as well to get at that first, and then reason from it. Now, if in the scheme that was proposed by the Finance Committee they wanted an absolutely just and scientific adjustment, it would have been of this kind—that the loss of Western Australia should be made up exactly in proportion to the exports of the different colonies to Western Australia. That is the bed-rock justice of the thing. On the other hand—and I am only now speaking in the most tentative way, with a view to the Finance Committee and others considering the question—this scientific arrangement might cause a great deal of friction and unpleasantness.

Mr. HOLDER. -

The Finance Committee had that suggestion before them.

Mr. MCMILLAN. -

I did not know that. If we cannot arrange matters scientifically we may sometimes do it by a rough-and-ready method. What we want in most of these financial arrangements is to get at certainty with regard to the state Treasuries, and really it seems to me—although I do not put the view as one that can be entertained, because I recognise that it is open to grave objections, as almost every view is that it would be better almost to fix upon a sum, say, £150,000 a year if you like, although I know very well that it may be only £5. We have had figures put before us by the Hon. Mr. Holder which are approximately correct. We owe a debt of gratitude to him for the great care he has taken, and the grasp he has shown of all the principal factors in this financial problem all through these debates. I say again that sometimes a rough-and-ready method may be adopted. So far as I am concerned, and I have no right to speak for my own colony excepting personally, I should be quite willing to agree to a specific sum being distributed per capita. That would not be fair, in one sense, but in the case of Tasmania, where the finances are worked on a very close margin, and where, without any disrespect to that colony, it is very difficult to make elastic the sources of revenue, it would fall very lightly on a per capita basis. Then we have the proposal of my honorable friend (Mr. Deakin), which is very well worthy of
consideration. I happened to be out of the chamber during the earlier part of his speech, but I understand he proposed that the Federal Parliament should put some extra duties on certain special articles, and that Western Australia should derive the benefit of those extra duties.

Mr. DEAKIN. -

Duties in Western Australia.

Mr. MCMILLAN. -

There is that proposal; and there is another possible plan, if no other means are open to us, that of keeping on the intercolonial Tariff with Western Australia during the first five years.

Mr. DEAKIN. -

I mentioned that as an alternative.

Mr. MCMILLAN. -

The advantage we would derive from the fixing of a specific sum is this, that we would be able to tell all Australia that every barrier to trade within the colonies was removed. I hope honorable members will not think I wanted to delay the discussion. I have simply stated my views very shortly. Of the imports into Western Australia, New South Wales only contributes a very small proportion. Perhaps the Right Hon. Mr. Reid will tell me what that proportion is?

Sir GEORGE TURNER. -

It is rapidly increasing.

Mr. REID. -

It is not much at present, suppose about one-eighth, but it is rapidly increasing.

Mr. MCMILLAN. -

With all the enterprise of our people, we are at a disadvantage. There is Tasmania with all As great production, and its facilities for production, and then there is Victoria. It will clearly be seen that in almost any proposal that is not based upon a distribution according to the exports of that colony, New South Wales would have to pay a very large sum for the sake of federation. My reason for asking for an adjournment was that, in the light of this criticism, the whole matter might be considered between this and the completion of the other financial clauses. I do not think there will be any great difficulty over the question of debts, because that is not a matter that affects one colony as against another. If this question can be settled on an equitable basis it will practically close the whole of our financial troubles, and certainly it has in it ingredients of trouble, which, although every other portion of our financial work might be right, might become a source of irritation, and create a difficulty to many of us in placing the Constitution before our respective colonies. I throw out these suggestions
for what they are worth, and I trust that some satisfactory solution of this problem will be found.

Mr. DEAKIN (Victoria). -

I rise, not to detain the committee, but to put forward an amendment which would be quite acceptable to myself, although it varies in one important particular the proposal that was submitted in a crude way yesterday evening. I will read it now as a proposition that is worthy of the consideration of the Convention, either in this or in an altered form. It takes the shape of a new clause, and is as follows:-

To compensate the Treasury of the state of Western Australia for any diminution of revenue which might be caused by the imposition of uniform duties of customs, or by the operation of free trade and intercourse among the several states, the Commonwealth may, on the imposition of such uniform duties, and for five years afterwards, impose and collect on the articles, and to the extent agreed on between the Commonwealth and that state, further duties of customs in respect of goods originally imported from beyond the limits of the Commonwealth and entering that state.

The proposal I submitted yesterday has been altered by a limitation of the additional duties. As first made it embraced all duties, including the intercolonial.

Mr. SYMON. -

Is it limited to goods imported from abroad?

Mr. DEAKIN. -

Yes, that is the important addition—a very valuable addition, of course, from the point of view of the other colonies, but a serious addition from the point of view of Western Australia.

Mr. JAMES. -

It might increase our loss and increase your gain.

Mr. DEAKIN. -

Duties are taken off certain goods that you import.

Sir JOHN FORREST. -

And our markets would be open to you.

Mr. DEAKIN. -

Yes, the duties are taken off goods coming from the other colonies, and put on goods coming from abroad. I put this suggestion before the Convention. Of course the representatives of Western Australia will indicate whether this addition to the proposal as originally made is an obstacle from their point of view, and to what extent it is an obstacle.

Sir GEORGE TURNER (Victoria). -
This matter of continuing the intercolonial duties so far as Western Australia is concerned was fully considered by the Finance Committee. We saw that if such an arrangement were made, the same concession would be demanded by other colonies with regard to certain duties which, in their opinion, ought to be continued in the interests of the producers. In order not to give rise to such a claim, we had to abandon further consideration of that proposal. My honorable friend (Mr. Deakin) now makes a proposal which I am afraid cannot be accepted. He says that Western Australia is to allow intercolonial goods to be admitted free. She will, therefore, lose a certain amount of revenue. The uniform Tariff may make up a portion of that loss, but Western Australia is to have an increased Tariff on goods coming from abroad, for the purpose of enabling her to get an extra revenue. Many persons in Western Australia will say to this—"If you are going to subject us to an increased Tariff, and we have to pay the extra duties out of our own pockets, we will not federate." There is also this consideration, that when a duty is raised beyond a certain amount the less money you collect by means of it.

Mr. MCMILLAN. -

In some cases.

Sir GEORGE TURNER. -

In many cases. Where they are mere revenue duties, if you sufficiently increase them you also increase the price to the consumers—that is, where, the articles cannot be produced in the colony itself. Supposing that the Federal Parliament put a duty of 3d. a pound on tea, and for the purpose of assisting Western Australia said that in that colony that duty should be 6d. a pound, the consumers would pay the extra 3d.

Mr. DOBSON. -

The consumers would save £389,000 in intercolonial duties.

Sir GEORGE TURNER. -

To some extent they would.

Mr. MCMILLAN. -

It is purely a Treasury matter.

Sir GEORGE TURNER. -

I believe that the bulk of the people who consume the goods would pay exactly the same price for them. It would be no benefit to them, but it would be a benefit to those who buy in large quantities.

Mr. MCMILLAN. -

Then, if there were 100 per cent. on an article, and you took it off, it would make no difference.

Sir GEORGE TURNER. -

The honorable member wants to reduce the thing to an absurdity.
Mr. MCMILLAN. -

Does not the right honorable member see that prices must come down by competition?

Mr. DEAKIN. -

It is all very well to say they must, but they very often do not.

Sir GEORGE TURNER. -

Our experience is that they do not. I should be glad to adopt this proposal if it were feasible, but there are objections to it which must be considered. If you put on extra duties as revenue duties the people will have to pay them, and when you tell the people that they will have to pay something extra, you may make up your mind that they will have nothing to do with federation. In endeavouring to frame a Constitution we must look at these matters from a practical point of view. It has been our experience in our own colony that when you largely increase certain duties you diminish the revenue obtained from them. The same thing will happen to Western Australia. Instead of this proposal being a benefit to them, it might simply cause a further loss.

Sir JOHN FORREST (Western Australia). -

I am sure that all my colleagues must feel grateful to my honorable friend (Mr. Deakin) for the proposal he has made, and which he, I suppose, considers to be in our interests. I regret to say that I cannot view it with favour. The honorable member, quite innocently of course, protects the producing colonies by providing that our ports shall be free, but he does not make any provision whatever to meet the difficulty that we fear. It reminds me of another suggestion that has been made recently, that, although we will lose a certain amount of revenue, the money will remain in the pockets of our people, and we can make up the loss by some other form of taxation. Mr. Deakin proposes that we should recoup ourselves by increasing the customs duties on goods of foreign manufacture. I may point out that such goods are subject to very high duties at the present time. Intoxicants and narcotics are taxed to as great, if not a greater, extent in Western Australia than in any other colony.

Mr. SOLOMON. -

To a greater extent, so far as liquor is concerned.

Sir GEORGE TURNER. -

What is the extent?

Sir JOHN FORREST. -

Sixteen shillings a gallon; and it would be difficult to further tax such commodities. The proposal now made is impracticable, and would be of no use whatever to Western Australia. I would suggest, as a means of getting
rid of the difficulty, and also with a view of not treating Western Australia in this Bill exceptionally, that the proposal of Sir George Turner should be adopted with the alteration, that in the event of the uniform Tariff producing to a colony a greater amount than was produced by the Tariff of the colony before the introduction of the uniform Tariff, all contributions shall cease—that the contributions shall only remain in case the uniform Tariff fails to produce as much as the state Tariff did previously. That would be a simple plan. It might result, and I think it probably would, in nothing being contributed at all.

Mr. SOLOMON. -
Is not that the proposal of the Finance Committee?

Sir JOHN FORREST. -
No.

Mr. SOLOMON. -
To a very great extent it is.

Sir JOHN FORREST. -
This proposal is general. Every colony would be secured in an amount equal to the amount received when the uniform duties were introduced. We all look forward—at any rate, I do in my own colony—to a large increase of trade and business, and therefore I believe the uniform Tariff will probably yield a larger amount than is produced at the present time in Western Australia. That same remark applies to every other colony. But it would be a great assistance to the passage of this Bill if the Treasurers of the colonies were able to say to their people—"At any rate, under the uniform Tariff, for five years, you would be assured of as much revenue from the Customs as you were receiving when the uniform Tariff was introduced."

If that idea meets with any favour from honorable members, it would be a fair compromise, and a fair way of dealing with the matter. In fact, I do not think it looks well at all to introduce into a great State document, such as we are trying to produce, a clause giving different treatment to one part of the Commonwealth as distinguished from another part. No one can say that my proposal is unreasonable. It would only go so far as to provide that Western Australia should be assured that for five years she would have as much revenue from the Customs as she had when the uniform Tariff was introduced.

Mr. SYMON (South Australia). -
This is a matter which so greatly concerns Western Australia that I had no hesitation in feeling we were all desirous of hearing the views of Sir John Forrest on the proposal now before the committee. We must all feel that Mr. Deakin's amendment has gone. It is impossible, as Sir George
Turner pointed out, that the people of Western Australia would be likely to accept a Constitution under which they were likely to be taxed double, it might be, the amount which people of the other colonies are taxed on their tea, sugar, or imported machinery—that in Western Australia increased taxation should be imposed, from which the other colonies are free. Then, it would have the effect of creating, in Western Australia, a discriminating Tariff, not only against foreign nations, as ordinarily understood, but against England. We do not know on what articles these additional duties might be imposed, and the result would be that we should have very great difficulty, from a financial and economic point of view, staring us in the face. In addition to all this, further complications and difficulties would be occasioned by the possibility of goods on which taxation was levied being imported into other colonies, and thence, under the free intercolonial system, into Western Australia. To prevent that, there would be required a system of bookkeeping and an espionage which would create difficulty and irritation. I think, however, as Sir George Turner and Sir John Forrest have dealt with this amendment effectually, it is unnecessary to say more on the subject, except that we are all indebted to Mr. Deakin, I am sure, for having evolved a suggestion which, if not open to the objections I have mentioned, would have afforded a way out of a very serious difficulty.

Mr. DEAKIN. -

Mr. Walker made a similar suggestion last night.

Mr. SYMON. -

I did not hear Mr. Walker make the suggestion. As to Sir George Turner's amendment, the fatal objection to my mind appears to be that there is no proper legitimate source from which this money would come to compensate the various colonies sustaining loss. It has been pointed out that if the Customs revenue were to be the source, the money would, of course, primarily come from New South Wales. The figures dealt with so ably and lucidly by Mr. Holder have satisfactorily and once for all established that fact. Sir George Turner says-"I don't want this money to come out of New South Wales." But all the colonies except New South Wales will be losing colonies, and, without so providing in the Constitution, Sir George Turner suggests that the money must come either from borrowed money or out of extra taxation, or, as Sir John Forrest says, out of the proceeds of Commonwealth lands within the federal territory.

Sir GEORGE TURNER. -

Or the Federal Tariff being so framed as not to make a loss to any of the colonies.

Mr. SYMON. -

My honorable friend shrinks from putting any one of these suggestions
into the amendment; and I invite him to do so.

Sir GEORGE TURNER. -
You want to trust the Federal Parliament. Always do that when you are in a hole.

Mr. SYMON. -
I say trust the Federal Parliament altogether, all in all or not at all, in the matter. My honorable friend says on the one hand we should trust the Federal Parliament, and the next moment he expresses mistrust. The suggestion now before the committee means that we are placing on the face of the Constitution a declaration with which Mr. Reid is to go to New South Wales, to the effect that there is to be a very high Tariff indeed. If Mr. Reid is willing to do that I do not think any of us, free-traders or protectionists, need complain. But I apprehend that Mr. Reid is not willing to do that. As to the suggestion about borrowing money

in order to make good the contributions of the states, I do not think any man in the Convention would tolerate that for a moment. Whatever the exigencies of local finance may be, and whatever the peculiarities of administration under necessity may be, still we do not flaunt-I say "we," but I do not think the Treasurer of South Australia has ever flaunted in the eyes of the people, or in the eyes of the British community, that our colony was using borrowed money to pay ordinary expenditure.

Sir GEORGE TURNER. -
The states would have to borrow to make up their deficits, so it is as bad one way as the other.

Sir JOHN FORREST. -
They have always done it.

Mr. SYMON. -
I believe those difficulties are greatly exaggerated. My own belief is that, with the impetus that will be given to the business prospects after federation, and with the adjustment of a wise uniform Tariff, we shall find little financial difficulty indeed. It would be really a mere bagatelle. We are magnifying mole-hills into mountains.

An HONORABLE MEMBER. -
There will be the increase of population.

Mr. SYMON. -
And there will be the increase of population. As has been said, if you have a very high Tariff you reduce your revenue; but if you have a high, but an adequate, fair, and just revenue Tariff—which we all admit must come—the losses to the states will be very considerably minimized from
what we believe they might otherwise be. The fatal objection to the amendment before the committee is that there is no source from which this money can legitimately come, except out of the pocket of the people of New South Wales. I thoroughly agree with what Mr. Holder has said, and I hope the amendment, if a division is taken, will be rejected.

Sir PHILIP FYSH (Tasmania). -
I rise to support the proposal of Mr. McMillan that the further consideration of this subject should be delayed. I think we might yet find some way out of the difficulty if the Finance Committee were again to meet with our friends from Western Australia. It is a wise suggestion that, instead of subjecting ourselves to a great deal more discussion at the table here—which, I think, is not likely to lead to the result we all wish—we might, perhaps, in committee again consider a proposal, or one or more proposals, which have not had serious consideration given to them by the committee, and which, under the special circumstances that have now arisen, might be found acceptable.

Mr. SOLOMON. -
What is the use of the committee doing that, and turning round and reversing their proposals next day?

Sir PHILIP FYSH. -
It must not be forgotten that the committee were cornered on an important proposal of the kind. The members of the committee agreed to the proposal, because they saw no other way out for Western Australia.

Mr. SOLOMON. -
Precisely.

Sir PHILIP FYSH. -
And the extreme solicitude of the Finance Committee, joined to the extreme solicitude of the Convention, to draw our friends from Western Australia into the Federation, leads us to desire to meet them in every possible way.

Mr. JAMES. -
Why not give us the customs duties for ten years?

Sir PHILIP FYSH. -
I will address myself to that presently. I presume the Convention desires to do everything which is fair to every state. It is admitted that Western Australia occupies a very exceptional position. The bare fact of her collecting over 35 per cent. of her present customs duties on intercolonial products, and the fact that she cannot afford to lose this revenue of £380,000 immediately, point to the necessity for something being done. If we have arrived at a conclusion which is shown to be detrimental to New South Wales—in which view I do not concur—and if that conclusion is not
acceptable to that colony, then, as New
South Wales, as usual, dominates the Convention to a certain extent financially, we must think of some other plan. The suggestion, or amendment, of Mr. Deakin is one which that gentleman will surely see is hardly likely to be accepted by Western Australia. I concur most fully in the conclusion arrived at by Sir George Turner, that the higher the rates of duty, the less would be the revenue collected. We should not, by giving to Western Australia the opportunity of collecting a higher rate of duty than the uniform Tariff would give on the various foreign products, relieve that colony from the financial difficulty in which she finds herself.

Mr. DEAKIN. -

Well, the amendment can be further adapted.

Sir PHILIP FYSH. -

I am going to suggest another alternative. The suggestion made that Western Australia would have the option of collecting higher duties on foreign imports, is not likely to give them the revenue they need. But it has been suggested-and I regret there almost seems to be, in some minds, treason in the suggestion-that Western Australia should, at any rate for five years to come, in connexion with the collection of her customs duties, have a decreasing or sliding scale on intercolonial products. I know it has been regarded as almost treason against the Constitution that we should within the compact for a uniform Tariff think of one colony which does not give thorough intercolonial free-trade.

Mr. HOLDER. -

Would you extend the same privilege to Victoria?

Sir PHILIP FYSH. -

We have not the absolute necessity in the case of Victoria that we have in the case of Western Australia. But if we give this right to Western Australia-Question: Shall we injure any other colony?

Mr. KINGSTON. -

I should think so.

Sir PHILIP FYSH. -

I think not. I hold in my hand a return of the various products imported into Western Australia in the years 1894, 1895, and 1896. I find from the figures here given that those imports grew in value in those years from £251,342 in 1894, to £445,864 in 1895, and to £783,372 in 1896. Let us look at what the component parts of those figures are for the year 1896, remembering that all these are colonial products. Flour amounted to £152,135; grain, £160,800; hay and chaff, £73,245; potatoes and onions, £44,221; green fruits, £13,402. Now, take dairy and domestic produce. The
imports of butter were £148,971; bacon, hams, &c., £79,625; cheese, £30,118; preserved milk, £47,446; eggs, £33,389

Mr. SOLomon. -

Preserved milk is not domestic produce.

Sir PHILIP Fysh. -

It is colonial preserved milk which is referred to. Undoubtedly, preserved milk produced in the other colonies has been going to Western Australia in enormous quantities. We are sending concentrated milk—that is to say preserved milk—constantly. The figures I have quoted amount to a grand total of produce going from the whole of these colonies of £783,372 in 1896. This trade would not be injured by the retention by Western Australia of one of these duties for the next five years on a sliding scale. On the assumption that Western Australia may see her way clear to retain these duties, wiping them off at the rate of 20 per cent. per year for the five years, this gives her a right to be in a different position to the other colonies so far as intercolonial trade is concerned during that period. She would retain the whole of her receipts from customs duties in the first year, reducing the amount to 60 per cent. in the second year, to 40 per cent. in the third year, and so on until she got rid of the whole duty. I cannot find among these items one on which there would be an injury to the producers of the other colonies by the continued imposition of the Tariff in Western Australia. Let me assume that Tasmania provides the whole of the potatoes, £44,000. Who buy those potatoes? The Western Australians themselves. It is not blocking the market, so far as

[Tasmania is concerned, if Western Australia retains her duties to some extent on potatoes. It will, however, I recognise, give her producers a better chance of producing for their own market. She is a new colony which people have entered upon before dairying and, agricultural production have been levelled up to the condition of production in our other colonies. Victoria, at any rate, has been living on her bonus system, and her producers have become solidified by acquiring capital and attaining a good position. In Western Australia, however, where production is in a younger stage, the farmers have not yet attained a position which will enable them to compete with the producers in the other colonies, and during the next five years it maybe presumed that they will endeavour to secure that position for themselves. Certainly, I think they will be able to secure it by means of the continuation of the duties to which I have referred. With respect to the other colonies, by the continuation of the Western Australian ditties for five years, on a sliding scale, to enable that colony to become a producer, they would not be in any way injured. If it could be shown that]
South Australia, or Victoria, or Tasmania would lose any portion of their present trade by reason of the continuation of such intercolonial duties, I could understand that that would be fatal to any such agreement, but I do not think that any one of experience will arrive at any such conclusion. We have the trade already, and until Western Australia becomes producing and self-reliant we shall continue to have it. Whether it be in regard to potatoes, grain, or flour, Australia will be in the position of retaining that trade, unless, indeed, some extraordinary crisis should rule again in America or elsewhere in regard to wheat. The other colonies must command a market like that of Western Australia because she is at our very doors, and we are able to put the stuff in at a lower rate than any other country could do. I am satisfied, Sir Richard Baker, that by such a system Western Australia will secure the two objects she has in view: The one the continuation of her Customs revenue-losing it only 20 per cent. at a time—and the other the rendering of assistance to her farmers for the next five years. I am sorry to make use of any argument which might indicate that I would be a party to the retention of protective duties. I consider myself as thorough a free-trader as any one; but considering the peculiar circumstances in which we are situated—that we do not propose to build up some new system, but merely desire to stand by while Western Australia works out her own future—which she can only work out in some such way as has been suggested—it must be patent to us all that it would be desirable to adopt some such plan. I do not desire to speak for the Western Australian representatives. They are capable of speaking for themselves. We must admit, as reasonable men, however, that they are in an extraordinary position, and, therefore, some extraordinary means must be devised to meet their case.

Mr. SOLOMON (South Australia). -

I very much regret that the proposals of the Finance Committee have been somewhat complicated by the host of amendments which have been placed before this Convention since the report of the committee was laid upon the table.

Mr. MCMILLAN. -

Many of them by members of the committee itself.

Mr. SOLOMON. -

Quite so. We are somewhat hampered by members of the Finance Committee, who have sprung entirely new theories upon the other members of the committee since we have met the Convention with our proposals. I may at once, perhaps, refer for instance to the attitude taken up by the Premier of Victoria (Sir George Turner) on this matter. I am not divulging anything which I think should be kept as a Star Chamber secret,
when I say that in the Finance Committee the whole debate upon
this question was as to the means to be devised to deal with the special and
peculiar circumstances prevailing in Western Australia.

Sir GEORGE TURNER. -
I asked the Finance Committee to devise a scheme that would apply to all
the colonies, but New South Wales objected.

Mr. SOLOMON. -
But that was never debated. It was objected to at once by all the members
as utterly impracticable. We were determined to consider specially the
conditions of Western Australia, and Western Australia alone. But at the
same time, Sir Richard Baker, now that we have considered to some extent
the condition of Western Australia, and since the publication of the
proposals of the Finance Committee, there has been a little feeling that if
there is going to be a grab at the Commonwealth purse—whether it is to
have anything in it or is simply to be filled with loan money—Victoria is
going to have a "finger in the pie" as well as Western Australia.

Mr. HOWE. -
Oh, yes! Trust Victoria!

Mr. SOLOMON. -
No doubt about that! The Premier of Victoria points out that his colony is
likely to lose from £100,000 to £150,000 by intercolonial free-trade, but he
forgets to point out that Victoria, by having the whole of the markets of
Australia open to her spoon-fed industries, which have been protected for
the last twenty years, is likely to gain far more by the establishment of
intercolonial free-trade than the whole of the other colonies put together.

Sir GEORGE TURNER. -
I am not so sure of that; I wish I were.

Mr. SOLOMON. -
It is pretty well patent to any one having a knowledge of the commerce
of the different colonies that it is so, and I hope that honorable members of
this Convention will cast aside altogether from their consideration any such
idea of general grab on the Commonwealth purse, about which we do not
know how it is to be filled, or how it is to be replenished. It is all very well
to suggest (but I am surprised at Sir George Turner's suggesting it) that at
the start of this Federation we should make up every little loss that may
occur from joining together, by floating loans upon the London market,
and dealing out from the Commonwealth purse the result of these loans to
the different colonies. Surely we must recognise that every one of the states
coming in to this Federation must be prepared to lose something in return
for the great gains which we shall obtain, and the great improvements
which will be effected. We shall have the great gain of intercolonial free-trade, we shall have open markets, and the great advantage resulting from better work being done by one central administration in regard to a number of departments instead of a host of administrations. But all these gains require that some sacrifice should be made on the part of the colonies to enable us to come into the Federation at all. This, I think, was the spirit in which the Finance Committee dealt with this particular question. But they recognise that while Victoria will lose something (it may be from £100,000 to £150,000 a year) by intercolonial free-trade so far as direct monetary loss is concerned, South Australia perhaps losing £50,000, and Tasmanina perhaps £30,000; yet that these losses are to be looked upon simply as the price which all of us are called upon to pay for federation. Perhaps New South Wales would be called upon to consent to a greatly different fiscal policy to that approved of by the majority of her people, but that also is a price to be paid for federation. But in regard to Western Australia we have a case which is not a question of the loss of a twentieth or a fortieth of the Customs revenue, or of a loss of £100,000 out of a revenue of £2,000,000, but a loss of nearly a third of the total of the Customs revenue of the colony.

Mr. REID. -

More than a third.

Mr. SOLOMON. -

Yes, more than a third; between £350,000 and £380,000 out of a revenue of from £1,000,000 to £1,100,000. But every one recognises, and has recognised from the inception of this Convention, that in dealing with these commercial questions and with the finances of the colonies, it is absolutely necessary to make a special exception in regard to Western Australia. The question as to how this exception was to be met, as to the practical lines upon which it would be better to devise a scheme to suit Western Australia, was left to the Finance Committee. They have endeavoured from the start to thrash the question out. It was left to them to suggest some means by which the difficulty could be surmounted; and even though the Finance Committee are blamed for not showing any brilliant flashes of financial genius in discovering some new patent way, by a fairy wand or otherwise, of disposing of the difficulty that faces us, the thing was looked at from its practical aspect, and each Treasurer on the committee, and every member of the committee, tried to imagine himself in the position that Sir John Forrest and his colleagues are placed in, and to ask himself how, if so situated, he could possibly go to his colony with a proposal that meant a loss of a third of its revenue, and advise it to come
into the Federation on those conditions. The members of the Finance Committee recognised that, under these circumstances, it was necessary to give the people of Western Australia special treatment in order to induce them to join the Union. Every honorable member recognises that if there is one colony of the group which the older colonies specially desire to see in the Federation—perhaps, because of their selfish wish to extend the markets of their own producers—it is Western Australia. Western Australia, with its growing population, and its immense demand for colonial produce, is the market we all desire to open up for our general trade, and it is for the Convention to determine whether we shall treat Western Australia, not with liberality, because that is a word which need not be used in this connexion, but with a degree of fairness, and a recognition of the fact that she must be assisted in bearing the loss which federation will entail upon her, or whether we shall make up our minds to leave her out of the Union.

The conclusion of the Finance Committee was that it was necessary to give special terms to Western Australia; that in asking this desirable partner to join us we should say that, as she was sacrificing more than the rest of us, we should give her special terms in the adjustment of the finances. There is nothing in a bargain of that kind to bring contempt upon Western Australia. The proposal of the honorable and learned member (Mr. Deakin), which is the last before us, seems to me to miss the main point. All the other suggestions in the same direction, asking for a differential Tariff, such as those made by the honorable member (Mr. Walker) and others, seem to me utterly impracticable. If we are to have federation at all, the main principle that is to be laid down, irrespective of the financial position of any colony, must be absolutely free commercial intercourse between all the colonies. Intercolonial free-trade—the removal of border barriers—is what we desire above all other things in connexion with federation, so that each colony may be given an opportunity to develop the resources best suited to her climate and her soil. All this has been recognised from the start, and to say now that one colony of the group shall have the right to impose a Tariff upon a sliding scale, or a Tariff with differential rates against foreign countries, while there is intercolonial free-trade amongst the other colonies, is to strike a blow at the rock upon which federation is to be built. I have already said that, in my opinion, the proposal of the right honorable member (Sir George Turner) would mean a general grab by all the colonies—by the colonies who otherwise would be willing to sacrifice something of their revenue to obtain federal union. I do not wish to go over the ground traversed by the honorable member (Mr. Holder) yesterday, but it seems to me that the right
honorable member’s proposal would perhaps make it necessary for the Federal Parliament to raise a loan of something like £500,000, in the very first year after the establishment of the uniform Tariff, in order to recoup the various colonies their losses by intercolonial free-trade. I admit at once that there is nothing brilliantly original about the recommendations of the Finance Committee. Originality had to be cast aside, and all efforts of financial genius had also to be cast aside. We had to face the question from the practical stand-point of men who had colonial experience, of men who had some knowledge of the commerce of the colonies, and of the particular requirements of Western Australia. It was pointed out by the Treasurer of Western Australia that that colony would lose a little more than one-third of her revenue—something more than £350,000 a year—by the establishment of intercolonial free-trade. This came as a surprise to the members of the Finance Committee, but from a careful examination of the figures put forward by the right honorable gentleman and by his colleague (the Hon. Sir James Lee Steere) it was apparent that, although there might be some slight discrepancies in regard to the manufactured products imported into the colony, Western Australia would absolutely lose, in round figures, from £300,000 to £350,000 by the establishment of intercolonial free-trade. It was only necessary to look at the documents quoted a few minutes ago by the honorable member (Sir Philip Fysh) to see how that loss would accrue. This document—and I recommend its perusal to every honorable member—shows that the bulk of this £350,000 is obtained from duties upon fodder and dairy produce, which will probably be produced in Western Australia in the very near future. Can we imagine that during the seven years that would be occupied by the framing of the Commonwealth Tariff and the subsequent introduction of the bookkeeping system, the position of Western Australia in regard to the production of food and dairy products will remain what it is now? Can we imagine that Western Australia will still have to import great numbers of cattle and sheep, and great quantities of butter and eggs, and so forth? It will be necessary for me to read only a few of the items from which £200,000 was obtained in 1896, to show honorable members that we are really making a great deal too much of this proposed concession to Western Australia, and that we are exaggerating the possibilities. In round figures, Western Australia, in 1896, collected through her Customs £20,000 on cattle, sheep, and pigs; £20,000 upon bacon and hams; £10,000 on bran; £27,000 upon butter; £19,000 upon chaff; £11,000 upon cheese; £16,000 upon oats; £6,000 upon eggs; £22,000 upon flour; £12,000 upon preserved meats; £7,000 upon jam, and £8,000 upon potatoes.

Mr. ISAACS. -
What is the honorable gentleman quoting from?

Mr. SOLOMON. -

The annual report of the Western Australian Collector of Customs and Registrar of Shipping, for 1896. On these and similar products Western Australia collected £213,000. In the ordinary course of events, however, the colony will within the next two or three years be producing a great part of these supplies for herself, and we must take this probability into account in calculating the amount which will have to be made up to the colony after the establishment of a uniform Tariff. Surely the very liberal land policy which has been promulgated by the Forrest Government, and which is gradually settling the fertile and suitable agricultural lands in the southern portion of the colony, must in the natural course of events lead to the production of the great bulk of these products by the people of the colony with in a very few years. Preserved meats is the only item that need be taken out of the category. This, of course, would considerably reduce the liability of the other states. We are told that Western Australia would have a deficit of £350,000 if intercolonial free-trade were established. Of this amount, perhaps £100,000 is obtained from duties upon articles manufactured in the other colonies, and it may be pointed out that, as a large part of the raw material would pay duty-I am alluding to the raw material of clothing, boots and shoes, and so forth-that would still further reduce the loss of Western Australia. Then we must remember that, upon the free list of Western Australia, there are items which I believe are not in the free list of any other British colony-such items as tea, sugar, machinery, and a host of other lines which in other places contribute largely to the revenue. It was pointed out by the honorable memb

Mr. HENRY. -

You might not get much revenue from tea and sugar during the first two years in Western Australia.

Mr. SOLOMON. -

I think, as a rule, that mining communities are larger consumers proportionately of tea and sugar, and, I admit, of other beverages as well, than working men in other communities; they are more wasteful consumers of tea and sugar than the ordinary class of working men.

Mr. HENRY. -

Seeing that these articles are duty free now, they might be imported before the Tariff is altered.

Mr. SOLOMON. -

Precisely; I thank the honorable member for the interjection. Still, the fact must not be lost sight of that during the first two years after the
establishment of this Federation, it is extremely probable that the Premier of Western Australia, with that foresight which has characterized him hitherto, will see the necessity of removing two or three of those lines from the free list, especially lines of the kind mentioned. There can hardly be any doubt that the Government of Western Australia will not endeavour to increase the difficulties of federation, but will rather strive during those two years of interregnum to meet the difficulties by increasing their revenues from a few of those lines which can be easily taxed without being a great burden to anybody. These figures will reduce the Tariff liability to Western Australia by something like £200,000.

Mr. DOBSON. -

The Premier has just admitted that he may get more revenue under the uniform Tariff than £380,000.

Mr. SOLOMON. -

Precisely; and that is the point I am now coming to. That has been carefully considered in the suggestions of the Finance Committee. Those suggestions are not that Western Australia should be recompensed for the whole of this loss of duty through the establishment of intercolonial free-trade, but practically the gains by uniform Tariff over the loss shall be considered in proportion to the loss sustained by the other colonies, and, whatever the difference may be, it should then be made up to Western Australia. I think the figures quoted by Mr. Holder are fairly correct—much more correct than the statistics and figures we have had hitherto—and we will suppose that the increased duty upon tea, sugar, and the excise duty upon beer will provide a little over £100,000 to meet the deficiency of £300,000. Then consider for a moment the probable increase in production on those numerous lines, for instance, dairy products. We will say that the loss sustained by Western Australia will be £200,000 or £250,000 by the establishment of intercolonial free-trade; that is, supposing that there is not a uniform Tariff, and that her present Tariff, which is a very partial one, will be continued. But under a uniform Tariff it is extremely probable that the revenue of Western Australia will be very much larger than it is at present, on some lines especially, so that instead of having to deal with a deficiency of £250,000, we may safely assume that at least £100,000 difference will be made up by an increase of the duty on other lines which are not taxed now. That would leave us—what? £150,000 a year to deal with for five years; that also is supposing that during the whole of the period of two years which will form an interregnum before the imposition of a uniform Tariff the farming communities of Western Australia will continue
as now unable to produce even sufficient eggs and butter, flour, chaff, wheat, and oats to supply their own little community of 150,000 or 160,000 people. We can safely assume that during the next seven years the men who are taking up land in the southern portions of Western Australia which are suitable for agriculture will be able to keep a few hens and produce eggs sufficient to supply the community, without having to pay £7,000 a year for them as at present, and that they will be able to produce sufficient butter instead of having to pay £20,000 a year for it as at present. We see that production of that kind is increasing now; the farmers are gradually endeavouring to keep up with the demands of the gold-fields population, because that is the principal population that they have to look to. Now, as to the present special conditions of Western Australia. We have not only the question that I have just dealt with to consider, because that is considering the position of Western Australia as it is to-day, and the taxpaying portion of the people of Western Australia as they exist to-day. I say without hesitation that to deal with the problem from that stand-point only is to give it a most exaggerated appearance. At present they have a population in Western Australia of 150,000 or 160,000, and the bulk of that population does not consist, as it does in the other colonies, of a large number of women and children; at least 70 per cent. of the population consists of adult males.

Mr. HENRY. -

51 per cent.

Mr. SOLOMON. -

I am somewhat inclined to doubt those figures.

Mr. HENRY. -

They are the figures of a reliable statistician.

Mr. SOLOMON. -

A census has not been taken recently, and I know from knowledge gained by visiting the various mining centres that in Coolgardie and Kalgoorlie, where there is a population of 10,000, it would be difficult to find 1,000 women.

Mr. GLYNN. -

The males are 51 per cent. more than the females.

Mr. SOLOMON. -

That is different; that is not the point I was going on. The estimate that I was giving, and I think it is a very moderate one, is that at least 70 per cent. of the population right through consists of adult males. We all know that in most of our calculations here we reckon a family to consist of a man, his wife, and three children. That is the general average throughout the colonies for the purposes of rough calculation, and we estimate in our
return of revenue at an average rate per head in the southern colonies, including every man, woman, and child in the community. It must be patent to every member of the Convention that a man contributes a great deal more to the revenue than a woman and three children altogether. However, when we are calculating the population of Western Australia, we may fairly assume, to start with, that the adult males there contribute four times as much per head to the revenue as every adult male in each of the other colonies. The figures will bear me out in that.

An HONORABLE MEMBER. -

Not quite so much as that.

Mr. SOLOMON. -

The argument is further strengthened by this fact, which must not be lost sight of, that the revenue derivable from population depends to a very great extent upon the earning ability of that population; that is almost an axiom. What is the earning ability of adult males of Western Australia compared with the earning ability of adult males in the rest of the colonies? It is nearly twice the amount. In Western Australia, every adult male who can work fairly gets as much as £3 to £3 10s. per week.

AD HONORABLE MEMBER. - On the gold-fields.

Mr. SOLOMON. -

I dare say that in the cities, where the men who are not fit for gold-fields work are employed, they probably do not get anything like that amount of wages; but, on the gold-fields, you cannot get a man to work for less than £3 10s. a week, and if he is working in wet ground, or where there is any difficulty, £4 per week is the current rate of wages. Any attempt by the leading mining companies to lower the wages has been met by a strong combination of the Amalgamated Miners' Association.

Mr. HOWE. -

Very properly so, too.

Mr. SOLOMON. -

That is a question I do not intend to argue just now. Where your adult male unit is separated from his wife and family, where he is living in a rough country, and earning nearly twice as much as he can in the southern colonies, his spending power with regard to the leading revenue-producing items in the Tariff list is twice as great as the spending power of a man in the other colonies. A man earning £4 a week in Western Australia can afford to spend a few shillings a week in beer, wines, and spirits, and the bulk of them do so religiously. Here we have at once the solution of the
immense difference in the revenue-producing power of the population of Western Australia as compared with the population of the other colonies. I will not apologize for somewhat lengthily explaining this matter, because it has a most important bearing on the question before us. We cannot expect that the population of Western Australia will continue to be mainly a population of adult males, or that they will spend £80,000 or £100,000 a month as they do now in post-office orders to send to their wives and families. As the permanency of these mines in Western Australia has been established, so has been the permanency of the billets of those men who until recently could not rely upon regular employment. The men are, therefore, adopting precisely the same system as is adopted in other mining districts in the more settled portions of Australia, and they are getting their wives to join them, as they recognise the expensiveness of keeping up two homes and the increased cost of living. They are, therefore, altering all the conditions under which we are now considering this financial problem. As each man gets his family to Western Australia, so his relative amount of contribution to the revenue of the colony will become more like the amount contributed by the population in the other colonies. Here is a factor that will operate very largely in removing this great bogy which we are now facing. As to the policy adopted by the Finance Committee in their recommendations, I should like to point out that they have carefully recognised all those circumstances; they have all been brought before the committee and considered; and the committee saw at once that even though it might appear on the face of it that the colonies were becoming liable from a general fund for what might seem to be a large amount per annum for a given number of years, still the circumstances were such that this apparently large amount will, in all probability, be reduced year by year, so that perhaps in two or three years it would be hardly worth considering. I do not for a moment admit that it is a matter for very grave consideration at the present moment. I cannot see for the life of me why, in entering into this great Federation, where we are pooling the whole of our revenues, amounting to £6,000,000 or £7,000,000, we should make such a tremendous mountain out of this molehill of having to compensate one of the colonies of the group—one of the parties to this partnership—to the small extent of perhaps £100,000 or £150,000 a year, and that perhaps only for a few years—not necessarily for the whole five years. I am strongly of opinion that perhaps for the first year or the first two years we may have to pay amongst us £100,000 or £150,000 a year to assist the revenue of Western Australia. That is a matter which Western Australia need not be for one
single moment ashamed of. This is a question of a partnership into which we are all going, not to take advantage of one another but on equal terms, to do justice to one another; we want to present a Constitution to our people in each state which they will recognise as a fair and just one. I cannot understand, for an instant, the sentimental dislike expressed by the Premier of Western Australia to that colony being named in this Constitution. The circumstances are admitted on all sides to be extraordinary; the necessity is admitted on all sides to be a grave one. Wherefore, then, this desire to hide what we are really doing by putting in, as suggested by my honorable friend (Mr. Holder), that any colony having less than a certain percentage should be recouped? We have said in plain English to this Convention-the Finance Committee have said—that the circumstances of Western Australia demand special treatment. We have not hesitated to place before you what we think the best means of dealing fairly and justly with Western Australia in this matter; but I, as one of that committee, say that here the consideration must end, here the special circumstances and conditions must end, and any demand on the part of the Premier of Victoria, or any other member of this Convention, to still further extend this special difficulty by proposing that each colony shall be recouped for any particular loss she may make in regard to intercolonial free-trade, is beyond reasonable consideration at the hands of this Convention. I am sorry if I have taken up too much of the time of the committee, but I consider that this matter, although a very important one, is one that has been grossly exaggerated. It is one that we have exaggerated from a mere mole-hill into a mountain, and it is one which, by that very exaggeration, may prove very dangerous to the cause of federation. Therefore, I have sought to show honorable members that this big difficulty, as it appears at present, is a gradually decreasing quantity - that it must, in all probability, gradually decrease during a few years until we shall hear nothing more of it. The circumstances are such that if we desire the co-operation of Western Australia, which is the best market open at present in the whole of the Australasian group for the products of the southern colonies, if we desire to have her trade open to the rest of us, it is necessary that for a few years her circumstances should be considered, and met fairly and in a proper and federal spirit. Under these circumstances, I hope that the amendment proposed by the Premier of Victoria will be rejected as utterly impracticable, as meaning borrowing money to make up the necessities of the whole of the colonies; and that the amendment of Mr. Deakin, which means no inter-colonial free-trade, which means still keeping up certain barriers, still having vexatious differential Tariffs, will also be rejected with very little hesitation.
Mr. FRASER. -

That is only for a time.

Mr. SOLOMON. -

It may be only for a time, but I have pointed out that the very basis of this proposal for federation—the main point which has recommended it to the people of Australia—is the prospect of having our markets free and removing Tariff barriers, and the amendment of

Mr. Deakin would prevent that. It is all very well to say that it would only prevent it in one colony, but that one colony is a colony to which many of us look for a great deal of our trade. One may as well be candid on these questions. As a representative of South Australia, I say that South Australia looks to Western Australia for a very lucrative and mutually advantageous trade. The figures also show that Victoria, although seeking now, if there is going to be a loss, to have her loss recouped, has been the largest gainer in the past by the trade of Western Australia—far the largest gainer. The figures quoted by Sir George Turner show that; and the figures quoted by Sir John Forrest show it. In conclusion, I may say that if it is a matter of a mere probable expenditure of perhaps £100,000 or £150,000 a year, for a few years, between the different colonies, we may well consider that that is a fair and reasonable price to pay for a federation complete and full, embracing, as it should do, the rising and prosperous colony of Western Australia.

Mr. DOBSON (Tasmania). -

I am inclined to think that the debate upon the clause now before the Chair has practically come to an end; because, if I understood the Right Hon. Sir John Forrest a few minutes ago, be stated that he thought his colony might, or would, possibly, receive from the uniform Tariff as large an amount, or a greater amount, than the loss of £350,000, which he believes Western Australia will sustain by intercolonial free-trade. If that belief is entertained by the Premier and Treasurer of Western Australia, it appears to me that the Finance Committee and the Convention have been rather, as the last speaker said, making a mole-hill into a mountain. But while we are all anxious to do every justice to our friends in Western Australia, and to consider their position exceptionally, I think we have been rather considering the less of the two losses or evils which the representatives of that colony have a right to point out. I understand that the losses are of two kinds. First, there is the direct loss which they think they may suffer, although Sir John Forrest has practically knocked that suggestion away.

Sir JOHN FORREST. -
You are driving that point to death. I did not say that altogether.

Mr. DOBSON. -

There is the loss by intercolonial free-trade, and I understand that behind that there is the loss— I begin to think, though I may be wrong, the greater loss—that Western Australia will not have the advantage which other colonies have had for a quarter of a century, of putting her settlers on the land and rearing her industries under a protective policy.

Sir JOHN FORREST. -

We have no exports either, remember that.

Mr. DOBSON. -

Under these circumstances, I am inclined to think that the suggestion made by my honorable friend (Sir Philip Fysh) is well worthy of discussion by the Convention—that we should not treat Western Australia exceptionally on the lines now before the Chair, but that we should allow her to continue her duties upon intercolonial produce for a period of five years, one-fifth going off each year. I am quite aware that, as Mr. Symon has pointed out, this would be to some extent a blot on the great advantage which federation is to bring. But we shall all have a free market, with the exception that we shall not be able to ship our colonial produce to Western Australia for five years, and if every year the duties go off by a sliding scale, we shall each year be coming nearer to the goal of intercolonial free-trade and an unfettered market. That appears to me to be a very good solution of the difficulty, but for some cause or other honorable members seem to have lost the interest which I thought this debate would have assumed, and probably the sooner we get to a division the better. I am disposed to think now that the matter of not having protection like all the other colonies is a greater injury to the producers of Western Australia than the supposed loss by intercolonial free-trade, which, I think, in the words of Mr. Solomon, must be to a great extent minimized, considering that the present free list of Western Australia includes tea, sugar, beer, iron, and machinery of all descriptions, as well as other articles.

Sir JOHN DOWNER (South Australia). -

I have been endeavouring to discover from the debate the views of the Finance Committee. That committee was appointed for the purpose of making recommendations. It was composed of the most excellent financiers the Convention could produce, and the result of their deliberations was the recommendation, which the Drafting Committee put into form, now before the Convention. At the present stage, it appears to me that the only agreement between members of the Finance Committee is
a thorough disagreement with the proposals which they recommend to us.

Mr. HOLDER. -

No, the majority of the committee stand by them.

Sir JOHN DOWNER. -

I am delighted to hear it. That is entirely different from the impression I should have formed from the speeches which I have heard from time to time. I thought that except my honorable friend (the Treasurer of South Australia), and, I think, the Right Hon. Mr. Reid-

Mr. WALKER. -

I also supported it.

Sir JOHN DOWNER. -

There were also Mr. Walker and Mr. Solomon, whose speech just now was like a breeze from the sea—it was so delightful to find that one of the committee, at all events, adhered unhesitatingly to that which they had thoughtfully considered and deliberately recommended. I confess that I have felt somewhat lost, and have been wondering whether it would be possible, by having another meeting of this Finance Committee, which was so strangely consistent in its recommendation and so strangely divergent in the explanation of what it recommended, to reconcile their explanations with their recommendation whether it might not be well for them to meet again with a view, not only to arrive at a private agreement, but also at the public exposition of that agreement. Now, we have really four proposals before us. There is the recommendation of the Finance Committee, which I understand from Mr. Holder they still adhere to, however variously they have expressed themselves. Then, there is the amendment of my honorable friend (Mr. Deakin); next, there is the suggestion of my honorable friend (Sir Philip Fysh); then, there is the proposal of Sir George Turner, which is indorsed by Sir John Forrest—a member of the Finance Committee, by the way.

Mr. DEAKIN. -

Both are members of the Finance Committee.

Sir JOHN DOWNER. -

And, finally, there is the alternative to do nothing, to leave this out altogether, and not to treat Western Australia exceptionally at all. Now, the views of Sir John Forrest do bother me a little. As a member of the Finance Committee, I suppose he agreed to this report?

Mr. ISAACS. -

This portion of it, at all events.

Sir JOHN DOWNER. -

I am asking for information, because I was not on the committee. I am inviting contradiction if he did not.
Mr. WALKER. -
    He did not enter a protest, at any rate.

Sir JOHN DOWNER. -
    As a member of the Finance Committee he agreed to its report, but, on
    consideration, he does not like Western Australia having special
    consideration directed to it.

Mr. HENRY. -
    He always objected to that on the Finance Committee.

Mr. SOLOMON. -
    He only objected to the name being used, not to receiving the results.

Mr. BARTON. -
    He wanted the donation to be anonymous.

Sir JOHN DOWNER. -
    As things go on, I become more and more puzzled. How was the
    majority of the Finance Committee arrived at? I suppose that Sir John
    Forrest, at all events, agreed to the report and the recommendations of the
    Finance Committee, whatever internal dissension there may have been, and
    whatever doubts he may have had in arriving at that end, and I want to
    know whether he adheres to it still? I am sorry he is not here just now.

Mr. ISAACS. -
    Oh, yes, he is; he is behind you.

Sir JOHN DOWNER. -
    I understand, from the sense of fair play which I have always found in
    him, that he thinks the other colonies ought to have consideration as well
    as Western Australia; that it is a little infra dig. for Western Australia to
    accept special consideration; that he thinks so highly of his colony that he
    considers it is casting a reflection on that colony to say that Western
    Australia shall have benefits which the other colonies do not receive. All
    that I sympathize with, but what I would like to ask him is this: Supposing
    we cannot agree to the methods which he and Sir George Turner suggest,
    of treating all the colonies alike, does he wish the recommendation of the
    Finance Committee to be adopted?

Sir JOHN FORREST. -
    It would be better than nothing.

Sir JOHN DOWNER. -
    Very well then, as both Sir George Turner and Sir John Forrest have
    suggested alternative methods which are absolutely impracticable, as was
    clearly shown by the speech of the Treasurer of South Australia last night-

Sir JOHN FORREST. -
Sir George Turner's proposal is not impracticable.

Mr. HOLDER. -

I think so, indeed.

Sir JOHN DOWNER. -

And I think so, too. Therefore, I think Sir John Forrest will have to go back to the views he agreed to in the Finance Committee, and submit to the indignity of our living special consideration to Western Australia.

Sir JOHN FORREST. -

I expressed the same views in the Finance Committee as I have expressed in the Convention. There is not much in the proposal either.

Sir JOHN DOWNER. -

If Sir John Forrest is sure that there is nothing in the proposal there is no necessity for putting it in the Bill. If he does not want it, I am sure nobody wishes to force it upon him. It was put in by the Finance Committee, I suppose, as a means of getting Western Australia into the Federation, and in consequence, I suppose, of arguments that no doubt Sir John Forrest addressed to the committee to show that Western Australia had to have some special consideration. Now, take the argument that Sir John Forrest addresses to its to-day. His elucidation of the difficulty is a guarantee to every state of its present revenue for five years.

Sir JOHN FORREST. -

Yes, that is it.

Sir JOHN DOWNER. -

That will mean a continuation, first of all, of the highest Tariff in any of the colonies. It will mean, secondly, further taxation to make up the loss from intercolonial free-trade; and, thirdly, further taxation again to make up the expenses of the Federation.

Mr. SOLOMON. -

And the estimate of Western Australia's revenue to-day is based on an assumption of the continuance of an absolutely abnormal condition of things for five years, which is another point.

Sir JOHN DOWNER. -

I say that it will have to be a curious kind of Tariff that will carry all this out. You cannot adopt the Tariff of any one colony you will have to adopt a Tariff which will be as high as that of any colony, and which will, in addition, cover other goods which are higher in the colonies in which the duties are highest on those particular goods. And then you will have to add to it still farther, or raise money by direct taxation, by providing additional duties enough to make up for the loss on intercolonial free-trade, and for the cost of the Federation. Now, does Sir John Forrest
think that this is practicable for a single moment?

Sir JOHN FORREST. -
I think so.

Sir JOHN DOWNER. -
I certainly do not think that Sir John Forrest really does think it is practicable. On reconsideration, I am sure he will not think so. I think, that, in those figures which the Treasurer of South Australia gave us last night, we were shown the utter impracticability of adopting any such course as that suggested. Mr. Holder showed that in a few words—and better than in mere language, because he worked it out in figures which nobody has contradicted. Now, what have we left? Of course the whole difficulty with all the colonies is to have the cake and eat it too. The Attorney-General of Victoria said this course is impossible, he said that Western Australia had no special claim, and he said that, to the extent to which the Government of Western Australia would be poorer, its people would be richer.

Mr. ISAACS. -
As far as its revenue duties are concerned.

Sir JOHN DOWNER. -
And my right honorable friend (Mr. Reid) says—"The extent to which my colony will be richer, my Government will be richer, and my people will be poorer." And so we wrangle on. We always talk about the loss a country sustains, forgetting that the loss of one is the gain of another. Whoever dreams, when a Treasurer brings in a new Tariff which takes duties off some goods and puts duties on other goods, or which takes the duties off all the goods, that the country sustains loss? The Government may sustain inconvenience, but that the colony sustains any loss nobody will seriously contend. But when we come to discuss federation that is the whole line of argument, for honorable members talk about what is really a matter of adjustment and never of loss as being not a matter of adjustment, but of absolute loss.

Mr. ISAACS. -
But we have separate Treasuries.

Sir JOHN DOWNER. -
Now, Mr. Isaacs in a very careful and elaborate speech sought to demonstrate the general principle that what the Government lost the people gained, and he further endeavoured to show that there was no reason to make an exception in the case of Western Australia.

Mr. ISAACS. -
In regard to revenue duties.

Sir JOHN DOWNER. -
Always so. The honorable member also tried to show that in the case of
Western Australia, although the Government revenue might be lessened to a larger extent than the revenue of other colonies, yet the people were so much the better off, and therefore they sustained no loss. Then came his right honorable leader, who took precisely the opposite view, not endeavouring in any way to answer the arguments which I am sure convinced Mr. Isaacs, and that Mr. Isaacs still entertains, and Sir George Turner stated that, not only was Mr. Isaacs wrong in the exception, but also that he was wrong in the rule. Well, sir, I want to know where we are at the present time? We have had a long discussion, and yet we are not very much more forward than we were at the beginning. Shall we leave Western Australia out? That is to say, shall we make no provision for that colony? If so, Sir John Forrest, who wants everybody to treat his colony fairly, will tell us that in all probability their loss will be so great that Western Australia cannot join the Federation. Shall we treat Western Australia in the way Mr. Deakin proposes, which would meet the views, I should think, of Mr. Isaacs?

Mr. ISAACS. -
No.

Sir JOHN DOWNER. -
Does it not? I should have thought it would.

Mr. ISAACS. -
No.

Sir JOHN DOWNER. -
Shall we adopt Mr. Deakin's proposal to remove the restriction from Western Australia by the imposition of duties to such an extent as may be necessary to prevent the uniform duties of customs disarranging the finances of that colony? I really thought that that was a logical sequence.

Mr. FRASER. -
There is no great risk about that. There is no risk in doing that.

Sir JOHN DOWNER. -
But it is objected to by many, and we get the usual arguments from the free-trader on the one side and the protectionist on the other. The free-trader tells us that the higher you make the duties of customs, the less you get from them, which, carried out to its legitimate conclusion, would land you in the reductio ad absurdum that if you had no duties at all, and, of course, got nothing from them, and you imposed duties, you would get less than nothing. That is what the whole thing comes to. I have heard this argument times out of number, and it is really not necessary to repeat it. There must, of course, be an extent when a duty becomes prohibitive, and
you will get nothing out of it; but what reason have we to suppose that any duty imposed in any of the states will really reach that stage? The amendment of Mr. Deakin is merely what is fair and right, whether the Convention accepts it or not. It says to Western Australia-"Your position is exceptional, and you do not want to be deprived of the right of imposing duties to prevent the disarrangement of your finances." Mr. Deakin's amendment says-"Let Western Australia take the right to do that to the extent to which it is necessary, but not so as to interfere with the cardinal principle of this Bill, which is, between the colonies, absolute freedom of trade."

Mr. ISAACS.-

The proposal is that if the Commonwealth chooses to do it, and the state chooses to agree to it, then they can do it with respect to foreign produce only.

Sir JOHN DOWNER.-

I am not quibbling about the words of the amendment; but if that method is adopted, while the burden will be on Western Australia, they will get the benefit of it. If they have to impose extra duties on the foreign goods imported, those burdens will fall on their people; but the benefits arising from the reduction of duties under the uniform Tariff will also be for the benefit of their people. The amendment, I think, is a right, just, and proper proposal. But we have to consider also the question of what is expedient. The circumstances of Western Australia, as has been pointed out, are exceptional. The Federation will not be complete without that colony. The money that we are asked to expend, at the most, is a mere trifle in comparison with the importance of obtaining the assistance of Western Australia in this great cause, and I do believe, as Sir John Forrest says, that there will not be any money to pay to her at all. I believe it will, in the result, be what a Minister who has had some experience, and who recognises the manner in which the policy of the Federal Government will probably be formulated, has told us it would be. I could very well understand, without going too much into detail, that in the result there will be very little or nothing to pay to Western Australia; but if, in the meantime, this guarantee creates confidence in the minds of the people of that colony, so as to bring Western Australia into the Federation, I am willing to take all the risks about it, and to accept the recommendations which the Finance Committee deliberately adopted, but which they have inconsiderately, in many instances, abandoned-I am willing to stand by their recommendations as they were sent to us, and endeavour to make them law. As far as I am concerned at present, I sympathize very much with Sir John Forrest in his feeling that he does not like to appeal in any
way for his colony, which now occupies so great a position, to the sympatheies of anybody. But, at the same time, whilst he says that, he does ask for special consideration, and when he says that much the same consideration should be shown to all the rest of the colonies, be asks for that which is impracticable and impossible. And so, sir, I simply conclude by saying that I hope the Finance Committee will become a little better consolidated in their original suggestions, and will stand by their own recommendations. If they do so, I will support them.

Sir JOHN FORREST (Western Australia). -

If the proposal of my right honorable friend (Sir George Turner) is to be put to the Convention, I desire to move the addition to it of the following:--

That no payment shall be made to any state in which the revenue received from Customs and Excise, after the imposition of uniform duties, exceeds the amount received by the state the year before such imposition.

This would have the effect of enabling all the state Treasurers to know exactly what their position would be during the five years immediately after the imposition of uniform duties. If the Convention does not agree to this proposal, if it is influenced by the views of those who think that it would be a great drain upon the resources of the Commonwealth, I cannot help it. In the argument my honorable friend (Mr. Dobson) used yesterday: That because I said there was a possibility of the revenues of the various states being as great after the imposition of the uniform duties as before such imposition, there was no necessity to do anything, too free a use is made of my words. My object in desiring that the state Treasurers should be assured of their position during the first five years after the imposition of uniform duties is, that it would provide a very strong argument in favour of the various colonies entering into the Federation. We cannot foresee what is going to take place, but we may have our views about it. The view I express may or may not be an accurate one. I hope it will prove to be accurate, and that there will be no necessity for any contribution from any of the states. If the results of federation are to be as great as foreshadowed by some honorable members, and notably my honorable friend (Mr. Symon), there is no doubt that our revenue will be materially increased, but we have to take care now to assure the future as far as we can, at any rate for the first five years after the imposition of the uniform duties. With this view, I think that the proposal of Sir George Turner, with the addition of this proviso, which overcomes some of the objections that have been raised, is a reasonable one, and that it would not be likely to cast any heavy burden on the Commonwealth. The only objection to this proposal-and it
may be considered to be a very strong one—is that the Commonwealth might be called upon to pay a very large sum of money, and that it might not have the necessary funds available. But those who make that statement do not take the view held by Mr. Symon and others, that an era of great prosperity is to come upon this continent as soon as we federate. If we take this more sanguine view the chances are—of course it is not a certainty—that the revenues of the various states will be greater than they are now. In that case no harm will be done. We are trying to frame this Bill in such a way that it will be acceptable to the people. If we can assure the people of the various colonies that the revenue from Customs during the first five years after the imposition of uniform duties will not be less than in the year before, we shall have provided for those who have to advocate this Constitution a good argument with which to induce the people to enter the Federation. Of course if this proposal does not meet with favour we shall have to fall back upon the recommendation of the Finance Committee. As I said before, I shall take no part in the division upon the Finance Committee's proposal. My chief objection to it is that it names Western Australia for special treatment. I should like a plan to be adopted which would be general in its application, such as that submitted by Sir George Turner, with the addition of my proviso. It may be said that the amount to be paid by the Commonwealth will be very large, and we may hear from the representatives of New South Wales that that colony will have to find the money. Those who use the

Mr. SYMON. -

Would it not suit you better to take off the intercolonial duties by degrees during the five years?

Sir JOHN FORREST. -

No, even without any inducement of that sort it is probable that the duties that exist now in Western Australia will not remain always. There is a disposition in that colony to reduce the duties on many of the articles of food which are imported, and I have no doubt that that will be done.

Mr. REID. -

You gave a promise to that effect.

Sir JOHN FORREST. -

I promised to deal with the question during the next few months. My object is to have this Bill passed in such a form that we can confidently recommend it to the people of the various colonies. If we can assure them that the Customs revenue for the first five years after the imposition of the uniform duties will not be less than in the preceding year, we shall do much to assist those who have to advocate the cause of federation before
the people. I beg to move now that Sir George Turner's amendment be amended by the addition of the words which I have read.

Mr. REID (New South Wales). -

The effect of this proviso is simply to throw a little doubt upon the conclusive figures given to us by the Hon. Mr. Holder, and to make it perfectly sure that New South Wales will not come into this Federation.

Sir JOHN FORREST. -

You are afraid of the future.

Mr. REID. -

I said I was not in favour of the Finance Committee's proposal, but I must frankly admit that it is the best we have had submitted to us yet. I see grave objections to it, but I see graver objections to all the other propositions that have been made. It seems to me that we shall have to go back to the Finance Committee's recommendation. Although I do not favour it myself, it is one which I could far more cheerfully justify anywhere than any of the other proposals that have been put before us. Of course it is essential that any proposal we adopt should command the approval of the representatives of Western Australia, otherwise all our labour would be in vain. Our main object is to get a solution of this problem which will commend itself to the representatives of Western Australia as being satisfactory. Sir John Forrest was satisfied with the Finance Committee's recommendation. I have not heard a word from that time down to the present by which the right honorable gentleman has shown any desire to go back on what was done with his full concurrence in the Finance Committee.

Sir JOHN FORREST. -

I do not like the special treatment of Western Australia.

Mr. REID. -

I quite see that, but if the right honorable gentleman sees that the making of the thing general will cause difficulty to the other colonies, I am sure that he will not insist on a merely sentimental objection.

Sir JOHN FORREST. -

Would not the proviso meet your case?

Mr. REID. -

The proviso does not alter the complexion of the proposal made by the Premier of Victoria, I believe that it would be mere idle words, except with reference to one colony, New South Wales, whose case has been already referred to. Most of these proposals were considered by the Finance Committee, and the whole of this discussion strengthens the fact that the Finance Committee, having thought the matter out, has made a suggestion which, under all the circumstances, is the best that we can adopt. Although I do not approve of it personally, still I recognise that Western Australia
will have to give up one-third of its revenue on colonial produce, and that it is in a peculiar position amongst the other colonies, because whilst the other colonies will have an increasingly valuable market for their exports opened to them, Western Australia, for years to come, will receive no corresponding benefits from us, because her main product, gold, goes through every country in the world free. We are only too glad to get it. Western Australia is in a peculiar position all round. It does not come into this projected Federal Union with any strong necessity from the facts of trade, impelling it to make sacrifices to join us in order to get the run of our markets. It has no pressure of that sort, and that is one of the difficulties of my right honorable friend. If the exports of Western Australia were of a character fitted for the other Australian markets, then my right honorable friend could go to the electors of Western Australia and say:"Look what we are doing. We are opening to the producers of Western Australia a grand market in the adjoining colonies." But my friend from Western Australia has not that argument to use. It is very likely that in years to come this union will prove of inestimable advantage to Western Australia, and that she will then have a magnificent intercolonial trade. But that is in the future, and does not apply to the electors of to-day. I therefore, from every point of view, feel that the case is so special that, although personally I could not approve of the recommendation of the Finance Committee, I would be in a position, having heard the whole of the discussion of this proposal, to say to those who object to it that, after the most severe scrutiny, it contained absolutely the least unsatisfactory method.

Mr. ISAACS. -
For New South Wales.

Mr. REID. -
Looking into the figures, I do not apprehend any serious question for any colony. As I said last night, the Commonwealth Treasurer will have immense power and opportunity in the moulding and framing of a Tariff. I would remind Mr. Isaacs that although New South Wales would bear one-third, at any rate, and probably more, of the loss, that colony is not interested in the Western Australian trade to anything like the extent Victoria is. We are many hundreds of thousands of pounds a year below the trade of Victoria.

Sir GEORGE TURNER. -
You hope soon to come up to it, though.

Mr. REID. -
Of course we hope to come up to everything in the world soon. But that
will take a little time, considering our enterprising friends in Victoria who are a few hundred miles nearer the gold than we are. I really do feel that the Commonwealth Treasurer would be able, having the difficulty staring him in the face, to make large adjustments, and, even at the worst, the amount would be greatly reduced by the losses of other states.

Sir GEORGE TURNER. -

It is very little satisfaction to know the amount is reduced by their own losses. It is good satisfaction to you, of course.

Mr. REID. -

My honorable friend must recollect that the revenue really has been got out of brother Australians all the time, and that the evils of getting this revenue out of fellow Australians are felt to be so grave that they constitute the chief reason for federal union. That aspect must be regarded. If my honorable friend could have the consolation that these duties were coming out of foreign nations—the hated importer of other lands—that would be another matter. But he must admit, on his own theory, although I think myself the duties come from the gentlemen behind the barrier, that they are a loss to fellow Australians and not to foreign. That aspect of the matter, I say, must not be forgotten. It would be easy, as I pointed out last night, for a colony to make its loss greater by putting its tariff upon articles of Australian production indefinitely. But I do not think that that would be a gain in any sense to the colony that did it. It might put more money into the Treasury, but it would not be a gain to the people in whose interests the Treasury is administered. These matters must be considered. It is a loss really of opportunity of taxing fellow Australians, which opportunity and the use of it are the strongest possible reasons for destroying Border Duties and the distinctions between one part of Australia and another. It is a loss in one sense, but in another sense it is one of the glorious gains of federation. The more time we take up now, the more we will be driven to the proposal of the Finance Committee, which has the cardinal merit of being acceptable to those whose interests have to be studied in the matter.

Mr. ISAACS. -

Have not our interests to be studied, too?

Mr. REID. -

I am of opinion that our interests are less prejudiced by the committee's proposal than by any other proposal that has been submitted. I confess that I was rather taken at first with the suggestion that there should be a power in Western Australia of retaining these duties on intercolonial produce for five years, with 20 per cent. off each year. But I am confronted with the
difficulty of another colony, where the argument might be pushed with as much force—"Well, if you do that in Western Australia, why not do it for the farmers of Victoria?"

Mr. ISAACS. -
If that were so as to intercolonial produce, you might have the outward Tariff less. How would that work?

Mr. REID. -
How do you mean by the outward Tariff.

Mr. ISAACS. -
Suppose the Tariff against the world were less than the gradually-reducing intercolonial Tariff, how would that operate?

Mr. REID. -
On the same articles?

Mr. ISAACS. -
On the same articles.

Mr. DEAKIN. -
They are not the same articles.

Mr. ISAACS. -
Some are the same.

Mr. REID. -
Well, that could easily be adjusted. But I discarded that rather attractive proposition because of the difficulty in Victoria—a difficulty I quite appreciate. On the whole, therefore, I feel that the committee's proposal is the more broad and satisfactory adjustment, which has the great merit of satisfying the Western Australian representatives—a cardinal point in any arrangement we make.

Mr. HENRY (Tasmania). -
I have no desire to lengthen this discussion, but, as I have not yet spoken on the subject, I feel bound to make some comment on the present proposal. There is a just, and, I may say, a strong feeling as to the necessity of making some provision in the Bill that will induce our Western Australian friends to join the Federation and enable them to justify their action in their own colony. I am quite in accord with the view put forward by Mr. Reid on the practical aspect of the question. I also recognise that if the Western Australian delegation say that any proposal is impracticable, that proposal could not be recommended to our fellow colonists. A proposal deemed by the Western Australian representatives to be impracticable must be changed, or some other proposal made which could be justified. I recognise that position. I also think, however, that there is something due to the interests of the other colonies, and I naturally ask myself the question as to how the proposal will affect the colony which I
share in representing in the Convention. As I have already said in the general debate, I regard the principle in the proposal submitted by the committee as inherently bad. It was very clearly demonstrated to my mind, by the Attorney-General of Victoria, that the radical defect in this proposal is that it will compel the taxpayers of one colony to contribute to the relief of the taxpayers in Western Australia. In fact, it is doubling the burdens of taxation to the extent of the loss, or the amount paid to Western Australia. This must be obvious at once to any one who reflects on the question. It is generally admitted that in Tasmania the purchasing power of the people and the ability to contribute through the Customs is relatively less than in the rich colony of Western Australia. Yet out of our poverty we would be compelled to contribute to the wealth of Western Australia. In principle the thing is radically wrong and I cannot see, how it can be defended. But we come round to the question of expediency, which I admit we have also to consider. Before leaving the question of loss, I must say there seems to me a great deal of confusion very often in people's minds in distinguishing between the losses to the Treasurer and the loss to the taxpayer. That distinction should be kept clearly in view. As regards the taxpayer, the Premier of Victoria has contended that in imposing customs duties the loss would not fall on the consumer. Sir George Turner's argument was tantamount to that. I am aware, as a practical man, that there is always sufficient competition amongst the traders of a colony to secure to the consumer either the relief afforded by a remission of duties or a burden caused by an increase. The result seems to me inevitable. Take a simple illustration. Assuming that in Western Australia a duty were imposed on tea and sugar, which duty is not imposed now, can it be contended that the consumer would not have to pay that duty? Such a duty might amount to something like 40 per cent., and we know that competition in trade is such that at the present time, in all probability, there would be no margin for a 40 per cent. difference. It follows inevitably that the burden would fall on the consumer. There is a fallacy with which many of us are familiar, but I really fail to see how the consumer can escape the burden. That was very clearly and admirably illustrated by the Attorney-General of Victoria the other day. Now I come to the practical question as to whether, recognising the great difficulties we have in dealing with this question, we should adopt some plan that would justify our friends in Western Australia in saying to their fellow colonists - "Yes, You may enter the Federation." I am as anxious as any man present to see Western Australia join the Federation. I am also desirous that we should, at as early a stage as possible, enjoy the benefits of a free
interchange of commodities, and have an open market in Western Australia. But I am faced with the practical question, from a Tasmanian point of view: Would the people of Tasmania be justified in taking from their admittedly insufficient surplus a considerable sum of money, merely for the sake of having the right to trade with Western Australia? That, is the practical way in which the question addresses itself to my mind. I confess I have great difficulty in being able to say to the people of Tasmania "Yes, I consider you are justified in risking the payment of what is, to Tasmania, a considerable sum of money to relieve the taxpayers of Western Australia, merely for the privilege of trade with them." I confess to a very great difficulty in being able to justify my action in supporting a proposition which is inherently bad, and which may possibly call on the Tasmanian taxpayers to contribute a certain amount of money for the privilege of trading with Western Australia. With regard to the figures supplied by Mr. Holder-whose great ability in grasping these questions I join most cordially in admiring-they are necessarily speculative. They deal with what are the possible losses Western Australia may sustain under a uniform Tariff, and, therefore, with the amount that the several colonies may be called on to contribute. If tea and sugar, which are two important articles as revenue yielders, are admitted free to Western Australia at the time we have a uniform Tariff, it is almost a certainty that merchants and speculators in such articles, which are certain of consumption and will not depreciate by keeping will largely import them into Western Australia. The result would be a rather serious diminution of the revenue of Western Australia for the first year, and, consequently, in proportion to that particular year, would be the amount to be contributed by the several colonies. There would be a loss of anticipated revenue. The revenue that Western Australia would contribute under the uniform Tariff would, in consequence of the heavy importation of articles now free, be considerably diminished; and in proportion as the revenue for the first year of the uniform Tariff is diminished, so is the loss or losses of the several colonies increased. No one can pronounce with any degree of certainty as to what the losses may be. These losses may be considerable. I am very sorry I cannot see daylight through this; but my own mind leads me to support Mr. Deakin's proposal as equitable and just. But we are faced with the difficulty of meeting Western Australia, and until the representatives of that colony agree to something, it is very difficult to say what course should be taken.

Mr. MCMILLAN (New South Wales). -

I understand that no postponement of this clause is to be granted. I think
that it is well that we should understand from the leader of the Convention what is to be done, because it seems to me that a postponement might lead to the debate being terminated for the present, whereas if the discussion is to be continued we shall know exactly what we are doing.

Sir JOHN FORREST. - Don't postpone it.

Mr. MCMILLAN. - Then it seems to me that the only question that will ultimately come before us for voting upon will be that of the Finance Committee. I feel myself in a very awkward position. The representatives of Western Australia are to be absent from this chamber when the division takes place. That is right in itself, but we shall find ourselves voting for a proposal on behalf of a colony which absolutely does not want it.

Sir JOHN FORREST. - I do not say that.

Mr. MCMILLAN. - If language means anything, the right honorable gentleman told us that he dissented from this method of treatment, and preferred a proposal of his own.

Sir JOHN FORREST. - I said I preferred another clause to this.

Mr. MCMILLAN. - That is what I say; the right honorable gentleman dissented from this.

Sir JOHN FORREST. - No, I object to Western Australia being specially mentioned.

Mr. MCMILLAN. - Unquestionably the right honorable gentleman objects to a proposal which will apply to Western Australia without applying all round, and he has given very cogent reasons against the whole scheme in view of the very proper feeling of Western Australia against any special privileges being granted to her. Of course, if we are to understand now, after this debate, that the right honorable gentleman, on behalf of his colony, accepts this as a fair settlement should we agree to it, then, of course, that lets us know exactly where we are.

Mr. DEAKIN. - He accepts Sir George Turner's proposal as amended by himself.

Mr. MCMILLAN. - Yes; but that is not the point. As far as I can see, if there is any possibility of gauging the opinion of this committee, it is clear that the proposal that will obtain a majority will be the original proposal of the Finance Committee.
Sir JOHN FORREST. -

We shall see about that.

Mr. MCMILLAN. -

Very well. But I think, whatever process we adopt, before we come to vote specifically on that proposal we ought to have some assurance from the Western Australian delegation that it is satisfactory to them, and that they take it as a solution of the difficulty, so that if we vote for it there will not still be unpleasantness left behind, and an unsatisfactory solution. The point is: If this proposal is adopted, will the members of the delegation of Western Australia be willing to go back to their colony and tell their people that they are now in accord with this as the best solution of the difficulty, and that they warmly propose the Bill for the acceptance of their people? We shall be in a very peculiar attitude if, after passing this proposal, which is intended entirely to consult the position and meet the exigencies of Western Australia, we find that the delegation from that colony, in the first instance, retire from the Convention while the vote is taken which I have no fault to find with them for doing—and then, when the proposal is agreed upon, apparently at their own request, they go back to Western Australia and say that they were really never in favour of it. I still say that it would be far better to have a postponement of the question.

Sir JOHN FORREST. -

You do not say what you will do when you go back to your colony on any particular question.

Mr. MCMILLAN. -

But this is a special matter affecting only Western Australia.

Mr. KINGSTON. -

Does not the attitude of Western Australia depend upon a variety of things?

Mr. MCMILLAN. -

It may. But I am justified in looking on this matter from the point of view of the speeches made, and there is such an amount of incongruity in the position that it does not seem to me that any decision will be satisfactory. The members of the Finance Committee themselves have brought forward so many amendments on their own proposals, that it seems to me that as we have other work to do in regard to the financial clauses—in reference to the debts, for instance, which is a question that will take up a considerable amount of time—it will be better to postpone this subject for the further consideration of the Finance Committee. If, after what has been said in the course of this debate, they still consider that their proposals are worth anything at all—
Mr. HOLDER. -  
We cannot do better than we have done.

Mr. MCMILLAN. -  
Very well. If the committee come back and say: "We have reconsidered the proposals made, and still adhere to them," the whole thing will be passed; but at the present moment with so many proposals before the committee, many of which have been sprung upon the committee by the members of the Finance Committee themselves, the best way would be for the Finance Committee to reconsider their recommendations. I think that that is a very fair suggestion to make. I made it last night, and I thought that it would have ended the discussion this morning. I still think that it would be a good thing if the proposal before the committee were withdrawn, with a view of the Finance Committee reconsidering the financial clauses.

Sir JOHN FORREST (Western Australia). -  
I hope that the advice of the honorable member who has just spoken will not be followed. I confess that I am becoming sick of the subject of Western Australia in regard to this matter. It seems to me that we are just as near to a settlement as we ever were, or ever will be. I hope there will be no time lost in taking a division. I favour the clause of Sir George Turner as amended by myself. If, however, that does not meet with the favour of the committee-and I see no reason why it should not, as it seems to me to be the most feasible and the simplest plan-then the opinion of the committee can be taken upon the suggestions of the Finance Committee. I do not see any reason for delaying the matter. As I have said, Western Australia will not take part in the second division if it takes place, and it will be for this committee to say whether they approve of the suggestions of the Finance Committee or not. In regard to the representatives of Western Australia pledging themselves one way or the other, I reply that I do not feel much inclined to make any pledges to this Convention, nor do I see that any other member has made any pledges with regard to his colony. I have heard some members say that they will be unable to recommend sometimes this question, sometimes the other, with the object, I think, of influencing honorable members. But, for my own part, I make no pledge whatever. When I see the Bill complete it will be time for me to consider whether it is such a Bill as I can recommend to the people of Western Australia. I make no pledge on this question or any other; nor do I find that those honorable members of this Convention holding official positions in the other colonies are willing to pledge themselves as to the attitude they will assume when
the Bill is completed. It is asking too much.

Mr. MCMILLAN. -

I didn't ask you to pledge yourself.

Sir JOHN FORREST. -

The honorable member asked me to pledge myself in regard to the financial proposals, but I say that the whole subject will require consideration when I see the Bill completed. I have never expressed myself as adverse to the recommendations of the Finance Committee, because I recognise that in a sense I was a party to the committee's report but I never fully approved of these recommendations, because I thought that some provision which would have been general in its application, and would not single out any one colony for special treatment, should have been adopted. I prefer the amendment of the Right Hon. Sir George Turner as amended by myself to the recommendations of the Finance Committee, but if we cannot obtain the approval of honorable members for that amendment, it will be for us to consider whether the recommendations of the Finance Committee, although they are objectionable to the extent that they single out Western Australia for special treatment, should find a place in the Bill,

Sir EDWARD BRADDON (Tasmania). -

I shall support the suggestion of the honorable member (Mr. McM

Mr. BARTON (New South Wales). -

I would point out to the right honorable member that in the Canadian Constitution there are a number of sections which give special treatment to various states. It has been suggested that the further consideration of this matter should be postponed, but I am inclined to think that we have not yet arrived at a stage at which there should be a postponement. At any rate, I think that the sense of the committee should be taken upon the amendment of the right honorable member (Sir George Turner), because, whatever may be said of the other proposals, it, at least, has been fully debated. If, afterwards, we reach a stage when there may be a proposal before the committee which seems to require deliberation upon the part of the Finance Committee or upon the part of the Convention, let us have a postponement then. At the present stage, however, there is no solid ground for a postponement. I consider that the speech made by the honorable member (Mr. Holder) last night effectually disposes of any argument in favour of the amendment of the right honorable member (Sir George Turner). The figures produced by the honorable member showed the inequity of the proposal, and tended to prove that New South Wales, to use a common term, will have to pay the piper.
Sir JOHN FORREST. -
That is the old cry.

Mr. BARTON. -
Yes, and so long as proposals of this kind are brought forward, I, at any rate, will take care that it is heard.

Sir JOHN FORREST. -
The Honorable member's argument cannot be considered proved by figures like those produced.

Mr. BARTON. -
They come from as safe a source as we have in the Convention—a gentleman whose name has only to be mentioned to secure respect for the moderation of his arguments and the clearness of his statements. They are the best and most practical indications of the probable effect of this proposal that we have yet had.

Sir JOHN FORREST. -
They give New South Wales a million more revenue than Victoria.

Mr. BARTON. -
I see no joke in what has been said about giving £1,000,000 to New South Wales and then taking it away from her to divide it among the other states. The arrangement may seem a joke to those who profit by it, but, notwithstanding the mild sarcasms of the right honorable member (Mr. Reid) last night, we who represent the colony do not see the humour of the situation. I do not wish to express myself at any length in regard to this matter, because I think that, so far as the inequality of proposals of this kind can be demonstrated by figures, the speech of the honorable member (Mr. Holder) was such a demonstration. It may be said that his statements were merely surmises. That may be so, but if you have the best surmises yet drawn with respect to the operation of a clause, you must take them before anything else. That is the position in which I find myself with regard to the speech of the honorable member (Mr. Holder). Reasons were given by the honorable and learned member (Mr. Isaacs) against the proposal in the Bill, and, so far as they extended, I am rather inclined to think that they also operate against the proposal of the right honorable member (Sir George Turner).

Mr. SYMON. -
And against the proposal to make special provision for Western Australia.

Mr. BARTON. -
They were directed against the proposal to make special provision for Western Australia, but if that special provision is to be extended all round, even if actual loss takes the place of proportionate net loss, it seems to me
that the argument of the honorable and learned member (Mr. Isaacs) will have four applications instead of one. So far as the arguments against the Western Australian proposal have gone, I do not see that they are not exceeded by the arguments against the proposal of the right honorable member (Sir George Turner). I would rather take the proposal of the Finance Committee than that of my right honorable friend. At any rate, we have debated his proposal at considerable length, and I do not see why we should not deal with it now. I do not see why we should not deal with the whole clause at this stage. If the need for a postponement should arise it might be asked for, but I would suggest that we should deal with this matter as soon as possible. For myself, I feel some inclination towards the suggestion of the honorable and learned member (Mr. Deakin), and I may be pardoned if I give one or two reasons in favour of its acceptance. It is, of course, very well to say that we cannot persist in a proposal which the Premier of Western Australia has declared against, but we have to take the reasons for and against in all theme matters, in the full confidence that the best reasons will, in the long run, probably prevail upon all sides. What is the position of Western Australia? It was rightly pointed out by the honorable and learned member (Mr. Isaacs) the other day—I have seen a criticism of his position with which I do not agree—that while the Treasurer of Western Australia might not be a gainer, and might indeed be a loser, by the operation of intercolonial free-trade and a uniform Tariff against the outside world, he would be in a worse position only by way of figures, because the taxable capacity of the population of Western Australia would be increased to the extent of the duties foregone. If, by the operation of a uniform Tariff, the Customs revenue of Western Australia was £200,000 or £300,000 less than it is now, the money would be saved to the state, and would be still available to the Treasurer for taxation. That is the position which has been criticised, but I do not think that the criticism should have any effect. It has been pointed out that the honorable and learned member and other protectionists were in a false position when they urged that the consumer paid the duty. I am not aware of any protectionist having urged that where the production is not substantial the consumer does not pay the duty. When production increases, and it becomes necessary to reduce the price of the imported article in order to enable it to compete with the local article, the importer, by reducing the price, pays the duty, and it is saved to the consumer. That, however, does not apply in the present case. It is not urged that where there is no material production the consumer does not pay all or nearly all the duty. That being so, the amount which has been mentioned as being lost to Western Australia would really be saved to the
taxpayers of that colony, and could be obtained from them by the Treasurer.

Sir JOHN FORREST. -

Surely there is some production in Western Australia.

Mr. BARTON. -

I am not saying that there is not; but between the intercolonial products which flow into Western Australia and the amount of its local production there is a considerable difference. I am not urging that there is not a very promising production in Western Australia, but it has not reached a point at which it can affect the argument of the honorable and learned member (Mr. Isaacs). There being this amount of taxation saved to the people of Western Australia, it can be raised in other ways. I quite sympathize with the position of the right honorable member (Sir John Forrest) if he says that the time has not yet come for direct taxation in that country, and that perhaps he could not carry such a policy there. What does that imply? It does not get rid of the fact that there is a taxable capacity. If the money cannot be obtained by direct taxation, it still remains available by means of Customs taxation. If it is available by means of Customs taxation alone, some provision should be made for the application of Customs taxation to this taxable capacity. The burden laid upon the taxpayers will be the same as that which they have to bear now. If, therefore, some arrangement can be made by which the loss of Western Australia can be compensated by increased taxation, the colony will avoid the stigma which some honorable members have argued would attach to her if she received special treatment. The only way in which this could be done is that suggested by the honorable and learned member (Mr. Deakin). It seems reasonable that if Western Australia is not anxious to accept the favour from the other colonies, and the representatives of the other colonies think that their taxpayers would have some objection to compensating the taxpayers of Western Australia for having made a loss, an alternative proposal should be considered.

Mr. HIGGINS. -

It is the only solution.

Mr. BARTON. -

So far, it seems the only reasonable solution. That is to say, that while a uniform Tariff is imposed, an agreement should be made between Western Australia and the Commonwealth allowing that colony to increase the duties upon certain articles for a term of five years, in order that the additional revenue thus obtained by her might compensate her for the loss she would otherwise sustain.
Sir JOHN FORREST. -

We do not want that.

Mr. BARTON. -

My right honorable friend owes the same duty as we all owe to the Convention. He owes it to his position to give full consideration to the proposal which has the most reason in its favour, and takes the money from the source from which it comes at the present time. I therefore think this proposal should be fairly considered. One can sympathize with the right honorable gentleman if he is of opinion that this is not a time to impose direct taxation in Western Australia. That is a strong argument for raising this money by indirect taxation. But it does not follow in the course of that argument that means adopted to solve the difficulty should be destructive of the intercolonial free-trade which all the other colonies desire to follow upon the imposition of a uniform Tariff. If that destruction can be avoided by any such expedient as Mr. Deakin has suggested, it is perhaps the most reasonable, and perhaps the only one which has any logic to support it. I do not say that under some circumstances I will not vote for the proposal of the Finance Committee, still I must join in thinking that that proposal is not defensible on purely logical grounds. As the taxpayers of Western Australia will save a certain amount of money by being freed from a certain amount of taxation on the removal of the duties on intercolonial trade, it does not seem to be supported by reason or innate justice that this colony—which, after all, consists only of its people, like all the rest of us—and those people having been saved a certain amount of money, they should be again paid that amount of money, because that is really the state of the case. That is the difficulty. It might be possible that the transaction could be supported on the ground that the Treasury does suffer loss, and that there is a difficulty in recouping that loss; but if there is an easy way of recouping that loss, that argument would also disappear. We seem to be brought to this position—that there is a way out of the difficulty which has not been seriously considered, and, as far as that proposal is concerned, it ought not to be lost sight of by the committee; it ought not to be hastily swept away. The fact that there is an objection from Western Australia is entitled to very great attention, as coming from a colony whose affairs are in question; but it is of equal concern to the Constitution that some proposal should be adopted with reference to which we could say to the electors of our colonies, who are the taxpayers, that the burden is being laid on the right shoulders; that intercolonial free-trade is not being denied, and that there is a way of doing this which does not impose an undue and unnecessary burden upon the electors with whom we have also to deal. I would urge, therefore, that some consideration which has not yet been
afforded should be given to Mr. Deakin's proposal. It is certainly more in the line of the argument of Mr. Isaacs yesterday than any other proposal which has been made, and I strongly think that there was force in his argument. We may support the Western Australian proposal, if it is carried, by urging this, that it really may not amount to very much; that, under this Tariff, it may not give very much back to Western Australia; but we do not want to go back to our electors with such an argument when it is possible to point out a way by which the position of Western Australia might be actually restored, and without a penny's loss to the pockets of its own taxpayers. On the whole, that seems to be the legitimate result of the proposal made by Mr. Deakin.

Mr. DOUGLAS (Tasmania). -

The question before us seems to me to be a perfect paradox. The Premier of Western Australia put before us a most extraordinary and peculiar proposition. He said practically - "We are to be relieved of taxation, and the rest of the colonies are to make up that difference." But at the same time he went on to say - "I do not like to be branded with that species of robbery, and, therefore, I want you who are all more or less interested in the subject to be branded with the same brand as ourselves." Inasmuch as I do not want Tasmania to have any such brand upon it, I would either stand out or go in. I have no doubt we shall go in, although I think we shall suffer if such a proposition is carried out. What does the honorable member say in order, as it were, to gain votes? "We will spread it all over the community, and you will all suffer in this respect; you will all be defaulters, and therefore you will all have to be paid out of the difference." That seems to me to be a very peculiar argument. What is the position of Western Australia at present? There are a number of articles admitted free of duty into that colony which are taxed in the other colonies. If that colony is to come into the Federation, why should it not be taxed in the same way and in the same proportion as the other colonies? There are tea, sugar, tobacco, spirits, and a variety of other articles which in that colony are free.

Mr. SYMON. -

Spirits are not free.

Mr. DOUGLAS. -

I think wines are free.

Sir JOHN FORREST. -

No.

Mr. DOUGLAS. -

According to the list, sparkling wines are subject to a duty, but not wines in general.
Sir JOHN FORREST. -

Yes, they are.

Mr. DOUGLAS. -

That appears to be the case from the return. Sir John Forrest was a member of the Finance Committee. I am happy to say I was not a member of that committee, and therefore I can speak with freedom. The members who form that committee must feel themselves bound more or less by its decision.

An HONORABLE MEMBER. -

No.

Mr. DOUGLAS. -

If a committee brings up a report it seems to me that the members are bound by that report. I was on a committee on one occasion and they rejected the motion which I proposed, yet I had to sign the report, and I was bound by it, although I tried to get out of it. Sir John Forrest was a member of the Finance Committee, and that committee brought up a report which stated that Western Australia should be treated in a certain manner; now, in the Convention Sir John Forrest objects to that report. He says- "No, do not imagine that Western Australia is going to do this," and Western Australia is not going to receive the plunder. They do not like it. Why should not they receive the reward which they claim to be entitled to? There is another extraordinary thing. There are five colonies represented here, every one of which, with the exception of Tasmania, has threatened to retire. The fact of the matter is that the only union will be that of Tasmania by-and-by, and that will be the only result of this Convention.

Mr. DEAKIN. -

You will then have the capital all to yourself.

Mr. DOUGLAS. -

What are we going to do? Are we not bound, more or less, to yield one to the other? How can Western Australia complain of its position at this moment? At present is it not the richest colony of the group? When we met in 1891 the population of Western Australia was only 45,000; the population now is verging on 200,000, and, no doubt, before the end of the year it will be 200,000, yet it comes here and makes a complaint of poverty.

Sir JOHN FORREST. -

No.

Mr. DOUGLAS. -

Then what do you complain of? You say you cannot pay your debts.
Sir JOHN FORREST. -
I have never said so we can pay them twice over.

Mr. DOUGLAS. -
Very well then, what are you doing? Just what Victoria and the others did when they had a lot of money. You are getting into debt, and then you say the other colonies should pay your deficiency. That is the sum and substance of your argument. I would point out to Western Australia that it has a splendid career before it; that it is in a splendid position, and Sir John Forrest, who has known that colony ever since he has been in this hemisphere, knows very well the progress it is making, and yet he tries to depreciate that colony.

Sir JOHN FORREST. -
No.

Mr. DOUGLAS. -
Then what are you trying to do? Is it to rob your neighbour to make up your deficiency? Take my advice, I am an older man than you, make up your mind to take part in this Union, and you will have great results. All knowledge goes from the east to the west, and generally the west keeps everything. The west gains everything, and it is trying to gain a great advantage over us. The great western country is attempting to take possession not only of Tasmania but also of New South Wales, but it will not gain possession, that is very evident. However, you are not going to have it all your own way. Sir John Forrest may have great influence on the Finance Committee, but he is now in the Convention itself. But do not think that you are going to have your own way here; be satisfied with your position, and form part of the Union, and there is no doubt that Western Australia must progress in wonderful degree. You have now over 100,000 inhabitants more than you had in 1891, and those men will be your rulers in the future. There is no doubt about that. You will have a very different population henceforth to what you have had hitherto. You have had it all your own way, but you will not have it very much longer. There is a new element springing up.

Mr. SYMON. -
These are home truths.

Mr. DOUGLAS. -
Instead of having a small population, as you had when I first saw Western Australia, you will have one of the largest populations of any one of the colonies. Why cannot you be satisfied? It seems to me that Western Australia has nothing to complain of, and it had better join the Union on straightforward and equitable principles, and give up this idea that it is to
be paid for a deficiency which cannot arise, and which, according to the arguments of Sir John Forrest himself, he places before us in a most extraordinary way. First of all, he says—"We must lose; but you need not pay, because we will make it up out of the other pocket. We shall lose out of one pocket but we shall gain in the other." I know Sir John Forrest is a very obstinate man, but on this occasion he should yield to good sense and sound advice. My advice to him is that he should withdraw his opposition.

Mr. HOLDER (South Australia). -

I want to say only a few words, chiefly with reference to the amendment of the Hon. Mr. Deakin. I should be very pleased indeed if it could be proved that his scheme would help us out of the very serious difficulty in which we are placed. I am afraid there are objections to it which are fatal, so far as I have been able to see. I think we may assume, for practical purposes, that a uniform Tariff will be a protectionist Tariff as against the outside world; if it be not, it will at least be a high revenue Tariff upon foreign goods. Given a high revenue Tariff on foreign goods, any additional impost on those goods, and on the small proportion of foreign goods coming into Western Australia, must be very considerable to make it of any effect. It must have one of two results; it must either so diminish consumption as to destroy itself, or it must diminish importation apart from consumption, by making importation unprofitable to such a degree that it will destroy itself. We have all in the past seen, again and again, that the imposition of increased duties has resulted in smaller revenue. If we take the average Tariff, as I have done before, simply for argument sake, as the basis of the Federal Tariff—say, 10, 15, or 20 per cent—to meet the special needs of Western Australia, we shall arrive at a point which will so tend to discourage importation, both through the diminution of consumption and the unprofitableness of importation, as to make the proposal absolutely unworkable in the direction which we seek. I am not at all surprised, having these difficulties in my mind, that the Premier of Western Australia does not see his way clear to accept the proposition. It does seem fair that it should be Western Australia that should make up Western Australia's loss, and that the other colonies should not be asked to make up that loss. On the other hand, I think it is not a scheme that can be carried out unless some one can answer the objections I have raised, which appear to me to be fatal, attractive as the scheme may appear at first sight. I do not think any one would desire that a committee constituted as the Finance Committee is should bind all its members to agree to any majority report which it might bring up. It would be a distinct loss to the Convention if any man who happened to be a member of any committee was prevented
from placing his opinions before the Convention, simply because he
chanced to have been outvoted in the committee. Therefore, I do not
complain at all that the minority of the Finance Committee have seen fit on
various occasions since the committee's recommendations have been
placed before the Convention to represent their strongly divergent views. I
think they have helped the Convention in doing so. At the same time, the
majority of the committee do, I believe, adhere to the committee's
recommendations, and I expect to see, that in this respect, as it has done in
all others, the Convention will accept the recommendations of the Finance
Committee and embody them in the Bill. I have already stated the reasons
why I think, if that result follows in this particular case, we shall have
reason to be content with it.

Mr. LEAKE (Western Australia). -

My inclination has been, and still is, to support the recommendations of
the Finance Committee; nor have my opinions been changed by the
arguments which have been advanced in favour of the various amendments
that have been proposed. In fact, they appear to me to make confusion
worse confounded. In the consideration of this very difficult problem, I
must confess that I am influenced very largely by the result of the mature
deliberations of the selected men who have affirmed those conclusions, and
I am prepared to accept these recommendations as the best that can be
devised. They appear to me to have been conceived in generosity, and
should, therefore, be accepted with gratitude. The objections which I have
heard advanced against them appear to me rather sentimental and, so far as
I can understand the arguments of my right honorable friend (Sir John
Forrest), those objections can be met by a mere change of phraseology.
The accidental mention of the colony of Western Australia in these
proposals can be altered, and some general words can be used which will
give effect to the recommendations as conclusively as the words proposed.
It has been freely admitted in the Convention—and I gratefully acknowledge
the fact—that the position of Western Australia is exceptional, and that she
is entitled to ask for exceptional treatment. Certain advantages were
offered to her, her exceptional position being recognised, but as soon as
those advantages were offered, it was conceived by representatives of other
colonies that their position also was exceptional, and that those exceptional
advantages should be shared by others, thereby doing away with the
exceptional
colony which joins the Federation must lose something. It is therefore a question merely of proportion, and this Convention says:"If the loss to Western Australia is out of proportion to that of the other colonies we step forward and generously offer to repay you something." But for us to expect, as delegates from Western Australia, that we shall become compensated for our full loss is, I think, expecting more than we are entitled to. Moreover, it must be remembered that Western Australia's gain must be another colony's loss. I am not convinced that our loss will be so very great as is at the present moment anticipated. Our conditions are abnormal, but I am one of those who hope that those abnormal conditions will not obtain for very long. Again, as has been pointed out by more than one speaker, the tendency in Western Australia-and in this particular I am in agreement with the Right Hon. Sir John Forrest-is towards a reduction of our customs duties. In fact, we have been promised a reduction in our Tariff. The right honorable gentleman himself has told this Convention, as he has told our local Parliament, that it is his intention, at a very early date, to abolish some duties and to reduce others. One of the results of our somewhat high customs duties has, fortunately, been huge increases in our revenue, and I am happy to say that Western Australia is, I firmly believe, in a better position to join the Federation, or, at any rate, in as good a position t

Mr. DEAKIN. -

Hear, hear; she has a very large surplus.

Mr. LEAKE. -

We are possessed, in proportion, of a greater surplus revenue than the other colonies. I do not mention that in any vaunting spirit, but merely as an actual fact, and with the idea of advancing the interests of federation.

Sir JOHN FORREST. -

What about the effects of this Tariff?

Mr. LEAKE. -

If I differ from the right honorable gentleman in what I say, I wish to avoid considering our relative positions, or any possible reference to controversial local politics.

Sir JOHN FORREST. -

You are talking about the surplus revenue.

Mr. LEAKE. -

I think we may say that there has been a surplus revenue, and if members of the Convention will refer to the return which has been laid on the table, it will be seen that the colony of Western Australia has enjoyed credit balances for the last eight years, varying from £30,000 up to £500,000. I am right, I think, in saying that that surplus has for the last three or four
years averaged upwards of half-a-million. Therefore, we are in a position, I say, to anticipate and to meet the possible loss that will ensue by the adoption on our part of the Federation Bill. We should, if we lose anything, probably lose but little, and the little that we do lose I think we can fairly afford. My arguments, perhaps, would seem to go to the extent that we ought to ask for no concession at all from the Federation, and in that connexion I would remind honorable members that there has been no persistent endeavour from this bench to place too prominently before the Convention the peculiar and exceptional position of our colony. But I accept, as I said before, with all gratitude the generous offer which has been made, prompted no doubt by the strict federal spirit, and by that true spirit of compromise which we all anticipated would influence honorable members in the consideration of this question. I accept these proposals the more readily, because I am convinced that if the Bill is adopted as suggested by the Finance Committee, it will enable those delegates from Western Australia who are truly imbued with the idea that federation is a political necessity of our existence, to go back to our constituency and point out to our fellow colonists that we may fairly and justly join in a Federation with neighbours who are prompted by such generosity and such fair principles; and this would assist, I think, the passage of this measure in the colony of Western Australia. The matter is important in this regard, because if we do discuss it in our colony, we must be prepared to show to our colonists that neither are our finances crippled, nor is the possible development of our internal resources delayed by federation; and I do not think that the immediate financial loss which would accrue to our colony would be so great as not to be fully compensated by the advantages of federation, and the acceptance of the principles of intercolonial free-trade. In this particular I know that I do not express the views of my colleagues in our delegation, because the majority of them are protectionists, and perhaps, with one or two exceptions, there is very little tendency towards free-trade among them. But, as we all have to give and take, I appeal to them, and I will listen to any appeal they may make to me to modify my views in this particular direction. Although it has been said that we have no sources of revenue in Western Australia—that we do not export—I cannot be unmindful of one source of production which we possess, and which, I think, we may fairly claim will benefit under federation—that is our timber industry. If we have federation, although our ports will be open to intercolonial goods, it must be remembered that the ports of our neighbours will be open to our timber. I do not feel disposed to support any of the amendments which have been proposed, and my chief
objection to the proposal of the honorable member (Mr. Deakin) is this—that we are asked to accept federation on distinctly anti-federal lines. If we accept the proposed which he has made we must pile up duties upon duties, and possibly the second edition of duties, in order to be of any use to us for revenue purposes, will practically amount to prohibitive duties, and, therefore, I am not inclined to accept his amendment. Rather than that, I would see these Western Australian proposals wiped out altogether, and leave the question for the first five years entirely and solely to the Federal Parliament. But as there is no possibility of that line being followed, I have made up my mind, as at present advised, at any rate, to adopt the suggestion of the Finance Committee. As to the question of the Western Australian representatives voting upon these particular proposals, I must confess that I feel myself somewhat in a difficulty. At the first blush I was prepared to agree with my right honorable friend (Sir John Forrest), that the Western Australian delegation should not vote upon the proposal of the Finance Committee; but I should only refrain from voting if I thought that honorable members in this Convention would consider that our delegates were prompted in this matter by any policy of greed. If our votes might be considered to be cast as the result simply of true deliberation, then I should have no hesitation in voting; but if such a thing were possible as that any slur or taint should be cast upon us through our voting, I myself should certainly refrain from recording my vote.

Mr. SOLOMON. -
No one has suggested anything of the kind.

Mr. LEAKE. -
I do not think for a moment that there is any such suggestion. It is, perhaps, only my exceeding diffidence and modesty which prompts me to this expression of opinion. I certainly feel strongly on this question. I accept with pleasure, I accept with thanks and with gratitude, as I said before, the offer of the Finance Committee, and, unless some strong expression of opinion which I have not yet heard induces me to act otherwise, I shall certainly vote for their proposal. In the course of the debate, I was very pleased to note that some honorable members had referred to the exceptional position of Western Australia. And if Western Australia is in a position where she can make sacrifices, and does not want to make money out of her neighbours, the certainly does not require to go cap in hand to them to ask for financial assistance. If she is in that high financial position, then she may congratulate herself on the fact that so far above her neighbours does she stand that they must lean on her for assistance.
Mr. SYMON (South Australia). -

I think that the non-adjournment of this debate has been productive of very great gain, because we have now had an additional flood of light thrown on the position of Western Australia—light which, I fancy, will lead us still more strongly to the conclusion that Western Australia really has no claim whatever to exceptional treatment on the ground of any special loss.

As the last speaker has very clearly shown, it really amounts to this, that whatever we do give will be thankfully received, but it is a case of "To him that hath shall be given, and from them that have not"—like some of us in the eastern colonies—"shall be taken away, even that which they have." I feel that we have been dealing with this question upon an altogether mistaken basis, and I deeply regret that Sir John Forrest should have declared his intention of supporting the amendment proposed by Sir George Turner, as that amendment intensifies ten times over—at least four times over, according to the number of colonies—the objections which many of us entertain to the recommendations of the Finance Committee. I can quite appreciate the view which my honorable friend has put, and the considerations that have influenced him in taking up that attitude. He says it is from considerations of delicacy. He wishes to avoid the brand, as Mr. Douglas said, of putting Western Australia in the Constitution as a colony receiving some special favour from the other colonies. Now, I ask Sir John Forrest this—If he feels a delicacy in supporting the proposals of the Finance Committee, ought he not to have fourfold delicacy in supporting the proposal of Sir George Turner, which is to give a sum—a douceur, if I may so express it—to Western Australia, but to unite in the receipt of the gift three other colonies?

Sir JOHN FORREST. -

I deny that absolutely.

Mr. SYMON. -

Does not Sir George Turner's proposal give that to Western Australia?

Sir JOHN FORREST. -

No, it only gives Western Australia security; that is all.

Mr. SYMON. -

The right honorable member is not addressing himself to the point I am putting. Does it not give exactly the same benefit to Western Australia as she would derive from the adoption of the Finance Committee's clause?

Sir JOHN FORREST. -

Certainly not.

Mr. SYMON. -

In what way.

Sir JOHN FORREST. -
I will tell you.

Mr. SYMON. -

Presently. I would like to hear Sir John Forrest presently explain how that is. As Mr. Henry says, it will give Western Australia a great deal more. Instead of being an average contribution, it will be, to put it roughly, a contribution as to an actual, not a relative, shortage.

Sir JOHN FORREST. -

But only in the event of their being short.

Mr. SYMON. -

When Sir John Forrest gets up, I want him to explain in what respect does the loss to the people of Western Australia, which this Convention is ready to provide that the other states should make up-

Sir JOHN FORREST. -

I have asked particular questions a good many times, but you never answered them.

Mr. PEACOCK. -

Mr. Symon will charge you very heavily for answering them.

Mr. SYMON. -

Because my answers are of value when they are given that way.

But I want Sir John Forrest to explain where this loss to Western Australia comes in. We have listened to Mr. Barton; we have had as exhaustive and careful an exposition of the subject from Mr. Isaacs as any one could wish to have. It is clear to demonstration that, if not all, at any rate a large proportion, of this so-called loss of Western Australia will remain in the pockets of the taxpayers of that colony. If that is the case, as undoubtedly it is, the whole point is that there will be some little trouble to the Western Australian Treasury. There will be a loss of revenue, a Treasury loss, to be made up, but the whole point is that the Treasurer of the colony of Western Australia will have perhaps a little more trouble and difficulty in arranging his financial position than he would have if he were able to look to the Federal Parliament for a contribution in cash to provide for his difficulties. The whole thing is that by this uniform Tariff you are providing for the compulsory remission of Customs taxation from Western Australia, and you want the other colonies to make it up. Now, just look at the absurdity of the position—you are remitting taxation in four of the colonies, and you are increasing taxation in the fifth colony. New South Wales is to have her taxation increased, while taxation in the other colonies is to be remitted; and, because you remit taxation in those other colonies, you are to charge it against the colony that will be over-taxed. To me, it
seems to be the very wildest injustice that such a state of things should prevail, and I do not wonder at Sir John Forrest trying to avoid—and in that respect I quite sympathize with him—the appearance of the name of Western Australia for all time in this Constitution as associated with a transaction of that kind. I appeal to him, as representing a colony of great strength and boundless resources, to say that he does not want this assistance at all, that he is perfectly willing to rest on his own estimate of the future of Western Australia, and that he believes that this suggested loss will never result. It has been said that, if there are likely to be no difficulties on the part of the state Treasury of Western Australia, no harm can accrue from putting this proposal in the Bill, because there will be no deficiency to make up. But the argument is all the other way. If there will be no deficiency to make up, we do not want any provision of the kind, and, therefore, why put it in the Constitution? If there is some trifling, some small deficiency in regard to the resources of the colony, I am quite sure that no one has greater confidence in the elasticity of his own resources and revenue-producing country than Sir John Forrest himself, and I feel sure that when we come to deal with this matter of the special provision of the Finance Committee, Sir John Forrest will rather prefer not to have this sort of contribution made at all, but that he will rest content with the benefit his people will derive from the enforced remission of taxation, and that he will be quite prepared, when the time comes, to make up any deficiency by other ways and means in Western Australia. Now, sir, the position with regard to the surplus is a matter that I do not enter into, but if the facts are as stated, then the only effect of any possible remission of taxation under the uniform Tariff will be that the surplus will be to that extent diminished. There will be no difficulty in the Treasury then. The whole thing is a Treasury difficulty. It is not a difficulty to the people; it is not a loss to the people. It is nothing that comes out of their pockets which ought to be recouped, and, therefore, so far as it is merely a Treasury and financial difficulty, the surplus on the one side and the remission of taxation on the other will partially, or perhaps wholly, balance each other. I am sure that my right honorable friend, as he has had surpluses in the past, expects to have them in the future, and that, with the abounding prosperity of his colony, he has no fear as to what the

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result will be. I can also understand, with regard to my honorable friend's (Mr. Deakin's) amendment, that there is another objections and that is: That if it is made compulsory—and I do not remember what the exact words of it are—it enforces upon the Treasurer of Western Australia a particular mode of making up the losses caused by the remission of customs duties. If it is
permissive it amounts to nothing, because it merely indicates a way by which, with the consent of the Commonwealth, this remission of taxation may be made up. I can quite understand that my right honorable friend (Sir John Forrest) would not be desirous either of having a compulsory method inserted in the Constitution, or of having a sort of direction given to him, as if he did not know his own business, with regard to the way in which he should find the money. I appeal to my right honorable friend to withdraw his support from the amendment of Sir George Turner. It does not get rid of the delicacy of feeling to which he has referred. Let us dispose of that, and treat this suggested scheme of the Finance Committee on its merits. I regard it, to use a word that has been employed before, as being indefensible. I feel most strongly that we shall be making up no loss, and that if this money is handed over it will simply mean presenting a gratuity to Western Australia. Still, if the honorable members from Western Australia desire it, I will vote for it being placed in the Bill.

Mr. DEAKIN (Victoria). -

I rise once more, most reluctantly, in consequence of the direct appeal made by the Hon. Mr. Holder, to whose opinion we all pay so much respect, and the criticism which he has offered upon a proposal that is not yet before the committee, but which has, during the course of this debate, received so luminous an exposition at the hands of the leader of the Convention. In reply to Mr. Holder, let me say that the whole of the weight of his argument, as against the amendment now before the committee in an indirect manner, lies in the fact that he assumes that the uniform Tariff to be brought into existence will necessarily be a Tariff of high duties. His argument implies a Tariff of high duties upon revenue-producing articles. I think he will admit on further consideration that, whatever may be the nature of the uniform Tariff, which none of us can exactly foresee, the implication that it will practically exhaust the sources of revenue in the colonies, by imposing as high duties as are possible without impairing the revenue on all commodities, is not one that is supported by his own reading of the necessities of the Commonwealth, his estimate of the amount of the Tariff likely to be levied, or by the forecast he has given us of the probable policy then to be pursued by the Treasurer of the Commonwealth. It is an extreme assumption that, be the Federal Tariff as protectionist as you please, it would not only be of such a nature as to satisfy the advocates of local production, but would actually exhaust in one act-to use a common phrase-the revenue-producing capacity of the Commonwealth. That, to me, is an assumption so extreme that it would need very powerful evidence indeed before I could accept it. The honorable member, as he usually does, has laid his finger on the weak point of the amendment as originally
proposed, and the criticisms offered by the representatives of Western Australia, whom we all desire to meet as far as possible, have emphasized the same weakness, that is, in the power given to Western Australia, with the consent of the Commonwealth, to increase duties only upon goods which are not the produce of the other colonies. That is a desirable end to attain, and it is an end that we all hope to attain at the earliest possible moment. But the amendment might be acceptable to the representatives of Western Australia if a further addition were made to it, enabling Western Australia to retain her present duties on intercolonial produce, subject to a reduction in each year by one-fifth of the amount of the duties, so that at the termination of the five years, which we trust will see the end of the vexatious system of bookkeeping, we shall also see the end of the Western Australian Tariff, so far as it affects goods the produce of the other colonies. By these means Western Australia would still retain, with the reduction of one-fifth each year, the large revenue she now derives, and the certainly larger revenue she would derive during the course of the five years. The reduction to her would be very gradual; the dislocation of her finances would be prevented, and yet we would secure by steps that complete intercolonial free-trade without which federation could never be a reality.

Mr. HIGGINS. -
No extra staff would be required.

Mr. BARTON. -
The Commonwealth officers would make the collections.

Mr. DEAKIN. -
Yes, and the duties would be paid to Western Australia. I do not desire to discuss the amendment at length, because it is not before the committee, and feel that it would be unfair to interpose it in the discussion on Sir George Turner's amendment. If that proposal should fail, it will be my duty to submit the amendment altered so as to embrace a continuance of the duty on intercolonial products in Western Australia, reduced by a sliding scale until completely abolished at the end of the five years.

Mr. SYMON. -
You make that as all alternative to the extra-colonial duties?

Mr. DEAKIN. -
In addition to the power of imposing extra duties on goods which are the produce of countries beyond Australia, there should be a power to retain the duties on intercolonial products for five years, reducing them by one-fifth in each year, so that at the end of five fears they would entirely disappear.
Mr. ISAACS (Victoria). -

I should be inclined to vote for the proviso that it is proposed should be added to Sir George Turner's amendment. I am, however, against the scheme to which it is sought to attach the proviso. But, assuming, as we must for the purpose of this particular vote, that the scheme may or may not be accepted eventually, I believe that the proviso will be an improvement to it, and for this reason: As the scheme at present stands, it is open to the same objection as those submitted by the Finance Committee and by the Right Hon. Sir John Forrest, namely, that the measure of net loss is altogether wrong. It is an artificial loss that is created; it is a balance obtained in a certain way that is deemed to be a net loss.

Mr. SYMON. -

It is a paper net loss.

Mr. ISAACS. -

Yes, and that paper net loss may, under conceivable circumstances, as was admitted yesterday evening by my honorable friend (Mr. Holder), be, in effect, a net gain. And, therefore, inasmuch as what may, in fact, be a net gain, is to be deemed a net loss, it seems to me to be a wrong proposition and a wrong measure altogether. This provision comes in to say that whenever this artificial net loss shall, in fact, be a net gain over the amount actually received by the particular state in the year preceding the imposition of uniform customs duties, no money whatever shall be paid to the particular state. That, so far as it goes, seems to me rather an improvement of the schemes and for that reason I shall feel bound to vote for the proviso. The proviso, however, is couched in negative terms, and may seriously conflict with the preceding clause, because it says-"No payment shall be made to any state in which the revenue received from Customs and Excise after the imposition of uniform duties exceeds the amount received by that state before such imposition." if this particular form of words be retained it may seriously affect the operation of the preceding clause as to the surplus. While I shall vote for the proviso, I shall be prepared to vote against the new clause. On any ground the measure of the net loss proposed to be laid down-the standard proposed to be adopted-is wrong. As I understand, the states are not asking, and certainly I do not think they ought to ask, to be guaranteed their possible profits and possible gain. And that is what all the schemes do. The schemes say in effect-"During these five years we shall take two constant factors. We shall take the Tariff that the state had previously to the imposition of the uniform duties, and we shall take the uniform Tariff; and the variable quantity-namely, the goods-imported in each of these separate five years..."
shall be calculated as on each of these bases. And we shall take one from the other, and, if in a particular case it is found that the amount of money actually received under the uniform Tariff is less than would hypothetically have been received if the state Tariff were still in force, the state shall regard that as a not loss." Now, this is not a net loss. It is not a loss in the sense in which the states are asking for a guarantee or security against a diminution of their present revenue. The basis, I think, is wrong altogether, and this observation applies to all these proposals. Then we come to the proposal of Mr. Deakin. But before we consider that or any proposal, I think that all we ought to do—the position is difficult enough—is to see that each state does obtain some sort of guarantee on the face of the Constitution that it will not suffer any diminution of its revenue from what it received immediately before the imposition of the customs duties.

Mr. FRASER. -

We tried that and lost it.

Mr. ISAACS. -

It is not lost altogether.

Mr. FRASER. -

Well, try it again.

Mr. ISAACS. -

We did not carry it in one clause, but, as pointed out by Mr. Dobson, it may well be made the subject of a subsequent clause. The position then is this: Does the proposal of Mr. Deakin—which is certainly deserving of the very best consideration, because it goes a long way, I admit, in the endeavour to solve the question—does the proposal effectually meet the case? In the first place, I point out that the proposal is to give Western Australia what is really a guarantee against loss in that state.

Mr. FRASER. -

She pays the money herself.

Mr. ISAACS. -

If we are going to give Western Australia a guarantee against the whole of her loss—not the extra loss remember—but against the whole of her loss, is there any reason why we should not give a similar guarantee to every state?

Mr. SYMON. -

No reason whatever.

Mr. ISAACS. -

We are going to give Western Australia by this scheme a complete guarantee against the whole of her loss—not the extra loss—that she sustains above other states. Now, I think every state could fairly ask for the same.

Mr. SYMON. -

You might just as well put in the Constitution a guarantee as to what the
Tariff shall be.

Mr. FRASER. -

This is lawyers' splitting. There is no common sense in that.

Mr. ISAACS. -

The next position to consider is that if this guarantee is given to Western Australia, not only is it unfair to the other states, but it amounts to an absolute determination not to give any guarantee whatever to any other state. Again, it will influence the other states adversely in other directions. First of all, it considerably vitiates the bookkeeping system. The object of the bookkeeping, or one great object, is to try and get data for the Federal Parliament, on which it can act after the expiration of the five years. How can you tell what the imports of Western Australia will be under a uniform Tariff if she has no uniform Tariff during that period? To that extent, therefore, the bookkeeping will be vitiated.

Mr. FRASER. -

It is only 21/2 per cent., 5 per cent., or 10 per cent. on the other Tariffs, and it is easily reckoned.

Mr. ISAACS. -

I have no doubt my honorable friend sees the applicability. He will pardon me if I do not. The next objection to the proposal is that it seriously affects the Tariff from the outset, because Western Australia, knowing that it has the right to come and bargain with the Commonwealth as to certain articles on which it will seek an extra Tariff, will have a very strong voice in determining what the nature of the articles will be on which the Commonwealth Tariff is to be laid. There will, therefore, be an inducement to urge arguments in respect of the formation of the common Tariff in the first place, not with a view so much to the general welfare, as with a view to get protection under this particular clause. And then, I point out, that it will vitiate the whole Commonwealth returns and imports in another way. It will be extremely difficult, especially if the clause with regard to the rateable reduction be added, in many cases, such as those in connexion with boots, clothes, hats, and so on, to distinguish with any degree of accuracy between colonial imports and foreign manufactures. We shall have a large amount of difficulty as to the rate at which goods shall be taxed. I would also like to point out that if you are going to have the present Tariff of Western Australia diminishing by 20 per cent. each year, as regards intercolonial products, you must necessarily make your Tariff as against the world higher than those rates otherwise you would have a low Tariff as against Queensland, if she does not come into the
Commonwealth, and a high Tariff against a state which was a member of the Commonwealth. That would be unfair, and would be really offering a premium to Queensland or any other state to stand out of the Federation. For these reasons it seems to be very difficult indeed to adopt the system proposed. I do not pretend to have exhausted the objections, but these I have mentioned seem to be on the surface. They may be answered; and it may be shown that they have no real validity. To me they appear to be real practical difficulties which stare us in the face. I admit this scheme is not open to some of the objections to which the other schemes are open.

Mr. HIGGINS. -
You can't have ideal justice. This is the nearest thing we can get.

Mr. ISAACS. -
I was going to point out how I think we might approach the matter; the object being, as I conceive it, to say to each state-"We will ask you to come into the Federation, and in order to secure your state Treasurers, we will guarantee to each one of you that you will not receive less during the first few years of the uniform customs duties than you were receiving previously to the imposition of those duties." Therefore, it seems to me that, without attempting, as Mr. Higgins says, the impossibility of attaining to ideal justice, what we can do is this-We can say that during each of the first five years of the uniform Tariff the Treasurer of the Commonwealth shall keep an account of all of the actual duties collected, or taken to be collected, in each year in respect of each state; put that amount down, and calculate what is a fair annual average receipt, or what really represents the average annual receipt, from such duties by the states, for a period which may be considered fair-it may be three, or four or five years-previous to the imposition of uniform duties; and that it shall then be stated that the average annual amount is the amount up to which the states shall be guaranteed, so that, if the actual receipts for any of those five years shall be found to be less than the average annual amount previously, the difference shall be made up to that state by the Commonwealth.

Mr. LYNE. -
That was the first proposal.

Mr. ISAACS. -
It has not been made during this session.

Mr. LYNE. -
It was made in Adelaide.

Mr. ISAACS. -
I have no doubt that the scheme might be made to meet the case of all the
states.
Mr. HENRY. -

The same difficulty applies to this as applied to Sir George Turner's proposal.
Mr. ISAACS. -

No, because under Sir George Turner's proposal you have to guarantee prospective gains as well as prospective losses. We either must accept some scheme of this sort or else say that we are not going to guarantee the states at all. Is it contemplated that the states shall not have the loss made up to them! I think it was insisted upon and put pointedly by Mr. Holder that the necessities of the states would compel the Federal Parliament to make up the amount of their losses. If that is to be the case, it seems to me that that should be put in so many words on the face of the Constitution, and the proposal I have made would, it seems to me, put it in a fair and proper way on the face of the Constitution. We might, for instance, take the case of Western Australia for three or four years, and constitute the average upon that period. It might be that upon that average Western Australia would have received a million pounds a year from her Customs, and that she would have to be guaranteed a million pounds a year by the Federal Parliament for each of the five years. Then we should know exactly where we were standing, and there would be no temptation to doctor the Tariff to meet the particular case of Western Australia. We should have intercolonial free-trade from the start, and each colony would feel safe in going into the Federation. I feel, of course, that New South Wales may say that there is a difficulty in her case. But the difficulty in regard to Western Australia is one that exists, and we must face it. We must either say that the amount lost is not to be guaranteed to the states, or that the amount is to be paid by the Commonwealth Treasurer. We may be sure that the Commonwealth Treasurer and the Commonwealth Parliament will be able to adjust this matter in some way; and because we cannot say absolutely what they may do, I do not think we should shrink from guaranteeing to the states this possible loss, which guarantee I am sure will be of considerable effect in commending the Commonwealth Bill to the favorable consideration of the people of the Commonwealth. I have drafted a clause which I think would meet the case, and will read it to the committee. I do not say that I am satisfied with the wording of the draft, but I put it in this form because other proposals before the committee are similarly drafted, and I want to make my clause easily possible of comparison with the others. It is as follows:-

For each of the first five years after uniform duties of customs have been imposed the Commonwealth shall keep an account showing-
I. The amount collected and taken to have been collected in that state from duties of customs and of excise.

II. The net average annual amount collected in each state from duties of customs and of excise during the three years immediately before the imposition of uniform duties.

The former amount, if less than the latter amount, shall be deducted therefrom, and the balance shall be taken to be the net loss of the state for that year by reason of the imposition of uniform duties of customs and of excise, and by reason of the operation of free trade and intercourse throughout the Commonwealth.

The Commonwealth shall pay to each state the amount of its net loss.

I only wish to say, with regard to the period "three years," that that is only put in as a tentative proposal, and as a basis for discussion.

Mr. CARRUTHERS (New South Wales). -

I have hesitated to address the committee on the fiscal question, because I know I am one of those who hold opinions which do not command the support of anything but a hopeless minority of this Convention. I have never from the outset believed that the financial difficulty has been in any way solved by any proposal submitted to the Convention. I feel that the views which I advocate are not likely to receive the support of the majority of the Convention, but the discussion which has gone on for the past week has proved to me that the difficulties are so great as to force a considerable section to look around them, and even to come nearer to the views which I hold.

The CHAIRMAN. -

I would point out to the honorable member that we are only discussing the question of special treatment to Western Australia.

Mr. CARRUTHERS. -

I am well aware of that, Sir Richard; I have had a long parliamentary experience, and I know pretty well how to keep to the subject. My remarks will be quite pertinent to the matter, as it has been spoken to by those who have addressed the committee. In listening to the speeches, I have found that there has been a great deal of reiteration in them.

Mr. FRASER. -

Any amount.

Mr. CARRUTHERS. -

We hear the same points urged time after time, over and over again, and yet we seem to come no nearer to a solution of the difficulty. The speech of Mr. Isaacs just now is but a replica of other speeches made during this debate, but it seems to me that it does not show a way out of the difficulty
which confronts us. We are all willing to give guarantees to the states if we can only see where honestly the money is to come from to pay the money guaranteed. I have not yet heard any honorable member favouring the guarantee proposal who has made any practical suggestion except Sir John Forrest. He is the only one who has honestly proposed or suggested any fund from which the amount guaranteed may be met but I do not think that that right honorable gentleman, on an examination of his own proposal, will believe that it is one which could be worked out. His proposal is that a fund should be raised by setting apart the territory upon which the federal capital is to be situated, and selling the land or leasing it, and from the fund so realized paying the amount of the guarantees to the states. But the right honorable gentleman will see for himself that a proposal of that character is one that will not stand investigation. Other proposals have been hinted at in the nature of borrowing the money, but I do not think that the Convention would agree to have embodied in the Constitution any proposal of the character that money should be borrowed from the very outset of the Federation for the purpose of meeting an obligation of this character. So that now we come back to the real point, which is that one section of the taxpayers must find the money to recoup another section of taxpayers. We must be prepared to accept either the proposal of the Premier of Victoria or the proposal which the Premier of Western Australia has agreed to; if there is a deficiency to be met in regard to one colony we must look for some means of meeting that deficiency, and it must come from the surplus of any colony having a surplus. How is the revenue to be raised? By taxation. If there is a deficiency it will be because one section in the Commonwealth is under-taxed, and if there is a surplus in any particular colony it will be because another section is over-taxed. Did any man ever hear of such a proposal as that the people who are over-taxed are to bear the burdens of the people who are under-taxed? Because the Western Australians under the new Tariff will not raise as much revenue as they now raise by their Customs Tariff, their people will not be paying the same amount of taxation as they are paying now. Therefore, under the new Tariff the Western Australians will be under-taxed as compared with the people of New South Wales. And it is proposed, because the people of Western Australia will be under-taxed, that the people in New South Wales—or, for the matter of that, the people in any of the other colonies who are over-taxed—are to subsidize those Western Australians, who keep in their pockets the money which would otherwise go in paying legitimate taxation. Surely the Western Australians

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will be all the richer by not having this amount of taxation taken out of
their pockets.

**Sir JOHN FORREST.** -

Better not have any; then we shall be rich.

**Mr. CARRUTHERS.** -

I think that, as a matter of political economy, the right honorable member will admit that if he remits £300,000 worth of customs duties his people may fairly expect to have other taxation to that amount substituted. If, upon the establishment of federation, the people of Western Australia have to pay £300,000 less in customs duties than the amount now raised, surely they cannot complain if they have to submit to some other method of taxation. The proposal which presents itself to my mind as the best for dealing with this difficulty is that which emanated from, I think, Sir Samuel Griffith, who suggested that any colony which was likely to have a deficit should be allowed to impose excess duties upon seaborne goods. I would have no objection to the insertion of a provision to that effect with regard to Western Australia. I would be willing to allow that colony to impose excess duties for a certain period—say, five years—until the equilibrium of the finances was obtained. I have, however, never agreed with the financial schemes which have been submitted to the Convention, because I am of opinion that unless there is some fund which can be e

The committee divided upon the question that the words of Sir John Forrest's amendment proposed to be inserted be so inserted—

Ayes ... ... ... ... 19
Noes ... ... ... ... 25
Majority against the amendment 6

**AYES.**
- Berry, Sir G. Hassell, A.Y.
- Braddon, Sir E.N.C. Higgins, H.B.
- Briggs, H. Isaacs, I.A.
- Clarke, M.J. Lee Steere, Sir J.G.
- Crowder, F.T. Peacock, A.J.
- Deakin, A. Quick, Dr. J.
- Fysh, Sir P.0. Trenwith, W.A.
- Glynn, P.M. Turner, Sir G.
- Grant, C.H. Teller.
- Hackett, J.W. Forrest, Sir J.

**NOES.**
- Abbott, Sir J.P. Leake, G.
- Barton, E. Lewis, N.E.
- Brown, N.J. Lyne, W.J.
- Carruthers, J.H. McMillan, W.
Cockburn, Dr. J.A. Moore, W.
Dobson, H. O'Connor, R.E.
Douglas, A. Reid, G.H.
Downer, Sir J.W. Solomon, V.L.
Fraser, S. Symon, J.H.
Gordon, J.H. Venn, H.W.
Holder, F.W. Walker, J.T.
Howe, J.H. Teller.
Kingston, C.C. Henry, J.

Question so resolved in the negative.

Sir GEORGE TURNER (Victoria). -
After the division which has just been taken I see that it is hopeless to proceed with my amendment, and I therefore ask leave to withdraw it.

The amendment was, by leave, withdrawn.

Mr. DEAKIN (Victoria). -
I now propose to move the amendment already foreshadowed. I will not endeavour to attach the words which I propose to move to the words of this clause which we have already passed. But, in the event of my proposition being accepted, will ask permission to recast the words so as to make it harmonize with the rest of the clause. It is practically a substantive proposal. I beg to move-

To compensate the Treasury of the state of Western Australia for any diminution of revenue which might be caused by the imposition of uniform duties of customs, or by the operation of free trade and intercourse among the several states, the Commonwealth may, on the imposition of such uniform duties, and for five years afterwards, impose and collect on the articles, and to the extent agreed on between the Commonwealth and that state, further duties of customs in respect of goods originally imported from beyond the limits of the Commonwealth, and entering that state either directly or from another state.

To put it simply, that paragraph, which may be put either with what follows or singly, as the Convention prefers, gives to Western Australia, with the consent of the Commonwealth, power to impose additional duties on articles, which are the subject of duties in the Commonwealth, but any extra duty which is imposed on those articles will be paid to the state of Western Australia as compensation for any losses which it might incur by entering the Federation. The remainder of the clause deals with intercolonial duties, and is as follows:-

And notwithstanding the provisions as to free trade and intercourse
between the states, the customs duties in the said state as existing at the
time of the imposition of uniform duties upon goods not originally
imported from beyond the limits of the Commonwealth shall be collected
five years with a deduction of 20 per cent. per annum.; (that is to say), with
a deduction of 20 per cent, for the second year, 40 per cent, for the third
year, 60 per cent, for the fourth year, 80 per cent. for the fifth year, and at
the end of the fifth year customs duties on all such goods shall cease and
determine.

Sir JOHN FORREST. -

Do you mean that that shall apply to foreign goods?

Mr. DEAKIN. -

No, intercolonial goods. On foreign goods the proposition is that if
Western Australia desires to impose additional duties on foreign goods
over and above those imposed by the Commonwealth, such duties may be
imposed, and if so they will be solely for the benefit of Western Australia.
With regard to intercolonial duties, the proposition is that the existing duty
shall remain, but shall be decreased 20 per cent. per annum. after the first
year, so that in five years they will disappear altogether.

An HONORABLE MEMBER-Is that an alternative?

Mr. DEAKIN. -

No, it is supplementary. This offers a means by which Western Australia
can assure itself, with the consent of the Commonwealth, that her finances
will not suffer by a uniform Tariff.

Mr. SOLOMON. -

But it will kill intercolonial free-trade.

Mr. DEAKIN. -

It will not. The honorable member might as well say that the
bookkeeping system, of which some honorable members are ardent
advocates, will kill free-trade for five years. The bookkeeping system will
doubtless seriously hamper intercolonial free-trade. For five years, during
the transition period of the Commonwealth, this scheme will in some
degree interfere with intercolonial free-trade, but those who would refuse
what they desire because they cannot obtain it at a blow—because it is
offered in five stages—are not looking to the life of the nation, and to all that
must accrue during its slow national growth.

Mr. DOBSON. -

Do you propose that Western Australia shall make up the loss
partly by duties on intercolonial goods and partly by duties on foreign
goods?

Mr. DEAKIN. -
I propose that, if Western Australia so desires, with the consent of the Commonwealth, she can do that; but in no case shall she levy higher duties on intercolonial goods than exist at the time of the establishment of the uniform Tariff, and they are to be diminished by one-fifth each year.

Mr. DOBSON. -

The first part is optional.

Mr. DEAKIN. -

Yes, but the second part is absolute. If Western Australia does not desire to accept the first part of the proposal she has to decline it. But the second part of the clause as regards intercolonial goods would be absolute. The first proposal, as Mr. Symon put it, may be said to be permissive; it is subject to the desire of Western Australia.

Mr. SYMON. -

It is optional.

Mr. DEAKIN. -

Yes; the second part is not optional, because Western Australia, without further authority, will have the right to continue to levy duties on intercolonial goods.

Mr. SYMON. -

It is optional for Western Australia.

Mr. DEAKIN. -

Yes, if Western Australia chooses to refuse it, it will be optional.

Mr. SYMON. -

It only operates as a gentle hint to the Treasurer of Western Australia as to what he ought to do.

Mr. DEAKIN. -

No, as to what be may do, and doubtless he will do it. I do not wish to detain the Convention, as this proposal has been discussed by the leader and one or two honorable members, and trust that it will meet with general acceptance. The alternative is that unless we accept this scheme, we are proposing to make a levy on states which are likely to incur a loss in the commencement of the Federation, for the purpose of handing the money over to another state which, according to the testimony of its own representatives, enjoys a large surplus. We continue to them the large surplus they at present enjoy by increasing our own deficit.

Mr. BARTON (New South Wales). -

I would like to make a suggestion, and that is that, as the amendment of Mr. Deakin consists of two paragraphs, they be put seriatim. That course of procedure would not deprive any honorable member of his rights. There are some of us who may vote for the first portion of the amendment—I think several honorable members think of voting for the first portion, but they
have not considered the second portion of it sufficiently to have made up their minds on it, and it is not yet in print. I, for one, have not. As at present advised, unless convinced by some other argument, I shall vote for the first paragraph, but I should not like to be deprived of voting for the second paragraph afterwards, if, on full consideration of the matter, I deem it my duty to do so, but I should like an opportunity of considering the second paragraph, and if any amendment is proposed to leave out one part of this suggestion, it will have a more limiting effect on honorable members in their action than if the paragraphs are put seriatim. Supposing, for instance, the first paragraph is carried, and the second is rejected, some honorable members would not like the amendment in that shape to be put in the Bill.

Mr. ISAACS. -

We do not want the first paragraph without the second.

Mr. BARTON. -

But put it the other way. Some honorable members think that another addition might be made to this amendment, which might then be acceptable all round. There would be a better opportunity of doing that if you took the paragraphs seriatim. I always find that honorable members are freer when matters which involve substantive proposals are put seriatim.

Sir GEORGE TURNER (Victoria). -

Supposing, Mr. Chairman, you put the amendment in paragraphs, and the first paragraph is carried, and the second

rejected, have we no opportunity of voting again on the question that the first paragraph be added to

The CHAIRMAN. -

Oh, yes. I will point out that the present question is that the words which Mr. Deakin has proposed be inserted in the clause. If an amendment is moved on this amendment, and is rejected or accepted, then I shall put the question that what is left be inserted in the clause, so that any honorable member will have an opportunity of voting for Mr. Deakin's amendment as a whole or for part of it, if part is carried.

Sir GEORGE TURNER. -

Yes, if you put it in the way suggested, namely, if you put the amendment as a whole, leaving any honorable member to move the omission of any part of the proposal that he thinks fit, but if you put it paragraph by paragraph, and we agree, say to the first paragraph, that stands part of the Bill.

The CHAIRMAN. -

No; there is another stage, when I put the question that the whole amendment, or whatever is left, in case it is amended, stand part of the
Mr. BARTON. -

You, Mr. Chairman, will put each paragraph separately, and the question will be whether that paragraph stand part of the amendment, and whatever is kept, the question will then be whether that part be inserted in the Bill?

The CHAIRMAN. -

Yes.

Sir JOHN FORREST (Western Australia). -

I am sure that I feel very much obliged to Mr. Deakin-and in saying so I echo the views of my colleagues from Western Australia-for the desire he has to give some consideration to the colony we represent, but I may say at once that the views expressed in the amendment do not command themselves to me. I see no advantage in giving the proposed power to tax foreign goods when it will be impossible to exercise that power. I have not the slightest doubt that the Commonwealth will tax foreign goods sufficiently high and that putting a provision in this Bill that Western Australia can tax them still higher is giving us a concession that we will never be able to exercise.

Mr. HOWE. -

That is common sense.

Sir JOHN FORREST. -

The Commonwealth will be, after all, the arbiters of the matter, for they will have the power, not the state. At the request of the state the Commonwealth may do this thing, but is it likely that the Commonwealth will do such a thing, or that the people of our colony will desire to be taxed on foreign goods only to a larger extent than any other part of Australia? To my mind, the whole thing is unworkable. That would be the result. Now, I should like to dispel an idea which seems to have got abroad, and is grasped at by some honorable members, that Western Australia enjoys an immense surplus of revenue. All I can say, after many years' experience as Treasurer of that colony, is that although our revenue has expanded in a marvellous way, still the demands for expenditure have expanded in a yet larger way, and there is more difficulty now, with a revenue of nearly £3,000,000 a year, in meeting the demands of the people, than there was seven years ago when the revenue was only £500,000. So that I hope no one will run away with the idea that we have more money in Western Australia than we know what to do with. Although our revenue is great, our demands are even greater still. I do not much appreciate the latter portion of this amendment either, providing a sliding scale.

Sir GEORGE TURNER. -

That helps you a good deal.
Sir JOHN FORREST. -

I think it would be a cumbrous method, and not likely to find acceptance in our own colony. The only plan—the simple plan suggested by Sir George Turner—has been rejected, and this sort of half-and-half thing, which means nothing, it is desired we should put in its place. It has been asserted by many honorable members who will, no doubt, vote for this amendment, that Western Australia has no claim—that she has not made out any case for special consideration.

Now, why don't they stick to their colours? We do not, as beggars, ask for any concession, we only ask for what is right. I want honorable members to take that point of view. If they think Western Australia is entitled to nothing, why not vote to leave Western Australia in the same position as any other colony? For my own part—I have not consulted my colleagues on the matter—I do not give any adherence whatever to the proposal which has been so kindly made by my honorable friend (Mr. Deakin).

Sir EDWARD BRADDON. -

It is in the interests of your colony.

Mr. SYMON (South Australia). -

I beg to move—

That the word "shall" in the latter part of the amendment be omitted, with a view to the insertion of the word "may."

I do not see why Western Australia should be compelled to adopt a sliding scale system if she has no desire to do so.

Mr. REID (New South Wales). -

It seems to me that it is idle to discuss a proposition which does not commend itself to the colony whose special case we are considering.

Mr. HIGGINS (Victoria). -

I should not have spoken but that Mr. Deakin, who has had to leave the chamber, has put the amendment in my charge. I sincerely hope that the committee will not dispose of it in any summary way. I can quite understand the Right Hon. Sir John Forrest, after being defeated on proposals which he preferred, feeling disinclined at present to accept any other suggestion but I think we may appeal to him, as so much turns on his veto in this matter, to consider whether the main idea of this suggested clause will not answer his purpose. If, as has been put by the Premier of New South Wales, it all depends on what Sir John Forrest will take or will not take, we may as well throw aside all idea of coming to any agreement which will be acceptable unless we go back to the scheme that has been
rejected.

Mr. TRENWITH. -

Or leave the matter to Sir John Forrest.

Mr. HIGGINS. -

I do, however, think that it is owing to the natural fatigue caused by a number of amendments being sprung upon him that the right honorable gentleman is unable to accept what appears to a good many onlookers to be really the only solution of this problem. After all, what is the problem? We have used the word "loss," and that has misled us. There is no loss. It is simply a dislocation of the finances for the time being which causes an inconvenience to the Treasurer of Western Australia. How does that dislocation of the finances arise? It arises simply from the fact that one-third or more of his revenue comes from duties levied on the products of the other colonies. Surely, if that is the reason of the dislocation, the proper thing to do is to mitigate that dislocation by a gradual sliding scale of reductions. What more common-sense proposal could be made than that? I feel strongly in favour of the second part of Mr. Deakin's proposal. Sir John Forrest has shown the weakness of the first part of it, with regard to the goods which are the produce of countries outside the Commonwealth, and I admit that it gives very little relief. But this proposal is divided into two parts. One part has been prepared by the Drafting Committee and not by Mr. Deakin, and is to the effect that, so far as regards goods originally produced outside the Commonwealth, Western Australia may, with the consent of the Commonwealth, put on extra duties. Sir John Forrest has pointed out that it is very unlikely, having regard to the feeling in favour of a reduction of duties in Western Australia, that more could be got by that means. The main dislocation would be caused by Western Australia not being able to get a revenue from oats, wheat, potatoes, and other produce imported from the other colonies. That is the main dislocation,

and to avoid it or to make it gradual is the essence of this amendment. We do not want to have a violent dislocation of the finances of Western Australia, and there would be a violent dislocation by introducing intercolonial free-trade suddenly. Let us do that gradually, so far as Western Australia is concerned. This would only be a matter of five years, and not one new officer would be required for the staff.

Sir JOHN FORREST. -

There would be a change of, Tariff every year. That is nothing, I suppose.

Mr. HIGGINS. -

With all respect to the right honorable gentleman, I think he
misunderstands the position. It is not a question of a change of Tariff. He will have his Tariff when the uniform duties come into force in the Commonwealth. In the first year he would, under this proposal, get the revenue derived from the old duties, minus 20 per cent. In the second year he would get the revenue derived from the old duties, minus 40 per cent., and so on, until the end of the fifth year, when he would have to come on to a level with the other colonies. This is all the amendment means, and it is a reasonable proposal. It has been suggested that injustice may be done to those colonies outside the Commonwealth if the Federal parliament should impose lower duties than are now imposed in Western Australia. I take it the Federal parliament will be careful that it does not protect outside countries, as against any state of the Commonwealth. We may, in that respect, trust the Federal Parliament. Victoria, of all the colonies, is the most interested in the question of intercolonial free-trade with Western Australia, and I think I leave the concurrence of the Premier of Western Australia when I say that we are willing to trust the Federal Parliament far as regards the alleged danger of it Tariff being adopted that would protect outside countries as against any of the states of the Commonwealth. I think it will be an irreparable mistake, a profound pity, if at this stage of the discussion after we have considered so many schemes that were known to be absolutely unworkable, if we should reject a proposal which, at all events at first sight, has the elements of what is reasonable about it. I do hope that we shall not rest upon the statement of Sir John Forrest, made, I think, in haste. I say, with all respect, that I think the right honorable gentleman has expressed himself with a little haste. We are anxious to have Western Australia in this Federation. We want to have that grand country, with its endless resources, within the bounds of the Commonwealth at once, but we may, by having intercolonial free-trade right off be saddling ourselves with too big a task. It is quite possible to hasten more quickly by not insisting on free-trade in the first instance. I was struck by a speech made by the Hon. Mr. Walker yesterday evening. It is due to him to say that from him came the first suggestion that this is one of the solutions of the difficulty. I am glad that he has impressed the Convention so far that they have come to see that a gradual reduction of these duties, which is necessary for the purpose of preventing a dislocation of the finances, is the true solution of the difficulty.

Mr. CROWDER (Western Australia). -

I would like to point out how impossible it seems to me that Western Australia can in any way accept a sliding scale as proposed. If such a scale were accepted, the merchants of Western Australia would have to empty their warehouses at the end of every twelve months, otherwise the man
importing goods in January would be able to undersell the man importing goods in December.

Mr. HENRY (Tasmania). -

I would like to add my solicitation to that of Mr. Higgins, and invite Sir John Forrest and his colleagues to consider the proposal submitted by Mr. Deakin. I would like to call honorable members' attention to a phase of the question as naturally affecting Western Australia. As I understand it, those particular duties were introduced for the purpose of stimulating production in Western Australia. That was one of the objects in view in imposing duties on articles such as butter, bacon, bran, pollard, chaff, and similar produce. These duties, in connexion with the liberal land system, have no doubt attracted a great many producers to Western Australia. Under the proposal of the Finance Committee, intercolonial free-trade is entered on immediately, while under the proposal of Mr. Deakin intercolonial free-trade is gradually introduced under a sliding scale; and surely it will suit the producing interests and also the financial arrangements of Western Australia very much better to adopt the sliding scale. I doubt myself as to whether the proposal of the committee would be as effective as the proposal of Mr. Deakin in protecting the revenue, because, as a matter of fact, it was the large amount of loss to Western Australia, in consequence of the remission of the duties on intercolonial products, that led to the introduction of some special means of dealing with that colony. Now, the very best means which, in my judgment, could be adopted are those proposed by Mr. Deakin; and I do hope the suggestion of Mr. Higgins will be seriously considered by Sir John Forrest and his colleagues. I hope those gentlemen will take time to consider what effect the proposal

Mr. GLYNN (South Australia). -

I will only delay the committee one or two minutes, perhaps not so long. If this resolution is carried it will simply mean affording protection to a number of Victorian exporters of colonial produce to the extent of the difference between the external duty and the internal duty.

Mr. HIGGINS. -

Are you speaking of the first part of the proposal, or the second?

Mr. GLYNN. -

They are both in a similar situation. Last year there were importations to the value of £6,500,000 into Western Australia. Of those importations, about £2,500,000 were of colonial produce.

Sir GEORGE TURNER. -

How much gold does that include?
Mr. GLYNN. -

I am speaking of other Australian produce. Gold is in a separate list, and therefore does not affect my argument. The amount of gold that would be imported to Western Australia from Victoria must be exceedingly small. As I have said, there was colonial produce to the value of £2,500,000 imported into Western Australia last year.

Sir JOHN FORREST. -

That included gold.

Sir PHILIP FYSH. -

There was £1,000,000 of gold in that.

Mr. GLYNN. -

That may, if correct, which I doubt, diminish the effect of my argument, but it does not destroy it. To, the amount of the difference between the external and the internal Tariff you are protecting the exporters from the other colonies as against the English exporters. There must, in many of the lines of goods, be competition at the present time. If a difference be made in the duties, the competition will be to a large extent in favour of the colonial exporters into Western Australia. South Australia might be benefited by this, but it would be an unfederal position to take up. Then you would practically take the money out of the pockets of the Western Australia taxpayer, because it would not go into the Treasury of that colony, but into the pockets of the manufacturers of the other colonies. It would be transferred from the Treasury into the pockets of the exporters.

Mr. HIGGINS. -

You are not speaking of the sliding scale.

Mr. GLYNN. -

I do not care what scale Mr. Higgins is referring to. One proposition is a certain uniform Tariff, and the other proposition is to abolish the intercolonial duties by diminution over a series of years. But the moment you reduce the 20 per cent. duty against the external world to a duty of 17 per cent. in favour of colonial products, the difference of 3 per cent. undoubtedly is against the importers from abroad. To that extent the proposal is purely and simply protection; and that is a principle this committee cannot affirm.

The CHAIRMAN. -

I would point out to the honorable member that the proposal only applies to goods which have not been imported from abroad.

Mr. GLYNN. -

I understood the proposal was to impose a heavier rate of duty for a time on goods imported from outside the colony.
The CHAIRMAN. -

That is the first proposition; the second proposition only deals with colonial products.

Mr. GLYNN. -

Unfortunately, I did not see the proposal in print, and my remarks must chiefly apply to the first part, in regard to which my argument holds true. Nevertheless, colonial products may in either case compete under more favorable conditions. It is no more than protection to the extent of the difference between the two duties, and the committee cannot support the principle. It has been said once or twice that Western Australia has no grievances, but that on the abolition of the intercolonial duties, the people will retain in their pockets money which previously they paid to the Treasurer. Put is that true? A proportion of the payment must, under the uniform Tariff, go to the Federal Treasurer, and a proportion will go to exporters in the other colonies. By the abolition of the Border Tariff you are giving protection to the exporters of the four other colonies. The money is not really kept in the pockets of the taxpayers, but a portion of it goes to the Federal Treasurer, and a considerable portion to the manufacturers, who take advantage of the abolishment of the Border Duties.

Mr. KINGSTON (South Australia). -

I think that by the process of exhaustion we shall shortly be forced to the conclusion that the best proposals are those laid before us by the Finance Committee. Certainly no honorable member has yet been able to satisfy a majority of this Convention that he can suggest anything better.

Mr. ISAACS. -

No one has been able to satisfy a majority of the Convention that the proposals of the Finance Committee are better than the other proposals.

Mr. KINGSTON. -

I think we will be forced to accept the proposals of the Finance Committee, or, at least, that there will be no difficulty in regard to the particular proposal before us. Two reasons have been given against that proposal. One put out by Mr. Reid is that it is not acceptable to the very colony which it is intended to protect. The proposal is not submitted as a matter of right, but as a matter of expediency, for the purpose of securing the advocacy of this Constitution by the gentlemen who will be charged with the presentation of it for the consideration of the Western Australian public. When we are told by the Right Hon. Sir John Forrest that the proposal is not acceptable to him, I think the best thing we can do is to take him at his word and reject it. I would like to go further and say that, so far as South Australia is concerned, the proposal is not at all acceptable from our point of view. It is all very well for my friend from Tasmania (Mr.
Henry), whose colony does a magnificent trade with Western Australia of something like £4,000 a year, to say it does not matter whether or not Western Australia imposes duties on intercolonial produce.

Mr. HIGGINS. -
He does not say that.

Mr. KINGSTON. -
I could well understand it if he did, and he would be perfectly justified in saying it as a representative of Tasmania. But I, in endeavouring to represent the views of South Australia, which does a much larger trade (second only to the trade of Victoria) with Western Australia, do not hesitate to assure this Convention that we look with satisfaction to the certainty that in connexion with the adoption of federation

there will be intercolonial free-trade with the colonies, and particularly with Western Australia.

Sir GEORGE TURNER. -
But if you cannot get it all at once had you not better take it gradually?

Mr. KINGSTON. -
I think we can get it all at once, and we are prepared to accept the suggestion of the Finance Committee to pay the loss of Western Australia proportionately with the other colonies. We are willing to pay our share; but if we are to go back to our people, who have been looking forward to the throwing down of the barriers to free intercourse with our great and thriving neighbour in the West, and to tell them that while we are compelled from the time of the adoption of the uniform Tariff to throw open our markets, they are not to have an opportunity of obtaining access to the markets of Western Australia, they will, to say the least of it, be very much disappointed. I ask honorable members not to force us into that position, but rather to accept the statement of the Premier of Western Australia that the proposal is not acceptable to him.

Mr. HIGGINS. -
No proposal is acceptable to him but his own.

Mr. KINGSTON. -
I think, from what we heard as to the report of the proceedings of the Finance Committee, that we shall not have much difficulty in satisfying Sir John Forrest that ultimately he will do well to accept the recommendations of that committee. I do not hesitate to give the members of this Convention the assurance that a proposal of this sort now under discussion would materially increase any difficulties we may experience in securing the adoption of this Constitution by South Australia; and I trust that the scheme will be rejected.
Mr. BROWN (Tasmania). -

I assume that there is no intention to come to a division upon this subject before the adjournment. I hope that there is not, because I do most earnestly trust that the present position taken up by the Right Hon. Sir John Forrest will, after reflection, be departed from by him. At all events, the right honorable gentleman may be assured of this: That, try as he may, try as any of us may, it will be absolutely impossible to act a scheme which would be acceptable to each individual in this Convention. We have been endeavouring all through to arrive at satisfactory results by compromise, and it does appear to me that the proposal now before us affords an opportunity of dealing with the special circumstances of Western Australia in a way which is much more likely to be satisfactory to the majority of this Convention, and to those who will have to deal with the matter hereafter, than any other proposal which has been submitted. I would urge Sir John Forrest to consider the position from the point of view of the other colonies. As far as Tasmania is concerned, I cannot speak positively, but I think that our people will take the view that if the alternative to this proposal is to be the arrangement suggested by the Finance Committee, they will unhesitatingly give their support to this proposal for the very simple reason that, in the one case, the difficulties of Western Australia are left to be dealt with within her own borders, and, in the other case, thousands of pounds may be drawn from Tasmania to make up the Western Australian loss. That is the position we have to face, and I ask the right honorable gentleman to consider whether it is fair, for the sake of obtaining a very problematical benefit, to force us into that position. The gradual adoption of intercolonial free-trade is, of course, not what we should desire. No one has been a more ardent advocate of free intercourse between the states of the Commonwealth than I have, as honorable members know; but it seeing to me that owing to exceptional circumstances we cannot obtain that very great boon all at once. Why, then, should we not do the next best thing, and obtain it gradually? I cannot understand the very strong opposition shown by honorable members from Western Australia, and I entertain the very earnest hope that after the interval for reflection between the adjournment this evening and our next meeting, and after having seen the amendment in print—because none of us have seen it in print yet—the Western Australian representatives will be prepared to accept the proposal as giving them very reasonable terms.

Sir JOHN DOWNER (South Australia). -

After a sleep of twenty years Rip Van Winkle awoke, and not unnaturally wondered where he was. After listening for about twenty minutes to this
debate I find myself in precisely the same position. I have been longing
and hoping-hoping against hope-that I should get some assistance from the
members of the Finance Committee which would help us to understand the
position a little better. We have heard a lot of talk about the lawyers and
the time they waste, and that sort of thing; but at least when they come to a
conclusion it is clear and definite, and we know what it means. But my
experience of the Finance Committee in Adelaide, in Sydney, and here is
that you never know exactly what they mean, and they are never quite clear
about it themselves. Of course, I know how hard it is for a man to make up
his mind even when he really knows what he wants. No one is more aware
of that than I am.
Mr. REID. -
   It is a good thing you make that admission or you would have got "a
   scorcher."
Sir JOHN DOWNER. -
   I am not a bit afraid of that. I suppose my right honorable friend (Mr.
   Reid) would have administered the "scorcher"?
Mr. REID. -
   No, I would have set Mr. Douglas on to you.
Sir JOHN DOWNER. -
   It seems to me that we ought to get a little help from the Finance
   Committee which has worked so laboriously and has produced so
   satisfactory a report-
Mr. REID. -
   There is no doubt that the honorable member has been asleep. We have
carried all our substantial proposals.
Sir JOHN DOWNER. -
   No one in the Convention has a more perfect sympathy with the right
   honorable member than I have, so that if I have imitated him in going to
   sleep he will forgive me.
Mr. REID. -
   Of course accuracy is nothing to an essayist, but you must know that all
the substantial propositions of the Finance Committee so far have been
adopted.
Sir JOHN DOWNER. -
   My right honorable friend will admit that I have been loyal to the
Finance Committee. I have treated them as gentlemen eminently competent
to come to conclusions, whatever doubt they may have about these
conclusions after they have arrived at them. I thought that, in this
particular, they had arrived at a determination by which they meant to
abide. But have they?
Mr. REID. -
There is one man who is abiding by them, and he is myself.

Mr. HENRY. -
Are not the members of the Finance Committee who formed the minority to be allowed to express their opinions in the Convention?

Sir JOHN DOWNER. -
I assume that the report of the Finance Committee does not express the views of every member of that committee, and, of course, every member of the committee has a right to express his views here. The painful thing is, however, that we hear only the views of the minority, so that we do not really know what the views of the majority are with regard to the proposal. The chairman of the committee seemed to think that he had done his duty when he told us that the right honorable member (Sir John Forrest) objected to the proposal now before us.

Mr. REID. -
Since this proposal is intended to conciliate the colony of Western Australia, surely that is so. Who knows more about the requirements of Western Australia than the right honorable member?

Sir JOHN DOWNER. -
If I proposed to give a man £10,000, and someone else said that £5,000 was enough, and then the man said that he would not accept £5,000, I think that it would not be easy to determine exactly what should be given to him. To my mind, this matter is worthy of more consideration. I should very much like the right honorable member (Mr. Reid), who has proved himself to be so highly competent to assist us, to say something in regard to this matter. I do not pretend to be a financier I belong to that troublesome class of people who arrive at fixed conclusions by very bad processes. What I should like the right honorable member to say is whether he agrees to this proposal for assisting Western Australia, quite apart from the attitude taken by the right honorable member (Sir John Forrest)? After all, though we recognise that the right honorable member (Sir John Forrest) is a great authority, and all-powerful in his own colony, we must admit that there may, some day, be a change of public opinion there, and we cannot be entirely dominated by the opinion entertained by the right honorable gentleman at the present moment. We all want Western Australia to join the Federation. I have hitherto stood loyally by the report of the Finance Committee, and I ask the members of the committee to stand by it.

Mr. WALKER. -
We are doing so.

Sir JOHN DOWNER. -
Some of the members of the committee are doing so, but very few. We never know who is standing by it, and the public do not know. The Finance Committee bring down a report, and, without having considered it, we follow them loyally, but our loyalty is but ill regarded. I understand that the Premier of New South Wales stands by this report? I wish him to correct me if I am wrong.

Mr. REID. -

I am no longer the chairman of the committee.

Sir JOHN DOWNER. -

Very well. Then the report is dead.

Mr. REID. -

No, the committee is dead, but the report lives.

Sir JOHN DOWNER. -

And the chairman, I suppose, lives for the purpose of supporting the report.

Mr. REID. -

The honorable member had better have a day with Sir John Forrest; he would make better use of his time by talking the matter over with him.

Sir JOHN DOWNER. -

I am maintaining the same attitude as I have maintained before. I agree entirely with the first part of the amendment proposed by the honorable member (Mr. Deakin), though I do not like the sliding scale. I am also willing to accept the report of the Finance Committee, not because I agree that it contains the best solution of the difficulty, but because I think that it provides a means for bringing about federation without substantial loss. There may be a slight loss, but it will not be much. Whatever conclusion we come to, I think that we might fairly ask those honorable gentleman whom we have trusted to such a large extent in this matter of finance to give us the best assistance they can, and either support their recommendations in a manner quite the reverse from lukewarm or abandon them altogether.

Mr. BARTON (New South Wales). -

So far as I have arrived at a determination in regard to this matter, it is my intention to support the first portion of the amendment.

Sir JOHN FORREST. -

That is the part we do not want.

Mr. BARTON. -

I know that, but the Convention has a duty to perform to itself. Because my right honorable friend says that he will not take this, and that he will not take that, we are not shut up to accept exactly that which he says he will take. We have to do the best we can, and I am sure he will agree with
me when I say that all of us have to consider the interests and the opinions of our own electors as well as those of the people of the other colonies.

Sir JOHN FORREST. -

The honorable and learned member would not force this against the unanimous wish of all the representatives?

Mr. BARTON. -

I will state my own opinions, though I generally have to get my right honorable friend's permission to do so.

Sir GEORGE TURNER. -

The right honorable member thinks that he is in Western Australia.

Mr. BARTON. -

Even though the objection is expressed unanimously by the representatives of Western Australia, that does not prevent us from proposing what we consider to be a fair concession. It will be for the representatives of Western Australia to consider whether they will accept what we propose. We should be in a very peculiar predicament if, after having specially provided something for Western Australia, and included her name in the Constitution, her people were to turn round and say-'This does not suit us.' We should appear rather foolish if the Constitution were rejected in Western Australia because it did not give that colony enough, and rejected in the other colonies because it was thought by them that it gave Western Australia too much. That is the position which has arisen, and it is one to be reflected upon. I do not think a vote should be taken upon the matter to-night. In my own opinion, it would be against the wishes of the Convention to go any further at the present time. I might be prepared to vote against the proposal of the Finance Committee; if I did so it would be because I know that there can be no absolute finality at this stage, and because I hope that something better may be devised. So far as I call see, the first paragraph of the amendment is better than anything that has yet been suggested. I am doubtful whether I will vote for the second paragraph.

Sir JOHN FORREST. -

It is a further protection to the eastern colonies.

Mr. BARTON. -

No, it is an attempt on the part of the eastern colonies to consider how far they can make this Constitution acceptable to their own electors as well as to those of Western Australia. If we put something in the Constitution which my right honorable friend may think right for his colony, but which we may know is not right for ours, and try to explain it to our electors-as
the young lady tried to explain a certain occurrence by saying that it was only a very little one—we might find ourselves in difficulties in our own colonies, while at the same time we might not satisfy the aspirations of my right honorable friend's constituents. That would be a very pretty termination to our labours. For this reason I think that no vote should be taken to-night. Whether all honorable member is a senior representative of a colony, or whatever position he occupies, he should think twice before coming to a final determination upon this matter. In my opinion we are now at a state in our discussions when we should avoid anything that may seem quite conclusive. We have to determine what is the best course to decide upon. I am not saying that the proposal of the honorable and learned member (Mr. Deakin) is the best that can be adopted, but it strikes me as the best that has yet been suggested. I should like, however, to wait for even a better proposal. Under these circumstances, and without committing myself to any definite expression of opinion, I think I shall best discharge my duty to the Convention, and to myself, by moving that you, sir, do now leave the chair, report progress, and ask leave to sit again.

Mr. MCMILLAN (New South Wales).—

I must dissent from the opinion of the honorable and learned member who has just sat down. This is not an ordinary question affecting all the colonies. What we are now discussing, is a proposal which has been made purely and simply to satisfy the people of Western Australia, and I hold that it is futile to discuss a question of this sort until we are fairly advised that the representatives of Western Australia will give the proposition advanced reasonable consideration. That was my reason for asking for an adjournment before. I must confess that now I think, on the whole, to-day's debate has done good; it may not have been time wasted; but I have not addressed myself to the proposals of Mr. Deakin at all, because at once Sir John Forrest practically disclaimed them. I imagine that between this and Monday it ought to be considered by Sir John Forrest whether there is any proposal at all that he could accept for his colony, and fairly and generously consider it as a solution of the difficulty. Otherwise it seems to me that it is perfectly useless to discuss it. The leader of the Convention says that we should discuss these proposals in the general interests of the Commonwealth, but the fact is that if there is no scheme that will apply to Western Australia, we have the simple reasonable solution of doing nothing.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at eight minutes to five o'clock p.m., until
Monday, 21st February.
Monday, 21st, February, 1898.

Appeals to the Privy Council—Commonwealth of Australia Bill.

The PRESIDENT took the chair at twenty-five minutes to eleven o'clock a.m.

APPEALS TO THE PRIVY COUNCIL.

Mr. SYMON (South Australia). -

Some days ago, when discussing the question of Privy Council appeals, I referred to certain particulars which had been taken out with regard to a number of cases as indicating the time occupied in determining appeals from the various colonies to the Privy Council. I have been asked to lay these particulars on the table, which I have very great pleasure in doing. In all probability they will assist in enabling a speedy compliance to be made with the motion of which the Hon. Sir Joseph Abbott has given notice for a return on the subject.

Sir JOSEPH ABBOTT. -

Do these particulars relate to South Australia alone?

Mr. SYMON. -

No, to South Australia, Victoria, New South Wales, Queensland, Tasmania, and Western Australia.

Mr. OCONNOR. -

How many years do they cover?

Mr. SYMON. -

The last 30 years.

Sir JOSEPH ABBOTT. -

If that is so they will give all the information I propose to ask for.

Mr. SYMON. -

My honorable friend's curiosity extends further than these particulars go. I have not gone into the interesting subject of cost. The particulars can be amplified in any way desired. I think they will be of great assistance, and they may dispense with the cost and delay of furnishing a more complete return. I lay this paper on the table, and I beg to move that it be printed.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Friday, 18th February) was resumed on Mr. Barton's proposal for the insertion of new clause 93B (see page 1122), and on Mr. Deakin's amendment thereto (see page 1191).
Sir EDWARD BRADDON (Tasmania). -

I hope that we shall be able at an early hour this morning to bring this very protracted debate to a conclusion and to get ourselves out of the entanglement into which we seem to have fallen in respect to this particular clause. I think we all admit that, owing to the peculiar circumstances of Western Australia, it is desirable, if it can be done without injury or unfairness to any other colony, that Western Australia should have consideration shown to it. There are a large number of honorable members who agree that if this is to be done by way of compensation, New South Wales should not be made the only contributor and the only sufferer. There are honorable members representing other colonies who also feel that it would be unfair to them if they were made to bear, in addition to the loss of Customs revenue, a further loss by way of contribution to Western Australia. No member of the Convention admits more readily than my right honorable friend (Sir John Forrest) the injustice of making Tasmania contribute to any payment made to Western Australia in addition to making up her own loss on Customs. He has made no secret of that. He has said to me, in his usual frank and outspoken manner, that the representatives of Tasmania cannot possibly vote for the new clause upon which the Hon. Mr. Deakin has moved his amendment. The amendment does offer to Western Australia a means by which she can within her own boundaries and by an adjustment of the customs duties avoid any loss at all. It is fully admitted by the representatives of Western Australia, which is one of the richest colonies in the group at the present time, that it is highly improbable that there will be any loss. My honorable friend (Mr. Douglas) has pointed out one good reason why the loss, if any, should not be a heavy one, and that is the rapidly-increasing population in Western Australia. In addition to that she has such an abundant revenue and such prospects of increasing that revenue that she may very well be content to accept such compensation for any loss as she can get within her own boundaries. And it is quite clear that by adjusting the balance of her customs duties she could still get a sufficient revenue from her own people. At the same time, she would not be taking more money from them than she is doing at the present time. Mr. Deakin's amendment seems to me to point a way out of this difficulty, and I hope that it will be adopted. There is an objection to the latter part of the amendment on the ground that it delays that perfect inter-communication of trade that we all desire to see established. But it is not absolutely necessary that that method should be adopted. It is highly probable that that method will not be required. And even if it were required, my right honorable friend (Sir John Forrest) must
admit that it would not be an unpalatable method to the colony be represents, inasmuch as Western Australia has had a predilection for taxing Australian commodities.

Sir JOHN FORREST. -

She is not worse than you; not so bad.

Sir EDWARD BRADDON. -

Worse than Tasmania for this reason: That Western Australia has differentiated in favour of the foreigner against the other Australian colonies.

Sir JOHN FORREST. -

Where? We charge them all 20 per cent. alike.

Sir EDWARD BRADDON. -

Not a bit of it. Western Australia places foreign goods in a preferential position as compared with Australian goods. She charges lower duties on foreign goods than on Australian products.

Sir JOHN FORREST. -

To stimulate our own industries.

Sir EDWARD BRADDON. -

That is what it is called, but even with that virtuous intention there is no sufficient justification for Western Australia differentiating in favour of the foreigner against her own sister colonies.

Sir JOHN FORREST. -

I suppose you call Great Britain a foreigner?

Sir EDWARD BRADDON. -

I hope Western Australia will reform, whatever else may happen in regard to this matter.

Sir JOHN FORREST. -

Is Great Britain a foreign country?

Sir EDWARD BRADDON. -

Foreign compared with the colonies of Australasia.

Sir JOHN FORREST. -

Not a bit of it.

Mr. MCMILLAN (New South Wales). -

I have carefully considered since we last met the various proposals that have been made, and it seems to me that the only basis for some satisfactory solution is in the latter part of the proposal of Mr. Deakin. I do not think it is worth while recapitulating the very grave objections to this preferential rate of duty on goods beyond the sea; nor do I think it is possible for a moment to consider the proposal incidentally made by Sir
John Forrest that Western Australia should retain her own Tariff for the first five years. There would be one very grave objection to that, it seems to me.

**Sir JOHN FORREST.**
- When did I propose that?

**Mr. MCMILLAN.**
- I understood that the right honorable gentleman made such a proposal.

**Sir JOHN FORREST.**
- I never knew of it.

**Mr. KINGSTON.**
- The proposal is in the amendment before the Chair.

**Sir EDWARD BRADDON.**
- It is in the latter part of Mr. Deakin's amendment.

**Mr. MCMILLAN.**
- That refers only to intercolonial duties. There is a similar objection to the way in which this latter part of Mr. Deakin's amendment is put. Although we shall have intercolonial free-trade ourselves, I take it that New Zealand and other parts will be dealt with exactly the same as foreign countries, and that under the Tariff that will be framed, if it is to be a protective Tariff, practically every article which is produced in these colonies will come under it; that is to say, it will be protective against wheat, potatoes, and all produce outside Tasmania and Australia. Now, it seems to me that it will be far better to have the uniform Tariff applying all round, Western Australia taking the risk under it, than to continue two Tariffs alongside of each other. I should, therefore, propose, if it would be likely to meet with acceptance, that the Tariff of the Commonwealth should be applied all round, with a sliding scale with regard to the intercolonial duties, and that if there is no duty on a particular article Western Australia should take the risk. I do see a very grave objection to carrying on, even for the purpose of getting over this difficulty, the old Tariff of a state. Of course, I know that this proposal opens up the difficulty that we do not know what products will be made dutiable from beyond the sea; but at the same time I think it would be a much better basis than the one we have before us. Therefore, I have risen simply to suggest that we should approve of the latter part of Mr. Deakin's proposal as an adjustment of the difficulty, but that, in my opinion, it will be better to take the new uniform Federal Tariff instead of the old state Tariff.

**Dr. COCKBURN (South Australia).**
- I think that the latter part of Mr. Deakin's proposed amendment is even more objectionable than the first part. What does it mean? It means treating our western sister as a foreign element in the Federation for five years; in
other words, it is destroying that union to which we are looking forward. I think the second part of the amendment is decidedly the worse part, but even to the first, looking at it carefully, is an impossible proposal. It will puzzle the world at large as to what the Tariff of Australia is. The world at large, with which we hope to do better business when we are federated, will be more puzzled than ever. It will say-"It was possible to understand things before federation, but now it is impossible to make out the difference between the treatment of goods going to the Commonwealth and goods going to Western Australia, a part of the Commonwealth." The proposal of the Finance Committee is much better than any proposal made since, and it is infinitely preferable to the scheme now proposed.

Mr. SOLOMON. -

That is damning the Finance Committee's proposal with faint praise.

Dr. COCKBURN. -

Well, no one thinks it a perfect scheme, it makes one feel bad; but this proposal makes one feel sick. It will be better to settle the claim of Western Australia at once, and go in for Australian union forthwith in a way that the world at large will be able to understand, than to adopt what would be looked upon as simply a complicated puzzle.

Mr. SYMON (South Australia). -

I quite agree that this proposal of Mr. Deakin's is vicious in every part. It is bad root and branch. I do not intend to go over the ground traversed the other day, but I would point out again that this proposal means simply handing over to Western Australia a sort of banner which she may - I do not say she will - flaunt in the face of our people, proclaiming that our goods are liable to be doubly taxed as compared with all foreign imports. Secondly, it will be placing something on the face of the Constitution utterly destructive of the cardinal principle of free interchange between all the colonies which we are endeavouring to build up. It may be said that the system proposed is only to last for five years. But we shall be told in five years, very likely, that the inter-colonial trade with Western Australia has fled altogether. You are covering a period of five years in regard to that trade, and at the end of that time the necessity for any special provision may have disappeared altogether. Even if Mr. Deakin's proposal were adopted there are one or two amendments which my honorable friend will find it necessary to make in it. There is one point in particular, and it is this: Instead of dealing with what is the average net loss, you are taking into consideration the whole of the revenue of all the different colonies in the Federation in order to make up every shilling of the actual diminution.
of revenue to which Western Australia may be subject. That, I say, is a very grave defect. It is simply blotting out Western Australia from the Federation just as much as though she did not go in at all on the establishment of the Union. It would be far better and be more consistent-deplorable as such a state of things would be—that Western Australia should stand aside for five years, than that we should have such a lop-sided provision from the trade point of view as this would be. The provision may be regarded as standing on two legs, both of which are equally bad, the two being as to extra-colonial and intercolonial duties. Then I would point out that the imperative part of the latter provision of the proposal should be permissive like the first part, so as not to impose it upon Western Australia as a condition to maintain these intercolonial duties. For these and other reasons which I have dealt with before I intend to vote against both provisions of this amendment, and against the amendment as a whole. I would rather see a general provision inserted if it is desired that Western Australia should come in on such terms, leaving her free to frame any Tariff she pleases, or to collect her revenue in any way she pleases, during the five years. That would be less objectionable on the face of this Constitution than holding up a declaration that free-trade between the colonies is to be a myth. I would ask honorable members, in dealing with the Finance Committee's proposals, to consider whether it would not be preferable as regards Mr. Deakin's amendment that we should obliterate all special reference to Western Australia in the Constitution. Of course, the proposal of the Finance Committee arises from a consideration of the special position of Western Australia, but the principle is that it is desired to make up to the state having the largest proportionate net loss above the average net loss of all the states, that excess proportion of net loss. There is no necessity whatever for inserting the name of Western Australia. Therefore I would suggest the following amendment, as one which I shall be prepared to move at the proper time, so as to provide instead of

mentioning Western Australia-because in two or three years Western Australia might not be the particular colony with the largest amount of proportionate not loss—that the particular colony with the largest excess of average net loss should be the colony to be treated specially by the Federal Parliament. That colony at present is Western Australia, but it might be in two or three years' time Tasmania, or South Australia, or Victoria.

Mr. WALKER. -
Not New South Wales.

Mr. SYMON. -
She is such a wealthy colony that we can never predicate her sustaining
any such loss of her revenue.

Sir GEORGE TURNER. -
She might if she puts a Tariff on before she comes into the Union.

Mr. SYMON. -
My right honorable friend surely does not consider that to be a very hopeful contingency. My amendment would be to strike out the reference to Western Australia in the suggestion of the Finance Committee, and then at the end of the second paragraph, and in lieu of the third paragraph, to insert the following words:-

The Parliament shall have power in such manner as it thinks fit to make good in each year to the state, if any, whose proportionate net diminution of revenue for such year is most above the average net diminution of all the states, the excess of the proportionate net diminution of that state above such average; provided that such excess for the first of such five years shall be the maximum to be made up for each of such five years to any state.

The latter part is inserted because, otherwise, if the population of Western Australia increased of course her average net loss would immensely increase. There is no doubt about that. The increase would go on arithmetically progressing. We must guard against such a contingency as that.

Mr. ISAACS. -
You still guarantee the gains.

Mr. SYMON. -
No, I think not. The honorable member (Mr. Lyne) asks where is the money to come from, but we have already debated that question at great length. The advantage of my suggestion is that it empowers the Parliament to deal with the manner in which this excess diminution must be made up.

Mr. LYNE. -
The Parliament will have to find the money.

Mr. SYMON. -
Yes, but not necessarily out of the coffers of New South Wales. The remission of taxation to one colony in order to get the money from another colony upon which heavier taxes are imposed does not commend itself to one's sense of justice, but if we are to arrive at a solution of the difficulty we must either adopt something in the nature of the suggestion of the honorable member (Mr. Deakin), Something which goes a little further, or the recommendation of the Finance Committee. I should like to see the recommendation of the Finance Committee carried into effect. The principle of that recommendation is that the colony making the largest average diminution of revenue should be specially considered.

Mr. ISAACS. -
It is only a hypothetical loss, which may be an actual gain.

Mr. SYMON. -

If it is an actual gain you do not make it good.

Mr. ISAACS. -

Under the recommendation of the Finance Committee you would have to do so, because it would be a hypothetical loss.

Mr. SYMON. -

That is not the way the financiers have been treating the matter in the Convention. By my proposal you get rid of the difficulty which the right honorable member (Sir John Forrest) feels, in that you are not pillorying Western Australia in the Constitution.

Mr. KINGSTON. -

We are saying what we mean.

Mr. SYMON. -

No; what we mean is that the colony which suffers shall be recompensed. It may not be Western Australia which will need this consideration.

Mr. KINGSTON. -

We would not put any provision of this sort into the Bill if we had not the case of Western Australia under consideration.

Mr. SYMON. -

I admit that the reason for this provision is the position of Western Australia, but the representatives of that colony say-"We do not want to see the name of the colony in the Constitution in this connexion." Therefore, let us be content with embodying the principle of the Finance Committee's suggestion without the name of the colony of Western Australia. The principle of this recommendation is, I think, contained in the amendment which I have just suggested, and which I shall be prepared to move at the proper time.

Mr. GRANT (Tasmania). -

I have heard all the propositions which have been submitted to us on this clause. They have been many, and have shown great ingenuity upon the part of their propounders, but I think that the only one which can recommend itself to our sense of equity and justice is that of the honorable and learned member (Mr. Deakin). It may at the first glance appear, to borrow the phrase of the honorable and learned member (Mr. Symon), to pillory Western Australia, but I think it does so only to a limited extent. It will enable the people of Western Australia to recoup themselves for any loss of Customs revenue without inconvenience to themselves and without doing injustice to any industry. Looking at the matter in an equitable spirit,
I feel that none of the other proposals which have been submitted to us can be considered fair and just to the the other colonies. Although the proposal might place the Treasurer and Parliament of Western Australia in some little difficulty at first, I do not think that that difficulty, when fully considered, will be found of vital importance. The extreme sum that it is anticipated will have to be made up to Western Australia is £378,000 per annum, the amount now collected from customs duties there exceeding £1,000,000. This being so, it is not probable that state would have any practical difficulty in recovering through the medium of the Customs a sufficient amount to make up any loss, and it would stand in an absolutely just and fair position before the federal community. It would have asked for no concession from the Federation, and any loss would be made up entirely by its own resources. It is provided that the collection of special duties by that state shall be subject to the consent of the Federal Parliament; but I do not know why we should put that provision into the Bill. It seems to me that we might give the colony of Western Australia absolute liberty to deal as it likes with the Customs, in order to obtain the sum required without reference to the Federal Parliament. In every other respect, however, I shall support the amendment of the honorable and learned member (Mr. Deakin) as being fair and just, and the only practical solution of the difficulty which has been vexing us for so many days.

**Sir JOHN FORREST (Western Australia). -**

The proposal made by the honorable and learned member (Mr. Deakin) does not, as I said on Friday last, meet with my support - at any rate, the first portion of it does not. I do not think we should be able to avail ourselves of it, and it might have the effect of doing us injury rather than good, because it gives us power to put up an extra barrier against foreign producers, and if we did that we should only be giving a greater amount of protection to the products of the other colonies. As I feel sure that we should be unable to avail ourselves of any provision of this sort, I think it would be unwise to cumber the Bill with it, and therefore I intend to move the emission of the whole of the first part of the amendment. I also propose to move several amendments in the second portion, in order to leave it optional with Western Australia to collect the same amount of revenue as is collected before the establishment of the uniform Tariff. The amendment as it stands makes it compulsory to do this.

**Mr. SYMON. -**

My suggested amendment would meet the right honorable member's objection. It substitutes "may" for "shall."
Sir JOHN FORREST. -

We are sometimes told that "may" and "shall" are identical terms. However, I intend to make the amendment quite clear. I propose to make it read in this way:-

Notwithstanding the provisions as to free trade and intercourse between the states, the customs duties in the state of Western Australia as existing at the time of the imposition of uniform customs upon goods not originally imported from beyond the limits of the Commonwealth may, if that state thinks fit, continue to be collected for five years with the deduction of 20 per centum per annum; that is to say, with a deduction of 20 per centum for the second year, 40 per centum for the third year, 60 per centum for the fourth year, 80 per centum for the fifth year. At the end of the fifth year customs duties on all such goods shall cease and determine.

I should have preferred a longer term than five years, and to have had no sliding scale, but I realize that if we cannot get all we desire, we should try to meet honorable members and get what we can. I have already pointed out the difficulties of Western Australia, and I am glad that they have been generally appreciated. The Premier of New South Wales has expressed himself to the effect that the case of Western Australia is surrounded by much difficulty, inasmuch as she has no great incentive to join the Federation, seeing that at the present time she has not much to export except timber. Although the amendment does not go as far as we should like, it is one which I think we may fairly accept. It will give us power, if we so desire, to continue the duties upon produce and other manufactures imported from the other colonies, these duties being reduced gradually, until at the end of five years they will disappear altogether. It does not follow that we shall use this power, but still, if it is found necessary so to use it, it can be used in the interests of the colony. I hope that if there is a considerable majority in favour of the amendment, it will be passed without much delay, so that we may then go on with some other part of the Bill. I do not think any one can object to the provisions in the amendment, because there is very little likelihood of the duties coming out of the pockets of others than the consumers of Western Australia. Of course it is contended that duties are not always paid by the consumers, but in this case they will be paid chiefly by those who consume the goods that are imported. I take some exception to the attitude which has been assumed by several of the representatives of Tasmania in regard to this matter. It would, of course, be very hard for Tasmania to have to contribute towards the loss of Western Australia. If there is to be any contribution, it would no doubt be fairer that Western Australia should contribute to Tasmania.

Sir EDWARD BRADDON. -
We have not asked for that yet.

Sir JOHN FORREST. -

When the honorable member told us that the policy of Western Australia has been to relieve the foreigner and to tax the people of Australia, he was a long way wide of the mark. I do not look upon the mother country as foreign. If we owe an obligation to any one it is not to Tasmania, but to the great mother country, which protects us, and to which we owe our national existence and our liberties.

Sir EDWARD BRADDON. -

What about the tea and sugar producing countries?

Sir JOHN FORREST. -

Our aim has been to help the local producers, and articles of food in general use which we cannot produce in our own colony we have admitted free. For this reason tea and sugar have been placed upon the free list. I think that those who are protectionists to the extent of desiring to foster local industries will not quarrel with me when I argue that articles of food which cannot be produced in the colony should come in free of duty. Of course I prefer the proposal of the honorable and learned member (Mr. Isaacs). I think that is a reasonable proposal, which will probably cost nobody anything. At the same time, it will be a great lever in our hands in advocating the acceptance of this measure, because we can see that if the worst comes to the worst, at any rate, we shall be guaranteed a certain amount during the next five years. I do not think that is unreasonable, considering we are handing over the great source of our revenue, the Customs, which is nearly all profit. It is not unreasonable to say that during the first five years of the working of this new machinery, the Commonwealth will take care that no difficulty or disaster will come upon us by reason of our giving up this great, engine of revenue. I intend to move that the first nine lines of Mr. Deakin's amendment be struck out.

Mr. TRENWITH (Victoria). -

It appears to me that something will be accomplished by striking out these words which will be undesirable, and which I should say the Right Hon. Sir John Forrest does not want. He says he does not see any prospect of giving effect to the first part of the amendment, because the effect would be to protect the local producer as against the producers outside the Commonwealth.

Sir JOHN FORREST. -

I did not say that.

Mr. TRENWITH. -

I understood the honorable member to say something to that effect. At
any rate, if it is struck out the effect will probably be to protect the outside producers against producers inside the Commonwealth.

Mr. ISAACS. -

No. The second part of the paragraph will really be the minimum possible Tariff.

Mr. TRENWITH. -

It seems to me, reading the amendment as it is, that the Commonwealth Parliament may permit the Western Australian Tariff to remain as it is with reference to intercolonial products, while the uniform Tariff of the Commonwealth might be very much lower than the Western Australian Tariff.

Mr. LYNE. -

Hear, hear.

Mr. TRENWITH. -

It seems to me that that is possible. If so, what would happen would be that the producer outside the Commonwealth would have protection against the producer inside the Commonwealth, because it will be cheaper to import some products from outside the Commonwealth than it would be to import from the neighbouring colonies, because the duty would be higher between the states than between the whole Commonwealth and producers outside.

Sir JOHN FORREST. -

You could not force us to put on the duties.

Mr. TRENWITH. -

No; but the Commonwealth might permit the duties to remain in order to reduce the loss which would be entailed in Western Australia by the change in the Tariff. However, I think that is highly improbable. I do not think that the Commonwealth would create such an anomaly, still the power to do so appears to be given; whereas, if the clause were carried as it now stands it would give the Commonwealth Parliament power to equalize the duties by empowering Western Australia to collect higher duties from abroad than from the other sections of the Commonwealth. I do not propose to occupy any more time, but it seems to me that this anomaly does exist. I shall vote against striking out the first portion of the amendment.

Mr. HENRY (Tasmania). -

I am sure every honorable member must have been highly gratified at the attitude taken up by the Right Hon. Sir John Forrest. It is only another evidence of the reasonableness which has distinguished him in the consideration of this financial question, The object we have in view, as practical men, is to satisfy Western Australia; to enable her delegates to go
back to their colony and say-"We have such terms in this Bill, from a financial point of view, as will justify us in recommending it for acceptance by the people." I do not propose to enter into the question at any length, and, seeing the stage we have arrived at, it is not desirable to reply to arguments which have been used, although I attempted to do so. Seeing, however, that the parties most ultimately concerned are satisfied, and seeing that our one object has been to introduce a reasonable provision into this Bill which will satisfy Western Australia and will not operate unjustly on any other colony, I think we have reached a stage when we need not enter into any further argument. The great recommendation of this proposal as compared with the proposal of the Finance Committee is that under the last half of Mr. Deakin's proposal Western Australia will bear her own burden of taxation. Under the proposal of the Finance Committee she would have called upon other colonies to bear a share of the taxation which she would escape. I urge upon Mr. Deakin that he should withdraw the first portion of his amendment.

Sir GEORGE TURNER. -

There will be no objection to that.

Mr. DEAKIN. -

I have no objection whatever to withdraw the first part.

Mr. HENRY. -

I think that will be the better course, seeing that Western Australia is satisfied, and we shall then be able to get on with other important business.

Mr. REID (New South Wales). -

I am quite prepared to accept Mr. Deakin's proposal if it is distinctly understood that this is not intended as a proposal upon which something else is to be built afterwards. If this is simply paving the way for subsequent proposals to extend all round these terms which we are now, as a special measure, giving to Western Australia the case will be quite different. As I said a few days ago, I believe Mr. Deakin's proposal in the case of Western Australia is the better one, because it certainly has the great advantage of leaving it to the people themselves to find the money to make up the difference; but if this is intended as the foundation stone for subsequent proposals, so as to make this a bargain all round against intercolonial free trade, I should strongly object to it.

HONORABLE MEMBERS. -

No, no.

Mr. REID. -
On that understanding I will support it.

Mr. KINGSTON (South Australia). -

I hope there will be no such understanding as has been suggested by the Right Hon. Mr. Reid. I trust that if we are going to concede to Western Australia the privilege of maintaining her customs barriers against her sister colonies that the same privilege will be extended to the other colonies.

HONORABLE MEMBERS. -

No.

Mr. KINGSTON. -

I claim it undoubtedly on behalf of South Australia. I do not hesitate to assure honorable members that there will be a profound feeling of disappointment if anything of the sort suggested is given effect to.

An HONORABLE MEMBER. -

It is only for five years.

Mr. KINGSTON. -

Only five years in the case of the richest colony of the group, for the purpose of, as has been suggested by my right honorable friend, protecting her own industries at the expense of those who are desirous of extending their commercial relations with her.

Mr. MCMILLAN. -

But if she does not come in you will be just in the same position.

Mr. KINGSTON. -

I have no doubt that Western Australia in due course will come in, and she is just as well prepared to come in as any other colony. I hope the Premier of Western Australia will withdraw from his present attitude. What is proposed by the Finance Committee is this: That we, even the poorer colonies of the group, are prepared to pay our share in order to secure, in the earliest stages, all the advantage of federation—that is, intercolonial free-trade—throughout the whole of the Commonwealth. If we are to return to the colony from which we come and inform them that they who looked so long for the benefits of intercolonial free-trade, which is really the greatest advantage to be secured by federation, are to be still further put off before it is accomplished, I venture to say that we will return with a scheme which will not augur so brightly for the future of federation as we could desire. I claim that all the colonies should be treated alike. If there are matters with regard to which Western Australia requires special treatment, some of us at least representing South Australia
are prepared to support the proposal s of the Finance Committee; but we regard the sort of combination which at this moment seems likely to be effected between the representatives of Western Australia and the representatives of Tasmania, who do little or no trade with the great colony of the West, as an alliance which may be fraught with the worst results to those who are more fortunately situated at present, and who do a large and important trade, which they think ought to be benefited by the adoption of federation, which we are here to accomplish.

Mr. DEAKIN (Victoria). -

I only wish to say one word in reply to my right honorable friend—that South Australia has done her trade with Western Australia even under the existing Tariff.

Mr. KINGSTON. -

Yes, under difficulties.

Mr. DEAKIN. -

And surely with a steadily reducing intercolonial Tariff South Australia may reasonably hope to do even a larger trade. In reference to what was said by the Right Hon. Mr. Reid, I do not desire to be placed in any ambiguous position. A proposal has been already submitted by the Right Hon. Sir George Turner, and indirectly voted upon, which would have the effect of providing similar treatment to all the colonies which might suffer loss, and I voted for that proposal. If such a motion is proposed again I shall be compelled to vote for it. But, as far as intention is concerned, this motion was not proposed by me with any such ulterior purpose. It was simply submitted as a solution of the difficulty which confronted us. The manner in w

Mr. SOLOMON. -

The magnanimity which you refer to consists in consenting to be allowed to do exactly what they please.

Mr. DEAKIN. -

Yes, Under the iron limit of five years, with an absolute reduction of 20 per cent. in the duties each year.

Mr. SOLOMON. -

No; he has put in the word "may."

Mr. DEAKIN. -

That is, as to taking advantage of it. I noticed that one of the members from Western Australia (Mr. Crowder) made a point as to the commercial difficulties that might arise. If so, this introduction of an optional provision will leave it open to Western Australia, if she thinks it might be to her advantage not to employ the provision—not to put it in force. It has not the effect that the honorable member (Mr. Solomon) has indicated.
Mr. REID. -
And under your proposal the extra revenue they may require will come out of Western Australian pockets,

Mr. DEAKIN. -
It will come out of the Customs, at all events. Under these circumstances, I ask leave to withdraw my amendment with a view to moving it in another form.

The amendment was, by leave, withdrawn.

Mr. DEAKIN. -
I now beg to move-

Notwithstanding the provisions as to free trade and intercourse between the states, the customs duties in the said state as existing at the time of the imposition of uniform duties upon goods not originally imported from beyond the limits of the Commonwealth may be collected for five years with a deduction of 20 per cent. per annum; (that is to say), with a deduction of 20 per cent. for the second year, 40 per cent. for the third year, 60 per cent. for the fourth year, 80 per cent. for the fifth year, and at the end of the fifth year customs duties on all such goods shall cease and determine.

Sir JOHN DOWNER (South Australia). -
As the amendment comes up from the Finance Committee there need not of necessity be a single penny to pay Western Australia. Western Australia was only to be paid if the imposition of the uniform duties created any loss.

Mr. SOLOMON. -
Or any alteration in trade.

Sir JOHN DOWNER. -
And it did not follow at all that any loss, would be created or that one penny would have to be paid to Western Australia. On the contrary, we have the assurance of the Premier of Western Australia himself, who is the man best able to judge, that there would be no sum to pay at all-that really no difference would be made. So we have before us a recommendation which, however anomalous it may appear in form, still, in substance, recommends itself to Western Australia as allaying those fears, and which, I thought, the majority of us were prepared to accept. Now we have got something which the Premier of Western Australia is congratulated on, but for the life of me I cannot see where the congratulation comes in. Under the proposal now before the committee Western Australia gets all the uniform duties and all benefits which Sir John Forrest says would, in his opinion, be enough to pay him.
Mr. SYMON. -

For losses which may never occur.

Sir JOHN DOWNER. -

For losses which may never occur. First of all, we give the Premier of Western Australia what he says he is satisfied will compensate him for any possible loss, and, having done that, we give him the right to levy additional duties on his own account, and then congratulate him on his generosity, because, forsooth, he brings the duties to nothing in five years, having got the full amount in the first year, 80 per cent. in the second year, and so on. I recognise that Sir John Forrest is a reasonable and fair man, and I appeal to him not to try and force this amendment. I can understand the amendment is satisfactory to my friends in Tasmania, because they have nothing to do with it.

Mr. HENRY. -

They have nothing to do with it!

Mr. REID. -

Tasmania exports £4,000 worth of goods to Western Australia.

Sir JOHN DOWNER. -

Tasmania has practically no business with Western Australia.

Mr. HENRY. -

There is very considerable business.

Sir JOHN DOWNER. -

Tasmania, whose interests are not concerned at all one way or another, accepts this amendment, because it quietens the fear of having to subscribe to a continent loss—a very contingent loss—which Western Australia might sustain. The colony most materially interested is South Australia. Not only is Western Australia, as I have said, to get the benefits of this Constitution, which Sir John Forrest thinks will prevent his colony sustaining loss at all, but she is to have the right to impose duties for five years, with a result that will be exceedingly disastrous to the colony I represent. I sincerely hope we will either adopt the report of the Finance Committee, or adopt nothing at all. From the first, I have thought that it was either a case of doing something in the direction the committee recommend, or of saying to Western Australia—"You have no right to any consideration at all."

Sir JOHN FORREST. -

Supposing we don't come in at all.

Mr. SYMON. -

You would be very sorry for that.

Sir JOHN DOWNER. -

After all, there would be a time when you would have to say you were very sorry.
Sir JOHN FORREST. -
This amendment is better than not coming in at all.

Sir JOHN DOWNER. -
I don't know; it is better for Western Australia.

Sir JOHN FORREST. -
Better for you.

Sir JOHN DOWNER. -
I don't see that at all; but, however, I do not know. What I say is, that when the Finance Committee give us a recommendation which, whether logical or not, we can easily understand-

Sir JOHN FORREST. -
Very difficult to understand.

Mr. SOLOMON. -
It was straightforward.

Sir JOHN DOWNER. -
It was quite straightforward, and it recognised the special claims which Western Australia set up, and it ministered unto them. Now it is proposed to minister unto their other claims.

Sir GEORGE TURNER. -
The money would be taken out of the pockets of the other states; that is our difficulty.

Sir JOHN DOWNER. -
The Premier of Victoria suggested that money should be borrowed for the purpose of starting the Commonwealth as a new working concern. Even that would have been better than the proposal now before the committee. In fact, I do not know anything that would not be better than the anomalous position of intercolonial free-trade in all the other colonies, leaving out the colony which is considered the most rising one of the whole.

Mr. WALKER. -
It is an anomalous position we have to deal with.

Sir JOHN DOWNER. -
I still hope that, in spite of the opinions that have been expressed, the committee will not adopt the amendment.

Mr. ISAACS (Victoria). -
In the form in which the honorable member's (Mr. Deakin's) amendment is now presented I am prepared to support it, and I should like to explain particularly why. I do not understand its being put forward as a substitute for a general guarantee. Nor do I understand that it would stand as a guarantee, even for Western Australia, such as that state and the other
states deserve, and, I think, must have, in this Constitution. I would like to point out why I welcome this, or any proposal, which will effect a desirable and necessary object. When this proposal by Mr. Deakin has been disposed of, I shall move the amendment which stands in my name. That amendment provides a guarantee, and an effectual guarantee, against loss, but not a guarantee against prospective gains. The guarantee-which I referred to the other day, but which I shall not debate at length now, because I shall have an opportunity presently-would be a guarantee to the states that during each of the five years immediately succeeding the imposition of uniform duties, they would not get less than they had for, say, an average period preceding the imposition of those duties. I will point out, when I come to deal with the matter, how there need be no injustice at all, even in New South Wales, but that there is only an apparent difficulty in the way. My proposal, however, even if adopted, leave, one difficulty which I think Mr. Deakin's amendment gets over. The difficulty is that in imposing a Tariff, or any taxation which will afford a guarantee and afford the Commonwealth the means of paying the states the amount of that guarantee, it will be difficult not to give to any one particular state just the right amount without leaving other states with either too much or too little. In the case of all the states except that of Western Australia the position can be pretty accurately gauged. In the case of Western Australia there must be left a gap of some sort. The proposal of Mr. Deakin just fills up the gap and enables the general guarantee to stand for all the states, including Western Australia, for what we call the proportionate net loss, and yet enables Western Australia to make that loss up out of its own pocket, so to speak, without calling on any of the other states to contribute to extra or excess loss which may be sustained. On that ground, therefore, I am prepared now to support the amendment in this particular form. The honorable member (Mr. Reid) has said he is no party to any bargain, implied or otherwise, in regard to any other proposal. I desire to say that it must not be construed that we are any party to a ny bargain the other way. We hold ourselves free, while voting for this amendment, to vote for any other proposal, or against it, whether that proposal be of a like or any other nature.

Mr. WALKER (New South Wales). -

As a member of the Finance Committee, it is right to say we adopted this suggestion in regard to Western Australia because it was approved by Sir John Forrest on behalf of that colony; and I intended to vote against Mr. Deakin's amendment unless it was approved by Sir John Forrest. It is most important we should have a proposition acceptable to Western Australia,
and, as Mr. Deakin has withdrawn the first part of his amendment, I intend recording my vote for that amendment as now submitted. At the same time, I want it distinctly understood that I do not think the Finance Committee made a bad proposal. The proposal the committee made was, as they believed, in the interest of federation. I also desire to say that on the Finance Committee I advocated special consideration for Tasmania. To my mind, the amendment now before the committee has the additional attraction of removing, at all events from our Tasmanian friends, the feeling that possibly the people of that colony may have to subscribe indirectly to losses sustained by much wealthier colonies than themselves. I welcome the amendment as the happy solution of the difficulty.

Mr. LYNE (New South Wales). -

I do not quite agree with my honorable friend (Mr. Walker), in his statement as a member of the Finance Committee, that the proposal of the committee is a good one. The proposal, in my opinion, is about as bad as it could be. If I vote for the proposal as now submitted, it is only because it is not quite so bad as that of the Finance Committee. I do not like the present proposal. It is very objectionable, but it may perhaps be better than the proposal of the Finance Committee, because it recognises the chances that New South Wales would have to make up nearly all the deficiency of Western Australia. In that case, I do not think it matters much to New South Wales whether the proposal is accepted or not. It certainly does not matter so much to New South Wales as it does to Victoria. If Victoria is satisfied to accept the proposal in conjunction with Western Australia, it will hit Victoria harder than it hits any of the other colonies. The trade between Victoria and Western Australia is much larger than that between any of the other colonies and the western province.

Sir GEORGE TURNER. -

It will not hit us any harder than if Western Australia stands out altogether.

Mr. REID. -

Not so hard.

Mr. LYNE. -

Possibly not; but it would be very much better for Victoria if there was intercolonial free-trade between the other colonies and Western Australia.

Mr. DEAKIN. -

Hear, hear. Undoubtedly.

Mr. LYNE. -

In that respect, this matter is therefore more for the consideration of Victoria than for that of New South Wales.

Mr. ISAACS. -
We would retain that trade.

Mr. LYNE. -

And more than that, I recognise that, perhaps, the taxpayers of Western Australia must pay a large proportion of the deficiency, though those who exported from Victoria would also pay a portion, along with those who exported from South Australia.

Mr. WALKER. -

Does the consumer not pay the whole of the duty?

Mr. LYNE. -

No. The consumer does not pay the whole of the duty. In some colonies the consumer pays but little of the duty. In Western Australia the consumer would pay a portion, because the people of that colony have not had an opportunity of producing the articles which they are importing.

Mr. ISAACS. -

Practically the consumer pays the whole of it.

Mr. LYNE. -

Not the whole, but a larger proportion than he would pay if in Western Australia there could be produced sufficient, or anything nearly sufficient, to meet the importations. The case of Western Australia is, therefore, not a parallel to many other cases which I could quote, in which the consumer does not pay. Now, I will take the colony of Victoria, where, I know perfectly well, the consumer, in many instances, does not pay; and I could compare, in many cases, prices in Victoria with prices in New South Wales, where there is no duty at all. However, I rose to point out that this is more particularly a matter for the consideration of Victoria and South Australia, as the colonies which are doing the larger trade with Western Australia up to the present time. The trade that is done between New South Wales and Western Australia so far, I regret to say, is insignificant compared with what it should be, while the trade between Tasmania and Western Australia is very small, and I do not think it is likely to be very large for a considerable time to come, at any rate during the five years to which this amendment will apply. If I vote for this proposal it is not that I approve of it altogether, because I should like to see absolute intercolonial free-trade between all the colonies from the onset, and a great deal is detracted from the federation of the colonies for the first few years if we do not have absolute intercolonial free-trade. I venture to say that this is one of the principal objects that people in all the colonies have in view in trying to bring about federation, and if intercolonial free-trade existed to-day there would be very few advocates for federation, except for defence and one or two other things. I agree with those speakers
who have stated that they are not surprised that Sir John Forrest should accept this proposal. I certainly think that in his interest it is perhaps the best proposal that has been made, because under it Western Australia is placed under this advantageous position, that she is not called upon to come into the Federation unless she chooses to arrange among her own people to accept this step-by-step reduction of duties for the first five years of the Commonwealth. If she does not desire to accept this arrangement she can stand out, and then the other colonies will be simply placed in the same position in relation to Western Australia as they are at the present moment. I hope that this discussion, which has lasted so long, will not be continued very much longer, because nearly everything that can possibly be said in regard to it has been said. I did hope that this difficulty would be overcome in a manner more advantageous than the one now proposed, and I am sorry that there has not been any reference to the letter from Mr. Harper, which appeared in the Argus of Saturday, and which, I think, contains the germ of the solution of the whole of this difficulty between the states—a principle which I have advocated for some time past.

Mr. GLYNN (South Australia). -

I think that this proposal is really worse even than the one we rejected, and which came from the Adelaide Convention, because in the case of the Adelaide proposal there was no assumption that there would be a loss at all, if there was one, it was covered. Under this proposal we are allowing Western Australia, for the next two Years, to raise her Tariff beyond its existing limits I do not think it is likely that that will be done, but we are allowing it to be done, if Western Australia thinks fit to do it and as we are taking precautions against other things in this Constitution, it is just as well we should take precautions in regard to that matter also. In all communities there are men who can fight exceedingly hard for their own interests, and it is not unreasonable to suppose that there are men in Western Australia who will use their best endeavour's to induce the Government of that colony to do what is to their advantage under the Commonwealth Constitution. Besides, there is the further objection to this proposal that you will have two Tariffs in force. Mr. McMillan pointed out that it would be far better to have an intercolonial Tariff, subject to certain reductions, but so as to be, in character, like the uniform Tariff.

Mr. MCMILLAN. -

I propose, after this provision is dealt with, to add something to make it optional for Western Australia to adopt the uniform Tariff on the intercolonial articles.
Mr. GLYNN (South Australia). -

That makes the honorable member's suggestion better still. It is the only consistent method of getting over the difficulty. Under this amendment there will be two different Tariffs, and two different methods of treating imports, and, as Mr. Trenwith pointed out, it is quite possible for the uniform Tariff against foreign goods to be lower than the Western Australian Tariff on colonial products sent to Western Australia, so that we may have a differentiation under this scheme against colonial products. Now, how are we who represent South Australia going to recommend this proposal in our colony? One of the chief trials on which we are asking them to accept federation is that it will give us a start on intercolonial free-trade with the colony with whom we do the largest amount of trade. It was interjected on Friday last, when I was speaking, that about £1,000,000 of the total importations of colonial produce from, Victoria into Western Australia represented gold; but I find, on looking up the figures, that the value of the gold imported last year into Western Australia from Victoria was only £45,000, so that my argument on that occasion was quite correct. Now, how can we ask the people of South Australia to accept with enthusiasm a Commonwealth Constitution under which intercolonial free-trade is partly postponed for five years? In about three years' time we are to get an instalment of about one-fifth of the whole reductions of customs duties on colonial produce in Western Australia, but by a rise in her Tariff within the first two years that very one-fifth may be annihilated so that in this way the introduction of intercolonial free-trade may be postponed for four years. Therefore, we cannot heartily recommend this proposal to our people. I can understand New South Wales falling in with it, because her imports to Western Australia are not half of our own. Victoria and South Australia are also the greatest shippers of outside products to Western Australia, so that we would surrender, not only a portion of our trade in intercolonial products, but also, it may be, our trade with Western Australia in goods imported from abroad; and what Victoria and South Australia now send to that colony amounts to almost the total of the goods imported via other colonies from abroad. We cannot with good prospects of success recommend the people of South Australia to accept this Constitution if intercolonial free-trade is to be played with like this for five years. The fact, that under this proposal Western Australia can discriminate between colonial and foreign products imported into that colony ought to damn it. I would much prefer that the proposal of the Finance Committee should be adopted. How can we in this Convention, on the mere hurried suggestion of Sir John Forrest—because this amendment of Mr. Deakin's proposal is a very vital one—adopt a mode of dealing with the difficulty different from
that recommended by the Finance Committee? This proposal will allow Western Australia to establish a Tariff that will yield a better revenue than she gets from her present Tariff. Although Western Australia may suffer no loss at all, it may have an intercolonial Tariff for the purpose of getting a greater gain. How can the Convention accept this suggestion which has never been considered by the Finance Committee? It will stultify our common sense if, on a mere suggestion, we accept this proposal of Mr. Deakin's, as now altered by Sir John Forrest. I hope the matter will receive more consideration. I would not have spoken but for the fact that representatives from all the colonies, except South Australia, seem to be ready to bolt this proposal.

Mr. SOLOMON (South Australia). -

I do not wish to go over the whole of the ground that was taken up last week in discussing these various proposals, but I must say that I am surprised at the Premier of Western Australia going back, if I may term it so, upon the proposals which were adopted by the Finance Committee at his special instigation, and with the entire approval of both himself and the other member representing Western Australia (Sir James Lee Steere). It seems to me that when the Finance Committee admitted the necessity for some consideration to be shown to Western Australia in regard to her Customs Tariff, and selected the mode which is embodied in the proposals they put before the Convention, they did all that was absolutely practicable, and all that it was possible to do for Western Australia, while at the same time properly protecting intercolonial free-trade. It is no use for us to bandy words about what the result of adopting this amendment will mean. It certainly means killing intercolonial free-trade for the first five years. It means that Western Australia will have the privilege not only of collecting a much greater revenue under the uniform Tariff that may be adopted, but of collecting just whatever duties she may choose to impose during the first two years - the interregnum - as against the other colonies. Now, I ask, do the other colonies want Western Australia to come into the Federation on those terms? I say, without hesitation, representing as I believe I do, a large portion of South Australia, that we do not want Western Australia to come into the Federation on terms which will render utterly nugatory all our attempts to establish intercolonial free-trade. The objects of these colonies in seeking to establish federation are - first, intercolonial free-trade; next, in regard to defence; and then in regard to some of our more important services. And if we have to go back to our people and say that the Convention has accepted a Constitution which permits one colony of the group, and that probably the largest consumer of our products, to act in the
way I have described, how can we attempt to recommend such a Constitution to our producers? It is impossible, if we permit Western Australia to stand out and impose whatever Tariff she pleases for five years.

**Sir JOHN FORREST.** -

Not any Tariff we please, but the one which may be in existence when the uniform Tariff is established.

**Mr. SOLOMON.** -

Yes. But the right honorable member knows himself that the Tariff of Western Australia will probably be altered within the next two years.

**Mr. PEACOCK.** -

Do you say that Sir John Forrest knows that himself?

**Mr. SOLOMON.** -

I do not think there is a probability of a change of Ministry or of fiscal policy in Western Australia, but that the rapid changes with regard to her population may render it necessary for the Government in power to entirely alter her Tariff within the next two years. And what is the position under the amendment submitted by Mr. Deakin? Not that the Tariff now existing in Western Australia shall be the basis, although affording the only facts on which we can base any conclusion now, but that the Tariff which may be in existence two years hence, when the uniform Tariff is adopted, shall be the basis of this arrangement, and Western Australia is still to be permitted to impose duties under that Tariff throughout the five years following. It is all very well to say that there is an implied trust in the Government of Western Australia that they will adhere to the present Tariff, but there is nothing to guarantee that the duties on chaff, flour, and other products imported from these colonies into Western Australia will not be increased to twice their present amount during the next few years if the exigencies of Western Australia happen to require that that shall be done.

Who can say that the present Government may not be replaced by another Government, or that the present policy in regard to the raising of revenue from intercolonial products may not be entirely altered, so that when the uniform Tariff comes into existence, the Tariff of to-day may have ceased to be, and instead of 10 per cent. duties the duties imposed may be 15 per cent.?

**Mr. FRASER.** -

Or nothing.

**Mr. SOLOMON.** -

Or nothing. If we could believe that, of course it would be so much the better, but I do emphatically press on the members of the Convention that
it would be advisable, at this stage, even after all the time we have devoted
to this question, to postpone the consideration of these clauses for a week,
until some other proposals have been considered, with the view of bringing
the different delegations into caucus, and considering whether some better
means cannot be suggested, if the recommendations of the Finance
Committee are not satisfactory. I do not think I need touch upon the
proposals in print to be submitted by the Attorney-General of Victoria (Mr.
Isaacs) at present. They will come up for discussion later on, but I do think
it would be the greatest mistake we could possibly make to accept this
proposal of Mr. Deakin's and place it in the Constitution now. It would be
far better to give a little further time to the consideration of this important
matter.

Mr. FRASER. -
But how much time do we want to consider it?

Mr. SOLOMON. -
I may point out that we are not considering the original proposal, but
each day when we come into the Convention we are faced with some new
proposal. We are not going over the old ground again and again. We are
not debating the proposals of the Finance Committee, which we were
pretty fairly agreed to, but a new proposal of importance, which was only
put in our hands in print when we came here at half-past ten o'clock this
morning, and which has since been amended; and if we hurriedly come to a
conclusion on such a point as is involved in the present proposal I think we
shall make a very great mistake. The proposal now before the Chair is one
which, I am sure, will not recommend itself to the people of South
Australia; it may, perhaps, recommend itself to the people of Tasmania,
who have very little to lose in regard to their intercolonial trade; but to the
people of South Australia, and, I believe, even to the people of Victoria,
the proposal would prove very unacceptable indeed. When the producers of
Victoria-those producers whom the Premier of Victoria is so anxious
about-come to know that they are going to lose one of their very best
markets, leaving the people of Western Australia a perfectly free hand to
tax them for five years, I doubt whether the producers of Victoria will
accept this proposal with any more satisfaction than the producers of South
Australia. Of course I may be told that the representatives of Victoria are
perfectly able to protect their own people, but I also know from my reading
that, if there is any section of the Victorian community from which
opposition is expected-opposition of a grave nature-it is the section
employed in agricultural pursuits. The producers of Victoria are the people
who are showing most opposition to federation, as it is proposed at present,
because they believe that they will at least reap a less benefit, probably a
far less benefit, from it than the mercantile community. If, on top of all the objections we have already had - objections on account of the stock tax and other matters - we also have the position still further complicated, made still more annoying to the producers of this colony, by the fact that Western Australia, where they have been sending a large quantity of produce every year, is to be treated in this way, what support can be expected from them? I forget the exact figures of the Victorian exports to Western Australia.

Sir GEORGE TURNER. -

£1,250,000; and yours are £800,000.

Mr. SOLOMON. -

And those are chiefly produce. Last year, as has been already stated, there was only some £50,000 of gold exported to that colony from Victoria. Will the Victorian producers, with an export of £1,250,000 to Western Australia now, and with the probability of that increasing, and perhaps being doubled in the near future, with a perfectly open market, approve of the Victorian delegates consenting to a Constitution giving Western Australia for five years after the uniform Tariff the full right and power to tax the producers of Victoria and all the other colonies to the same extent as she can tax them now, or even to a greater extent if she chooses to alter her fiscal policy within the next two years? I certainly doubt whether such a Constitution will be any more acceptable to the Victorian producers than it will to the South Australian producers. However, I would suggest to the honorable member (Mr. Deakin) that perhaps it would be advisable for him, at this stage, to withdraw his proposal. It is a new proposal, which has been sprung upon us somewhat suddenly, and the honorable member would perhaps best meet the wishes of the Convention, and also prevent a lot of unnecessary debate, by withdrawing his proposal at the present time. And then I would suggest to the leader of the Convention that this particular clause dealing with Western Australia, and all the amendments thereon, should be postponed for a few days. We have plenty of other work to go on with, and there might possibly be another meeting of the Finance Committee held, or meetings of each of the delegations of the different colonies, so that some more acceptable means of meeting the difficulty might be submitted. I think it would be the greatest mistake for the Convention as at present constituted, a great many of our members being away, to take a vote on such a crucial question, because not more than two-thirds of the Convention could be represented in the division. I would suggest, therefore, to the honorable member (Mr. Deakin), not at all with the view
of endeavouring to block his proposal by any unfair tactics, but with a view of affording time for proper consideration, that his proposal might be withdrawn, at all events, for the present. We are really now at an absolute deadlock on this question. On the one hand, we have a certain section of the Convention prepared to accept the suggestions of the Finance Committee, recognising, as they do, that, although those suggestions may involve an expenditure of £100,000 or £150,000 per annum, we know, at all events, the full extent which those suggestions do involve, and, moreover, we do not bar intercolonial free-trade. Moreover, this £100,000 or £150,000—and that is the outside amount—would be a mere nothing to the Commonwealth purse.

Sir GEORGE TURNER. -

To the Commonwealth purse? It won't come out of that; it will come out of the states according to population, and with one-third of our population you do nearly as much trade as we do.

Mr. SOLOMON. -

The Premier of Victoria seems rather to change his ground occasionally. A day or two ago he proposed that the Commonwealth should float a loan for half-a-million to recoup the whole of the colonies.

Sir GEORGE TURNER. -

But you would not have that.

Mr. SOLOMON. -

I prefer to consider the Commonwealth purse as the purse of the Parliament which we are about to establish—a purse which is to be replenished by contributions per capita. It is specially laid down in all these amendments, I think, that the Commonwealth shall be responsible for the loss, whether it is a loss to one state or to the whole of the states.

Sir GEORGE TURNER. -

It is to be charged against the states per capita.

Mr. SOLOMON. -

It is to be deemed one of the original charges. Now, how do we provide for the original charges? By a per capita contribution of the whole of the states. That is the only purse which can be termed the Commonwealth purse; the purse which is contributed to by every man, woman, and child in an equal ratio seems to me to be the Commonwealth purse. But, as I was asking when the right honorable member's interjection turned me aside, where is the enormity of this contribution towards Western Australia? It is admitted, even by members from Western Australia, that there is a probability that there will not be any call at all upon the general community
for any recompense for their loss—that there will probably be no loss, but that when intercolonial free-trade is established, and the uniform Tariff is in operation, it will yield nearly as much as will recompense Western Australia for her loss on intercolonial goods. We have also been told that the advance in the agricultural prospects of that colony will, to a great extent, do away with all this difficulty, or a great deal of it, and yet we are making here a tremendous mountain over a matter which, after all, is only, at the utmost, a matter of £100,000 or £150,000 a year, to be contributed by the whole of the states. What does this amount to? Suppose we have to contribute £100,000 or £150,000 for intercolonial free-trade, and the full measure of federation, that would only represent a per capita contribution of less than 6d. per annum for every man, woman, and child in the colonies represented. What a tremendous lion in the path of federation to make all this fuss about! And that is putting it at the very largest estimate at which it can possibly be placed, and is assuming that agricultural pursuits in Western Australia do not advance at all during the next few years. And this 6d. per head of the people of the whole of these colonies is the price we have to pay for federation with the richest colony of the group—with the colony whose trade is most to be desired by the older and more producing colonies. I hope that at the present stage this difficult problem will not be finally settled, as I think it would be most unfair that a vote should be taken unless we have the very fullest representation of the whole of the colonies present.

Mr. CROWDER (Western Australia). -

I regret that I cannot support the motion of the honorable member (Mr. Deakin) or the amendment moved by the Right Hon. Sir John Forrest, because under those proposals I cannot conceive that any man in Western Australia would be mad enough to vote for federation. What is the position which those proposals would place Western Australia in? On the one hand, the people would be taxed by the Federal Parliament, and they would also have to be taxed again under this clause. It is all very well for members of the Convention, including delegates from Western Australia, to argue that Western Australia may not require to be taxed, but I may point out that once she joins the Federation, and intercolonial free-trade takes place, the income which she derives at the present moment, or the greatest part of it—the part derived from wine, beer, and spirits—will diminish; because under intercolonial free-trade Victoria and New South Wales will swamp her markets immediately with Wine, spirits, and beer sent from those colonies, and the excise duties on that wine, spirits, and beer will be collected in the colony where those articles are manufactured.

Mr. SOLOMON. -
Western Australia will receive credit for her consumption.

Mr. CROWDER. -

Again, under the sliding scale, is it possible to conceive for a moment that any Western Australian merchant will vote for a clause which simply means that every merchant must empty his warehouse on the 31st of December, or else make a loss of 20 per cent. on all the goods be bought during that year?

Mr. SOLOMON. -

20 per cent. of the duty.

Mr. CROWDER. -

20 per cent. of the duty is the difference between a dead loss and gain. It is all very well to argue that merchants can keep their stocks down and arrange their shipments so that they will arrive in the beginning of January, but if that were done it would mean starvation, as the consumers would be blocked and could not get the articles they required. I do not wish to detain the committee except to say that I am a believer in federation, and I feel deeply that the representatives of the different colonies have a difficult task before them in trying to induce their people to make some concession to Western Australia. I feel that, and I would say that if they can see that any of these different proposals which have been made will jeopardize federation in their colonies, then let them strike out all these proposals, and leave it to Western Australia to come into the Federation when she thinks fit. I am a believer in federation, but I am not a believer in federation with starvation. What I desire is that Western Australia shall be treated justly. But if treating her justly will jeopardize federation in any of the other colonies, then I say strike out the proposals and federate; we shall come in sooner or later.

Dr. COCKBURN (South Australia). -

It seems to me that this proposal is calculated to defeat the very object for which we are assembled here. What is the chief object we have in attempting to federate the Australian colonies? Undoubtedly, intercolonial free-trade is the chief object which we have at heart in this movement.

Mr. LEWIS. -

This is setting it after five years.

Dr. COCKBURN. -

The postponement of the Australian hopes for five years is a very serious matter. In forming this Federation we all have to surrender many things which we hold very dear, and we look for our recompense in the removal of intercolonial barriers. But if, while having to surrender everything we get nothing in return, and our hopes are postponed for five years, what will
the people whom we represent say?

Mr. JAMES. -

It is a matter of pounds, shillings, and pence?

Dr. COCKBURN. -

The removal of intercolonial barriers means a little more than the mere price we have to pay for the tolls between the colonies; it is the removal of the restrictions which hamper, curtail, and annoy the people of the different colonies in their intercourse and interchange with one another. To secure the removal of these restrictions is the chief object for which we are assembled here. By postponing the realization of the hopes of the people of the several colonies for five years, we shall deal a very severe initial blow at our federation proposals. Undoubtedly, offences will come. Many will bear no love to the federal authority on account of the privileges which will have to be surrendered to it, and if this surrender has to be made without an equivalent satisfaction being obtained, much will be done to make federation unpopular at the very moment of its birth.

Mr. HENRY. -

What will happen if you shut out Western Australia?

Dr. COCKBURN. -

Western Australia is not going to be shut out. The people of Western Australia are animated by the same federal spirit as ourselves, and for the same reason, that they desire to have intercolonial free-trade. Any postponement of intercolonial free-trade will, I believe, cause dissatisfaction to the people of Western Australia just as much as to the people of the other colonies. By agreeing to this proposal, we shall be putting a brake on federation just at its start, and when difficulties will arise, to secure the removal of which we ought to endeavour to obtain the good-will of everybody. An immense barrier will be raised to the successful launching of our federal scheme. We shall place in the hands of the enemies of federation a most formidable weapon, and I do hope that the Convention will pause before they agree to any proposal of this kind.

Sir EDWARD BRADDOON. -

It has been pausing.

Dr. COCKBURN. -

It has been pausing, and now it is going down a declivity with fatal speed. When the amendment was first submitted I did not think there was much probability of it being carried, but now there seems to be a considerable fear that it will be carried. It has been made all the more objectionable by the alteration made in it. When first submitted it presented two anomalies—interference with outside trade, and interference with and
postponement of intercolonial free-trade. The former part of the
amendment has been excised, but it now provides that the whole force of
the interference shall fall upon intercolonial free-trade—the most vital
principle in the scheme of federation. I trust that the Convention will either
defeat the proposal or postpone the further consideration of it so that
honorable members may have an opportunity of reflecting on the inimical
results that will follow from its adoption. It will take away the strongest
argument for federation, and will deal a most fatal blow to this high
enterprise.

Mr. DEAKIN (Victoria). -
I rise with great regret, but the statement made by the Hon. Mr. Crowder
is so serious, and indicates so grave a misapprehension of the scope of the
financial clauses, that I think the Convention will agree that, taking into
account the strong language in which it was couched, it certainly merits a
reply. I would ask the honorable member to refer to sub-section (1) of new
clause 91, in which he will see that the danger he fears has already been
provided for. That sub-section is as follows:

The duties of excise paid on goods manufactured in a state and thence
exported to another state for consumption therein, shall be taken to have
been collected in the state in which such goods have been consumed.

The danger which the honorable member foresees of intercolonial goods
paying excise in one of the eastern colonies, and then being imported to
swamp the markets of Western Australia, depriving that colony of its
revenue on imports from abroad, has, therefore, no foundation.

Mr. CROWDER. -
What is the difference between the outside duty and the excise duty?

Mr. DEAKIN. -
Even in the protectionist Tariffs the difference is very small. In our own
colony it has been reduced, and it is not impossible that it may be further
reduced, if not entirely abolished, in the future. This, however, is a matter
that the Federal Government will have to deal with. When it imposes
import duties it will see that the excise duties represent a fair proportion.
The honorable member is alarmed without sufficient cause. We should not
forget that it is to a member of the Western Australian delegation—the Hon.
Mr. James—that we owe the first suggestion, made in Sydney, of this
method of meeting the peculiar position of Western Australia. The scheme
cannot, therefore, be said to have been sprung on the Western Australian
representatives as a surprise.

Mr. SYMON (South Australia). -
It is proposed to insert this provision with a view of enabling Western
Australia to collect these duties, although there may be no diminution
whatever of her revenue. That is monstrous. There should be some limit to it. My right honorable friend (Sir John Forrest) does not expect, does not ask, that we should hand over to him the power to continue these duties, even upon a sliding scale, for five years, although there may be no necessity for it. This is out-Heroding Herod. We began some days ago to discuss the financial position of Western Australia, because it was likely to suffer from a deficiency of revenue. We considered several methods by which that deficiency might be made up. Now, even if there is no deficiency, we are going to allow the whole of the free-trade system of the continent to be dislocated. There ought to be some words inserted in the amendment to provide that these duties should only be imposed to make up a diminution of revenue. We have discussed this matter from the point of view of the exporters to Western Australia, and the arguments advanced seemed to me, rightly or wrongly, to be irresistible. We have discussed the question whether Western Australia, owing to her exceptional position, should have made good to her any deficiency which may result from the new Tariff. If there is to be no deficiency, why should we hand over to Western Australia for five years this engine of what some of us may think to be oppression upon the part of the consumers of that colony, and of interference with trade on the part of others?

Mr. MCMILLAN. -

Could we not provide that if, after the first two or three years, there was no deficiency, these arrangements should cease?

Mr. SYMON. -

I do not care how it is done, but I do say that honorable members do not understand the effect of the amendment if they are going to vote for it without some qualification of that kind. It is perfectly preposterous. We are asked to pass an amendment which will have the effect of declaring that, whether there is a deficiency in the revenue of Western Australia from this cause or not, the Western Australian Government may retain these intercolonial duties. I hope that no honorable member will vote for any such proposal. It is simply a partial repeal of the provision we have already introduced in the Constitution, that there shall be free-trade in all the colonies. Honorable members, in supporting this amendment, do not consider what the broad aspect of it is, apart altogether from the interests of this or that particular colony. We are intrusting to Western Australia the power to retain these customs duties, in spite of our declaration in favour of free interchange, whether she wants them or she does not.

Sir JOHN FORREST (Western Australia). -
The honorable member who has just resumed his seat has told us that he is not speaking in the interests of this or of that colony, but it is an extraordinary thing, and I am sure we all rejoice at it, that in regard to this matter the South Australian representatives should be so unanimous, I cannot see what South Australia has to fear. It will not be placed in a worse position than any of the other colonies, and our action is not in any way especially adverse to its interests. The retention of our duties will not affect South Australia more than any other colony. Honorable members seem to be very anxious to maintain the trade with Western Australia untrammelled. I have repeatedly pointed out to honorable members that unless we have some inducement to offer to the people of Western Australia it will not be easy to induce them to come into this Federation. The other colonies will obtain the advantage of free intercourse, but Western Australia is not in the same position. It has no export trade with the other colonies. I have asked Mr. Symon time after time to point out what great benefit Western Australia will derive from federation, but the honorable member has always avoided that question,

Mr. SYMON. -

I will tell you.

Sir JOHN FORREST. -

I don't know how the honorable member would proceed if he were in our places, and had to tell the people that in the first few years, at any rate, of federation there would be no possibility of any gain, but there would be every probability, in fact almost a certainty, of considerable loss. If there are any honorable members from whom we have a right to expect generous treatment, it is the representatives of South Australia and of Victoria, who have a trade with Western Australia that runs into millions of pounds annually. If this proposal will give any little advantage to Western Australia-and it is admitted that its position is exceptional-those are the honorable members to whom we might look for assistance. The position is just the reverse, so far as the representatives of South Australia are concerned. For some years past South Australia has had a trade of about £750,000 per annum with Western Australia, and now it wants more, whilst it is unwilling to give us anything in return. Honorable members do not appear to realize the difficulty we shall have in advocating the cause of federation before our people. We have really no inducements to offer them, but that is nothing to the representatives of South Australia. Their only anxiety appears to be to get our trade free and untrammelled. That is not the treatment I expected from them. This proposal may give us a small advantage, It may prove to be no
advantage at all, and I do not like to see such unanimity on the part of the representatives of one colony. If my honorable friend (Mr. Solomon) will find it to be difficult to induce his people to accept federation when he has to tell them that there is to be a sliding scale, so far as Western Australia is concerned, and that for the first few years there will not be complete freedom of trade, how much greater must our difficulty be when we have to tell our people that there will be a loss and not a gain?

Mr. SOLOMON. -

What stronger argument do you want than that supplied by the Finance Committee's recommendation, which provides that you shall be recompensed?

Sir JOHN FORREST. -

I never did like the Finance Committee's recommendation. I cannot believe that it would be right for us to take anything from Tasmania, however much we might take from South Australia, which has a large trade with us. Tasmania does a very small trade with Western Australia, amounting only to about £4,000 a year, and no one could advocate her making a contribution towards the loss of Western Australia. In fact, I should hesitate to take it if it were agreed to by this Convention. There is a great objection to the Finance Committee's proposals-although I have advocated them, and have indeed suggested their adoption to some extent-and that is, that I can

Sir JOHN DOWNER. -

You told us about yourselves, and we believed it.

Sir JOHN FORREST. -

Of course I believe that all that has been said in praise of Western Australia is quite true. I know, at all events, that we are the greatest gold-producing colony in Australia at the present time. But even though what is proposed does result in some advantage to Western Australia-and of course it will result in some advantage to us-I do not think that the other colonies should grudge us that little advantage.

Mr. DOBSON (Tasmania). -

I have risen to ask my right honorable friend (Sir John Forrest) whether he would not desire to amend the clause in order to make it a little more elastic? It appears to me that, as the clause is worded now, the whole of the duties enforced at the time of the coming into operation of the uniform Tariff must be kept on. Western Australia will not be able to take off some duties and leave the others. The clause says "existing duties." If some existing duties are considered too high, and the people of Western Australia desire that they shall be reduced, it does not appear to me that, according to the wording of this clause at present, the Parliament will be
able to make any reduction. The provision should be made more permissive and elastic, so as to allow Western Australia to take advantage of it in the way of reducing duties if she thinks proper.

Mr. SYMON. -

We should add the words "or to reduce."

Mr. DOBSON. -

Quite so. It seems to me that the words at present go too far. Now I come to deal with two objections that seem to me to be well worthy of consideration. The first is that of Mr. Glynn. He says that, although Sir John Forrest might not be ungenerous enough to take advantage of it, there is no reason at all why, between this and the coming into operation of the uniform Tariff, the Parliament of Western Australia should not raise the duties of that colony, or lower them, for the express object, of getting the best possible terms out of this arrangement which we are proposing to make. I am certain from my knowledge of Sir John Forrest that he would not take advantage of any provision in that way; but at the same time we should take care that no Parliament of the group shall be able to twist an advantage which this Convention gives to it in order to get a greater advantage than is intended.

Mr. JAMES. -

If you have nothing to fear from Sir John Forrest—and you may feel equally secure that you have nothing to fear from Mr. Leake—what fear have you at all?

Mr. DOBSON. -

I did not say that there is anything to fear, but I do say that we should make the provision so that it will be impossible for any colony to take undue advantage of it. The second objection is that of Mr. Symon, and it seems to me to be a still more forcible one. Our sole desire is to make up to Western Australia any fancied or real loss she may sustain in proportion to the real losses sustained by the other colonies; and unless this provision is amended in some way, so that it operation shall only extend to make up the loss actually made by Western Australia it will not be in accord with the view of the majority of this Convention. These two points which I have gathered in the course of the discussion appear to me to show the advisability of referring in important clause of this class to our Finance Committee. I can hardly go with Mr. Solomon when he says that the amendment has been sprung upon us, because we all knew about it before it was proposed; but I must confess that some important points have been raised during the discussion this morning, and as the Finance Committee is
composed of the Treasurers of the various colonies and of financial experts, who have had this problem before them for a considerable period, I am inclined to think that we should refer the provision to them, so that they may fully consider such objections as these of Mr. Symon and Mr Glynn. Now, I ask myself, what is a fair thing to do with regard to Western Australia, to whom we all desire to be fair, if only in return for the very generous spirit which Sir John Forrest and his colleagues have manifested to us throughout this Convention? I do not know at this moment how I shall vote when the matter comes to a division, because I am perplexed about it, and my perplexity arises because my right honorable friend (Sir John Forrest) himself says that he does not approve, and never did approve, of the proposals of the Finance Committee.

Sir JOHN FORREST. -

I did not say I disapproved of them; I said I did not like them.

Mr. DOBSON. -

But the right honorable gentleman went so far as to say that if the clauses were passed, he would not be fully prepared to accept from us a contribution in money. But what is he now supporting? Is not the proposal one for making to Western Australia a contribution from the producers of Victoria first, from those of South Australia secondly, those of New South Wales thirdly, and to some extent from those of Tasmania?

Mr. FRASER. -

It is a contribution from the consumers.

Mr. DOBSON. -

We know that the consumers may be in it in a way, but the...
colonies, and the other half is expenditure upon public works and upon building railways. If that is the position of Western Australia, I am inclined to think, with great deference, that the true course for me to urge is that my right honorable friend and his colleagues should say-"We are so rich and prosperous and so well off, and, at the same time, so desirous of federation, that we will not ask the other colonies for anything at all." I believe that if we were to have these matters thoroughly beaten out by men of judicial minds, having no interest in the matter at all, and who had all the figures and data given them to examine, they would say that Western Australia was not in a position to ask for any concession whatever, on account of her extraordinary position of prosperity and wealth at the present time. Let us take one example. I find from the figures that have been furnished to us that Western Australia has constructed railways to the extent of 970 miles at a total cost of £3,236,493; whereas we in Tasmania, with our rocky and mountainous country, have constructed only 428 miles, against Western Australia's 970, at a cost of £3,600,000.

Sir JOHN FORREST. -
We have constructed about 1,500 miles of railways altogether.

Mr. DOBSON. -
The railways of Western Australia bring in £1,066,708, whereas our Tasmanian railway receipts are only £170,000. The railways of Western Australia pay 31 per cent. interest, which is the full interest on the money lent by the debenture-holders, and our railways, on the expenditure we have laid out upon them, pay only 1 per cent. Therefore, it seems to me to be questionable, as a matter of absolute justice, whether we should make the producers of the other colonial contribute anything whatever to a colony with the magnificent position of Western Australia.

Mr. JAMES. -
Because we are rich you want to pick our pockets.

Mr. DOBSON. -
No, nothing of the kind. I say to Western Australia - "Federate with us, and do not assume that you are going to make a loss." We say that we are going to make a great gain by federation, and it is because we think we are all going to gain in the end that we are here. If Sir John Forrest wants to see what the advantages of federation are, let me refer him to the magnificent peroration in the speech which Mr. Glynn delivered to us on Friday week, and be may add to that a few very practical things which Mr. Glynn did not mention. The right honorable gentleman himself must know what the great advantages of federation will be to his colony, or he would not be here at all. In looking over the Customs revenue of Western Australia, what do we find? There is a total value of imports amounting to
£6,493,557, and of that total goods to the value of £1,664,437 are subject to specific duties. Then we find that £2,400,990 of imports represent goods which are absolutely free. We also find that £691,394 of imports pay duty at the rate of 5 per cent.; 10 per cent. is paid on goods to the value of £648,074; 15 per cent. on goods to the value of £836,441; and 20 per cent. on goods to the value of £252,221. Therefore, there is room for modification if we can get any modification. We could strike out the 20 per cent. duties and the 15 per cent. duties, and leave, say, the 5 per cent. and the 10 per cent. duties. But all these things are worth looking into before we come to a conclusion upon this matter. Therefore, I hold the opinion that in a matter of this sort, which is so complicated and so important, we should ask for the views of the Finance Committee. I do not think we shall be doing ourselves justice, or paying the committee the deference which they are entitled to, unless we refer a matter of this sort to them, and let them bring up a report.

Mr. KINGSTON (South Australia). -

I am very sorry that the Right Hon. the Premier of Western Australia should have referred to South Australia and some of the eastern colonies in the way he has thought fit to do, after the speech he has delivered this morning.

Sir JOHN FORREST. -

You are so unanimous.

Mr. KINGSTON. -

Yes; when we do agree our unanimity is truly wonderful. It is only on rare occasions that the representatives of South Australia do thoroughly agree, and then they do so because there is urgent need for it. As to what the right honorable gentleman has said with reference to the people of the eastern colonies, he seems to me to have put it as though all the advantages are on the side of those colonies. I am sorry to be compelled to make anything in the way of a contrast, but I cannot help saving that Western Australia is greatly indebted to us. We have peopled her wildernesses, we have discovered her resources, we have discovered her gold mines, we have fed her people, and in return for that it seems to me that we have had to bear heavy burdens in the shape of taxation. The position is that we are told that Western Australia cannot come into the Federation unless special terms are conceded to her. We desire to see her come in. We are prepared accordingly, in the sacred cause of federation, to give our consent to any scheme of benevolence which is necessary for the purpose of securing the entry of Western Australia into the Federation.

Sir JOHN FORREST. -
We do not want benevolence.

Sir JAMES LEE STEERE. -
Do not talk about benevolence.

Mr. KINGSTON. -
Well, I will not use the word "benevolence," I will say a scheme of fair and equitable compromise. The only reason why I was tempted to use the other term was because my right honorable friend intimated that he was not prepared to consent to the scheme suggested by the Finance Committee, because he did not like Western Australia to be specialty named in connexion with it, and I thought he rather regarded it as an act of benevolence, against which term, however, his manly and independent soul revolts. That was the reason why we employed a term which I shall be happy to see withdrawn in favour of one more acceptable to the people of Western Australia. Whilst the proposal of the Finance Committee was to make good a loss, the proposal which it is suggested should be substituted for it, and to which my right honorable friend gives his assent, goes a great deal further. The proposal now is to secure to Western Australia, loss or no loss, a power to raise revenue which

Mr. HENRY. -
A power to raise revenue from her own people.

Mr. KINGSTON. -
Extra customs duties would fall both upon the producers in other colonies and upon the consumers in Western Australia. There can be no doubt that these duties would seriously embarrass our trade by facilitating the competition of local producers. What is the position of South Australia? Our chief trade is with Western Australia. So far as the New South Wales markets are concerned, we have them already. The Victorian markets are overstocked, so that it is difficult for any one to compete with her manufacturers and producers. The Tasmanian markets are not so extensive as we could wish. Western Australia is the great market for the consumption of our goods. But if effect is given to the scheme now proposed we shall have to return to our people and say-"Whilst you are going to throw open your ports to the producers of New South Wales, Victoria, Tasmania, and Western Australia"-at the present time the timber exportation of Western Australia is of considerable importance-"you are not to have free access to the colony to which your commercial attention is chiefly directed." An arrangement of this kind would be a huge blot upon our Constitution. We are told that, at the present time, Western Australia receives something like £380,000 per annum from duties upon intercolonial produce, which
amount she will lose if she is compelled to adopt intercolonial free-trade. But if the proposed scheme is adopted, she will not only be able to make up this loss, but she will be able to put into the Treasury chest between £900,000 and £1,000,000, which she will obtain from the other colonies.

Sir JOHN FORREST. -

How can that be?

Mr. KINGSTON. -

£380,000 for five years would amount to £1,900,000. I take away one-half to allow for the gradual reduction, and that gives between £900,000 and £1,000,000.

Mr. SOLOMON. -

Irrespective of the revenue derived from the uniform Tariff.

Mr. KINGSTON. -

Yes. I put it to the right honorable member, does he want that? I do not think he does. I know that his financial soul is very often vexed by these questions of pounds, shillings, and pence. Even with a booming revenue it is possible to find the expenditure increasing proportionately; but I have at times heard the right honorable gentleman dilate upon the advantages of federation apart from mercenary and sordid considerations. I therefore ask him to give us some practical proof of his enthusiastic love for federation by saying that he does not want to give to Western Australia the power to take £1,000,000 from the other colonies.

Mr. FRASER. -

The people of Western Australia will have to pay these duties.

Mr. KINGSTON. -

The honorable member's interjection almost forces one to the conclusion that intercolonial free-trade is not what we are chiefly aiming at. His remark would apply to the people of Victoria, and of the other colonies, as well as to the people of Western Australia. Are we to be told, when we try to emphasize the propriety of establishing intercolonial free-trade at the earliest moment, that it is of no concern, because the people of the various colonies pay these duties themselves? If the right honorable member must have special terms beyond the advantages which federation will give to all the colonies, he should recognise that the terms which he now seeks are too favorable. It is proposed that instead of Western Australia being recouped her actual loss, she should be empowered to levy immense sums by imposing additional duties upon produce from the other colonies.

Sir JOHN FORREST. -

The Western Australians will not tax themselves to a larger extent than they can help.

Mr. KINGSTON. -
Well then, why not rely upon the same principle in regard to the other colonies? But the power to tax goods imported from each other will be taken away from the federated colonies. I would suggest that Western Australia, the richest colony of the group, should not extort extreme terms at the expense of her poorer neighbours. If she is to suffer loss, let her consent to an arrangement which will recoup her the amount of that loss, but no more.

Mr. FRASER (Victoria). -

I am sorry that we are taking up so much time over this matter. As Western Australia is willing to accept this proposal, I do not see that we should cavil so much at it. I do not think that any one can deny that the Western Australians will have to pay the bulk of any extra Customs taxation, and if they do not want to pay more taxation, they will not consent to its imposition. Then, too, this arrangement is to last only for five years, and five years will be over in a twinkling of the eye, as compared with the duration of the Union. If we do not make concessions like this one to another, and especially to Western Australia, the colony which appears to require so much to make up her loss of revenue, how can we expect to get over the difficulties which we have to face? I do not wish to say an unkind word to South Australia, but I am afraid that there is a Murray River running between Western Australia and South Australia somewhere.

Mr. SYMON. -

Not a Murray River—a golden river.

Mr. FRASER. -

Yes, a golden river; that is better. This trouble will only last, at the most, for five years, and will be lessened each year by the sliding scale.

Mr. KINGSTON. -

Would you allow the other colonies the same privilege

Mr. FRASER. -

No. Not that I would have any personal objection to such an arrangement, but I think that it would really stop federation altogether.

Mr. SYMON. -

If we give this concession to Western Australia, what answer shall we make to Victoria if she asks for a similar concession?

Mr. FRASER. -

Though I am a Victorian representative I would not vote to give Victoria such a concession, because it would create immense difficulties. Western Australia, so far as her trade is concerned, is a colony apart. The whole of her trade with the other colonies is water borne. The colony is a new one,
and has sprung into life within a very few years, and it cannot be dealt with upon quite the same lines as colonies which have been in existence for half-a-century or more. I do not see any better proposal than that now before us. To my mind, it is preferable to the proposal of the Finance Committee. I do not see that any complications can arise under it. No doubt it may put a stop to a little of the trade between South Australia and Western Australia and between the other colonies and Western Australia. That is to be regretted, but the trouble will be of short duration. I would say, let the Western Australians have this power and be done with it, so that we may settle the financial provisions of the Constitution.

Sir JOHN DOWNER (South Australia). -

When I was speaking upon this matter before I pointed out that Western Australia was asking for the power to collect, of course from her own people, a greater amount of Customs revenue than was necessary to make up any possible loss under federation. I ask the right honorable member (Sir John Forrest) if he wants to collect Customs revenues in excess of this possible loss? Suppose the uniform Tariff brings him in as much Customs revenue as he has now, does he want anything more?

Sir JOHN FORREST. -

We do not know what our population may be in the future.

Sir JOHN DOWNER. -

But you do not want more Customs revenue than you are getting now.

Sir JOHN FORREST. -

Why not? We may want twice as much.

Sir JOHN DOWNER. -

I understood that we all agreed that where the circumstances of Western Australia were not different from those of the other colonies no exception should be made in favour of Western Australia.

Sir JOHN FORREST. -

It is quite different when we make up this loss ourselves.

Sir JOHN DOWNER. -

My right honorable friend appears to want to get from the uniform Tariff as much Customs revenue as he gets now, and to obtain as much more as he can get from extra duties.

Sir JOHN FORREST. -

Does the honorable member think that the Western Australians will easily be got to agree to these extra duties?

Sir JOHN DOWNER. -

I do not know as to that. I would suggest the insertion, after the words "from beyond the limits of the Commonwealth" in the latter part of the
amendment, of the words "to the extent necessary to equalize the proportion of net loss of such state with such average." Afterwards, I would reinsert the remainder of the Finance Committee's recommendation, except so far as the alteration in the mode of payment is concerned.

Sir JOHN FORREST. -

I would not agree to that.

Sir JOHN DOWNER. -

Even if the amendment is agreed to, I shall vote against the clause as amended. I shall move the amendment to minimize the evil of what I think a mischievous clause.

Sir EDWARD BRADDOCK. -

Does the honorable member think that any one will support it upon those terms?

Sir JOHN DOWNER. -

I think that there is still some reasonableness left in the Convention in spite of the length of this discussion, and I have a sure and certain hope that a good many honorable members will vote for the amendment. I think that, after the luncheon adjournment, the Premier of Tasmania will see that Western Australia should have the right to impose extra Customs taxation only to the extent necessary to recoup her for any diminution in revenue resulting from the operation of this Constitution.

Mr. LYNE. -

But the honorable member does not propose to let Western Australia have an advantage over the other colonies.

Sir JOHN DOWNER. -

Certainly not.

Mr. LYNE. -

That was what the Premier of Western Australia seemed to want.

Sir JOHN DOWNER. -

Yes, I am afraid so.

[The Chairman left the chair at one o'clock p.m. The Convention resumed at five minutes past two o'clock p.m.]

Sir JOHN DOWNER. -

I intend to move my amendment, because it is the logical sequence of the arguments by which the representatives of Western Australia support their position. I am not doing it in any flippant spirit, but in all seriousness. Western Australia says-"Our position is exceptional, we are importers, not exporters; you are both. You derive benefits which we do not participate in; our position is abnormal at present. We believe we will develop industries which will make us exporters after a little while, and we want you to give us five years in which we are to get the benefit not only of your
intercolonial duties, but also of any other duties we choose to impose on a sliding scale. By that means you will enable us to protect our own industries, to develop them, and we sincerely hope that at the end of the five years we shall not be in need of any of you." That is practically the position that Sir John Forrest has taken up.

Sir JOHN FORREST. -
What is your objection to that?

Sir JOHN DOWNER. -
There is no objection whatever if you are allowed to do it.

Sir JOHN FORREST. -
Give us some inducement or we cannot come in.

Sir JOHN DOWNER. -
The inducement is to be the same inducement which operates upon everybody.

Sir JOHN FORREST. -
What is your inducement?

Sir JOHN DOWNER. -
It is of a mixed kind. I aware my right honorable friend it is not all made up of pounds, shillings, and pence.

Mr. SYMON. -
It must be a material inducement to Western Australia to give her people untaxed food.

Sir JOHN DOWNER. -
That is the case. Sir John Forrest asks why I want South Australia to come in. I hope it is from a feeling much higher than any feeling which concerns business operations, or such considerations as we have before us at the present time. I will do my right honorable friend the justice to say that he has the higher feeling, only if he can combine the noblest with the most ignoble motives, he does not mind, while he can make things right all round. My right honorable friend simply asks to be placed in a fair position, not an exceptional position. When it was proposed to extend a benefit to his colony, which, he thought, reflected upon its dignity, he protested, with all that pride of colony which becomes him so well against any such proposition. He said: though he would take it if we forced it upon him, he would take it complainingly. As far as I am concerned, I was willing, and am still willing to adopt the report of the Finance Committee, which, by the way, at the present moment is not supported by a single member of that committee, as far as I know, except Mr. Holder.
An HONORABLE MEMBER. -
Mr. Solomon also supports it.

Mr. WALKER. -
It is an excellent scheme.

Sir JOHN DOWNER. -
Does the honorable member think so?

Mr. WALKER. -
Yes, but I support this scheme because Sir John Forrest approves of it.

Sir JOHN DOWNER. -
At present the only members of the Finance Committee who support the recommendations are the members from South Australia who were on that committee.

Mr. ISAACS. -
They did not defend it on grounds of justice.

Sir JOHN DOWNER. -
I would ask Mr. Isaacs if he can defend this scheme on grounds of justice? Not a bit of it. He says "I am going to support it, because directly it is carried I am going to propose another logical sequence of this proposal."

Mr. ISAACS. -
No; I think it is an admirable supplement to the scheme I want to propose.

Sir JOHN DOWNER. -
Exactly, but this will come first, then Mr. Isaacs will come in as a supplement. His clause is to be an addendum. I do not think my honorable friend will get in his clause. I do not think he has the smallest chance, and I think it would work a monstrous injustice.

Mr. ISAACS. -
We shall get something like that.

Sir JOHN DOWNER. -
While I quite agree that the position of Western Australia is exceptional, and that she should get exceptional treatment, I say-"Don't be too lavish in your treatment of Western Australia." Let us combine that consideration with a reasonable degree of economy in our generosity. If Sir John Forrest is earnest in what he says that all he requires is to be placed on an even condition with the other colonies, he should propose something in the nature of the amendment I am now proposing. He should have said-"I do not want to keep the duties which I believe will recoup me for all my losses, and in addition to that be able to levy those duties which go to the very root of federation, interfere with its cardinal principle, and create anomalies, which have to exist for five years. I only want the duty on the Commonwealth or the right in me to levy the customs duties which are
now imposed to such an extent as circumstances may prove to be necessary to recoup me the losses I have sustained in excess of the losses sustained by other portions of the Commonwealth."

Sir JOHN FORREST. -
That was when it came out of the pockets of the Commonwealth.

Sir JOHN DOWNER. -
That is the position my right honorable friend has taken up. But when there is a disposition to accept that he asks for something more. The Tasmanian representatives, relieved from their anxiety lest they should be called upon to assist this rich colony, are willing to accept anything which somebody else has to pay for.

Mr. BARTON. -
Who says so?

Sir JOHN DOWNER. -
That is what I am saying. New South Wales does not care very much. The Finance Committee say, like my friend (Mr. Walker)-"Well, really, all we have to consider are the views of Sir John Forrest, and, having ascertained what his final view is, to accept it, although I adhere loyally in sentiment-only in sentiment, not in truth or in fact-to the report of the Finance Committee." I am going to propose an amendment.

Sir JOHN FORREST. -
What for?

Sir JOHN DOWNER. -
I am going to tell the honorable gentleman what for? I am going to propose the amendment just to see whether my honorable friend has the accurate sense of proportion in his wishes for right which I have always suspected him of.

Sir JOHN FORREST. -
Will you vote for it?

Sir JOHN DOWNER. -
No, I will vote against it. I would like the majority of the members to see exactly what I mean. My own fear is that this will be carried.

Sir JOHN FORREST. -
Oh, no, there is no fear of that.

Sir JOHN DOWNER. -
My own fear is that the amendment of Mr. Deakin will be carried.

Sir JOHN FORREST. -
Oh, yes.
My wish is, if Mr. Deakin's amendment be carried, to minimize the effect of that amendment, or, at all events, to put it on lines right and just to everybody. If I fail-if the amendment on the amendment is carried, and the motion as amended is carried, so that that which I think is a bad thing becomes a portion of the Constitution-then I will have to persuade myself that I can still loyally support the cause which I have been interested in for so many years, and which is so dear to the hearts, I believe, of most of us.

Sir JOHN FORREST. -
That would not upset you, would it?

Sir JOHN DOWNER. -
My honorable friend knows very well, as the representatives of Tasmania and the representatives of New South Wales know, that when some particular local interest comes in they get very much upset. Victoria gets very much upset at times.

Sir GEORGE TURNER. -
No, no.

Sir JOHN DOWNER. -
In fact, I think there is rather a normal condition of mental anxiety on the part of Victoria. New South Wales is in a condition of defiance.

Mr. WISE. -
Suppression, not defiance.

Sir JOHN DOWNER. -
At times, I think South Australians want to do what is proper and right.

Mr. ISAACS. -
For them.

Sir JOHN DOWNER. -
For them and for all, because the interest of one should be the interest of everybody. Although objecting to the proposal, I am going to move, in order to test the feeling of the committee-

Sir JOHN FORREST. -
That is rather hard.

Mr. KINGSTON. -
Why?

Sir JOHN FORREST. -
It will make it worse.

Sir JOHN DOWNER. -
I am trying to make it better, and trying to bring about a state of things which, at the worst, I shall not have to repudiate.

Sir JOHN FORREST. -
And you will vote against both.

Sir JOHN DOWNER. -
I am sure my honorable friend would not respect me if I did not vote according to my judgment. I am going to minimize the amendment—if I could I would oppose it—because to minimize a bad thing is no evil.

Mr. DEAKIN. -
This is a moral ideal!

Sir JOHN DOWNER. -
I have seen the need of it.

Mr. DEAKIN. -
For export only.

Sir JOHN DOWNER. -
I now move—
That, after the word "states" (line 2), the following words be inserted:—
"The Commonwealth shall re-impose and collect the customs duties in the state of Western Australia existing at the time of the imposition of uniform duties upon goods not originally imported from beyond the limits of the Commonwealth to the extent necessary to equalize the proportionate net loss of that state with such average. Such duties shall be re-imposed and collected for five years with a deduction of 20 per centum per annum (that is to say), with a deduction of 20 per centum for the second year, 40 per centum for the third year, 60 per centum for the fourth year, and 80 per centum for the fifth year, and at the end of the fifth year customs duties on all such goods shall cease and determine."

I move this amendment hoping, in the cause of federation, the committee will seriously consider whether it is expedient to make a provision in respect of Western Australia, however desirable it may be that that colony should be in the Federation, which, on the face of it, in the most unfederal spirit, would work harm to one of the states.

Mr. DEAKIN. -
Do you say what the particular net loss means?

Sir JOHN DOWNER. -
I take the report of the Finance Committee. I take clause 92, as recommended by the Finance Committee.

Mr. DEAKIN. -
You accept the definition there?

Sir JOHN DOWNER. -
Yes, I take that and then go on. I take all the premises by which you arrive at the net loss, and then I provide how the net loss is to be made up.

Sir GEORGE TURNER. -
And you allow the people of Western Australia to make up their own net
loss?

Sir JOHN DOWNER. -

Oh, yes, they are entitled to do that, I think.

Mr. MCMILLAN. -

How about the first year? You have no calculation.

Sir JOHN DOWNER. -

You have to make your calculation as soon as you can. That will be a matter for the Parliament of the Commonwealth. My intention is that the Commonwealth shall make that calculation. The Parliament of the Commonwealth will, in respect to Western Australia, continue such of the duties at the rates which are at present imposed and which may be necessary for the purpose of recouping to Western Australia any loss.

Mr. MCMILLAN. -

What data will they have?

Sir JOHN DOWNER. -

I would like to know my honorable friend's data for the extraordinary proposition, which is rule of thumb at the best, and which he does not agree with, but thinks it will not affect New South Wales?

Sir JOHN FORREST. -

You had better withdraw.

Sir JOHN DOWNER. -

I certainly will not withdraw. We have discussed the matter sufficiently, so far as the general question is concerned, and by this time we ought to know pretty well what we are about. We have had a report, which I am willing to adopt, and of which Sir John Forrest approved, but afterwards repudiated. We have another recommendation with which I distinctly disagree, and which, if it cannot be improved, I hope will be rejected altogether.

Sir John Downer's amendment was negatived without a division.

Mr. LYNE (New South Wales). -

I shall not detain the committee more than two or three minutes, but I think there was something in the contention raised by Mr. Symon, when he pointed out that there was a possibility under Mr. Deakin's proposal that Western Australia would obtain a larger revenue than she obtains at the present time.

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Sir JOHN FORREST. -

The last decision was on that.

Mr. LYNE (New South Wales). -

No, the last decision was on Sir John Downer's amendment.
Sir JOHN FORREST. -

Well, that was it.

Mr. LYNE. -

But, it had other matters in it as well. The insertion of one or two words in Mr. Deakin's proposal would prevent Western Australia obtaining a larger revenue than she now obtains, and I understand Mr. Deakin's proposal to be that Western Australia shall be guaranteed against any loss, and nothing more. If the proposal may possibly give her more revenue than she obtains at present, I certainly do not think that that is the intention of the committee. I stated at the outset that if I voted for this proposal it would be because it was the better of the two proposals before the Chair. The proposal of the Finance Committee is not so good as this one, but I am not at all anxious to see this amendment passed, nor do I think it is entirely a satisfactory solution of the difficulty. Moreover, if there is any possibility of Western Australia obtaining a larger revenue than she now obtains, this proposal will not meet with the approval with which it would be received if it was simply to allow Western Australia to reduce her duties 20 per cent. each year, instead of immediately on the imposition of the uniform Tariff, and thus prevent her suffering any loss of Customs revenue through federation. I would like to say a word with reference to the speech of Mr. Dobson, who suggested that the colony of Western Australia should be allowed to take the duties off any of her importations regardless of the wishes of the other colonies. I think that that might act very unfairly. We will take, for instance, the case of flour. If Western Australia kept the full rate of duty on flour, that would be injurious to the exportations from the other colonies, but if she reduced her Tariff by 20 per cent. all round, it would be only a proportionate reduction.

Mr. DOBSON. -

I said that she should have liberty to reduce duties, and then let 20 per cent. go off the reduced rates.

Mr. LYNE. -

I understood the honorable member to say that Western Australia should be able to select out of her Tariff any particular items she chose, and reduce the duties on them.

Mr. DOBSON. -

No; I said she should be able to select any of the articles on which duties are now imposed.

Mr. LYNE. -

I did not understand the honorable member to say that she should reduce the duties on all articles 20 per cent., but that she should be allowed to select any particular ones for reduction.
Mr. DOBSON. -

No; let me give you an illustration. Supposing she had a duty of £1 per ton on chaff, she could reduce it to 10s., and then take 20 per cent. off the 10s.

Mr. LYNE. -

Then I did not understand the honorable member properly. I thought the honorable member suggested that the 20 per cent. should come off generally, whatever rate she fixed on as the basis, and I feel that we should not do anything which would give a probable increase of revenue to Western Australia instead of simply enabling her to protect herself against any loss that might arise during the five years.

Mr. SYMON (South Australia). -

To give effect to the suggestion I made, and also to secure the determination of this provision when the necessity for it ceases, I beg to move the addition to Mr. Deakin's amendment of the following:—

Provided that this provision shall cease to have effect if and whenever there shall be no diminution of revenue to Western Australia owing to the imposition of uniform duties of customs or by the operation of free trade and interchange among the several states.

Mr. BARTON (New South Wales). -

I wish to know whether that provision is intended to operate in such a case as this: If there be a year in which the state of Western Australia is not under any loss, is the whole operation of Mr. Deakin's amendment then to cease, notwithstanding that there may be other years during the five years in which there will be a loss? I should like to know whether the amendment is to operate to that extent, or is it to be made clear that its operation in the case I have pointed out is to be prevented?

Mr. SYMON (South Australia). -

I intend that the moment any diminution of revenue ceases the operation of Mr. Deakin's amendment shall cease.

Mr. DEAKIN. -

How are you to know the moment?

Mr. SYMON. -

In the same way as you ascertain whether there is a diminution.

Mr. DEAKIN. -

A relative diminution.

Mr. SYMON. -

Yes. The whole object is to secure Western Australia against loss to her Treasury. If there is no loss, that can be ascertained in the ordinary way. I
intend, by my proposal, that the moment there is no loss this special provision shall cease.

Sir JOHN FORREST. -

What do you mean by loss?

Mr. SYMON. -

Personally, I do not call it loss, I call it simply a dislocation of the Western Australian Treasury. The right honorable gentleman will be able to find out whether there is a loss, and, if so, what that loss is. The whole of the provisions embodied in the Finance Committee's scheme have been directed to ascertain what is there called the loss, the proportionate net loss, or the diminution in the receipts of the Treasury of Western Australia through the Custom-house, and what I propose to do is to apply this method, if the Convention agrees to it, to provide that the moment there is no diminution this special provision shall cease.

Mr. DOBSON. -

Your proposal applies to a whole year's loss.

Mr. SYMON. -

Yes.

Mr. DOBSON. -

Then why not say so.

Mr. SYMON. -

It is not necessary to say so, because you can only ascertain annually whether there is a loss, and, if so, what that loss is.

Mr. DOBSON. -

Some honorable members do not understand it in that way.

Mr. SYMON. -

That is what the words of my amendment would cover. There must be one year's transactions completed before the loss, if any, can be ascertained.

Mr. OCONNOR (New South Wales). -

It appears to me that none of these expedients for bringing this provision into operation, with regard to the loss of revenue, can have any application at all. In dealing with the matter on the basis of paying a certain sum of money the amount could be ascertained, because the payment would not be made till the end of the year, when the loss could be absolutely ascertained, and, therefore, if it was only just a money payment that was to be made by all the colonies, it should be on the ascertained loss. But that expedient has proved itself unsatisfactory to most of the colonies for many reasons. At one time I was prepared to support that proposal in the absence of anything better, but it appears to me that Mr. Deakin's amendment relieves us of a great deal of difficulty, and will put the matter on the fairest possible basis.
But, having arranged to give this benefit to Western Australia, I will be no party to fritter it away, so that it will be of no value. We must look at the thing fairly and squarely. We cannot give Western Australia a money compensation. Then what are we going to do? We are going to grant a compensation which will give a certain advantage to Western Australia. There is no question that it will give an advantage to Western Australia, and it seems to me that we must be prepared to pay that price for the benefit of having Western Australia in this Union. That appears to me to be the least objectionable way of making a special concession to Western Australia. Let me point out to Mr. Symon how impossible it is that the provision he suggests can be brought into operation. I presume that you could not ascertain, till the end of a financial year, whether Mr. Symon's provision was to operate or not. Well, if at the end of some financial year you find that there is no diminution of revenue in Western Australia, as compared with the year prior to the introduction of the uniform Tariff, Mr. Deakin's proposal can no longer apply; but until that fact is ascertained all your traders are in a state of absolute uncertainty as to what the duties of customs imposed in the following year will be. That is the condition they will be placed in every year.

Mr. SYMON. -

No; once the diminution of revenue ceased, Mr. Deakin's proposal would never be revived.

Mr. OCONNOR. -

If that is so, yours is unjust, because it is certainly not intended to compensate Western Australia for the loss of one year only. If another year's loss occurs it must be compensated for. If

Sir EDWARD BRADDON. -

Traders could provide against any loss, owing to the decrease of customs duties, if they knew the decrease was coming.

Mr. OCONNOR. -

That, of course, would be an answer to another objection to the sliding scale. I do not like the sliding scale, but it might be made not very objectionable if it had a certain tenure for four or five years, but if there is to be no certainty about its continuance, it will be an embarrassing, mischievous, and disturbing influence on trade. The reason that I support Mr. Deakin's proposal altogether is that I think it must be taken as a whole. I do not think it is scientific—it is objectionable in many ways, but it is the best thing we have been able to evolve after a discussion which has lasted a considerable time, and after the application of a great deal of ingenuity to the solution of this problem. It appears to me that Mr. Deakin's proposal

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will operate justly in this sense: That the payment will come from the colony which is chiefly concerned, and that the other colonies will lose no money, although they will certainly lose, for a time, the full advantages of free-trade with Western Australia. Well, that is what we must be prepared to pay to induce her to join the Federation. I quite admit the force of Mr. Kingston's statement that that loss will fall on the colonies in a varying degree. Perhaps South Australia would gain more from absolute free-trade than New South Wales, but, on the other hand, while Victoria will lose considerably from this arrangement, New South Wales will lose a certain amount, and Tasmania will lose a certain, although a smaller, amount. As practical men, however, we must make up our minds to that loss, and I hope that, with the advantage of her proximity to Western Australia, and of her production of the particular things that the people of that colony require-advantages which have already given great benefit to South Australia-she will still retain and improve upon her present trade with the West, because she will then be in a better position to trade with Western Australia than she is under the existing Tariff. South Australia has already a large trade with Western Australia, with prospects of that trade increasing and under this sliding scale arrangement for the reduction of the customs duties of Western Australia I hope that her trade with that colony will be still greater in years to come. But I rose to point out the objections to Mr. Symon's amendment. It appears to me, not only should that amendment be rejected, but that Mr. Deakin's proposal, with some few amendments, will meet the difficulties of the case. I will point out some ways in which I think the provision should be amended, not necessarily now, but if Mr. Deakin is willing to accept the amendments in substance they may be put into drafting form afterwards. I think there ought to be power to take any one or more of the duties of Western Australia and deal with them, and that Western Australia should not be bound to deal with the whole of her Tariff.

Mr. DEAKIN. -
I quite agree with that.

Mr. OCONNOR. -
I think also that there ought to be some power to enable the Commonwealth and Western Australia, by agreement, to modify the duties from time to time, otherwise you bind Western Australia for the whole five years to the duties which happen to be imposed on particular products at the time the uniform duties of customs come into existence.

Mr. DEAKIN. -
I agree with that, too.
Sir JOHN FORREST. -

Mr. O'Connor means to give the state power to decrease, but not to increase, duties of customs within the five years.

Mr. OCONNOR. -

Yes, the Commonwealth and Western Australia. And, of course, that must be done. If those two provisions are made there will be sufficient elasticity about the arrangement to enable it to be worked, and I hope that Western Australia, possibly in the interests of her own people, may not only see fit to relax the terms of this provision in such a way as will be an advantage to her, but that long before the five years are up she will be able to throw her ports open to the products of the other colonies.

Mr. DOBSON. -

Ought she to have to wait until she gets the consent of the Federal Parliament to do that?

Mr. DEAKIN (Victoria). -

I shall accept the amendments Mr. O'Connor has suggested. I did not endeavour to cast my amendment into proper form to fit it into the Bill, but simply to express plainly what was meant. I shall be quite prepared to accept any other necessary drafting amendments.

Mr. DOBSON (Tasmania). -

I would like to ask Mr. O'Connor, supposing in the third year the uniform Tariff makes up to Western Australia all her loss, will it be possible for this provision to apply in the fourth and fifth years?

Mr. OCONNOR (New South Wales). -

The answer to that question is, that we cannot tell what the result of the fourth and fifth years will be until they have gone by.

Mr. DOBSON. -

But you are discarding Mr. Symon's amendment.

Mr. SYMON (South Australia). -

Mr. Dobson desires to make the matter perfectly clear. We have drifted away altogether from the original position on which we debated this subject, and now it is simply a question of whether we are to allow Western Australia to continue her policy of protection on a sliding scale for five years. What is the good of talking about a loss to the Treasury and that sort of thing? Sir John Forrest wants to keep up the policy of protection for the sake of the butter-makers, the hay and wheat growers, and those sort of people in Western Australia, to the detriment of the producers of similar things in other parts of the Commonwealth. Now, I say that it will be a violation of the principles we have implanted in this Constitution if such a state of things is allowed to prevail; and when Sir John Forrest talks about his difficulty in ascertaining the advantages of federation to his colony, let
me remark that it is surely of the greatest possible advantage that he should be able, immediately on the establishment of federation, to give to his people untaxed food. Why should we seek to impose upon them the injustice of taxed food for a period of five years?

Sir JOHN FORREST. -

That is their business.

Mr. SYMON. -

It is my business - the business of every member of this Convention-just as much as it is my honorable friend's business. There are far greater numbers of people in Western Australia who are interested in having these duties immediately remitted than are interested in having them continued.

Sir JOHN FORREST. -

That is for themselves to consider.

Mr. SYMON. -

No doubt it is for themselves, but we are now considering the interests of the whole of Australia, and considering a Constitution to be founded on the principle of free interchange, free-trade between the different states.

Sir JOHN FORREST. -

It is not all on food.

Mr. SYMON. -

My honorable friend (Mr. Solomon) the other day estimated that the amount of duty on food-food for man and beast-was £213,000 per annum.

Sir JOHN FORREST. -

But the amount is £378,000 altogether.

Mr. SYMON. -

The great bulk of these intercolonial duties are duties on food, and we are face to face with the plain question of having to maintain for Western Australia a system of protection for five years against their fellow citizens in the other colonies, under the guise of preventing a dislocation of the Treasurer's accounts. Now, surely that is not the position in which my right honorable friend (Sir John Forrest) would wish to place us?

Mr. FRASER. -

Otherwise, we shall not get Western Australia in at all.

Mr. SYMON. -

We will get them in right enough; they will come in. They have much larger considerations to move them into this Federation than the mere question of pounds, shillings, and pence, It is not the mere sordid element-at any rate, not as reckoned in that particular way-but it is for a far larger gain that my right honorable friend (Sir John Forrest) himself and his
colony will be brought into more intimate relations of citizenship with the whole of the rest of Australia, commercially, personally, and in every other way. He sees quite well that in addition to all his gold boom he will have prosperity opening out to him that will repay him infinitely more than this paltry re-arrangement of these protectionist duties.

Sir JOHN FORREST. -

Then what are you arguing for?

Mr. SYMON. -

I am appealing to my right honorable friend to withdraw his support from this amendment, to put his trust in his own people and his own colony, and to tell us he won't have this special consideration at all.

Mr. Symon's amendment was negatived.

Question-That the words of Mr. Deakin's amendment proposed to be inserted be so inserted-put.

The committee divided-

Ayes ... ... ... ...31
Noes ... ... ... ...11

Majority for Mr. Deakin's amendment 20

AYES.

Abbott, Sir J.P. Isaacs, I.A.
Barton, E. James, W.H.
Berry, Sir G. Lee Steere, Sir J.G.
Braddon, Sir E.N.C. Lewis, N.E.
Briggs, H. Lyne, W.J.
Brown, N.J. McMillan, W.
Carruthers, J.H. O'Connor, R.E.
Clarke, M.J. Peacock, A.J.
Dobson, H. Quick, Dr. J.
Douglas, A. Reid, G.H.
Forrest, Sir J. Turner, Sir G.
Fraser, S. Venn, H.W.
Fysh, Sir P.0. Walker, J.T.
Grant, C.H. Wise, B.R.
Hassell, A.Y. Teller.
Henry, J. Deakin, A.

NOES.

Cockburn, Dr. J.A. Leake, G.
Crowder, F.T. Solomon, V.L.
Glynn, P.M. Symon, J.H.
Gordon, J.H. Trenwith, W.A.
Howe, J.H. Teller.
Kingston, C.C. Downer, Sir J.W.
PAIR.
Aye. No.
Moore, W. Holder, F.W.
Question so resolved in the affirmative.

The CHAIRMAN. -
The question now is that all the remaining words after "showing" proposed to be struck out stand part of the clause.

Mr. MCMILLAN (New South Wales). -
There is a suggestion I was going to make. The question is whether this clause gives power for the Western Australian Government to adopt the uniform Tariff of the Commonwealth? There is no doubt that one of the weak spots of this proposal is that you may have a difference in the rates of duty between the uniform Tariff and the old Tariff of Western Australia. I do not know whether this point can be met by the Drafting Committee, but it would be a good thing if the clause was sufficiently elastic to allow the Treasurer of Western Australia to agree, as the basis of this arrangement, to the uniform Tariff wherever it could apply to the same articles. I will read a proviso which has been drafted for me on this subject, and I will then leave the matter in the hands of the committee:-

Provided that in the case of goods made dutiable by the uniform Tariff, the colony of Western Australia may elect, in respect of similar goods, that duty shall be collected at the rate fixed by the uniform Tariff.

I think if the uniform Tariff could be applied-

Mr. KINGSTON. -
It might give them more.

Mr. MCMILLAN. -
Of course, but on the other hand, by the sliding scale, the duty will be decreasing every year. Under this provision you would never have a duty higher in the Western Australian Tariff than you would have in the uniform Tariff.

Mr. BARTON. -
Would your amendment secure that?

Mr. MCMILLAN. -
I only bring forward the suggestion to be considered. Perhaps the Drafting Committee will suggest something that will make the clause sufficiently elastic to allow this kind of negotiation between the Treasurer of the state and the Commonwealth.

Mr. BARTON (New South Wales). -
I am afraid that this is not a matter of drafting at all. I take it the intention is to make some proposal under which Western Australia will have the option of applying the external duties of the uniform Tariff intercoloniaally to the products of other colonies. Judging from Mr. McMillan's remarks, my impression is that he intends that to apply by way of amelioration to the other colonies, to enable Western Australia to apply the duties of the uniform Tariff in place of her own, on the assumption that she will apply them in place of any higher duties she may be exacting. Now, the proposal which my honorable friend has outlined does not carry out the view which he seems to entertain. It would render it optional for the Treasurer of Western Australia to take either the duties in existence in his own state at the time of the imposition of the uniform Tariff, or to take in their place those prescribed by the uniform Tariff, and apply those intercoloniaally.

Mr. FRASER. -

To intercolonial produce and manufactures?

Mr. BARTON. -

To goods "not originally imported from beyond the limits of the Commonwealth," which is the phrase used in Mr. Deakin's amendment. That means goods produced or manufactured in the states. Now, if Mr. McMillan wishes to make it so that if the Commonwealth Tariff is the lower one of the two in respect of goods produced intercoloniaally that Tariff should be applied, his amendment should go so far as to specify that, and say that in such a case those duties shall be charged. If honorable members will consider the matter they will see that this is not a question of drafting at all, it is altogether a matter of policy, and a very important matter of policy. It might or might not suit Western Australia to agree to this, and it might or might not suit the Convention to place a provision on these lines in the Constitution. It is quite clear, however, that the Drafting Committee cannot help the Convention in this matter unless something in the nature of an instruction is given to the Drafting Committee. In the absence of that they cannot frame clauses conjecturally. Matters of policy are no concern of the Drafting Committee, and therefore I would like the Convention not to leave this matter in a nebulous state,

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but to let us understand perfectly whether there is to be an option, first, to take the Federal Tariff instead of the existing Tariff of Western Australia, so far as it applies to goods not originally imported into the Commonwealth, and if that is so, whether that is to be a mere matter of discretion, or whether there is to be an understanding that the Federal Tariff, if the lower one, is to be adopted in preference to the other.

Mr. FRASER (Victoria). -
I hope that we shall not hamper the decision we have arrived at by making any further amendment. Five years will pass very quickly, and it is not worth while to worry our brains in adding any more provisions.

Sir JOHN FORREST (Western Australia). -

I take it the intention is this—I do not know that it is expressed, but I have no objection to it—that the Tariff in existence in Western Australia when uniform customs duties come into force shall still be applicable to intercolonial imports. At the same time, I do not wish to make that a hard-and-fast rule for the whole of the five years. The Legislature of Western Australia might desire during that period to reduce the intercolonial duties, and no one should object to their having the power to do so. That is a matter the Drafting Committee might deal with. The uniform Tariff might be higher than our own Tariff. Even if it were a little lower, the Legislature of Western Australia might desire to go lower still, and unless the power was given to them they would not be able to do so. We should give the Legislature of Western Australia a free hand not to increase, but to reduce duties, if they think fit to do so, during the five years.

Mr. DOBSON (Tasmania). -

I voted for the last amendment with great misgivings, and I should like now to ask the leader of the Convention whether he does not think that, as a matter of Constitution building, we should try to frame a provision to meet the objection taken by Mr. Symon? It ought to be set out that whenever it is shown that the uniform Tariff is giving to Western Australia an equivalent of the loss caused by intercolonial free-trade, the operation of this provision should cease. The Drafting Committee devoted great attention to this point. They gave hours to it, and the clause they submitted was framed on that understanding. We are now departing from it. I think it would alter my voting if I saw that Western Australia was to get the benefit of this blot on the Constitution even when they were incurring no loss under the uniform Tariff, but making a gain.

Mr. BARTON (New South Wales). -

I have not given a vote with more reluctance during the whole of the proceedings of the Convention than the vote I last gave. In answer to the honorable member, it seems to me that the question we have to ask ourselves now is whether this is a provision for the purpose of maintaining the revenue of Western Australia, or for the purpose of maintaining intercolonial protection in Western Australia. I voted for it under its revenue aspect. If I had considered it only from the point of view of its effect in keeping up intercolonial protection in Western Australia, I should have had to say to myself that the maintenance of intercolonial protection after the adoption of the uniform Tariff was alien to the principles of
federation. If the matter is to be treated from its revenue aspect, I am clear in my own mind that, as soon as it is shown that Western Australia suffers no loss by the operation of intercolonial free-trade, these duties should cease.

An HONORABLE MEMBER. -
Her own people will see to that.

Mr. BARTON. -
They may or they may not. But in Constitution building I take it that, if you provide for one part of a case, and there is an alternative, you should provide for that also. Some provision might be placed in the Constitution that would have the effect of making it plain that this provision was to be regarded from its revenue aspect, and that Western Australia was not to enjoy any benefit by way of intercolonial protection that was not given to the other colonies, excepting in so far as that was necessary for the purposes of revenue. That is the view I hold, and it is a view that is consistent with my expressed intention to support the first part of Mr. Deakin's amendment. As I had to choose between this and what I considered to be a worse proposal made by the Finance Committee, I voted for it. But I trust that it will be regulated so that it may be restricted to its revenue aspect. Protectionists and free-traders alike avow their conviction that one of the first benefits and one of the eternal benefits of federation—one of those things without which it cannot be—is inter-state free-trade. Holding that opinion, I am able to answer the Hon. Mr. Dobson's question in this way. I do think the clause should be limited so as to provide that, the moment the requirements of Western Australia are met, she should not keep up these duties for the purposes of intercolonial protection, which it is one of the fundamental principles of the Constitution to deny to every state in the Federation. My honorable friend asks if the Drafting Committee cannot do something to meet that difficulty. The Drafting Committee cannot interfere with matters of policy. If the Convention think that a restriction should be imposed the necessary provision should be inserted either now or on the reconsideration of the clause.

Mr. GLYNN (South Australia). -
I desire to move the addition of a proviso to the clause, to enable the Federal Parliament, at any time from one year after the adoption of uniform duties, to repeal the clause.

Sir JOHN FORREST. -
I think you had better not make any more amendments.

Mr. GLYNN. -
Yes, I will move this amendment, and ask the leader of the Convention whether, in view of what has been done, he will reconsider the effect of the other financial clauses? One object of the bookkeeping was to give information to the Federal Parliament, which would be a guide at the end of five years as to what new method of apportioning the revenue should be adopted. We have now introduced a most complicated factor into the calculation. The Federal Parliament, instead of having evidence as to the effect of the uniform duties in the Commonwealth, will have evidence as to the effect of uniform duties in four states, and of two different Tariffs in another state. The introduction of this complicated factor will render all the calculations useless. So that I would ask, considering that the work we have done by the insertion of the two previous clauses has been practically cancelled by the adoption of Mr. Deakin's amendment, whether the leader of the Convention will not consent to re-open the consideration of those two clauses?

Mr. BARTON. -

What effect do you estimate that the amendment has had on the two clauses so as to justify us in reconsidering them?

Mr. GLYNN. -

I say that the apology made for the adoption of the bookkeeping system was that, at the end of five years, it would be possible to tell from the bookkeeping of the uniform Tariff what should be the method of apportioning the surplus at the end of five years. You cannot possibly apply a barrier Tariff against four colonies working under a lower uniform Tariff without disturbing the operation in the colony with the barrier Tariff of the uniform Tariff. How can you apply the work of apportioning the surplus on such complicated data as that? I say that if the Parliament find the operation of this clause is not what we think it will be, they should have power to cancel this clause or to make some other provision in lieu of it, so as to enable the Parliament to do what is right under the circumstances. I therefore beg to move that there be added the following proviso:-

Provided that the Parliament may, at any time after the expiration of one year from the adoption of uniform duties, repeal this clause and make other provision in lieu thereof.

Sir JOHN FORREST. -

You die very hard, I must say that.

Mr. KINGSTON (South Australia). -

I was very pleased to hear the remarks of our leader in connexion with this clause, and I am sorry the clause was not presented for consideration in
its initial shape. I would suggest to Mr. Glynn not to press his amendment to a division at the present moment, but I will ask the consideration of the Convention, and of the Drafting Committee in particular, as to

Mr. BARTON. -
To compensate the Treasury of Western Australia.

Mr. KINGSTON. -
Yes. I would suggest to Mr. Barton that we might add to the clause a provision setting forth that-

This section is intended solely to compensate the Treasury of the state of Western Australia for any diminution of its receipts in consequence of the adoption of uniform duties of customs or by the operation of free trade and intercourse with the several states, and its operation may be accordingly repealed or reduced at any time by the Federal Parliament.

I am not attempting to tie myself to any particular phraseology, but what I understand is that, though many voted for this provision, a majority so voted only because they recognised the necessity of compensating Western Australia in the event of loss. We also know that the leader of the Convention favours that view, but if we pass the clause as we have it now, Western Australia, for the purpose of protecting her industries and producers, may retain the provision. This ought not to be. I therefore ask that the Drafting Committee may consider the matter further, and advise the Convention as to whether a provision such as I have suggested, defining the purpose of the clause, should not be inserted, placing in the hands of the Federal Parliament the power of modifying it if they think proper to do so. I recognise perfectly well the difficulty of framing a provision of this sort, and I would infinitely prefer that an amendment such as I suggest should be framed in the least objectionable shape possible, and should emanate from the Drafting Committee.

Mr. BARTON. -
My difficulty would be as to whether my view of the matter is shared by the majority of the Convention.

Mr. KINGSTON. -
I should ask our leader to test the feeling of the committee on that point. I think the suggestion I have made simply gives just effect to the honest desire to meet the difficulties of the position.

Sir JOHN FORREST (Western Australia). -
The objections that have been raised by our leader and also by Mr. O'Connor apply equally to this proposal. Traders would be in a state of uncertainty always from not knowing what the Federal Parliament was going to do. It seems to me that this proposal would not only be unnecessary, but mischievous. It has generally been conceded by every one
who has given attention to the matter that the case of Western Australia is exceptional. My honorable friend the Prime Minister of New South Wales and others who have been on the Finance Committee have admitted that the position is exceptional in regard to this matter, but now our friends from South Australia seem to think that there is no exception whatever, and that it is unnecessary to do anything for Western Australia. I accept the Finance Committee's proposal, which, as honorable members know very well, did not meet with favour from me at first. I was not going to vote for that: It seems to me that our case is exceptional, and unless we can get some argument to use in favour of joining the Federation we shall be placed in a very difficult position. Some honorable members appear to look on the trade of Western Australia as absolutely their own, as though we in Western Australia have nothing whatever to say to it. They have it, and they mean to hold it. But they forget altogether that if they prevent the people of Western Australia from joining the Federation, the Parliament of Western Australia will be absolutely free to deal with its Tariff and everything else exactly as it likes. They seem to think that under any circumstances Western Australia will join the Federation, whether it is to its advantage to do so or not. I think I know perhaps as much about the colony as the representatives of South Australia, and I can say that, even with the clause we have adopted in the Bill, it will be a difficult task to induce Western Australia to join the Federation. That being so, honorable members are grasping at a shadow, and grasping very hard at it, whilst they will be very likely to lose the substance. I believe they are open to this advice: That in their own interests they should leave the matter where it is. In striving to obtain something which may be to their advantage they will probably lose something a great deal better worth having. I should be very sorry, indeed, to place myself in opposition to the people of South Australia. That colony is our nearest neighbour, and we have always lived on the happiest terms and have worked together; but they must not think of themselves only, they must also think of us.

Mr. HOWE. -

We have developed your country.

Sir JOHN FORREST. -

Although the Honorable and learned member (Mr. Symon) made an eloquent address in favour of the consumers of Western Australia, I would point out that they are able to look after their own interests without the people of Australia. In reply to the interjection of the honorable member (Mr. Howe). I believe that a good many people have come from South
Australia to Western Australia. and I see evidences of their success when I go through the streets of Adelaide. It is of no use for the people of one colony to say that they have done a good deal for another colony. We are all working as well as we can for our own interests. I do not think that I am doing anything unreasonable in supporting the proposal of the honorable and learned member (Mr. Deakin), but I am very sorry to see what I was going to call a grasping spirit-I will withdraw that term, and call it a self-interested spirit-pervading the mind of the Premier of South Australia. I hope that in the future he will give a little of his great mind to the consideration of the interests of Western Australia, and not concentrate all his attention upon his own colony.

Mr. Glynn's amendment was negatived.
The remainder of the clause after the word "showing" was struck out.
Question-That the clause as amended be inserted in the Bill-put.
The committee divided-
Ayes ... ... ... 30
Noes ... ... ... 10
Majority for the clause 20
AYES.
Abbott, Sir J.P. Isaacs, I.A.
Barton, E. James, W.H.
Berry, Sir G. Lee Steere, Sir J.G.
Braddon, Sir E.N.C. Lewis, N.E.
Briggs, H. McMillan, W.
Brown, N.J. O'Connor, R.E.
Carruthers, J.H. Peacock, A.J.
Clarke, M.J. Quick, Dr. J.
Dobson, H. Reid, G.H.
Douglas, A. Turner, Sir G.
Forrest, Sir J. Venn, H.W.
Fraser, S. Walker, J.T.
Fysh, Sir P.O. Wise, B.R.
Grant, C.H.
Hassell, A.Y. Teller.
Henry, J. Deakin, A.
NOES.
Cockburn, Dr. J.A. Solomon, V.L.
Glynn, P.M. Symon, J.H.
Gordon, J.H. Trenwith, W.A.
Howe, J.H.
Kingston, C.C. Teller
Leake. G. Downer, Sir J.W.
PAIR.
Aye. No.
Moore, W. Holder, F.W.
Question so resolved in the affirmative.

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The CHAIRMAN. -

The clause which we have just put into the Bill ought to come before the clause immediately preceding it.

Mr. BARTON. -

Yes. I will ask that the two be transposed.

The CHAIRMAN. -

I will see that that is done.

Mr. ISAACS (Victoria). -

I rise for the purpose of proposing the amendment standing in my name, and which has been circulated for the information of honorable members. It deals with a question which, to my mind, is not only important but essentially important to every one of the states. We cannot remember too well that the clauses which we have already passed take from the states the bulk of their revenue. Victoria is giving up over £2,000,000 a year, but we are not getting rid of the correlative of that revenue, namely, our liabilities. Therefore it is essential to us, and to each of the other states, that we should receive a guarantee that a portion of the revenue we are surrendering to the Commonwealth sufficient to enable us to meet our liabilities shall be returned to us. It is only because it is absolutely necessary to secure uniformity of trade and commerce that we are obliged to give up the control of our Customs and Excise to the Commonwealth, and, having done that, we have a right to say that we must have a guarantee that we shall not be left in a position in which, while we still have our liabilities to meet, we are deprived of the means for meeting them. I would have been very glad if some other honorable member, preferably a member of the Finance Committee, had come forward to enunciate this in express terms. I should like to point out that, while we are putting on the face of the Constitution the actual surrender of our revenues, so we ought to put on the face of the Constitution in like manner the security that each state will have, that the liabilities which it necessarily retains shall be met. If there was a proposal before us that the Commonwealth should indemnify each state against the interest portion of its liabilities to an amount equal to the revenue it surrendered, that would be one way of solving the difficulty. It would be only putting in one particular concrete shape a method that might
or might not be adopted by the Commonwealth. Other methods might suggest themselves to the Federal Parliament and Treasurer which might be equally efficacious, and perhaps more palatable for the time being. Therefore I do not desire to lay down a hard-and-fast rule as to the way this essential end might be attained. But I wish to put on the face of the Constitution that the state shall be absolutely guaranteed in the direction I have indicated. The fault I have to find with the proposal of the Finance Committee and certain other proposals subsequently made was this: That there was no proper measure of guarantee offered to us. It was suggested to keep an account in the Federation first of the revenue actually received for each of the five years succeeding the uniform Tariff, but against that was placed, not a proper measure which would enable us to calculate our loss, but this utterly false measure was placed, viz., that we should calculate as against the import of goods and the production and manufacture of goods for each of these five years—that is, possibly seven years ahead of the present time—that we should calculate as one factor the state Tariff as existing at the time of the imposition of uniform customs duties. That would be utterly wrong. It would not by any means measure the actual loss to the state. Therefore I have reiterated time after time that it would be rather a guarantee of possible and prospective gains than a measure of actual loss. What we want is this, to be able to say to each state—"You can come into this Federation with the assurance that, when the uniform customs duties are established, your whole financial machinery will not be thrown out of gear, because you will be guaranteed by the Commonwealth that you will during each of those five years receive as much as before." It would not do to say "as much as you were receiving in the year immediately preceding the imposition of the uniform customs duties," because that would not only leave it to each state to fix its Tariff with a view to that matter, but it would also afford a very bad standard in any case, because the year or the previous two years immediately preceding the imposition of the uniform duties would be years of dislocation of

Mr. HENRY. -

What about New South Wales?

Mr. ISAACS. -

A difficulty might arise in New South Wales, but I do not conceive that it is a difficulty that must necessarily lead to injustice, because, as the Right Hon. Mr. Reid has pointed out, no doubt with an internal vision of the identity of the person he was speaking of, the Federal Treasurer will be a man of genius and he will be able to rectify any difficulty in that direction.
Mr. REID. -

I am afraid that under this clause it would be a sort of genius which would entitle a man to get into close confinement.

Mr. ISAACS. -

Let us see what it amounts to. Does my right honorable friend, or any one else, venture to suggest openly that the states are not to receive back as much as they are surrendering in the first five years? Would any one venture to say openly to the people of his state that the Treasury of that state is not to receive back sufficient to meet its liabilities? There is not a member of this Convention who would dare to take up such a position. If this is the case, are we not under a bounden duty to those who sent us here to show them that the position that I have advocated, viz., that the states are to get back a sufficient amount, is clearly indicated on the face of the Constitution? Of course, if we are going to attempt to bind the people-if we are going to say-"Oh, trust the Federal Parliament, you may or may not get it;" and then, if we are told that it is very unfair to New South Wales that they should get it, it is time that we looked after our own states, and insisted upon this essential to going into the Federation: That each state should find a guarantee in this Constitution such as I am asking for. I do not care in what shape the guarantee is given; I do not care whether it is that a sufficient amount of liabilities are taken over; I do not care if it be in the form, if possible, of a Tariff; we should have in some shape, and in some words sufficiently clear, the absolute promise on the part of the Commonwealth that it will return to the states a sum which shall not leave them losers by the operation. If any honorable member can suggest a better form, I am not wedded to this form. I would have preferred if somebody with more knowledge of finance and figures had come forward and indicated it. I would have been happy to support him. But as far as Victoria is concerned, and I think the same may be said of Tasmania, South Australia, and Western Australia, we should have this guarantee in the Bill. What have we done for Western Australia? One of my honorable friends asked me that question. We have given Western Australia a guarantee to a certain extent, and, as I indicated earlier in the day, I was prepared to vote for that, not by way of giving Western Australia specially and solely a guarantee in this direction, because Western Australia requires it less than other colonies, but I was prepared to do that, so as to form a proper supplement and an addition to any general guarantee that is given to all the states alike. I can see that New South Wales, under some circumstances, might be called upon to pay an improper share, but I can see also that a Tariff can be framed so that that should not be done. I can see that various
expedients could be resorted to, perfectly legitimate and proper ones, by which that unjust result could be averted; but I know also that it would be impossible to so frame a Tariff as to give Tasmania, Victoria, and South Australia just as much as they ought to have under normal conditions, as they are living now, and not leave Western Australia with a gap to fill up. I, therefore, think we were right in supporting the last clause, because that will afford Western Australia a means of filling up the gap, without resorting to the pockets of the colonies.

Mr. MCMILLAN. -

Don't you see where your admission lands you?

Mr. ISAACS. -

Where it ought to, I hope.

Mr. MCMILLAN. -

You can only get the money either from loan or from New South Wales.

Mr. ISAACS. -

I do not care if direct taxation be called on to help. But where does the opposite position land you? If my friends mean what they say—and say it openly—it means they are going to take such steps as will prevent the other colonies from getting back a sufficient amount of their revenue. If that is what we are asked to do, I should say the other colonies would not hesitate in refusing to do it.

Mr. REID. -

You are not asked to do anything at present. We all agree to leave it to the federal electors and the Federal Parliament.

Mr. ISAACS. -

I want to leave it to the federal electors, but to leave it in a way that they cannot misunderstand it, and in such a way as to make it safe and right for the other colonies. I want to say to the colonies—"You are perfectly secure in this respect: You will not be left with your liabilities around your neck, and revenue out of your reach." That is, shortly, the position. I hope that when Mr. Reid comes to deal with the question, as I hope he will, he will say definitely and distinctly which position he takes up. I hope he will say whether he is content to admit that Victoria and the other colonies are to get back a sufficient amount of their revenue. If he admits that, I would ask what objection he has to this proposal? If Mr. Reid says that the proposal would mean an injustice to New South Wales, it seems to me that we cannot meet each other at all, and that we are beyond hand-shaking distance. If we are to say it would be unfair to New South Wales, and that there is no conceivable way out of the difficulty, it means that the colonies are to give up their revenue and hand it over to the Federal Parliament—that we are practically not to expect to get it back. Under those circumstances, I
press the proposal with all the earnestness I can. This is not a right to be bartered away, but one absolutely essential to our existence as states. Without it we cannot continue to live, and if the proposal is rejected, what are we to say to the people? Are we to say-"Oh, trust the Federal Parliament"? If we did that, the people would say-"No. We were told by New South Wales it would be unjust to do so that there are no possible means of getting the money back without injustice to New South Wales, and, therefore, we cannot get it at all." If that be the case, the people would hesitate before giving an affirmative vote for the Bill. On the other hand, it seems going a long way to assert that you could not say to the states "We will not secure you in your solvency."

It comes to that, and if the revenue be taken away the states are insolvent. If the states are given what is necessary to maintain solvency, then less cannot be given than what the states are asking. The position should be known clearly and distinctly. It should not be covered up with buttered words, or the declaration "We will trust the Federal Parliament." Are we to be sure that we can go to the people and tell them that they will get back revenue sufficient to guarantee their liability, or, what would be equivalent, that such a proportion of the states' liabilities would be taken over by the Commonwealth? Or have we to tell them to take a leap in the dark-that we have got the vote of the Convention, supported by New South Wales, that to get back what is absolutely essential to the existence of the states would be an injustice and an impossibility? We have now come to understand each other thoroughly. We must take our stand that it is essential to our very existence as states that we should have this security. I beg to move the following new clause to follow clause 93:

For each of the first five years after uniform duties of customs have been imposed the Commonwealth shall keep an account showing-

I. The amount collected and taken to have been collected in each state from duties of customs and of excise.

II. The average annual amount collected in that state from duties of customs and of excise during the three years immediately before the imposition of uniform duties.

The former amount, if less than the latter amounts shall be deducted therefrom, and the balance shall be taken to be the net loss of the state for that year by reason of the imposition of uniform duties of customs and of excise, and by reason of the operation of free trade and intercourse throughout the Commonwealth.

The Commonwealth shall pay to each state the amount of its net loss.
Mr. REID (New South Wales). - 
I really wonder whether my honorable friend (Mr. Isaacs) was here on Thursday evening. Does he not remember that his respected chief made absolutely the same proposal?

Mr. ISAACS. -
No, no; it was totally different.

Mr. REID. -
I have looked at it with great care, and in all essential features the proposal is absolutely the same.

The CHAIRMAN. -
I may say that I have looked at the present proposition very carefully to see whether it is the same or not, and I have come to the conclusion that it is entirely different.

Mr. REID. -
When the Chairman says it is entirely different I only wish he would go on and tell us in what respect it is different.

The CHAIRMAN. -
In the first place, there are three years named instead of one. In the next place, the actual revenue collected in the state is the measure, instead of, as in the other case, the revenue which would have to be collected after the imposition of the uniform duties. These are two different things altogether.

Mr. ISAACS. -
One includes gains as well as losses.

Mr. REID. -
That may be so, but the aim is exactly the same.

Mr. ISAACS. -
The object is the same.

Mr. REID. -
The aim is the same, although the play on words may be slightly different. For greater caution I will just point out the respect in which I think the propositions are the same. The Convention is asked to put in the Constitution a direction to keep an account for each of the first five years after the imposition of the uniform ditties of customs, and that that account shall, in the first place, show the amount actually collected and taken to have been collected in each state. That is to say, the amount actually collected under the uniform Tariff for each of the five years. Then the next entry that is to be made is the average annual amount collected from duties of customs and excise during three years immediately before the imposition of the uniform duties. That is where the deviation occurs. I would like to show from
the dates on which this operation must take place that I am absolutely correct in saying that the proposition now made is the same as the original proposition. That is so, certainly, so far as one colony is concerned, namely, the colony that would have to find the money. That is the only colony which will not have a net loss on the operation of intercolonial free-trade, because it is the only colony that does not tax its fellow Australian colonists. The uniform Tariff call only come into operation for the year 1901. That is allowing two years, a certain time for the assent in the colonies to the Constitution, and for the proclamation, with six months' interval, and then the work of framing a Tariff.

Mr. ISAACS. -

If that is the objection of my honorable friend, I have no objection to take the Dibbs Tariff.

Mr. REID. -

In saying that the propositions are substantially the same I am not stating the only objection. During the three years prior to 1901 see what position the honorable member puts New South Wales, and indeed every other colony, in. There is a direct temptation to engage, for the two or three years before federal intercourse, in rival measures to put up Tariffs against the existing state of things-to put up Tariffs against Australians - with the sure and certain hope that the higher Tariff put on the subjects of the coming intercolonial trade the greater will be the credit of the states in the accounts of the Commonwealth. Supposing that New South Wales continues in her present policy, the figures in the year before the imposition of the uniform Tariff would be exactly the same as the figures for the three years before the uniform Tariff. The basis would be as nearly as possible precisely the same. The present policy of New South Wales is not a casual passing state of things. The present state of things has characterized the fiscal policy of that colony for I do not know how many years. With a slight interval, the present policy has been that of New South Wales since the foundation of the colony. It is too much to ask the oldest colony of the group, at the very time of federation, to depart from a policy which, it might be said, has been inherent in its very existence since it became a colony. And now to ask it to depart - in what direction? To suddenly put on a number of duties to tax its neighbours (just as its neighbours tax the colonists of New South Wales), in order to get even with the other colonies in the calculation of the taxes of the Commonwealth. Because, unless we do that, this will be our position.

Mr. ISAACS. -

At the very worst, it is anticipating the Federal tariff for two years.

Mr. REID. -

It is inconceivable that the Federal Tariff will leave us with a net loss in
comparison with the previous Tariff. That is admitted all round. When these two amounts are taken, we will be left with a large amount more than we ever collected ourselves. Consequently, there is no equality in this proposal. Why is Western Australia dealt with specially? Why have we spent two or three days in dealing with the special case of Western Australia on the lines on which we have dealt with it if this was the thing that was seriously contended for? Why could not we have saved Western Australia the comparative, if not the positive, humiliation of being dealt with as a special case, when this is infinitely more satisfactory to Western Australia than anything we have given them? What is the use, after five days' discussion, of giving to Western Australia the concession to tax herself in order to make up her deficiency, when the moment we have arrived at that decision we immediately turn round and do for the other colonies something infinitely more beneficial to them than what we have done for Western Australia, the moment they lose by the adoption of intercolonial free-trade? Because, the other colonies under this proposal are to get something, not by taxing their own people, not by increasing duties which are not increased in other parts of the Commonwealth, as in Western Australia-no, but by the much simpler plan of putting their hand in the Commonwealth purse, and taking out an amount which shall represent the exactions of those colonies on their fellow Australians. And the more they have taxed and harassed their fellow Australians the larger the cheque they will get out of the Commonwealth purse. And out of whose pocket is the money to come? Why, Sir, 48 per cent. of the total amount taken out of the Commonwealth purse to replace the Border Duties in the state exchequers will be taken from the one colony that has not put any duties on her neighbours. Well, this is the refinement of the federal spirit, and it seems to me that we have been wasting a great deal of time if this is to be the solution of the difficulty. Why not have given this concession to Western Australia, in common with the other colonies, as it is much better than what we have just given to that colony after much grudging and a comparative amount of heat?

Mr. ISAACS. -
I suggested it days ago.

Mr. REID. -
Surely you do not think that this assembly, which, at any rate, is an intelligent assembly, would have wasted five days on all the intricacies of the Western Australian difficulty, and solved that, and, in the next breath, have arrived at a settlement which will make that settlement of the Western
Australian difficulty not only unnecessary, but absolutely unfair to the very colony in whose interests we are supposed to be giving something up?

Mr. ISAACS. -

It is quite necessary.

Mr. REID. -

If this is necessary to Victoria, it is doubly necessary to Western Australia, but we are not giving this concession to Western Australia, to make up out of the Commonwealth Exchequer a single penny of the loss which Western Australia will suffer from intercolonial free-trade. Western Australia has not asked us to do that. She has simply obtained power to get the money out of her own people to make up the gap in her finances, whatever it may be. On the top of that proposal comes the Attorney-General of Victoria, with another proposal which is in no sort of harmony with it, and which makes absolutely a disagreement with a part of it, if this is to be carried out. I thought Mr. Holder crushingly showed the absurdity of this proposal the other

Mr. ISAACS. -

He did not deal with it then; it was not before us then.

Mr. REID. -

The same thing, in principle, was before us then.

Mr. ISAACS. -

No.

Mr. REID. -

If the honorable member does not admit that substantially the same proposal was before us on that occasion, I will not look to him for an admission again, because it is notorious that, although the basis of the period of time has shifted, the principle of compensation is absolutely the same. Surely the honorable member will not deny that. I do not think Victoria is quite so hard up that its Attorney-General should take up a position of that sort. However, I will not waste any time on this matter. It has now been before the Convention for several days, and we know all the bearings of these proposals. I am not going to say anything more than the observations I have made. It will simply make the Convention ridiculous, after the time we have taken on the special case of Western Australia, if we now adopt this general proposition; because, if we do adopt this proposal, we must immediately proceed to withdraw the other which we have passed.

Mr. MCMILLAN. -

This will practically negative the other.

Mr. REID. -

Certainly the other will have to be struck out, if we pass this. I should be
very sorry to see us getting at such cross purposes in this Convention. I simply decline to discuss the matter any further, it is so abominably unfair. Mr. Isaacs' proposed new clause was negatived.

Clause 94 was agreed to.

Equality of Trade.

Clause 95-Preference shall not be given by any law or regulation of commerce or revenue to the ports of one state over the ports of another state, and any law or regulation made by the Commonwealth, or by any state, or by any authority constituted by the Commonwealth or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth, shall be null and void.

Mr. BARTON (New South Wales). -

I think that the heading "Equality of Trade" is unnecessary, especially as the public debts clause comes under it and can have no application to it. I see no necessity for that heading, and it may as well come out. I therefore beg to move-

That the heading "Equality of Trade" be omitted.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

Honorable members will see that this clause begins by prohibiting any preference being given by any law or regulation of commerce or revenue to the ports of one state over the ports of another state—not merely to a state or part of a state, but to the ports of a state. And then it goes on to say that any law or regulation made by the Commonwealth, or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth shall be null and void. It seems to me that the whole of the legitimate effect of this clause can be gained by a very much shorter provision, which would simply nullify any law or regulation of commerce or revenue giving any preference to one state or port of that state over another state or port of that state. I beg to move-

That clause 95 be struck out with a view to the substitution of the following:-

Any law or regulation of commerce or revenue made by the Commonwealth or by any state, or by any authority constituted by the Commonwealth or by any state, giving any preference to one state or any part thereof over another state or, any part thereof shall be null and void.

This clause is not intended to interfere with the internal regulation of trade in any state. It is simply intended to prevent any state from giving trade preferences, whether by itself or by any authority under its control, to itself or to any state over another state.
Sir GEORGE TURNER. -

It will prevent us from continuing our Riverina rates, but it would allow you to carry our goods from the border to Sydney at any price you liked.

Mr. BARTON. -

It would not have the latter effect, certainly.

Sir GEORGE TURNER. -

Why?

Mr. BARTON. -

For this reason. If we prohibit any law or regulation of commerce or revenue giving preferences to any state, we cannot make preferential rates. That I take to be certain. At both Adelaide and Sydney I pointed out that I did not in any way defend preferential rates. I drew a distinction between local rates and preferential rates, and that is a distinction that is daily drawn by the Inter-State Commission in America. It is a distinction which generally dictates the answer to the question-"Is the rate fair or not?" If the honorable member will look at any of the books published in the United States on the subject, he will find that the cases are frequent in which the Inter-State Commission has to decide whether a rate is fair within the meaning of the inter-state legislation or not.

Mr. ISAACS. -

Can they hold that a rate is bad because it is too low?

Mr. BARTON. -

Not if it is a rate dealing with the development of internal traffic alone.

Mr. ISAACS. -

The last report I saw showed that the Inter-State Commission could not declare a rate bad on the ground that it was too low.

Mr. BARTON. -

No. If they find that a rate is deliberately fixed low, not for the mere purpose of internal development, on the ordinary principle of diminishing the rate in proportion to the length of traction, but of wrongfully preventing inter-state commerce from taking its ordinary course, the allowance of that rate is a matter which they can consider. A decision which says that they cannot interfere with a rate because it is low is not a decision which abnegates their constant duty to prevent preferences between the states. I do not think any decision can be found which will negative that view. Under the clause as it stands, the prohibition of preferences extends only from the ports of one state to the ports of another state. If it is wrong to give a preference to the ports of one state over the ports of another state, it is equally wrong to give a preference to a part of a state over a part of another state. I have endeavoured to correct that anomaly. On the other
hand, the second part of the clause, making void any law or regulation made by the Commonwealth or by any state, or by any authority constituted by the Commonwealth or by any state, having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth, may mean more than the Convention intends. At the instance of the Hon. Mr. Isaacs we amended clause 89 to make it read that on the imposition of uniform duties trade and commerce, whether by intercolonial carriage or ocean navigation, between the states should be absolutely free. The words used before were "throughout the Commonwealth." What we desire to protect is inter-state trade, and we recognise that the internal regulation of trade must be left in the hands of the individual states. That is a principle on which we are agreed. It exists in the American Constitution, and the more I reflect upon it the more important I think it is that it should be preserved here. If we had adhered to the wide words used in clause 89, as to the amendment of which I agreed wi

Sir GEORGE TURNER. -
Let the new clause be printed.

Mr. BARTON. -
No, I don't see why that request should be made to me when it is not made to other honorable members. I am getting rather tired of being asked to have every small amendment I submit printed.

Sir GEORGE TURNER (Victoria). -
I have endeavoured to follow the statement of our honorable leader with regard to this question, which he himself will admit is a very important one. He appears to be desirous of radically altering clause 95. I do not understand what would be the full effect of this proposal, and, under the circumstances, I think I may fairly ask that the further consideration of the matter be postponed until we see the new clause in print, and have an opportunity of studying it.

Mr. BARTON (New South Wales). -
I am very loath to accede to the suggestion of my right honorable friends and I will tell you why. The most important propositions are brought forward by way of amendment by members of the Convention without being printed. He has himself submitted some of the most drastic, the most important, and the most radical amendments.

Sir GEORGE TURNER. -
They have always been printed.

Mr. BARTON. -
Yes, because the right honorable member has had an opportunity of
getting them printed. I do not see why I should have this clause separately printed, because it forms part of a schedule of amendments which has been printed, and which is about to be distributed.

Sir GEORGE TURNER. -

It has not been circulated.

Mr. BARTON. -

No, but the most radical propositions have been dealt with without their being printed. It is hard on me, holding the position I do, that I should be handicapped by having to get every proposal I bring forward printed. Honorable members are all old parliamentarians, who understand what they are about, and they do not want two or three days to consider a proposal the meaning of which is plain on the face of it. At any rate, the proposal has been circulated; but I wish to protest against the idea that whenever I bring forward a proposal it must be printed, whereas the same condition does not apply to any one else.

Mr. DEAKIN (Victoria). -

The observations of the leader of the Convention in one respect, at all events, have emphasized the distinction which, though possibly latent in the clause as he has amended it, is not explicitly set forth there. The honorable member has admitted that a particular line of demarcation is to be drawn between traffic rates within a state. Whatever be their end-even though it be a reduction of an enormous amount as compared with other charges made by the state-such arrangements are not to be open to question if they only affect the development of the state's own resources, or the encouragement of its own traffic. But if, at the same time, such a reduction, although it may have the effect of developing the local resources of a particular part of the territory of a state, has also the further and additional effect of interfering with the railway traffic or the railway rates of some portion of another state, then the reduction may be held to be repugnant to this particular provision. I do not think that any one disputes the wisdom of that distinction. No honorable member here desires to limit the power of a state to make any regulation or alteration of its charges it pleases to make, so long as they are perfectly local in operation. If they cease to be local, and involve a question of interstate commerce, they are to come within the scope of authority of this commission. But even so-and it is a most important and vital point—I venture to say that it is too important a distinction to be allowed to be concealed in the wide words which the leader of the Convention has employed in the clause. With the principle these words convey we are all in hearty concurrence, and I only trust that they may be given their full effect. But with regard to the question whether the decisions given in the United States can be held sufficient security for
the important distinction to which the leader of the Convention has drawn attention, is another point, upon which I should not like to express a judgment without an opportunity for further consideration. At all events, it is surely a matter in regard to which we should not rely on words which are not to be found—speaking from memory—in the United States Constitution, even though on the face of decisions given in the United States courts, under their Constitution, such words would convey, by necessary implication all we desire. We cannot be sure that they would, if introduced into our Constitution, have precisely the same significance as different words in the United States Constitution have been held to possess. That is a very important point which, owing to shortness of notice, I have not had an opportunity of examining, and therefore do not desire to detain the Convention by its discussion. But, at all events, it is a very reasonable request that we should be allowed an opportunity of examining the general proposal now submitted to us, together with the decisions of the United States, in order to determine whether this language, if introduced into our Constitution, would, so far as we can tell, be interpreted by our courts so as to have the same effect as other words have had in the United States. Let me press upon the honorable and learned leader that, having enunciated a principle that meets with acceptance all round, he should not ask us to take the further step of trusting to the interpretation of the courts of such wide words, in the belief that the distinction he indicates will be held to be implied in these words by the future courts of the Commonwealth. If the honorable and learned gentleman will place plainly in this clause a definition of the functions of the Inter-State Commission, which shall give it authority over all matters affecting intercolonial interest, and will at the same time either by that definition or by more express words retain to the states the liberty to deal with all rates and charges that are purely and strictly local in operation, he will have met, at all events, the first obstacle to the adoption of this clause. He will place in explicit terms in the Constitution the principle which seems to be essential to the proper interpretation of this clause, and which he himself has alluded to as being the proper interpretation to be placed upon it. If that be done, although I should desire to examine the United States decisions—and, no doubt, another opportunity for their consideration will be given—I shall be satisfied but unless that distinction were put in the clause, I should view with apprehension the addition of words as wide as these are, which might prejudicially interfere with the profitable working of the railways of the states, and might seriously affect their earnings.

Mr. GORDON (South Australia). -
I should like to add to what Mr. Deakin has just said, that too much reliance ought not properly to be placed on the American position, because our situation in regard to railways is different to the position in the United States. The railways in Australia are owned by the states, and what qualification that fact might have as governing the relations between the state and the railways we do not know. The distinction pointed out by Mr. Deakin should be clearly stated, I think, in this clause, because it is vital to the whole working of the Constitution. Preferential railway rates are not to be allowed, and I think that this provision should be covered not by any general words, but by clearly-expressed words. A great deal hangs also on whether the Convention is going to allow in the next clause the word "may" to be altered into "shall." If there is to be an alteration we should perhaps be content with a vague principle which otherwise we should not put up with. So far as South Australia is concerned, there is a strong feeling that the matter should be made clear, both as regards preferential rates and as to the erection of the body which shall so adjust the interests of the various colonies that no injury shall be done to either of them.

Mr. ISAACS (Victoria). -
I quite feel that there is a large measure of truth in what the honorable and learned leader of the Convention says, that he should not be subjected to any further delay than any other honorable member is subjected to in regard to amendments which he wishes to propose. But this clause is fraught with enormous consequences, and goes much further than the American Constitution or the American decisions.

Mr. BARTON. -
The clause as it is in the Bill goes a tremendous distance.

Mr. ISAACS. -
But this clause will go further. The clause in the Bill deals with freedom of trade. This deals with the matter on a totally different line.

Mr. GLYNN. -
This is a better one.

Mr. ISAACS. -
That is a question of opinion. At all events, this is a totally new proposal. In America the provision that preference is not to be given to one port of one state over any port of another state is a provision which is altogether different in character to this. I have alluded previously to the effect of that provision in the United States Constitution, as defined in the case of Pennsylvania v. Wheeling, where it was stated distinctly that the provision related only to the United States and not to individual states. That provision
was introduced by reason of the fear that the Federal Government might probably prefer the ports of one state over the ports of another.

Mr. REID. -

It was a restriction on the powers of the United States, and not particular states.

Mr. ISAACS. -

Quite so; not on individual states. Now we are proposing to take up a totally new line in that respect, and also in another respect. What has been guarded against in America is the institution of barriers against freedom of commerce, and it has been held both by the courts and by the Legislature that there is to be no barrier introduced between the states as to commerce. But this proposal does not intend to do that. These words do not make our commerce free. This clause says that although you may want to invite commerce to enter your ports, although you may want to offer attractions to commerce, you are not to do it, because the mere doing of it, irrespective of your motive, will give a preference to your own state. Where will a provision of that kind land us? The clause says that, whatever regulation of commerce or of revenue is made by the Commonwealth, or by a state, or by any authority constituted by either of them, if, in the opinion of the Supreme Court—for that is what it comes to—its effect is to give a preference over any state, or part of a state, it is to be null and void. How are we to carry on under such a provision? I think that this is too important a matter to be dealt with off-hand. It would at once do away with our railway rates affecting the Riverina traffic.

Mr. BARTON. -

Does the honorable and learned member mean that the deference between this and the existing clause would do away with those rates?

Mr. ISAACS. -

Yes, because the existing clause deals only with derogations from the freedom of trade. This clause goes much further.

Mr. BARTON. -

You have this provision in the first part of the existing clause as applying to ports.

Mr. ISAACS. -

In the existing clause the application to ports is only an application of Commonwealth laws. Preference is not to be given to the ports of one state over the ports of another. We are now applying this provision to state laws.

Mr. BARTON. -

We applied it to state laws in the second part of clause 95 originally.

Mr. ISAACS. -

That was only in regard to freedom of
latest Inter-State Commission report that I have been able to lay my hands upon. He will find it at page 20, volume 2, of the House of Representatives-Miscellaneous Documents, 1894-5. The passage is headed "The Southern Freight War." This freight war is very like the freight war that now exists between Victoria and New South Wales. Of course, I must not be understood to be defending this freight war.

Mr. REID. -

At any rate, it does not injure the producer.

Mr. ISAACS. -

It does not. As the passage is a very long one, I think I should be unduly taking up time by reading it. As I understand, the commission report that the situation calls for a statutory remedy, because under no circumstances are they enabled by the American law to deal with the sweeping reductions which are the result of this freight war. The contest for traffic is not between states, but between lines of railway. By the secret and the open cutting of rates, damage is done to one locality as against another, and the commission find themselves unable to deal with this evil. In America, they have not reached the position which is sought to be reached by this proposal, which is quite a new departure, and would have the most serious consequences for Victoria. If honorable members doubt the reason of our insistence upon full time for consideration, I invite them to read the Railways Commissioner’s report upon this very question. He deals with it most fully upon page 315 of the Victorian Blue-book. He points out that it would affect Victoria to the extent of £160,000 it affects us not only with regard to our railway returns, but also in our position as a commercial and distributing centre. Although the change of words is not, upon the face of it, very great, the effect is enormous, and revolutionizes the clause altogether. I do not know how the amendment affects New South Wales, but it is difficult to see how we can accept, without full consideration, a provision which allows the Supreme Court of the Federation to take up any enactment and say whether, in its opinion, apart from its object or motive, it gives a preference to another state or part of a state. If it has that effect it is, independently of any other consideration, to be null and void.

Mr. OCONNOR. -

Those words are not in the amendment.

Mr. ISAACS. -

That is the effect of it. I do not see how else the honorable and learned member can read the amendment. It provides that any enactment which has the effect of giving a preference is to be null and void.
If it has the effect of derogating from freedom of trade and commerce.

Mr. ISAACS. -
Those words are not in the provision read by Mr Barton.

Mr. BARTON. -
I simply prevent the giving of a preference.

Mr. ISAACS. -
Yes. The question appears to me a very difficult one, and I think my honorable and learned friend will see that, in consideration of its difficulty and of the consequences which flow from it, we should have a little further time to deal with it.

Mr. BARTON. -
I will not press the matter to a division to-night, but I think we might discuss it a little longer.

Sir GEORGE TURNER (Victoria). -
In thinking over this matter while honorable members have been speaking, it would seem to me that the clause will have this effect: We at the present time have reduced rates for wool coming from Riverina to Victoria; these rates will have to go. On the other hand, New South Wales has increased rates upon goods coming to our borders from the interior of her colony. Those rates will remain, because they do not give a preference to one part of New South Wales over any part of Victoria. It seems to me, as I have had to remark on several occasions with regard to this particular question of railway rates, that we are always faced by one position—the hands of Victoria are to be tied, while the hands of New South Wales are to be left absolutely free.

Mr. REID. -
I say, leave them both free. The producer is not injured by these rates. The lower the rates, the better for the people who use the railways.

Sir GEORGE TURNER. -
I should be prepared to leave them to fight it out if both sides were free, but I would rather see no fight at all.

Mr. BARTON. -
Would the right honorable member rather have the additional clause 95 taken out of the Bill?

Sir GEORGE TURNER. -
Now, you are springing another difficulty upon me.

Mr. BARTON. -
I am not springing another difficulty upon the right honorable member. I only want to know what he wants.

Sir GEORGE TURNER. -
I want to stop any unfairness.

Mr. REID. -

He wants to put that little thing right that affects him, and he does not think about anything else.

Sir GEORGE TURNER. -

I do not think the honorable member is fair in making such a statement.

Mr. REID. -

I apologize; the honorable member has been the good boy of the Convention.

Sir GEORGE TURNER. -

In future I intend to be the bad boy. The difficulty about these words giving a preference is that it would mean we were giving a preference to a portion of New South Wales over Victoria, but if we attempted to challenge the New South Wales rates the answer would be at once that they were not giving a preference to any portion of New South Wales over Victoria. That is the cleft stick in which we are going to be placed. We shall not be able to carry on the war, whereas, quite unintentionally under this clause New South Wales will be left perfectly free to carry on that war.

Mr. REID. -

We do not want any inequality

Sir GEORGE TURNER. -

We do not want any inequality, and that is why I desire to have an opportunity of looking at the wording so as to see if we could not meet the views of our New South Wales friends, and at the same time be fair to Victoria.

Dr. QUICK (Victoria). -

I wish to draw attention to the fact that according to clause 95, as it is in the Bill, there are two prohibitions: First, it prohibits preference; that probably would be directed against Victoria adopting any rule or regulation giving a preference to the Riverina trade. So far it might be desirable that such a clause should be kept in the Bill, but the second part of the clause contains this important prohibition. It prohibits any law or regulation having the effect of derogating from freedom of trade or commerce between the different parts of the Commonwealth. I wish to draw attention to the fact that the amendment of Mr. Barton proposes to give effect to the prohibition against preference, which might have a very serious and important effect upon Victoria; but at the same time he omits from his new clause that prohibition against any law having the effect of derogating from the freedom of trade and commerce.

Mr. BARTON. -

You could not speak of any such preference which would not be a
derogation from the freedom of trade and commerce.

Dr. QUICK. -

I would point out that the omission of that prohibition might give New South Wales a free hand to impose any regulation of trade or commerce which, although not directly intended as a preference, might indirectly have the effect of a preference. For instance, New South Wales might go on reducing its railway rates until they assumed such an attenuated shape that they would have the effect of a preference by attracting trade which would naturally go to Victoria to some port of New South Wales. I think we might be able to accept the proposed amended clause if Mr. Barton would insert, in addition to the words which he proposed-"No law or regulation giving a preference, &c., or having the effect of

derogating from the freedom of trade and commerce between the different parts of the Commonwealth."

Mr. BARTON. -

It is the same thing really.

Dr. QUICK. -

Then I want to know why these words, "having the effect of derogating from the freedom of trade and commerce in the different parts of the Commonwealth," have been omitted?

Mr. BARTON. -

The reason is because I do not believe in idle repetitions. I think the two things mean the same. As a draftsman, I thought it better to leave out these words.

Dr. QUICK. -

These words have stood the test of time for some years.

Mr. BARTON. -

No, they were altered in Adelaide.

Dr. QUICK. -

I know that in New South Wales objections were taken to these very words, "derogating from the freedom of trade and commerce." I know that there were a number of critics of the words in New South Wales who were of opinion that this would prevent them from attracting trade and commerce to Sydney, so there must be some difference.

Mr. BARTON. -

I hope the honorable member will take my assurance. I am not in the habit of telling lies.

Dr. QUICK. -

I accept the honorable member's statement, but we know that a certain amount of literature has clustered around these words, so that the omission
of them cannot be regarded by the representatives of Victoria as altogether
without significance. At any rate, there is a sufficient amount of reasonable
doubt on the subject to give weight to the suggestion of the Right Hon. Sir
George Turner that the clause should be postponed until to-morrow.

Mr. BARTON. -

I do not intend to ask for a division to-night.

Dr. QUICK. -

It strikes me that the omission of these words might have a very
prejudicial affect with regard to the action of Victoria. It would appear that
the prohibition of preference is deliberately intended to take away from
Victoria the power of giving preferential rates in order to attract the
Riverina trade. Yet it reserves to New South Wales the power to impose
what Mr. Barton calls development rates; yet these differential rates might
become so narrowed down as to be absolutely preferential in their effect. I
would ask is it intended to reserve such a power to the railway authorities
of New South Wales? With regard to freedom and equality of trade, I may
remark, by the way, that equality of trade has been struck out, I do not
know why. The heading seemed to suggest the meaning of the clause, that
was, that there was to be equality of trade, and none of this cutthroat
business, such as New South Wales putting on rates between Albury and
Wagga to prevent trade drifting towards Melbourne. Are those rates to be
preserved? I say we ought to put something in this Bill to prohibit such a
thing.

Mr. MCMILLAN. -

Between what places does the honorable member say these rates might
be imposed?

Dr. QUICK. -

Between Wagga Wagga and Albury.

Mr. MCMILLAN. -

Those will be done away with.

Dr. QUICK. -

But what is to prevent their being imposed under this emasculated
clause? The railway authorities will be able to impose any rates they like
within their own territory. In my opinion, those words with regard to
preventing anything which would derogate from the freedom of trade or
commerce are most significant and important. If they are eliminated, the
clause will be emasculated and shorn of a large amount of the power which
would secure freedom and equality of trade.

Mr. OCONNOR. -

Will the honorable member explain what is the meaning of the words
"derogating from freedom of trade and commerce"?
Dr. QUICK. -
It would prevent the placing of any obstruction in the way of river navigation or railway carriage. It would prevent anything in the nature of a rate which would derogate from the freedom of trade between two colonies—which would take away from the freedom of trade. Therefore, I would suggest that if this clause is to be pushed forward tonight, it should be amended by inserting the words which are contained in the original clause.

Mr. MCMILLAN. -
There are certain things which we allow. If there is a high rate from Wagga to Albury we would certainly allow that that was a preferential rate. We cannot fix the rate so as to take away the trade.

Sir GEORGE TURNER. -
But it would not be a preference under this clause.

Dr. QUICK. -
It is evidently intended to prevent preferential rates being imposed at Echuca or Swan hill in order to draw traffic from across the border. That is quite clear. It will cripple our action, but at the same time it reserves more freedom indirectly to the railway authorities of New South Wales. I agree with my colleagues that, if there is to be freedom and equality of trade, which we all profess to desire, it ought to be implanted firmly in this Constitution. The representatives of New South Wales ought not to be allowed under the pretended exercise of a power to develop their own resources, so as to interfere with the free flow of trade and commerce to the nearest port.

Mr. GORDON. -
No matter from which state?

Dr. QUICK. -
No matter from which state.

Mr. GORDON (South Australia). -
That is the point. I was surprised to hear Sir George Turner and Mr. Isaacs rather fighting against the great principle without which federation would be a bastard federation.

Mr. ISAACS. -
What principle?

Mr. GORDON. -
The principle which would prevent anything in the way of preferential rates.

Mr. ISAACS. -
You have not heard me say one word against that principle.
Mr. GORDON. -
I understood the honorable member to fight against the principle in the interests of the little bit of trade from Riverina.

Mr. ISAACS. -
Anything I said on the subject was rather the other way.

Mr. GORDON. -
Then I must have misunderstood the honorable member. But Sir George Turner rather argued in favour of the little bit of trade from Riverina.

Sir GEORGE TURNER. -
No, I did not. What I said was that it would be unfair to take that trade away and tie our hands, unless the same thing were done to the other colonies. We are quite willing to go on an equal footing.

Mr. GORDON. -
I agree with the honorable member, and I am glad I misunderstood him. Without some provision to prevent preferential railway rates free-trade would be a farce. The benefits of free-trade could be done away with by erecting a barrier of railway rates.

Mr. ISAACS. -
Do you mean to say that giving lower rates to the foreigner is a barrier?

Mr. GORDON. -
As between states, if it be worked in that way.

Mr. ISAACS. -
Nonsense!

Mr. REID. -
It is not a barrier; it is a premium.

Mr. GORDON. -
It is an obvious barrier. The wealthiest colony would, in that case, carry off the palm. I hope no suggestion will be made to obviate what Dr. Quick so clearly described just now as the flow of trade and commerce to its natural geographical outlet.

Mr. MCMILLAN (New South Wales). -
I suppose it is inevitable that this controversy, which was really thrashed out on a previous occasion, must again come before the Convention. The whole question is really where "differential" becomes "preferential." That seems to be the whole point. But it seems to be forgotten that in New South Wales we have an enormous territory, which we are absolutely bound to open out. It is not our fault that our territory is bigger than that of Victoria. In some cases in which it was never intended in any way to give what might be called a preferential rate, but to give purely a differential rate to afford the people in the far interior an
opportunity of having a reasonable chance with those nearer the port, that rate as it got nearer the border might be construed by some as a preferential rate. But supposing it was made a regulation of the railways throughout New South Wales that those differential rates should be exactly on the same scale throughout the colony. I do not mean to say we would be committed to that; but I take it as an example. In such a case I do not see how, in view of the interests of our own people, it would be possible for us to say that the attenuated rates, at the far end of one of those systems nearing the border, should be absolutely altered, in the same manner as if we joined the service of Victoria, and made a through rate. The best thing in these matters is to be perfectly candid. We have discussed this matter before. My honorable friends are aiming at a state of affairs that would, no doubt, exist if the whole of the railways were absolutely federalized and vested in the Commonwealth. Under these circumstances let us, for instance, take Cootamundra as a central point between Sydney and Melbourne. What has been contended is that, if the railways were federalized, there should be a through rate from Cootamundra to Melbourne, on the same principle as from Cootamundra to Sydney. We are quite willing at this stage of our affairs, before the railways are absolutely federalized, to let things remain as they are.

Mr. HIGGINS. - And allow us preference rates?

Mr. REID. - Yes.

Mr. MCMILLAN. - Exactly. The Victorian position is simple. It is very easy to decide that there is an absolutely preferential rate if greater facilities are given to people in another colony than are given to the people of the colony by which the facilities are granted.

Mr. GORDON. - Or people are placed at a greater disadvantage by a higher rate.

Mr. ISAACS. - That is provided for in the Constitution.

Mr. MCMILLAN. - Yes, exactly. There are two positions; one very simple, and the other very complicated. It is very simple to understand that if you reduce your rates from Riverina below the point at which you charge your own people for a similar carriage inside your colony, that is a derogation of trade and commerce to some extent.

Mr. ISAACS. - Not a derogation of freedom.
Mr. MCMILLAN. -

Well, perhaps not. On the other hand, we have a much more complicated thing to consider. The New South Wales representatives are asked to say that a large amount of their railway tariff, which has been fixed on differential rates, would, when we federalize, become fixed on preferential rates. That is the whole point.

Mr. GORDON. -

Let the Inter-State Commission settle that as a jury.

Mr. MCMILLAN. -

No, no. What we want to do first, before we decide on an Inter-State Commission or anything else, is to understand in this Convention what we mean. There is no use in saving that here is a very difficult hazy question, surrounded by all kinds of complications, which must be left to a tribunal of the Federal Parliament. You may possibly do that, but before that is attempted you would want to understand the whole question from beginning to end. And the whole question is, I think, as I have stated it—that you want us to make through rates from our railways from the different parts of our colony into Victoria before the railway system is absolutely federalized. I say it would be me possible for us to justify that procedure.

Mr. HIGGINS. -

That is not the proposal.

Mr. MCMILLAN. -

The Convention must recollect that, although we are going to federalize, the states will still have their autonomous Governments, and have to keep up the police, public buildings, and all the ramifications of civil life throughout the colonies. The parts of the country into which we have sent our railways are kept up at an enormous expense. People have settled there, and are connected with the Government through the land and by other means. Those people, in many instances, wish to trade with New South Wales and through our ports. Are we going to increase the rates to our own producers in order to give the people of Victoria a through rate? The result would be that, with our railway system, which is now under such magnificent management that we can afford to reduce rates from the far interior of the colony, we would actually have to say to our producers—"While we federate, and while we will let you go to the nearest port, you will have to pay a higher rate."

Mr. ISAACS. -

What proposal has Victoria ever made to the effect you are stating?

Mr. MCMILLAN. -

I have asked the delegates a very simple question. Is not the whole
purport of their argument that they should get through rates from certain places in our colony on the same principle as if the railways were federalized?

Sir GEORGE TURNER. -
I never heard that asked for.

Mr. HIGGINS. -
We would like that, but, at the same time, we are not asking for it.

Mr. MCMILLAN. -
Then there is no-thing in the argument at all. Dr. Quick and others have said-"You have so attenuated your rate at the far end of the railway system as to practically give preference to the port of Sydney." Well, is not that exactly the point I am trying to deal with? We do not give that preference necessarily because the lines approach the border, but as part of the policy of our railway system, and for the benefit of those in the far interior. It seems to me that, if we cannot get at some arrangement that is absolutely understood in the Convention, we had better give up all the clauses connected with the Inter-State Commission, or anything that hampers the question.

Mr. BARTON. -
The Commonwealth would still be able to legislate for trade and commerce.

Mr. MCMILLAN. -
The broad principle of equality of trade would still remain in the Constitution, with the High Court as guardian of our rights in this respect. Let the Federal Parliament deal with the whole question under the powers that are in the Constitution.

Mr. BARTON (New South Wales). -
Before I move, Mr. Chairman, that you report progress, I would just like to say one word more. I am not going to re-open this question. Honorable members who entertain any fear with regard to the omission of the second portion of the old clause 95 may perhaps find their fears very much modified if they look at the form in which clause 89 now stands. It has been amended to apply to inter-state free-trade only, and it enacts that from the imposition of uniform duties of customs trade and intercourse between the states shall be absolutely free. In this clause there is a prohibition of derogation from freedom of trade, but I take it that a law passed in derogation of freedom of trade would be void under clause 89. Therefore, there is nothing to fear about leaving out the second portion of this clause. The first part is simply a prohibition of preference to the ports of one state over the ports of another state.

Mr. ISAACS. -
If you keep the latter part of the clause in, would it not operate as from the beginning of the Commonwealth?

Mr. BARTON. -

Yes, that would be the only difference, and the question is whether it is worth while to make it operate in that way, because it may be taken that there is in the Constitution, without the latter part of clause 95, an implication that any law or regulation of commerce or revenue having the effect of derogating from freedom of trade or commerce between the states shall be null and void.

Mr. ISAACS. -

Would it be right to make it operate from the beginning of the Commonwealth?

Mr. BARTON. -

It might not be, and it might be better to leave it to the operation of clause 89. I think it would be better to get rid of the implication I have spoken of, in order that, until the uniform Tariff is imposed, proposals of law that would have the effect of conflicting with the state of things that would subsist for two years after the inception of the Commonwealth might not arise. So I ask honorable members, in looking over the matter between now and to-morrow morning, to see whether the present form of clause 89 does not provide for all we want, and whether the expansion of the first part of this clause by the words I have suggested is not a desirable thing—that is to say to extend the forbidding of preference to port over port to a forbidding of preference between state and state. The second part of the clause may be read as sufficiently provided for by clause 89, and at the right time. I now beg to move, sir, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at six minutes to five o'clock p.m.
Tuesday, 22nd February, 1898.

 Appeals to the Privy Council-Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

APPEALS TO THE PRIVY COUNCIL.

Sir JOSEPH ABBOTT (New South Wales). -

I beg to move-

That a return be laid before this Convention showing-

1. The number of appeals from the Supreme Court of each of the colonies of New South Wales, Victoria, and South Australia to Her Majesty's Privy Council.
2. The parties to the suit.
3. The date of the order of the court granting leave to appeal.
4. The date when the transcript was forwarded to England.
5. The date of judgment of the Privy Council.
6. The amount in dispute.
7. The result of such appeal.
8. The amount of the taxed costs of each appeal.
9. Such return to be for the last 30 years, and to show the average time from the date of the order giving leave to appeal to the date of judgment by the Privy Council; and also the average time for the last seventeen years; also the average time in the last seventeen years from the posting of the transcript to the date of judgment of the Privy Council; also the average amount of the costs in which the amount of the taxed costs is known; also the average amount of the taxed costs of an appeal to the Privy Council in the last seventeen years.

I understand, Mr. President, that this information can be obtained with very little trouble and at very small expense, and I am quite sure that when it is produced it will be of great service to honorable members, at all events, to those who are not connected with the law.

Mr. SYMON (South Australia). -

I have great pleasure indeed in supporting this motion, and I am also very glad to hear the mover say that there will be no difficulty and no delay in supplying the necessary information. I am quite sure that when it is obtained it will cast a flood of light, not exactly in the direction my honorable friend supposes, but a flood of light upon some of the minor details of this great question.

The motion was agreed to.
COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 95 (see page 1250), and on Mr. Barton's proposal that the clause be omitted with the view to substituting the following:-

Any law or regulation of commerce or revenue made by the Commonwealth, or by any state, or by any authority constituted by the Commonwealth or by any state, giving any preference to one state or any part thereof over another state or any part thereof shall be null and void.

Mr. HIGGINS (Victoria). -

I tabled an amendment on clause 95, some days ago, and it appears in the printed amendments. It has come on before I expected it to come on, but I think this is the place at which I should press my amendment. The words which I propose should be added will apply to the proposed new clause which has been submitted by our honorable leader, as well as to the clause which at present stands in the Bill. The proposed new clause simply makes invalid any preferential rate. It in no way affects unfair differential rates. I need not, of course, speaking to members of the Convention, remind them of the difference between the two kinds of rates-preferential and differential rates-but I think it has been generally admitted that if you interfere with preferential rates, you ought also at the same time to interfere with such differential rates as operate in the same direction, and operate unfairly. Now, sir, in dealing with this matter, my proposal is to insert in the last line of clause 95, after "Commonwealth," the words "or with the view of attracting trade to ports of one state as against ports of another."

Mr. DOUGLAS. -

Attracting?

Mr. HIGGINS. -

Yes, "attracting trade to ports of one state as against ports of another."

Mr. DOUGLAS. -

Why should not a state do that?

Mr. HIGGINS. -

Well, the position is one in which at present only three colonies-New South Wales, Victoria, and South Australia-are concerned, but, in the course of a few years, I leave no doubt that Western Australia will be very intimately concerned in this, and I also think that, although you cannot have a railway to Tasmania, still there will very likely be an important advantage gained by Tasmania, if there is a just rule laid down in the Constitution. The position, so far as I am concerned, is this-I am one of
those who, I suppose wrongly, have advocated the taking over of the railways by the Commonwealth. We have been beaten on that, and I accept the beating. I take the position that we cannot, at this stage, expect to get more in that direction than we already have, but the next course I should like best would be that there should be some inter-state body, some Commonwealth body, an impartial body, which should regulate the railway rates throughout Australia in the interests of Australia as a whole. That, I am told, also, it is impossible to get, because each colony wants to develop its own area-its own land-in its own way. Then what is the minimum which any one with an idea of what federation means for Australia thinks we ought to ask for? The minimum we ought to ask for is that there shall be no more unjust preferences by charging different rates from the same place to the same place, and that there shall be no more devices used for the purpose of attracting trade in one direction, or to one port as against another port. What does the Bill do at present? All the Bill does at present is to take away any rate which interferes with freedom of trade. That, of course, has not anything at all to do with the matter of preferential and differential rates. Freedom of trade is obstructed if you keep goods out, but here is a case in which you try to draw goods to you. The next point in which the Constitution acts is that it interferes with preference rates, and if you look at Mr. Barton's amendment you will see he is very careful to restrict that amended clause to the case of preferential rates.

An HONORABLE MEMBER. -

What amendment?

Mr. HIGGINS. -

Mr. Barton's amendment reads:--

Any law or regulation of commerce or revenue made by the Commonwealth, or by any state, or by any authority constituted under the Commonwealth or under any state, giving any preference to one state or any part thereof over another state or any part thereof shall be null and void.

Mr. BARTON. -

An honorable member has asked which amendment. The amendment circulated this morning is the same as the clause circulated yesterday, with the exception of the word "under" for the word "by."

Mr. HIGGINS. -

The word "preference" governs the whole of the clause. The idea is, for instance, that Victoria shall be prohibited from charging one rate from
Echuca to Melbourne to Victorian producers, and for the same goods charging another rate from Echuca to Melbourne to New South Wales producers. That is distinctly giving a preference. A preference is given to the New South Wales producer over the Victorian producer in order to attract the trade of the Riverina along the Victorian lines to Melbourne. Although I represent Victoria, I think such rates are anti-federal and ought to cease. They are not only anti-federal, but they lead to the greatest loss to our revenue, and to the extra taxation of the people for the purpose of making up the yawning deficit. Those rates should cease all through the Continent. Assuming the committee is in favour of those rates ceasing, ought they not, in the same breath, to remove the power to impose such differential rates in any colony as are meant to attract the trade in one direction in place of attracting it in another direction? I may remind honorable members that there is practically the same rate from Cootamundra to Sydney on the railways for wool as from Hay to Sydney, although Cootamundra is 200 miles nearer the New South Wales capital. Mr. Mathieson, giving evidence before the finance committee, says-

Just now the distance to Cootamundra, the station which rules the high rate, is 254 miles. They charge for greasy wool 3d. per ton per mile to Cootamundra, and for 200 miles further, viz., to Hay, they charge practically the same rate, but it works out 1.70d. per ton per mile.

In fact, wool is carried from Hay to Cootamundra, 200 miles—for nothing. Mr. Mathieson goes on—

I simply want to illustrate the position that Victoria would be placed in if Mr. Eddy is to be at liberty to quote whatever rate he thought fit to stations within New South Wales. Why, it would simply mean that for me to maintain the position in Victoria, I would have to square the whole of my rates along the Murray River so as to enable me to take that traffic to the port to which it has been going for a long term of years.

I understand that by squaring the rates it is meant to have the same rates for all goods of the same class from the same station, Mr. Mathieson continues:-

Mr. Eddy has mentioned that on the northern boundary from Wallangarra he carries wool 192 miles for the same rate as he does from Tamworth, 282 miles. From Bourke, which is 504 miles from Sydney, he carries wool for something less than 2d. per ton per mile. But then he has three rates, one for Bourke proper, 1.90; one for the other side of the river, 1.60; and another that takes him 100 miles into Queensland territory, 1.29. While Mr. Eddy may abolish all these differential rates, he is still enabled to draw Queensland traffic to Bourke in the same way as he will prevent the flow of traffic from the Murrumbidgee on to the Victorian lines. Mr. Eddy
suggests that so long as we quote a rate into New South Wales that is not less than the rate to our own terminal station he raises no objection. But he forces us into this position: That a province which has been an integral part of Victoria, all but in name, for many years, is now to be taken from us-

Mr. REID. -

Not in name; you have not been able to tax it.

Mr. HIGGINS. -

Mr. Mathieson goes on:-

simply because there is a want of true federal feeling, and to confine the trade to the New South Wales territory. All that I ask is, that due consideration should be given to this important question and, if there is to be a commission appointed to deal with intercolonial rates, that commission should have the right to determine what is a fair and reasonable rate in the district that might be governing the flow of traffic to and from the various colonies.

I want to carry out that idea. I understand that the Victorian commissioners have no objection to the taking away of preferential rates of the nature I have indicated-charging New South Wales wool about one-third the price from Echuca to Melbourne that Victorian wool is charged. But Mr. Mathieson also says that if that preferential rate be taken away, New South Wales, or any other colony, ought also be prevented from charging differential rates and from forcing the trade from its natural channels. That is what Mr. Mathieson wants. It may be said that this is a very difficult question, because lower rates mus

Mr. MCMILLAN. -

Do it without taking away the right of another country.

Mr. HIGGINS. -

It is not interfering with another country. It is interfering with one part of the country for the benefit of Australia as a whole. But the answer is that we are not taking over the railways, and are not assuming any power to fix rates. The Federal Government, however, is, as I understand, to appoint an Inter-State Commission. I propose that that commission shall have power not only to stop all rates which are preferential, in the sense of charging more for Victorian wool than is charged for New South Wales wool from Echuca, but it shall also have power to forbid any rate, no matter where it is imposed, no matter by what authority it is imposed, which is made with a view simply of attracting trade to the ports of one state in the place of the ports of another state.

Mr. MCMILLAN. -

Does not the American Inter-State Commission carry out your view?
Mr. HIGGINS. -

It does not. I have here a recent article in the North American Review, of November, 1897, which is evidently written by a great railway expert, and is a most thoughtful paper. He shows the state of chaos to which the American railway systems have been reduced by the want of such a power of interference.

Mr. HENRY. -

How are you to distinguish between rates for the development of a country and rates for bringing traffic to a particular quarter?

Mr. HIGGINS. -

Railway experts—and I have consulted them—can tell you in 99 cases out of 100 when that is the case. They know that certain rates, having regard to the scale of charges and proximity to a certain border, must be so fixed not for the mere purpose of development or easing the producer, but for the purpose of forcing trade into an unnatural channel. It is quite certain that any state can, if it chooses to incur the expense, force all its trade to its own port. You can pump water to any height, but it is a question of expense. The question is whether in framing this Federal Constitution we are going to prevent a colony from continuing preferential rates, so as to secure the trade for its own ports, and at the same time not going to prevent the other colonies from continuing the differential rates which are obviously meant for the purpose of attracting trade to those ports. I think, therefore, that it is a pure question of intention. My idea is that the Inter-State Commission, an impartial body to be appointed by the Federal Parliament, shall go into the question of rates, and, like a jury, come to a conclusion whether the differential rates are reasonable or unreasonable. If you will remark that the burden of proof is upon all those who object to the rates, prima facie, every colony is to be entitled to have its own rates to develop its own country in its own way. But supposing it is proved that a certain rate, like the rate between Cootamundra and Hay, is obviously intended for the purpose of preventing trade coming to Melbourne which would naturally come here, the Inter-State Commission can interfere.

Mr. DOBSON. -

Would that question be settled by the commission, and not by the High Court?

Mr. HIGGINS. -

Yes, I think it is desirable that the High Court should be kept to the decision of law points, while the Inter-State Commission should be confined to the decision of expert questions with regard to railway
management. The function of a legal court is to deal with law; it has not to deal with questions of policy or of railway management.

Mr. DOBSON. -

Suppose we provided in the Bill that the states were not to impose these improper rates, could not the High Court decide that question as well as the Inter-State Commission?

Mr. HIGGINS. -

That is quite true assuming that after the Inter-State Commission decided as experts that these rates were unfair differential rates, and then the state still imposed those rates, of course, there would be the ordinary legal process. That would come before the ordinary Federal Courts. There is no doubt that if the law or the rule laid down by the Inter-State Commission were not adhered to the only appeal would be to a law court.

Mr. DOBSON. -

Supposing the Constitution said that there were to be no preferential rates, and the Inter-State Commission decided in another way, would there be no appeal to the High Court?

Mr. HIGGINS. -

No, I take it that the Inter-State Commission will be the jury to settle whether a rate is unfairly differential, and that will be final. But supposing that, notwithstanding the Inter-State Commission had laid down the principle, the rates were still imposed, the only process would be to go to law. But I apprehend that in every such case it would be like the story of the coon and the colonel-the state, instead of waiting to be shot, would say, like the coon-"Don't fire, colonel, I'll come down"-and on being told by the Inter-State Commission that a rate was unlawful and unfair, the state would cease to impose that rate.

Mr. DOBSON. -

The decision of the Inter-State Commission would be final.

Mr. HIGGINS. -

I think so. We are all sinners in this respect. I find, from the Border Duties Act of Queensland, that New South Wales has been doing to Queensland just what we have clone to her. The preamble to that Act says-

And whereas it has been ascertained that differential rates on the railway lines of the neighbouring colonies have been promulgated and otherwise arranged for, which have had and are continuing to have the effect of diverting the traffic which ought legitimately to be conveyed over the railway lines of this colony, thereby entailing a considerable loss in railway revenue; and whereas it is considered desirable to prevent, as far as practicable, this diversion of traffic-

Then they impose a certain duty on all goods exported over the border to
New South Wales. There is no doubt we do to South Australia exactly what New South Wales does to us. We have these tapering rates, which are meant to protect West Victorian trade from going to Adelaide, or in that direction. I admit it is most anti-federal.

Mr. DEAKIN. -

And the only federal feature about it is that we all do it.

Mr. HIGGINS. -

I hope we shall stop all these practices. We had a discussion a few days ago with regard to bounties, and the Premier of New South Wales stated, in words which struck me at the time, the true principle that ought to guide this committee in dealing with this system of railway rates. He said-

The keen point, as my honorable friend will admit, of federalists throughout all Australia is absolutely this: The rising of the Commonwealth is to be the death of these local struggles to get an advantage for one colony over the others.

Are we to carry that out? What is an unfair differential railway rate but a bounty to the warehouseman in Sydney? Does it not simply mean that, in order to get business to Sydney or any other city, you are imposing rates so as to draw trade to it, and unduly low rates in order to draw business into Sydney? It means, practically, that out of the railway revenue you are making a present to the people of the port. If it is improper and inconsistent with the federal spirit for us to give bounties, are we not to stop this system of giving bounties to the ports, which arises from the system of giving unfair differential rates? I appeal to the right honorable gentleman, who always uses most guarded words in this matter, to carry out the noble principle which he laid down in his own words only last week—"The rising of the Commonwealth is to be the death of these local struggles to get an advantage for one colony over the others."

Mr. REID. -

It did not convince you at the time; you voted the other way.

Mr. HIGGINS. -

It convinced me that my right honorable friend understood the true federal principle. I was altogether in favour of interfering with that system which allows, by means of bounties, one state to get the better of another. I only supported bounties so far as the bounties did not interfere with the system of freedom of trade. I think honorable members will hear me out that that was so. Speaking to the general principle, the Premier of New South Wales has laid down a maxim by which we ought to be guided.

Mr. REID. -

By which we are to be guided, but not you.
Mr. HIGGINS. -

I might also indicate that the late Mr. Eddy, an authority second to none on this question of railways, speaking in the interests of New South Wales, has used these words in a report:-

The advisability, and even necessity, for federal control appears to be fully recognised. For this reason, in some countries Governments are steadily buying up railways originally constructed by private enterprise. The welfare of the whole continent is largely dependent upon the economical and effective working of the railways.

It seems to me that, as time goes on, we shall see more and more how much Australia is dependent upon the effective working of these railway systems. Mr. Eddy also says-

The greater the efficiency and economy of the administration, the greater the ability to reduce rates. Waterways being practically nonexistent, the railways of Australia become to a greater extent than elsewhere the main arteries of communication.

Take the idea of an artery. The system which is at present at work has a tendency to tamper with the organism of Australia, and to make separate arterial systems, in place of working, as it were, from one heart. I knew of nothing more ridiculous than looking at a map of the eastern part of Australia, showing its railway systems. You find a number of railways in New South Wales all carefully avoiding the Victorian border, and you also find railways in Victoria going up as far as the Murray and eager to draw as much life-blood as they can from New South Wales.

Mr. WALKER. -

Why not federalize the railways?

Mr. HIGGINS. -

I cannot get that, therefore I am going for the next best thing. We must not have separate arterial systems; I am only using Mr. Eddy's metaphor.

He continues:-

If the federation of the Australian colonies be realized it may become absolutely necessary to have some kind of federal railway control. The principal objects in view are to insure uniformity of policy, efficiency of management, and the affording of greater public convenience; to minimize to as great an extent as possible the friction and unfair competition now existing in the border districts for the trade of adjoining states, and to bring about as speedily as possible at a minimum cost a uniform gauge on those sections of state railways where desirable.

Mr. MCMILLAN. -
What are you quoting from?

Mr. HIGGINS. -
From a report by the late Mr. Eddy.

Mr. MCMILLAN. -
What is the source of the quotation?

Mr. HIGGINS. -
It is a report made prior to the Convention in Adelaide-dated the 16th March of last year-and was addressed to the Premier of New South Wales.

Mr. MCMILLAN. -
I think Mr. Eddy said afterwards that that could

Mr. HIGGINS. -
I have read Mr. Eddy's evidence, but I do not know whether he goes definitely as far as that. But, at any rate, that does not affect my point, which is this: As the committee has decided against federalizing the railways in the full sense, are we to interfere with unfair rates so far as they affect Victoria and South Australia, and not interfere with unfair rates so far as they affect New South Wales? I think the question bears upon its face its own answer. I have no doubt whatever that the representatives of New South Wales are as anxious as we are to stop this ruinous war of competition which is going on between the colonies, and I have no reason to think their federal sentiment is not as strong as our own. But I hope we shall rise to the occasion, and treat all the colonies fairly. It is a matter which at present only perhaps affects three colonies, but it will soon affect Western Australia as well. She will, in the course of time, find herself prevented from the possibility of having preferential rates. Suppose a railway were constructed from Port Augusta towards Coolgardie. At the same time South Australia might impose any differential rates she liked, no matter how unfair, to the injury of Western Australia. I said, a little time ago, in reply to an interjection by Mr. McMillan, that I had a passage from the North American Review. It is an article by Mr. H.T. Newcomb, entitled "The present Railway Situation," and the passage I quote is to be found on page 591 of the North American Review, for November, 1897. The writer says-

The present railway situation may be briefly summarized. From the stand-point of the investor in railway enterprises, the salient facts are: That rates and charges for transportation services are demoralized; that the law has imposed upon railway managers the unnatural burden of maintaining a costly, wasteful, and worse than useless competitive system; that the carrying corporations are allowed to combine neither for the establishment and maintenance of just rates, nor for the prevention of unjust discriminations; that nearly 40,000 miles of railway are in the hands of
receivers; that railway securities having a par value of nearly four and one-half millions of dollars receive no return of interest or dividends; and that solvent lines are practically at the mercy of those of their competitors whose bankruptcy has relieved them from the necessity of attempting to earn a return upon at least their bonded indebtedness.

Then he asks what is the remedy, and he says (on page 593)-

What is to be considered an equitable adjustment of the burdens of transportation? It will be far easier to enumerate some of the things that cannot coexist with such an adjustment than to give it a positive definition. Relatively just charges will not make arbitrary or unjust discriminations among railway patrons, whether considered individually, as constituting communities, or as producers or consumers of particular commodities. They will not favour a particular individual on account of his political, social, or commercial standing, the character of the business in which he is engaged, the extent or number of his commercial transactions, or, what is almost the same thing, the quantity of transportation that he purchases, nor unduly on account of the place of his residence, or location of his farm, factory, warehouse, or store. Such rates will not place a locality at commercial disadvantage on account of the number of the inhabitants, the degree of their geographical concentration, or their political affiliations, nor on account of its economic organization, the character of its productive resources, nor the number, extent, or financial condition of the railway lines by which it is served.

The point is (Mr. Newcomb says), that you must have your over-riding rule, so as to avoid many other things making differences between people. Because of their political affiliations you are not to alter your railway rates for the benefit of one state and the injury of another, but are to try as far as you can to make your rates work for the benefit of the community as a whole, without regard to whether a man is living on one side of a border or another.

Mr. DOBSON. -

Would not the application of the zone system overcome that?

Mr. HIGGINS. -

It would largely help, but I do not expect to get as much as that. If there could be a zone system by which there could be a through rate given irrespective of political boundaries, I quite admit that that would be one solution of this problem, so far as I can see.

Mr. GRANT. -

Uniform rates would be the same.

Mr. HIGGINS. -
Yes, but I have not proposed their imposition. All I say is that, if you had uniform through rates, they would answer the same purpose. At the same time, we cannot expect so much as that at the present stage. All we can expect is that if an Inter-State Commission is created it will be able, as a jury, to decide whether any particular rates have been designed for a purpose which is not a federal purpose, and to attract trade from one state to another state. I feel that I have taken up enough time in speaking upon this matter, and, in submitting the amendment, I appeal to honorable members to deal with it in the interests of Australia as a whole forgetting the fact that there are other interests, and trying so far as we can to insure the working of the railways for the benefit of the producers of the whole continent. We should work for the development of Australia as a whole, and not allow one state to put a wall round its territory, and say-"I have nothing to do with you on the other side." It will be quite enough for my purpose if the railway systems of the colonies are, so far as possible, treated as one Australian system.

Mr. MCMILLAN. -

The honorable member must have graduated in a free-trade school.

Mr. HIGGINS. -

I do not understand the honorable gentleman, but, as he is regarded as one of the free-trade leaders in New South Wales, I ask him what will be the use of talking about free-trade between the states, and diminishing the friction upon the borders, if we do not provide against a war of railway rates? The President was very expressive when, in Adelaide, he asked-"What is the good of transferring your war from the Custom-houses to the railway stations" A railway rates war could be made much more detrimental to the freedom of commerce than intercolonial customs duties, and, in achieving the glorious result of absolute freedom of commerce between the colonies, I hope that, as a corollary, we shall provide that there shall be no competition between the rival railway systems to bring about the loss of railway revenue and to injure the development of Australia.

Mr. GRANT (Tasmania). -

I take the liberty of rising at this early stage in the discussion in order, if possible, to shorten it. The debate in Adelaide, which was a very lengthy one, was really upon sentimental considerations, and not upon the hard business lines upon which a matter of this kind should be treated. There have been endless explanations as to what are preferential and what are differential rates. New South Wales claimed that her differential rates were not preferential, while Victoria claimed the right to impose such preferential rates as she pleased. In my opinion, if the contending parties would only come together and discuss the matter in a businesslike manner,
it could be settled at once. I think that everything that can be said about it here has been said. It has been dealt with by experts, it has been most ably thrashed out by the legal talent of the Convention, and if we were to sit here for three months, I do not think any more light could be thrown upon it, or that the Convention could make preferential rates into differential rates or differential rates into preferential rates. The trouble lies in the geographical position of Victoria. Victoria has only short distances to carry her produce, and cannot therefore carry it at the low but profitable rates imposed in New South Wales. There can be no doubt, the contention of New South Wales that she should be allowed to develop her territory by what are called differential rates for long distances is reasonable and just. Indeed, Victoria has to a very large extent adopted differential rates. Goods can be carried to and through Melbourne at an almost nominal rate where distances are great. Victoria has thoroughly indorsed the principle of differential rates, and should have no reason for complaining against New South Wales for doing the same thing. I shall not take up time by going into this matter generally, or by showing the position of South Australia as compared with that of either Victoria or New South Wales. I will confine myself entirely to the dispute between these two colonies. We have had elaborate reports by the Railways Commissioner of Victoria, showing that Victoria is entitled to certain traffic, and, on the other hand, we have had equally elaborate statements from the Railways Commissioners of New South Wales, showing that their colony is entitled to this traffic. When two business parties disagree, what is the proper course to pursue? The course generally pursued is to go to arbitration. I think that arbitration in connexion with this matter would lead to far better results than an Inter-State Commission. An Inter-State Commission must, to a great extent, fail in its object, unless those who control the railways are the members of that commission. Of course, if those who control the railways are appointed to act as an Inter-State Commission, they will be able to settle the question of differential and preferential rates between themselves, and their technical knowledge would enable them to detect any errors or any endeavours to take advantage of each other, and, perhaps, in some way fairness and justice would be done between the colonies. But I do not know why the Convention should be the battle-ground of the contending parties. I think that it should not. The railways are purely commercial undertakings, and they should be managed on commercial lines. Differences of this kind continually arise in England. There has been a war of rates between the various companies there, but they are supposed to act honorably, and to conduct their business in a strictly fair manner to each other. Agreements
have been made between them at times as to the way traffic shall be dealt with, but I have never known such to last without some evasion for more than twelve months. Although the principals have not interfered with or endeavoured to evade these agreements, they have so many agents, and there are so many varying interests at work, that the agreements have broken down almost immediately. In America the Inter-State Commission has found it impossible to control these matters. I again contend that we are not called upon to constitute such a commission here, and that the parties should be allowed, where possible, to settle their differences between themselves. One general system of operating on the railway systems throughout the world when any difficulty of this kind arises is to pool the receipts from the principal freight. Nothing would have been easier if the parties had come together and dealt with the matter apart from political considerations than to pool special receipts. In that way a fair return could be got from the traffic, and justice would be done to all the parties concerned. The Commissioners of Railways in their reports make recommendations that are simple in their character, and are such as would commend themselves to our judgment. But even they are overweighted by political considerations. We have had to listen to enormously long speeches from the sentimental aspects of the question, whereas we should consider it from a commercial point of view. The railways are money-making machines, and we should deal with them on that principle. It would be futile for us to attempt to lay down any rule by which to determine what are differential and what are preferential rates, and it is just as well to acknowledge that at once. I hope, therefore, that we shall not be treated to any more long discursive speeches on the subject. Experts will have no difficulty in deciding what are differential and what are preferential rates, but the views of honorable members are coloured by political considerations. I have made these few remarks in the hope that they will have some influence in shortening the discussion, and that the succeeding speakers will deal with the question from its business aspect alone.

The CHAIRMAN. -

The first amendment I shall put is that suggested by the Legislative Council of South Australia. It is as follows:-

That the following words be added to the clause:"or having the effect of inducing trade or commerce in any particular direction within the Commonwealth unfairly, and in particular by one part of the Commonwealth offering greater inducement than other parts, wherever the inducement offered returns no direct profit as regards the particular trade or
commerce induced to that part of the Commonwealth offering the inducement."

Mr. GORDON (South Australia). -

That is an amendment which I moved at the sittings of the Convention in Adelaide, and which I afterwards submitted and succeeded in carrying in the Legislative Council of South Australia. After considering the amendment that has been proposed by the Hon. Mr. Higgins, and supported with so much ability, I prefer it very much, and I shall vote for it. It appears to me that that amendment goes right to the heart of the subject. Let the colonies have as many differential rates as the development of the country and the interests of the producers require, but directly any of them put on a rate with the intention of attracting trade from a port in another state to a port of their own, let it be treated distinctly as an anti-
feder

Mr. ISAACS. -

A rate having the effect of diverting trade.

Mr. GORDON. -

That removes the question into the ambit of ambiguity.

Mr. ISAACS. -

I do not agree with that, but that is what it means.

Mr. GORDON. -

The test, after all, is the intention, and what is the intention can only be gathered from the evidence surrounding the case, and can only be determined by a jury of experts. The Inter-State Commission will be such a jury. They will consider the whole of the circumstances. They will consider whether the circumstances of a particular railway require differential rates in the interests of the producers, and whether or not particular rates are imposed with a view simply of encouraging the producers. They will decide all these questions, and from the surrounding facts they will get at the intention. If the intention is what I may call federally dishonest, the jury will disallow the rates. My honorable friend (Mr. Isaacs) asked me yesterday how a low rate could be disadvantageous to the producers. A war of low rates may be disadvantageous to the producers, who, like the rest of the community, have to bear the burden of the debt. If the result of lowering the rates is to make the railways non-paying, the producer has to pay out of one pocket what he gains in the other, and the country generally suffers. A war of railway rates, even when the rates are lowered, would, therefore, injure the producers to an extent for which the lowering of the rates would not compensate them. I think Mr. Higgins' amendment touches the matter right
at the heart. It applies the real test as to what is a federally dishonest rate, and I shall support that amendment rather than the amendment of the Legislative Council of South Australia, because it is simpler, more direct, and would be much more workable.

The CHAIRMAN. -

I understand that the leader of the Convention proposes that we should strike the clause out altogether.

Mr. BARTON. -

Yes.

The CHAIRMAN. -

The Hon. Mr. Higgins' amendment is submitted as an amendment on the leader of the Convention's proposal. If there is any amendment prior to that suggested by the Legislative Council of South Australia it should be moved now.

Mr. ISAACS (Victoria). -

It is perfectly legitimate to say that the Commonwealth shall not make any law giving a preference to a port of one state over a port of another state. I think we all agree that that is correct. We should not consent to strike out the clause until we have something else before us.

Mr. WISE (New South Wales). -

If the amendment suggested by the Legislative Council of South Australia was negatived, we would still be in a position to discuss the Hon. Mr. Higgins' amendment.

The CHAIRMAN. -

Certainly.

Mr. HOLDER (South Australia). -

Would it be possible to submit the Hon. Mr. Higgins' amendment before we strike out the clause? I agree with the Hon. Mr. Isaacs, that we should be sure we have something else before we consent to let the clause go.

The CHAIRMAN. -

The Hon. Mr. Higgins has moved his amendment as an amendment on the Hon. Mr. Barton's new clause.

Mr. HOLDER. -

I would ask Mr. Higgins to submit his amendment as an amendment on the clause as it stands.

Mr. HIGGINS (Victoria). -

Before I knew that the Hon. Mr. Barton was going to submit a new clause, my intention was that my amendment should attach to the clause as it stands, and should come after the word "Commonwealth." When I saw Mr. Barton's new clause I found that my amendment would equally well attach to it. I have now much pleasure in moving-
That, after the word "Commonwealth" in the last line of clause 95, the following words be inserted - "Or with the view of attracting trade to ports of one state against ports of another."

Mr. WISE (New South Wales). -

It is impossible for any one who feels as strong a desire as I do to see all the barriers separating the people of the different provinces broken down not to sympathize with the object of my honorable friend in moving this amendment. Like himself, I have contended from the first for the taking over of the railways by the Federal Commonwealth, and, like himself, I accept my defeat on this question and recognise the impossibility of re-opening it. I gather that my honorable friend's intention is by this amendment to bring about a state of things in the management of the railway systems of the several colonies as nearly as possible the same as would exist if they were under one control, and as I intend, for reasons that I shall offer, to oppose the amendment, I would like to make it quite clear that I understand the object of it, so that there may be no misapprehension either in my mind or in the minds of those who are listening to me. The view of my honorable friend is, I apprehend, that, inasmuch as there are certain rates which, although in one sense development rates-differential rates-are in fact preferential, and, inasmuch as any railway expert is able to tell at once what portion of the rate is purely a development rate, and what portion is competitive or preferential, there should be power to the Inter-State Commission so far to control the management of the railways of each state as to prevent those rates being imposed which would not be imposed if the railways were under one control. Now, while I greatly sympathize with that object, I doubt very much whether it would be achieved by this amendment, and for two reasons. In the first place, reflection since the sitting of the Convention at Adelaide has satisfied me of the truth of that which Mr. Grant, who speaks on this matter with the authority of an expert, has just announced to the committee, namely, that an Inter-State Commission will be utterly ineffective, and therefore I, for one, shall record my vote against the insertion in this Constitution of the clause relating to the constitution of the Inter-State Commission. I believe it would be ineffective for this reason: Without tiring the committee with extracts from reports of the Inter-State Commission in the United States, which most honorable members interested in the subject will have already read, I entirely agree with Mr. Grant that that commission has proved a failure.

Mr. ISAACS. -

It almost admits it itself.
Mr. WISE. -

Yes, in its last report it almost admits that itself. It is not correct, I think, as Mr. Higgins rather indicated than said, that the cause of that failure is to be sought in the inability of the commission to deal with the differential rates. I believe that the cause of the failure of the commission is far more deep-seated—that it has failed through the inherent circumstances of its constitution. It has failed to exercise authority which it has no real power to enforce; and if there has been that failure in the United States, where there is the enormous prestige of the Federal Government behind the commission, where the bodies with which it has to deal are private companies, how unlikely it is that there should be any success here, where the bodies to be dealt with are not private companies amenable to the law, but practically independent commissions. I object to putting any possibility of conflict into a Constitution unless one sees clearly how that conflict is going to be resolved. And one can easily foresee—it would be merely tedious of me to suggest to the committee occasions that I have in my mind—when there might be many decisions come to by the Inter-State Commission which would excite popular feeling to a very high degree, which might affect the material interests of large sections of the community in either state, and which, if it was attempted to put them in force, would create so much friction, so much difficulty, that there would be a real risk to the existence of the Union itself. I regard the Inter-State Commission, although devised with the best intentions, as an element of disintegration; and for that reason I cannot assent to an amendment which would put it in the power of a body too weak to enforce its decrees—a body which exercises authority quite novel to us in Australia—to deal with matters affecting the vital interests of each state. But there is another objection. I doubt very much whether, even assuming—and I will assume for this part of my argument that the decrees of the commission will be effective—I doubt very much whether the object of the amendment moved by the honorable member can be carried out with fairness to New South Wales. My doubt arises from this consideration: That the amount of dead capital invested in our competing railways is so great that the injury inflicted upon us by the prohibition of the differential rates, which are in fact preferential, would be so much greater than the injury inflicted on the neighbouring colonies of Victoria, Queensland, or South Australia. And there is no provision in the Constitution for making up the loss that would ensue upon the working of these competitive railways which we have built under the present system of separation—no provision to make up that loss, and no means to provide for insuring that
the loss shall not take place therefore, both because I believe the proposal
will be ineffective, and because if it were effective it would work with
unfairness to my own colony, I find myself reluctantly compelled to
oppose the amendment. I do not intend following Mr. Grant's suggestion to
enter into any discussion at all about the details of differential and
preferential rates. The value of the discussion at Adelaide was to clear up
that question thoroughly in the mind of every member of the Convention. I
am not going to make any general observations as to the propriety of
differential rates. I am simply going to consider the facts as they are, and I
would like in this connexion to make a confession of having been guilty
unintentionally of considerable exaggeration in talking of this railway
question both at Adelaide and elsewhere. I do not believe now that it is
correct to say that a war of rates is as bad as a war of Tariffs. Mr. Higgins
repeated that observation—an observation which many of us who feel very
strongly on this railway question have allowed ourselves to make, but on
reflection it is obviously unsound, and for this reason. There is a point
below which the reduction in rates cannot go. There is a point at which
competition becomes so obviously unprofitable that it ceases of itself. And
there is this other consideration—that the producers do benefit by the
reduction of rates. No doubt they benefit at the expense of the general body
of the community, and those persons are generally persons residing in the
towns and using the suburban railways, to whom higher rates are charged
for the benefit of the producers in remote districts.

Mr. HIGGINS. -

The merchants in the ports also get the chief advantage.

Mr. WISE. -

They get some advantage, but I would not say the chief advantage. Now,
some of us have unintentionally contributed to mislead public opinion—and
I plead guilty to this myself—by attaching too much importance to this
question of the war of rates. We can have great advantages from federation,
great advantages from interstate commerce provisions, and yet the war of
rates may continue. The advantage, of course, would be infinitely greater if
we could remove the war of rates, too.

Mr. MCMILLAN. -

But there is a great difference between the two things.

Mr. WISE. -

There is an enormous difference between continuing the war of rates
with the prohibition to each state to erect barriers by means of port charges
or any other device to hinder trade, and continuing the war of rates under
the conditions which prevail to-day. I very reluctantly come to the
conclusion—I have by no means given consideration to it now for the first
time; the matter interested me when I stood for election in New South Wales and when it was brought forward in Adelaide—that there is no middle course between keeping things as they are, and taking the railways over.

Mr. DEAKIN. -
I am afraid that is so.

Mr. WISE. -
It is a humiliating confession, because it is an admission that the federal systems themselves have not yet sufficient community of development or organization. Those of us who take the view I am endeavoring to express are in this position. The general commerce clauses, as they stand today, put New South Wales in a position of enormous advantage. I will be perfectly fair to my friends from Victoria. I, for one, will be no party to asking for a Bill so framed as will make the preferential rates of Victoria illegal and allow us to keep our differential rates on the plea that they are development rates. I shall be no party to depriving Victoria of her weapon, while giving us complete liberty to use ours with undiminished brightness. I recognise further that the general clause in the Constitution dealing with trade and commerce would place Victoria and New South Wales in that relative position; that is to say, that the clause which prohibits an interference with trade and commerce, if the decisions of the United States are followed, would hold all the rates by which Victoria gets the Riverina trade—to which I do not think she is entitled, but by which she does in fact to-day get that trade illegal, whereas it would allow us to put any rates we please between Albury and Cootamundra, which would have the practical effect of shutting out Victorian produce.

Mr. ISAACS. -
I do not know what clause would do that.

Mr. WISE. -
The commerce clause, and this clause as it stands.

Mr. HIGGINS. -
The commerce clause will enable you to stop the preferential rates.

Mr. WISE. -
That is my opinion. If the Victorians are satisfied I am quite satisfied. If they leave it as it is I am satisfied.

Mr. ISAACS. -
Preferential rates are no barrier to trade.

Mr. WISE. -
If my honorable friends can satisfy their minds that there is no necessity to put anything in the Bill, I am quite content.

Mr. ISAACS. -
That is another question.

Mr. WISE. -

I do not want to move an amendment unnecessarily; I rather want to throw the matter out for discussion if there is any doubt, as I believe there is, in the power of the Parliament under this Constitution to make laws prohibiting preferential rates, while there is equally no doubt that they have no power to interfere with the internal management of the railways to prevent one state from imposing differential rates, even though they may have the effect of being preferential. If that is the position, and my honorable friend (Mr. Higgins) thinks it is-

Mr. HIGGINS. -

Are you in favour of leaving the old system of fighting and competition between railway systems?

Mr. WISE. -

I am not in favour of it, but I can see nothing else which is better. I do not see that any proposal which has been made for getting rid of it will not give rise to difficulties, in themselves far greater, and likely to menace the very existence of the Union, and, therefore, I would propose the insertion of this new clause, to come after the clause moved by my learned friend (Mr. Barton):

*But nothing in this Act shall be taken to limit the powers of the several states in respect of the control and management of the Government railways of the states respectively.*

I wish to make it perfectly clear that the trade and commerce clause gives Parliament no power to interfere with the internal management of the state railways by the states themselves. I hope that my position will not be misunderstood. I am not in favour of that state of things.

Mr. GORDON. -

That is to keep the flame alive.

Mr. WISE. -

Exactly.

Mr. GORDON. -

Yet you say you do not like the present war of rates.

Mr. WISE. -

I am afraid that it must be my fault if my honorable friend does not understand me. I am only attempting to provide that there shall be no power in this Constitution to get rid of one class of rates while preserving others.

We have in the Constitution a clause that allows each state's railways to be taken over with the consent of the state; without they are so taken over they
will not be Government railways of that state. My chief reason for insisting on this is that I believe that in five years' time, when the sentiment of union is further developed, the practical necessities of the case will force the railways to be taken over. I believe, therefore, we run no risk from guarding against any implied powers in this Constitution to interfere with the railway rates of any particular colony. I believe, further, that the very fact that there are these competing rates going on between the states that are comprised in one Federal Union will in the course of very few months seem so absurd, and at the same time be attended with so many practical inconveniences, that Parliament will exercise the powers conferred on it by the Constitution with the consent of each state, and take the railways over and work them as one system. Therefore, I believe, paradoxical as it appears to provide that things should be left as they are, it is the quickest way of getting the railways taken over. If you attempt to establish some sort of Inter-State Commission which misleads the people into the idea that the problems are settled, when, in fact, they are never really touched, you check and delay what is, I believe, a great sentiment, resting not only on an enlarged view of patriotism, but also on the direct practical motives of self-interest, in favour of working the railways as one system. In taking that course I trust again that in no way shall I be misrepresented as advocating the continuance of this state of border warfare. The practical question is: How are we best going to bring about that which we are all aiming at? If we are agreed, and I think we are, that the Inter-State Commission has been a failure in the United States, what guarantee have we for putting forward to the people a similar proposal here, where the difficulties will be much greater? But if the Inter-State Commission is out, my honorable friend must admit that the whole basis of his amendment goes. There is no power to distinguish between those two classes of rates.

Mr. HIGGINS. -

No, I would not permit that. I think it would then come to be a question of fact to be decided by the court, which I want to avoid.

Mr. WISE. -

I should think so. I cannot imagine a question less adapted to coming before the court than that.

Mr. HIGGINS. -

I agree with that.

Mr. WISE. -

Does it not practically come to this, that if the Inter-State Commission goes my learned friend's amendment goes?

Mr. HIGGINS. -

No.
Mr. GORDON. -

The Inter-State Commission will not go.

Mr. WISE. -

I am not sure, but I hope that it will go. I believe there is a majority of this committee against it. Certainly much stronger arguments for keeping it in will have to be given than those adduced at Adelaide, in view of the later knowledge we have on the subject. I do not propose to move my amendment now, but I should like it to be printed, and the view I have expressed to be considered by the Convention. I have not expressed it without considerable reflection, and have been very slow indeed to come to a conclusion which, at the first blush, appears to be so anti-federal, but which I believe in the long run will best advance the interests of federation.

Mr. ISAACS (Victoria). -

The particular amendment before the Chair is that of my learned friend (Mr. Higgins). Well, I should like to point out with regard to that amendment that, together with my honorable and learned friend (Mr. Wise), I think we are at one in the desire to prevent any unfair dealing, but I am afraid that such words as those proposed by Mr. Higgins might carry us further than we intended to go in one direction, and not as far as we desire to go in another direction. Would they not be futile, to start with, in preventing unfair attractions in the ports of one state as against the ports of another state? Mr. Higgins' amendment would make the clause provide that any law or regulation of commerce or revenue made by the Commonwealth or by any state, or by any authority constituted by the Commonwealth or by any state, with the view of attracting trade to ports of one state as against ports of another state, shall be null and void. Now, what does that mean? Suppose that Victoria were to offer inducements in the shape of better port regulations and lower charges, as we will assume she would do, to attract foreign ships, and ships from various parts of the Commonwealth, to Melbourne, rather than that they should go to Sydney. Would they be null and void? If they would, I do not know where this provision is going to stop. Assuming that they were null and void—that the Supreme Court or the Inter-State Commission declared that our lower charges were null and void, what would be the result of it? That decision would not mean that Victoria was to charge a higher rate, but that she was to charge nothing.

Mr. HIGGINS. -

You are begging the question. You skip over the point. You may improve your port without necessarily improving it with a view to attract ships to your ports as against the ports of another state.
Mr. ISAACS. -

I am assuming a strong case, I am aware, namely, that we in Victoria will make lower charges for goods and various regulations with a view to attract trade to Melbourne against Sydney.

Mr. HOWE. -

That would merge into a preferential rate.

Mr. ISAACS. -

No, I am putting it that in Melbourne we will charge lower rates all round with the view of bringing trade here, by making the port of Melbourne more attractive than the port of Sydney. What would be the result of declaring our Melbourne charges null and void? Why, that we could not make a charge at all.

Mr. CARRUTHERS. -

That will cure itself, then.

Mr. ISAACS. -

I doubt it, because the greatest barrier we could erect would be to make no charges at all in our port—to do services for nothing. If offering special opportunities to foreign trade and arrangements for attracting trade to Melbourne as against Sydney, for example, constitute a barrier to freedom of trade, then, of course, the greatest barrier we could erect is to do things for nothing.

Mr. GORDON. -

That is a reductio ad absurdum.

Mr. ISAACS. -

I want to meet the argument that has been put before the Convention—that the insertion in this Bill of a clause providing that any law of the Commonwealth, or of a state, with a view of attracting trade to ports of one state as against ports of another state shall be null and void will carry out the object honorable members have in view.

Mr. HIGGINS. -

We all admit that it will.

Mr. ISAACS. -

No; we do not. I, for one, believe that it will not enable us to stop the system of making one port attractive as against another. I am answering Mr. Wise's argument.

Mr. WISE. -

I assumed that Mr. Barton's new clause will be combined with Mr. Higgins' amendment.

Mr. ISAACS. -

I am assuming that, too. But it is only a prohibition against laws derogating from freedom of trade, and I submit that such a provision will
not give any opportunity of preventing the operation of laws and regulations which increase trade. I am afraid we are getting into a knot about it.

Mr. WALKER. -

It seems to me that we are.

Mr. ISAACS. -

It appears to me that we are assuming that a prohibition against a law derogating from freedom of trade includes a prohibition against a law giving preferential rates, but it does not do anything of the kind. If we in Victoria preferred our own people, and made higher charges against outsiders, I agree that it would be a breach against the law of freedom of trade. Anything that will raise a barrier like a customs duty, or any provision offering an obstacle to outside trade coming in, would undoubtedly be a barrier to freedom of trade, but when you reverse the process, and say you will do certain services for nothing, that is not a barrier freedom of trade.

Mr. MCMILLAN. -

You are assuming that you are keeping within your own geographical area; but supposing you went beyond your borders, into the geographical area of another colony?

Mr. ISAACS. -

How can we go beyond our geographical area? We have no jurisdiction to carry our railways beyond our territory. If we were to say we will carry produce for people in New South Wales at a less rate than we will carry produce for people in Victoria—mind you, I am not defending the practice—I mean to say that that is not a barrier to trade.

Mr. REID. -

Hear, hear; there is no doubt about that.

Mr. ISAACS. -

That practice is not a barrier to trade; it is not a derogation from freedom of trade.

Mr. REID. -

Hear, hear; at least I am not quite so sure of that.

Mr. ISAACS. -

It is offering an inducement that may operate very unfairly, not to the trade, but to the railway system of the other colony.

Mr. REID. -

That is right.

Mr. ISAACS. -

It is not a block to trade, but it unduly cuts down the revenue and
disarranges the finances of the other colony, and, on that ground, I am anxious to counteract it, but I venture to submit that we shall not accomplish that purpose by putting into the Bill a clause which merely declares that any provision made by the Commonwealth, or by any state, with the view of attracting trade to ports of one state as against ports of another state shall be null and void. In certain circumstances such a provision would be nugatory, and I am not prepared at the present moment to go to the extent of saying that all regulations with the view of attracting trade to ports of one state as against ports of another state are to be prohibited.

Mr. HIGGINS. -

The point is, you can attract trade within Victoria to one port as against another port, but you must not deliberately legislate for attracting trade to ports of one state as against ports of another state.

Mr. WISE. -

Would not Mr. Barton's amended clause meet the case?

Mr. ISAACS. -

No; I pointed out yesterday why it would not. Take the case of Melbourne and Sydney, for instance. I am not going to say that Victoria is to be prohibited from attracting trade to Melbourne against Sydney. Why should she not do it, and why should not Sydney do the same thing?

Mr. FRASER. -

Because it would not be fair.

Mr. ISAACS. -

In America the Commonwealth, which is the nursing mother of all the states in this respect, has not to make any difference between the ports of the different states; that is to say, that the Commonwealth has not to prefer the port of one state over the port of another state, but there is no provision that each state cannot do what it pleases in attempting to make its own ports the great ports of all the states, provided it does not set up any barriers and obstacles to the admission of trade. That is the only prohibition, and I cannot see why we in Victoria should not be at liberty to make our ports as attractive as possible to trade. That is a matter for our own consideration.

Mr. HOWE. -

What is the good of abolishing custom-houses if you are going to transfer the trouble to the railways?

Mr. ISAACS. -

A custom-house is a barrier which repels trade, which says-"Trade shall not enter unless it pays certain duties"; but we are talking about preventing ourselves from attracting trade to our respective ports from the ports of any
other state. I cannot see why we
should not be at perfect liberty to do that, provided we do not set up any
barriers.

Mr. MCMILLAN. -
Does "equality of trade" not cover that?

Mr. ISAACS. -
I would like to hear a definition of "equality of trade." There is no such
expression in the whole of the Constitution.

Mr. HOLDER. -
Your argument is parallel to that used in relation to bounties the other
day.

Mr. ISAACS. -
Bounties are not to attract trade to one's self. What we were then talking
about was the production of goods, and we were willing to consent to the
Federal Parliament annulling those bounties if they interfered with the
common trade of the Commonwealth.

Mr. HOLDER. -
Free wharfage would have the effect of a bounty.

Mr. ISAACS. -
Is the honorable member going to propose that there shall be a common
rate of harbor dues, port dues, pilot charges, and common regulations all
over the colonies?

Mr. HOLDER. -
I am not going to say that, but I want you to consider it in connexion with
your argument.

Mr. ISAACS. -
Its consideration leaps to one's mind in a moment. We are here to take
away the barriers between states.

Mr. WISE. -
Do you consider that, if Mr. Barton's amendment is carried, the Victorian
preferential rates, as against South Australia and New South Wales, will
still continue?

Mr. ISAACS. -
I think that under Mr. Barton's amendment they could be interfered with.

Mr. WISE. -
That is my view also.

Mr. ISAACS. -
I think that, under Mr. Barton's provision, the Victorian rate would be
interfered with, but that the New South Wales rates would not.

Mr. WISE. -

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Exactly; I agree with that.

Mr. ISAACS. -

Then I think we are one about that.

Mr. WISE. -

It was to prevent that made my suggestion, as I thought the proposal unfair to you.

Mr. ISAACS. -

We must keep clearly in view the distinction between freedom of trade and equality of trade. A prohibition against freedom of trade would not include a prohibition against preferential rates. So long as we keep that in view, the Convention will be able to make up its mind. We ought not to be too prone to put in large words, which can only make null and void all our desires and attempts to attract trade to one port as against another. There can be honest rivalry and honest and legitimate endeavour to make our ports more attractive for trade than the ports of other states. We should not be prevented from doing that. To make the bare statement, as in Mr. Barton's proposal, that a provision giving preference to a state, or part of a state, over another state, or part of that state, is to be null and void-or, as Mr. Higgins proposes, that such provision must not be made with a view of attracting trade to the ports of one state over the ports of another state-is going further than necessity requires.

Mr. MCMILLAN. -

Would not the trade and commerce clause cover that?

Mr. ISAACS. -

I think not. The trade and commerce clause in America enables Congress to legislate so that no barrier shall be set up by any state or state authority. Up to the present, no one has ever suggested that the Commonwealth should legislate so as to prevent additional attractions being given by a state.

Mr. WISE. -

We want to prevent differential tonnage or wharfage dues.

Mr. ISAACS. -

If the difference is against foreign trade?

Mr. WISE. -

Or against other states.

Mr. ISAACS. -

But not as against their own state?

Mr. WISE. -

Oh, no.

Mr. ISAACS. -

Very well, that is the point. We must bear clearly in mind whether the
effect is in regard to commerce and trade, or in regard to the finances of a particular state. We are losing sight of the distinction between obstacles to trade and equality of trade. Unless we are prepared to go the length of saying the Commonwealth shall determine how much shall be charged, I do not see how we can fairly say one state shall not attract trade to its ports over the ports of another state.

Mr. REID (New South Wales). -

There is no doubt this is one of the most difficult matters we have to deal with in connexion with the chapter on finance and trade. We will probably waste a great deal of time in discussion unless we get to some general understanding as to what we desire to do. It would be impossible, I think, to frame words which will secure freedom to a railway system to impose preferential rates for developmental purposes, but not differential rates to attract the trade of another colony. In the nature of things, it would be impossible to distinguish between the two. A legitimate rate for the development of a district must incidentally have the effect to which I have referred. Preferential rates must always be in the nature of a reduction of the ordinary rates, and this must incidentally enable the railway system which makes the reduction to stand in a better position than before in regard to competing districts. My learned friend (Mr. Isaacs) has cleared away by his speech a great deal of confusion which otherwise might have fallen on this debate. Some people jump at the conclusion that one of the objects of federation is to paralyze business competition. The object is nothing of the sort.

Mr. FRASER. -

The object is to encourage business.

Mr. REID. -

As my honorable friend (Mr. Fraser) says, one of the main objects of federation is to encourage business competition throughout the mercantile communities of Australia.

Mr. GORDON. -

This is a question of state business; not private business.

Mr. REID. -

My friend may be sure I will not stop at generalities, but will address myself presently to the matter under review. I begin with the general observation that throwing down the barriers is not to restrict the utmost keenness of business competition, but on the contrary, to give it freer play than before. Now we come to the crucial question about railways. Unless the railways are federalized, they remain a business concern which the states have to run on business lines. You may federalize your railways, and
then you may go to the extreme length of abolishing rates which seem to
invite traffic. In that case, having taken over the financial responsibilities
of running the lines and paying the cost of their construction, you are
perfectly free to lose as much money as you like on a particular line.

Mr. MC MILLAN. -

Having the monopoly.

Mr. REID. -

But one of the incidents of the monopoly, if those differential rates are
abolished, may be to render a large stretch of railway lines unproductive.
So long as the railways are federalized, the burden falls on the right
shoulders; and the man who owns the property is quite at liberty to lose as
much as he likes on it. But so long as the railways are left-as I understand
we have left them, and as I believe we must leave them-to the separate
ownership of the colonies; and so long as to the separate colonies it is left
to manage them so as to pay working expenses and interest, I submit that
following from that state of things you cannot hamper the administration of
those railways, except in a very slight degree. I may say at once I am quite
prepared that there shall be some words in the Constitution which would
prevent rates being run up unduly.

Mr. LYNE. -

Don't you mean run down?

Mr. REID. -

I am quite prepared for protection in this direction to those
interested in commerce. It is natural for my friend (Mr. Lyne) to make the
observation he did. The whole tenor of his policy is to prevent people
getting things cheap. I consider that, so long as the railways and the
financial burdens connected with them are left in the hands of the states,
the states must be left free to develop their traffic and revenue by every
sort of business contrivance they think fit for that purpose.

Mr. GORDON. -

Cut-throat and otherwise.

Mr. REID. -

Whose throat is cut-the man who has nothing to do with the railways?
But no throat is cut. The producers of Australia are not injured. Take the
case we all know a great deal about, the intense competition between
Victoria and New South Wales for the Riverina trade. Is there a single man
in Riverina engaged in the work of production whose interests have not
been vastly benefited by the war of railway tariffs?

Mr. PEACOCK. -

It does not benefit all the people of the state.
Mr. REID. -

But do you not see that the people of the state have their remedy? If the people of Victoria differ from the policy of the Government of Victoria in carrying on the railways, it is very easy to bring about a change of policy or a change of Government.

Mr. HIGGINS. -

But if you have non-paying rates in those parts of Riverina, you must put on extra rates on the parts nearer Sydney.

Mr. REID. -

Is not that for the people of the state to consider? The honorable member should not confuse the argument.

Mr. HIGGINS. -

I am not aware that I am doing so.

Mr. REID. -

The honorable member is when he raises questions of justice or equity between one section of the people of New South Wales and another section.

Mr. GORDON. -

Does not the honorable member see-

Mr. REID. -

I know this is a rabid question with my honorable friend, but if he will be good enough to wait until I have finished, and he favours me by mentioning any question that I have not dealt with, I shall be much obliged to him. What I wish to say is this: Taking as an illustration the competition between Victoria and New South Wales for the trade of Riverina, the producers and settlers of Riverina have not been injured by that competition; they have been greatly benefited. But do not let it be supposed for a moment that the Government of Victoria were simply studying the benefit of the people of Riverina. Nothing of the kind. Being the managers of a business railway concern, they saw their way to benefit our people by running their lines to the advantage of the people of Victoria. It would be indeed a confession to make that this arrangement for the purpose of attracting Riverina traffic does not also benefit the country which reduces the rates. Of course it does. The plain fact about all the difficulties between the Governments of New South Wales and Victoria in arriving at a peaceful solution of this matter is that, when the railway experts have arrived at such a solution from a railway point of view, there are powers behind the throne interested in the commercial condition of the respective colonies which step in and say--"That might be a very good railway arrangement, looking at the matter from a railway point of view, but we have larger interests behind this matter than the mere administration of the
railways; we have our commerce to protect, and if we adopt your railway agreement we will undoubtedly inflict a great injury upon our general commerce." That is the secret of the failure of our attempts to agree. Let us suppose that these competitive lines on our side, and on the Victorian side, were owned by two large companies. They would have agreed long ago. They would have reconciled their interests, so as not to have cut so immensely the rates. But the secret is that behind this railway competition there is the competition for trade and that is one of the difficulties of the position. It only points the force of what I am saying, that, if you leave this business concern in the hands of the states, with the liability in the states to make both ends meet, you must leave with those states all the incidences which follow from financial responsibility and actual management.

Mr. HIGGINS. -

But these are losing rates.

Mr. REID. -

Again I say that my honorable friend had better address himself to the Government of Victoria on that subject. It is a matter which may be very interesting between himself and his Government, but it is of no sort of interest to me.

Mr. HIGGINS. -

I was speaking of your rates in New South Wales.

Mr. REID. -

Again I say that so long as the railways of New South Wales are not managed by my honorable friend, or by any one over whom he has influence-

Mr. HIGGINS. -

That is hardly an answer to my question, and is not courteous.

Mr. REID. -

Unfortunately, my honorable friend's interjections come with such a sharp point that one is apt to return the sharpness. My honorable friend's interjections are not, as a rule, dictated by a thirst for information, but very often they are in the way of throwing down a sleeper on the rails of one's argument. We do not look upon interjections of that kind in a very friendly spirit. As I said to Mr. Gordon-If I leave untouched anything upon which the honorable member thinks it worth while to ask me a question, I shall be happy to answer him when I have finished. It is impossible to deal with this matter in a systematic way if the different trains of thought in different minds are projected upon the line on which one is reasoning. I say again, we are brought face to face with the general connexion between federal
management and state management, Federal management must mean federalizing the railways, and the more we attempt, whilst leaving the railways in the hands of the states, to control or interfere with the management of those railways, the more we set the business forces in motion which can never bring about any harmony, and which can never bring about the slightest solution of all these troubles. Even in the United States, where there is no state relation, no state considerations at all, where it is a mere matter of competition between private individuals or companies, what is the history of this Inter-State Commission? You have only to look at the reports to see that it has overwhelmed railway management with a thousand difficulties, and heavy expenditure in the way of litigation; that instead of the Inter-State Commission being a final and authoritative tribunal, which settles matters with some show of expedition, and without any great expense, nearly every ruling of this commission goes into the courts of the United States, and an enormous amount of litigation follows upon the decisions of the commission. I shrink from throwing this question of railway communication into the state in which it would be if we left the financial responsibilities with the states, and yet the Commonwealth takes the power of interfering with their management. The extent to which I would go is this: I am quite prepared, although I am afraid it is going a little too far, that there should be a power in this Constitution to prohibit the impositions of certain rates which are decided against, I would not state by the Inter-State Commission, but I would say directly by the Federal Court, because it means eventually the same thing. If the ease is of any importance, it goes from the Inter-State Commission to the Federal Court. I would remark parenthetically that if we can avoid multiplying these high expensive offices in connexion with the Commonwealth, we should do so. If we can avoid the necessity of appointing three very highly-paid railway experts, knowing what the experience of America teaches us, namely, that, in spite of all their skill, every important question will come to the courts at last for determination, we will do well to provide that any disputes which may arise in this Constitution connected with railways should be determined at once by the Federal High Court.

Mr. FRASER. -

How far would you go with the rates?

Mr. REID. -

I will tell my honorable friend that, while I admit it is rather a deviation from the general principles I have endeavoured to lay down, still I am quite prepared to deviate from these general principles to this extent. If it is
thought desirable—I do not myself press for it, but I am willing to see it done and to vote for it—that there shall be a jurisdiction in the Commonwealth to prevent the imposition of exorbitant rates, to prevent any railway from being used in such a way as to impose an exaction from any persons who happen to be situated in certain parts of the Commonwealth—

Mr. ISAACS. -

That is, from being a bar to trade.

Mr. REID. -

Yes, that certainly comes within the prohibition with which we are willing to surround this Constitution. But, remembering that, so long as state railways are in state hands, it is in the power of the people of the states to control the policy of the Government in any direction, I am quite agreeable that a superior power shall control even the Government to such an extent as to prevent any of our state Governments from throwing any obstacle in the way of trade.

Mr. HOLDER. -

They have never done that. They have done the opposite.

Mr. REID. -

Then all I can say is that the grievance becomes mysterious.

Sir GEORGE TURNER. -

It has been done, because you have put on rates to prevent us getting trade from your country.

Mr. REID. -

The less we go into these conflicts the better, because they simply illustrate the tactics business firms will always adopt when they go into competition. I have never complained of what has been done in Victoria

Sir GEORGE TURNER. -

As the Bill is now it will restrict your rates and not ours.

Mr. REID. -

I do not care how it is put, so long as it is put equally.

Sir GEORGE TURNER. -

It will not be put equally as it is in the Bill now.

Mr. REID. -

I am willing to leave each colony to run its own railways on its own lines, and to allow that on the part of New South Wales implies a similar freedom on the part of Victoria or any of the other colonies owning railways. But I am quite willing to give the Commonwealth power, in the interests of what we will call freedom of commerce—and in that sense equality of commerce—to redress a grievance which is based upon an exaction, an unfair and unequal exaction, from any class of persons using
the railways of any State. I am quite agreeable to come up to that point, but I must admit that, so far as I can review the effect of sub-section (1) of clause 52, and any such clause as that we are discussing it will be necessary to put in this Constitution, and probably at the end of any clause we agree to here, express words to that effect. I am quite agreeable that there shall be such express words used. I think it would be to the advantage of this debate if we came to some conclusion upon the discussion, and the point that my mind has come to is this (I will not move this amendment, Sir Richard Baker, but will simply read it as expressing what I am willing to agree to upon this matter): To add at the end of the clause the following words:-

Provided always that state railways shall not be subject to the provisions of sub-section (1) of section 52, or of this section, upon any ground that traffic rates are unduly low.

Mr. ISAACS. -

It is almost the same as the amendment of Mr. Wise.

Mr. REID. -

It is almost the same. My honorable friend (Mr. Wise) and I had a conversation this morning before the commencement of the proceedings of the Convention and we found that our ideas were almost precisely the same. We came to the conclusion that that was the position upon which the matter might fairly be put. The result of such a provision, it seems to me, would be this: Those financially responsible, and actually vested with the control of the railways, would be left free to control them as business concerns, but they would have to work them upon such lines of fairness and equity that if they endeavoured to raise rates unfairly against any person using the railways the power of the Commonwealth might be invoked to annul any such rate. I admit that this is a very difficult matter, but I do not think we can get away from the position that you cannot federalize the management of the railways unless you also federalize the acceptance of the financial responsibility for, those railways. You cannot have the responsibility of finding me money to run the railways in one set of hands, and the power to practically manage the railways vested in a tribunal which bears no sort of financial responsibility for the operation of those lines. Now, we must have some regard to the existing state of things. If federation had come about twenty years ago there would be very little difficulty today in regard to this matter of railways. But I know that our people in Riverina, made the most urgent appeals to us year after year to carry our railways system down to their part of the colony, and, indeed, promised all sorts of things if we would do so. Well there being no
immediate prospect of the accomplishment of federation, and being anxious to develop the resources of that very rich part of New South Wales, the Government acceded to the application. And there comes the whole difficulty. The responsibility of developing the resources of the lands of each colony is left quite as fully as before to each individual state. Again, the railways being owned by the state, and the state owning an enormous quantity of land, it, as the representative of the whole community, has a strong reason, even an imperative reason, for railway construction which has nothing to do with railways from the strict business point of view. There are other considerations which arise, and a railway that might, as a matter of fact, for a course of years show a heavy loss on the national page headed "Railways," might have conferred untold advantages on the whole community in many other directions. And all these elements have to be taken into account by a state which runs railways, and which is at the same time responsible for the good government of its country and the development of its territory.

Mr. HOWE. -

So that present cut-throat rates are to be maintained?

Mr. REID. -

Again I wonder at the violence of this expression. Does it come from a human being who has been injured by the lowering of rates? Has any one ever heard of a man living alongside a railway line indulging in violent complaints because rates have been reduced? Why this exclamation from a certain quarter of this Convention? Does it not add force to what I have stated?

Mr. HOWE. -

The right honorable member's statement does not point to inter-colonial free-trade.

Mr. REID. -

If my honorable friend and the people of the colony which he represents are prepared to indemnify us against loss in connexion with the management of our railways, we shall be prepared to give them a very large share in that management. But the sort of person who uses violent language about the liberal way in which we adjust our rates is a person I do not pay the slightest regard to, because, having no sort of financial responsibility in connexion with the matter, he must have some interest at heart which is really no concern of the people of New South Wales.

Mr. HOWE. -

The whole of the people are a guarantee for the debt.
Mr. REID. -
Not the people of South Australia.

Mr. HOWE. -
I am not so narrow as to confine my interjection to the people of South Australia.

Mr. REID. -
Does not my honorable friend see that those who use violent language about low rates show that these rates are doing them an injury because they happen to be competing against them? When business men use violent language about others who are competing with them no one regards them. Any one who attempts to destroy competition of any kind makes a big mistake, and will never succeed. What keener competition can you have than that for the trade of Riverina, and what part of that competition is keener than the competition between the great business firms of Melbourne? If the people of South Australia want to have a voice in the management of our railways, they must take some financial responsibility in regard to them. There are any number of men in the street who will give you all sorts of wise advice about the way in which to manage your business, and they are in this singularly happy condition, that if you carry out their advice, and are ruined by it, it does not matter a pin's point to them. That is the position of those who are advising us as to the management of our railways. We thank them for their advice, we reflect upon it, and, if we think it good, we adopt it. But we always feel that the responsibility must be with us, and that we cannot shift it by saying that other people advised us to do this and we followed their advice. So far as the people of South Australia are concerned, I think I can dismiss from their minds the idea that we contemplate doing them an injury.

Mr. HOWE. -
I have no such apprehension.

Mr. REID. -
No. So far as we are concerned, the difficulty is chiefly connected with the railway system of Victoria.

Mr. HOWE. -
And the river trade.

Mr. REID. -
Well, that is a separate matter. I do not wish to bring the river, which was given to us by nature, into the same category as the railways.

Mr. HOWE. -
The river is a feeder to the railways.

Mr. REID. -
Yes; but, so far as we are concerned, it really injures our railway traffic
to some extent. The Bourke Railway, for instance. However, the river is a natural advantage to some of our settlers, and the more advantages they have the better we are pleased. I do not apply the statements I am now making to the rivers; I am speaking only of the railways, which have cost us a large amount of money to construct, and our indebtedness for which constitutes a heavy burden upon the people. I have no sympathy with anything unbusinesslike in connexion with the management of these railways; but, viewing the interests of the people as a whole, I do not look with alarm upon the reduction of rates of carriage to the lowest possible point, because I reflect that this policy can at any time be altered if it is against the will of the people, or if it is seen to act against the benefit of the state. In any case, the state should be allowed to carry out its own policy in regard to matters in regard to which it is financially responsible.

Mr. GORDON (South Australia). -

I am beginning to think that we shall have nothing of federal principle left in the Constitution by the time the sittings of the Convention are finished. First of all, we have agreed to the irritating system of bookkeeping, which is nearly half as bad as that which erects customs barriers upon our borders.

Mr. FRASER. -

It will be in force only for a time.

Mr. GORDON. -

Then we have left Western Australia out of the Federation altogether for five years; we have chipped off a very large integral portion of Australia from the Federation for that time. Now we are going right back upon every sentiment previously expressed in the Convention with regard to the management of intercolonial railways. The honorable and learned member (Mr. Wise) in a speech, which was charming but which meant very little, put two propositions to the Convention. The first was that we should not establish an Inter-State Commission because it was novel.

Mr. WISE. -

Because it has been proved a failure.

Mr. GORDON. -

The honorable and learned member's first proposition was that it was novel. But the whole of this Constitution is novel. We are creating entirely new political machinery.

Mr. FRASER. -

Surely not.

Mr. GORDON. -

It is new so far as we are concerned, and in some of its aspects it is new
so far as the political history of the world is concerned. Then the honorable and learned member said that an Inter-State Commission—a jury of experts—would be a disintegrating factor in the Federation. How can it be said that a body of men competent and educated to deal with the frictional differences which are now admitted to exist between the colonies would be a disintegrating factor? Such a body must be a peace making and mollifying institution. For these two reasons the honorable and learned member says with the utmost calmness and frankness that we must continue to be competitive. If we are to continue to be competitive, why do we want federation?

Mr. FRASER. -
We are not taking over the railways.

Mr. GORDON. -
If the Convention is going to think that way, I am a convert to the taking over of the railways.

Mr. REID. -
I should think the honorable and learned member would be. He would take over anything.

Mr. GORDON. -
Rather let us

Mr. FRASER. -
Would the honorable and learned member take over the railways of Tasmania and Western Australia?

Mr. GORDON. -
Let us consider any proposition rather than leave in our midst such a cause of friction and damage to the Federation as this would be. After consultation with the Right Hon. Mr. Reid, it has been decided by the representatives of New South Wales that we are to remain competitive. I thought that federation was to reduce competition.

Mr. REID. -
I never dreamt of such a thing.

Mr. GORDON. -
The honorable and learned member (Mr. Wise) used the words "We must remain competitive." I thought that the abolition of protective duties was to do away with competition.

Mr. REID. -
Indeed it will not. It will do away with unequal competition.

Mr. GORDON. -
Is not unequal competition still competition?

Mr. REID. -
The abolition of protective duties will not do away with competition; it
will increase other kinds of competition.

Mr. GORDON. -

The intention of federating is to allow the people residing in the Federation to enjoy fully, freely, and without anti-federal competition the natural advantages which the continent offers. It appears that each colony is to keep within its own hands a weapon which will destroy half the benefits of federation. That is what this proposition narrows itself down to.

Mr. REID. -

What is the thing which any colony can do that will destroy the benefits of federation? Is it putting the rates too high?

Mr. GORDON. -

They may put the rates up too high.

Mr. REID. -

I shall be willing to go with you to prevent that.

Mr. GORDON. -

I shall be pleased to answer any question the right honorable member may put to me after I have finished my remarks. These interjections do tend to throw one off the track of his argument, but I will answer the right honorable member at once. He says-"Might this barrier be raised by way of higher rates or lower rates?" My reply is, by either. I will take him on his strongest ground, and on my weakest. A barrier may be raised by charging low rates with a view of tempting trade from one state to another. But then the right honorable member says-"How can this hurt anybody? The producers gain." So do the carrion gain after the battle. So do the contractors gain in a war between two countries. Of course somebody will gather in spoils. But does the right honorable member contend that a war of railway rates in which less than actual cost is charged for the carriage of goods can do good to any colony.

Mr. WISE. -

After union, this will end itself.

Mr. GORDON. -

The honorable member gives away his whole position. Are we to leave this cancer to remain festering until it is so bad that the patient must either die or it must be cut out, or are we to take immediate steps to effect a cure?

Mr. WISE. -

Unfortunately, there are no steps that will effect a cure.

Mr. GORDON. -

If the honorable member had a mote in his eye he would no wait until it destroyed the eye before he took it out.
Mr. WISE. -
I am not going to take remedy that will put the eye out.

Mr. GORDON. -
Are we going to leave this difficulty here to create friction and trouble? We should then be in very much the same position commercially as before. I cannot understand the argument of Mr. Reid in advocating a cut-throat policy of low rates on the ground that it benefits the producers. Have not the experts of this and the other colonies met and absolutely denounced such rates?

Mr. LYNE. -
What?

Mr. GORDON. -
They lamented that they should exist.

Mr. LYNE. -
They only denounced the preferential rates, and not the differential rates.

Mr. GORDON. -
I am attacking the preferential rates. The Hon. Mr. Higgins' amendment only attacks preferential rates and rates imposed with a view of unfairly attracting trade.

Mr. LYNE. -
It attacks differential rates also.

Mr. GORDON. -
It is not meant to have that effect. The Inter-State Commission sitting as a jury would see that no unfair rates were imposed with a special view of attracting trade improperly from one state to another. The railway experts have lamented the existence of such rates, but it remained for Mr. Reid to get up and solemnly in this Convention defend a thing which all those who know anything about it have condemned.

Mr. REID. -
No, not to defend it. I say it is a question of independent management, and that as long as management is independent you cannot control it.

Mr. GORDON. -
Let me quote another authority to the right honorable member, and it is an authority which I am sure he will respect—that of his own colleague (the Hon. Mr. Carruthers).

Mr. REID. -
He is in favour of federalizing the railways.

Mr. GORDON. -
Either of federalizing the railways, or of providing some piece of machinery which would remove the
friction. He prefers federation of the railways, but he says, if we cannot get federation, let us have something which will remove the friction.

Mr. Wise. -

Reflection proves that we cannot find that something.

Mr. Gordon. -

We think we can, but let me quote the honorable member. He says-

We also have been trying to get the trade of Riverina, which geographically belongs to Victoria. If something be not done wisely in reference to the railways, the anti-federal spirit will continue to be exhibited. The same spirit of antipathy engendered and fostered by the Custom-houses will be engendered and fostered by the Railway department.

Is Mr. Carruthers right, or is his revered chief?

Mr. Reid. -

We are both right, from different points of view.

Mr. Gordon. -

One point of view must be wrong, and I am afraid it is that of my right honorable friend. Mr. Carruthers goes on to say-

Any policy which allows New South Wales to rob Victoria of the earnings of her railways tends to impose additional taxation upon the people of Victoria, and anything which allows Victoria to rob the people of New South Wales of the earnings of her railways tends to impose additional taxation upon the people of New South Wales.

What becomes of the catch-penny argument of Mr. Reid that low rates benefit the producers in the particular locality in which they are imposed? The question is-taking the larger view put by Mr. Carruthers-whether it is a good thing for any colony?

Mr. Fraser. -

It may create new traffic.

Mr. Gordon. -

My honorable friend has a bee in his bonnet on this subject. He is a large carrier of wool, I know. Mr. Carruthers also states-

I urge, therefore, that the Federal Constitution Bill should either provide to take over the railways or provide some machinery by which thorough inquiry might be made, and ultimately federal control—or such control as the Federal Parliament may approve-assumed over railways.

That is what we want—such control as will prevent this unfair competition. The Hon. Mr. Wise said that too much had been made of this question, and that it had been spoken of as if it were as bad to have railway competitive rates as to have inter-colonial customs barriers. To some extent that is a figure of speech. Nobody contends that one is as bad as the other
at present. But one may be made almost as bad as the other if once a spirit of antagonism is aroused between the colonies. What would be the consequences then to the weaker colonies? At present they can protect themselves by inter-colonial customs duties; but if it becomes a question of fighting wealthy colonies like New South Wales and Victoria in the matter of railway rates, the smaller colonies must go to the wall. We must have an independent body protect us against possible injustice. We are not making laws which we of this Convention are going to administer. We are making laws for all time. We do not know what causes of friction may arise, or what troubles may come under the new Constitution. We must provide for possibilities, and there is a serious possibility here of injury being done to some of the colonies and to the whole fabric of the Constitution. Surely we can devise some scheme under which an independent body can see that fair play is done in this respect. It is a comparatively narrow issue. It is not a question affecting the whole management of the railways of the Commonwealth, as Mr. Reid would have the Convention suppose. Outside the area of competition between the states the management will be left to the colonies themselves. It is only in matters affecting intercolonial interests that this body will come in.

Mr. FRASER. -

Would not the Federal Court deal with these matters?

Mr. GORDON. -

I doubt it very much unless it is provided for. Moreover, we do not want this constant litigation. The arguments which have been used against the Inter-State Commission by comparing it with the Inter-State Commission of the United States are not of much value, because the United States Commission is a commission which is dealing with private concerns, with railways which, in their inception, were cut-throat railways, lines which were designed to kill each other. Here the Inter-State Commission would deal with the interests of those who appointed it. We would appoint a body to deal with our own interests, not with outside interests, and there is no comparison between the duties of those two bodies or their area of jurisdiction, nor is there any comparison between those bodies as regards the spirit in which their decisions would be received. It is impossible to conceive that any of these sovereign colonies would dispute a decision arrived at by the Inter-State Commission, and it is impossible to conceive that so high and expert a body would do anything unfair to any colony. I must confess that there was some force in the criticism of Mr. Isaacs as to the wording of Mr. Higgins' amendment. It is possible that it is a little too wide; it might be made to embrace the
prohibition of such attractions as one colony might fairly surround its ports with, and we do not want that. It would be better to confine the proposition to rivers and railways, or, if desired, to railways only. Do not let us run the danger of making it too wide. But either to leave the thing untouched, or, worse still, to go right back on the whole federal position, and to crystallize in the Constitution a selfish policy of managing the railways would be, in my opinion, absolutely destructive of the federal spirit. That is the limitation which the Right Hon. Mr. Reid and Mr. Wise seek to embody in this Constitution - to encourage competition, to throw right into the Constitution a casus belli between the colonies, and to say-"Although you are federating in name, you have each still a powerful weapon with which to injure one another, and here is the warrant for your using it." That is a direct invitation to the colonies to derogate from the federal spirit, and one which I hope the Convention will not encourage.

Mr. FRASER (Victoria). -

I indorse almost every word that fell from the Right Hon. Mr. Reid in this matter, for I do not see how it is possible to control the railway rates unless you federalize the railways. The one thing is impossible without the other. It is impossible to give a body the control and fixing of rates and other matters unless you federalize the railways altogether, and there is not much use in wasting time over the question of federalizing the railways, because I believe there is an overwhelming majority in the Convention against that proposal. For very good reasons it is regarded as quite impossible and impracticable. As to differential and preferential rates, I do not see how you can very well draw a distinction between the two. For instance, the rate from Sydney to Cootamundra is 3d. per ton per mile, while the freight to Hay, which is 250 miles further, is only the same. Now, that is a preferential rate which is intended to draw traffic. I deny that the present railway warfare-or cut-throat policy, as it is called-has the injurious effect attributed to it. The rates from here to Echuca, of course, are lower for the producers across the Murray than they are for the producers on this side of the Murray; but the producers on this side of the Murray, who use our railways, would have to pay higher rates if the railways did not get the traffic across the border. If the lines running to the borders of the different colonies did not get the traffic from portions of adjoining colonies which geographically belong to them, and if the traffic was so curtailed that it would be very slight indeed, of course the people living in the colony would have to pay a higher rate in order to make the railways pay. Let honorable members make no mistake about the matter-it is really not known at how low rates railways can be run if they have an enormous
traffic. What fixes the paying rate is not so much the distance as the amount of traffic and the gradient. For instance, between Sydney and some parts of New South Wales there are very steep gradients, and of course a locomotive cannot draw perhaps more than from four to eight trucks on such lines. On the other hand, on the line to Echuca, except on the gradient near Woodend, a locomotive can draw from 40 to 60 trucks. The geographical advantages, and the advantages of level lines, are things you cannot get rid of. Victoria has a perfect right to draw traffic from Riverina. No clause that we can devise or put into this Constitution will get over that, because Riverina geographically belongs to this colony. So does the Richmond district belong to Queensland, and I could name many other parts in the different colonies which belong, geographically, to adjoining colonies. It is almost impossible to drive trade hundreds of miles from its natural outport, and it should not be done. That is not intended, I hope. But I would repeat that we should not run away with the idea that the people who use the railway to Echuca, for example, on this side of the border, would not have to pay higher rates if the traffic on the other side of the border was shut out. If you run trains with only one truck loaded, when you should have 20 or 30 trucks, the train cost is almost the same as if there were a full train. There is a very slight difference in the coal consumed, but there is no difference in the pay of the engine-drivers or guards. The wear and tear is almost the same, so that, practically, the only saving is the small decrease in the amount of coal consumed. It is utter nonsense, therefore, to say that the so-called cut-throat policy has been as ruinous as it is said to have been. £1 per ton will pay to run goods to Echuca with sufficient traffic, while the lowest rate charged is much more than that. If you have plenty of traffic the rate has not yet been named or used in these colonies which is not sufficient to pay; such rates are paying everywhere else where there is a large traffic, and this will be admitted by the railway people themselves. Of course, I do not object to the cut-throat policy, as it is called, being stopped in a reasonable way; but I say that it does not injure the railways to the extent supposed, and they have all adopted that policy in the various colonies. When federation takes place there will be much less friction in this regard than there is at present. Of course, with one Federation there will be a sort of Commonwealth sentiment running through the various railway departments, and the result will be that there will be less of cut-throat railway rates. While I do not know that the clauses in the old Bill need be objected to—I do not think we need be alarmed at clause 95 or clause 96; I think they are right enough—still, I agree that it is just as well to leave the Inter-State Commission out, as it is more embarrassing than otherwise, and I do not see that it can do very much
good. At any rate, what possibility, I ask, is there of taking over the railways of Tasmania or of Western Australia? It would require an immense department to manage the railways of all the colonies included in the proposed Commonwealth, and, the wider the scope, the more difficult of management the railways would be. If one department had to manage the railways in Western Australia, in Tasmania, in New South Wales, in Victoria, and in South Australia, it would have to be a very huge department indeed, and those railways would be much better managed as they are; especially as the responsibility of making them pay would be with the states. Another matter which ought not to be forgotten is that the river rates control the railway rates in many cases. If the railway rates in many parts were raised, the rivers would be much more used than they are at present. The river rates control the railway rates, especially when there is navigation, and the Darling, the Murrumbidgee, the Edwards, and other rivers are navigable for a part of the year. So that the cut-throat policy is brought about, not go much by the competition with the railway rates as by the river rates.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. LYNE (New South Wales). - I cannot allow the question to be put without saying a few words. It appears to me that the words proposed to be inserted by my honorable friend (Mr. Higgins) are of a character which might be misinterpreted, because I do not think, according to his speech, that he intended that they should go so far as they appear to go. However that may be, there are very many difficulties in the way of dealing with this question. I think the best course to take to ascertain really what is aimed at is to find out if possible what is underlying this proposal. I take it that the desire of the colony of Victoria to appoint an Inter-State Commission is, in the main, to hold the trade she has in Southern Riverina. It must be admitted, I think, on all sides that during the last ten or twelve years the extension of the railway system of New South Wales and the re-arrangement of rates has, to a large extent, drawn towards New South Wales much of the trade which formerly went into Victoria. And how you are going to appoint a commission of any kind to take out of the hands of the state, so long as she controls her railways, the power of regulating, the rates thereon, I cannot conceive. If you wish to get over the whole difficulty there is only one way of doing it, and that is by federalizing the railways and the debts of the colonies. I do not see any other way of getting over a difficulty such as presents itself at the present time. South Australia, of course, in a degree, but not to the same extent as
Victoria, is desirous of holding the trade she has with Broken Hill, and, probably, taking a part of the trade which she hopes to obtain from the western portion of New South Wales, further towards the Darling. I can, therefore, understand both Victoria and South Australia being very anxious indeed for the appointment of a commission which must, if it is to have any effect at all, take the power of regulating rates on the lines of those colonies that have spent their money in building railways. I do not think, unless under the conditions of taking over the railways and the debts, it is likely that any state will agree to permit an Inter-State Commission or a body of any kind to dictate what the rates shall be. If I read aright the result of the Inter-State Commission in the United States, it is not to prevent a state from obtaining all the trade it can within its own borders, but to prevent a railway that runs through one state from adopting such a tariff as will take the trade from another state. If any one is to blame for attempting to take trade from another state it is the colony of Victoria.

Sir WILLIAM ZEAL. -
How is that?
Mr. LYNE. -
And she has been to blame for a very considerable time.
Sir WILLIAM ZEAL. -
We had made railways to the border before you had made any railways down there at all.
Mr. LYNE. -
New South Wales does not desire to put a rate on her railways to take from Victoria any trade which is not her own.
Sir WILLIAM ZEAL. -
She has done it.
Mr. LYNE. -
For many years past, I think from about 1882, Victoria has, according to the evidence of her commissioner (Mr. Mathieson), considered the whole of the trade in Southern Riverina, to belong to her, although it is in the territory of New South Wales.
Sir WILLIAM ZEAL. -
They are all Victorian settlers.
Mr. LYNE. -
That may be so, but they are under the rule of New South Wales. And they are also contributing to the cost,
New South Wales. The object of the Inter-State Commission and its duty, I take it, would be at once to prevent the rates that are now imposed by the Victorian Railways Commissioner, which have the effect of drawing the production from New South Wales. As Sir William Zeal knows, when you get a certain distance above the Murray, the Victorian Railways Commissioner gives, in some cases, a discount on the rates charged over the railway lines in Victoria of 61 per cent., and in other cases, discounts of from 40 to 45 per cent.

Sir WILLIAM ZEAL. -

Well, you do practically the same thing on your side.

Mr. LYNE. -

We are compelled to do it in consequence of the action of Victoria, but we do not desire to do it. In referring to those particular cases, I refer to them as preferential and not differential rates. I say, therefore, that Victoria, was the first sinner in this regard, and that it was only in self-defence that New South Wales was compelled to put on rates in our own colony to prevent the destruction of the railway revenue of New South Wales.

Sir WILLIAM ZEAL. -

But you had none of that revenue until you made those railways.

Mr. LYNE. -

No, we had none of that railway revenue, and we had also none of the capital cost; but we have gone to the capital cost; of constructing those railways, and we desire, if we are allowed by our neighbours, to levy rates on the traffic of those railways that will bring in revenue enough to pay interest on the money expended. You are not proposing to take away from New South Wales that capital cost, but you are proposing to take away from us the power of producing sufficient revenue from those railways to pay the cost of their construction. New South Wales is only doing that at present for the purpose of protecting herself against the inroads of those who started this competition.

Sir WILLIAM ZEAL. -

It is the other way about; we were there first.

Mr. LYNE. -

No, I beg the honorable member's pardon; you were there first, but you were the encroachers.

Sir WILLIAM ZEAL. -

We settled the country for you.

Mr. LYNE. -

You came to take some part of our country, and in that respect you were the first sinners. But New South Wales met those differential rates of 40 to
60 per cent. discount by, first of all, placing as low a preferential rate as she could on her long lines of railway, and, in the second place, by putting on a high rate when the goods were going towards the Victorian border.

Mr. HOWE. -

That is what New South Wales pleads for now, according to the statement of your Premier.

Mr. LYNE. -

I do not think so. I listened to what the Premier of New South Wales said, and I do not think he advocated a high rate on goods going from a certain point; take, for illustration's sake, from Hay to the Victorian border. What our Premier contended was that New South Wales should not be prevented from putting on the ordinary differential rate for the first 50 miles from Sydney, another rate for the next 50 miles, and so on, each 50 or 100 miles, the rate shading off and becoming lower and lower. I always thought, until I heard Mr. Eddy's evidence in Adelaide, that if you took a mile of railway near Hay, where the goods were carried at the low rate, that that mile did not pay; but Mr. Eddy distinctly said in his evidence at Adelaide that he did not run an engine or carry a ton of goods over a mile of railway anywhere in the colony that did not pay. And that seemed to indicate that, although the rates are low when you get to the extreme limits, still they are not at such a low level as to involve a loss to the colony.

Sir GEORGE TURNER. -

Mr. Eddy did not say that the lowest rate paid; he admitted that the lowest rate did not pay, but he stated that, in conjunction with the whole of the lines, the traffic paid.

Mr. LYNE. -

Yes; I was just going to say that if he did not get to carry that ton of goods, not only over that mile of line, but also over other miles of the railways of the colony, probably there would be some loss, but having to carry it the whole distance, he was enabled to say that every ton of goods paid the Railway department of New South Wales. Now, I understand the Premier of New South Wales to say that he is not in favour of, nor did he desire to keep on, that preferential high rate, going towards the border of Victoria, and towards the border of South Australia, or, still later, when we extend our railways, towards the border of Queensland. That is certainly a cut-throat policy. There is no question of that; and I can scarcely think that any of the delegates from New South Wales would strongly advocate the retention of the system on that account. But it can only be done away with if the Victorian Railway department do away with their discount system,
the object of which is to draw railway traffic from the very centre and
almost from the other side of New South Wales into Victoria. Because, if
Victoria is allowed to continue its extreme preferential rates, New South
Wales must, in some way or other, meet those tactics. Victoria has started
this, and we must defend ourselves; but the object at the present time is to
prevent Victoria continuing that extreme preferential rate, and if that object
is accomplished we shall be no longer under the necessity of defending
ourselves from such competition. But the Inter-State Commission in the
United States of America was created, I think, for the purpose of
preventing any company from establishing cut-throat rates upon its
railways with a view to draw the trade from another state into the state
from which its lines were run. And if a rate was imposed on the New South
Wales railways which drew the trade from Victorian territory to Sydney, it
should not be allowed. That idea, I think, must be accepted by all those
who wish to see the railways of these colonies run on fair and equitable
lines. But to say that we in New South Wales shall not be allowed to put on
a differential rate at the 50-mile limit, the 100-mile limit, and so on, would
be to tie our hands, and prevent us getting sufficient revenue to pay interest
on the capital we have expended in the construction of our railways. And
unless we allow those limit rates to be extended from Melbourne to
Cootamundra, which is about half-way between Melbourne and Sydney, no
doubt Victoria will also lose some trade. I do not see how we could agree
to a differential rate, starting with Melbourne as a base, being charged on
goods carried right through the Victorian territory, where the Railway
department would have a higher rate paid to its treasury, and that when the
traffic got into New South Wales it should pay any lessened rate there, or
over all our lines, which is what, it seems to me, both Victoria and South
Australia desire. I have not the slightest doubt that South Australia is
looking, more particularly, to the trade of Broken Hill.
Mr. HOWE. -
Oh no, that is secure; you cannot take that away.
Mr. LYNE. -
Very likely; but supposing New South Wales extended her railway
system, as she must at some time or other, to Broken Hill, I do not think
the honorable member would then say that the trade of Broken Hill was
secured to South Australia.
Mr. HOWE. -
Oh, yes.
Mr. LYNE. -
I happen to have gone into the matter in every detail, and I am satisfied
that your trade will not be secure. You will get a portion of the trade.
Sir WILLIAM ZEAL. -
If you are prepared to carry the trade five miles for their one mile, you will secure it, and not else.

Mr LYNE. - There are many things I need not go into now. If the railways were extended from Cobar, or Lachlan, to Broken Hill, a large portion of the trade that is now done through Adelaide would be done through Sydney. South Australia, to-day, is afraid of such extension.
Mr HOWE. - Not at all.

Mr. LYNE. - We should not be prevented from extending our railways, and obtaining a portion of the trade which we cannot obtain by water carriage.
Mr HOWE. - Your producers are under an everlasting obligation to South Australia—gave facilities which you denied them.

Mr. LYNE. -
It is not my fault that those facilities have been denied in connexion with Sydney. I have, on all occasions, advocated the extension of our railways, right to the extreme limits of the colony, wherever an opportunity presented itself. I will take the arguments on the other side. At the present time we have a preferential rate on Queensland produce in order to attract that produce to Sydney. I do not think New South Wales desires that that should be so, and I am prepared to admit that the whole of the trade belonging to Queensland, if that colony come into the Federation, should to its natural ports, and not be drawn by cheap rates to Sydney as at present. But this is too small a matter to consider in this question. We should not be prevented putting on such rates as our commissioners or the Government consider are just and equitable to give facilities to persons 500 or 600 miles from the metropolis. If we cannot do that we cut off the chance of trade with our own metropolis. How are we going to solve the difficulty? So long as we do not take any produce that is raised in Victoria, and draw it from Victoria, or so long as we do not take that course in regard to South Australia and Queensland, we should be allowed to work and develop our country in our own way. That is all I contend for, but other representatives are contending for a great deal more. New South Wales should not be a kind of chopping block for all the states. We do not ask that New South Wales should take any trade to which she is not entitled.

Sir WILLIAM ZEAL. -
What about Queensland trade?
Mr. LYNE. -
We do not want it.
Sir WILLIAM ZEAL. -
You do, you know.

Mr. LYNE. -
I referred to that a few minutes ago, and I think I am speaking for all the representatives of New South Wales when I say they do not want to continue to impose those rates to withdraw trade from Queensland.

Sir WILLIAM ZEAL. -
Why should they put an export duty on wool?

Mr. LYNE. -
There are certain preferential taxes put on in consequence of the rates on the Queensland border. But that at present may be put on one side. We are prepared to give those taxes up. We do not want to draw from South Australia, Victoria, or Queensland; but there is a desire on all sides to draw from New South Wales. That is what is aimed at; and what we want, if possible, is to induce the Convention not to agree to it. We must lay down in as clear terms as possible in the Bill that the preferential rate system, which is mostly carried on by Victoria at the present time, shall not be continued. It may draw the trade to Victoria, and, I understand, it really does draw a great deal of wool from as far as Wilcannia and near Bourke.

Sir GEORGE TURNER. -
All we want is that trade shall be allowed to go to its natural ports.

Mr. LYNE. -
You want a great deal more trade to come to Melbourne.

Sir GEORGE TURNER. -
You want to take the trade away and force it to Sydney, and we are not likely to agree to that.

Mr. LYNE. -
All we want to do is to keep the trade for our own port and our own state, and until such time as the public debts and the railways are confederated I do not see how we can have a system other than that of differential rates. So far as I understand Mr. Wise, he supports the view I am putting now. He may, however, be supporting that view from motives altogether different to mine. Mr. Wise has been a strong advocate for federalizing the railways, and also the debts. His proposal, as it strikes me, is an attempt to show the impossibility of dealing with special rates unless the railways and debts are both federalized, and he is, therefore, supporting the idea I am now presenting for the purpose of showing that in no other way can this difficulty be overcome. My expression of the view is not for that purpose at all. My object is to allow New South Wales to keep her railways for the purpose of developing the colony. In the development of
each state we may, with some degree of certainty, judge the future from the
history of the past. Would Victoria, if she had not separated from New
South Wales at the time she did, have attained her present development?
Would New South Wales have projected the Victorian railways as Victoria
herself has done all over the colony, and have developed the resources of
Victoria to any greater extent? I think not. Would South Australia, had she
been attached to a larger Federation, have developed so rapidly as large a
railway system as she has up to the present? I think not. The development
of each state will progress much more rapidly and more naturally if it is
left in the hands of the state, instead of being transferred to the Federal
Parliament, for at any rate many years to come. If it were desired to make a
branch line to any particular part where, at present, there would not be
sufficient traffic to pay interest on the cost, the Federal Parliament would
not for a moment think of carrying out the work if it were left entirely to
them. But the interests of the state would be more directly concerned. The
necessity for the development of territory comes home to the state more
quickly than it would to the Federal Parliament. A state develops and
extends its railways, not because it sees a return at once, but because the
development of the country in the near future will bring a return. In that
way the whole of New South Wales has had to be developed by the railway
system; and, in my opinion, we are simply on the fringe of our railway
construction in that colony. Victoria has more railway mileage than New
South Wales, but the territory of the latter colony is three times as large,
and is not developed to anything like the extent of that of Victoria. It is
much better, therefore, to leave this matter of local development in the
hands of the states. The question of federalizing the railways may be left
for further consideration, until the Federal Parliament has been in existence
some years, when the people will have more confidence as to what that
Parliament may do, and as to how it will extend the railway system. To
attempt now to carry through an Inter-State Commission or any body to
take the work out of the hands of Parliament, still leaving the responsibility
of the debts on the shoulders of the state Parliaments, cannot meet with the
consideration or with the approval of New South Wales, or, I believe, of
any of the other states.

Mr. CARRUTHERS (New South Wales). -
I intend to support any proposal which will give federal control over the
railways, so as to prevent that competition in future which has been going
on in the past. I am strongly of opinion that, although the great object of
federation may be to have freedom of trade throughout the federated
colonies, still we must not lose sight of the fact that the reason for desiring
that change is in order that there may be some harmony amongst the
endeavour to cure, surely we ought not in doing away with our custom-houses leave in their place something which may provoke just as keen a conflict and strife in the future as our custom-houses have ever done. It appears to me that if by the state ownership of railways we are to have the conflict increased and intensified, as it must be, of which we have seen a little in the past, then the federation we shall accomplish will only be a federation in name, and we shall still leave in it the germs of division and strife for the future, when we might have seized the opportunity which now presents itself of destroying, once and for all, those germs. My honorable friend (Mr. Wise), who is one of the minority with myself who is in favour of taking over the railways, advocates that if we leave things as they are - that is, if we have no control over the railway competition - we shall be adopting the surest and most effectual means hereafter of forcing the Federation to take over the railways. I altogether dissent from my honorable friend's views in that respect. I believe that if we leave the railways as they are now, without any controlling influence, the effect will be to largely prevent the consummation of federation at all, because the electors cannot be so blind as not to see for themselves that the continuance of the existing state of affairs, intensified, as it must be, by the removal of the Border Duties, will to to inflict disaster and loss on the various colonies concerned. I maintain that, so far as New South Wales and South Australia are concerned, the people are not prepared to have their public finances further demoralized by the continuance of this railway contest, by this war of tariffs, with the pecuniary loss which follows in its wake. Arguments were used by my chief to the effect that these competitive rates were a benefit to the producers; that they have really helped the flow of trade rather than retarded it, and that it was really the business of those who owned the railways whether they managed them best at low rates or high rates, and that it was the business of those who ran the railways as to what rates they would fix; that no loss accrued, but rather a gain to the producers who used the railways. I take leave to gainsay that argument. There may be a gain to the producers who have the choice of the use of the two lines of railways; it may be a gain to the producers on the border of Riverina, or near to South Australia, who can take advantage of either one or other of those competitive rates, and who, if they choose, can ship goods to Adelaide or Melbourne, and to Sydney or Melbourne. But whilst those producers have that gain, some one else pays the price for it, and the price
is paid by the producers and users of the railways in other portions of the colony, where there is no choice whatever between two lines. There being a state monopoly of railways throughout Australia, the producer cannot turn from the state to a private railway. In nine cases out of ten he is forced to use one line, and he must pay the price fixed on that line. Where the choice presents itself to the producer to use two lines, and he gets the benefit of competition, that benefit is enjoyed at the loss of the general railway revenue. We know very well that in all the colonies now the railways are placed under managements which are bound by Acts of Parliament to run the railways on commercial lines. There is no Railway Act in force in any of the colonies which provides that railways are to be run on development lines. I have been astonished to hear the arguments used on that subject. If you search the Railway Acts of New South Wales, South Australia, or Victoria, you will not find one Act which provides that the commissioners are to run the railways on development lines; they are bound to run them on sound commercial principles.

Mr. REID. -

It is a sound commercial principle to develop traffic along the railway lines.

Mr. CARRUTHERS. -

I should like my honorable chief to point out where the Railways Commissioners of New South Wales have ever offered to carry goods at a nominal rate simply to enable settler to take up land and promote settlement in New South Wales. They have always laid down this dictum: That they must fix a rate which will pay for the cost of carriage and leave some margin of profit. I can understand that where the railways are owned by the states only, and there is no controlling Act of Parliament, that it might pay the states to carry goods at a loss, and to make up that loss by imposing a charge upon the land; but the Railways Commissioners are bound in all the colonies to manage the railways on commercial lines. They may pay heed to the development of the territory, but that is not within the four corners of the Acts under which they work. I am sure that the competition going on between Victoria and New South Wales for the carriage of wool from the border and the return traffic in goods is a competition which takes away from the railways of both colonies their proper earnings; it diminishes the net returns of the railways of all the colonies, and the commissioners are thereby losing a large amount of legitimate revenue, and it really amounts to this, that the Government give with one hand to some of their producers, while they take away with the
other hand from other producers. If, instead of carrying on this competition, we were able to develop the fertile territory of our colony by giving lower railway rates all over it, we should be conferring a benefit on all our producers. As I have said before, to give to Victoria and New South Wales the right of competing on their railways, to take traffic away from another colony, or to force that colony to retain its traffic by lowering its railway rates beyond commercial limits, is to deplete the revenue of one colony by the action of another, and to force the colony whose revenues are depleted to look around or some other source of income, either by increased railway rates elsewhere or by increased taxation. If this is occurring in the early infancy of Australian railway management, when we have comparatively few miles of railway constructed in proportion to our territory, what will it be 50 years hence, when we have so much more produce to carry and so many more miles of railway, with the competition growing keener day by day? We know there is a limit to customs duties, because they are burdensome to all who have to pay them, and there is a general complaint against them. But, as has been pointed out by Mr. Reid, so far as low rates are concerned, there is always a large section of the community who will benefit by them, and there will never be a universal outcry against them, because there is such a large section of the community who will benefit by their lowness. But, at the same time, the state will have to suffer a loss. We know in these colonies how easy it is for losses to be entailed because the Government has to hear them, the people forgetting that the Government only represents themselves, and that the losses have, in the end, to be made up out of their own pockets. It is hard to make the people remember this, but it is a fact, and one that will be made more and more patent as years go on. Now, I maintain that the difficulty is one that should not be argued as one that merely affects Victoria and New South Wales, because we have the same conflict going on already between Victoria and South Australia. We have it beginning between New South Wales and Queensland, and there can be no doubt that in a few years' time it will be going on also between Western Australia and South Australia. It is a conflict in which lower and lower rates will be charged, the public revenue being depleted in consequence, and there will be strife engendered between the various states concerned. I have made a great point I through this Convention in favour of the taking over of the railways by the Federation, but I recognise that it is impossible to carry a proposal of that kind at this juncture. I do not believe in going to that extreme, but if things are left as they are they will breed such discontent that the Federation will ultimately be forced to take
over the railways. It will be better to minimize the evils that will result from not taking them over at present, and to insure that the railways will not be used as weapons of hostility on the part of one state towards another. The conflict will be intensified because of the removal of Border Duties. Any one who knows anything of the conditions prevailing in New South Wales is aware that nearly the whole of the trade of Riverina will be practically at the mercy of Victoria when Border Duties are removed. Geographically, Victoria is entitled to the greater portion of the Riverina trade. There will, under federation, be no barrier of custom-houses to prevent the flow of that trade to Victoria, and is it likely that Victoria will stand idly by and see New South Wales annexing that trade without some attempt on her part to retain it? If there has been a conflict in the past, it will be intensified when the custom-house barriers are removed, and then Victoria will have to strive to retain the Riverina trade wholly by reducing rates on Victorian lines. There will have to be a very, large reduction of rates by New South Wales if there is to be any retention by her of any portion of the Riverina trade. It will mean that the traffic of Riverina will have to be carried on by New South Wales at a dead loss, if she is to retain her share of it, or otherwise we shall have to hand over the whole of the Riverina, trade to Victoria, and that will mean that we shall have some hundreds of miles of our railways rendered absolutely useless and a valuable public asset destroyed. I am thoroughly in favour of allowing trade to flow in its natural channels, and believe that the natural channel of a large portion of the Riverina trade is to Victoria. But I am not in favour of any Constitution which will provide that we should ruthlessly destroy the public asset of any colony without paying compensation; and the only fair means of giving compensation to New South Wales or any other colony a portion of whose railways are practically destroyed in any given district by reason of opening trade to its natural channels will be for the Federal Government to take over these lines and manage them as a whole on sound commercial principles, free from the competitive influences which are all the keener on the part of states than of individuals, because states like to gain prestige and supremacy, and are willing to pay for it so long as their people will agree to bear the burden. The only means of allowing trade to flow freely in its natural channels, as far as railways are concerned, will be for the Government to take over those lines. There will be a loss, perhaps, on one line, but that will be compensated for by the increased flow of trade on another line, and the consequent increased profit. If we had these lines federalized, we should find that unproductive lines in Victoria would become remunerative and would, instead of paying 1 per cent., pay 3 per cent., or 4 per cent., or 5 per cent. Some lines in New
South Wales might pay less than they paid previously, but the increased profits would more than counter-balance the losses sustained. I am surprised at any ardent federationist in this Convention wanting to federate in a half-hearted manner. When the United States Constitution was framed there were no such things as railways, and consequently there was no state ownership of railways. But I would undertake to say that, if there had been railways in existence, the wisdom of the framers of that Constitution would have provided that these great arteries of traffic should be made matters of federal concern. If there had been state railways in

Canada, I feel sure that there would have been a provision in the Canadian Constitution which would have prevented any conflict by means of the federalization of the railways. We have an opportunity of overcoming this difficulty by means of an expedient which I am positive the people of Australia are prepared to adopt. But the difficulty we have to confront at present is that we allow the state to own railways, but want the Federal Government to have a hand in their management. Of course the difficulty is serious to contemplate, and hard to remove. I am not prepared to go to the extent of my honorable friend (Mr. Wise), and to say that there is no middle course. If we refuse to interfere with the management of the railways we shall jeopardize the passage of this Constitution, and it is only on the ground of expediency—that there should be some safeguard to satisfy those who see great losses staring us in the face without the adoption of some provision of this sort—it is only to satisfy the minds of those who think the loss will be too great for the various colonies to bear that I shall vote for the amendment proposed by the leader of the Convention. And, in giving my vote in that direction, I wish to intimate that I should infinitely prefer, even at this late stage of our proceedings, for the Convention to spend some time in retracing its steps, so as to undertake to federalize that which is almost as important in its effect as the Federal Government itself, namely, this great gigantic monopoly of railways. In Australia our railways are almost as great, if not quite as great, in their importance as our Crown lands. We consider that it is one of our most sacred obligations to develop our territory; but here we have an asset, increasing in value day by day, equal in value now to the whole of our public debts, equal almost in its value in many of the colonies to the whole of the Crown lands left in the hands of the state, and yet we are prepared to leave this great matter of Australian concern to state management. Freedom of trade does not consist merely in the removal of customs barriers. Duties do not constitute the sole impediments to free intercourse. You may have competition increased to such an extent by the diminution of railway rates as to create a barrier to
the flow of trade in its natural course. These barriers can be created, not only by raising rates, but by reducing them. Have we not known goods to be carried by the wealthy railway companies of America practically for nothing, in order to destroy the natural flow of trade to other lines owned by men who could not afford to stand against this competition? I am not one of those who look at this question wholly from the merchants' standpoint. I do not believe that trade ought to go only to the man who has the longest pocket. I believe that it should flow along the lines which nature has provided for it. Anything that prevents it from flowing along those lines is an obstacle to it, and, as an obstacle, injures some one. Whilst the injury may fall upon that great milch cow, the State, and may not at first be very greatly felt, in the long run it must mean increased taxation and increased burdens upon the community, and the engendering for all time of a strife which will be as bitter and as keen as that which has been created by the customs barriers on our borders. Do we not know that the fiscal policy of Victoria has promoted strife between the colonies, though that policy is not nearly so much resented as the policy which creates warring railway rates? Complaints about these rates are heard from the far north right down to the south, and in Victoria as well as in New South Wales. Producers who do not happen to live near the border are taxed, in order that men living close to the border may be induced to send their produce along artificial lines. Whilst the proposal before the Convention will, to some extent injure Victoria, but because I think no loss should be entailed upon a state without compensation, and no compensation is proposed for the loss which New South Wales must suffer if some safeguard is not provided. I should, however, prefer to see a policy adopted which will not inflict loss upon any one. Let the whole of the paying and non-paying railways of all the colonies, together with the public debt, be taken over by the federal authority, and they will prove instrumental in building up the prosperity of the people. But they must be under the control of one power. If they are under six or seven authorities, instead of being instrumental in creating prosperity, they will be weapons for destroying the best influences upon national life in the future.

Mr. WALKER (New South Wales). -

As one who advocated the federalizing of the railways when speaking at public meetings in New South Wales before the elections, I shall be consistent in supporting the proposal of the honorable and learned member (Mr. Barton), and the proposal to establish an Inter-State Commission. It seemed to me that the last speech was admirable in its tone, and the best
federal speech we have had to-day. There has been such a tone of provincialism prevailing the speeches of honorable members of late that I began to wonder whether we were an anti-federal meeting, or a Federal Convention. I had the honour to consult the late Mr. Eddy upon the subject of the federalizing of the railways, and he assured me that he considered that federal man without the federalizing of the railways was not worth having, and that to abolish intercolonial custom-houses, while still keeping up differential railway rates, was to take away with one hand what you gave with the other. My honorable an learned friend (Mr. Wise) is perhaps the ablest exponent in New South Wales of the advantages of federalizing the railway. I give him credit for being an ardent federationist, but he appears to wish to gain ends by a peculiar process. It appears to be his desire to make things so intolerable that they must be rectified, and he then hopes to see his views carried into effect. The position reminds one very much of the case of a man suffering from incipient blindness by reason of cataract, who has to wait until his sight is totally gone before an operation for its restoration can take place. I hope, however, that that is not the process which honorable members want us to put into practice now, and that, on the contrary, we shall grapple with the difficulty at once. It is somewhat discouraging to find that an expert like the honorable member (Mr. Grant) takes the other view, but I know that at heart he also wishes that the railways may in time be taken over by the Commonwealth.

Mr. MCMILLAN. -

They will be taken over in time.

Mr. WALKER. -

Yes. Speaking from our experience in New South Wales, there are two kinds of federationists. There are those who wish to put as little as possible under the federal control. These gentlemen call themselves "prudent" federationists, but some of us think that they are anti-federationists. There is another section, and to it I am pleased to belong, the members of which desire to strengthen the Federation, so long as there is no derogation from state powers, in matters affecting land legislation, education, trade, licensing, local government, European immigration, and so on. I shall support what I believe to be genuine federal principles. I regret that one of the speakers saw fit to impute motives to an honorable member who differed from him. I do not think we ought to do anything like that. Being conscious of our own motives a honorable and thorough federationists, we should give credit to those who differ from us for similar honesty of purpose.

Mr. OCONNOR (New South Wales). -

I had hoped to have heard something more from our friends from
Victoria in regard to this matter.

Sir JOHN DOWNER. -

They are not supporting the honorable member (Mr. Higgins).

Mr. OCONNOR. -

No; but the debate is taking a general character, and it will be useful to have the views of some of our honorable friends opposite, so that we may know what they require, and what their opinions are upon these matters. Although I am loath to continue the line of New South Wales speakers, I think it just as well that I should state what I have to say at this stage. I hope honorable members will follow the very wise advice given by the honorable member (Mr. Grant) in the early part of the debate. The point that is now left for decision is really a comparatively small one, and I think it of very little advantage to go into the question whether New South Wales or Victoria is to blame for the existing state of things, and whether it is desirable or undesirable in the abstract to do away with differential rates. Since our meetings in Adelaide I have altered my views-and I think other representatives have done the same-upon the general bearing of this question. I should have been very glad if some method could have been devised by which the necessity for imposing differential rates could have been obviated, and I should have been quite willing now to fall in with the views which suggest some provision such as that implied in the clause now under discussion, but I see an insuperable difficulty in the way of any enactment of that kind. It would, it is true, stop the working of the preferential rate in Victoria, and it would stop the working, also, of the preferential rate strictly so called in New South Wales, but it would leave New South Wales in this position—that by reason of the paring off of the differential rates of New South Wales, the whole effect of a preferential rate might be given to the working of her railways. I can see, therefore, the justice of what has been pointed out by our honorable friends from Victoria, that by passing a clause which prohibits preferential rates only you would put Victoria in the position of losing all the advantages of the present condition of things, and, at the same time, leave New South Wales practically in the possession of those same advantages. Although, theoretically, I should like to see some such provision as I have indicated carried, I recognise the justice of the protest made by the representatives of Victoria. I could not expect them to fall in with our views. Now, the other alternative is the one which has been proposed by my honorable friend in his amendment. That involves, according to the honorable member's reading of the amendment, the handing over to the Inter-State Commission
of the power of saying, with regard to any rate on a New South Wales railway, that it is not a differential rate or a development rate merely, but that it is a preferential rate. Unless you lay down some definite clear principle in the Constitution, which would be a guide to the Inter-State Commission in deciding a question of that kind, I do not see how you can hand over to them the power of determining such questions without giving them a very dangerous jurisdiction, and one in respect of which it would be impossible to say in what direction it would be exercised.

Mr. GORDON. -

The amendment contains the principle.

Mr. OCONNOR. -

No, that does not help us in any way. The difficulty is this-if you constitute an Inter-State Commission, and say that that commission shall carry out the provisions of the Constitution on the railways of the Commonwealth, without giving them any further guide than that furnished by the clause now under discussion, you leave it practically open to them to say in any case how the operations of trade are being affected by a rate. If the operations of trade are being affected in such a way that business, even from New South Wales, is being drawn to Sydney rather than being allowed to go to Melbourne,

they would have the power to say that the rate should be prohibited.

Mr. GORDON. -

Not unless the rate is made with a view to attracting traffic.

Mr. OCONNOR. -

The mere intention with which a rate is imposed is a matter that the Inter-State Commission could not and would not consider. If the rate had the effect of drawing away any portion of the trade of New South Wales to Sydney that would otherwise have gone to Melbourne, the Inter-State Commission would come to the conclusion that, whatever the expressed intention was, the intention must be gathered from the effect of the rate. If it does not mean that it means nothing. I should be very sorry to see any provision put into this Constitution which my honorable friends from Victoria would construe one way in their favour, and which we would construe another way in our favour. I would very much rather see the meaning of the thing settled definitely here, so that we would know what we are about. Mr. Higgins' amendment does not lay down any definite line upon which it would be safe to leave it to the Inter-State Commission to form a judgment with regard to the rates on the New South Wales railways. The words used by my honorable friend are-"Rates having the effect of derogating from freedom of trade and commerce between the different
parts of the Commonwealth, or with the view of attracting trade to ports of one state as against ports of another state." If that is to be construed having regard to the effect of the rate, then I say that it is an interference which we could not possibly submit to under present circumstances.

Mr. ISAACS. -

The first part only relates to Commonwealth legislation.

Mr. OCONNOR. -

Yes; but I am not dealing with that just now. I say that if the meaning of it is that the intention is to be judged by the effect, then that is an interference which, under all the circumstances, we could not possibly submit to. If, on the other hand, the intention simply is to be considered, then it is useless for my honorable friend's purpose. If we make a development rate for the purpose of aiding the settlers upon our own lands, and we make a development rate which we can well afford to charge with reference to a particular kind of produce, that rate may be a competing rate of a most efficacious character against Victoria. If it was not imposed with a view of attracting our own trade from the ports of Victoria, it would not come under the prohibition. That is not what the honorable member intends. He desires to give a power to the Inter-State Commission to say with regard to any of the rates on the New South Wales railways-"These are rates which we cannot allow, because they interfere with the free course of trade by attracting trade to one port of the Commonwealth as against another." I do not want to repeat what has been so well said by my right honorable friend (Mr. Reid) and by my honorable friends (Mr. Lyne and Mr. Wise) before me. There is no halfway house in this matter. Mr. Higgins wants to get all the advantages of federal ownership of the railways without the disadvantages and the responsibility of the cost of their working. We cannot allow that to be.

Sir GEORGE TURNER. -

We cannot either.

Mr. OCONNOR. -

No. And it appears to me when we come to look at this matter in the plain business-like way in which it is our duty to regard it, we must come to the conclusion that in leaving the railways as they are at the present time, in the hands of the states, we cannot without mischief and loss both to Victoria and New South Wales make any provision which will give any authority a right to interfere with the making of these rates. It is no doubt an unpleasant conclusion to come to, but it is a conclusion which, under all the circumstances, is I think inevitable. What else is left? It is proposed by Mr. Wise that things should be left as they are, and
I am now inclined to take the view that that is really the only way out of the difficulty at the present time—to leave each railway system exactly the same power as it has at present, subject to the general control over trade and commerce which is given in the first sub-section of clause 52 of this Constitution. To what extent that may go I will point out in a moment, but it does appear to me that the only way out of this difficulty is to abstain from putting in the Constitution any directions as to rates—to abstain from putting in the Constitution any directions which will in any way affect the fixing of rates or the competition between these railway systems, and to confine ourselves to the simplest function of a Federal Government in regard to the course of trade. Now, what is that? The one thing which is necessary for the free intercourse of trade between the states is that there should be no obstruction to trade between states, not that trade should be made easier between states, whoever has to pay for that result, but that there should be no obstruction to trade between states. Let me give an illustration of what I mean, and, of course, I am putting the illustration only as an extreme case. Do not let it be assumed for a moment that I think it will be carried out. Victoria has a stock tax the Victorian railways are under Government control; the stock tax is abolished but it would be quite easy to put on a system of rates against New South Wales stock which would have exactly the same effect, in so far as stock are carried by rail, as the stock tax had.

Sir GEORGE TURNER. -

We do not for a moment desire anything of the kind.

Mr. OCONNOR. -

I only put that as an illustration, and I guarded myself by saying that I did not suppose that such a thing would ever be done. I am showing the length to which I think the interference of the Commonwealth should go, and the limits of that interference. There must be some power in the Commonwealth to prevent anything of that kind from being done. Exactly in the same way there ought to be some power in the Commonwealth to prevent New South Wales from putting a rate on her railways against produce of any kind coming from Victoria. Anything of the kind which would operate against the free passage of trade from one part of the Commonwealth to the other, there ought to be a power in the Commonwealth to stop and regulate. But, short of that, it appears to me that any interference with the course of trade, with the competition between these railway systems, would be, at the present time, not only mischievous, but might lead to consequences which we cannot even anticipate with any clearness. That power, I say, is contained in the Constitution as it is at present; it is amply provided for in sub-section (I) of
clause 52, because if the power to regulate trade and commerce means anything, surely it means this: That, inasmuch as one of the principal advantages, and the great business basis which binds the colonies together and is a reason for their union, is that trade and intercourse of every kind shall be absolutely free, you do not interfere with that freedom by cutting down rates. That is simply a matter for the authority which runs the railway, and the people who have to pay for it to consider.

Mr. ISAACS. -

To facilitate the freedom of trade.

Mr. OCONNOR. -

Of course you might facilitate it; as a matter of fact, business is facilitated to those who live within the competitive area. But when you get beyond that, when you get to the question how any prohibition is to be insisted on, then, I contend, you must leave that to the general powers which are exercisable under the trade and commerce clauses. We are not without authority on this question. In the United States the sole foundation of the Inter-State Commerce Act is the trade and commerce clauses of the Constitution. They are not founded on any such provision as that which we are discussing here, but are founded simply on a right which is inherent—the right to regulate trade and commerce—in the Constitution. I hope the committee will excuse me if I read a statement which shows how that right flows from the principle of the control and regulation of commerce, and which is put in very much better language than I can command. From Dos Passos' book on the Inter-State Commerce Act, I am going to quote the judgment of the Supreme Court of the United States in the case of the Wabash, St. Louis, and Pacific Railway Company against The State of Illinois. Mr. Justice Miller says—

It cannot be too strongly insisted upon that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the state might choose to impose upon it that the commerce clause was intended to secure. This clause, giving to Congress the power to regulate commerce among the states and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the states, which was deemed essential to a more perfect union by the framers of the Constitution, if at every stage of the transportation of goods and chattels through the country the state within
whose limits a part of this transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce. . . . As restricted to a transportation which begins and ends within the limits of the state, it (the law of Illinois) may be very just and equitable, and it certainly is the province of the state Legislature to determine that question. But when it is attempted to apply to transportation through an entire series of states a principle of this kind, and each one of the states shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates or to permit it, the deleterious influence upon the freedom of commerce among the states upon the transit of goods through those states cannot be over-estimated.

Now, that is the principle, and it appears to me to be one which flows directly and immediately from the basic principle of this Constitution itself. Now, I have said that there is abundant power in the inter-state commerce clause to control commerce.

Sir GEORGE TURNER. -

Without this clause at all?

Mr. OCONNOR. -

Without this clause at all, and I was coming to that presently.

Sir GEORGE TURNER. -

We are agreed with you so far.

Mr. ISAACS. -

Without the latter part of it.

Mr. OCONNOR. -

Without the latter part of the clause; but before I come to deal with the clause, I would like to refer to something which my learned friend (Mr. Isaacs) said in his very acute analysis of clause 95. The honorable member very truly said that the object of this clause is not to interfere with methods to make the trade easier, or to make opportunity of trade better in one state than another, so long as that is not done in such a way as to be a deliberate obstruction to trade. I quite agree with the honorable member that if Victoria, in the management of her wharfage system, saw that she could impose charges and rates of such a character as to make her port attractive, there is no reason why she should not do it. In the same way, if New South Wales found herself able to impose light shipping dues and wharfage rates, I do not see any reason why she should not do so. But there should be a power somewhere in the Commonwealth to prevent Victoria or New South Wales from imposing special kinds of charges or rates on any one kind of produce coming from any one colony, and any charge of that kind which would have an obstructive effect on the trade of any portion of the
Commonwealth should be prevented, and would be prevented under these inter-state commerce clauses. That is the reason why it seems to me that these clauses, interpreted as they would be in the broadest way, and the way most beneficial to freedom of commerce through the states, should be preserved exactly as they are. I come now to the question of this clause; not the clause as it is proposed to be amended by my learned friend (Mr. Barton), but the clause as it is. As it is, it contains two parts.

Sir GEORGE TURNER. - Which are separate sections in the American Constitution.

Mr. ISAACS. - And in the 1891 Bill.

Mr. BARTON. - They were put into this Bill in Adelaide.

Mr. OCONNOR. - They were separate in the 1891 Bill, and, as my learned friend reminds me, they were put into this Bill in Adelaide. The first part of the clause simply provides that a-

Preference shall not be given by any law or regulation of commerce or revenue to the ports of one state over the ports of another state.

Mr. ISAACS. - It was originally introduced in America to guard state rights.

Mr. OCONNOR. - Exactly. I think it is a very good thing that some such provision should be inserted here. Because there are a number of powers in the Constitution which will be administered by the Commonwealth, and which might possibly be administered to the detriment of one state, or to the advantage of one state over another. For instance, regarding the postal and telegraphic services, regarding navigation and shipping, regarding ocean beacons, buoys, and light-houses, and so on, it would be in the power of the Commonwealth to regulate all these things, and to put charges upon shipping in regard to all these things.

Mr. BARTON. - With the sub-sections in.

Mr. OCONNOR. - Yes, under the sub-sections it would certainly be in their power to do that, and, without any intention, the outcome of the operation of this power might be to favour one port over another in the making of these regulations. I think it quite right that there should be in the Constitution a power to declare null and void any such regulation. Therefore, it appears to me that the first portion of the clause might very well stand.
Mr. BARTON. -

But why do you want to limit the first portion of the clause to the ports?

Mr. OCONNOR. -

Well, the first portion of clause 95 is limited to the ports in the amendment, but there is really no reason why the ports should be considered solely, because you may have advantage given to one place in a state over another place in another state, neither of those places being ports. That might be done by regulations of trade, or by dealing with the telegraph or postal systems, or in a variety of ways. However, that is a matter which no doubt my learned friend will deal with. Coming to the second portion of the clause, it simply declares that there shall be no derogation from freedom of trade or commerce. Now, what does that mean? I must confess that it is one of those dangerous generalities which we ought to be very much afraid of putting into this Constitution. We ought not to have anything in the Constitution without its reason, and, unless there is some special reason for putting ill these general words, I do not think they ought to be in the Constitution. But, if they refer simply to the prohibition against the imposition of customs duties or charges of any kind that will interfere with the freedom of trade, that is already provided for in clause 89, and if they mean anything else, that something else ought to be stated more definitely. It appears to me therefore, so far as the latter portion of the clause is concerned, that, inasmuch as it is simply an attempt to carry out what most of us think is impossible—that is, to deal with this question of differential rates and yet leave the railways in the hands of their present ownership—there is no reason for the insertion of this provision, and it might as well disappear from the Bill.

Mr. BARTON. -

You are speaking of differential rates.

Mr. OCONNOR. -

Of course I am speaking of differential rates. With regard to the Inter-State Commission, my mind

has fluctuated very much on that question, but I feel disposed to adhere to the view which I put forward in Sydney when this matter was being discussed, and it is this: That all the power which we require to be exercised by the Inter-State Commission can be exercised by an Inter-State Commission appointed under the power of regulating trade and commerce—that under the power to regulate trade and commerce there is ample power to appoint a tribunal or body for the purpose of carrying that into effect. And it appears to me that the danger of putting a clause of this kind as the Constitution, although it is only a permissive provision, is this, that once
you establish the notion that you may create this official body there will probably be a clamour to have it appointed, and if you once appoint a body of that kind you may rest well assured that it will be a very live body; that it will be always looking out for something to do, and that, unless you have its sphere of interference and its duties confined within narrow and definite lines, it may possibly be a body that may do more harm than good. On the other hand, if you leave it to the Parliament of the Commonwealth to appoint this Inter-State Commission, it will appoint the commission as part of a species of general legislation dealing with the whole question of inter-state connexion, and, dealing with the question in that comprehensive way, it will, at the same time, probably lay down the duties and principles on which that body is to act.

Mr. REID. -

They need not appoint the commission until a real necessity arises.

Mr. OCONNOR. -

Quite so; and I have very little doubt but that the operation of these conflicting railway systems, when once we are federated, will be to show more clearly than ever the advisability of handing over, perhaps, first the trunk lines, or first some portions of those railway lines, and then other portions of the lines, but gradually approaching the handing over to some kind of federal control these main lines of railway. Now, there is, in the provision of a permissive clause-clause 52-abundant power to do that, and I think it is very likely that, when the Commonwealth is brought face to face with the difficulties of managing these different systems of railways, in the intercourse of trade and commerce between the states, it will very likely be found that the solution of the difficulty may be in the direction of handing over some portions of these railway systems, very shortly after the Federation is established, rather than in the appointing of an Inter-State Commission with the functions and the large powers it must have if it is to be of any use at all, and which, if it is once established, may possibly be an obstruction rather than an aid to anything like the handing over of the railways to the general federal control. I have been against the handing over of the railways to the general federal control, simply because I see the impossibility of its being carried out at the present time, and because of the impossibility of forecasting, in any way, how these railways are going to work under the altered conditions under which we are to live when federation is established; but when those altered conditions, by our experience under the Commonwealth, have become fixed, when we know how the operation of trade and commerce and trade facts will bear on the new state of things, then we will be in a position to deal much more comprehensively and much more satisfactorily with this problem of
railway management than we can possibly do now. Therefore, my suggestion would be to retain so much of clause 95, whether in the amended form suggested by Mr. Barton or in its present form, as deals only with the imposition of regulations relating to trade, commerce, and revenue by the Commonwealth.

Sir GEORGE TURNER. -

Make it clear that the clause refers only to that.

Mr. OCONNOR. -

Yes, and leave the creation of the Inter-State Commission to the general powers of the Commonwealth. In that way we shall solve the question in what appears to me the simplest way in which, in the light of the facts now before us, it can be solved.

The CHAIRMAN. -

Do I understand the honorable member to move any amendment?

Mr. OCONNOR. -

No, I have not moved any amendment.

Mr. ISAACS. -

Would it not be well for Mr. O'Connor to move an amendment in the first line, in order to make sure that it is the Commonwealth?

Mr. BARTON. -

If Mr. O'Connor's idea is carried out it is not necessary to make it sure that it is the Commonwealth, because, as it reads, it means the Commonwealth.

Mr. ISAACS. -

I think so, but others have doubts.

Mr. HOLDER (South Australia). -

This question is a very important one. At the same time, the sense of its importance seems somewhat to have been lost since we first faced it in Adelaide. It was Mr. O'Connor, I think, who suggested the appointment of an Inter-State Commission to deal with the railway question. It was then felt, and expressed by very many members of the Convention, that it would be of little use to remove the border customs duties if we still allowed preferential rates on the railways to accomplish, practically, the same purpose that those duties had in the past accomplished. Today we seem to have become, somehow, reconciled to those railway preferential rates. We seem to have accepted the position that they are inevitable, and that we must put up with them for an indefinite time. That means we are gradually frittering away the benefits of the Federal Constitution. Presently we shall have a Constitution, federal in name, but which will give us nothing but the husks, because the wheat will all be gone. I am not prepared to follow the
lead of Mr. Wise and accept as our remedy this condition, which, to my
mind, is most unsatisfactory in connexion with our railway system. That
honorable members may have their memories revived, and may see just
what the position is, I desire to quote a few figures from the proceedings of
the Convention held in Sydney. Papers were there laid on the table
containing the evidence given before the Finance Committee in Adelaide
by the Railways Commissioners. I will first quote Mr. Eddy. On page 2,
that gentleman gives evidence as to the price of carrying truck loads of
wheat over certain distances. He says there-

The rate for 200 miles, at per ton, in 6-ton truck loads, is 11s. 4d.; for 300
miles the rate is 12s. 4d.; for 400 miles the rate is 13s. 4d.; and for 500
miles, 14s.

It will be seen from this that 6 tons of goods are carried for 8d. per ton
over the last 100 miles of the 500, and I ask honorable members who know
anything about the matter, whether it is not absolutely clear that those
goods are carried over that last 100 miles at a loss?

Mr. FRASER. -

Not if the country is level.

Mr. HOLDER. -

It may be down hill all the way, and still the goods are carried at a loss.

Mr. FRASER. -

Goods are carried on a private railway across the Murray at a less rate
than that.

Mr. WISE. -

At a loss to whom?

Mr. HOLDER. -

I will come to that in a moment. If Mr. Fraser will make a simple
calculation, he will find it is impossible to carry 6 tons of goods 100 miles
for 8d. per ton.

Mr. FRASER. -

I thought you said 8s.

Mr. HOLDER. -

I am quite certain it could not be done. It might be done for 8s., we are
told, and that shows the extent of the loss. It is now done for 8d.

Mr. FRASER. -

I would like that confirmed.

Mr. HOLDER. -

Here it is in Mr. Eddy's evidence. Details are given, and also the mode by
which his calculations were arrived at. The figures must be absolutely
accurate.
Mr. REID. -

Mr. Eddy said he never carried a ton at a loss.

Mr. HOLDER. -

He never said that.

Mr. REID. -

I understand he said so.

Mr. HOLDER. -

No, he did not. What be said was that he did no business at a loss. He said that if the last 100 miles did not pay, the whole 500 miles did.

Mr. REID. -

That is the way to look at it. You must not take the tail end, but take it as a whole.

Mr. HOLDER. -

That interjection will not divert me from my point, because it will rather help me than otherwise. Mr. Wise asks me to whom it is a loss. I reply that it is a loss to the revenue of Australia. If 11s. 4d. be, as I suppose it is, a fair rate for the first 200 miles, and if the rate for the next hundred miles is unfairly low, then the railway is entitled for the work it does to a much larger revenue than 14s. for a 6 ton load over 500 miles. I begin by making it clear that there are railways in Australia which are carrying goods at a much lower rate than is a fair one, and a lower rate than the railways ought to be able to charge. The reason why this unfairly low rate is tolerated in New South Wales is because in Victoria and South Australia there are rates which are also too low. New South Wales is compelled to carry goods at a rate which will not pay simply because, unless she does that, she cannot get trade for which the other two, colonies are strongly competing. There is ample justification for the interjection by the Hon. Mr. Howe that those rates are cut-throat rates—that we are cutting each others throats. South Australia is making New South Wales and Victoria lose money, and Victoria and New South Wales are making South Australia lose money. Each colony is making the others lose money which might fairly be obtained for services rendered. Mr. Eddy was an expert of the highest worth. If he were here to-day, he would give us the benefit of his knowledge, and assist us very materially in deciding this important matter. I, therefore, make no apology for quoting at some little length some remarks of Mr. Eddy on the same page. Mr. McMillan, who was the chairman of the committee on that occasion, asked—

Would you be willing to leave the question as to what extent it is a preferential or a differential rate between the different states to a commission to be appointed?
Mr. EDDY. - You will find it will be absolutely necessary to do that. It would be impossible for a body like this, engaged in the drafting of a Constitution, to go into so much detail as to be able to indicate, even in a small degree, the lines on which the commission that they would create to carry out certain functions for them should go.

The CHAIRMAN. - Personally, as the chief railway administrator of New South Wales, that is your view?

Mr. EDDY. - Yes; with certain safeguards, viz., the absolute prohibition of preferential rates between the traffic of adjoining colonies, the creation of a strong commission, free from influence, to see that the spirit of the Constitution is carried out, the commission to be of such a nature that it would carry the confidence of all the states.

Sir GEORGE TURNER. -

That would let each colony do what it liked within its own borders. That is what he wanted.

Mr. HOLDER. -

I know what Mr. Eddy wanted.

Mr. BARTON. -

That is in reference to traffic which begins and ends in the state.

Mr. HOLDER. -

Mr. Eddy took a different position from the other two Railways Commissioners - very much the same position that Mr. Reid took the other morning - that every state should be free, in its own borders, to do just what it liked. At the same time, I will quote Mr. Eddy to show that even he, who did not quite believe in that kind of thing, wished to limit that liberty, which he first claimed the state should have. Mr. Eddy said-

I think that the commission would have to deal with the question somewhat in this spirit; that the main principle to animate the policy of rate-fixing to be that all traffic originating in adjoining states should be carried over the railways of other states at rates entirely in harmony with the rates applicable to all traffic of a like character for like distances in such states - that is to say, that any traffic originating at any place in an adjoining colony must pay, when passing over the lines of another state, exactly the same rates as are paid by the people of that state. There ought to be no difference. Whether the traffic has come from A, B, C, or D, it must always pay the same uniform rate in passing over the
railway line.

I entirely agree with that sentiment, and I am about to point out that entire agreement with such a sentiment would require a limitation of a very different character from that contemplated by one or two of the interjections made just now. At page 91, Mr. Mathieson says -

He has three rates - one for Bourke proper, 1.90; one for the other side of the river, 1.60; and another that takes him 100 miles into Queensland territory, 1.29.

It will thus be seen that goods landed at Bourke, and placed upon the rails there, are charged three different rates, according to where they come from. They are charged the highest rate when they come from the east side of the river. Then, when they come from districts where they might be conveyed on barges, they are charged another rate, and, on the other hand, if they come from 100 miles across the Queensland border, the lowest rate is charged, so that the principle Mr. Eddy contended for was not enforced in New South Wales.

Mr. FRASER. -

Nor on the other railways of Australia.

Mr. HOLDER. -

I will come to that. I would point out to those honorable members who cheered the remark, that no matter where the goods came from, a uniform rate should be charged, that here is one step we should take to secure that principle. We ought to prohibit the charging of preferential rates-rates which induce certain persons to send their trade to Sydney when they live across the river, when the same rates are not conceded to persons living close to Bourke, but who live on the eastern side of the River Darling, so that there is a weak place even in actual experience, which equity demands we should make strong, and which justice demands we should right. It was pointed out this morning with some emphasis by the right honorable member (Mr. Reid) that there was no barrier to traffic in any of these arrangements; but I point out that there is clearly a barrier here. The natural flow of that traffic for 100 miles on the other side of the Queensland border would be, politically, to Brisbane or to some other port of Queensland, but these preferential rates of New South Wales act as a barrier to the natural political flow of that traffic, and divert it to New South Wales. The natural flow of the traffic on the western side of the Darling would be to South Australia, but the preferential rates of New South Wales form a barrier to the natural flow of that traffic, and force it to Sydney. It is these barriers to the natural flow of traffic which, in my mind, are the great reasons for the adoption of some such provision as we are now debating. I could give another quotation from the evidence, only I do not like to weary honorable
members, which refers to goods sent from Cootamundra to Albury. The natural flow of traffic would be from Cootamundra southwards to Melbourne. In all probability, for most classes of goods, if there were no barriers, the natural flow of trade would be from Cootamundra, via Albury to Melbourne, but a very high rate is charged to Albury from Cootamundra. If the goods are going to Sydney, a much lower rate is charged than if the goods are carried over the same rails in the same trucks and over the same line, and they are not going to Sydney but to Melbourne. Where is the justice of that? The extraordinary difference in the rates charged must be for the same reason, that they divert the traffic from the course which it would naturally follow, in order to benefit Sydney. I ask now, in this connexion, what is the good of saying-"We must insure absolute freedom of trade and intercourse between all parts of the Commonwealth so that there shall be no custom-house barriers to this freedom of trade, that it shall flow freely in every direction, and so that every man shall do his business just as he pleases-what is the good of saving this concerning all other things if we leave the railways, the most important factor in dealing with all matters of trade, to be so managed and to have their tariffs so arranged that this freedom of trade is absolutely destroyed?"

Mr. FRASER. -

The only way is to pool the railways.

Mr. HOLDER. -

My answer to that is that I have been driven more closely to the federalization of the railways by the debate to-day than I have ever been before.

Mr. SOLOMON. -

That is the solution of the question.

Mr. KINGSTON. -

Hear, hear.

Mr. HOLDER. -

In the past, I have not been able to see the absolute necessity for it. I have always thought before that it must be possible for a body of men, such as we are, to frame a clause under which a fair regulation of the railway rates might be secured. But if it be impossible, certainly the way out of the difficulty is to federalize the railways, which I have hitherto opposed, on the ground that there are financial difficulties of a somewhat serious character. But we may overcome these by calculations and apportionment of cost.

Mr. MCMILLAN. -
If that were done we could not carry federation.

**Sir GEORGE TURNER.** -

There are worse difficulties than these. The development of the country is our great difficulty.

**Mr. HOLDER.** -

I have two interjections to deal with; one says we cannot carry federation if we pool the railways. Possibly that is the case. Then Sir George Turner says that you cannot separate the railways from the development of our territory, and I believe it is because you cannot readily make that separation that we might not get federation accepted by the people if we federalize the railways.

**Sir GEORGE TURNER.** -

I would go with you if you could get over that difficulty.

**Mr. HOLDER.** -

There are railways that might be put under the control of the Federation. We might do that with railways where they are carrying through traffic, and all railways which run from capital to capital, or branches of those railways. At any rate, if it be admittedly impossible to frame regulations and to lay down principles for the fair adjustment of this railway traffic, we shall, all of us, I think, be driven to support the federalization of the railways; but I am not going there at present. I refuse to believe that the Convention is unable to draft words which will cover what we wish to cover, and which will at the same time exclude undue limitations of the rights of the states. The right of ownership is very powerful, and it is a right which no one would wish to diminish in the slightest degree. While the states own the railways they must have authority with reference to the earning power and the methods by which that power is maintained. But I say to Mr. Reid, who made a strong point of this in the morning, that this provision against these cut-throat railway rates is one of the best means of increasing the value of the railways to the states themselves. In this connexion, I come to some other papers laid before this Convention. In January, 1895-I think that was the month, but I am not sure; at all events, in the beginning of 1895-the railway experts of New South Wales, Victoria, South Australia (and, I think, also Queensland), met in Melbourne, and discussed the whole matter of railway freights and charges, and they saw that great loss had resulted to the Railway departments of the different colonies through these cut-throat rates. I had marked a number of passages to read to the Convention from the evidence given before that meeting of experts, which passages would have enabled us to measure the loss to the railways sustained in consequence of these rates, but I know how wearying it is for honorable
members to listen to figures. In some cases the evidence shows that discounts amounting to 61 per cent., and even to 66 per cent., are given, and the commissioners there represented came to the conclusion that if a fair agreement were arrived at these tremendous discounts would be at once discontinued. I will quote a passage from the report of the South Australian Railways Commissioner to the South Australian Government, dated 10th October, 1894. The words are valuable, as being by a railway expert whose knowledge and reputation fully justify me in quoting his remarks.

Mr. REID. -
Is that with regard to the 1895 agreement?

Mr. HOLDER. -
The report is dated 10th October, 1894, at the time when the negotiations for the meeting of commissioners were going on. Mr. Pendleton says-

During the past year attention has been directed to the attempts which have been made from time to time, and in various districts, to divert traffic from its legitimate channels to other routes through the adoption of special rates. We have been extremely loath to enter upon what has been described as a "war of tariffs;" but at the same time we have felt it to be our duty to take such measures, and put in force such a scale of rates, as would secure to this colony its proper traffic which would otherwise have been diverted to competing routes. Such a condition of affairs is, however, as undesirable in the interests of the freighter as it is of the different railway administrations involved. Competition must sooner or later end in combination, an we hold to the opinion that the proper course to adopt is for the respective authorities to enter into an agreement, in the first place as to the rates from competing districts, which should be upon a fair and equitable basis, both as regards the freight and the railways, and, in the second place, as to the division of the receipts, no matter by what route the traffic may be conveyed.

In other countries where competition is keener than in Australia, and where the position of the competing railways is much more complicated, such a course was, after a protracted struggle, found to be absolutely necessary, and the only solution of the difficulty if ruin were to be averted.

Those are strong words, and they are as applicable to-day as they were in 1894. I echo the last of those words-"if ruin is to be averted." I am not speaking for one railway system alone. I am speaking for all. "If ruin is to be averted," and the earning powers of the railway systems are not to be seriously diminished if not destroyed, some agreement is urgently necessary. What are we trying to do to-day? We are trying to put into the
four corners of this Constitution the basis on which some agreement can be arrived at, and surely, I say again, we have the ability in this body, which includes within its ranks 26 lawyers, to frame some suitable words-

Mr. HOWE. -

We have 29 lawyers here.

Mr. HOLDER. -

Still more then is it reasonable to hope that we shall be able to frame a form of words which will prevent this ruinous competition, and enable the railways to earn what they are entitled to earn in the shape of revenue, at the same time doing justice to the freighter.

Sir GEORGE TURNER. -

And to the commercial community as well, because it is well known that that is the trouble. The railway authorities would be able to come to an agreement at once if it were not for the commercial influence behind which prevents them doing so.

Mr. HOLDER. -

I admit that, but I would point out that, given certain conditions, we should abolish those discount amounting to 61 per cent. and 66 per cent., and arrive at some basis of understanding whereby the ports of Melbourne, Sydney, Brisbane, and Adelaide would be relatively in the same condition as to advantage of trade as they are in today.

Mr. FRASER. -

Then the rivers will get the traffic. We should not get the traffic if we abolish the discounts.

Mr. ISAACS. -

This is what Mr. Holder is after.

Mr. HOLDER. -

I admit that I should not be sorry to see that, nor, of course did I lose sight of that point of view.

Mr. BARTON. -

That is the trouble. The cataract in another man's eye blinds the honorable member to the river in his own.

Mr. HOLDER. -

That argument has no force at all with me, because, while it is important for South Australia that the river trade should come to her, it is still more important that her railways, in which she has invested £12,000,000 sterling, should make a good profit. We have a railway revenue of over £1,000,000 a year, and it is of much more direct importance to the South Australian Treasurer that the South Australian railways should be managed
at a profit than that the trade should come down the river. I again, therefore, urge the absolute necessity for some arrangement being made between these states so as to secure a fair return on the traffic over the railways, even in competition with the river itself. But what is going on now? A low charge is necessitated by river competition, necessitated by unfair-together unfair-intercolonial railway competition; and while I am not willing to leave out of the account the river competition, I do say that it should be possible for the parties concerned to agree to discontinue these undue discounts and other concessions on our railways so as to be able to get what our railways fairly earn; and if we did that there would probably be no loss either to the railways or to the freighters concerned nor would any undue advantage be given to them. Freighters would probably have to pay a little more than they do now and to send more to their own ports than they do now.

Mr. FRASER. -

Some wool at present comes from Bourke to Echuca.

Mr. HOLDER. -

I know.

Sir GEORGE TURNER. -

Have you any figures showing the loss by each colony by these cut-throat rates?

Mr. HOLDER. -

No, and I think it would be impossible to work out such figures.

Sir GEORGE TURNER. -

They have been given.

Mr. HOLDER. -

I have marked some passages on the subject, but I do not like to detain the committee so long. Honorable members will find some very startling figures in the evidence given by Mr. Mathieson in Adelaide. What has been done in America and other parts of the world should be done in these colonies. In 1895, as I have said before, the commissioners of the various colonies met. They were men with a complete knowledge of local conditions and of railway management, men interested in making these systems earn as much as they possibly can, and eager to see that their own railway systems did not suffer in any arrangement arrived at with regard to other railway systems. They agreed upon a scheme of combination by which these ruinous cut-throat rates would be abolished.

Sir GEORGE TURNER. -

The agreement was admittedly satisfactory only from a railway point of view.

Mr. HOLDER. -
I am coming to that. I would now say a few words as to what Mr. Reid said this morning. What we all want is that the railways shall be managed as if they were large commercial undertakings, but at the same time we do not want our railways to be managed as political engines for the benefit of some state as against others.

Mr. REID. -

I quite agree with you there.

Mr. HOLDER. -

Very well. Now then I come to the point on which the right honorable gentleman says he agrees with me. He agrees that our railway systems should be managed as if they were large commercial enterprises. What are the facts? If they are to be so managed, the railway experts who met in Melbourne, and who, as the right honorable member (Sir George Turner) says, viewed the matter purely from a railway standpoint, made recommendations which ought to be accepted. From a purely railway standpoint-excluding the political standpoint-their agreement was the right one to arrive at, and I do not hesitate to say to-day that the right thing to do is to leave the political aspect out of consideration, and to deal with the railways as if they were purely commercial enterprises. Under these circumstances, it would not take the Railways Commissioners three weeks to thrash out the matter and to bring up a satisfactory agreement under which losses would be prevented in the future.

Mr. ISAACS. -

Does the honorable member treat the railways as a commercial enterprise, entirely separate from all the other enterprises of the state?

Mr. HOLDER. -

There is only one point in respect to which the railways must be regarded upon political considerations, that is, so far as they affect the development of territory. A state to develop her territory might be justified in constructing a railway long before there was sufficient traffic to make it pay; but the traffic ultimately created would be to the great benefit of that state.

Mr. MCMILLAN. -

That is a commercial principle.

Mr. HOLDER. -

Yes; because the enterprise might in the long run return a very good profit. But I do not believe in using the railways to promote the good of one state at the expense of another. I have heard the federal idea expressed more eloquently than I can express it by every Premier in Australasia in after-dinner speeches, and surely it is this, that the gain of one state is the
gain of all. We ought not, after federation comes about, to seek the good of one state at the expense of all the rest, or of any of the rest.

Sir GEORGE TURNER. -

If you wipe out all the divisional lines I am with you, but that is what you will not do.

Mr. HOLDER. -

I do not think the right honorable gentleman and his colony have in the past gained by these preferential rates. While Victoria has fought bravely and undauntedly, she has lost as much as any other state.

Mr. ISAACS. -

The Railways Commissioner says that it would be a terrible loss to Victoria if we abandoned the system now.

Mr. HOLDER. -

If the alteration were made upon fair lines I do not think that the agreement arrived at in 1895 would show any serious loss to Victoria. I think that the largely increased revenue which will be caused by the abolition of these tremendous discounts would more than make up for any slight diversion of trade. That is how I have been advised by the railway experts in South Australia when I have consulted them upon these and similar matters. I now practically come back to where I began, that is, to the assertion that we are discussing a matter which is far too important to be left unsettled. If it is far too important to be left unsettled; it is also far too important to be left in a state of great uncertainty. It is a settlement, and not hints and surmises, that we want. I listened with great attention and interest to the speech of the honorable and learned member (Mr. O'Connar). He threw light upon the subject, as he always does, but he asked me to go further than I am prepared to go. If he will go just a step further than he indicated, and consent to the insertion in clause 52 of a line giving the Federal Parliament power to legislate in regard to intercolonial railway rates, or to inter-state competing railway tariffs, I shall be content to trust the Federal Parliament. But I am not going to trust the Parliament to exercise a power which I do not know that it has. If we are not sure that we have given it this power we cannot trust the Parliament. It is simply a question as to whether the Convention has or has not done its duty. If it has done its duty, and has given the Federal Parliament power to deal with this question, no one will be better satisfied than I. Otherwise much of our work will be done in vain.

Mr. FRASER. -

That is taking away state rights.
Mr. HOLDER. -

No. I should be the last to advocate that. I think that my record shows that I am not forgetful of state rights, and this particular state right, which I have already recognised under the title of the ownership which the states have in their railways, has been guarded by what I have said. I am not taking away state rights; I am conferring upon the various states which enter the Federation the power to manage their railways without being subject to unfair competition. That is not a derogation from state rights, but an increase of them. I am quite prepared to accept any form of words with which the leader of the Convention or the honorable and learned member (Mr. O'Connor) may be content, in regard to clause 95, if a provision is inserted in clause 52 clearly empowering the Federal Parliament to deal with this matter. If we do not insert such a provision it may be that, after years have passed, we shall have been found to have fatally failed in our duty.

Mr. BARTON. -

For what reason do you doubt that the trade and commerce sub-section in clause 52 will give the Federal Parliament power to make regulations in regard to railway matters?

Mr. HOLDER. -

If it gives the Federal parliament that power, why not make it clear? So many limitations have been suggested. We have had two this morning. The honorable and learned member (Mr. Wise) has moved an amendment which expressly takes away from the powers of the Parliament, and which would, if we passed it, altogether destroy the value of the provision referred to by the honorable member (Mr. Barton). Then we had the speech of the Premier of New South Wales, who would seek judging by his concluding sentence, to limit the operation of this provision. As these efforts have been made to limit it, I think we had better say what we mean in as plain English as we can command; so that it may not happen in the future that this question which is so vital to the financial well-being of the states and to the full accomplishment of the federal scheme we have in hand, will be over-looked, or its settlement rendered impossible.

Mr. REID. -

I do not wish to be understood as opposed to the broad lines you have laid down.

Mr. HOLDER. -

I am very glad to hear that interjection, and I am not surprised at it, because until the right honorable member spoke this morning I should have counted him as an absolute supporter of the principles I have enunciated. I hope that even now we shall find him standing shoulder to shoulder with
us, not in resisting differential rates, which are necessary to the working of
the railways, but in resisting preferential rates.

Mr. REID. -

Rates designed to draw trade out of its own state. I am prepared to follow
you in that.

Mr. HOLDER. -

This morning the right honorable member simply deprecated unduly high
rates. But I think the figures I have given show that it is as important to
prevent the imposition of unduly low rates as it is to prevent the imposition
of unduly high rates. We must attend to both extremes, and do what we can
to prevent both.

Mr. BARTON (New South Wales). -

I do not rise to speak at any length at the present stage, but to suggest
that, as we have spent to-day and a part of yesterday upon this question, it
is a fair time now at which to come to a division upon the amendment
submitted by my honorable friend (Mr. Higgins). I shall not vote for that
amendment, because I have been considerably impressed with some of the
arguments used to-day, and I think that the purposes we have in view will
really be met by a modification of my amendment, confining it to a
prohibition against the Commonwealth misusing the trade and commerce
clause in such a way as would give an improper preference.

Mr. ISAACS. -

And leave the states free.
stands, inserting a prohibition against the Commonwealth giving a preference to a state or any part thereof over any state or any part thereof. I shall be able to show then, following up the line taken by my honorable friend (Mr. O'Connor), that with the power given to the Commonwealth to regulate trade and commerce by law in sub-section (1) of section 52, and with the prohibition which exists in clause 89, there will be sufficient to carry out what we have in view, which is the prevention of anything being so done by a state in the regulation of its internal commerce as to go outside its border limits as laid down in the Wabash case, attempt to regulate what must be the commerce between state and state, which is really the subject of legislation by the Commonwealth itself. I do not wish to expand my views at this stage, but simply to suggest that every argument which is applicable to the amendment has been heard, and that we may as well take a vote upon it so as to mark another step in advance. We are now in our fifth week of sitting, and there are honorable members who are content to wait until the end of our proceedings, but who hope that they will not be unduly prolonged.

Sir JOHN DOWNER (South Australia). - We have seen such a remarkable development in the course of the discussion on this question that it will not be a matter of surprise to us if the public outside require a little development as well. When this discussion began, it was distinctly founded on the basis of preserving to each state the right to deal with its own railways, and to impose what Tariff it pleased, no matter what pernicious result might follow, so far as free-trade was concerned. That position was distinctly taken up, as was pointed out by my honorable friend (Mr. Gordon), in the face of the declaration that we were to have intercolonial free-trade. We were really going to preserve a state of things that might destroy the very foundations of the Constitution. As the discussion has gone on, we have found out that the gentlemen who made utterances that were capable of that construction did not mean what they said. We have had each one interpreted more broadly by somebody else, till, in the speech of my honorable friend (Mr. O'Connor), we had a demonstration, I think, that if we followed the cases decided in America, the power given to Parliament to regulate trade and commerce, coupled with the fundamental provision for freedom of trade, would be quite sufficient to give all the authority that is required.

Mr. REID. - You must not forget that in the Inter-State Commerce Act there is an express provision which is not in this Constitution.

Sir JOHN DOWNER. - Yes; but the Inter-State Commerce Act is not contained in the American
Constitution. It was passed by the American Congress under the general power which they had of regulating trade and commerce.

Mr. REID. -

We all know that.

Sir JOHN DOWNER. -

My right honorable friend will excuse me for mentioning it for the information of others who may have forgotten it. What I feel so strongly is that, although the power to regulate trade and commerce has in the evolution of the American Republic been coupled with an exceedingly wise Judiciary extending its provisions to the utmost limit, and always studying the principles which underlie the Constitution, there is no reason why we, in framing a Constitution a hundred years afterwards, should leave everything to judicial decisions. Why should we leave the greater part of the Constitution to be framed by Judges, who might be influenced by utterly different principles, and discard the experiences of the past, which ought to have told us what we are to provide for, simply assuming that the judgments given in the future will be similar to those that have been given in the past, in a country with which we have no relations at all? For my own part, I have felt for a long while that this trade and commerce clause would do an immense deal that we are legislating for. Supposing that any state, by means of a railway tariff, endeavoured to interfere with the cardinal principle of the Constitution—freedom of trade between the states—you have an authority that could prevent it, the Supreme Court. It is beyond all doubt that, if a tariff such as that which Mr. Holder has described were in existence, the Supreme Court could interfere and say that it could not be permitted. There may be another case—and it has been put several times during the discussion—that of increasing the freedom of trade by lowering the tariff, even to a point at which it will be unprofitable, not with a view of developing the resources of the state, which would be legitimate, but with a view practically of giving bounties that would have the effect of defeating the cardinal principle of the Constitution.

Mr. ISAACS. -

Bounties to whom?

Sir JOHN DOWNER. -

To persons within your own territory.

Mr. ISAACS. -

It is the other way.

Sir JOHN DOWNER. -

It might be bounties to your own people or excessive charges on people outside. It would be a bounty in the one case and protection in the other.
Mr. BARTON. -
   It might be a bounty to people outside.
Sir JOHN DOWNER. -
   Yes.
Mr. DEAKIN. -
   Do you say that that it prohibited?
Sir JOHN DOWNER. -
   No, I do not think it is prohibited, but it would be exceedingly unfair
   between the states. It would create all sorts of ill-feeling, but there it would
   end. It would not be an interference with freedom of trade.
Mr. DEAKIN. -
   Is that quite certain?
Sir JOHN DOWNER. -
   I think it is quite certain that what made trade more free could not be said
   to be an interference with the freedom of trade. In my opinion, then, as far
   as the Constitution stands at the present time, without these provisions at
   all, the general cardinal provision that-trade should be free would give the
   Supreme Court power to prevent any tariffs being made in derogation of
   that principles But that would not apply to a reduction which might
   operate, not unfairly in the way of trade, but unfairly as between States.
   How is that to be got over? I agree again with Mr. O'Connor. I think the
   Parliament will have jurisdiction under the general provision relating to
   trade and commerce, as they have in America, and can deal with that; but
   when we have said all that, we have one thing to recollect-that we want this
   Constitution to be passed, and that we want to put it in a form in which we
   do not require conflicting opinions, but which he who runs may read, so
   that there may be no possible mistake as to what it does mean. The
   trade and commerce clause is good, and may be all-sufficient, but this is
   not a Bill merely drawn to satisfy a lawyer's notions of precise and accurate
   drafting. It is a Bill that has to be drawn in a form to recommend it to the
   public and which the public will understand, and from that point of view
   we must not make the American Constitution do too much work for us. We
   must do a little for ourselves.
Mr. KINGSTON. -
   Say what we mean.
Sir JOHN DOWNER. -
   So far as this matter is concerned, the suggestion of my honorable friend
   (Mr. Holder) ought to be absolutely unobjectionable. I think it is
   unobjectionable to the honorable member (Mr. Reid), and I think it should
   be absolutely unobjectionable to everybody, because if everybody says that
that is at least what it means, then what possible objection can there be to saying so? While I entirely agree with Mr. Barton and Mr. O'Connor in their view that these provisions in the Constitution are quite sufficient, still, with the view to prevent differences of opinion, above all to recommend this Bill to the general public, whom we wish to understand it, and without whom we can do nothing, I think we should be a little more explicit, and the insertion of a few words which, some of us agree, are included in the general power, and others think not, might fairly be agreed to, so as to prevent any possible misunderstanding, and to recommend the Bill to the persons who have to adopt it.

Mr. HIGGINS (Victoria). -

As I was responsible for the moving of the amendment, I want to say a few words as to certain criticisms which have been levelled against it. In the first place, a very weighty criticism came from the right honorable member (Mr. Reid), in which he said:"You cannot interfere in this way unless you take over the whole railway system; but, as the state and the state Government are responsible for the finances, you cannot interfere with part of the finances in this way." I have given due weight to that in thinking the thing out; but I would ask the right honorable member whether he thinks that there will be a serious dislocation for the worse of the finances of New South Wales, or of any other colony, if rates, which every one seems to think are losing rates, should be stopped? I cannot see where an inconvenience can happen to the finances, if they are losing rates.

Mr. REID. -

If they were losing rates, I would quite agree with the honorable member, but I happen to know that they are not.

Mr. HIGGINS. -

I understand that the late Mr. Eddy, whose authority none will dispute, would not admit that they were losing rates; but he would not say that they were gaining rates; he would not say that they were profitable rates.

Mr. LYNE. -

Yes, he did.

Mr. HIGGINS. -

He simply said that they were able to pay their way, taking the good with the bad.

Mr. REID. -

They leave a small margin of profit.

Mr. HIGGINS. -

I admit the honorable member's contention to the full extent, that we have no right to interfere with the financial position of any state in any serious degree, however we must in some way interfere. Certainly as
regards the great colony of New South Wales, and her grand resources, I cannot think that the honorable member is serious in saying that by giving up certain rates, which are reduced to the lowest point of payment, we will be interfering with her finances.

Mr. REID. -
To some extent.

Mr. HIGGINS. -
The right honorable member says, "all developmental rates must incidentally attract trade." I quite admit that, but then these rates will not be void under this clause. If a rate is honestly meant for the development of the back country, so as to relieve the local producers, then it is not void under this clause, even if it should have the incidental effect of attracting trade. The only case in which the rate will be void and dealt with by the Inter-State Commission is the case in which the real object of making the rate so low is to attract trade from the ports of other states.

Sir JOHN DOWNER. -
That will be the effect of it, I should think.

Mr. HIGGINS. -
Of course the effect of the rate will be one of the evidences to show its intention, but it is not conclusive evidence, and the mere fact of its incidentally attracting trade is not a ground for having the rate declared void.

Mr. OCONNOR. -
How would you prove with what intention a rate was framed except by considering its operation?

Mr. HIGGINS. -
In 99 cases out of every 100 you can very soon tell the object of a tapering rate. If it is to be left to a body of railway experts, you will find that no railway expert will have the least difficulty, in 99 cases out of every 100 in telling the object of every rate. If no charge is made for produce coming from Finlay to Berrigan, and no charge is made for the same produce from Berrigan northwards up to Cootamundra, I do not think it would be very hard to say that that was not a developmental rate. That is practically what is done on the railways there sometimes. You will find that the same charge is made for wool from Cootamundra to Sydney as is made for wool from Hay to Sydney, 200 miles further.

Mr. REID. -
And yet that very state of things has caused a development of the district.

Mr. HIGGINS. -
My right honorable friend, with his usual tact, appeals to the desire of producers, of whom we have representatives in this chamber, I believe, to have the rates as much competitive as possible between the different railway systems.

Mr. REID. -

I was only speaking of the difficulty of discovering what sort of rate it is.

Mr. HIGGINS. -

The producer, the right honorable member says, will benefit; but it is not for the producer's benefit that he is doing it, because, if it were, he would have the rates as low on this side towards Melbourne. It is done for the benefit of Sydney warehousemen, and it is a mere bounty given to the people of Sydney. There was an important criticism levelled against this amendment by my honorable friend (Mr. Isaacs). I think honorable members will recognise that, important as it is, it is more a verbal criticism than a substantial one. He says-"If these words are put in they will go too far; they will have the effect of practically interfering with the improvement of a harbor with the view to attract more trade to the port." I venture to say, with the utmost confidence, that my amendment will not have any such effect.

Mr. ISAACS. -

I go much further than that. I say any regulation of commerce

Mr. FRASER. -

Then deepening a channel would be an infraction of the law.

Mr. HIGGINS. -

Exactly; in the way in which the honorable member puts it my amendment would prevent a state deepening a channel.

Mr. FRASER. -

And that is absurd.

Mr. HIGGINS. -

Of course, the amendment would not prevent the deepening of a channel. The deepening of a channel is not a matter of law or regulation. What is prohibited is a law or regulation made by the Commonwealth. I cannot find that my honorable friends have pointed to, one single concrete instance in which this, limitation of the powers of states with regard to railway rates can be used with any damaging effect. It is evident, from the idea that Mr. Fraser has, that some honorable members have been led to think that my amendment will interfere with the deepening of a channel, but I think I have clearly shown that it will not do anything of the sort. It is against a rule or regulation that this provision is levelled, not the deepening of a channel. But

[P.1318] starts here
supposing the words of this provision were its wide as Mr. Isaacs has said, that is merely a question for the verbal amendment of my proposal by the Drafting Committee. I do not profess to be the draftsman of the Bill, and I ask the Convention to allow a division to be taken on the merits of this question, the substantial question being as to whether we shall be so far federal as to insist that unfair differential rates-unreasonable differential rates-rates which are not merely developmental" shall be prohibited by this Bill, or, rather, that it shall be left to the Inter-State Commission to say whether those rates come within the unfair category or not. I appeal to honorable members to vote on the substantial question, because we shall be able, in the event of my amendment being passed, to trust to the skill and farsightedness of the Drafting Committee, so that if Mr. Isaacs' fears about the extent to which this provision can be applied are substantial they can be dealt with.

Mr. ISAACS. -

Supposing you lowered the charges for pilotage and wharfage in connexion with the port of Melbourne, that would be void under your proposal.

Mr. HIGGINS. -

No; here you are speaking of any law or regulation of commerce or revenue made by the Commonwealth.

Mr. ISAACS. -

Or by any state.

Mr. HIGGINS. -

My honorable friend does not suggest any improvement. If his idea is adopted we shall be simply left as we are, with an arrangement under which the Victorian system of preferential rates is prohibited, and the New South Wales system of differential rates is not prohibited.

Mr. ISAACS. -

Oh, that is not so; we can protect ourselves, or else federalize the railways.

Mr. HIGGINS. -

My honorable friend has made no better suggestion. No suggestion has been made which would at least go so near to meet the crux of the difficulty as this; and I shall be only too happy if the Drafting Committee will propose any words which will obviate any necessity for the fears of the Attorney-General of Victoria. I might indicate one direction in which the thing may be limited, if we succeed in the impending division, namely, that my amendment should apply to rates on railways or rivers-that they are not to be made so as to attract trade to the ports of one state as against the ports of another. The more you consider the words, the more you will
see that they are carefully guarded. It will be competent for Victoria to do all it can to develop the Gippsland Lakes as against Western Port and Port Phillip, because that will not be attracting trade from the ports of one state to the ports of another, and so New South Wales can develop the Hawkesbury against Port Jackson, because that also will not be developing the ports of one state as against the ports of another. I take it that we have come to the nearest possible solution of this difficulty; but, having regard to the serious effect of this clause on Victoria, South Australia, and ultimately Western Australia, perhaps also Tasmania, and I think New South Wales, it will be one of the most serious blows to the prospects of federation if there is not a limitation imposed in this respect.

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

The committee divided-
Ayes ... ... ... ... 18
Noes ... ... ... ... 24
Majority against the amendment 6
AYES.
Braddon, Sir E.N.C. Howe, J.H.
Carruthers, J.H. Kingston, C.C.
Cockburn, Dr. J.A. Lewis, N.E.
Deakin, A. Quick, Dr. J.
Dobson, H. Solomon, V.L.
Downer, Sir J.W. Symon, J.H.
Glynn, P.M. Walker, J.T.
Gordon, J.H.
Grant, C.H. Teller.
Holder, F.W. Higgins, H.B.

NOES.
Abbott, Sir J.P. Leake, G.
Barton, E. Lee Steere, Sir J.G.
Brown, N.J. Lyne, W.J.
Brunker, J.N. McMillan, W.
Clarke, M.J. O'Conner, R.E.
Crowder, F.T. Peacock, A.J.
Douglas, A. Reid, G.H.
Forrest, Sir J. Turner, Sir G.
Fraser, S. Venn, H.W.
Hackett, J.W. Zeal, Sir W.A.
Hassell, A.Y.
Henry, J. Teller.
Isaacs, I.A. Wise, B.R.

Question so resolved in the negative.

The amendment suggested by the Legislative Council of South Australia (see page 1270) was then put and negatived.

Mr. BARTON (New South Wales). -

I propose to modify the amendment which I previously suggested. I now move-

That clause 95 be struck out, with a view of substituting another clause.

Sir GEORGE TURNER. -

I would like to hear what you propose to substitute.

Mr. BARTON. -

I propose to substitute the following clause:-

The Commonwealth shall not give preference by any law or regulation of commerce or revenue to one state or any part thereof over another state or any part thereof.

The amendment as I circulated it to-day read:-

"Any law or regulation of commerce or revenue made by the Commonwealth or by any state, or by any authority constituted wider the Commonwealth or under any state, giving any preference to one state or any part thereof over another state or any part thereof shall be null and void."

As to the use of the words "null and void," I do not think there is any necessity for putting a prohibition on any state or the Commonwealth in that form, for the plain reason that the prohibition itself is so effective that any law made in contravention of it would be null and void. The form I now propose seems to be more dignified as applied to the Commonwealth or a state, and more respectful to the authority dealt with. I have left out, in the present proposal, the words "affecting the law or regulation of a state," and I think the reason for doing that is easily explained. The provision in reference to preference given to ports is in the American Constitution; and the cases show that that is a prohibition on Congress, or on a similar body to the Parliament of the Federation. In passenger case, T. Howard, 283, it is laid down, according to Baker's Annotated Constitution, that-

This clause is a limitation upon the powers of Congress in the regulation of commerce, and intended to prevent what otherwise might have resulted in discrimination in favour of one state against others.

I ask honorable members to mark the words "in favour of one state against others." Although it was inserted in the Constitution as a prohibition against preference between the ports of the different states, it
was interpreted as a provision in furtherance of prohibiting the right of Congress to make preference between one state and another state. It is in that way, I think, the amendment should be modified, and I am quite with those who say it is unnecessary to include a provision prohibiting preferential regulations made by a state, or by any authority constituted by a state, because I am, on reflection, as convinced as I was with reference to the question of the control of the rivers, that the trade and commerce subsection provides the Commonwealth with sufficient legislative power to deal with any such preference. More than that, any such preference may be dealt with by the Congress even before legislation, if it amounts to an infraction of the Constitution in other respects. There is not any power to regulate trade and commerce, but there is a further provision in clause 89 that, after the imposition of the uniform duties, trade and commerce as between the states, or among the states, shall, whether as regards internal carriage—which includes railways and rivers—or as regards ocean navigation be absolutely free. We have in those two provisions taken sufficient protection, and it was well pointed out in the debate by Mr. Isaacs, yesterday, that the absolute freedom clause (the 89th) was one that operated only on the imposition of uniform customs duties. Looking again at the trade and commerce clause, it is, without doubt, that in the United States the decisions have gone as far as to include all we have been arguing for in this debate. They go so far, as my honorable friend (Mr. O'Connor) has pointed out, in the case of the Wabash Company, as while allowing a state to make its own law or regulation in regard to traffic which begins and ends in that state, they nevertheless declare any law of a state Constitution void, if professing to deal with that traffic, it does actually deal with inter-state traffic in a way to infringe on the powers of the Congress in regard to trade and commerce. Of course, a fortiori, if the law of the state expressly attempts to fix what amounts to interstate commerce, then it is under the same prohibition. It cannot stand against the powers given to the Commonwealth or Congress. There is one passage in the American decision which so supports my view that, notwithstanding it has been read already, I would like to call the attention of honorable members to it. Dealing with the law of Illinois on this question, we read in Dos Passos' The Inter-State Commerce Act that the Wabash Railway Company had violated a statute of Illinois, enacting that if any railroad company shall, within that state, charge or receive for transporting passengers or freight of the same class the same or a greater sum for any distance than it does for a longer distance, it shall be liable to a penalty for unjust discrimination. The court said of that law:
As restricted to a transportation which begin and ends within the limits of
the state, it (the law of Illinois) may be very just and equitable and it
certainly is the province of the state Legislature to determine that question.
But when it is attempted to apply to transportation through an entire series
of states a principle of this kind, and each one of the states shall attempt to
establish its own rates of transportation, its own methods to prevent
discrimination in rates, or to permit it, the deleterious influence upon the
freedom commerce among the states, upon the transit goods through those
states, cannot be over-estimated. That this species of regulation is one
which must be, if established at all, of a general and national character, and
cannot be safely and wisely remitted to local rules and local regulations,
we think is clear, from what has already been said. And if it be a regulation
of commerce, as we think we have demonstrated it is, and as the Illinois
Court concedes it to be, it must be of that national character, and the
regulation can only appropriately exist by general rules and principles,
which demand that it should be done by the Congress of the of the United
States under the commerce clause of the Constitution.

From that case it seems perfectly clear that when either professedly, or
by its operation, the law of a state goes to affect interstate commerce to
such an extent as to usurp the power of Congress in America to regulate
that branch of trade or commerce, it is to that extent, at any rate, void.
When we had a discussion in Adelaide I referred to a large number of cases
decided in the United States upholding the view of the entire power of a
state to deal by its own regulation with traffic beginning and ending in that
state. That power has been upheld in a long series of cases, but it is only
fair to point out this: That in a case decided before the Wabash Company's
case, Peik v. The North-Western Railroad, U.S. Reports, 164, it was
decided that-

A statute which fixes the maximum rates for fare and freight on a
railroad which extends from one state to another is not repugnant to this
clause of the Constitution, although incidentally such regulation may reach
beyond the limits of the state-Peik v. North-Western Railroad, 94 U.S.,
164.

NOTE. - The last clause in this syllabus has been over-ruled by a

So it would appear that where the regulation incidentally reaches beyond
the limits of a state, so as to affect inter-state commerce, it is to that extent
void, although the effect is only incidental. The question we really have to
deal with is: Are we to overload the Constitution with a number of
provisions which may themselves affect
the full vital power of the trade and commerce clause, and which may-for we know not how they will work until they are actually applied-produce effects upon trade and commerce in every colony which we cannot contemplate or foresee; or is it not better to rely upon a provision which has already been settled by judicial interpretation in cases so clear as that of the Wabash Railway Company? I take it that it is far better to place reliance on the trade and commerce clause. I would point out that the question of the railways stands in rather an analogous position to that of irrigation or the control of rivers. With regard to the control of rivers we decided so far, at any rate, to rely on the trade and commerce clause, very much fortified as it is by the 89th clause. Our railways are used for the development of our land; we claim the right to use our rivers for the development of our land; we say we will not hand over our rivers, so far as their application to the development of our land is concerned—although we are prepared to hand them over for the federal purposes implied in the regulation of trade and commerce. I think we ought to say the same with regard to the railways; that is to say, that we will not hand over our railways into a common pool. I would like to draw this distinction, that when honorable members speak of pooling and federalizing the railways as synonymous terms, they are speaking under mistake. Pooling the railways means the unification of the railways, whereas the may be federalized without being unified.

An HONORABLE MEMBER. -

We could pool special receipts.

Mr. BARTON. -

You may do that if you like, but all I wish to point out at present is that if you pool the railways you will unify and not federalize them. Here we have a means of developing our territory, which I take it is as precious an advantage to us in all our colonies as is, in respect of any one colony, the waters of our rivers. We have decided that the use of the rivers which develop our land is a provincial and not a federal matter, while we are ready to submit by all manner of means to the full power of the Commonwealth Parliament to legislate for trade and commerce, so as to maintain that freedom of trade between the states which is one of the prime purposes of the Constitution. The same argument applies to the proposal with regard to the railways. We are entitled to retain the railways in our own hands, but we also say that the regulation of trade and commerce, so far as it affects the railways, is a federal power, and in the same way as it applies to navigation it applies to railway traction, but to this extent only: Just as the use of the waters in your rivers within your states is your own
property, just as you are entitled to use it for the development of your land, so for the internal development of your province you are entitled to use your railways without restriction, and you only go outside the limits of provincial concern, and hand yourself over to the federal power, when, in the exercise of your power to regulate internal traffic, you trespass into the federal domain by attempting to regulate traffic between the states. Still it is an analogous case between the control of rivers and the control of railways. Preferences by states, if the Wabash case is any authority, will be dealt with by the courts. Even without the passing of any special legislation such preferences are dealt with in the courts of the United States, that is, so far as they affected interstate traffic. Is there anything conceivable in the application of these authorities which should lead us to doubt that an authority of that kind is applicable to our own case? So I submit that if we adopt the full value of the trade and commerce clause, we are in this position—that every one of us, as a whole, will retain control over all traffic which begins and ends in his state, subject to the one limitation that we are not entitled, because we have internal control, to assume also control which implies the government of traffic which is not wholly internal. That is the principle laid down in the Wabash Company's case. I am satisfied that is sufficient for the purpose we are dealing with. If that is a sufficient principle for my friends from Victoria I am prepared, for my part, to accept it as sufficient for New South Wales.

Mr. GLYNN. - Will the honorable member refer to clauses 96 and 97?

Mr. BARTON. - I will come to those in a minute, and I was about to speak with regard to them. In the same line as the case of Peik v. The North-Western Railway, which has been partly, but not entirely, over-ruled, there is a further case which does not appear at all to be over-ruled, that is Railroad v. Iowa, 94, U.S., 155. It is said—

The statute is not void that fixes a minimum of fares and rates, nor is a statute void which fixes the minimum rates of fare and freight on railroads for passage or shipment wholly within the state.

What I would ask is this—Will our friends from Victoria and South Australia be satisfied to leave the Constitution in a position which imports the full value of this decision?

Mr. HOLDER. - Will you state plainly in clause 52 that the Federal Parliament has power to deal with these matters?
Mr. BARTON. -

My answer to that is, just as I asserted and argued with reference to the trade and commerce clause, that it imported what was desired with regard to the navigation of the rivers—that it imported full and fair power, but no more than that, and I believe that argument was on the whole accepted. My argument here is the same, that without any tag to it—and all tags of this kind are dangerous—the trade and commerce clause is sufficient for this purpose.

Mr. HOLDER. -

Why not say plainly what you mean?

Mr. BARTON. -

For this reason, that you do not need to say twice over what you mean if once will do. By asserting that the trade and commerce clause will be sufficient you have the benefit of decisions in courts which have been dealing with a very similar Constitution, and the reasoning with respect to those cases is so entirely consecutive that I do not believe there is a legal gentleman in this Convention who will throw the slightest doubt on that reasoning.

Mr. HOLDER. -

We cannot put Baker's Annotated Constitution into our Constitution.

Mr. BARTON. -

But that is no reason for asking to have the same thing repeated over and over again.

Mr. MCMILLAN. -

And the danger is that you may say more than you mean.

Mr. BARTON. -

What I am afraid of is that we may go on putting tag after tag on to this trade and commerce clause, which I regard as absolutely the most valuable provision in the Constitution; we may put this and that explanation on to it, and not only end in limiting it in the specific ways in which we profess to do so, but we will lead up to judicial constructions which will apply limitations in a way we never intended. It is far better to stand in the paths we know, and take the meaning of decided cases as legal gentlemen here approve. There can be no conflict of opinion with regard to the Wabash Company's case. Having that before us, we should abstain from overloading the Constitution with provisions which are always loaded, and which sometimes go off at the very time we do not want them to. Now, my honorable friend has asked me about the Inter-State Commission. I return the same answer as to that. I do not want to unnecessarily overload this Constitution with safeguards. If the better judgment of the Convention chooses to leave the provision for the establishment of an Inter-State
Commission in the Constitution, the provision will not have the injurious effect which a tag to the trade and commerce clause would have, because such a tag would, I think, have the effect of limiting the trade and commerce clause, whereas the provisions for the establishment of the Inter-State Commission would certainly have no limitative effect whatever. They do not affect the power of the Commonwealth to legislate in regard to trade and commerce, and, therefore, I do not consider them to be objectionable in reality. I feel sure that they would not establish any injury. But I am sure that the more you limit the trade and commerce provision in sub-section (1) of clause 52 by putting explanatory tags at the end of it, the more you weaken its effect. That is what I am afraid of. I can assure my honorable friend (Mr. Holder) that I am speaking quite frankly now, when I say that my opinion is that to append any limitation to the trade and commerce clause whatever might seriously limit its effect, whereas the provisions with regard to the Inter-State Commission would leave the effect of the trade and commerce provision as it stands in clause 52, without undue limitation. There has already been one limitation inserted with regard to that clause, which, though I do not object to the provision in itself, is, I think, in its wrong place as it stands as a proviso to sub-section (1) of clause 52. I refer to the provision with regard to intoxicating liquors, and I am so impressed with the necessity of having no proviso to that subsection that when the time comes I shall ask the Convention to put the proviso in another place in the Bill, in order that there may be no limitation to the trade and commerce provision whatever.

Mr. DEAKIN. -
Hear, hear.

Mr. BARTON. -
The argument, however, does not apply to the reasons for the establishment of the Inter-State Commission. I have always been somewhat inclined towards the establishment of such a body, because I think it is a right thing to do, although I recognise that whether this establishment should be provided for in the Constitution, or whether we should leave the matter to the Commonwealth Parliament, is another question. It may be that it would be better to leave for legislation by the Commonwealth Parliament the matter of the Inter-State Commission, but, at all events, my view has been all along that the clauses for the establishment of that body are innocuous in the Constitution, and do not affect the construction of the trade and commerce sub-section. To that extent, as I wish to be rather zealous in the guardianship of this sub-section, I have no objection to a provision affecting the trade and commerce clause, whereas the provisions for the establishment of the Inter-State Commission would certainly have no limitative effect whatever.
commerce sub-section. I feel that there should be an Inter-State Commission, and I am prepared to trust the Federal Parliament to create one. But I know there are a great many people out-of-door who would feel more secure if there were some such provision, not defining altogether the limits within which the commission is to act, but making it sure that there will be a commission of the sort. But about that I am not so very urgent, because I have always been one of those who are rather opposed to putting placards in the Constitution. I think we must rely on the abilities of those who are making this Constitution to explain it to the people, and we should abstain from defacing it or deforming it in any way by declarations which are generally inadvisable, and only act as electioneering placards. We should be strong enough, I think, to explain this Constitution to our people without such placards in it. Therefore, I am prepared to forego the clauses providing for the Inter-State Commission, although if I am alive when the Federal Constitution is adopted I shall be one of the first to urge that such a commission shall be appointed.

Mr. DOBSON. -

Is not the appointment of the commission rather inconsistent with the principle you have been suggesting that we should adopt?

Mr. BARTON. -

I am saying that the provision for the establishment of an Inter-State Commission in this Constitution is rather a placard, and to that extent is somewhat inconsistent with what I am urging. But I think it may be a guarantee. And I have always had an attachment to the idea of an Inter-State Commission. All of us have our pet ideas, and this has been one of my pet ideas; but I am willing to leave such matters to legislation by the Federal Parliament, and am quite content to forego my pet placard if honorable members will do the same with theirs.

Mr. HOLDER. -

Then could we not, on the same ground, strike out the trade and commerce provision, and allow the Federal Parliament to settle that matter?

Mr. BARTON. -

No, that would be a grave mistake, because it would give the Federal Parliament power to frame a Tariff which was not uniform, and to make a distinction between different states; it would give the Parliament power to create a Tariff which might be unjust and unequal in its incidence as between one state and another. To that extent we are bound to guard our interests, and it is for that reason that we have provided that customs duties
shall be uniform. And if honorable member will look at the American Constitution, they will see that that instrument gives power to levy and collect taxes, &c., but there is attached to it this provision—that the taxes shall be uniform throughout the United-States.

Mr. MCMILLAN. -

Is there any necessity for clause 95?

Mr. BARTON. -

I am saying now that I do not think there is any necessity for clause 95 in its present form. What I am saying however, is that it should be made certain that in the same way as you provide that the Tariff or any taxation imposed shall be uniform throughout the Commonwealth, so it should be provided with reference to trade and commerce that it shall be uniform and equal, so that the Commonwealth shall not give preference to any state or part of a state. Inasmuch as we provide that all taxation, whether it be customs or excise duties, or direct taxation, must be uniform, and inasmuch as we follow the United States Constitution in that particular—in the very same way I argue that we should protect the trade and commerce subsection by not doing anything which will limit its effect. That is the real logical position. I do not think we need go further than that, because the provisions of the Bill are ample to sufficiently guarantee the rights of the states. Every state will have full control over its traffic, except to the extent that it will not be able to usurp the powers of the Commonwealth in respect to trade and commerce. And are we going to allow those powers to be usurped? That question, I am sure, would meet with a direct negative all round. But if we go further and put in a limitation or proviso, we are simply increasing the power of a state to usurp that power of regulating trade and commerce, which should be confined to the Parliament of the Commonwealth. For it is only by that authority that trade and commerce can be kept free and equal. I suggest, therefore, that the amendment which I have outlined may be placed in this Bill. Sir John Downer agrees with me that the trade and commerce clause is quite sufficient for the purpose, but he would insert a few words to inform the public. I meet that argument again by asking whether it is not a danger to insert such words when they may alter the entire legal construction of the Constitution? I suggest simply inserting such a provision as I have suggested to prevent the Commonwealth from dealing by way of preference with any state or part of a state, and that we should leave the Constitution in that respect in the same way as we have left it by saying that taxation shall be uniform and equal throughout the Commonwealth.

Mr. GORDON (South Australia). -

I think the best argument we could have for inserting in the Bill what my
honorable and learned friend calls a placard is supplied by the long and legal speech which he has just delivered to show us that it is not necessary.

Mr. BARTON. -
My speech was not so long as that of the honorable and learned member.
Mr. GORDON. -
Then I will call it a little more laboured.
Mr. BARTON. -
Everything is easy to my honorable friend.
Mr. GORDON. -
I think that the honorable and learned member has shut his eyes to the fact that the circumstances of these colonies, so far as the railways are concerned, are different from the circumstances of the American colonies when they federated.
Mr. BARTON. -
Perhaps my honorable and learned friend would prefer to answer me after the tea adjournment.

[The Chairman left the chair at twelve minutes past five o'clock p.m. The committee resumed at thirty-five minutes past seven o'clock p.m.]
Mr. GORDON. -
Before the adjournment I had started to show that the lengthy argument which Mr. Barton addressed to the Convention was one which by its very length and subtlety proved, I think, to many of us that the question which he considered as settled by his proposition is one which at the best is highly debatable. His argument that it is unnecessary to provide against the anti-federal use of the railways was founded upon two propositions. The first was that our circumstances are similar to those of America at the time they formed their Constitution, and that as they did not see fit to provide against such an anti-federal use of the railways we need not provide against it. I am not going to trouble the committee now with any definition of the difference between preferential and differential rates; I prefer to use the term "anti-federal use of the railways." The honorable member's argument, as I have said, was that, because the Americans saw no reason for providing against that in the Constitution, neither should we. My answer to that is this: Our circumstances are by no means analogous to, but, on the contrary, are entirely different from, the circumstances of the American states at the time when they formed their Union. They had no state railways. They were not interested at all in railways, whereas the federating colonies of Australia have invested £150,000,000 or £160,000,000 in railways. If the American states at the time of the establishment of their
Constitution had had £150,000,000 invested in those great state utilities, which might possibly, indeed even probably, be used in the future in an anti-federal way, is it not almost a certainty that they would have provided against such an anti-federal use of the railways in their Constitution? It seems to me almost a certainty that some such provision would have been made, because they provided for their debts and other financial considerations. The very fact that they did find it necessary afterwards to appoint an Inter-State Commission seems to me to be a conclusive argument why we should provide for this now. Why should we not, as Mr. Holder suggested, take advantage of their experience? They found it necessary afterwards to go to the trouble of formulating legislative machinery to appoint a commission. Why should we not do this now, seeing that state interests are so vital and so huge in this matter, and that these railways may be used very dangerously by one state against another? Then the honorable member's second proposition is that the Americans have found the trade and commerce clause in the Constitution sufficient to control the anti-federal use of the railways. Even if that is so, it had to be ascertained to be so by the courts. The courts of America had to search the Constitution and find this out. Why should we throw on our courts the onus of doing the same thing when we can make it clear at the outset? Why have uncertainty when we can so simply and easily have certitude at once? I can quote no better authority on this point than my honorable friend (Mr. O'Connor). And what does he say?—

If there is one thing more than another that we should endeavour to avoid it is the admission of doubtful language into this Constitution.

And any language is doubtful which requires a court to interpret it. It is doubtful in the negative sense clearly.

Mr. BARTON. -

Is language any longer doubtful when a court interprets it according to the principles of plain reason?

Mr. GORDON. -

I think the honorable member has rather mistaken his authority, at any rate, the bearing of that authority, on the present state of things in America. I am now quoting from as high an authority as any Judge in America—that of Mr. R.E. O'Connor. He says—

If we are going to make up our minds that there is to be some provision that the railway intercourse should be free of its present restrictions we should say so in language which would be unmistakable and be free from ambiguity.

I think that the majority of honorable members will take that view. Then
Mr. O'Connor also says-

I can see no reason why in the first place we should not place in our Constitution a distinct prohibition against anything like the imposition of differential rates for the purpose of advancing one colony over another, or one locality over another. We should make provision to prevent preference being given to the ports of one colony over the ports of another colony, and we should make it plain that in the running of our railways there is to be no disadvantage accruing from residence in a particular locality or a particular colony.

Whatever my honorable friend's legal mind may lead him to infer, there is no lay member who will say that the requirements of Mr. O'Connor's proposition are satisfied by our being made to rest on the probable decisions of a court of law founded on a decision given in America more than twenty years ago, and which was then only a majority decision. I could not possibly use language stronger or clearer than that used in the quotation I have given by an eminent member of the Convention and a member of the Drafting Committee. Mr. O'Connor is also a gentleman whose judgment is sound, and I know that the leader of the Convention relies to a very large extent on his judgment, and his sound law and common sense.

Mr. BARTON. -

There is no conflict between us whatever.

Mr. GORDON. -

I submit that there is. My honorable friend wishes this prohibition against the anti-federal use of the railways to be a deduction to be drawn by the courts of law. Mr. O'Connor says that if we mean it, we ought to say so in language clear and unmistakable. There is as much difference between these two propositions as there is between light and darkness. They both have the same object, but seek to attain it by very different means. With much respect to our leader, I dispute that the authority he quoted applies to the present state of things in America at all.

Mr. BARTON. -

There has been legislation since then.

Mr. GORDON. -

I know that. I am going to show, on the authority he himself quoted, that legislation might qualify the Wabash judgment if it had to be given now. The Wabash decision was only a majority decision, and we all know what that means. It certainly indicates that the proposition was not a clear one, but that it was one upon which even great lawyers differed. It was only by a majority that the deduction which the honorable member wants us to believe is as clear as noonday was arrived at. Can any honorable member
say that that is language clear and unmistakable? Of course, it is not so. In addition to that, this judgment was given long before the appointment of the Inter-State Commission. Neither my honorable friend (Mr. O'Connor) nor the leader of the Convention were quite frank in quoting the authority of Mr. Dos Passos, to the effect that the trade and commerce clause did make it clear that the Federal Government had power to prevent the anti-federal use of the railways. This gentleman quotes the Wabash decision, but he guards it by a very important qualification. I have always understood that when an authority is quoted, if the authority guards his proposition by a qualification, it is only fair to the court that that warning should be given to it. But my learned friend forgot, if he ever knew, that Mr. Dos Passos introduces a very important qualification into his comment on this case. He states the case, and then goes on to say-

But it must be remarked that the language of Mr. Justice Miller, which is quoted above-

That is the passage which my learned friend quoted.

so far as the Inter-State Commerce Act is concerned, the provisions of which were not before the court, should be regarded as obiter dictum, and used only in the most general sense.

In other words, it was a wide generalization, not the clear and unmistakable language which Mr. O'Connor demanded should be placed in this Constitution. Yet my learned friend, in one of those lapses which even the most brilliant minds sometimes have, asks the committee to say that the judgment is equal to clear and unmistakable language in the Constitution. Mr. Dos Passos goes on to say-

When the Act, therefore, creating the Inter-State Commission comes before the Supreme Court for interpretation, it will be treated and regarded as a new and original question to be determined upon general principles, and without a precedent to guide the Judges in their decision.

Mr. BARTON. -

Is not the author then speaking of a state of things which had arisen since the Act was passed?

Mr. GORDON. -

Clearly; and that will be our position, as a majority of the Convention are for an Inter-State Commission. My learned friend himself says he will support it. But he sought to apply his reasoning and his argument to a state of things which exists in America now whereas his own author says the judgment only applied to the law before the appointment of the Inter-State Commission.
My learned friend is utterly and entirely mistaken. I never attempted to apply the language of that case to the state of things existing in America since the Inter-State Commerce Act was passed. I was careful to point out that the state of things which is described there was the state of things antecedent to the Act being passed—that under the trade and commerce clause the Inter-State Commerce Act had been passed. I did not point out, because every member must know it, that since that Act was passed matters have to be determined according to its provisions. I was applying the state of things existing in America before that Act was passed to the state of things which must prevail in the Commonwealth till the Federal Parliament passes a similar Act.

Mr. GORDON. -

I do not think that explanation removes the misconception which, at any rate, my learned friend's remarks engendered in my mind. We are practically agreed, in fact it is provided in the Bill, that we shall have an Inter-State Commission. My learned friend says he will support an Inter-State Commission.

Mr. BARTON. -

That is only a provision giving a power, which power is contained already in the trade and commerce clause. I was applying the language of the case I cited, and which Mr. O'Connor cited before I did, to the state of things which existed before the passage of the Inter-State Commerce Act. Nobody can say what the state of things will be afterwards; but I said I would support the passage of such an Act, as I trust my learned friend will also do if he has an opportunity, though perhaps neither of us will have an opportunity. What I did say was that I hoped that these matters would be regulated by an Inter-State Commerce Act as in America, but that, until that Act was passed, this authority was strong to show that even before the United States legislated on the subject, an interference by a state with interstate commerce could be prevented by the court. That is what I wanted to point out, and nothing more.

Mr. GORDON. -

I should be sorry indeed to misrepresent the honorable member. I think he misconceives the effect which his remarks had on the Convention. If he was arguing on the assumption that we are not to have an Inter-State Commission, then I say that the deduction which was made by the Judges in the Wabash case was only a majority decision, proving to everybody that it was a highly debatable proposition. We all know how Judges differ. The most eminent Judges in England, only the other day, differed in every court in the land, right up to the highest, as to the interpretation of the
statutes relating to betting. So that when you get only a majority decision you have a debatable proposition. If my learned friend was arguing on the assumption that we are to have no Inter-State Commission, I think I have shown clearly that his deduction is debatable. If he was arguing on the assumption that we were going to have an Inter-State Commission he has no authority at all, if he rests on Dos Passos' dictum, for that author says-"It would be fruitless to endeavour to attempt to predict what the result may be when this Act (the Inter-State Commission Act) comes before the Federal Court for interpretation." So that I have the honorable gentleman on the horns of a dilemma.

Mr. ISAACS. -
What is the date of that work?

Mr. GORDON. -
The date of the work of Dos Passos, from which I have quoted, is 1887.

Mr. BARTON. -
It was written in the year that the Act was passed.

Mr. GORDON. -
If the honorable member's proposition is that the judgment proves there is a prohibition in the trade and commerce clause without express words against the anti-federal use of railways, I say it is a debatable proposition; and if the honorable member, even as the law then stood, argues that the judgment held good after the Inter-State Commission was appointed, he is contradicted by his own authority, because Dos Passos says-"It will be fruitless to endeavour to predict what the result may be when this Act comes before the Federal Court for interpretation." The honorable gentleman states that the trade and commerce clause, in clear and unmistakable language, provides against the anti-federal use of railways, but I think it is clear that this is doubtful The real course for us to take is that advocated by Mr. O'Connor. We should put, in clear and unmistakable language, in the Constitution, a direct prohibition against the anti-federal use of railways. I think I have shown that our honorable and learned leader's argument, which is a lawyer's argument, is founded on decisions which have now no solid ground to rest on. No one can say that we should establish this Constitution upon a deduction to be gathered from a doubtful decision, or upon the assumption that Australian judgments will be given on the lines of old American decisions, after the appointment of an Inter-State Commission, when even this leading American authority says he cannot "predict what the result may be when this Act comes before the Federal Court for interpretation."

Mr. BARTON. -
If the honorable member would refer to Dobney's book, which I quoted
in Adelaide, he will find that it is written by a writer who has had experience of the Inter-State Commission Act, and of how the Inter-State Commission defined what is and what is not anti-federal. Perhaps it would be fairer if the honorable member dealt with the authorities I cited in Adelaide, which included Dobney's work.

Mr. GORDON. -
I cannot carry in my mind all the authorities that the leader of the Convention quoted in Adelaide, and I am only dealing with the authority he has quoted on the present occasion.

Mr. BARTON. -
I thought the honorable member carried everything in his mind, when he quoted Mr. O'Connor as citing an authority he was not dealing with.

Mr. GORDON. -
No, I would rather rely on Mr. O'Connor- 

Mr. OCONNOR. -
When it suits you.

Mr. GORDON. -
I would rather rely on Mr. O'Connor than on some American authority, of whom I know nothing.

Mr. OCONNOR. -
Do you follow my view of the question?

Mr. GORDON. - I have faith in the things I see, and not in the things I know nothing about. I have faith in Mr. O'Connor, and I believe his words were unmistakable wisdom when he said:"Place this prohibition against the anti-federal use of the railways in the Constitution in unmistakable words," whereas his honorable colleague says:"Leave it to the courts and the refinements of law." I say that it would not be fair to Australia to leave so great an interest on so slender a foundation.

Mr. BARTON (New South Wales). -
I should like to clear up one or two doubts-which may possibly have been raised in the minds of honorable members by Mr. Gordon's ingenious argument, which was certainly more ingenious than direct. I cannot give him as much credit for its directness as I can for its ingenuity. The words that were quoted from Mr. O'Connor's speech in detail were quoted from a debate on the words which, if the amendment be carried, will disappear from the 95th clause.

Mr. KINGSTON. -
The debate was on the resolutions.

Mr. BARTON. -
Yes, it was a general debate on the federal resolutions, and I think my friend was arguing then for an Inter-State Commission. That debate was based on the Bill of 1891. That Bill contained something very similar to the present 95th clause, but the proposal then consisted of two clauses, and the second part was a prohibition without the further statement that further legislation should be null and void.

Mr. ISAACS. -

It gave the Parliament power to annul it.

Mr. BARTON. -

Arguing on that, Mr. O'Connor said it was necessary, that the provision should be made more clear-that, inasmuch as the language of the clause was doubtful, we should do without that which was doubtful, or add to it something which took away its doubtfulness. My proposition has been to remove the entire doubt by striking out the clause, and substituting a provision which does not admit of any doubt in regard to the action of the Commonwealth, leaving the remainder of the dealings of the states in regard to the traffic to be regulated by the trade and commerce clause, which does not admit of any doubt. The question really is-Is the subsection relating to trade and commerce doubtful? Putting aside judicial determinations for a moment, what are the words of the clause-'The regulation of trade and commerce with other countries and with the several states.' Will my honorable friend say that the word "regulation" is doubtful, or that "trade and commerce" is doubtful? Will he deny that the power to regulate carries with it the power to legislate?

Mr. GORDON. -

Why then go to the American courts to decide what it means?

Mr. BARTON. -

If my honorable friend hears me he will have his answer presently. The power to regulate gives the power to legislate, coming, as it does, under the heading-'Parliament shall have the power to make laws in all cases following,' one being the regulation of trade and commerce. The power to make laws, is clearly a power to legislate, so there is no doubt as to the meaning of that word. And is there any doubt that "trade and commerce" includes all exchanges and traffic among the several states, as well as with other countries? If my honorable friend has no doubt about the meaning of those words, then there is, clearly, the power to legislate for the regulation of traffic by way of commerce, whether by land carriage, river, or sea; among the several states, and with foreign countries. Let us take the matter apart from all legal determinations. If the regulation includes navigation, does it include railway, as well as river and sea,
traffic? If the answer to both is in the affirmative, where is the doubt, apart from judicial decisions?

Mr. GORDON. -

It requires judicial decisions in America.

Mr. BARTON. -

The decisions are all of one tenor, and against my honorable friend's contention. And, while he is arguing that we should take away any doubt, because the matter has to be solved by a court of justice, is it not clear that a consistent course of decisions is the only way we can safely arrive at a det

Mr. GORDON. -

A long series of decisions of the courts of justice are usually embodied in the law.

Mr. BARTON. -

A long series of decisions of the courts of justice are usually not embodied in the law.

Mr. GORDON. -

They are, where they apply to the business of the state.

Mr. BARTON. -

If that were so, we should have a code of laws to explain the whole common law of England. My friend, as a lawyer, has rather twitted me with some want of knowledge on the subject, of which I am, perhaps, an unworthy exponent, and says that the decision required to be embodied in a statute should be made clear. If that be so, we must come to the conclusion that the ordinary operation of the common law of England requires, as I have said, a statute to explain it. But that is not the case. A succession of plain words, defined over and over again by judicial determination, requires no explanatory statute. If it did, we, overburdened with legislation as we are, would never be done making laws. But where is the authority to show that the United States Constitution allows the anti-federal use of railways? There has not been the slightest attempt to cut down the authority of the Wabash case, whether that was decided by a majority or not. On the Wabash case followed the passing of the Inter-State Commission Act, which was an endeavour to embody the principle laid down in the decision in that case. Since that statute has been passed, there have been a large number of decisions under it. I do not want to weary the committee by citing cases; but under these decisions it is abundantly clear that a distinction is drawn between what is federal and what is anti-federal. Under these numerous decisions, which there is no authority on the part of the United States to impugn, it is clear that when a rate deals with traffic entirely within a state, that must be regulated by the power of the state to
deal with its own traffic, while not engaged in commerce with another state. But where that rate has the effect, of interfering with the inter-state traffic, it is held that it would be usurping the power of the Commonwealth with regard to traffic. There the Inter-State Commission does step in, and prohibits that rate, and that is only carrying out the broad principle at the root of the Wabash decision. So when the honorable member says that I am in a dilemma, he convicts me of putting before the Convention the state of the law in the United States before the Congress legislated for the appointment of an Inter-State Commission. That is precisely our position, because even if we retained the Inter-State Commission clauses, they are only clauses giving authority to Parliament to appoint an Inter-State Commission. There is, under these clauses, no Inter-State Commission, but only authority to appoint one. Until a commission is appointed, and until its powers of administration and adjudication are defined by a statute, the state of things under this Constitution must remain precisely as it was under the United States Constitution before the Inter-State Commission was appointed. So whatever value the Wabash decision has—and it has all the authority of an untouched decision of the United States Court given twelve years ago—its authority is applicable to any state of things which will exist in the Commonwealth until the Inter-State Commission is not only appointed, but invested by statute with power. Until such a commission is invested with the same powers as the commission in the United States, I am confident that the mere verbal carrying into effect of these principles of the Constitution (because Congress cannot legislate outside the Constitution) which were laid down in the Wabash case must prevail here without statute, and when such a law is carried it will be more effectually carrying into effect the principles of the Constitution itself.

Mr. SYMON (South Australia). -

I do not attempt to reconcile the views of Mr. Barton and Mr. Gordon, both of which views have been expressed with a great deal of force and earnestness. But I think those views have made it very clear indeed that after all there are some occasions when it is desirable to have what has been described as a placard in a Constitution. Of course, I am not a believer in having placards, in the least agreeable sense of the word, scattered broadcast throughout the Constitution, but there are occasions and places in which it is desirable to have something which is intended to be what Mr. Barton calls a placard inserted in the Bill. After listening to what has been said, I think this is one of those occasions, because Mr. Gordon has pointed out circumstances that, at any rate, indicate the
possibility of some doubt as to the length to which the decisions of the United States go on this very important point. But, after all, we must remember this: That this is not like an Act of Parliament which we are passing. It is not in the position which Mr. Barton has described, of choosing or setting up a code of laws to interpret the common law of England. This Constitution we are framing is not yet passed. It has to be handed over not to a Convention similar to this, not to a small select body of legislators, but to the whole body of the people for their acceptance or rejection. It is the whole body of the people whose understanding you have to bring to bear upon it, and it is the whole body of the people, the more or less instructed body of the people, who have to understand clearly everything in the Constitution, which affects them for weal or woe during the whole time of the existence of this Commonwealth. We cannot have on the platform, when this Constitution is commended to the people, lawyers on both sides, drawing subtle distinctions, which may or may not be appreciated by the people.

Mr. Howe. -

If you had lawyers on the platform in that way you would never get the Bill forward at all.

Mr. Symon. -

Whether that be so or not, where we have the varying opinions of lawyers on a matter of such particular consequence as the trade of a country, those varying opinions are not proper matters to bring before the whole body of the people as matters upon which they should give their vote. Therefore, this is one of the things on which we may discard the objection which I, for one, would otherwise take to the insertion of what are called placards in the Constitution. But I think that Mr. Gordon is quite justified in the anxiety he feels as to every material advantage seeming to be slipping away from under the feet of South Australia. That is the position we are in. Yesterday the hope we all cherished that unrestricted freedom of trade between these colonies would be maintained was taken away, and the one avenue in regard to freedom of trade between these colonies which, at this particular moment, is of value to us as South Australians was closed.

Mr. Henry. -

Temporarily.

Mr. Symon. -

But I will ask my honorable friend how he would feel if he had
federal union was being postponed for seven long years, during which time all the possible benefits that might accrue to them might altogether disappear?

Mr. BROWN. -
Some of them.

Mr. SYMON. -
They may have altogether disappeared. We cannot say; none of us can tell. But at any rate the victory that Sir John Forrest achieved yesterday has had the effect of closing against us the only channel of benefit in respect of the free interchange of commodities that is of any considerable moment to us. My right honorable friend achieved a very great victory for his own colony no doubt, and when he goes back to Western Australia his people will perhaps canonize him for it. There is no other honour great enough for what he has done.

Mr. PEACOCK. -
He would be a very fat saint.

Mr. SYMON. -
We will call him the modern St. John.

Mr. WALKER. -
You are posing as a martyr.

Mr. SYMON. -
At any rate, the great advantage to Western Australia is a correspondingly great disadvantage to us. We have been left with the River Murray, in regard to which it has been said that the water is to be under the control of the Commonwealth.

Sir JOSEPH ABBOTT (New South Wales). -
I rise to a point of order. I wish to ask whether the honorable member is speaking to the Question?

The CHAIRMAN. -
Strictly speaking, I do not think that the honorable member is in order in discussing these matters, though he may mention them so as to make the point that a particular clause ought not to remain in the Bill, seeing that so much has been struck out of it which he thinks ought not to be struck out. But I do not think the honorable member is in order in discussing the Bill in general.

Mr. SYMON. -
The honorable member (Sir Joseph Abbott) did not give me a chance to discuss it. He jumped up before the words were out of my mouth. I can understand the uneasy feeling—I will not say uneasy consciences—of my honorable friends from New South Wales in regard to this subject. I am not going to reproach them about it. The thing is past and gone. But, having
been deprived of all the possible gains that we looked for, specific gains which we thought we could point to when we returned to our constituents, it is a matter for very grave anxiety how far the revenue which depends upon our internal trade is to be taken from us. The fact is that the specific advantage gained by South Australia is like the Cheshire cat in Alice in Wonderland—it has faded until nothing is left but the smile.

Mr. WALKER. - What is the smile?

Mr. SYMON. - The smile is the advantage we shall have in joining a Federal Union out of which we admit that great prosperity to all the colonies will spring. The right honorable member (Sir John Forrest) said that he wished to have something specific to put before his people, but what have we left? You have taken away the gains that we hoped for, and you are now engaged in whittling down the arrangement made in Adelaide. If you succeed in putting an end to it, there will be nothing upon the face of the Bill which can be called a placard or anything else to indicate to our people that there will be any particular-or specific gains from the union into which we contemplate entering. The point which has been elaborated is as to the effect of clause 95. If the leader of the Convention is willing to support the clauses providing for the establishment of an Inter-State Commission, I see no objection to the amendment he proposes in clause 95, and I will state in a word why I think so, and why I also think that the Inter-State Commission provision should be retained. Clause 95 is in two parts. The first part is that which prohibits the Commonwealth from, by any law or regulation, giving a preference to one part of the Commonwealth or to any state or part of a state. That, I think, is as far as the legislation in regard to the Commonwealth can well go. All that it is necessary to provide in the Constitution is that the Commonwealth Parliament shall not be able to pass any law which would give a preference of this kind. Having done this, the clause goes on to provide that "any law or regulation which shall have the effect of derogating from the freedom of trade shall, be null and void." It seems to me that the view expressed by the honorable and learned member on that point is unassailable. That portion of the clause is simply, an elaboration of the provision in clause 52, which deals with trade and commerce. At the same time, we should either have in clause 52, as was suggested by the honorable member (Mr. Holder), an express provision enabling the Federal Parliament to legislate in relation to the railways and the railway traffic—that would be far and away the best method of dealing with the subject—or we should retain the provisions
enabling the Parliament to establish an Inter-State Commission. It seems to me that either the one or the other is essential. If no such provision is placed in the Bill we shall be in an exceedingly difficult position, and it will be impossible to satisfy the commercial population in our colony that their rights in regard to free interchange with neighbouring states are likely to be preserved. Therefore, while I shall support my honorable friend's amendment, because I think it is absolutely necessary to provide for-the prohibition of these preferences in the Constitution, I think that we require something further, either in the nature of an Inter-State Commission or in the nature of a provision enabling the Federal Parliament to legislate. If the latter provisions are retained, the power to legislate will be sufficiently exercised by dealing with the Inter-State Commission. It will be, competent for the Parliament, upon establishing a commission, to prescribe the rules by which it shall be guided, to provide for everything enabling it to give effect to its decrees, and to secure that it shall be in a position to do that.

Mr. GLYNN (South Australia). -

I agree with the honorable and learned member (Mr. Symon) that if a reference to the appointment of the Inter-State Commission is retained, in the Bill in clauses 96 and 97, we may very well accept the suggestion of the leader of the Convention, and leave the creation of the commission and the power to regulate intercolonial trade to the judicial decision, under clause 52, sub-section (1). I should like, in order to sustain the position taken up by the leader of the Convention, to remind the honorable member (Mr. Gordon) that the decision in 1886, in the case of The Wabash Railway Company v. The State of Illinois, is not the first in which the question of the power to regulate inter-state commerce turned up. In a book published in 1863, this statement, was made as to the extent of the power of Congress over commerce. Referring to a provision of the United States Constitution, it is stated-

This clause grants to Congress the full power of regulating foreign and domestic commerce, navigation, and intercourse. The power does not extend to internal traffic between individuals in different parts of the same state, but to the trade which may be carried on between the United States and foreign States, and among the several states, and from one state to places within the territory of another state.

So that before the decision of 1886 this power was very clearly defined; nor again was the decision of 1886 the reason of the creation of the Inter-State Commerce Commission. That commission was created owing to the extraordinary
complications which arose through the pushing on of railways in the southern states as the result of the war. From 1865 to 1875 there was an extraordinary expansion in the southern states, and it is pointed out by a writer in the Forum of last September that-

After a while the struggle for southern traffic between rival lines east, west, and south lost every semblance of order, and culminated in a disastrous "rate war," destructive to the interests of transportation, and utterly demoralizing to trade.

So that really the decision of 1886 was not the precipitating cause of the appointment of the Inter-State Commerce Commission, but the general failure to regulate those evils which were becoming intensified and more numerous, owing to the pushing on of the southern railways after the cessation of the war in 1865. Again, Mr. Barton has said that we are not to rest solely on the decision of 1886, because from that time down to May, 1897, the Inter-State Commerce Act under which the Inter-State Commerce Commission was appointed, has often come before the Judiciary of the United States. There is the one point of doubt as to whether under sub-section (1) of clause 52 a commission could be appointed. If the appointment of the commission and the power to regulate rates in accordance with the decisions in the Wabash case was to rest on sub-section (1) of clause 52, and if the appointment of the commission was held to be *ultra vires* in the United States courts, these points must have been thrashed out in the various cases that up to May, 1897, came before the Judiciary. Some of these cases may have turned on other points, but still if you could have upset the very Act which was the justification of the commission interfering at all, of course, the particular interference complained of on the part the commission would have fallen to the ground. You could, by striking at the foundation of their authority, strike at the Act which was challenged in that particular case, and which flowed from that authority. But what has been the result? The Act has never been declared to be *ultra vires*. In May, 1897, one of the last cases was decided, and that was on the attempt made by the Inter-State Commerce Commission to extend its powers beyond the decision of 1886 by practically interfering with the internal commerce, and also to arrogate the rights of the states. The decision was described by a writer in the Forum as being one of the most momentous ever given in the United States courts, and it was that the power of the commission stopped at the attempt to make rates. It might declare whether a rate was or was not fair, but it could not make a rate. Mr. Barton was justified in stating that, under the operation of this clause, the principle affirmed in 1886 would operate here. But there is a doubt as to whether the Federal Parliament will have power to create a commission if
we do not retain in the Constitution clauses 96 and 97. The reason is this, that it was declared that there was a special class of commerce and a special class of rates that the states could not touch. Congress sought for a means of carrying out the spirit of that decision, and it found precedents in existence in the case of the states. The Inter-State Commerce Commission was only the last of several commissions appointed. Just as the Board of Trade in England has power to regulate railway rates, so in the United States there were commissions appointed to do, in regard to the internal traffic of the states, what the Inter-State Commerce Commission had to do with regard to inter-state traffic. I say, therefore, that following the ordinary state method of regulating traffic, and maintaining equality of trade within the states, the United States Congress were justified in appointing an Inter-State Commission, because they found precedents and analogies in the case of the states themselves. The power of, by this means, regulating

interstate commerce could scarcely be challenged by states that had done the very same thing with regard to that portion of railway management that lay within the field of their jurisdiction. In Australia the analogy fails. There they were private railways. Here they are state railways. There they had state commissions, and here we have none. The British precedent of the Board of Trade does not hold here either, and, unless you make provision in the Constitution for the appointment of an Inter-State Commission, the power of the Federal Parliament to appoint such a commission as a means of carrying out the spirit of sub-section (1) of clause 52 may be challenged. Mr. Barton declares that this cannot interfere with the operation of clause 52. He says that we can do no harm by putting it in, and as its omission may affect the powers of the Parliament, we ought to act on the principle that modest doubt is the beacon of the wise, and make assurance doubly sure by inserting it in the Constitution.

Sir JOHN DOWNER (South Australia). -

I should prefer, instead of "The Commonwealth shall not give preference," the words "Preference shall not be given." That is a more striking way of phrasing the clause, and I think also that it might remove the fears of some honorable members that this may refer to the Commonwealth and not to the states. I recognise the force of what the leader of the Convention says, that the provision already in the Bill that trade and commerce between the states shall be absolutely free might make the clause unnecessary. But if the clause is necessary at all, I certainly do not think it expedient that it should be confined to the Commonwealth, because it might seem to be almost a limitation rather than an authority. If
trade and commerce between the states is to be absolutely free, then neither Commonwealth nor state should be able to make any law interfering with it. To give a preference would certainly be to interfere with the freedom of trade and commerce. What do we mean by freedom? Do we not mean that there should not be any preferences?

_Sir GEORGE TURNER._ -

Would you say that making a low rate would necessarily be an interference with the freedom of trade?

_Sir JOHN DOWNER._ -

No, but it would be a preference, and so I shall submit for the consideration of the committee whether, instead of the words "The Commonwealth shall not give preference," we should not put it abstractly by saying "Preference shall not be given."

_Mr. ISAACS._ -

In America they have put it abstractly, and it only relates to the Commonwealth.

_Sir JOHN DOWNER._ -

We have heard too much of the American decisions. I should prefer saying what we mean, and supposing that we might have our meaning interpreted in accordance with our intentions, and not in accordance with the, American decisions. We should not slavishly follow a Judge-made law, or a precedent in which the Judiciary supplied the defects of legislation. I should prefer to risk putting in plain words what we mean, and testing the Judiciary to interpret it according to our undoubted intentions. It is not necessary to suppose that, because we use the same words as are used in the American Constitution, we intend them to be interpreted in precisely the same way. If some case of the kind occurred in Russia we should not consider that we were bound by the decision given, and I do not see why we should be bound by the American decisions when we use words which ought not to be difficult of interpretation. For these reasons I think it better to put the matter abstractly. I beg, therefore, to move-

That the words "The Commonwealth shall not give preference" be struck out, with a view to the substitution of the words "Preference shall not be given."

That will have this effect. If the other words are broad enough to prevent any state legislation on the subject, these words will not do any harm. If they are not broad enough they may do some good. At all events, they contain a general enunciation of what we desire to provide—that preferences
shall not be given by any law, whether it is made by the Commonwealth or by any state. I cannot see that there can be any objection to using these words. As you have already provided for the states, there is no harm done by putting in these words. If the other words are not broad enough, then these words supply the defect.

Mr. OCONNOR. -
That re-opens the whole difficulty we have been dealing with all day.

Sir JOHN DOWNER. -
I do not think so.

Mr. BARTON (New South Wales). -
My learned friend (Sir John Downer) says that we have had too much of American decisions. The difficulty in our way is that where you have a Constitution such as this is, which reserves to the states all rights that are not taken away, expressly or by necessary inference, a provision of this kind cannot be read to have any reference to the states. I believe it is from that principle that a provision almost in these words in the United States Constitution has been held to be a prohibition on the Congress alone, and not on the states. The Constitution, as ours proposes to do, keeps to the states all powers not taken away expressly or by the necessary interpretation of powers given to the Federation. That being so, I take it that what my learned friend now proposes would necessarily be read by any court, whether in the United States or anywhere else, in the same way as applying only to the Commonwealth, because the states will retain all powers which are not taken away from them, either by the mere operation of the Commonwealth powers or by the necessary incidence of the Commonwealth powers. It was in deference to honorable members that I made this clause begin with the words-"The Commonwealth shall not give preference." Although we thought that the legal interpretation of it was perfectly clear, it was suggested to me that I should use the words "The Commonwealth shall not give preference," instead of saving "Preference shall not be given," in order that honorable members might have no doubt as to what the meaning of the American decision was. I do not believe that the amendment of my learned friend, if it is carried, will affect the meaning of this suggested clause at all. If the committee thinks it better to have the words in this way I have no objection, because I have not the slightest doubt that they both mean the same thing.

Sir GEORGE TURNER. -
They would not have the same meaning in the eyes of the public outside.

Mr. BARTON. -
That may or may not be. If the committee prefers the way in which my learned friend wants it to be put to my way, believing that they mean the
same thing, I am willing to leave the matter entirely in their hands without the slightest feeling about it. I really do believe that the words as they are put are, on the whole, likely to be better understood. The reason why the states are interdicted from making laws or regulations which conflict with the freedom of trade and intercourse in the Commonwealth is because clause 89 says that after the imposition of uniform customs trade and commerce amongst the states shall be absolutely free. That is, the reason why the states themselves would be interdicted from doing anything which conflicts with the federal power to regulate trade and commerce. I conceived that the states were sufficiently dealt with by clause 89, and that the only remaining thing was to deal with the Commonwealth itself, which I thought I was doing by proposing this clause.

Mr. ISAACS. -
Clause 89 also prohibits the Commonwealth

Mr. BARTON. -
It prohibits the Commonwealth too,

Sir JOHN DOWNER (South Australia). -
I do not object to the words "by the Commonwealth or by any state" being kept in, as I think that is an improvement, but it appears to me that the whole of the arguments of my learned friend in reference to the effect of clause 89 apply with equal force to this clause, and go to show that it is unnecessary. I notice that an honorable member interjected that this was reopening the whole question. I do not see it in the slightest degree. It is all a question of phraseology. It is a question of altering the Bill in the form in which we passed it in Adelaide, and the form in which it was passed in 1891. It is simply a question of whether we will say that no preference shall be given by the Commonwealth. Surely there is no interference with any principle if we say that no preference shall be given by anybody, the Commonwealth, or any one else? I think, sir, I must very respectfully insist on my amendment being put.

Clause 95 was struck out.

Mr. BARTON (New South Wales). -
I move -
That the following stand clause 95 of the Bill:-The Commonwealth shall not give preference by any law or regulation of commerce or revenue to one state, or any part thereof, over another state or any part thereof.

Sir JOHN DOWNER (South Australia). -
I beg to move as an amendment-
That the words "or any state" be inserted, after the word
"Commonwealth," in the proposed new clause.

Mr. LYNE (New South Wales). -
I should like to know what the meaning of this amendment is?

Mr. REID. -
There must be something in it, or there would not be such a fight over it.

Mr. LYNE. -
I wish, to know what the effect of the amendment is? The words of the amendment are very few, but they may have a very considerable meaning. I think we should know, what we are going to vote on.

Sir GEORGE TURNER. -
We know what it is.

Mr. ISAACS. -
I know what its effect will be.

Mr. LYNE. -
If the learned member knows what the effect of the amendment is, he might tell me what it is.

Mr. ISAACS. -
I will.

Sir JOHN DOWNER (South Australia). -
As the clause is drawn, it says the Commonwealth may not impose preferential rates. The leader of the Convention says that they have already provided that states may not do so. Therefore, all you have to protect yourself against is the Commonwealth. If the leader of the Convention is right we need not put anything in. It would be superfluous, and might operate as a contradiction of the other clause.

Mr. LYNE. -
I am quite satisfied.

Sir JOHN DOWNER. -
We put this in so as to make no possible mistake.

Mr. ISAACS (Victoria). -
From a Victorian standpoint, it means that we are to lose the Riverina trade absolutely. It means that no state is to give a preference to any one state over any other state, that is to say, that we are not to give any differential rates or preferential rates with regard to goods that come from the Riverina over our own goods; we must charge the same.

Mr. LYNE. -
You don't want to impose these differential rates, do you?

Mr. ISAACS. -
That is what it means to Victoria. We would be perfectly willing if some fair scheme of federalizing the railways could be adopted, or, in the alternative, to be allowed to work out our own salvation; but we distinctly
object to have this taken out of our hands; without any compensating return. Our revenue has been taken, our bounties have been taken, our rivers, have been taken, and this is another proposal to take our railways, too.

Mr. REID (New South Wales). -

I think it is quite enough for me to say that although, for the first time, our friend Sir John Downer will not follow his chief, I will.

Sir JOHN DOWNER (South Australia). -

Well, even that does not affect me very much.

Mr. PEACOCK. -

You complained about the members of the Finance Committee not sticking together; the members of the Drafting Committee ought to stick together.

Sir JOHN DOWNER. -

The Drafting Committee agree to matters of form.

Mr. REID. -

Is not this a matter of form?

Sir JOHN DOWNER. -

No, it is a matter of substance.

Mr. REID. -

I thought you believed so, or you would not have spoken three times.

Sir JOHN DOWNER. -

I am glad to hear my right honorable friend say that. I now ask for leave to withdraw my amendment, in order that I may move another in lieu thereof.

Sir John Downer's amendment was, by leave, withdrawn.

Sir JOHN DOWNER. -

I now beg to move that the words- "The Commonwealth shall not give preference," be struck out, with a view of inserting "Preference shall not be given."

Mr. ISAACS. -

That is exactly the same thing.

Sir JOHN DOWNER. -

I prefer to move the amendment in that form.

Mr. OCONNOR (New South Wales). -

The amendment in the form in which Sir John Downer has just proposed it means this-that if we carry it, we undo all the work we have done to-day.

Sir JOHN DOWNER (South Australia). -

Mr. O'Connor says that the amendment, if carried in its present form, will
undo all we have done today, whereas the leader of the Convention told us that he does not care which way it is put, because it means identically the same, so that we have the melancholy spectacle of every member of the Drafting Committee disagreeing with the other members of that committee.

Mr. DEAKIN. -
Is this what you call federation?

Sir JOHN DOWNER. -
This is only putting, in an abstract way-

Mr. DEAKIN. -
What we have put concretely?

Sir JOHN DOWNER. -
Yes, what is put too concretely.

Mr. TRENWITH (Victoria). -
It seems to me that if Sir John Downer's amendment will have the effect that he contemplates, it will be extremely undesirable to carry it. The honorable gentleman contemplates, I assume, that it will prohibit states from giving a preference, under any circumstances, to their own citizens over the citizens of another state.

Mr. WALKER. -
And vice versa.

Mr. ISAACS. -
If it will leave New South Wales to do as she likes, but it will not leave Victoria to do as she likes.

Mr. TRENWITH. -
If it will leave one state to do as it likes, it should surely leave another state to do as it likes? But it might prevent states doing anything for the benefit of their citizens in a manner which would not be prejudicial to the rest of the Commonwealth. The presence of these words might have the effect which Sir John Downer thinks they would have. I think that would be extremely baneful and pernicious, and therefore they should not be carried. I have in mind a question which we were discussing the other day-the question of old-age pensions. It might happen that a state would think fit to give old-age pensions to its own citizens, and also provide that citizens of another state should not participate in those old-age pensions, even though they came to reside in that state, until they had lived there a certain length of time, and the presence of these words in the clause might prevent a policy of that kind being carried out by a state.

Mr. HOLDER (South Australia). -
I want to state the position in which I find myself. Just now I heard the leader of the Convention say that this
amendment was not at all necessary, and that all that it would secure was in
the Bill already, so that it was simply a placard. Now we are told by Mr.
O'Connor that these words will not do at all, because, he says, if we put
them in we will undo all that we have done to-day. Now, are we to follow
the leader of the Convention or are we to suppose that these words include
some new principle? I was prepared to vote with the leader; I am now
prepared to vote with Sir John Downer, because it is now evident to me
that these words mean something that is not already in the Bill, and that
without them the Bill would be, to a large extent, a farce.

Mr. DOBSON (Tasmania). -
I do not see how any honorable member who is not very well versed in
these railway rates can possibly give a vote until this confusion is cleared
up. We have had two members of the Drafting Committee differing before,
and now we have all the three pulling in different ways. I ask Sir George
Turner to indorse or explain away the statement made by the Attorney-
General of Victoria, to the effect that if Sir John Downer's amendment is
carried it will practically deprive Victoria of all the Riverina trade, and will
do an injustice to Victorians in that way.

Mr. ISAACS. -
Cannot you test the principle of it by your own experience and
knowledge?

Mr. DOBSON. -
I thought that the whole debate, to-day and yesterday, was straining in
the direction of having some fair uniform rates in reference to our
geographical boundaries, and that one state was not to deprive another of
the trade or traffic which nature gave it. If Sir John Downer's amendment
will be unjust to Victoria in reference to traffic that is 200 miles nearer
Melbourne than Sydney, I shall be inclined to vote against that amendment.

Mr. GRANT (Tasmania). -
I may point out to Mr. Dobson that Sir John Downer's amendment cuts
both ways. Although it would prevent Victoria making a railway tariff
which, at present, would be somewhat unjust, as compared with the New
South Wales railway tariff, it also prevents New South Wales from making
a tariff which would be somewhat unjust as compared with the Victorian
tariff.

Mr. ISAACS. -
No, they cater for the Riverina trade, which will be in their own territory,
and, therefore, they do not interfere with the trade between different states.

Sir GEORGE TURNER (Victoria). -
There seems to be some misapprehension with regard to this particular
clause. As it stands now, we, who represent Victoria, see no objection to it.
It is protect

Sir JOHN DOWNER. -

You are quite right.

Sir GEORGE TURNER. -

The Attorney-General of Victoria merely said that that was something which we could not accept, for this reason, that while you tie the hands of Victoria you leave the hands of New South Wales absolutely free. We all know very well that we have a limited area in Victoria, and that the trade we get from Riverina,-we say properly get, geographically-comes from a portion of New South Wales into Victoria. If we are not to be at liberty to give preferential rates to get that trade we shall be deprived of that trade altogether, but New South Wales can make any arrangements she pleases to get that trade.

Mr. LYNE. -

I think you have shown your hand a bit too clearly.

Sir GEORGE TURNER. -

I have, from the very start.

Mr. PEACOCK. -

It is a pity that more members of the Convention have not done as Sir George Turner has done all through.

Sir GEORGE TURNER. -

I have no doubt that I have shown my hand too clearly from the start, but I tell you now plainly that if it is the desire of New South Wales to take away from Victoria the trade that she has had for so many years, without allowing us to be on fair grounds to compete with New South Wales-for that trade, then they are asking for something which I shall be obliged to tell the people of Victoria, as the Premier of this colony for the time being, not to grant.

Mr. REID. -

But we do not want any thing of the kind.

Sir GEORGE TURNER. -

I believe that you do not want anything of the kind; but I am pointing out that the effect of these alterations will undoubtedly be to give to New South Wales the right to make any rates she thinks proper regarding all the trade within her own borders, which would mean the right to make such low rates as would take this Riverina trade to Sydney, if need be, practically for nothing, whereas Victoria would not be able to make such rates, as would insure that trade continuing to come in the course in which it now comes. That is the plain simple question, and is what, we have been fighting all along. I am perfectly prepared to allow that the two colonies
should be put on level ground to fight this matter out afterwards, as we have been fighting it in the past. We are perfectly prepared to fight, because in the past we have succeeded well. But we do not want to fight.

Mr. REID. -

Let us come to the agreement of 1895 and settle everything comfortably.

Sir GEORGE TURNER. -

That agreement was no doubt very profitable to the railways, but it meant ruin to many merchants in Melbourne.

Mr. REID. -

I am glad you are looking after the merchants at last.

Sir GEORGE TURNER. -

I look after every class; but my friend (Mr. Reid) has told us that he only looks after the squatters, because he can get a lot out of them. We are prepared to let the clause go as it stands. But we cannot agree to an alteration which would prohibit states making rates as matters now stand. Then it is sought to make another alteration, simply saying that preference shall not be given. That throws us back into the realm of doubt and difficulty, out of which we have all been trying to get. What does the alteration mean? My honorable friend surely believes it means, that preference should not be given by the Commonwealth or the state; otherwise he would not propose it. If all that is meant is that preference shall not be given by the Commonwealth there is no need for the alteration. If the idea is that preference should not be given by the state, let my honorable friend say so; in so many words, and not use language which people might believe meant that by the American decisions the Commonwealth was referred to when the states are intended.

Mr. CARRUTHERS (New South Wales). -

I am very glad indeed that the honorable member who has just resumed his seat has spoken in the manner he has. I have been contending against the majority of the New South Wales representatives in favour of embodying some such proposal in the Bill as will be carried if this amendment, proposed by Sir John Downer, be carried. I have contended that for the reason that I see the passage of the Bill without such a proposal means to hand over the whole trade of the Riverina to Victoria, leaving to New South Wales nothing but her assets in the shape of her railways. I said before that geographically

the Riverina trade belongs to Victoria, but if Victoria is to get that trade it should not get it at the price of the ruin of the large and valuable assets belonging to New South Wales in that district.

Sir GEORGE TURNER. -
We were there long before you were there to make the assets.

Mr. LYNE. -

That does not constitute any proprietary.

Mr. CARRUTHERS. -

At the present time no one ought to know better than Sir George Turner that the bulk of this trade now flows into the port of Sydney, and flows there owing to the fact that Victoria itself has put up barriers to the trade coming to Melbourne. But let these barriers in the shape of high prohibitive duties be removed and the trade will flow to Melbourne. Sir George Turner is doing the right thing for his colony in advocating a course which will allow that trade to come to Melbourne, and to be a profit to his colony. As a free-trader, I have no objection to the flow of trade to its natural channel, but I do object to an injury being done to a vested interest, and a national interest, of New South Wales without some compensation. I have always claimed that, as federation will wreck and ruin interests here and there, to the right and to the left, in regard to commerce and traffic, compensation should be provided in the taking over of the arteries of traffic, and making the profits pay for the losses. I always took the consistent position that, so long as this Federation is built on lines which refuse to take over the great national artery of Australia, then every care should be taken to safeguard the assets which we left to the various states in a ruined and crippled condition. I hope my colleagues will see that as clearly as I do. I have travelled this district from end to end, and know the condition of the colony there. If you give Victoria a free hand to make preferences for New South Wales trade over its own trade, you will hand over the traffic to the sister colony of Victoria. Why should Sir George Turner be ready to give New South Welshmen, with their wool and stock, rates on his railways which he refuses to give to his own colonists of Victoria? I have no objection to low or differential rates on the Victorian railways, but I have every objection to rates which favour the people of Albury, and which Victoria will not give to the people of Wodonga. That is not federation at all. We shall have to wait for another century until the federal spirit is stronger in the hearts of the people than is shown at the present time. If you are going to leave what will breed up bitterer feelings than the Tariff-if you are going to allow Victoria to make war on the revenue and territory of New South Wales by means of railway rates-then the federation that does come will be a sham and a farce, and the people will not be slow to see it. I give all credit to the Premier and the Attorney-General of Victoria for having in plain language said what is the meaning of the amendment. I take my present attitude on the amendment, not from any selfish motive for protecting New South Wales, but in order that we who are building this
Constitution may say there is something more to federate than the mere freedom of trade and the Tariffs. You may federate, but you will be leaving weapons which will be used with as keen effect in the future as in the past. I look to the amendments moved by the various colonies to clause 95, but I look in vain for the amendment suggested by Victoria. Sir George Turner tells us that if this amendment is carried he will advise the people not to accept the Bill. And yet, forsooth, neither House of the Victorian Legislature has proposed the slightest amendment on the clause. The clause as drafted at Adelaide has been before the Legislative Assembly and the Legislative Council of Victoria, and neither House has suggested that one line or one word be amended in the slightest degree. Then we are told it is against the instincts of the people of Victoria to accept the clause. The federal instinct is truer in Victoria, perhaps, than has been voiced this evening.

Sir GEORGE TURNER. -
We do not object to the clause.

Mr. CARRUTHERS. -
I would not have spoken now but for the reason that I believe the foundation of a true Federation will be built on lines which will do away with all those differences between men of the various colonies, and will do away with that feeling and those laws which give a better place to a New South Welshman because he comes from that colony, and to a Victorian because he comes from Victoria. I believe in having equality of rates for people in regard to trade and commerce, not merely through the ports and customs, but in everything which governs trade. I should go with Sir George Turner and Mr. Isaacs if they would press the matter to its logical issue, and propose to remove the difficulties which we had to face in the financial proposals, and which we have to face now, and if they will join hand in hand with those who believe that federation should be built on lines which will remove all those things containing within them the germs of conflict. I invite my friends, therefore, at some stage, to propose that the railways be federalized.

Mr. PEACOCK. -
And also the River Darling?

Mr. CARRUTHERS. -
Well, I should not object to let the Darling be federalized, as I said in my speech on the question; but to allow that river to be used to compete with the state railways is one of my great arguments against it. But I said then, as now, that you will remove difficulties of a varying character and on various points by at this late stage adopting some clause which will
federalize the railways. I intend to vote for this amendment, simply because I believe it does mean that it will restrict the right of Victoria or any other colony to attempt unduly, and improperly, and unfairly to attract trade from a sister colony, leaving it perhaps with a ruined asset.

Mr. REID (New South Wales). - My colleague has expressed himself with very great earnestness, and we all know that he has a very strong feeling in favour of federalizing the railways. He has taken advantage of the turn which the debate has assumed to repeat, in still stronger and more emphatic language, his views on that subject. But when he says that the settlement which this Convention is apparently about to arrive at will expose the New South Wales railways in the Riverina district to ruin, I beg leave, with much superior knowledge of the subject, and as Minister for Railways, to assure my colleague that he is absolutely mistaken. Not only have I to assure him that he is absolutely mistaken, but I have to go further and tell him that, unless this settlement which I am supporting is carried out, his statement would have a much greater significance, because, taking the railways of Riverina as they exist today, it is absolutely the case that, unless we are allowed to apply different rates to those railways from the other railways in New South Wales, they will be absolutely crippled. I am speaking now, not only on my own authority, but on the authority of the responsible officers of the Government, whom I have had with me in long and serious consultation. My honorable friend is absolutely wrong.

Mr. CARRUTHERS. - Does that apply to preferential or differential rates?

Mr. REID. - It applies to the Riverina railways. I can assure my honorable friend that unless we are allowed the liberty to establish rates there as we please, in the interests of our own railways, the value of those railways will be seriously impaired. I am supporting this proposal in common with my honorable friends from Victoria, for perhaps the for that is, as my honorable friend says (and there he is perfectly logical), the federalization of the railways absolutely, or a friendly agreement between the colonies concerned. I deeply regret that that friendly agreement has not been arrived at, but that is no fault of ours. Our commissioners, the commissioner of Victoria, and the commissioner of South Australia did arrive at a friendly agreement, but the powers above the Victorian Commissioner cancelled that agreement. My honorable friend spoke of a conflict between New South Wales and Victoria on this matter. I can assure him that I look forward to any such conflict with
absolute confidence. I feel that, as this Bill is going through, I shall be quite prepared to meet my friends in Victoria in that friendly dispute which exists between us in connexion with the Riverina trade. If they are satisfied with it I am sure I can be.

Mr. SYMON (South Australia). -

I only rise to ask Sir John Downer not to press his amendment. As Mr. Barton's amendment stands, it is quite clear that it is the Commonwealth that is not to give any preference. Sir John Downer's amendment, which, as a form of words, I infinitely prefer, does evidently leave it in doubt whether that language may not be interpreted so as to give a prohibition not merely as regards the Commonwealth, but as regards the states. On the principle according to which I sought to act in the few remarks I made earlier in the day, I think it is undesirable, if we can have clear language, that we should have ambiguous language. On that ground I ask my honorable friend either to withdraw his amendment, or to put it more clearly.

Sir JOHN DOWNER (South Australia). -

I feel some difficulty in withdrawing the amendment after listening to the speech of the Premier of Victoria, because that showed such a complete misapprehension of everything we are doing that it shook to the foundation my ideas of the agreement we were coming to. I understand the right honorable gentleman thinks that, in spite of all the provisions about states treating each other fairly and everything else, it would be still quite open for any one to make a preferential railway tariff as against another state for the purpose of getting the full benefit of what that state considers are the natural advantages that ought to belong to it. I understand that is exactly what the Convention intends to prevent—that is, to prevent natural advantages being created by preferential tariffs. If the natural advantages exist you have to get the benefit of them on their own merits, and not by reason of any preferential rates which you make, and which give people in another state, not in your own state—because you can do what you like in your own state—a preference which it is the very object of the Convention to prevent. It is very agreeable to me to find the enforced accord of the two Premiers, and it is sweet to know that they agree.

Mr. HOLDER. -

Agree to have opposing armies on each side of every border.

Sir JOHN DOWNER. -

That is what they say, but although their promise is most gratifying to the ear, it is, I am afraid, rather blighting to the hope, because the view of the Premier of Victoria is that they should be left alone to fight out their own battles. And the very object of the Convention is to leave no battles to be
fought out.

Sir GEORGE TURNER. -

You want to leave us with nothing to fight with, while you leave the other people everything to fight with.

Sir JOHN DOWNER. -

I am sure the right honorable member will agree that I do not wish to have anything of that kind.

Sir GEORGE TURNER. -

That will be the effect.

Sir JOHN DOWNER. -

I do not think it will be the effect. If my right honorable friend thinks that the words which he wishes to preserve in this clause will give him what he wants, he will find that, in the result, he is grievously mistaken, because I am perfectly certain that the other clause which the leader of the Convention has referred to is quite good enough to prevent Sir George Turner from entering into the contest which he seems to very agreeably contemplate.

Sir GEORGE TURNER. -

We do not.

Sir JOHN DOWNER. -

Then we had better understand each other.

Mr. REID. -

Do not make mischief between two friends.

Sir JOHN DOWNER. -

I admit that it is a nasty job, especially so late in the evening.

Sir GEORGE TURNER. -

I shall be glad if my honorable friend will show me that I am wrong; he has a better knowledge of constitutional matters than I have.

Sir JOHN DOWNER. -

I think the right honorable gentleman is wrong.

Sir GEORGE TURNER. -

I shall be glad if my honorable friend can show me that I am wrong.

Sir JOHN DOWNER. -

The view I take is that, according to clause 89, as the leader of the Convention has stated, it is quite clear that as soon as uniform duties have been imposed there shall be absolute free-trade between the colonies.

Mr. GORDON. -

That would not be so for five years.

Sir JOHN DOWNER. -

Then there is an addendum proposed. The view which Mr. Barton took
about the matter was that this makes it impossible for any state to impose a railway tariff which might operate as a limitation on trade and commerce.

Mr. ISAACS. -

How do you say that these two things are identical?

Sir JOHN DOWNER. -

Well, that is my opinion. As a matter of law, in my opinion, these words are broad enough to give the High Court jurisdiction to stop any Victorian Tariff or any New South Wales Tariff which would have the effect of interfering with perfect freedom of trade; and if it should appear on the hearing of a case that New South Wales or Victoria had imposed a Tariff for the purpose, or which had the effect, of interfering with that provision for intercolonial free-trade, the provision, I think, would be held to be void.

Sir GEORGE TURNER. -

That is to say, a state can put on a Tariff to keep trade within its own borders, but not to draw trade from another state.

Sir JOHN DOWNER. -

A state can impose any Tariff within its own borders just as it pleases so long as that Tariff does not interfere, or has not the effect of interfering-I use both terms-with perfect freedom of commerce between the different colonies.

Sir GEORGE TURNER. -

Then I shall have to object to that clause as well as to the other.

Sir JOHN DOWNER. -

Very likely, but it is just as well at this stage that we should understand one another.

Sir GEORGE TURNER. -

Hear, hear.

Sir JOHN DOWNER. -

I do not believe in thinking to one's self-"It is all right; they think it means that." Federation should be founded on a perfect understanding at the beginning, so that we can put trust in each other in the future. I thought it was to a large extent a matter of form when I moved this amendment, but I see now that it is a matter of substance. I thought it was a matter of form until the Premier of Victoria was invoked and gave vent to the utterance in which he showed, I think, a slight misunderstanding those federal principles that should be kept in view, and seemed to think that whatever may be done with regard to the other colonies, at all events, New South Wales and Victoria should on one particular question be left to fight it out between themselves. That is not the intention all.

Mr. HIGGINS. -

Hear, hear; and it ought not to be.
Sir JOHN DOWNER. -
There is no fighting it out between the colonies to be permitted. The whole question is to be put in the domain of law under the authority of the new Parliament you are creating, and when you provide this law, if the right honorable gentleman says that he understands that after that Victoria or New South Wales can impose preferential rates in respect of certain classes of trade, I say unhesitatingly that that is exactly what this Bill is intended to prevent. I am sure that my right honorable friend (Mr. Reid) will agree with me in that.

Sir GEORGE TURNER. -
I agree with you, too, only my difficulty is in the way you are wording it, and leaving New South Wales to do exactly what she likes, and shutting Victoria absolutely out.

Sir JOHN DOWNER. -
If my right honorable friend can show me that that is so I shall be with him. What we have said is that no state shall impose preferential rates.

Sir GEORGE TURNER. -
That is, within the colony?

Sir JOHN DOWNER. -
Yes.

Sir GEORGE TURNER. -
That makes all the difference. We have a little bit of a colony, and New South Wales has a very big territory, and if she imposes differential rates they will, so far as we are concerned, have the effect of preferential rates.

Sir JOHN DOWNER. -
My right honorable friend can impose whatever differential rates he likes, but not against another state.

Mr. ISAACS. -
They are not against another state.

Sir JOHN DOWNER. -
That is how I read it. Under all the circumstances, I think I must decline to withdraw my amendment.

Mr TRENWITH (Victoria). - I would respectfully point out to Sir John Downer that what he contemplates, and what is in the mind of Sir George Turner, is such an application of authority to railway rates within the colony as will have the effect of preventing the contravention of absolute freedom of intercourse between the colonies, as it is properly understood; that is to say, as will prevent trade from flowing in its natural channels. I do not mean by creating a barrier in the shape of anything like customs duties, or by what would be called preferential rates, but by creating what
may be called a magnet to attract trade to a certain point to such an extent as to constitute a barrier to that trade flowing to its natural outlet. Taking the illustration we have in our mind, Riverina is about 200 miles distant from Melbourne, and about 400 miles from Sydney, and if there are no preferential or differential railway rates, the trade of Riverina will naturally flow to Melbourne. If there were complete freedom of inter-course between the colonies, most of the Riverina trade would take its natural course. But if any attraction is created to draw it to another point, that is to all intents and purposes a barrier to prevent the trade flowing to where it would flow were it not for that artificial attraction. That is exactly what Sir George Turner fears, and exactly what Mr. Reid has indicated, will take place. An attraction will be created in New South Wales in order to draw the trade of Riverina, not to where it would naturally flow in pursuance of the spirit of freedom of trade throughout the Commonwealth, but, in consequence of the attraction set up, to Sydney; and this attraction will operate as a barrier to the trade coming to Melbourne.

Mr. HOLDER. -

That is the kind of thing that the Victorian representatives have been fighting for all day.

Mr. TRENWITH. -

Well, we are present fighting as independent states. That is to say, we are doing our best for our respective states—for the states we have the responsibility of managing. We are not at present united. But we are actuated by the federal spirit, and claim that immense advantages will come from the adoption of free and unfettered intercourse between the various states of the Commonwealth. Can any one say that we have unfettered intercourse when you allow all the resources of a powerful state to be devoted to attracting some of the trade within the Commonwealth from some particular point to which that trade would otherwise go? If we are to have it, we must be permitted to have it on fair and equal terms. We must not be expected to be content to juggle with the terms "differential" and "preferential." We will not be content to see the interference with trade by one system of rates permitted simply because those rates are called differential, and do not apply specially to traffic coming from beyond the boundary of a colony, and a similar kind of interference prohibited because it is brought about by rates termed "preferential." We have been fighting for the Riverina trade, and the Premier of Victoria says that we are prepared to continue to fight for it, and the probability is that, with the natural advantages so greatly in our favour, we shall fight for it successfully. But, if we are not to fight, the matter must
be referred to some competent and fair tribunal, which will have the power to deal, not only with rates affecting the carriage between states, but also with rates which do not apply outside the colony in which they are levied, though they are designed to influence traffic in another state. I respectfully submit to the honorable member (Sir John Downer) that freedom of intercourse between the states should mean that the natural flow of trade in the Commonwealth should not be interfered with. If the honorable member carries his amendment he will, as has been pointed out by the Premier and by the Attorney-General of Victoria, tie the hands of this colony in its struggle for a trade which the Secretary for Lands of New South Wales has said naturally and properly belongs to it.

Mr. SYMON. -

The amendment of the honorable member (Sir John Downer) means really the same thing as the amendment of the leader of the Convention.

Mr. TRENWITH. -

I think it does not, and I will endeavour to show why. Under this provision New South Wales could carry goods from Riverina to Sydney practically for nothing; not to make her railways pay, but to divert trade to Sydney.

Mr. SYMON. -

The Inter-State Commission would come into operation if this were unfair.

Mr. TRENWITH. -

We have not yet established the Inter-State Commission.

Mr. SYMON. -

But we are going to establish it.

Mr. TRENWITH. -

If we establish an Inter-State Commission the amendment will be absolutely unnecessary.

Mr. REID. -

Even if the Inter-State Commission is not established you will have the protection of the Supreme Court of the Commonwealth, which will surely be as good.

Mr. TRENWITH. -

The Federal Supreme Court will have to interpret the law as we make it, and if we agree to this amendment the court will say that New South Wales is acting within its rights in creating a strong attraction to draw trade to Sydney, because it does not by any export duty or tax prevent trade from coming to Victoria. If we leave that clause as it stands, it is doubtful whether we shall have the power to fight upon the best terms we can make for this trade that naturally and geographically belongs to us. This trade
was created and has been developed by Victorian money.

Mr. REID. -
I should think that the people who settled in Riverina created it.

Mr. TRENWITH. -
It has been created by Victorians, and with Victorian money.

Mr. CARRUTHERS. -
Out of New South Wales land.

Mr. BARTON. -
Was the money a gift?

Mr. TRENWITH. -
No; it was spent to obtain a profit.

Mr. LYNE. -
Are you sure that you did not create Sydney?

Mr. TRENWITH. -
If we took the honorable member's estimate of himself, we should think there was very little he did not create. I am sure that Sydney money and Sydney people did not develop the Riverina trade, and that it was developed by Victorian money spent by Victorians living in Riverina—of course, to make more money. I am not saying that we have done anything to be proud of, or to be thankful for; I am only showing that this is our trade, and that, if no barriers are created, it will flow to Melbourne.

Mr. REID. -
Since our squatters settled Victoria, we might say that we created this colony.

Mr. TRENWITH. -
No doubt, to some extent you have done some good for Victoria, but there can also be no doubt that you have done harm. However, that is not the matter we are discussing now.

Mr. LYNE. -
The honorable member wants Riverina.

Mr. TRENWITH. -
Yes. But I would see no objection to your having it if there is a fair fight, and our hands are not tied.

Mr. KINGSTON. -
The honorable member proposes to fight. That is a nice way to federate.

Mr. TRENWITH. -
If we are to declare that above all things, and at all times, there shall be absolute freedom of inter-course between the colonies, we must tie the hands of New South Wales, and prevent that colony from doing what we are not to be permitted to do.
Mr. LYNE. -

From getting its own trade from its own territory?

Mr. TRENWITH. -

That is where my honorable friend lacks the federal spirit.

Mr. REID. -

The honorable gentleman shows the Victorian spirit.

Mr. TRENWITH. -

The honorable member (Mr. Lyne) cannot get beyond the boundaries of his colony. While he is clamouring for the abolition of the barriers we have created, he wants to raise up barriers himself. I admit that Victoria has probably done more than any other colony to establish barriers upon the borders, but we are now talking about knocking down these barriers. If we knock them down, let us make it impossible for any one else to create similar barriers. If the amendment of the honorable member (Sir John Downer) be carried, the hands of Victoria will be tied, while the hands of New South Wales will be left unbound, and New South Wales will be able to do, by means of differential rates, what we cannot do by means of preferential rates. Therefore, I strongly urge honorable members to leave the clause as it is. I consider that there must be an Inter-State Commission, which must have control of railways which go from state to state, and be able to interfere where railways are so managed as to influence the natural flow of trade between colonies. This commission must have the power to prevent one colony from imposing rates which will unfairly attract trade to its own territory. There can be no absolute freedom of intercourse between the colonies unless the power to create barriers of any kind at all is taken away.

Mr. MCMILLAN (New South Wales). -

It seems to me that either the clause must be passed as the leader of the Convention has drawn it, or, what may be better still, it must not be passed at all. A great deal of the debate has gone far beyond the position which we at present occupy. I have very great sympathy with the Premier of Victoria. Any specific clause which would prevent the people of Victoria from imposing preferential rates, while the people of New South Wales were allowed to carry on the struggle for trade by imposing differential rates, would be unfair to Victoria. But the question, of course, arises under other clauses of this Bill—for example under sub-section (1) of clause 52—could these preferential rates be continued? It is questionable whether they could or not. I do not think this Convention has absolutely settled whether that clause would do it or not. It would be a matter of opinion, more or less, among honorable members. Now, a great deal of
argument has been used, first, as if we had gone as far as the Inter-State Commission, which we have not yet reached; and, secondly, by my honorable friend (Mr. Carruthers) and others, entirely on the basis of the necessity to federalize the railways. Now, the railways cannot be federalized at the present time.

**Mr. CARRUTHERS.** -

It is just as easy as to federate the colonies if you only tackle it.

**Mr. MCMILLAN.** -

If we take the absolute opinion of honorable members of this Convention as to what they would like to see, probably there might be a majority in favour of federalizing the railways. Others would say that they hoped to see them federalized a little later on, but I think most will say that, as a matter of pure policy at the present time, we are not ripe for any such operation, and that any attempt to do that would practically jeopardize the whole of this scheme before the people. Now, we have only reached this stage, as far as I can understand it, in our Bill—that these preferential rates may be nullified by certain general clauses in the Bill, and it does seem to me that for us to put into this measure at this particular time anything that would strike a direct blow at Victoria until some other provisions have been made would be a very unfederal and unfair act. I myself believe that several other clauses which have been introduced of a declaratory character—of course, I only speak as a layman—are more or less surplusage, and I doubt—I say this, of course, with a great deal of diffidence whether this clause is necessary at all. It certainly seems to me—and I only just rose for the purpose of saying this—that it lies in all fairness between the clause as drafted by Mr. Barton and knocking out the clause altogether.

Sir John Downer's amendment was negatived.

On the question that the proposed new clause be inserted in the Bill, **Mr. HIGGINS (Victoria) said** -

I may state that several who voted with me this afternoon upon my new clause have indicated that they wish me to submit my proposal in a slightly altered form, and I propose to move it by way of an addition to the clause which the leader of the Convention is submitting. I propose to add to the new clause the following:-

Neither the Commonwealth, nor any state, nor any authority constituted by the Commonwealth or by any state, shall make any law or regulation relating to railway rates with the view of attracting trade to ports of one state as against ports of another.

The position is this: That in deference to the remarks which were made during the course of the debate today, I am going to restrict the proposal which I made to a prohibition of unfair differential adjustments with regard
to railway rates. My proposal this morning was criticised upon the ground that it was too wide. It has been said that as a sequel to the leader of the Convention's proposal, it would come in well if restricted to the case of railway rates. I have fully explained the position I take up, and I shall not do so again, but I may say that the object of this amendment is that we shall not have preferential rates, and that we shall not have unfair differential rates. I want to prevent both. I am convinced that if the clause were passed as the leader of the Convention has submitted it, preferential rates could be stopped, but unfair differential rates could not.

Mr. MCMILLAN. -

The ports of one state might be nearer than the ports of another.

Mr. HIGGINS. -

There would be no occasion then for any attempt to attract trade from one port to another. It is the suggestion I made this morning, modified to meet the criticisms of certain honorable members who said that my proposal was too wide. The effect of this would be that with one stroke we would stop both preferential and unfair differential rates. The proposal now is to be restricted to regulations or laws which relate to railway rates.

Mr. REID. -

You are simply giving us the same discussion over again.

Mr. HIGGINS. -

The Right Hon. the Premier of New South Wales is right, and he is wrong. He is wrong in stating it is the same thing. I have just indicated that it is different in one respect.

Mr. REID. -

I said that it raises the same discussion.

Mr. HIGGINS. -

I hope that there will be no discussion. I am simply indicating what the amendment is, and surely a member of the committee, on a grave matter of this sort, is at least entitled to do that. I am not going into any long discussion about the Wabash case. We have had enough of American decisions, and this is a most unfit place in which to discuss decisions. I know what I want, and I desire to put it in plain language which we can all understand.

Sir GEORGE TURNER (Victoria). -

I have been listening all day, without taking much part in the debate, to the arguments of our able constitutional lawyers with regard to the meaning of certain words and of certain clauses, and with reference to the effect of certain amendments. I confess that I am absolutely confused as to
the meaning of the clause, and as to the effect of the amendments. That being so, how can we expect the laymen in this Convention, and the people outside, to understand what we mean when we have framed this Constitution? We ought to have this matter settled once and for all in what seems to me to be a federal manner. It may be thought that I want to keep on this war of rates. I have no desire whatever to do that. I want it to cease at the earliest possible moment; but my one fear is—and I cannot get rid of that fear, although I may be absolutely wrong—that if I consent to these amendments, and to the clause in the Bill as proposed, I may be tying the hands of the colony of Victoria and leaving the colony of New South Wales absolutely free. That I cannot do, because when we once pass the Constitution we cannot alter it.

Mr. REID. -

You have a very able Attorney-General to advise you.

Sir GEORGE TURNER. -

I have an able Attorney-General, whose opinion I value, and whose opinion I generally find to be correct. I have other able colleagues who hold legal positions, and I find them differing absolutely as to the meaning of the clauses.

Mr. REID. -

It is these night sittings that are doing it.

Sir GEORGE TURNER. -

I want to deal with this matter in an absolutely federal spirit, and I say now that the length to which I am prepared to go is this: That if our Drafting Committee will put the clause in such a form as that it will leave to the Federal Parliament full and ample powers to decide all these questions with regard to warring rates, I will not only be prepared to support it, but I will be prepared myself to move it.

Mr. BARTON. -

I may say at once that I will not ask the Drafting Committee to take in hand any question of policy unless the Convention first expresses its view as to the policy.

Sir GEORGE TURNER. -

Then I will have to draft something myself which will carry out that idea, leaving it to the Drafting Committee afterwards to put it into proper shape. I always hold that those who have the drafting of a measure, who have every clause in their minds, should make any necessary amendments. Many of the serious defects in our laws are caused by amendments being proposed which in their particular wording do not work in with the wording used by the draftsman of the Bill.

Mr. BARTON. -
The Drafting Committee will be quite willing to render any assistance they can after the resolutions have been carried.

Sir GEORGE TURNER. -

That is all I can expect from the Drafting Committee.

I am not prepared to move that amendment to-night unless I put it into the baldest possible form. I voted against the Hon. Mr. Higgins' amendments because I believed they would have an effect contrary to what he intended. He is very strong in the opinion that they would carry out what he desires and what I desire. I have very grave doubts whether that is so. I think the proper course for us to pursue is not to attempt here to decide these matters. We are prepared, in regard to many more important questions, to place our absolute trust and confidence in the Federal Parliament to do what is right and just to all the colonies, and I say now, as one of the representatives of Victoria, that I am prepared to advocate that course with regard to this question, and I am prepared to press upon the people of Victoria that it is the proper course to take in the interests of federation.

Mr. HOLDER (South Australia). -

I wish to congratulate the right honorable member (Sir George Turner) on the speech he has made. I have been wishing all day, and a good many other members have been wishing too, that we could have the assistance of Victoria, as we had in Adelaide, towards a pacific policy, towards the ending of this railway strife; and welcome indeed the return of Victoria to the pacific fold.

Sir GEORGE TURNER. -

I offered this in Sydney.

Mr. REID. -

Wait a moment; don't be too soon, they may leave you again.

Mr. HOLDER. -

I offer my right honorable friend my congratulations right away, and if he will bring forward such a clause as he suggested, he will have a strong support from the colony I represent, and I will do my best to secure the passing of the clause.

Mr. BARTON (New South Wales). -

I wish to say a few words about the amendment of my learned friend (Mr. Higgins). It strikes me that he has made a very ingenious attempt to get this question before the Convention again, it having been practically settled this afternoon.

Mr. HIGGINS. -

I have been asked by several honorable members who misunderstood the question to bring it forward again.
Mr. BARTON. -

This amendment differs slightly in form from the other. It is in order, I think. If it had been in precisely the same terms as the other, it would not have been in order. The former amendment applied to all laws or regulations with the view to attract trade to the ports of one state as against the ports of another. The present amendment applies only to railway rates, but every honorable member knows that the amendment which was negatived was aimed at railway rates, and at nothing else.

Mr. HIGGINS. -

But several honorable members voted against my proposal because it was so wide.

Mr. BARTON. -

My belief of the matter is that the majority of the committee opposed that amendment because they thought that it was specially aimed at railway rates. We were discussing railway rates from the time we began this discussion, about three or four o'clock yesterday afternoon, till the time my learned friend moved his amendment, and I do not think anything else but the competition of railway rates has been the subject of discussion ever since that was moved. I think that nearly every honorable member who voted must have known what the drift of the amendment was. Inasmuch as my learned friend has restricted his present amendment to railway rates, instead of laws or regulations to attract trade from the ports of one state to the ports of another, it cannot be objected to on the score of order. But there is a more serious objection to this amendment. The former one was implanted in a clause, since struck out, which dealt with derogations from freedom of trade and commerce, and the effect of the amendment was to limit a certain class of laws or regulations as they affected freedom of trade and commerce. The whole of that clause has been struck out, and this amendment is proposed as an addendum to a clause which deals only with a prohibition against the Commonwealth to give a preference between states, so that it occupies a totally different position from the other one. Either it is meant to raise the same point as the other one did, or, if it is not, it assumes such a totally different aspect that really this clause would almost be a prohibition to any state to make any railway rates. Let us look at the amendment:-

Neither the Commonwealth, nor any state, nor any authority constituted by the Commonwealth or by any state, shall make any law or regulation relating to railway rates with the view of attracting trade to the ports of one state as against the ports of another.

There is scarcely a rate that could be made on a railway which would not
fall within the prohibition of this amendment.

Mr. HIGGINS. -
Do you say that all rates are made with the view of attracting trade to ports?

Mr. BARTON. -
Every rate which is made on a railway which communicates directly with a port is made with a view to attract goods to that port, and two ports which are connected by a railway attract trade each to each, by that line. What is there in this clause which saves almost any rate from being made the subject of an inhibition? What I am saying now is said in order that my honorable friend may have an opportunity to forward his view. We have been sitting some time, and shortly it will be a proper thing to report progress. I am only making these few remarks now in order to put my views before the honorable member, because he may see fit to give this clause some form which might deprive it of the objections I have to it. To repeat myself, lest I should be misunderstood, let me say that either this is the same thing in substance which we negatived this morning, in which case it is rather too much to ask the Convention to deal with it now again, or else it is a totally different thing; and, instead of being a clause about derogating from freedom of trade and commerce, it is a clause which might have the effect of causing the inhibition of almost any rates we could devise. I submit we shall have to negative the amendment in this form, but I have spoken in order to enable the honorable member to bring forward his views tomorrow in a form which will be acceptable to the Convention.

Mr. HIGGINS. -
You are against the fundamental idea of stopping differential rates?

Mr. BARTON. -
I am totally against stopping developmental rates. I am totally in favour of preventing any rate which wears the false mask of a developmental rate from being used for the purpose of improperly interfering with inter-state traffic.

Mr. HIGGINS. -
You limit it to that. That is the point of fundamental difference.

Mr. BARTON. -
I see no fundamental difference unless it consists in this; and the remarks of Mr. Trenwith and Mr. Higgins' interjection lead me to make these observations. Mr. Trenwith's speech rang with the idea that you should not take trade from its natural channels. Now, I want to know what is meant by the natural channels of trade? If you give advantages to people outside your borders which amount to bonuses as against your own producers, and if, in addition to that, in your freight rates you handicap your own
producers in their competition with outside producers, and if you do that for the purpose of taking traffic from another colony, will anybody tell me that the channel that that traffic takes is its proper natural channel?

Mr. TRENWITH. -
Yes, if that is done in answer to other rates as low.

Mr. BARTON. -
There may be something in that, but we understand that it was by this bonus system which was adopted by Victoria that Victoria got, and means to hold, this trade, and, if so, is it not plain that the undertaking of that system called forth these counter rates? It is by these temptations that this trade has been got and developed, and it is by the continuance of the system that this trade is hoped to be retained.

Sir GEORGE TURNER. -
You started the cutting rates.

Mr. BARTON. -
I do not wish to act in any spirit other than conciliatory towards honorable members, but the remarks I have just made were prompted by what Mr. Trenwith said, and by the interjection of Mr. Higgins. I do not think that traffic is going in its natural channels when it is attracted into those channels by giving premiums to outsiders, and handicapping your own producers. I am not in favour of all differential rates. I am in favour of the principle of less rates for long haulage. You cannot work railways without that.

Mr. HIGGINS. -
We are all in favour of that.

Mr. BARTON. -
I am in favour of applying that principle to the traffic of a railway which is within a state's own borders-which begins and ends in that state. But I express this qualification-that, where that kind of rate is designed and used for the purpose of infringing the proper province of the Commonwealth to regulate trade and intercourse among the states themselves-inter-state trade and traffic-it then becomes an unconstitutional proceeding. I have expressed that view several times, and I hold that, under that view, this amendment would be totally unnecessary. If it is intended to introduce any view more extensive than that-

Mr. HIGGINS. -
It is.

Mr. BARTON. -
Then it is intended to introduce a view which deprives the state of the
internal regulation of its own trade, and in that respect I will have to oppose it, root and branch.

**Sir JOHN FORREST (Western Australia). -**

I very much regret that it should be found necessary to discuss this matter at such length, but, of course, I must make allowance for diversity of interest causing diversity of opinion. We have had experience of that during this Convention in regard to the rivers. That was a pitched battle between the South Australian and the New South Wales representatives. Now we have a sort of pitched battle between the representatives of three of the colonies—South Australia, New South Wales, and Victoria.

**Mr. HIGGINS. -**

A triangular duel.

**Mr. REID. -**

They have been living on one colony for a long time.

**Sir JOHN FORREST. -**

In my opinion, under existing conditions, where each state is practically, for all purposes, a sovereign state, and has entire management of its own affairs, each state has a right to its own trade. I think no one will deny that each state, under existing conditions, has an absolute right to its own trade, and there is no power that I know of, except the power of the House of Commons at home, which can interfere with its management of that trade. But I agree that under the Federation which we are trying to bring into existence each state is prepared to give way to some extent, in order to have the blessings of free intercourse between the states, which it is believed will be to the advantage of the people of the whole of Australia generally. Now, it seems to me that this discussion might be very much shortened if all honorable members agreed to fall in with the view expressed by Sir George Turner, that a clause should be inserted in this Bill giving absolute power to the Commonwealth to step in in any case in which one state desired to monopolize its own trade to the disadvantage of another state.

**Mr. REID. -**

Its own trade? I thought you said it had a right to develop its own trade.

**Sir JOHN FORREST. -**

I said it has, under existing conditions; but at the same time, what is desired by all the states, except the one I represent, is to get a bit of the trade of another state.

**Mr. REID. -**

We have never gone for it, and precious little we have got of it.
Sir JOHN FORREST. -
Victoria desires to have the Riverina, trade.
Mr. REID. -
They are nibbling all round us, but we do not seek to get the trade of other colonies.
Sir JOHN FORREST. -
Our good friends from South Australia want to take in every part of Australia, whether it is far away up the Darling to Bourke, over to Broken Hill, to Coolgardie in the West, or down in Tasmania. Those enterprising people seem to desire to have a share of all the trade. Well, we all admire their enterprise, and we all owe them deep debts of thanks for trying to serve their own interests in pushing their trade all over Australia, doing good for themselves and doing good to others.
Mr. GORDON. -
Especially the latter.
Mr. SYMON. -
You will not allow us to do good to you.
Sir JOHN FORREST. -
My sense of fair play revolts at the idea that, after we erect this Commonwealth, any state should be allowed to charge less on its railways to the people of a neighbouring state than it charges to its own people. In fact, that seems to me, even without federation, to be very unfair.
Mr. BARTON. -
And that is the cause of all the trouble.
Sir JOHN FORREST. -
That position certainly cannot be supported by any good argument, from the point of view of fairness, unless we regard ourselves as states having no interest in one another, and only concerned each in the development of our own interests. I hope that, under federation, that state of affairs will not prevail. In fact, I could not bring myself to vote for any proposal by which, for example, the people of Victoria could charge the people of New South Wales less for traffic over the Victorian Railways than they charge to Victorians, or vice versà. That seems to me a proposal for which, under any circumstances, even if we were to wreck federation over it, I really could not vote.
Mr. LYNE. -
Victoria is doing that now to the extent of 61 per cent.
Sir JOHN FORREST. -
Under federation she will have to give it up.
Sir GEORGE TURNER. -
New South Wales is doing a jolly sight worse, as I will tell you presently.
Sir JOHN FORREST. -

Under federation, each colony will have to submit to the rules of the Commonwealth. I understand that Sir George Turner is willing to leave this matter entirely in the hands of the Commonwealth, and we may rest assured that the Commonwealth will not tolerate anything of that sort. My principal object in rising was to suggest to the leader of the Convention that if that is considered a reasonable proposal—that the Commonwealth should have power to deal with any state which was acting unfairly, in the opinion of the Commonwealth, to another state—I think we might all be satisfied.

Mr. BARTON. -

I have explained that that is really a power given under the trade and commerce clause.

Mr. HIGGINS. -

But you differ as to what, is unfair.

Sir JOHN FORREST. -

I am not so sure myself about it. My own opinion is that where a state has certain rights to manage its own business in its own way, unless you take those rights away from it in express terms, there will be difficulty. I hope that by tomorrow we will be able to come to a conclusion on this question, and not spend another day over it, very interesting and very important though it is. The time is approaching when we will have to turn our faces homewards in a very few days, and I think that if those honorable members who are interested in this matter will come together and frame a clause, general in its terms, which can be applied as the circumstances arise, it might be better than any express provision for meeting the difficulty at the present time.

Mr. REID (New South Wales). -

I hope honorable members, in thinking this matter over, will so bear this in mind—that while it is absolutely right that the Commonwealth should have power to see that, as regards the commerce between the states, there is no unfair attempt to draw trade from one state into another; that so long as the state has its sovereignty and possesses its own railways, it must be left absolutely free as to the trade of its own colony within its own boundaries, and that no other settlement of that matter will be a federal settlement.

Mr. ISAACS. -

Does the right honorable gentleman refer to the trade that will naturally flow into another colony?
Mr. BARTON (New South Wales). -

Trade cannot flow naturally into any place, unless there are the men in existence there to supply the trade. Trade simply follows the direction that humanity gives it. In order that there may be a little thought over the state of things that has arisen, I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.

The motion was agreed to.

Progress was then reported.

THE HON. J.N. BRUNKER.

Mr. BRUNKER (New South Wales). -

Mr. President, I should like to relieve myself of a deep debt of gratitude which I feel I owe to the members of this Convention, for the kindness conceded to me under the uncontrollable circumstances which prevented my attending the sittings before today. I feel I cannot find words sufficient to express to members of this Convention my deep sense of gratitude for their kindness towards me.

EVENING SITTINGS.

Sir GEORGE TURNER (Victoria). -

Before we adjourn, I understand there is some question as to whether we shall be sitting at night next week. If the leader would give us an indication now, it might be of assistance to honorable members. I am anxious to know when the Drafting Committee are likely to have the three days' adjournment which has been spoken of, because there is a desire to have a conference of the Premiers during those days?

Mr. BARTON (New South Wales). -

The position is this: After we have gone through the clauses, the preamble, and the new clauses, I shall, before the reconsideration of the clauses comes on, ask that a print be made of the Bill as amended, with the Drafting Committee's amendments as so far made, so as to enable honorable members to see the work done. But that must be done concurrently with the sittings. There will be no further evening sittings this week except on Thursday, but I think there will have to be evening sittings next week. On the reconsideration of some of the clauses there will be debate, particularly in reference to the clauses relating to disagreements between the Houses. On these latter clauses there is sure to be a debate of, at least, a couple of days. Taking all these things into consideration, I do not think that the adjournment to which Sir George Turner has referred can, under any circumstances, be obtained before the middle of next week. I should think it much more likely to be the end of the week before there can be an adjournment. But I shall go on asking for evening sittings, at any rate, on Thursday and Tuesday nights next; and, if special reason arises, I
will ask for an evening sitting on Wednesday.

The Convention adjourned at nine minutes past ten o'clock p.m

[P.1355] starts here
Wednesday, 23rd February, 1898.


The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITION.

Sir GEORGE TURNER (Victoria). -
I have the honour to present a petition from various banking institutions in the colony of Victoria, praying that the Convention will not deprive them of the right of appeal to the Privy Council. I beg to move-
That the petition be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

To the Right Honorable the President and the Members of the Australian Federal Convention, in session assembled.

The Petition of the undersigned Banking Companies, trading in Victoria, humbly sheweth-

1. That your petitioners have had under consideration that clause in the Bill now before your honorable Convention dealing with appeals from decisions of the local courts, and are of opinion that the existing right of appeal to the highest court in the empire should be preserved.

2. That, having regard to the extensive and increasing business relations between Australia and the other parts of the empire, as well as the necessity for maintaining confidence in Australian investments, it is of the utmost importance that the final Court of Appeal should be the Privy Council, so as to insure certainty and uniformity in the decision of all mercantile and other questions depending on principles of law common to the empire.

Your petitioners, therefore, pray that your honorable Convention will not deprive them of this right of appeal to Her Majesty.

And your petitioners will ever pray, &c.

LEAVE OF ABSENCE.

Sir EDWARD BRADDON (Tasmania). -
I beg to move-
That the standing orders be suspended, in order to enable a motion to be moved without notice.

The motion I wish to move is for leave of absence to be granted to the Hon. William Moore, who is too ill to be able to make his appearance in the Convention. He may not be able to attend for several days owing to his
illness, but he may come back to-day or to-morrow.

The motion was agreed to.

Sir EDWARD BRADDON (Tasmania). -

I beg to move-

That seven days' leave of absence be granted to the Hon. William Moore on account of illness.

The motion was agreed to.

STATE OF BUSINESS.

Mr. BARTON (New South Wales). -

I should like to draw the attention of the Convention to the state of business. I am quite sure that all honorable members are with me in desiring that the business of this Convention shall be expedited, so far as that can be done without sacrificing the due discussion of all matters coming before us; and it occurs to me that perhaps I am not asking too much if I suggest that we might all engage in a self-denying ordinance in one respect by undertaking, where arguments have been previously used by ourselves, not to repeat them. My right honorable friend (Sir George Turner) shakes his head, but I do not know that that is an effective answer to what I am saying. I would also suggest that we might say to ourselves that where another honorable member has put an argument which we may have a desire to put, and has put it sufficiently well, we should not repeat it.

Sir JOSEPH ABBOTT. -

It may not satisfy the gallery.

Mr. BARTON. -

But I think it will satisfy the public at large if we prevent any undue prolongation of our discussions, so long as we discuss fully and fairly the matters that come before us. There is a certain notice on the paper which I may indicate by way of illustration, that will revive the whole discussion upon railways, and I do think that so much has been said on both sides of that subject that we might very well so manage the matter as to be able to decide any question of that sort today. I am not making special reference to that matter, because we have yet to deal with new clauses and with the reconsideration of the Bill. All I say is that it is not a good thing for the Convention that we should have too many night sittings. I did hope that we should get through the business of the Convention without any night sittings at all, but we have had to begin them. I ask that we may so manage our business as not to require an unnecessary number of night sittings; and I think that, even so, we may still get through our business during the next fortnight. I think with
a little selfdenial all round we shall be able to do that. I certainly shall not ask from any honorable member what I am not willing to do myself.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on Mr. Barton's proposed clause 95A (in substitution for clause 95), which was as follows:-

The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof;

and on Mr. Higgins' proposed addition thereto, as follows:-

Neither the Commonwealth, nor any state, nor any authority constituted by the Commonwealth or by any state, shall make any law or regulation relating to railway rates with the view of attracting trade to ports of one state as against ports of another.

Question-That the words proposed to be added to the clause be so added-

Ayes ... ... ... ... ... 18
Noes ... ... ... ... ... 15
Majority for Mr. Higgins' amendment 3

AYES.
Abbott, Sir J.P. Henry, J.
Carruthers, J.H. Holder, F.W.
Cockburn, Dr. J.A. Howe, J.H.
Deakin, A. Kingston, C.C.
Dobson, H. Lee Steere, Sir J.G.
Douglas, A. Quick, Dr. J.
Forrest, Sir J. Solomon, V.L.
Glynn, P.M.
Gordon, J.H Teller.
Hackett, J.W. Higgins, H.B.
NOES.
Braddon, Sir E.N.C. O'Connor, R.E.
Briggs, H. Reid, G.H.
Brown, N.J. Symon, J.H.
Brunker, J.N. Turner, Sir G.
Hassell, A.Y. Venn, H.W.
Isaacs, L A. Wise, B.R.
Lewis, N.E. Teller.
McMillan, W. Barton, E.

Question so resolved in the affirmative.

Mr. REID (New South Wales). -

I have an amendment to propose as an addition to Mr. Barton's proposed clause.

The CHAIRMAN. -

The position now is that nothing has been inserted in the Bill in place of clause 95; all we have done is to amend the proposed new clause, and the question before the committee is that the proposed new clause as amended be inserted in the Bill. Upon that motion I understand that an amendment is to be moved by Mr. Reid.

Sir JOHN FORREST. -

Although I voted-

Mr. REID (New South Wales). -

I believe that, as a matter of courtesy, I am allowed to write out an amendment. I am really in possession of the Chair.

Sir JOHN FORREST. -

You propose to make an addition to the clause; I wish to amend it.

Mr. REID. -

Then, in that case, I will give way to you.

The CHAIRMAN. -

No amendment can be made in the words that have been agreed to.

Mr. REID. -

I beg to move that the following words be added to the clause as amended:-

But nothing in this Constitution shall be taken to interfere with the power of any state or authority constituted by a state to arrange rates upon lines of railway so as to secure payment of working expenses and interest on the cost of construction.

Mr. ISAACS. -

That is quite necessary now.

Mr. REID. -

We will get a straight vote on this, and see what honorable members mean.

Mr. GORDON (South Australia). -

In a few words I desire to state what I intend to do. I shall vote against the whole clause, with a view of supporting the proposal of which the Right Hon. Sir George Turner has given notice, and which appears to me to meet the whole case better than any of the propositions before the Convention.
Mr. SYMON (South Australia). -

It is a great pity that we have added Mr. Higgins' amendment to the clause.

The CHAIRMAN. -

Honorable members cannot go back upon or comment upon former decisions.

Mr. SYMON. -

I am only giving a reason for the course I intend to take. The first part of the amended clause inserts in the Constitution a prohibition which seems to be absolutely necessary. I quite appreciate what my honorable friend (Mr. Gordon) has said, but we cannot vote against the whole clause. We

An HONORABLE MEMBER. -

He was fighting against the same thing all day.

Mr. SYMON. -

He may have been. I do not care whether a man has been fighting against a thing all day or all the week if at the finish he submits something that is worthy of consideration, it is our duty to consider it. It would have been better if the matter had been postponed yesterday evening, with a view to Sir George Turner, with the assistance of his Attorney-General, preparing some amendment that would solve this problem or cut this Gordian knot. We should have been more likely to produce satisfaction by dealing with the question in that way than by making the addition that has been made to the clause. I should have been glad to consider the Hon. Mr. Higgins' amendment from a different point of view, but for the reasons I have given. I do not see how I can vote against the whole clause, and I hope that some means will be adopted to enable us to consider Sir George Turner's suggestion, with a view of arriving at a reasonable and complete solution.

Mr. DEAKIN (Victoria). -

I address myself to this question, for the first time, and with the greatest reluctance, partly because I have entertained an opinion different from that of some other representatives of Victoria, for whose judgment on these matters I have a great regard, and partly because I have failed to see that the Convention had come to any such specific issue as demanded any contribution. I have striven throughout the whole of our sittings not to speak, save under necessity, and now rise only to state, in a very few words, what appears to be the position. In the first place, I gave the vote just recorded deliberately, a similar vote yesterday, and will give it again on every opportunity afforded to me. One need not refer to the difference of opinion as to how far the words which Mr. Higgins has used are capable of one or other of the interpretations given to them, because yesterday we
had a statement from him of what is intended to be implied by the amendment. He expressed his willingness to leave himself, beyond the assertion of the principle, entirely in the hands of the Drafting Committee as to the form of expression which should be given to it after the Convention had approved it. What Mr. Higgins said yesterday evening was this:

I do not profess to be the draftsman of the Bill, and I ask the Convention to allow a division to be taken on the merits of this question, the substantial question being as to whether we shall be so far federal as to insist that unfair differential rates-unreasonable differential rates-rates which are not merely developmental, shall be prohibited by this Bill, or, rather, that it shall be left to the Inter-State Commission to say whether those rates come within the unfair category or not. I appeal to honorable members to vote on the substantial question, because we shall be able, in the event of my amendment being passed, to trust to the skill and far-sightedness of the Drafting Committee.

That is a clear intimation of what the honorable member's intention was.

Mr. BARTON. - How can the Drafting Committee alter the policy of this amendment?

Mr. DEAKIN. - They are not asked to do so.

Mr. SYMON (South Australia). - I rise to order, I was called to order for referring incidentally to Mr. Higgins' amendment, and the honorable member is apparently discussing the whole merits of that proposal.

The CHAIRMAN. - I have given a ruling, and I think that, in the interests of finality, it ought to be obeyed—that is, that we ought not to re-open questions that have been decided. No doubt the honorable member is quite in order in alluding to former debates and decisions to illustrate the arguments he is adducing, but he must not rediscuss the question.

Mr. DEAKIN (Victoria). - It is not my intention to do so. I have simply sought to state the position, and now propose to discuss the further amendment submitted by Mr. Reid. We have said in addition to the declaration that "The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or part thereof," that "Neither the Commonwealth, nor any state, nor any authority constituted by the Commonwealth or by any state, shall make any law or regulation relating to railway rates with a view of attracting trade to ports of one state
as against ports of another." The intention of that is, while leaving all developmental rates directly under the control of the state in which they are imposed, to prevent under cover of such rates a war of rates really designed to be preferential.

Mr. BARTON. - I hope the honorable member does not think it is within the province of the Drafting Committee so to read the debates as to carry out the intentions of an honorable member without regard to the words of his motion.

Mr. DEAKIN. - I will not reply to that interjection, desiring to conclude. The position we now find ourselves in is this: We have said that the Commonwealth shall not give preferences, that neither the states nor the Commonwealth shall impose what are practically preferential rates, that is, rates that are competitive and not merely developmental, and now we are asked to add another proviso, to the effect that this shall not be taken to prohibit any state from making such charges upon its railway system as may be required to pay working expenses and interest upon the cost of construction. The object of that, apparently, is to negative the provisions we have already made, but I have my doubts as to whether the amendment would have that effect. I have my doubts, after listening to it as read, whether it would interfere at all with what we have carried. In any case this appears to be an unsuitable and improper place in which to introduce any such amendment. It is not intended to complete the clause or the sense of the clause in any way. The proposal just accepted by the Convention does not imply anything necessarily antagonistic to this amendment, for all that is aimed at is to prevent unfair rates-rates which under cover of being developmental have a distinctly anti-federal purpose, and that is a reasonable thing for the Convention to do. I, as one who has consistently advocated since the Convention first met the federalization of the whole of the railways, feel bound to adopt this as the furthest point to which it is possible to go now without interfering with the management by each state of its own railways. The clause, as it stands, need not, and will not, involve any interference with the management by each state of its own railways so far as its capacity to render them payable is concerned, unless under that pretence rates are imposed the object of which is to deprive some other state of traffic that would otherwise be attracted to it. I have the misfortune not to agree with my honorable friend (Mr. Isaacs) in regard to the position of Victoria. I believe the Bill, as it stands, contains provisions of the most serious import to this colony, and regard this amendment as a means that is offered to us of mitigating a threatened injury.
Mr. BARTON (New South Wales). -

I am very much inclined, if the clause remains as amended, to vote against it. I am disposed to vote for the Right Hon. Mr. Reid's amendment, but even if that addition is made to the clause I do not think it will satisfy me. The reason why I am inclined to vote against the clause as amended is this: The first part of the clause, the part which I drew, is a prohibition upon the Commonwealth against giving preference by any law or regulation of commerce or revenue to one state or any part thereof over another state or any part thereof. The addition is this. There is a prohibition not only upon the Commonwealth but upon the states, and upon authorities constituted by the Commonwealth or by the states, preventing them from making rates with a view to attracting trade to the ports of one state from the ports of another. I cannot understand how the passage quoted from the speech of the honorable member (Mr. Higgins) can be reconciled with the words of his amendment. The purport of this provision is not to prohibit fair developmental rates. If words mean anything its purport is that there shall be carried out by the Commonwealth and by every state some sort of arrangement by which points of equidistance between rival railway lines shall be established, and the rates shall be fixed in such a way that no particle of traffic can pass those points in its passage to a port. I do not care what my honorable friend meant by his speech; that is the meaning of the amendment. Supposing this matter, as has been suggested, were left to the Drafting Committee, all it could do would be to loyally give effect to the sense of the amendment. The committee could not alter it.

Mr. HIGGINS. -

I am afraid that several honorable members differ from you as to the meaning of the amendment.

Mr. BARTON. -

I am prepared for that, but I am expressing my own views about the matter. To me the meaning of the amendment seems perfectly clear. It is a prohibition against the framing of rates with a view to attracting trade to the ports of one state from the ports of another, and to my mind that prohibition can be reasonably satisfied only by fixing equidistant points. If an arrangement is to be made in any other way, in what way is it to be made? In what way does the amendment indicate that developmental rates are to be allowed, and preferential rates prevented? It was clear enough, under the clause relating to trade and commerce, that preferential rates were to be prevented, and developmental rates allowed. Now we have this qualification placed upon the clause as I moved it. The difference which it makes, in addition to what I have already pointed out, will be a very serious one. The first part of the clause says that "The Commonwealth shall
not give preference," and so on. Honorable members will find there a clearly expressed prohibition of any preference being given.

Then there is the addition preventing the Commonwealth from making any law or regulation with regard to railway rates to attract trade from the ports of one state to the ports of another. That means that preferences being already prohibited in the earlier part of the clause, something else is to be prohibited which is not a preference.

Mr. DEAKIN. -
Something which is not upon the surface a preference.

Mr. BARTON. -
Something which is not a preference at all. If we are not to be ensnared in some bewilderment of words, it must be agreed that there is a clear prohibition of a preference so far as the Commonwealth is concerned in the first part of the clause, and that the second part of the clause prohibits something which is not a preference. I challenge any lawyer or any honorable member who pays respect to the English language to deny that.

Mr. ISAACS. -
Before the honorable and learned member goes further, I would ask him if, independently of that, there is any power elsewhere in the Constitution allowing the Commonwealth to make laws with regard to railway rates?

Mr. BARTON. -
There is no power to make railway rates; but in the clause giving the power to regulate trade and commerce there is the power to prohibit what is bad. It is quite possible that this provision may give an implied power to make rates, but that would be still further from the intention of the honorable member (Mr. Higgins).

Mr. HIGGINS. -
The honorable and learned member has forgotten that the Federal Parliament has power to take over the railways with the consent of the states.

Mr. BARTON. -
Yes; but my honorable friend cannot call that to his aid, because he cannot call this general provision to the aid of a merely permissive one.

Mr. HIGGINS. -
That is no answer at all.

Mr. BARTON. -
Yes, it is. The honorable member is aiming at something beyond the permissive power given in clause 52. The addition of my honorable friend being limited to a prohibition of railway rates which may attract trade to
the ports of one state from the ports of another, the necessary implication is
that similar rates are permitted in regard to river carriage and every species
clause, for a state to frame non-preferential rates with any certainly that the
Commonwealth would allow them. This interference which is sanctioned
by the clause as amended would go to this extent, that any state in
attempting to frame a railway tariff would be constantly hampered by the
knowledge that, even though it might not be seeking a preference, its rates
might be over-ruled by the Commonwealth. That would be intolerable to
every state in the Union. I think the clause should be guarded by some
provision which will make it clear that it is not intended to deprive the
states of the opportunity to earn the expenses of railway management and
the interest upon railway construction.

Mr. ISAACS. -

The states would never be safe from applications for injunctions.

Mr. ISAACS. -

The states would never be safe from applications for injunctions.

Mr. BARTON. -

Yes, and even with the addition of the amendment of the Premier of New
South Wales, the clause will be prolific of lawsuits. There will be dozens
of applications to the Federal High Court.

Mr. SYMON. -

Instead of one High Court, we shall want two or three.

Mr. BARTON. -

Yes. We should have to go back upon our work, and arrange for the
appointment of twelve Judges and a Chief Justice, instead of three and a
Chief Justice. A clause of this kind as it stands is eminently open to
misunderstanding, and entirely misleading. I am sure that the honorable
member (Mr. Higgins) does not want to be the author of a misleading
provision, and I hope that something will be done to prevent any provision
from getting into the Constitution which will be such a fruitful cause of
uncertainty and confusion, of financial injury and litigation.

The CHAIRMAN. -

I would point out to the committee that the question now before us is the
addition of the words proposed by the Premier of New South Wales.
Perhaps we had better get rid of this amendment before we discuss the
whole clause.

Mr. REID (New South Wales). -

I was going to say, with reference to my amendment, that I only justify it
because of the words which have already been inserted in the clause. I feel
it absolutely necessary that, if the words which have been added to the
clause are to remain in it, my amendment should be carried, and for
obvious reasons. I do not think any honorable member can wish that the lines of railway which have been developed in the separate existence of the states should be so interfered with as to practically throw them upon the hands of the states. Of course I am only warranted, in one sense, in representing the interests of New South Wales in this matter, but the provision is of general application to all the states upon the mainland which have lines of railway, though the case of New South Wales is a particularly hard one. Although it has been stated over and over again by my honorable friends opposite that Melbourne is the natural port for the Riverina trade, we must not forget that heavy duties were put upon the live stock of Riverina to prevent it from being sent to its natural port, and that heavy duties were put upon agricultural produce to prevent the farmers of Riverina from sending their wheat to their natural port. Since Victoria shut her doors in this way upon the producers of Riverina, and prevented them from getting to their natural market, it was only common justice to the settlers in this rich tract of country that the New South Wales Government should come to their rescue, and make railways to enable them to get their produce to Sydney. This was a necessity that was thrust upon us. We did not create obstacles to prevent the wheat and live stock of Riverina, from going to its natural market, and it is almost too much now to hear people like the honorable member (Mr. Trenwith) talking so glibly about Melbourne being the natural port of Riverina. The development of the rich agricultural areas of Riverina was blasted by the policy adopted by Victoria in shutting her doors against their produce.

Mr. CARRUTHERS. -

Not blasted; they could not blast it, although they tried do so.

Mr. REID. -

My honorable friend is quite right. I want to point out that, in common fairness, the New South Wales Government had to come to the rescue of these settlers and make railways into Riverina, in order to give the people there a market. We, having been forced into that position, I ask the Convention if, in common honesty, any provision should be put into the Constitution to prevent us from imposing such rates as will pay for the grease upon the axles of the railway trucks?

Sir JOHN FORREST. -

What about freedom of trade and intercourse throughout the Commonwealth?

Mr. REID. -

Surely the Convention is not going to throw railways like these upon our
hands without giving us the power to run them in such a way as will pay working expenses and interest upon the cost of construction.

**Sir JOHN FORREST.** -

But this is a magnificent country.

**Mr. REID.** -

That is why the railways went there. My right honorable friend has a magnificent country, but he had to ask for special terms for it a day or two ago. Now I want special terms for the railways of Riverina.

**Sir JOHN FORREST.** -

We will give you five years.

**Mr. REID.** -

That seems to be a favorite period with the members of the Convention, but five years would not mean much in the history of a line of railway. I am absolutely in favour of extending freedom of trade as far as possible. More than that, I point to what I have done already as an earnest that I am sincere in this respect. But when I have to deal with the existing state of things, with the property belonging to the state, I have to some extent to see that that property does not go to wreck and ruin. I am bound to do that, and I do not care whether the railways are in Victoria, New South Wales, or South Australia. The Riverina Railway, when it was constructed, was also in this position. In 1887 a duty on wheat was imposed by South Australia, and even although the rivers were snagged to enable South Australian enterprise to use those rivers, to carry on our trade, our farmers found that, when they sent their wheat down to South Australia, the door was shut in their faces.

**Sir JOHN FORREST.** -

Shame!

**Mr. REID.** -

I do not say it is a shame, but those railways were absolutely necessary under such circumstances in order to find a market for our settlers. I am no opponent of the freest commercial enterprise, so long as the Commonwealth—and then it would not be the Commonwealth, but New South Wales, because we should have to provide 40 per cent. of the money—but so long as the Commonwealth would come in and make up the loss which would be inflicted under this provision of Mr. Higgins', I am quite willing to have trade and intercourse on our railways as free as possible. But unless the Commonwealth takes the railways over it is impossible to do justice to our railways unless we are allowed freedom of management, at any rate, up to the point at which we can pay the interest and working expenses. Unless we can do that, the honorable member, by his amendment, is practically taking the property of the state, and making it
worthless. I am afraid I cannot be a party to that, although I am quite in favour of the freest play of trade throughout the Commonwealth.

Sir JOSEPH ABBOTT (New South Wales). -

I would like to point out that I am one of those who believe the drift of trade ought to be towards its natural outlet. In the votes I have hitherto given on this Bill with regard to the rivers, and now with regard to the railways, I have always had the object of allowing that state of things to exist. By the clause proposed by Mr. Barton dealing with preferential rates the Commonwealth would not have the power to interfere with these railway rates, but the states would be allowed to do so. Under these circumstances, although we have built this railway into Riverina, if Victoria were content to allow the trade which belongs to her to flow from Riverina by her railways, I would not object to any concession she might give to our people in that part of the country as against her own people. But she is not content with that. By her railway system she has endeavoured to annex nearly the whole of our territory in the western and central divisions of New South Wales. The map which was laid on the table in Adelaide shows that over an area extending from a line about 30 or 40 miles north of the Murray, south of the Murrumbidgee River, right away up to the Queensland border, and up to the head of navigation at Walgett, 1,250 miles from the Murray River, the Victorian Government are prepared to give concessions generally of 40 per cent., and on large clips 61 per cent., as against her own people. If we pass the clause submitted by Mr. Barton, and nothing else, the Commonwealth could not allow that state of things to exist, but the states themselves could. I will object to give any such power to the states. All that Mr. Reid has said with regard to the construction of railways into Riverina, is absolutely true. We were forced to construct those railways for the reasons he has stated, but Mr. Reid seems to forget that if we are to federate the condition of things will be entirely changed, and there will not be those barriers which forced us in the past to incur this expenditure.

Mr. REID. -

But we shall be left with an unprofitable railway.

Sir JOSEPH ABBOTT. -

Exactly; I am coming to that. We cannot federate without giving and taking, without some of the colonies making losses and some making gains. Our loss will probably be the worthlessness of these railways; but even then it is not a loss to the settlers in our community, because they will have the advantage of getting to their best and readiest markets.

Mr. REID. -
But if you take the trade you ought to give us something to make up for the loss on the railways.

Sir JOSEPH ABBOTT. -

I admit that, and I agree with what Mr. Carruthers said last night. With him I should like to give any vote which would force the federalization of the railways upon the Commonwealth; but what I do object to is withholding from the Commonwealth a power which it would be more likely to use with reason and justice, that is, the determination of these railway rates, while at the same time we give to the states power to make those rates. Could anything be more iniquitous, even under the existing state of things? But how much worse it would be if we were to have in a Federated Australia Victoria claiming to capture our traffic away up to Walgett, nearly 1,200 miles from their own railway stations! As we go right through New South Wales the same thing is done. Away up the Lachlan reductions of 66 per cent. are given. Fault is now found with regard to the terms and character of the amendment proposed by Mr. Higgins. This is not the time to discuss that amendment; it was allowed to go on the voices, and I think the committee were somewhat led away in allowing that amendment to go by the remarks of Mr. Barton with reference to curtailing debate. While I entirely agree with much that he said, I do not think that it has done any good in this case. The debate should not have been curtailed, and the imperfections of this amendment should have been pointed out before the question was put.

Mr. BARTON. -

I did not for a moment suggest that there should be no debate. What I suggested was that there should be no repetition of arguments.

Sir JOSEPH ABBOTT. -

It is too late now to find fault. If those imperfections existed they should have been pointed out before the question was put.

Mr. BARTON. -

I pointed out some of the imperfections last night.

?. - Admitting the imperfections, for the reasons I have already stated, and because I do not believe power should be given to a state which is not given to the Commonwealth to interfere with the trade of a neighbouring state, I shall continue to vote in every possible way to give effect to my views on this matter. On every occasion when the question arises, when I can give a vote to allow the trade of the country to drift to its natural outlets, whatever the consequences may be, I shall give that vote.

Mr. MCMILLAN (New South Wales). -

I also regret with Sir Joseph Abbott that the vote this morning was taken in such a thin House. I do not wish to infringe
upon your ruling, sir, but I should have liked to have spoken on Mr. Higgins' amendment, because in the part in which he refers to the ports, it seems to me you have a conundrum which it is almost impossible to solve. I wish specially to point out that what Mr. Reid has proposed, no doubt very hurriedly, will not give us what we want. He proposes that we should have the power inviolate to so run our railway line or lines as to pay working expenses and interest. That does not interfere for a moment with the Federal Parliament in dictating the whole question of the tariff. Suppose you have run a railway line with such attenuated charges towards one end as to give what my right honorable friend would call an unfair preference, and suppose we say that we must make certain charges in order that the railways shall pay, what the Federal Parliament would do would be this. They would say:"You will have to pay heavier charges near your own port." I do not want a clause like this to be passed, under the guise of giving us the management of our railways, when it practically takes it away again.

Mr. REID. -

The amendment was drawn up hurriedly, but I think the honorable member will find it absolutely prevents any interference with the rates fixed by a state.

Mr. MCMILLAN. -

On looking over the amendment, I have only to reiterate what I have already said. Supposing these attenuated rates are made in such a way that, from Sir George Turner's point of view, action might be taken before the Supreme Court, or through the Federal Parliament, to say that an unfair preference was given by those rates, and supposing the answer of New South Wales was that we had to make our railways pay, they would simply point to the rates on other parts of our lines, and they would say:"You must simply re-adjust your tariff in order to make your railways pay."

Mr. REID. -

They could not do that without going into the facts connected with that particular line-the conditions under which the trade was carried on, and the competition to which it was exposed.

Mr. MCMILLAN. -

There might be a number of questions, but it seems to me distinctly to infringe upon the one principle which is at the bottom of the whole of this discussion. We are asked to have the responsibility of our own lines with regard to the payment of interest and everything else, and another outside power which will interfere with the management.

Mr. REID. -
I am wholly opposed to that.

Mr. MCMILLAN. -

I do not want the matter to be dealt with in this hurried way. I believe the whole clause ought to be rejected now absolutely.

Mr. REID. -

Hear, hear. This gives us the chance of doing that.

Mr. MCMILLAN. -

We are getting now near the end of our labours, and there will be a disinclination to re-open any question, except accompanied by very strong proof; and anything we do now may be beyond repair. I am, therefore, very anxious that nothing should be done which would in any way imply a power of management over our traffic. It seems to me that, while the intention is right, the proposal will not give the desired effect.

Mr. REID. -

That is a matter of drafting; the intention is clear, and the Drafting Committee can carry it out.

Mr. MCMILLAN. -

There is a little more in it than drafting. It is a question that will come up in the future. There is left open a very large question, in which, from my point of view, if I were adjudicating on the matter, I could not say to New South Wales-"You have plenty of power on the railways, by the alteration of rates, to pay your own expenses and interest, and at the same time carry out your policy."

Mr. REID. -

That would not be the test. The only test would be as to the management of the line for the purpose of getting

the desired end. If the management was in good faith it could not be interfered with, but if it was not in good faith it could.

Mr. MCMILLAN. -

But it does open up the question of absolute interference with differential rates for developmental purposes, and those rates, which, from our point of view, are for developmental purposes, might, in the opinion of the court or of Parliament, be considered preferential. I know the hurried position in which the right honorable gentleman was placed, but it seems to me clearly proved that either the first or second amendment will scarcely be anything but a blow to the Constitution.

Mr. KINGSTON (South Australia). -

One of the chief inducements to South Australia to enter the Federation is the hope of the abolition of those cut-throat railway tariffs. It has been well pointed out by Mr. Carruthers, with a courage and consistency which we
must all admire, that it is idle to provide for the abolition of war at the Custom-house if that war be transferred to the railway station. An amendment has been carried at the instigation of Mr. Higgins which has the effect, at least, of securing recognition of the principle that something should be done for the purpose of dealing with those conflicting railway tariffs. Under those circumstances I voted for the amendment, and under those circumstances I will adhere to it; and I will resist as far as possible any attempt to make it nugatory in the way suggested by the Premier of New South Wales. At the same time, it has occurred to me, in view of what took place last night, and in view of the amendment which has been tabled in pursuance of that discussion by the Premier of Victoria, that it is possible we may secure, by dealing with his amendment, something which those who desire to put an end to this railway traffic war would even prefer to that which has yet to be carried by Mr. Higgins. Under the circumstances, I suggest to the leader of the Convention that it might be possible, by a suspension of the standing orders, in the same manner which was adopted in the matter of the rivers question, to enable us to discuss Sir George Turner's amendment before deciding finally what we will do with reference to the clause now under discussion. I do sincerely trust that a course such as I now suggest may be adopted. I am sure it will relieve many who desire some satisfactory provision, and who do not wish to be forced to vote on the amendment now before the Chair in a way which may prevent the giving of what is now proposed, whilst, at the same time, there is no security that the amendment of Sir George Turner, or any modification of it, will be passed. Under the circumstances, I ask the leader of the Convention that we may be afforded the same opportunity in connexion with this question as was afforded in connexion with the riparian question, with, I trust, similar results.

Sir GEORGE TURNER (Victoria). -

I felt constrained yesterday, and I feel constrained to-day, to vote against the proposal of my honorable friend (Mr. Higgins), because I believe it would not carry out what we all desire to see carried out. From the numerous expressions of opinion which have been given by honorable members, it is clear there are at least six or eight different readings of this particular clause. Now, we are asked to embody it in our Constitution in such a way that we cannot alter it except by the referendum. I fear to do that, because I confess I do not understand—and I believe there are very few members who could say—what the result of any test case in regard to the amendment might be. I therefore felt bound to vote against the whole proceeding, hoping we might possibly come to a decision which would leave to the Federal Parliament to do what we all desire, and what I believe
Mr. Higgins desires by the amendment. But that must be done in such a way that, if afterwards it was found that the legislation by the Federal Parliament did not carry out what we desired, the Parliament would always have it in its own hands to make necessary alterations, and ultimately pass such a law as would be reasonably fair to all the colonies. So far as Mr. Reid's proposal is concerned, it does to some extent mitigate the difficulties. It leaves the states in such a position that they know they will be able to carry on their railways in such a way as to pay working expenses and interest. I therefore do not exactly like voting for this amendment, but still, I cannot see how I can vote against it. In voting against it, I would be affirming that the amendment already dealt with should stand, while I believe it should not. I am rapidly being forced to the conclusion that, sooner or later, this, or some other body dealing with federation, will have to deal with it in an entirely different way, in regard to the debts and the railways, than we have attempted up to the present. I have always been against handing over the railways of the states to the Federation. But, day by day, I am coming to the conclusion that my previous decision is wrong, and that, sooner or later, we shall have to be prepared to hand over our debts and our railways to the sole management of the Federation, if we are to deal with the matter in a way that would be satisfactory to the whole Commonwealth. But one difficulty staring us in the face in regard to both proposals is as to how we can provide for the development of the country in the meantime. I do not know whether it would be any use the Finance Committee tackling this problem. If so, I would like to see the Convention adjourn for a few days, and the Finance Committee meet together and devise a scheme to hand over the whole of the railways and the whole of the debts, at the same time making the best provision they can for the development of the country in the future.

Mr. MCMILLAN. -

You have to consider how such a proposal would be regarded by the colonies.

Sir GEORGE TURNER. -

I believe that if we could provide some means by which the states would not be restricted from developing their various countries the people would be perfectly satisfied to hand over the railways and the debts.

Mr. LYNE (New South Wales). -

I am perfectly sure they would not. If Sir George Turner is honest in what he says, let him submit a motion dealing with the railways and debts. It is no use a member of the Convention talking of being gradually drawn
to the conclusion that the railways should be amalgamated and handed over. Let the Convention, with its eyes open, tackle the question if it so wish. I feel satisfied that the people of New South Wales, at any rate, and, I think, of the other colonies, would not submit to anything of the kind at the present moment. There is no use beating about the bush. There is no use in this Convention saying it is afraid to deal with the subject. If a majority of the representatives desires that the debts and the railways should be handed over, let them so decide, and then let the people give a vote one way or the other. Those who desire federation at an early date had better leave the matter alone. There are one or two newspapers which circulate those ideas, and, it may be, influence members' minds. For my part, I think it ridiculous to talk of anything of the kind. The questions submitted to the Convention at present are large and numerous, and we should have federation much quicker if those questions were not so numerous.

The CHAIRMAN. -

I must ask the honorable member to confine his attention to the clause as far as he can.

Mr. LYNE. -

I was replying to the remarks of Sir George Turner.

The CHAIRMAN. -

I am afraid honorable members take too much latitude generally.

Mr. LYNE. -

The railway rates and the debts cannot be separated. It is acknowledged already, by half-a-dozen speakers, that the difficulties would be overcome if the railways were taken over. What is the question of railway rates? It is the question of the interest, and that leads us at once to the debts.

The CHAIRMAN. -

Does the honorable member think that bears on this particular clause?&

Mr. LYNE. -

I must say I do. I think it is bearing very strongly on the clause. I do not now wish to open a discussion on the debts and the railways, but was merely replying to Sir George Turner. I regret very much that anything should have taken place before I arrived this morning to curtail the debate which was going on last night.

The CHAIRMAN. -

I do not think the honorable member is in order in referring to a former decision of the committee.

Mr. LYNE. -

I have not yet referred to any decision of the committee.
The CHAIRMAN. -
The honorable member was expressing his sorrow at what has taken place.
Mr. LYNE. -
I do not know exactly what did take place.
The CHAIRMAN. -
The honorable member is out of order.
Mr. LYNE. -
Surely I have the privilege of stating I regret I was not here in time to know exactly what did take place.
The CHAIRMAN. -
Oh, yes.
Mr. LYNE. -
And that I have been informed the debate last night was curtailed very suddenly.
Mr. REID. -
Very cleverly.
Mr. LYNE. -
The debate was curtailed suddenly, and I had not an opportunity of voting on the matter submitted. I now have an opportunity of referring to the matter on the amendment proposed by Mr. Reid. That amendment I must say is, in its inception, submitted for the purpose of improving, if possible, the clause as it is amended at the present time.
Mr. REID. -
That is all.
Mr. LYNE. -
But I do not think the amendment would have the desired effect. I gave expression to my views yesterday regarding what I conceived should be the course to be taken with reference to the railways between the various states. The amendment now submitted is one which will only give power to the various states to impose, without restriction, any tariff that will meet the interest on the debt and the losses on working expenses—I think I am correct in saying that—without interference from the Commonwealth or any of the other states. Now, my feeling is that no state should impose railway rates that would draw the trade from another state to that first state, but, under the conditions we are likely to have, each state should have full power to deal, in a legitimate way, with the railway rates of its own state, so long as they were not framed with the view to draw trade from another state. That is all I and my colleagues of the New South Wales delegation ask at present. Now, if this clause is left as it stands, very serious injury will be done to the cause of federation in New South Wales, because this is
one of those object-lessons that the people take hold of very quickly, and
that they can understand very thoroughly. About one-half of the members
of this Convention are legal gentlemen, and when we find one-half of them
interpreting this clause in one way, and the other half arguing that it should
be interpreted in another way, how can we expect that the lay mind outside
will grasp the meaning of this clause? They will readily grasp the principle
of putting on long-distance railway rates with a view to develop distant
parts of their respective colonies. That will come home to them very
readily. Unless this clause is amended in some way so that it will not
unduly interfere with the state management of our railways, I would
suggest to the leader of the Convention that it had better be struck out
altogether. For my own part, I would rather see the
[Page 1368] clause dealing with trade and commerce left by itself than have a clause of
this kind inserted in the Bill, whatever its effect may be, and I do not
suppose that any honorable member can positively say what its effect
would be. I would rather see the trade and commerce clause left in the
Constitution, subject to the interpretation that may be put on it by the High
Court, than a system which will interfere with our railway rates, and enable
other states to obtain traffic to the disadvantage of our own railways. It is
all very well to say that the southern part of New South Wales belongs
geographically to Victoria. We all give full credit to Victorians, and to
Victorian capital, for developing that part of our colony, but the Victorians
did not develop it in the interests of New South Wales, but in their own
interests. We were compelled, for the reason given by Mr. Reid, to extend
our railways to the southern borders of our colony, so as to enable our
producers to get their produce to market. The only other ways by which
they could send their produce to market were in bond by river through
South Australia, or in bond by rail through Victoria.

Sir WILLIAM ZEAL. -
You utterly neglected Riverina.

Mr. LYNE. -
No, it was simply that we had a larger territory than Victoria to deal with,
and it took us longer to extend our railway system to that distant part of our
colony. Now, this question seems to me to be resolving itself into a similar
position to that in connexion with the rivers. Similar influences are at
work. It is a question of who is going to get the most trade from New South
Wales, and before this question is settled, if the clause is not amended or
struck out, I hope that there will be a full vote of the Convention taken on
the principle at issue, and then we must be satisfied with the result of that
division. That ought to be demanded by all members of the Convention.
We are entitled to ask for a full vote on a serious matter of this kind. If we do not get a full vote of the Convention now, I hope that when we receive the revised print of the Bill we may have an opportunity of dealing with this question in a full House, and not merely while 33 members are present, as was the case when the last division was taken and Mr. Higgins' amendment was carried in a snapshot sort of way a few minutes ago.

Mr. HOWE (South Australia). -

I hope honorable members will bear with me for a few moments. At this juncture I think it is well that I should state what the producers of our colony whom I represent think they have a right to, and what they expect at the hands of the Convention. The producers of South Australia expect this Convention to give them free-trade throughout the length and breadth of Federated Australia. Now, it seems to me that, while we have for the last day or two, given free-trade through the abolition of custom-houses and inter-colonial imposts, we are now seeking to hamper the producers of Australia by transferring this power to the Railway departments of the various colonies. Cut-throat rates on railways are quite as great an obstacle to freedom of commerce as custom-houses on our borders.

Mr. KINGSTON. -

Hear, hear; fair commerce.

Mr. HOWE. -

Mr. Reid's amendment simply allows things to remain as they are, each colony to carry on its railways in its own way, at its own sweet will and pleasure, although it maybe to the injury of other colonies. Now, I say that a state has a perfect right to conduct its railways in its own way (so long as it does not interfere with the federal spirit that ought to exist in a true federation of these colonies, and so long as it does not hamper trade and commerce), and to devise means to make its railways pay. I was very much struck with a remark of the Premier of New South Wales, who said-"While we seek to control our own state railways, and while we advocate and must of necessity maintain a differential rate upon those lines of railway, we do not seek to make the tapering end the expansive end." In other words, the Premier of New South Wales would not impose a high traffic rate on those lines of railway in his colony for the purpose of prohibiting the free flow of traffic from his colony to another colony. Did I understand the right honorable gentleman correctly?

Mr. REID. -

I never used those expressions about the tapering end and the expansive end.
Mr. HOWE. -

I understood the right honorable gentleman to say that while there might be an infinitesimal rate for the carriage of goods towards the end of a line in this colony, he would not discourage produce going from New South Wales to another colony, so long as the Railway department received an adequate rate of revenue. Is not that so?

Mr. REID. -

No, I did not make use of any of those expressions; I did not refer to that part of the question.

Mr. HOWE. -

I am very sorry that I misunderstood the honorable member. However, I must say that I cannot return to my colony and recommend this Constitution to the people of South Australia unless something is done to put an end to these cut-throat tariffs that have obtained so long, and that have been so injurious to every colony that has adopted the system. In self-protection we must fight to the last, but who benefits by such competition? Scarcely any one. A few producers may benefit, but their number is infinitesimal compared with the rest of the people who will undoubtedly have to bear the burden. Therefore, I cannot return to my colony unless something is done to remove the system which at present obtains. I may tell the Convention that, so far as Mr. Barton's amendment is concerned, or the clause which he proposed in lieu of the one that was struck out, I was in favour of it, so long as that ran side by side with the Inter-State Commission, but after looking over the amendments now before us this morning, I very much prefer, as between the two proposals that have been carried and the one that is now under discussion, the amendment suggested by Sir George Turner. If we can negative the two proposals already carried, and also this proposal of the Premier of New South Wales, I shall be delighted indeed to vote for the proposal of the Premier of Victoria, because if we carry that I can really go back to South Australia and say to those who sent me here that I believe, under that provision, the producers, whom I endeavour to represent, will receive ample justice.

Question-That the words proposed to be added to the clause be so added-put.

The committee divided-
Ayes .... ... 20
Noes .... ... 22
Majority against Mr. Reid's amendment .... ... 2
AYES.
Barton, E. Lyne, W.J.
Mr. KINGSTON (South Australia). -

I would ask the leader of the Convention whether he cannot see his way to give us an opportunity to consider the amendment of Sir George Turner before we finally come to a conclusion as regards this question? I would point out to the honorable member that there is almost a consensus of opinion in favour of the first part of the clause proposed, but to it has been added the amendment of Mr. Higgins, to which some honorable members object. I would point out to my learned friend that he might take the power in the mode I suggest.

Mr. BARTON (New South Wales). -

I have no objection to the course which the right honorable member has suggested; in fact, but for the division coming on rather suddenly, I should have expressed my concurrence with it before. It will be necessary, if the suggestion is adopted, for me to propose that the Chairman do leave the chair, and report progress, with the view to obtaining an instruction to the
committee, and then in the Convention to move to suspend the standing orders, and to propose some motion like the following:-

That it be an instruction to the committee of the whole that they have leave to postpone, if they so desire, the consideration of the proposed new clause in substitution of clause 95 struck out, which has been amended, until after the consideration of another clause to be proposed in substitution of clause 95; also that they have leave to reconsider the first-mentioned new clause which has been so amended.

Of course it will be necessary to take leave to reconsider if we wish to dispose of the whole matter at once. That will be a course in accordance with what was done in regard to the rivers.

Mr. ISAACS. -

Is that with the view of seeing whether we will reverse what we have done this morning?

Mr. BARTON. -

It is with the view of enabling us to consider Sir George Turner's new clause, and take such course upon that as we think proper, and to deal afterwards, or at any stage before we proceed to fresh business, with clause 95 in its present position, so that the hands of the committee will not be tied in any way. I beg to move-

That the Chairman do now leave the chair, and report progress, with the view to obtaining an instruction to the committee.

The motion was agreed to.

The PRESIDENT having taken the chair, progress was reported.

Mr. BARTON. -

I beg to move-

That the standing orders be suspended to enable Mr. Barton to move a motion of instruction to the committee on the Commonwealth Bill.

The motion was agreed to.

Mr. BARTON. -

I beg to move-

That it be an instruction to the committee of the whole that they have leave to postpone, if they so desire, the consideration of the proposed new clause (in substitution for clause 95 which has been struck out), which has been amended, until after the consideration of another clause to be proposed in substitution for clause 95; also that they have leave to reconsider the first-mentioned proposed new clause which has been so amended.

The motion was agreed to.

The Convention again resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.
Mr. BARTON (New South Wales). -

I beg to move-

That the further consideration of the proposed new clause 95A as amended be postponed until after the consideration of a new clause to be proposed in substitution for clause 95.

I take it, sir, that the way is now clear to my right honorable friend (Sir George Turner) if he wishes to propose his new clause.

Mr. REID (New South Wales). -

I would suggest that, if there is still a majority in favour of Mr. Higgins' amendment as against Sir George Turner's proposal, it is infinitely better to know it at once, because, if there is a majority in favour of the former, all the debate on the latter would be a waste of time. I therefore propose that we first ascertain whether the committee prefers to retain Mr. Higgins' amendment, or to dispose of his amendment, and then deal with Sir George Turner's amendment on its merits. It would save a great deal of time if we did, because, if after giving leave to Sir George Turner to move his amendment, and having a long discussion thereon, we found that the committee was still of its original opinion, all that time would have been wasted.

Mr. DEAKIN. -

Why did we take all these steps then?

Mr. REID. -

Otherwise, we may have this ridiculous state of things—that Mr. Higgins' amendment remains in, and Sir George Turner's amendment, too.

Sir JOHN FORREST. -

No.

Mr. REID. -

It may be so. Let us know how we stand. I beg to move—That the committee reconsider clause 95 as amended.

The CHAIRMAN. -

Does the right honorable member move that as an amendment on the motion of Mr. Barton?

Mr. REID. -

Yes, because it will enable us to know at once whether I he committee is prepared to take up Sir George Turner's amendment. If it is it will rescind Mr. Higgins' amendment. I do not suppose Sir George Turner intends his amendment to be side by side in the Bill with the other.

Mr. BARTON. -

It will be impossible.

Mr. REID. -
I do not suppose that Sir George Turner, in moving his amendment, is agreeable that his amendment and Mr. Higgins' amendment should be in the Bill side by side.

Sir GEORGE TURNER. -
No, but you see you are putting honorable members in a false position. Some honorable members desire to vote for my clause, and get it if they can; but, failing that, they desire to retain Mr. Higgins' amendment, and therefore you are putting those members in a false position.

Mr. REID. -
I do not wish to do that; therefore, I beg leave to withdraw my proposition.

The CHAIRMAN. -
I have not put the proposition to the committee.

Dr. QUICK (Victoria). -
As one of those who voted for the amendment of the honorable member (Mr. Higgins), I hope that the proposal of the Premier of New South Wales will not be carried.

Mr. REID. -
I have withdrawn it.

The CHAIRMAN. -
It has not been proposed from the Chair.

Dr. QUICK. -
I trust that we will carry out what was intended when this instruction was given to the committee, namely, that we should have an opportunity to have a straight vote on Sir George Turner's clause. I supported Mr. Higgins' amendment, because it gave expression to what I thought a fair principle, although, perhaps, its wording was open to objection and was capable of improvement. But my position is this: If Sir George Turner's proposal is now carried I shall feel justified, if a division is taken, in voting against Mr. Higgins' amendment, but if Sir George Turner's proposal is negatived I shall feel at liberty to support that amendment.

The motion of Mr. Barton was agreed to.

Sir GEORGE TURNER (Victoria). -
I do not propose to detain the committee at any length with regard to this matter, because I think it is a proposal which ought to command a majority of honorable members by its own wording. We are all striving to get to one point, so that no state may be able to improperly and unjustly deal with another state. I think that is the simple point we have to decide. We have been two days endeavouring to devise some means by which to do it. I think up to the present we have not dealt with the question satisfactorily. There is only one way, to my mind, in which we can deal with the question
in a way which will be fair and just to all the states. I pointed out before that, if we put anything in the Constitution, and it turns out afterwards, by a decision of the Supreme Court, to have a meaning different from what we desired to put in the Constitution, we shall find it almost impossible to alter the provision. Whereas, if we leave it to the Federal Parliament, and they devise means which will not work well, or afterwards turn out to be unfair, we must trust to the justice of the Parliament to make the necessary alterations when they find that an injustice has been done by any of their acts. We want, if we possibly can, to stop all this cut-throat competition in all the colonies. We are all agreed upon that, but, unfortunately, we cannot find words to do so in such a way as will satisfy all of us. I beg to move-

That the following stand as clause 95B, to follow clause 94, viz:-

The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce, and particularly to forbid such preferences or discriminations as it may deem to be undue and unreasonable, or to be unjust to any state.

I do not know that the second part of the clause will be necessary, except that we want a particular instruction. From time to time, under this provision, I take it the Federal Parliament will have full power to legislate with regard to these matters, and they will know that they have a direction, in the Constitution itself, that in so legislating they must see that the provisions are not undue or unreasonable, and that they are not doing an injustice to any state. If they find that they have done an injustice to any state it will be in their power, and it will be their duty, to remove that injustice as soon as possible. Of course, the wording of my new clause may be questioned.

Mr. GORDON. -

It is not quite the same as the printed clause.

Sir GEORGE TURNER. -

No. With regard to the clause which we hurriedly prepared last night, A doubt was raised as to whether it would give power to the Federal Parliament to deal with the rates if they were too low. We want to give power to the Federal Parliament to deal with the rates whether they be too high or whether they be too low. If it will act in any way unreasonably or unjustly, then we are prepared, so far as I and my colleagues are concerned, to trust implicitly the Federal Parliament to do what is right and proper to all the states.

Mr. MCMILLAN. -
It would be an excellent proposal if we were federalizing the railways.

Mr. REID. -

Yes, if the railways were federalized; but as it is it practically puts them under federal authority, without the protection of the Federal Court, which we should have if the railways were federalized.

Sir GEORGE TURNER. -

No, only under the control of the Federal Parliament for the purpose of carrying out the principles of the trade and commerce sub-section.

Mr. REID. -

If it stopped there, there would not be a word of objection to it.

Sir GEORGE TURNER. -

But, in addition to that, the Parliament must see that no injustice is being done by any one state towards another. Unless some power of that kind is given to the Federal Parliament, we must fall back upon the federalization of the railways. But if the railways are federalized, we shall, no doubt, have to hand over all our lines to the Federal Parliament; whereas, under this proposal, we only want to give the Parliament power to say that one state, in dealing with its railways, shall not act unfairly and unjustly to any other state. I shall be quite prepared to hear any objection that may be raised to this proposal, and, no doubt, we shall be able to satisfy those who are objecting to it that this is the best thing we can do.

Mr. MCMILLAN. -

If the people will not agree to the federalization of the railways, what is the good of making regulations that practically give the Federal Parliament as much authority as if the railways were federalized?

Sir GEORGE TURNER. -

I do not know that we are doing that. I do not desire that. But I and all of us desire that no state shall do anything which is unfair and unjust towards another state so far as the management of its railways are concerned. We are not proposing to take any power to make any regulations at all. All we are taking power to do is to say that if the Federal Parliament finds that a state Parliament in one state or another has made regulations the effect of which is to give undue preference or discrimination so as to act unreasonably or unjustly to any other state, then the Federal Parliament may have power to step in and prohibit these regulations. I think this is the least power we can place in the hands of the Federal Parliament if its power is to be effective.

Mr. BARTON (New South Wales). -

There is only one word in the first part of this proposal which is anything more than padding, and that is the word "railways." The real proposal is in
the words beginning after the words "and particularly." The rest we can disregard. For this reason: The first part of the proposal is utterly useless, inasmuch as, without any such leave being given as is given by the first part of this amendment, the Federal Parliament will have power to make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of the Constitution with regard to roads and rivers, and all essential laws relating to trade and commerce.

Mr. ISAACS. -

But if you left the first part of the amendment out there might be an implication the wrong way in regard to the latter part.

Mr. BARTON. -

I think there will be an implication the wrong way even if we leave the first part in. Now, my objection to this proposal is that it is a total departure from the proper guardianship of the Constitution. While the Parliament may properly in relation to trade and commerce make laws for the execution and maintenance of roads and rivers, and pass any other laws for the carrying out of the trade and commerce subsection of clause 52, when they have done that much they have done all they should be allowed to do. They should be kept within the meaning of the trade and commerce provisions. Their legislation, if it stopped at that point, would be subject to the High Court of the Commonwealth, which is the proper tribunal. To take the adjudication of matters of this sort out of the control of the High Court, and to vest it in the Federal Parliament, is a proposal which I have a rooted objection to; and I shall be found, as I have been found from the beginning of the proceedings of this Convention, objecting to every provision which seeks to take away from the High Court of the Commonwealth, which we have appointed the arbiter of the Constitution, the consideration of matters which should be matters of adjudication by the court, and the placing of them within the jurisdiction of the Parliament, by that means keeping down and restricting the authority of the High Court as the protector of the Constitution.

Mr. SOLOMON. -

But the High Court will only interpret the laws passed by the Parliament.

Mr. BARTON. -

Yes, but if you give, outside the ordinary meaning of the trade and commerce clause, the discretion to the Parliament which is given to it by the latter part of Sir George Turner's amendment, you do more than you ought to do. By the second part of this amendment you take away from the High Court, and vest in the Federal Parliament, the determination of what is a preference or discrimination, which is an infringement of the trade and commerce provisions.
Mr. SOLOMON. -

Will not they be subject to review by the High Court?

Mr. BARTON. -

That cannot be if you give the Federal Parliament the sole discrimination. And I draw attention to these words-"such preferences or discriminations as it may deem to be undue and unreasonable or to be unjust to any state." Those words put in the hands of the Federal Parliament, instead of the High Court, the entire determination of what is an undue and unjust preference or discrimination.

Mr. GORDON. -

What is the best tribunal?

Mr. BARTON. -

I am much obliged to my honorable friend for his interjection. The best tribunal is a just one.

Mr. MCMILLAN. -

You might as well give the ownership of the railways to the Federal Parliament.

Mr. GORDON. -

But which is at once likely to be the most competent and the most just?

Mr. BARTON. -

The one which is likely to be most competent is the one that best understands the Constitution and can best interpret the meaning of it.

Mr. GORDON. -

The Parliament makes the law.

Mr. BARTON. -

And under this proposal the reasonable law which the Parliament may have made might be twisted at the discretion of the Parliament to the utter damnifying and humiliating of the High Court.

Mr. SOLOMON. -

If you strike out the words "as it may deem to be undue and unreasonable," would your objection be met?

Mr. BARTON. -

It would to a certain extent, but the proposal would still be open to this objection-that the insertion of these words constitutes an absolute denudation of the Supreme Court of its proper power under this Constitution. My next point is this-and it was the subject of an interjection by Mr. McMillan-that this is an attempt to deal with the railways of the various states as if they were already federalized property. Now, we must either federalize the railways or not.
Mr. KINGSTON. -
Are you prepared to federalize them?

Mr. BARTON. -

We have hitherto determined not to federalize the railways. I objected to the use of that term yesterday; I should prefer to say we have decided not to pool them. What we have determined to do in the case of the rivers—and, so far, the same applies to the railways—is this: To leave the Federal Parliament with authority to exercise federal control for the purpose of maintaining navigation. And so, in the case of the railways, we should prevent interstate commerce being interfered with. That, we, as New South Wales representatives, are perfectly prepared to abide by, but beyond that we are not willing to go. This is an attempt to treat the railways as if the Commonwealth had assumed their ownership, and in that respect the proposal is radically wrong. Because we have stopped short at taking over the railways—and I venture to say rightly so—but having so stopped short we are now asked to give to the Parliament of the Commonwealth a power which is only consistent with the complete ownership of the railways. How else can this clause be defended, except that you are going to give jurisdiction to the Federal Parliament to manage the railways? There is not a railway rate or tariff that would not be subject to a power of this kind. If the Parliament is to have the power of saying what is a just or an unjust preference or discrimination, we are practically allowing the Parliament to assume the ownership of these railways, because it may do everything it likes, short of absolutely taking them over.

Mr. REID. -

And short of paying the expense of running them.

Mr. BARTON. -

And short of paying the expense of running them, as my right honorable friend says. So that you give to, the authority which is not charged with the expense of maintaining these railways, or with the responsibility of managing them, and whose citizens do not have to sustain the obligation of them, such an authority as to impose an interdiction upon the management in such a way as would seriously jeopardize the finances of the state that owned them. It is a most radical amendment, and I do not think I shall go too far in denouncing it as the most unjust proposal that could possibly be put forward here. Now, with reference to preference or discrimination, we have under the trade and commerce subsection and under clause 89 made such provision as will enable the Parliament in the first place to make laws to maintain the proper freedom from interruption of navigation and commerce in regard to the carriage of goods between the states. We had that provision
sufficiently in the trade and commerce sub-section, and we have added to its effect by clause 89. I do not think that my honorable friend (Sir Joseph Abbott) understood that, when he spoke with regard to that clause this morning, because, as an interdict not only to the Commonwealth, but to the states themselves, in connexion with any action they desired to take in regard to trade and commerce between the states, those provisions cannot be usurped. Those provisions are sufficient to maintain freedom of trade and commerce between the states, but they allow the states themselves to take care of the trade and commerce which is within their own limits. And that is the proper division of federal and state power. I have been surprised to find in the course of this debate that the proper limits of the state and the Commonwealth in regard to this subject have been so much mixed up, even by honorable members who have spoken freely and strongly before as to the necessity for the separation of these two powers being provided for in the trade and commerce sub-section and clause 89. The sub-section and the clause referred to retain the authority of the state and of the Commonwealth within their proper provinces, and enable the High Court to interdict any traffic regulation made by a state which usurps the interstate authority of the Commonwealth—that is to say, which applies regulations that, upon their face, affect interstate traffic in such a way that it could not be continued without obstruction. But we are now asked, instead of leaving the provinces of the Commonwealth and of the states distinct, to go further and to give power not only of legislation, but of interference, to the Commonwealth.

**Sir GEORGE TURNER.** -

For one of the purposes of the Commonwealth—freedom of interchange.

**Mr. BARTON.** -

My honorable friend is quite in error there, because all that has already been done in the trade and commerce subsection and in clause 89. But he now proposes to go further. The amendment which he has proposed only reads sensibly if you read it as an additional power. The first part of the amendment is a mere repetition, but the second part is an additional power. If, therefore, you have already provided in such a way that trade and commerce come within the proper sphere of the High Court as arbiter between the states and the Commonwealth, it follows, if you mean what the amendment says, that you mean to go further and let the Parliament, dictated by factions and by parties, be the arbiter with regard to traffic and the state railways. I submit that that is radically wrong. It is an interference with the whole course of the Constitution which we have been making. Apart from all preferential considerations, if I were not one of the representatives of New South Wales, I should oppose this proposal,
because it is an attempt (quite apart from all consideration of the ownership of railways in the colonies) to take away from this body which we have set up the authority which should belong to it, and to force the states into confusion. I object to it because it takes away a power from the body that should be the arbiter, and leaves to faction the dictation of this important matter. I object to it because if this amendment is carried we shall be doing what is unjust as between the states. That cannot be. And this would be a maleficent provision to put into our Constitution.

Let any proposal be made which I consider to be fair and just and reasonable and I will not be one to unnecessarily object to it. But I do object to a proposal which seeks to hand over these cases which should be determined by an authority of permanently just and even decisions to an authority the voice of which today may be negatives by its own voice tomorrow. There cannot be justice or consistency in a proposal of that kind, and the transfer of this authority to the wrong place, if done, will be the most evil thing for the success of this Constitution which ever has been done. Passing from that constitutional view of the matter to the other view of it, what right is there that we should, at the dictation of one colony, place in the hands of the Parliament the determination of the way in which all the state railways shall be managed, for it amounts to that? It has been our intention, up to this point, to leave to each state the management of its own railways; and the two cannot stand together. This proposal is not in furtherance of the federal power for the regulation of trade and commerce, but it is an attempt to give the federal power an authority over railways which we have said we are going to keep to the states. If the Convention is going to pass a law of that kind, they will really in one breath be saying that the states shall manage their own railways, and in the other breath that this Federal Parliament shall manage the railways for the states. These two things cannot live together, and I do say that you could not have a proposal submitted that would be more likely to do damage to the Constitution than that to which I now object.

Mr. Isaacs (Victoria). -

I am sorry I cannot agree with the honorable member who has just resumed his seat. So far from thinking this a maleficent or wrong proposal, it should, in my opinion, have the support of every honorable member in the Convention who desires to see the Constitution come into operation with little friction as possible. Nothing has been said during the debate which has convinced me that the freight wars are injurious to the freedom of trade of the states as they stand, and, as I gather from the arguments of
my learned friend and of those who have spoken with him, the position will be this: That under the trade and commerce clause, and under clause 89 of the Bill, Victoria and South Australia may be prevented from doing anything which would give either of those states an opportunity of drawing custom to their own railways, whilst New South Wales would have the fullest opportunity, unrestricted by the Commonwealth, of doing everything she could to prevent any of her trade leaving her own political borders. In other words, the political lines are to govern and not the natural or geographical position. That must be cleared away. It must be made perfectly plain in the Constitution that Victoria, New South Wales, and South Australia are to be left with exactly the same rates as they have now in regard to railways, or that the matter must pass into the hands of some impartial and superior body, which will have power to control us all and keep us all within fair and equitable limits. We are told that New South Wales cannot consent to that. I personally hold the view that under the trade and commerce clause, as I said yesterday, the freedom of trade and commerce is what is looked to. I do not know of any case or any decision that has ever been given which goes to show that the giving of lower rates to an outsider is an interference with the freedom of commerce, and indeed a very late case decided in 1895 strengthens the views that I hold. Strong opinions have been given on the other side, and we ought not to leave this matter to the ultimate decision of a court in such a way that if the decision should be adverse to what most of us desire, the position could not be altered except by a referendum succeeding on a joint vote of the two Houses of Parliament. I think that would be a calamity. If it were to turn out as we fear it might, it would be a calamity. The object of the proposal put forward by the Right Hon. the Premier of Victoria is to do away with that. When the Hon. Mr. Barton said that it appeared on the surface of it to be a fair and equitable proposal he did it scant justice. The first part of it was in the Bill of 1891 and in the Adelaide Bill, with the exception that rivers were included.

Mr. WISE. -

You will admit that the words in the first part are not necessary?

Mr. ISAACS. -

I think they are necessary if you are going to say any more than that, because the absence of these words, if you are going to particularize, might raise an awkward implication. The objection is to the concluding words, which are these-"and particularly to forbid such preferences or discriminations as it may deem to be undue, unreasonable, or unjust to any state." The first objection taken is that the wrong tribunal is to decide the
matter. I would seriously ask honorable members whether such a question can be left to the Supreme Court as advantageously as to the Parliament? Is it a mere question of dry law? Is it a mere question of the construction of an Act of Parliament or of a regulation? If it were, I should say, undoubtedly, leave it to the Supreme Court. But what is the position? You will have to inquire into the political and commercial position of a country, and into the competitive claims made on the various lines, and you will have to look into a thousand and one considerations wholly foreign to the province and ordinary jurisdiction of a court of law. The Judges should not be asked to decide matters which extend far into the political arena, and which might land them in very awkward entanglements, and make the Supreme Court a centre of terrible political conflicts and controversies that might go to the very existence of the states.

Mr. OCONNOR. - Would not that apply to almost any question arising under the Constitution?

Mr. ISAACS. - No, because an ordinary constitutional question would be determined by a consideration of the document before the court. This is a totally different thing. The considerations which relate to what is a just railway rate between different states should be determined by independent men in Parliament, and not on questions of dry law. In a state, the state Parliament or an authority created by them determines the rates. Then we say that we will transfer any disputes that arise in regard to these matters to a superior body. And what body would be so calculated to determine them equitably as the Federal Parliament? If we want precedent for this we have got it in England. We have been talking about the American Inter-State Commerce Act, but the English Railways Act is the foundation of that measure. It is the English Act that the Americans follow. We have been looking to America for the provisions of the Inter-State Commerce Act with regard to railways, but the English law is the foundation of them. In deciding the latest cases in the American courts the Judges have been forced to go to English law in order to determine what is right in respect to these railway rates. In America have they left the question of what is fair and reasonable in railway rates to the Supreme Court? Not a bit of it. They have actually left it to Congress. The contention of my honorable friends opposite that Parliament has a right under the trade and commerce clause to regulate these matters shows that in America it is the Parliament that determines them. They have the fullest control. Under the Inter-State Commerce Act they constituted the Inter-State Commission.

Mr. MCMILLAN. -
Is not there a difference between a Parliament in a state and a Parliament that exercises its powers over several states?

Mr. ISAACS. -

I am referring now to the United States. The United States Congress has not any property in the railways, and although Congress does not attempt to manage these railways-and it could not, because they are private property-yet, by virtue of the powers it possesses, it did pass an Inter-State Commerce Act, in order that it might see that the states were fairly and properly dealt with.

Mr. REID. -

Are you willing that the principles of interference recognised under that Act should be recognised in this Constitution?

Mr. ISAACS. -

Yes, and I would go further. There is a case, The Texas and Pacific Railway Company against The Inter-State Commission, which was decided in October, 1895, and is reported in volume 162 of the United States Reports, page 197. In this case the Supreme Court

An HONORABLE MEMBER. -

What about the Wabash case?

Mr. ISAACS. -

The decision given in the Wabash case has been very severely commented on in a dissenting judgment recently, so that it is useless to rely upon it absolutely.

Mr. REID. -

There is the Act itself, the first section of it.

Mr. ISAACS. -

Will the honorable member allow me to answer one thing at a time? The case to which I was referring dealt with the position of the Inter-State Commission. It is a very instructive case, and I will read the final conclusions of the Supreme Court. They will be found on page 233 of volume 162. The court stated:

The conclusions that we draw from the history and language of the Act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the Act is to promote and facilitate commerce by the adoption of regulations, to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations: That in passing judgment upon questions arising under the Act the tribunal appointed to enforce its provisions, whether the commission or the courts, is empowered to fully consider all the
circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment. That among the circumstances and conditions to be considered, as well in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights, which would otherwise go by other competitive routes, are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered. That if the commission, instead of confining its action to redressing, on complaint made by some particular person, firm, corporation, or locality, some specific disregard by common carriers of provisions of the Act, proposes to promulgate general orders, which thereby become rules of action to the carrying companies, the spirit and letter of the Act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country.

Mr. OCONNOR. -

It is the commission that has to consider all these things, not the Parliament.

Mr. ISAACS. -

The commission will be created by the Parliament, and the Parliament can pass any enactment it likes for the guidance of the commission. It may refuse to establish the commission if it likes. But I urge it upon the consideration of my honorable friend, if the Supreme Court is not a body ill calculated to deal with these matters. If it did deal with them, it would be entering into political contests, which would degrade it, and it would render itself subject to animadversion upon the part of those who were dissatisfied with its decisions, which would seriously detract from its dignity. Suppose, however, that the Supreme Court endeavoured to deal with these matters, I ask how would it proceed? It would call experts-

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merchants, railway men, and others-from all parts of the states concerned. Would it also have to call for a jury of the inhabitants of these states, or
would the Judges be supposed to be competent to give a decision upon the facts set before them? I think that all the considerations surrounding the ease should determine us that the Supreme Court is not a body suitable for the performance of this work.

Mr. GLYNN. -

Does not the Inter-State Commission declare what is unjust, while the Supreme Court acts accordingly?

Mr. ISAACS. -

In this case, Parliament will determine what shall be done, and who shall do it. I can quite understand that Parliament may say - "We are too large a body, too complex a tribunal, to ourselves determine these matters, just as we are unable to directly control the management of the various departments of Government; but we can lay down principles, and we can create a tribunal which we can alter if it does not satisfy us, and we can thus see that justice is done between the various states as nearly as possible." That is what Parliament does in America, and what Parliament does in England. In England they have created a commission, and have laid down provisions similar to those I have been referring to. We must not think that America affords all the precedents in regard to matters of this kind. In America they refer to the English decisions, and acknowledge that it is the English law and legislation which forms the foundation of their interstate commercial provisions. In England the state does not possess or control the railways, but care is taken that in regard to these gigantic concerns which merchants and producers require to be able to meet each other and to effect a distribution of products, both manufactured and unmanufactured, the rights of the public are considered. The public are not legally compelled to use these instruments of commerce, but they are practically compelled to do so. Therefore, the state steps in and says that there shall be no undue preferences or discriminations. In this connexion the English case of Phipps v. The London and North-Western Railway Company, 1892, 2 Q.B., 289, is very instructive. I merely refer to the case to show honorable members that these matters have had consideration in the English courts of law.

Mr. OCONNOR. -

Every English railway company works under a charter which is limited by certain conditions, these conditions dealing with the question of discriminating rates and other matters.

Mr. ISAACS. -

There are railway companies in existence in England who got their charters long before the present Act was passed, and it cannot be said that they took them with the knowledge that this Act would be passed. The Act
was brought in because it was found that the public welfare demanded it—just as, I think, the public welfare will demand some provision of the kind I am advocating.

Mr. GLYNN. -

There were Acts passed before 1888. There were Acts passed in 1844.

Mr. ISAACS. -

Yes. The amending Act was passed in 1887-8, and the English Act preceded it. The question was considered by the Supreme Court of the United States in 1896 in the action—The United States v. the Trans-Missouri Freight Association. It is a remarkable thing that in nearly all these cases we have a division of opinion amongst the Judges. The decisions are generally come to by a majority of five Judges to four.

Mr. GORDON. -

That shows how dangerous it is to leave these matters to the Judges.

Mr. ISAACS. -

Undoubtedly. The position in America is very curious. There appears to be no provision enabling the Inter-State Commission to stop what is called "the war of freights," that is, undercutting. Honorable members will recollect that I read the other day part of the report of the Inter-State Commission for 18945, in which, after deploring

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the terrible war of freights in the south, the commissioners expressed themselves as unable to deal with it, because the legislation of the Commonwealth has not yet given them power to do so, the implication being that Congress could give them this power. In 1890 Congress passed a law providing that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce," was thereafter to be illegal. Under that Act a very strange case arose, and it indicates the necessity for a provision such as we now desire to introduce into this Constitution. The Trans-Missouri Freight Association consisted of a certain number of railway companies which had been undercutting each other, and which combined to fix rates from which none of them should depart. The legality of the combination was questioned, but before the court could give a decision the association was broken up, in order that the court might not decide the matter. But the Judges said that they could still deal with it, and that they could grant an injunction against the repetition of what had occurred. They decided that the provisions of the Act to which I have referred—

Apply to and cover common carriers by railroad; and a contract between them in restraint of such trade or commerce is prohibited, even though the contract is entered into between competing railroads only for the purpose
of thereby affecting traffic rates for the transportation of persons and property.

On page 330 the court made some observations which, I think, should guide us in this matter:

To the question why competition should necessarily be conducted to such an extent as to result in this relentless and continued war, to eventuate only in the financial ruin of one or all of the companies indulging in it, the answer is made that if competing railroad companies be left subject to the sway of free and unrestricted competition the results above foreshadowed necessarily happen from the nature of the case; that, competition being the rule, each company will seek business to the extent of its power, and will under-bid its rival in order to get the business, and such underbidding will act and react upon each company until the prices are so reduced as to make it impossible to prosper or live under them; that it is too much to ask of human nature for one company to insist upon charges sufficiently high to afford a reasonable compensation, and while doing so to see its patrons leave for rival roads who are obtaining its business by offering less rates for doing it than can be afforded and a fair profit obtained there from. Sooner than experience ruin from mere inanition, efforts will be made in the direction of meeting the under-bidding of its rival until both shall end in ruin. The only refuge, it is said, from this wretched end lies in the power of competing roads agreeing among themselves to keep up prices for transportation to such sums as shall be reasonable in themselves, so that companies may be allowed to save themselves from themselves, and to agree not to attack each other, but to keep up reasonable and living rates for the services performed. It is said that, as railroads have a right to charge reasonable rates, it must follow that a contract among themselves to keep up their charges to that extent is valid. Viewed in the light of all these facts, it is broadly and confidently asserted that it is impossible to believe that Congress or any other intelligent and honest legislative body could ever have intended to include all contracts or combinations in restraint of trade, and as a consequence thereof to prohibit competing railways from agreeing among themselves to keep up prices for transportation to such a rate as should be fair and reasonable.

The court says that, as Congress has determined that there shall be no combinations of this kind, it cannot go into the question of whether rates are or are not reasonable. The court has only to look at the bare words of the Act, and decide whether there has been any combination. But is that the state of things that we wish to see existing here? If the Supreme Court has to take into consideration the various circumstances to which I have referred, will it not be disturbed in it proper functions and required to
decide questions it was never intended to decide? But if we leave matters where they are, we shall have injustice, according to the contention of my honorable friends. New South Wales would, from the nature of her situation, be absolutely free to make such charges as

she liked, be they great or small, so long as they were confined to the traffic originating within her own borders, although that traffic might politically and geographically belong to another state, and should naturally flow to some other part of the Commonwealth. When we are entering into a Federation these considerations must appeal to us with unanswerable force. Therefore, I say that the amendment of the Premier of Victoria is supported by the very latest decisions on these matters, and is defensible and unanswerable when attacked from the aspect of the nature of the tribunal which it is sought to impose. It is also necessary in order to give what I think a fair and reasonable solution of the difficulties which have been engaging our attention for the last few days.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. GORDON (South Australia). -

I should like, in a very few words, to say something in reply to the argument which the honorable and learned member (Mr. Barton) addressed to the Convention with regard to the impropriety of submitting the matter of the justice or injustice of railway rates to the Parliament. I think the honorable member rather makes a fetish of the High Court. I think we ought to remember that, after all, the High Court, important as its functions are, is the creature of the Constitution, and that the Constitution is not to be the creature of the High Court. Why are the services of the High Courts so often called into requisition in America? Simply because of the uncertainties of the Constitution. And if, by stating plainly what we intend, we can avoid the necessity of calling into use the services of the High Court here, why should we not do so? I should prefer to we as much left to parliamentary sovereignty as possible, consistent with the proper adjustment of the Constitution, rather than that we should delegate the duties of Parliament to the High Court, as, owing to the uncertainties of the American Constitution, has too often been the case there. It is a common saying that the Constitution of America is not to be found in the Federal Constitution Act itself, but in the decisions of the Supreme Court, and if we can avoid a similar state of things here, I think we ought to do so. I entirely agree with the Attorney-General of Victoria that Parliament is the best tribunal to decide this matter. When Mr. Barton asks us why should we remit this question to the voices of the faction which at the time it was to
be decided might be in power, I ask him in return why remit any of these matters to the voices of the faction which might be in power? We are giving the Federal Parliament power to take the shirts off our backs by giving them absolute powers of taxation. They have a right to restrict our liberties, and to make us military servants and slaves of the Commonwealth for the whole of our lives if they choose, theoretically speaking; and surely we can leave to the Federal Parliament the right to say whether an injustice is or is not being perpetrated in the Commonwealth in a matter of this kind. That is all we are asking—that Parliament shall have the right to see that no injustice is committed in the matter of railway rates. In matters of immensely more importance we are leaving the arbitrament to the Federal Parliament, and why should we not do so in this case? I object, as I said before, to a fetish being made of the Supreme Court, which is only the creature of the Constitution. If we can make, in our Constitution, things so plain that he who runs can read, by so doing we shall lessen the necessity of going to the Supreme Court for explanations.

Dr. COCKBURN (South Australia). -

One word in support of my honorable friend (Mr. Gordon). I would say, do not let matters of detail obscure the great issues of principle which are before us.

Do not let the mere question whether it is the Federal Parliament, the Interstate Commission, or the Judiciary which should interfere in this matter obscure the great issue that some federal authority should have this power. I do not want to see a false vote taken on this occasion, as has been done on some former occasions in which members voted against a great principle because the power did not appear to them to be put in the hands exactly of that authority in which they thought it ought to rest. Let us decide, on the grounds of principle, whether or not we want to give some federal authority an oversight of these matters. The mere putting in of the words "Federal Parliament" does not necessarily imply that the Federal Parliament itself will always be the arbiter. The Federal Parliament can make what laws it likes to constitute any other body to be the arbiter.

Mr. ISAACS. -

Those are the words of the amendment—make laws.

Dr. COCKBURN. -

Yes; and yet the whole of the declamation against this proposal has been based on the ground that every question will have to be debated on the floor of the Parliament. The Parliament will certainly erect some authority to deal with this matter.
Yes; the Parliament will use an instrument.

Dr. COCKBURN. -

Of course it will. It will not bring into the political arena every question of this kind. The Parliament will be composed of sensible men, like this Convention, and will delegate its authority to some efficient instrument.

Mr. GORDON. -

Just as they appoint the Supreme Court Judges.

Dr. COCKBURN. -

When we have a clear issue before us, do not let that issue be obscured by a mere question of detail as to whether this, that, or the other instrument should be employed. The real question is whether there should be a federal authority or not in this matter.

Mr. WISE. -

That is not the question at all

Dr. COCKBURN. -

That is the whole point.

Mr. WISE. -

It may be what is intended, but it is not expressed.

Dr. COCKBURN. -

If the honorable and learned member sees what is clearly meant, then, to use the language of his own profession, let the issues be joined, and a vote be taken on the merits of the case.

Mr. REID (New South Wales). -

I quite agree with my honorable friend (Dr. Cockburn) that we should direct our attention first, at any rate, to the particular principles which are involved in this proposal, and in the whole discussion. Mr. Isaacs referred at some length to cases in England and America, but I would respectfully point out that remarks based on such references are completely wide of the mark. In the first place, just contrast the difference between questions arising between railway companies A, B, and C, heard before some board in England, and questions arising affecting the trade of colonies whose representatives are to be constituted a tribunal to decide all questions arising which affect such trade. It is a very queer kind of a jury—a jury personally interested probably in every question that comes up. If we can learn any wisdom at all from our proceedings, we can learn this lesson, that the moment trade comes up in any shape or form—whether in regard to the hold that one colony wants to have over the rivers of New South Wales, or with regard to the hold the two colonies want to have over the trade of New South Wales—we find immediately that the pure federal atmosphere becomes obscured, and there is a contest, almost by delegations, upon these points of self-interest. Who can calmly see the slightest chance of any
questions which might arise being settled in a just and impartial manner by such a tribunal? Who can look forward with any satisfaction to the tribunal established under the proposition of the Premier of Victoria—a tribunal in which almost every individual sitting in judgment and making laws will represent the direct interests of his own state in conflict with the direct interests of another state?

Mr. GORDON. -

The creation of an interstate tribunal is conceded.

Mr. REID. -

The honorable member must see, first of all, that that is not so.

Mr. GORDON. -

The Inter-State Commission is in the Bill.

Mr. REID. -

It by no means follows that it will remain in the Bill.

Mr. GORDON. -

We all assume that it will.

Mr. REID. -

We have not assumed anything about any clause we have not yet considered. It is entirely open for consideration and perhaps for omission. That is the view we have taken in the past with reference to every other clause, and I presume no understanding has been arrived at in reference to this one. The Convention is absolutely free to leave it in or take it out. But even if that were to be left in, this amendment is fatally at variance with the jurisdiction and usefulness of such a body making laws—to do what?"—to forbid such preferences or discriminations as it," not the Inter-State Commission, "may deem to be undue and unreasonable or to be unjust to any state." Just dwell for a moment upon these words. The Federal Parliament is called upon to make laws to forbid these things. Now, any one who has the slightest knowledge of railway management and the multitude of rates that may come within the scope of this proposal will see the sort of task that is being laid on the Federal Parliament. It must spend probably all its time dealing with particular rates on particular competitive railways, trying to checkmate the ingenuity of the Railways Commissioners as each attempt after attempt is being made to impose a rate which is doing what, perhaps, the Federal Parliament will think to be a wrong thing, but which cannot be declared a wrong thing until Parliament has passed a law declaring it to be a wrong thing, and forbidding it to be done. First of all, it would leave all such matters to the Government. No private member would ever attempt to bring in a Bill to forbid the schemings of Railways Commissioners to carry on their railways so as to
evade this provision, so that naturally the Government would deal with such matters, and the Government would thus spend nearly all its time in order to carry out the spirit, meaning, or intention of this clause. That is a proposition which has only to be looked in the face to stand self-condemned. If the words were to establish a tribunal to forbid preferences or discriminations which that tribunal might deem to be undue and unreasonable-

Mr. ISAACS. -

Do you suggest that? If that is the only objection we can cure it.

Mr. REID. -

How can the honorable member suppose, when I have just begun to address myself to the proposition, that that is the only objection? I deal first with the structure of the proposal, to show what it means. The first thing we all attempt is to come to an understanding what a proposition means. It then comes to us for our judgment whether we approve of it or not. I point out that the meaning of this proposition is that the Parliament, not by any resolution of one House or of the two Houses, but through all the clumsy stages of passing a law, must grapple with all the ingenuity of Railways Commissioners in passing rate after rate or 100 different rates upon different lines which may be in contravention of the principle of this proposition. Who would lay upon Parliament such a task? No reasonable man would set Parliament to check Railways Commissioners by means of Acts of Parliament; they would never overtake the commissioners. What Parliament in the world is there that could pass Bills through two Houses to forbid railway rates, to overtake the ingenuity and industry of Railways Commissioners who can frame rates every day, and who could alter them the next day by a stroke of the pen? The Parliament would be hopelessly, lagging behind in the race to attempt by such clumsy methods to grapple with the quickness of action of the Railways Commissioners. So that method in itself breaks down. But there is a more important point behind it. Do we want our Commonwealth to be put in such a position that its political forces in the party arena are to be put in the odious position of pretending to do justice when their own self-interests are involved? What set of Judges in the world have ever been allowed to adjudicate in a matter affecting any human being when they have a direct personal interest in the matter to be decided? What sort of new tribunal is this which the wisdom of this illustrious Convention is creating? Are not the bare bitter strong opposing forces of self-interest sufficiently apparent in this Convention when the trade, whether of a river or a turnpike or a railway, is involved? Have we not seen enough to the
peculiar kind of judicial treatment which such questions receive in this Convention without carrying the miserable fight of provincial self-interest into the Federal Parliament, in the name of an impartial judicial tribunal? The whole project breaks down, and it can only be thought of owing to some desperate emotion of self-interest; or to meet some desperate necessity of some colony or colonies. I confess that my honorable and learned friend, the Attorney-General of Victoria, does not often perform such an extraordinary change of front as he has done in connexion with this question. I will read from today's newspaper the well-considered decision, or the ill-considered decision, of Mr. Isaacs, taking this report as correct. Mr. Isaacs said-

That, although sympathizing with Mr. Higgins' objection, he was afraid the words of his amendment would carry them too far in one direction, and not far enough in another. Suppose Victoria formed regulations and a set of charges, with a view of making Melbourne the greatest port in the Commonwealth, would those regulations and charges be rendered null and void by the amendment? If so, the amendment went too far; for each of the states, so long as they raised up no barriers to trade, should have the most perfect liberty, by offering low railway rates, to make their ports the best in the Commonwealth.

That is a plain and intelligible proposition, and I won't oppose it. I am prepared to give Victoria exactly the same liberty as ourselves in connexion with such matters. I am prepared, if the words leave the matter in doubt, and I frankly admit that they do -

Mr. ISAACS. -

That is just our difficulty.

Mr. REID. -

I wonder you are so long in seeing it; I saw it yesterday, and I think my friend must see it too. But, whilst I am prepared, contrary to the principles of the Constitution, to help Victoria out of her difficulty, I must say that if my friend thinks this is helping him, he is making a great mistake. There is no colony against which these words could be used more strongly than against the colony of Victoria. But I am not concerned specially with Victoria. I am looking at the matter, first of all, as it affects the working of the Commonwealth, and, secondly, as it affects the working of the states. Mr. Isaacs knows that in the United States Commerce Act, in its very first section, it is expressly provided that there shall be no interference with the traffic which is entirely within a state. The first section of the Act puts such traffic absolutely beyond the interference of that commission, and that is the very basis of the Constitution—the very words of the United States Constitution, and the very words of this Constitution. In section 53 or 52,
subsection (1), the Commonwealth is given power to make laws to regulate commerce among the states. In section 89, it is provided that the commerce among the states, using the same words, shall be absolutely free.

Mr. DEAKIN. -

Between States.

Mr. REID. -

Yes. These are the words of our Constitution, and they are the words of the United States Constitution;

and the provision in the Inter-State Commerce Act absolutely exempting traffic entirely within a state followed the legal decisions upon the words in the United States Constitution. We must be taken to know what we are doing. The words "among the states" can only mean one thing. They cannot mean between one part of one state and another part of another state. They mean the commerce between the states, as expressed. That has been the scope of the United States Constitution, and the scope of the Inter-State Commerce Act. That is the scope of this Bill up to this moment, and I submit it is a sound scope. I submit that where the sovereignty of a state is preserved it should be left with its sovereignty or else it should be plainly told it has no sovereignty. One of the greatest evils of the task we are engaged on would be brought about if we are not always clear and explicit on the point as to whether the states are really to be sovereign on matters vested in themselves, or are to be creatures of the Commonwealth. It becomes all the more important if the law of the Commonwealth, passed on a subject within the scope of the Commonwealth, is absolutely supreme over any state law passed in the course of its sovereign power-over a power expressly kept within the state. That is the position. If the Commonwealth law on subject A, which is within the power of the Commonwealth, incidentally conflicts with a state law on subject B, with which the Commonwealth has nothing to do, the state cannot even be heard in the Federal Supreme Court to say one word against the Commonwealth law. Why? Because it is provided under the 7th section, and under, I think, the 100th section, that where the law of the state is inconsistent with the law of the Commonwealth-it does not say on the same subject-the law of the Commonwealth shall prevail. We are in a sufficient position of danger. Though the Commonwealth laws may interfere with the state's law, in which the states are supposed to be sovereign, still we have sufficient danger, without further mixing up these two important questions. If it were a dispute between A., B., and C., as private individuals, the proposition to make the Parliament judge of a particular railway rate or regulation would still be ridiculous, because it would not work; it would break down. The
Federal Parliament, after three months of procedure, might decide a certain rate to be wrong, and annul it, and another rate would take its place. We would then have another run of three months before the Commonwealth could undertake to say the second rate was wrong. That is the sort of procedure the amendment establishes. It does not suggest another tribunal to decide whether a particular rate is unfair and unreasonable, but it takes on itself, as a Parliament, to decide it by an Act of Parliament. That seems to me, in the plainest possible view of the facts, to be a ridiculous proposition. If an Inter-State Commission is intended to decide such matters, the general words of the Constitution regulating trade and commerce would enable the Commonwealth Parliament to establish such tribunal. So far as any useful purpose is concerned, the proposition in reference to an independent tribunal is unnecessary. Any question affecting a railway rate in this Commonwealth is a state question. It is a question affecting a state and not an individual.

Mr. DOUGLAS. -
And states.
Mr. REID. -
If there were 50 states the argument would be the same. What have we done in reference to disputes which affect the Commonwealth and the states? We have deliberately put in the bedrock of the Constitution, that such disputes shall be decided by an independent tribunal, sworn to do justice, sitting as Judges. That is the protection which we have put in the Constitution for the states. If the Commonwealth and a state come into collision at any time on an item, the state will seek the protection of the Federal Supreme Court, however strong the Commonwealth is, and appeal for justice. That is the structure and design of this Constitution. Why should a state's interests in its railways be remitted to any other tribunal? I will tell you why. There are a lot of people with a great deal of interest in the trade of New South Wales; and they want to have special words, to make sure they will get that trade. That is the plain English of the matter. We cannot be blind to the position of New South Wales. We have colonies all round our borders. These colonies have been straining every nerve, not for one year, or for ten or twenty years, but always, to practically annex New South Wales as far as they could. We have their emissaries, day after day, going through the length and breadth of New South Wales on such an errand. We have Victorian agents going up, not merely through Riverina, but as far as Bourke-through the back country of our colony-offering extreme inducements to take trade from us.
Sir GEORGE TURNER. - Did not your Commissioners of Railways send out certain circulars?

Mr. REID. - I am afraid we have had to. When we see these gentlemen from Victoria going up to near Bourke, I think it is about time we did something in the defence of our own interests. But I only mention that to show that a Federal Parliament which will be composed of representatives of colonies that act in that way is not quite the tribunal which we ought to select. We want, at any rate, to choose a tribunal whose Judges have not been beset by that sort of thing. What a strange thing to propose that gentlemen who have been members of Governments that have indulged in these cut-throat rates should sit in the Federal Parliament as Judges over such a matter. Such a tribunal is tainted with self-interest, and, under the guise of doing justice, it will bring into play all the political passions that can possibly be invoked-political passions which are never so keen as on questions of trade, as we have seen in this Convention. So that whatever we do, if this Convention is determined that the Commonwealth, whilst paying nothing for the construction and management of the railways, shall practically run them—if we are prepared to put the people of the colonies in the position of saying yes or no to such a proposal as that, at any rate, let us try to induce them to shut their eyes to the sort of thing they are asked to do, by giving them some guarantee that they will get justice, or that the tribunal which is to determine the matter will be a just one.

Mr. ISAACS. - Why should that tribunal be more unjust in a case of this kind than in the case of the Tariff?

Mr. REID. - I will tell my honorable friend the difference between those two things. We are not handing over the railways to the Federation. If the Federation had the financial responsibility of running the railways, much that I say would lose its point, because the Federation would have to pay for its mistakes in railway management, and other people would not have to pay to have the privilege of doing their own business in the way that somebody else directed it ought to be done.

Mr. ISAACS. - That is no distinction.

Mr REID. - That is a sufficiently strong distinction.

Mr. ISAACS. - Nobody proposes that the Federal Parliament shall make such regulations.

Mr. REID. -
This proposal is infinitely less sensible than a proposal of that kind would be. I could more easily understand the Federal Parliament being asked to make regulations, although that would expose them to the taint I have already referred to—the taint of self-interest.

Mr. ISAACS. -

That would not be done.

Mr. REID. -

Still, I think it infinitely more absurd to compel Parliament to express its opinion on the fluctuating rates of railways in a solemn Act of Parliament.

Mr. OCONNOR. -

And an opinion would not be asked until a dispute had arisen.

Mr. REID. -

How could it? That brings me to another feature of the injustice of this proposal. It must be remembered that the Parliament has, before it can legislate, to arrive at a personal judgment—the personal judgment that it deems a certain railway rate to be undue or unreasonable, or to be unjust to any state.

Mr. SOLOMON. -

No.

Mr. REID. -

Then we had better go to school again.

Mr. SOLOMON. -

Some of us.

Mr. REID. -

What do these words mean? The Parliament may make laws—I leave out the intervening words—particularly to forbid such preferences or discriminations as it may deem to be undue. How can any authority deem a thing to be undue or unjust until it knows what that thing is?

Dr. COCKBURN. -

It can provide for it beforehand.

Mr. REID. -

That is exactly the admission that I wished some one to make. It only points more keenly than I can to the clumsiness of this proposal. Each of these railways is in a widely different set of circumstances than the other railways—certainly that is so it our colony—and how, in the name of common sense, can any Parliament deal with the varying circumstances, of different lines of railways in different districts, and with rates of which they have no knowledge?
The Federal Parliament can lay down general principles.

Mr. REID. -

If there are any particular general principles which honorable members wish us to oblige them with, let them propose to put those general principles in the Constitution; let them put those general principles before us in black and white now, and let us know before we sign this deed what you are driving at. It is a queer way of putting general principles in, to propose to give a certain tainted tribunal, in a matter of this sort, an absolute power to do what it likes.

Dr. COCKBURN. -

I do not admit that the Federal Parliament is going to be a tainted tribunal.

Mr. REID. -

When I say tainted, I mean tainted in the point of self-interest. In the case of our friend, that taint is patriotic. The representatives of South Australia are unanimous, except the Treasurer of South Australia, who shines amongst us all for the absolute conscientiousness of his attitude in this Convention. I will not say the same about ourselves. I do not want to put myself on the same plane as the Treasurer of South Australia in this matter. I say that there is nothing more natural than for the representatives of New South Wales to look more particularly after the interests of their own colony rather than after the interests of other colonies. They are human beings. And I am merely saying the same of my honorable friends, only that they are rather more so. It is no reflection on a Parliament to say that it consists of human beings. It is no reflection on a Judge, if he happens to be a shareholder in a bank whose case comes before his tribunal, to say that he should not sit in that case. No Judge would think of doing so under such circumstances. And in these matters of trade, when the rival interests of the colonies crop up in the Federal Parliament, each man who comes from his own colony will, in the course of human nature, naturally look more after the interests of his own colony than after the interests of other colonies who have got other persons there to represent them.

Mr. ISAACS. -

Then, whatever tribunal you have to get, you would get its members from persons who were not citizens of the Commonwealth.

Mr. REID. -

A Judge is a citizen of the Commonwealth, and yet be cannot sit in a case in which he is interested.
And yet you say you would not have him sit in a case of this kind.

Mr. REID. -

Not at all. A few minutes ago I expressly pointed to a tribunal that we have put in the Constitution, which is the kind of tribunal I have referred to.

Mr. ISAACS. -

But won't the members of that tribunal necessarily be citizens of the Commonwealth, and tainted, as you say?

Mr. REID. -

No. But I was not referring to the Inter-State Commission. I was referring to the Federal Supreme Court.

Mr. ISAACS. -

Are not the members of that court citizens of the Commonwealth?

Mr. REID. -

If I cannot point out the difference between the functions of Judges on the bench and the functions of political representatives dealing with the interests of the various states in the Federal Parliament, I really cannot meet the intelligence of the honorable member. Fancy Mr. Solomon trying anything affecting the mercantile interests of South Australia. He is a clear-headed able man, it is true, but I should want another clear-headed able man, who was a New South Welshman, along-side him when such issues were being tried.

Mr. SOLOMON. -

A man after the Reid pattern.

Mr. REID. -

No, I am not up to the honorable member in business matters. My honorable friend is a much cleverer man than I am in business matters.

Mr. SOLOMON. -

Will you answer me one question—would your objection be overcome by putting in, after "Federal Parliament," "may appoint an interstate tribunal independent of Parliament, which may make laws dealing with this question"? Will you agree with that?

Mr. REID. -

One would think that my honorable friend was knocking me down at auction. I would like to state to my honorable friend, without turning my back on the Chair, that I infinitely prefer the High Court or an Inter-State Commission to the tribunal of the Federal Parliament.

Mr. SOLOMON. -

Still you do not say whether you will accept the alteration.

Mr. REID. -

No, because I have other objections, and very serious ones, which I have mentioned. The words in the Bill give the Federal Parliament at present full
power to appoint, as a tribunal, a body of men to deal with questions affecting commerce and navigation. The power is in the Bill, and there is no necessity for this provision.

Mr. SOLOMON. -

Not quite so full as this.

Mr. REID. -

My honorable friend knows, just as well as I do, that this is not a drive for an Inter-State Commission but is a drive for prejudging how they are going to decide. That is the sort of thing that is wanted. My honorable friends are constantly willing to accept tribunals so long as they lay down a principle on which they must act. You cannot lay down a general principle in reference to the varying

Mr. BARTON. -

It would not be fair play.

Mr. REID. -

Any words which could be pointed to by a critic of this Bill in any colony as designed to prejudice that colony and its substantial interests, in the event of an independent tribunal having to decide, are words I do not want to see in this Constitution. If the interests of a great colony like New South Wales are to be left absolutely to any tribunal, the interests of the smaller colonies must be left in the same way.

Mr. ISAACS. -

That is the proposal.

Mr. BARTON. -

That is not the proposal.

Mr. REID. -

That proposal does not fit this proposal. This proposal is one to do a thing which is impossible in the nature of the case. It is impossible justly to lay down any rule in any form of words that would enable justice to be done under all the varying and fluctuating conditions to which I have referred. No human brain could conceive a form of words which would, in administration, be absolutely fair as regarded every possible case of railway rates and railway administration which would come up, and the attempt to do such a thing is idle. We might just as well attempt-and it would be a very valuable thing if we could do it-to lay down general principles of law and justice, which the Federal Court should administer. We do not attempt to do that.

Mr. BARTON. -

We might as well make a code of laws for them.

Mr. REID. -
We leave the destinies of every man in the Commonwealth and of every state to the judicial discretion of the High Court. If we do that in reference to matters of the greatest concern

Mr. TRENWITH. -
Subject to lines we have laid down.

Mr. REID. -
If my honorable friend were more familiar with these matters he would know that the Federal High Court will begin with a wonderfully free hand.

Mr. BARTON. -
It amounts to saying this: Do justice, provided that you slate the other fellow.

Mr. REID (New South Wales). -
It means, do justice, provided that you do it on that pattern. That suits some, because the pattern suits them. Any attempt to lay down any criterion of fairness in the varying complexities of the administration of different lilies in different parts of the country must break down, because the circumstances vary so indefinitely; and only those who have an ulterior purpose to serve, and see that the words will at any rate do them good, will attempt to put them in. I can understand men of business putting all sorts of words in to suit them, however ridiculous they may seem in the structure of the document. But we are here, I presume, to act fairly by one another. We are here to constrict a document to which the critic cannot point as containing a blemish of that sort. I frankly put to my honorable friends here a difficulty, which is not a new one to me; for the strongest observations I made in 1891—and I made, I am afraid, rather too strong observations—were about this very provision in the old Bill, which amounted to an interference with the management of the state railways, while leaving the state with the financial responsibility of working them. I have always put this matter as a very strong and important one in connexion with our railways. I cannot change my view on the matter, because it appears to me inherently just that those who have the financial responsibility of a mere trading concern, remember, because these railways are simply a trading concern

Mr. DEAKIN. -
More than that.

Mr. REID. -
Let me put this test. If the railways in Riverina, were owned by private individuals whose money had been embarked in them, there would be a great deal more slowness in interfering with the vested interests of those shareholders than there is in interfering with the interests of New South Wales. A large number of questions would come up. We would hear about the rights of property. We would hear all sorts of very solemn things said
about the rights of possibly some few influential individuals who owned those lines. The railways in Riverina were established as a business concern, also as a state concern; they were established under circumstances of peculiar hardship to our settlers, when those who now speak of Melbourne as the natural port of Riverina, refused to our producers the right to sell a shilling's worth of their produce in a Victorian market. It must not be forgotten that we built these railways because of that hardship.

Mr. BARTON. -
Because there was only the one market for them.

Mr. REID. -
Because, deprived of their natural market, they came to the Government in Sydney, and said:"We cannot sell our goods in this natural market of Melbourne, in Victoria, you must do something for us, and let us come to Sydney, where we shall have a chance to sell our goods." The Riverina railways were constructed under these circumstances, and, built as they were under such circumstances, I cannot consent to words being put in this Bill which would make those railways worthless—which would make it impossible for us to keep them open. It is not a matter of interfering with trade that oppresses me here; it is the fact that these large assets must be preserved and must be protected.

Mr. HIGGINS. -
Do you mean that by charging reasonable rates Riverina would be destroyed? Riverina is the most prosperous part of New South Wales.

Mr. REID. -
Yes; but if the mere mileage distance were preserved, 200 miles would always prevail as against 500 miles. There is no doubt about it.

Mr. TRENWITH. -
You want to derogate from freedom of trade by taking it away.

Mr. REID. -
No; my honorable friends in Victoria having put up a fence across the boundary of the 200 miles to keep our stock and our wheat and our general produce from going to their natural market, we were compelled to build these lines to give our producers an opening.

Mr. PEACOCK. -
That is going to be done away with.

Mr. REID. -
Then just send along a cheque to the value of our railways!

Mr. DOUGLAS. -
We want to get rid of all that.
Mr. REID. -

My honorable friend does not owe anything upon these lines. If he owed a few hundred thousand pounds upon them he would take a very different view. The airy wave of the hand that does not owe anything is very pretty, but I, unfortunately, cannot wave my hand in that airy fashion, because the colony I represent does owe a large sum of money upon these lines. Of course, there is no trouble of this sort in a country that only measures about five by two. These difficulties have arisen because our producers were shut out from their natural market, and I say that, having built these railways, so long as we have to run them I will not allow our liberty of action in running them to be interfered with. Now, that is plain language. It is not only plain, but it is absolutely in accordance with the principles of the United States Constitution, because, as I have already pointed out, under the words of that Constitution, and under the Inter-State Commerce Act, it is recognised clearly that, so far as a State's own internal trade is concerned, the state's sovereignty is preserved. I only ask for that which every state in the United States has. If these were private railways, and only private capital were concerned, and if our claim would be recognised in regard to private ownership, that claim becomes all the stronger, inasmuch as our railways are owned by the state, and represent a large amount of money belonging to the people of the whole country; and inasmuch as they were constructed, not to secure some sordid gain, but on sound principles and with good objects. But I can see the position of Victoria under the Bill as it stands. She would be treated unfairly. My reason for saying that is this: That goods going from New South Wales to Victoria, to the nearest port—we will drop calling it the natural port—would interstate commerce, and the Commonwealth would have power to step in there, whilst it would not have the power to step in in case of goods going from Hay to Sydney. We must look at facts they are, and make allowance for them. If we asked our people to shut their eyes to facts in accepting this Constitution, we should make a great mistake. And just as I could not expect my friends in Victoria to go with this Bill as it stands to their people, so I could not go to my people with the Bill as it would stand if this proposal of Sir George Turner were put into it. But I am prepared, in spite of the interests of my own colony—which would be against such a proposal—in fairness and justice to Victoria, to vote to allow her to have the same terms as we have ourselves. I am prepared to give Victoria exactly the mine freedom as we have in regard to our internal commerce. And I do this, I admit, on no broad principle of federation. I have no doubt that it
would be far more satisfactory if we could cast all these considerations to
the wind and allow the matter to go by. It would be more in harmony with
the federal spirit to do so. But when we go to our people who have these
large assets in their hands, which would be rendered valueless under
conditions such as we are asked to accept, we place federation in an
unfortunate position. We do not wish to see that. We wish to do justice to
Victoria. The present condition of affairs has grown up—and I recognise that
it is more a matter between Victoria and New South Wales than as
affecting any other colony. Because our friends in South Australia, with the
protection they will have secured in regard to the rivers as the Bill stands,
and with the enormous distance of our back country from Sydney, need not
have much anxiety in connexion with the matter. I admit that they may
have on the border some trouble with Victoria with which I am not
familiar, but even in South Australia, where everything I am told—since
there is no temptation the contrary—is perfect, I understand that there are
port charges imposed, when wool gets near to Adelaide, which have the
effect of sending it down to Adelaide. So that these things are really done
all round in the interests of railways, and generally by business men for
business reasons. The sooner we recognise these railways as business
concerns and leave them alone to be managed by gentlemen who know
their own business, the better I think it will be. Now, there is a suggested
amendment which has been placed in my hands, and which I will read,
although really I think it only states the position of affairs as the Bill stands
already.

Mr. BARTON. -

But the Victorian representatives want the position to be made plain.

Mr. REID. -

Then here is the suggested amendment—

The Parliament may make laws for the execution and maintenance with
respect to trade and intercourse among the states of the provisions of this
Constitution relating to trade and commerce.

Mr. PEACOCK. -

Even the Chairman cannot listen to that proposal without laughing.

Mr. ISAACS. -

That is just what we have contended would leave Victoria in an unfair
position.

Mr. REID. -

I admit that this proposal leaves matters exactly as they are. But it is a
nice little form of words. They read far nicer than Sir George's words do.

Sir EDWARD BRADDON. -

What does the amendment mean?
Mr. REID. -

It means exactly what we have done. It just emphasizes what I have been saying, that, with these general words, there is really an attempt to do a thing which would not stand investigation if it were put in plain English, that is to say, to assume an internal control over internal railways in respect of internal traffic. That proposal is absolutely foreign to the Constitution of the United States, and it is absolutely foreign to the proposed Constitution of the Australian Commonwealth. I will resist it to the utmost. But, at the same time, I say again that, in the case of Victoria, the particular provision which I have referred to would leave her in a very unfair position as she stands, and if any form of words can be suggested to meet the case of Victoria, and leave her open to come into our colony and compete for the trade of our producers, I am quite willing to put them in the Bill. But Sir George Turner, I think, would not find that this would be satisfactory to his own colony. That is my impression.

Sir GEORGE TURNER. -

The worst the Parliament can do under this would be to allow the state of affairs that you are willing to allow.

Mr. REID. -

I do not know that it would. It would depend on which way the whip went, or upon which way the Government of the day chose to go. I take my right honorable friend's case as showing how it might work more injuriously to him than to us.

Sir GEORGE TURNER. -

I am willing to risk that.

Mr. REID. -

Then, if my honorable friend is willing to risk it, he must feel very confident of his tribunal. When I find a cautious able lawyer like my right honorable friend prepared to take the risk of the verdict that will be given, I think he knows how the verdict is going. I am not prepared to risk it. I cannot go before my electors and talk in such a free and easy manner.

Sir GEORGE TURNER. -

You risk a far bigger issue.

Mr. REID. -

No business man would be talked to in that way.

Sir GEORGE TURNER. -

You have risked your fiscal policy, so that I suppose you must be pretty certain of what the fiscal policy of the Commonwealth is going to be.

Mr. REID. -
I again point out how that comes about. In the same way I have agreed to equality of representation, which I absolutely disapprove of. I think in the future it will work in the most unfair and ridiculous way. Why did I vote for it? Simply because it is impossible to have federation without it. In the same way I am prepared to risk all my fiscal principles in the name of federation, because it is impossible to have federation without it. Do not believe I would do it if I could help it? But that is not the supreme consideration which applies to this question. This is not a question of that broad and vital character. It is a question of rival interests in trade, which, boiled down, come to rival commercial interests which have grown up, and of which the railways have been made the vehicle during past years. If any method can be adopted to lessen the evils of this competition, while preserving to each state some sort of control over the railways left on its hands, I should be prepared to adopt it. But this proposition I have sufficiently shown to be one I could not possibly accept.

Mr. TRENWITH (Victoria). -

The question under consideration is whether or not this clause purposes fulfilling a federal object. The Right Hon. the Premier of New South Wales says there appears to be perfect willingness to adopt any tribunal so long as the persons who agree to it can prescribe the pattern. With all submission, I would point out that we have in this Constitution prescribed a pattern for trade and commerce. We have declared that after the imposition of a uniform Tariff, trade and commerce between the states shall be absolutely free. Now, we have discovered in our experience two expedients that have been used for the purpose of derogating from absolute freedom of trade. One of them is customs duties. We have decided that that derogation from freedom of trade shall be abolished, and we have declared that after the abolition of Border Duties there shall be absolute freedom of commerce between the colonies. Really, then, we must remove the other influence that derogates from absolute freedom of trade.

Mr. BARTON. -

These clauses do it.

Mr. TRENWITH. -

With all deference to the honorable member's great ability, his knowledge of constitutional law, and of constitutional history, I venture to differ from him on that point. The declaration itself is absolutely useless. A Constitution that was only a declaration could serve no practical purpose. If you make a declaration of a principle, you must provide machinery clauses, and I submit that what we are endeavouring to do here is to provide a machinery clause for giving
effect in one particular to that absolute freedom of intercourse between the colonies.

Mr. REID. -

Do not forget that there is a special subsection in clause 52 giving the Federal Parliament power to do everything that is necessary.

Mr. TRENWITH. -

That is to appeal to the Federal High Court.

Mr. REID. -

No as a matter of legislation.

Mr. TRENWITH. -

There appears to be a very considerable doubt as to whether there is power to prevent differential rates that act as preferential rates and derogate from freedom of intercourse between the colonies. This clause only aims at making it clear that if there are such rates the Commonwealth shall have power to over-ride them. Those who are advocating free-trade between the colonies; those who declaim, as Mr. Reid does, against the inequity perpetrated by Victoria in raising barriers against the natural markets of the people whose trade we are now considering, should recognise that the advantages of freedom of trade to the whole Commonwealth would be sufficient to compensate for any trifling pecuniary disadvantages that might accrue in connexion with some of their assets. My right honorable friend says that the tribunal to which this is to be referred is tainted. It is impossible to conceive of a less tainted tribunal if he means that it is tainted with unfairness. It is proposed to submit it to a tribunal on which each of the parties interested would be represented in proportion to their interests, as calculated upon the basis of population. All the elements considered fair in arbitration cases are to be provided. Not only are the parties interested to be represented in proportion to their interests, but there are to be fair-minded and impartial persons to hold the balance fairly between them. Mr. Reid, in reply to an interjection from Mr. Solomon, said-"If you were representing one side I should require to have a keen clear-headed business man representing me on the other." That is exactly what this clause provides—that where a conflict arises as to the question of whether a rate that is proposed within the boundaries of a state is designed to act as a barrier to freedom of intercourse, both parties shall be represented by the keenest and clearest-headed men they can get. After the question has been thrashed out it will have to be decided by the vote of a tribunal in which they are represented, and in which there are a number of other persons who have no personal interests whatever. The vote of the whole, not of the interested parties merely, is to decide whether or not the proposed rate is in derogation of freedom of intercourse. Mr. Reid laid
considerable stress upon the point that this matter was not to be referred to an Inter-State Commission or to any tribunal but Parliament itself, that Parliament upon every occasion must make the law, that Parliament must go struggling along in the rear of nimble and active Commissioners of Railways, and that it would necessarily always be at least three months in arrear. If I understand the powers of Parliament, Parliament may make a law providing that a certain tribunal shall decide in case of a dispute. That law may empower a commission or any other body to be the arbiter from time to time. I recognise that in regard to these technical questions a layman is at a great disadvantage, but it seems to me that, under the provisions of this clause, Parliament may make a law decreeing that an Inter-State Commission shall be the arbiter when a dispute arises. If I am correct in that assumption, the Inter-State Commission will be in exactly the same position with respect to its ability to act quickly as the Railways Commissioners of the various states. It will not have to manage the railways; it will not have to say what rates shall be adopted; it will only have the power to say that certain rates shall not be adopted. The objection raised by the leader of the Convention was that this was a proposal to give the Commonwealth the management of the railways without attaching to that management any responsibilities in connexion with them. But I respectfully submit that control in no way means management.

Mr. REID. -
It is much easier.

Mr. TRENWITH. -
It is not proposed that the commission should be able to say how the railways should be managed, it is only to say how they should not be managed.

Mr. MCMILLAN. -
If you could control the rate of interest charged by a bank it would not matter much who managed the bank.

Mr. TRENWITH. -
That is not a parallel case. If I had power to say in every instance what ventures the bank should enter upon, I might very materially influence its welfare and prosperity; but if I were only empowered to say that the bank might enter upon any venture which might seem desirable, except some particular venture indicated upon the face of the document giving me this power, I do not think that I could very materially influence the welfare of the bank. At any rate, what we are now aiming at is the establishment of intercolonial relations such as have never previously existed. There are several barriers to this which it will be necessary to remove in order to
achieve our desires, and I am now urging that the Commonwealth Parliament, in which all interests will be adequately represented, shall have the power to say that one particular incident of railway management cannot be tolerated. Certain rates are not to be imposed, not because it is urged that their imposition is necessary to make the railways a profitable asset, but because they derogate from the principle of absolute freedom of intercourse between the colonies, which we say is essential to federation.

Mr. MCMILLAN. -

If you were starting a new business under specific conditions that would be all right, but you are now dealing with a business already in existence.

Mr. TRENWITH. -

That is true; and if the provision is agreed to it will be for the states to consider whether the advantages to be achieved from the knocking down of all barriers, and from amalgamating, for certain purposes services which cannot be performed by the various states separately as well as they can be performed by these states unitedly, will compensate for the business loss involved.

Mr. REID. -

Does not the honorable member see how unequal that would be? The other colonies will get the advantages he speaks of without this sacrifice.

Mr. TRENWITH. -

The right honorable member makes the statement that this is unequal, but he does not prove it.

Mr. LYNE. -

It is true, nevertheless.

Mr. TRENWITH. -

In the effort to draw the trade of Riverina to Sydney at whatever cost-

Mr. REID. -

You refused to have it.

Mr. TRENWITH. -

The right honorable member has already made that statement, but I am opposed to entering into a fiscal controversy here. It would, however, be very easy to show that nothing we have done in the slightest degree necessitated the construction of railways from Sydney to Riverina, because, in spite of all the barriers that we have erected, if ordinary and fair rates were charged upon the New South Wales railways, it would be possible to take produce from Riverina to Melbourne, and thence by sea to Sydney, more cheaply than it can now be taken direct by rail.

Mr. REID. -

Thank you for nothing.
Mr. TRENWITH. -

The right honorable member has been adopting the line of argument in which he is so eminently successful. He has been raising up a man of straw in order to knock him over again.

Mr. REID. -

Two and eleven pence a cental is not straw; 30s. a bullock is not straw.

Mr. TRENWITH. -

Whether the duty is 50s. or 5s. a bullock that is in no degree pertinent to the argument I am conducting. The question at issue is: Is it possible to have internal railway rates which will not be in derogation of freedom of trade, and, if so, is it desirable to make laws to prevent the establishment of such rates? I submit that we cannot carve this Commonwealth according to the pattern we desire, unless we accept some such provision as that which has been proposed by the Premier of Victoria. In reply to the argument that no such provision is contained in the Constitution of the United States, I respectfully submit that it would be a strange thing if this Constitution, which is being made in 1898, were not in many particulars better than the Constitution made over a century ago. It is no fatal objection to say that 100 years ago some extremely wise and marvellously able men framed a Constitution in which this provision does not appear.

Mr. HIGGINS. -

There were no railways then.

Mr. TRENWITH. -

In making our Constitution we should be guided by the mistakes of other people, and not tempted to follow those mistakes. Our experience has taught us that it would be extremely wise to provide that the Federal Parliament, which will have the Commonwealth interests at heart and the pattern of this Constitution in its mind, should have this power, so that it may be able to create machinery which will bring about results such as we require. I recognise the generosity of the Premier of New South Wales in saying that he would be glad to support any proposal which would place New South Wales and Victoria upon an equal footing, not only in regard to the trade of Victoria, but also in regard to the trade of that part of New South Wales which is geographically attached to Victoria. I agree with him that if we can come to no equitable arrangement, to restrain the states from making undesirable railway rates, which will be acceptable to all, the next best thing will be to give a free hand to all the parties engaged in this fighting for traffic. But clearly, fighting, if it can be avoided, is not desirable in connexion with states that are proposing to unite in a partnership of friendship and brotherhood; and fighting, if it continues,
must derogate from that feeling. It is impossible to conceive New South Wales and Victoria living on terms of amity and good fellowship, such as ought to exist, while each of their Governments are from time to time engaged in framing legislation or regulations intended to circumvent the other. It is because I am anxious to see the fighting removed—because I am anxious to see between the colonies a condition of absolute free-trade that I am supporting this proposal. Although I am a protectionist of the protectionists, I admit, and always have admitted, that the slight advantages of intercolonial duties would be immensely outweighed by the greater advantages of absolute freedom of intercourse between the colonies, with reasonable protection on the coast.

Mr. REID. -

It is a good thing to be able to support one's principles and one's interests at the same time.

Mr. TRENWITH. -

I can say, without pretending to understand the subtlety of my honorable friend's interjection, that as far as I am concerned, and I believe most members of the Victorian delegation, we are considering, not the mere interests of Victoria or any other spot of the Commonwealth, but the desirability of embodying in this Constitution provisions that will act equitably, and in accordance with the principles that we have laid down.

Mr. REID. -

Then you will give us compensation for our loss?

Mr. TRENWITH. -

Personally, I should see no great objection to, if possible, adding to this proposal some other to the effect that if, in controlling the action of states in connexion with their railways in the interests of Commonwealth purposes, loss were entailed, that loss should be recouped to the state which suffered it from the Commonwealth funds, if the loss could be proved. That seems equitable and fair, and, personally, I should have no objection to it. But I would urge on honorable members that, if we are going to have free-trade between the colonies, let us have it. If we are going to have federation, we cannot have it on the lines that ought to exist without wiping away absolutely a thing in the nature of fighting or struggling between the colonies. If we can abolish such fighting we certainly ought to do so, and we cannot have federation on the basis it should prevail unless we do.

Mr. HIGGINS (Victoria). -

I cannot help thinking that the Right Hon. the Premier of New South Wales made an unanswerable point at the opening of his speech and also at
the end of it, when he said that this proposal of the Right Hon. the Premier of Victoria, if carried, would operate much more to the prejudice Victoria than to that of any other of the colonies. But that being his view, what amazed me was that he should spend so much energy, and he has plenty of energy, so much ability, and he has plenty of ability, as we all know from sad experience, in combating a proposal which will tie the hands of Victoria and leave the hands of New South Wales absolutely free in the matter of rates. Sir, I understood that the Premier of Victoria was in favour of putting a stop to all preferential rates and to all unjust differential rates. By unjust differential rates I mean those differential rates which are not merely development rates—which are not merely meant to relieve producers in the back country, but which are designed for the purpose of drawing trade from the nearest port or the natural port, as you may choose to call it. I understood that was the right honorable gentleman's intention, and I looked this morning to find his proposed amendment. But to my amazement I found that, after all the deliberation we have had, we have now before us a proposal which I think I shall be able to convince honorable members is simply a proposal to stop preferential rates, and has nothing whatever to do with unjust differential rates. Let us look at the proposal as it stands. It states that—

The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce,—

So far there is no harm in that, and the Premier of New South Wales says he is willing to have that portion of the proposal, because there is no provision as to trade and commerce which will stop differential rates of any sort in New South Wales. But see what follows:

and particularly to forbid such preferences or discriminations as it may deem to be undue and unreasonable, or to be unjust to any state.

Now, the vital words there are "preferences or discriminations." They are the cardinal words upon which the whole thing turns, and no chain is stronger than its weakest link. I would ask what preference, what discrimination, is there in the case of the kind of rate to which I referred—charging nothing for wool from Hay to Cootamundra? Where is the preference there? There is neither preference nor discrimination as to person or goods. There is no preference or discrimination. It is not meant by this that you may not charge from one station a different price from what you charge from another, otherwise we must have one uniform railway tariff from every New South Wales station to Sydney. The phrase is "preferences or discriminations," which must be either as to persons or goods. Now, in the rate from Berrigan to Sydney, or from
Hay to Sydney, or from Cootamundra to Sydney, I take it that you charge every person the same price wherever he comes from; there is no preference of persons, and no preference of locality. Where, then, I ask, is there any power under this proposal of the Premier of Victoria to interfere with what he says he is in favour of interfering with unjust differential rates? I would be the last person in the world to accuse my right honorable friend—who is candour itself, as we have found in the Victorian Parliament—of keeping the word of promise to the ear and breaking it to the hope. But I will say this—that if we want the people of Victoria to think that, while they are giving up their system of preferential rates, we are getting the right to interfere with New South Wales' unjust differential rates, we could not devise a better form of words for that purpose; but if the clause be examined, the whole thing turns, as I have said, upon those words, "preferences or discriminations." Where have these words been taken from? The Attorney-General, in his speech, has very well and conclusively shown that it will be better to leave these questions to some expert body, and not to the Federal Court. I thoroughly agree with him there but in his speech he referred to a judgment in which there were certain words which caught my ear. I find he has got these words, "preferences or discriminations," from page 233 of the volume he read, with regard to a case in 1895, Texas Railway v. Inter-State Commission. It says, in the words of the Judge:

To forbid undue and unreasonable preferences or discriminations.

These words look very well until we see how they are applied. What I find is that the Inter-State Commerce Act, which was the subject of discussion in that case, makes it unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, to any undue or unreasonable prejudice or disadvantage in any respect whatever.

Mr. LYNE. -

I think that is in our Railways Act.

Mr. HIGGINS. -

That is in the Inter-State Commerce Act, but I do not know about the Railways Act. That is the clause the Judges had in their mind when speaking of preferences and discriminations. That relates only to interstate commerce, and how can these regulations, affecting only interstate commerce, affect commerce within the boundaries of New South Wales? It is perfectly correct, as the Premier of New South Wales puts it, that there is
no power to interfere with commerce within the limits of New South Wales.

Mr. REID. -

The first clause of the Inter-State Commerce Act recognises that.

Mr. HIGGINS. -

Therefore, when these words are looked at they must be looked at with reference to the only power which Congress has in the United States. The reason why the Constitution of the United States is not given the power to interfere with commerce within the limits of the states is because they had no railways in 1788, and a change in the Constitution was almost impossible to obtain. But I showed, the other day, how very unfairly and injuriously the railway system works in America because they have not power to interfere with any rates except interstate rates. We want to avoid the evil in this case which they have fallen into in America. In the very head-note of that particular case it will be seen that they have expressly excepted any case within the limits of a state. It says -

In enacting the Inter-State Commerce Acts, Congress had in view, and intended to make provision for, commerce between states and territories, commerce going to and coming from foreign countries, and the whole field of commerce except that wholly within a state.

That is the point. But the honorable member has extracted from the judgment [P.1398] starts here the words "preferences or discriminations," which mean preferences or discriminations as between states. Clause 52 in this Bill deals with the regulation of trade and commerce with foreign countries or between the states. It has nothing to do with trade and commerce within a state. Now that I have made that point clear, I might state that although my amendment holds the field at present. I tell honorable members honestly that if there be any form of words which will achieve the same purpose, I shall vote for it and support it, because it is too critical and important a matter for any one to be wedded to his own particular verbiage or amendment. Whether honorable members believe me or not, I must say that when it comes to a question of opposing what has been put forward by the responsible leader of the Government in Victoria, I feel very chary about voting against it in a matter so vital. But I say this with confidence, that no matter what the consequences are, I shall vote against this proposal, because it does not carry out the purposes for which the Premier has proposed it.

Mr. ISAACS (Victoria). -

My right honorable friend (Mr. Reid) has raised certain objections to this
proposal. I intend to deal very shortly with them. First, he raised the objection that it will be practically inoperative, because Parliament could not be expected to pass a law annulling a regulation which it thought was unjust. In the first place, Parliament will have complete control of the matter. If it chooses it may pass a law, as Dr. Cockburn said, laying down certain principles, and subsequently it may, upon the advice of the Inter-State Commission, if it chooses to create such a body, act upon any report of that body which may take evidence that will be practically inaccessible to the Parliament. Parliament may act upon that report, or such advice as it chooses to get, just as Parliaments today pass judgment on much more intricate questions.

But I would like to ask, if you are not going to allow Parliament to control this matter, either by itself or by any body such as an Inter-State Commission that it may choose to create for the purpose, what are you going to have? All the objections which are urged against Parliament acting in the matter apply with tenfold force to the Supreme Court. The Right Hon. Mr. Reid says that Parliament will be a tainted tribunal. I wonder how far he is going to carry that argument. If it is tainted in this respect it must be in every respect, because Parliament will be composed of representatives from each of the states, and will be no more interested in dealing with this question than with, say, the surplus.

Sir EDWARD BRADDON. -

What becomes of the cry-"Trust the Federal Parliament"?

Mr. ISAACS. -

Of course that is gone, because it is not convenient to remember it for the present. But When we come to deal with millions of money, to be dealt on lines right and fair to the states, we are then told that Parliament is not tainted-that it is a perfectly just tribunal-and when we ask that it may interpose its over-powering authority on a question of this kind we are told that it is tainted. My right honorable friend said that it is a different thing from asking the Commonwealth to take over the railways. I pointed out, and it has been pointed out again by Mr. Trenwith, that that has nothing whatever to do with it. It would be a valid argument if we were proposing that Parliament should pass affirmative and positive regulations which would control the railways. What are we asking? Nothing of that kind. Not that the Commonwealth Parliament should control the railways in any state but that the Parliament should see that one state by means of its railway regulations does not practically control the railways of another state, that it shall merely hold an impartial and sufficiently strong hand to see that one state does not compel another state to go against its better judgment-and clear interests in the
management of the second state's railways. Then, my honorable friend (Mr. Higgins) says that this would operate against Victoria. And why? First, Mr. Higgins says this does not refer to differential rates. In that I am utterly unable to follow Mr. Higgins. I do not know the distinction between a differential rate and a discrimination. A differential rate is a rate that is not even along the whole distance, but one in which a difference is made on account of locality, length of haulage, class of goods, or for personal reasons.

Sir EDWARD BRADDON. -
Or because of competition by water carriage.

Mr. ISAACS. -
In other words, a discrimination is made.

Mr. HIGGINS. -
You want to say that it would stop one fare from Ballarat and another from Stawell.

Mr. ISAACS. -
I think it would if the discrimination were unjust to a state. Parliament would have a power to act if they thought such a discrimination or difference was unjust to any other state. But in any circumstances, I cannot conceive such a rate would be unjust to any, other state. If, however, such a rate in the opinion of the Federal Parliament was wrong, then, of course, the power would apply. If we take the words of the clause, we read-"The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth"-that is our railways-"of the provisions of this Constitution relating to commerce." That would relate to interstate matters; but the succeeding words are without limitation as to interstate commerce. The words are "and particularly to forbid such preferences or discriminations as it may deem to be undue and unreasonable, or to be unjust to any state." These words are without limitation, and apply to state commerce-internal commerce-just as to interstate commerce. It is therefore intended to go, and the words do clearly go, far beyond mere state commerce. We all know that the judgment in the American case must relate to interstate commerce, because the Constitution does not permit Congress to dabble in anything else. When we look at that judgment we always read it in reference to a particular fact. We know it relates to interstate commerce only, because Congress cannot go beyond that. But, when we give express power to go beyond, these preferences or discriminations must be those relating both to internal commerce and interstate commerce. Mr. Reid thought I was not consistent in what I said today and yesterday, and he referred to a newspaper report of my speech. The newspaper reports of what we say are
wonderfully good, and, with the space at the command of the reporters, it is marvellous what accurate views they give of our speeches. But in this particular case, my honorable friend (Mr. Reid), having Hansard within his reach, chooses to take a compressed report, the general accuracy of which I do not deny. I shall, however, read a few words from Hansard to show I am perfectly consistent, because the newspaper report does not exactly convey what I said. My honorable friend quoted my remarks in order to show that I said all differential rates were perfectly right, and that it should be left to each colony to do what it pleased. What I said, according to page 1277 of Hansard, was-

We have no jurisdiction to carry our railways beyond our territory. If we were to say we will carry produce for people in New South Wales at a less rate than we will carry produce for people in Victoria—mind you, I am not defending the practical mean to say that that is not a barrier to trade.

Mr. REID.-

Hear, hear; there is no doubt about that.

Mr. ISAACS.-

That practice is not a barrier to trade; it is not a derogation from freedom of trade.

Mr. REID.-

Hear, hear; at least, I am not quite so sure of that.

Mr. ISAACS.-

It is offering an inducement that may operate very unfairly, not to the trade, but to the railway system of the other colony.

Mr. REID.-

That is right.

Mr. ISAACS.-

It is not a block to trade, but it unduly cuts down the revenue and disarranges the finances of the other colony, and, on that ground, I am anxious to counteract it. That is exactly what I say today. I have said that all along, and I have only been anxious that Victoria should not be in a worse position than New South Wales. It has been put forward by a very learned representative of New South Wales that the trade and commerce clause would enable the Federal Parliament to stop Victoria charging preferential rates, but would leave New South Wales free. We in Victoria think that is unfair. I quite recognise the justice of Mr. Reid in condemning that distinctly. The proposal we have made will, I think, meet the views of those who desire to see what is right and proper. If there is anything whatever in the objection
that the Federal Parliament has to wait to see whether a particular rate is unjust—I do not think that that is meant—but if there is anything in the objection, it would be met by inserting, after the word "forbid," the words "or prevent." This will allow us to make laws to prevent undue discrimination. The word "forbid" means that you must see the thing first before you annul it. But the word "annul" is not in the proposal. If the case be as I have stated, it would be well to put in the word "prevent." There is no doubt whatever a law could be passed to prevent unjust discrimination. That could be done by a law which may operate in circumstances to arise in the future. The objections that have been raised would be fully answered, and Victoria and every state would be perfectly protected. We should then have provided a remedy for what I understand to be a very great evil, and a remedy that is not open to the various objections that my honorable friend (Mr. Barton) pointed out, it seems to me unanswerably, to the amendment this morning.

Mr. GLYNN. -

Would you consent to put at the beginning "Without limiting the general effect of clause 52"?

Mr. ISAACS. -

I do not see what effect that would have.

Mr. GLYNN. -

It would have a very, vital effect.

Mr. MCMILLAN (New South Wales.) -

I think, with all due deference, that nearly everything that can be said has been said on the subject. We are really debating and re-debating the same thing over and over again which we discussed when dealing with the rivers. I am not in a position to give a judgment on the opinion of my honorable and learned friend (Mr. Higgins) with regard to this proposal. I take the proposal to have the meaning which appears on the surface.

Mr. HIGGINS. -

What is that?

Mr. MCMILLAN. -

The meaning on the surface was the meaning that Mr. Barton considered it had, when he exhausted the whole question in a very able and concise speech. I take the meaning to be that you give to Parliament the complete control of our railway system; and that is the way I will deal with it. After all those arguments we have had, almost ad nauseam, we come back to the position from which we started. We conceive that our railways are very much like our lands. I do not take the extreme view that many do, that there is an absolutely strict analogy between the question of railway warfare and that of customs duties. I have never done so. I know there is
some analogy. But in all those differences of opinion New South Wales has said-"We will be ready to stand-or fall in the future Federation on the broad interpretation of the first subsection of clause 52." But we further say, that if any ingenious gentleman in this Convention can draw any clause which will give that a clear interpretation, but will not, at the same time, practically do away with our management of our railways, we are quite willing to adhere to such a clause.

Mr. HIGGINS. -

It is not a question of interpretation. Is there not a fundamental difference in that you are not willing to allow any interference with the state rate.

Mr. MCMILLAN. -

Yes, the honorable member is perfectly right. I have been absolutely candid in the matter.

Mr. HIGGINS. -

Yes, you have.

Mr. MCMILLAN. -

I say there is no medium course between our own absolute and untrammelled control, and the absolute vesting of the railways in the Federation. I think the case is clear. After all, we have the responsibility of the profit and loss on our railway lines. As one very learned gentleman has said in this Convention, when once a power is handed over to this Federal Parliament, the High Court, by implication, will probably uphold, and may even strengthen it. And we simply say that we cannot allow these great railways, which are intended as much for the policy of development as anything else, to be controlled by any body. We say-"We stand or fall by the commercial clause, but we would rather that Victoria had an absolutely free hand, with power to impose preferential rates, which are no doubt anti-federal in the strictest sense, than that there should be an arrangement made by which an Inter-State Commission, or any other body, should have absolute control of our railways."

Sir WILLIAM ZEAL. -

Why don't you apply the same principle to the carrying of passengers?

Mr. MCMILLAN. -

I do not quite understand the honorable member.

Sir WILLIAM ZEAL. -

You have a uniform rate for the carriage of passengers, but preferential and differential rates for the carriage of goods.

Mr. MCMILLAN. -

That does not touch the question. We might not have that arrangement
tomorrow. My point simply is that we must have the absolute control of our great railway system in New South Wales, because we must make it pay.

Sir WILLIAM ZEAL. -
You are not making your goods traffic pay now, any way.

Mr. MCMILLAN. -
I will be perfectly candid in this matter. I do not take the same view that many honorable members, or even railway experts, do, in dealing with these lines. I believe that these lines would probably pay, even upon the broadest federal principles. I believe that even if you were to arrange through rates, say, from Cootamundra to Melbourne, on a commonsense basis, the lines would still pay. But that does not touch the question. We are not experts in this Convention. The whole question is the matter of our control of our own railways, and you may draw any refined cobwebs of language and tell us that the Federal Parliament will act justly, but that does not alter the fact that we have to go back to the people of our country and tell them that we have given the Federal Parliament a power which is practically a power of control over our railways. And they can reasonably say to us-"If you were giving that power, why did not you get rid of the whole affair; why did not you get rid of the debts of our railways, and hand them over absolutely to the Federal Parliament?" Well, while I shall hope to see, in the future, the power of control over our railways given to the Commonwealth-and this has practically the same effect-I believe, from my point of view, it would be absolutely fatal to the acceptance of this Constitution in New South Wales.

Sir JOHN FORREST. -
Oh, don't say that.

Mr. MCMILLAN. -
Honorable members, will not consider that as anything of a threat. I am only giving an opinion which I gave in my speeches previously. As an honorable member who has felt the pulse of the people in his own country, I do not hesitate to say that we would simply be playing into the hands of the anti-federalists of our colony, if we gave over that great asset-our railways-which is so intimately connected with the development of our country.

Sir JOHN FORREST. -
Why should it be worse for you than for Victoria?

Mr. MCMILLAN. -
What?

Sir JOHN FORREST. -
This clause.

Mr. DEAKIN. -

Or the federalization of the railways.

Mr. MCMILLAN. -

I do not say that the particular clause we are dealing with is worse for New South Wales than it is for Victoria, but Victoria is willing to take the risk, and we are not. That is the point. It is all well enough for Victoria, but we have to go to the people of our colony and tell them what this Constitution means. There is no use our saying that this Constitution means the opinions of certain honorable members here; we must tell them what we believe it means.

Sir WILLIAM ZEAL. -

Well, we have to do the same thing.

Mr. MCMILLAN. -

Yes, but we are not actually sponsors for you. You must act according to your view. You may say to your people that there are so many countervailing advantages to be gained by federation, that they may well accept this article of the Constitution, but our people would not be satisfied with any statement of that kind. If I were a Victorian tomorrow, I would say to my fellow colonists-"The advantages of our going back to our proper geographical area would almost certainly outweigh any disadvantages we may suffer under this Constitution." Our position is that New South Wales has an enormous territory, of which everybody around us is trying to get a slice geographically. I do not object to that. I believe in everybody getting his goods to the nearest port, and I believe in the federal principle right through, but if we do not give over our railways, on the principle that everything left is sovereign power in the state, just as every thing given over to the Commonwealth is a sovereign power there, so you have no right to leave a certain power or asset in the state, on the one hand, and, on the other hand, introduce a controlling clause in the Constitution which will absolutely annihilate that state right. I do not see how you can get away from that. It is not a matter of refined logical reasoning, but simply a practical distinct position taken up by New South Wales. We say, sir, to broad-minded federationists, that we are willing to come in under the first sub-section of clause 52, and we are ready to trust to the Federal Parliament in that respect, and to the sense of justice of the Federal Court, in order to get our rights respected, but beyond that we will not go. Of course, if this is carried it will be in the Constitution, but we will fight to the last moment against any provision being introduced in this Bill which will practically put in rigid lines in this Constitution that, for all purposes of control, we have handed over our railways to the Federation.
Sir EDWARD BRADDON (Tasmania). -

I shall repeat to honorable members of this Convention the prayer of Mr. McMillan that they will not talk on this matter any further, because the thing has been discussed ad nauseam, and I shall not be as long as Mr. McMillan in saying what I have to say on the point. If we carry out the suggestion made by the honorable leader of the Convention at the opening of our sitting today, namely, that we should not repeat over and over again what has been said before, and if also we do not transgress your ruling, Mr. Chairman, and talk of anything outside the question, I do not see how we can say much more about this matter. I intend to obey both those injunctions. I will only say one thing, and that is that a very apt illustration of this question comes from my honorable friend and colleague (Mr. Grant), one of the representatives of Tasmania, who tells me how, when the Tasmanian Main Line Railway Company desired to have some dispute with the Government settled, an appeal was made to the then Chief Justice about it, and the Chief Justice said-"Well, do you want law, because if you do, we can give it to you; but if you want justice you had perhaps better go somewhere else." I think, therefore, we might very well leave the matter to the Federal Parliament, which we are able to trust as a body more likely to arrange for the better adjudication of any dispute that may arise than the Supreme Court.

Mr. DOBSON (Tasmania). -

Before the division on this question is taken, I should like, in the absence of the leader of the Convention, to ask Mr. O'Connor a question as to the amendment of Sir George Turner. Mr. Barton has told us, and I am sure we must all say rightly, that the first part of this clause, down to the word "commerce," is surplusage, and the question I wish to ask Mr. O'Connor is this-Is not the second part also nothing but surplusage? And, in the words of Mr. Higgins, is not the clause practically worthless I ask Mr. O'Connor whether the second part of the clause is not surplusage for this reason: The only two clauses we have relating to the matter are the general clause 52, sub-section (1), which gives the Commonwealth power to regulate trade and commerce? Not another line except those words. Then, in clause 89, we are told that after the imposition of uniform duties trade by means of internal carriage shall be absolutely free. I want to ask my learned friend if the last part of the proposed new clause is not absolutely bound and limited by the powers of the Commonwealth as expressed in sub-section (1) of clause 52 and in clause 89? Without this clause at all, or without the words-"such preferences or discriminations as it may deem to be undue and unreasonable, or to be unjust to any state," has not the Federal Parliament,
under the general clause, as Mr. Barton has all along been pointing out, the
power to prevent this injustice from being done? I understand that my
honorable friends from Victoria want to have a clause which goes some
way beyond that. And in that I am inclined to agree with them, but I think
that the clause as framed by the Premier of Victoria shows most distinctly
that, however unjust or differential a rate may be, unless it derogates from
the powers of the Commonwealth as expressed in the two clauses I cited, it
is absolutely null and void. That is the question I should like to be
answered with no uncertain sound before I make up my mind as to how to
vote. At present I am inclined to vote against Sir George Turner's
amendment, partly for that reason, and partly because I do not believe in
leaving a question of principle to be decided by the Federal Parliament. I
think that we are to some extent shirking our duty, and that after discussing
this very intricate question for three or four days we are absolutely getting
no fruit from our debate. You are not engraving in the Constitution the
principles you want to guide you. Put the terms of your partnership, or
when you cannot have a term in pounds, shillings, and pence, put the
principles of the bargain into your Constitution, and let the High Court and
not the Federal Parliament apply those principles in that just and equitable
way which only trained Judges can do. I am at difference with a great
many of my honorable friends, who say-"Take a matter of this sort and
leave it to the Federal Parliament." As my learned friend (Mr. Isaacs) was
speaking, there came into my mind a question of disagreements and a
referendum. Here is a question about the Riverina traffic, in which two
colonies are most closely interested. Suppose this matter is referred to the
Federal Parliament, then comes in at once the question of counting heads.
The colony of New South Wales has a majority of two or three in the
House of Representatives, and according to our friends from Victoria the
colony of New South Wales ought to have a majority of one or half a
senator in the Upper House. When you come to refer a question of this
sort, where it is

nothing but self-interest from beginning to end, all policy will be sunk.
"Can we, Victoria, maintain the trade of Riverina?" or "Can we, New
South Wales, take it away from the Victorians?" will be the question, and it
will go by a count of heads to a very great extent. I am not denying for a
moment that there will be able men and men of enlightened patriotism in
the Federal Parliament. But are we not rather indulging in cant when we
imagine that self-interest, localism, and other motives of that sort, will not
be there? The other day I read a very nice little story with reference to our
friend Carlyle, and his opinion of the House of Commons. I think the story
arose in reference to a discussion he was always having with his friend Emerson about the personality of the devil. Carlyle, who did not believe in many things, did, apparently, believe in the personality of his Satanic Majesty, but his friend Emerson did not. When Emerson came to visit the Sage of Chelsea, they had a very long argument on this vexed question, and of course Carlyle did not succeed in converting him. At last Emerson said "Let us go to the House of Commons, and spend an hour or two there." "All right," said Carlyle, and he took his friend into the Strangers' Gallery of the House of Commons. After listening to a debate, lasting some three hours, Emerson wanted to go, and Carlyle gave his friend a poke in the ribs, and said "Don't ye believe in the Devil, noo? " I take it, sir, that the devil of provincialism, the devil of self-interest, and the devil which our democratic friends may send there, will be present in the Federal Parliament-the man who thinks the word "democrat" is meant only for himself, who goes there bound hand and foot, and in some instances signs the platform of this league or of that society, who goes there to carry out their views, and not to take part in the government of the Commonwealth by the discussion of what is fair and right. I do not trust implicitly the Federal Parliament, and I do not believe that any member of this Convention does, to decide questions solely of self-interest. I wish to get rid of, or to minimize, the questions of self-interest which have to go before the Federal Parliament. Do let us fight out the question now, and engraft the principles in our Constitution, and then your High Court, not your Federal Parliament, is the right tribunal to adjudicate on the matter, or to say whether any state or states are infringing the principles of the Constitution or derogating from that freedom of trade-that freedom of intercourse-which we all desire to see. The Premier of New South Wales uttered a very good illustration in favour of the argument I am using when he said that he does not trust the Federal Parliament. He said that this amendment, emanating from our absolutely fair and generous friend (Sir George Turner), was the outcome of a desperate emotion of self-interest. I did not know that my right honorable friend (Sir George Turner) was emotional; I thought that he was intensely practical. I did not know that he could be guilty of any desperate emotion of self-interest or desperate effort to gain undue advantage from, this Convention. But if the Premier of New South Wales thinks that members of the Convention can be influenced by a desperate emotion in favour of the self-interest of themselves and of their state as against the interest of the Commonwealth, how much more will that desperate emotion of self-interest be present in the Federal Parliament! I am unable to vote for this clause, first, because I do not think it is necessary-I do not think it carries the thing one whit further than Mr.
Barton's proposed new clause does-and, secondly, because I do not think that we ought to leave the Federal Parliament to settle a question of policy which, after four days' debate, we are shrinking from settling, and which we appear to be unable to settle.

Mr. OCONNOR (New South Wales). -

I have no difficulty in answering the question put by my learned friend (Mr. Dobson). I am glad to have the opportunity of answering the question, because in my answer is disclosed one of the strongest objections which there are to this amendment. The honorable member is quite right, in my opinion, in assuming that the power to make laws regarding preferences and discriminations must refer to the trade which is spoken of in clause 52-that is, to the trade and commerce amongst the several states. Therefore it applies, not to traffic which is entirely confined to a state, the beginning and end of the transit being within the state, but only to traffic which passes from one state to another. But in saying that I only point to this conclusion, that the whole question of controversy between us is the traffic between one state and another. There has been no attempt, and I take it that there will be no attempt, to interfere with the local traffic of either Victoria or New South Wales or any other colony. It is only in dealing with the traffic as it passes from one colony to another, particularly from Riverina, in New South Wales, into Victoria, or from Victoria back into New South Wales, that we are concerned here. It is very unfortunate that a condition of things involving very important interests on both sides of the border have grown up. It is a very unfortunate thing that we cannot decide this question without considering those vested interests. But, I say, notwithstanding all the windy generalities used here with regard to the federal way of looking at this thing-and no man is more anxious than I am to regard everything we possibly can so regard from the federal stand-point-we must remember, in dealing with the question of the vested interests of those who are represented here, that we are not dealing with property and rights of our own, but with the property and rights of those who have sent us here. And if the basis of our union necessitates the surrender to a certain extent of rights that we now possess, we must take care that that surrender is just, and is properly safeguarded in all its terms. It is only because I feel, in common with the other representatives of New South Wales who have taken the same view as I hold, that to consent to the clause as it is proposed now would be to hand over absolutely to the determination of the Federal Parliament property which is not federal property, but our property, that I oppose this amendment. It is quite true, as Mr. Dobson has said, and as Mr. Higgins has contended, that we have only to deal here with rights as to
traffic between the colonies. But in what position is the Parliament to be in regard to those rights? It is true that the limitation apparently here is that they are to forbid or prevent such preferences or discriminations as the Federal Parliament may at any time deem to be undue or unreasonable or unjust to any state. But the question of what the unreasonableness or the injustice is it is proposed to leave entirely to the Federal Parliament to determine. That is the groundwork of the objection of my honorable friend (Mr. Barton) and my right honorable friend (Mr. Reid), and all those other representatives of New South Wales who have addressed the Convention. I do not wish to elaborate the objection, but I would merely say this about it: No matter how absolutely contrary to fact, no matter how absolutely contrary to existing rights and to real justice, the decisions of the Federal Parliament may be, there would be no possible appeal from its decision and control over it. It is because the power which is handed over to the Federal Parliament in this way may be exercised, and could be exercised, and in certain circumstances would be exercised, to the extent of interfering with the ordinary differential development rates of the railways of New South Wales, that we protest against this clause in its present form. I would only appeal to the experience of honorable members in this Convention. I doubt if, in our fondest anticipations of the constitution of the first Parliament, we look forward to getting together a body of men who will have less self-interest, or who will be animated by a higher ideal of what the duty of the Parliament should be, than the members who compose this Convention. And yet, what do we find in this Convention? We find that this very question of the manner in which the trade of Riverina is to be dealt with is looked upon, not from the point of view of the rights of the parties interested, but from the point of view of the advantage of the countries which are concerned here. And when you have a Parliament constituted, not as this Convention is, but representing particular localities, striving to advocate the interests of particular localities in particular states, can there be any question that that tribunal will be infinitely more animated by the interests of their several states than this Convention or any member of it could possibly be? And I say I object to handing over the consideration of what the rights of New South Wales should be on her own railways to any such body. I do not wish to allude to arguments that have been so well used already upon this same side of the question, but I wish now to suggest something which I think will find a way out of our difficulty and enable us to find out accurately what position our friends from Victoria are taking up in this matter. Let me call the attention of the committee now to what has been taking place within the
last two days. After a great deal of discussion, the amendment of the honorable member (Mr. Higgins) was defeated by a substantial majority, and in the majority which defeated that amendment were included a number of my honorable friends from Victoria, who are supporting Sir George Turner's amendment now. On what ground did the vote in the majority?

Mr. HIGGINS. -

That is what I want to know.

Mr. OCONNOR. -

I will tell the honorable member why. I am not speaking from inferences, but from statements made. They voted that way because they considered that it was in the interests of both New South Wales and Victoria, which were the colonies directly interested, that the status quo should be preserved in regard to the use of preferential rates. They saw the importance of arriving at a common solution of the difficulty of preferential rates which would enable them to be abolished, and at the same time would not give New South Wales an advantage over Victoria. It was because of that position which was taken up by Victoria that I and others who thought with me abandoned the idea of trying to provide for the ceasing of these preferential rates, and gave way to our friends, in order that the status quo might be preserved. And they voted for us on that occasion.

Sir GEORGE TURNER. -

Who did?

Mr. OCONNOR. -

I refer now to Mr. Isaacs, for one. He did not expressly state the ground on which he voted, but he concurred in the view put forward by Mr. Barton and myself.

Mr. ISAACS. -

That is right in this respect: I concurred in your view of the legal inferences to be drawn. If it were to be left in the position in which it now is we should be satisfied.

Mr. OCONNOR. -

But the honorable member voted against the amendment.

Mr. ISAACS. -

But I said clearly that I should have preferred something better.

Mr. OCONNOR. -

I am coming to that. I am glad to hear what the honorable member has just stated, because it confirms my view that it was on that ground that the honorable member and his colleagues voted against this amendment, which was rejected by a substantial majority. But it appears now that the
honorable member and some of those who supported him, think that there may be a danger in the preservation of the existing state of things in the powers expressly given by the trade and commerce provision. The honorable member thinks, and

no doubt properly, that under the trade and commerce provisions it will be competent for the Commonwealth Parliament to legislate in such a way as might prohibit the existing state of things in Victoria while leaving the hands of New South Wales free. Now, I am willing to meet that objection. I am willing to do anything in reason as far as I am concerned, and I think I represent in that respect the feeling of all my colleagues from New South Wales, which will fairly meet the views of our friends from Victoria. I am willing to do this: If the only objection which our friends have to leaving the matter to the operation of the trade and commerce provisions is that they might possibly interfere with the existing state of things, I am willing to propose an amendment which will make it perfectly clear that the trade and commerce provisions can have no such operation.

Mr. KINGSTON. -

Declare the continuance of war.

Mr. GLYNN. -

Can you call that federation?

Mr. OCONNOR. -

I am sorry that such a provision has to be made, but we have done many things here which are departures from the first principle on which we entered upon our deliberations. We have been obliged to depart from those principles because we were brought face to face with facts, and we must recognise that facts make it impossible to pursue those principles to their logical conclusion. And all legislation with us, as in our several colonies, must proceed upon a recognition of facts as they are. That is why, although I agree that a provision of this kind is not what one would expect or wish to find in the Constitution, I think that, if it is the only way out of the difficulty, we should not, on any merely theoretical grounds, object to it.

New South Wales cannot accept the amendment of the Right Hon. Sir George Turner, but I think it might accept the proposal I am about to make. It is really the proposal that was suggested by my right honorable friend (Mr. Reid) yesterday as an amendment to one of the clauses, but it is put in slightly different language. It is that Sir George Turner's amendment be negatived, and that the following take its place:-

Nothing in this Constitution shall be taken to render unlawful any rate of a railway the property of a state on the ground that the rate is unduly low.

Mr. ISAACS. -
That will allow you to give rebates and discounts.

Mr. OCONNOR. -

Does not it give exactly the same right to Victoria.

Mr. ISAACS. -

The honorable member will see that it will allow the Federal Parliament to interfere with regard to rebates and discounts in the one case, and not in the other.

Mr. OCONNOR. -

Not unless they were an obstruction or a prohibition to, trade. It is very difficult to meet my honorable friends. We were told yesterday that the only objection which existed to the adoption of the commerce clauses was the possibility that they might interfere with the existing state of things. The existing state of things is that these railway systems are fighting each other by cutting rates. That is what you have to provide for; but if your cutting rates do not come under the prohibition, surely we have met that objection. But now my honorable friend (Mr. Isaacs) raises another objection, that you can interfere with discounts and private arrangements of that kind. If interference can take place upon the one side it can take place upon the other. We cannot provide for all these minor details in the working of a railway system. My amendment recognises that the railway systems are rival businesses, that they are competing for trade within a certain area, and that they are to be allowed to go on competing as at present until some other way is found of getting over the difficulty.

Mr. HIGGINS. -

If they are rival businesses, they would do better by making an arrangement.

Mr. OCONNOR. -

Is not it for those who own the businesses to consider the arrangement?

Mr. HIGGINS. -

We are considering it now

Mr. OCONNOR. -

Yes; and you propose that this vexed question, which we cannot settle because we cannot get a recognition of the rights which we insist upon, shall be handed over to, and finally settled perhaps in a way which may cause interference with our business, by the Federal Parliament. We are not willing to consent to that. We are willing to make many surrenders, and have done so.

Mr. PEACOCK. -

What are they?
Mr. OCONNOR. -

It would take me too long to inform the honorable member. This being a surrender which we cannot make, we cannot accept Sir George Turner's clause, but we are willing that that clause should be set aside, and the clause I have suggested substituted for it. I appeal now, not to the members of the Convention who may be

Sir GEORGE TURNER (Victoria). -

I only want to make one alteration in my new clause. It has been suggested to me, and I think rightly, that the use of the word "particularly" may cut down the meaning of the first part of the clause. I have no desire to do that. When inserted the word, it was more with the object of bringing into prominence the latter part of the clause. I therefore desire, with the permission of the committee, to amend the clause by omitting the word "particularly."

The proposed new clause was, by leave amended accordingly.

Question-That Sir George Turner's proposed new clause 95B, as amended, be inserted in the Bill-put.

The committee divided-

Ayes ... ... ... 25
Noes ... ... ... 16

Majority for the clause 9

AYES.
Abbott, Sir J.P. Hassell, A.Y.
Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Brown, N.J. Kingston, C.C.
Carruthers, J.H. Leake, G.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Crowder, F.T. Peacock, A. J.
Douglas, A. Quick, Dr. J.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Gordon, J.H. Zeal, Sir W.A.
Grant, C.H. Teller.
Hackett, J.W. Isaacs, I.A.

NOES.
Briggs, H. McMillan, W.
Brunker, J.N. O'Connor, R.E
Clarke, M.J. Reid, G.H.
Deakin, A. Symon, J.H.
Glynn, P.M. Venn, H.W.
Henry, J. Walker, J.T.
Higgins, H.B.
Lewis, N.E. Teller.
Lyne, W.J. Barton, E.
PAIR
Aye. No.
Moore, W. Dobson, H.

Question so resolved in the affirmative.

Mr. BARTON (New South Wales). -
I beg to move-
That clause 95A, as amended, be reconsidered.

I may explain, Mr. Chairman, that this is my proposed new clause, with
the addition which was made at the instance of the honorable member (Mr. Higgins). I take it that honorable members, in view of the decision just arrived at by the committee, will now be of opinion that the amendment carried at the instance of the honorable member (Mr. Higgins) is unnecessary.

The motion was agreed to.

Mr. BARTON (New South Wales). -
The amendment of the right honorable member (Sir George Turner) having been carried-and the rules of the Convention

preventing me from referring to that matter-I do not think that the amendment of the honorable member (Mr. Higgins), which was agreed to this morning, will now meet with the approbation of the committee. The whole clause, as amended, would read in this way, and I think honorable members will agree that it would be as pretty an example of higgledy-piggledy as ever was given.

Mr. HOWE. -
It is understood that Mr. Higgins' amendment is now unnecessary.

Mr. BARTON. -
At any rate, this is how the clause stands. I dare say some honorable members do not wish me to read it, but I intend to do so:-

The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof. Neither the Commonwealth, nor any state, nor any authority constituted by the Commonwealth or by any state, shall make any law or regulation relating to railway rates with the view of attracting trade to ports of one state against ports of another.

I believe that we are engaged in the making of a Constitution, not in writing a comic paper. Therefore, I beg to move-
That the amendment of Mr. Higgins be struck out.

The CHAIRMAN. -
I would point out that the first part of the clause has not yet been inserted in the Bill.

Mr. HOWE (South Australia). -
In the few words I had the honour to address to the committee this morning, I guarded myself against this contingency. I distinctly stated that if the amendment of the right honorable member (Sir George Turner) was carried, I should, upon the recommittal of this clause, vote against the amendment of the honorable member (Mr. Higgins), and I think that other honorable members will take the same position in regard to it.

Mr. HIGGINS (Victoria). -
I can understand the position of the honorable member (Mr. Howe) and other honorable members, but, from my point of view, the amendment of the right honorable member (Sir George Turner) will not give the advantages that the honorable member (Mr. Howe) hopes for.

Mr. HOWE. -
At any rate, I am satisfied with it.

Mr. HIGGINS. -
I understand that the honorable member is willing to hope that the amendment of the Premier of Victoria will enable the Federal Parliament to interfere with differential rates so far as they are unjust.

Mr. HOWE. -
When they become preferential.

Mr. HIGGINS. -
I understand that that is the honorable member's view. I differ wholly from him, however, and I think that other honorable members differ from him. If there is a division I shall vote against the striking out of my amendment.

Question-That the words proposed to be struck out (Mr. Higgins' amendment) stand part of the clause-put.

The committee divided-
Ayes ... ... ... ... 5
Noes ... ... ... ... 33
Majority against Mr. Higgins' 28 amendment
AYES.
Cockburn, Dr. J.A. Henry, J.
Deakin, A. Teller.
Grant, C.H. Higgins, H.B.
NOES
Mr. BARTON. -  
I beg to move-  
That the following be substituted for clause 95:-  
"The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof."

Mr. OCONNOR (New South Wales). -  
I beg to move-  
That the proposed new clause be amended by adding the following proviso:-  
"Provided that nothing in this Constitution shall be taken to render unlawful any rate of a railway the property of a state upon the ground that the rate is unduly low."

As a matter of drafting, the exact wording may be left to be dealt with afterwards.

Sir GEORGE TURNER. -  
I rise to a point of order, as to whether our mode of procedure will allow this to be done. We have already decided that certain words shall stand part
of this clause. Certain words were added by Mr. Higgins, but they have since been struck out, and I take it we are now dealing with certain words that I have proposed. Can anything be dealt with until the words I have proposed have either been added to the Bill or rejected.

The CHAIRMAN. -

Matters stand as follows: This clause was originally proposed by Mr. Barton, and an addition at the end of it was carried on the motion of Mr. Higgins. A further addition was proposed by Sir George Turner and negatived. Now the standing orders are being suspended to enable this clause to be reconsidered, and the amendment of Mr. Higgins has been struck out. There is nothing whatever to prevent other words being added to it now. The clause carried on the motion of Sir George Turner is a separate clause, which we have inserted in the Bill.

Sir GEORGE TURNER. -

I apologize. I did not know my clause had been inserted in the Bill.

Mr. OCONNOR. -

It was for that reason that I was obliged to move my amendment as an amendment on this clause. I should have preferred to move it as an amendment on Sir George Turner's clause. The reason why I proposed the amendment I have in part already stated. I would like to say this in addition, that the intention of it is to preserve, as far as possible, the methods under which these railways are being run both in New South Wales and Victoria at the present time. It will be quite impossible to disregard altogether, in considering a question of this kind, one of the first uses of a railway system, and that is the development of your own territory; and considering that the amendment which has been now carried will give the right to the Commonwealth Parliament to make any law it likes regarding what it may consider to be preferences or discriminations, it is necessary to place some safeguard upon the exercise of that power which will insure to any state that it has the right to put on such rates as will operate for the proper development of its territory. The power given under the amendment of Sir George Turner would entitle the Commonwealth Parliament to interfere with, say, some rate which was put upon the railways in Riverina for the purpose of aiding a particular class of traffic—for instance, for aiding the producers of wheat or any other class of produce that ought be interfered with by a law of the Federal Parliament. There is no one to interfere with their decision. They may decide anything in any way they may think fit, and if it should appear just and reasonable to the Commonwealth Parliament they might enact that no rate below a certain amount should be charged upon the railways in Riverina, although they ran within the borders of our own state. Of course it may be or may
not be absolutely contrary to the facts and justice of the case; but if we are handing over to a body which will necessarily be self-interested, and will have its own interest to look after, the decision of a question as to whether a rate is a discriminating or a preference rate, we must take care when that power may be exercised in regard to our own railways that some limitation is put upon it. No doubt one of the uses of railways is to make profits to a railway business, but another more important use of railways is to assist in the development and settlement of the country. If any railway system is making profits, and the state thinks fit to distribute those profits, not by paying them into the Treasury, but by reducing the rates in such a way as to extend settlement, and benefit farmers, and enable them to get their produce to the sea, it will be interfering with the first principles on which we are dealing with this matter if such interference could be allowed. The first principle of our dealing with those railways-not handed over-which are part of the property of the state and are inseparably connected in their management with the public lands-not handed over-is that the fullest possible power should exist to use those railways in the development of the lands, in any way the state owning the railways shall think fit. For those reasons, in addition to the reasons I have already given in speaking to the amendment which I suggested, I propose that at the end of this clause the words which I have read be added.

Sir GEORGE TURNER (Victoria). -

My honorable friend (Mr. O'Connor), when he first suggested those words, did so as a substitution for the clause which I had proposed. In doing that he was quite right. If those words had been carried there would be no necessity for the clause. My honorable friend will see that we have now intrusted the Federal Parliament with full power to deal with those matters, and to say whether rates are unreasonable or unjust. But he desires to go on and say that they shall not declare rates to be unreasonable or unjust because they are unduly low. Well, I venture to say that in nine cases out of ten the cause of the injustice would be that the rates were unduly low. If that provision is to be carried out it certainly neutralizes all the effect of the clause we have passed.

Mr. OCONNOR. -

That means your intention in carrying the amendment was to give power to interfere with the imposition of our rates.

Sir GEORGE TURNER. -

Not necessarily so.

Mr. OCONNOR. -
That is quite clear.

Mr. REID. -

We are not children; we know what you are driving at.

Sir GEORGE TURNER. -

No doubt my friend judges everybody by himself.

Mr. REID. -

You are no fool, I can tell you.

The CHAIRMAN. -

I must ask the right honorable member (Mr. Reid) not to interrupt.

Sir GEORGE TURNER. -

Rightly or wrongly, we have determined that we will leave the decision of this question as to the injustice of any rate to the Federal Parliament. I repeat that in nine cases out of ten an injustice would be caused by the rate being unduly low. If this amendment is to be inserted, it will enable New South Wales to do what we have been openly fighting against all along. There has been no concealment about the matter. We say that if New South Wales is to be at liberty to reduce those rates down to nothing, then that is unfair and improper competition with the other colonies. There would be the same result if Victoria were allowed a similar liberty. That is a point we desire to leave to some tribunal, and that tribunal we have decided shall be the Federal Parliament. Under the circumstances, while this amendment would have been a fair matter for discussion as an alternative, the Convention ought not to be asked to insert the words unless honorable members are prepared to stultify what they have done in the past. There is nothing in the remarks about the liberty to open up the country.

Mr. REID. -

No doubt you will do that for us.

Sir GEORGE TURNER. -

We are not to assume for a moment that the Federal Parliament, which we all have so much trust in, is going to declare a rate to be unjust if that Parliament is satisfied that the object in imposing the rate is for the development of the country, and not to do an injustice to another state.

Mr. REID (New South Wales). -

I am not going to adopt the language used by the Premier of Victoria last night, when he said he could not take the Bill to the people of Victoria in the state in which it stood in regard to this matter. That declaration on the part of my honorable friend has evidently been highly satisfactory to him in that which has just happened; but I must, in all frankness, say, that this spectacle of cutting up everything that belongs to New South Wales to the
satisfaction of our neighbours, is going on in a somewhat monotonous fashion. Unless some change comes over the spirit of this particular dream, it is a mere waste of time for any one who represents New South Wales to sit here; except that a statutory duty compels a member to stay to the last, and do his best to bring this Constitution into a shape in which it will have some chance of acceptance. I think my honorable friend, the leader of this Convention, went altogether too far on a previous occasion; but, still, in the interests of federation, I can appreciate the attitude he took with reference to a similar question of the particular instruction in connexion with the general power of controlling commerce and navigation. I would like to know from Mr. Barton whether what has occurred this afternoon will justify him in persisting in such an attitude? Are we always to give way? Is every general principle of the Constitution to be invaded with particular stipulations, all aimed at one particular colony? I confess, in all earnestness, as responsible for the railways of New South Wales at the present time, I feel that position of responsibility in a way which other members of the Convention cannot perhaps appreciate. The amendment precisely defines the attitude I mentioned to the Convention yesterday morning. I read out similar words as showing the final position that New South Wales could arrive at in reference to this matter. What I read was almost word for word with the amendment now proposed. I tell honorable members frankly, as the Minister responsible to the people of New South Wales for the millions invested in her railways, that I cannot ask those people to throw those millions into the gutter to satisfy the appetite of our friends for our trade. It is, of course, a matter of indifference to the representatives of Tasmania, Victoria, South Australia, and Western Australia whether New South Wales is in the Federation or not. Her absence would not make the slightest difference to the happiness of the union which will be consummated between Tasmania and Victoria.

Mr. DOUGLAS. -

The honorable member knows better.

Mr. REID. -

But I assure honorable members solemnly, as the mouthpiece of the people of New South Wales, charged with the responsibility of the railways of that colony, that in giving everything Victoria has wanted in such a form as to cripple us, the Convention has made a fatal mistake. We now have an opportunity of doing for New South Wales what has been done for Victoria, and so showing the absolute impartiality of honorable members. As to the geographical distance of our railways in the Riverina from Victoria, it can be shown to absolute demonstration that, owing to the distance being so much greater, our railways must be practically closed if
we are not allowed to make our rates low enough to keep them alive.

Mr. BARTON. -

For our own trade?

Mr. REID. -

For our own traffic and for our own people. That is the strong point. If we were seeking to get an ounce of traffic out of another state, this Convention would have a right to spurn anything I say. But the singular thing is that the Convention has departed from sound principle in order to protect another colony in taking our trade from our own people and out of our own boundaries, and will not do as much for New South Wales in respect of its own trade and its own railways. My honorable friend (Mr. Douglas) will see there is a great responsibility attaching to me in virtue of the office which I hold. It is no secret that I have had the Chief Commissioner of the railway system of New South Wales down from Sydney with the express purpose of finding out how far I could go in the way of meeting the wishes of the Convention. I am not speaking lightly. I am speaking after a number of consultations with the man who absolutely knows how we stand. And I tell the Convention—and I leave the responsibility with the Convention, although perhaps the matter is one of no importance to it—that if, having safeguarded the grasp which Victoria has over the trade of New South Wales, the latter colony is not safeguarded in an endeavour to make her railways in the Riverina pay for the expenses of maintaining them, a very heavy handicap has been put on us in the way of accepting this bargain. The general principles—and this is the most serious thing of all—have been departed from in order to obtain definitions which, without any doubt, are intended in the interests of one particular colony, if not two. Well, now, however attractive the prospect is of taking bodily possession of a fair estate belonging to other people, do not forget that those other people have an opportunity of considering their position before they enter this alliance. And I tell this Convention, as I told them once before, that these are object lessons to the people of New South Wales of the sort of treatment they get from the representatives of the other Australian colonies. I ask our friends, who are impatient to annex large tracts of New South Wales, in the interests of their own desire to look after our business for us, to be a little more moderate, and not place too great a strain upon the people of New South Wales. Because it will undoubtedly place a very great strain upon the people of New South Wales if their railways in Riverina are made useless, while Victoria, with the one hand, shuts her markets against our producers and offers 66 per cent. premiums for our own trade. Whilst that is ground for the triumph of Victoria, those
whose markets are open, those who are forced to find railways, to find markets, for the other colonies are left exposed to the chances of this clause as it stands.

Mr. ISAACS. -

Our railways were there twenty years before you constructed yours.

Mr. WISE. -

Why not let both colonies be treated in the same way?

Mr. REID. -

That is what I have said. If I had tried to prevent Victoria getting fair play I would not feel so strongly on this matter, but I have already offered that Victoria shall be put in an absolutely fair position as against New South Wales, recognising her vested interests and rights in our trade. And I am prepared to say that all those rights which have existed, which have been used to create inequalities against our own people, in order to increase the

for a moment, and doubly so when the representatives of one's own colony vote against him; but while that is true, now that the temporary irritation may be said to have gone, I make the same appeal to this Convention as the representatives of Victoria made last night, and I shall wait to see whether it will receive equal respect and attention.

Mr. BARTON (New South Wales). -

I am about to move, in a couple of minutes, as it is now past five o'clock, that progress be reported, because I think we should be all the better, after what has passed, for a little cool reflection. I am not going to indulge in any warm words to the Convention. I do not think that that conduces to the success of our efforts in framing a Constitution. My right honorable friend (Mr. Reid) has rather thrown out a challenge to me, but I am happy to inform this Convention that that challenge may have been suggested to his mind by what I said to him this morning while this debate was going on. For I pointed out to him that I had taken a stand, on behalf of the general interests of federation, with reference to the question of rivers, which maintained this trade and commerce clause in its integrity, even although, under certain circumstances, rights of irrigation might have, in emergencies, to give way to rights of navigation for a time. I maintained that attitude with reference to what has been taking place on the question of railways, thinking it a consistent one, and expecting that the Convention, which had adopted that attitude in connexion with rivers, would adopt a similar attitude in connexion with the question of railways. I maintained that, on the part of New South Wales, it was something of a sacrifice, and I thought that the Convention might well adopt the same attitude when there was another attempt to cause sacrifices to be made by New South Wales
again. Some amendment of this kind ought to be adopted, not that I think an amendment of this kind will put matters right. Mr. Reid has spoken of his responsibility, and it is a great one. I, also, have a great responsibility.

Sir WILLIAM ZEAL. -

We all have our responsibilities.

Mr. BARTON. -

Yes, we all have our responsibilities; but I suppose that there is laid on me, in respect of this question, a greater responsibility than on any man in Australia, and I hope to maintain that responsibility fairly and equitably, at any rate, in such a way as to conduce to the success of our labours; but it is a very great trial to me to find that there should be any objection at all to an amendment of this kind, when one considers that, throughout this Convention, the interests that have been under serious debate, as to the manner in which they shall be adjusted for the general benefit, have been the particular interests of New South Wales. All these attempts, when they are successful, result in New South Wales paying the score.

Several HONORABLE MEMBERS. - No.

Mr. BARTON. -

When they are successful, I say, they must result in New South Wales paying the score, and an attempt such as this which has been made, unless it is nullified by such an amendment as has been proposed, will again result in New South Wales paying the score. I said a few days ago that I had nothing to complain of in the attitude of this Convention towards New South Wales. Up to that time I had not, and I limited my statement up to that time. Up to then New South Wales had been fairly dealt with, and, reciprocally, New South Wales had taken a stand in reference to the rivers question which was abundantly fair and even generous to the other states. But, when she seeks to apply that same rule, which resulted so happily for the other states on the rivers question, to matters—which ought to go with the regulation of trade and commerce, in the same way as the rivers go with it—when the question becomes railways and not rivers—then a stand is taken which...
railways, then I much fear me that there is becoming a forgetfulness of the right line of justice which we ought to observe. I am not saying these words in any heat, I am saying them with great deliberation.

Sir WILLIAM ZEAL. -

Why say them at all? As leader you ought not to make these remarks. It is unworthy of you.

Mr. BARTON. -

I am afraid that my honorable friend is a little more irritable than I am, and perhaps he will be sorry he said that I am taking a course unworthy of me as leader of the Convention. I take it to be my duty as leader to endeavour to point out, at all times, where I think the Convention is going too far in any one direction, and if I have not that authority as leader, exercising it as fairly as I can, then I suppose I was not put here for anything at all.

Sir JOHN FORREST. -

You represent New South Wales.

Mr. BARTON. -

I am representing New South Wales too, but my right honorable friend will do me this credit, that from the very beginning of this Convention I have represented New South Wales in a spirit of the utmost fairness and generosity to the other colonies.

Mr. REID. -

You have been too generous, and you have your reward now. I knew the people I was dealing with.

Mr. BARTON. -

But, sir, if I have adopted that attitude-and I believe it is said that I have-is it to be said that I am acting in a way unworthy of my position when I point out that things inconsistent with the attitude I have been endeavouring to maintain are now being done?

Sir WILLIAM ZEAL. -

That is only your opinion.

Mr. REID. -

Is not that all he is expressing?

Sir JOHN FORREST. -

Why should he lecture a majority of the Convention?

Mr. BARTON. -

Let my right honorable friend understand me. I make the utmost concession to every member in the exercise of his opinion. I recognise the right we all have to express our opinions freely and fully. But my right honorable friend, perhaps, will recollect that when I have resumed my seat he will be able to lecture me. What I wish to point out-and it is consistent, I
take it, with that protest which I have always made against curbing discussion in the Convention, with that liberty of speech which I have endeavoured to safeguard here—is that I should be allowed to proceed without undue interruption. I am merely expressing my own opinion, and I am bound to express my opinion in this Convention, irrespective of my representation of New South Wales, when I consider that there are dangers ahead of the Convention, and it is in respect to dangers ahead that I am now addressing honorable members.

Sir JOHN FORREST. -

What is before the House, I wonder.

Mr. BARTON. -

What is before the committee at present is Mr. O'Connor's motion, and on that I intend to move to report progress. I thought I had explained all that. I am astonished to be told that I am lecturing this Convention when I am simply taking that stand which I consider that a member appointed to my position should always take—that is to say, to point out to the Convention where he thinks the proceedings are going too far. I do ask that this matter should be considered. I do ask that we should not put the whole question of federation in a serious danger. I am not delivering a lecture, but I am making an appeal to this Convention and to its sense of justice. Let the course which the Convention adopted at my instance with regard to the rivers be pursued with reference to this question of railways, and I am abundantly content.

Mr. HOLDER. -

You ought to have gone as far with the rivers as you did today with the railways.

Mr. BARTON. -

Whether they have gone by river or by rail to their destination, the end of that proceeding would have been that they would have gone to Jericho.

Mr. REID. -

You have got the muddy end of the river, and that is all you are entitled to.

Mr. BARTON. -

There appears in some quarters to be a forgetfulness that we are all engaged in the common work of endeavouring to secure such a Constitution as the people of the colonies at large may accept, and that is all I am addressing my self to in speaking to this amendment. I think we ought not at any point to stray from that one matter, which is the beacon light in front of us. We are charged by law to make a Constitution, and our statutory instruction ends there. But, inasmuch as that Constitution has to
be accepted by the people of the federating colonies, it is implicitly right to say that we should make a Constitution which they will accept. Now, one section of these people will not take that Constitution if they are under a well grounded suspicion that the movements that take place in this Convention, even when they are defeated, are merely victories of defence to New South Wales, and when they are successful are victories of aggression against her. I wish these words to be well regarded. I do not speak as a representative of New South Wales now, I speak as the leader of this Convention. I think that if my right honorable friend (Sir John Forrest) were to give matters a little more consideration, he would sometimes think before be laughs.

Sir JOHN FORREST. -

You have been lecturing the Convention all the way.

Mr. BARTON. -

I am speaking here very seriously; I am not speaking with any desire to, in any way, lecture the Convention, but I wish to protect the interests of the state I represent. I have not been one of the men who have made threats. I have not been in the habit, at any time since the beginning of the Convention, of laying down impossible conditions as to those matters which would secure my support. I have endeavoured often to stand between conflicting parties, and to lead the Convention to a decision which is just between those parties, and that is my attitude now. I wish a decision to be come to which is just between the conflicting parties, and if I am of the honest opinion that a decision which has been come to without some further proceeding is not just, surely my right honorable friend ought not to laugh at me when I hold that opinion and put it forward in the duty I owe to this body. I do hope that this amendment of Mr. O'Connor will either be adopted or that we shall have some means to retrace the step we have taken, so as to render such an amendment unnecessary. We are told that because of some trade that Victoria has acquired in the southern regions of New South Wales a step has to be taken, which, as far as we know, will result in an enormous diminution of our own trade on our own railways. That is the position, and we are told then that New South Wales has long-distance lines upon which she can charge development rates, that Victoria has not those long distance lines and cannot charge development rates, and that therefore her only resort is to charge preferential rates and give discounts and drawbacks.

Mr. FRASER. -

No. She could taper off her rates.

Mr. BARTON. -

Well, let Victoria taper off her rates, and let us understand this business
properly. We are two contiguous states. We are each entitled to our traffic confined within our own state. We are ready to accept that position. We are willing that New South Wales should confine herself to making any development rate as regards her internal traffic, and that Victoria should make any development rate as regards her internal traffic. Then we are prepared to go further. We are prepared to make some concession which will, to a certain extent, recognise the expenditure which Victoria has gone to in order to secure trade in our south western districts. We do not wish to go beyond that, but we do resent a position which takes matters right beyond that, and converts a position of mutual defence into a position of aggression on one side. That is the position as it presents itself to us. Surely it is not our fault if the lines in Victoria are so abortive, owing to the length and breadth of her territory, that the policy of development rates cannot be carried out with some force, and so as to yield a good return to her railways, unless she goes into another colony and takes some trade from that colony. That is not our fault; and as we are normally entitled to make rates for our trade within our boundaries, the same as every other colony is entitled to do, why should there be set up a position which will virtually and effectually take away that title from us and transfer it to another state? That is the position which has been set up. I do not wish to add another word to what I have said. I hope that every honorable member will understand me as speaking not in heat—not in anger. I speak not in anger. I am accustomed to speak with warmth, but I am not speaking in heat or in anger. I am speaking in the best interests of this Convention and of the cause which I believe others have at heart as warmly as I have. But I do trust that the difficulty of this position will be recognised. I do trust, without any word of threat, because words of threat am not desirable here; without any attempt to menace members, because I think the position of menace is one unworthy of a member-

Mr. REID. - They were used last night, and very usefully, too.

Mr. BARTON. - I do trust that the opening out of the actual position, as it may be regarded in the colony from which I come, will be taken as an indication to the Convention that there should be some further consideration of this matter, which will eventually lead to its being settled on lines of justice. I beg to move-

That the Chairman do now leave the chair, report progress, and ask leave to sit again tomorrow.

The CHAIRMAN. -
According to our practice and standing orders, the motion that I report progress and ask leave to sit again cannot be debated, and no honorable member can move that motion after he has made a speech.

Sir JOSEPH ABBOTT (New South Wales). -

The Right Hon. the Premier of New South Wales has made allusion to the vote which was given by myself and his colleague (Mr. Carruthers) with regard to this matter. I cannot see that there is any necessity for the remarks he has made. We have given our votes according to the best of our judgment. I do not know that we have come to the point when every member of every delegation is bound to vote according to the views of the majority of that delegation. I am still under the impression that the clause as it stands will give enormous advantages to New South Wales, by preventing Victoria from making aggressions upon the trade of that colony.

Mr. LYNE (New South Wales). -

I rise to a point of order. I wish to know whether, under the standing orders, this discussion can go on after the motion for reporting progress has been moved by the leader of the Convention?

The CHAIRMAN. -

I have not put the motion to report progress. I refused to put it on the ground that the honorable member who moved it had spoken.

Sir JOSEPH ABBOTT (New South Wales). -

It is clear to me that it is not in Mr. Barton's power, having made a speech with reference to the matter, to move that you, sir, report progress. What I was saying before I was interrupted, was that, as the clause now stands, in my opinion, New South Wales gets enormous advantages.

Mr. REID. -

I wish the Railways Commissioner would tell me that. I should then be satisfied. But be tells me the opposite.

Sir JOSEPH ABBOTT. -

Then perhaps my intelligence has misled me. I have at any rate given my vote according to my opinion, believing that it was not against the interests of New South Wales. I belong to that colony, and have never lived out of New South Wales during the whole course of my life. It is my native colony, and I certainly would be the last in this Convention to do anything to injure it.

Mr. REID. -

Hear, hear; I am sure of it.

Sir JOSEPH ABBOTT. -

If I could be convinced that the vote which I have given was given under
a misunderstanding, and would have the effect of injuring New South Wales, I should be most anxious to retrace my steps if it were possible to do so; but I listened to the speech of Mr. Carruthers last evening, and that speech impressed me immensely. I do not think Mr. Reid took great exception to it at the time.

Mr. REID. -
    I did, though.

Sir JOSEPH ABBOTT. -
    My right honorable friend disagreed with Mr. Carruthers, perhaps.

Mr. REID. -
    I strongly objected to what he stated, and if he knew as much as I do about railway opinion in New South Wales he would have followed me. I am acting under advice.

Sir JOSEPH ABBOTT. -
    I hope, at all events, that nothing will be said that will cause ill feeling. After we have slept upon the matter, we shall be able to come to a conclusion which will, while doing full justice to Victoria, do no injustice to New South Wales. And if it can be shown to me that the vote I have given will have the effect of doing injustice to New South Wales, I shall be willing and anxious to retrace my steps.

Sir JOHN FORREST. -
    Or any injustice to any other colony.

Sir JOSEPH ABBOTT. -
    No; it is only now a question of New South Wales' interests, and not of the other colonies. It seems to me, however, that New South Wales is getting enormous advantages by preventing Victoria from capturing New South Wales' trade from Walgett.

Mr. REID (New South Wales). -
    May I be allowed to assure my honorable friend (Sir Joseph Abbott) that I have not for a moment thought that he and my colleague (Mr. Carruthers) gave their votes in any way except, as they considered, absolutely in the interests of New South Wales? My observation was made simply because I happen to have official information which makes me feel more strongly than I should feel if I were acting upon my own individual opinion as a member of this Convention.

Dr. COCKBURN (South Australia). -
    I should like to say a word or two with regard to this question. Nothing would give me greater pain than to see my right honorable friend (Mr. Reid) martyred; but I do not see, in spite of all that he has said, that he has had to suffer martyrdom at all. On the contrary, I think he has had his way all along the line. I remember that when first we met in Adelaide, some of
us had strong views as to the question of the powers of the Senate. We had a majority with us, but the right honorable gentleman was then opposed to us.

Mr. FRASER. -

Why go into personal matters now?

Dr. COCKBURN. -

I do not want the impression to go abroad that in any case has my right honorable friend (Mr. Reid) been martyred. I say with regard to the powers of the Senate that we had at first a majority with us in Adelaide. But the division was postponed day after day until Mr. Reid got a majority with him; and then he had his own way. I might allude again to the rivers question. We had a majority with us upon that matter also, but Mr. Reid made an eloquent appeal to us not to make a martyr of him and his colleagues, and he succeeded in delaying the division until he got a majority with him; so that once again he beat us.

Mr. REID. -

Let me do the same again!

Dr. COCKBURN. -

I believe that, in spite of us, the right honorable gentleman will get his way again after all. But I wish to say that it seems to me that, by inserting this amendment, we are inserting in our treaty of peace a provision for a continuance of war.

Sir JOHN FORREST (Western Australia). -

I should like to say one word, sir. I should be very sorry, indeed, if my honorable friend the leader of the Convention should think that anything that I have said in any way reflected upon him. I recognise most fully that he has a very difficult position to occupy. He is one of the foremost representatives and advocates of his colony. I do not think I am going too far when I say that he has never lost an opportunity of urging its claims whenever he could. At the same time, he is the leader of this Convention. That is a very difficult position to fulfil, and I regret that my right honorable friend (the Premier of New South Wales), whom I think I may say I respect very deeply, and our leader did not like to lose the division in which they were so much interested. Well, no one does. No one likes to be beaten; but I think when we are beaten we should accept the defeat. And I may also say that it is not a very good thing, after you have had a defeat or a victory, that one side or the other should have anything to say about it till the next day; then, perhaps, an opportunity can be afforded of endeavouring to change the minds of those who have inflicted the defeat. I have tried to judge this question as fairly as I could, and I can assure my
honorable friends opposite that I gave my vote conscientiously, and I think every one else did the same. And what more could we do? We could only take the cases placed before us and judge as to which was the sounder; and whether we were right or wrong in the conclusions we came to, I do not think it is a good thing to discuss a division after it has taken place. I assure the leader of the Convention that there is no one in this House who has a greater respect for him than I have. But I do not think it is a good thing, after we have come to a decision, to lecture us with regard to our votes.

Mr. BARTON. -

I was not lecturing; I was only holding up the danger signal.

Sir JOHN FORREST. -

If there is anything which I have said that our leader takes exception to, I shall be most happy to absolutely and unreservedly withdraw it; and I am sure that the respect in which he is held by me is shared by every member of this Convention.

Progress was then reported.

The Convention adjourned at half-past five o'clock.
Thursday, 24th February, 1898.

Return: Appeals to the Privy Council - Commonwealth of Australia Bill.

The PRESIDENT took the chair at twenty-seven minutes to eleven o'clock.

APPEALS TO THE PRIVY COUNCIL.
Mr. HOLDER (South Australia) laid on the table, pursuant to an order of the Convention (dated 22nd February), a return relating to appeals from South Australia to the Privy Council, and moved that it be printed.
The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on proposed new clause 95A, which was as follows:-
The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof; and on Mr. O'Connor's amendment to add the following proviso:-
Provided that nothing in this Constitution shall be taken to render unlawful any rate of a railway the property of a state upon the ground that the rate is unduly low.

Mr. OCONNOR (New South Wales). -
In order to put more clearly before the Convention the object aimed at, I have prepared another amendment, which carries out my intention more fully, and I desire to ask leave now to withdraw the amendment I submitted yesterday. The new amendment puts the matter on the ground we wish to discuss.

Mr. KINGSTON. -
Will it let in the High Court?

Mr. OCONNOR. -
Under certain circumstances I think it will, but I do not wish to discuss it now.
The amendment was withdrawn.

Mr. OCONNOR. -
I beg now to move-That the following words be added to new clause
"Notwithstanding anything in this Constitution, a rate upon a railway the property of a state shall not be prohibited or taken to be unlawful on the ground that the rate is unduly low, if such rate is imposed for the development of traffic between places within the limits of the state."

The amendment as it was put yesterday did not sufficiently indicate that what was required was protection of rates which were merely for the development of traffic within the territory of a state.

Sir GEORGE TURNER. -

The development of the country.

Mr. OCONNOR. -

It is precisely the same thing.

Sir GEORGE TURNER. -

Oh, no.

Mr. OCONNOR. -

If honorable members can show me any substantial distinction I shall be prepared to follow it. I propose to explain, as shortly as I can, the reasons for this further amendment. I would ask the attention of the committee, because we have undoubtedly arrived at a very serious point in our deliberations. I wish to discuss, without any undue heat or exaggeration of expression, the question of what the position really is as far as it affects New South Wales. I should very much have preferred to treat the railways in exactly the same way as the rivers. I should very much have preferred to leave the solution of this question to the general principles which are embedded in the Constitution under the commerce clause. I should very much have preferred to leave to the High Court the interpretation of any Act that is passed dealing with trade and commerce and affecting these matters. Unfortunately, it has been decided by the passing of the Right Hon. Sir George Turner's amendment that that course is not to be followed, and the position as it stands to-day may very readily be gathered from that amendment. My right honorable friend struck out the word "particularly," and did so for the purpose of making more clear what his intention was. The criticism of Mr. Higgins, which was, I think, quite justified as a matter of legal construction, showed that there might be a doubt as to whether the power given to Parliament under Sir George Turner's amendment would enable the Parliament to interfere with the rates of a state regarding its own traffic only. And, in order to make that matter perfectly clear, Sir George Turner struck out the word "particularly," and carried the amendment in the condition in which it now stands. Well, we did not object to that being done, because we thought it was better that the committee should understand at once the real meaning of the amendment. We thought it was
better that the injustice of the proposal should stand out in a clear defined way, so that there could be no mistaking the effect of it. And its effect now is that not

only has the Parliament the right to lay down a rule as to what shall be preferences or discriminations in interstate traffic, but also as to what shall be discriminations and preferences in any traffic on the railways of a state.

Mr. TRENWITH. -

Any traffic which affects intercolonial trade.

Mr. OCONNOR. -

Not only upon any traffic which affects intercolonial trade, but upon any railway of a state, whether carrying interstate traffic or not. The honorable member may shake his head, but I can assure him that he has not considered the legal effect of Sir George Turner's amendment, and therefore he is not in a position to give any opinion on the question.

Mr. TRENWITH. -

The legal effect of the amendment is that they can do so, but the commonsense effect of it is that they won't.

Mr. BARTON. -

Well, are we making a law or not?

Mr. OCONNOR. -

If a legal power is given by the amendment, I want to see what that power is, and I decline to accept the honorable member's assurance that the operation of the provision which Sir George Turner carried yesterday will be protected by common sense. I say, that we are giving a right here which will be exercised to its fullest extent, and I will explain presently why I think it will. But, first of all, I want to make clear to the committee what the meaning of Sir George Turner's amendment is. I do not think there can be any question that what I have just stated is the real meaning of it. Now, how does that affect the position in which New South Wales stands? Mr. Trenwith interjected just now that, whatever the law may say, common sense would dictate something else. But I would like to point out to the honorable member that we are making a law here, and making a law of, perhaps—indeed, certainly—of more momentous import than any law yet passed in Australia—a law the interpretation of which will involve the rights of millions of persons in the future, and a law which, above all things, should be exact and definite in its terms.

Mr. ISAACS. -

That applies to everything in the Bill.

Mr. OCONNOR. -

Undoubtedly that applies to everything in this Constitution. Therefore, it
is of little value to tell me that the meaning of a clause or an amendment may be one thing in a legal sense, but that it is something else in a common sense. We have to consider this as a matter of law, and to consider the rules of construction that will be applied to the interpretation of this Constitution in the future. The honorable member's interjection brings me to another point. The strongest objection which we have to handing over this power to the Federal Parliament is that we are handing it over to a body which, however honest it may be in intentions, is interested in the deepest possible degree in the determination of the question. And it is interested in exactly the same way as the members of this Convention are interested, but it will be a body which, however much we may hope as to its personnel and as to its character, cannot possibly fail to be more affected by special and personal interests than the members of this Convention. Now, in any question dealing with the trade which will be affected by this amendment there will at the least, leaving out Queensland for a moment, be interested in the matter the colonies of Victoria, New South Wales, and South Australia. Any one who knows anything about the fixing of the rates in the competitive area which carries the Riverina trade will know this: That the rates upon that area are not fixed only by the requirements or the competition of trade between New South Wales and Victoria, but are also affected very largely by the cost of carriage on the river, in which South Australia is so deeply interested.

Mr. DOUGLAS. -

What is the object of federation?

Mr. OCONNOR. -

The honorable member knows as well as I do what the object of federation is, and it is in order to secure and retain the principles of federation that I am moving this amendment. Now, I say that, on any question affecting this trade, you have had up to the present time and there will always be a triangular duel; not only a contest between New South Wales and Victoria, but also a contest between New South Wales and Victoria by land, and the interests of South Australia on the river. No system of competitive rates can be devised to deal with this matter which would leave the position of the river traffic out of consideration, and the reason why these rates upon the railways of Victoria and New South Wales are compelled to be fixed so low is because they must be brought down to a level which will enable them to compete with the river traffic. Now, in any question that can arise in the future regarding this traffic, you must have exactly the same elements of competition, exactly the same interests
at work, and it is because we feel that, in any question of discrimination or preference with regard to the rates of our own railways, we are submitting that question to be decided by a body in which, of the three parties to the contract, two may be interested in one way, and one in the other, that we say that it is not the kind of tribunal to which we would submit the interests of New South Wales, and the fixing of the rates on her railways.

Mr. DEAKIN. -

I do not wish to interrupt the honorable member's line of argument, but at some part of his speech, perhaps, he will be good enough to say how far he thinks the amendment carried yesterday by Sir George Turner does give the Commonwealth control of the railway traffic wholly within any one state?

Mr. OCONNOR. -

I pointed that out very shortly a few minutes ago, when the honorable member was evidently not in the chamber, but I have no objection to answer the honorable member's question now. If the honorable member has Sir George Turner's amendment before him-

Mr. DEAKIN. -

I have what you said last night before me.

Mr. OCONNOR. -

But I am now dealing with Sir George Turner's amendment, which has been considerably altered by the striking out of one word. The amendment as it stood was, as I pointed out before, open to the criticism of Mr. Higgins-and I think it was very fairly arguable, if the matter was to be decided by the court, that, with the word "particularly" inserted, the power "to particularly forbid such preferences or discriminations as it may deem to be undue and unreasonable, or to be unjust to any state"-that those words were merely an illustration of the general power conferred. But the honorable member will see that by striking out the word "p

Mr. DEAKIN. -

Does that take the power out of the implied limitation of the trade and commerce clause?

Mr. OCONNOR. -

Undoubtedly it does. If this matter was to be decided by the court, there would be some reason in the suggestion. But it is not to be decided by the court, but by the Parliament, and it is left to the latter to determine what is a rate or preference which comes within the power of Parliament. If Parliament determine that, what power is there to prevent it?

Mr. DEAKIN. -

Surely the court could try the validity of an Act passed by Parliament to
see whether it is wide enough.

Mr. WISE. -
Parliament is made the whole test of what is reasonable or unreasonable.

Mr. OCONNOR. -
It seems to be forgotten that Parliament may forbid such preferences or discriminations as it may deem to be undue or unreasonable, or unjust to any state. The court has no power. The absolute power is given to the Parliament.

Mr. REID. -
The only question for the court would be as to whether Parliament had so deemed it.

Mr. OCONNOR. -
Exactly. As my honorable friend reminds me, the only power left to the court is to determine whether Parliament has deemed a particular rate, preference, or discrimination to be undue, unreasonable, or unjust to any state. I have no hesitation in saying that the meaning of the amendment is not only such as I have indicated, but that it is proposed deliberately and purposely in order to carry out the meaning of my right honorable friend.

Mr. DEAKIN. -
Hear, hear.

Mr. OCONNOR. -
I am glad to hear that cheer from Mr. Deakin, because this brings us to the true position.

Mr. DEAKIN. -
My only object is to make it clear.

Mr. OCONNOR. -
This brings us to the position which ought to be put in no mistaken language before the Convention. We are not without light on this matter from the experience of the past. We know that, in dealing with the question of whether a rate is discriminating or whether a preference is unjust, the area of the conflict will be, at least, what it is at the present time. We find according to the valuable report laid before the Convention by Mr. Eddy on the differential rates controversy—which has been so long going on—that the competing area, over which Victoria allows a reduction of as much as from 61 to 66 per cent., extends into New South Wales territory up the Darling to where the Darling becomes the Barwon. It extends across the Bourke line and the Lachlan River down to the Murrumbidgee. It includes all the area served by the Jerilderie to Hay line, and all the branch lines to Jerilderie, to Berrigan, and all the Albury lines to the border, and branches of them—in other words, the area in which the New South Wales rates, drawing New South Wales traffic, would be considered an area the rates in
which should be submitted for the consideration of Parliament under this amendment of Sir George Turner. That is to say, the whole of the railways of New South Wales, in so far as they deal with the richest part of the products of New South Wales, would be submitted to the judgment of the Parliament of the Commonwealth as to whether the rates were discriminating, or whether preference should be made.

Mr. TRENWITH. -
A Parliament in which New South Wales is represented.

Mr. OCONNOR. -
A Parliament in which New South Wales is represented, and in which Victoria and South Australia are represented, and in which a combination of Victoria and South Australia could overcome the majority of the members for New South Wales. There is no use in talking in this way, and I do not want to say anything more about it. Exactly the same interests operating here would be in force in the Federal Parliament. We are warned by what has been going on here as to the danger of submitting the consideration of the rates on our railways, in regard to our own traffic, to a tribunal, in which, necessarily, there would be much self-interest. It must be remembered that if Queensland becomes a member of this Commonwealth, as I ardently hope she may, there will be exactly the same class of problem to meet. There is a competitive area between the New South Wales terminus at Bourke on the Darling and the termini of the Queensland railways. Within that area, both in Queensland and New South Wales, there is competition for trade. If the rule suggested applies, there would be, as has been pointed out, a new party and a new element in the Commonwealth Parliament—an element which would, also, have an interest in fixing the rates of the railways of New South Wales for the carriage of our own traffic and fixing them in a way to suit somebody else. And not only that, but we come to a point at which our northern railway touches Queensland in another way—from New England to Wallangarra. Exactly the same consideration arises there. Queensland would have a right to say—"After you, in South Australia and Victoria, have attended to the little matter of the rates for Riverina, we have a word to say in regard to the rates to Bourke—to the railway at Moree, which comes within 60 miles of the Queensland border.

Mr. BRUNKER. -
And the line is being extended to Collarendabri.

Mr. OCONNOR. -
Yes, it is being extended to Collarendabri. There is no question that one of the first results of the development of the railways in the north-west
must be in that direction. The interest of New South Wales is not only in the competitive area in Riverina, but is touched at every border of the territory. It touches us where we deal with South Australia, and also where we deal with Queensland, on the north-west and northern border. Remembering the admissions that have been made by my honorable friends from Victoria, as to what they mean by this amendment, and remembering what they desire and require in regard to the rates of the New South Wales railways-

Mr. REID. -

They may find it a rod for their own backs.

Mr. OCONNOR. -

Remembering these things, how can we possibly take back to the people of New South Wales, with any feeling of confidence, a measure which hands over to a Parliament, the members of which would, as I have pointed out, be deeply interested in determining the rates on our own railways for the carrying of our own produce? I appeal to honorable members who may take strong but not extreme views in regard to this matter, and I appeal particularly to those who represent colonies which are not specially and directly interested in the trade of the districts which these proposals will affect. I ask whether, as a matter of common ordinary justice, we should be expected to submit to an interference in our railway management of the kind proposed? These railways have been built by us at enormous expense to serve the interests of our producers, and they must be conducted with a regard to the interest of those producers.

Mr. ISAACS. -

And, if you wish, you would argue, to ruin the Victorian railways.

Mr. OCONNOR. -

No. I have before pointed out in this Convention that I recognise the difficulties of dealing with the question in any symmetrical way, or upon the ideal lines which we should like to see embodied in the Constitution. We must face the facts, and we are quite willing to face them in such a way as will leave things where they are. We are willing to leave to Victoria her power to impose rates, and to leave to New South Wales the same power, trusting to the development which must take place after we have become united for some more reasonable arrangement. Until such an arrangement is come to, we are willing to leave things as they are. Under the guise of a provision which would do that, the amendment of the Premier of Victoria was carried; but that amendment, instead of leaving things as they are, gives to a body interested in the way I have described the control, not only of intercolonial railway rates, but of all the rates charged.
upon the railways of New South Wales. I quite admit that the majority which carried that amendment may refuse to accept the amendment I now have to propose. But I would remind honorable gentlemen that, although they may carry an amendment, or a clause, or a Constitution here it means very little if an element of injustice is contained therein-and I am not using too strong a word if I say an element of spoliation-because that will make its acceptance impossible in New South Wales.

Mr. Reid. -

We do not mind the same old game; but we do not want a new game upon the top of it.

Mr. O'Connor. -

I would ask honorable members to consider the object of our meeting. We should not be tempted to use too far an advantage which a chance majority may give us. I am willing to consent to any amendment which will put this matter upon a reasonable footing. I have taken up some little time in explaining the manner in which this question affects New South Wales, because I think there are many honorable members here who may not have studied the map, and who may not have seen exactly what the proposal means. I think that to those who understand the position, and who have listened to the arguments we have been putting forward, the justice of our case will be apparent. I do not care to be bound down by any particular form of words. I am quite content to move my amendment in any form which will carry into effect the principle mentioned by the honorable and learned member (Mr. Isaacs) just a while ago that is, the principle of leaving things as they are. By carrying the amendment of the Premier of Victoria we have not left things as they are, but we have given away a power which I think was beyond the wildest dreams of my honorable friends opposite when the amendment of the honorable member (Mr. Higgins) was being considered. In order to surround this power with a limitation which will preserve the right of New South Wales to develop her own territory and to look after the interests of her own producers, I beg to move-

That the following words be added to the proposed new clause:-

"Notwithstanding anything in this Constitution, a rate upon a railway the property of a, state, shall not be prohibited or taken to be unlawful on the ground that the rate is unduly low, if such rate is imposed for the development of traffic between places within the limits of the state."

It does not matter very much where that provision is inserted, and I leave it to the Drafting Committee to part it in its proper place. It will enable New South Wales to consider the interests of her farmers in Riverina. It will enable her to deal with, say, the wheat traffic from places like Berrigan
in such a way as will permit the farmers there to send their grain to the seaboard, upon such terms as will make exportation possible. We all know that if Australia is to have any large dealings with the outside world the cost of delivering produce at the seaboard must be made very much lower than it is now, and it is one of the uses which New South Wales proposes to make of the gains of her railways to benefit her producers by reducing the rates of carriage to the sea. That is the principle which is being adopted with us, and which must be adopted in all the colonies if Australia is to become a producing country worthy of the name.

Sir WILLIAM ZEAL. -
And to compete with the outside world.

Mr. OCONNOR. -
We ask you to allow us to reduce our rates where the interests of our producers require that they should be reduced. I do not like to see a provision of this kind introduced into the Constitution at all. I look upon a provision such as the amendment of the Premier of Victoria as a blot upon the work we are doing, but, if that provision is to remain in th

[P.1426] starts here

Mr. BARTON. -
This shows how much damage you can do by trying to explain what is already clear.

Mr. TRENWITH. -
If the words are clear, why should the honorable gentleman object to having them made clearer?

Mr. BARTON. -
It is not possible to make the construction of such words clearer.

Mr. REID. -
Your 60 per cent. rates are quite clear.

The CHAIRMAN. -
Order. I must remind the Right Hon. Mr. Reid that Mr. O'Connor is in possession of the chair.

Mr. REID. -
I really forgot that that is the fact, owing to what is taking place.

Mr. OCONNOR. -
My right honorable friend's interjections are always useful. I do not wish to detain the Convention at any greater length except to urge upon honorable members that they should consider at this crisis at which we have arrived that the question is not to be settled by majorities, but by what is fair, right, and reasonable. Looking at the matter in that way, I hope that no honorable member will feel himself tied or bound down by any view
which he may have previously expressed in the absence of full knowledge of the subject. I hope the matter will be looked at fairly from every point of view, and that the necessity will be recognised, if Sir George Turner's amendment is to stand, for some such limitation as I have proposed. I would rather have none of these limitations; I am quite willing to leave the matter as it was left, and for the reasons explained by Mr. Barton on many occasions, to the general power of dealing with the regulation of trade and commerce, which is the underlying principle of this Constitution. I say that that power administered by the Government, and interpreted in the last resort by the court, is at once the most elastic and the safest provision which can be made in dealing with this difficult question.

Sir GEORGE TURNER (Victoria). -

I quite agree with my honorable friend that we should do what is fair, just, and reasonable, but I consider that, in carrying the amendment, we did yesterday undoubtedly what was fair, just, and reasonable to all the states. My honorable friend seems to forget that there is any other state than New South Wales, when he talks about what is fair, just, and reasonable. The keynote of my honorable friend's remarks for the last three-quarters of an hour has been "We are not to trust the Federal Parliament to do what is right." That is the sole basis on which he has objected to my amendment. The effect of that amendment is simply to leave to the Federal Parliament the controlling power, not to regulate rates and charges with regard to that traffic, but to prevent any one state doing what is wrong to another state. All through we have been told that our friends in New South Wales are perfectly satisfied that they should be placed in that position, but it has been admitted lately that what we contended for hour after hour, and day after day, was quite correct; that is, if you left us to the operation only of the trade and commerce clause, you tied up Victoria and left New South Wales free.

Mr. WISE. -

I was the first to point that out to you in Adelaide.

Sir GEORGE TURNER. -

That was pointed out by the honorable gentleman, but it was argued all along, and it is argued by Mr. O'Connor now, that we should rely on the trade and commerce clause. That has been pointed out, and so we have attempted to argue and tried to get out of that difficulty, which simply meant to give everything to New South Wales, and leave Victoria at her mercy.

Mr. OCONNOR. -

I said I would be quite willing to vote for any amendment which would leave matters as they are.
Mr. REID. -

We all say that.

Sir GEORGE TURNER. -

I would ask my honorable friends to listen to what I have to say. My honorable friend will give me credit for not wanting anything that is not fair to any colony. In fact, that is what we are all here for. I would suggest that the amendment should read in this way:--

Notwithstanding anything in this Constitution, a rate upon a railway the property of a state shall not be prohibited or taken to be unlawful on the ground that the rate is unduly low, if such rate is not unjust to another state.

Let it stop there.

Mr. WISE. -

That will not meet it.

Sir GEORGE TURNER. -

Very well; I throw out that suggestion to show our bona fides - to show that all we want is to prevent Victoria or New South Wales from using the railways in such a manner as to be unjust to one or other of the states in the Federation. I do not want to take my honorable friends on the hop, and I am willing that they should have time to think over the matter. Let us see the words of the amendment, and the effect of it. What we did yesterday was, to my mind, simply to leave to the Federal Parliament the whole question of dealing with all the states in such a way as to prevent one treating another unfairly or improperly. Here we are asked to say that, notwithstanding anything we may have done, a rate is not to be unlawful on the ground that it is unduly low, if such rate is imposed for the development of traffic between places within the limits of the state. My honorable friend says we must put in words which are definite. These words are definite and distinct enough to tell the people of Victoria "this is aimed directly at you, and for the benefit of New South Wales." This power is not wanted by New South Wales for the development of the country; it is not wanted for the benefit of the producers or for opening up these remote districts; but it is wanted to conserve the traffic of New South Wales in New South Wales, to take the Riverina trade to Sydney, and to prevent it from coming to Melbourne, and we are invited to say that a rate is not to be unlawful if imposed for the development of the traffic between places within the state. That is stating, in as clear, definite, and distinct language as possible, to Victoria-"You must not make your charges low in order to get the Riverina trade to Melbourne, while in New South Wales we can carry goods for nothing for the express purpose of taking trade away from Melbourne, where it now flows, and to lead it to Sydney." Is it
to be thought for a moment that we, as representatives of Victoria, could consent to such a proposal, or is it to be thought that the people of Victoria would agree to a Constitution having that provision staring them in the face? Mr. Barton characterized our action as malevolent.

Mr. BARTON. -
No, maleficent—the opposite of beneficent.

Sir GEORGE TURNER. -
The honorable member used a lot of hard terms, but I would find it difficult indeed to characterize the effect of Mr. O'Conor's amendment on the prosperity and progress of Victoria.

Mr. DOUGLAS. -
They must think that you are green.

Sir GEORGE TURNER. -
We are just getting back to the one question which we have been strenuously fighting for the last few days; that is, that leaving the matter to the trade and commerce clause simply meant that we were tied, and that New South Wales was free. Surely any honorable member who reads this will see that its effect, whatever the intention is, will be to make it absolutely clear that that is to be the position hereafter. Therefore, those who are prepared to deal fairly, justly, and equitably with all the colonies will never dream for a moment of voting for an amendment of this description.

Mr. MCMILLAN. -
What does the honorable member mean by saying that the trade and commerce clause makes us free, and binds Victoria?

Sir GEORGE TURNER. -
That was admitted by Mr. Wise and Mr. Reid yesterday.

Mr. WISE. -
I have always thought so.

Sir GEORGE TURNER. -
I contend that the effect of the trade and commerce clause is what I have described.

Mr. SYMON. -
Many others do not agree with that.

Mr. DEAKIN. -
How can we settle it when the lawyers differ?

Mr. WISE. -
Put in a clause to make it clear.
An HONORABLE MEMBER. -

It would only make it obscure.

Sir GEORGE TURNER. -

I do not want to have any misunderstanding, and we need not have any sneers about the matter. If it is to be a question of fighting, Victoria is just as able to fight, and is quite as prepared to fight, with regard to these railway rates as is New South Wales.

Mr. LYNE. -

We are quite as well able to fight as Victoria.

Sir GEORGE TURNER. -

We have fought so far and succeeded, and we are perfectly willing to continue the fight.

Mr. LYNE. -

We do not want to make a fight, but if you make an onslaught on us we will defend ourselves.

The CHAIRMAN. -

I would ask honorable members to allow the right honorable gentleman to address the Chair.

Sir GEORGE TURNER. -

We are perfectly prepared to fight, and we have fought as separate states. We will fight so long as we are separate states, but when we are bound together in a Federation, we want to stop that fighting on the border, and let everything be fair, just, and reasonable.

Mr. REID. -

Especially reasonable.

Sir GEORGE TURNER. -

Well, now, Mr. O'Connor has based his argument on the ground that the Parliament will be too deeply interested in this important subject to do what is fair. Are we going to enter into our Federation with any such thought in our minds? If we are, I say that we shall do better to end our conference at once, and save the great expense going on day by day to our different countries, When we were dealing with the question of bonuses, and the question of the distribution of the surplus, my right, honorable friend said:"Surely you are quite prepared to trust the Federal Parliament to do what is fair, just, and equitable." But when it comes to a question of preventing injustice being done by one country to another-

Mr. OCONNOR. -

Dealing with our property, that is the thing.

Mr. ISAACS. -

And you will be dealing with our revenue.

Sir GEORGE TURNER. -
Surely the surplus is just as much our property as these railways or the rivers can be said to be the property of New South Wales. We have had to agree to leave the surplus absolutely to the Federal Parliament, to do as they please with it, and to divide it among the states as they choose.

Mr. OCONNOR. -

There it is a case of putting the property of all the states into a pool, but here the property is ours only.

Sir GEORGE TURNER. -

No. New South Wales cannot suffer any loss in regard to the distribution of the surplus, but when we pointed out that we were bound to suffer a loss which might mean ruin to us, we were told, of course, to trust the Federal Parliament. And I suppose we shall have to trust them. But are we to believe for a moment that if we trust the Federal Parliament in regard to these railway rates, there will be any combination to injure New South Wales? South Australia is fighting Victoria just as much as Victoria is fighting New South Wales. It is a triangular duel.

Mr. REID. -

It is Mr. Midshipman Easy's triangular duel, and New South Wales is Mr. Midshipman Easy.

Sir GEORGE TURNER. -

Then it is said that we are fighting New South Wales for the purpose of securing her traffic, to her injury, and that South Australia and Victoria are going to combine with that object in view. I say again, as to that, that if my honorable friends opposite have any such thing in their minds, we had better break up our conference at once and end the matter. Surely we are not going to imagine that the representatives of these colonies—and I think that New South Wales would have pretty nearly as many representatives as South Australia and Victoria together—are going to combine for the purpose of injuring New South Wales? Is it imagined for a moment that the representatives of Western Australia and Tasmania would not prevent any such corruption taking place? If it were suggested that these two colonies were combining together with that object in view, would not the sympathies and determination of the representatives of Tasmania and Western Australia lead them to prevent any such combination? Are we to assume that those representatives were acting dishonestly yesterday because they voted as they did?

Mr. REID. -

I do not say there has been any dishonesty. Victoria has been trying to get our trade for the last twenty years, and what we say is that you have had your hands in our pockets too long. That is all. We do not say that it is
dishonest. It is honest enough—but inconvenient to us.

Sir GEORGE TURNER. -

And it is just as inconvenient to us to lose what we have got. If the representatives of New South Wales cannot see their way to their country coming into the Federation unless they are to take away from Victoria what she has now, Victoria may just as well say that she is not prepared to come into it without taking away from New South Wales what she has. We have two positions offered: Either we must leave ourselves to fight as we have been fighting in the past, and no one wants that; or-

Mr. KINGSTON. -

We have come here to make peace.

Mr. REID. -

Peace with honour, not peace with surrender.

Sir GEORGE TURNER. -

If we are not to surrender anything at all-

Mr. REID. -

Oh, you are all right.

Sir GEORGE TURNER. -

We have had to surrender many things. We have had to surrender our bonuses, which I, for one, look upon as more important to this colony than even the trade we are fighting about.

Mr. HIGGINS. -

But you did not talk of upsetting the Convention with regard to the bonuses.

Sir GEORGE TURNER. -

I am not talking of upsetting it. But if my honorable friends opposite mean, and if my honorable friend (Mr. Higgins) agrees with them, that we are going to combine with the representatives of South Australia corruptly to injure New South Wales, then I say—"Better break up the Convention." But if we are not, we may trust the representatives to do what is honest, though it may be to their loss to do so.

Mr. REID. -

And that is what you are going to do, I am sure of that.

Sir GEORGE TURNER. -

And we did it yesterday.

Mr. DOBSON. -

Would the right honorable gentleman be content if we say that existing rights are to remain as they are?

Sir GEORGE TURNER. -

I am afraid that New South Wales would not consent if we did say that.

Mr. WISE. -
Oh, how do you know?

Mr. REID. -
"Existing rights" it is, you know.

Mr. KINGSTON. -
It is the right to do as you please.

Sir GEORGE TURNER. -
"Existing" rights are something like "existing" rights in the waters falling from the heavens. They happen to fall in my right honorable friend's (Mr. Reid's) territory, and he thinks he has a right to keep them against any one else. But if it were suggested that we should retain what we have now, and New South Wales what she has now, I should not see much objection to that.

Mr. REID. -
That would be infinitely better for us than the present proposal.

Sir GEORGE TURNER. -
I do not think it would. But to come back to the point: The position is that if we leave it to the Federal Parliament to do what is right and proper we are running just the same risk as New South Wales is. It may be to the interests of South Australia and

New South Wales to see that our existing rights are altered, and if it is supposed that there would be a combination between South Australia and Victoria to injure New South Wales, we have just as much reason to fear a combination against us. But we are prepared to trust the Federal Parliament, because we believe that in a matter of this kind it would do what is absolutely right.

Mr. DOBSON. -
Does the right honorable gentleman think it fair to leave to the Federal Parliament what Mr. O'Connor says is the most important part of the bargain we are now making? The matter will be a bone of contention thrown before them as soon as they begin their business, without having any basis to work upon.

Sir GEORGE TURNER. -
My honorable friend must see that we have left many other matters to be fixed by the Federal Parliament without giving them any basis to work upon.

Mr. DOBSON. -
It will be a question of bargaining between the two states, and we should settle it in some way.

Mr. REID. -
Hear, hear.
Sir GEORGE TURNER. -
I do not see how we can settle it.
Mr. DOBSON. -
Then how can the Federal Parliament settle it?
Mr. REID. -
Hear, hear. A very good point.
Mr. DOBSON. -
There will be ten times the difficulty we have now.
Sir GEORGE TURNER. -
I am perfectly prepared to settle it by doing what we are supposed to do in a Federation-wipe out our political boundaries altogether. That is a way that would settle it. If we are to federate, let us do what a Federation surely means in all matters of this kind-leave the people who are living in Riverina to use the railways to Melbourne or to Sydney as they think fit.
Mr. REID. -
Leaving to one state the responsibility of paying the piper!
Sir GEORGE TURNER. -
Well, we have heard that so often that it is becoming nauseous. We have heard about leaving New South Wales all the responsibility, and we have been told before that it was the prohibitive duties imposed by Victoria that forced New South Wales to build these lines. My right honorable friend said that, and repeated it yesterday, but it was so self-evidently incorrect that I did not think it worth while to take up the time of the Convention by answering it, because every one knows that such statements contain a good deal of "hifalutin" and exaggeration.
Sir WILLIAM ZEAL. -
We have had to pay half the cost of constructing bridges over the Murray.
Mr. REID. -
Really! It is wonderful that you have done something.
Sir GEORGE TURNER. -
And we have offered to build a bridge over the Murray at our own cost. But I have been led off the track too many times by these friendly interjections from my fellow representatives. I must say I think Mr. O'Connor has been very hard-pushed for any argument to support his amendment when he has had to reiterate time after time that the groundwork of it undoubtedly is the fact that this Parliament which we are proposing to bring into existence is going to do something that is unfair and unjust to New South Wales. I think we may dispense with that argument altogether, and be perfectly prepared to leave the whole question, as we have done, to the Parliament. I have no objection, however, if the
representatives of New South Wales would frame any words which will show that New South Wales is to be prevented from doing with regard to this railway traffic what is unfair and unjust to Victoria, while Victoria, on the other hand, will be prevented from doing what is unfair and unjust to New South Wales. I am willing to accept any words which will show that unfairness and injustice will be prohibited to both, but I am not prepared to accept any proposal which will leave what we consider to be an injustice to one side, and take away from us that strong force we have at the present time to counteract that injustice and prevent it from operating against our colony.

Mr. OCONNOR. -

Your amendment is the difficulty in the way now. If you wipe that out we might arrange the matter.

Sir GEORGE TURNER. -

Surely the honorable member is not serious in asking us to insert these words. He cannot be serious.

Mr. REID. -

He does not do the joking. I do it. He never made a joke in his life.

Sir GEORGE TURNER. -

I am afraid that he has been rubbing shoulders with my right honorable friend too much. I do not know whether the honorable member (Mr. O'Connor) will deny the correctness of my reading of this proposal—that the effect of it is to allow New South Wales to develop the traffic within New South Wales, and to allow Victoria to develop the traffic within Victoria.

Mr. OCONNOR. -

Hear, hear.

Sir GEORGE TURNER. -

Well, that is useless to us. The effect of it is undoubtedly to take away everything that we have been fighting for during the last few days, and the honorable member cannot be serious in asking us to agree to that.

Mr. OCONNOR. -

That is the principle of interstate commerce in America—that each state shall have the control of traffic within its own boundaries. That is the principle which is laid down in the amendment.

Sir GEORGE TURNER. -

But have they competing states where, say, there is a port in one

Mr. OCONNOR. -

Nothing of the sort.

Sir GEORGE TURNER. -

That is the effect of the amendment. I do not think the honorable member
desires it, but the effect of his proposal certainly is to say that all the traffic of New South Wales must go to Sydney, and that Victoria can keep her own traffic. That does not suit us.

Mr. REID. -

Take the last words of the amendment-"traffic between places within the limits of the state." Could it not be said that your low rates from Wodonga to Melbourne are to develop traffic between those two places, although they extend in effect to New South Wales?

Sir GEORGE TURNER. -

I do not think so. The bargain is made by the carrier. He makes a bargain with the Victorian railways, and a bargain with the squatters. He does the work for one complete bargain, and any rates we might make, I think, would undoubtedly be held to be rates to attract the traffic from New South Wales into Victoria. There is no question, I think, that it would be so. I would commend to my honorable friend (Mr. O'Connor) the suggestion I have made. We are willing to meet him as far as we can, and to say that a rate is not to be declared to be unlawful on the ground that it is unduly low-"if such rate is not unjust to another state." We must have these low rates in our own colony to develop our country. We want to develop the mallee, to develop the Gippsland district; but in framing those rates we will be framing rates which will not be intended to attract any of the trade from New South Wales.

Mr. FRASER. -

The present rates are unjust to every one of the colonies, one against the other. How do you get over that?

Mr. HOWE. -

That is what we will have to get over.

Sir GEORGE TURNER. -

I will not trouble the committee any longer. As this amendment is framed, it renders absolutely nugatory what we did by a very large majority, and after full consideration, yesterday, because it simply gives to New South Wales the sole weapon, and takes it away from Victoria. Our friends from New South Wales cannot expect us to agree to any such proposal, nor do I think they really desire us to do so. If they want anything that will be an alteration of what was done yesterday, they must be prepared to submit something which, on the face of it, is far fairer to Victoria before they can ask the representatives of other colonies at the Convention to agree to it. They must be prepared to do something which is fair to Victoria, and also fair to our friends in South Australia. What they are doing now is...
undoubtedly unfair to Victoria and unfair to South Australia, and it will leave Victoria to do something which is unjust to South Australia, because we could work our traffic in such a way as to take away from South Australia traffic which, geographically, ought to go there. We do not want that power, and I do not think New South Wales wants the power which this amendment will undoubtedly give to it. Therefore, as the honorable member (Mr. O'Connor) appealed to the Convention to do what was fair, just, and equitable to New South Wales, I would appeal to the Convention to do what is fair, just, and equitable to all the Australian colonies.

Mr. Wise (New South Wales). -

I think it is very much to be regretted that there were not longer intervals for reflection between the suggestion and the determination of the various proposals which the Convention has been considering during the last two days; because it is impossible not to observe that the Convention has got into one of those moods which deliberative assemblies do somehow get into occasionally, when an element of discord seems to come upon them and to confuse the minds of honorable members, so that matters cannot be looked at with that clearness and tranquillity which ought to characterize our deliberations. As there has been heat introduced into the discussion, and as I am going to oppose as strenuously as I can the proposal of Sir George Turner, I would like at once to preface my remarks by saying that I have the most complete conviction of the honesty of purpose with which he moved his amendment, and of his sincere desire to arrive at a settlement of this matter which will be beneficial, not only to Victoria, but to every part of the Commonwealth. I have been struck, and other honorable members must have been struck too, with the fact that all through these discussions there has been an evident sincerity of purpose on the part of members, and of delegations in this Convention, and in spite of some heated remarks from various parts of the chamber-remarks which I am quite sure those who made them regretted almost immediately afterwards—no one can deny that all honorable members here have been striving, while not neglecting the interests of their own colony, not to push those interests forward unduly to the disadvantage or oppression of another colony. So much have I been impressed with that tone in the Convention, that on this matter I have almost separated myself from my colleagues in my endeavour to do what I thought was fair to Victoria. I recall this, not in any spirit of egoism, but in order to give all the strength and power that I can to the appeal which I am about to make to the committee. When this matter first came up in Adelaide, I pointed out to Sir George Turner—I believe he thought I had some ulterior purpose in doing so—that the general clauses, while being perfectly fair to New South Wales, would deprive Victoria of
her weapon of preferential rates. I renewed that observation the other day, and my friends opposite know that in private I have expressed the same sentiment to them, and have made suggestions with a view of rendering amendments which they had in their minds more clear for the purpose of protecting the interests of Victorian trade. I have taken this course, not because I think it is just that Victoria should have the Riverina trade-I do not think the question of justice or injustice enters into it at all-I have taken this course because, all through, we who have had to bear the brunt of this federation movement in New South Wales, have insisted that the basis of federation must be the absolute acceptance of existing facts. That is the ground on which we, with enormous difficulty, have persuaded our people to accept the principle of equal representation in the Senate. We take the facts as we find them, and one of the most striking facts about this matter is that the trade of Riverina is to a very large extent now passing into Victoria, and that it is passing into Victoria by means of preferential rates, which we may condemn or approve, but which exist, and which have a certain operation.

Sir WILLIAM ZEAL. -
The Riverina trade belonged to Victoria twenty years ago.
Mr. WISE. -
I care not what the origin of it is. I take the fact as I find it. I am not going back into ancient history to say who is to blame. I find as a fact that there is this trade passing over the Victorian railways. I find as a fact that the railways of New South Wales have been built, and that by means of low rates, no preferential, a portion of the trade which would otherwise go to Victoria is taken to Sydney. I have done my best to get rid of that state of things, because I am on of those who, from the very beginning of this Convention, have urged the federalization of the railways. But I have always seen-and I do not depart from this position one bit-that there is no middle course between taking over the railways and leaving matters as they are.

Mr. FRASER. -
That is the point.
Mr. WISE. -
That is why I hope to satisfy Sir George Turner, for I know his openness of mind, that the amendment he carried yesterday-and which I do not believe would have been carried if there liked been a longer interval for reflection-has completely altered the situation, that it has just reversed a position that seemed to be advantageous in Adelaide, because, while keeping to Victoria the bulk of the instruments she uses to attract the trade,
it takes every instrument out of the hands of New South Wales for bringing any traffic at all over her lines. In one sentence I can show why the plausible argument of "Trust the Federal Parliament, leave them to interpret the word reasonable or, the word unjust," can have no application to a matter of this kind. The real difficulty is caused, not by the impossibility of deciding between two rates which is reasonable or which is unreasonable, but because the very existence of some of the railway lines is unreasonable.

Mr. FRASER. -

There are too many lines.

Mr. WISE. -

The line running out to Hay, if we were under one system, is utterly unreasonable. You can put no rate on that line which an impartial tribunal will declare to be a reasonable rate to make the railway pay. You can put no rate on some other lines, even in Victoria, which an impartial tribunal will declare to be a reasonable rate. If we run out along the Lachlan, say to Wentworth, as is proposed, and stop there, no rate that can be imposed on those lines which will have the effect of drawing any traffic to them but must be declared to be unjust or unreasonable by any tribunal. It is the essential nature of the problem that you cannot solve it by appointing a tribunal to decide that point. It is the very existence of these railway systems which creates an insoluble difficulty.

Mr. ISAACS. -

In America they are allowed to take into consideration the fact of a rate being necessary to make a line pay.

Mr. WISE. -

I am not dealing now with that question, and I hope my learned friend will not allow me to conclude without reminding me again on that point. I will show exactly what I mean by a concrete illustration. A railway will be opened to Walgett in the course of a very few months. A railway is being continued now along the Lachlan, and may be carried on to the junction of the Lachlan and the Murrumbidgee, at Oxley, and then again down past Balranald on to the Murray. I do not say that that has been planned at present; but if our territory is to be fully developed, and if it is to be developed as a separate state, sooner or later that would have to be done. If the railways were all under one system that would simply be part of a trunk line running from north to South. But if you have to run the railways out there for the development of the territory of New South Wales, having regard to New South Wales alone, then I would ask honorable members to fairly put this question to themselves:
What rate can you impose for the carriage of goods, say, from Balranald, or from Oxley, or from Walgett, which will not of necessity be declared unjust to another state or unreasonable? And for this reason: That trade now goes through Walgett, some of it, down the Darling to South Australia. The trade that is done at Balranald goes partly to Victoria and partly to South Australia.

Sir JOHN FORREST. - Not all the year round.

Mr. WISE. - The moment our railway comes, a portion of that trade is necessarily diverted, and who is to say whether that is unjust to South Australia, or unjust to Victoria? Why, sir, the very men who have been deprived of the profits of the trade which has been taken from them. Now, this is not a matter of politics or of policy; it is a matter of hard commercial business. Is there any matter of hard commercial business which a business man would hand over to be determined by the votes of his two rivals?

Sir JOHN FORREST. - Where are the other colonies?

Mr. TRENNWITH. - And where is New South Wales herself?

Mr. WISE. - That is the answer to the apparently attractive analogy - "Trust the Federal Parliament for the distribution of the surplus." One deals with a surplus as one deals with a question of politics, according to certain large general principles of policy affecting the welfare of the whole community. In this matter you are dealing with the property of one state only, because by the very geographical circumstances Victoria cannot give these low rates—she has not the extent of territory to do so, and South Australia cannot, except in the northern district where there is no competition. You are really dealing entirely with the property of one colony, and you are handing it over to whom? To a Parliament in which the majority will be composed of the men who are business rivals for the particular trade which is in disputes and you are giving them no guide as to how they are to determine. They are to pronounce, according to their own views, what is unjust, what is unreasonable. We have had an illustration of why that cannot be done, and Sir George Turner will correct me if I am inaccurate in my facts. The commissioners of South Australia, Victoria, and New South Wales - and I ask attention to this as a concrete illustration showing that I am not indulging in any vague forebodings - on two, if not three, occasions, have come to an agreement as to what these rates shall be. They have agreed as to what is just, what is reasonable.
Sir GEORGE TURNER. -
Not just and reasonable to the state, but just and reasonable to the railway itself. They only dealt with them from that standpoint.

Mr. PEACOCK. -
From a purely railway point of view.

Mr. WISE. -
That gives away the argument, because it shows that what may be held to be just and reasonable may be absolutely unjust to the railway system of New South Wales, because it would really mean that what is just and reasonable, having regard to the railway interests of each territory, may be held by the Parliament to be unjust and unreasonable.

Sir GEORGE TURNER. -
The Parliament will prevent anything which is unjust and unreasonable to New South Wales.

Mr. WISE. -
I am pointing out that the Railways Commissioners of three colonies came to this decision, and the Government of the day—whether it was the Government of New South Wales or the Government of Victoria is immaterial to my argument—found itself unable to accept their recommendations, and for what reason? Not because the Government of Victoria thought that they were unjust or unreasonable. I do not know whether my right honorable friend was a member of the Government at that time.

Sir GEORGE TURNER. -
I take the whole responsibility.

Mr. WISE. -
Why did the honorable member do it?

Sir GEORGE TURNER. -
Because it was unjust to the colony of Victoria.

Mr. WISE. -
I am not questioning the policy of Victoria—I am not saying whether it is sound or unsound, for I would not be guilty of such an impertinence. The honorable member took that view because the policy of Victoria required that certain rates should be kept up for the purpose of drawing certain trade into Melbourne, and that is just from the Melbourne point of view. But does not that show the sort of considerations which will influence the Parliament when it has to decide on whether a rate is fair or reasonable? In the determination of a question of this kind Parliament will be moved by purely business considerations. Why should we expect the business men of
South Australia and Victoria to take any other than the business view of the matter? I leave the other colonies out, because they are not directly interested, and we may assume that they will be equally divided. What I am urging is that this is utterly different from an ordinary matter of politics. The request is to hand over a matter of business, and to allow it to be decided simply by the money interests of a lot of merchants in Adelaide and Melbourne, each looking to their own pockets, and to their own pockets only. The people in Sydney who at present have all the trade are to say—"It is for you in Adelaide, our rivals, and for you in Melbourne, our rivals, to decide whether we shall keep that trade or not." Such a proposition has only to be stated to be self-condemned. That is where there is no distinction in Sir George Turner's amendment. "Unjust" and "unreasonable" remain equally ambiguous terms, equally incapable of any such definition as will insure that they will be interpreted in a manner that will not do injustice to the colony of New South Wales. The problem is insoluble from its very nature. It is insoluble, because the railways should never have been brought into existence to be run as competing systems. There is only one way to deal with it, and that is to take the railways over.

Mr. FRASER. -

And that cannot be done.

Mr. WISE. -

It cannot be done here, but if we get the Union I think it will be done within five years. No one would be a rash prophet to assert that. I will ask the Hon. Mr. Isaacs to give me his attention. I agree with the view I expressed in Adelaide, and I think he agrees with me too, that the general commerce clauses would prevent, or might prevent, the preferential rates charged in Victoria if Parliament legislated on the subject. My honorable friend (Mr. McMillan) asked why. The answer is that clause 52, giving power to Parliament to regulate trade and commerce between the states, has been held in the United States to authorize Congress to pass a law prohibiting preferential rates on the goods of one state over the goods of another.

Mr. ISAACS. -

The portion of the Inter-State Commerce Commission's report to which I referred previously bears that out, because it suggests that Congress should legislate to prevent the rate war.
contended that the matter should be left under that general clause. I did not think it fair then, and I do not think it fair now. If we intend to leave the railways as they are now, some statement must be put into the Constitution to that effect.

Sir GEORGE TURNER. -
Would not that be a blot on the Federal Constitution?

Mr. WISE. -
I think it would.

Mr. ISAACS. -
It could never be altered.

Mr. WISE. -
I think it could easily be altered. And it would also be necessary to insert a proviso that the commerce clause shall apply so far as to prevent any colony from rising its railway rates as barriers. A clause to this effect would, I think, meet the case:

Nothing in this Act shall limit the right of any state to control and regulate railways upon its own territory, provided that no state may charge a higher rate upon goods from other states than upon goods of the same class moving within its own territory.

Mr. FRASER. -
In the same direction.

Mr. WISE. -
I do not think that is necessary. It is said that this would be blot on the Constitution. I expressed my opinion on that subject on a previous occasion. But if we cannot get union in the highest form, there is no reason why we should run the risk of losing union in the form in which it is attainable, especially when we are satisfied that the inevitable trend of events is to compel the federalization of the railways in a very short time. If that argument does not appeal to honorable members, let me point out how much Victoria would gain at the expense of New South Wales if an amendment were carried in the form I have suggested.

Mr. SYMON. -
What you prohibit is prohibited under the free-trade clause.

Mr. WISE. -
The proviso is only necessary because of the first part.

Mr. HOLDER. -
It forbids what they do not do, and it allows what they do.

Mr. WISE. -
That is an epigrammatic way of putting it. It will allow the colonies to carry on the interstate warfare of low rates as at present.

Mr. FRASER. -
No. At present they are charging lower rates for goods from the other colonies than for goods from their own colonies.

Mr. WISE. -

The proposal is to allow rates to be charged in Victoria as today that are preferential, and to allow rates to be charged in New South Wales as today that are differential, but which have the effect of giving preference. This state of warfare will continue, with this great exception in favour of Victoria, that if this is carried, the commerce clause with a proviso will apply to compel New South Wales to take off all the extra high rates now charged on Victorian goods between Albury and Cootamundra. Would not that be a substantial gain?

Mr. DEAKIN. -

And it would compel us to take off the extra charges as against South Australia.

Mr. WISE. -

I am much obliged to the honorable member for that reminder. It would be a gain to South Australia, because the extra rates charged, which are really in the nature of a barrier, would have to be taken off, both on the Victorian and the New South Wales railways.

Mr. ISAACS. -

Sir George Turner's amendment gives the same protection to South Australia as that does.

Mr. WISE. -

That is the intention of it, but it leaves Parliament to determine whether a rate is unreasonable and unjust. It would have that effect, but it would have such other far-reaching effects that we may very fairly object to submit our destinies to anything so uncertain.

Mr. OCONNOR. -

Your suggestion should take the place of Sir George Turner's clause.

Mr. WISE. -

Yes.

The CHAIRMAN. -

We cannot go back.

Mr. WISE. -

It is a mere suggestion. I only want to emphasize to my friends from South Australia, who say that federation will be of no use unless we can get rid of the war in rates, that in attempting to get too much they may lose everything. I have never indulged at any period in the sittings of the Convention in any threats as to what is going to happen; I have never attempted to do more than present my views clearly; I have never used any
arguments as to what the results might be in the other colonies, because I am confident that the good sense and fair dealing which have characterized the members of the Convention from the beginning will continue to the end. And it is only necessary that we should state our views frankly and clearly to each other, to be sure that our different relative positions are accurately understood, and then we can be satisfied that some conclusion will be come to which will be just and honorable to every colony alike.

Sir JOHN DOWNER (South Australia). -

It appears to me that we have taken a day and a half in discussing whether we will express in this Bill what everybody says we mean. We had a most luminous exposition of the possibilities of the trade and commerce clause from Mr. O'Connor, in which he showed clearly that the trade and commerce clause, coupled with 200 years of American decisions, would cover anything that everybody asked.

Mr. FRASER. -

That is against private railways, though.

Sir JOHN DOWNER. -

There are no private intercolonial railways between the colonies, and there will be less and less railways that are not state railways in the future.

Mr. FRASER. -

And more difficulty in consequence.

Sir JOHN DOWNER. -

And, therefore, fewer and much less difficulties, because difficulties which would apply to private individuals owning a railway, as to the manner in which they should conduct their railway, could in no way apply to state institutions.

Mr. FRASER. -

I look upon it exactly the other way.

Sir JOHN DOWNER. -

I have considered the amendment of Sir George Turner again and again, and I am endeavouring to find out in what way it differs from the trade and commerce clause as expounded by Mr. O'Connor. And I call his attention to this point, because I wish him to explain the difference he sees between them. My honorable friend explained with great clearness, in a most able speech, that the trade and commerce clause, coupled with the provision for intercolonial free-trade, would do all that was required, because the provision relating to intercolonial free-trade would give the High Court jurisdiction to prevent anything that was contrary to free-trade between the states, while the provision of the trade and commerce clause would give the Federal Parliament jurisdiction to legislate on the whole question, and the Federal Parliament could pass legislation to insure what was right and
just to all the colonies, and to prevent any of the provisions of the
Constitution being evaded. I would like my honorable friend to explain the
difference between the trade and commerce clause and Sir George Turner's
amendment.

Mr. OCONNOR (New South Wales). -

I will explain now, if the honorable member will permit me to interpose
for a moment. The difference is that under the principles of the regulation
and control of commerce, as laid down in America, the Commonwealth
could not, by legislation, interfere with any traffic which was purely within
the limits of a state. Sir George Turner's amendment gives the
Commonwealth Parliament power to interfere with traffic which may be
confined entirely within the limits of a state.

Sir GEORGE TURNER. -

If it is unjust.

Mr. SYMON (South Australia). -

May I ask, at this juncture, for the sake of information, one question? I
understand that traffic entirely within the limits of a state could not be
interfered with by the

Commonwealth; but do the American decisions go to the length of saying
that the trade and commerce clause of this Bill would not enable the
Parliament to interfere, by legislation, with the traffic of a state which
becomes interstate traffic, inasmuch as the proper port of outlet-I mean the
natural port-for that traffic is in another colony I

Mr. OCONNOR. -

I don't think they do.

Mr. ISAACS. -

I am afraid they go very much in the direction Mr. Symon indicates. I
have a case on the point, which I will give the honorable member
afterwards.

Sir JOHN DOWNER. -

To resume my remarks, I may point out that in these colonies-particularly
in the colonies that are not well developed a number of railways are
constructed which are never expected to pay of themselves, and which can
only be made to pay in connexion with the land. They are made to serve
the purpose of settling and developing land which would be no good
without access to it, and, on the other hand, those railways would be no
good without the land. Neither would pay without the other, but with the
two going together, gain and not loss results to the state. Although a
railway of that kind is not a paying mercantile concern, still it is a paying
concern as a means of developing the land, and we should take care not to
put limitations on, I won't say the right, but the duty of every colony to
develop its own territory to the utmost possible extent. But what I am
anxious to impress on the minds of honorable members is that neither Mr.
O'Connor's exposition of the meaning of the trade and commerce clause
nor the amendment of Sir George Turner touches this point at all. It
appears to me that, in spite of the remarks which Mr. O'Connor made just
now, his exposition of what would be the powers of the Parliament in the
trade and commerce clause is identical with the words inserted in the
amendment of Sir George Turner. In fact, I would go a little further, and
say that it might be found out, in the result, that those words are words of
limitations and not words of authority at all.

Mr. DEAKIN. -
Hear, hear. That is quite possible.

Sir JOHN DOWNER. -
It may be that, in the trade and commerce clause, there is a power, if the
honorable member's exposition of it is right, and I think it is, to prevent the
development of the lands of a state by means of railways, where the result
of their construction, although highly beneficial to the colony internally,
was to operate in a way prejudicial to some other colony. But surely that is
a proper power, after all, for the Parliament to have. The first principle of
federation is that each is to so use his own property as not to injure the
property of his neighbour. That is the view which I understood Mr.
O'Connor took in his explanation of the clause, and that is what is put into
words in the amendment of Sir George Turner. And why should it not be
put into words in this Bill? I have been reading and listening to the debate
that has been going on, and it appears to me that the very members of this
Convention who believe that the provisions of the trade and commerce
clause are broader than anything we can provide are yet the most
strenuously against words that contain only a part of what the trade and
commerce clause includes, on the ground that those words would alter the
Constitution. I would really like the assistance of somebody in getting to
the root of this matter. I say it in all good faith. It appears to me that we
have spent a couple of days in fighting, not as to what we mean, but as to
whether we should say it or not in this Constitution.

Mr. DEAKIN. -
And as to how we should say it.

Sir JOHN DOWNER. -
And why should not we say it in the Constitution? What is the whole
tendency of the federation movement? Are we to adopt a Constitution
founded on general words which

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require the support of a couple of hundred years' decisions of a foreign country to explain them?

**Mr. KINGSTON.** -

And those decisions are not binding on us.

**Sir JOHN DOWNER.** -

Even in our own colonial legislation we have found it necessary to codify our laws. We codified the mercantile law of bills of sale and exchange.

**Mr. LYNE.** -

Does not Mr. O'Connor say that Sir George Turner's amendment goes a good deal further than the interstate law of America?

**Sir JOHN DOWNER.** -

I do not see that it does. If it does so, it would have been better to amend it. As I said, we have codified our laws relating to bills of sale and exchange and our laws relating to goods. The whole tendency of legislation is not to cause people to look through a heap of textbooks to find out the law, but to so codify it that everybody can see and understand the law, and not have to pay a very high fee when they want to know the law. And are we to begin this Constitution, either against experience or through timidity, by rejecting the lines which we are adopting in the drafting of Bills in our respective Parliaments, in the general way of legislation, and by trusting this Constitution to an interpretation which can be in no wise certain, and for which, at all events, we shall have to go to foreign parts? I will be obliged if Mr. O'Connor will explain clearly (because he and I, in regard to federation, are in very great sympathy) in what way, and to what extent, Sir George Turner's amendment differs from the construction which he (Mr. O'Connor) places upon the words which give to the Parliament power to legislate with regard to the regulation of trade and commerce.

**Mr. OCONNOR.** -

I did explain just now.

**Mr. WISE.** -

It would enable us to say the rate from Walgett to Sydney was unreasonable, because it had the effect of taking trade from South Australia.

**Sir JOHN DOWNER.** -

The word used is "unjust." I am glad my honorable friend interjected. Mr. Wise believes in the federation of the railways as the only way out of the difficulty, and I expect most of us think so, too. I fancy that generally we are under the impression that one of the earliest parliamentary Acts of any consequence will be the taking over of the railways. After that is done, who will exercise the authority? We will trust the Commonwealth then. And there will be just the same influences in the Federal Parliament as are being
Mr. MCMILLAN. -

The railways would be the property of the Commonwealth.

Sir JOHN DOWNER. -

Of course they would. If we are going to do an injustice and sacrifice the interest of one state to another, there is no reason why the Federal Parliament, under other circumstances, should not do the same and a great deal more. This is a power of veto - not affirmative legislation, but the power of preventing that which interferes with trade and commerce, or that which may be done in the interests of one colony with injustice to another. Do we want anything else than that? There should be no difficulty at all about the interpretation of the words, and I firmly believe that any interpretation put by the courts on this trade and commerce clause would be quite as broad, and it might be broader. In fact, I do not see where the limitation is. If you give a general power, that power may be exercised without limitation.

Mr. WISE. -

Only as regards interstate commerce.

Sir JOHN DOWNER. -

Exactly.

Mr. WISE. -

Traffic within New South Wales is not interstate traffic.

Sir JOHN DOWNER. -

This only applies to interstate traffic.

Mr. WISE. -

No, it does not; Sir George Turner's amendment goes further.

Sir JOHN DOWNER. -

I cannot see any words which take the amendment further. These are the words-"that is unjust to another colony."

Mr. LYNE. -

That interferes with the ordinary rates in New South Wales.

Mr. WISE. -

It is the very existence of the railway from Hay to Narrandera that is unjust to Victoria.

Sir JOHN DOWNER. -

I do not know the details, but certainly there would be power under the Constitution to interfere with that railway.

Mr. WISE. -

Or to recoup us losses on expenses.

Sir JOHN DOWNER. -
If it were found that a railway, whether wisely or unwisely constructed, was being used, not for the development of the territory in which it was, and not for the legitimate trade, but for the purpose of doing an injustice to another state, where is the right and justice of a suggestion that there should not be some power to interfere? I hope no alteration will be made.

Mr. DOUGLAS (Tasmania). -

Before we adjourn for luncheon, I think I am justified in making a few remarks on what took place yesterday, and what has taken place here today. The first consideration to be given, in questions of this character, is as regards federation itself. It is a strange position to assume, for one colony to start by threatening that the Convention is likely to be broken up because certain arrangements are not made to agree with the particular views of the representatives of that particular colony. Mr. Reid's speech, although it was splendid so far as the people of New South Wales are concerned, had not from beginning to end any proper logical deduction, and was most absurd in many respects in regard to railways. It appears that the Riverina country is a special portion of New South Wales bordering on the Murray. Victoria was more interested in that country years ago than New South Wales itself. Victoria made railways through the country in order to develop it. New South Wales found that the trade was going where it ought to go to Melbourne, which is the natural outlet for that part of Australia. The argument of Mr. Reid was that it had cost New South Wales a large sum of money to make railways in the Riverina district. What were the railways made for? Simply to take the traffic from that portion of the country to Sydney, against the interests of the settlers. There can be no doubt about that. Having gone so rapidly to work to invest money where it could not pay under the arrangements made, Mr. Reid, as representing New South Wales, now tries to make up the loss under a federal arrangement, which really ought to be of a more liberal character than the preceding one. The argument is that Victoria has put a log of burdens on the settlers by charging duties. These duties are abominable in my eyes, and it appears that there are some parties who wish to re-establish similar abominable duties in New South Wales. The people of Victoria say - "Very well, we will give you access to our ports by charging a less amount of money than we charges people in our own district who do not want to go to Sydney." Are the people of Victoria not justified in doing that? Does such an action not promote trade and traffic? I understood the leader of the Convention (Mr. Barton) to be exceedingly careful last night in trying to carry out his views, but when we find him giving a lecture to us for half-an-hour as to what we should do for New South Wales, it is going too far. Had I spoken at the time I am afraid I would have spoken with some heat,
and I am glad to have the opportunity of looking calmly at the matter this morning. Who could agree with the last words in the proposal before the committee? It would be a "dead sell" to the people of Victoria if the words were accepted. It is desired to make a law applicable to New South Wales which would not be applicable to Victoria.

Mr. LYNE. -
So far as New South Wales trade is concerned.

Mr. DOUGLAS. -
It is no use talking to you on the subject. We all know your position, and there are no arguments on your side.

The CHAIRMAN. -
I must ask the honorable member to address the Chair.

Mr. DOUGLAS. -
The honorable member ought not to address me. What do the words "within the limits of the state" mean? Do they mean to give a special law to a special portion of territory in the Federation? Are we to agree to such a thing as that? This is a matter which does not affect my colony at all, and therefore I have a right to speak impartially. The Premier of New South Wales talked in his usual style yesterday, and asked what Tasmania had to do with the matter? Tasmania has as much right to talk about the principles of federation as the biggest man in New South Wales.

Mr. ISAACS. -
That is what you are here for.

Mr. DOUGLAS. -
We are here for that purpose, invited by the very gentleman who turns up his nose, if he has any, and who speaks on behalf of New South Wales. The thing is in a nutshell; we want to do justice between all the colonies, and that no colony shall be favoured as against another. When you compare railways with rivers it is a misapplication of terms. One you make yourselves, the other was given by a power superior to your own, and you have no right to deal with it in the way you have done. You say you have lost everything; what have you lost? Up to the present time you have had everything your own way, but now you say we shall have nothing unless we agree to all your terms. It is a pity that the Premier of New South Wales did not start yesterday on that principle, and then we should know where we are. He now says - "We do not intend to let you have federation; we do not intend to let people of New South Wales join the Federation if you do not give us what we want." Let it be so. We in Tasmania shall not suffer if New South Wales does not join, because at the present moment we are in a
better position with regard to New South Wales than any law passed by this Convention can place us in, because we have the benefit of free-trade with New South Wales, and a great benefit it is to us. If federation is carried, we shall not be limited by the abominable practice of this confounded protective system in Victoria; we shall get rid of that. But at present we have the benefit of New South Wales trade, which is of infinitely more importance to us than the trade with Victoria, with regard to which we have groaned for years and years. We do not intend to be placed under the heel of any community, barring our own. We shall be willing to join the Federation upon fair terms, but we are not to be put under the heel of New South Wales, Victoria, or any other colony. We are endeavouring to do what is fair, right, and just between the colonies, according, to practical common sense. But, because we do not agree with the representatives of New South Wales, we are told that we are not honest men. That is the sum and substance of the arguments used. I hope we shall endeavour to bring this matter to a close by dealing with it in the same way as we have dealt with other questions; that is, what is good for one is good for another, and what is bad for one is bad for another. We have tried to get federation over and over again, and we have never succeeded, and I am afraid, judging by appearances, that we are not likely to succeed on this occasion. It appears to me that we were nearer to federation in 1891 than we are today. The gentleman who upset everything then is the leader here today, and when he again threatens the abrogation of federation we ought to look at the matter with some degree of suspicion?

Mr. DEAKIN. -
I suppose the honorable member does not refer to the leader of the Convention?

Mr. DOUGLAS. -
No. I apologize to Mr. Barton if he thinks that I threw any reflections upon him. I think he has taken a noble part in these proceedings. Last night, when he was overwhelmed by the position of New South Wales, I felt inclined to think that I ought to have less confidence in him; but he has taken a most independent honest straightforward part in our deliberations, and all the colonies ought to be grateful to him for it.

Mr. MCMILLAN (New South Wales). -
I think the very honest and direct expressions of opinion by Mr. Douglas will be considered by all of us to be a healthy, breeze in this Convention, which ought to bring us back to our true relationships to each other. Although the clause proposed by Sir George Turner has been passed, I think we cannot get away from the fact that, if there could still be some
clause drawn up which would prevent this aggregation of absurdities, it would be far better, even at this stage, to try and see if such a clause cannot be constructed. I think the wisest remark passed today with regard to this discussion is delay. It is one of those questions pre-eminently which we have had before us in which a further delay, not necessarily interfering with the progress of business, would be very beneficial on all hands. We have had the ablest lawyers in this Convention trying to solve what seems to be an absolute conundrum. If I understand the exact position, it is this: That we want to put in something which will give more definiteness to a certain phase of sub-section (1), clause 52; and at the same time we do not want to put anything into that declaratory clause which will be an actual injustice to present interests. Of course, I have no legal ability, but, as in one or two other cases when we have tried and abandoned certain clauses, it seems we are trying to do a something of which no human intellect is capable. However, I do think that the proposal of Mr. Wise comes as near to what is wanted as any proposal which we have yet heard. It seems to me it would be better, by a little delay, and by a certain mode of procedure which we have had before, to go back upon Sir George Turner's clause, and, if necessary, introduce this proposal by Mr. Wise, or some other clause which goes nearer to our purpose than anything we have had yet, because, after all, what have we been struggling to do? Let us be honest. We have been struggling to put in a direct negative of a previous clause. But the reason we have tried to do that absurdity in a great instrument like this, which ought to be perfect in all its parts, is that we of New South Wales believe that this matter is so essential to the success of federation, and that our position is made so peculiar by the work of the other day, that it is still necessary, by all means, before we part to see if we cannot get over the difficulty in another way. I shall not take the responsibility of doing anything, because I hold no official position here, but I think it would be better on the whole that this clause drawn up by Mr. Wise should be accepted, because it really seems to have a grip of the thing and to be absolutely fair in its consequences. It would be well to close this discussion, say at lunch time, and go on with it again in a couple of days, after we have finished the question of debts and other things connected with the financial clauses. I have not referred to this matter before, but I deprecate any of these extreme expressions of opinion, these threats, these things which might be well enough in a local Parliament when, perhaps, I am opposing my honorable friend (Mr. Lyne), but which, I think, are entirely out of place in a Convention where we meet, not with any party, not with any section, but on purely national and patriotic grounds as arbitrators, as negotiators, to put before the people a Commonwealth Bill.
which shall be fair to the whole of this great continent. Therefore, I say, having no official position here, I do not intend to move anything, but I would commend this to honorable members who, like myself, are very much in earnest, that whatever we do on the final vote of this Convention, every man should be prepared to subscribe his name to a document, if necessary, stating that he is prepared to go before the people of his own colony as a great propagator of the scheme of federation.

Mr. GRANT (Tasmania). -

I rise to see if it is not possible that the conflicting opinions of honorable members may in some way be moulded into harmony. We have had extreme speeches from one side and from the other, because all who have spoken have not been so temperate as the honorable gentleman who last addressed the Chair. To my mind, the difficulty is absolutely insoluble. It was stated in Adelaide to be so, and those who have given attention to the matter consider it so now. The trouble is that both parties are trying to take advantage of each other, and neither will give way. There cannot be a shadow of a doubt that the attitude of Victoria in regard to New South Wales is most unfriendly. She is trying to attract traffic across the borders from railways which were constructed at great expense to the people of New South Wales. On the other hand, there can be no doubt that the New South Wales railway rates have not been framed solely and wholly to encourage the development of the resources of the colony. They have been made preferential with a view to drawing traffic to Sydney. This being the position of affairs, there is apparently only one course open to us, and that is to let the two parties go on fighting. The amendment of the Premier of Victoria was, I think, conceived in a truly fair and reasonable spirit in order to emphasize and to give special application to the provisions of clause 89, which are intended to secure freedom of trade and intercourse between the colonies. Were it not that the representatives of New South Wales feel so sore in regard to these preferential rates, which they call differential rates, I have no doubt that they would be willing to accept the amendment; but they are not prepared to give up what little advantage they think they got by charging excessively low rates over long distances, although they gain almost nothing by the freight. I cannot think that Victoria, on the other hand, gains very much by her system when the large discounts which are given upon the carriage of the Riverina produce are taken into consideration. In addressing the Convention upon the matter generally, I stated that there could be no doubt in the mind of every fair-dealing man that each state was entitled to be allowed to develop its resources in any fair and reasonable way it thought fit. I do not think any one could deny to
New South Wales the right to develop her resources by charging fair and reasonable rates for local traffic. I think that that right should be continued to New South Wales absolutely; not the right to do injustice to Victoria, but the right to do the best for her own country and her own producers. To my mind the development of the country and the making the best of its resources for commercial purposes is of more importance than the gaining of a few pounds by attempts to take advantage of another state. In regard to the management of both rivers and railways the development of the country which they serve should be the first consideration. Although I feel that New South Wales has not dealt with these matters in a liberal spirit, I would not be a party to deprive that colony of any opportunity to develop its resources in a fair and reasonable manner. To meet the case, I have drafted the following amendment, which I now beg to move:-

That after the word "Constitution," in Mr. O'Connor's amendment, the following words be inserted-"Such laws shall not have the effect of preventing the development of the internal resources of any state."

I do not think the Convention should take any action that would prevent the development of the internal resources of any colony.

Sir GEORGE TURNER. -

The Federal Parliament would not interfere with rates

which were intended simply to develop the resources of a colony.

Mr. WISE. -

If the Federal Parliament did its duty, some of these railways would be shut up.

Sir GEORGE TURNER. -

We had better, perhaps, pass no provision at all, and let New South Wales dictate the terms of the union.

Mr. PEACOCK. -

We might ask the representatives of New South Wales to draft a Constitution for us.

Mr. KINGSTON. -

Why did they not bring it with them?

Mr. GRANT. -

The railways and the rivers are the chief factors in the development of the resources of a country, and I do not think there should be any interference when they are being managed with that object. I submit the amendment in the hope that it will be considered by the parties as a fair compromise.

Mr. LYNE (New South Wales). -

I ask myself, and I am sure the majority of honorable members will ask
themselves, whether it is possible to say anything new upon this subject. We have listened to arguments from the best legal minds in one direction and counter arguments from other legal minds, and these speeches have succeeded, as they usually do, in placing us in such a position that we cannot tell exactly where we are. I think that a plain statement of the facts should have greater weight with the Convention, as it will with the public outside, than the very keen argument used by lawyers on one side and another. I must thank my honorable friend (Mr. McMillan) for his little lecture upon the use of language here, though I have heard him when excited use extremely strong expressions. However, he is not usually excited. If the proper course had been taken when the Convention met in Adelaide, words would have been used by honorable members to express their meaning, not to cloak them. It would have been better to have had a little plain speaking, such as we have had during the last two days, when the question first arose for discussion. We have been fighting and talking round this question for the last twelve months, and it is now suggested by some honorable members that we should have a further adjournment, so that we might see if it would not be possible to settle it satisfactorily six or twelve months hence.

Mr. BARTON. - We are not going to do that.

Mr. LYNE. - I hope not. I have not heard an expression of opinion from the leader of the Convention on the subject before, but I hope we are not going to adjourn. Whatever Bill we are going to frame should be framed before the termination of this particular session of the Convention.

Mr. BARTON. - Unquestionably.

Mr. LYNE. - I think we should have arrived at a conclusion quicker if we had dealt with the question from the first exactly as we are dealing with it now. The fight was bound to come. I saw it looming in the distance. I saw that we were bound to have this fighting before we got to the end, and that we must know the result of the battle before the Bill could be finally framed. I was more pleased than I can express with the speech delivered last evening by the leader of this Convention.

Sir JOHN FORREST. - You were singular in that respect.

Mr. LYNE. - I do not think so. Though I have heard this morning some honorable members objecting to the terms of the speech, yet I think the terms were as
strong and as conciliatory as it was possible to have them consistent one with the other. The speech showed to me what a strong feeling the leader of the Convention must have, wishing, as we all know he does so strongly, to pass a Bill which will be acceptable to the people of all the colonies, and especially New South Wales.

Mr. MCMILLAN. -

I do not think that any one has been referring to the leader of the Convention.

Mr. LYNE. -

We have had one lecture from Mr. McMillan today, and I do not want to hear another. I have said nothing derogatory to the leader, having only expressed my appreciation of what he said yesterday, and I have said that because I have heard some honorable members of this Convention, notably that stalwart young man from Tasmania (Mr. Douglas), making some very strong remarks concerning it.

Mr. BARTON. -

He made no attack upon me.

Mr. LYNE. -

He made an attack upon the tone of the speech, not an attack upon Mr. Barton personally. I repeat, it showed what a very strong feeling Mr. Barton and the New South Wales delegates have upon the subject, and I, for one, feel that it is of such a crucial character that upon it almost hangs the acceptance or rejection of the measure which will be framed by this Convention. That being so, I will try again to emphasize the difference between Mr. O'Connor's explanation of the law as it has been interpreted in America and this proposal. I understood the honorable gentleman to explain that the American law does not interfere with the management and arrangement of rates which affect the internal traffic of a state within its own boundaries, but those interpretations and decisions do affect the railways if they impose a rate which affects interstate traffic. The proposal of Sir George Turner which has been adopted affects the internal arrangement of the state of New South Wales whether that state touches Victoria or goes near the Victorian border or not. That seems to me to be the entire difference. If you leave its alone, and leave us to carry on our railways without putting on rates to fight Victoria-we do not want that-we shall be satisfied. And let me say this: That it was Victoria that first instituted these differential rates.

Mr. ISAACS. -

That is a mistake.

Mr. LYNE. -
I know that it was so. The first, wool that I ever sent down to Melbourne I carried from near Albury by special arrangement with the Victorian railways as against New South Wales, and that was in the year 1876.

Mr. SYMON. -

What is the use of going into those matters of ancient history?

Mr. KINGSTON. -

Let the dead past bury its dead.

Mr. BARTON. -

It was about the year 1876 that this system began.

Mr. LYNE. -

I have referred to this because it has been said that New South Wales instituted the warfare. It was nothing of the kind, and we do not wish to continue it, but we do not want New South Wales to be seriously injured by the proposed insertion of Sir George Turner's amendment, which will injure our railways to a very great extent. All we want to do is to be left to impose legitimate rates on our distant railways. It is not for the short distance railways that we require them, but for the long distance railways. It is differential rates of a legitimate character, not preferential rates, that we want to impose. There is one thing which I ask the Victorians to consider which is of great importance, and that is that the preferential rate, which is the fighting rate put on the New South Wales railways now, is put on because the Victorian fighting rate is there. We are putting on a high rate from a certain point in New South Wales, but New South Wales is prepared to do away with that altogether. If Victoria cannot compete with New South Wales in Riverina when we apply our own rates—not preferential rates of any character—to goods which would otherwise come to the Victorian railways, surely she ought to be able to do so. The geographical advantage, which she has in Riverina, that district being nearer to Melbourne than to Sydney, favours Victoria in regard to competition. In respect to the preferential rates of high character that have been referred to, the simple matter is that we have to deal specially with our railway line from Sydney to Bourke—and I would ask Mr. Douglas to pay attention to this—although that line does not come into competition with any of the other colonies or with any line in Victoria; but in consequence of the Victorian preferential rates, and of the low rate of freight on the River Darling to South Australia, we have had to make a specially low rate in order to bring our produce from Bourke to Sydney.

Mr. DOUGLAS. -

No one objects to that.

Mr. LYNE. -
Yes, the South Australians and Victorians object to it.

Mr. DEAKIN. -

No.

Mr. LYNE. -

I have seen correspondence in reference to it.

Mr. GORDON. -

It is not objected to unless it is unjust to the other colonies.

Mr. LYNE. -

What is unjust to the other colonies? We had a great fight over the river question. The real bottom of the discussion was that, owing to the low freight rates on the River Murray for a distance extending over 1,200 miles, from Wentworth to Bourke or Walgett, the railway from Sydney to Bourke could not compete unless we put on a preferential rate. Are we to be so handicapped that we cannot put on a preferential rate, supposing that there is a differential rate on the Murray from Walgett to Bourke right down to South Australia?

Mr. DOUGLAS. -

Where does the handicap come in if the settler gets his produce to market cheaper?

Mr. LYNE. -

I am putting this case to show the effect of railway competition at the present moment. This proposal of Sir George Turner will have the effect of preventing New South Wales having that preferential rate. But it has put on a preferential rate to prevent the carriage of the produce on the Murray. This amendment proposes to take away the power of New South Wales to put on that preferential rate, and to allow the whole of the produce of the Murray to go down to South Australia.

Mr. DOUGLAS. -

What harm if it does?

Mr. LYNE. -

I appeal to my honorable friend's sense of fair play, whether it is a fair thing to allow that to exist under this Constitution?

Mr. DOUGLAS. -

Decidedly. The object of federation is to make us all one, but you want to make us all six.

Mr. LYNE. -

No, the honorable member wants to make federation all Tasmania. If, as the honorable gentleman says, the object of federation is to make us all one, then why should one have a cheap rate from Walgett down to Adelaide—so cheap that it is absolutely impossible to obtain the goods for the railway, which is only about a fourth of the distance from Walgett to
Sydney.
Mr. SYMON. -
But it is a good thing for your citizens.
Mr. LYNE. -
It is not, except for very few of them.
Mr. SYMON. -
Well, a few.
Mr. LYNE. -
There are a few large stations up there.
Mr. KINGSTON. -
Is it not good for your settlers?
Mr. LYNE. -
Here are the Victorians at the present time, and the Convention, by the vote of the majority yesterday, saying to us-"Though you are in this position you shall not put a rate on your railways which can compete with the water rate to South Australia." With all the expressions of desiring to do justice, and only justice, I say that is unjust and unfair.
Mr. DOUGLAS. -
But there is no water in the river.
Mr. LYNE. -
When there is water in the Murray that is the result. I know something about this matter. I remember that on one occasion the merchants of Adelaide sent their travellers to Wilcannia, Bourke, and Walgett

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Mr. KINGSTON. -
Is that in reference to the river?
Mr. LYNE. -
It is in reference to the river and to the 66 per cent. discount which is given by Victoria, and which extends all over that country. I venture to think, and I am sure the good judgment of the Convention-of the majority, at any rate-will see that a colony like New South Wales is not likely to accept quietly a decision of that kind.
Mr. HENRY. -
Do you want that state of things to continue?
Mr. LYNE. -
I do not, but that state of things will continue or else New South Wales will lose the whole of her trade in that country if you allow the proposition which was carried yesterday to remain as it is. It will prevent us in New South Wales from putting on what is known as an ordinary long distance rate. It will prevent us from using our own judgment and putting on the
long distance development rate we have been using, not intending to compete with any of the colonies, but purely for the purpose of developing our own territory.

Mr. SYMON. -
But you threatened a good deal as to the Broken Hill traffic, you know.

Mr. LYNE. -
No, that does not affect the Broken Hill traffic at all.

Mr. SYMON. -
It was intended to do so.

Mr. LYNE. -
No, it never was. The honorable member is quite wrong in saying that.

Mr. SYMON. -
I am glad to hear that.

Mr. LYNE. -
I think the railway to Bourke was opened before Broken Hill was discovered.

Mr. SYMON. -
I mean the continuation which is being built to Broken Hill.

Mr. LYNE. -
There is no railway being built to Broken Hill. There is a railway built to Cobar, which is, I think, 200 or 250 miles from Broken Hill. The question of Broken Hill never entered into any of the considerations I am referring to. We desire not to continue these fighting rates. I interjected, in consequence of what Sir George Turner said, that if Victoria continues these fighting rates, the responsibility will be thrown on New South Wales to meet them, and New South Wales can meet them. It is not a proper thing for a Federation to have to continue that state of things. But if you still allow the colony of Victoria to put on her preferential rates right over the large area of the western districts of New South Wales, then you must expect this fighting condition to continue. I do not want that.

Mr. KINGSTON. -
How do you propose to stop it?

Mr. LYNE. -
Either the amendment moved by Mr. Barton or the amendment suggested by Mr. Grant will stop it. But, so long as we are only permitted to put on the ordinary long distance rates, then Victoria will not be allowed to put on a specially low rate to go through the interior of our territory, right from our southern to our northern border. That is all we ask.

Mr. DOUGLAS. -
Can Victoria interfere with your internal trade?

Mr. LYNE. -
She does; and under the proposition which has been carried she can interfere with our internal trade. I know that she does attempt to interfere, and gets a good deal of trade. The honorable gentleman has only to look at the maps which have been submitted to the Convention, to see at a glance from the colouring thereon the effect of the condition of things which exists. The Railways Commissioners of three colonies have more than once met and agreed to a business commercial rate over the whole of their railways. But what do we find immediately that takes place—and I conceive it would probably be the decision of the Inter-State Commission if such a body were appointed? I think you may reasonably say that the commissioners understand the question of commercial relations as well as, or better than, any one else, and an Inter-State Commission would probably do as much as the commissioners have been doing up to the present time. We find that immediately an agreement has been come to by the commissioners, the Government of Victoria step in and say—"No, that rate would prevent us from carrying out our preferential rate system in New South Wales, and getting a lot of the trade of Riverina and of the Darling River." More than once—I think twice the Government of Victoria have stopped any equitable arrangement which has been proposed by the Railways Commissioners of each colony. That must impress my honorable friend (Mr. Douglas) with the injustice of the state of things which exists. The right honorable member (Sir George Turner), I think very unjustly and very unwisely, said that corruption had been imputed to certain members who voted yesterday. The word "corruption" was never used.

Mr. GORDON. -

The word "tainted" was used.

Mr. LYNE. -

No, that word was used by the Premier of New South Wales in a different sense from that in which it was construed. I understood him to say that the Parliament to which this matter was to be referred might be a tainted tribunal, but that did not refer to this Convention in any possible shape or form.

Mr. BARTON. -

It only had reference to the Federal Parliament.

Mr. LYNE. -

It only had reference to the Federal Parliament. I think Sir George Turner was wrong and unjust when he said that accusations of corruption had been made against members who joined together and voted to carry the proposition which was carried yesterday.
Mr. BARTON. -
It was a mere misunderstanding on the part of Sir George. He misunderstood what Mr. Reid said.

Mr. KINGSTON. -
I do not think he said it.

Mr. LYNE. -
I think he said that corrupt motives or corruption had been imputed to the representatives of South Australia, Tasmania, and Victoria, who voted yesterday for the proposition. I do not think that any one here imputes any such motive to those honorable members. I should be exceedingly sorry to allow any impulsive expression of mine to be interpreted in that way, because I do not think that there is any corruption at all. What I said at Adelaide—and I am sure I am justified in saying it now—was that this Convention is really the condition of things which will take place under equal state representation.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. LYNE. -
When the adjournment intercepted my remarks, I was speaking in reference to this Convention being much the same as we might expect under equal representation in the Senate in the Federal Parliament. In that respect I indorse the remarks which I heard made by one or two speakers—that this debate and the voting on this question, as on some others, is an object-lesson, and must be an object-lesson, to New South Wales as well as to the other colonies. Some honorable member (I think Mr. Douglas) said that Tasmania had no interest in this question. South Australia has, Victoria has, Western Australia has none, and by the equal representation in this Convention the combination of these states is enabled to carry a proposition of this kind, which we conceive at any rate—we may be wrong, but I do not think so—is detrimental to the interests of New South Wales. Now, sir, I have always, as you know, opposed the principle of equal state representation.

The CHAIRMAN. -
Does the honorable member think he is in order in discussing the question of equal state representation now?

Mr. LYNE. -
I think I am in order in referring to it in the way I am doing, because I only make that remark as a forerunner to another which I am about to make, and that is that I do not
matter altogether to the Federal Parliament, were it not for equal state representation. If there was proportionate representation, I think that would have a very considerable effect on the minds of the people of New South Wales.

Sir GEORGE TURNER. -

Equal representation is only to be in the Senate.

Mr. LYNE. -

I am aware of that. But, supposing this matter comes before the Federal Parliament, under the honorable member's clause as it is now, what is the result? It is dealt with in the House of Representatives, but it cannot become law until it passes the Senate, and, therefore, the Senate has full power to deal with the matter, just in the same way as we are dealing with it now.

Sir JOHN FORREST. -

The other states would be impartial; not having any interest in the matter.

Mr. LYNE. -

I am not quite sure that they would be.

Mr. WISE. -

It might be the impartiality of ignorance of the conditions.

Mr. LYNE. -

However impartial Western Australia is now, or however impartial Tasmania may be now, I think Sir John Forrest must recognise this: That in the Federal Parliament we shall not have representatives elected altogether in the way the representatives have been elected to this Convention. We will, perhaps, have in the first federal election a very severe party fight, perhaps in every state, and those party elements will be brought very prominently forward in the first Federal Parliament, so that the calm deliberations which usually take place in this Convention may not be found to take place in the Federal Parliament—even in that high, august, and powerful body which the Senate is to be. I am now directing attention to what has taken place in this Convention so far. A decision has been carried in favour of Sir George Turner's clause by the votes of the smaller states. However honestly those votes may have been given, the result will certainly appear to the public to be the result of a combination of smaller numbers and smaller states against the state that is most interested.

Sir GEORGE TURNER. -

Even some of my own colleagues voted against me.

Mr. LYNE. -

I am not quite sure but that one or two of my colleagues voted against us, but they were in a very great minority. This only shows that there was a very great divergence of opinion.
Sir JOHN FORREST. -

It shows that there was no combination.

Mr. LYNE. -

Perhaps combination is hardly the right word to use, but there was in the minds of the majority who voted against New South Wales a misconception of the existing state of things. It has been admitted by many honorable members that this is a matter that affects Victoria and New South Wales principally. South Australia comes in almost incidentally. It is not concerned in the matter to the same extent as Victoria. This is not, therefore, a question which should be delegated to a Parliament that may, and that will be, in my opinion, composed of very strong party elements. One of the first duties of that Parliament will be to deal with the question, and we know how much heat it has caused even in the calm deliberations of this Convention. Mr.

The bridges that span the River Murray at various points on the Victorian and New South Wales borders. Wherever Victoria is erecting these bridges it refuses to employ New South Wales workmen.

Sir GEORGE TURNER. -

There is no discrimination exercised. The contractor employs anybody he likes.

Mr. LYNE. -

Whether it was done at the instance of the Victorian Government or not, I do not know, but the contractor did refuse to employ New South Wales workmen, and representations were made on the subject. I mention this to show the feeling that exists at the present time, and which has had its origin to a large extent, if not wholly, in the fight which has taken place to secure the traffic from New South Wales.

Sir GEORGE TURNER. -

Are we so infernally mean that because there is a fight between us we will not employ any of your men at 6s. or 7s. a day?

Mr. LYNE. -

You do not employ them. Everybody knows that I am in favour of a protectionist policy. I have nothing to say now against the fiscal policy of New South Wales. My object here is to try and secure intercolonial free-trade. However much I may approve of the Victorian protectionist policy, or a portion of it, I say that we were compelled to construct certain of our railways in consequence of the Tariff on the Victorian border. We had to give our people in the south and south-western parts of New South Wales facilities to enable them to get their produce to market. If we had not done this they would have had only one course open to them—to send their goods
in bond through Victoria.

**Sir GEORGE TURNER.** -

The main thing we take is your wool. We have no duty on wool.

**Mr. LYNE.** -

You attempt to take a great many other things. I recognise that the preferential rates that are imposed are of great advantage to the settlers in the Riverina. Their produce is carried to Melbourne or Sydney much more cheaply than would otherwise be the case.

**Mr. HIGGINS.** -

These rates are a burden on those living nearer to Sydney.

**Mr. LYNE.** -

Incidentally they may be. If the rates on the extreme extensions were not so low, it might be possible to reduce the rates over the shorter distances. Taking the whole railway system, it is, according to the commissioners, paying interest on the money invested. We have to give some little advantage to those settlers who, from the nature of their work, are compelled to live so far away from our metropolis. That is what we are attempting to do, and what Victoria is trying to prevent us from doing. As I said before, we are prepared to take off the high preferential rates which preclude trade from going to Victoria. That would be a great gain to Victoria. We are willing to allow produce to be carried on the Victorian railways at the rate we charge on our own railways. What more can Victoria desire? Surely it is not intended that the war of tariffs shall continue. Sir George Turner said he was prepared to carry on the fight. If so, we must be prepared to carry on the fight also, but it would be better in the interests of all the parties if we could agree to some arrangement that would put an end to this war of tariffs. It must not, however, be an arrangement that places New South Wales at a disadvantage in comparison with other colonies in regard to her own trade. We ask for the right not to impose high rates, but to impose developmental rates, throughout the whole of our borders. But we do not wish to do that in such a way as to interfere unduly with trade in Victoria or Queensland.

**Sir GEORGE TURNER.** -

Do I understand the honorable member to say that we impose differential rates to attract from New South Wales produce other than wool?

**Mr. LYNE.** -

I believe that is so.

**Sir GEORGE TURNER.** -

What other produce?
Mr. LYNE. -

I have not the rate sheet before me, but I think there are many other articles on which special rates are charged. There is, for instance, a special rate on stock. The whole object of the fight, so far as Victoria is concerned, has been to secure the traffic from Riverina and the sending of supplies from Melbourne into Riverina.

Sir GEORGE TURNER. -

Hear, hear.

Mr. LYNE. -

Yes, there is no question about that. The New South Wales delegates have gone further than one could have expected in the offer they have made. If Victoria does not accept some reasonable proposal, what is to be the result? There is really no halfway house. We must either be able to deal with our trade in our own way, not for the purpose of injuring Victoria, but simply with a view to the development of our own country, or else the Federal Government must take over both the railways and the debts and throw the whole thing into one pool. Now, Mr. Grant gave notice of an amendment, just before I rose to speak, in which he foreshadowed his ideas, and, without following the wording of that amendment, it seems to me to be fair in its incidence and to meet the case, if proper words were put in, that New South Wales requires to be met. Now, I have represented the border district, almost from the head of the Murray right down to the Albury district, for the last eighteen years, so I surely know something of the feeling of the people there. And I can tell this Convention that the feeling of the people there is to get, if they possibly can, the ordinary rates in both cases. I do not think that they want a preferential rate, such as is given in Victoria at present. I believe that they would be quite satisfied if they could get the ordinary rate to Melbourne, without any preferential incidence, and the ordinary rate to Sydney, that being what we know as the long distance rate. Now, I do not desire to occupy undue time over this matter, because it has been debated for a very long while, but I felt that it was my duty to explain the practical appearance of the thing to my mind. Not having a legal training, I cannot go into the intricacies of the matter as lawyers do, but I feel that New South Wales has gone a great deal further than she could have been expected to go, and I am not sure whether her representatives in this Convention have not gone further than our people will agree to, in making the offer that has been made.

Sir GEORGE TURNER. -

Which offer do you refer to?

Mr. LYNE. -

I refer to the offer to take off our high preferential rates, which prevent
goods coming to Melbourne.

Sir GEORGE TURNER. -

But you have got to do that under a provision of this Bill; you cannot help yourselves.

Mr. LYNE. -

If that provision has that effect on this matter it should have the same effect on everything else. But you are putting something of a declaratory nature in the Bill which directs the Parliament to go a great deal further, and if, as Sir George Turner says, New South Wales cannot put her high preferential rates on goods going towards Melbourne without this clause, owing to a provision in this Bill, then why not leave the whole Bill without this clause? It is our duty to try, in the interests of the cause which we have met here to serve, to frame a Bill which will be acceptable to all the colonies, and we have now to seek some solution of this difficulty which will be accepted by all the colonies. But unless it is of a very reasonable character, our solution of this difficulty will not be accepted by the people of New South Wales.

Mr. DOBSON. -

Do you support Mr. Wise's amendment?

Mr. LYNE. -

I think, judging from hearing it read, that it is a fairly good amendment, but I should not like to say that I will support it without having time to consider it carefully. Still, it seems to me to be a fair proposal, and, as at present advised, I feel inclined to support it.

Sir GEORGE TURNER. -

Mr. Wise's object is to let us go on fighting.

Mr. LYNE. -

Well, I do not want that; but if we cannot get a solution of the difficulty which is deemed fair to New South Wales, I am afraid there is no other course open to us.

Mr. DOBSON. -

How would Mr. Wise's amendment work as regards the Riverina traffic?

Mr. LYNE. -

As I said before, I have not read the amendment, and therefore I cannot give an illustration of that kind. Sir George Turner says its effect will be to let the war of railway tariffs go on as at present, but I do not think that that is a wise thing.

Mr. DOBSON. -

But cannot you give us your reading of Mr. Wise's amendment?
Mr. LYNE. -

I repeat that I have not had an opportunity of reading Mr. Wise's amendment, and, therefore, I do not know exactly to what extent it goes; but my desire is, and, I think, the effect of Mr. Grant's amendment will be, to enable New South Wales to put differential rates-developing rates-on goods carried to the extremity of our colony, but not preferential rates, either to prevent goods going to Melbourne, or to unduly draw goods to Sydney. That is what I desire to see, and that, I think, will be the effect of Mr. Wise's and of Mr. Grant's amendments. They are both of the same nature as far as Victoria and New South Wales are concerned.

Mr. SYMON (South Australia). -

We are now considering an amendment with a view of putting an end to discriminations, but I think we shall soon have to discover an amendment to put an end to recriminations.

Sir GEORGE TURNER. -

Oh, no; we are all in good temper.

Mr. BARTON. -

Mr. Lyne's speech was quite good tempered.

Mr. SYMON. -

But I think we should confine ourselves to the particular amendment under discussion, rather than go back to the more or less dark and troublous times with a view of arriving at a conclusion as to who is responsible for the unfortunate state of things that has arisen-unfortunate as far as regards the difficulties of the solution. My honorable friend also reproached Mr. McMillan for what he called his lecture on the heated language that has been more or less indulged in in this Convention. Now, I think that Mr. McMillan is not to be reproached for those remarks of his, but to be very greatly commended. I am sure that I and many others honorable members feel very, greatly embarrassed when we hear arguments pointed by statements to the effect that it is better to break up the Convention, or that the Convention had better break up, or statements that such-and-such a particular colony cannot possibly join the Federation. I think that before we make use of language of that kind, we ought to wait until we absolutely fail to come to some arrangement in the course of the negotiations, and until the dire necessity exists for our contemplating anything of the kind. There is no one in this Convention who has a either esteem for our honorable leader (Mr. Barton) than I have, or who places a higher value upon his great services to this Convention, and to the great cause in which we are engaged, but I confess I did feel a sense of pain last evening when I listened to the language, the warm language, in which he indulged at the close of the sitting.
Mr. HOLDER. -

It is warm weather, you know.

Mr. SYMON. -

I quite agree that our honorable leader did not use that language with any view of infusing temper into our discussions, but I must confess that warm language of that kind, delivered in that manner, has not the effect of creating a more salutary frame of mind amongst us, but it has rather the tendency to create a kind of bitterness of heart.

Mr. DOBSON. -

But why refer to all this?

Mr. SYMON. -

I do refer to it, because I wish to express once for all-I have never said that before-my sincere hope that language of that kind may not be used on any future occasion. It is not argument; it is simply a tendency to which I have ventured to call attention, and I, for one, feel that we shall much better and much more effectually advance the cause in which we are engaged if we act upon the belief which appeals to us all that we are here, not as an ordinary deliberative assembly struggling for victory or for the loaves and fishes on one side rather than on the other, but with a view of arriving by negotiation at a fair solution of these difficult problems. I also feel that we are entitled to consider the earnest suggestions made by the representatives of other colonies which are perhaps not so deeply interested in the question as those of Victoria or New South Wales. Whether we are more likely to be fair or not, we are here with the intention and determination of bringing to bear the best of our intelligence, and arriving at, what we desire to be, a just and honest conclusion. No honorable member, whether his colony be directly interested or not, should be reproached for any vote he may give. Such votes must be set down to their desire to arrive at a fair result. We appreciate the difficulties of the situation, and the difficulty is in framing a form of words proper and worthy to be inserted in the Constitution—words that will reconcile the conflicting interests of New South Wales and Victoria. That is the problem set us. There is one effectual way of solving the trouble, and that is, to federalize the railways. The danger that New South Wales apprehends in this amendment of Sir George Turner is that it would have the effect of federalizing the railways.

An HONORABLE MEMBER. -

To federalizing the profits, but not the losses.

Mr. SYMON. -
If that were the only objection to the federalization of the railways, I think it will be seen that that federalization and control is only with a view to protecting the interests of every citizen of the Commonwealth. If I thought that Sir George Turner's amendment tended in the direction of federalizing the railways, I should not have been found voting against it. It seems to me there is no middle course other than to insert in the Constitution practically a railway tariff between New South Wales and Victoria.

An HONORABLE MEMBER. -
You cannot.

Mr. SYMON. -
Of course you cannot; it is utterly impossible. The difficulty of the position is that, on the one hand, we are trying to avoid anything like the federalizing of the railways, and, on the other hand, trying to accomplish the same purpose. That may be accomplished by some other form of words, but both desires seem perfectly impracticable. Victoria wants the right to charge preferential rates.

Mr. DEAKIN. -
Preferential reductions.

Mr. SYMON. -
My honorable friend says "preferential reductions." In saying preferential rates, I am using the expression that has been used hitherto. The word really ought to be "concessions." The result would be to give concessions to the trade of New South Wales, or any portion of New South Wales, to Victorian ports. That is really the essence of the whole question. I do not reproach-and I do not suppose anybody would-Victoria for taking such a course. Whilst Victoria is seeking by this method to benefit her traders and her ports, she is, at the same time, conferring advantages on the producer in the particular portion of New South Wales which that producer would not otherwise possess. The Victorian representatives, whilst admitting that position, say they are willing to leave the whole matter to the control and settlement of the Federal Parliament. That is a position to which, if it could be accomplished, I would give my entire assent. There seems to be nothing fairer than that the difference which may exist in regard to those railway rates should be left to a body which has the care of the interests of every citizen of the Commonwealth. For my part, so confident am I that the Federal Parliament would seek to do justice, if a form of words could be provided that would leave the exact matter in dispute to the Federal Parliament, so as not to
leave too much scope, I would support it. That is the first solution of the subject. On the other hand, Victoria says, and says very properly-"Whilst we wish to preserve these preferential rates, we object to what New South Wales calls preferential, or long distance, or development rates, by which she may checkmate us in securing that trade or divert the traffic for her own purposes." If New South Wales did follow the course of having these differential rates so as to checkmate the preferential rates of Victoria, the Victorian concessions might go on increasing until we arrived, on the one side or the other, at the point of railway financial exhaustion. How are we to bring these two things together? New South Wales says she wants to retain her differential rates. She objects to leave that matter to the Federal Parliament, because she regards that as handing over to the Federal Parliament, without the federalization of the railways, the control and management of the internal affairs of the state. The only result that is sought to be brought about is that suggested by Mr. Wise's amendment. New South Wales, it appears, does not object to Victoria going on as now, so long as New South Wales is also allowed to go on as now.

Mr. WISE. -

We make a further concession. We actually give up the right to charge an extra rate between Cootamundra and Victoria, which we are charging now. That is about £10,000 a year.

Sir GEORGE TURNER. -

That is wiped out by the Constitution.

Mr. WISE. -

Exactly; we are prepared to do it.

Sir GEORGE TURNER. -

Exactly; so are we.

Mr. SYMON. -

Then that is already laid down by the Constitution. I do not really understand what the object of our having inserted clause 89 is, unless it is to prohibit, not only a barrier to free interchange by means of customs duties, but a barrier by means of high railway tariffs.

Mr. HIGGINS. -

It is like a magnet drawing trade, instead of obstructing trade.

Mr. SYMON. -

The intention is said to be to prevent the imposition of high rates on goods going from other states to the state which has, and is intended to have, under the amendment, the control and regulation of its own railways. It seems to me, in the first place, we are putting in this amendment, which substantially includes in a form of words Mr. Dobson's suggestion, a declaration in the Constitution that the existing war of railway rates is to
Mr. WISE. -

No, because each state will have it in its power to make any surrender it pleases, and can always surrender its rights.

Mr. SYMON. -

Of course they can do that at any time, and so they can at this moment.

Mr. WISE. -

We cannot agree on the terms now.

Mr. SYMON. -

No, and there is nothing in the Constitution to impose any terms; it is only postponing the evil day and perpetuating an evil which, if we intend to do away with it, we should do so now, once and for all. If we are to lay down any principle in the Constitution it is a principle which will get over this difficulty which has arisen, and the strife arising out of this competition in connexion with our railways. If my friends from Victoria are agreeable to accept the amendment, the matter is one which so deeply concerns the two colonies, I shall consent to anything that has any essence of fairness and equality about it; but I object to putting in this Constitution what is tantamount to a declaration that the railway strife which everybody has been deploring for a whole week shall continue so long as the two rival states please.

Does my honorable friend think that the general commerce clause would allow Victoria or allow us to continue our differential rates, while it would prevent Victoria from having her preferential rates?

Mr. SYMON. -

I do not; I do not agree with my honorable friend's view of the law.

Mr. WISE. -

If you can satisfy Victoria on that point we will be quite content.

Mr. SYMON. -

I will come to that in a moment. No one can possibly have a higher appreciation of my honorable friend's desire, which is the desire of all of us in this matter, than I have.

Mr. PEACOCK. -

He is the reasonable man of the New South Wales delegation.

Mr. SYMON. -

He is entitled to be described as one of the reasonable men, but I will not discriminate. We do not want any discriminating Tariffs.
No preferences.

Mr. SYMON. -

We all admit that there is no fairer man in this Convention than Mr. Wise, or one more inspired with the sentiment of bringing about a conclusion of our labours satisfactory on all grounds of justice to all parties. Therefore, in making the remarks I have, I did not want to depreciate in any way the effort he has made in this amendment to arrive at a solution. It seems that, after a week employed in convincing each other of what, I dare say, we were convinced of before, that these competing Tariffs, preferential rates, and so on, are highly undesirable, it is wrong to place in the Constitution a declaration that the same state of things is to continue until the states themselves on their own motion choose to alter it. I should like to see some provision which would leave the matter in some way or other, under the restrictions I have already briefly indicated, to the Federal Parliament. I will appeal to my honorable friends from New South Wales to say whether they cannot devise some form of words which will have that effect, and at the same time not be exposed to the most pungent and many just criticisms of the amendment already carried, and in connexion with which Mr. O'Connor's amendment has been suggested? I submit to them whether they are not placing the interests of their people as citizens of the state above their interests as citizens of the Commonwealth. We must not forget that while there ought to be no interference with the control of the state railways by the state itself for all purposes of trade, that, after all, the interests of the citizens of the state are the interests of the citizens of the Commonwealth, and if the Commonwealth Parliament desires to secure the interests of the citizens of the Commonwealth, that would be to the interests of the citizens of the state. These railway tariffs ought to be so adapted that the two interests would be identical and the citizens of the state ought to have the advantage, for example, of sending their goods to the nearest port rather than that they should be tempted to send their trade to a particular port in a particular colony. That is the whole essence of the matter, and that is the point my honorable friends from New South Wales have overlooked. They wish that the interests of the state in its trade relations should rather dominate the interests of the citizens of that state as citizens of the Commonwealth. I think the latter is what ought to prevail.

Mr. DOBSON. -

That is what I wanted implanted in the Constitution, not that this war should continue for ever.

Mr. SYMON. -

I am sure that is what my honorable friend intended, and that is what I
commend to my honorable friends from New South Wales. The body which is to control and deal with the interests of the citizens of the Commonwealth, is the Federal Parliament. I feel confident that the Federal Parliament may be trusted to see that no injustice whatever is done; that the interests of the

connexion with this matter of the railway lines as in connexion with any other part of the Constitution. Now, I come back to what Mr. Wise has directed my attention to, that is, clause 52, sub-section (1) the trade and commerce provision. My objection to Sir George Turner's provision, with the addition proposed in Mr. O'Connor's amendment, is this: The first part of it I do not object to at all. That is the part of it which hands over the power of legislation to the Federal Parliament in connexion with railway matters, except that it seems to me to be a limitation of the provision as to trade and commerce; first, because it eliminates from the control of the Federal Parliament the rivers; and, secondly, because if the provision as to trade and commerce is large enough, any additional words introduced are liable to be construed as a limitation. But the second part of Sir George Turner's amendment, it seems to me, goes a great deal too far, and it is because of that second part that Mr. O'Connor has proposed his amendment. So far as the amendment is intended to be a limitation upon the second part of Sir George Turner's provision, I feel bound to support it. The point in the second part of Sir George Turner's amendment is that it hands over to the Federal Parliament the control of the railway rates within the state. The proposal is not limited in any way to the interstate rates, or to trade and commerce between the states.

Mr. ISAACS. -

Limiting it in that way leaves Victoria in an unfair position, as everybody admits.

Mr. SYMON. -

I do not admit that.

Mr. ISAACS. -

It is not interstate commerce between Riverina and Sydney, but it is interstate commerce between Riverina and Melbourne.

Mr. SYMON. -

I will come to that in moment. My honorable and learned friend's remark bears rather upon sub-section (1) of clause 52. It seems to me that that provision, coupled with the provision for an Inter-State Commission, will amply meet the whole case. I cannot for the life of me see why there should be any objection to providing for an Inter-State Commission so long as care is taken to guard against the limitation of the generality of the
provisions as to trade and commerce. I regret that I do not agree with the view taken by the honorable and learned member as to the restricted operation of the trade and commerce clause. His fear is that it would enable the federal authority to interfere with such a state of things as exists in Victoria in regard to concessions operating to withdraw trade from portions of New South Wales; but that it would not enable the Parliament to put a stop to the system of checkmate, as I may term it, which exists in New South Wales. I am not aware that a similar condition of things has ever existed in America.

Mr. ISAACS. -

Well, something very close to it.

Mr. SYMON. -

I do not express this view at all dogmatically. I am trying to assist the committee in arriving at a conclusion, and it is my opinion that the condition of things existing in regard to the railways of these three colonies has never existed in America. The element of development has never conflicted in America with the principle of free passage to a convenient port, and I feel that it would be impossible for the Convention to settle a matter like this upon cases cited from the American courts. We are not a court to determine this matter. If we did determine it our determination would not be final. We must feel that we are not the tribunal that can be expected to deal with this matter in such a way as will insure that justice shall be arrived at. At the same time, we can look upon the American decisions as likely to contain guiding principles. If in this country we have a condition of things in regard in the management of railways which has never existed in America, we must ask ourselves if that affects trade and commerce in the larger sense. If it does, it is my belief that the Federal Parliament will be competent to legislate upon it, and the Federal Judiciary to deal with it. In my opinion, the best solution of the matter is to leave things as they were. All these amendments are only heaping up one difficulty upon another. I have tried to frame a form of words to get over the difficulty, but I have found it impossible to do so, and unless some provision can be devised which will leave the matter to the Federal Parliament, subject to the restriction that the interests of the citizens of the Commonwealth are to be considered above the trade interests of any particular port, I think our only course is to leave the matter to the interpretation which may be placed upon the Constitution as we have framed it in regard to the regulation of trade and commerce. I cannot see what the provision for the regulation of trade and commerce is here for, unless it is to embrace trade and commerce in the largest...
acceptation of those terms.

Mr. BARTON. -

That has been my position all through.

Mr. SYMON. -

The leader of the Convention said last night, with the greatest possible truth, that a majority of honorable members thought that this provision would cover the case of the rivers. If that be so, why should it not also cover the case of the railways? Where you are taking goods from New South Wales into Victoria to a port of shipment, surely the transaction concerns trade and commerce between the states. It concerns trade and commerce between the states that Victoria should, on the one hand, give concessions in order to secure that these goods shall come to her ports, and that New South Wales, on the other hand, should impose rates to induce them to go to other ports. Looking at it in its largest interpretation, it seems to me that the provision in regard to trade and commerce is ample to cover the position that we are now dealing with, and that the more we try to adjust all these differences, which will be better adjusted in the future under the federal authority, the more entangled we shall be in a mass of contradictions, and things will be placed in the Constitution expressly which should be conceived and expressed in general language. That is the view I take of this particular matter. If the amendment of the honorable and learned member (Mr. O'Connor) is put, I shall vote for the amendment of the honorable member (Mr. Grant), because I think that the immunity of rates upon the ground that they are intended for the development of traffic is open to the objection stated by the Premier of Victoria this morning. I think that any amendment which is inserted should preserve to New South Wales the right to develop, by means of a railway tariff, if she chooses, the resources of her country. That it is her state duty as well as her state interest to do. On the other hand, the principle of the Constitution is that in matters relating to trade and commerce between the states freedom of intercourse is to be considered the dominant principle. On these grounds, and in the absence of some provision which will leave the matter to the Federal Parliament, subject to some such restriction as I have indicated, I will support, for the present at all events, the amendment of the honorable and learned member (Mr. O'Connor), as the honorable member (Mr. Grant) proposes to amend it. I hope, however, that this decision of the committee will not be considered final, and that either upon the next clause, which deals with the Inter-State Commission, or perhaps at some later time, after we have had a further opportunity to consider the whole matter, some more satisfactory agreement may be arrived at.

Sir JOHN FORREST. -
How much longer will you be?

Mr. SYMON. -

I hope we shall not be much longer. At the same time, my right honorable friend must know that, apart from its material interests, this question is one upon which feeling runs strong between the two colonies chiefly concerned, and we have sometimes to consider feeling as much as material interests. I reserve to myself the right to suggest or to vote for what may be a better arrangement, if one can be proposed.

Mr. ISAACS (Victoria). -

My honorable and learned friend says that he is inclined to support the amendment of the honour and learned member (Mr. O'Connor), as it is proposed by the honorable member (Mr. Grant) to amend it. Let us see where that leads us. Mr. Grant has moved the insertion of the words "Such laws shall not have the effect of preventing the development of the internal resources of any state." The consequence of that will be that if the law is one that has the effect of preventing the development of the internal resources of any state it is to be void. That is to say, the Supreme Court is to go into the whole question of whether the railway regulation is one that interferes with the development of the internal resources of a state. Can we conceive of the Supreme Court undertaking any such investigation? How is it to be done? The most serious political controversies would arise, and these are to be determined, forsooth, as questions of dry law or questions of fact-to be determined, I suppose, by the Judges, because that would be preferable to their being determined by a jury of any particular state-as to whether the internal resources of a state are to be developed under that particular law. Is that a provision which we are going to put into this Constitution? Having disposed of that point, let us see how the proposal of Mr. O'Connor will stand. The proposal is that a rate that is unduly low is not to be prohibited if such a rate is imposed for the development of traffic between places within the limits of the state. That is to say, a rate may be unduly low, and still be valid if it is to be for the development of traffic between Albury and Sydney, because those places are within the limits of New South Wales; but if we are to get the traffic from Albury or any other part of Riverina to Melbourne, Albury and Riverina not being within the limits of Victoria the rate imposed for obtaining that traffic is to be held bad. Is that fair play? Then Mr. Symon says he will support the, proposal; but the honorable gentleman voted against our clause yesterday. I do not charge him with any inconsistency in doing anything that would abrogate that clause today but surely we cannot arrive at such a conclusion after the vote we gave yesterday. We are told also that we do not require anything
else in the Constitution, because the matter is made perfectly plain under the trade and commerce clause. But what will happen? Let me remind honorable members that there is by no means certainty in America as to how that provision operates. As lately as March, 1896, a case was decided upon this very point. and let me read the passage to show honorable members what danger the people of Victoria will be in if they accept the proposal that we should say nothing about the matter in the Constitution. The case I refer to is that of The Cincinnati, New Orleans, and Texas Pacific Railway Company v. The Inter-State Commerce Commission. It is reported in vol. 162, United States Reports, page 184. The head-note is as follows:-

When a state railroad company whose road lies within the limits of the state enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but by an arrangement for the continuous carriage or shipment from one state to another; and thus becomes amenable to the Federal Act in respect to such inter-state commerce; and having thus subjected itself to the control of the Inter-state Commerce Commission, it cannot limit that control in respect to foreign traffic to certain points on its road to the exclusion of other points.

Now, suppose the converse—that is that the railway company had taken the foreign traffic simply between its own borders, not by virtue of any arrangement with regard to foreign bills of lading, and had in no way connected itself with any traffic outside its borders. It is plain that the court would have held that the trade did not come within the scope of the Inter-State Commerce Commission. In other words, New South Wales, in relation to the Riverina traffic, would not be affected by the Inter-State Commerce Commission, but Victoria, if she did, as she would be bound to do, in some way connect her railways with the carriers in New South Wales by some arrangement, then that would fall within this case. I bring this matter forward in order to show how dangerous it would be for Victoria to think that she could rely on the position which Mr. Symon thinks is the correct one. It would leave Victoria in the unhappy position of some day finding that she could be restrained by New South Wales. Now, let me also, while I am on this matter, refer to another point in connexion with this case. The position in America is exactly as it would be here under the clause which we passed yesterday. The Inter-State Commerce Commission is not empowered, either
expressly or by implication, to fix rates in advance; but, subject to the
prohibitions that their charges shall not be unjust or unreasonable, and that
they shall not unjustly discriminate, so as to give undue preference or
disadvantage to persons or similarly circumstanced, the Act to regulate
commerce leaves common carriers as they were at the common law, free to
make special contracts, looking to the increase of their business, to classify
their traffic, to adjust and apportion their rates, so as to meet the necessities
of commerce, and generally to manage their important interests upon the
same principles which are regarded as sound, and adopted in other trades
and pursuits.

That is precisely the position we take up—that New South Wales shall be
left free and unchallengeable in all her internal arrangements, provided
they do not act unjustly to other states. Because it is possible to affect the
operations of the Victorian railways by internal charges made on New
South Wales railways just as Victoria is able to affect New South Wales
railways by charges on her own. Therefore, we say, let us look to the
substance, not merely to the form, and consider what is just and fair. I
would invite my honorable friend's (Mr. O'Connor's) attention to a book
which is, perhaps, the latest work on the subject of railways, and which
deals with the question of discriminative charges. The volume is Wood On
Railroads. It deals with, I think, all the English and American cases and
Acts on the subject. On page 639, section 195, the subject under discussion
is dealt with in a most masterly and exhaustive fashion. I shall only quote
one passage from page 665, section 203. It is under the heading of
"Statutory Regulations-continued: State Statutes; Inter-State Commerce."
The author says—

The principal limitation to the power of the state Legislatures to regulate
railroads is imposed by the construction which the courts have given to the
clause of the Federal Constitution vesting in Congress exclusive power to
regulate commerce with foreign nations and among the states. The
stupendous effect which this brief provision, through willing hands, has
exerted might well be the subject of a great deal of remark, if the occasion
afforded. It has been invoked more often than any other part of the
Constitution, as a ground upon which to have state legislation declared
invalid. If it had the effect merely to prevent state legislation from
operating outside of the limits of the state, no objection could be made.
But, at the present day, it has acquired such an increased power that it has
robbed the states of their power of control even over matters purely
domestic which happen to have become tainted, though ever so slightly,
with an interstate odour. In the famous Original Package decision the
Federal Supreme Court declared that the state of Iowa had no power to
exclude intoxicating liquors from its limits, nor any power to prevent its sale within the state if the sale is made, in the original unopened package. The baneful effect of this decision was immediately remedied by Congress by means of what is known as the Wilson Bill; but the remedy, while it corrected the evil immediately in hand, by no means obliterated the evil effects of the decision.

It proceeds at length to deal with the question of railway rates. I am not going to read any passages bearing on the question, because a good deal has been said about that already, but there is a short passage at page 675 which I will read-

So that the right of the state to fix the rates of charges by railroad companies is confined entirely to transportation, beginning and ending within its limits.

That is the trouble which is affecting our minds. The right of Victoria to fix these rates of charges will be confined entirely to transportation, beginning and ending within its limits. The case that I have cited shows that the transportation is held not to begin and end within its limits, if there is even a contract by which it is connected with some outside transportation.

Mr. BARTON. -

So long as it operates on goods the subject of that contract.

Mr. ISAACS. -

Yes.

Mr. BARTON. -

The goods must come across to be affected.

Mr. ISAACS. -

New South Wales in taking Riverina goods to Sydney will not be affected by it, because they do not come across, and that is why I say it is so unfair to Victoria that we should leave it untouched. Then we have the clause which we inserted yesterday. It seems to me perfectly fair and right, and the proposition of Mr. O'Connor, with or without Mr. Grant's suggestion, would seem to leave us in a position even more unfair than we would be in if we put no distinct provision in it. Therefore, I do hope that these proposals will be withdrawn or rejected.

Mr. BARTON (New South Wales). -

I had no intention to join in this debate, nor shall I join in it now at any length. But one or two remarks have been made by my learned friend (Mr. Symon) which, I think, he will consider it right that I should make some reply to. I am very sorry to learn that my learned friend was pained at any
speech I made yesterday. It will be recollected that at the time that speech
was made honorable members generally were somewhat in a condition of
tension, from which tension, certainly, I, in my acute apprehension for the
future of this movement, which I have so much at heart, was not free. I do
not think that while I was making my remarks there was absent a fire of
interjections which was calculated to be rather irritating to any speaker. I
am not aware of having consciously said a word which was personal in its
application. I am not aware that I made the slightest imputation of motives
against any honorable member. What I had to say was said from a feeling
of dread lest we were committing ourselves to courses which might
frustrate the whole of our work. It was extremely natural to any one having
the confidence of the Convention-as I believe I have-that remarks should
be made highly expressive of the dread which one felt on such an occasion.
It was from that motive that I spoke, and I believe that, speaking from that
motive, what I said will be interpreted in a perfectly generous spirit by the
Convention. I have been accused, if I may mention it, in some newspapers
of having gone so far as to say that the motion of yesterday was an attempt
to get at New South Wales. Now, that is a very cruel remark to make.

The CHAIRMAN. -

I do not think the honorable member will be in order in referring to
newspaper comments on our proceedings.

Mr. BARTON. -

Perhaps, sir, it is better that I should refrain from mentioning any
newspaper, but I may say, without referring to any newspaper, that I have
carefully read the report of the remarks I made yesterday, and I find that
there is not in those remarks one syllable or one sentence that imputes to
the representatives of Victoria any design to do anything which was
corrupt or dishonest. And, if I may have leave to say so now, I did not
accuse them, and the thought of accusing them of any corrupt or dishonest

conduct never entered my head. If anything I said last night has, in any
respect, wounded the feelings of any honorable member-and I am quite
sure that anything I said was not so intended to do-then my regret that even
any misunderstanding should cause pain is freely expressed now. I do
hope, however, that what I said may not be stripped of its effect by any
feeling of irritation which may exist, because the feeling which dictated
what I had to say was a feeling entirely in the interest of and for the
furtherance of the work of this Convention. Now, I am not about to canvass
the American decisions which my honorable friend (Mr. Isaacs) has cited. I
can quite see the effect of the case which he cited from volume 162 of the
United States law reports. I can quite see also that, while the normal state
of things would be that a state should regulate its own internal traffic, so far as it is purely internal, without interference from any body whatsoever, while at the same time holding itself, as it must, subject to the legislation of the Commonwealth and to the control of the Commonwealth in matters which affect commerce among the states-I can quite see that the position of Victoria would be affected by a strict interpretation of that rule. And in my remarks yesterday I pointed out that, under the circumstances, it was perhaps too much to demand that Victoria should be entirely affected by that rule to the full extent to which the decisions would carry it. What I am concerned in now is that there should be some way out of the difficulty which has arisen. And I feel inclined myself to give support to the suggestion which has been made by my honorable friend (Mr. Grant). I cannot help remembering that Mr. Grant may be regarded as railway expert, that he has considerable practical and technical knowledge on subjects of this kind, which most of us cannot hope to possess, and, therefore, which we cannot communicate to others. I feel, also, that the proposal comes from a peacemaker, and is designed for the furtherance of the work of this Convention without doing injustice to any state. These are the grounds which dispose me, if I can get nothing better, to accept the honorable member's (Mr. Grant's) suggestion, while I do, at the same time, wish it to be understood that I think we should, all of us, be safer and better if, without any of these limitations and endeavours to explain what is, on the whole, clear, we were to rely on the trade and commerce clauses with any such limitation as may be necessary, if there is one necessary, to prevent any absolutely unjust operation on the colony of Victoria. What seems to me to be the difficulty is that Sir George Turner's amendment, if not limited in some way, moved as it is for the purpose of preventing what its mover considers an injustice to Victoria, will inevitably work more danger and more injustice to another colony. It is in that light that I regarded his amendment last night, and I regard it now in the same way, as one of the most serious things that have ever happened during the whole currency of this Convention.

Sir GEORGE TURNER. -

I do not desire that.

Mr. BARTON. -

I am sure that my right honorable friend has not the slightest idea in his thoughts of working any injustice by any proposal he makes. I am only speaking about the effect the amendment may have if it becomes a part of the constitutional law of the country. I understand that Mr. Grant is willing that his amendment should read somewhat in this form:--

Nothing in this Constitution shall prevent the imposition of such railway
rates by any state as may be necessary for the development of its territory, if such rates apply equally to goods from other states.

The limitations here are two: First, that a rate is saved from prohibition if it is merely necessary for the development of the territory which belongs to a state, and, secondly, that a rate is saved from prohibition if it applies equally to goods from other states. If the rate on goods carried across the border from one state to another is equal, it is not subject to prohibition, and if in a state a rate is imposed not affecting the interstate traffic, but simply for the purpose of developing a tract of territory, it also is free from prohibition.

Mr. ISAACS. - Who is to decide that question of fact?

Mr. BARTON. - The words seem to make that clear. Why should not the court decide it?

Mr. ISAACS. - It is a political question.

Mr. BARTON. - No, it is a question of evidence as to whether the rate is a necessary developmental rate or not. I take it there would be no difficulty in giving legal effect to a prohibition of that sort, and something of the kind is necessary in order to adjust the relations of the two or three states most intimately affected by these provisions. I am not pretending that I can show that Mr. Grant's amendment is perfect. That is a question which a railway expert can best determine. But that it makes some approximation to justice, that it takes some of the sting out of Sir George Turner's amendment, that it helps to secure for any state immunity from interruption and interference on the part of any body when it is solely engaged in the development of its own internal resources, is, I think, clear. I doubt whether there can be, so far as I am at present advised, any better qualification of the effect of Sir George Turner's amendment than this, and I am very much disposed to support it. If the Right Hon. Sir George Turner will read the amendment with his own, and see the way in which the one bears upon the other, he will, I think, come to the conclusion that this proposal cannot affect his amendment excepting in preventing injustice that might otherwise arise. I hope that some such amendment as Mr. Grant has submitted may be found to be acceptable to the Convention. If it is accepted a step will, at any rate, have been taken towards making peace in our proceedings and restoring what we consider to be the balance of justice. Let it be perfectly understood that we who come from New South Wales are not seeking to interfere with the just development of anybody else's territory. We
are not seeking to interfere with the rights and privileges of other states in the management of their own internal traffic. All we ask is that we should be allowed to regulate our internal traffic in our own way, so long its we do not usurp the functions of the Commonwealth. To that we submit. If a rate of ours has the effect of creating an unjust preference as against another state, so far as interstate commerce is concerned, we have all along been and are ready to say at once that we will submit to the jurisdiction of the Commonwealth. We do not consider that we have a right to impose a rate which will necessarily have the effect, or which has the effect, in its operation, of interfering with fair commerce between state and state. But, on the other hand, while we submit to the jurisdiction of the Commonwealth to that extent, we want it to be clearly understood that we do resist any interference with regard to those matters which cannot affect interstate traffic, and which therefore belong to our own traffic solely. That is our position, and as Mr. Grant's amendment goes somewhat to sustain that position, without unduly limiting the hands of the Commonwealth, it is a reasonable proposition that that amendment should be accepted, and it will have my vote.

Mr. GRANT (Tasmania). -

I desire to ask permission to alter my amendment. I may say that this new amendment goes very much further than anything that has yet been proposed in the way of dealing with the railways, and it may be considered as having been conceived in an entirely federal spirit. It gives to one state all the advantages that another state enjoys. Should any state make any laws or regulations for its own internal traffic, the neighbouring state will get the full advantage of these laws and regulations. This is, of course, a sequel to Sir George Turner's amendment, which makes the Parliament the arbiter in the first instance of all traffic arrangements. That amendment would have been quite sufficient, and the amendment that I propose only makes it a little more explicit, and, I think, a little more federal. Sir George Turner proposes that, in the first instance, the Parliament shall exercise control so far as all regulations relating to rates are concerned. The primal settlement of the rates and of the regulations is to be in the hands of the Federal Parliament. There can be no objection to that. The Federal Parliament will be composed of the representatives of all the states, and we may assume that they will do justice between each state. I have no fear that they will take the New South Wales or the Victorian view. There will be sufficient force in the Parliament to do absolute justice to all parties concerned. We might safely be content with Sir George Turner's amendment, which gives the
Parliament power to make any laws and regulations having reference to the traffic on the railways. My amendment simply carries that proposition a little further. It goes to the extent of giving to New South Wales the benefit of any rates imposed in Victoria, and of giving to Victoria the benefit of any rates imposed in New South Wales. Goods could then be sent from Melbourne to any town in New South Wales territory on the same terms and conditions as similar goods sent from any part of New South Wales into Victoria.

Sir GEORGE TURNER. -

How can that be possibly worked out in practice?

Mr. GRANT. -

The Commonwealth Bill will, under your proposal, make laws and regulations in reference the traffic on the railways, and in doing so they will see that the amendment I propose is given effect to. Therefore, if my amendment find favour with the Convention, I think that the clause as it will then stand will be of a most federal character, in point of fact, it will accomplish the federalizing of the railways to all intents and purposes. Such being the case, I hope my amendment will be accepted by the Convention, and that honorable members will all consider that they have advanced a step further, very much further, than has hitherto been contemplated, and that should this amendment be carried we need trouble very little about the federalization of the railways, because that will be, to a great extent, accomplished. And under the amendment of the Right Hon. Sir George Turner, the controlling power will be that impartial tribunal, the Parliament of the Commonwealth—a tribunal which we will all respect, and to whose decisions I hope we shall all bow with satisfaction and pleasure. Sir George Turner has asked to whom the reference will be, in case of dispute. Of course, in this, as in all other cases, the reference will be to the High Court, but that will only be a reference on the laws and regulations made by the Federal Parliament. It is not that the High Court would have to frame the laws and regulations, but that any reference to the court would simply be on a dry question of the interpretation of the laws and regulations made by the Federal Parliament. Therefore, I think there should be no objection to the matter standing as it does—that the High Court should be the eventual arbiter in case of dispute, because the court would only be called upon to interpret the views of the Federal Parliament. I therefore ask leave to withdraw the amendment standing in my name, with a view to re-submitting it in a slightly altered form.

Mr. Grant's amendment was, by leave, withdrawn.

Mr. GRANT (Tasmania). -

I now beg to move-
That we insert, before the word "Notwithstanding," the following words:--
"Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may be necessary for the development of its territory, if such rates apply equally to goods from other states."

Mr. KINGSTON (South Australia). -

I trust we will adhere to the decision of yesterday. A substantial majority of this Convention agreed that, on this much-vexed question of the rival railway rates between the states, the matter should be left to the sense of justice of the Federal Parliament. That was the amendment carried at the instance of the Right Hon. the Premier of Victoria, and although I have heard a good deal said since as to the inequity of doing anything of the sort, I resent the suggestion that the Federal Parliament will be, as it has been termed, a tainted tribunal, or one on which we cannot rely to do justice on a matter of this sort. We have confided much graver questions to the arbitrament of the Federal Parliament. We have granted to them the power—nay, we have imposed on them the duty—of deciding every year how what we must estimate from the first year as a sum of between £4,000,000 and £5,000,000, and annually increasing, shall be distributed among the states. In the matter of that distribution state interests naturally and directly arise, and to suggest that the Parliament, which, at the instance of the Finance Committee, has been intrusted by this Convention with such powers, is likely to be false to its trust when asked to decide a matter of much less consequence, although a matter of considerable importance, seems to me to be asking honorable members to assent to a position which we cannot possibly accept. Either the Federal Parliament is to be trusted, and will be a pure tribunal to decide a matter of this sort, or it is a body which we cannot trust with the much graver issues that we have already resolved to give it power to decide. The question now is the amendment proposed by Mr. Grant, and I can hardly think that the members of the Convention generally recognise what will be the full force and effect of that amendment if carried. It seems to me that it will utterly whittle away the proposition that was assented to yesterday at the instance of Sir George Turner. What did we decide on? That the Federal Parliament should have power to regulate this matter in the interests of justice between the states. What did we intend to prevent specifically? This undue cutting of rates to the extent of drawing from any state trade which properly belongs to it. If we leave the matter in the way it was left after the division on Sir George Turner's Amendments the Federal Parliament will have power to do justice between the states in this respect, but if we carry the amendment now
suggested, the question will then be taken away from the final power of
decision by the Federal Parliament. The High Court, it seems to me, is, to a
considerable extent, introduced by the amendment on a question of policy
but, further, the proposal is made plain that if you grant these rates to
goods from other states equally with goods which belong to your own state
the Federal Parliament will have no power to interfere. Why, sir, these
suction rates, as, I think I am justified in calling them, are intended for the
purpose of drawing goods from other states on to the lines where those
rates prevail, and this amendment simply means that as long as you treat
goods from other states with the same liberality as you treat the goods of
your own people consigned by rail, the Federal Parliament shall have no
power to interfere. Assent to that amendment, and New South Wales can
go on doing, in connexion with these matters, what she has been doing in
the past, to the detriment, not only of her own railway revenue, but to the
injury of trade which, geographically, belongs to other portions of the
Commonwealth, and to the injury also of the railway revenue of those
states. Are we to be told, sir, that after all the argument which has been
addressed to

this question, and which resulted in the decision of yesterday, we really did
not know what we were voting on, or that we did not properly understand
the question? I am of opinion that we did know and understand what we
were about, and I trust that honorable members will see that the
amendment now proposed means depriving Sir George Turner's
amendment, which we carried yesterday, of all practical results. Under
these circumstances, I trust we will adhere to the decision that we came to
yesterday.

Mr. REID (New South Wales). -

I have already spoken on this matter so fully that I certainly do not
propose now to say very much, but I do regret that the Premier of South
Australia does not pay some attention to a set of considerations which,
although they do not affect his colony, are very serious matters in one of
the colonies invited to join in this union. And I must press on my right
honorable friend to recollect that the very basis of this attempt at federal
union was that, as far as possible, consistently with federal union, the rights
of the several states, and the sovereignty of the several states, should be
preserved. Indeed, the original resolution, upon which the whole
movement was based, spoke of the voluntary surrender of rights and
privileges. We have gone largely forward up to this point, with a great deal
of success, on these essential lines. We have endeavoured to deal with
broad principles, irrespective of the way in which they may affect this or
that part of Australia. For the sake of these broad principles we have all been willing to leave the actual working of the Constitution, in any precise direction, to the fortune of party warfare in the constituencies after federation is accomplished. This Convention has refused to take over the railways of the several states. The Convention cannot escape from the consequences of that decision. I do not know how Mr. Kingston voted on the question as to whether the railways should be taken over.

Mr. KINGSTON. -
I voted against it.

Mr. REID. -
Then I must press on my right honorable friend that, since he is one of the ardent friends of union, and he has arrived at the conclusion that the railways of the several states should not be taken over by the Federation, he ought in common fairness-

Mr. KINGSTON. -
Are you ripe for it?

Mr. REID. -
My right honorable friend must not overlook the fact that those who refused to accept the financial responsibility for the working of the states, must be very slow in their efforts to deal with the management of the states concerned.

Sir JOHN FORREST. -
That is not the reason.

Mr. REID. -
I have quite enough to do with my right honorable friend (Mr. Kingston) at present, but I am quite prepared to deal with my right honorable friend (Sir John Forrest) presently. One of my right honorable friends is more than enough for me at a time. I know I need not endeavour to show how the proposal affects New South Wales, in order to quicken Mr. Kingston's ever-ready sense of equity and justice. I have only to come before him, representing, as I do, another colony which has a large railway system, and point out to him that when he is in favour of practically handing over the management of the railways of New South Wales-

Mr. KINGSTON. -
No.

Mr. REID. -
 Practically.

Mr. KINGSTON. -
No.

Mr. REID. -
Because those who can annul your rates-
Mr. KINGSTON. -
When unfair to another state.

Mr. REID. -
Those who can decide on the rates, practically have all the incidental powers of railway management. As one honorable member said here yesterday, if you can control the rate of interest a bank charges on advances, you can control the bank. I feel sure my right honorable friend's (Mr. Kingston's) sense of justice will return to him.

Mr. KINGSTON. -
Will you go further and say that if you control the railway rates you control trade?

Mr. REID. -
Well, I think I could say that.

Mr. KINGSTON. -
Then what is the good of intercolonial free-trade?

Mr. REID. -
What is the good of what?

Mr. KINGSTON. -
What is the good of intercolonial free-trade?

Mr. REID. -
I am not talking about intercolonial free-trade.

Mr. KINGSTON. -
I am sure you are not.

Mr. REID. -
I am not talking about inter-state trade. I have said over and over again that I am absolutely in favour of inter-state trade—that is intercolonial, is it not?—even in reference to the rates on the railways being subject to the control of the Federation. My right honorable friend seems to lose his ordinary control, if I may say that of the President of this Convention.

Mr. KINGSTON. -
I am not President sitting here, you know.

Mr. REID. -
But my veneration for my friend follows him wherever he goes. Surely he will recollect that, under the general words giving a power to regulate trade and commerce among the states, there is an absolute power in the hands of the Federal Commonwealth to prevent every colony represented in the Federation from placing intercolonial trade at the slightest disadvantage. My right honorable friend cannot deny that.
Either by cutting or raising prices?

Mr. REID. -
Will my right honorable friend deny what I say?

Mr. KINGSTON. -
I asked you a question.

Mr. REID. -
Will my honorable friend deny what I say? He will not; because he cannot.

Mr. KINGSTON. -
I say it is not clear.

Mr. REID. -
What?

Mr. KINGSTON. -
I say it is not clear.

Mr. REID. -
My right honorable friend says it is not clear; although we have had a similar Constitution, with similar words in it, which has been the subject of judicial decisions for 50 or 60 years, all through which the application of these words has been admitted.

Mr. KINGSTON. -
Of undercutting.

Mr. REID. -
I am talking of inter-colonial free-trade. My answer to the right honorable gentleman (Mr. Kingston) when he speaks of intercolonial free-trade, is, that we have cheerfully, without any reserve, granted to the federal power absolute control over any rate on our lines which affects intercolonial free-trade-any rate which creates a discrimination in favour of our own people as against people outside our boundaries throughout the Commonwealth. On the same broad principles, which make a uniform Tariff and establish intercolonial free-trade, we have handed over to the Commonwealth absolute power over our internal railways for preventing discrimination between the trade of another state and our own trade. I believe I re-echo the convictions of a majority of the Convention when I say that if it is put in plain black and white that no state shall have any power to establish preferential rates-that is, rates distinguishing between the people of that state and the people of other states, and distinguishing between the trade of a state and the trade of other states-so as to make it certain that, on any internal line, the rates should not be made unduly high in a certain direction in order to prejudice those outside the boundary-the majority of the Convention would agree. If that be so, I am willing to have it placed in black and white in the Constitution, in plain English, and not
regard it as a subject to be settled by some accidental decision of the Federal Parliament. I am willing to have it put that no state shall have any right to do these things, and these are the only things of which complaint can be made. The question is, are we prepared to put in the Constitution some plain definite terms, so as to prevent things of this sort being done, or are we going to leave the matter to a political tribunal? I think such a departure would be unprecedented. I do not know of any federal body in the world that assumes the power put in this Constitution with reference to the railways of the states—a power providing that the railways shall be a subject of debate in Parliament. I do not wish at all to repeat what I went over yesterday. All I wish to say is, that if this Convention has made up its mind to adhere to Sir George Turner's amendment, let us have some convenient method of carrying it out. It is no use wasting time over the matter. If there is not a general disposition to deal with the matter on some better terms than those settled by Sir George Turner's amendment, the sooner we know the better. But, so far as I am concerned, I wish it to be distinctly understood that I am prepared to go a great way with any honorable member who proposes to put in black and white a power against states to prevent them from having two rates over their lines—one for a certain trade outside their borders, and another for a certain trade inside their borders. I am prepared to absolutely prohibit that, and not to leave it to a court or Parliament to consider; so I am prepared to do away with and prohibit such rates as I believe we have in New South Wales to-day, which make a difference between goods coming up from Albury to Wagga Wagga as compared with goods travelling from Wagga Wagga to Albury, subject always to this condition, which is a legitimate incident of railway rates, that the longer distance goods travel the smaller the charge. Subject to the legitimate operation of that principle, I am perfectly prepared that no such rates should remain, or that we should give the Federal Parliament power to abolish any rate which distinguishes between goods coming from the southern or western districts from another colony. That being so, I wish to ask is more than that asked for by a majority of this Convention? Without taking over the railways is there a greater interference or power of interference asked for with our internal railways and traffic? I believe that if honorable members were polled on these propositions it would be found that the majority are in favour of going so far, and no farther, and that a majority is in favour of putting what we do in a plain proposition, so that it shall bind every one and be understood by all before the Constitution is established. One of the great objections to the form in which the matter stands at present is not only that there is a grave objection to the tribunal,
but that a still stronger objection is that these words are so vague that there could be no certainty of a principle upon which a decision could be arrived at.

Mr. DOBSON. -

Will not Mr. Grant's amendment make them more palatable?

Mr. REID. -

I admit that it would be much more palatable.

Mr. DOBSON. -

Will you accept Sir George Turner's amendment and Mr. Grant's?

Mr. REID. -

Of course I cannot accept Sir George Turner's amendment on any terms. I hope that is not surprising to any one who has listened to me for a day or two.

Mr. ISAACS. -

Not to any one who has listened for the last day.

Mr. REID. -

When did I say that I would accept one word of Sir George Turner's amendment? I thought the heat got white yesterday on that subject. All my objections to Sir George Turner's proposition remain, and I cannot accept it in any shape or form. But I am willing to accept the more moderate proposals which have the merit of being definite. Mr. Grant's proposal is an improvement on Sir George Turner's proposal.

Mr. ISAACS. -

He is proposing it as an addendum.

Mr. REID. -

We will go on putting addendum after addendum until everybody gets what he wants. Can I put in my little addendum? If so, I would put it all right. Cannot any one see that trying to settle all these matters in the Federal Convention by definitions—it is not carried out anywhere else—will lead to each one wanting to have his own little addendum and his own little definition attached to the Bill? I hope we shall be able to come to a solution of the matter which will avoid the objections to Sir George Turner's proposal, which first establishes no definite rule, and then leaves the matter to the chances of political warfare. We want to be in a position to go back and tell our electors how they stand on vital matters. I defy any honorable member to go back to his electors and define the position.

Dr. COCKBURN. -

It is easy enough. It is left to the Federal Parliament.

Mr. KINGSTON. -

To interfere when necessary.
Mr. REID. -

That is the position. My honorable friend can go back cheerfully to his electors, because any railway in his province is at conflict only at one point and with one colony, that is Victoria. Their lines are not affected by the conflicting considerations which the New South Wales railways are. How can I tell the electors of New South Wales that while the Convention declined to grant a single penny of a guarantee against losses arising from our management of our own railways and our own railway traffic, they assume to themselves the right, in the very sweeping language of the right honorable member (Mr. Kingston), of interfering when necessary? We have not yet come under the heel of a lordly interference of that character. When I am dealing with business concerns, involving millions of money, it will be a long time, when dealing with the undoubted rights of our own people and traffic, and our own financial responsibility, before I allow gentlemen whose only responsibility is that of talk to manage our railways. Take them over, and pay for them. That is equitable; you can do what you like with them when you have paid for them. But there is too much of this attempt to take over the benefit of state property, in the shape of railways, when they interfere with trade, without realizing the financial responsibility of the cost. Give me some guarantee that if the railways of Riverina have to stop owing to this interference, when necessary, that the loss which New South Wales has incurred will be made good, and the problem will become an easy one. But I cannot face the problem without some such guarantee. If we at any time had had in this Bill anything which went to the extent of this proposal, I would not express so much surprise, but ever since we began the consideration of this Bill we never had this pretension put forward. I do hope we shall be able to hit upon some form of words which will be free from the objections which New South Wales has so strongly to Sir George Turner's proposition. Very often I find myself advocating what I think is a just consideration to New South Wales, separated from my colleagues and learned friends (Mr. Barton and Mr. O'Connor). In my opinion, sometimes they have been almost, in their great anxiety for the cause of federation, too easily disposed to look away from the interests of New South Wales. But surely honorable members, who have seen the thoroughly broad attitude which those honorable gentlemen have always shown towards the federal movement, must see the significance of the cause which brings those honorable gentlemen and myself absolutely into line. Honorable members must see that there must be some very strong reason for the leader of the Convention taking up the position which he has taken.

Mr. DOBSON. -
You are the awkward boy. You have put yourself out of line. Mr. Barton supports Mr. Grant's amendment.

Mr. Reid. -
I am talking of Sir George Turner's amendment.

Mr. Dobson. -
We think we will be able to graft this on to Sir George Turner's amendment.

Mr. Reid. -
I will not object to that if you allow us to put in a few words. If you give us our turn I do not mind it; but that is what I am objecting to.

Mr. Higgins. -
One negatives the other.

Mr. Reid. -
There is no doubt the honorable member (Mr. Higgins) will have his turn; what I want is

Mr. Higgins. -
A very unwholesome mixture.

Mr. Reid. -
Yes. Let me point out this in all fairness. The fault of Mr. Grant's much better proposition is that in the Federal Parliament, where New South Wales would have odds of two to one against her, or if Queensland joined the Federation, of three to one, this difficulty would arise in connexion with the railways of Riverina. The question would arise whether those railways were for the development of the resources of Riverina, and how would it be decided? It might well be argued against the operation of the clause in our favour: "No, these rates are not to develop the resources of Riverina. Your railways there are white elephants. They are not wanted, and the rates you charge are intended, not to develop the resources of Riverina, which has been commercially annexed to Victoria, but to keep the trains running." But would not that be one of the most legitimate reasons for establishing low rates? Is it not a vital principle of railway management that rates must be designed so that the trains will pay working expenses and interest upon the cost of constructing the lines? My objection to the proposition of Mr. Grant is that if the tribunal which had to decide the question came to the conclusion that the rates were low simply that the trains might be kept running and the interest paid, they would decide that that was no legitimate reason for them. We should be told that there is a river running down to the land where the just men grow-South Australia-that there are railways to take the resources of Riverina to great outlets.
which are 300 miles nearer than the great outlet in New South Wales, and we should be asked—"How under these circumstances can you say that the maintenance of your railways is necessary for the development of the resources of Riverina?" Even under Mr. Grant's provision our property would be left to the chance view which might be taken of the construction of these words.

Mr. DOBSON. -
By the High Court.

Mr. REID. -
By any court.

Mr. DOBSON. -
With technical evidence before it.

Mr. REID. -
Exactly. No man in the world will put his property, at all events if it is a large one, into the hands of another person, unless that person gives him a guarantee for its security. If we are given such a guarantee, I will withdraw my opposition to these provisions. If not, I would point out that we cannot go back to our colonies unless we can assure the electors that our railway system will not be ruinously affected by federation.

Mr. HOLDER. -
The experts say that the abolition of these cut-throat rates would largely increase the railway revenue.

Mr. REID. -
Of course, I do not pretend to be an expert, but we have a few experts in New South Wales, and I have had the benefit of their advice. Quite apart from the matter to which my honorable friend refers, and looking at the lines merely as something which we have to keep going, I can assure the honorable gentleman that under these provisions there is no certainty that our railways will not be thrown upon our hands as worthless.

Sir JOHN FORREST. -
How can that be?

Mr. REID. -
I really do not know, except that that is the best possible opinion upon the subject. My right honorable friend is a sort of political Almighty, who is able to solve all these troubles in a moment. Unfortunately, I cannot consult him; he is not my engineer-in-chief for railways. I have to take the advice of the New South Wales experts.

Sir JOHN FORREST. -
Then it must be a very barren country, that is all I can say.
Mr. REID. -
That is not all you can say. You are always saying more than that. For instance, you are always telling us about the revenue and the trade of another bit of country. I am dealing with the trade and the railways of Riverina.

Sir JOHN FORREST. -
That is a fertile country.

Mr. REID. -
Yes, it is. The right honorable member is quite correct, although I believe he has never seen the country.

Sir JOHN FORREST. -
And yet your railways will not pay.

Mr. REID. -
I do not find that my right honorable friend's interjections, are bringing me to any satisfactory point. All I can tell him is that, in spite of his expression of opinion, I am advised in a different direction by those who know something about the working of our railways. I regret that I cannot assume the free and easy mind which my right honorable friend has in regard to this matter. Since the provision of the honorable member (Mr. Grant) is not entirely satisfactory to us, I would infinitely prefer to see the whole matter deferred for more mature consideration. It does not seem to me that we are now any nearer a friendly settlement than we were at first, and I think we all desire a friendly settlement. After what my right honorable friend has said, I am compelled to again state the position of New South Wales. I should be very glad if we could have some more time to look calmly over this matter and confer together, in the hope that we may hit, not upon vague questions to be determined, we do not know how, but upon certain definite rules which will govern the traffic of our railways so far as it affects the interests of sister states. If we could put definite principles into the Constitution instead of leaving all these matters to be settled afterwards, it would be a great improvement. I do not pretend to have any weight as a lawyer, but I say, unhesitatingly, that if the Premier of Victoria were to refer his amendment to three of the leading members of the bar of this colony, together with the amendment of the honorable member (Mr. Higgins), at least two of them would say that his amendment is the less likely to secure the object which he has in view.

Sir GEORGE TURNER. -
The honorable and learned member (Mr. O'Connor) does not say that.

Mr. REID. -
Then you have a good man on your side; but I know some others who are of a contrary opinion. At any rate, the right honorable gentleman will admit
that he has laid down no principle for the guidance of the tribunal.

Mr. GORDON. -

Except that of justice.

Mr. REID. -

I have never met with that principle—at least, not since I have been here.

Mr. GORDON. -

So I gathered from your position.

Mr. REID. -

Quite right; I am a martyr. Surely the honorable gentleman knows to what chaos the affairs of a country would be reduced if you wiped out all its statute law and said to the Judges—"Let justice be your maxim; apply the principle of justice to every case you try." After a year it would be found that it was wiser to lay down definite principles for the guidance of Judges, and infinitely safer, both in the interest of those seeking justice and of those administering it. The advantage of the amendment of the honorable member (Mr. Higgins) was that it laid down a principle.

Mr. HIGGINS. -

Some of us cannot understand why New South Wales should object to the amendment of the Premier of Victoria. It gives you all you want.

Mr. REID. -

I only object to it because its wording is such that any mistake is possible under it, and the odds being two to one against me I will not risk the possibility of a mistake. If I were compelled to take risks, I do not know that I would not as soon take them under these words as under any others that could be devised. But I absolutely object, in the interests of federation and of the good feeling, not only of the people of the colonies but the members of the Federal Parliament, to any more of these burning questions than are absolutely necessary being left to be settled by the Federal Parliament. We have, of course, to leave the Tariff matter to be dealt with by the Parliament, because there is no other tribunal that can deal with that. But with reference to applying the principles of justice, I think it will be better to put a just principle in the Constitution than to leave the matter to chance, because the effect upon the people will be bad enough for us all if we have to say that vital matters are left to chance, which are capable of having definite principles applied to them. Cannot we put in this Constitution one or two principles to meet the case?

Mr. KINGSTON. -

What would you suggest?

Mr. REID. -

I should be happy to confer with my right honorable friend for the
purpose of agreeing upon some principles which we could embody in a
form of words and allow them to be put in the Constitution. Then we
should all know how we stood. I can tell the Convention that this matter
affects the revenue of New South Wales to the extent of about £250,000 a
year—that is to say, the railways which will come within the scope of this
clause would affect our revenue to that extent. We cannot leave great
interests like that in such a position. I do hope that we shall come to an
agreement. It is a difficult matter, and we know that difficult matters are
better fought out after some preliminary consideration than in any other
way. I, simply in the interests of federation, feeling that if matters are left
as they are a very vital position will be left in an unsatisfactory state, assure
my honorable friends of my readiness to assent to any proposition for a
conference upon the subject.

The CHAIRMAN. -

I do not want to unduly limit the debate, but I feel bound to point out that
the clause inserted on the motion of the Right Hon. Sir George Turner is
not now under discussion at all. It has been inserted in the Bill, and no one
has moved to strike it out, which, indeed, could not be done at the present
stage. The only question we have before the committee for discussion now
is the amendment proposed by Mr. Grant.

Mr. GLYNN (South Australia). -

I should like to make an alternative suggestion to the amendment of Mr.
Grant, and I do so because Mr. Reid has said that certain general principles
might be put into the Constitution, and I make the suggestion as a
contribution to that effect. Mr. Reid has said that he knows of no
Constitution in the world in which an attempted interference with internal
traffic, such as has been proposed and inserted at the instigation of the
Victorian representatives, has been attempted. May I remind the
Convention that that has been done in Germany, where the interests in
regard to railways were much more difficult to deal with than the railway
question is here? Prussia, I think, owns something like 15,000 miles of
Government lines, of which it had some at the time of the establishment of
the German Constitution, and a considerable mileage of private lines were
held in Prussia irrespective of the Government lines. But what was done
there? They did not stick to existing interests and say—"You are not to
surrender a single thing." They made a very large federal surrender. I am
not saying this to the prejudice of the position of the representatives of
New South Wales, because I voted with them in the last two divisions in
the interests of what I considered to be fairness, but I make the statement
for the guidance of the Convention; and I should like to refer more
particularily to what has been done in Germany under circumstances
affecting interests far more difficult to deal with than ours. The forty-second article of the German Constitution states that-

The Governments of the federal states bind themselves, in the interest of general commerce, to have the German railways managed as one system, and for this purpose to have all new lines constructed and equipped according to a uniform plan.

Becoming more specific, the forty-fifth article of the Constitution provides-

The empire shall have control over the tariff of charges.

These are very significant words-"control over the tariff of charges"-affecting both Government and private lines. But the Constitution becomes still more specific and more interfering with state and individual rights as it goes on. It provides-

It shall endeavour to cause-

1. Uniform regulations to be speedily introduced on all German railway lines.

2. The tariff to be reduced and made uniform as far as possible, and particularly to secure low long distance rates for the transport of coal, coke, wood, minerals, stone, salt, crude iron, manure, and similar articles, as demanded by the interests of agriculture and industry. It shall endeavour in the first instance to introduce a one pfennig tariff as soon as practicable.

So I say that there is in Germany a limit to private and Government rates on railways which I suppose would be simply shocking to some of the representatives of New South Wales, if embodied to the same extent in this Constitution. But I desire to make a suggestion which I think is really just, is not an interference with New South Wales, arid is fair to Victoria. I say that an amendment of this sort might be put in without reasonable objection by the representatives of either of the states concerned:-

The Parliament, in any law providing in respect of long-distance rates for the execution and maintenance upon the railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce, shall provide for, as far as possible, uniform rates, in proportion to the distance, irrespective of state limits of the place in which the traffic originated from the place of consignment.

The effect of this is, that as the law, as expressed in the first part of the amendment, must be in respect to the trade and commerce under subsection (1) of clause 52, it will not deal with internal traffic; and, again, that the distance can be fixed, not from the terminal point of the railway, where the shipment was made, but from where the traffic originated-from, for instance, the squatter's residence, the wool-shed in fact. How can New
South Wales think that the passage of such an amendment as that will be in
derogation of her state interests, coloured by her federal sense of what we
are going to do? We cannot view these interests merely as state interests,
because the Federal Constitution involves to some extent a subordination
for greater co-ordination of those interests to the welfare of the whole. By
passing such an amendment you will be giving Victoria a fair advantage
from long distance rates by which she is deprived by her geographical
limits. By not limiting the place of consignment to the railway you will put
your rates far beyond the terminal point. It seems to me that this proposal
would be free from the objection which applies to Mr. Grant's amendment.
Undoubtedly it would be a condition under Mr. Grant's amendment that the
legislation should be for the development of the territory of the state. Now,
that is open to two meanings. It would be the subject of contention in the
Federal Parliament, and would, perhaps, have to be referred to the Supreme
Court, where the necessity for evidence upon the point in dispute would be
enormous. But the suggestion I make is absolutely free from that objection.
I think our friends from Victoria could not complain under the suggestion I
have made, nor would there be any ground of complaint on the part of the
representatives of New South Wales.

Sir GEORGE TURNER (Victoria). -

In consequence of the suggestion you have made, sir, as to the matters
we have been discussing being somewhat out of order, I will refrain from
replying to the speech of

my right honorable friend (Mr. Reid) with regard to the various matters he
has dealt with. I will simply say this: So far as I understand, he will not,
under any circumstances, with or without Mr. Grant's amendment, accept
the clause which was passed at my instance yesterday. If he had been
prepared to accept that clause, I should have been prepared to endeavour to
meet him with regard to Mr. Grant's amendment. My objection to this
amendment-

Mr. REID. -

Will you allow me to put in one little addendum?

Sir GEORGE TURNER. -

Yes, if you will allow me to draft it for you.

Mr. REID. -

On my instruction?

Sir GEORGE TURNER. -

I will draft it for you.

Mr. REID. -

On my instruction?
Sir GEORGE TURNER. -
I will draft it satisfactorily to you in three or four words.

Mr. REID. -
Very well.

Sir GEORGE TURNER. -
The proposed addendum to the clause we dealt with yesterday provides that-

Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may be necessary for the development of its territory.

I do not want to prevent the imposition of any rates which are honestly for the development of the territory, but I do not want in these words to have a power where it might be colorably alleged that the rate was for the development of the territory, whereas, in truth and in fact, it was for an entirely different purpose. The great difficulty I see with regard to these words, if we accept them, is this: We have declared that we will leave the Federal Parliament to say whether any rates imposed by a state are undue, unreasonable, or unjust to any state, and, if they be, then there is power to prohibit them. Mr. Grant's amendment puts a limitation that I would not object to as a direction, or an instruction, or a commandment to the Federal Parliament. My honorable friend, I believe, intends it as such, but, as a matter of fact, it is not. The wording, as I have read it, would leave it absolutely open to this course of proceeding: New South Wales might have made a rate which was objected to by Victoria; the Federal Parliament, after full discussion, after hearing all that can be said, after making inquiries, either by a select committee or by an Inter-State Commission, to get the fullest information, might have declared that it was not necessary for the development of its territory, and that therefore it was a bad rate. But there would be nothing to prevent an appeal from that decision to the High Court. The High Court would have a perfect right, it seems to me, under the wording of his amendment, to re-investigate the whole matter, perhaps by a jury—a jury it may be from the state interested, or before the Judges alone, as inquiring into a matter of fact. They would have to go into the whole of the circumstances—the rights of the producers; the rights of the merchants in different colonies; the rights of the railways as railways; and a large number of other questions. And then, on the facts before them, they might say that the two Houses of Parliament were absolutely wrong in the decision they had come to, and that this particular rate was honestly for the development of the territory. They would over-rule, on what seems to me to be clearly not a judicial but a political question, the decision of the Federal Parliament. Can we put into the Constitution any words which will allow that to be done in a matter of this kind?
Mr. REID. -

You admit that it would be a political question to the Federal Parliament.

Sir GEORGE TURNER. -

It would be a political question for the Federation to decide.

Mr. REID. -

Well, the odds are against you, like the Irish jury.

Sir GEORGE TURNER. -

All along, those who have opposed the clause we passed yesterday have had only one objection to raise to it, namely, that they cannot in a matter of such serious importance to New South Wales trust the honesty and justice of the Federal Parliament. That is the one objection they have harped on both yesterday and to-day. To endeavour to meet my honorable friends, if they will come a little of the road to meet us, and do away with that difficulty which I see, I, personally, will raise not the slightest objection to this addendum, if it is made perfectly clear that the question of whether it is or is not for the development of the territory is to be decided by what I believe to be the proper tribunal—the Federal Parliament. Mr. Grant, I understand, intends his amendment to be in that direction. He could never for a moment think that we would give such a power to the High Court as to over-rule the Federal Parliament on pure questions of political facts.

Mr. OCONNOR. -

That is a direction to the Parliament in the first instance.

Sir GEORGE TURNER. -

And no more.

Mr. OCONNOR. -

If Parliament goes outside the lines laid down in the Constitution then the court can interfere.

Sir GEORGE TURNER. -

Then my honorable friend fairly admits the whole of my contention.

Mr. OCONNOR. -

If you strike out the words proposed it would have no value.

Sir GEORGE TURNER. -

The whole effect of this amendment will be to transfer the decision of that important question from the one tribunal to the other—that New South Wales is to have two chances. It is to have a chance in the Federal Parliament, and, having failed there, it is to have a second shot by way of appeal to the High Court. I think the majority of this committee will not agree to that.

Mr. BARTON. -
Do you mean to say that applies to New South Wales alone?

**Sir GEORGE TURNER.** -

Certainly not; I am taking it by way of example. It will apply to all colonies in exactly the same position. New South Wales seems to be anxious to get into that position. The other colonies are not anxious to get into that position. If my honorable friends can see their way to consent to the insertion of a few words so that it may read "by any state as may in the opinion of the Parliament be necessary for the development of its territory," I will not object. I think that is carrying out my own view, that if the rate is honestly for the development of the territory, then a state should, and I believe would, under the clause we have passed, be allowed to carry that rate into effect. I am perfectly content to leave it to the Federal Parliament to say whether it is for the development of the country, or whether it is simply, as was put in some of the amendments to-day, for the development of the traffic.

**Mr. HOWE (South Australia).** -

The vote I gave yesterday was only a tentative vote. I preferred the amendment moved by Sir George Turner to that moved by Mr. Higgins, but now we are placed in this position—that the leader of the Convention and the Premier of New South Wales tell us emphatically that they can, on no conditions, accept the proposition which we carried. If, in lieu of that one, I can get one which appeals to my common sense as reasonable, and which I hope will give satisfaction, perhaps, to New South Wales and also to Victoria, I leave myself free to vote for any further amendment which may be proposed leading to that issue. I notice that the Attorney-General of Victoria, with that acuteness which we all admit he possesses, smiles at the position which I am placing myself in.

**Sir GEORGE TURNER.** -

No. I will tell you what he said.

**Mr. HOWE.** -

I am very glad to find that I have unintentionally done my learned friend an injustice.

**Sir GEORGE TURNER.** -

You said that you were prepared to accept any alteration which would be fair to all the colonies, and he said-'So are we.'
proposition from a business point of view, knowing what politics sometimes lead to, and the votes which sometimes are arrived at, we cannot altogether condemn the action he has taken. The position of New South Wales is peculiar owing to her remotest terr

Mr. ISAACS. -
They will be there to take a personal interest in our affairs.

Mr. HOWE. -
The Attorney-General of Victoria will admit that-

If self the wavering balance shake
'Tis rarely right adjusted.

That is the fear that animates the Premier of New South Wales. The producers should have the blessings of this intercolonial free-trade afforded to them from the centre of Federated Australia to its circumference. But we cannot deny to each state the right to charge differential rates for the purpose of developing its own territory. The difficulty is that, on the long lines of railway belonging to New South Wales, and abutting on to our borders, the differential rate becomes a preferential rate, and we feel it.

Mr. BARTON. -
We have never objected to any preferential rate being stopped.

Mr. HOWE. -
I will put myself in the position of a producer of New South Wales. I will say that I reside somewhere near the Victorian border. New South Wales imposes differential rates to attract trade to Sydney, but the natural port geographically is Melbourne. As a producer under intercolonial free-trade my best market may lie just over the borders of Victoria. I should not like New South Wales to impose a rate which would prohibit me from sending my produce over, say, the 100 or 150 miles of railway which abuts on the Victorian border. I think the producer can claim protection against anything of that kind, and if Mr. Reid or the leader of the Convention will agree to an amendment that will give them such protection, I think I can see my way clear to vote for it. When the right time came, I should then reconsider the vote I gave on Sir George Turner's amendment. I know very well that it is useless for the Convention to insist on a proposition which the representatives of New South Wales tell us they could not recommend to their people. We want federation, and surely we are not going to allow a matter of this kind to part us. Surely, amongst the able body of men assembled here there are brains enough to devise some provision that will be just and acceptable to New South Wales, Victoria, and South Australia. I have drawn out an amendment, which I would put as a proviso to the amendment proposed by the Hon. Mr. O'Connor. It is as follows:-

Provided that no state shall charge an unduly high rate on goods moving
from one state to any part of another state.
   I only throw this out as a suggestion for the consideration of honorable members.

**Sir WILLIAM ZEAL. -**
   You will have to define what an unduly high rate is.

**Mr. HOWE. -**
   That is a matter that the Inter-State Commission would have to determine. It is useless to try to thrust a proposition upon the representatives of New South Wales when such men as our leader and Mr. Reid tell us that they will not recommend any Bill containing such a provision to their people. I presume that they do not make that statement without duly considering the position.

**Mr. BARTON. -**
   It would not make any difference if we did recommend it.

**Mr. HOWE. -**
   No, you are satisfied that your people would not accept it. We must, therefore, try to compromise. Unless we do this we cannot during the present session of the Convention hope to bring the matter to a satisfactory conclusion. If the Premier of South Australia will weigh the words I have uttered, and will apply that great mind and brain of his to solving the problem, I have no doubt that an amendment may be proposed that will meet the case, and will bring the conflicting colonies together.

**Sir GEORGE TURNER (Victoria). -**
   I beg to move-
   That the amendment be amended by the insertion, after "may," of the words "in the opinion of the Parliament."
   Without this alteration I do not think the amendment will have the effect that Mr. Grant desires.

**Mr. GRANT (Tasmania). -**
   I do not know that I can accept the amendment, as it altogether alters the effect of the clause. The clause agreed to on the motion of the Right Hon. Sir George Turner makes the Parliament the originator in all matters of railway rates and regulations. Under my amendment a state must make its regulations in accordance with the laws and regulations previously passed by Parliament.

**Mr. ISAACS. -**
   The question is whether the Parliament or the High Court is to determine whether a rate is made for purposes of development or not.

**Mr. GRANT. -**
In the case of dispute I would rather have the authority of Parliament, which would be a much more satisfactory tribunal than the Supreme Court. I do not, however, think that the words the Right Hon. Sir George Turner proposes to add are necessary, because Parliament would have supreme power in the making of laws and regulations. And if the state made a law or regulation which conflicted with one previously adopted by the Federal Parliament, it would be pronounced by the High Court to be bad and vicious. Therefore, I do not see the necessity for the alteration of my amendment which Sir George Turner now proposes; but, at the same time, I say unreservedly that if the sole object were to deal with such questions, I should certainly prefer the Federal Parliament rather than the High Court.

Mr. BARTON (New South Wales). -

The difference between the two positions is this: If you insert the words of Sir George Turner's amendment, the matter is then in the discretion of the Federal Parliament alone. The Parliament can form any opinion it likes, and is responsible to no one. Whatever opinion it may come to cannot be considered wrong, and although the rate in question may be absolutely necessary, as demonstrated over and over again, the Parliament can refuse to consider it necessary, with this result, that the very evil which we, who were against Sir George Turner's proposal carried yesterday, complained of handing over the management of railways practically to the Parliament of the Commonwealth, while leaving their ownership in the states—would be carried a step further by the amendment which Sir George Turner has just submitted. I do not think that Mr. Grant desires that. I do not think that an amendment designed to prevent what was characterized as the odious operation of Sir George Turner's proposal of yesterday should be frustrated in this way. I do not think it can be Mr. Grant's intention to let that provision be altered so as to assume the same direction as the provision whose evil consequences it was framed to obviate.

Mr. ISAACS. -

If Sir George Turner's amendment is not carried, the Supreme Court could overrule the solemn decision of Parliament on this question.

Mr. BARTON. -

Let my honorable and learned friend apply that principle still further, and then, when Parliament makes a law, we will find him arguing that the High Court ought not to determine the meaning of that law.

Mr. ISAACS. -

Oh, no; that is a very different thing.

Mr. BARTON. -

A very different thing, but, in the opinion of the honorable member, a
difference that does not apply to the construction of this provision.

Mr. ISAACS. -

I would apply the same construction to this provision if it be passed, but I am giving reasons why it should not be passed.

Mr. BARTON. -

If the honorable member says that under this provision, if passed, the High Court could not over-ride the decision of Parliament, my answer to him is that we want to extract that evil from the provision.

Sir GEORGE TURNER. -

Mr. Grant never intended to do that, I am sure.

Mr. BARTON. -

I think he did, because when he was making his speech on his amendment, he said the High Court would be the arbiter in case of dispute. Mr. Grant spoke in favour of leaving the final decision to the High Court. Of course, he may have been a little shaken in his determination by what my right honorable friend advanced, but I hope he will not be, on reconsideration of the matter. I desire to point out to him, and to honorable members generally, that the effect of adopting Sir George Turner's present amendment would be to put into this provision the very evil we complained of in Sir George Turner's proposal of yesterday, and, indeed, it would simply intensify that evil, as far as New South Wales is concerned. Instead of having an ameliorating effect on us, it would simply amount to jumping on us. That is the only phrase to apply to it. I hope we shall find a way out of this difficulty.

Mr. PEACOCK. -

Not by talking about jumping on you.

Mr. BARTON. -

I hope the honorable member will not be too delicate about a matter of that sort, because he is an old parliamentarian, and he knows that in Parliament we use figurative expressions.

Sir GEORGE TURNER. -

He had better not try to jump on you.

Mr. BARTON. -

So long as he gave me an opportunity of reversing the operation, I should not mind so much. I do not think that we shall find any way out of the difficulty by carrying Sir George Turner's present amendment, because I know, of my own knowledge, that it would intensify the difficulty.

Sir GEORGE TURNER. -

If Mr. Grant's amendment is carried without my present amendment it will kill the clause we passed yesterday.

Mr. BARTON. -
I wish it would, but I do not think it will. Mr. Grant's amendment merely amounts to making one exception on the provision which Sir George Turner carried yesterday. It means this: That while Parliament may forbid preferences and discriminations when it deems them to be undue and unreasonable, or unjust to any state, a rate shall not be construed to be undue, unreasonable, or unjust, when made by a state if it is necessary for the development of the territory of that state, and if it applies equally to goods from other states. That is the whole effect it has on Sir George Turner's clause. If it had the effect of completely overturning Sir George Turner's clause, I should be very pleased, but I cannot honestly say that it has more than the effect I have pointed out. If this amendment of Sir George Turner is carried, it simply repeats the trouble in the clause which was passed at the instance of the right honorable gentleman yesterday. Our objection will be intensified by putting similar words in this amendment, because they will deprive the provision of its ameliorating effect, and leave it entirely barren. As far as we who represent New South Wales are concerned, it will be simply offering us dead sea fruit. I hope that better counsels than these will prevail, because I am myself relying on the sense of justice of the whole Convention, and I am not at all with those who think we are trying to take any undue advantage of each other. Gentlemen coming from different colonies cannot be expected to see the same thing through the same pair of spectacles, and, therefore, one can be very well excused for not seeing this matter in the same light as some other members of the Convention. But we may be able to arrive at something which will accommodate our varying views, something which we can take back to our constituents without fear of the rej

Mr. ISAACS. -

If it is not carried, it will leave Victoria in exactly the same position of unfairness that she was in before.

Mr. BARTON. -

I do not think so. How can there be unfairness so long as the rates apply equally to goods coming from other states?

Mr. ISAACS. -

It means a fight before the Supreme Court in every case.

Mr. BARTON. -

Let us just consider that? Is not that an argument which would entitle us to strike out one-half of the provisions of this Bill? When any law is made for the regulation of trade and commerce, if it in any respects exceeds, or is thought to exceed, the authority given by the Constitution, that can be
taken to the High Court, and if any law made under the 37 powers contained in clause 52 exceeds the rights conferred by that clause, is it not also open to be taken to the Supreme Court? And must it not be open for the protection of the individual and the states? The same principle is applied to this clause, but objection is raised here to any matter in dispute being taken to the Supreme Court, when no similar objection is raised in respect of the rest of the provisions of this Constitution. I think that that is enough to dispose of Mr. Isaacs' objection. I hope that this amendment will not be persisted in, because it will be taken in other quarters as rubbing in what was done yesterday. That is the meaning that will be put on it. I am not saying anything in this respect but what I know myself, and I am sure my honorable friends will credit me with telling them what I really believe in this matter. I hope, therefore, that the amendment will not be persisted in. Rather than that should be done, I would like to see a little delay. Rather than that we should have any trouble of the kind, it would be better if some of us were to consider the matter together, and see if we could not adjust our views, so as to do justice amongst the states. I should be quite willing, if a majority of honorable members desire to see this matter considered at a sort of consultation or conference, or desire to see a postponement of the clause until after the new clauses were dealt with. In the meantime, any asperity remaining will have cooled down, and we should be able to smile at each other, as Sir George Turner and myself are smiling at each other now. We have been talking a very long time about this matter, but no time is too long to avert disaster, and nothing but disaster will follow unless some means are taken to bring more closely together those who hold such very doubtful opinions on the subject.

Mr. DOBSON. -

Supposing the whole thing could be decided by the High Court or an Inter-State Commission?

Mr. BARTON. -

If the matter could be decided by the High Court it would have a very different aspect. But instead of leaving it to the High Court, we have left it to Parliament, which might vary as time went on, and might be the scene of combinations for the purpose of expressing what otherwise Parliament would not express.

Sir GEORGE TURNER. -

Would you accept an Inter-State Commission?

Mr. BARTON. -

The clause provides for an Inter-State Commission. If Sir George Turner
will consent to submit a proposition in reference to an Inter-State Commission, showing in what way he proposes to limit the powers which may be conceded to it, and if we could accept that proposition, his clause would no longer be necessary.

Sir GEORGE TURNER. -

I am trying to meet you by departing from my own idea.

Mr. BARTON. -

We will never find a basis of adjustment in Sir George Turner's clause, and no one says that with more reluctance than I do. No one regrets more bitterly than I the amount of time consumed in this debate, but, if we are to have a state of things that will not be disastrous to the desire of every colony for federation, the best plan is to take time for consideration.

Mr. ISAACS. -

There will have to be another Convention, because Sir John Forrest and the Western Australian delegates are going away next week.

Mr. BARTON. -

There only remains the inter-state clause, which could be postponed with the present clause, and there is nothing between but the public debts clause.

Sir GEORGE TURNER. -

That will take some little time.

The CHAIRMAN. -

The clause as amended cannot be postponed. But if all the amendments are withdrawn, they can be proposed by way of new clauses.

Mr. BARTON. -

I take it there will be no objection to that. Sir George Turner's clause stands as having been inserted in the Bill, and the remaining clauses are those of Mr. Grant, Mr. O'Connor, and Mr. Wise.

The CHAIRMAN. -

Mr. Wise's proposal has not been put.

Mr. BARTON. -

Then there are only two proposals before the Chair. I understand Mr. O'Connor and Mr. Grant have no objection to temporarily withdraw their proposals in order that the suggestion of the Chairman may be carried out. It only remains for Sir George Turner to withdraw the few words at present, on the understanding that there will be another opportunity of bringing them forward.

Sir GEORGE TURNER. -

What do you mean by another opportunity?

Mr. BARTON. -

When we consider the new clauses.

Sir JOHN FORREST. -
We will never have the matter in our minds so clearly as we have now.

Mr. PEACOCK. -
Take your beating.

Mr. BARTON. -
Do not talk about taking a beating. No one will deny that I can take a beating as far as it affects my own interests, but, as it affects the whole interests of federation, no man ought to take a beating in the sense my friend suggests. I commend the suggestion of the Chairman, because I believe it will lead to the clause being considered before Sir John Forrest and his colleagues will have to leave; whereas, if we leave it till the recommittal stage, they will have gone to a certainty before the matter can be reached.

The CHAIRMAN. -
May I suggest that Sir George Turner, Mr. Grant, and Mr. O'Connor ask leave to withdraw their amendments, and that then the first part of the clause as originally proposed be inserted in the Bill? We go on then and finish the next three clauses, and then we go back to the reconsideration of clauses.

Mr. BARTON. -
These can be proposed as new clauses at the stage we are approaching. There will be the public debts clause, and a few new clauses between, and that will give time for the reconsideration of this matter.

Sir GEORGE TURNER. -
Mr. Reid has said he will not accept my clause under any circumstances. That being so, I believe from my experience of previous conferences that my proposal would be hopeless.

Mr. BARTON. -
I do not suppose any formal proceeding is necessary. The more formal a proceeding is the less likely is it to be successful. I suggest that the movers of amendments should lay their heads together and see if they cannot agree on something. I am sure nobody would be more willingly to do that than Sir George Turner. Any other course would put the whole matter off until after the Western Australian delegates have left.

Mr. SYMON (South Australia). -
I join in the suggestion that Mr. Barton has made, and only wish to add that, instead of the carrying out of the suggestion resulting in any delay, it will really be a saving of time. If this clause be postponed until after the new clauses, we shall reach the matter sooner and more effectually than if it were left a matter to be dealt with on reconsideration. If the position of New South Wales is unchanged, and they decline to accept Sir George
Turner's amendment, I presume they would have to reconsider this clause.

Mr. BARTON. -
They would have to.

Mr. SYMON. -
I mean we should have a vote arrived at with the accession of the strong feeling we have already seen, whereas, if we calmly and quietly let the thing stand over, not to a fixed time, but till after the new clauses have been dealt with, we may arrive at a discussion of the point tomorrow.

Mr. PEACOCK. -
What will be gained by getting at it tomorrow?

Mr. SYMON. -
We are all anxious to arrive at a conclusion. There is no element, I am sure, of hostile feeling on the subject; at least I hope not. It is a mere question of arriving at a form of words to carry out the intention we all wish to give effect to. I put that as strongly and emphatically as I can. I have stated my own objections to Sir George Turner's amendment, and I do not want to deal with the matter again. I hope we shall arrive at something which will intrust to the Federal Parliament the settlement of this matter on a basis agreeable to every one.

Mr. HOLDER. -
I thought it was arranged that we should sit until half-past five.

Mr. BARTON (New South Wales). -
Since I mentioned half-past five there has been a strong disposition to rise at five, and since then we have risen at five. I therefore do not propose to ask honorable members on this occasion to sit for the extra half-hour. I think it would be very much better to sit until half-past five on those days when we do not sit at night. It is regarded as a severe strain to do so on those days when we have night sittings.

[The Chairman left the chair at two minutes past five o'clock p.m. The committee resumed at thirty-five minutes past seven o'clock p.m.]

Sir JOHN FORREST (Western Australia). -
I shall be sorry if my rising to say a very few words should defer for any length of time coming to, a decision upon this matter. I regret that some arrangement has not been come to which could have been accepted by all, although, probably, not satisfactory to any particular colony. I regret, also, that during the debate we should have had so many expressions of opinion as to the result of the voting which has already taken place, which may unduly influence honorable members. We are here to do the best we can-to apply ourselves to the best of our judgment to the various matters that come before us. It does not assist matters when we hear - shall I call them threats - at any rate, strong expressions that if this does not pass, or that if
something else is passed, there will be a failure of the project upon which we are engaged. I am here at very great inconvenience, and I am very anxious to get away as soon as possible. If I thought for a moment that any decision which we might arrive at, or any decision that we have arrived at, would result in this great work being a failure, I should have very little hesitation in leaving at a very early opportunity. But I take it that is not what we are here for.

We are here to frame the Constitution as best we can. When we see the work completed it will then be time for us to express opinions as to whether it will be acceptable to this or that particular colony. After all, we are in committee now, and if the decisions we arrive at are such that they do not commend themselves to honorable members there will be another opportunity for recommitting the Bill, and bringing up the question which does not meet with our approval. I have followed this debate as an onlooker, taking a great interest in the matter; but still it is not one in which my colony is particularly interested at the present time. It seems to me that a great change has come over this Convention since we met in Adelaide. At that time we had high-sounding, patriotic speeches; we were all desirous of framing a Constitution which would be worthy of this great continent which have a right to call our own. No localism or parochialism was apparent at that time, but, as months have gone by, localism and parochialism have come very largely to the front, especially in one or two matters during our sittings in Melbourne. That is especially the case, I think, with regard to the question now before us. It was an unfortunate circumstance, I think-and I have expressed this opinion before-that the meeting of the Convention in Sydney should have occurred so close to the general elections in Victoria, and I think it is particularly to be regretted that the Convention should be holding its final sitting here almost immediately preceding the general elections in New South Wales. We must all recognise the difficulty that Members of Parliament have in debating questions with the sword of Damocles in the shape of a general election hanging just over their heads. We must therefore take cum grano salis the fears expressed by honorable members who are so close to a general election.

Mr. REID. -
Would you like that to be said of yourself?

Sir JOHN FORREST. -
I do not know; the right honorable member has said a good many things that I did not like.
Mr. REID. -
But would you like that to be said of you?

Sir JOHN FORREST. -
I am saying what I believe, and I think it is reasonable; do not you?

Mr. REID. -
I think it is an unworthy thing to say.

Sir JOHN FORREST. -
Is it not reasonable?

Mr. REID. -
It is reasonable to a certain mind.

Sir JOHN FORREST. -
My friends from Victoria have not taken exception to the statement so far as they are concerned. But if there is anything in what I have said that the right honorable member regards as offensive, I shall at once withdraw it. I am not saying it with that object at all.

Mr. PEACOCK. -
And the right honorable member (Mr. Reid) said something of the same kind in Sydney.

Mr. REID. -
Surely we have a sense of responsibility quite apart from general elections.

Sir GEORGE TURNER. -
Did not you suggest something about the general election in Victoria when we were at Sydney?

Sir JOHN FORREST. -
I think that all through the framing of this Constitution Bill, from the time when it was first drafted and approved of in 1891 up to the present time, all the speeches we have heard have referred to freedom of trade and intercourse between all the colonies as one of the greatest blessings—indeed, the greatest boon—that we would acquire when we become a Federated Continent. We all understood, and I think we have all expressed, that after Australia was federated trade would be allowed to go free and untrammelled—that the barriers of Custom-houses would be removed, and that trade would go in the direction that it thought best—that is, in the direction which was most beneficial, without being trammelled by Tariffs and barriers of Custom-houses.

Mr. REID. -
We are all with you there.

Sir JOHN FORREST. -
Now, we all know that one of the greatest battles that have been going on
for many years between the four colonies which adjoin each other is the battle of the railway tariffs, which has been carried on to an extraordinary height by the desire of each colony to get as much of the trade of its neighbours as possible. We know that legislation in Queensland has been passed with the object of preventing the traffic going to New South Wales, where exceptional advantages were given, and with the view of taking it to Brisbane. We know that Victoria for years past, and at the present time, has given inducements for railway traffic away up to Bourke and all over Riverina, and also that New South Wales has been doing the same thing. And I do not think that I can acquit South Australia of this either. She, too, has been doing her best to get as much trade as possible in the direction of Adelaide. No doubt it has been to the advantage of the producers, but this advantage has been given to them at the expense of the whole community. I do not suppose that the railway revenue has benefited by these low rates, the great object of which has been to draw trade to certain centres—Melbourne, Sydney, Brisbane, and Adelaide. A very unfair competition has been the result of this system. I should like now to refer to a remark made by the Premier of New South Wales in regard to the railways of Riverina. We know that the lines of railways from Junee westward are not very extensive.

**Mr. Reid.** -

One is 160 miles in length.

**Sir John Forrest.** -

That is not a very great distance. The right honorable member has told us over and over again that if the control of these matters is left to the Federal Parliament these railways will be useless. I interjected, because I could not understand that reasoning, that this was a fertile country. It cannot be said of a fertile country which has good rivers running through it that any railway there will be idle. Surely railways running through fertile country would not be useless, whatever laws were passed.

**Mr. Reid.** -

If a railway does not pay working expenses it is a bad line.

**Sir John Forrest.** -

These railways will carry the produce of the district, whether it goes to Sydney or whether it comes to Melbourne. All the produce that is carried upon them now will continue to be carried on them for all time.

**Mr. Reid.** -

I am sorry that I did not let you have a chat with our Chief Commissioner for Railways.

**Sir John Forrest.** -

I have looked at the map, and I can see that all the traffic from the
Riverina district goes to Junee, and from there north to Sydney or south to Melbourne. The traffic will continue to travel over these railways even if the Federal Parliament is empowered to say to the New South Wales Government: "You shall not carry produce at rates which injure another colony." The Premier of New South Wales said that the Convention had refused to take the responsibility of the railways, and that, therefore, we must not in any way interfere with their management. I interjected: "Not for that reason." The reason why I did not vote for the taking over of the railways was because I regard the railways of Western Australia—and I think the same remark will apply to the railways of all the colonies—as the life-blood of the community. They afford means of transit and open up territory. What is more, they are, as a rule, great producers of revenue. I do not know of any other colony, with the exception perhaps of one, where the state railways are not a great asset. I know that in our colony the railways are one of our great revenue-producing instruments. But that was not the reason why I voted against the proposal. I do not think any one voted against it because he was afraid of the responsibility of taking over the railways. As self-supporting and reproductive works, they would be amongst the best assets the Commonwealth could have. Taking the whole of the railways of Australia, they are not only self-supporting, but also reproductive, and, therefore, my honorable friend was altogether wrong when he said that we were afraid for the Commonwealth to take over responsibility for the railways. I would vote tomorrow for taking over all the railways of the colonies, and not be afraid of the responsibility; but the reason why I voted against the provision was different altogether. We use the railways for opening up our territory, and giving a means of transit to our colonists, and we desire to extend them in any way we wish, at the time and in the direction where they are required, untrammelled by any other authority. Now, it occurs to me that, with all the provisions in this Bill, and all the statements in our speeches in regard to trade and intercourse throughout the Commonwealth being free, we should be careful not to allow barriers just as severe to be erected in regard to our railways; because, if we allowed the railways to remain altogether in the hands of the states without any control by the Commonwealth, it seems to me that our boast of free trade and intercourse between all parts of the Commonwealth would be merely idle words.

Mr. REID. -

But the objection is to too-free-trade and intercourse. That is the trouble here.

Sir JOHN FORREST. -
I think both high rates and low rates may be used in the direction of interfering with free trade and intercourse.

Mr. REID. -
Still you cannot say that low rates are not in the direction of free-dom of intercourse.

Sir JOHN FORREST. -
I have heard of a war of railway tariffs that would be just as bad as a war of customs duties, and that would injure the people, if not individually, at all events collectively, just as much as no doubt such tariffs have done in the past. I have no doubt that those persons who are very conversant with the management of railways—my honorable friend (Mr. Grant) for instance, if he had a free hand in one of these great colonies—would be able to make railway rates which would injure an adjoining state just as he chose. I am quite sure that Mr. Grant's ingenuity would be sufficient to make low rates injure an adjoining state as much as high customs duties would injure it. I do not propose to say anything more. I think if we are to have this free intercourse for trade and commerce throughout the Commonwealth, we should provide for it in the Bill. My honorable friend, the leader of the Convention, has told us that he does not want anything but the trade and commerce sub-section of clause 52, which he considers to be sufficient. Well, if it be sufficient to prevent this interference of one state to the injury of another state, why not make it even more clear?

Mr. BARTON. -
Because it is clear enough already.

Sir JOHN FORREST. -
We have lawyers in the Convention who differ with regard to that point. I am not competent to give an opinion.

Mr. BARTON. -
I do not think the lawyers really differ as to that.

Sir JOHN FORREST. -
Surely if it be the case that the sub-section in question is sufficient, there cannot be any objection to making it even clearer. I cannot understand why there should be any objection to the provision moved by my right honorable friend (Sir George Turner). It simply says—"You shall trust the Federal Parliament to do what is right in this matter, and if a state is acting unfairly towards another state the Federal Parliament will come in." The Federal Parliament will not have any power of initiative; it will not go out and meddle with the business of other people till a case is brought before it. It will not have any primary jurisdiction, but it will have to act when a complaint is made.
Mr. BARTON. -
Did you say that the Federal Parliament will not have any primary jurisdiction?

Sir JOHN FORREST. -
I mean without a complaint being made.

Mr. BARTON. -
Yes, it will; it can do as it likes.

Sir JOHN FORREST. -
I do not think so.

Mr. BARTON. -
Yes, it can.

Sir JOHN FORREST. -

Mr. BARTON. -
The High Court cannot act unless complaint is made, but the Parliament can act whenever it likes.

Sir EDWARD BRADDON. -
Only on motion.

Sir JOHN FORREST. -
A Parliament is generally glad to let sleeping dogs lie, and I do not think it is very likely that the Federal Parliament will move unless there is a desire that it should. We have heard all through this Convention—at Adelaide, Sydney, and Melbourne—that we should have faith in the future, that we should trust the Federal Parliament, knowing that it will do right, and that it will be just; in fact, we have handed over to the Federal Parliament the complete control of our finances. Every honorable member who is intrusted with the management of the financial affairs of a colony has handed over the one great wealth producer we have absolutely to the Federal Parliament, and trusted to its sense of justice to give us back what we are entitled to. Surely we are taking a greater responsibility in handing over our great revenue producer—the Customs—to the Federal Parliament than the right honorable gentleman is in handing over to that body the right to say—"You are acting unjustly to your neighbour, and we shall not allow you to do so."

Mr. REID. -
In that case we do not put in the special words Sir George Turner is putting in here. We put it on the broadest possible lines for them to decide, and we are willing to do that. It is these special words which are being put in that we object to.

Sir JOHN FORREST. -
All I want is that in case of a dispute between two states the Federal Parliament shall have the power to say let right be done. Any one who objects to that proposition, and expects us to declare that there should be no power to say that right shall be done in regard to warring railway tariffs is not asking us to agree to what is reasonable. The Treasurers who are willing to hand over the Customs revenue to the Federal Parliament are, I think, taking upon themselves a greater load of responsibility and a greater burden than the right honorable gentleman is doing when he hands over to the Federal Parliament simply the right to say-"Let justice be done in the case of a dispute," and to decide how justice is to be done. I hope that the debate on this matter will come to a conclusion. I shall have no hesitation in giving my vote. I regret very much that so different a tone seems to be actuating honorable members at the present time in regard to the colonies they represent from that which actuated them months ago. I think that self-interest is more rampant now than it was, that we are trying to bring forward dangers which do not exist, and which never will exist. The power in the Federal Parliament to say that right shall be done will be sufficient, and you will find that there will be very little reason for complaint. I have heard, and I believe it is generally admitted, that this war of tariffs would have been decided long ago by the various engineering authorities if it had not been for the political authorities. What is the desire in creating this Commonwealth? The desire is to have free-trade unrestricted, that it shall go its own course. If that is so, I cannot see what there is to fear. Each state will manage its own business in its own way.

Mr. FRASER. -

Its own railways?

Sir JOHN FORREST. -

Yes, so long as in its arrangements it does not do injustice to any other state. If it does, that state will have a right to complain to the Federal Parliament, who will be able to deal with the matter. I prefer that procedure to an appeal to the High Court. We shall probably have a provision in the Constitution giving a right of appeal to the Privy Council, and these matters will then have to be determined not only by the High Court, but also by the Privy Council. It has been said that the Federal Parliament will be a tainted tribunal. I was surprised to hear the Right Hon. Mr. Reid use such an expression. If I had time I could refer to the magnificent oration he gave us in Adelaide, and to speeches he delivered subsequently, in which he extolled up to the height of heaven almost the wisdom and the patriotism of the Federal Parliament. Now he tells us it will be a tainted
tribunal, and he seems to think that the determination of these matters will rest with the representatives of Victoria and South Australia. Where will the representatives of Western Australia and Tasmania be? They will occupy an independent position, and will they not be able to judge between the combatants and to use their influence on the side of justice? What I regret most in connexion with today's debates is the expression of the opinion that the Federal Parliament will be biased, and that it cannot be trusted to do justice in a dispute as to a railway rate between one colony and another. I have no forebodings of that sort myself. I think it is the tribunal that will give the most wise and the most speedy decision, and I shall continue to support Sir George Turner's clause. I am against the provisions of that clause being in any way altered so as to make them practically of no effect.

Mr. HOLDER (South Australia). -

So much has been said on this question that it is hopeless for any of us to expect to say anything new. At the same time, two arguments have been used against the proposal carried by the Convention, and which it is proposed now to extend, that I want to reply to. One of these arguments is that that proposal might seriously diminish the revenue of the states concerned. It is said that we want to take over the railways of certain colonies, and that in doing so we might strike a serious blow at the finances of those colonies. It is also said that the railway experts are entirely against the course which this Convention has favoured. What do they say? I will quote the very railway expert who is chiefly relied on by the Right Hon. the Premier of New South Wales as supporting his argument. That officer, Mr. Oliver, when reporting to his Government, under date 7th May, 1895, said, in reference to the proposed cessation of these cut-throat rates and the acceptance of an agreement by the colonies interested:-

Whether this be so or not-

That is whether or not the steps then being taken resulted from previous correspondence originated by New South Wales.

it is highly satisfactory that the conference took place, as if the agreement which has been arrived at is finally confirmed, all complications in connexion with the traffic in question will be removed, each colony will receive reasonable payment for services rendered, and the producers and consumers will in like manner pay fair and reasonable railway rates.

So that there it is set out by the very person on whom Mr. Reid chiefly relies that the result of the abolition of these cut-throat rates will be that the railways will receive an increased, and not a diminished, revenue.

Mr. REID. -

You the basis of a certain agreement, which you are not giving us, and
which was not accepted.

Mr. HOLDER. -

I meant to speak only a very short time; but I shall have to occupy a longer period if these interjections continue, because I must meet them. The agreement fell through because it was objected to by Victoria, but now Victoria, from having sought, on Tuesday, to have a free hand to maintain this strife, has, yesterday and to-day, happily changed its attitude, and, instead of wishing to have a free hand to maintain the fight, Victoria is willing that both sides shall lay down their weapons. Therefore, the honorable member's ground of objection falls entirely away. It has been said that we are not giving this agreement. Well, the agreement was arrived at by representatives of the Railway departments of all the colonies, and I have no doubt that it was an eminently fair agreement.

Mr. FRASER. -

That is denied; I have heard it denied.

Mr. HOLDER. -

This is the first time that I have heard that denied. However, I will start a little further back, and I will say that, as far as the railways are concerned, it was a good and fair agreement, and the only persons who could find any fault with it were those who had more in view the political aspect of the question, and perhaps the attracting of trade and commerce to the city of Melbourne as against the city of Sydney, or to the city of Sydney as against the city of Melbourne. From the railway point of view, as it is from that point of view that the objection to this scheme is being raised, and, therefore, it is from that point of view that I am answering it, the agreement was an eminently fair agreement, one which it was very desirable should be given effect to, and I do not believe that the Federal Parliament, or any authority it might constitute to deal with this matter, would be less fair than that conference of railway experts It would have at its disposal similar railway experts' opinions, and would no doubt adopt, in substance, the agreement then arrived at. Therefore, on the authority on which Mr. Reid chiefly relies, I say that that agreement, or anything similar to it, would have the effect of increasing and not diminishing the railway revenue in New South Wales as well as in the other colonies, and would result, as Mr. Oliver says in that minute, in reasonable payments to the railways for services rendered. In the same minute, a little further on, I read this sentence:-

While it is possible that the New South Wales railways cannot carry more wool, or, perhaps, quite so much, a better income will be derived.
Sir WILLIAM ZEAL. -
    Hear, hear; that is the point.
Mr. HOLDER. -
    This statement refers to the direct result of the agreement, so that we have Mr. Oliver's authority for saying that absolutely, under any such agreement as this, the benefit to the railways will be very large owing to the increased revenue to be derived. That is enough on that head. I come next to the opinions locally on this question, as given in the Sydney Daily Telegraph of Tuesday last. That paper is at the head-quarters of the feeling of opposition alleged to exist to the acceptance by New South Wales of a Constitution in which any of these proposals are included.
Mr. REID. -
    The Daily Telegraph is strongly in favour of federalizing the railways.
Mr. HOLDER. -
    The paper is not discussing the question of federalizing the railways.
Mr. HIGGINS. -
    Is the article signed or is it a leader?
Mr. HOLDER. -
    It is a leader in the Daily Telegraph of Tuesday last. I suppose the arguments in the article are so strong that it is desired to discount them before I read them.
Mr. REID. -
    I have not read the arguments, but I have no doubt they are strong. The leaders in the Daily Telegraph are always good leaders.
Mr. HOLDER. -
    I will read the arguments in the article, and no doubt their weight and importance will have due effect. After referring to considerable discrepancies in the rates made with a view to attracting trade, we have the words:-
    Of course, some persons and interests have benefited by this policy. It may, indeed, be thought that Sydney, generally speaking, has benefited by it.

I direct particular attention to the next words:-
    But the cost to New South Wales has been very much greater than the gain to any part of it, even if the gain could have fairly been conferred.

The writer, who is referring to elaborate statistics on which his arguments are based, shows that, even taking Sydney into consideration, and the benefits that may result from the concentration of trade there, the loss to New South Wales is much greater than the gain to any part of New South Wales. We want to remove the loss, and allow the gain to swallow up any
loss to which the present system leads. I read further:-

Some tables quoted in the Leader illustrate the suicidal folly of the attempt which has been made by our railway administrators to make water run up hill, so to speak.

That is precisely what those patent arrangements for the railway traffic do. They take the traffic in the opposite direction from the one in which it ought to go. This influential journal, which is the paper supporting the Premier of New South Wales, and is one of the leading and one of the most important and influential journals, takes the very same ground that we have been taking in the Co.

That is a very frank admission that, bad as Victoria is—and Victoria is shockingly bad—New South Wales is worse still. I must read the closing few sentences of the article, which seem to me very powerful indeed:-

It is regrettable that the exigencies of railway administration should involve an infraction of it—

That is of the policy of freedom of trade.

and establish a system which can only result in public loss and inter-state friction and ill-will.

These are very strong words, and we could not have better. This has been prevalent all these years, but the Convention, if it is worth anything, will put an end to it.

Mr. REID. -

You never read to us the

Wagga Express on the river question.

Mr. HOLDER. -

The article proceeds:-

It is impossible that such a state of things should long endure, and for no reason is federation more desirable than that it will abolish political boundaries within Australia,—

That is the very thing we have been fighting for.

and permit the trade of every district to find its most suitable outlet.

Could you have anything better than that?

Sir WILLIAM ZEAL. -

What paper is that?

Mr. HOLDER. -

The Sydney Daily Telegraph of Tuesday last. One might think that the writer of the article had been sitting here during the last few days, and, having heard the arguments used, had gone back to his office and summarized in very excellent form the strongest arguments used by those who have taken the same side as I and others have taken against those railway hostilities. I think that is enough on that point. I have replied to the
two arguments which I think have had most weight with the Convention, and I now pass on to another phase. I do not think we ought to postpone this matter until we settle it. It will never be fresher in our minds than it is now; we will never be more seised of the facts than we are now. The only thing we could do by an adjournment would be to give further time for whipping. If there is any place or business concerning which whipping is unworthy it is a Convention such as this. But I want to take higher ground than that. I want to make an appeal to the Convention. There are 50 of us here who have the grandest opportunity that any men in Australia have ever yet had. We have been elected, most of us directly, and others indirectly, by the people of these colonies to do a certain work. I ask whether this Convention will separate without having done that work for which we were sent here; without having done it in such a way as that it is likely to meet with acceptance by those we represent? If we separate without having framed a Constitution which is fair and just to all, a Constitution which, at least, we 50 who are here will be prepared to advocate, we shall stand confessed as unworthy of the trust reposed in us, and unequal to the task which we have been called to perform.

Mr. FRASER. - What about trying to do too much?

Mr. HOLDER. - I do not think we are trying to do too much. I should like to know what that remark bears upon. If my honorable friend means that we are trying to do too much in putting an end to this railway war, I say that is not too much, and that a Federation which contemplates, as some desire it should, the maintenance of the railway war is a Federation not worthy of the name.

Mr. HIGGINS. - It is trying to do too much to have a Federation without ending this war.

Mr. HOLDER. - What is proposed is not even an armed truce. What is desired by those who wish us to interfere in no way with this railway war is that the several colonies shall maintain in full activity the most powerful engine against each other that they can possibly wield, that is, the railways, to injure each other. Are we going to form a Federation which will leave every colony with its hand on its neighbour's throat? That is not such a Constitution as we could recommend to the acceptance of our constituents. We shall not go far enough if we do not go sufficiently far to prevent the maintenance of that unfriendly unbrotherly attitude. I am making an appeal to the Convention-I am appealing to honorable members-that we should not close
our proceedings until we frame a Constitution that we who are here, at least, can recommend; that we should not separate until we frame a Constitution which shows every probability of being accepted by our constituents. If the people fail to accept the Constitution our work will be in vain, and we shall have our work disavowed by those who have sent us here as their agents. We cannot contemplate that possibility; we must meet each other in some way. We must compromise this question in such a way as to have peace with honour, not with dishonour to any one, but peace with honour to all, and yet the right thing be done for the final abolition of these unfriendly border rates. It may be fairly argued, after these remarks, that I should suggest some way out of the difficulty. I am loath indeed to try and make a suggestion of this kind, because I know how irreconcilable is the attitude taken up by some persons during the last two and a half days. I am sorry it has been so irreconcilable. I do not think that personal comments or the impugning of motives is the way by which, in a Convention like this, we are likely to draw closer or bring the colonies nearer. We must recollect that when we speak heated words, they are published in the press and go before our electors.

Mr. REID. -
I wish the honorable member would bring up a cool southerly.

Mr. HOLDER. -
I hope we can rise superior to the circumstances of weather.

Mr. REID. -
I cannot; I am not thin enough.

Mr. OCONNOR. -
We ought to strike an average between the two honorable members.

Mr. HOLDER. -
If that would enable the honorable member to compromise this difficulty, I could earnestly wish that he were thinner; but we must take things as they are. We shall surely prove ourselves able even to rise above such weather as we are now enduring. However, I shall make a suggestion. It is that, while the Premier of New South Wales should abandon his antagonism to the parliamentary decision of this question, and abandon his advocacy of the High Court as the only means of a solution, the other party should abandon also the attitude they have taken up. It seems to me there are objections to an appeal to the High Court, and that the Parliament is a somewhat cumbrous body to deal with such a question. It may not be sitting more than three or five months in a year, at any rate, after the first session, and it is a very cumbrous body to which to refer such complicated and difficult questions as railway rates and the questions that will be raised...
constantly all the year round. I am not going to assent to the validity of the argument of the Premier of New South Wales as to its being a tainted or unworthy body; it will be the highest court of appeal in this country on all important political questions, and surely we ought not to discount it before it comes into being by any such remarks. At the same time, I do admit the force of the argument that it is a cumbersome and unwieldy body to deal with such questions. On the other hand, if there is one thing which the constituents we represent dislike more than another it is the referring of so many grave questions to the High Court. It is inseparable from any scheme of federation that the High Court shall be in many things superior to the Parliament elected by the people. It is nauseous to many people to find that not only those matters in which it must be superior to the Parliament—matters connected with the federal compact and the deed of partnership—but also that many matters of public policy, such as railway questions, upon which certainly this Convention is competent to lay down rules, should be referred to this High Court. It is also to be considered that when we bring all these matters to the arbitrament of the High Court it will involve enormous cost, and we have also to remember, as Mr. Howe has remarked, that it will involve great delay. If we refer all these railway and other matters to the High Court, I am afraid we shall leave things in about as unsatisfactory a condition as they can possibly be left in. But there is a body which will be judicial in its nature, a body which will, I hope, consist, as an honorable member suggests, of practical men. I hope it will be a body, perhaps, not constituted as Mr. Grant wants it to be, of the Railways Commissioners of the colonies, but certainly constituted of men who understand railway business, and who, from their high position and responsible offices, will be almost a High Court themselves, with the extra advantage of being absolutely free from legal technicalities, and possessed of practical knowledge. That is a body to which we can refer all these matters. If we do that, I think we shall then have done our best; we shall not merely have made a compromise that will satisfy nobody. We shall have done the best, and we shall have done better than if we had referred these matters to the High Court or to Parliament. We shall have referred them to that body most able to deal with them, and most freely and cheaply accessible to those who will have to bring questions under their notice. I would suggest that instead of inserting the words "in the opinion of the Parliament" in the amendment of the honorable member (Mr. Grant), we should insert the words "in the opinion of the Inter-State Commission." If this compromise is accepted, I would also suggest the substitution of Inter-State Commission for Parliament in the clause which was inserted in the Bill upon the motion of the Premier of Victoria.
Mr. HIGGINS. -
That clause has already been dealt with.

Mr. HOLDER. -
Yes, but it could be amended upon recommittal. The whole matter of what rates were fair and what rates were unfair, of what rates did, and what rates did not, tend to the development of territory, would thus be referred to a board of experts who, being acquainted with all the facts of the case, would be in a much better position than either the

Parliament or the High Court to decide these matters. I make this suggestion, and I shall be sorry if it comes to nothing. On the other hand, I shall be very glad if it allows those who have been fighting so long some common foot-hold of agreement.

Mr. HIGGINS (Victoria). -

Before dividing I wish to define my position in regard to this amendment. I hope that we shall have a division to-night. The difference between us is not a matter of drafting, it is a matter of principle; and I think it will help to an ultimate settlement to know how the numbers stand. I thoroughly agree with the last speaker that we should not postpone our decision any longer. We have been discussing the matter for days, we have had amendment after amendment proposed, and it is of no use to continue discussions about forms of words when there is a matter of substance upon which we cannot agree. The matter of substance is as to whether there shall be any attempt, in however slight a degree, to interfere with internecine tariff wars. I intend to vote for the amendment of the honorable member (Mr. Grant), and against Sir George Turner's amendment of the amendment. I intend to vote for Mr. Grant's amendment, because it carries with it the principle I have advocated that each state, if the railways are not federalized, should have perfect liberty to make developmental rates, and to develop its own territory in its own way, provided that it does not overstep a certain line. I shall also vote for the amendment because of the reflex action which it will have upon Sir George Turner's clause. It may have the effect of giving a wholesome construction to that clause which it has not got at the present time. I have said before that that clause--and I have looked at it carefully--allows New South Wales to impose any differential rates which she likes, and to any extent, while it takes away from Victoria the power to impose preferential rates. The more I think of it, and the more I speak to others about it, the more I am convinced that that is the position; and I find that others are coming round to my view. Mr. Grant proposes to, insert these words:--

Nothing in this Constitution shall prevent the imposition of such railway
rates by any states as may be necessary for the development of its territory, if such rates apply equally to the goods of other states.

Nothing in the Constitution is to affect devel

Mr. REID. -

Surely the Parliament will have more important work to do than that of acting as an Inter-State Commission!

Mr. HIGGINS. -

I think the right honorable gentleman is right. Strongly as I feel the need for federal control in regard to these rates, I do not want to interfere with a state in the development of its territory. The effect, however, of inserting the words "in the opinion of the Parliament" will be that, before New South Wales, say, can impose a developmental rate, she will have to ask for the opinion of the Parliament in regard to it. If we concede to New South Wales the right to make honest developmental rates—rates which are not imposed to attract trade from other colonies, we should not compel her to go cap in hand to the Federal Parliament for its opinion upon those rates. Looked at practically the proposal is absurd. You must leave the colony a free hand in the imposition of rates for developmental purposes, provided that a certain line is not overstepped. That line is purely a line of intention.

Mr. KINGSTON. -

Will not New South Wales be free until the Parliament has legislated?

Mr. HIGGINS. -

I think not, and I will tell you why. How would a Government, or how would Railways Commissioners, be safe in imposing developmental rates before they knew that the Federal Parliament would consider those rates honest developmental rates? Upon this ground I shall oppose the amendment of Sir George Turner. I am strongly of the opinion of the last speaker that a board of experts would be the most useful tribunal to deal with questions of fact in regard to the action of rates, and it was to carry into effect that opinion that I framed my amendment, which has been laid on one side for the present. My idea was that the Inter-State Commission, as a jury of experts, would decide whether a rate was an honest developmental rate, and, if it was, it would allow it. I am as willing as anybody is to trust the Federal Parliament; but a member speaking in his place in Parliament knows that his constituents are watching him, and members are more likely to vote for what is the interest of their constituents than for what is merely and absolutely just. I take it that in these discussions we are pursued by the Nemesis of the false principles which we have embodied in the Constitution in regard to the Federal
Parliament. New South Wales would be much more willing to trust her railways to the Federal Parliament if she knew that she would have a proper representation there. I also, in conclusion, would say this: I strongly deprecate—and I speak as an independent member of this Convention—the strong expressions which have been used by our premiers in saying that we may as well throw up the idea of federation. I feel that the matter under discussion is one of great importance, but we have had matters before us that are ten times more important than this. It is our duty never to nail the flag to the mast and say that we will give up the idea of federation if this thing or that is not carried. We must wait until we see the Bill as a whole. I was very sorry to see the Premier of our colony—which is as strongly federalist in its convictions as any colony in the group-following (if I may say with respect) the bad lead set by the Premier of New South Wales, and saying that if what he contends for is not granted Victoria will not come in. We all have to accept defeats in the course of these discussions, and I hope that we shall not have that carpet-bag argument used any more, but shall wait until we can gravely study the Bill as a whole and see if we can possibly accept it.

Mr. OCONNOR (New South Wales).—I propose, as the mover of the amendment now under discussion, to say a few words in answer to what has been said with regard to it.

Mr. ISAACS (Victoria).—If my honorable and learned friend (Mr. O'Connor) intends his speech as a reply upon the debate, I should like to say a few words before the discussion is closed. I would like to point out one or two reasons why we should agree to the amendment of Sir George Turner. I was very much struck—and I wish to acknowledge the point at the earliest possible moment—by a very important reminder which we had from Sir John Forrest in the course of this debate. It had been well pointed out previously—I attempted to do so myself, and at another stage it was done more effectually by Sir George Turner—what an absurd position we shall be getting into by refusing to accept the amendment which he has suggested, and by merely voting for Mr. Grant's amendment. It was well observed that if Mr. Grant's amendment were adopted we might find ourselves in this position: That one state might impose a railway regulation—in good faith, no doubt—to which another state might—with equal good faith and honesty of purpose—object as being unfair and unjust to the complaining state. Under the clause which my right honorable friend the Premier of Victoria carried, a complaint could then be made to the Federal Parliament to act as arbitrator in the matter and annul
that provision. The Parliament—I cannot for an instant believe that it would be the tainted tribunal which we have heard so much about—

Mr. REID. -

There is no taint about it. It would be honest self-interest. There is no taint in honest self-interest.

Mr. ISAACS. -

I am using the very word which was used here; the term is not my own.

Mr. REID. -

If you have upon a jury a man who had an interest in the case, the term you might use in regard to him would be that he was tainted with self-interest, although he might at the same time be an honest man.

Mr. ISAACS. -

But the Federal Parliament will be "tainted" with self-interest to that extent in regard to pretty well every question that comes before it; that is to say, the members will have the interest of their several states at heart.

Mr. REID. -

There is the same taint in regard to state rights, although the representatives of the smaller states are not prepared to give them up.

Mr. ISAACS. -

We will ask the Federal Parliament to decide between the conflicting interests of rival states. Very well, what does it do? It investigates the matter.

Mr. CARRUTHERS. -

How?

Mr. ISAACS. -

Honestly, we assume, by means of the Inter-State Commission, or any other means it chooses to employ. It examines merchants, agriculturists, pastoralists, railway experts, and brings to the test of the evidence it procures all that human science and skill and experience can give to it. And then the Parliament decides the question.

Mr. CARRUTHERS. -

How?

Mr. ISAACS. -

Having come to the conclusion, it decides, we will say, to annul the regulation in question.

Mr. CARRUTHERS. -

How decide it; by an Act?

Mr. ISAACS. -

By an Act of Parliament; and having passed an Act of Parliament, under the amendment of my honorable friend (Mr. Grant), unless altered by the proposal put forward by my right honorable friend (Sir George Turner), the
state whose regulation had just been annulled could apply to the Supreme Court and ask for a reversal of the solemn decision given by the Federal Parliament. I should say in passing that the threat of a possible appeal to the Supreme Court would no doubt be held over the head of the Parliament during the debate on the very question, and the Parliament, having given great attention to the consideration of the question would be open to the ignominy of having its decision reviewed by the Supreme Court, which would have evidence brought before it to induce it to reverse the Parliament's decision. What a miserable position to which to reduce the highest court of all-the Parliament! And what a position in which to place the Supreme Court! The court would find itself compelled, as a jury, to come to a decision of its own on these very complicated questions involving political considerations, and we should have the Supreme Court in conflict with the Parliament of the Commonwealth, not on questions of law, but on questions of fact, requiring for their determination the multitudinous considerations I referred to yesterday.

Mr. DOBSON. -

No, upon a principle which ought to be engrafted here.

Mr. ISAACS. -

Will my honorable friend say that he can take up a document like an Act of Parliament, and decide on the mere words-the cold type-he sees before him, that a measure expressed within the four corners of such a document is or is not beneficial to the development of the country? Would he leave out of consideration all the evidence of commercial and social life around him, and would he carry a question of party warfare or political struggle on to the floor of the very temple of justice itself? It seems to me absurd to believe such a thing.

Mr. DOBSON. -

It is merely a question of interpreting the Constitution.

Mr. ISAACS. -

But Sir John Forrest carried the matter to its legitimate conclusion, and what he pointed out was that, not only could this very matter of the development of a state be appealed from from the Federal Parliament to the Federal Court, but under our Constitution (as some honorable members desire it to be), the question might be carried to the Privy Council. Now, imagine the people of the Federation having a question of the development of a state, a political question, taken, for the first time in British jurisprudence, to be determined by the Privy Council! Mr. Grant's amendment is admitted to be such a one as would enable that course to be adopted, and the state would have an opportunity to avail itself of the
permission granted by the Constitution. The position has only to be studied

to be objected to. And unless we wish to depart from the even course

which has been adopted in this Constitution, and all other Constitutions, of

referring to the Supreme Court matters of law, and matters of law only, and

keeping zealously and earnestly from its determination questions of

politics, we shall be making a very grave mistake indeed. There is not a

single instance to be found in this Constitution or any other of a parallel

nature. I admit at once that if you put this clause in, it will be a matter for

the court to determine, but I am urging reasons why you should not put it

in. Where do you get, in the whole of this Constitution, any reference of a

political nature to the High Court! There is a dividing line drawn in many

places where the states are told-"You are to have your powers intact up to a

certain point, and where the Federation is told-"You have your powers

from a certain point," and a court may determine where that line exists in a

large number of cases. If we refer to the decisions in America, we will find

them determined, not upon such evidence as will be necessary in the case

we are now considering, but upon the words of an Act of Parliament, upon

a decision of the court itself, and upon legal arguments addressed to the

tribunal. How can such a question as we are now contemplating be
determined in that way? I should say that we would be putting a strain on

the Constitution which it would be almost impossible to bear. And if we

were told that the Federal Parliament was over-ruled in a question of

internal policy, a question of a political nature, by, first, the High Court,

and then the Privy Council, I think the position would be intolerable. It has

been said that the railways are not the property of the Commonwealth, and

that therefore it should not be given this negative power of overruling any

regulation having the effect of oppressing another state. Let us take the

course of commerce. The commerce of a state is not the property of the

Commonwealth, and yet, although we do not give the Commonwealth the

power of regulating the commerce of a state, we give to it the power of

preventing one state in its commerce from oppressing any other state. We

give to the Commonwealth the over-ruuling power of preventing barriers

being erected, and preventing one state from doing an injustice to the

commerce of another state. In the one instance we give it to the court,
because a court can say from the four corners of an Act of Parliament
whether its necessary effect is to obstruct commerce. But when you are
told about a railway regulation, and you are asked to say whether it is
calculated to develop the resources of a state, a very different set of

considerations arise, and you cannot tell from the mere consideration of

these words whether they are calculated to develop, on the whole, the

resources of the state. Therefore, if the court has to consider whether it
would be

beneficial from a railway point of view and injurious from an agricultural point of view, more or less useful from a pastoral point of view, more or less beneficial from a mining point of view, and to weigh all the advantages and to sum up the difficulties, and then come to its conclusion as to whether, on the whole, it is calculated to develop the resources of the state, it is idle to put it on the plane of the duties of the High Court or refer the question to a judicial power at all. The more it is thought over the more, I think, we can dismiss it from our consideration. it astonishes me very much to hear some of the arguments from my friends from South Australia in support of this. It is only the other day we heard, with masterful eloquence and almost unexampled irony, the lash laid round the proposal of South Australia with regard to the rivers. We heard them told that it was a mere sordid question of South Australian barges, and now we find some of these honorable gentlemen willing to submit to the argument in favour of New South Wales bales and bullocks. The very point they failed to gain for South Australian barges they will yield to New South Wales bales and bullocks. Victoria has never held out threats, and I am sure never will; but we have heard a good deal of-I will not say threats, but uncommonly near to threats-from some of our friends from other colonies; and they are perfectly right if they think that their colony will not accept certain proposals to say out manfully what they think about them. Victoria has been driven backwards, step by step, losing revenue, losing bounties, and losing various other things, and now she is asked to submit to a most injurious position with regard to her railways. There is a limit where concession passes to surrender, and we cannot afford to go to that limit. The other day when we asked with regard to bounties for developing our resources that we should have the opportunity to put on those bounties, and at the same time said that we were willing to submit to the overruling power of the Federal Parliament, we were told by the representatives of New South Wales that that was wrong. But now, when it becomes a question of her railways, New South Wales forgets all this argument with which she repelled the advance of Victoria and says-"No, with regard to the railway bounties we want to give our people, we must give them, and we will not have them questioned even by the Federal Parliament." It must go as a question of law to the Supreme Court, make it as difficult as you like, but for developing their resources they must give bounties, and they will not even have the overruling power of the Federal Parliament. Is that fair? Let us deal with this matter with an even hand. The clause passed at the instance of Sir George Turner is a just and fair clause, and unless we
adhere to what we did, and unless we insert in these words of Mr. Grant the words of Sir George Turner, as suggested, we will not only go back on what we have done but we will go back on the principles of fair play.

Mr. HOLDER. -

Do you think that an Inter-State Commission will be better than the Federal Parliament?

Mr. ISAACS. -

I am perfectly willing to have an Inter-State Commission, and I may point out to my honorable friend that our proposal includes one.

Mr. HOLDER. -

Why not say so directly? Parliament could not do that, and you might as well say so.

Mr. ISAACS. -

My honorable friend is perhaps right; I am inclined to agree with him I am perfectly willing to yield to that if it is a necessary part of any bargain, but at the same time in the Constitution of the United States they have no provision for an Inter-State Commission.

Mr. HOLDER. -

Because they, had no railways at the time.

Mr. ISAACS. -

And yet they have an Inter-State Commission. They can alter it whenever they like, if they find better means, as progress advances, or if they alter their minds. I have not the slightest objection to an Inter-State Commission being appointed by Parliament. But it was pointed out as an objection just now to Sir George Turner's words that it would require Parliament to consent before the rate was imposed. Really, I was astonished to hear that, because we have put in words which merely substitute Parliament for the High Court. We are not responsible for the wording of Mr. Grant's amendment. However the words of his amendment run, we understand Mr. Grant to mean that the Federal Parliament, in making laws such as are included in Sir George Turner's amendment, should not have the power to make laws to annul state regulations, if those regulations were made for the purpose of developing the resources of the state. But the state is to have power to make its original law as it likes, subject to revision by the Parliament, as we hope, and by the High Court as some honorable members think. All we desire to do is to raise the one simple question whether it shall be the High Court or the Parliament. There can be no doubt about the effect of it, and, therefore, I think the arguments I have just heard should not prevail. I do hope that we will not put ourselves in the somewhat farcical position we shall be in if we fail to
carry this amendment. And, therefore, unless some agreement be arrived at which will satisfactorily settle the matter from all stand-points, I hope we will retain the ground at which we arrived yesterday after long and laborious contest, and, I am sure, after the fullest consideration had been given to the matter.

Mr. DOBSON (Tasmania). -

We have been discussing for two and a half weeks—that is, for more than half the sitting of the Convention here—two questions of rivers and railway rates, in which we are told that Tasmania and Western Australia have no direct interest. But, as I pointed out before, every member of this Convention has a direct interest in framing a Constitution which will not redound hereafter to his discredit. I have done my best during to-day and yesterday to see if, having thoroughly thrashed out this matter, and said all that is to be said, we could not settle the matter by a private conference between the leading men of the two great colonies interested. If these leading men cannot or will not come together, or if they think that no good would ensue from a friendly conference, and the matter has to be settled here, I crave indulgence for a few minutes to explain the position I take up, and the principles which will guide me in giving my vote. To me the question is complicated by two difficulties. First, there is the difficulty of inserting in the Constitution words which will, to some extent, conserve the conflicting interests of the two great colonies of New South Wales and Victoria; and, secondly, there is the vital point of whether the Parliament or the High Court shall decide in cases of dispute. I am almost bowed down by fear in differing from my honorable friend (Mr. Isaacs) and many other honorable members who are more capable than I am of forming an opinion on a subject of this sort. Many questions have come before the Convention in regard to which I have felt great doubt as to whether I was right or wrong. I may be wrong, but I venture to say that the Convention will make a fatal blunder if they hand over to any tribunal but the High Court a question of this kind. I am altogether opposed to referring a matter in which Victoria and New South Wales are interested up to the very neck, and which, even in this Convention, has caused so much heat and warmth, to the Federal Parliament.

Mr. HOLDER. -

It is a question of policy.

Mr. DOBSON. -

No, it is a question of principle. If you put the principle into the Constitution, the High Court is the only tribunal which is capable of interpreting it.
Mr. HOLDER. -

An Inter-State Commission could do that better.

Mr. DOBSON. -

I desire to use that argument to show how weak and tottering the Convention are on this point. When we discussed this matter in Adelaide we were not confronted with the difficulties that now surround us. What was the universal cry of honorable members? It was that this was a technical and a professional matter, that neither the Parliament nor the High Court were capable of dealing with, and that an Inter-State Commission of expert railway men must be established. The representatives of Victoria have now succeeded in getting an amendment inserted in the Bill—and I am glad of it, although I could not vote for the amendment because it left this question to the Parliament—and they are now throwing over all their principles and arguments. In my opinion, this is the last question that should be left to the Federal Parliament. My honorable friend (Mr. Isaacs) has referred to the delay that would be caused by an appeal to the High Court. But fancy the delay that would take place if this matter had to go before two Houses of Parliament. Supposing that in the Lower House the representatives of the other colonies were equally divided, and New South Wales had the support of half the number and Victoria the support of the other half, Victoria might be out-voted by two, three, or four votes, as we know the population of New South Wales is increasing at a greater ratio than that of Victoria. Then when it had passed through the House of Representatives it would have to go to the States House—the Senate—which would probably disagree with the House of Representatives, especially if self-interest was strong and party feeling was running high. You would put the matter into the saucer to cool. The saucer would perhaps cool it, and send it back again. I would ask the Right Hon. Sir George Turner to reflect on the delay that would be caused by the adoption of this plan.

Mr. REID. -

And a successive Parliament might arrive at an opposite conclusion, and there would be no certainty.

Mr. DOBSON. -

I am trying to point out that self-interest would form a strong element in the determination of these questions. We have had instances of it in this Convention. We are all losing our tempers, and getting irritated.

Sir GEORGE TURNER. -

We are all in the best of temper.

Mr. DOBSON. -
It may be only for the moment; but do you suppose that the member's of the Federal Parliament, in dealing with such a matter, would be in the best of temper? Squatters from the Riverina might be elected members of the Senate or the House of Representatives. They would be vitally interested in this question. They would probably side with Victoria, and you would then have representatives of New South Wales voting against their own colony, not in the interests of federation, of enlightened patriotism, or of a higher national life, but solely in the interests of their own pockets-going against their own state and allying themselves with a colony which was hostile to their own colony in order to save their pockets.

**Dr. COCKBURN.** -

Better not have a Federal Parliament at all, then.

**Mr. DOBSON.** -

That is no argument against it. If we do our work well and incorporate the principles which we as framers of the Constitution think are right and just in this Bill, we can safely leave it to the High Court to interpret those principles and to apply the facts to them. Has any honorable member, even my learned friend (Mr. Isaacs), attempted to answer the argument of Mr. Barton, who takes up the same position that I have taken up from the very beginning on this question, but who has put it far more ably than I can do? This is to be the one sole question on which you are to refuse to allow the High Court to be the interpreter of the Constitution.

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My honorable friend (Mr. O'Connor) has told us-and he did not qualify his words-that this is the most important thing we have ever had to consider. That may be slightly the language of exaggeration, but I agree with him that it is a most important matter, and this most important matter is to be another exception, another blot on your Constitution. You are not to put your principles in the Bill, but you are to capsize the whole thing over to the Federal Parliament, and to ask them to lay down the policy, to lay down the law, and everything else. I cannot take that view. I desire to be logical. I desire to be consistent, and I have heard every honorable member who is a frequent speaker at this Convention ram home with all his force and weight the fact that the High Court is our guardian, is the interpreter of the Constitution, is the tribunal which is there to say whether a state on the one hand or the Commonwealth on the other infringes the principles of the Constitution. Yet now, in order to get rid of a difficulty which we are afraid to face, we are going to withdraw from that High Court one of the very greatest functions which it might fulfil. In reference to the merits of the question, my position is very much that of my
honorable friend (Mr. Higgins). I desire, on the one hand, to do nothing which will take away from Victoria what I may speak of as transactions with Melbourne, their stations were financed in Melbourne, and they scarcely ever talked of New South Wales or of going to Sydney. Therefore, to a very great extent, the colony of Victoria has developed the Riverina traffic with her railways, and has to some extent a vested right in it. Consequently, I shall vote in every way I possibly can that Victoria shall not be deprived, when she enters the Federation, of anything that she has now and ought justly to retain. But my friend, the Premier of New South Wales, has driven home a very pretty shot, between wind and water, at the protectionists of Victoria. He says-"You shut our producers out of your market. You not only wanted to feed your dog with its own tail, but you wanted to feed your dog with the tail of my animal; and, therefore, I had to build railways to the border to bring down the produce of our outlying producers to a free market, as against your protected market." That argument appeals to me, and, therefore, while I am in favour of protecting Victoria on the one hand, I am perfectly in accord with Mr. Grant's resolution-the idea of which first entered my head after hearing the speech of Mr. Higgins-that you should allow New South Wales into this district with rates for developing her territory. That, I think, ought to be done. Does any honorable member of this Convention suppose for one moment that your three or four Judges sitting in the Federal Court, after having some six or eight of your railway experts before them, would not, in 24 hours, be able to tell exactly whether a railway rate was put on with the honest intention of developing an outlying territory, or under the guise of development, but really as a preferential rate, to deprive another state of its natural traffic? It is idle to think your High Court cannot do that. They will have before them every bit of expert evidence you can possibly give them, they will cross-examine those men in a quiet, calm, and judicial way, they will suck their brains, and get everything they can from them, and when they have done that they will commence to apply the experience of a lifetime in sifting evidence, their grasp of all branches of the subject, and their faculty for applying facts to principles, and, with all their judicial knowledge and experience, they will be able to arrive at a sound conclusion. Therefore, I say, let this matter be determined, not by an Inter-State Commission, but by the High Court. The members of an Inter-State Commission would have within their own minds a knowledge of these technical things, and would apply the facts to their experience, but they would arrive at their judgment without the assistance of the judicial knowledge which your High Court would possess. Therefore, your High
Court would be an infinitely better tribunal than any other you could possibly erect. However, if it will settle the question, I will vote for the Inter-State Commission. Still, I do not believe in it. I regard it as an unnecessary expense, because, after the first year or two, you will settle these questions, and you will not want your Inter-State Commission. Still, I will gladly accept that as a compromise, although in adopting it we shall be departing from principle and making our Constitution lop-sided, through taking from the High Court one of the very functions which it exists to carry out.

Mr. OCONNOR (New South Wales). -

The amendment of Sir George Turner is really only an elaboration of the fault which made his previous proposal most objectionable. Our principal objection to the amendment on my proposal was that it handed over for determination to the Parliament matters affecting the rights of New South Wales in regard to the rates upon her own railways, and with reference to her own traffic. Mr. Grant's amendment put my amendment in another form, which I am ready to accept for the present. But Sir George Turner seeks to entirely neutralize that amendment by handing over to the tribunal whose jurisdiction we objected to in regard to deciding preferences and discriminations the task of deciding whether or not a rate was made for the development of a state. Is it not idle to suppose that the faults which would prevent what we consider a right and just decision in regard to discriminations and preferences do not apply equally to handing over to the same tribunal the task of deciding a question as to whether a railway rate is for the development of territory? And therefore it is that Sir George Turner's amendment appears to me to completely neutralize all the benefits which we seek to derive from the amendment of Mr. Grant. Now, I was very much interested in the speech of my honorable friend (Mr. Isaacs) dealing with this matter. He lifted the veil only a little, but quite sufficient to indicate to us what was in his mind as to the method by which these questions were to be settled.

Mr. ISAACS. -

I intended to lift the veil altogether.

Mr. OCONNOR. -

Well, the honorable member lifted it quite sufficiently. He pointed out the method in which these questions, which would be questions of fact, would be decided. Now, a question for the Federal Parliament to determine probably would not arise until some dispute had arisen between states as to whether certain rates were discriminating or not, and that dispute would not arise until a considerable amount of friction and irritation had occurred between the states in reference to the question in dispute. Because disputes
of this kind are not taken up by Governments, and do not come before Parliaments, until a considerable amount of pressure is brought to bear upon them. Not only must the dispute have reached those dimensions, but it must have reached dimensions sufficiently important to be made the subject of Government action, because we cannot suppose that a subject of this kind would be brought before the Federal Parliament by any less authority than the Executive Government, and you may be very well assured that in the Parliament of the Commonwealth we shall have parties upon some lines. Whether they are state lines, lines of fiscal policy, or on whatever lines they may be formed, there will be parties. I presume that the Commonwealth Government will be carried on on the party system, and so you will have the disputed question brought up by a Government which is kept in office by a party. Now, how are the facts on which the dispute will be decided to be obtained? There must be a basis of facts on which to rest the decision. And how are those facts to be obtained? By the usual method of a parliamentary select committee. Now, I do not wish to make any reflection on Parliament, but it is evident to any man who knows anything about our parliamentary system that a select committee of Parliament, no matter how high may be the character and integrity of the men who compose it, is not the proper tribunal for the decision of any fact in a question of this kind.

Mr. ISAACS. -

No one suggested that the parliamentary committee should be the tribunal.

Mr. OCONNOR. -

I am quite aware of that. If the honorable member will be, as patient with me as I was with him, he will find that I am not assuming that a parliamentary committee will be the tribunal; but it will examine witnesses, collect evidence, and make a report, which will be taken up by the Executive Government, and there can be no question that upon its report the deliberations of the Parliament of the Commonwealth will take place. The dispute will be taken up by a Government with a party bias, and the inquiry will be conducted by a select committee, whose report will be brought before a Parliament in which parties must be rampant, and there made the basis of the decision of Parliament, and I say that such a procedure in a matter of this kind will not commend itself to the members of this Convention. The decision will be come to upon the question of whether a rate is a discrimination and preference, or whether it is unjust as a matter of policy, so that this question of how far the rates of New South
Wales are to be interfered with by the states of the Commonwealth is to be
decided, not upon the justice of their claims, not upon their rights in any
way, but as a matter of the policy of the Commonwealth. Now, we in New
South Wales object to the settlement of our rights being effected upon the
basis of the policy of the Commonwealth. We are quite willing to submit to
any process which will hand over the control of unjust rates, in regard to
interstate traffic, to any tribunal which it may be thought fit to intrust with
the decision; but we do object to have the decision as to what rate we shall
charge on our rail-ways handed over to the Federal Parliament. The
honorable member (Mr. Isaacs), in his very able speech, appeared to me to
appeal with a very considerable amount of skill to a prejudice which we all
know exists in all assemblies against too much judicial determination. My
honorable friend painted, in very strong colours, the delays which must
take place in the determination of such questions by the High Court. Does
the honorable gentleman forget that there are scores of matters in the
Constitution to be determined by the High Court, and which must depend
on the finding of that court, on questions of fact? If the High Court is to be
of any value in the Constitution it must be prepared to decide all questions
involving disputes between states, and all questions involving the
assumption by the state or by the Commonwealth of some power which the
Constitution has not given it. You have only to turn to the decisions of the
American courts to find scores of cases in which the principal matters to be
considered were questions of fact, to which the Constitution was to be
afterwards applied. You cannot turn over a page of the Constitution
without finding matters that must come before the court, which is the
highest arbiter. I hope honorable members will not be led away by the
suggestion that this is a matter which it is

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intended to leave to the consideration of the court. I would call the
attention of Mr. Grant to the fact that the amendment would be a direction
to Parliament that in making its laws in regard to rates it should follow the
direction of the Constitution. The probabilities are that in 99 cases out of
100 the direction of the Constitution would be followed. It is only in those
cases in which Parliament goes outside the lines which the Constitution has
marked out, that the court would have any jurisdiction. The court is only a
means of keeping Parliament within the lines of the Constitution, and only
in such cases would the aid of the court be invoked. Within the lines in
which Parliament has power, Parliament will be absolutely free, and it is
only when it exceeds those lines that the High Court can be called on to
determine the question. There are no terms that have been more misused
than those of "Trust the Federal Parliament." No one is more ready to trust
the Federal Parliament than I am, and to trust it fully and frankly, in regard to any matter which, I think, ought to be handed over for its consideration. As a matter of constitutional policy, I am willing to trust Parliament to the uttermost; but our objection to handing over this question to Parliament is, not because we are afraid to trust it, but because, from its very constitution, Parliament is absolutely unfitted to deal with it. Mr. Holder has reminded me of a suggestion he made in the course of his exceedingly temperate and lucid speech on this question. The honorable member suggested that the determination of this question should be handed over to an Inter-State Commission. I admit that an Inter-State Commission is an infinitely more capable body to decide a question of this kind than either the Federal Parliament or the court in the first instance. But I say that, whether this question is to be submitted to the decision of an Inter-State Commission or not, it depends entirely on the scope of the question you remit for their consideration. I would have no objection to remitting to the consideration of the Inter-State Commission any question regarding the justice or reasonableness or propriety of traffic rates between states.

Mr. Higgins. -

That would leave them no work to do.

Mr. O'Connor. -

I beg the honorable gentleman's pardon. If the honorable member knows what has been done under the Inter-State Commission Act in America, he will know that the only jurisdiction which is conferred is jurisdiction in regard to traffic.

Mr. Higgins. -

There are 44 states there, and five here, with a huge territory.

Mr. O'Connor. -

I am not arguing now on the question of the policy of establishing an Inter-State Commission. I am perfectly willing to hand over to the Inter-State Commission the determination of those questions-questions which are suggested in the Right Hon. Sir George Turner's amendment-if those questions are restricted to matters arising on inter-state commerce. But I object to hand over to the Inter-State Commission questions affecting the rates on New South Wales railways as to our own traffic. Although the tribunal is not so objectionable, the principle of my objection is as strong as ever. We cannot hand over to the consideration of a tribunal, or any body, the determination of what rates shall be charged on our own railways in regard to our own traffic within our own state. That principle is on the basis of the agreement to retain in the hands of our own Government our railway management. If the assent of New South Wales is to be obtained to the suggestion of Mr. Holder, some consideration should be given to the
suggestion I have thrown out as to the limitations of the functions which are to be intrusted to this body. I hope the committee will not assent to the amendment of my right honorable friend (Sir George Turner). I hope the committee will not assent to any proposition which takes away the whole life and purpose of Mr. Grant's amendment. I am willing to which own the railways.

Mr. HOLDER. -

I should like to ask Sir George Turner whether he will consent to move his amendment in this shape: "In the opinion of the Inter-State Commission," instead of "In the opinion of the Parliament"?

Sir GEORGE TURNER (Victoria). -

The Convention having already affirmed that the words should be: "In the opinion of the Parliament," I cannot move to alter it, but in order to settle the whole question, if all parties are willing I am perfectly prepared to accept the decision of the Inter-State Commission instead of the decision of Parliament.

Mr. BARTON (New South Wales). -

Before that is done, I should like to point out that Mr. Grant's amendment is intended to follow clause 95A, which I moved to insert the day before yesterday, and to which I understand there are no objections. My clause is-

The Commonwealth shall not give preference, by any law or regulation of commerce or revenue, to one state or any part thereof over another state or any part thereof.

That relates solely to laws made by the Commonwealth. Mr. Grant's amendment is as follows:-

Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may be necessary for the development of its territory if such rates apply equally to goods from other states.

The amendment now before the committee is to insert, after the words "as may be necessary," the words "in the opinion of Parliament." It is now intended to substitute for these words-"in the opinion of the Inter-State Commission." If that were done, it might necessitate Sir George Turner consenting to amend his new clause in the same direction.

Sir GEORGE TURNER. -

The two must hang together.

Mr. BARTON. -

The whole scope of my Clause (95A) is with reference to the Commonwealth. It was suggested by the Chairman that all these amendments might be withdrawn, and 95A passed, upon which there should be a postponement of the remainder of these provisions, which
would be dealt with as new clauses. That view has not been acceded to. What I should like to point out is this: We are dealing now with a clause which relates to the Commonwealth only. If we amend Mr. Grant's amendment so as to arrange for the control of the Inter-State Commission in these matters, the amendment will be in the wrong place.

Sir GEORGE TURNER. -

The amendment will have to be added to the clause we passed yesterday. It cannot go with the clause with which we are dealing now.

Mr. BARTON. -

Yes, it might have to be added to the right honorable member's clause.

Mr. HOLDER (South Australia). -

On a point of order, I would ask is it not a fact that the new clause proposed by Sir George Turner is already in the Bill, and that what we are now discussing is a new clause of three lines proposed by the leader of the Convention, and to which the honorable member (Mr. Grant) wishes to add certain words?

The CHAIRMAN. -

Yes. What I would suggest is that the proposed new clause of three lines should be inserted as a separate clause, all the amendments being withdrawn to enable this to be done. The honorable member (Mr. Grant) could then move his amendment as a new clause. That would get rid of one difficulty.

Mr. BARTON. -

Yes; that would get rid of one difficulty. Having considered the matter, I am still of the opinion that the words "as may be necessary," which, I think, it was agreed upon all hands, left the provision for the interpretation of the High Court, should remain as they are without any amendment. If it is decided to substitute another tribunal for the High Court, we are driven back upon this position: The imposition of railway rates for the development of territory is, in the first instance, a work for the state concerned to carry out. Therefore, the clause should read-"such railway rates as may be necessary, in the opinion of the Parliament of a state for the development of its territory." For this reason: If we are to leave the imposition of railway rates by a state subject to the opinion of the Federal Parliament, it will be impossible for any state-and I think this was pointed out by the honorable member (Mr. Higgins)-to impose rates without being in the constant fear that, no matter what those rates may be, or however fair, the Federal Parliament may interfere in regard to them, to their utter destruction. There will be thus no continuity in the framing of rates of this
Mr. HIGGINS. -

Does the honorable and learned member think there is need for the insertion of these words, having regard to the provisions of clause 96?

Mr. BARTON. -

I was coming to that. Clause 96 says-

The Parliament may make laws constituting an Inter-State Commission to execute and maintain upon railways within the Commonwealth, and upon rivers flowing through, in, or between two or more states, the provisions of this Constitution relating to trade and commerce.

I am not certain that the words "and upon rivers flowing through, in, or between two or more states" are necessary, if under the provisions relating to trade and commerce the navigation of rivers is made a matter upon which the Federal Parliament can legislate. It will be absurd to limit the jurisdiction of the Inter-State Commission to rivers "flowing through, in, or between two or more states," if the Commonwealth Parliament has power to regulate trade and commerce generally, and, therefore, to make laws of application to all the rivers in the Commonwealth without distinction at all. This is a case in which it is dangerous to make limitations. It is dangerous to say that the Inter-State Commission is limited to particular sorts of rivers; and in the same way it is dangerous to say that the commission shall be limited in respect of railways. When one considers the whole matter of the province of the Inter-state Commission, if it is properly appointed, we should make it a commission whose functions extend over the whole matter of the regulation of trade and commerce, without any limitations which, I think, I am entitled to characterize as absurd limitations. Its authority should extend over all sorts of traffic, because all sorts of traffic are so entirely interwoven,

as we shall find when the Federation begins to work; the business of common carriers, whether by means of rivers or railways, is so interwoven that if you do not give the commission permission to deal with all kinds of traffic, and to have all classes of such business under its jurisdiction, you may frustrate all its decisions. That would be rather a breeding of complications. Therefore, if your Inter-State Commission is to have any power at all, its power should be co-extensive with the trade and commerce clause. It should be a commission to which the Commonwealth delegates its powers, passing for that purpose a law imposing such limitations as the Commonwealth is entitled to impose, giving to the commission under that law adjudication over the whole field of intercolonial trade and commerce. That would be a logical way of dealing with the question. I think honorable...
members will see that, as far as the Inter-State Commission is to have power, it would be a mistake to limit its power. Its power should extend to all matters with which the Commonwealth can deal in regard to trade and commerce, so that there will be one tribunal to which all such matters can be referred—always subject, however, to appeal to the High Court in any case where the Inter-State Commission may go wrong in its law. That latter point is one with regard to which the Drafting Committee have a strong opinion. It does seem to me to be a mistake to place words about the commission in any clause of this character, because if you give power to the state Parliaments to legislate with reference to their regulations, so far as they do not infringe upon the Commonwealth regulations, as to trade and commerce, those powers should be such powers as the state Legislatures feel to be necessary, provided they are within the terms of the Commonwealth Constitution; and, as the that, the over-riding power of the Commonwealth in the regulation of trade and commerce will be sufficient to keep the states straight. Therefore it is that I think it would be a mistake to insert words about the Inter-State Commission in this particular amendment. We should leave matters of this kind to the discretion of the state Parliament, always recollecting that over the state Parliament hangs the sword of Damocles in the shape of the High Court, and that, should it infringe on the powers committed to the Commonwealth by the Constitution, it will certainly be checked. I think the matter should be looked on in this logical spirit. It is not a matter affecting one state against any other. It would be better not to make any limitation of this sort in this clause, but to put the clause providing for the establishment of an Inter-State Commission in such wide language as will enable that commission to have jurisdiction over all such subjects; and then the object we have in view will be attained without trouble to any of us.

Mr. Reid (New South Wales). -

I wish to ask you, sir, if the amendment of Mr. Grant is relevant to this particular clause! It puzzles me rather if it is. The general words are words restraining the Commonwealth from giving preferences to one state over another.

The CHAIRMAN. -

That is why I suggested just now that this amendment should be withdrawn, that the clause as proposed by Mr. Barton should be inserted, and that afterwards Mr. Grant should move his amendment as a new clause.

Mr. Reid. -

I think that would be generally convenient, because the two things do not connect. The general words restraining the Commonwealth from giving
preferences do not fit with Mr. Grant's amendment, which deals with the matter from quite another point of view—which deals with the jurisdiction of the Commonwealth over things done by the states. A restraining power in the Commonwealth to prevent certain things from being done by the states is a different class of subject altogether.

The CHAIRMAN. -

It will not take a minute to do as I suggest. I suggested, some four hours ago, that it should be done.

Sir GEORGE TURNER. -

The proposal, then, was that this should be postponed until Monday.

The CHAIRMAN. -

No; till we met again.

Mr. HIGGINS. -

Hanging it on to Sir George Turner's amendment.

The CHAIRMAN. -

You cannot go back.

Mr. REID. -

We cannot, unfortunately, do that. I have an amendment to propose which I believe, from inquiries I have made, will meet with general acceptance, and will help us very much in New South Wales in connexion with this matter. But those of my friends from Victoria who wish to vote with me on it ask me to move that it be inserted next to the words which Sir George Turner has put in the Bill. If the suggestion of the Chairman is adopted, Mr. Grant is quite agreeable, in view of the facts I have mentioned to him, to withdraw his Amendmen

Mr. BARTON. -

Yours cannot be voted on at the present stage.

Mr. REID. -

With consent it can.

Mr. BARTON. -

Not even with consent.

Mr. REID. -

I can move it as a new clause.

The CHAIRMAN. -

It can be put in as a new clause.

Mr. REID. -

I will move my amendment here on the understanding that afterwards it will be added to Sir George Turner's clause, because the concession which has been extended to Mr. Grant should certainly be extended to me. Mr.
Grant, in view of the request of my Victorian friends that my amendment should follow Sir George Turner's clause, has very courteously consented to allow his amendment to stand aside for a moment, as mine does not conflict with his.

Mr. BARTON. -

It looks as if your proposal would be rather better if it came next to Mr. Grant's amendment than next to any other clause.

Mr. REID. -

I am quite agreeable to take that course, except that my friends front Victoria are willing to accept my amendment if it is put next to Sir George Turner's clause, and they are not willing to accept it if it is put next to Mr. Grant's amendment. I am only anxious to get my words in, and afterwards the thing can be put in a harmonious shape.

Mr. HIGGINS. -

Tell us what are the words of your amendment.

Mr. REID. -

It does not affect Mr. Grant's amendment; it is an equitable recognition, which I think most honorable members are agreeable should be in the minds of any authority which determines this conflicting question:

Due consideration shall be given to the financial responsibilities incurred in connexion with the construction and working expenses of state railways.

That is a matter of equity.

Mr. HOWE. -

That is an instruction to the Inter-State Commission.

Mr. REID. -

To meet the views of my friends, I wish to put my amendment next to Sir George Turner's, and it will follow then in the parliamentary clause, but still, if the Parliament will have to be guided by this provision, clearly any other authority which deals with the matter will have to be guided, too. And it will be a matter of drafting to put it so. For instance, if we appoint an Inter-State Commission, clearly they will have to be guided by the same consideration, so that it will not be hostile in any sense to that clause. With consent, and on the understanding that the thing is put right afterwards in the Bill, I would ask my honorable friend (Mr. Grant) to withdraw his amendment for the present.

[P.1505] starts here

The CHAIRMAN. -

Sir George Turner's amendment is the first amendment to be withdrawn.

Mr. REID. -

Perhaps Sir George Turner will withdraw his amendment to enable Mr.
Grant to withdraw his amendment.

Mr. BARTON (New South Wales). -

May I make a suggestion before the right honorable member does that? It seems to me that a difficulty may arise. Although the Right Hon. Mr. Reid's amendment is not put as a proviso, it really affects principally the amendment proposed by the Hon. Mr. Grant. Mr. Grant's amendment is to protect the imposition of railway rates by any state, so far as they may be necessary for the development of its territory, and so long as they may apply equally to goods from other states. That is the English of it, and Mr. Reid's amendment should come in there, because it is intimately allied with that protection.

Mr. SYMON. -

Why not add it to Mr. Grant's amendment?

Mr. BARTON. -

There is an intimate alliance between the two amendments. The one thing really hangs to a large extent upon the other. The question of the legality of the imposition of a rate is, according to Mr. Grant's amendment, to be decided in favour of the state if it is a development rate, and it applies equally to goods coming from other states. Then it is most natural that due consideration should be given to the fact that the state has incurred financial responsibilities in connexion with the construction and working of state railways. It would, for these reasons, be better to take the two proposals together. Mr. Reid's amendment cannot be taken at the present stage unless we report progress, and go through the laboured form of giving a fresh instruction to the committee. It could, however, be added to Mr. Grant's amendment.

Mr. ISAACS. -

If Mr. Grant would withdraw his amendment there would be no difficulty.

Mr. BARTON. -

There is a difficulty. Mr. Reid's amendment cannot be considered now because he wishes to append it to the new clause inserted on the motion of Sir George Turner.

Sir GEORGE TURNER. -

He could append it to your clause, on the understanding that it should be transposed afterwards.

Mr. BARTON. -

I expected to hear that interjection. But the two proposals have nothing to do with each other. The one is a prohibition to the Commonwealth against preferences, and the other is an enactment that the state shall have due consideration in respect of its financial responsibilities. There is a way out
of the difficulty. Mr. Reid's amendment can be put as an addendum to Mr. Grant's, and that is obviously the proper course to pursue. We can decide afterwards whether we will pass the whole provision as it will then stand. There is no limit to the power of the committee in the matter. If it is inserted as an amendment to the original clause there does not seem to be any ground for it to stand on. It would, therefore, have to be put as a new clause, and to come in at the new clause stage, which Mr. Reid does not want.

The CHAIRMAN. -

I would point out that we are proposing to take all the new financial clauses now.

Mr. BARTON. -

Then I understand that, independently of Mr. Grant's amendment, Mr. Reid's amendment can be taken by-and-by as a new clause?

The CHAIRMAN. -

Yes.

Mr. BARTON. -

There can be no objection to that. In the meantime, it seems obvious that Mr. Grant's amendment will either have to be put or to be withdrawn.

Mr. REID. -

Then Mr. Grant's amendment need not be withdrawn. I will move mine as a new clause after Mr. Grant's is dealt with.

Sir JOHN DOWNER (South Australia). -

It appears to me that the proper thing to do is to ask Mr. Grant to withdraw his amendment at present, and for Mr. Reid to move his.

Mr. ISAACS. -

You mean that Mr. Grant's amendment should be withdrawn temporarily?

Sir JOHN DOWNER. -

Yes.

Mr. BARTON. -

We have had the debate on Mr. Grant's amendment, and therefore we had better deal with it.

Mr. HIGGINS. -

Yes, or we shall have the debate over again.

Sir JOHN DOWNER. -

As far as this matter is concerned, it is in the interests of the Convention that Mr. Reid's proposal should be considered first. It may be unnecessary to consider Mr. Grant's amendment if we carry Mr. Reid's. In that event,
nothing more may be required. I have been under the impression, from conversations I have had with the honorable gentlemen interested in that amendment, that they intended it to be tacked on to Sir George Turner's amendment, and that nothing else should be added. With that view I cordially agree. Speaking for myself, desiring to keep my mind clear, and not to mix up the different amendments, and looking on the proposal of the Premier of New South Wales as, perhaps, a way out of all our troubles, although it will make very little difference in the whole concern, in my opinion, I hope that the arrangement that was made between Mr. Reid and Mr. Grant will be adhered to. Mr. Grant wishes to withdraw his amendment, and I trust that he will be permitted to do so temporarily, to allow Mr. Reid's to be moved.

Mr. REID. -
Oh, you have now told Mr. Grant he may prejudice himself by taking that course.

Mr. BARTON. -
You have simply put him on the shelf.

Mr. REID. -
You have said enough to put him on his guard.

Sir JOHN DOWNER. -
I did not mean to say anything in the way of imputation.

Mr. REID. -
It is not an imputation; it is a credit.

Sir JOHN DOWNER. -
I do not think it will alter the point of view of Mr Grant at all. You ask him to withdraw his amendment, and from my point of view it would be more convenient if that course was adopted, and Mr. Reid moved his amendment first.

The CHAIRMAN. -
If the amendments are withdrawn by consent, and Mr. Barton's clause, as originally proposed, is inserted, I call on Mr. O'Connor to move his amendment, if he wishes. I shall then call on Mr. Grant to move his amendment as a new clause, if he wishes, and on Sir George Turner to move his amendment to it, if he wishes, so that we shall have got rid of the difficulty of tacking on to Mr. Barton's new clause provisions which do not relate to it.

Sir GEORGE TURNER (Victoria). -
To facilitate the proper carrying out of our work, I beg to withdraw my amendment.

Sir George Turner's amendment was withdrawn.

Mr. GRANT (Tasmania). -
And I beg to withdraw my amendment.
Mr. Grant's amendment was withdrawn.

Mr. OCONNOR (New South Wales). -
I also beg to withdraw my amendment.
Mr. O'Connor's amendment was withdrawn.
New clause 95A was agreed to.

Mr. OCONNOR. -
I do not intend to move my amendment.

Mr. GRANT (Tasmania). -
I beg to move-

Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may be necessary for the development of its territory if such rates apply equally to goods from other states.

I would have preferred that my clause had been taken as part of Sir George Turner's new clause, because it is not complete unless it [P.1507] starts here simple and practical, and may be explain in a few words. We have had a great deal of legal acumen displayed in discussing the clause, but it has had the effect of hiding the principle involved, and of clouding the question rather than elucidating it. I take it that the words of Sir George Turner's clause give absolute control over the railways to the Federal Parliament; it is, in fact, a federation of the railways as regards their management.

Mr. ISAACS. -
If you do not spoil it by any other amendment.

Mr. GRANT. -
We are asked by Sir George Turner's clause to bring the management of the railways under the purview of the Federal Parliament. One of the first proceedings of that Parliament will be to make laws to provide for the regulation of the railways in all matters relating to the traffic, and to provide against the preferential and differential rates of which we have heard so much. If I am right in assuming that the Federal Parliament is to be all-powerful in the matter, the question is whether that Parliament would give full and proper attention to the wants and necessities of each individual state. Thinking that it would not, believing that a state should certainly be able to look after its own affairs, to some extent at least, I have taken the liberty of proposing the words which are in my motion. If these words are taken with Sir George Turner's clause, I think it follows that a state would only make laws relating to its local traffic after the Federal Parliament had made general laws applying to all the states. Therefore, I do not think there would be the difficulty which has been pointed out by preceding speakers, or that a state would be liable to have its laws which
were passed for the regulation of local traffic interfered with by the Federal Parliament. A state would be careful enough in framing rates to have regard to the law already imposed by the Federal Parliament, and consequently it would exercise its discretion under the law in giving to the citizens of the state all the advantages which its Government desired for the development of the resources of the state. That, I think, is the legal position of the matter. It has been amplified and explained in various ways, but it may be put shortly in this way: That the Federal Parliament will, under Sir George Turner's clause, first frame laws and regulations to apply to all the states, and, subject to these laws and regulations, each state will have liberty to frame its own Tariff for the benefit of its own citizens, and the development of its resources. An attempt has been made to introduce into this clause the matter of an Inter-State Commission. But at present we have not decided that we will have such a commission, and, for my own part, I see no reason for it. It would be far better to leave to the Federal Parliament the constitution of an Inter-State Commission, should that Parliament deem such a body advisable or necessary. There is no need for us to trouble ourselves about the establishment of an Inter-State Commission, when it is by no means certain the services of such a commission would be required. At any rate, in regard to the subject-matter of the present discussion, I see no opportunity for the intervention of an Inter-State Commission, nor do I see any necessity for the intervention of the Federal Parliament. Having once constructed a code of laws applicable to all the states, the remedy for any breach of those laws would necessarily be an application to the High Court, as has been so much better shown by previous speakers. The application would be a very simple one. The High Court would not have to decide upon any complicated set of circumstances or on the general policy of railway administration, but it would have to decide whether a state had infringed the law made by the Federal Parliament. I do not agree with the amendment proposed by Mr. Reid, and therefore I was rather reluctant to have my amendment  
Sir GEORGE TURNER (Victoria). -  
I regret very much that my honorable friend has thought fit to press his amendment on now. I would be very glad if he would allow it to remain in abeyance until we have endeavoured to settle the difficulty in another form, which will, I believe, be satisfactory to all the members of the Convention. It appears to me absurd to say that nothing in the Constitution
shall prevent a state imposing any rate, subject to the controlling power of the Federal Parliament, under the two clauses in regard to trade and commerce and freedom of trade.

**Mr. BARTON.** -

You think that the trade and commerce clause and the freedom of trade clause are sufficient.

**Sir GEORGE TURNER.** -

Perhaps that is just a little too far. I think Mr. Barton will tell us that that is wholly unnecessary from one point of view. In another view, if there is to be a restriction on what we carried yesterday, then, I say, it is improper. Unless the words which I have moved, and which I am reluctantly compelled to move again, be added, I will certainly be compelled to vote against the amendment altogether. Mr. Barton seems to think we ought to give some power to the state to do everything; but I do not think we are likely to allow the Parliament of any state to impose those rates. I regret that my honorable friend has thought wise to press his amendment, because I believed we had arrived at a stage when the matter would probably be settled satisfactorily to everybody in a way that we could say was honorable to all. I am afraid that the way in which we shall have to vote now will probably injure what many of us have, during the last two or three hours, been desirous of carrying. I should be glad if my honorable friend would withdraw this until we had dealt with the other matter in a way which will satisfy all of us. If not, I beg to move-

That after "may" (line 3) the words "in the opinion of the Parliament" be inserted.

**Mr. HOLDER (South Australia).** -

I am reluctant to do anything against the wishes of the Premier of Victoria, but I see no other way of getting a vote upon the question. I, therefore, beg to move-

That the amendment be amended by the omission of the word "Parliament," and the insertion of the words "Inter-State Commission."

**Mr. KINGSTON (South Australia).** -

Will there be any objection, as a matter of form, to putting the amendment as far as the words, "but in the opinion of," so that those who desire to see this matter left to the decision of either the Federal Parliament or the Inter-State Commission may have an opportunity of voting for the insertion of these words? When we have dealt with them we can go on to consider whether we can insert the word "Parliament" or the words "Inter-State Commission."

**Mr. BARTON (Now South Wales).** -

Would not that put us in this position: That the words "in the opinion of"
might be inserted in the new clause, so that it would be necessary that this matter should be decided according to the opinion of some authority, while the committee might determine that neither "Parliament" nor "an Inter-State Commission" should be the authority? The question put from the Chair will be "That the words proposed by the right honorable member (Sir George Turner) stand part of the proposed amendment." If that is resolved in the negative, the question will be "That the words proposed by the honorable and learned member (Mr. Holder) to be inserted be so inserted."

The CHAIRMAN. -

I will put on one side, for the present, the proposed new clause. The words we are now considering are "in the opinion of Parliament." An amendment has been moved to strike [P.1509] starts here out "Parliament" and to insert "Inter-State Commission." If that amendment is carried, I shall have to put the question "That the words 'in the opinion of the Inter-State Commission' be inserted."

Mr. BARTON. -

Do you intend, sir, to put the whole form of words "in the opinion of" each time?

The CHAIRMAN. -

Yes.

Mr. BARTON. -

If you do that, there will be no objection.

The CHAIRMAN. -

I will put the question "That the words 'in the opinion of Parliament' be inserted." If that is negatived I will put the question "That the words 'in the opinion of the Inter-State Commission' be inserted."

Sir GEORGE TURNER (Victoria). -

I shall object to that. There are a large number of honorable members who believe that this matter should be subject to the opinion of either the Parliament or the Inter-State Commission; but the effect of putting the amendments in the way you have stated, sir, will be to divide the forces, and, perhaps, to beat us.

Mr. REID (New South Wales). -

The right honorable member's observation has no point, because if the words "in the opinion of" be carried, but neither the word "Parliament" nor the words "Inter-State Commission" inserted, the result will be worthless. The insertion of the words "in the opinion of" will not help you; they will be a mere thread of old rope.

Mr. BARTON (New South Wales). -

I will ask you, Mr. Chairman, to put the amendments in the manner to
which we are most accustomed. It will then be proposed that the word "Parliament" be struck out of the amendment, and the words "Inter-State Commission" inserted. If the word "Parliament" is struck out, vote will be taken on the question of the insertion of the words "Inter-State Commission." Then the question will be put "That the amendment be inserted in the clause," which will give full opportunity for the expression of opinion. I think that this course should be adopted, because I heard the word "jockeying" used just now, and I believe that it will avoid any suspicion of what is known as jockeying."

Sir GEORGE TURNER (Victoria). -

May I be allowed to make another suggestion, which I think will meet the difficulty? I have proposed the insertion of the words "in the opinion of the Parliament." It is quite competent for Mr. Holder to move the insertion before the word "Parliament" of the words "Inter-State Commission," and then, if that were agreed to, it would follow that the word "Parliament" would be struck out. If, however, that were not agreed to, all who desired to do so would be at liberty to vote for the word "Parliament."

Mr. BARTON (New South Wales). -

I have not the least objection to that course being pursued.

The CHAIRMAN. -

I must put the matter in the proper technical manner. Mr. Holder has moved to strike out the word "Parliament," with the view of inserting the words "Inter-State Commission."

Mr. HOLDER (South Australia). -

I am quite willing to adopt the course suggested by Sir George Turner. I therefore beg leave to withdraw my amendment.

Mr. Holder's amendment to strike out the word "Parliament" was withdrawn.

Mr. HOLDER (South Australia). -

I now beg to move-

That the words "Inter-State Commission" be inserted before the word "Parliament."

The amendment was agreed to without a division.

The amendment to strike out the word "Parliament" was agreed to.

The amendment to insert, after the word "may," the words "in the opinion of the Inter-State Commission," was agreed to.

[P.1510] starts here

The CHAIRMAN. -

It is proposed to insert the following new clause, as amended, in the Bill:-
Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may, in the opinion of the Inter-State Commission, be necessary for the development of its territory, if such rates apply equally to goods from other states.

Question-That the clause as amended be agreed to - put.

The committee divided-

Ayes .... .... 22
Noes .... .... 21

Majority for the clause 1

AYES.
Abbott, Sir J.P. Lewis, N.E.
Barton, E. McMillan, W.
Briggs, H. Moore, W.
Brown, N.J. O'Connor, R.E.
Brunker, J.N. Reid, G.H.
Carruthers, J.H Solomon, V.L.
Clarke, M.J. Symon, J.H.
Dobson, H. Venn, H.W.
Glynn, P.M. Walker, J.T.
Higgins, H.B.
Holder, F.W. Teller.
Howe, J.H. Grant, C.H.

NOES.
Berry, Sir G. Henning, A.H.
Braddon, Sir E.N.C. Henry, J.
Cockburn, Dr. J.A. Kingston, C.C.
Crowder, F.T. Lee Steere, Sir J.G.
Deakin, A. Peacock, A.J.
Douglas, A. Quick, Dr. J.
Downer, Sir J.W. Trenwith, W.A.
Forrest, Sir J. Turner, Sir G.
Fraser, S. Zeal, Sir W.A.
Gordon, J.H. Teller.
Hackett, J.W. Isaacs, I.A.

PAIR.

Aye. No.
Lyne, W.J. Hassell, A.Y.

Question so resolved in the affirmative.

Mr. REID (New South Wales). -

I beg now to propose the following new clause, to follow the clause which has been inserted on the motion of Mr. Grant:-
In dealing with questions affecting railway rates, due consideration shall be given to the financial responsibility incurred in connexion with the construction and working expenses of state railways.

**Sir GEORGE TURNER (Victoria).** -

This is hardly what I agreed to, and I am not going to vote for it. What I said was that I would vote for the insertion of the words commencing with "Due consideration," on the distinct understanding that those words should form part of the clause which we carried yesterday. I did that because I did not want to have any doubt in my mind as to whether the insertion of these words would give the High Court of the Commonwealth power to interfere with anything done by Parliament. This clause contains words that I strongly object to-the words "In dealing with questions affecting railway rates." If it is inserted as a new clause it will give to the High Court the very power that I and many others have been strenuously fighting against, and unless the words are withdrawn-and I will not move an amendment-I will vote against the clause.

**Mr. BARTON.** -

Do you wish it to read "Due consideration shall be given by the Parliament"?

**Sir GEORGE TURNER.** -

No, I have not insisted on Parliament being mentioned. I wanted the amendment to read "Due consideration shall be given," and to have it added to my amendment, because it would then mean due consideration by the Parliament. The insertion of the words "by the Parliament" in this particular clause might appear to be invidious, and I do not insist on them. I must, however, ask my right honorable friend to withdraw the first words of the clause. I am quite willing to have the remaining words added to the clause that was carried yesterday.

**Mr. BARTON (New South Wales).** -

I would ask the right honorable member whether his objection is that the words "by the Parliament" are not inserted, and whether it is his intention to support this proposal on condition that in the re-drafting of the Bill it is made a part of his own clause?

**Sir GEORGE TURNER.** -

I do no ask to have the words "by the Parliament" inserted, because they are some what objectionable.

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[P.1511] starts here

**Mr. BARTON.** -

You did not say so yesterday.

**Sir GEORGE TURNER.** -
I do not say so now. They are not objectionable to me, but they were objectionable to my right honorable friend. I desire that the clause shall commence with the words "Due consideration," and it if, an honorable understanding among ourselves, which I have no doubt will be carried out, that the Drafting Committee will add them to the amendment we carried yesterday when dealing with the Bill at another stage.

Mr. REID (New South Wales). -

My right honorable friend is perfectly correct. That was the agreement we arrived at. But, unfortunately, from the force of circumstances, it was impossible to carry out a condition precedent, which was that I should get my proposal added on to the right honorable member's new clause. I have added the words to which he objects simply because I am now moving a new clause instead of an addendum to a clause already in the Bill. I am perfectly willing to withdraw all the words down to "due." I simply inserted them to indicate what was meant. But I am perfectly willing to withdraw all the words before the word "due," with the consent of the Convention. As my right honorable friend objects to them I cheerfully withdraw them, and leave my amendment in the form in which my right honorable friend approves of it.

Mr. BARTON (New South Wales). -

As a member of the Drafting Committee, I may say that as it appears to be the desire of the committee that this new clause, if passed, should be attached to Sir George Turner's clause as an additional proviso, I have only to know it, and that will be carried out by the Drafting Committee.

Mr. GORDON (South Australia). -

I think this amendment should be printed. Mr. REID. - It is a simple thing.

Mr. GORDON. -

It is anything but a simple thing.

Mr. REID. -

We could finish it in a minute or two.

Mr. GORDON. -

If such a nebulous thing is to be attached to the clause, we ought to have an opportunity of considering it. What authority is to enforce it?

Mr. SYMON. -

An Act of Parliament. It is to be tacked on to Sir George Turner's clause.

Mr. GORDON. -

If Parliament does not enforce it, what is to be done? The whole thing is too nebulous and too uncertain.

The CHAIRMAN. -

The question is that Mr. Reid have leave to amend the proposed new
clause. Leave being given, I will put the clause in its amended form.

Mr. KINGSTON (South Australia). -

I fully agree with the remarks of my honorable colleague (Mr. Gordon). We are now having a clause introduced without the slightest opportunity for its consideration.

Mr. REID. -

I submitted it to you about an hour ago.

Mr. KINGSTON. -

And I told the honorable gentleman I did not like it.

Mr. REID. -

And this is how you are showing it?

Mr. KINGSTON. -

I will give my honorable friend some of the reasons which induced me to come to the conclusion that it ought not to be accepted. First and foremost, who is it provided shall give due consideration to these questions? The Parliament. We are going to embody a provision of this sort in the Constitution. What does that mean? It means that in other matters where we do not similarly provide Parliament can deal with them without due consideration.

Mr. ISAACS. -

But they won't.

Mr. BARTON. -

Will they?

Mr. KINGSTON. -

Have honorable members ever seen a precedent of such a character in a Constitution? What is to be the result of the absence of consideration, and who is to determine whether or not that consideration has been given? Is it another attempt to let in the decision of the High Court? It seems to me that if you provide as a hard matter of fact in this clause that consideration shall be given to this particular matter, you must at least imply the existence of power in some tribunal to say whether or not the provisions of the Constitution Act have been complied with. Now, there is only one tribunal for this purpose, and it seems to me possible that, after an Act has been adopted by the Federal Parliament dealing with this question of the railways, a question might subsequently be raised in the High Court as to whether or not the consideration, which by the terms of the Constitution Act was required to be given, had been given, and, if not, that the High Court should have some power with reference to the validity of that particular Act. If something of that sort is not intended, the words are so much surplusage, and the whole clause waste paper; and I object to
the insertion of a provision of this sort in the Constitution. Further, what is the particular matter which the Federal Parliament is enjoined to give its consideration to? The financial responsibility of the state in connexion with a railway in respect of which the rates are under consideration. It seems to me that this is an attempt to insert a direction that its railway rates, however unfair, should not be attempted to be interfered with, except in the shape of a guarantee against loss given to the state by which the railway has been constructed.

Mr. BARTON. -
It does not mean anything of that kind.

Mr. KINGSTON. -
Then what does it mean?

Mr. BARTON. -
It is plain enough on the face of it.

Mr. KINGSTON. -
I have ventured to suggest to honorable members the only reasonable meaning that can be attached to these words. Although I welcome anything in the shape of an amicable arrangement and an equitable compromise on this very much vexed question, still at the same time I think that we are introducing a blot in the Constitution by the insertion of a provision of this character, which is either meaningless or worse, and I hope it will not be assented to.

The new clause, as amended, was agreed to.
Progress was then reported.
The Convention adjourned at thirty-three minutes past ten o'clock p.m.
Friday, 25th February, 1898.

Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-five minutes past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Clause 96-The Parliament may make laws constituting an Inter-State Commission to execute and maintain upon railways within the Commonwealth, and upon rivers flowing through, in, or between two or more states, the provisions of this Constitution relating to trade and commerce.

Amendment suggested by the Assembly of South Australia-
Omit "may make laws constituting," insert "shall constitute."

Mr. BARTON.-
This amendment involves a difference, and I am not quite prepared to say whether it will be an improvement or not; but I would like to draw the attention of the committee to the fact that, if this alteration is adopted, the clause, instead of giving the Parliament leave to make laws constituting an Inter-State Commission, will make it compulsory on the Parliament, as far as you can direct a Parliament, to pass such laws. Of course, Parliament may, nevertheless, take its own good time about doing so. I thought it well to draw the committee's attention to the nature of this proposed amendment. In view of what has been done in regard to the Bill, it might or might not be an improvement to rather widen the scope of this clause, as I mentioned yesterday, and make the powers as to the Inter-State Commission unrestricted with regard to railways and certain classes of rivers, while extending those powers to all species of traffic under the trade and commerce clauses. It suggested itself to my mind, in the course of our discussions yesterday, and I dare say it may meet with the approval of the committee, that the leave given to the Parliament to constitute an Inter-State Commission perhaps ought not to be restricted in the way in which it is restricted as the Bill at present stands. If it is necessary to give the Parliament power at all, Parliament should have that power in an unrestricted form, so as to enable the Inter-State Commission to execute and maintain the trade and commerce provisions generally.

The CHAIRMAN.-
Instead of putting, as the question, the proposal to omit, "may make laws constituting," as suggested by the Assembly of South Australia, I will put it that the first word "may" be omitted, with the view of inserting "shall," so as to enable other amendments to be proposed.

Mr. KINGSTON (South Australia). -

I would like to suggest to the leader of the Convention that the form in which the amendment of Mr. Grant was carried yesterday necessitates, if effect is to be given to it, the appointment of an Inter-State Commission, because it provides for certain powers to be exercised by that body. The amendment now before us turns the power of the Parliament to constitute that commission into a direction to constitute it, and there would be a difficulty, as has been pointed out by our leader, in giving effect to that provision. If we intend that there shall be an Inter-State Commission, let us say so in the Constitution. It seems to me to be idle to put in this Bill a direction to the Parliament to constitute an Inter-State Commission. If we intend that that commission shall be appointed, let us say, within the four corners of the Constitution, that there shall be an Inter-State Commission, just as we say in the Bill that there shall be certain other tribunals. Then it will simply necessitate an executive act to appoint the commission. Of course, some legislation will be necessary to regulate the powers of the Inter-State Commission.

Mr. HOLDER. -

That is provided for in the next clause.

Mr. KINGSTON. -

I would suggest to our leader that the better course would be, if we alter this clause, not to put in the Bill a direction to the Parliament that it shall legislate to constitute an Inter-State Commission, but rather, in so many plain words, say that there shall be an Inter-State Commission, and, then without any further interference of Parliament, that body can be created.

Sir GEORGE TURNER. -

Who will create the Inter-State Commission?

Mr. KINGSTON. -

It would be an executive appointment.

Sir JOHN FORREST. -

Oh, surely not.

Mr. KINGSTON. -

Some legislation would be necessary for the purpose of defining its powers.

Mr. OCONNOR. -

Yes, its powers and status would have to be defined.

Mr. ISAACS. -
Carrying out Mr. Kingston's view, there ought to be a provision in the Constitution that there shall be an Inter-State Commission.

**Mr. KINGSTON.** -

Those are the very words I am suggesting. If we intend to have an Inter-State Commission, let us say so in the Constitution in the plainest possible way.

**Mr. BARTON.** -

As we have done about the court.

**Mr. KINGSTON.** -

Yes.

**The CHAIRMAN.** -

Do I understand Mr. Kingston to move an amendment?

**Mr. KINGSTON.** -

I was suggesting one to the leader of the Convention.

**Mr. BARTON (New South Wales).** -

I do not know whether I quite understood Sir George Turner correctly yesterday to say that if Mr. Grant's clause was amended there would also have to be an amendment made, at the proper time, in his own clause, dealing with the Inter-State Commission, by inserting similar words. That is the suggestion which Mr. Holder made, and I understood Sir George Turner to say that be would accept it.

**Sir GEORGE TURNER.** -

I accepted that, as far as I was personally concerned. I said it was a compromise, and that, to settle the matter, I was prepared to accept it.

**Mr. BARTON.** -

I am asking this question more as a member of the Drafting Committee than otherwise, because, looking at the clause we are now dealing with, which speaks of constituting an Inter-State Commission for the purpose of executing and maintaining the trade and commerce clauses; and then, looking at Sir George Turner's clause, I find it says—

The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce,

and so on. Well, lest there should be any danger of a repetition, or anything of that kind, I would like to know whether Sir George Turner thinks that these provisions should be placed in one clause entirely, instead of their being in separate clauses, with the possibility of repetition or clashing by our speaking in this clause of the maintenance of the trade and commerce provisions by the Inter-State Commission, and then speaking, in
Sir George Turner's clause, of the Parliament making laws for that purpose? We know perfectly well that ordinarily the sub-section giving power to regulate trade and commerce gives power to make laws dealing with that subject. So, in any case where there is a legislative power proposed to be given, this is a mere repetition. Therefore, I felt a little embarrassed about the matter, and should like to know what my right honorable friend thinks about it.

Dr. QUICK (Victoria). -

As attention has been drawn to Sir George Turner's clause, which has been carried, I beg to point out that the earlier portion of the clause seems to be somewhat limited in its operation. It is confined to making laws for "the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce." Now, that is very limited. Probably Sir George Turner will consider the advisability of making it more general.

Mr. BARTON. -

It might lead to the implication that there was no power to make laws in regard to any other avenues of trade than railways.

Dr. QUICK. -

Yes, and that it did not include roads and rivers. I think the subject might be referred to the Drafting Committee.

Mr. BARTON. -

I do not think that it is a mere drafting amendment that is required. We should take the sense of the Convention with regard to it.

Dr. QUICK. -

I have mentioned the matter to Sir George Turner, and no doubt be will move something to make the provision harmonize with the rest of the Bill. I agree with Mr. Barton as to striking out the words in clause 96, to which he has referred. The clause as it stands would restrict the operations of the Trade and Commerce Commission to railways and rivers only, whereas the powers of the commission should be applicable also to roads and ocean navigation between the various states.

Mr. BARTON. -

Its powers certainly should not be confined only, to the rivers described in the clause, but should extend to all rivers that are navigated.

Dr. QUICK. -

The clause would, as it stands, confer on the Inter-State Commission a more limited power than is contemplated by this committee. Of late, in Victoria, I regret to say, road traffic has been superseding the railway traffic in many respects. So that it will be desirable that the Inter-State Commission, in the constitution of which I thoroughly
concur, should have jurisdiction over all avenues of communication. Consequently, the limiting words in clause 96 should be struck out. I also hope that Sir George Turner will see his way clear to giving the Inter-State Commission jurisdiction to deal with the preferences and discriminations which are contemplated by his clause. I think it should not only be sufficient hereafter to harmonize these particular provisions but also to harmonize with the other clauses of the Bill. The other clauses, as well as the Inter-State Commission clauses, give the Parliament power to make the laws, and the Inter-State Commission the jurisdiction to enforce those laws, and especially to prevent preferences and discriminations.

Mr. MCMILLAN (New South Wales). -

It seems to me that the great question-I am not going to speak with regard to the technicalities, which are more for the legal members to deal with-which we have to decide is whether, in the first place, the Inter-State Commission is to be a non-political body-practically a judicial body-outside all political influence, and whether its decisions are to be final? I think we must all consider the question of the range of the duties of this body in view of what it is going to be. It is very clear that there are many things that might have to be adjudicated upon by Parliament, such as laws and regulations of a political character; and, if I understand the object of this tribunal aright, it is to be practically a non-political tribunal of a judicial character to interpret the Constitution. Therefore, it does seem to me that we shall have to put certain restrictions upon it, in certain directions, to indicate what its functions are. I understand that one of its chief functions will be to interpret and adjudicate upon matters arising out of the trade and commerce

Mr. HOLDER. -

To administer rather than to interpret.

Mr. MCMILLAN. -

Perhaps I am not using the right term.

Mr. OCONNOR. -

"Execute and maintain," those are the words.

Mr. MCMILLAN. -

To "execute and maintain"; and if we are going to have a tribunal of this kind-and I assume that we have practically carried the principle, by arrangement at any rate-then we ought to decide that it shall be as nearly as possible

Mr. KINGSTON. -

An independent body.

Mr. MCMILLAN. -
Yes, an independent body, introduced into the Constitution very much as we have introduced the Supreme Court; a body established by the Constitution, and free from all political prejudices and unnecessary control. With our knowledge of what we intend this body to be, we have first to decide its character and scope, and the principles upon which it is to be founded, and then other matters will flow from those definitions.

Mr. ISAACS (Victoria). -

I am afraid that we shall be getting ourselves into a maze if we do not take care. I would point out that great as are the advantages of having an Inter-State Commission, it is very problematical in America, at the present time, how far the Inter-State Commerce Commission there has been beneficial, and how far not. There has been considerable discussion upon the question, and no later than December, 1897, in the Forum, there was a paper by one of the members of the Inter-State Commission—Mr. Prouty, I think—who dealt with the question of pooling. This paper was the latest of a very extensive series of articles dealing with the Inter-State Commission in relation to railways, and the conclusion come to was that it is very problematical how far the commission has been beneficial and how far not.

Mr. HOLDER. -

They have to deal with private railways in America, but our Inter-State Commission will have to deal with state railways.

Mr. ISAACS. -

That point is perfectly irrelevant, if I may say so, to this question. The difficulty is exactly the same.

Mr. HOLDER. -

The two cases are different; in one case the railways are owned by private people, and in the other the state owns the railways.

Mr. ISAACS. -

But the courts have pointed out that there is no real distinction in that respect. Even private railways get their authority and powers from the state, and are practically dealt with in America, so far as the Inter-State Commission is concerned, as state corporations. Much as I am in favour of the constitution of such a commission, I think it is a mistake to constitute that body under the Constitution. I think it should be created by Parliament, with certain duties allotted to it. What will be the result of constituting the commission under the Constitution? You will have the Parliament in certain respects independent within its own sphere; you will have the Supreme Court independent of and checking the Parliament; and then you will have the Inter-State Commission deriving its powers and functions from the Constitution itself, and therefore independent of and superior to
Parliament within its sphere, independent of the Supreme Court, and of every other power in the Commonwealth. I am entirely in favour of the Inter-State Commission or some such body being appointed, but I want it to be created by the Parliament, endowed with its proper functions, and, as in America, letting the Federal Parliament have power to modify the laws from time to time according as it sees the necessity for so doing. Sir George Turner's clause, as it has been passed, provides that the Parliament may make laws for the execution upon railways of the trade and commerce provisions, and may forbid improper and unjust discriminations and preferences. But if we say that there shall be an Inter-State Commission instituted by and deriving its authority from the Constitution, and deriving also its powers from the Constitution, having express power under the Constitution to forbid any preferences and discriminations which it may deem unjust, Parliament has no power to interfere, and the commission is finally independent alike of the Supreme Court and of Parliament. We may find ourselves in this position: We shall have a tribunal called into existence which will be practically the fifth wheel of the coach, and we shall find ourselves, perhaps, with an incubus which we shall be glad to get rid of, but which we cannot remove. I think we should make provision for the Parliament having power to create an Inter-State Commission—having the duty ascribed to it, if you like, to create that Inter-State Commission; but certainly what we ought not to do is to create it ourselves, endowing it with such powers and functions as may hereafter make it obstructive to the whole machinery of government.

Mr. KINGSTON (South Australia). -

I voted with Mr. Isaacs against giving power to the Inter-State Commission to protect state railways against federal legislation. We were beaten on that division. I was very sorry for it, but I am bound to loyally abide by the decision of the Convention, and to do what I can to give effect to it. It seems to me that when in one clause you provide that the decision of the Federal Parliament on the subject of state rates can be reviewed or abrogated by the Inter-State Commission, if you are going to allow the Constitution to remain in this shape, that the Federal Parliament can either appoint that commission or hold its hand, you run a very great risk of the Federal Parliament refusing to do anything, or delaying to do anything, to call into existence a body which will in the slightest degree review the Parliament's decisions. And although I voted as I have already mentioned yesterday, I call the attention of this Convention to the necessity of creating, so far as they can, this Inter-State Commission independently of any subsequent legislative Act on the
part of the Federal Parliament. As has been stated by Mr. McMillan, it is necessary, if you are going to intrust this commission with powers of the character which have been suggested, that you should secure it in its office and render it altogether, so far as you can, absolutely free from control by the Federal Parliament. What is the good, I venture to ask, of having a commission to review, to some extent, the decisions of the Federal Parliament on a matter of state rates, if that commission owes its existence to the Federal Parliament, and is subject to the Parliament for the continuance of its existence, and if its constitution may be repealed or altered at any time?

Mr. HIGGINS. -

I think the idea was to give a fixed tenure.

Mr. KINGSTON. -

Yes. What was provided in the clauses which came before the Constitutional Committee in Adelaide was that there should be an Inter-State Commission; that that Inter-State Commission should be constituted by the Constitution, and that its members should be practically independent of the Parliament. They will have power to declare that, notwithstanding federal legislation, state rates of a certain character are essential to the development of the territory of a state, and shall not be rendered nugatory by federal legislation.

Mr. BARTON. -

That is, only state rates which may in the opinion of the Inter-State Commission, be necessary for the development of the country.

Mr. KINGSTON. -

Yes; but as you put that matter altogether within the opinion of the Inter-State Commission, it is their decision on the point as to whether those rates are necessary which decides whether or not the federal legislation shall apply. The Federal Parliament can legislate as it chooses, but as long as the Inter-State Commission certifies that the rates sought to be attacked by the Federal Parliament are necessary for state development, the Act of the Federal Parliament will not apply. I will ask honourable members of this Convention: If the Inter-State Commission is to have power to abrogate, if it thinks necessary, federal legislation, is it not absolutely necessary, as pointed out by Mr. McMillan, that this body should be independent of the Parliament, and should be as secure within the realm of its jurisdiction as the Judges of the High Court? This matter was thoroughly recognised by the Constitutional Committee which met in Adelaide. I think that the provisions relating to the constitution of the commission were first brought under our notice by Mr. O'Connor, but certain it is that, as the Bill came up from the Constitutional Committee, in Adelaide, there were provisions
dealing with this most important subject. They were as follows:-"The members of the commission." In the first instance, I think, it was provided "may." That was a little defect, but it was cured by the subsequent provision. "The members of the commission shall hold office during good behaviour; shall be appointed by the Governor-General, with the advice of the Federal Executive, may be removed by the Governor-General by such advice, but only upon an address from both Houses of Parliament in the same session praying for such removal; shall receive such remuneration as Parliament may from time to time determine, but such remuneration shall not be diminished during their tenure of office." By a provision of that sort security was given to the members of the Inter-State Commission in the discharge of their high and important functions similar to the security which is given to the occupants of the highest official positions. This Convention having now determined in the clearest possible terms to confide to the Inter-State Commission, in its absolute discretion, the settlement of the question as to whether or not state rates are necessary for local territorial development, and so should be exempted from the operation of federal legislation, I do think that it is a necessary corollary that we should secure the members of that commission in the discharge of their duties almost to the same extent as we secure the Judges of the High Court.

Sir GEORGE TURNER. -

What became of that provision in Adelaide?

Mr. KINGSTON. -

It was struck out; but there was not, in Adelaide, a positive declaration, as there has been here, that in a matter of this sort, state against Federation, the Inter-State Commission is to decide. I suggest, therefore, to the leader of the Convention that he should do two things-first provide that there shall be this commission, and follow that up by a clause similar to that which we had in Adelaide, securing the members of the commission in their offices, making them independent, removing from them all considerations of fear or favour which might embarrass them in the discharge of the duties intrusted to them.

Mr. OCONNOR (New South Wales). -

There are two considerations involved. The first is whether the Constitution should enact that there shall be an Inter-State Commission; second, whether there should be some enactment in the Constitution guaranteeing the status and constitution of the committee, as proposed in Adelaide. With regard to the first question, a very important matter to be considered is the form which the Right Hon. Sir George Turner's
amendment is to take subsequently. It will be very important to consider the form the amendment giving power to the Parliament to forbid discriminations will eventually take. If that amendment provides that the Inter-State Commission is to be the judge as to discriminations and preferences, I do not think there will be any necessity to insist upon the appointment of the Inter-State Commission by the Constitution, because then the question with regard to the exercise of power by the Inter-State Commission can only arise after the Inter-State Commission has been appointed and has acted with regard to any of these questions of rates. If, on the other hand, the provision in Sir George Turner's amendment remains as it is, that is to say, that Parliament may determine preferences and discriminations, then, in order to carry out Mr. Grant's amendment passed yesterday, it will be necessary to enact that there shall be a commission.

Mr. ISAACS. -

There is no doubt that Mr. Grant's amendment creates a great difficulty.

Mr. BARTON. -

It is Sir George Turner's amendment that creates a difficulty.

Mr. OCONNOR. -

I understood from Sir George Turner last evening that on the recommittal he will be willing to alter his amendment, so as to make it refer to the opinion of the Inter-State Commission. If we have my honorable friend's assurance to that effect—and I think that is the opinion of the Convention—we may, as a matter of drafting, amend the right honorable gentleman's amendment to provide for that, and then there will be no necessity to do anything more than to give the right to Parliament to constitute the Inter-State Commission.

Sir GEORGE TURNER. -

I shall be very glad if the honorable member will tell us more fully exactly what he means, and how he would propose to make it read.

Mr. OCONNOR. -

The necessity for the amendments which were carried last night arose from my right honorable friend's amendment carried the day before, which was as follows:-

The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce, and particularly to forbid such preferences and discriminations as it may deem to be undue and unreasonable, or to be unjust to any state.

An amendment has been carried upon that, as follows:-

Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may, in the opinion of the Inter-State Commission, be
necessary for the development of its territory, if such rates apply equally to the goods from other states.

Supposing that the right honorable gentleman's amendment remains as it is, this will happen: That Parliament will legislate to forbid the discriminations or preferences; but the protection given under Mr. Grant's amendment cannot operate until the Inter-State Commission has been appointed.

Mr. ISAACS. - Protection!

Mr. OCONNOR. - Protection or exemption, or anything you like.

Mr. ISAACS. - There is a very great difference.

Mr. OCONNOR. - That is to say, the restriction of the power of Parliament to deal as it thinks fit with the imposition of rates.

Mr. ISAACS. - But Mr. Grant's amendment is only a restriction of the power of the state to impose rates.

Mr. OCONNOR. - I am quite aware of that; but before Parliament can come to a conclusion as to whether a rate is discriminating or preferential, under Mr. Grant's amendment, it must take into consideration the question of whether, in the opinion of the Inter-State Commission, it is necessary for the development of the territory. Before that consideration can come before Parliament there must be an Inter-State Commission to pronounce an opinion upon it.

Mr. KINGSTON. - Surely not.

Mr. HIGGINS. - At all events, the protection given to New South Wales does not arise until there is an Inter-State Commission.

Mr. OCONNOR. - Exactly; that is another way of putting it.

Mr. KINGSTON. - Not if your construction is right, because you say there must be a commission before Parliament can legislate.

Mr. OCONNOR. - It is the same thing. Let me put it in another way. Without the appointment of an Inter-State Commission, legislation may take place under Sir George Turner's clause dealing with discriminations and
preferences; but, by Mr. Grant's amendment, Parliament has not a free hand in dealing with these discriminations and preferences. Its hand is restrained if in the opinion of the Inter-State Commission a rate has been made for the development of territory, and, if so, that must be considered. Very well, I say that Parliament cannot have that element before it until the Inter-State Commission has decided or pronounced an opinion. That means it is necessary for the Inter-State Commission to be appointed; that is, if things remain as they are. If that is so, it would be clearly necessary in my view to provide mandatory words in the Constitution that the Inter-State Commission shall be appointed and to provide the way in which it is to be appointed. On the other hand, if I understand the honorable member's suggestion as carried out yesterday, that is to say, that he is willing to amend his clause so as to make the consideration of preferences and discriminations subject to the opinion of the Inter-State Commission-and the honorable member seemed to assent to that suggestion yesterday-then, inasmuch as the power to interfere with rates cannot come into existence until the appointment of the Inter-State Commission, the limitations cannot come into operation until the exercise of the power, so that both will come into operation together, and there is no necessity, therefore, to provide in a mandatory way for the appointment of a commission.

Mr. KINGSTON. -

Cannot Parliament legislate in the first instance? Does not the Inter-State Commission declare an exemption afterwards? Parliament is not bound to hold its hand until the Inter-State Commission deals with the question.

Mr. OCONNOR. -

I did not say or intend to say that. What I say is that the full effect of Mr. Grant's amendment cannot arise to any state until the Inter-State Commission is appointed; therefore it would be unjust to leave to Parliament the unfettered power to deal with these rates, and, at the same time, provide no machinery by which protection could be given.

Mr. KINGSTON. -

Hear, hear.

Mr. ISAACS. -

Is not Sir George Turner's clause directed merely to the power of Parliament to annul any rate that is made by a state which it thinks is unjust-I mean the latter part of it?

Mr. OCONNOR. -

I do not think so. I think Sir George Turner's clause would enable Parliament to pass an Act describing what shall be preferences and
discriminations.

Mr. ISAACS. -

I agree with that.

Mr. OCONNOR. -

Probably that would be done; a particular rate would not be selected, but classes of preferences and discriminations would be described in a general way; in other words, a general principle would be laid down.

Mr. ISAACS. -

But if the honorable member is going to have it altered, as suggested, that the latter part shall read as the Inter-State Commission may deem unjust, then Parliament will not have that power.

Mr. OCONNOR. -

I think it would, because Parliament would have power to obtain the opinion of the Inter-State Commission on any question, not only as to a special rate, but as to a class of rates, or upon the principle on which discriminations and preferences should be dealt with.

Sir GEORGE TURNER. -

Would the Parliament be bound to carry out that opinion, or could it carry out any other opinions it thought fit?

Mr. OCONNOR. -

If the clause is amended as I suggest, and as the right honorable gentleman seemed to assent to yesterday, by making the Inter-State Commission the judge of discriminations and preferences, then Parliament could not legislate without the opinion of the Inter-State Commission with regard to this matter.

Sir GEORGE TURNER. -

And would have to legislate upon that opinion.

Mr. OCONNOR. -

Would have to legislate upon that opinion, or, if it passed legislation in such a way that the Inter State Commission afterwards considered was improper, the Inter-State Commission might set aside any rate or any principle of rate decided upon.

Sir GEORGE TURNER. -

It would never do to let Parliament pass a law which the Inter-State Commission could set aside. That would be terrible.

Mr. OCONNOR. -

There must be one or the other. If you set up an Inter-State Commission for the performance of any duty you must enable it to perform that duty effectually. The commission must be able to consider the principle of discrimination and preference before Parliament passes any enactment, or it must have the power to decide any matter by the application of principles
which it thinks desirable to apply. If the suggestions to amend the right
honorable member's clause by putting in certain words relating to the Inter-
State Commission is carried into effect, it will not be necessary at the
present time to provide that there shall be an Inter-State Commission,
because, inasmuch as the Parliament will not be able to legislate effectually
until there is such a commission, the commission will probably be
appointed for both purposes. I hold the opinion very strongly that,
inasmuch as it is quite evident from the form in which these provisions
dealing with railways and rivers are taken now, it is absolutely necessary
that there should be an Inter-State Commission to deal with the questions
which will be raised. If there is one thing more important than another in
the constitution of the commission, it is that it shall be absolutely above
every kind of prejudice or influence which may come from provincial
sources. If it is important that not only the Judges of the High Court, but
that all the Judges, shall be given a tenure of office which will place them
above all political interference, surely it is still more important that
individuals who have to deal with matters of the highest interest affecting
states, interests

which may arouse the most intense political excitement, should be placed
upon the same footing of independence. The only way to secure their
independence is to guarantee it in the Constitution. Now that we have
arrived at the opinion that there should be an Inter-State Commission, and
that it should be charged with real duties, we should take care to insure that
the power is exercised by a commission which will be in every sense
worthy to carry out the duties imposed upon it. Therefore, I should like a
statement from the Premier of Victoria as to what his intentions are with
regard to the amendment of the clause which was inserted upon his motion.
That may operate upon the question whether we should or should not make
this provision mandatory by the appointment of a commission. Whatever
the honorable member's view may be, I think that it is very desirable that,
if we give the power to appoint the commission, some provision such as
has been read should be inserted in the Constitution.

Mr. SYMON (South Australia). -

I think the honorable and learned member's remarks rather illustrate the
tangle into which we have got with regard to these railway rates. But,
having got into it, we must try to discover the best way out. I do not quite
agree with the honorable and learned member as to the effect of what we
have done, so far as it can be ascertained. It appears to me that under the
clause put in upon the motion of the Right Hon. Sir George Turner, the
Federal Parliament has the absolute right, at the earliest possible moment it
chooses, to deal with the entire railway question. Its power to deal with it seems to me absolutely and entirely unrestricted so far as this particular clause is concerned. I think that that was my right honorable friend's intention when he moved the clause. Running upon parallel lines with it is the power of the state to do as it pleases-subject to a restriction I shall point out-in regard to railway rates within its own territory. The moment that the Federal Parliament has dealt with the entire subject-of course upon general terms, not dealing with any particular rate or any particular class of goods-if its legislation conflicts with what has been done by the state, the Inter-State Commission will come into play and will declare whether any portion of what has been done by the state is to be supported upon the ground contained in the amendment of the honorable member (Mr. Grant).

Mr. KINGSTON. -
The commission would have power to declare an exemption.

Mr. SYMON. -
It might be expressed in that way. The Inter-State Commission will have a function similar to that possessed by the High Court, but in regard to other matters. It will declare whether the rate imposed by the state is in conflict with the legislation of the several Parliaments. If it is in conflict, there will come the further inquiry whether it is to be exempted from the bar placed upon it by the Federal Parliament, upon the ground that it is necessary for the development of the state territory.

Mr. ISAACS. -
The Inter-State Commission must decide whether the rate is necessary for the development of the state territory.

Mr. SYMON. -
Yes. If that provision were not in the Constitution the matter would be left to the Parliament of the state, whose enactments might be over-ridden by the Parliament of the Commonwealth. If by virtue of the amendment agreed to last night the Inter-State Commission is now substituted, that body will inquire into all the necessities of the case and give its certificate upon the facts. This certificate will give an immunity to the particular rate or class of rates in connexion with which it is granted from the legislation of the Federal Parliament.

Mr. KINGSTON. -
It would bring the rate within the constitutional exception.

Mr. SYMON. -
My object is to point out that, however defective in some respects these provisions may or may not be, there will be no conflict between the powers of the Federal Parliament and of the state in relation to
railway matters which may not be adjusted by the Inter-State Commission. This being so, it seems to me that the introduction of the Inter-State Commission into the clause providing for this exemption renders it necessary to make it obligatory under the Constitution to appoint the commission. It would be absurd to give a protection—I call it an immunity—to the state in relation to these railway matters, depending upon the action of an Inter-State Commission or any other body, if we did not make the creation of such a body imperative. It seems to follow almost as a consequent amendment on what we have done that the permissive provision in the clause should be made obligatory. When we have done this it follows that as there is an element of policy, the existence of which no one can deny, it will be even more necessary than in the case of the Federal High Court—which is not to deal with matters of policy, or matters tainted with policy, to use the expression of another speaker—that the tribunal which we are creating should be above the breath of political intrigue. To secure this, I think, some provision should be inserted similar to the provisions which we have inserted in regard to the Judges of the High Court. Whatever may have been the case as the Bill left us after the Adelaide session, it seems to be imperative now, to give effect to what has already been done, that we should introduce into the Constitution provisions binding the Federal Parliament to create an Inter-State Commission, and placing the Inter-State Commission, when created, on a level which will raise it above the possibility of the suspicion that its judgments or actions have been in any way influenced by political considerations.

Mr. HIGGINS (Victoria). -

I have to make a suggestion. I foresaw this tangle last night, and therefore I voted against the insertion of the words "in the opinion of the Inter-State Commission," although I should prefer to see these rates imposed subject to the opinion of an Inter State Commission, rather than subject to the opinion of Parliament, for obvious reasons. I foresaw that it would render obligatory at first sight the creation of an Inter-State Commission, and I hoped that we should leave the hands of the Federal Parliament absolutely free in regard to the creation of such a body. I think that the argument of the honorable and learned member (Mr. O'Connor) was very logical. He said: "If you are going to protect New South Wales in regard to rates which, in the opinion of the Inter-State Commission, are properly developmental rates, you must have an Inter-State Commission to give effect to that protection." At the same time, I agree with the Attorney-General of Victoria that it would be a lamentable thing to put this obligation upon the Federal Parliament. I would suggest this way out of the
tangle: That we should make the creation of the Inter-State Commission permissive as hitherto, with the understanding that upon recommittal we strike out the words "in the opinion of the Inter-State Commission."

Mr. HOLDER. -
You will not be successful in having them struck out,

Mr. HIGGINS. -
I think that the honorable member has conceived-and I say it with all respect-an undue prejudice, an undue sense of danger, in regard to the courts.

Mr. HOLDER. -
I am voicing the opinion of the great majority of the people.

The CHAIRMAN. -
The honorable member is not in order in rearguing this question.

Mr. HIGGINS. -
I did not mean to do so. I was merely about to refer to it in reply to the honorable member's interjection. My suggestion is this: It is now put to us that we must make the appointment of the Inter State Commission obligatory. I agree that you must make it obligatory if you preserve the clause in its entirety, retaining the words

I in the opinion of the Inter-State Commission," but I hope that we shall not retain those words. With regard to the Inter-State Commission, if they have merely to deal with matters arising under the provision in regard to freedom of trade and intercourse and preferential rates, there will not be enough work for them to do.

Mr. OCONNOR. -
Their powers would be much larger than that.

Mr. HIGGINS. -
I feel that we shall have a difficulty in getting the people to accept a Constitution which makes the creation of a team of highly-paid officers obligatory upon the Federal Parliament. The argument which I and others have heard so frequently outside, and it is in the main an unjust argument, is that this Constitution will create a number of highly-paid officers who will have but very little work to do. What I want is that the Federal Parliament should be left free, although I thoroughly agree with my friend (Mr. O'Connor) that as a corollary to the amendment of Mr. Grant's clause—an amendment which Mr. Grant does not want-you make the creation of an Inter-State Commission obligatory. I hope we shall not make it obligatory, and then, if there be a recommittal, Mr. Grant's clause can be struck out.

Sir GEORGE TURNER (Victoria). -
I do not think it is necessary, when we constitute this Inter-State
Commission, to have highly-paid officers permanently. I do not anticipate that we are going to appoint an Inter-State Commission which may work for one or two months in the year and be paid for the whole year.

Mr. HIGGINS. -

But the Inter-State Commission must be absolutely independent of Parliament.

Sir GEORGE TURNER. -

I take it the Inter-State Commission would be appointed by Parliament.

Mr. OCONNOR. -

By the Executive, you mean,

Sir GEORGE TURNER. -

Well, they would be appointed probably by the Executive, and it is questionable whether they would be removable except under certain conditions. I think we are mixing up questions which ought to be kept separate. When we come to discuss the tenure of their office, I shall be perfectly prepared to leave them fairly independent. At the same time, there is no necessity to pay high salaries to men who will only work a portion of the year. I make these remarks in reply to Mr. Higgins, who seems to think it is necessary to have a permanent body drawing high fees.

Mr. HIGGINS. -

I did not say there should be a large staff. What I said was that the Inter-State Commission should be independent of Parliament, and have no fear in consequence of any action they may take.

Sir GEORGE TURNER. -

My honorable friend said we were creating a large body of men drawing heavy salaries.

Mr. HIGGINS. -

What I said was simply that you must have a body of highly-paid men with a fixed tenure.

Sir GEORGE TURNER. -

With regard to the main difficulty, I confess we appear to have got into a tangle. My own desire is that we should leave the sole decision of all questions to Parliament, so that Parliament may, on finding their decisions to be wrong, have power, from time to time, to amend legislation so as to act fairly and justly to all the states. The amendment proposed by Mr. Grant has undoubtedly created a difficulty, and does not carry out the design of the mover, and certainly does not carry out my desire. My desire is that there should be restriction on the power of the Federal Parliament. My desire is that, while we give to the Federal Parliament power to make laws for the execution and maintenance of all provisions as to forbidding preferences which are unreasonable and unjust, that power should be
restricted in cases where the rates are imposed purely for the development of the country. In the case of such rates, the power of the Parliament to declare them unjust or unreasonable should cease. I should be glad to see the amendment altered so as to carry out our desire. I think we should leave the Bill as it is, and as it was when I spoke yesterday—that we should leave it to the Parliament to make those laws. I am prepared to go further and say that Parliament shall not constitute an Inter-State Commission.

Mr. DOBSON. - Leave it permissive.

Sir GEORGE TURNER. - It might be left permissive, or I am perfectly willing to fall in with the views of those who think the power ought to be made compulsory. We ought not, however, to go the length of constituting an Inter-State Commission in the Constitution. If we leave it to the Federal Parliament to appoint such a commission, Parliament will have full power to rectify any difficulties which may occur.

Mr. MCMILLAN. - You would give certain status to the members of the commission?

Sir GEORGE TURNER. - If an Inter-State Commission is appointed, it should have a fairly independent tenure, something like that of the Railways Commissioners. I do not believe in having an Inter-State Commission which is to be a mere farce, or a parliamentary puppet which could be turned out of existence. That would not be a proper provision to put in the Constitution. I do not go the length that Mr. Kingston goes in saying we, in the Constitution, should appoint an Inter-State Commission. I am quite willing to leave the matter optional. Having done that we still leave to Parliament powers to make laws providing for the execution of the Act in regard to trade and commerce, and to forbidding preferences. But I would leave it to the Inter-State Commission to carry out those laws from time to time. In the first or second year of the existence of the Federal Parliament, it would be impossible to draw a hard-and-fast line which would be applicable ten years afterwards. We are new country with new developments, and as years go on, what might be just and proper now might in the future become improper and unjust. I, therefore, think we ought to give power to the Federal Parliament to constitute the commission, and leave the carrying out of the laws to a body with a proper tenure.

Mr. MCMILLAN. - Would the Inter-State Commission not be administering matters in
connexion with the Constitution?

Sir GEORGE TURNER. -

Parliament could only pass laws where the powers to pass those laws are conferred by the Constitution.

Mr. MCMILLAN. -

You want the Parliament to lay down rules and the Inter-State Commission to administer them.

Sir GEORGE TURNER. -

I think that is the only course we can properly pursue. I desire to make this body a good body.

Mr. MCMILLAN. -

Your view seems to be in direct antagonism to the other view.

Sir GEORGE TURNER. -

Which other view?

Mr. MCMILLAN. -

To the other view that in the Constitution it shall be provided that Parliament shall administer the laws.

Sir GEORGE TURNER. -

I object to the question of the Inter-State Commission being made obligatory in the Constitution. Let Parliament be bound if necessary to adopt this Inter-State Commission, and give that Inter-State Commission as reasonable and proper a tenure as may be thought fit. Parliament, from time to time, can declare what the laws are to be within the terms of the Constitution, and it would, then be the duty of the Inter-State Commission, independent of Parliament, to carry out the laws.

Mr. DOBSON (Tasmania). -

I hope the clause will be left as it stands, making it permissive, and not obligatory, on the Parliament to appoint an Inter-State Commission. While there may be great force in argument of Mr. Kingston, that what we did yesterday would logically point to our making the Inter-State Commission part of the Constitution, we must all admit that what we did yesterday was a compromise. I can quite understand that as the federal spirit and the desire for harmony increases, we shall hardly, if ever, desire to call into play an Inter-State Commission. With Mr. Higgins, I think it would be a very great mistake to compel Parliament to appoint highly-paid officers. As the practical Premier for Victoria has pointed out, there is no reason why the members of the Inter-State Commission should be permanently paid. They might be called together and paid 100 guineas for a small case or 200 guineas for a large case. My thoughts are tending in the direction that when federation comes about it will be found that two
colonies, if they have any dispute, would be quite willing in nine cases out of ten to have that dispute settled by their own officers through negotiation, or, if not, would probably consent to have the dispute settled by the High Court. In Victoria and New South Wales are the most skilled railway men in the Southern Hemisphere. When the names of Mr. Speight and Mr. Eddy are mentioned, where could equal or superior men be found? Any dispute which might arise might, under the circumstances, be referred to a body certainly not more capable than the officers advising them. I do not believe that men would be found to form an Inter-State Commission equal in experience to those now managing the railways of this country. A simple course would be to let the railway experts go before the High Court in order to strengthen the case, and then to let the High Court decide. I do not believe that, for years to come, an Inter-State Commission will be necessary.

Mr. KINGSTON (South Australia). -

For the purpose of taking the sense of the Convention, I hope the leader (Mr. Barton) will see his way to accept the suggestion. I move that the words "There shall be" be inserted before "the."

The CHAIRMAN. -

The amendment to strike out "may" will be withdrawn for the present, in view of putting the proposal of Mr. Kingston to insert "There shall be" before "the."

Mr. BARTON (New South Wales). -

I think there may be some difficulty about this. If it be stated in the Constitution that there shall be an Inter-State Commission, having certain powers, I am not sure that it might not be interpreted to mean a direction to the Commonwealth to appoint a commission at once. That would not do. It is intended that the powers of the commission shall be within the limits of the Constitution as defined by law. That might raise a difficulty of interpretation, and I suggest to Mr. Kingston that he should leave it-

"Parliament shall constitute an Inter-State Commission." I was not in the chamber when Sir George Turner spoke, and he will correct me if I am wrong, but I understand he seems to think that the Inter-State Commission should merely have such powers as the Parliament may grant to it. I think the Inter-State Commission should have some of the powers expressed in the Constitution in regard to water traffic.

Sir GEORGE TURNER. -

What I said was, that I thought Parliament should declare, generally in regard to trade and commerce, and that the Inter-State Commission should be practically an independent body to carry out the law of Parliament from time to time; that law being, of course, in the Constitution.
Mr. BARTON. -

We are about to say that an Inter-State Commission shall be appointed to execute and maintain the Commonwealth provisions relating to trade and commerce. I understand that the general sense of the Convention is that the restriction to railways and rivers should disappear; that the Inter-State Commission should deal with commerce throughout the states without any restriction. Then the clause would read:-

The Parliament shall make laws constituting an Inter-State Commission to execute and maintain within the Commonwealth the provisions of this Constitution relating to commerce.

That seems to me to be the charter of the Inter-State Commission.

Sir GEORGE TURNER. -

Would you add "and the laws for the time being passed by the Parliament"?

Mr. BARTON. -

I think that is unnecessary. They will have to maintain the constitutional provisions with regard to trade and commerce. It is obvious that we must give a certain amount of discretion to Parliament, and Parliament having a commission already in existence will not pass any laws relating to trade and commerce without leaving the determination of those laws to the Inter State Commission. It may be only a difference of form, but I think there would be no advantage in adding the words suggested. We are giving in the Constitution power to the Inter-State Commission to execute and maintain within the Commonwealth the provisions relating to trade and commerce. Then we have in Mr. Grant's amendment the determination of certain other matters confided to the Inter-State Commission, and I understand that the Right Hon. Sir George Turner consented yesterday to have similar words inserted in his clause. It is clear then that the provisions we are inserting in the Constitution in relation to trade and commerce will be under the jurisdiction of the Inter-State Commission, and that is really all we want. We might go further and make some provision as to the laws, but that is unnecessary. It is inconceivable that Parliament would pass laws, and take away from the Inter-State Commission the power of adjudicating on them. What I do want to impress on honorable members is that there is no necessity to say that there shall be an Inter-State Commission. If we say that Parliament shall constitute an Inter-State Commission, then we make it clear that it is the Parliament, and not the Executive, that is deal with the commission in the first instance and to define its powers. That is necessary, as we might otherwise find the Executive Government taking this as a direction to appoint an Inter-State
Commission before a statute had been passed, and then there might be some trouble with the High Court.

Mr. KINGSTON (South Australia). -

I do not propose to differ from the leader of the Convention in regard to the wording of the clause, but I should like to see the appointment of this Inter-State Commission provided for completely in the Constitution, so that the states and the Federal Parliament would know what body would have the right to decide this vexed question of state developmental rates, and what powers it would possess in that direction. It does not appear to me to be of very considerable importance whether we say that there shall be an Inter-State Commission or that Parliament shall constitute an Inter-State Commission, so long as we omit to deal with the matter within the four corners of the Constitution. In the way we have it at present, even with the amendment I have suggested, it will be necessary before the Inter-State Commission can be properly constituted, or can have any powers of adjudication or administration, that the Parliament should deal with the subject. The carrying of the amendment I have suggested would not therefore entirely effect what I desire. I should infinitely prefer that the leader of the Convention should introduce complete clauses dealing with the whole subject, and not leave to an Act of the Federal Parliament, which may be interested in connexion with the settlement of disputes, the regulation of the powers and the determination of the existence of the body which is to decide these disputes. If the Hon. Mr. Barton cannot see his way to deal with the whole thing completely in the Bill, somewhat on the lines on which the High Court is constituted, and armed with the necessary authorities for the discharge of its duties, I shall not divide the committee on the question of whether or not there should be a declaration that there "shall be an Inter-State Commission" or that "Parliament shall constitute an Inter-State Commission."

Mr. BARTON. -

I shall adopt the honorable member's suggestion as to the tenure of office of the commission, and I may propose the reinsertion of the clause brought up by the Constitutional Committee in Adelaide, with perhaps the omission of the third sub-section.

Mr. KINGSTON. -

I am obliged to the honorable member, but perhaps he will go further and completely call into existence a body of this description without having any necessary recourse to the Federal Parliament. It is a body which should depend on the Constitution for its existence and authority, and it should not be left to the Federal Parliament to make or to mar it.
Mr. GLYNN (South Australia). -

It would be a great mistake to make the appointment of the Inter-State Commission compulsory. It will have to be composed of experts, and they will have to be well paid, although they will have very little to do. We cannot appoint a tribunal at a cost of a few hundred pounds per annum to decide on issues which, though seldom arising, are of such magnitude. We agreed to an amendment last night providing that in considering railway rates the amount of capital invested and the necessity of making the railways profitable should be taken into account. In that way we require the Inter-State Commission to act as financial experts, and to say whether a certain rate, which would be held to be a discriminating rate but for the fact that the railway would be run at a great loss without it, would be tolerated even when in many respects it is against the principles of the Constitution. That amendment was agreed to last night, and agreed to, as I think, very hurriedly. In addition to this, there is a possibility that the Inter-State Commission may be a failure. There is an article in the Forum of September last which shows that the Inter-State Commission in America, taking into consideration the powers with which it is vested, is a failure. In its seventh report the commission asked for powers of rate-making and other powers of interfering with rates which are not simply interstate rates, and it says that without these powers the work it is called upon to do by Parliament will be frustrated.

Mr. SOLOMON. -

It is dealing with private companies.

Mr. GLYNN. -

No doubt; but if the Inter-State Commission in America has been to some extent a failure simply because it cannot make certain rates we may use that fact as an argument for the statement that if we constitute a body here without arming it with extraordinary powers it may also be a failure. In America there are 44 states, with a railway mileage of 180,000 miles. Here we have the affairs of about three states to deal with. Here we are going to constitute a body-to do what? Not to interfere with general rates, but simply to determine whether any rate is preferential and contrary to the provisions of the Constitution. There will be very few meetings of the commission, but the members of it will have to be well paid because they will require to be experts. I would also call attention to this fact, that by making the appointment of the Inter-State Commission compulsory, and giving it power to carry out the general provisions of the Constitution with regard to trade and commerce, you will enable it to exercise control over inter-colonial telegraphic rates and other matters. Is it contemplated that the commission shall be a jack-of-all-trades, having to decide on river
rates, and to determine such questions as to what is territorial development, what is the financial returns of the various lines of railways, and what is a fair intercolonial telegraphic rate?

**Mr. BARTON.** -

All they can do is to maintain the provisions relating to trade and commerce. They will have nothing to do with the question of telegraphic rates.

**Mr. GLYNN.** -

It has been laid down in America that the Inter-State Commission could get from Parliament power to exercise control over the telegraphic rates.

**Mr. BARTON.** -

Parliament could give them that power, but it is not likely that it will do so.

**Mr. SOLOMON.** -

We are not handing over the posts and telegraphs to the Federal Parliament.

**Mr. GLYNN.** -

I understand that, but what I say is that if Parliament did not legislate at all with regard to telegraphic rates, the federal tribunal could say whether any one rate was unduly fair to one colony and unfair to another. If we appoint a commission with general powers with regard to trade and commerce similar to those we are vesting in the Supreme Court, we, by implication, give power to that commission to deal with intercolonial telegraphic rates. We should not do that. The Railways Commissioners of New South Wales and Victoria, Messrs. Oliver and Mathieson, point out, although it may be said that they are prejudiced, that the appointment of such a commission is altogether unnecessary. They state that if the matter is left to themselves they can do all that is required, and they point out also that the duties of the commission will be altogether different from those which fall within the scope of the commission in America.

**Mr. SOLOMON.** -

There is nothing in the clause to prevent the Railways Commissioners of the respective colonies being members of the commission.

**Mr. BARTON.** -

Very possibly the chief commissioner of each colony will be appointed.

**Mr. GLYNN.** -

That may be done, but I do not think it will be, because the Inter-State Commission will have to deal, not only with the question of railway rates, but with the question of the development of territory. Surely you are not
going to appoint a board of Railways Commissioners to determine what is the true policy of development, say, in New South Wales.

Mr. SOLOMON. -

They might form a part of the board.

Mr. GLYNN. -

If the difficulties I have indicated exist, we should not make the appointment of the Inter-State Commission compulsory. There is a feeling in the Convention that the railways will be taken over in five or six years, and is the Inter-State Commission to remain after that time? It must, if its appointment is made compulsory, because it will still have some duties to perform in connexion with the rivers and the telegraph systems. It will practically have nothing to do, but we should be unable to abolish it. I would, therefore, far rather leave the matter to the Federal Parliament, and take the risk of any little political influence that might be brought to bear on the work of the commission. That would be the least of two evils, and, if a division is taken, I shall vote against the compulsory appointment of the commission under the Constitution.

Mr. REID (New South Wales). -

I am entirely in sympathy with the position which my right honorable friend has taken up. But I go a little further than he does. I confess, sir, that my present view has only arisen in consequence of what has been done during the past few days. If nothing had been done of the character which has been done, I should have been perfectly satisfied to have followed the structure of the Bill. But we have to recognize the altered complexion which has been put on the Bill, and a most important alteration it is. From the first moment, I think, we considered the propriety of having some authority to check any infringement of the spirit of intercolonial free trade and intercourse. I think the universal idea was that there should be some tribunal appointed to look after such matters, and that is the structure of the Bill. But since these words have been inserted, which, instead of leaving such matters to an independent tribunal, put on the Parliament the duty of practically doing this work, we will have to make up our minds once and for all whether we are going to have one or two tribunals to deal with these matters. If we have two, they are bound to conflict; I think it follows that there must be one, and one only. Then the question is, is that one to be an Inter-State Commission, or is it to be the Parliament? I think most of us will agree that for obvious reasons, which we need not waste time in mentioning, a compact commission would relieve the Parliament of an infinite amount of labour, and, perhaps, of conflict, as it consists of not one body but two independent bodies. If these matters were
all left to independent experts the time of the Parliament would be saved, and many other good results would come. I go further, and say that only some such tribunal will give perfect confidence to all parties, and such a tribunal is calculated to give perfect confidence to all parties. The question is, which is to be the tribunal? Is Parliament to be a rate-supervising, rate-revising, and rate-annulling body, or are we to have a special body for that purpose? I think the Convention will probably see that it is worth the trouble and expense, in view of all the difficulties and the feeling engendered, to have some independent tribunal. If we are to have an independent tribunal, we must make it at least as independent as is the Federal High Court. We should follow the language used in connexion with that body. I think my right honorable friend will agree with me that, instead of using "shall" for "may," we should insert a provision of this sort:—

The power of executing and maintaining the provisions contained in this Constitution relating to trade and commerce upon railways and rivers within the Commonwealth shall be vested in an Inter-State Commission.

That is the language which is used in another part of the Bill in reference to the High Court, and it is used deliberately to make the High Court a part of the Constitution, to prevent the Parliament from destroying it or repealing it.

Mr. KINGSTON. -

Make it independent of Parliament.

Mr. REID. -

I think it would give much reassurance to the people who are anxious about these trade matters if they felt that at any rate they would be determined by a tribunal having the independence of a High Court, although not the High; Court itself. I do not want to take up any time, as so much time has been taken up with these matters. To recapitulate, since words have been put in, I think it is necessary to have a tribunal to carry out the powers involved in those words instead of the Parliament; that if there is to be such a tribunal it must be made thoroughly independent, that it should be a part of the Constitution, and should not owe its powers or its position to any Government or to any Parliament.

Mr. SOLOMON. -

Will you deal with the point touched on by Mr. Glynn just now, namely, the probability of the railways vesting in Parliament within five years, and of there being no necessity then for the Inter-State Commission?

Mr. REID. -

As to the tenure of office of the commissioners, I do not wish to follow it up so minutely as that, but simply to put the thing itself in the bed-rock of
the Constitution. I hesitated to follow the rest of the clause relating to the
High Court, such as the condition that the Judges shall hold office during
good behaviour, because I felt that it might work out inconveniently. I do
not wish to tie the matter up more than is absolutely necessary.

Mr. SOLOMON. -

That would only deal with the office, not with the limitation of the
Constitution.

Mr. REID. -

If the railways are taken over the rivers are left, and questions may arise
of public roads, trade and commerce generally, so that under any set of
conceivable circumstances the Inter-State Commission is a body which
will be useful. We do not want to make it an expensive body; we do not
want to lay down that there shall be so many commissioners, or to make
any provision of that sort. I would leave that entirely to the Parliament. I
am perfectly satisfied that, once we put the thing in the Constitution, the
Parliament

will do all that is right in connexion with it. I think the plainer course will
be to support the amendment of my honorable friend-to put in the word
"shall," with the understanding that we will have this subsequently put in
the form I suggest.

Mr. KINGSTON. -

Is not the tenure of office one of the most important things?

Mr. REID. -

I am perfectly satisfied to leave that. I do not apprehend that sworn
officers put in such a position will do anything but what is right and just. I
do not want to complicate the matter, because I quite see that these things
may become so unimportant in time that it will be an inexcusable expense
to maintain highly-salaried experts in such positions.

Mr. DOUGLAS. -

Useless officers.

Mr. REID. -

It might turn out to be so. Although it might be objectionable, still this
arrangement might commend itself to the wisdom of Parliament-the
Railways Commissioners of the three colonies should act. I want to leave it
open to the Parliament to exercise its wisdom on all these matters, but I
want to put into the bed-rock of the Constitution that these matters shall be
settled by such a tribunal, and out of Parliament. Of course, this will
involve the recasting of the clause, but we have faced that position from
the first. I think we have all admitted that those amendments which have
been made require to be put together in a different form. The whole thing
must be recast, but I will vote for my honorable friend's proposition that the word "shall" be inserted, simply as an indication that we wish to make this Inter-State Commission a part of the Constitution, and, subsequently, a clause can be framed which will deal with that. At present, we merely wish to test the feeling of the Convention, and I think my honorable friend's amendment will do that in the simplest way.

The CHAIRMAN. -

The amendment of the Right Hon. Mr. Kingston is to put in "There shall be," and to strike out "The Parliament may make laws constituting."

Mr. REID. -

Then something else will follow.

The CHAIRMAN. -

No; "There shall be an Inter-State Commission."

Mr. REID. -

I will vote for that, as amounting to an expression of opinion that we should have an independent commission, as part of the Constitution, and then, afterwards, the necessary words may be put in.

Mr. BARTON (New South Wales). -

The words "The Parliament shall constitute an Inter-State Commission" would be perhaps more elastic than those which are suggested by my right honorable friend (Mr. Kingston). As my honorable friend (Mr. Glynn) has pointed out-and I think we are all indebted to him for painting it out-circumstances may arise under which the necessity will no longer exist for the Inter-State Commission. Imagine, by an arrangement between the states under the powers given in clause 52, the railways becoming vested in the Commonwealth. In that case the very great probability is that the questions which would necessitate an adjudication by an Inter-State Commission will no longer have any existence. It would be saddling the Constitution with a continuous expense to provide that there must always be this commission, when in point of fact it will then have nothing to do. That is the danger I foresee from the amendment.

Mr. REID. -

If it is left open to the Parliament to decide the tenure of office nominal commissioners can be appointed, for that matter.

Mr. BARTON. -

If the matter is left open to Parliament all my objections are satisfied. I want the Constitution in its terms not to raise any implication that there must be an Inter-State Commission always in existence without fear of circumstances arising which would render it a needless expense, and simply cumbering the ground.

Mr. REID. -
So long as we do not put any tenure in the Bill, we do not embarrass the Commonwealth in filling up the commission from time to time as it pleases.

Mr. Barton. -

I am rather inclined to make some provision about the tenure of office; but I think, under the circumstances I have mentioned, that a tenure of a few years, renewable from time to time, would be a sufficient one, and then of course that tenure need not be renewed if the necessity for the commission died out. Perhaps that would be the better way to put it. Under the circumstances, I think it is better either to leave in the words "The Parliament may" or to say "The Parliament shall constitute an Inter-State Commission." Then they may constitute an Inter-State Commission under a law which may fall into desuetude, and as it falls into desuetude they can cease the appointments, and leave off paying the

Mr. Reid (New South Wales). -

From my reading of these matters, I do not think we will ever be in such a position that such a body's services will not be required. In the manifold ramifications of trade and enterprise of all kinds, and in the extension of business over more than one colony, I feel sure that a number of matters are bound to arise. But the great point with me is that I wish to reassure the people of the colonies that at the present time all these vexatious questions will be settled by a competent and independent tribunal. And to secure that object, which is an immediate and pressing object, I think we should provide in the Constitution for the appointment of this commission, leaving the Parliament to exercise a discretion as to the length of the appointments, and so on; and if in the course of time it turns out that the labours of the commission are reduced to a minimum, it will be quite open for the Parliament to accommodate the facts to that state of things, by having nominal appointments.

Sir Edward Braddon (Tasmania). -

We decided yesterday that matters concerning disputes as to railway rates and so forth should be determined by a tribunal called an Inter-State Commission. We have left the matter at this point, that there is no other tribunal provided in the Constitution by which these matters can be settled. It seems to me, as a natural consequence, that we have no choice but to include in the Constitution a provision for the appointment of an Inter-State Commission, which, we have agreed, shall decide these matters. I do not think that this need involve any very great expense. I cordially agree with the suggestion of the Premier of New South Wales that the best choice the Parliament could make in selecting the members of the commission would
be the Railways Commissioners, and, that being so, I do not think that the expense of the Inter-State Commission, whose services would not be continuously required, would be anything that need alarm us. If I thought that we were going to create a body of highly-paid officials to sit permanently, and to enjoy their salaries permanently, whether they had anything to do or not, I should be found recording my vote against it; but I do not think we need fear that. I hope that we shall be able to proceed to a division and settle this matter with as little delay as possible.

Mr. Moore (Tasmania). -

I hope that this machine that you are now creating will be under the control of the Parliament, and I think that the word "may" is much more to the point than "shall" in this clause, which should not be mandatory. If you create an Inter-State Commission with all the powers you intend to invest in it, it would not be at all an independent commission if you appoint a Railways Commissioner for each of the colonies on that commission. It would be a very defective commission, and I am sure that if you appoint a commission at all those who constitute it should be entirely independent of the Governments of the colonies. This kind of thing is growing. We are adding part after part, and expense after expense, to the Constitution, and I think that whatever machinery may be necessary in this case, it should not be mandatory on Parliament, but that Parliament should have the control of it, so that Parliament might, from time to time, appoint that commission whenever it was necessary to decide state questions of a railway character. That is the only way in which you can avoid the great expense which will otherwise follow the appointment of such a commission as that. I do not intend to go into this matter very extensively, but my idea with respect to it is that we should limit all the expenses as far as possible, and that to create a huge body of this kind-to appoint an Inter-State Commission with all the staff and paraphernalia that there may be in connexion with it-will land us in a very large expense. We are comparing great things with small things. We are comparing a little place with about 3,000,000 inhabitants, like Australia, with a much more populous country. We are trying to draw comparisons between these colonies with their small populations and the United States of America with their population of between 60,000,000 and 70,000,000 people. Now, I think that in creating an institution of this kind, which may require to be remodelled, or changed and altered as time goes on, it would be a great mistake to make it mandatory, to give it a distinct power in itself under the Constitution, and I again urge that it should be under the control of Parliament, so that Parliament may change or alter it from time to time as may be found
necessary in the public interests.

Mr. BRUNKER (New South Wales). -

Without wishing to detain the committee, or to discuss this matter very fully, I would like to offer a few words on the question now before us. I think I shall express the opinion of every member of the Convention when I say that the trend of the discussion, during the last two or three days, leads to the necessity for the appointment of such a commission as that now suggested. Something has been said with regard to the expenditure concurrent with such an appointment, but I contend that, in the interests of federation, no expense should be spared that is necessary to abrogate the irritation, inconvenience, and loss which have obtained between the colonies of New South Wales and Victoria during the last twenty years. I consider that the appointment of this Inter-State Commission is the true solution of the whole difficulty that has created the conflict which necessitated the discussion that has taken place on this important subject during the last two or three days. I do not speak from a theoretical standpoint, and, as an illustration, I would like to suggest to the members of the Convention the very great advantages that have arisen in New South Wales since we have had Railways Commissioners who, by the power of Parliament, and consequently the will of the people, have been able to act independently, in the interests of the whole country. And all that honorable members have to do is to refer to the statistics furnished by the Railways Commissioners, showing the profits that have been derived in New South Wales from the railways, as compared with the railways of the other colonies, to demonstrate how perfectly the system has worked in a very much smaller degree than that which it is proposed to initiate under this Constitution. With regard to the duties of this commission, there is no doubt they would have to be controlled in a very large degree by Parliament, but that control would simply tend to the definition of their duties, something in the same form as our Railways Commissioners in New South Wales are appointed by Act of Parliament. Because we must always remember that Parliament is bound to remain supreme as representative of the will of the people. Still, we must be very careful in framing this Constitution to embody it in terms that will create a controlling independent body. They must be independent in the interests of all. And with regard to the functions of this body, it has been stated by an American writer that-

The Inter-State Commerce Commission is a semi-judicial body, by which the federal statutes forbidding unjust discriminations in railway rates, in inter-state freight or passenger traffic, prohibiting certain sorts of
combinations in railroad management, &c., are interpreted and enforced.

Now, I think the duties defined here to a very large extent will devolve upon the commission which we propose to appoint under this Constitution. I wish to offer these few remarks, because, although in a much smaller degree, we are enjoying in New South Wales advantages which have resulted by the action of our Railways Commissioners, and the excellent work they have done, and I regard our experience in that respect as a proof to us, combined with the trend of this discussion, which has embraced almost all that can be said on the subject, that the appointment of this Inter-State Commission will be a solution of the whole difficulty. I may add that I was very pleased last evening when I heard this suggestion made by Mr. Holder, who, I confess, has to a large extent induced me to consent to the appointment of this commission, to which, at a previous stage, I was somewhat opposed. I hope that, whatever may be the result, there will be, nothing done that will detract from the powers or the-control of Parliament, because we must all recognise that Parliament is a body which expresses the supreme will of the people. But we must also bear this fact in mind, that however strict in integrity the members of the Federal Parliament may be, still there are always prejudices that will arise through the local interests members of Parliament have to represent, and we, of course, who are old parliamentarians, can fully recognise this. We do not want to be guided by theory in a matter of that kind: we know from practical experience exactly how these prejudices do arise, and it matters not how the Parliament may be constituted, these prejudices will arise in some of our highest and freest institutions, and we must avoid any of these political innovations being made upon the action of a body which we hope may reign supreme, and independent, so far as the traffic and the trade and commerce of the different colonies are concerned.

Mr. DOUGLAS (Tasmania). -

I should like, to know whether we are discussing the question of the appointment of an Inter-State Commission simply as regards railways and, rivers, or upon the general question as regards trade and commerce, because the clause we have been discussing simply relates to railways?

The CHAIRMAN. -

The question under discussion is as to whether it shall be compulsory or optional on the Parliament to appoint this Inter-State Commission.

Mr. DOUGLAS. -

Yes; but for what purpose is the commission to be appointed-as regards the rivers and the railways, or also connected with them, trade and commerce in general because those involve entirely separate questions? If it is simply as regards railways and rivers, it seems to me, that the
Parliament should appoint the Inter-State Commission, but that it certainly should not be restricted in its choice of the members of that commission to the Commissioners of Railways, who are much more likely to be prejudiced than independent persons appointed by Parliament, from time to time, to carry out the object which this Inter-State Commission is to be appointed to carry into effect. To provide that Parliament shall appoint three of the Railways Commissioners—one from South Australia, one from Victoria, and one from New South Wales—and that those commissioners are to be under Parliament, would, it seems to me, be a great deal worse than leaving it to Parliament altogether, because the Railways Commissioners are much more likely to be prejudiced than are Members of Parliament, who have no interest in the matter. There are two colonies represented in this Convention who would not be particularly interested in the results of this commission, but, as regards the other three colonies, it is very evident that there must be an independent body authorized to arrange matters between them. And I quite agree with Mr. Reid when he states that he would not go further at the present time than to appoint an Inter-State Commission and leave the matters of detail and rates with the Federal Parliament. That, it appears to me, is a much better course of procedure. The idea of appointing as members of this Inter-State Commission men for life, as our Judges are appointed, or for good behaviour, would, it appears to me, be going in the wrong direction altogether, inasmuch as in all probability, as things settle down, this body will have little or nothing to do. The Inter-State Commission will only be brought in casually, and for that reason the members of the commission ought not to be paid a fixed salary, and create a staff of officers who will not be required. At present, as I understand it, the vote proposed to be taken is simply on the question as to whether this Inter-State Commission shall be appointed, not going any further than that. It appears to me that it would be desirable, inasmuch as we have practically decided, to a certain extent, on the appointment of an Inter-State Commission, that we should now affirm that, and agree at once to the appointment of the commission, but I feel that we ought to stop there, and leave the rest to Parliament.

Mr. BARTON (New South Wales). -

Perhaps I might make a suggestion to the committee which will enable us to pass on to other matters. If a vote were taken on the proposal that the word "shall" be substituted for the word "may," so as to make the clause read "Parliament shall," and if that be decided in the affirmative, it might be taken as a direction to the Drafting Committee to redraft this and the following clause, so as to provide for the desires that have been expressed
by the committee during the debate, which are very easy, on this occasion, to gather. It would not be a very difficult matter to redraft these clauses to meet the views of the committee.

Mr. HIGGINS. -

We want a test vote as to whether it shall be obligatory or not on the Parliament to appoint an Inter-State Commission.

Mr. BARTON. -

Yes, and if such a vote is carried, as far as I can see at present, the Drafting Committee would be likely to put the two clauses together in some such shape as this:-

There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament front time to there deems necessary, but so that the commission shall be charged with the execution and maintenance within the Commonwealth of the provisions of this Constitution, and of any laws made thereunder, relating to trade and commerce.

That is to be the charge of the commission, but the extent of the powers of adjudication and determination necessary to enable them to carry out their charge must, from time to time, be le

Mr. REID. -

We do not object to that.

Mr. HIGGINS. -

Is it quite clear as to railway rates coming under the trade and commerce clauses?

Mr. BARTON. -

There is no question about that

Mr. HIGGINS. -

I think so.

Mr. BARTON. -

I do not think there will be any question of that at all. I think that we will all admit that railway rates will come under the trade and commerce clauses, and I think that the Drafting Committee may go so far, in dealing with Sir George Turner's and other amendments, where they find that a suggested new clause or anything of that kind contains what is obviously a repetition of powers already given, as to bring the matter before the Convention, in order to

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see that the repetition does not occur. Those would be pure matters of drafting. After the clause I have just suggested, I would follow up-with a clause something like the one that was brought up in Adelaide for regulating the tenure of office of the commissioners. I think it would be
better if, instead of appointing the commissioners during good behaviour, they were appointed, like the Railways Commissioners, for a definite term of years, so that if ever the necessity for the appointment of an Inter-State Commission died out, by the transfer of the railways, or otherwise, Parliament would have the matter in its own hands.

Sir GEORGE TURNER. -

The commissioners might be appointed for five years.

Mr. BARTON. -

Yes, for five or seven years, as our Railways Commissioners are appointed. We have found seven years a convenient period. However, that is a minor matter. I merely make the suggestion in this way, and I ask the committee to take a vote as to whether the appointment of this Inter-State Commission shall be made compulsory or optional with the Parliament. It appears to me that possibly some clause like that which I have suggested might meet the case by combining the two provisions in one clause.

Mr. KINGSTON (South Australia). -

The point which I wish to make is this: Should not the Inter-State Commission be constituted under the Constitution instead of being the creation of the Federal Parliament, as it is intended in some respects to control the judgment of the Federal Parliament?

Mr. BARTON. -

I think the Federal Parliament would be obliged to appoint the Inter-State Commission anyhow. Otherwise, Sir George Turner's clause and that of Mr. Grant could not be put into operation.

Mr. KINGSTON. -

It must be appointed, but I am inclined to think that proper provision should be made within the four corners of the Constitution for the appointment of the commission. You cannot expect the members of a commission which owes its very existence to the Federal Parliament to exercise the absolute independence which you might like, and which it would exercise if it owed no such allegiance. As to the question of expense, I hardly like the suggestion that the Railways Commissioners' services should be utilized. The commissioners are the servants of the several Governments, and that absolute independence which is so desirable could not be expected from them. But there is no necessity for any great expense. Probably very little will require to be done, and the offices will be high and honorable, and be valued as such. The remuneration need only be commensurate with the services rendered. I have every disposition to facilitate the action of the leader of the Convention, but I am sorry that he does not see his way altogether to provide for the constitution of this commission in the Constitution. No doubt, however, we shall have an
opportunity of amending the clause, and of further considering the matter by-and-by-

The amendment for inserting the words "There shall be" was agreed to without a division.

The amendment striking out the words "The Parliament may make laws constituting" was agreed to.

The CHAIRMAN. -

There is an amendment suggested by the Legislative Assembly of South Australia with reference to the rivers; but, inasmuch as it appears to me that that question has been decided, I shall not put the amendment. The question now is, That the clause, as amended, stand part of the Bill.

Dr. QUICK (Victoria). -

I understood that the qualifying and limiting words with regard to railways and rivers were to be eliminated.

Mr. BARTON (New South Wales). -

I intended, that being the sense of the committee, to give to the commission the execution and maintenance within the Commonwealth of the provisions of the Constitution relating to trade and commerce. That is a widening, but I think a necessary widening, of the powers of the Commission, and I understood that it met with the entire approval of the Convention. I will suggest that we might now pass these clauses as they stand subject to my bringing forward a reprint of them in the shape in which I think the committee intend that they shall stand.

Dr. QUICK (Victoria). -

I beg to move-

That the words "upon railways" be struck out.

The motion was agreed to.

Dr. QUICK (Victoria). -

I beg to move-

That the words "and upon rivers flowing through, in, or between two or more states," be struck out.

Mr. ISAACS (Victoria). -

I understand that if this amendment is agreed to, the way the clause will read will be, that the "Inter-State Commission will be charged with the execution and maintenance within the Commonwealth of the provisions of the Constitution relating to trade and commerce"

Mr. BARTON. -

Yes.

Mr. ISAACS. -

Then the commission will have to say whether the action of any
particular state is contrary to this provision, whether relating to railways or 
merchandise, or to bounties, or to anything of the kind. Well, it seems to 
me that a body of railway experts are having a duty cast upon them that 
will not only supersede the powers of the Parliament altogether, but will be 
contrary to what we desire.

Mr. BARTON. -
They need not be rail-way experts necessarily. Their powers would be 
defined by the Parliament, and there would be an appeal to the High court.

Mr. ISAACS. -
It seems to me to be superseding the powers of the Parliament. I am 
afraid of it.

The amendment striking out the words and upon rivers flowing through, 
in, or between two or more states" was agreed to.

The CHAIRMAN. -
The clause now reads-

There shall be an Inter-State Commission to execute and maintain within 
the Commonwealth the provisions of this Constitution relating to trade and 
commerce.

Dr. QUICK (Victoria). -
The clause as it stands seems somewhat restricted. It does not take into 
consideration Sir George Turner's clause. I understand that the object was 
to give the Inter-state Commission jurisdiction to determine what are 
preferences and discriminations which are unjust to any state.

The CHAIRMAN. -
We cannot go back to clause 95.

Sir GEORGE TURNER (Victoria). -
I think the clause will be restricted as it stands. It provides that there shall 
be an Inter-State Commission-
to, execute and maintain within the Commonwealth, the provisions of 
this Constitution relating to trade and commerce.

I think there should be added the words "and any laws passed by the 
Federal Parliament." If the leader of the Convention will not agree to add 
those words I shall have to move an amendment to that effect myself. We 
have another clause in the Bill which shows that the Federal Parliament 
may pass laws with certain restrictions, but grave doubts may arise as to 
whether the commission has power to say anything except what arises 
under this Constitution.

Mr. KINGSTON. -
It will be-too much to say "any laws passed by the Federal Parliament." It 
might apply to marriage and divorce, for instance.

Sir GEORGE TURNER. -
Not such questions as those. Perhaps, however, the amendments have indicated might have the effect which Mr. Kingston suggests if the words were put in the wrong place. I think the clause should, read: "The provisions of this Constitution and any

laws passed by the Federal Parliament relating to trade and commerce." If the leader of the Convention will not accept an amendment of that kind, I shall move it as an amendment.

Mr. OCONNOR (New South Wales). -

I do not think that the words suggested by Sir George Turner are necessary. The provisions of the Constitution include the power to legislate, and, therefore, the provisions of the Constitution include everything which is necessary to carry out the Constitution.

Mr. ISAACS. -

But the Inter-State Commission is to maintain these laws, not the Supreme Court.

Mr. OCONNOR. -

"Maintain" simply means supervise the carrying out of the laws. The laws will be in the hands of the Executive.

Mr. BARTON. -

The commission can only leave the powers of administration which the Parliament gives to them.

Mr. OCONNOR. -

Exactly. The statute constituting the Inter-State Commission, which gives the commission its status and powers, will lay down the lines on which it is to act. These powers will be defined within certain limits. The words suggested by Sir George Turner do not seem to be necessary for the purpose of carrying out the provisions of the Constitution.

Sir EDWARD BRADDON (Tasmania). -

We are beginning to feel some of the difficulties which have arisen from our substitution of the Inter-State Commission for the Parliament. Just now I cordially agreed with Mr. Reid in his suggestion that this Inter-State Commission should be constituted of the Commissioners of Railways, believing that the duties of the Inter-State Commission should be almost exclusively those relating to traffic in regard to railways. But now we discover that this tribunal is to deal with every possible matter relating to trade and commerce. Never mind what appeal there is to the High Court, I object that we are giving to this body the responsibility of deciding in matters of every sort relating to trade and commerce. We cannot accept the wish expressed by Mr. Reid that the Railways Commissioners should be these experts. The Railways Commissioners might know nothing about the
subjects which will have to be referred to this body. If there is to be a commission of three appointed, many questions besides those relating to railway disputes will have to be decided.

Mr. ISAACS. -

They would at least want the qualifications of Supreme Court Judges.

Sir EDWARD BRADDOCK. -

They will want more, because they must have a considerable technical knowledge of various matters.

Sir GEORGE TURNER. -

They could always get technical evidence.

Sir EDWARD BRADDOCK. -

I do not see how we could safeguard ourselves in this particular unless it is by saying that this commission shall be appointed by the Parliament from time to time as occasion arises, and for particular questions as they arise.

Mr. ISAACS. -

Would not that be very dangerous?

Sir EDWARD BRADDOCK. -

The whole thing is dangerous and difficult, as we have made it for ourselves. I was not one of those who made it so.

Mr. KINGSTON (South Australia). -

I confess I did not quite follow the argument of Mr. O'Connor when he said that the law made by the Federal Parliament is a provision of the Constitution because it happens to be made within the powers conferred upon it.

Mr. OCONNOR. -

No; I say a provision of the Constitution within the meaning of this section.

Mr. KINGSTON. -

I think if the honorable member considers the matter he will be disposed to think that he has laid it down a little too broadly. Suppose the Federal Parliament has exercised its powers of legislation on this subject, can it be said the Act it has passed is a provision of the Constitution?

I rather think that a provision of the Constitution, as meant by that clause, are those declarations as to the freedom of trade and otherwise inserted in general terms for observance by all concerned.

Mr. BARTON. -

There are several provisions as to trade and commerce. Sir George Turner's new clause is a provision relating to trade and commerce.
Mr. KINGSTON. -

As regards all these things within the four corners of the Constitution, I thoroughly agree that they are provisions of the Constitution. Sir George Turner's proposal as to the question of special guardianship with respect to railway rates, is a provision of the Constitution, but as to all laws relating to trade and commerce, I understood Mr. O'Connor's answer to be that those laws, being made within the powers of the Constitution, they would be provisions of the Constitution. I do not think so.

Mr. REID. -

They would follow from that.

Mr. KINGSTON. -

Can they be termed provisions of the Constitution?

Mr. REID. -

Yes, for the purpose of that clause.

Mr. KINGSTON. -

I would ask my honorable friend to consider the question; I confess I am unable to support his view.

Dr. QUICK (Victoria). -

In support of the contention of Mr. Kingston, I would point out that section 73, referring to the judicial body, distinguishes between a power arising under the Constitution and a power arising under any laws made by the Parliament. There is a clear distinction; consequently, I submit that the words proposed by Sir George Turner and those to be added afterwards would restrict the provisions of this Constitution.

Mr. BARTON (New South Wales). -

There is something in that point, and I will make a suggestion that it should read in this way-

The execution and maintenance of the provisions of this Constitution and of any laws made thereunder relating to trade and commerce.

Mr. KINGSTON. -

That would do.

Sir GEORGE TURNER. -

Might not the provisions of this Constitution refer to all provisions?

Mr. BARTON. -

No; the words relating to trade and commerce would cover that.

Mr. OCONNOR. -

Dr. Quick is quite right. There is a distinction already drawn in the Constitution.

Mr. SYMON (South Australia). -

This ought to be considered a little more. The question is now whether you are setting up this Inter-State Commission in rivalry to the powers of
the Federal Judiciary.

Mr. BARTON. -

We are going to provide for appeals from the Inter-State Commission to the High Court.

Mr. SYMON. -

That may get over the difficulty, but you have to be very careful in a general clause like this to keep it as narrow as possible.

Mr. BARTON. -

I would not dream of giving these powers to the Inter-State Commission unless there was an appeal to the High Court.

Mr. SYMON. -

That gets rid of the difficulty to some extent, but, as an honorable member suggests, it creates another difficulty, and I think the question ought to be more fully considered.

Mr. OCONNOR. -

Parliament will define the powers.

Mr. SYMON. -

Of course, this is all to be under the consideration of the Drafting Committee, and we shall have another opportunity, perhaps, of putting it in an intelligible shape.

Mr. BARTON (New South Wales). -

I beg to move-

That after the word "Constitution" the following words be inserted-"and any laws made thereunder."

The amendment was agreed to.

Mr. ISAACS (Victoria). -

This will now stand that the Inter-State Commission is to have jurisdiction with regard to the provisions of the Constitution, and of any laws made thereunder relating to trade and commerce. Now, how far is that to extend? Does it extend to the provisions of Sir George Turner's clause in relation to preferences and discriminations, which will not touch on the trade and commerce clause, but which may be deemed by Parliament to be unjust to a state by reason of being too low?

Mr. BARTON (New South Wales). -

My view is that preferences and discriminations are subject already to interference. They could be brought before the High Court; they are an infringement of the provisions relating to trade and commerce, but the law with regard to these matters is now better defined by the clause of Sir George Turner which we have inserted. I do not think the addition of the
words forbidding preferences and discriminations leads to the inference that preferences and discriminations are not infringements of the laws relating to trade and commerce. It is clear that carriage by railways under rates which are preferences or discriminations is trade and commerce, and is the inter-state commerce aimed at if it passes from state to state.

The clause, as amended, was agreed to.

Clause 97-The commission shall have such powers of adjudication and administration as may be necessary for its purposes, and as the Parliament may from time to time determine.

Mr. BARTON (New South Wales). -

I wish to suggest that this clause might now be allowed to stand as it is. I have undertaken to draft a clause which will combine these two in a more definite form.

Mr. DOBSON (Tasmania). -

I wish to ask whether, in these two clauses-96 and 97-there is not a clear conflict of duty between what the Inter-State Commission has to do and the powers of Parliament? As I understand the amendment of Sir George Turner, Parliament will maintain and execute certain rules.

Sir GEORGE TURNER (Victoria). -

Parliament is to pass laws.

Mr. DOBSON. -

It appears to me to be extremely confused.

Mr. BARTON (New South Wales). -

That is the reason why I suggested a redrafting of the clauses. It will probably take this shape:-

There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament from time to time deems necessary, but so that the commission shall be charged with the execution and maintenance within the Commonwealth of the provisions of this Constitution, and of any laws made thereunder relating to trade and commerce.

That would meet my honorable friend's objection. There is no real conflict between the clauses.

Mr. DOBSON. -

My point is, can the Parliament give away the powers to the Inter-State Commission which we, by Sir George Turner's amendment, have conferred on the Parliament.

Mr. BARTON. -

You cannot give the execution and maintenance of these provisions, but the question of adjudicative and administrative powers are to be vested by Parliament.
The clause was agreed to.

[The Chairman left the chair at five minutes to one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

The CHAIRMAN. -

Before putting clause 98, I wish to call the attention of the committee to proposed new clauses, which are to be found on pages 57 to 59 of the tabular statement of amendments suggested by the Legislatures. There is a series of new clauses with reference to public debts proposed by Tasmania, and on page 61 there is a proposed clause-93A-also proposed by the Parliament of Tasmania. Inasmuch as this proposed new clause 93A is simple, and deals with one specific point, namely, whether the Commonwealth should have power to lend to the states or not, it will perhaps be convenient to put that clause first. Therefore I will put the question that the proposed new clause 93A be inserted in the Bill. That clause is as follows:-

The Commonwealth may from time to time lend to any state on such terms and conditions as the Parliament may prescribe any sum or sums of money borrowed on the public credit of the Commonwealth.

Sir GEORGE TURNER (Victoria). -

I would ask, sir, whether it is wise to put this clause first? As the Bill stands at present there is no compulsion on the Commonwealth to take over all the existing debts; but suppose the Bill is altered, and it is made compulsory on the Commonwealth to take over all the debts, then I think it would probably follow as a matter of course that future borrowings would have to be through the Commonwealth only. I think it would be rather unwise to decide this question first, because the decision of it in many of our minds would hang on the question of whether it was compulsory to take over the debts or not. It would be better to let this stand over until the other question is settled.

The CHAIRMAN. -

I will put it in any way that is considered most convenient. I will put any new clause first which is submitted.

Mr. GLYNN (South Australia). -

Mr. Chairman, would you not allow clause 98 to be taken? As Sir George Turner has pointed out, these clauses may be conditional on making the Commonwealth take over the debts at once. I have a clause which will run into this, but it is purely conditional on the carrying of another amendment to take over the debts. The three long clauses suggested by Tasmania are simply methods of doing the same thing, so that they might be discussed in
connexion with clause 98.

The CHA. - I will put it in whatever way seems best to the committee.

Mr. OCONNOR. -

It seems to me that the suggestion of my right honorable friend might be followed, and that then 93A might, if necessary, be inserted as a separate clause.

The CHAIRMAN. -

I would call the attention of honorable members to clause 92A, which has been suggested by the Legislative Assembly of Tasmania. Is it advisable to put it before this clause? It provides that upon the establishment of the Commonwealth the whole of the public debts of the states shall be taken over by the Commonwealth.

Mr. GLYNN. -

That is another proposal to carry out something to effect which other amendments have been suggested. I think that if you put the general clause it would be possible to discuss the advisability of taking over these debts.

The CHAIRMAN. -

No doubt it will be competent for honorable members to discuss all these clauses together. The question that occurs to me is which is the best way of putting them to enable the committee to come to a decision in regard to the various amendments.

Sir GEORGE TURNER. -

I think the best way would be to put the clause.

The CHAIRMAN. -

Then, I will put the clause:-

Clause 98. - The Parliament may take over the whole or a rateable proportion of the public debts of the states as existing at the establishment of the Commonwealth, and may, from time to time, convert, renew, or consolidate such debts, or any part there-of; and the states respectively shall indemnify the Commonwealth in respect of the amount of the debts taken over, and thereafter the amount of interest payable in respect of the debts shall be deducted and retained, from time to time, from the respective shares of the surplus revenue of the Commonwealth which would otherwise be payable to the states, or if there be no surplus revenue payable, or if such surplus revenue be insufficient, then the amount shall be charged to and paid by the respective states wholly or in part. The rateable proportion of the debts of the several states to be taken over is to be calculated on the basis of the populations of the several states as ascertained by the latest statistics of the Commonwealth.

Mr. GLYNN (South Australia). -

Perhaps I may be allowed to move an amendment which I have drawn up
to deal with this matter. I beg to move-

That all the words after the word "The" be omitted, with a view to the insertion of the following words: "existing public debts of the states shall be taken over by the Commonwealth at the date of its establishment, and the interest thereon shall be a charge on the consolidated fund. Each state shall indemnify the Commonwealth in respect of the amount by which its debts exceed the average amount of the debts of all the states, after such debts have, for the purpose of ascertaining their relative values, been reduced to and expressed in a debt of the average currency and rate of interest of the debts of all the states. The Commonwealth shall be deemed to be indebted to a state in the amount so ascertained by which the reduced debt of the state is less than the average amount of the reduced debts of all the states."

If this amendment is carried, its effect will be to make the taking over of the debts compulsory. The Constitution will then vest the debts of the state in the Commonwealth from the very start. I should like to refer to one or two objections which are generally urged to any proposal to allow the Commonwealth to take over the debts of the states at once. The honorable member (Mr. McMillan) urged a few days ago that by taking over the debts at the start you did not settle the financial difficulty. I do not think that any one who proposes that the Commonwealth shall take over these debts suggests that this is a method of solving the difficulty connected with the apportionment of the surplus. You cannot possibly by taking over an equal amount of annual liability determine the share that the several states will get of the surplus revenue of the Commonwealth. What you can do is to get over one difficulty. You can at all events absorb the whole of the surplus. After the apportionment of the surplus has been determined, the aggregate is practically wiped out by the liability being taken over by the Commonwealth. It will not, therefore, be an objection to the proposal that it does not solve the financial difficulty. I do not think that any advocate of the assumption of the debts at once would say that you could possibly determine how the surplus should be divided amongst the various states. We have endeavoured to solve that part of the difficulty in the previous clauses, and the question now remains whether it would not be better for the Commonwealth to assume liabilities corresponding approximately to the aggregate of the surplus, and, there to get over the difficulty of making periodical payments to the states, and whether you would not, by doing that, remove any timidity from the minds of the state Treasurers as to their liabilities for their public debts. From the moment you take over the interest upon the public debts, there can be no fear that the liabilities will
not be met.

Mr. HIGGINS. -
Suppose the state fails to indemnify the Commonwealth, what then?

Mr. GLYNN. -
How can that contingency arise?

Mr. HIGGINS. -
The Commonwealth is to take over the debts of the states, and the states
are to indemnify the Commonwealth for what is taken over and above the
average.

Mr. GLYNN. -
But the Commonwealth also takes over corresponding sources of
revenue. With the exception of the railway fund, it takes over the whole of
the consolidated revenue, and the powers of direct and indirect taxation. If
that were not sufficient to pay off the annual interest upon the debts, it
could be extended.

Mr. DEAKIN. -
That is not the point. You say that each state shall indemnify the
Commonwealth. That is a debt from the state, not from an individual.

Mr. GLYNN. -
I will explain what I mean by that in a few moments. This is not only a
suggestion to take over the debts, but to do it in a way which will be
mathematically correct, and which may result in a liability for a certain
balance of debt—in the case of South Australia, for instance—having to be
covered by the state.

Mr. HIGGINS. -
But how can you compel the state to fulfil the obligation of indemnifying
the Commonwealth?

Mr. GLYNN. -
If the liability is created, and the state retains, say, the railways, the
railway revenue can be impounded. Suppose there was a surplus revenue
beyond the interest, you would deduct any liability from it. If there is no
surplus revenue, the state will have assets, and that will enable the
provision
to be enforced. Under the Constitution the Commonwealth could sue a
state.

Mr. HIGGINS. -
But how could you get at the assets?

Mr. GLYNN. -
A private individual can get at the assets of a creditor by obtaining
execution, and a process could be issued by the federal courts for the
impounding of the assets left in the hands of the state. The assets left in the hands of the state will amount to about 62 per cent. of the total capital debt. We are giving over to the Commonwealth two sources of revenue—the revenue derived from posts and telegraphs and other departments, and the power of direct and indirect taxation. If that is not sufficient you fall back upon this 62 per cent. of assets.

Sir GEORGE TURNER. -

Surely you would not suggest that the Commonwealth should obtain execution against the state and sell its railways. That would bring about civil war.

Mr. GLYNN. -

I do not say that this contingency would ever arise; but if the Commonwealth takes over the debts of the states, and its sources of revenue are not sufficient to pay the liabilities, it will be able to fall back upon the state assets. It is extremely doubtful, however, that it will ever have to do this. If this is a bar to taking over the state debts, the Commonwealth never can take them over. Another objection usually urged against all attempts of this sort is that if the Commonwealth takes over the debts it must also take over the railways. I put it to the Convention, however, that there is really no necessary connexion between the debts and the railways. There is no specific charge of the debts upon the railways. The debts of the states are charged upon the Consolidated Revenue Fund, of which the railway revenue forms part; but the railways are not specifically mortgaged for the payment of debts. Leaving out Queensland, the debts of the five colonies, according to the returns presented to us in Adelaide, amount to between £140,000,000 and £150,000,000.

Mr. HIGGINS. -

Supposing the interest on the South Australian debt is £1,000,000, and the Customs take over £660,000, and South Australia fails to pay, what is the Commonwealth to do?

Mr. GLYNN. -

I have endeavoured to reply to that already. If you confer a right of indemnity against a state, surely a method of procedure to enforce the right may be found.

Mr. HIGGINS. -

I want a practical means.

Mr. GLYNN. -

I cannot give, any more practical means than I have up to the present. Besides, the indemnity is provided for even in the clause as it stands. I say there is no necessary connexion between the debts and the railways. The debts are 50 per cent. more than the value of the railways. In the case of
some colonies, the railways represent a far greater proportion of the debts than in the case of other colonies. In Victoria, about 78 per cent. of the liabilities were incurred for the purpose of the railways. In the case of New South Wales, the ratio is 71 per cent.

Mr. HIGGINS. -
In Victoria that expenditure consists largely of renewing old lines.

Mr. GLYNN. -
We cannot go into these particulars and ascertain to what extent the debt of the railways consists of renewals. These are details I am not bound to enter into. I have called for and obtained a return as to what capital consists of, but I say that these details cannot affect the question of taking over the debts. In the case of Tasmania, about 50 per cent. of the debt is represented by railway assets. These disparities show there is no necessary connexion between the debts and the railways. One cannot balance the other. Another objection is urged that you cannot, by taking over the debts, make large savings by conversion. The advocates of the immediate assumption of the debts never said that large savings could be made. You cannot possibly convert, before bonds mature, without giving cash or premiums representing the difference in

the value between the old and the new rates, or giving an extended term equal to the difference. If you change 41 per cents. to 4 per cents. you must give the bond-holders an equivalent.

Mr. MCMILLAN. -
Or increase the currency of the loan.

Mr. GLYNN. -
Yes.

Mr. MCMILLAN. -
Would not your proposal give the bond-holders the benefit of the premium?

Mr. GLYNN. -
I do not think it would. As regards conversion, I do say there will not be great immediate savings by the taking over of the debts. I have examined every English conversion of magnitude from 1749 to 1888.

Mr. FRASER. -
You were very industrious.

Mr. GLYNN. -
I had to be industrious in connexion with a Bill drafted for our own Government. There have been very few conversions.

Sir GEORGE TURNER. -
There have been only six.
Mr. GLYNN. -

In all the cases of these conversions the bonds had either matured or were capable of being redeemed at not more than a year's notice.

Mr. FRASER. -

That is the whole point.

Mr. GLYNN. -

In 1888 between five and six hundred millions of the English debt was converted by Mr. Goschen. That consisted of two classes of stock-new 3 per cents. payable at once, and reduced 3 per cents., which could be redeemed on twelve months' notice. Any credit that accrued to Mr. Goschen for the success of that scheme was not due to the fact that he changed one stock into another. He could do that if the bondholders were willing. The credit to Mr. Goschen lay in the fact that he so gauged the possibilities in declaring he would pay or convert, as to risk the alternative of being called on to pay cash in case the new stock was not accepted. If he had been forced by the bond-holders to pay between five and six hundred millions of cash, he could not have done it. The gold would not have been available.

Sir GEORGE TURNER. -

If they had had the cash it would not have been invested.

Mr. GLYNN. -

That was one of the factors, I dare say, that guided Mr. Goschen. But Mr. Goschen did get éclat for the success of his scheme, because he gauged the desire to accept the 3 per cents., reducable to 23/4, in lieu of cash.

Mr. HOLDER. -

He had the power to compel them to come in, which we have not.

Mr. GLYNN. -

He had the practical power, as I explained, but that has nothing to do with the position which I am assuming now as to the credit due to Mr. Goschen. In that scheme the redemption-of one stock was possible at once, and in the other stock at twelve months' notice.

Mr. HIGGINS. -

He could have forced them to accept payment.

Mr. GLYNN. -

I am not sure, before maturity. I do not think he could. But redemption was, as I have shown, at his option.

Mr. HIGGINS. -

That is the whole point.

Sir WILLIAM ZEAL. -

Sir George Turner did the same thing here not twelve months ago.

Mr. GLYNN. -
The point is not whether Sir George Turner or Mr. Goschen are entitled to any credit.

Mr. Higgins. -
Mr. Goschen held the whip hand.

Mr. Glynn. -
The point I wish to emphasize is that you cannot convert, except loans are maturing, without giving compensation. I say that between the dates I have mentioned there has not been a single conversion scheme in which the moneys could not have been paid by the Treasurer on not more than twelve months' notice given. We do not, therefore, say that large conversions are possible on the assumption, of the debts. The objection urged by Mr. Holder seems to me the most telling I have heard. Mr. Holder stated that if the debts are taken over at once you practically give the bond-holders a premium, which is measured by the additional security represented by the federal liabilities. The stock will go up, but if you do not render it compulsory you can make terms and so secure, if not the whole, part of the premium.

Mr. Howe. -
How can you make it compulsory?

Mr. Glynn. -
I say make it compulsory to take it over.

Sir William Zeal. -
Sir George Turner held 4 per cents. current, and he called them in and issued 3 per cents., for which he obtained a premium.

Mr. Glynn. -
That, if anything, strengthens my position.

Sir John Forrest. -
He had the right to call in.

Mr. Glynn. -
The statement I have made is not affected by what Sir George Turner did. I am anticipating, for the purpose of replying to a statement which was made by Mr. Holder in Sydney, and which told with considerable force, that, by taking over the debts at once, you stop the power of the Treasurer making terms with the bond-holders for a general security.

An Honorable Member. -
It will be a Commonwealth security.

Mr. Glynn. -
I should like to see whether the premium is likely to be of such magnitude as to set off the great advantage accruing from taking over the
debts at once. Now, I ask the Convention are the quite sure that the federal security will a first be better than the state security?

Sir JOHN FORREST. -
Yes.

Mr. GLYNN. -
The states, at present, have not only certain powers of taxation which are being handed over to the Federal Parliament, but they have the railways, which are not being handed over. The have general assets which the Federation will not possess, so that, as a matter of selling out assets and using taxation powers, the states are in a better position than the Federation. The Federation will not have general assets for some time. Is not the solvency of a state greater if it has, in addition to the powers of taxation, realizable assets, and we know that the railway assets of the whole of the five colonies amount to £100,000,000? Is not that an important factor, and is it not quite likely that the bond-holders would consider the security of a state better than the security of the Federation?

Mr. HIGGINS. -
What are the states' assets?

Mr. GLYNN. -
Anything that a state can sell, or any power of taxation it possesses.

Mr. HIGGINS. -
Including the railways?

Mr. GLYNN. -
Yes.

Mr. FRASER. -
The whole world would consider the federal guarantee better than the state guarantee.

Mr. GLYNN. -
That is merely a statement. I avoid making general statements in the Convention unless I can support them by facts.

Mr. FRASER. -
Look at Canada.

Mr. GLYNN. -
Let us look at Australia for the present. For the first five or six years the Federation will undoubtedly be on its trial. Before it can gain a reputation for solvency, it must do something to justify it, and do honorable members think that the English creditors are going to jump at this federal security until they see how the forces operate in the Federal Parliament? I very much doubt it. Again, the moment the Federation adds on a new debt to the existing debts, that, of course, will have a tendency to discount the value of the old debts. I would point out that the Federation may, at the beginning
of its career, and in connexion with the departments taken over, have to borrow to some extent. All these borrowings must affect, the value of the federal bonds. Canada has been referred to. Let me refer to America, where they did take over the debts within a few years from the foundation of the Confederation. Undoubtedly there was then, a rise in the value of American bonds. Why was that? There were three, debts taken over. There were the confederal debts which were of two classes-one the debts due to outside creditors, and the other the debts due to internal creditors. Then there were the state debts. These debts amounted altogether to about 80,000,000 dollars, and before they were taken over the bonds were at an extraordinary discount, because the liability of the states and particularly of the Confederation, for these debts was challenged. The first proposal that was made in the American Congress was to pay off only a certain class of the debts-the outside ones-and to leave the creditors to any remedy they might have for the others. Mr. Hamilton urged that all the debts should be paid off, and the moment this suggestion was made there was a rise of from 15 to 20 per cent. in the value of the stocks, because it really amounted to a suggestion of a guarantee. It must not be argued from the fact that there was such a rise that there will be a similar rise here.

Mr. HIGGINS. - Were they, at par before?

Mr. GLYNN. - They were under par, because it was exceedingly doubtful whether there was any liability at all for these debts. They were debts that were incurred during the Revolutionary War principally, and many of them were made up of arrears of interest, and the Confederation had no executive powers at the time under which they could enforce payment. It is, perhaps, an argument from analogy for taking over the debts that, within a year or two from the establishment of the Union, all the debts of the United States were taken over by the Confederation. In Canada, the debts were also taken over at the start, although there were differences of rates per head there. It is true that in America, and in Canada, to some extent, there was a rise in the value of the stock, but they had large assets in the shape of public lands. For the first sixty years after the existence of the American Confederation the revenue was very largely increased by the sale of the national estate. These were assets that belonged to the federal body. Here they will not belong to the federal body, and, therefore, I say that the security of the federal body in America is greater than it can be here for many years to come. Let us see what will be the effect of passing clause 98. That clause provides that
existing public debts may be taken over either partly or altogether. The words "existing at the establishment of the Commonwealth" have been taken from the Canadian Act. At all events, they are in the Canadian Act, and they are applicable there, but not here. In Canada the whole of the debts were taken over at once, and therefore it was perfectly right to say that the existing debts should be taken over. If you are to limit the debts to be taken over hereafter to the existing debts of the Commonwealth, you may subsequently find yourselves in this position: That you will be unable to take over any new debts incurred by the states, or to take over debts the character of which has been varied. It will be quite possible to increase the total debt liabilities of the colonies within a few years by merely changing the character of the debts, and without any corresponding increase of interest. As the high-priced loans mature, conversion loans will have to be floated. These will be new borrowings, and they will not come within the terms of clause 98, which says that the existing debts must be taken over. Take the case of South Australia, for instance. Her debts at present amount to 23 1/3 millions. By contemplated conversions within the next eighteen months or two years the debts of South Australia will probably be increased to 26 millions, Certain debts will have to be incurred in order to clear off accounts with the Northern Territory. The result will be that you will have a higher capital in-debtedness, while the interest will only have run up, taking the probable rates into account, from £931,000 to £985,000. We are therefore in this dilemma: That in the case of the colonies—and I only cite South Australia as an instance—there will be large conversion schemes within the next few years that will change the character of the debts and probably increase their volume without any corresponding increase of interest. If that is so—and if honorable members will look at the appendix to the Adelaide Convention reports, they will find that conversions may, take place to a large extent during the next ten years; the average currency being only twenty years—the Federation may not be able to take over the debts to the extent of more than two-thirds of their present amount, because, in the case of the remaining one third, the character of per capita basis, according to the population of the colonies. That does not result in an equal amount being taken over. If you take the amount of a debt on a per capita basis it may result in one colony giving a far greater proportion of its debts over than another.

Mr. HIGGINS. -

It is equal, per head, isn't it?

Mr. GLYNN. -

It may be an equal amount per head. It is not representing an equal
capital amount. The idea of the clause is, of course, to get an equal amount taken over when anything is taken over.

Mr. HOLDER. -

You mean equal in proportion to population.

Mr. GLYNN. -

It may mean that, but I am entitled to point out that, by taking over an equal amount in proportion to population, you will be taking over a very much different amount, and it will result in inequalities in the capital amount, at all events. Several proposals have been given, notice of for taking over the debts at once. For instance, the Tasmanian proposal, is to amalgamate the debts up to an amount represented by the lowest capital indebtedness of the five states.

Mr. HIGGINS. -

On what page of the schedule is it?

Mr. GLYNN. -

It may be seen on, I think, page 57. The amount to be taken over by amalgamation—that is, the pooling amount—is to be determined by that amount which is represented by the lowest per capita indebtedness of the states to be federated. If, for instance, Western Australia had the lowest amount, say £34 a head, that sum would represent the amount up to which the debts of the states are to be amalgamated without any further consideration. There will, of course, be excesses to be accounted for, and each state is to be debited with the excesses over this capital amount. But a suggestion is made that these excesses may he wiped off as the population in the various states increases. The reasoning is that as, on a per capita basis of distribution of the surplus, which was the one in the Bill at the time these amendments were drawn up, you assume that each state makes an equal contribution per capita to the revenue, that if there is an increase of population in the states the aggregate amount paid on a per capita contribution will be increased. That is the position taken up by Tasmania.

Sir GEORGE TURNER. -

Would the honorable member mind repeating that last statement?

Mr. GLYNN. -

I admit that it is rather involved, and I speak subject to correction by my friends from Tasmania. They say you assume that each state pays an equal amount to the revenue. After a time, of course, that will be an admissible assumption; on a per capita distribution it, would be an assumption, and these calculations are based principally on the Customs revenue. Then, it is argued, if the population of a state increases, that state will be paying more in the aggregate to the Treasury than it paid before, when the debts were taken over, and the debt should therefore be proportionately reduced. The
addition to the population, it is also said, will bring down its capital indebtedness. I cannot follow the position which is taken up by Tasmania, because it makes no allowance for a corresponding increase in population, and consequently corresponding additions to the federal revenue in the states which have no excesses—the states with low indebtedness at the time the debts are taken over. The one objection I see to the Tasmanian method of amalgamating the debts is that it does not take into account the differences in the rates of interest and in the currency. If you amalgamate up to an amount determined by the per capita indebtedness solely, you do not take into account the relative values of the loans as determined by varying rates of interest and varying currencies.

Sir GEORGE TURNER. -
You propose to rectify that anomaly by your amendment.

Mr. GLYNN. -
I propose to rectify that anomaly, and I will endeavour, in a few words, to show how it can be done. At Adelaide, the Convention was presented with a return on which, presumably, the Tasmanian amendment is based; it is No. 12 of the statistical papers in the appendix to the Votes and Proceedings. There, five colonies are set down as having a total capital indebtedness of £140,000,000; and the average currency is put down as 21 years, and the average interest as 3.846. These rates have been struck, not by converting each loan of each colony into some common stock which might be the measure of the relative values of the whole, but simply for a certain year the average rates of interest, without respect to the currencies, have been taken. The average rate of interest, 3.846, simply shows an average of the total rates paid at a given time on all the loans.

Mr. HIGGINS. -
It does not take into account the amount of each loan.

Mr. GLYNN. -
It does not take into account the currency of each particular loan. You cannot, with mathematical correctness, take over the loans unless you do this, and this practically is the suggestion made by my amendment. You take some common stock, say a stock that would, at the date of the establishment of the Commonwealth, at average rates fetch about par. You may take a stock for 25 years if you like at 3 per cent.; then you take each loan of each colony, and say what capital amount that loan would represent if converted into that common stock. Having done that with each loan of each colony, then you find out what is the average capital indebtedness of all the colonies in these converted loans.

Sir GEORGE TURNER. -
What do you mean by the average capital indebtedness?

Mr. GLYNN. -

Suppose, for instance, you take a stock of twenty years' currency at 6 per cent., and you convert that stock into a stock of 25 years' currency at 3 per cent. The capital amount expressed in the new stock, being the stock which you will take as the common stock to determine the relative values of all the loans, would be the true relative capital indebtedness. That is, that 6 per cent. stock valued in the new or common currency would be the true capital indebtedness of that loan in relation to the other loans of the colonies after conversion of all in a similar manner. That, then, would give accurately the relative capital values of all the debts; and the operation of conversion for this purpose need not take a day to do. I submitted the proposition to the Commissioner of Audit in South Australia, and he says that it is mathematically correct, and that it can be done. Whatever then would be the average of the total debts, after being converted in this manner, of all the colonies would be the point on which would binge any liabilities that would remain to be discharged by, or credits given to, some of the states. South Australia, for instance, having a larger debt per head, would be liable after this conversion for £6,000,000 or £7,000,000 on the present total indebtedness, and my clause suggests that you would debit a colony with its excess over the average after conversion. In this manner the debts would be amalgamated, but where there were no excesses over the average the Commonwealth would be liable to the state to the extent of any deficiency under the average.

Mr. HIGGINS. -

Victoria would stand the lowest.

Mr. GLYNN. -

Probably it would, or it might be Western Australia.

Sir GEORGE TURNER. -

Do you think we would get anything back out of the Commonwealth?

Mr. GLYNN. -

The proposal also provides for that.

Sir GEORGE TURNER. -

That is all I am interested in.

Mr. GLYNN. -

You debit all excesses over the average amount, and the Commonwealth is to be indebted to a state which has a sum less than the average amount. There can be no inequality there.

Mr. MCMILLAN. -
Mr. GLYNN. -
Yes. A state which is below the average amount has a loss for which the Commonwealth would be liable, but a state which is above the average amount would be liable to the Commonwealth for its excess.

Sir GEORGE TURNER. -
You say that a state that is below the average has a loss. How do you make that out?

Mr. GLYNN. -
Because it would contribute to the capital indebtedness of the other colonies whose indebtedness was greater than its own. That is the reason.

Mr. MCMILLAN. -
Out of what fund would it pay its contribution?

Mr. GLYNN. -
Out of its consolidated revenue. Its contributions would be to the total interest, and therefore involve an excess over its true liability. Hence the credits to equalize. Of course, the honorable member may doubt the wisdom of this proposal.

Sir GEORGE TURNER. -
Is the state to retain a part of its public debts and hand over the balance to the Commonwealth?

Mr. GLYNN. -
It is to hand over all its existing public debts to the Commonwealth, but the Commonwealth is to allow the state, by the issue of federal bonds or otherwise, some compensation for the additional liability which it takes over beyond what it ought to take over, beyond what its true proportion of the indebtedness is.

Mr. HIGGINS. -
Why not take the lowest scale of borrowing instead of taking the average?

Mr. GLYNN. -
That might be done. The excess would then be greater. The total liabilities of the Commonwealth to the state, and the state to the Commonwealth, in question would not, by taking the average, amount to more than £15,000,000. My estimates are not given on the basis of the conversion of the debts to a common stock, but they are approximately correct. Therefore, if debts amounting to £140,000,000 were amalgamated, you would only have a total difference of about £15,000,000, which is not much to take into account. There is no loss on the one side or the other. I respectfully submit this method of conversion for the consideration of honorable members. I would point out that the longer we delay the
conversion of our loans the greater the difficulties of conversion will be, when the character of our debts has changed. Some five years hence we may not have to deal with a total indebtedness of £140,000,000, but of £200,000,000 and consolidation operations will then, of course, be considerably hampered.

Mr. HIGGINS. -

I cannot see how you meet the point raised by Mr. Holder that you are giving the advantage of the conversion, in the shape of a premium, to the bond-holders, instead of retaining it with the Commonwealth.

Mr. GLYNN. -

The premium to the bond-holder is problematical, but that difficulty could be got over, if necessary, in a way that would not result in the loss of that possible gain, because it is only, at worst, the loss of a possible gain. It might be provided that the existing debts of the states shall, as against the states only, be taken over from the start, and that until the Commonwealth assumes the liability for the debts, the states, not the Commonwealth, shall be liable to the public creditor therefor. For the purpose of absorbing the surplus, the debts of the state might thus be taken over by the Commonwealth, but you need not give the better security of the Commonwealth to the creditors themselves until you make an arrangement with them for a quid pro quo. In that way you would take over the public debts as against the states at once, but not as against the creditors, and by that method you would wipe off practically the whole of the probable surplus. It will also have this very great advantage, that the state Treasurer would know how his financial accounts would be from year to year. He would be able to say "this liability has gone from us."

Sir PHILIP FYSH. -

Providing it raises a corresponding revenue.

Mr. GLYNN. -

If it does not do that, it means repudiation, which we need not take into account. We may presume that the Federal Parliament will do what the Constitution says it ought to do. My amendment will render compulsory, from the start, the taking over of the public debts.

Mr. HOLDER (South Australia). -

I think we have come to a stage when we ought to economize time as much as possible, and I fancy we shall do that best, at the present juncture, by first taking the amendments suggested by Western Australia, which are printed on page 63 of the tabular statement of amendments prepared by the Parliamentary Draftsman of New South Wales, circulated amongst
honorable members, because the first amendment is whether it shall be "may" or "shall." That amendment raises a distinct issue, namely, whether debts shall be taken over by the Commonwealth compulsorily or not. Each of the other questions may be discussed alone, after that is determined, which would be a better course than confounding them together.

Sir GEORGE TURNER. -
Can we discuss that without knowing the conditions that would be laid down?

Mr. HOLDER. -
I am afraid that if we do not take care we shall have the same debate three or four times over, but if we were first to discuss the question whether the word should be "may" or "shall," we should avoid needless repetition to a considerable extent.

The CHAIRMAN. -
I suggested that we should take the Tasmanian amendment first, but that did not appear to meet with favour, therefore, I put the clause, to which an amendment has been moved by Mr. Glynn-to insert the amendment that is in print-and, therefore, I am bound to put that question to the committee first. If, however, Mr. Glynn chooses to withdraw his amendment, the suggestion of Western Australia to omit "may" and insert "shall" can then be put, and that will decide the question of whether the taking over of the state debts by the Commonwealth shall be compulsory or optional.

Mr. GLYNN (South Australia). -
The solution the Chairman suggests is the true one; but you could insert "shall" instead of "may" in my amendment.

Mr. HIGGINS. -
Will you do that?

Mr. GLYNN. -
I do not want to pin myself to that amendment. If any honorable member wants to challenge the position I am taking up he can propose that amendment.

Mr. MCMILLAN (New South Wales). -
I have given a great deal of attention to this matter since we first met in Adelaide, and the opinion I then held, both in regard to the railways and the debts, is as strong to-day as ever it was. I do not mean by that statement to say for one moment that I am not in favour, under certain conditions, of the Commonwealth taking over both the railways and the debts. Any business man will see that that is what must come sooner or later. The consolidation of the debts of these colonies would, doubtless, give a higher tone to the market, and the future schemes that may be adopted could, of course, be ultimately better adopted by the Federal Parliament than by the
different states. But the very speech of the honorable member who has just sat down, opening out his scheme, has exhibited innumerable difficulties, and has shown us into what a quagmire we will get here if we attempt to solve this problem by the adoption of any intricate scheme. It is all very well to say in a few simple words that the Commonwealth should take over the debts of the states, but it would be utterly unfair to leave absolute power with the Federal Parliament to take over these debts on any scheme which their wisdom might suggest. The scheme of Mr. Glynn means that these debts, which in a certain number of years will run out, and be converted at the lowest possible rates, should be taken as they now stand, with all their disadvantages, and that certain states should have to pay up certain deficiencies. Well, that would be a nice proposal to make to any of the present states who may, in times of great impecuniosity, have launched loans with high rates of interest. Those states would naturally say-"No; from what source are we going to get the money to pay up the deficiency? Are we going to get it from our consolidated revenue, or are we to issue a new local loan in order to raise the necessary funds?"

Sir GEORGE TURNER. -

Mr. Glynn says that the states will not have to pay any more than they are paying at present.

Mr. MCMILLAN. -

Mr. Glynn knows that some states must be indebted to the Commonwealth for a certain deficiency after ascertaining the average of interest liability.

Mr. GLYNN. -

That would not increase their liabilities at all; it would not add to their present liabilities.

Mr. MCMILLAN. -

It must add to the liabilities of the states in one sense, so far as I can see. There are only two modes: Either to leave these debts as they are subject to the consent of the state and the negotiations of the Federal Parliament in the future, or to take them over bodily. But what does that involve? It is all very well to get rid of a certain liability upon the states, but this involves, according to the honorable member himself, making such a Tariff by the Federal Parliament that it will be able to cover the interest as well as the federal expenditure. Then there is another point which, to my mind, is very strong. It is this: That there is a connexion between the debts and the railways which, from my point of view, I cannot dissociate. The railways and the debts are absolutely and inextricably bound up together. Therefore, for us to say to the Federal Parliament that the debts which are left with us...
for the present can be taken over upon any scheme except an absolute scheme for taking them all over at the present rate of interest would be absolutely unfair to the states. Is it fair for us to put into this Constitution an arrangement by which these debts with different rates of interest pertaining to them shall be taken over by the Federal Parliament, and the whole Commonwealth made responsible for them? Let us remember what the character of these debts is. It does not seem to me to be departing from that simple principle with which we have started that there are certain matters which are to be left to the states mixed up intimately with their particular life and assets, to say that these debts ought not to be interfered with, except with the consent of the states, by the Federal Parliament.

Mr. HIGGINS. -

Is your point that the interest is different or that the security is different?

Mr. MCMILLAN. -

It is this: You have a large number of debts in the different colonies, and you have some of those debts connected with railways which are paying a full rate of interest. You have other debts which have paid for railways that are not returning a full rate of interest. You have some colonies in which, perhaps, the charge upon the debt is entirely interest producing. You have other colonies where it will be difficult to say where the assets for the debts are. The whole question is so complicated—as can be seen by the different schemes suggested here, such as the scheme of Sir Philip Fysh—that it seems to me absolutely impossible for this Convention to deal with it.

Something has been said by Mr. Holder about placing us in a worse position, and giving the bond-holders all the benefit of the conversion. That is partly true and partly not true. There is no doubt to my mind that it is probable that there will be no great system of conversion for some years to come, because we have floated our loans for a certain period, and many of them have been floated on such magnificent terms for the investor, as compared with the rate of interest that is paid now, that it is not likely that any bond-holder will allow a system of conversion unless such terms are given to him as would increase the capital debt of the respective colonies to an extent that could never be permitted. On the other hand, I agree with what Mr. Holder has said, that while we are leaving the debts of the colonies, and while I make that remark about the improbability of conversion at present, we must not shut out from our minds that there might be a conversion under certain conditions. But I say that, if there ever is a conversion, that conversion will be much better done when the Federal Treasurer takes the thing in hand quietly, perhaps secretly, negotiating with
the different states, holding all the strings by mutual consent, and then says in one flash to the English creditors: "We offer you so-and-so; take it or leave it." If that conversion is not determined upon, you will have to wait until your loans expire. But I quite agree with the honorable member that if there is any benefit in consolidating those loans, the moment you try to do it you increase credit, and make future conversion almost impossible. That is the logic of the whole affair. I have always felt that in this Constitution we are dealing with that which requires a great deal of reserve and caution. We hear very much about the necessity for courage and about want of pluck, but it is far better to be on the safe side in matters of this kind. We do not want to pile up obstacles to this federation, and I do not myself, as a man of some experience in these matters, think that we shall do any good by interfering at the present stage with our debts and our railways, which form the key to the credit of these colonies, and the key to our development and economy. These questions are too intricate for this Convention to settle upon any concrete scheme. Therefore the amendment which I have introduced is of the simplest possible character. It is to allow the Federal Parliament to take over a part or the whole of the debt of any state, with the consent of the state, on terms that may be agreed upon. Now, I do not introduce the provision with regard to getting the consent of the states with the idea that there shall be any partial taking over of loans, but I feel that you must get the consent of each state, and that we have no right to arrogate at the present moment these terms to the different states. I hold that it is unfair to say that the Parliament shall take over the whole of the different loans. Our safest plan is to leave that matter just as we have left the question of the railways under section 52. It is there provided that the Parliament may take over the railways on terms that may be agreed upon, and that that may be done after the Federal Constitution has been a year or two in working, and when you have all the strings, and all the knowledge, and all the ability which is necessary for a great transaction of this kind. I believe that that will be the time to face it, and that it will be wiser not to attempt to do it at the present moment. I am perfectly certain that we might go on arguing here for several weeks with regard to different schemes for taking over the debts and consolidating them, but we must either say that the debts are to be taken over at their present rate of interest, and that the Federal Parliament shall make itself responsible, or we must leave the matter as it is. But again, just as in the case of the railways, we want to know what about future construction.

So this involves the question of future borrowing. Are you going to have
one consolidated loan, or are you going to simply take over these loans, and allow the colonies to borrow independently, and have two systems?

**Sir GEORGE TURNER.** -

We cannot do that.

**Mr. MCMILLAN.** -

Nobody thinks of such a thing for a moment; but that shows you the great difficulties, and who is going to say to anyone of these states-unless there is one well-laid scheme about future borrowing and future action between these states and the Federal Parliament in these matters-who is going to say that any state is not going to borrow for certain local purposes? If you take over the state debts now, and before some scheme can be properly adopted by the Federal Parliament, are you going to have a hiatus in this matter, so that the states cannot borrow for their own necessities. If you leave the whole thing as it is some scheme may be arranged by the Federal Parliament involving not merely the terms of taking over these loans, but the conditions upon which future loans shall be raised, and also for properly meeting the debts or loans which must be met during the next few years. It seems to me that will be a much more reasonable and practical way of dealing with the subject. I would, therefore, urgently beg of the Convention at this stage not to attempt to solve a puzzle, but to leave the matter as it is, and allow that federal spirit and that federal ability which must be concentrated in the Parliament of the Commonwealth to ultimately solve it.

**Sir GEORGE TURNER.** -

Why do you want the consent of the state?

**S (Western Australia).** - From what has been already said, I think we should all come to the conclusion-at any rate, I have-that any attempt to make this clause with regard to the public debts one of finality at the present time, is not likely to be successful. It seems to me that this clause as it is, if you amend it to some extent, ought to meet the requirements of every one. If the clause were amended so as to allow the Parliament to take over the whole or a rateable proportion of the public debts of any of the colonies with the consent of the state, from time to times whether these debts existed at the time the Commonwealth was instituted or not, it should meet all the requirements of the case.

**Mr. MCMILLAN.** -

If you take my proposal it will cover everything practically.

**Sir JOHN FORREST.** -

I was not present when the honorable remember read it.

**Mr. MCMILLAN.** -

I will move it as an amendment to Mr. Glynn's.
Sir JOHN FORREST. -

I have no objection to the honorable members moving it, but it seems to me that the proposal in the Bill with a little modification, as suggested by me, making it a little wider, will really meet the whole case.

Mr. HIGGINS. -

The honorable member will not submit his own Assembly's amendment.

Sir JOHN FORREST. -

No, although I have given the matter a great deal of consideration, and will have a word or two to say with regard to it before I sit down. The debts of the various colonies are so unequal, whether in regard to the population or with regard to the male adults, or with regard to the male and female adults, that it would be impossible to take over all the debts of the colonies on an average even with regard to the population or the adults without giving to some states the right to borrow a considerably larger amount, so that they might come up to the average, or to leave to many of the states a considerable portion of their debts. The public debts of the various colonies run from £41 per head, or something like it, in the case of Victoria, to £67 per head in Queensland, £69 in South Australia, £50 in Tasmania, and something like £45 or £48 for Western Australia, and £46 for New South Wales.

Mr. HIGGINS. -

In Victoria does that include borrowing for the deficit?

Sir GEORGE TURNER. -

It does not include that; it only includes the public debt and not the accrued deficit.

Sir JOHN FORREST. -

It amounts to about £41 per head of the population in Victoria. The average of all the debts of Australia is about £50 per head. If we take the adult males the average is £166 per head. If we take the adults, male and female, the average is £96 per head. I have had a table prepared which shows that the lowest average per head of adult males and females is about £76 per head, that is, in the case of Victoria. If we were to take an equivalent of that. per head of the population of the various colonies we should leave a large amount of debt to many of the colonies. I think the only colony that would not have borrowed up to the amount of £76 per head would be my colony—the debt of which would be £750,000 under the amount. I do not think it will be satisfactory to adopt such a plan. The various colonies would not care to hand over a portion of their debt, and be responsible for another portion. There are great difficulties, as far as I am
able to judge, in the way of converting the debts from one scheme to another, unless they are near maturity. We had an excellent speech on this subject from Mr. Holder, in Sydney, and he quite convinced me that we should be playing into the hands of the stock-holders by giving them a better security while not getting any reward for the colonies. We do not desire that to occur. If we talk for two or three days on this matter, as we have on many others, I am sure we shall not be able to come to a satisfactory conclusion at present with regard to taking over the debts at the institution of the Commonwealth. Therefore, I hope the clause as it is in the Bill will be approved of. If I had my way I should like to have it widened. I do not think that the Federal Parliament should interfere with a state's finances unless the state desires that that should be done. I think the words "from time to time" should be inserted in the clause, so that it would refer to the date of the institution of the Constitution or any time afterwards. It should not apply to the existing debts only, It should apply to the debts at any time. I would make the clause read-"The Parliament may, with the consent of the state, from time to time, take over the whole or a rateable proportion of the public debts of such state." I would strike out the words "as existing at the establishment of the Commonwealth," and then I would let the remainder of the clause stand. That I think, would give full power to the Commonwealth, and would meet all the requirements of the states. If we attempt at present to bind the Commonwealth to take over the debts we shall never come to a common agreement. The question is too complicated, and the time would be inopportune; whereas, if we give power to the Commonwealth whenever it likes, with the consent of the state, it will be able to take advantage of certain conditions and circumstances when the debts mature, or at any other favorable opportunity for conversion. By that means, while we shall be reserving to the states the full control over their debts, while we shall be prohibiting Parliament from interfering with the public debt of any state without its consent, we shall be giving full power to the Commonwealth from time to time to deal with this matter, with the consent of the states, in any way that will be to the advantage of the states and of the Commonwealth.

Sir PHILIP FYSH (Tasmania). -

I have listened with very much pleasure, as usual, to the admirable speech of Mr. McMillan, but I could not help arriving at the conclusion that he had surrounded this question by a maze of difficulties which he was not himself disposed to see the way clearly out of. He has left us with a maze around us, and it is for us to clear away that maze. I think the maze

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in which he has left us arises from the fact that he has complicated the
question very unnecessarily If honorable members will read carefully the amendment which I shall propose presently, they will see that we need not complicate the question with conversion. There is no necessity just now to speak about the possible future conversion of our debt. There is no necessity just now to inquire why that debt was incurred. It was incurred in some instances for railways which give a profit—a direct profit—and in some instances for railways which give only an indirect profit, to the people of the country. It was incurred, as Mr. McMillan has said, sometimes at 6 per cent., sometimes at 5, 4, and even down to 3 per cent. It has a currency of from 1 to 30 or 35 years. But these are all complications which had better be swept away. We do not need just now to inquire into the question as to when the Federal Parliament will attempt to convert, and I do not know that we need do more than consider the great and important question of consolidation. Conversion must come, and it must come at the time that will be most convenient to the Federal Executive. The amendment which I am about to propose will reserve fully to the Federal Executive the power to choose its own time. We shall thus have disposed of the difficulty—not a difficulty to me, but a difficulty in the minds of very many—that directly this Convention includes in its compact an agreement that the Federal Parliament shall consolidate and convert, that moment it gives to the consolidated or federal debt a higher value than it has at the present time. I propose to overcome that difficulty by leaving it optional with the Federal Executive to take its own opportunity for such conversion, and if it takes that opportunity, then we shall have disposed, at any rate, of one of the most important difficulties of the maze in which we have been left. Surely it is of no importance to consider, as a Federation, just now, whether Tasmania, which only earns 1.15 per cent. from its railways over their working expenses, has deemed it prudent to construct these railways for the auxiliary advantages to its people. It is not necessary surely that I should now attempt to prove that for every £1,000 the state loses in the shape of interest its people are gaining £2,000 or £3,000. There would be no difficulty in showing that. And if South Australia earns 3 per cent. beyond her working expenses, while Tasmania only earns 1.15 per cent., we can show that our people have realized more of the advantages or as much of the advantages as the New South Wales or South Australian people have realized on their lines. The great question, therefore, just now is not conversion, and I hope honorable members will dismiss that from their minds. Do not let us embarrass our present considerations by the possibilities of future conversion. Neither need we embarrass ourselves with the consideration of the fact that the debt has various currencies. As to those various currencies, if honorable members will turn to a paper which
was lately issued above the name, I believe, of Mr. Fenton, the
Government Statist of Victoria, they will find that as to currency all the
colonies have been working upon various lines. The proportionate debts of
each of the colonies due in 1900, 1905, 1910, and so on, are as nearly as
possible approximate. We shall not, therefore, upon such lines be unequal,
and certain it is that as to the question of the rates of interest paid there is
no, or very little, inequality between the whole of the colonies. We all
began at 6 per cent., and Tasmania is now wiping off the last £100,000,
this or next year, of her 6 per cents., and we are coming down to 31/2 and 3
per cent. We shall find, if we investigate the figures laid before the
Convention, that in that respect also each of the states stands in nearly the
same position—that the face rates of interest we are paying are
approximately the same. But, turning to another important
point, and that is not the question of the face value, but the question of the
effective rate which is being paid in the world's money market, we shall
find that, for the whole of Australia, according to the figures that I took
out, we are getting our money at £2 18s. 6d. per cent. That is the effective
rate—the rate which is received by our various investors from all Australia.

Sir GEORGE TURNER. -

That is on the present market values?

Sir PHILIP FYSH. -

Yes, on the recent market values. As far as Tasmania is concerned, I am
in the proud position of not being troubled at all in that respect, because
our effective rate is £2 16s. 6d. But since these figures were taken out we
have had the extraordinary example of Western Australia, popular in its
stocks, which has raised money at £3 per cent., and whose £3 face rate is
now running down, so that its effective rate will be even less than £2 18s.
6d. in a very short time, So that the figures to which Mr. McMillan referred
may be all swept away. We need not trouble ourselves with respect to the
amount of Customs revenue which each state has collected; that has very
little to do with the matter in one respect, because New South Wales pays
her interest out of her earnings, while Tasmania, which stands at the other
extreme, is compelled to raise Customs revenue in order to pay the interest
upon her indebtedness. We have all found it necessary to raise Customs
revenue except New South Wales.

Sir JOHN FORREST. -

She raises nearly £2,000,000 of Customs revenue.

Sir PHILIP FYSH. -

Here is Victoria earning her 3 per cent. also on her lines, and she has
found it necessary to raise a Customs revenue. New South Wales does not
find it necessary to raise a Customs revenue, because of her immense territorial revenue.

Sir JOHN FORREST. -
She raises a large amount from Customs.

Sir PHILIP FYSHER. -
Only about 20s. or 25s. per head-not a million and a quarter.

Sir GEORGE TURNER. -
About a million and a half.

Sir PHILIP FYSHER. -
Under a Tariff which is to be still further reduced; and when Mr. Reid's free-trade Tariff is in full operation, I think the amount will not be 25s. per head, or a million and a quarter altogether. So we may wipe away all these difficulties, get out of this maze, and come back to the one question-the question that was before us in 1891, and again at Adelaide. The mind of the Premier of Western Australia is harping back to what was done in 1891. We could then only agree to the proposal that the public debts of the colonies should be taken over, subject to their consent; but where would that provision land us? New South Wales or Victoria might object to her debts being taken over. Of course, South Australia would agree to the consolidation of her debts. That colony is in an extraordinary condition. Her Customs revenue only makes up about three-fourths of the amount of interest due upon her public debts, while Tasmania, on the other hand, makes up by her Customs revenue the whole of the interest upon her public debts and £50,000 in addition. The purpose of the amendment which I propose to move is to get rid of these inequalities, and to provide a balance of loss upon the services taken over, so that there will remain £5,500,000 for them to play with. We have trusted the Federal Parliament in regard to the disposal of this money, because it will be composed of representatives from each state, and we believe that they will take care that the Federal Executive does not squander the revenue. If this contract is to secure the position of the people of the various states, let us charge upon the Federal Executive the most important of all our responsibilities-that of honestly paying our debts in the sight of all men.

Sir JOHN FORREST. -
We are doing that now.

Sir PHILIP FYSHER. -
Yes, we are using our revenue to do that now, but if we federate it may be difficult for the right honorable member to continue to do that.

Sir JOHN FORREST. -
How will you do it?
Sir PHILIP FYSH. -

I will come to that presently. When we federate, Western Australia will have to give up a part of her revenue to the Federal Parliament, and she will get back just what the Parliament pleases. In my opinion, it would be better to impose upon the Federal Parliament the responsibility of upholding the credit of the states before all the world.

Mr. HOLDER. -

The honorable member would have them pay for us £1,000,000, and return £550,000.

Sir PHILIP FYSH. -

I would have the Federal Parliament make provision to pay to South Australia £963,000 of interest, with its share of the original expenditure-£40,000, that is the per capita distribution, and its share of the £1,250,000 loss upon various departments. As the Federal Executive would thus receive only £750,000, there would be a deficiency of £400,000 so far as South Australia is concerned. One of the difficulties of the honorable member who sits below me is that we must base our calculations as to the future position of South Australia-which colony, unfortunately, in this respect stands in the worst accountant's position of any-upon the supposition that there will be a Federal Tariff which will return to all the colonies not less than they are receiving at the present time. It is admitted that the Federation will be unable to maintain the credit of the various colonies except upon a Tariff which will return to each of them as nearly as possible £2 per head. In that case, so far as my present figures are concerned, South Australia will be the amount behind that I have referred to. She is the only colony in that unfortunate position. What is the position of the honorable member (Mr. Holder) now? It has suited South Australia, whether by probate duties or from profit upon telegrams-

Sir JOHN FORREST. -

From probate duties lately.

Sir PHILIP FYSH. -

Yes.

Mr. REID. -

How is it that you have run so deeply into debt in Tasmania? I see that your public debt is equal to £50 a head.

Sir PHILIP FYSH. -

To benefit our people, to lift Tasmania out of the Cinderella's position that she has hitherto occupied, to give her roads, and to develop her railways and mines. Now, we are reaping the great advantage of having exported £1,100,000 worth of metallurgical minerals last year.
That is a good financial operation.

Sir PHILIP FYSH. -

It is a good one. And we have raised our Customs rates, during the last four years, by 50 per cent.

Mr. HOLDER. -

You are now the beautiful princess of the group.

Sir PHILIP FYSH. -

I hope the Chairman will call to order honorable members who are interjecting.

Sir JOHN FORREST. -

You charge 20 per cent. all round.

Sir PHILIP FYSH. -

I do not think it would be wise to go into the Tariff question just now. Tasmania is a free-trade colony, trying to keep pace with New South Wales. Mr. Holder led me off the thread of my discourse. I have just said, that so far as South Australia is concerned, it is admitted that that colony is making good the deficiency out of other sources, and she can continue to do so. We are not going to take away any state rights, and we shall have a claim on that colony for £400,000 or £500,000, which she will be as well able to pay as she is able to-day to maintain her credit before the world. Under the same circumstances Tasmania will be deficient £40,000, and that is, as nearly as possible, what I find from figures for past year, she collected on the products of her labour. In order that we may live as we profess to do, as brothers on this great continent, Tasmania is prepared to abandon that £40,000. Tasmania is in the happy position of being able to do that and yet have a magnificent surplus. South Australia does not say there is any difficulty about finding the money, and so far as Tasmania is concerned there is no difficulty. I do not ask the Convention to consolidate the debts, nor do I ask that conversion should be immediately considered. All I say is that the Federal Executive will have a surplus of £5,500,000, and will be charged with the responsibility of paying away £6,000,000, or half-a-million more than her surplus; the amount of interest which each colony would otherwise have to pay. It will simply be paid by the Federation instead of by individual states.

Sir GEORGE TURNER. -

That will not make the Federation raise any particular amount of money, because whenever the Federation is short it will be charge against the states.

Sir PHILIP FYSH. -
New South Wales and Victoria will have a handsome surplus.

Mr. Reid. -
Call it a credit balance.

Sir Philip Fysh. -
I am always assuming that Queensland will be with us. Queensland would be deficient £400,000; New South Wales would have a credit balance—I will use Mr. Reid's words—of about £80,000, and Victoria would have a credit balance of about £300,000. Western Australia would have a balance of £30,000, while South Australia and Tasmania would have a debit balance.

Mr. Holder. -
What rate have you put down for the Customs and Excise of New South Wales!

Sir Philip Fysh. -
I have put down as a basis the Tariff which must be obtained to keep the various colonies solvent, namely, 40s. per head.

Mr. Holder. -
How much will New South Wales contribute?

Sir Philip Fysh. -
It will contribute about £2,260,000. We all know that New South Wales has been the bete noire of federation.

Mr. Reid. -
Don't say that.

Sir Philip Fysh. -
I do not use the word offensively, but, if my honorable friend objects, I will use the word "difficulty." An honorable member has said that a proposal of this kind will force New South Wales to a Tariff beyond her needs at the present moment. How often have we listened to that remark by Mr. Reid and other representatives of New South Wales? Has that not been the great difficulty hitherto—that, whatever Tariff is necessary for the other colonies, we give to New South Wales an excess of revenue which she does not want? That has been our greatest difficulty.

Sir John Forrest. -
What is your proposal?

Sir Philip Fysh. -
The proposal is—
The Commonwealth shall, when fair terms can be obtained for conversion of any stock, consolidate such stock or any part thereof into "Australian Federal Consols."

Sir John Forrest. -
That is not different to the clause in the Bill.
Sir PHILIP FYSH. -

It is a little unfortunate that my right honorable friend (Sir John Forrest) interjects so often. The clause in the Bill simply gives power to the Federal Parliament to do so when it finds it convenient. The clause says that the Federal Parliament "may." But here it is provided that the Commonwealth "shall," provided the terms to be got in the money market are satisfactory.

Sir JOHN FORREST. -

Satisfactory to whom?

Sir PHILIP FYSH. -

Satisfactory to the Federal Executive-to the Federal Parliament.

Mr. REID. -

You don't say so in this.

Sir PHILIP FYSH. -

Under what authority would the Federal Executive act, and to whom would the Federal Administration be responsible?

Mr. REID. -

Have an Act to define what would be fair terms for the consolidation of the stock.

Sir PHILIP FYSH. -

The words are there for the purpose of meeting the objection that the Federal Executive shall do something, with a proviso. I do not object to the terms that the Federal Parliament shall consolidate the debts.

Sir JOHN FORREST. -

Without consulting the state?

Sir PHILIP FYSH. -

Yes.

Sir JOHN FORREST. -

Oh no, they can't do that.

Sir PHILIP FYSH. -

The right honorable member last year agreed to this very clause which says that the Federal Executive may.

Mr. HOLDER. -

With the consent of the state.

Sir PHILIP FYSH. -

There was nothing about the consent of the state.

Sir JOHN FORREST. -

We altered that.

Sir PHILIP FYSH. -

We altered that in Adelaide this year. There has been an evolution in this
matter, as in everything else. The only thing is, that in this evolution I find myself rather beyond some of my honorable friends. The evolution did not commence in 1891, but long prior. A gentleman, whose name I forget, but who occupied an important position in the financial world, as a prominent member of the London Stock Exchange, paid us a visit a few years ago.

Mr. HOLDER. -
Mr. Westgarth.

Sir PHILIP FYSH. -

Ah, that is the name. I had forgotten it for the moment. He impressed upon every Government of Australia the desirability of taking the step to which I now refer. The contents of his pamphlets will ever be fresh in my mind. I have been watching this subject very closely. The financial press, not only of England, but of Europe, has been giving attention to it for years past, and all this has led to the conclusion that we cannot very much longer delay consolidating our debts. The colonial press has been following on the same lines. It is only when I come to consult the honorable members sitting below me that I find there are so many difficulties to be surmounted. There has been an evolution in this matter. Year by year we have had examples of the advantages that will accrue to us from the adoption of this plan, but we have not yet heard what are the disadvantages. I am hoping to hear from Mr. Reid what the disadvantages are.

Mr. REID. -
I have to go to Sydney to-night; how long are you going to be?

Sir PHILIP FYSH. -
What time does your train go?

Mr. REID. -
About eight o'clock.

Sir PHILIP FYSH. -
Oh!

Mr. REID. -
I mean five o'clock.

Sir PHILIP FYSH. -
It is very unkind of my right honorable friend to address me in these terms, because I have taken as much care as any man to conserve the time of the Convention.

Mr. REID. -
Hear, hear; you have been getting this up.

Sir PHILIP FYSH. -
No; it is a subject I have been familiar with for a number of years. Whilst some of my honorable friends have been taking a great interest in rivers, I have been devoting my attention to the consideration of statistical
information about national debts. Mr. Westgarth's pamphlet so impressed me with the desirability of our acting as one people in this respect that I have never forgotten what he said.

We talk of being Australians, but we hear a great deal about New South Wales, Victoria, South Australia, and Western Australia in our discussions. I want honorable members to put out of their minds the fact that we are six separate peoples. We ought not to be six separate peoples with six separate interests, but one people with one interest.

Sir GEORGE TURNER. -

And one debt.

Sir PHILIP FYSH. -

Yes, and one financial agency. Although we have not yet got to that true federal position in which we would throw the whole of our revenue into a pool and divide it per capita, still we have advanced so far that we recognise that instead of going into the world's money markets, competing against each other as we do, from time to time, it would be to our advantage to consolidate our debts.

Sir JOHN FORREST. -

We are not competing in the money markets.

Sir PHILIP FYSH. -

We have been, and we shall continue to do so.

Mr. REID. -

There is room for competition.

Sir PHILIP FYSH. -

There is no room for competition in this respect. A partnership of commercial men would scout the idea. They would say-"We will work for one common object, and that is the benefit of the whole." In this matter of our debts we have heretofore been working with separate objects, and with what results? The six colonies of Australia maintain six financial agencies in England. We are paying six separate rates for the flotation and management of our debts, from £100 per £1,000,000 per annum up to £600 per £1,000,000 per annum. We have been paying in England for work which we could very well do for ourselves.

Sir JOHN FORREST. -

We get our money very cheaply.

Sir PHILIP FYSH. -

We could get it more cheaply. I would call the right honorable member's attention to his own statistics. He raised money the other day at a little over £100, but the flotation of the loan did not cost him less than £2 or £2 10s.
per cent.

Sir JOHN FORREST. -
   No, £1.

Sir PHILIP FYSH. -
   The reserve was £96 or £97. Western Australia has at the present time a 3 per cent. loan which is quoted at over £100.

Sir JOHN FORREST. -
   No.

Sir PHILIP FYSH. -
   I saw it quoted at, I think, £100 6s., and I will venture to say that the flotation of that loan cost Western Australia from £2 to £2 10s. per cent. In addition to that it cost her for banking expenditure in connexion with the flotation of loans, the payment of interest, and the paying off of loans, a sum of money which was somewhat appalling when one came to consider it. I had an opportunity, some time ago, of calling the attention of the Federal Council to the actual facts, and I was able to point out that the Australian colonies are expending not less than £200,000 unnecessarily in consequence of their having these six separate agencies. That money, would be saved to the colonies if there was one federal agency empowered to do in England what the French people do with respect to their debt-receive the money across the counter without any expenditure. I have been able to set an example on a small scale in the colony which I have the extreme felicity of owning as my adopted home—Tasmania. I might almost say, from my long association with it, that it is my native home. It is as good to me as a native home, and I am proud of the country and of its people. By having a federal agency in London we could save the large sum of money I have mentioned. In addition to that, by consolidation we should give to our debts the joint and several guarantees of six states instead of one, and we should attract a class of investor whom we have never had before. I allude to the trustee investor.

Mr. DOBSON. -
   I hope so.

Sir PHILIP FYSH. -
   For these investments the consent of the Lords Judiciary would have to be obtained. And directly you do that you have a class of investor who will come across your counter, as I have said, and invest without the intermediary of the London Stock Exchange, or the syndicates who charge you so much. On a matter which concerns £170,000,000, on which the colonies are paying £7,000,000 a year, we hesitate, but with respect to ocean beacons and lights, patent laws, and many unimportant
matters, we consider it necessary to include them in the powers of the Parliament. My right honorable friend (Sir John Forrest) objects to inserting in the Constitution as a power of the Parliament that they shall take over the debts of the various colonies and consolidate them. I am very anxious to hear the objections which may be raised by my right honorable friend (Mr. Reid), and when I have heard those objections, on another occasion I will take advantage of my right to address the committee again. I therefore defer the amendment which I have to make, although I had intended to traverse the proposal of Mr. Glynn, and wished to fully explain the amendment which has been suggested by the Tasmanian Parliament. Mr. Glynn has spoken for himself, and I hope that Mr. Henry will relieve me by presently stating the reasons which have induced a majority of the Tasmanian Parliament to recommend a proportionate taking over of the debts, or the whole of them, under certain considerations. I have made a proposal that the whole of the interest on the debts shall be paid by the Federal Parliament; the remainder must follow. I do not follow that out to its sequence. Having done that, I hope that we will make an arrangement by which no state which is not well in credit with the Federal Executive will make a further borrowing. We shall, no doubt, have the Federal Executive compelled to borrow. If you have the six states each borrowing that is seven, and to superload that with the right reserved to others to load up further debts, unless they are in a position of credit with the Federal Executive to do so, will be a very gross piece of extravagance and a great mistake. But there we come to that very important question of state rights. We must advance stage by stage. Let us charge against the surplus which the Federal Executive will hold all the responsibility for our interest. We shall know then that we have each secured our solvency. Surely we can leave it to the Parliament of the Federation to make a proper provision as to what shall be the future borrowing. Knowing that my honorable friend (Mr. Henry) is desirous of taking up the other amendment which has been proposed by the Tasmanian Parliament, for the present I will leave the matter with that proposal.

Mr. REID (New South Wales). -

I regret that my honorable friend (Sir Philip Fysh) has brought his interesting address to so abrupt a termination, as we are all anxious to fully understand the reasons which induced him to bring before us the proposition which I see on the notice-paper. I really feel that it would be unfair to criticise my honorable friend's speech when I came to the conclusion, as I must, that I have only heard the introductory matter, from which he intended to advance into a consideration of the whole subject. I cheerfully recognise the labour which he has bestowed on this most
important matter. There is no member of the Convention who has given more time or attention to this subject than he has, and I am not forgetful of the very able addresses which he has delivered in Tasmania in very strong advocacy of this particular proposal. I have the utmost respect for the views he has enunciated, and I think when the matter is fully considered in the Federal Parliament we shall be found not to differ very seriously. But, at present, I am afraid that we cannot very well put in this proposed clause, or anything like it; and, as that is the general feeling of the Convention, I do not feel called upon, in a climate like this, to make any very arduous or strenuous attempts to reply to my honorable friend. I think it is generally felt that the Commonwealth cannot be given this arbitrary power of taking over the debts of the states without the slightest reference to the states themselves.

Sir PHILIP FYSH. -

We have done it already in clause 98.

Mr. REID. -

Does clause 98 do that without the consent of the states?

Sir PHILIP FYSH. -

Yes.

Mr. REID. -

Then I am all the more strongly inclined to support the proposal of Mr. McMillan, which I see on the notice-paper. I was not aware that it was done in clause 98, but I see that it is. I should certainly have been opposed to that clause remaining in its present form if I had noticed that provision.

The CHAIRMAN. -

The clause is now under consideration.

Mr. REID. -

We have got away from it a little, and I am much obliged to you, sir, for reminding me of it. I see that, in clause 98, the Federal Parliament may take over the whole or a rateable proportion of the public debts of the states without any consent. I fancy that I had left Adelaide before the clause was considered.

Sir PHILIP FYSH. -

You were in it.

Mr. REID. -

I do not think so.

Mr. MCMILLAN. -

It was in the Finance Committee, I think.

Mr. REID. -

I think my honorable friend will recollect that I strongly opposed it in the
Finance Committee.

Mr. MCMILLAN. -

Yes.

Mr. REID. -

I had forgotten all about that. I have the strongest possible objection to such a clause. And I have a very grave doubt as to whether the solvency of the states can in any healthy sense be said to be promoted if there is a transfer of liabilities without some corresponding transfer of assets. Whoever heard, for instance, of a business partnership being allowed to be constructed on the principle that the partners shall make away with all the assets before they enter into business?

Sir PHILIP FYSH. -

The Customs revenue is an asset.

Mr. REID. -

In one sense it is an asset, but it is not an interest-bearing asset.

Sir PHILIP FYSH. -

Yes, it is.

Mr. REID. -

It is not an interest-bearing asset; and then that raises fiscal questions. As has been pointed out before, why should we be tied down to raise revenue in a particular way in order to meet a certain view entertained by the honorable gentleman? As far as the railways are concerned, we know that the most of the interest is due on loans obtained for their construction, and they are interest-bearing. If the liability is put off on the Commonwealth while the assets remain with the states, I fancy that there will be considerable opposition to such a scheme in the Imperial Parliament. I am not speaking without a certain amount of information. This project of handing over the debts of the states, while keeping the interest-bearing assets in respect of which those debts were incurred, is not viewed at all favorably in some circles amongst our creditors in the old country. I certainly do not wish this Constitution to be burdened with matters or details that can safely be left to the future; therefore, I cordially support the proposition of Mr. McMillan. It is short, it is clear, and it will enable all the delicate financial incidents of such a transaction to be carried out in a proper way. Now, any project for making the Commonwealth Legislature decide when the Stock Exchange is favorable, or when it is not, would be a most extraordinary method of dealing with delicate financial operations. The clause says-"The Commonwealth shall, when fair terms can be obtained for conversion," and so on. How infinitely better it would be to leave out words of that description! What Executive would convert a stock unless fair term were offered? In what conceivable
way could the Commonwealth pass an Act in order to describe what would be fair terms? Perhaps a certain state of things would exist when the Act was passed, and one week afterwards those terms would shift and vary. Those are matters which must be left to the Executive.

Sir PHILIP FYSH. -

Then comes in your objection that you have forfeited the premium on your stock.

Mr. REID. -

Leaving out all those words will not hurt anybody. It will not leave out the brains of the Treasurer who has to conduct the particular operation.

Sir EDWARD BRADDON. -

It is not the words but the spirit we are anxious about.

Mr. REID. -

I utterly oppose the proposal that the debts of a colony shall be taken over by the Commonwealth without that colony's consent. I think that this project of consolidating the stock of the colonies, whilst one that is certain to come in due course, is one on which the most visionary and rashest prognostications are indulged in. There seems to be an idea that the consolidation of stock itself will yield a rich return, but that is a perfect delusion. If a man has got £10,000 worth of state stock at 4 per cent., he is not going to accept Commonwealth stock at 3 per cent. in exchange for it.

Sir PHILIP FYSH. -

You are talking now of conversion.

Mr. REID. -

Is not that a conversion?

Sir PHILIP FYSH. -

But you were talking just before of consolidation.

Mr. REID. -

What charm is there in consolidation if it is not accompanied by some change of conditions between the debtor and the creditor? It is only conversion that can bring about any change-converting one security at a certain rate of interest into a better security at a lower rate of interest.

Sir PHILIP FYSH. -

You would secure trustees' investments by consolidation, and is not that a gain?

Mr. REID. -

Certainly that would be a gain, I admit, by consolidation, but still the project would be a very lame one unless it went a little further, and made the new stock a genuine Commonwealth stock.

Mr. HOLDER. -
You could not consolidate unless you converted.

Mr. REID. -
I have such confidence in my honorable friend the Treasurer of Tasmania, in regard to matters of finance, that I am afraid I am inclined to follow him without reflection.

Mr. MCMILLAN. -
It is your conversion he is thinking of just now.

Mr. PEACOCK. -
Ah, that will be a hard matter.

Sir PHILIP FYSH. -
But simple consolidation must precede conversion.

Mr. REID. -
Supposing the holders of the debentures that you want back won't give them up, where is your consolidation? It is a mere idle operation, the printing of new paper that the debenture-holder will not take.

Sir PHILIP FYSH. -
Do you mean to say that a debenture-holder will not take the joint and several guarantee of six states instead of one state? Why, he would give the one state debenture up directly in exchange for the other.

Mr. REID. -
A debenture-holder might give up the bonds of Tasmania for such a joint and several guarantee, but the holders of New South Wales bonds would not give them up for anything. As a matter of fact, if any colony like New South Wales, South Australia, or perhaps even Tasmania wants a loan it can get the money on the London market at something like 3 per cent. per annum, and what a wonderful proof it is of the solvency of these colonies when they can raise money on such terms. There is not much margin for a very great profit to be made by conversion at the best of times, and the only chance of converting to advantage will be when the debentures to be converted are nearly ran out. Then there is a chance of getting a new set of debentures placed at a lower rate of interest, leaving some substantial profit, and the conversion honorable members talk about will no doubt take place on those lines. If the Commonwealth gets power from the state to take over and consolidate their loans, that consolidation will be effected, and as each loan falls in the Commonwealth will get the benefit of converting it into new stock bearing a lower rate of interest. Because the individual who has been reaping interest from a debenture which he is just about to lose will have to fall back, when the loan is repaid, on British consols bearing a much lower rate, and, under those circumstances, he will take your new bond at a lesser rate of interest than he received before; but
so long as his debenture has ten or five years to run, at a comparatively high rate of interest, he is not going to give it up. He wants the same interest, if he can get it, and, of course, he can retain it by keeping the bond.

Sir PHILIP FYSH. -

Or by an extension of the term.

Mr. REID. -

That only operates when the bond is running out. Under all these circumstances, I think that we are simply wasting our time in going into all these calculations about operations that cannot possibly be effected for some time to come. It is only because I wanted to show my great respect for the attention and industry which Sir Phillip Fysh has devoted to this subject that I have made these observations, I can assure him, and, however earnest we are to bring about this consolidation and conversion, we cannot load this Constitution with matters of that sort. We can simply give a power which will enable the state and the Commonwealth to come to some arrangement.

Sir GEORGE TURNER. -

Should that be with or without the consent of the state?

Mr. REID. -

With the consent of the state, certainly. Any state would absolutely resent the insertion in this Bill of the power to manage its own financial affairs without its consent.

Sir GEORGE TURNER. -

But one colony may stand out and spoil the whole scheme. That is the difficulty to my mind.

Mr. REID. -

It is a difficulty, but, as far as the internal finances of the states, are concerned, we cannot lay our hands on their independence in this Constitution. We cannot propose to do that.

Mr. DOBSON. -

But you take away the revenue that pays the interest on their debts.

Mr. REID. -

There is nothing in that between solvent communities.

Mr. DOBSON. -

There is nothing in giving over your revenue to the body who has taken over your liability.

Mr. REID. -

In other words, you would make the states the absolute financial creatures of the Commonwealth. No state that has got any financial strength will occupy such a position. Of course, if a state feels itself on its
last legs it will creep into any hole it can get into, but New South Wales is not in that position, and no Australian colony is. If I thought that some Australian colony was in such a desperate condition it might alter my view of this matter, but I look on each of these colonies as absolutely sound. I admit that in the future we may save large sums of money in the shape of interest, considering the enormous total of our debts, by adopting the operation Sir Philip Fysh suggests.

Mr. DOBSON. -
But if in the course of the conversion of the debts of the colonies you have on each occasion to get the consent of each state, one state may object, and the whole scheme may fall through.

Mr. REID. -
But if any state gets into a difficulty-

Mr. DOBSON. -
We are not in a difficulty.

Mr. REID. -
I have just said so. But if in the future any state, say New South Wales, gets into a difficulty, Mr. McMillan's proposal will enable it to be assisted.

Mr. DOBSON. -
It will enable one state to stop conversion.

We must not lose sight of the fact that the sovereignty of the states is being left to them under this Constitution. We seem to be continually endeavouring to do things as though the states were mere puppets of the Commonwealth. But, as a matter of fact, the absolute sovereignty of the states is left to them, and they will not give up their sovereign position with regard to their debts to the Federal Parliament without being consulted. The proposal is so preposterous that it is not really worth discussing.

Sir EDWARD BRADDON. -
You do not consult the people about the policy of taking over the customs duties.

Mr. REID. -
What is remitting the Bill to the people but consulting them? We have agreed to take over customs duties because we cannot federate without them. But we can federate without taking over the debts. We put the customs matter in because it was one of the essentials of Federation. We could not possibly leave it out. But you do not put everything in this Constitution on the same principle. If this were one of the essentials of union, I should say at once - "It must go in;" but it is not.
Sir EDWARD BRADDON. -

Is it not to the advantage of the states?

Mr. REID. -

It is to the advantage of every state to decide for itself as to its own debts.

Mr. HENRY (Tasmania). -

I rise principally for the purpose of making clear to this Convention the terms of the suggestion submitted by the Tasmanian Parliament. My colleague (Sir Philip Fysh) has left me to discharge this duty. My honorable friend (Mr. Glynn) has outlined the proposal, but I think he left one or two rather important points untouched, and I propose, in the first instance, making them clear as far as I can. The proposal is really, first of all, that the whole of the public debts shall be taken over by the Commonwealth, but that whatever is found to be the lowest debt per head in any colony shall be the amount of which each and every colony shall be relieved. Thus, assuming that Victoria has a debt of £40 per head, and that that is the lowest debt in the Commonwealth-I do not say that it is so; I believe Victoria's debt is now £41 per head-then the whole of the colonies would be relieved of debt to the amount of £40 per head, under these resolutions; and the excess of debt in each colony over £40 per head (where there was an excess) each colony would itself be liable for. Thus in the case of South Australia the debt is about £65 per head. So that South Australia would be relieved of £40 per head, and would herself become liable to the Federal Parliament for the difference of £25 per head. It is due to my valued friend and colleague (Mr. Inglis Clark) to say that he is the author of these resolutions—not the author of the ideas in them, because we are all fairly in accord with the principle, but he framed the resolutions, and suggested certain thoughts now embodied in them, which are well worthy of the consideration of the Convention. I regret that I was not here when Mr. Reid spoke—having been called away on other business—because there may have been some points in his speech which I ought to touch upon.

Mr. REID. -

I simply favour Mr. McMillan's proposal.

Mr. HENRY. -

One of the interesting points in this scheme is as to the mode by which the states Treasurer would indemnify the Federal Treasurer for the loss of interest in the first instance. The proposal is that the states Parliament shall grant to the Federal Parliament Commonwealth bonds for the amount of their debts in excess of whatever the lowest debt may be. Mr. Higgins, while Mr. Glynn was speaking, interjected a rather pertinent question as to how the Federal Parliament was to compel a state to pay a debt. That difficulty has been discussed by our Parliament, and is met in these
It is simply this: That in the event of any state neglecting to pay the amount of interest on the bonds granted to the Commonwealth, then the Federal Parliament shall have power to levy a special tax on that state to recoup it for the loss. And it seems to me that in the event of any state repudiating an obligation to the Federal Parliament this proposal would be effectual. Of course we must all admit that it is exceedingly objectionable to give the Federal Parliament power to levy a special tax on any state, but under the exceptional circumstances I do not think that it would be objected to. The power might not be used, but it should be there, to enforce payment in ease of need. There is another ingenious and perfectly just contrivance in these clauses for dealing with the increase of population and the consequent reduction of liability of states to the Federal Parliament. Obviously these proposals in the first instance are based on the population of each colony. That is, the Federal Parliament is to relieve the states Parliaments or the states Treasurers of a certain amount per head of the population, so that all the states may be treated equally. It is obvious that, as the colonies develop, there may be a greater relative increase of population in one colony than in the others, so that clearly it would be necessary to make some provision for that increase. I think the proposal here meets that difficulty effectually. It is that every five years there shall be a census taken, and whatever the increase of population shown in any state, the Federal Parliament shall relieve that state of an amount of debt proportionate to the increase.

Sir GEORGE TURNER. -

Taking a census every five years would be rather expensive.

Mr. HOWE. -

Every ten years, then.

Sir GEORGE TURNER. -

We do it every ten years as it is.

Mr. HENRY. -

That is a matter of detail. The principle is what is important. I think myself that it is very possible that the ordinary statistics of population might be taken as a basis. That is, roughly, the Tasmanian proposal; and I would like to say in connexion with the proposal of Mr. Glynn that one portion of it seems to me to be a necessary addition to the Tasmanian proposals. Recognising the necessity of taking over the public debts of the colonies at this stage, I should be very glad to see Mr. Glynn's proposal incorporated in the proposal of Tasmania. That is the portion of it which
proposes to reduce the debts to what is a just and equal proportion to be borne by each. I understand Mr. Glynn's proposal is this, and it is a thoroughly equitable one, put forward to meet the obvious distinction between the various classes of debt. One colony may have a larger amount of debt at a high rate of interest falling due shortly, another colony may have a large amount of debt with a long currency and a low rate of interest. It is, therefore, obvious that a per capita proportion of the debt is not strictly equitable, but by reducing it, as in Mr. Glynn's proposal—and I suppose it is an actuarial calculation, taking in the currency of the debt and the rate of interest—it could be reduced to a perfectly equitable sum.

Mr. HIGGINS. -
Do you pay regard to the market value, the length of terms, and so on?

Mr. HENRY. -
I do not know that I will deal with the market value. What strikes me with regard to Mr. Glynn's proposal is the absolute necessity of reducing things to equality. I believe he successfully deals with that.

Sir GEORGE TURNER. -
Would not that be a matter for the Federal Parliament to legislate upon?

Mr. HENRY. -
We can lay down the principle.

Sir GEORGE TURNER. -
Is it wise to lay down a principle that will not work out in practice?

Mr. HENRY. -
If the principle is sound it must work out in practice. I thoroughly sympathize with Mr. Glynn's object, and I see the necessity for securing equality in this matter. I have no doubt of the soundness of the principle enunciated by the honorable member. I have now outlined the Tasmanian proposal, and I propose to deal with the general question. Several objections were raised with the force and clearness which always distinguish Mr. McMillan's utterances, and they certainly deserve the respect and consideration of every honorable member. The first objection he urged was that in making it compulsory on the Federal Parliament to take over a given amount of the public debts, or, in other words, to become liable in the first instance for the whole of the interest, it is to be regarded as a mandate to the Federal Parliament to raise a large amount of revenue. I admit that unhesitatingly. But I say that the safety of the state Treasuries demands that a definite obligation should be laid on the Federal Parliament to provide sufficient revenue to relieve us of our responsibility. That is my answer to that objection. When honorable members object to laying a definite obligation on the Federal Parliament, by putting it in the
Constitution Bill, they are blinking the real position, because the financial necessities of four out of five of the states are such that it is absolutely necessary, if we are not going to make the several states insolvent, that a very large amount of revenue shall be raised from Customs, an amount certainly equal to what is required to pay the interest on the public debt. Does any honorable member, or any one who has given any attention to the subject, doubt the necessity of the Federal Parliament raising this amount of money?

Mr. HIGGINS. -

The objection is a sentimental one. We all know we must raise enough for the interest on the debts.

Mr. HENRY. -

We all know it, and with that fact staring us in the face, why object to the proposal to place such an obligation in the Constitution Bill? It is indisputable that the money must be raised in this way, and are we to believe that honorable members who object to laying this obligation on the Federal Parliament are prepared to wreck the state Treasuries? That seems to be the only conclusion. It has been contended, and it was referred to by Mr. McMillan, that the railways and the debts are inseparable; that if the debts are taken over the railways must be taken over also. I cannot see the force of that contention. It is claimed that the railways are a portion of the security for the debts, that they are the real assets for the large amount of money which English capitalists have lent to us so liberally. As a matter of fact, however, the real security to those capitalists lies in the willingness and the ability of the people to pay taxes to meet the demands for interest. There is no doubt that when the railways are taken over by the Federal Parliament it will somewhat complicate the financial position; but that is a matter which we can safely leave to the Federal Parliament, which will be the best body to deal with such questions. I have no doubt about the Federal Parliament having the necessary ingenuity to deal equitably with this question.

Mr. HOLDER. -

The great argument against this proposal is that the question can be better dealt with by the Federal Parliament if we give them power.

Mr. HENRY. -

That does not apply to this question of the debts, because we can lay down the lines on which the debts can be taken over, and the question appears to be perfectly simple. I was very much interested in what Mr. McMillan said regarding the conversion of the debts. It is unnecessary to say that I distinguish between conversion and consolidation, but it is well to be clear on that point, because I sometimes think the two things are
mixed. I understand that we will convert our debts first by a consolidation of all our state debts, and then the Federal Parliament will change the amount of interest by making it all one stock with a uniform rate of interest.

Mr. HOLDER. -

That can only be reached by conversion.

Mr. HENRY. -

It might be reached gradually; the distinction is this, as to whether an attempt should be made to convert the whole of the stocks at once before they mature, or should we await the maturing of the stock, and let the conversion be made gradually. Mr. McMillan urged, with very great force, several objections to the practicability of converting our debts, but I was somewhat surprised that, after arguing strongly against the possibility or practicability of converting our debts, he went on to say that the conversion was possible. I listened with great interest to what Mr. Glynn said, because it so entirely corroborated my own views about the debts. I would like to put it in a practical way to honorable members as to whether conversion is possible at all on fair terms. Obviously, the holders of colonial stocks, no matter what colony's stocks they hold, will require to be paid the value of those stocks, and in all probability they will not be prepared to part with them unless some additional advantage is given to them. How are you going to bring about an arrangement which will give an advantage to these bond-holders, and at the same time a profit to the state? The honorable member (Mr. Glynn), with his usual industry and research, has looked into this question from the historical point of view, and he tells us that all the conversions which have been made have been conversions of short-dated stocks. When a Government can say to its bond-holders-"We will pay you off in twelve months unless you accept certain terms," it is possible for it to force the acceptance of those terms, but where a Government has entered into contracts with bond-holders to pay interest for 20, 30, and 40 years, and then to return the full value of the stock, is it credible that the bond-holders will not know the value of the stocks they hold and refuse to convert, them into something less valuable

Sir EDWARD BRADDON. -

By conversion the bond-holders get a more valuable stock.

Mr. HENRY. -

How can they get a more valuable stock? Will any one say that the federal stock will be more marketable than the state stocks are now? I think no one will question the saleableness of Australian stocks at the present time, so that the right honorable member's interjection does not seem to
meet the case at all.

Mr. DOBSON. -

Are not Australian stocks below Canadian stocks?

Mr. HENRY. -

I admit unreservedly that it is not only possible but probable that the federal bonds would stand higher in the market than the bonds of any single colony, but that does not touch the question. If you cannot convert without either loading futurity with an increased amount of debt or making some sacrifice at the present time, what advantage do you get from the conversion? The bond-holders may get an advantage, but the taxpayers of Australia will not get any advantage.

Mr. DOUGLAS. -

The larger the amount of debt the greater will be the saving.

Sir PHILIP FYSH. -

The federal stock will have greater currency than the state stock has.

Mr. HENRY. -

Quite so. All these are, of course, elements in the consideration of the question. It is a question whether issuing bonds of a greater currency would be of advantage to the bond-holders, and, of course, it would be a question of calculation with them. If they were informed, upon the advice of actuaries, that they might obtain advantage from it, they might agree to the conversion. But probably such an arrangement would be very much against the interests of the authority issuing the bonds. Seeing that, in my judgment, conversion is not possible with any advantage to the Commonwealth, we must either increase the amount of the stocks, and give the bond-holders some advantage in the form of increased stocks, or we must give them an advantage in some other way. I fail to see how the state can get a profit, and how the bond-holders can also get a profit. Then we come to this consideration. If conversion is not possible at an advantage to the Federation, why should we postpone the imposition upon the Federal Government of the responsibility for the whole of the public debts of the colonies? It has been urged as one of the strong reasons why the federal authority should not take over the public debts of the colonies that possibly the colonies themselves might be able to make better terms with their bond-holders than could be made by the federal authority. I think, however, that I have disposed of that objection, at all events from my point of view. Now I come to what it has struck me are the advantages to be gained by allowing the federal authority to take over the debts of the states. In the first place, I have always held that it is most desirable that when the
states have given up their Customs revenue, upon which they now largely rely to pay interest upon their debts, the Federal Parliament should relieve them of the burden of this interest. Up to 1895, the total Customs revenue of Australia was about equal to the total annual interest charges of the various colonies.

Mr. HENNING. -

The states would all be represented in the Federal Parliament.

Mr. HENRY. -

I am familiar with that argument, and I have urged it myself both in my own Parliament and here. I am aware that the financial necessities of the various states will be the best security that we can have for the proper disposal of the surplus revenue of the Commonwealth. Honorable members have talked a great deal of wanting to go back to their colonies with some assurance which will induce the people there to enter into this Federation. I hold that it would be a very great inducement to the people of the various states to enter into the Federation if their representative here the press were to say-"The Federal authority has taken over your customs duties, but at the same time it has relieved you of your liability for the interest upon your public debts," or for a considerable portion of those debts, say, to £40 or £41 per head, as might be determined. By laying this direct obligation upon the federal authority you, to some extent, relieve the state Treasurers of an obligation they would otherwise have to meet after they had given up the revenue which they require in order to meet it. Mr. McMillan has stated, very justly, that this proposal to deal with the public debts does not dispose of the federal surplus. I am aware of that. But we have already determined how the surplus shall be dealt with for the first five years. To me, what appears to be the advantage of an arrangement enabling the Federal Parliament to take over the whole of the liability of the states in regard to public debts is the saving that would probably be effected by the paying off of these debts as they mature. I believe that that would be how any real saving would be secured—not by conversion. This work would, of course, have to be done gradually. The Federal Government should have the power, as various bonds matured, to pay them off, and the earlier that was done the better. By laying this definite obligation on the Federal Government we secure two objects. We give a definite assurance to the state Treasurers that a portion of their liabilities is certain to be met, and we put into the hands of the federal authority an instrument for effecting a saving of interest. I am afraid that the proposal of my honorable friend and colleague (Sir Philip Fysh) is not practicable. I certainly very much prefer the scheme proposed by the Parliament, of Tasmania. Sir Philip Fysh assumes that, as a first step, there should be a conversion when fair terms
can be obtained. It was interjected by Mr. Reid that the difficulty lay in determining what fair terms are. The words are loose and indefinite, and I do not think they would do.

I am not in the habit of criticising mere verbal expressions, or the terms of a clause, but the difficulty I have pointed out strikes one at once. The proposal implies that there shall be a conversion before there is a consolidation of the stock. That may be necessary, but, in my opinion, the, taking over of the stock should be immediate, whereas the proposal of Sir Philip Fysh puts the time off indefinitely, and does not make it immediately compulsory on the Federal Parliament.

Mr. BARTON (New South Wales). -

On an important subject like this, it would scarcely do to call on honorable members to speak in the few remaining minutes. I therefore move that progress be reported.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at eight minutes to five o'clock p.m., until Monday, 28th February.
Monday, 28th February, 1898.

Right of Appeal to the Privy Council - State of Business - Commonwealth of Australia Bill.

The PRESIDENT took the chair at twenty minutes to eleven o'clock a.m.

RIGHT OF APPEAL TO THE PRIVY COUNCIL.

Sir EDWARD BRADDON (Tasmania). -

I desire to lay on the table a copy of a resolution passed by the Launceston Chamber of Commerce, and by all the banks in Tasmania, against the abolition of the right of appeal to the Privy Council; and I beg to move-

That the resolution be printed.

A similar resolution has been passed by the Hobart Chamber of Commerce, but it has not yet reached me.

The motion was agreed to.

STATE OF BUSINESS.

Sir JOHN FORREST (Western Australia). -

I should like (although I am very sorry to have to speak upon this subject more than once) to ask the leader of the Convention whether we cannot make an effort to finish the work which we are engaged upon? I have arranged to stay in Melbourne for another week, but I must leave on the 9th of next month, and most of my colleagues are compelled also to return home on that date. We all desire very much that our work shall be practically completed before we leave, but absolute necessity prevents us from staying beyond the date I have mentioned. I think most honorable members are getting somewhat wearied of the length of this session, and the difficulty we have had this morning in getting a quorum emphasizes that view. I think that, if a little more in the way of conference took place between the leaders of this Convention, the work might be expedited. I am, of course, averse to rushing through the important work we are engaged upon.

Mr. HOWE. -

Curtail the speeches.

Sir JOHN FORREST. -

At the same time, I suppose I am not singular in having important duties in my own colony. Therefore, if some arrangement could be made by our leader to expedite the work, even if we had to sit every evening and on Saturdays too, I should be very glad. To adjourn on Friday until Monday, when our work is so urgent, and when many of us have such important
duties to do in our own colonies, seems to me to be too long an interval. I really do not see why we should not sit every evening and on Saturdays till we have finished our work. At any rate, I have stayed much longer than I had anticipated, at great inconvenience to myself and to my colony, and I am absolutely compelled to leave on the 9th. I do not wish to appear anxious that we should push this work unduly, but, at the same time, I hope that our leader will be able to suggest some means by which our labours might be terminated as quickly as possible.

Mr. BARTON (New South Wales). -

So far as I am concerned, I must confess that I feel to some extent an inability to suggest any means by which our procedure can be expedited, except that we should do what we can not to speak unnecessarily. I do not know any other means. It has been suggested that we should sit every night and on Saturdays, but my right honorable friend has already spoken of the weariness and fatigue of honorable members under the stress of our present work, and I am quite sure that to increase the burden of the work being done would scarcely conduce to the quality of it. What we, above all, are concerned with is to endeavour to make this Bill, as far as we are concerned, as good a Bill as possible. If we adopt the procedure which, from mere lassitude and weariness, leads to faults remaining in our work we know what sort of a reception it will meet with throughout Australia. We certainly ought not to run any risk of that sort. I take it that if honorable members will in the future combine to shorten matters so far as possible by adhering merely to the legitimate point under discussion, and not repeating any argument that has already been used, that is all that can be expected of them. To ask them to sit every night and to sit on Saturdays is too much. I recognise the extreme willingness of every member to get the work done properly, and I sympathize with my right honorable friend who has to return to his own colony before we shall have completed our labours. If I could in any way assist him I should be only too glad to do so, but I must not assist any one at the expense of the quality of the work of the Convention. If honorable members desire to sit oftener at night than on Tuesdays and Thursdays this week, which, I think, is almost enough, I should like to be informed of the fact.

Mr. HOLDER. -

Could we not have a short sitting on Saturday?

Mr. BARTON. -

We might sit on Saturday morning.

Sir GEORGE TURNER. -
Sit all day.

Mr. BARTON. -

If honorable members desire it we can sit half the day or all day. Some honorable members desire to have certain clauses reconsidered and other clauses recommitted. I mentioned this matter before, and it has been suggested that I should do so again. It would be an advantage to the Convention if in these cases notice was given, so that a notice-paper might be prepared. Several honorable members might desire the reconsideration of the same clause or clauses, and if notice were given unnecessary trouble might be saved.

Mr. HIGGINS. -

What is the difference between recommittal and reconsideration?

Mr. BARTON. -

In moving for recommittal it is necessary to state the purpose, but not in moving for reconsideration.

Mr. ISAACS. -

Will the honorable member inform us whether reconsideration would cover the reconsideration of proposed clauses that have been rejected?

Mr. BARTON. -

That I do not know. This procedure by way of reconsideration does not exist in the New South Wales practice. Sir Richard Baker might tell us whether it extends to the reconsideration of proposed clauses which have been rejected.

Sir RICHARD BAKER (South Australia). -

Under the practice we have adopted there is really no difference whatever between reconsideration and recommittal. It is a difference in procedure. In one case the Bill is not taken out of committee, and the same committee reconSIDERS the work it has done. In the other case a report is made to the House, and the House is asked to recommit the Bill. In asking to recommit it is usual to give reasons. Sometimes a Bill is reconsidered without any reasons being given. An honorable member may say that he desires to have, clause so-and-so reconsidered or it may be moved that the whole Bill be reconsidered. In the latter case the practice is not to go through the Bill clause by clause, but

to ask honorable members which clauses they desire to have reconsidered. If an honorable member says that he wants clause 13 reconsidered, and no honorable member asks for the reconsideration of an earlier clause, that clause is taken, and you cannot afterwards go back again.

Sir JOHN FORREST. -

That is not the practice of the House of Commons, is it?
Sir RICHARD BAKER. -

I do not know. We are acting now under the practice of the Legislative Assembly of South Australia.

Sir JOHN FORREST. -

It is a great mistake.

Sir RICHARD BAKER. -

I do not think it is right to argue that question here. I am not sure that it is a mistake.

Sir JOHN FORREST. -

There is no finality.

Sir RICHARD BAKER. -

How can an honorable member say it is a mistake when he knows nothing about it, and has not seen the practice brought into operation? I rose, in answer to the request of our leader, to explain the practice. I understand from his statement that what it is proposed to do is this: When we have considered the new clauses, and the Bill has been reported pro forma, the standing orders will be suspended. The procedure will then be the same as was adopted in Sydney, and we will consider the drafting amendments in globo. We shall afterwards get a new print of the Bill, and that will be the time for honorable members to say whether they wish for the reconsideration or the recommittal of certain clauses. The Bill has been so altered that I think it will be impossible for any honorable member to say what clauses he desires to have reconsidered until he sees a reprint.

Mr. ISAACS (Victoria). -

Might I ask Sir Richard Baker to inform us whether it will be competent for any honorable member on the recommittal or reconsideration to again submit any clause that has already been considered and rejected?

Mr. SYMON (South Australia). -

I should like to point out, as the matter is an exceedingly important one, that that would really be proposing a new clause. The honorable member's remarks have reference to clauses that have already been eliminated from the Bill. So far as those clauses are concerned there is nothing in the Bill as it stands for reconsideration. The re-insertion of these clauses would, therefore, one would think, come under the procedure relating to new clauses. I would ask Sir Richard Baker to consider the point, because it is important. I myself wish to reinstate one clause that has been struck out. It would be well to know whether it will have to be dealt with as a new clause or not.

The PRESIDENT. -

I would like to state that reconsideration is a matter for the committee, and recommittal is a matter for the House. The whole Bill can be
recommitted or only certain specified clauses. On recommittal new clauses can be proposed.

Mr. HOLDER (South Australia). -

In the standing orders under which we are working there is a vital difference between reconsideration and recommittal. It has always been ruled that the same committee cannot consider again any matter it has already determined. In the same committee the consideration of matters that had been already considered is therefore impossible. To enable such matters to be considered again, recommittal is necessary, and for that purpose it is essential to get power from the House for a new committee to sit. Reconsideration means dealing with matters that have been slipped over, and concerning which there has not been a vote taken—matters that are new to the committee, and the determination of which does not involve any reversal of any decision previously arrived at by that committee. Reconsideration really means the consideration of matters on which the committee has not deliberated. Recommittal means the consideration of matters on which the committee has deliberated.

The PRESIDENT. -

I was not proposing to discuss the question of reconsideration at all, because that is a matter for the ruling of the Chairman of Committees.

Sir GEORGE TURNER (Victoria). -

It seems to me that, between reconsideration and recommittal, we are likely to get into a greater fog than we have ever been in before. The simpler plan would be to have nothing to do with reconsideration. As soon as we have got through the Bill, let our leader say what clauses he proposes to recommit, and let those who desire other clauses to be recommitted tell him so. I have no doubt that he will fall in with their views. Those honorable members who wish to propose new clauses can then give notice of them. If we have a reconsideration stage, which no one seems to understand, the probabilities are that we shall lose the opportunity.

Mr. BARTON. -

We had a reconsideration stage in Adelaide, and it caused no trouble.

Sir GEORGE TURNER. -

We are told now that reconsideration means the consideration of something we have not considered before.

Mr. BARTON. -

How can you reconsider something you have not considered before?

Sir GEORGE TURNER. -

I do not know, but if we take the recommittal stage only, I think we shall
avoid difficulty and trouble.

Mr. BARTON (New South Wales). -

I will endeavour to bear in mind the suggestion Sir George Turner has made. In Adelaide we had a reconsideration stage, and a certain degree of latitude was allowed by the Chairman of Committees, with the result that it involved no difficulty or trouble whatever. In Adelaide, whether rightly or wrongly, we dealt with matters on reconsideration which we could have dealt with on recommittal. On this, the last stage of the Bill, we have to be very careful, and no harm can be done by having a reconsideration stage, and afterwards a recommittal stage. I do not think we should be erring on the side of safety by restricting the procedure to a recommittal, and for that reason I should be loath to suggest that we should forego the reconsideration stage.

The PRESIDENT. -

I would point out to honorable members that until we report the Bill we cannot get a clean print of it. I think they would desire to have a clean print as early as possible.

Mr. BARTON. -

My intention, as soon as the new clauses have been dealt with, is to have the Bill reported, in order that it may be reprinted. We could then take either the reconsideration stage, or, if that is impossible, the recommittal stage, and we could again recommit if necessary. I do not intend to make any suggestion now which would limit the power of the committee in dealing with the Bill.

Mr. SYMON (South Australia). -

We seem to be using two words when the standing orders only use one. There is no word like reconsideration in the standing orders.

Mr. BARTON. -

Yes, in Standing Order No. 294.

Mr. SYMON. -

That is not the procedure that we are dealing with. Standing Order No. 308 has reference to recommittal. There are two stages of recommittal—one on the motion for the adoption of the report, and the other on the third reading of the Bill.

The PRESIDENT. -

I do not think there will be any practical difficulty in connexion with the matter.

APPEALS TO THE PRIVY COUNCIL.

Sir GEORGE TURNER (Victoria) presented, pursuant to an order of the Convention (dated 22nd February, 1898), a further return relating to appeals to the Privy Council, and moved that it be printed.
LEAVE OF ABSENCE.

Sir JOHN FORREST (Western Australia) moved -
That seven days' leave of absence be granted to Mr. James, on account of urgent private business.

Sir RICHARD BAKER (South Australia). -
I do not wish to oppose this motion, but at the same time it seems to me that any honorable member who accepts the exceedingly important and responsible position of delegate to a Convention intrusted with the framing of a Constitution for Australia is not warranted, from any considerations of private business, unless of the most urgent character, in absenting himself from his duties, more especially when a means has been provided whereby somebody else can be appointed to take his place if he cannot attend. I am not sure whether it is so in Western Australia; but in connexion with all the other colonies, if any delegate resigns, or is unable to attend, somebody has been elected to take his place.

Sir JOHN FORREST. -
We have not that provision.

Sir RICHARD BAKER. -
Then my remarks lose a great deal of the force they might otherwise have had, but I do protest against any honorable member lightly departing from the Convention before the great work which we are assembled to do has been completed. I would perhaps not have risen at all had I known that the provision to which I have referred is not in the Western Australian Act. I hope that we shall not have any members of the Convention departing to their own colonies until we have practically completed the work that has been intrusted to us.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from Friday, 25th February) was resumed on clause 98 (see page 1540), and on Mr. Glynn's amendment thereto (pages 1540-41).

Mr. WALKER (New South Wales). -
We have heard economics called the dismal science, and judging by the dryness of financial debate we may presume that finances have a similar characteristic. Having addressed the Convention at Adelaide and at Sydney on the subject of the consolidation of the debts, I do not think it is
necessary to speak at very great length on the present occasion, more especially as the Premier of Western Australia and his colleagues desire that the work of the Convention may be brought to a close in time for them to get away next week. I am in favour of amalgamating Mr. McMillan's amendment with the clause as printed, leaving it to the Drafting Committee to work the two clauses together. It seems to me to be very undesirable to put into the Constitution anything likely to raise debatable points, which had better be left to the Federal Parliament for determination, and I therefore agree with the Premiers of New South Wales and Western Australia that consolidation of debts should only be undertaken with the consent of the states. It must not be supposed, from what I have just said, that I am opposed to the consolidation of debts. On the contrary, I have always been a great advocate of consolidation of debts, as well as of the federalization of the railways, and I look on it as a mere matter of time when both these steps will be taken.

Mr. Higgins. -

How can you make Mr. McMillan's amendment consistent with clause 98?

Mr. Walker. -

I mean only that portion of Mr. McMillan's amendment which says that the Parliament may take over all or any part of the debts of any state, "subject to the consent of the state, on conditions to be agreed upon." That is the portion. However, even then I trust that the last sentence of clause 98 will be deleted. That sentence reads as follows:

The rateable proportion of the debts of the several states to be taken over is to be calculated on the basis of the populations of the several states, as ascertained by the latest statistics of the Commonwealth.

I think that sentence should be deleted, because the rateable proportions should depend on the value of the security, irrespective of population. It seems to me that we must distinguish between adult population and general population, when we deal with the debts of the states. I observe that one of the local morning papers issued today states that the population of Victoria has diminished by 3,000 persons during the last three years, within which period 50,000 adults have left the colony, and their places, in the population statistics, with the exception of 3,000, have been filled by births. Surely, therefore, we must discriminate between adult and general population. I combat the proposed amendment of Tasmania, because in that amendment they go on the assumption that each unit of the population is an equal revenue producer. The framers of that amendment apparently
forget that the population of the other states will be increasing at the same
time, so that if their amendment was adopted the amount of the debts taken
over by the Commonwealth from a state would be necessarily larger *per
capita* at the time its debentures were cancelled than in the case of the
other states. I recognise, however, that by taking over a portion of the debts
the difficulty of dealing with the surplus is considerably mitigated, because
it would be largely absorbed by paying interest on the debts; in fact, the
surplus would not be sufficient for that purpose unless the duties were
considerably increased, which I should not desire to see. If the
Commonwealth is to take over the debts of the states, it must get an
indemnity from each state, and that indemnity in opinion should take the
shape of the hypothecation of a portion of the railway revenue, in which
case the Commonwealth would practically not run any risk in accepting the
liability. I can scarcely imagine that any state Legislature would object to
pass an Act giving such an indemnity. The hypothecation of a portion of
the railway revenue would probably cause state loans to be raised through
the Commonwealth, and it would be to the advantage of the states, when
borrowing after federation, to borrow through the Commonwealth rather
than direct in the home market, because others than the Commonwealth
would practically be advancing in what might be called a second charge on
the revenue of the states. A great deal can be said in favour of postponing
the conversion of the loans until the Commonwealth gets Imperial sanction
to include Australian consols in the list of trustees' securities. There is a
tendency for capital to accumulate so largely for safe investment that, in
the course of the next 25 years, I shall not be surprised to see Australian
consols at par, even if they only carried 2¼ per cent. interest. Now, as
each quarter per cent. on £180,000,000 means £450,000 a year saved in
interest, and, therefore, a reduction of one-half per cent. would amount to
£900,000 per annum, a very material difference as compared with 3 per
cent. In this connexion I think we owe a debt of gratitude to Mr. Glynn for
his great assiduity and for the trouble he has taken in collecting data
relative to conversions of magnitude between 1749 and 1888. I doubt if any
other member of the Convention has given such great attention to the
subject, and I feel that, as members of this Convention, we are much
indebted to him for the information he has given us on the question. Should
we, however, merge the debts of the states before the inclusion of
Australian consols in trustees' securities, I presume the colonial Treasurer
for the time being will see that certain special reservations are made for
securing conversion at a lower rate on that event coming about, so that the
Commonwealth will get the advantage of the inclusion of the stocks in the
list of trustees' securities. A clause might be
inserted to provide for that contingency. Supposing a loan were taken for 25 years, although many persons seem to think it is a mistake to have a terminable stock in the present state of affairs, there might be a reservation clause by which the Commonwealth, say, by giving twelve months' notice, could convert one-fourth of the loan in ten years, one-fourth in fifteen years, one-fourth in twenty years, and the remaining fourth in 25 years. That would, at all events, enable us to get some of the advantages arising from the falling value of money. It is very, evident, however, from what I have recently heard that even actuaries occasionally differ as to the probable savings to be effected through conversion, but, admitting that they do differ on the point, we may recognize the fact that they believe in what is called the actuarial equivalent of a future gain. For instance, the Victorian Government Statist estimates that if the existing loans (£174,000,000) are renewed on the respective due dates up to 1945, the saving in interest at that time will exceed £1,500,000 per annum. Surely the actuarial equivalent of that at the present time must be something substantial. And it may be well to remember in this connexion the old proverb that "a bird in the hand is worth two in the bush." At present it is very desirable we should keep down our annual charges as much as possible. In fact, at the initiation of the Commonwealth Government a substantial saving will greatly simplify the finances, and give relief. My argument is that the present population will proportionately receive as much benefit from the earlier conversion of the debts as the increased population 40 odd years hence will then get. And although I believe in looking ahead, I do not think that we owe much to posterity while we are doing a great work from which they will receive great benefit, and consequently we may reasonably expect them to bear a portion of the burden. I see in a recent article on "Federal Finance," in the Insurance and Banking Record, some r

Under a sufficiently comprehensive system the functions of the Commonwealth Government should include-

1st. The guaranteeing and the administration of the public debts of the colony.

2nd. Some effective form of control over the working of the railway systems, even without control over fresh construction.

3rd. The collection of sufficient revenue to cover the annual charge on the public indebtedness.

More than one reference has been made to Mr. R.L. Nash, who has given great consideration to the matter of the conversion of loans, to which he refers in a letter he addressed to me on the 29th December last, a short
A popular conversion looks to the relative market value of the principal only. Take Victorian 4 per cent. 1908 (£2,000,000) as an example. The market value is £106. If you can offer the holder the equivalent of £107, he will, as a rule, convert. Australian 3 per cent. consols should be worth £104 at the outset, and the present holder must be offered, say, £103 new 3 per cent. stock for each existing £100 stock. In that way the addition to the principal would be £60,000, but the saving in annual interest would be £18,200 per annum, a very important matter, as it would be immediate. That the Commonwealth will need all the revenue and all the savings it can muster in the first years of its establishment is so certain that these savings are really a vital consideration. A heavy deficiency in the early years of the Commonwealth would injure its credit greatly.

I think there is no doubt about that. At Sydney I had the honour of reading to the Convention a letter from Mr. David George, of London, but there is one little paragraph which I will take the liberty of reading again to refresh the memory of honorable members. I will preface it by saying that this is not merely Mr. David George's own view, but is indorsed by a leading firm of stock-brokers. Mr. George says-

Thirdly, as to bringing about a consolidation into Australasian consols, at once of all the various debts of the colonies.

This we believe to be the best plan; but in order to carry it out a large conversion scheme would have to be introduced. The whole question depends upon terms—that is to say, the quid pro quo that would be offered to the holders of the different stocks to induce them to exchange their present securities into stock of the consolidated fund. This, of course, will be a difficult and delicate matter to arrange, and it will require to be placed in the hands of actuarial experts of great experience and skill to ascertain the relative values of the different loans of the separate colonies to a single interminable consolidated inscribed stock, and the most influential medium will have to be employed to launch the scheme, and to find an opportune time for the purpose. The varying dates of maturity, and rates of interest, and the feeling existing here as to the position which the different colonies afford as security for their loans, would all have to be taken into account. Present holders cannot be compelled to exchange their securities, and, therefore, sufficiently liberal terms will have to be offered to induce the great bulk of them to fall in with a conversion scheme. The different merits and values of the loans of the various colonies will make it difficult to ascertain an all round satisfactory basis of exchange. Holders, for instance,
of New South Wales securities, owing to their superior credit-
I do not know that that is quite true at the present moment.
will require a greater inducement to exchange their present holdings,
while it may suit holders of Victorian, South Australian, and Tasmanian
stocks to accept a security of a Federated Australia much more readily.
Sir PHILIP FYSH. -
Does not that writer put forth very forcibly an extension of the term
rather than an increase of the sum as the chief thing trustees look for?
Mr. WALKER. -
Yes. The late much-respected Mr. Westgarth, of the London Stock
Exchange, was a strong advocate of the consolidation of the debts, as
referred to by Sir Philip Fysh.
Sir PHILIP FYSH. -
And of the extension of the term.
Mr. WALKER. -
Yes. We must also remember that the prospective gain in future loans is
not to be overlooked-the expense to be saved by inscription, floating,
conversion, and payment of interest through our own High Commissioner.
All through I have been of opinion that the High Commissioner should be
the financial representative of the colony, and then we should save an
immense sum which at present is paid for commission. It would add to the
popularity of the stock if holders could transfer it from the colonial register
to the London register, and vice versa. There is an enormous amount of
trust funds seeking investment in Great Britain, and if they could invest in
our stock at home, how much happier would many trustees be. The Statist
of Victoria makes a very valuable suggestion, that is, that once our
securities are available for investment by trustees the home Government
should be asked to forego the stamp duty of 12s. 6d. per cent., as in the
case of British consols, because investors would be largely the residents of
Great Britain, and it is to the advantage of people there to get safe
investments which will yield a moderately reasonable return. There are two
classes of stock-holders-temporary or speculative holders, and permanent
holders. The former would be the easier class to deal with in any
conversion scheme, because the latter class do not wish to change their
investment unless it is considerably to their advantage. If one had to
summarize the advantages to the investors of conversion of the various
stocks, we might enumerate the following amongst others: The greater
marketability-there is no doubt about that. Simplification of investments-
having one instead of six or eight stocks as at present. Another great
advantage would be if interest were made payable quarterly instead of half-
yearly. We all know what an advantage it is to have incomes coming in
regularly once a quarter instead of half-yearly.

Sir GEORGE TURNER. -

Is there any other stock which pays interest quarterly?

Mr. WALKER. -

No, but on some stocks interest is payable in January and July, and on others in April and October, and trustees very often divide their investments so that they actually get dividends quarterly. It is a singular thing in this connexion that those stocks which have their dividends payable in January and July are relatively higher than those whose dividends are payable in April and October. We should endeavour to pay our interest quarterly, and thereby we should offer an inducement to convert.

Sir GEORGE TURNER. -

Is not your argument in favour of making the interest payable in January and July?

Mr. WALKER. -

No; the difficulty is got over at present by investing in two stocks instead of one. Under my proposal it would only be necessary to invest in one stock in order to get quarterly dividends. I have mentioned the advantages to the holders of stock; now I will mention the advantages to the Commonwealth or to the states, through the Commonwealth. There will be greater simplification of accounts, reduction in charges for floating, inscription, and payment of interest, the option to the Commonwealth of paying off or renewing in whole or in part on giving the prescribed notice to the stock-holders; and I also think there ought to be a reservation in anticipation of Australian consols being included in trustees' securities. Once federal finance is fairly and successfully grappled with—and I think we are in a fair way to do so—may we not as representatives of rival colonies hope to see a fulfilment in the Southern Hemisphere of that happy state of affairs predicted in connexion with an older civilization than our own when it was said—"Judah shall not vex Ephraim, and Ephraim shall not envy Judah"?

Mr. GLYNN (South Australia). -

I promised Mr. McMillan that this question should be put in such a way that his amendment could be decided, as well as my proposed addition. If a division were taken on the word "Parliament" it would test the question whether my words should be inserted or not.

The CHAIRMAN. -

The way I shall put it will be to insert the words before the word "Parliament," and not to strike out anything.
Mr. GLYNN. -

That will practically meet my views.

Mr. BARTON (New South Wales). -

I am not going to detain the committee on this question. I prefer Mr. McMillan's amendment to Mr. Glynn's, because Mr. McMillan's amendment gives the power in perfectly wide terms, with sufficient liberty to the Parliament to make such an agreement as may be necessary with the states in the circumstances that may arise. It is better to do that than to bind Parliament down by any strict rule, because circumstances may arise under which a departure from any particular line of management laid down in the Constitution might become so necessary that the power given under the Constitution would be completely worthless under these circumstances, it would be unwise to make too strict a line of limitation for the exercise of powers by Parliament. Therefore, as Mr. McMillan proposes to give power in wider terms, I prefer his amendment.

Mr. Glynn's amendment was negatived.

Mr. HOLDER (South Australia). -

At Mr. McMillan's request, I beg to move-

That after the word "Parliament" the following words be inserted:-"may take over all or any part of the debt of any state, subject to the consent of the state on conditions to be agreed upon."

Sir PHILIP FYSH (Tasmania). -

I very much regret that in a very thin House like this we are about to retrace our steps to 1891, without giving to this very important subject the time and consideration which it deserves.

Mr. HOLDER. -

I am prepared to defend this proposal in half-an-hour's speech, but I want to save time.

Sir PHILIP FYSH. -

The only defence I want is with respect to the consent of the states. In 1891 that provision was made. After many years' consideration, not by members of the Convention, but by the financial world generally, and the conclusions arrived at were not those of our individual opinions-I wish honorable members to understand that I do not stand here to express my own opinions, but to express whatever opinions I may hold after being fortified by the very strong opinions given to us by those who have influence with the financial world-after seven years, we struck out in April last the words, "with the consent of the states," because it was apparent that that would be the Marplot of the whole proceedings. Now, after a very little consideration...
in the Convention, we appear to be falling back upon the purpose of 1891, forgetful of the lessons which we have been learning in the meantime or ignoring the teaching which ought to have come to us in the meantime, and we are going back to the extent of allowing any state to interfere.

Mr. HIGGINS. -

Will you explain how the consent of a state being made requisite will be a Marplot?

Sir PHILIP FYSH. -

I will take New South Wales, with about £70,000,000 of debt. You may be making an arrangement to take over the debts of two or three or of all the other colonies. You would still leave the position such that New South Wales, with her large amount of indebtedness, could step in and be a competitor at any time with the Federation in floating another loan. You would still maintain the extravagant expenditure and procedure as far as that colony is concerned. Of course, she has more interest in that than anybody else, but so far as federation is concerned, she will be a Marplot, because we shall have two agencies in London for the same purpose. I forebore on a late occasion to go into the question of conversion at all. I did not think that was a proper occasion, and I fear the occasion will not now serve us. I limited my remarks on Friday last to the desirability of consolidation, and of securing a unified debt to the whole of the colonies. I gave several reasons, which I will not repeat now, but I ask honorable members to give their attention to the proposal to reinsert the words "with the consent of the states," and to refresh their memories with what has taken place during the last seven years. Is it wise to ask us to retrace our steps in this way? I would ask honorable members to maintain the words in the clause as they are, so that the Parliament may take over the debts regardless of the states. We will not make it compulsory. The objection that you will at once raise the value of the stocks against yourselves does not hold good, because the Federal Executive will not take over the debts until it has materially good reason for doing so. Therefore, I should prefer that the words of the clause might be left exactly as they are. The objection to our movement in a proper direction comes to a great extent from the large colony of New South Wales.

Mr. WALKER. -

They will very soon come in.

Sir PHILIP FYSH. -

There is that to be said for the proposal, that so surely as the Federal Executive undertakes the very inviting proceeding of securing all the advantages which will come to the Federation by reason of a consolidated unified debt, New South Wales, if she chooses to hold out, will soon see
the advantage of giving in her allegiance, but in the meantime mischief will be created. We have been issuing our stocks probably with a currency of 30 or 40 years, and if we look at Mr. Fenton's list we shall see that at the end of every five or ten years a material portion of the debts falls due. At the end of these periods it would be a favorable opportunity for the Treasurer of the future to bring about a conversion.

Mr. HOLDER. -

Who will object to that?

Sir PHILIP FYSH. -

The state which has not joined simply stands in the position of your competitor.

Mr. HOLDER. -

We are not afraid of that.

Sir PHILIP FYSH. -

It is rather a serious matter that you should have two conversions in existence in a small community of 3,500,000 or 4,000,000, where one-third is represented, say, by New South Wales, and that one-third is indisposed to join in the unification or consolidation, and stands against the Federation when you might have the two of them going into the market at the same time. I have satisfied myself by expressing my opinions on the subject, and I shall wait to see the developments. I am convinced that the Federal Treasurer will be wanting such an opportunity as I am striving to give him, and that we shall regret our position if we do not give him that very strong hold which he should have to enable him to consolidate the whole, and not merely a part, of the debt.

Mr. HOLDER (South Australia). -

I will state in a few sentences my view of the position, in reply to Sir Philip Fysh. The honorable member suggests that some state might refuse to allow its debts to be consolidated. There is only one possible condition of affairs under which such a refusal would be likely: That is, when the consolidation was about to be carried out in a way prejudicial to the interests of that state. Under such conditions, would it be tolerated for a moment that the federal authority should have power, to the injury of any state, to step in and take over the debts of that state and consolidate them, or do anything else with them? I do not think such a contingency is likely to occur. No Federal Treasurer is likely to propose to consolidate any debts to the injury of any state. I therefore strike away all the force of the honorable members argument, because if it can be shown that the consolidation of debts is very much to the advantage of the Federal
Treasurer and of the states their consent will be given as a matter of course.

Sir PHILIP FYSH. -

Then why put in any provision about the consent of the States?

Mr. HOLDER. -

Because it would prevent injustice in a possible, but not likely, contingency.

Sir PHILIP FYSH. -

Then why put in these words?

Mr. HOLDER. -

I do not like to discuss details which are far better left to the Federal Parliament, which should have a free hand to do what at the time seems wisest and best. There is a great deal in what has been said by Mr. Glynn, Sir Philip Fysh, and Mr. Henry. Those schemes are all very valuable, and, no doubt, will be considered very carefully with a view to the adoption of one of them by the Federal Treasurer at any time when he contemplates the conversion and consolidation of debts. We ought not now, some years in advance, to lay down all these rules and say to the Federal Parliament-"No matter what new light you may have, no matter how circumstances may change, you shall convert or consolidate upon this system and upon no other." Therefore I am against the adoption of this or any other scheme which may be suggested to prevent the Federal Treasurer from having a free hand in regard to these matters. If he is a man worth his salt he will take action at the earliest moment. I should like, however, to see a provision inserted in the Bill making it necessary for the federal authority, before taking action in connexion with the consolidation or conversion of loans, to obtain the consent of the states interested. If what is proposed by the Federal Parliament is worth doing, the consent of the states will at once be forthcoming. I hope that the amendment of the honorable member (Mr. McMillan) will be agreed to because it practically summarizes in two lines the sixteen lines of clause 98.

The CHAIRMAN. -

As some honorable members may not be aware of the position of the various amendments, I should like to say that the amendment now before the Chair is to insert, after the word "Parliament," the words "may take over all or any part of the debt of any state, subject to the consent of the state on conditions to be agreed upon." If this amendment is negatived, the next amendment to be put is one suggested by the Legislative Assembly of Western Australia to strike out the word "may," and insert the word "shall."

Mr. DOBSON (Tasmania). -
I think that the honorable member (Mr. Holder) has given us abundant arguments in favour of negativing the proposal of the honorable member (Mr. McMillan). I believe he is one of those who pointed out, with a great deal of common sense, that it would not be necessary for the state Treasurers to have a guarantee from the federal authority, because it would be the duty of the federal authority to maintain the credit, and to uphold the sovereignty of the states. Now, however, the honorable member argues that the consent of the states to any consolidation scheme proposed by the federal authority would be granted as a matter of course. He also argued that the Federal Treasurer should have a free hand in regard to these financial transactions. This, however, should be an argument against the insertion of words making it necessary for the federal authority to obtain the consent of the states. When a Government wants to enter upon a large financial transaction of the kind we are discussing, it is necessary to wait for the right psychological moment. The Government gets the advice of its bankers in England, and does not approach the London money market until it is informed that the time is favorable. I take it that, not only will the federal authority be interested in consolidation or conversion schemes affecting £170,000,000 of borrowed money, but that it will also have to go into the market for fresh loans. But no Government would like to go into the money market just at a time, when, say, the Chinese wanted to borrow £16,000,000, or Greece £6,000,000, or just after a European war when there was a great demand for money. Any Government would like to be able to go into the market just at the proper time. The honorable member (Mr. Holder) asked in what way it would delay an affair of this kind if it were necessary for the Federal Parliament to obtain the consent of the state Parliaments. But while it might be that the federal authority would be informed by its financial advisers that within three months would be a suitable time for the floating of a loan, it might take eight or nine months before the consent of the various states could be obtained, though, as the honorable member (Mr. Holder) pointed out, this consent might be given as a matter of course. The honorable member stated that the consent of the states was bound to be given as a matter of course if the scheme was one to which, in the interests of the states, effect should be given. It is inconceivable that a great scheme of this kind, which, I believe, would gave £500,000 or £600,000, would be entered upon by the Federal Government unless it was believed to be to the advantage of every state concerned. If there could be a case where you should trust the Federal Parliament it is a case of this kind. But it is not proposed to trust the Federal Parliament now. We are asked to agree to a proposal which will clog its freedom of action, and which will practically prevent what, ten
years ago, was considered the great aim of federation—the consolidation of the state debts. It is not that anyone state may wilfully stand out of a conversion scheme; but the Federal Parliament might be pressed by its financial advisers to put its scheme upon the market at once, and in order to do so it might be necessary to leave out some state, because there would not be time to get its consent. If one state were left out, and had afterwards to consolidate or convert its debts, it might not get such favorable terms as were obtained for the other states by the federal authority. Although it may have been left out through no fault of its own, it might have to accept worst terms than the other states. What would happen then? The question would arise whether the Federal Government should not, out of the taxes of the whole Commonwealth, reimburse that state, at least to some extent, for the loss which it had incurred by being left out of the transaction, possibly against its will.

Sir GEORGE TURNER (Victoria). -

It seems to me that the proposal of the honorable member (Mr. McMillan) will allow the federal authority to deal with the states individually. It will be able to say to Victoria—"We will take over your bad loans." By bad loans, I mean loans obtained at high rates, or short-dated loans, and it may discriminate between the states. Some of the states may think that they are being treated unfairly and improperly, because some of their loans, which they may regard as good, may be taken over by the federal authority, while loans of the other colonies, which they regard as bad, may also be taken over. I think it is a mistake that we should allow the Commonwealth Parliament to deal in this way with the states. If I had my way I would at once transfer to it the whole of the debts of the states. I should throw the onus upon the federal authority of paying the interest upon the state debts, because I believe that by doing so we should, in the future, prevent the extravagance which the Federal Treasurer might otherwise be forced into against his will, simply because there would be a surplus. We all know what the experience of these colonies has been in regard to surpluses, and that Treasurers are forced to spend surplus revenue in a way in which they know it ought not to be spent. I believe that if we took the proper course we should at once hand over to the Federal Parliament the liability for the payment of the interest upon the state debts. Under the Constitution we do not compel the Federal Parliament to raise any specified amount of revenue, but I wish to insert some provision which will have the effect of making the Federal Parliament expend its revenue instead of, what I am afraid it may do, squandering it. If I thought it would meet the views of the majority of honorable members, I should feel
inclined to move the omission of the word "may," with a view to the insertion of the word "shall," in order to test the feeling of the Convention in regard to this matter. I think that the provision in the Bill as it stands is better than the proposal to allow the Federal Parliament to take over the debts of any one state. The proposal in the Bill as it stands is that the Federal Parliament may take over the whole or a rateable proportion of the debts of the states. That provision compels the Federal Parliament to treat all the states alike. The Federal Parliament will be able to say-"We will take over so much of the debts of all the states," but it will not be able to say to one state-"We will take over a certain portion of your debts," and to another state-"We will not take over any of your debts." I think, too, that it would be a grave mistake to insert the words "with the consent of the states." If we are leaving this matter to the Federal Parliament, we should take care to insure that when the time comes for conversion or consolidation, the Federal Treasurer will have a free hand, so that he will be able to take advantage of the state of the money market, and to avail himself of the advice offered to him by his proper advisers. In my opinion, no Federal Treasurer would dare to take over the debts of one state without taking over the debts of another; but to make it necessary to obtain the consent of all the states might mean the loss of a great deal of time when expedition was required. The Federal Treasurer might want to consult the states at a time when their Parliaments were not in session, and his hands would be tied most inconveniently. Besides, one state might object to the transaction, and thus spoil it altogether. We know how touchy the money market is, and if it were cabled to England that Victoria or New South Wales, or any other state, wished to stand out of the consolidation the people there would say-"There must be something at the bottom of this," and they would not touch the transaction without further inquiry. Besides, to get the consent of a state it would be necessary, I suppose, to obtain a resolution in favour of the proposal submitted from both Houses of Parliament, so that the vote of either House might block proceedings, or, if the voting were close, one individual member might prevent anything being done. Surely we are not going to put the Federal Parliament and the Federal Treasurer into such a position as would render it impossible to take advantage of the money market and to insure that the transaction should be a good one. If we do what is right and proper, we will hand over all these debts at once to the Federal Parliament, and then let the Treasurer make the best terms he can for consolidation and conversion. If we do not do that I hope we will leave the Bill as it is, and simply say that the Parliament is to take over the whole or a rateable
proportion of the debts of the states. I do not agree with my honorable friends that, if we are to make it compulsory on Parliament to take over those debts, we are going to add immensely to the value of our loans. I do not believe that we will. The persons who have lent us money know that they have as good security as they can possibly have. The only advantage they will get by having one large consolidated stock is that it will be more easy to deal with it in the money market in London. By that means it will make it a little more valuable in London, but the security is as good now as it will be when it has the Commonwealth at its back, because the Commonwealth will be composed of the people of the various states, and it is the people of the various states who are now responsible for the whole of the debts and the interest. I think it will be just as well to place on record that we have discussed the question of handing over the whole of the debts. Therefore, in the Bill as it stands or, in Mr. McMillan's proposed amendment, I propose to substitute "shall" for "may"

Mr. DOBSON. -

Will you say something about future state borrowing, and the exact security which the Federal Parliament will give for that consolidated stock?

Sir GEORGE TURNER. -

If we once hand over the whole of the debts to the Federal Parliament, then, I think that all future borrowing must be through the Federal Parliament. The Federal Parliament will be bound to borrow money before it has been in existence many years. And it will never do to have the Federal Parliament borrowing on Australasian consols, and each state borrowing its half-million or its million for its public works. I am perfectly prepared to trust the Federal Parliament to borrow the whole of the money, and to lend it out to the states when they are satisfied that the states wish to borrow the money for legitimate purposes.

Mr. DOBSON. -

Do you propose that the Federal Parliament shall only give as security the Customs revenue?

Sir GEORGE TURNER. -

The Federal Parliament will give no security on the Customs revenue. It will do simply what a state Parliament does now: It will borrow on the credit of the Commonwealth. We do not give any security when we borrow. We do not pledge our railways or our public works. The creditor in England looks to the people of the colony, their ability to raise by customs duties or some other mode of taxation the interest on the loan, and the knowledge that our kinsfolk in England have that those who have come from British Stock are not likely to ever repudiate the payment of the interest on their debt. That is the security on which the money is lent.
Mr. DOBSON. -

Then the security of New South Wales will be better than the security of the Commonwealth.

Sir GEORGE TURNER. -

No; the security of New South Wales, to my mind, is as good as the security of the Commonwealth, but it is no better. New South Wales has power to tax, but the Commonwealth has power to tax for any purpose by any mode of taxation; and when the Commonwealth puts on its tax it, no doubt, will take priority over any state tax. I am not prepared to say that the security of New South Wales is better than the security of the Commonwealth, although, in my opinion, it is equally as good. Under these circumstances, I think it is well to test the feeling of the committee in regard to this proposal. Therefore, I beg to move-

That the word "may" be omitted, with the view to the insertion in its place of the word "shall."

By that amendment I mean that the Commonwealth has to take over the liability, has to pay our interest, has to appropriate our surplus for that purpose, and has to collect from the states whatever balance there may be due to the Commonwealth, or pay over to the states whatever surplus there is after paying the interest. It does not make it compulsory on the Commonwealth to convert the loans. It does not make it compulsory on the Commonwealth to consolidate the loans. The Treasurer will take his own good time to do that, and, no doubt, will take full advantage of the money market when he thinks that the advantage ought to be taken. I would give him power to do it. I would not say that it would be compulsory on him to do it, because that might be a mistake. If we simply give him power to do it, compelling him in the meantime to pay the interest, I think we will be taking a step which will be in the interests of the whole of the colonies.

Sir EDWARD BRADDON (Tasmania). -

I support my right honorable friend (Sir George Turner) in the course he is taking as a via media in this matter, which secures to a great extent the compulsory character of the proposal, and also to some extent will prevent the stock-holders from obtaining all the value of the conversion when it is made. I know that amongst the people of Tasmania there is a very strong and widespread feeling in favour of the consolidation of our debts, especially in favour of the Federal Government being responsible for the payment of the interest on those debts.

Sir JOHN FORREST. -

No, doubt.
Sir EDWARD BRADDON. -

Is it not a very proper feeling to entertain? As the honorable member (Mr. Henry) said on Friday, we are going to give up to the Federal Government that great source of revenue to which mainly we look for the payment of our interest. It is only right in the revenue sense, it is only right for the prevention of possible extravagance on the part of the Federal Government, that we should make the one transfer contingent on the other. There is no doubt whatever in my mind, from recent inquiries I made in London, that the effect of consolidating our debts, when they come to be converted, will be to give an increased value to the Commonwealth stock. The main reason urged by London financiers for that was that there would be a much greater marketability about that stock, that it would be a stock which could be placed and disposed of on the Stock Exchange and elsewhere much more readily than the stock of the several states. But if we make this stock contingent-as we shall do if we accept my right honorable friend's proposals-on something which is to befall hereafter, giving the Federal Government full scope to act in regard to conversion as they think fit-to proceed with their conversion when they can get favorable terms-then we have nothing whatever to fear in that direction, and all we require will be secured to us. I hope Sir George Turner will move such an amendment as will secure this result for us.

Mr. KINGSTON (South Australia). -

I agree with a great deal of that which has fallen from the Premier of Victoria, but I confess that, as regards the proposals he made, I shall not be able to follow him altogether. I particularly object to the suggestion that the states should be prohibited from future borrowings. I am inclined to think that a proposal of that sort would be fatal to the development of Australia.

[2556]
Sir PHILIP FYSH. -
They represent the foundation of these colonies.

Mr. KINGSTON. -
Ours represent profitable investments-works of development of which we have every reason to be proud, and which are returning a very fair interest on the money. If the colonies are to be told that, as regards the sources of development, we in future are to be prohibited from having recourse to these loan funds which they have applied so profitably in the past, I cannot help thinking that it would be a very difficult matter to obtain their assent to the suggestion. I trust, therefore, that Sir George Turner will not consider that when some of us support him in his first proposal, we intend to follow him to the end in the direction which he suggested. I, for one, must at the earliest moment indicate my intention to oppose any such suggestion. We ought to do something for the purpose of providing for the application of the surplus revenue for the benefit of the states, and I think a great deal may be done in that direction by requiring the repayment of the interest on the state borrowings out of the Customs revenue, which is handed over to the Federation. Possibly we hardly appreciate the extent to which we are going in handing over that revenue. The Customs revenue, I suppose, represent fully 25 per cent. of the total revenue of the states, and say about 50 per cent. or more of the net revenue of the states. That is proposed to be handed over entirely to the Federal Government, and we place no limitation on their powers of expenditure. On the contrary, forming the best estimate we can under the circumstances, we come to the conclusion that they will be possessed, after satisfying all ordinary federal requirements, of a sum of between £4,000,000 and £5,000,000 at the outside, increasing as the prosperity and the population of Australia increase. I am appalled, and I use the word advisedly, at the contemplation of the possibilities which may arise on such a state of things. The temptation to waste and extravagance is almost shocking. However honest the Federal Parliament and the Federal Government may be—and I attribute to them every honesty—with a sum of between £4,000,000 and £5,000,000 to work upon, we know full well there are possibilities, if not probabilities, of waste to the states which are interested in the surplus, and we shall be failing in our duty if we do not attempt to provide against that so far as we possibly can. I therefore welcome this suggestion in connexion with the debts. I shall support it to the very utmost. Either you must, in so many words, limit the expenditure of the Federal Government—

Mr. ISAACS. -
That is impossible.

Mr. KINGSTON. -
Which is, if not impossible, very difficult, and very objectionable from some points of view. Either you must limit the expenditure of the Federal Government, or you must throw on the Federal Government responsibilities in proportion to the huge revenue with which you endow them. I think we can do that by throwing on the Federal Government some duties in connexion with these debts. My honorable friend and colleague (Mr. Holder) has put it, and I think strongly, that if you give to the state creditor at the outset, without any question of arrangement, the security of the Federal Government to his bond in addition to that which he possesses, you make him a present of whatever difference in value there would be between the state bond and the bond of the Commonwealth. Difficult as it may be to estimate what that difference may be, it does appear to me that a bond of the Commonwealth would command a higher figure, and if you are to give the additional security you ought to get something in the nature of a quid pro quo from the lender. I think, however, we will be doing all that is necessary at the present moment if, instead of declaring that the Federation shall take over the debts, capital and interest, we provide that they should either pay the interest direct to the lender, or return an amount to the states equivalent to their requirements in this respect. I think if that is done you will to some extent meet the force of the objection of my honorable friend (Mr. Holder).

Mr. FRASER. -

We have already decided against that.

Mr. KINGSTON. -

I do not think, Sir Richard, at the present time, in connexion with this clause we have decided anything in particular.

The CHAIRMAN. -

We have decided nothing.

Mr. KINGSTON. -

I am very pleased, indeed, that the whole matter is before us in a tentative condition, so that we may do our best under the circumstances. I am satisfied that this is one of the most important questions in connexion with the whole of federation. When we go back to our people, and dilate on the advantages of federation we shall be met by the matter-of-fact business inquiry: What will it cost? And if we return with a Bill in the shape proposed, we shall be compelled to tell them that we do not know. We shall have to admit that the whole of our Custom revenue is handed over to the Commonwealth, and that, as regards the expenditure of the Federation, we do not know what that will be-how much is coming back to the states, how much is available for distribution, or in what proportion the surplus
will be distributed. Under these circumstances, there will be a natural reluctance, as I think there ought to be—however much we may desire the accomplishment of Australian union—to rush into it too hastily, unless we know what it is going to cost.

Sir GEORGE TURNER. -

The people will look more at that than at anything else.

Mr KINGSTON. - Undoubtedly they will look more at the cost than at anything else. It is the price of the article that will be considered, and however attractive the article may be, unless we know what it is going to cost us it would be very difficult to induce any individual—and especially difficult to induce the majority of the electors throughout the states—to enter into a bargain in connexion with which they do not know their pecuniary responsibility. Unless we have some more precise provision on this subject, the states will be absolutely at the mercy of the Federation. They will be nothing more nor less, so far as their revenue is concerned, than dependencies of the Commonwealth. We are told that finance is government, and that government is finance. We have been at great pains to provide for the proper representation of the states, but all these constitutional provisions seem to me to be of little importance indeed so long as you leave the absolute control of the state purse-strings in the hands of the Federal Treasurer; and that is what you do unless you provide for something in the shape of a distinct return to the states. As to the proposal of Mr. McMillan, it has been well pointed out by Mr. Holder that a state is not likely to raise any substantial objection to its debts, its liabilities, its responsibilities, being taken over any more than an individual would do. There is no doubt about that; but pass the clause as proposed by Mr. McMillan, and what do you do? You place a tremendous power in the hands of the Federal Government and the Federal Parliament in enabling them to regulate

the mode of distribution of whatever surplus they may have left amongst the various states. But in passing the clause proposed by Mr. McMillan you go a great deal farther. We know the proportions to which state debts have already arrived, although I am perfectly satisfied that they are well invested, and that we can even indulge in greater borrowing. But give to the Federal Government and the Federal Parliament—although all the states may desire that some, if not all, of their debts should be taken over—the power to deal with one state to the exclusion of the others, just as they please, and you put, in my opinion, in the hands of the Federal Government and the Federal Parliament a power which is greater than they ought to possess. It would be infinitely preferable that they should be able to take
over either all, or a rateable proportion, of the debts. Enable them to
discriminate between one state and another in this respect, and it seems to
me that you introduce a fertile subject of difficulty, which it is well should
be eliminated, if possible, from a Federal Constitution. I observe that in the
Canadian statute a provision is made for the payment of the interest on the
debts—for taking over the whole of the debts. It is a second charge on the
federal revenue from the initiation of the Constitution. I see also, that in the
South African Act—though of course not much has been done with regard to
that so far—there is a similar provision extending to debts which are to be
ascertained by Executive order—"At or after the time of the establishment of
the Commonwealth." I think that we would do well to proceed on lines
somewhat of this character; and I trust that, however late may be the period
of our deliberations, we shall not exhibit anything in the shape of undue
haste in connexion with this all-important matter. When we go back to our
people we must admit to them that, as regards their chief source of
revenue, it will be taken from them, and I think we are hound to be able to
give them an assurance that a fair share of the responsibilities of each
province shall be assumed by the Commonwealth. I trust that some
provision of the kind suggested by the Right Hon. Sir George Turner will
be accepted.

Mr. FRASER (Victoria).—

From my reading of the clause as proposed by Mr. McMillan in
substitution for the clause in the present Bill, it appears to me that Mr.
McMillan's proposal is preferable. It gives a wider scope to the Federal
Parliament; it does not hamper it in any way. I said in Adelaide, and I say
here, that so far as I can judge, there is no probability, or very little
probability, of the Federal Parliament making a profitable conversion of
any loan unless the loan is maturing. If honorable members will look at the
return of the debts of Australia they will find that within the next ten years
there will be many millions of loans coming due, and when loans are
falling due is the time for the Federal Parliament, with the sanction of
course of the states concerned, to make the necessary arrangements for
conversion, or for renewal, or for any other process that will be most
profitable to the Federal Parliament and to the states concerned. In my
opinion, it is not possible to make a profitable conversion years before the
debentures mature. I do not know of any such case in past history, except
one or two, such as that of Mr. Goschen. Even in that case, as Mr. Glynn
pointed out the other day, the loans were on the eve of maturity; and I think
we ought to bear in mind the fact that the Federal Parliament can only
make a profitable transaction on the eve of maturity. Then, of course, they
have a clear field, and can tell the debenture-holders, whoever they may be,
that if they don't like to convert on certain favorable terms the open market will be used for negotiating fresh loans. We cannot too strongly bear that in mind, and I think we must leave out of the question the idea of converting vast millions of the public debt of Australia. That must be done gradually as the loans mature, and can only be done gradually in that way. It cannot be done in globo, as some honorable members appear to imagine. Mr. McMillan's proposal is that Parliament may take over all or any part of the debt of any state, subject to the consent of the state, on conditions to be agreed upon. Does not that give ample power? Are you going to take over the debt of a state without the state's consent? I think that would be a very unwise thing. You may have a crank as Treasurer in the Federal Parliament who would make ducks and drakes of the whole affair if you give him absolute power. If he has uncontrolled power, I do not know what he might not do.

Mr. HIGGINS. - It must be done by the Parliament.

Mr. FRASER. - But of course the Treasurer of the day pretty well represents the Parliament. At any rate, the debts belong to the states: The states are responsible for them, and I hold that the states should be consulted in any negotiation for the transfer of those debts, because the states have to pay the interest. Are you going to give the Parliament power to take over the debts on terms not agreed upon by the states? I repeat that would be a most imprudent thing to do. How are you going to transfer properly the debts of the states to the Federal Commonwealth in defiance, perhaps, of the wishes of the states, who are vitally concerned in the matter-who are responsible for the due and prompt payment of the interest on their debts every half-year? Surely you ought to give the states power to say yes or no in such a matter as that.

Mr. ISAACS. - Where is it suggested that the Commonwealth may fix terms?

Mr. FRASER. - If the Commonwealth has imperative power-mandatory power to take over the debts of a state, the state is ignored.

Mr. ISAACS. - What will the state lose if the Commonwealth has no power to fix terms?

Mr. FRASER. - Suppose the Commonwealth makes a very bad bargain-can you not suppose such a thing?
Can a state be any worse off if some one else becomes responsible for its debts?

Mr. FRASER. -

According to the clause, the state is responsible for its debts. If the Commonwealth is bound to pay over to the states sufficient of the surplus so that the states will be under no responsibility, I grant you the position is different.

Mr. ISAACS. -

No one has suggested any terms being imposed on the states.

Mr. FRASER. -

But the clause, as proposed to be amended by Sir George Turner, would make it compulsory that the Commonwealth shall take over the whole debt. I understand that would be compulsory. I want to be instructed on the point, seeing that there are so many legal members around me.

Sir GEORGE TURNER. -

Do not ask them; they will quarrel amongst themselves over anything.

Mr. FRASER. -

Certainly they do a lot of straw-splitting; but I look upon this provision as compulsory, and I think that it is a danger. I would far prefer, as a business man, the clause proposed by Mr. McMillan. It is the same clause with a much wider scope, and I see no danger in it. To make the creditors a present of a rise in the price of the stock which would necessarily take place on the Federal Parliament taking over the debts would be a most foolish thing, and, therefore, it would be foolish to convert stock long before maturity. In ten years' time some twelve millions of money is becoming due, and that will be the time when conversions can be effectually made.

Sir EDWARD BRADDON. -

The Federal Government need not give the stock-holders any advantage.

Mr. FRASER. -

The federal guarantee would be an advantage to the debenture-holders provided the loans had some years to mature, because the stock would rise in value in a short time, the debenture-holders would sell out, and of course the state would get no benefit from the profit. That is what I wish to avoid. It would be absurd to attempt to prevent the states from borrowing. The states must borrow and must be allowed to do so. The shire councils now borrow, and are we going to give less power to the states than we give to our shire councils?

Sir GEORGE TURNER. -
We could legislate in the state Parliament to prevent the shire councils from borrowing.

Mr. FRASER. -

You can?

Sir GEORGE TURNER. -

Of course.

Mr. FRASER. -

I tell you that you cannot.

Mr. ISAACS. -

What would prevent us?

Mr. FRASER. -

The shires would not allow you to do it. That may seem a strange thing to say, but it is true.

Sir GEORGE TURNER. -

The rate payers in the shires would be very glad for us to exercise a strong control over their borrowing.

Mr. FRASER. -

Apparently the Parliament of the state has unlimited power, but it derives that power from the people, and it cannot, now or at any time, fly in the face of the people. It would be absurd to try and prevent the shires from borrowing. They are responsible for their loans, especially when they are made by Act of Parliament to contribute to a sinking fund. The shire councils borrow at the present time, and I say that it would be absurd to prevent the provincial Parliaments from borrowing. There may be very good and valid reasons for doing so in a young country like this. Of course there is no doubt that it would be very satisfactory to the various local Parliaments for the Commonwealth Parliament to give them back sufficient to pay their interest, but, as I indicated by way of interjection when Mr. Kingston was speaking, we have already passed clauses in the Bill which do not give that power. Of course I have no doubt that we can review such decisions, but we have already voted, and, so far as my judgment goes, we could not very well go back on what we had said. I only rise, however to say that any conversions of the loans m

Mr. GLYNN (South Australia). -

I hope sincerely that the committee will support Sir George Turner in his amendment, and I should like to mention one or two considerations which seem to me to show the vital weakness of Mr. McMillan's scheme. The idea of Mr. Holder and those who follow his train of thought is that, by rendering this matter optional, terms can be made with the creditors to get a portion of the premium, the whole of which would otherwise go into their pockets. Under Mr. McMillan's proposal the position would be this: The
Commonwealth would have to bargain with the states about taking over their debts, and the moment these negotiations were instituted, the outside creditor would at once know that a particular state's debts would be likely to be taken over. The result would be that the price of the bonds would go up. But even if the negotiations were carried on in secret, a Bill would have to be brought into Parliament for the purpose, and the moment the Bill was brought in up would go the price of bonds.

Mr. FRASER. -

That would only be upon the maturity of the debt.

Mr. GLYNN. -

I agree with Mr. Fraser's position upon that point, but it is alleged that before maturity, if you were about to give the federal security instead of the state's security, there would be a premium in the market upon the existing bonds. I am merely now taking the position of my opponents, who say that no matter what length of time a loan might have before it was about to mature, the moment the Commonwealth took over the debts the loan would be at a premium.

Mr. FRASER. -

Would my honorable friend allow me to explain? That would only occur if you propose to take over a debt years and years before it would mature in the ordinary course. But if you only propose to take over the debts as they mature, there can be no possible rise in price.

Mr. GLYNN. -

My honorable friend (Mr. Fraser) forgets that I am not arguing against what he has stated, but against what has been stated by Mr. Holder, and, in order to argue against that position, I am restating it so that I may show its weaknesses. If a premium were likely to accrue from the federal security being better than the state security, then the moment you applied Mr. McMillan's provision you would allow the public to know that the state was about to take over a debt belonging to a particular state, and then, I say, the tendency would be for the price of the loans to be taken over to rise. Therefore, you could not get, as a consideration for the federal security, the premium you expect, because the market would have been forestalled.

Mr. FRASER. -

The taking over is not compulsory.

Mr. GLYNN. -

I know it is not, but I am pointing out that, between the optional method of Mr. McMillan and the optional method proposed by the Bill, there is a fatal weakness which operates against Mr. McMillan's proposal. The
weakness is that under Mr. McMillan's proposal you must let the public know at once that certain specific debts are to be taken over, so that the premium will have been forestalled by the action of the bond-holders or the rise in anticipation. Under the Bill, as it now stands, however, suppose it were intended to take over debts to the extent of £40,000,000 out of £140,000,000, you would not specify what particular bonds were to be taken over. You would say to the bondholders that tenders would be received for the taking over of so much stock by the Commonwealth, and the bond-holders wishing to, convert would offer a premium; and the biggest premiums would be accepted.

Mr. HIGGINS. - Would the Commonwealth ever act under Mr. McMillan's proposal except under pressure from the states? And is not that a signal of weakness?

Mr. GLYNN. - I say that under the Bill, as it stands, the stock you are going to take over will not be specified, but the Commonwealth would call for tenders as to which stock should be converted, and would thus secure the premium if one exists; so that there is absolutely no choice as to the financial reasonableness between the Bill as it stands and Mr. McMillan's proposal, which is a most retrograde step. And I would point out, in favour of the compulsory taking over of debts, that at the beginning of the Commonwealth Parliament there will, in all probability, not be much difference, if any, between the position of the Commonwealth bonds in the London market and the position of state bonds. For instance, I find that Canadian 3½ per cent. stock, payable in 1934, was on the 1st January, 1898, according to the Economist, at £108 10s.

Mr. FRASER. - What rate of interest?

Mr. GLYNN. - 3½ per cent. stock, payable in 1934. Now, take for the purpose of comparison a South Australian Stock-3½ per cent., payable in 1939. That stock was at £109 11s., as against the Canadian stock at £108 10s., on the 1st January, 1898. So that the difference in five years is covered by the 21s. additional price for South Australian stock. I might also say that Tasmanian 3½ per cent. stock, payable in 1920-40, was at £109 11s., as against the Canadian stock mentioned at £108 10s. on the same date. The same thing is observable throughout the whole scale of the colonial stocks. So that honorable members who think that the premiums will be realized are imagining that something will take
place which the existing comparison between the Canadian and our own Australian stocks show will probably not be realized, at any rate at the beginning of federation.

Mr. HIGGINS. -

Do you mean to say that, if the creditors in England knew that Tasmanian bonds were being backed up by the Commonwealth, those bonds would not sell for a higher price?

Mr. GLYNN. -

"Backed up" by the Commonwealth? That is not the proposal.

Mr. HIGGINS. -

The bond-holder will know that the Federation has promised to pay these bonds.

Mr. GLYNN. -

The honorable member means that you will have two persons promising to pay instead of one? But that is not the position. The position is not that the bond-holder will have two securities, but that one security will be divided into two. I would also point out that you are bringing sources of revenue to the Commonwealth which will rather have the effect of detracting from the value of the stocks in the London market. The probability is that our stocks will go back because you have taken from the states the control of the Customs revenue which they formerly possessed, so that the states will not be in as good a position to pay as they were in before.

Sir GEORGE TURNER. -

Going back would not injure us except that we should get worse terms when we went to borrow more money.

Mr. GLYNN. -

That is the real position. I am answering the objection to Sir George Turner's proposal, but I do not believe in that objection for a moment. The position of Sir George Turner is the correct one, and I hope that the committee will not consent to Mr. McMillans amendment, because it is, in my opinion, the most retrograde step in financing which I have seen proposed to this committee.

Mr. ISAACS (Victoria). -

This question must, I think, convince us as being one of which we are only at the threshold. I feel confident that it will be very difficult for us, with our conflicting views, and with the, to a large extent, meagre information we have, regarded from the point of view of reliability, to arrive at a settlement that can be accepted readily by any of the colonies. Now, I quite approve of proceeding with this work as far as we fairly can, but we must remember that there is considerable doubt and danger in
finally closing the discussion upon the financial question, considering that we have staring us in the face the necessity of leaving the Bill for acceptance or rejection by the various colonies.

If it were done, when 'tis done then 'twere well
It were done quickly.

But we know there is considerable danger in the undertaking, and we may find the matter done in a way we do not wish. I join with my right honorable friend and colleague (Sir George Turner) in thinking that the proposal of Mr. McMillan is not at all acceptable. It is not acceptable, because it offers us no solution whatever of the financial question in any aspect, and it is not only open to that objection, but also to another one, which is that it leaves another opening for more struggles for the surplus. It is open to the objection also-to which the Bill would have been open if the proposed amendments from Tasmania were accepted, in which it was sought to be provided that financial aid might be given by the Commonwealth-that it might be an indirect means of allowing a state to go to the Commonwealth and ask for financial aid by means of taking over some of its debts, without regard to any of the other colonies whatever. And, as Mr. Kingston said, it is a mode of access to the federal purse that cannot be too jealously guarded and provided against. I think, therefore, that there ought to be some such provision as Sir George Turner suggests, to compel the Commonwealth to take over the debts as they exist at the time of the establishment of the Union without any terms. I agree with my honorable friend (Mr. Fraser) that if it was suggested that the Commonwealth might, of its own volition, impose terms in any state without the state having anything to say in the matter, that would be very unjust.

Mr. FRASER. -
Will the state have any voice in the matter?

Mr. ISAACS. -
The Commonwealth will have no power to impose any terms upon the state. All that would happen under the proposal, which is rather bare at present, is that the Commonwealth would come in and pay the debts of the state. That is no hardship to the state. Certainly the state would have to indemnify the Commonwealth, and it would be in no worse position than if the Commonwealth did not pay the debts at all. I cannot go with Sir George Turner when he says that it follows as a corollary that there should be no more state borrowing. That is unnecessary, and it would, I think be equivalent to saying that no state undertaking of any kind should be embarked upon unless the Commonwealth found the money for it. That
would mean closing up the states altogether, and it would show that we
had-gone a very clumsy way about unification. We are committing to the
Commonwealth only certain powers and jurisdictions, and providing the
money to carry out those powers, and we are leaving to the states
everything connected with their internal development. We must not take
away from the states the money required to carry on that internal
development. What was done in Canada has been briefly referred to by my
right honorable friend (Mr. Kingston), but he did not go quite far enough.
It is true it is provided in the Canadian Act, section 104, that the annual
interest of the public debts of the several provinces of Canada, Nova
Scotia, and New Brunswick at the union shall form the second charge on
the consolidated revenue of Canada. What is to say, it is second to the
charge for collecting.
Mr. KINGSTON. -
Expenses?
Mr. ISAACS. -
Yes.
Mr. HIGGINS. -
Is that interest only?
Mr. ISAACS. -
Yes. But in section 111 it is distinctly provided that Canada shall be
liable for the debts and liabilities of each province existing at the union.
That is the principle, and it does not rest there.
Mr. HOLDER. -
Is that what you wish us to do?
Mr. ISAACS. -
Yes; I think that the Commonwealth should be liable for the debts of the
states as existing at the union. Then, to show that it is not necessary that the
states should cease to borrow on their own responsibility, sub-section (3)
of section 92 provides that the provinces shall have th
Mr. HIGGINS. -
That is what Mr. Glynn proposed.
Mr. ISAACS. -
Yes, something of the kind. Section 112 of the Canadian Act provides
that Ontario and Quebec conjointly shall be liable to Canada for the
amount, if any, by which the public debts of the provinces exceed, at the
union, 62,500,000 dollars, and shall be charged with interest at the rate of 5
per centum. per annum thereon. Section 113 has reference to some assets
Of Ontario and Quebec. Section 114 provides that Nova Scotia shall be
liable to Canada for the amount, if any, by which its public debt exceeds at
the union 8,000,000 dollars, and shall be charged with interest at the rate
of 5 per centum per annum thereon. Section 115 provides that New Brunswick shall be liable to Canada for the amount, if any, by which its public debt exceeds at the union 7,000,000 dollars, and shall be charged with interest at the rate of 5 per centum per annum thereon. Then Section 116 makes a per contra provision. It is that in case the public debt of Nova Scotia and New Brunswick do not at the union amount to 8,000,000 and 7,000,000 dollars respectively, they shall respectively receive, by half-yearly payments in advance, from the Government of Canada, interest at 5 per centum per annum on the difference between the actual amount, of their respective debts and such stipulated amounts. It is evident, therefore, that some careful calculation was made and that a basis was agreed to on which the Federation should start. Under the Canadian Act certain facts are made clear. The first is that a Federation may fairly start by taking the responsibility of the existing debts, and that it is possible to make a fair allowance, either for excess or deficiency above or below the standard; and the second is that each state may be left to borrow for its own provincial purposes. If you make the state indemnify the Federation then the state is checked in its borrowing by that consideration, because the Commonwealth may insist upon the fulfilment of the indemnity, and no doubt would. There is no chance of any favour being shown to the state.

Mr. GLYNN. -
The indemnity should only be in relation to excesses.

Mr. ISAACS. -
That is a matter on which I do not pretend to say anything very definite, but these are the broad lines upon which Canada went. We cannot apply these particular provisions to our circumstances. All that we can do is to take the principles.

Mr. HIGGINS. -
Was there a provision for the division of the surplus like our provision?

Mr. ISAACS. -
No; in the Canadian Act that question was dealt with in section 118, which provides that the following sum shall be paid to the several provinces in support of their Governments and Legislatures: - Ontario, 80,000 dollars. - Quebec, 70,000 dollars; Nova Scotia, 60,000 dollars; New Brunswick, 50,000 dollars; in all, 260,000 dollars. The section also sets out that an annual grant in aid shall be made to each province, and then it goes on to say what that grant shall be based on. In Canada this system has not been found to work satisfactorily. Efforts are continually being made to obtain what are technically known in Canada as "better terms." We are all aware of the fact that a few years ago a meeting was held of the Premiers,
and certain responsible Ministers of the various provinces, at which strong complaint was made of the treatment of the states. The position of the whole Federation seemed to be very risky at that time. If we are to preserve the Federation, and not to expose the states to annihilation, and that is what complete control of the revenue might lead to, we ought to be very careful to do what I sought to do in some way the other evening. I should have been very glad if on that occasion Mr. Kingston had made the speech he has delivered today. I should have been very glad to have heard him or any other honorable member put in those extremely forcible terms the absolute necessity, if the consent of the states is to be obtained to a Commonwealth Constitution, of the states being made in some way secure from annihilation. It has been pointed out in the Victorian Blue-book prepared by the Government Statist (Mr. Fenton) that the Customs revenue, which now amounts to £6,000,000 or £7,000,000 per annum, will probably in a century's time amount to something like £70,000,000 per annum; and to ask the states to enter the Federation without any sort of security is too much. We know very well that faith will move mountains, but it seems to me that we are making a mountain of dimensions that it will take a very strong faith to move. I would earnestly press on the committee, not the desirability, but the absolute necessity, if the consent of the states is to be obtained, of providing some means by which the states and the state Treasurers shall receive a guarantee that they will not be deprived of their revenues, and left in a most terrible state of uncertainty with regard to meeting their liabilities.

Question-That the word "may" proposed to be struck out stand part of the clause-put.

The committee divided-

Ayes ... ... ... ... ...8
Noes ... ... ... ... ...25

Majority for Sir George Turner's amendment ... ... ... ... 17

AYES.
Barton, E. Holder, F.W.
Brunker, J.N. Walker, J.T.
Cockburn, Dr. J.A.
Fraser, S. Teller.
Higgins, H.B. O'Connor, R.E.
NOES.
Berry, Sir G. Grant, C.H.
Braddon, Sir E.N.C. Henry, J.
It is evident that the clause cannot be left as it is, because it reads-
"Parliament shall take over all or any part of the debt." It could therefore be
complied with by taking over six penny worth of the debt of each state, and
the value of the word "shall" would then be exhausted.

Sir GEORGE TURNER. -
The clause will, of course, have to be remodelled.

Mr. KINGSTON. -
The Finance Committee can remodel it.

Mr. HOLDER. -
I am a member of the Finance Committee, and I could not undertake to
remodel the clause. I do not yet know what the majority want. I was
anxious to save time, but I think it possible that if a few more speeches had
been delivered the unfortunate vote that has, been given might have been
avoided. However, I must now speak of what I gathered to be the purpose
of those who voted with the majority just now. Even to compel the
Parliament of the Federation to take over the whole of the debts would not
accomplish the chief object which the majority have in view-the settlement
of the honorable member's difficulty.

Sir GEORGE TURNER (Victoria). -
If Mr. Holder will allow me to move a further amendment, it may give
him a basis for his arguments. I beg to move-

That after the words "Parliament shall" the following words be inserted:-
"be liable for the public debts of the states existing at the establishment of
the Commonwealth."

That amendment, of course, may require alteration later on. I am merely moving it tentatively as an amendment on which we may base our arguments.

Mr. KINGSTON. -

Could not you limit it to the interest?

Sir GEORGE TURNER. -

I am moving it in the widest possible form to facilitate the discussion of the question. My amendment follows on the lines of the Canadian Constitution, which also adds "and liabilities," but I do not like those words, because I do not know exactly what they mean. However, on my amendment we can discuss the whole question, and determine whether the liability shall be in respect of the principal and interest or only of the interest. My own idea is that, if we make it apply to the interest only, we shall go as far as we ought to go; but, as I have already said I move it in the larger form so as to facilitate the full discussion of the question.

Mr. HOLDER (South Australia). -

When the full effect of Sir George Turner's amendment is seen, it will make it quite certain that the Convention cannot pass it. It declares that the Commonwealth shall be liable for the public debts of the states existing at the establishment of federation, which must be twelve months hence. Now, if, in the meantime, any state pleased, on the faith of the Commonwealth being established, it might involve itself in a very large debt, and no matter if it were beyond the state's own capacity to pay that debt, the Commonwealth would be liable for it.

Mr. HIGGINS. -

What was the interval in Canada between the passing of the Act and the time of the union?

Mr. HOLDER. -

I cannot say on the spur of the moment, but my argument holds good in the present case. I must apologize for repeating what I said in Sydney. I took it for granted that the arguments I there used would be fresh in the minds of honorable members, and that I need not repeat them; however, I now find it is necessary to do so. The insertion of the words suggested by Sir George Turner would make the federal authority liable for the principal and interest of the public debts of the various states, and that would put the best security which Australia had to offer, not only at the back of the best she now offers in the London market, but at the back of the worst. Some of the Australian stocks are a good deal higher than others.
Sir GEORGE TURNER. -

There are not very many points between them, if you take into consideration the currency of the loans.

Mr. HOLDER. -

Taking into consideration the currency of the loans, and everything else, there is a difference between the 3 per cents. of one colony and another, where the circumstances are practically equal, of 5 1/2 per cent. to-day, according to the latest figures I have any knowledge of.

Sir GEORGE TURNER. -

There is very little difference on the 3 1/2 per cents.

Mr. HOLDER. -

Well, I am not discussing the 3 1/2 per cents., I am speaking of the 3 per cents., which are most like the probable stock of the Commonwealth, and I am saying that the difference in those 3 per cents. between one colony and another is 5 1/2 per cent.

Mr. HIGGINS. -

Is there a difference of 5 1/2 per cent. where the term is the same?

Mr. HOLDER. -

Where the terms are not materially unlike, there is a difference of 5 1/2 per cent. The moment we consolidate the debts of the colonies and issue a unified stock we shall, of course, raise the general level of all. If the 3 per cent. stocks of the several colonies average about par today, I take it that, the 3 per cent. stock of the Commonwealth would stand at not less than 104 per cent. I will take those figures to argue on. Now, what are we really going to do if we carry this proposal? By one stroke of the pen in this Constitution, if we carry so unfortunate a proposal, we shall make a present to the bond-holders who hold stock in the London market now worth 96 per cent. of the difference between that and par, and taking the colonies' 3 per cent. stocks, which now stand at 101 1/2 we shall be giving them the difference between that and 104. Now, are we going to do that? Have we so many millions of money that we can afford to scatter them far and wide among the people who hold Australian stocks today? I believe that the Commonwealth 3 per cent. stock will be worth 104, and is the Convention prepared to throw away the millions of money the difference represents by a stroke of the pen or of the printing press in this Constitution? I hope and believe that the Convention will not do anything of the kind. The next difficulty. which it is proposed by this suggestion to overcome is the difficulty connected with the surplus—the financial difficulty. Now, I take it that there are two alternatives before us. First, it is proposed in the amendment that we shall lay on the federal authority the whole
responsibility for the principal and interest of these Australian debts. What will be the result, if we adopt the amendment? In New South Wales they have a Customs and Excise revenue of £2,219,402. I am taking the latest figures available, and the amount I have mentioned is the average for the three years 1893-4-5. In the same colony they have a debt obligation of £2,158,170. So that there is not much of a difference there. In Victoria, the average Customs revenue for the same period was £1,871,000, and the debt obligation, £1,840,000. Now, coming to the next case, that of South Australia, I may say that I should be very glad—if I had only an eye for South Australia, and not for the scheme as a whole—to adopt this proposal, for whereas the revenue of South Australia from Customs and Excise was £525,000, its debt obligation was £931,573, so that, if this principle is adopted, the Federation will be making a present to South Australia of £400,000 a year.

Mr. GORDON. -

The state would be liable for the debt.

Mr. DEAKIN. -

In each case the balance would have to be struck.

Mr. HOLDER. -

I will discuss that too, but I am not going to refrain from putting all the facts and points before the Convention, and I am bound to put the point I have just referred to. It has been suggested that the debts and annual charges on those debts shall be taken and placed against the Customs and Excise revenue. But if that is done, I have pointed out what will be the result in the case of three colonies. While, in the case of some of the colonies, the proposers of that course are not far astray, as a matter of figures, in the case of South Australia, its adoption would make to that colony a present of £400,000 a year, which has to come out of somebody else's pocket, and the particular pocket out of which it has to come is the pocket of Western Australia.

Sir JOHN FORREST. -

I will vote with you at once.

Mr. HOLDER. -

I knew that the right honorable gentleman would vote with me as soon as he understood the matter. The revenue from Western Australian customs and excise duties for last year was £1,100,000.

Sir JOHN FORREST. -

We have no excise duties in Western Australia.

Mr. HOLDER. -

Well, the Customs revenue of Western Australia last year was £1,100,000. It will be observed that I have departed from the taking of the
three years' average in the case of Western Australia, and that is necessary, because only the latest figures will serve the end we have in view.

Mr. ISAACS. -

Does not Mr. Deakin's amendment alter the position?

Mr. HOLDER. -

I will come to that presently. I am only pointing out these facts, lest, by some extraordinary combination, this amendment might be carried, as I can conceive anything might be carried after the last vote. Now, whilst the Customs revenue of Western Australia last year was £1,100,000, its debt obligation was only £179,000, so that Western Australia would be paying the piper for the rest of us to the tune of many hundreds of thousands of pounds a year.

Sir JOHN FORREST. -

That won't do at all for Western Australia.

Mr HOLDER. - I knew that Sir John Forrest would say that, even if some of the other representatives did not. The effect of adopting the proposal that has been made would be that, while the totals correspond about accurately, the details making up those totals utterly fail to correspond, and federation on those lines would be such a partnership as we might imagine, if our imaginations were wild enough to conceive of such a thing, between two men in the street, one of whom had £1,000 in his pocket and the other a debt obligation of £1,000 hanging round his neck. Of course, the two amounts exactly balance in the total, and in the total it is all right; but when you come to analyze the details it is altogether wrong. And yet that is the kind of federation that people suggest who want us to set Customs and Excise revenue against the debts and the interest due by all the states, and they suggest that simply because the totals agree without regard to the details.

Sir GEORGE TURNER. -

I did not propose to do that.

Mr. HOLDER. -

Well, that has been proposed in this Convention and outside of it, and therefore I felt bound to answer the position as I have answered it. With what Sir George Turner expressly proposes, I shall deal when we come back after lunch.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. HOLDER. -

I was putting to the committee, when it rose, one of three points of view from which, according to the different methods of agreement or
arrangement, this question of setting the Customs revenue against the debts of the states might be disposed of. It appeared that the particular plan I was criticising first was not that which was in the minds of honorable members, and I therefore come to the second, which may prove to be that of which they were speaking. The second is: That there shall be a setting aside of the debts-I put it that way shortly, for the annual charge of those debts-against the annual Customs and Excise.

Mr. DEAKIN. -
That is in the wording of this clause.

Mr. HOLDER. -
I am not saying one word which I can avoid saying-I am not overlooking that it is in the clause.

Mr. DEAKIN. -
That is quite correct; but what you are going to discuss is naturally in the minds of honorable member because it is in this clause.

Mr. HOLDER. -
I am going to show that honorable members have not thought it out properly, otherwise they would

see that there are two different plans floating in their minds. The two plans are these: One keeping an account between the states and the Commonwealth, under which account every state shall be under an obligation to make up to the federal authority anything which its revenue may fall short of the annual interest charge, and under which account system the federal authority shall make good to any state by returning in cash any amount of its revenue in excess of the annual interest charge. The amount to be made good by a state, or to be returned by the Commonwealth Parliament, will be an uncertain amount-being the sum which, from time to time, under the fluctuations of revenue or the annual interest charge, may be the balance for or against the state. That is one plan. The other plan, to which I shall come a little later, is: That instead of keeping an account and making a calculation, which shall fluctuate from year to, year and be an uncertain amount, that we should first set out in this Constitution a fixed sum which shall, without any variation, no matter how circumstances may change-

Sir GEORGE TURNER. -
This is a very important question, and I think if we are to fairly understand the objections of my honorable friend, honorable members and the Treasurers ought to be present. I therefore call attention to the fact that there is not a quorum of members present.

A quorum having been formed,

Mr. HOLDER resumed. -
If we adopt the former of these two plans and provide for an account being kept of the fluctuating balance by which we shall determine the amount to be paid to or by the states, from year to year, I want to put as clearly as I can to Sir George Turner the fact that his proposal to overcome the financial difficulty will be entirely defeated.

Sir GEORGE TURNER. -

I do not say it, would overcome the difficulty. The only hope I have from it is to prevent the Federal Treasurer from being too extravagant.

Mr. HOLDER. -

I want to show that it will not even do that. I am as conscious of the difficulty of which the honorable member is thinking as he can be. I know the danger connected with entrusting any Treasurer with a surplus, and the danger of leading him into extravagance, If I could see an way, through the debts or any other method, of preventing him from having a large unappropriated surplus, I would adopt every means to attain that object, but I do not think that can be attained by this proposal, because, as soon as you provide that the fluctuating difference shall be paid to or by the state, you find yourself in this position: Then the Treasurer can expend as much as he likes, and he may spend almost nothing, or he may spend the whole; he simply has to make a larger or smaller levy upon the state account, according to the circumstances.

Sir GEORGE TURNER. -

That is where the difficulty is.

Mr. HOLDER. -

Therefore the proposal made by the honorable member is no protection.

Mr. ISAACS. -

The people will not be taxed more than a certain amount. It affects the destination of the money.

Mr. HOLDER. -

I wish I could grasp the whole meaning of that interjection.

Sir GEORGE TURNER. -

It is simply this, that the Federal Treasurer will be very careful about having to make up too large an amount, knowing that the whole question will have to be fought out in the states Parliaments. Therefore, this proposal will be of some little assistance, although it does not go as far as I should like to.

Mr. HOLDER. -

If the revenue of a state is £100,000 less than the Treasurer will require, the question will not then be whether the state shall pay £100,000. It is to
be a debt to the Commonwealth, and it is to

**Sir GEORGE TURNER.** -

I cannot get the other, and therefore I shall be glad to get this.

**Mr. HOLDER.** -

This is a very important matter, and it ought to be possible for us to understand each other. Either I ought to be able to convince the honorable member or he ought to be able to convince me. I should like to put it again. One of us must be right, and the other wrong. Is the state in any conceivably better position when it is resisting a charge made upon it by the federal authority for £100,000 a year, which is due to the federal authority, than it would be in if it were insisting that the federal authority had to return £100,000 from the surplus? I cannot see that there is the slightest difference between the two. If the honorable member can see that there is any difference I should like him to let us know what it is. If there is any difference then what the honorable member proposes might be a safeguard to the state, but if there is no difference at all his provision is no safeguard.

**Sir GEORGE TURNER.** -

Except in this way that the Treasurer will be very loath to spend his £100,000 when he knows that he will have to get it from the state.

**Mr. HIGGINS.** -

He will be more afraid of the people to be taxed.

**Mr. HOLDER.** -

We will take the case of a colony whose returnable surplus under ordinary conditions would be £500,000. The question is should the Commonwealth Treasurer return £500,000 a year to that state, or should he spend £100,000 more than that amount, and require the state to return £100,000 to the Commonwealth? I really fail to see how much stronger a state would be in insisting upon its not having to pay £100,000 than in insisting upon its receiving £100,000 more than it would receive under other circumstances.

**Mr. DOUGLAS.** -

The state will be represented in the Commonwealth Parliament, and will be able to defend itself. Surely

it will take care that it is not over-charged.

**Mr. HOLDER.** -

I think it would be as well able to take care that it got back its full surplus.

**Mr. ISAACS.** -

That assumes a limit to the expenditure. You are going in a circle.
Mr. HOLDER. -
The honorable and learned member seems to me to be arguing in a circle.

Mr. ISAACS. -
If the Treasurer knew that he had certain payments out to make, he would be very careful of his revenue to that extent.

Mr. HOLDER. -
And if he had to make certain payments out he would be careful of his surplus.

Mr. ISAACS. -
One set of payments he could regulate, the other he could not.

Mr. HOLDER. -
No. He could not regulate a payment to the Commonwealth Treasurer unless it was subject to the state legislation, which, I think, is inconceivable. If a debt is due to the Commonwealth, it must be beyond the control of the state Legislature.

Mr. ISAACS. -
I was referring to the Commonwealth Treasurer, not to the state Treasurer. The Commonwealth Treasurer will get the Customs and Excise revenue of all the states, and if he knows that he has certain liabilities to meet—say, the interest on the public debts of the states—to that extent he will regard his revenue as appropriated, and will be careful of his other expenditure.

Mr. HOLDER. -
It is not appropriated at all if the account between the state and the federal authority is a fluctuating amount; it is appropriated only under the condition that there is a fixed charge.

Mr. ISAACS. -
I was speaking of it in that sense.

Mr. HOLDER. -
Well, I shall deal with that later on. What I am discussing now does not concern a fixed charge, but a fluctuating amount. If the account between the federal authority and the state be a fluctuating charge, to depend upon the necessities of the Federal Treasurer and upon the contributions of the state, there is no greater obligation laid upon the federal authority to return anything to the state than there would be under the provisions of the Bill as it stands. I will put the position again in another way. The Federal Treasurer will have, say, £6,000,000 of surplus after paying the federal expenditure. That is rather more than he will have, but let us take that amount as roughly correct for the purpose of illustrating my argument. Let us imagine that the Federal Treasurer has in any one given year £6,000,000 of surplus. What difference can it make to him whether he has to return the
whole of that sum to the various states in cash, or whether he must return it partly in cash and partly in interest payments?

Mr. ISAACS. -

You assume a fixed amount for the federal expenditure. It may be more extravagant under the one system than the other.

Mr. HOLDER. -

That does not affect the point in the slightest degree. If the Treasurer has £6,000,000 to return, it cannot make any difference to him or be any more complete an appropriation of his funds whether he has to return that amount partly in interest charges and the balance in cash, or whether he has to return it all in cash. Now, take the case of a fixed amount. What can it matter to, the Federal Treasurer, to "limit his expenditure," whether he has to return £6,000,000 in the way of surplus or £4,000,000, when he knows that whatever he is short will certainly have to be made up by the states? He knows that if, instead of leaving himself a free surplus of £6,000,000, he leaves himself only £5,000,000, he has £1,000,000 more to go upon the states for. That does not embarrass him in the slightest degree.

Mr. ISAACS. -

Will it not embarrass him when he has to ask the people of the Commonwealth for the money?

Mr. HOLDER. -

The people will have to find the money in any case. Suppose that it is conceivable that under the Bill as it stands he might diminish this surplus, the states would have to make up the amount that he was short. If, on the other hand, he diminished the amount available for payment of interest, the states would also have to make up that amount. It does not matter what provision you make, the states will have to make up the amount that the Treasurer is short. If the Federal Government is extravagant, what difference does it make whether the states contribute this money by payments to the Federal Treasurer, or by payments to the bond-holders of the states? If the Federal Treasurer is extravagant, the states will have to make up any shortage.

Sir JOHN FORREST. -

The idea is, that if this arrangement will not give the Treasurer too much, he will not be extravagant.

Mr. ISAACS. -

Hear, hear; that is the whole point.

Mr. HOLDER. -

I am told that that is the whole point. But if the Federal Treasurer is
extravagant the states will have to make up any deficiency. Can it make any difference to the states whether they have to make up this deficiency by payments to the Federal Treasurer or by payments to the foreign bondholders? That leads me to this point. With the fact staring us in the face that extravagant and undue expenditure upon the part of the Federal Treasurer will mean difficulty for the states, we may conclude that the Federal Treasurer will not be extravagant. We often talk here as though the proposal were to hand over the management of our finances to a foreign power. Let us conceive that instead of being members of this Convention we are sitting here as members of the Federal Parliament. The Federal Parliament of course includes the Federal Treasurer, who could take no step against the wishes of the Federal Parliament. Is it conceivable that the Federal Parliament, which would be representative as we are, would take a step which must inevitably lead to the ruin of a state or states? It is absolutely inconceivable. I am not going to suggest that any one state is more awkwardly placed in respect to its finances than any other state, but if the Federal Parliament were extravagant, we may be sure that the weakest state must go to the wall first. Can we imagine that a body like the Federal Parliament, with a sense of responsibility such as we have, would deliberately take action which would lead to the insolvency of the weakest state of the group, and then, having ruined that state, would go on to ruin another, and when it had ruined two states would go on to ruin a third? Such a thing is inconceivable. I cannot imagine in my wildest thoughts that any action of that kind is likely to be taken by the Federal Parliament. That is our safe-guard, and a far better safeguard than any provision which has yet been suggested. I think that I have shown that any settlement which makes the amount to be paid to or by the states a fluctuating amount does not give a guarantee. Now I go on to my third point, the consideration of the proposal which would make the amount to be paid to or by the state a fixed amount, as in the case of the Canadian Constitution. Is that practicable? Before that can be done you must be able to fix the amount of revenue that will probably be derived from the various states under a uniform Tariff. Unless you have that information upon which to work you cannot say how much each state will contribute, and, therefore, how much each state ought fairly to be credited with. You must get that information before you can lay down any definite lines as to the exact amount to be paid to or by the states. Have we not by deliberate votes agreed that the revenue for the next five years cannot be determined, that we know so little about it that we are convinced that accounts must be kept for five years, and we are not quite convinced that at the end of five years we shall be certain as to what
the contribution of the various states ought to be? The states are not all on the same footing now, and we do not know whether they will be on the same footing in five years' time. It is impossible for us to lay down any definite lines as to what the contributions of the states will be, or what returns will be made to them. Therefore, the Canadian plan is impossible to us. In Canada, they were able to agree as to what the probable contributions of the states would be, and therefore they could say that such a state should receive back so many dollars. We admit that we do not know what the various states will contribute, and we therefore cannot say what amounts will have to be returned to them and what the relations of each state to the Federation will be.

Mr. ISAACS. - We know what it will be absolutely necessary to return to each state in order to keep it right.

Mr. HOLDER. - We know our needs. If we are going to determine this matter according to our needs, it will mean that the rich must help the poor. That is not the principle upon which we have gone hitherto.

Mr. ISAACS. - Each state must get at least a sufficient amount to pay its interest.

Mr. HOLDER. - That is a new line of argument.

Mr. ISAACS. - No, it is not. Victoria owes so much. She gets a sufficient revenue now to meet those obligations, and under the Federation she must not be left with a gap between her revenue and her liabilities.

Mr. REID. - Victoria must be all right before the bargain is struck, and then she will consent to enter the Federation.

Mr. ISAACS. - Every other state must be in the same position. Victoria wants no special consideration.

Mr. HOLDER. - This is quite a new line of argument. I find that others who were strongly opposed to it have agreed to it.

Mr. ISAACS. - It will be necessary to see that each state contributes a sufficient amount to meet its liabilities.

Mr. HOLDER. - This new suggestion is like a plaster upon the suggestions which we
already have, and makes all that we have hitherto done utterly unnecessary. If we adopt it we shall have to reverse every vote we have already given upon the financial provisions of the Bill.

Sir JOHN FORREST. -
What does the honorable member want?

Mr. REID. -
It is for those who are up-setting everything that we have done to say what they want.

Mr. HOLDER. -
I will say in a moment what I want, and what I think we ought to do, but I wish first to dispose of these other proposals. In my opinion, it is desirable that I should clear the ground by dealing with these suggestions, and especially with the suggestion that the distribution of the surplus should be made according to the needs of the states, and not in proportion to their contributions.

Sir JOHN FORREST. -
No one made that suggestion.

Mr. ISAACS. -
We do not want a penny of revenue that is not our own, we only want to make sure that we shall be able to pay our debts.

Mr. HOLDER. -
These two principles will not harmonize. If I say that a certain amount is to be distributed among certain persons in a certain way that is intelligible. I am trying to point out that these two suggestions are utterly irreconcileable. A plan to distribute the surplus among the states in accordance with their needs is quite intelligible.

Sir JOHN FORREST. -
We have already objected to that.

Yes, I know that. The proposal to make the return to each state in proportion to its contribution is also intelligible. But you cannot put these two proposals together; they are mutually destructive. You can distribute the surplus in one way or in the other way, but not in both ways. What is now sought is a direct reversal of what we have been trying to do, and will be utterly impossible to carry out unless we recommit the Bill and strike out the financial proposals to which we have already given so much attention, and upon which we have had so many divisions.

Sir JOHN FORREST. -
I never made any suggestion of the kind you were speaking about.
Neither did any one else.

Mr. HOLDER. -

The right honorable member did not make the suggestion, but the honorable and learned member (Mr. Isaacs) did.

Mr. ISAACS. -

Certainly not. All I said was that we wanted some guarantee that the return to the states would be sufficient to enable us to pay our liabilities.

Mr. REID. -

That sounds rather dicky.

Mr. HOLDER. -

I think that means what I have said.

Mr. REID. -

Hear, hear. It is exactly the same thing.

Mr. HOLDER. -

Then it means that we ought to put into the Constitution a minimum Tariff. But it would be better, instead of putting in a minimum Tariff, to put in an actual Tariff. I ask, however, if honorable members are prepared to sit here long enough to frame a Tariff as an appendix to the Constitution, or to adjourn for three or four months to enable some one else to frame such a Tariff for approval? I ask honorable members if they think the Convention has information enough before it to enable it to frame a Commonwealth Customs Bill, or whether, if we did it, there is the slightest probability of the people of these colonies accepting a Constitution which has a hard-and-fast Tariff within its four corners? The thing is an absolute impossibility. This is possible; this is what we ought to insist on; this we can get with the confident assurance that the Federal Parliament can raise such revenue by such methods as it may devise as will meet its own peculiar expenditure-the expenditure connected with the original powers of this Constitution-and that there shall be enough after that has been made to keep the states solvent. That cannot be put in express words in the Constitution unless you put in a minimum Tariff. But it can be assured if you simply take leave to believe that those who will be in the Federal Parliament will be men who will have at heart the interests of the Commonwealth, over whose destinies they will preside. Surely it is inconceivable that any Federal Parliament can be elected which will not have at heart the interests of each separate colony? We might say that the interests of the Federal Parliament will be apart from the interests of the state Parliaments; that the members of the Federal Parliament may wish to degrade, to weaken, the state Parliaments. It is conceivable that they may, but in the interests of the Commonwealth itself, if it is to live and prosper, if it is to live at all, it can only continue through the maintenance of the
solvency of each separate state. That is our assurance; and if we believe that the Federal Parliament is to be a body of sane men, a body having at heart the interests of this Commonwealth, we have that assurance, and can go back to our constituents with this sure conviction, that, as the only alternative to providing sufficient revenue for the various states is the insolvency of those states, sufficient revenue will be provided. I ask honorable members, what more can be desired than that? I do not know that I need proceed any farther. I trust that the resolution which was attempted to be arrived at just now, that the Commonwealth shall take over the debts, and to be followed by the further proposal before us, will not be adhered to by the Convention. I can assure honorable members that, anxious as I am to prevent any extravagance on the part of the Federal Treasurer, that is not the way to prevent it; that, anxious as I am to assure the solvency of the states, it is not by any such pledges as are being put that that solvency can be secured. I hope that we will leave the taking over of the debts at the earliest possible moment to the wisdom of the Federal Parliament, giving it the largest possible power as to how and when it will take over all the debts, but that we shall not dictate to it as to how and when it shall be done, but leave it to the wisdom of the Parliament of the day, and the conditions of the hour. That is my counsel, and I do hope that we will not proceed in the entirely wrong course in which we took the first step just before lunch.

Mr. DEAKIN (Victoria). -

It appears to me that the vote taken to-day emphasizes a great difference which divides this Convention. The clear and consistent statement just made by my honorable friend (Mr. Holder) has put in a manner, beyond misconception, the position as some see it. It appears to me that he correctly states the problem when he says that we have not, by the amendment which we have carried, solved the problem which we clearly desire to solve. We are faced by a problem with three faces. It presents in point of fact three knots, no one of which can be safely untied unless the two other knots are untied at the same time. Those three knots are the taking over of the railways and their financial obligations, the dealing with the debts and their obligations, and the guarantee to the states of the revenue which they are sacrificing in handing over certain of their services to the Federal Government. These three problems go together, and the more we examine them the more we will see that no one of them can be satisfactorily solved from the federal, stand-point unless the two others are also solved. The amendment which has been carried, standing by itself, is an incomplete and unsatisfactory adjustment of the one problem which it
seeks to solve, unless it be regarded in its necessary relation to the other two. If it is so regarded it indicates-on the part of the members of this Convention-a change in the attitude they have been assuming, a change which is becoming more and more marked as we proceed in our attitude towards the other two problems which are not immediately before us, but which are inseparably associated with the financial question with which we are now dealing. A consideration of the time and urgency which attend our sittings prevents me from elaborating this question in detail. I venture to assume we all recognise that no federation is complete without the federalization of the railways, that no federation is complete without the federalization of the debts, and that no federation is complete without a guarantee to the several states that they shall not be losers by this new bargain into which they are entering.

Mr. REID. -

And when did we discover this, because we have been going on different lines?

Mr. DEAKIN. -

We have. At Adelaide there was a comparatively small minority who held that view, but since then there is a larger body, and there is now very nearly a majority of the Convention at the present time in favour of that view.

Mr. REID. -

I am sorry.

Mr. DEAKIN. -

We have been slowly approaching it, and the vote which has been recently taken cannot be understood unless it is regarded as expressing the vague dissatisfaction which exists in the Convention with the proposal so strongly supported by Mr. Holder, to remit all these questions to the Federal Parliament. I, for one, happen to share his federal confidence and his federal enthusiasm. It does appear to me that he is not forecasting the future with any unduly sanguine anticipation when he says that the Federal Parliament-and in this he has been supported even by the Premier of New South Wales-will be bound by the very sanction of its position, though not by the express obligations in this charter, to preserve the solvency of the states. It cannot afford to see their solvency imperilled. Then we have had Mr. McMillan and many of the strongest opponents of the federalization of the railways declare that their federalization is not only essential, but is bound to take place. In the same way we have the opponents of any guarantee to the states, which is one method of maintaining their solvency, admitting
that their solvency must be maintained. Consequently, we are in this position: All round the Convention, almost without exception, it is acknowledged that the future of federation in these colonies implies, as a necessity the federalization of the railways, the federalization of the debts, and the protection of the solvency of the several states. We are only divided into two parties on the question how far it is possible to go, further than we have yet gone, in giving either directly or indirectly, to the Federal Parliament an indication of the judgment of this Convention, and an outline of the policy which the Federal Parliament is to follow. The honorable member (Mr. Holder) addressed to us an argument of great force when he pointed out that these issues, or, at all events, the one we are now debating, which may be taken as typical of the other two, involves the dealing with many details which it is not only impossible, but probably undesirable, to attempt to provide for in a Federal Constitution. So far, I am inclined to agree with him. But the position is, that while we are to lay before our constituents in the several colonies a perfectly blank sheet of paper in regard to the federal solution of these three problems, we shall say to them that, in our opinion, the inevitable working of such a Constitution, absolutely controlled as it will be by the democracy of Australia, is certain to result in these three federalizations.

Mr. HIGGINS. -

It is a blank sheet as to our certain liabilities.

Mr. DEAKIN. -

It is, so far as it implies a direction in the Constitution to the Federal Parliament to undertake the tasks of federalizing which we all admit it will be compelled to undertake by the very necessities of its being and by the interests of the people whom it will be created to protect, and for whom it will legislate. That being the case, we shall be met with the statement that we should have gone further in the way of expressing, so far as it may be advisable in this Constitution, a direction to the Federal Parliament as to the line which it should adopt in these cases.

Mr. FRASER. -

Give them a free hand, and then they will be able to do it.

Mr. DEAKIN. -

Is it enough to give them a free hand? I d

Mr. REID. -

That is what you are beginning to forget.

Mr. DEAKIN. -

No, that is what I am trying to remember.

Mr. ISAACS. -

That is what we are all trying to remember.
Mr. REID. -

Is it? Thank you.

Mr. DEAKIN. -

Objection is urged, and properly urged, against putting what are called mere placards in the Constitution. To that we may agree; but there may be instructions which are more than placards, although they do not go the whole length of providing in £ s. d. as to the obligations to be assumed or discharged. And the difference which divides the Convention, and which was indicated by the last division, is that, as the Constitution stands, we are leaving it altogether too much a matter of inference and assumption as to what course will be followed in regard to railways debts and the guarantee. While we, as old parliamentarians, familiar with the method in which Parliaments work, are, by our very experience of these circumstances, inclined to rely almost absolutely on the Federal Parliament, we have to remember that we shall be addressing thousands whose acquaintance with these methods is necessarily not so close as our own. They will look into this document and seek to find within its four corners all the policy which is sought to be embodied in it. Under these circumstances we are not forgetful, but are remembering the electors, when we say that there should be within this Constitution some clearer and more definite provision upon this vital question. We should define the relations which the several states shall bear to the Commonwealth, and the responsibilities which shall be assumed by one and the other, rather than leave the whole to implication and inference from the document which we will lay before them. Now, if I am correct in my surmise, the last division was significant, and is not likely to be reversed. It is quite possible that a means can yet be found which shall leave to the Federal Parliament that freedom which is a necessity of its being, and which is especially insisted on by the Premier of New South Wales, whose great anxiety on all these matters is not to tie its hands. While admitting that the views which he and many others hold must be given their due weight, it appears to me, for one, that they have been given too much weight, and that there has been less distinctiveness in the policy we have laid down in the Constitution than we may fairly put into it without impairing its efficiency as a Constitution, without indulging in placards, and without unduly tying the hands of the Federal Parliament. If we one and all mean and believe that the Federal Government and the Federal Parliament will necessarily undertake their federal responsibilities and discharge them in a federal spirit as to the railways, and debts of the several states, why should not that be indicated on the face of the
Constitution more distinctly than it is, where, indeed, it is a mere option? Now, leaving that general view without further elaboration for reasons already mentioned, allow me to put to my honorable friend (Mr. Holder), not merely as a financial expert, but as a politician of experience, the question whether the position remains the same so far as the finding of the money is concerned, if the Commonwealth, now or at any time, assumes the responsibility for our debts, and charges the states with them, or if the states themselves are left to find the interest on those debts? While theoretically that is the same position in practical politics, it is by no means the same thing. He has every year within his command the Budget of South Australia while he remains its Treasurer, and it might be said to him that the special appropriations made in his colony have no effect on his policy, that it does not matter in the least what special appropriations are made, because it is only a question of levying fresh taxation on the people and obtaining the necessary sum.

Mr. HOLDER. -
If you make the amount fixed and definite, your argument is complete, but if the amount is fluctuating it is useless.

Mr. DEAKIN. -
I agree with my honorable friend that if the amount is fixed and definite my argument is complete. I do not altogether agree with him that even if it is fluctuating it is insufficient.

On the contrary, it is worth something, and in practical politics it is worth a good deal. For this reason: If the Federal Treasurer has placed upon his shoulders the responsibility of finding the interest of our debts, it will really mean that the disposable sum in his hands will be diminished by that amount. As a practical matter of experience, whether they are taxed through the states, or taxed through the Commonwealth, the taxpayers of the Commonwealth in a rough-and-ready way have a certain limit to the amount of the taxation they can or will bear; and if that taxation be specially devoted to certain ends by the Commonwealth, those taxpayers will be less likely to permit his indulgence in any fresh schemes involving a large expenditure of money. First, he would be limited by the practical necessities of taxation, and secondly, even in the minor matter, the altogether surface matter, by the apparent sum at his disposal. The obligation which he is placed under even by a mere paper statement, although it may not have any effect as regards the pounds, shillings, and pence in his coffers, actually operates to some extent as a brake on his wheels in regard to extravagant expenditure.
An HONORABLE MEMBER. -
   Would it not be more agreeable to put it on the states Treasurers?
Mr. DEAKIN. -
   I think if he only had himself to consider he probably would, but as the representatives who maintain him in power, and give him his majority, are also the representatives of the states concerned, and are also taxpayers of the states, they will take care that he is not more exigent in his demands on the state than they can help.
Mr. REID. -
   Is that not a strong argument for doing without any device?
Mr. DEAKIN. -
   It is a strong argument, but I don't think it is a sufficient argument. There is something in making the obligation of the Commonwealth Treasurer clearer and more direct. By making him responsible for the discharge of the interest upon the debts of the states-a responsibility he must discharge in the face of representatives of every state in the Union-there will be on his part a less free handling of the balance of the federal finances than there would be if he had no such obligation. I agree with Mr. Holder, that if we work it out as a mere matter of £ s. d., as a mere matter of theoretical responsibility, there is practically no difference between the two situations. The money all comes from the taxpayers and has to be paid, whether by the Treasurers of the states or by the Treasurer of the Commonwealth to the state; so that theoretically the positions are identical. But, as a matter of practical working, I would put it to Mr Holder whether they really are identical; whether, for instance, if he had transferred to him the liabilities of all the municipalities of South Australia, that burden, even if accompanied with the rates at present paid, would not, by casting upon him a heavier financial load, tend indirectly-and that is all Sir George Turner contends for-to restrict his dealings with the other funds over which he has control, render him more economical in expenditure, and cause the taxpayers to watch him more jealously? By dividing up the responsibility, by having the local, state, and Federal Governments, you are able to do the work more efficiently; and one of the accompaniments of that is that you extract more from the pockets of the taxpayers than you could do under a unitary form of government. A taxpayer will, under three or four different forms of local and state government, face greater works and greater endeavours, and consequently pay more money, than if he were under a simple unitary government, like an Eastern despotism. I do not, however, desire to dwell unduly on that argument. The whole force and weight of the amendment lies not in its relation to this problem simply, but lies in its relation to the other two problem
with which it is bound up. Therefore, I voted with great satisfaction for the amendment, recognising at the time its very narrow limitations and its imperfect achievement, but looking at it as a finger-post pointing this Convention onward to its duty to reconsider this problem in its three pleases, so as to provide, if it be possible, in this Constitution for the taking over of the railways, for the taking over of the debts, and for an absolute guarantee in money.

Mr. HIGGINS. -

You cannot leave the state Treasurers to mere chance.

Mr. DEAKIN. -

There is one thing we could do without trespassing beyond the proper limits of this Constitution. We must leave the Federal Parliament to settle all details as to taking over the railways, because they involve multifarious considerations as to the construction of new railways, the development of existing lines, and so on. We must also leave to the Federal Parliament the taking over of the debts of the several states, because that question involves a choice of times and modes and many financial considerations. The states are not all on the same financial level, and no one state should be given an advantage at the expense of the others. What is aimed at is to enable the states by collective action to carry the financial burden of their loans better than they are now doing as separate states. I seek to place in this Constitution-I say this in answer to Mr. Reid-no provision which shall provide for an advantage to Victoria or any other single colony at the expense of the rest of the group. If there be an exception at all, it is the exception we have made in the case of Western Australia with regard to the retention of her customs duties, and we did that deliberately because of her special circumstances. But putting that aside, I would be no party to any proposal which had for its end a benefit to be gained by one colony at the expense of one or more of its neighbours. Therefore, Mr. Reid may be quite reassured that in the railway transfer, or in the taking over of the debts, no advantage is sought to be taken of his colony. I will go further, and say that while, for one, I agree with those who consider that the state Treasurer should not be left in blindfold dependence on the Commonwealth Treasurer, I add at the same time that the guarantee which is sought to be given to those states which have a deficiency should not come out of the coffers of the Treasury of New South Wales or of any single state. Any guarantee to be given-and I am a strong supporter of a guarantee-must be a guarantee which is buttressed by a proviso enacting that the money to be raised to discharge the guarantee shall come fairly and equally from all members of the Commonwealth, and that no one state or
group of states shall obtain any advantage at the expense of any member of
the sisterhood.

Mr. OCONNOR. -

Do you propose that the Commonwealth shall simply guarantee to the
states the payment of their interest, or that the public debts shall be taken
over absolutely?

Mr. DEAKIN. -

It is possible there may be two steps. If the honorable member asks the
first step that is to be taken, I am comparatively indifferent. If he means the
ultimate goal at which I aim, it is the second of his alternatives.

Mr. OCONNOR. -

I mean what is to be proposed in the Constitution.

Mr. DEAKIN. -

Personally, I am indifferent. A great deal can be said for simply
guaranteeing to the states the amount of their interest. From the point of
view of Mr. Holder and other honorable members, that is a much more
acceptable proposal, and it fulfils the present needs of the situation; but the
other and fuller proposal is that at which the Federation must ultimately
aim. In the future the Federal

Government must become the sole debtor to foreign creditors. I trust I have
made myself clear on this question, and, though speaking longer than
intended, let me point out that the matter is one of the utmost importance.
To sum up, it seems to me that the railways must be federalized, but we
cannot embody in the Constitution the details of the terms of that
federalization. Still, we should put in the Constitution something tending to
show that the federalization of the railways is a duty to be undertaken by
the Commonwealth. In regard to the second question—the federalization of
debts—I do not think we could accomplish that at once by any provision in
this Constitution; but, at the same time, we should place here an explicit
direction which shall require the Federal Parliament to undertake the
federalization of the debts as one of its paramount obligations. In regard to
the third matter, while it seems to me to be, perhaps, premature for us to
seek to place in the Constitution of the Commonwealth a definite
obligation to pay so many pounds, shillings, and pence per head from the
Commonwealth to the severa

Mr. HOLDER. -

They would not have tolerated the five years' bookkeeping if they could
have done that.

Mr. DEAKIN. -

Certainly not. It is with the desire of sweeping away the five years'
bookkeeping that I have always regretted that the Finance Committee did not present some scheme on the subject.

**Mr. WALKER.** -

We are not prophets—we could not see where the money was to come from.

**Mr. DEAKIN.** -

I have heard a good deal from the honorable member that would seem to indicate that he either is a prophet or thinks he is. We might have tested his powers of prophecy by his putting, in pounds, shillings, and pence, what he thinks would be a fair return to the several states for a given period, say, ten or twenty years. Not being a member of the Finance Committee, I am perhaps at liberty to believe that they might have solved that question. In their wisdom they have decided not to solve it, and as they have not done so, it is idle for us to attempt it here. Still, I think we might place in this Constitution a plain direction to the Federal Parliament that what we all deem to be an obligation on the Commonwealth—to preserve the solvency of the federated states—should be something more than an implied obligation—that it should be an expressed obligation. I believe that if we put in this Constitution, even if we do not descend to details, an expression of our decision, which shall be beyond mistake, that the Federal Parliament should undertake amongst its first labours the federalization of the railways, the federalization of the debts, and the guaranteeing of the several states, we shall have done more to recommend the Constitution to thousands and tens of thousands of electors of the states than we have done by any step we have taken for some time past in this Convention.

**Mr. HENRY (Tasmania).** -

I, as one of the members of this Convention who have always held that it is desirable to lay some definite obligation on the Federal Parliament in the matter of finance, seeing that we are parting from our customs duties, certainly rejoice at the decision given this morning. It was an emphatic declaration that that obligation shall be laid on the Federal Parliament. I would like to direct the attention of Mr. Holder to some points raised by him, which I desire to call the attention of the Convention generally to. The first is, that while we have simply decided with regard to the word "shall," we have certainly not committed ourselves to the whole clause; but I think it was plain that in deciding that the word "shall" shall be introduced into the clause, the intention was that it should be followed by subsequent amendments.

**Mr. REID.** -

To make it mean anything else?
Mr. HENRY. -

No. It means, as I understand, that a definite obligation shall be laid on the Federal Parliament of paying the interest on the debts of the colonies.

Mr. SYMON. -

I did not take it from that point of view.

Mr. HENRY. -

That is how I regarded it.

Mr. HIGGINS. -

Sir George Turner's amendment made the Federal Parliament accept the obligation with regard to the principal also.

Sir GEORGE TURNER. -

But I said I only proposed that so that we might have a full discussion upon it.

Mr. HENRY. -

If you have provided that for all time the Federal Parliament shall pay the interest, you have practically provided that it shall pay the principal, too. I have no doubt that subsequent amendments will follow the adoption of these words to carry out the intention of the Convention. Now, I desire to call attention to certain objections raised by Mr. Holder, to whom I, in common with other honorable members, always listen with care and attention. I cannot agree with him in several important points. In the first place, Mr. Holder laid great stress on the heavy loss sustained by the whole of these colonies in laying this obligation on the Federal Parliament—a loss that would accrue from the increased value of our stocks when they became federal instead of state stocks. The honorable gentleman assumed—it is merely an assumption of figures—taking the stocks worth £101 to-day, that they would increase in value to £104 when they became federal; and he further pointed out that, seeing the difference in value of the several stocks in the market, it would be a very difficult matter indeed to adjust their values in an equitable manner.

Mr. HOLDER. -

You would not have them adjusted by making a present of the whole accrued value to the bond-holders?

Mr. HENRY. -

The amendment submitted to this Convention by my honorable friend (Mr. Glynn) deals amply with that point, and provides to my mind a perfect remedy for any inequality existing. And I would say this: The value in the market of our stocks does not appear to have any force at all in regard to the matter of adjustment.

Mr. HIGGINS. -

Should not the Federation get the benefit of the increased value?
Mr. HENRY. -

Assuming that one colony's 31/2 per cent. bonds are worth £110, and another colony's only £107, the taking over of the debts does not in my judgment cause that difference to enter into the adjustment. Now I come to the material point raised by Mr. Holder. He said we should be squandering millions by throwing upon the Federal Parliament the obligation of paying the whole interest on our debts. But, inasmuch as the effect would be to raise the value of the federal stocks beyond the average value of the present stocks, I would ask the honorable member, or any other honorable member, in what sense should we squander millions of money among the bond-holders and make them a present? As I understand the meaning of making a present, it is giving away something which you have, so that the giver is made so much poorer by the gift. In what sense do we give away anything by our stocks increasing in value?

Mr. HIGGINS. -

Are you not giving away a lever by means of which the Commonwealth could get good terms?

Mr. HENRY. -

I am coming to that. The value of our stocks in the market varies periodically, and we do not save or lose through the depreciation of our stocks or the increase of their value except when we want to go on to the money market. It is then that the value of our stocks immediately affects us.

Mr. HOLDER. -

Will the honorable member allow me to explain what I mean?

Mr. HENRY. -

I shall be happy to hear the honorable member's explanation.

Mr. HOLDER (South Australia). -

The answer to the point is as clear as it can be. I will take a concrete case. Suppose some bond-holder holds 3 per cent. Western Australian stocks of the face value of £100, worth to-day in the market, say, £96. The Commonwealth, by backing up that £100 bond, would raise its-value we will say from £96 to £104. I think there is not much doubt that the value of a bond would be raised to that extent. Well, now, is not that making a present of all the difference between £96 and £104 to that bond-holder?

Mr. HENRY. -

No.

Mr. HIGGINS. -

It spoils conversion.
Mr. HOLDER. -

I am afraid that the honorable member (Mr. Henry) did not follow me. Let me put the case in another way. If the honorable member himself had £100 in Western Australian stocks, which to-day were worth £96, and if the Commonwealth came and indorsed his bond, and made it worth £104, would not that be making him a present of £8? There is no doubt about it. The honorable member would be £8 richer than he was before the Commonwealth backed his bond. Instead of putting that endorsement on the back of that bond by virtue of this Constitution, I contend that we should simply empower the Federal Treasurer to go to work, so that he could say-"You, Mr. Henry, have a bond worth £96, and I want to convert that into consolidated stock; I do not ask you to convert your bond for nothing, but I will give you stock worth £104 per cent. in the market for your bond worth £96 per cent., and I will give you a £1 bonus on the transaction." The honorable member would then have £97 for his £96 bond, and the Commonwealth would have made a profit of the difference between £97 and £104; a profit of £7. Well, now, that is only £7 on £100. What would it be on £160,000,000 of the debts of these colonies? That is the present which I do not want to be given to the bond-holders.

Mr. DOUGLAS. -

The honorable member is quite wrong.

Mr. HENRY (Tasmania). -

The honorable member (Mr. Holder) has explained the process by which he is going to make a present to the bond-holders of the several states. In the first place, he assumes that the bond-holders of the several states would be prepared merely on the chance of a rise in the value of the stocks, without any other equivalent, to do what he asks; that they would be prepared, because we thought we were going to make a saving on the chance of a rise in the value of the stocks as marketable commodities, to accept the terms that he offered. It all rests, in my judgment, on the possibility of a conversion scheme, if what has been proposed by Mr. Holder were the only bait thrown out to the bond-holders to induce them to do what? To part with their stocks and take a less rate of interest. And what is the advantage to them? Now, I would ask honorable members whether the mere chance of getting an increased value for the federal bonds is going to induce the bond-holders to accept a lesser rate of interest for the new bonds? Is that practicable? To my mind it seems to be utterly impracticable. The holders of the bulk of our long-dated stock are men who have invested their money in those stocks in order that they may get an assured income for the balance of their lives. Will those men, merely that they may have a chance of getting a profit on one set of bonds, be
prepared to part with their bonds and reduce their income? That is highly improbable, and if the proposed conversion scheme is to rest on that basis it will, I think, prove to be utterly impracticable. Any saving by the Federal Government in taking over the debts will be effected in renewing them.

Sir JOHN DOWNER. -

It will minimize the loss.

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Mr. HENRY. -

If conversion be possible you may do that; but it has been demonstrated that conversion is not a practicable scheme. Even Mr. Holder admits that.

Mr. HOLDER. -

If you throw away the only bait you have got.

Mr. HIGGINS. -

If you convert you may have to pay £104 instead of £97.

Mr. HENRY. -

These are all pure assumptions as to what the value of the federal bonds may be. Having thus placed my views on this somewhat important point before the Convention, I will proceed to another aspect of the question that was dealt with by Mr. Holder. Mr. Holder, in speaking of the absurdity of this proposal, said that it would relieve South Australia of the payment of some £400,000 interest. I think the honorable member must have misread the clause, inasmuch as it provides that the state shall indemnify the Federal Government the full amount of interest. How then could South Australia get a gift of £400,000? I am sure that Mr. Holder is the last person who would raise up a straw man for the purpose of knocking it down, and I attribute that statement to inadvertence or to a misconception of the clause. We have discussed Mr. Glynn's amendment and the amendment suggested by the Tasmanian Parliament, but it has never been proposed that any such gross inequality as has been suggested by Mr. Holder should be allowed to exist. It has been generally recognised that, owing to th

Mr. REID. -

Why not put that in the Constitution, so as to make everything perfectly safe?

Mr. HENRY. -

I understand the right honorable member's sneer, but we are content with one thing at a time. It is quite possible that the Federal Treasurer may make a miscalculation, and he should be responsible for any deficiency arising from it. Mr. Holder, in his closing remarks, said that the whole of the financial proposals as passed by the Convention were being reversed by the
throwing of this obligation on the Federal Parliament. I regret the
honorable member did not elaborate the point, and show up, how such a
result could follow. I fail to see in what way this definite proposal can be
destructive to, or can interfere in any way with, the proposals of the
Finance Committee up to the present juncture. The suggestion that the
Convention should enter on the task of preparing a Tariff I took to be mere
ridicule. I am entirely in accord with the honorable member's views as to
the confidence we have in the Federal Parliament doing its best to
safeguard the finances of the several states, and I hold that the insertion of
this provision in the Constitution will be an assurance to the several states
that, to a certain extent, at all events, they will be relieved of their
liabilities. It will certainly be of assistance to us in Tasmania, where
difficulties have been created owing

to the publication of the leaflets by the Statistician of New South Wales. I
hope that we shall have an opportunity of dealing with the last pamphlet
issued by that gentleman before the Convention adjourns.

Mr. REID (New South Wales). -

We have spent many days, sometimes, discussing matters of comparative
unimportance, and it was indeed a surprise to me to find that, during my
unavoidable absence this morning, one of the most important matters
which could be considered, and upon which a large number of other
important matters that have taken up a great deal of time depend, was
suddenly introduced, discussed, and decided between half-past ten and
twelve o'clock today. Unfortunately, the express from Sydney did not
arrive until half-past twelve o'clock to-day, so that I was, just by the mere
force of fate and accident, deprived from either the opportunity of being
heard on this matter or of giving myself the privilege of voting upon it. But
it does appear to me that, instead of joining with those who seem inclined
to advocate another meeting of this Convention, it would be infinitely
better for us to get our work done as speedily as possible, because the
further we go the more we seem to get mixed. Now, the other day there
was a provision in this Bill which sought to guarantee the financial position
of the states. It was inserted, against the strong opposition of myself and
others, by the Finance Committee which sat in Adelaide. It appeared in the
Bill, and remained in the Bill until the other day. When it came on for
consideration, after I had made some pretty strong observations on the
subject, there was no opposition against me, and that proposed guarantee to
the states was not even made the subject of a division. I received a pleasant
intimation that, owing to the very strong objection I had to it, honorable
members who were opposed to my view of the subject were not even going
to divide the Convention on the question. Bearing that in mind, honorable members can understand my astonishment when I arrived here today and found that the course of proceeding which characterized this Convention here and in Sydney had been suddenly changed. Of course it is well for the Convention to get on with its work, and whilst I impute no blame to any one, because it was my duty to be here at half-past ten o'clock this morning, still I think it is a pity that, on Friday afternoon, when the subject of the debts of the states was discussed at such length, no intimation was given to honorable members that such an important proposal would be made.

Mr. HIGGINS. -

Mr. Glynn's proposal on Friday was perfectly definite in favour of this proposal.

Mr. REID. -

But I am speaking of Sir George Turner's proposal. It is very wrong, no doubt, but somehow I have come to attach very little significance to notices of amendments by Mr. Glynn.

Mr. GLYNN. -

That does not test their merits.

Mr. REID. -

No; but still I went on the law of averages, and therefore I did not seriously regard my honorable friend's proposal but if I had known that the Premier of Victoria was going to make such a proposal as he submitted this morning, I would have attached great significance to it.

Sir GEORGE TURNER. -

I can assure the right honorable gentleman that when I got up to speak I had no intention of moving any amendment.

Mr. REID. -

That only shows how fortunate my right honorable friend was to be inspired while I was away. That is the charm about genuine inspirations; they always come at the proper time, and I am sure that the honorable gentleman is honestly delighted to find that those who have hitherto steadily resisted him on the matter have suddenly followed him to such an extent as to enable him to carry his proposal by 25 votes to 8. Of course, the right honorable gentleman's judgment has become more matured, and it is no possible sort of complaint that an honorable member at any time changes his mind.

Sir GEORGE TURNER. -

I have always been of my present opinion on this question.
But the honorable member was in a different mood in Adelaide, because he then deferred to my strong opinions as representing New South Wales, by not inserting "shall."

Sir GEORGE TURNER. -
I have heard so many of these strong opinions lately that they have no weight with me now.

Mr. REID. -
Well, we will take it that my right honorable friend is now determined, if he can, to put this new complexion on the matter. Now, I have long ceased to feel any very keen interest in the various decisions arrived at here, because one never knows when they will represent finality, but I might be humbly allowed to follow Mr. Holder, and express-and I cannot express it more forcibly than he did-with very great earnestness how strongly I share the views he has set forth. In the first place, the insertion of the word "shall" in this clause will have the effect of presenting several millions sterling at once to the holders of Australian bonds. The debts of the five colonies, I find, amount to £140,000,000, and the insertion of the word "shall" in this clause, if this Federal Constitution ever comes to anything, is practically presenting to the holders of those £140,000,000 worth of Australian states bonds the security and guarantee of the Commonwealth. And what becomes of all those elaborate, eloquent, and laborious statements made to the public of the whole of the colonies of Australia by leading financial authorities as to the great gain which was to come to the people of Australia through the advantageous terms upon which the state debts could be consolidated under the auspices of the Commonwealth? Every honorable member can see that, if it becomes an absolute compulsion that every one of these bonds shall be taken over by the Commonwealth, the bond-holder gets an issue of the Commonwealth's security without paying anything for it, and that represents a loss of hundreds of thousands a year to the Commonwealth. It represents millions sterling to the bond-holders, and I say it is time to ask this Convention are any of the colonies reduced to such a pitch that these desperate measures have to be resorted to Statisticians have said so.

Sir PHILIP FYSH. -
Yes; the New South Wales Statistician.

Mr. REID. -
No; the Government Statist of Tasmania.

Sir PHILIP FYSH. -
No.

Mr. REID. -
I think that Mr. Johnston's writings as to the position of Tasmania are
very strong, about as strong as anything can be. I have not once mentioned Mr. Coghlan's name in the Convention; I have never referred to his publications. No matter how people wrote, I have always been imbued with a strong feeling of confidence in the absolute stability of every one of these Australian communities. Indeed, this desperate aiming after something out of this not yet created body is significant not of a financial strength or confidence, but of a very different state of feeling, and I am very sorry to see it. Our people, whose policy differs so widely from the policy of most of the other colonies, feel, notwithstanding that fact, that, having embarked in this cause, they are prepared to leave the fortunes they pursue, to leave the settlement of vital matters affecting them as taxpayers, and as people engaged in the ranks of industry and commerce, to the Commonwealth; they are prepared, feeling full confidence in the stability of the other Australian colonies, to go in with them, even under circumstances which show that the colony of New South Wales must inevitably pay up to 48 per cent. of the taxation of this Commonwealth. Nearly 50 per cent. of the taxation under any conceivable Tariff will come out of New South Wales. If we are prepared, with these vast interests and responsibilities at stake, to come into this federal compact with every confidence, leaving our affairs in the hands of the Federal Parliament, surely other colonies can do the same thing, being equally sound and equally self-reliant. But no. There has been a constant desire in certain quarters to make certain things safe in advance. I say, on this question of finance, no one colony can be allowed to make anything safe in advance. How would honorable members listen to me, even if I represented so large a number of people, and even if the Federal Convention knew I did represent their views, if I asked for some sort of guarantee in connexion with the financial policy of the Commonwealth that the policy of duties should not be pushed too far, and so on, and so on; and that some share, however small, of the Commonwealth revenue should be raised from some other means than Customs, so as to give the policy of low Tariff a chance. How I would be ridiculed if I came forward with any such request! If I am prepared to leave everything open, confiding to the wisdom of the Federal Parliament, knowing that the Federal Parliament will, after all, represent the whole of the people of the states—if I am, and the people of New South Wales are, prepared to go into the Commonwealth with perfect trust in the fairness and wisdom of the financial policy of the Commonwealth, I think the other colonies should meet us in the same spirit. I have over and over again said that no Commonwealth Treasurer could possibly, having been intrusted with the duty of framing a Tariff, by any financial proposals of
his leave any single colony in a state of embarrassment. Well, if that is not enough, if stipulations are to be made, honorable members must not wonder if stipulations are made on both sides. Now, I do not propose to make any. I will be true to the feeling and spirit in which this federal enterprise was entered upon. I still leave, and I am ready to leave, the Commonwealth and the Commonwealth Parliament absolutely unfettered in dealing with the finances of the Commonwealth. But if these proposals are to be put in for a Commonwealth Tariff, or if the Commonwealth itself is bound to raise a revenue of £7,500,000, because that is what this word "shall" means-If I have to go back to New South Wales and tell them, not as a thing which may happen in the fortunes of political strife, but as a thing which must happen when the Commonwealth must begin by raising £7,500,000 sterling.

Sir PHILIP FYSH. -

£6,500,000.

Mr. REID. -

Yes; I find the honorable member is right. The amount will be £6,500,000.

Mr. ISAACS. -

If the states have to pay that amount out of direct taxation, what will happen?

Mr. REID. -

My point is this. If you send any one back with the absolute statement that the Parliament has so framed a Bill that a certain course must be taken-

Sir PHILIP FYSH. -

It is already so framed.

Mr. REID. -

How?

Sir PHILIP FYSH. -

Because you must protect the solvency of the states.

Mr. REID. -

I again lament the use of the word "insolvency." This Convention is becoming a sort of bankruptcy court if one may judge from the frequency with which that word is used. It is positively revolting that we should hear an assembly representing these great Australian colonies using these ominous words. They are words entirely unworthy of this great body. I am very glad to think that no member from New South Wales defiles his lips with such expressions about the solvency of the country he represents. I quite agree with Mr. Holder, and that is why I am so strong on this subject, that we have been altogether wrong in all our financial labours if this is to he persisted in. It reduces most of the labours
of the Finance Committee to an absolute absurdity. Would it not have been infinitely more straight forward and honorable if, on the motion for removing certain words from clause 92, which was agreed to without a division, this proposal had been made? These words were omitted on the strength of the remarks which I am now making, or remarks of an exactly similar purport, only a few days ago. These words were struck out without division:-

During the first five years after uniform duties of customs have been imposed the aggregate amount to be paid to the whole of the states for any year shall not be less than the aggregate amount returned to them during the year last before the imposition of such duties.

Sir GEORGE TURNER. -

These words were removed because they were unsuitable—I refer to the last ones.

Mr. REID. -

Still, they could have been amended. There has been a perfect genius for offering amendments in this Convention, and surely honorable members would have been equal to meet that little difficulty. But instead of that—we addressed ourselves to the main proposition involved in these words, and, as I say, following the lead of the Finance Committee—in which this present proposal did not find any strong favour—these words were struck out. Now, I say it would have been infinitely better to have left in that guarantee than in this round-about indirect way attempt to arrive at the same point. My reason is this: The fewer objections to the measure you put in this Bill the better. The fewer grounds you put in this Bill to create animosity and antipathy the better, and that remark applies—to this proposition to make it absolutely compulsory, whether a state likes it or not, that its finances shall be taken over by the Commonwealth, because that is what it means. The Customs are handed over to the Commonwealth, not because the states shall be reduced to be mere beggars standing at the door of the Commonwealth Treasury, not for any such ignoble reason, but because the whole enterprise of federation was impossible except with a uniform Tariff, and with the collection of the duties by one Central Government. We all gave way to that extent in this federal enterprise, but it did not at all follow that we were prepared in other matters, not essential, not vital, not unavoidable, to go so far that a colony would be compelled to give up its debts and intrust them to the Commonwealth, without having the slightest voice as to whether it would consent or not. Some colonies, no doubt, would be only too glad to consent, but I do not think our colony would consent. We do not wish to put our debt upon the shoulders of the other
colonies, and I do not think we are at all keen to take upon our shoulders their debts. Not that I at all distrust the absolute strength and stability of the states themselves, but we all want-and that has been the key note of this federal enterprise until lately-to leave to the states those things which they can look after themselves, and can best look after, whilst we only hand over to the Federation those things which cannot be done by the states, separately. This one point is enough to destroy this proposal, except as a desperate unwise extravagant expedient on the part of persons who have not sufficient confidence in the soundness of their own states-that, as the honorable member (Mr. Holder) stated, and as every one must admit, all the advantages to be derived in time to come by the states from a conversion of their debts under the name of the Commonwealth, with the national security attached, will be lost. I think that I heard the honorable member (Sir Philip Fysh), in tones of the loftiest eloquence, describe the enormous advantage which it would be in time to come to have such a conversion.

Sir PHILIP FYSH. -
You have always denied it.

Mr. REID. -
I have never denied it. The difference between my honorable friend and myself in regard to this matter is that I do not believe that any holder of a state bond, while the states have the reputation which they have at the present time, will give up that bond unless he gets in return a new bond under which he will be paid the same amount of interest as he is now receiving.

Mr. FRASER. -
Or very nearly the same amount.

Mr. REID. -
Yes. But I have always admitted that when the deferred periods for payment come about, and the bonds are about to mature, you can convert, and convert to the greatest possible advantage. Unfortunately, however, the bulk of our debts are not due for many years to come.

Sir PHILIP FYSH. -
Half of them fall due within eleven years.

Mr. REID. -
What holder of Australian states bonds will consent to the conversion of his good security eleven years before it runs out, unless he gets as good term as he is now enjoying? I do not know whether my honorable friend has ever tried to convert a loan, but other people have. New South Wales
has had the advice of the best financiers in London—not once, but a dozen times—during the last ten years, and they have all told us, what ordinary common sense should tell a man, that the colonies have not yet been reduced to such a pitch of discredit that any one believes that they will not pay their debts in full. So long as the bond-holders believe that they will be paid their interest they will not give up bonds which are now returning, say, £400 a year to them, for bonds which will only return them, say, £300 a year. But when these bonds are about to expire, and the bond holder is losing his £400 a year, if you come along with a proposal to extend the currency of the debt for another 30 years, he may be willing to take new bonds which will return him only £300 a year.

Mr. FRASER. -
He will have no choice.

Mr. REID. -
Yes; that will be his position. In this way you may be able to effect a great saving of interest, and the colonies are strong enough to be able to wait until they can reap this benefit. The Commonwealth will last long enough to be able to conduct all these operations, but they are operations which must be conducted with the mutual good-will of both parties. To talk of handing over to these people, who, hold £140,000,000 worth of state bonds to-day, the security and guarantee of the Commonwealth, by the insertion in the Constitution of the word "shall," means-what? It means this: If the liability to pay the interest upon this debt is taken over by the Commonwealth, the Commonwealth becomes responsible to pay every penny of interest so long as the bonds remain in force, and to pay the principal when the debt matures. Are we, an assemblage of business men, studying the interests of these states, when we propose to announce to the bond-holders in London that the day the Commonwealth Bill comes into force they will have the security of the Commonwealth behind their bonds? What will your conversion amount to if you do that? When you come along with your Commonwealth bonds in ten or twenty years' time, as each loan matures, and ask the bond-holders to accept the bond at a lower rate of interest, telling them—"Now you are getting the Commonwealth bonds instead of the state bonds," they will say—"The Commonwealth has been paying our interest for the last twelve years, and is responsible for this debt. You are not offering us better security than we already have. It is the same security, and what right have you to ask us to agree to these conditions under the plea that we are getting a better security?"

Mr. HENRY. -
If conversion is only possible as the bonds mature, how can such a state of things arise?
Mr. REID. -
I do not understand the honorable member.

Mr. HENRY. -
The right honorable member is arguing that there is no conversion possible, except as the bonds mature.

Mr. REID. -
I am speaking of the case when a state goes to the bond-holder. But the Commonwealth, going to the bond-holders, and having the power to say "No" if the terms do not suit, will be in a vastly different position. The Commonwealth will be able to go to the bond-holders and say:"You have only got big South Australia, or little New South Wales, or Tasmania, as security for your bonds. Now, here is a great Commonwealth, formed of all the colonies, ready to take these bonds off your hands and to give you a vastly better security, upon such terms as to length of time as may be agreed upon." If the Commonwealth did that it would be offering a distinct advantage to the bond-holder. The proposition is quite different from that in which the Commonwealth would stand if it gave the bond-holders this advantage in the first instance.

Mr. HIGGINS. -
The right honorable member is dealing with a bargain in respect to a conversion before the time of maturity.

Mr. REID. -
Yes. Of course, when a bond has matured it will be easy for the state to go into the market and borrow money irrespective of the bond-holders, and out of this money repay the original debt. The rate of interest then to be paid by the state will be the current rate of interest at the date of the conversion. No doubt the interest upon the Commonwealth bonds will be lower than the interest upon a state bond. But if the Commonwealth, while all the state bonds are out, stamps them with the indorsement:"We will pay this debt," state bonds are made Commonwealth bonds, and the Commonwealth loses the opportunity of being able to substitute a better security for a worse. That sort of finance may suit South American republics, but we have not come to it in Australia, at all events not in our part of Australia, and we never shall.

Sir GEORGE TURNER (Victoria). -
I was rather surprised at the language of my right honorable friend in regard to this proposal. He has insinuated rather than stated that advantage was taken of his absence to-day to pass an amendment which we should not have attempted to pass if he had been present.
Mr. REID. -
I did not insinuate that at all.

Sir GEORGE TURNER. -
If you did not insinuate that, the whole of your introductory remarks had been better left unsaid. Then the right honorable member characterized this proposal as desperately extravagant, and referred to it as being significant of a want of financial strength in the states which supported it.

Mr. REID. -
I said a want of confidence in our financial strength, which is a very different thing. I have confidence, if others have not.

Sir GEORGE TURNER. -
I think we all have confidence in the financial strength of all the colonies, and the British money lender has just as much confidence as we have. I have never been able to realize that any bond-holders will immediately put up the price of bonds from 96 to 104 because they have the Commonwealth security. Surely the Premier of New South Wales will not say that the security which his colony gives to the British bond-holder is not just as good as the security of the whole Commonwealth will be. I say, on behalf of Victoria, that I have no doubt that the security of Victoria is quite as good as that of the whole of the Commonwealth will be.

Mr. REID. -
Then the financiers are all wrong, because they have told us that the Commonwealth security would lead to better terms.

Mr. HIGGINS. -
Especially as the customs and excise duties have been taken away from the states and have been given to the Commonwealth.

Sir GEORGE TURNER. -
But they will be returned to the States.

My honorable friend tells us so.

Sir GEORGE TURNER. -
Then if they do, the security of the colony is just as good. If they do not, if there is a fear that they will not, then a colony is going to be placed in a very unfortunate position. There is just the difficulty.

Mr. REID. -
We are strong enough to stand it.

Sir GEORGE TURNER. -
I cannot see how we are making a present of £6,000,000 or £8,000,000 to the bond-holders because the honorable member tells us so, and I think a
majority of the Convention agree with me, that no conversion will take place until the bonds are just about maturing.

Mr. REID. -

You can convert under the Commonwealth at any time.

Sir GEORGE TURNER. -

I do not believe you can. Suppose my honorable friend is a tenant for life, and is entitled to the whole income of £10,000 worth of Victorian bonds at 4 per cent. If he is told that the Commonwealth is going to give certain bonds which, instead of bringing in £400 a year, will bring in only £300, he will say to the trustees-"I am perfectly satisfied with the income I am deriving; I am perfectly satisfied with the bonds of Victoria, and I do not want to convert Victorian bonds into federal consols."

Mr. HOLDER. -

What about the poorer colonies where the bonds stand much lower?

Sir GEORGE TURNER. -

I cannot see how that will affect the question at all. Of course, if they are below par, and you say you are going to give them par, I can understand their taking them at once, but I do not think there would be much fear of a conversion taking place if a Federal Treasurer had to give £100 for £96. I do not think that is the sort of conversion which a Federal Treasurer is likely to carry out. I have tried to follow those who hold the view that the mere saying to the Commonwealth-"You shall take over the liability to pay this interest" is going to put this great increase on the price of the bonds till an intimation is made by the Federal Parliament that in addition to what the state is doing-paying the interest-they are going to convert them into something better, and the Federal Treasurer will not do that till the bonds are falling due. But even if you leave it optional for the Commonwealth to do it, the moment that the Parliament intimates that they are taking the necessary steps to obtain the consent of the state, which must be given by Act of Parliament, and therefore must be made public, the same thing will happen. The bond-holder will know that the Federal Parliament is anxious to take up these bonds, and he will put up the price just as he will do under this proposal, because he will know that there is no compulsion to convert. I could understand my honorable friend's objection if we were providing in the Bill, that within twelve months after the establishment of the Commonwealth it should be the duty of the Federal Parliament to convert and consolidate all our bonds into one loan. I could understand then the bond-holders would naturally think that they were going to get a vastly improved security, and would ask for a larger price for their bonds. But as we say here, you shall pay our interest, and we are doing that to prevent extravagance, that will not convey to the minds of any astute people in
England who hold our bonds that there is any attempt to make this conversion or consolidation unless the Federal Parliament knows that it is going to get a fair and reasonable bargain on behalf of the states. The Premier of New South Wales tells us also that that colony has to pay one-half of this taxation-48 or 50 per cent. I fail to see how he arrives at those figures.

Sir EDWARD BRADDO. -
Coghlan.

Sir GEORGE TURNER. -
I do not think that even Mr. Coghlan goes to that length, but, of course, my right honorable friend is just mildly exaggerating the amount.

Mr. REID. -
No, I am going on a very good authority in saying it.

Sir GEORGE TURNER. -
For the first two years, with the fact of our having no duties to pay, because our bonds will be stored with dutiable goods, you cannot pay very much.

Mr. REID. -
We are not accustomed to paying much now.

Sir GEORGE TURNER. -
The other colonies will pay in the same ratio to their population as New South Wales pays. But even if they do pay 50 per cent. they get it back again. We are not going to rob New South Wales of all this extra revenue.

Mr. REID. -
Will you be good enough then to leave it optional to New South Wales whether, she is to bring in her debt? Will you give her that privilege?

Mr. ISAACS. -
That is another question.

Mr. REID. -
I make that application to you on behalf of New South Wales.

Sir GEORGE TURNER. -
I think it would be to the interest of New South Wales and of all the colonies that we should have federal consols.

Mr. REID. -
I differ from you. Give us the option, that is all I ask.

Sir GEORGE TURNER. -
Then my honorable friend says we are to raise this £6,500,000 because this proposal is put in, but in another breath he says that either the Federal Government must raise that sum or it must be left to the states to raise the
money by direct taxation. I think that if we have to go to our people here and tell them that we are giving up this elastic source of revenue, and do not know what we are going to get back-

**Mr. Reid.** -

It is anything but elastic now.

**Sir George Turner.** -

It is pre-elastic in most of the colonies.

**Mr. Reid.** -

Not in yours.

**Sir George Turner.** -

It has certainly been increasing in our colony, and I think it has been increasing in nearly all the colonies, and as time goes on no doubt it will rapidly increase, and while the Customs will be increasing year by year, a considerable amount of interest on these debts that the Federal Parliament has to pay will be greatly reduced year by year, because as loans fall due either the state or the Federal Parliament will undoubtedly convert them, and as they are converted the rate of interest will be reduced from 41/2 per cent. or 4 per cent. to 3 per cent. Therefore I think the Commonwealth will run very little risk, indeed, in undertaking to pay all this interest for the colonies. In any case, we arrive at the same conclusion, because it is perfectly clear that if the states are to be left in the position they ought to be in then they must get back from the Federal Parliament about as much as they are receiving now; allowing for the smaller amount of the expense. If they do not get it back from the Federal Parliament, then they must be prepared in the respective colonies to impose some kind of taxation for the purpose of raising the difference, because we know very well that we cannot get on with less money than we have. We have, most of us, cut down our expenditure as low as we possibly can, and that expenditure, against the desire of the Treasurers, must gradually, year by year, increase, if we are to carry out the various improvements and the development of our respective colonies. It is evident that if we are to be got in a safe position, we must either ourselves raise it by direct taxation, or we must, if we possibly can, place something in the Bill which will throw on the Federal Parliament the onus of raising it by indirect taxation through the Customs; and, as we are told that must be done, I see very little harm in making it perfectly clear and certain that it will have to be done. My honorable friend appears to disown altogether various figures which have been circulated from time to time by the Statistician of New South Wales. I think it is a matter of the deepest regret that week after week we have new pamphlets circulated amongst us, and the contents published in the press, bearing the imprint of
William Applegate Gullick, Government Printer, Sydney. What can our people think when this pamphlet comes into their hands—Notes on the Federal Aspect of Australian Federation by the Government Statistician of New South Wales, printed by the Government Printer? Ninety-nine persons out of every 100 will say—"This is an official document circulated with the cognisance of the Government of New South Wales."

Mr. Reid. -

Was not Mr. Johnston's paper published by the Government Printing-office?

Sir Philip Fysh. -

No.

Mr. Reid. -

I put no embargo on the Statist.

Sir George Turner. -

In the document we received to-day we read—

If, therefore, there was a return of surplus revenue, according to contributions, the Victorian Treasury would be £458,000 worse off than she is at present, supposing her Tariff were continued;--

That is what we have to go to our people with.

and his difficulties would be made still greater if a lower Tariff were adopted.

How can we go to our people with this staring us in the face—that even on our own Tariff Victoria will incur a loss of £458,000, but that—

Under a £6,000,000 Tariff the £458,000 deficiency would be swollen to £676,000.

There is a statement circulated apparently by the authority of the Government of New South Wales amongst our people, and published in our newspapers. Our people will naturally say—"What does this mean? If Victoria, with its population of only a million, is going to lose £600,000 or £700,000 a year through joining the Federation, we will be bound to submit to a very heavy increase in our direct taxation." Then he ends up with this significant statement:—

If the distribution is not *per capita* it will not be possible for Victoria to join the Federation without ruining its financial position.

We have been told by the Premier of New South Wales that we must not dare to mention the word "insolvency." We only mentioned it, not in fear that them colonies would ever be going insolvent but because if this revenue is to be taken from us, and we have not any guarantee that we shall get back a portion of it, then, unless we impose heavy and direct taxation, we shall be in an insolvent position,
Mr. REID. -
Then Coghlan is the basis of your move to-day?

Sir GEORGE TURNER. -
Coghlan is not the basis of my move to-day. My right honorable friend knows very well that, from the very first, I have advocated that the debts should be transferred to the Commonwealth.

Mr. REID. -
You assented at Adelaide that the word should be left at "may" and so the records show. In deference to the objection of myself you assented to the word. "may" being put in.

Sir GEORGE TURNER. -
But I think I am a little wiser now than I was at Adelaide.

Mr. HIGGINS. -
I think that you thought then that Mr. Coghlan was right.

Sir GEORGE TURNER. -
I never believed that he was right because the absurdity of his statements was palpable on the face of them.

Mr. REID. -
The facts upon which they are based are right, but the application is wrong.

Sir GEORGE TURNER. -
I am afraid the bombshell that was exploded in Adelaide, and which put two of my colleagues in fear of their existence, did more harm than it could possibly have done good. The only object that I had in this amendment was to throw the onus on the Federal Treasurer of making provision for this payment in order to prevent him from being extravagant, and giving way too easily, as Treasurer, to every demand for expenditure which will undoubtedly be made upon him. As the Bill stands, he will have ample power to spend money in the erection of arsenals and military colleges, and matters of that kind, which would eat up a large portion of the revenue. There can be no doubt that he would be extremely liable to have pressure brought to bear upon him to spend money in military and other directions, especially in times when there is anything like a war scare, and the result might be to leave him in a difficult position.

Mr. REID. -
War expenditure could not be met out of revenue, surely?

Sir GEORGE TURNER. -
In Victoria we have erected forts out of revenue, and have paid for them almost entirely.
Mr. REID. -
Well, if you get the money from the Commonwealth-and you will be entitled to get it back-it will be a nice nest-egg for you.

Sir GEORGE TURNER. -
We paid for these military works out of revenue, and do I understand that we are to get it back from the Commonwealth?

Mr. REID. -
Yes, if you paid for it out of revenue.

Sir GEORGE TURNER. -
Where are we to get it back from? And how? Are we to get it back from New South Wales?

Mr. REID. -
You will get Commonwealth bonds.

Sir GEORGE TURNER. -
Then the Commonwealth will have to borrow for that purpose?

Mr. REID. -
Surely; do you think the Federal Government can take up £8,000,000 or £10,000,000 worth of public works without borrowing?

Sir GEORGE TURNER. -
I know very well that they cannot. The clause, as I want it, would stand very much as it does in the Bill now. The clause says-
The Parliament may take over the whole or a rateable proportion of the public debts of the states as existing at the establishment of the Commonwealth, and may from time to time convert, renew, or consolidate such debts or any part thereof.

And so on. But there is no obligation on the Federal Parliament to convert or consolidate.

Mr. REID. -
Are you going to allow all the colonies, after all their debts are taken over, to enter into new borrowings?

Sir GEORGE TURNER. -
We discussed that matter this morning, and I gave my own view of it. That view is that all borrowings should be through the Commonwealth, and then that the states are to indemnify the Commonwealth for the interest payable in respect of the debts. If there is any surplus revenue after paying the interest, the Commonwealth will return it to the states; if there is anything short, the states will have to return it to the Commonwealth. That would not interfere with the bookkeeping system we have adopted, and it is some sort of guarantee-not the guarantee I desire or wish to take to our people; but it would be something with which we could go to the people and by means of it could say to them-"There is an obligation thrown upon
the Federal Parliament to provide as far as it can the interest on the loans before it expends money for ordinary purposes." This is to some extent a guarantee that the people of the colonies will not be left in the position that the Parliament will have to impose direct taxation. I should like to go a little way further.

Mr. BARTON. -

If it extended to all interest payable by the states it would amount to a huge expenditure by the Commonwealth.

Sir GEORGE TURNER. -

I am not proposing that the Commonwealth should meet these debts, but simply take over the payment of the interest on them.

Mr. SYMON. -

Do you intend that the states shall continue liable for any deficiency?

Sir GEORGE TURNER. -

Undoubtedly.

Mr. BARTON. -

I suppose the debts of the colonies amount to £170,000,000, and the average interest would be about 4 per cent.

Sir GEORGE TURNER. -

Yes. The interest is over £6,000,000 a year.

Mr. BARTON. -

Then there would be the ordinary Commonwealth expenditure in addition. What sort of a Tariff would have to be put on to meet that huge expenditure?

Sir GEORGE TURNER. -

I have not said that the Commonwealth Parliament is to be bound to raise a revenue sufficient to pay the whole of the interest. I thought, at first, that we might have adopted that very simple means; but it would work adversely to the states, because, in the first instance, the Commonwealth would be receiving less than they would have to pay in interest, but in ten or fifteen years' time the Commonwealth would be receiving in customs duties far more than it would be paying. I am not asking for any colony to have any advantage over another, but simply that we may have this check on extravagant expenditure by the Treasurer of the Commonwealth. That is the only object I have in view. I do not want to take money from New South Wales for the benefit of the other colonies, but simply that, instead of leaving the matter absolutely optional to the Federal Parliament, we should say to the Federal Treasurer-"From the first you must pay this interest."
Mr. REID. -
What machinery do you suggest if a colony is in distress owing to some calamity, and is slow in sending in the amount?

Sir GEORGE TURNER. -
I can hardly anticipate a case in which a colony would be in that position. If there was any such danger, there would be no difficulty whatever in making our railway revenues a trust account, or in giving the Commonwealth a first charge on the railway receipts as a security.

Mr. KINGSTON. -
You might give them a special power of taxation.

Sir GEORGE TURNER. -
I should not like to see such a clause inserted in the Bill.

Mr. BARTON. -
It would be as bad as putting in a receiver or a bailiff.

Sir GEORGE TURNER. -
It would be easy to give the Commonwealth a security, but I would not consent to anything of the kind being put in the Bill. I do not think the Federal Parliament would ever be likely to ask for such a security. There is no doubt that New South Wales is in a different position to the other colonies, by virtue of the large land revenue it now receives.

Mr. REID. -
Will you give us the option of standing out of that arrangement?

Sir GEORGE TURNER. -
No, I would rather see it struck out of the Bill altogether. I would not put a placard of disgrace on the mother colony.

Mr. REID. -
Our debt is £60,000,000. It is a heavy burden to carry.

Sir GEORGE TURNER. -
You will not carry it yourselves.

Mr. REID. -
Yes, and a little more.

Sir GEORGE TURNER. -
The honorable member is suspicious.

Mr. REID. -
Your nervousness is making me suspicious.

Sir GEORGE TURNER. -
I am quite prepared to show my trust in the Federal Parliament by handing over all our debts to the Commonwealth, if you like. I never met an individual who objected to handing over his debts to any other person. The right honorable gentleman seems to be afraid that he is going to be ruined by handing over to another body the payment of the interest on the
debt of his colony. New South Wales is in a different position from the other colonies, because it has a large land revenue. We in the other colonies have not that standby, and nine out of ten of our people will ask "How much is federation going to cost us?" That is our difficulty, and, with the various statements that have been published by the press with regard to the allegations made by Mr. Coghlan, we shall have a very hard task in inducing our people to vote for federation unless we have some standby. The standby we have asked for is a very little one, but it is something, and I hope the Convention will not, reverse the vote it gave this morning.

Sir JOHN FORREST (Western Australia). -

I do not think the Right Hon. the Premier of New South Wales should have been so much surprised at the action that was taken this morning having regard to the position of the other colonies and of New South Wales. In the other colonies the greatest revenue producer is the Customs, and the Customs are to be handed over absolutely to the Federal Parliament. It is natural that colonies so situated should be somewhat anxious about the future. Probably, however, we are over-anxious. We have often said that we should trust the Federal Parliament, and in connexion with this matter I think that we should trust the Federal Parliament. There is no reason to suppose that the Federal Executive will squander money that is handed over to them in trust, so to speak, in building arsenals and forts, and by those means place these colonies in a position in which it would be difficult for them to pay their way. That is an unreasonable hypothesis to set up. I think that, after discussing this matter the whole day, we shall probably have to come back to the clause in the Bill. That clause is, after all, as fair and reasonable as any that has been suggested. I myself should prefer that no limitation should be placed on the power of the Parliament to take over the debts of the states. It should be enabled not only to take over the debts existing at the time of the union, but the whole or any portion of any subsequent debts. We need not insist on the consent of the states being obtained. There might be difficulty in getting the consent of all the states, and we might fairly leave the matter in the hands of the Federal Parliament. It might be said that one state would be unwilling to give up its debts to the Federal Parliament, because it might be incurring an extra liability in regard the debts of the Commonwealth. But that would not be the case. The whole of the people of the Commonwealth will be responsible for the debts handed over. We might, therefore, dispense with the consent of the states. I quite agree with what the Hon. Mr. Holder and the Premier of New South Wales have said about
the inadvisability of allowing the holders of our bonds to obtain a profit that we should receive ourselves. I foresee that there would be a profit on the conversion or consolidation of our debts, and it should all go into the Commonwealth Treasury. It has been said that the bonds of all the colonies are of the same value. That statement is not accurate, and I am sorry to have to say it. There is a considerable difference in the value of the bonds of one colony and those of another even at the present time. I know that from my own experience. A Western Australian loan was placed on the market the other day, and although our position was far better than it had ever been before, so far as we were able to judge, we did not get as good a price as on other occasions. During the same week New South Wales placed a loan on the market, and she obtained about £4 per cent. more than we did. In the face of that fact, and seeing that Western Australia is supposed to be one of the most progressive colonies of the group, and that it is certainly as well able to bear its burdens as any of its neighbours, how can it be said that the bonds of all the colonies are of the same value? With regard to the insertion of the word "shall" I must say that if I have an opportunity I shall reverse the vote I gave this morning. I gave it hurriedly and without due consideration. I think it would be unwise to make it compulsory on the Federal Parliament to take over the whole of the state debts. I think, if we give them full power to take it over in their own discretion and at their own time, we shall be doing wisely. If there is a plan adopted by which benefit will come to the various states, and the Commonwealth likes to take advantage of it, the Commonwealth ought to have power to do so; but to put in this Bill that it shall be absolutely obligatory on the Commonwealth to do so would, I think, be a great mistake, and would defeat the object we have in view. I do not know how loans are raised by most of these colonies, but the plan adopted by Western Australia, and, I think, by Tasmania, lends itself most favorably to the consolidation and conversion of the loans after a certain term. For instance, after twenty years, our loans can be paid off at any time during the following twenty years, on giving twelve months' notice to the bondholders. When the first twenty years expire, therefore, in our case, will be the time for the Commonwealth to step in, when a favorable opportunity occurs, and give the twelve months' notice, and the Commonwealth will get all the advantage of the conversion scheme.

Mr. FRASER. -
There is very little money borrowed by the colonies on those conditions.

Sir JOHN FORREST. -
During the last seven years we have borrowed on those conditions, so that our earliest loans within that period have thirteen more years to run.

Mr. REID. -
Was the condition in your last loan, Sir John?

Sir JOHN FORREST. -
Yes, and it was in all our loans.

Mr. REID. -
You would have got a bigger price if you had not had that condition in.

Sir JOHN FORREST. -
Well, perhaps so. We have also a sinking fund of 11/2 per cent., which very few colonies have, and, at any rate, if we have suffered a little through putting in the condition in question, probably we will reap the advantage hereafter through having established a sinking fund, and also particularly through having the power to consolidate and convert our loans. Now, equally with every honorable member here, and especially with those who are Treasurers of the various colonies, I am most anxious to be able to see that we obtain, in this scheme of federation, all the advantages of federation, and also all the advantages of being secured in what we have at present. I would very much like a plan of that sort, but I do not think it is practicable. I believe that the Federal Parliament will be careful of the trust reposed in it, and that, after paying all necessary expenses, the federal authorities will return the balance to the states. Therefore, in this case, as in all others, I think we may fairly trust the Federal Parliament. Of course, as far as the present condition of the various colonies is concerned, I am quite content with the position we occupy in Western Australia. I have shown that, with fair economy and good management, we can pay our way and be independent of New South Wales and the whole world, and, therefore, it was not any idea that anybody else should pay anything for us that induced me to say, this morning, that the word "shall" should be inserted. My only idea was that if we were going to get the debts of the states transferred to the Commonwealth, leaving the obligation on the Federal Parliament to pay back so much, that would be more convenient to them, as it would be to us, but I am quite willing to leave it optional with the Federal Parliament to deal with this matter in its discretion as it thinks best. I am sure that we, in Western Australia, do not want anything from any one. I hope, and I believe, that I speak for every other representative in making that statement. Our present debt is only three times the amount of our revenue, which no other colony represented here can say. I make this statement with only one object, namely, to show that in giving my vote this morning I was not actuated by a desire to get the better of any one. I shall not say anything more on the subject. I wish to expedite business. I am afraid I have already
spoken too long, but I really think that after we have discussed this matter we will find that the provisions in the Bill, with perhaps a little alteration, will meet all the circumstances, and be more acceptable generally than any other scheme.

Sir PHILIP FYSH (Tasmania). -

We have been arguing to-day as though the federal debt of Australia was the great wheel upon which the finances of the world turned, whereas my experience, during a great number of years, has shown me that, after all, the colonies are but a fly upon that wheel. And we appear to forget that we do not control the value of money in the great monetary circles of the world, but that they control us. I observe that Mr. Reid leaves the chamber just as I am about to address to him some figures which, I think, might be worthy of his attention. It would be well if the right honorable gentleman would read himself up on questions of finance, and not maunder and meander about the subject as he very frequently does. I am going to bring to his mind the important fact that during the last five years the rate of interest in the monetary circles has governed the value of our securities, and that the value of our securities has not governed the rate of interest. Whether it was South Australia, or the great and important colony of New South Wales, or even impecunious Tasmania -

Mr. SYMON. -

Thrifty Tasmania.

Sir PHILIP FYSH. -

Yes, thrifty Tasmania; we found ourselves somewhere about 1892 or 1893 with our bonds all quoted at from less than £80 per £100. New South Wales, with her £2,000,000 of territorial revenue to back her up, Victoria with her protective Tariff, South Australia, and Tasmania, all stood in very much the same position, from £78 to £84 per £100. Now, what controlled this? Not that these colonies, some more or less wealthy, were separately indebted, but other circumstances in the monetary world, such as the failure of the Barings, and of the Argentine Republic, and so on, added their weight to our own difficulties of 1892-3. But since then our Australian securities have risen from less than £80 up to £110 for 3½ per cents. per £100, a difference of £30, or more than 30 per cent. upon the transaction. Now, why did not the Governments of these colonies, as Governments, go into the monetary market in 1892 or 1893 and purchase our bonds? Because they would have had to go to the same market and raise the money. Consequently, we are not controlling the money market, but the money market is controlling us; and if, therefore, we now get away from that position to the position of consolidating our debts, and we raise
the rate or capital value of the investment in those securities, who gets the advantage? Is it proposed that we should go into the market and buy up those securities? No. Therefore, the bond-holder will realize the advantage of a face value on his security higher than the value of the security he bought. But, of what value is that to him? The face value of his interest remains at 3½ per cent., but he can sell his stock for so many more pounds per £100, but if he sells he must immediately invest in something else, the market price of which will only realize him £2 12s. per cent. Therefore, it is not a question of how much we will lose by the conversion, but a question of how much advantage the holders of our securities will gain in the increased market value of those securities. The bond-holders will get no advantage in the way of increased interest by reason of the rise of the apparent capital value of their securities in the market. Now, take the other point.

Mr. WALKER. -

If there is a rise in value there is a fall in interest, and why should we not take advantage of that?

Sir PHILIP FYSH. -

Because the Commonwealth is not going to pay off its debts. We owe £160,000,000, and we are not likely to pay it off. We are likely during the next twenty years to add 50 per cent to it. If by endorsing the bonds with the signature of six or seven colonies, by means of a reasonable consolidation, you raise the value of those bonds, so much the cheaper will you borrow for the next twenty or thirty years. Who will get the advantage then? If we were never going to borrow again you could say that the holder would get the whole advantage, but if the colonies are going to borrow, the fact of our bonds having risen to £110 or £114 means that the Australian colonies or the Federation will be able to get money at 3 per cent. on £114.

Mr. HOLDER. -

And you will be paying the higher rate of interest in the mean-time.

Sir PHILIP FYSH. -

We will do so because we made a contract; but the colonies have been wise enough to make contracts for twenty years, and the loans are redeemable after that.

Mr. FRASER. -

Very few.

Sir PHILIP FYSH. -

£130,000,000 are owing, exclusive of £40,000,000 borrowed by Queensland, and of the former amount £50,000,000 are redeemable in
1910, and £20,000,000 in 1920. Any Treasurer will wait for such an opportunity. When he comes to convert what will be the quid pro quo? No man is so foolish as to suppose that the holder of stock is going to give away anything when he converts, and the Treasurer must give him a quid pro quo. If his stock has five years to run at 3½ per cent., and some of it has to run ten years or twenty years, you will give to him in proportion. If you are going to offer him a 50 years' tenure, then the holder with twenty years' tenure will take less than the holder of a five years' tenure. That will be the whole position. It has been pointed out by the exchanges and financiers of the world that so far as holdings are concerned we ought to do all we possibly can to secure our quotation in trustees' stocks. Trustees do not buy except upon a tenure of twenty years. If you have five years, ten years, and fifteen years to run, and then we were disposed to give 30 years' tenure to the whole of those stocks, it would not be the capital amount which would be increased; it would only be the number of years during which the security would be held which would be increased. So that, after all, we are dealing with a bogey when we presume that we are going to increase the value of these stocks so enormously against ourselves. There is no good to be gained by conversion, except by delaying the payment of your interest, and except upon a quid pro quo basis. I made a statement, three years ago, that Australia might save over £1,000,000 by conversion. Will any honorable member tell me that any financier having taken up those figures has proved them to be incorrect or unlikely of accomplishment? I can assure honorable members that the Government of Tasmania holds letters from very high authorities in the financial world in England, some of which have been already quoted, urging us to take the course indicated, and not only £1,000,000, but £2,000,000, might be saved by the arrangement. £1,000,000 will be saved actually in pounds, shillings, and pence, and the other £1,000,000 might be postponed in payment. I do not call such a postponement a saving; but if it were convenient, if the Treasurer had a great difficulty to meet, and was not able to raise a revenue except such as a Tariff of 40s. per head represents, and with the difficulty of a state standing between him, he could convert and save £1,000,000 simply by postponing the payment of a certain portion of the interest for 30 years, and he could save another £1,000,000 by giving trustees and others an opportunity of coming in upon a longer currency than they have at present. These are the only two points I wish to add to the discussion. There has been so much said that is utterly irrelevant that I do not wish to refer to it; but I consider that these two points are relevant to the issue, and I desire to place them before the committee.
Mr. SYMON (South Australia). -

I wish to say a few words before the debate concludes, in order to make clear my own attitude in this matter. When I heard the speech of Sir George Turner, it certainly had a very reassuring effect upon me, but until I heard that speech, having listened to other speeches previously delivered, I confess I had very serious misgivings with respect to the vote I gave for the insertion of the word "shall" in place of the word "may." However, I think Sir George Turner's explanation of what he hopes to gain has to some extent removed my misgivings, and it has taken away a great deal of the fear which I entertained as to the possible effect of substituting "shall" for "may." Both before and since I had the honour of entering this Convention, I have always been in favour of federalizing the debts and the railways. In Adelaide, when the subject was first discussed, I was amongst those who took the position that some scheme might be devised under which the railways and the debts might be brought under the federal power. I voted for the insertion of the word "shall" in order to give effect to the opinion which I have always entertained, that, to be consistent, some scheme should, if possible, be devised to carry out the federalization of the railways and the debts. I have not lately felt that there is very much possibility of that being accomplished now. If we had resolutely set our minds to the subject at the Adelaide sittings, and if we had determined in principle upon the federalization of the railways and the debts, I think we should have been able now to deal with some scheme which might have been formulated and worked out to the fair satisfaction of everybody. I think that that is now too late. Although I still adhere to the opinion I have always entertained, I believe it is now too late for us to take up this vast question of the federalization of the debts and the railways.

Sir PHILIP FYSH. -

That is not now proposed.

Mr. SYMON. -

If the honorable member listens to me he will understand that I do not believe in the federalization of the debts without federalizing the railways. It may be right or wrong financially if you please, but I do not believe that any fair scheme is possible under which you can federalize the debts without introducing into it as an element the federalization of the railways. Now that we are in the fifth or sixth week of our Melbourne session, it is hopeless to debate any such question as the federalization of the debts or of the railways, and therefore I am content to leave things as they are. It was from that point of view that I gave my vote for the substitution of the word "shall" for the word "may," in the hope that possibly some scheme or other might be submitted which might bring about some fair basis for the
consideration of this subject. But when I found that the discussion practically amounted to the re-opening of the financial adjustment to which we had devoted days, my mind was filled with the gravest apprehension as to whether I had not assisted in doing something I should regret, by-voting for the insertion of the word "shall." I am not prepared to re-open this question. I think that, so far as we can, we have dealt finally with the financial clauses. We decided that exceptional treatment should be meted out to the colony of Western Australia. We fought that question out upon the lines of the proposal submitted by the Finance Committee, and upon the lines of the proposal submitted by the honorable and learned member (Mr. Deakin).

Mr. HENRY. -

But how does the present proposal disturb the financial arrangements of the Bill?

Mr. SYMON. -

The view I take is that it was intended to disturb them. I heard speaker after speaker declare that this was, to be in effect a guarantee from the Commonwealth that the interest upon the state debts would be paid by it, and that it was to be another way of accomplishing what was sought to be accomplished quite fairly and properly by my honorable friends from Victoria—the giving of a substantial assurance to the states that they should receive, without further taxation or difficulty, any deficiency which might occur in connexion with the distribution of the surplus.

Mr. ISAACS. -

That is absolutely essential.

Mr. SYMON. -

My honorable and learned friend has put it exactly as I intended it, and as the Hon. Mr. Henry understood it and put it to the Convention. It was to re-adjust the financial balance, which was supposed to be disturbed by the arrangements which we have made. I felt that, at any rate, I could not be a party to this being done by this method. If, later on, some honorable member can submit something tangible and direct, I am perfectly willing to have the matter reconsidered, but I am not willing to have it reconsidered in connexion with the introduction of provisions which have nothing upon earth to do with this particular question. That is the view I took, and, therefore, like the right honorable member (Sir John Forrest) I felt that I had made a mistake. But when the right honorable member (Sir George Turner) said yes, in answer to the question I ventured to put to him as to whether he intended that the states should continue liable for any
deficiency of interest upon their debts which their contribution to the
Customs revenue was unable to make up, I felt that that took all the vice
out of his amendment.

Mr. HENRY. -
All the virtue.

Mr. SYMON. -
From my honorable friend's point of view, all the virtue. From one point
of view that answer emasculates the amendment, but from the other point
of view it commends it to those who do not want to disturb the financial
arrangements which have been brought about. Therefore, I do not feel as
many qualms of conscience as I did a little while ago in regard to the vote I
have given. At the same time, I do not see how the right honorable member
(Sir George Turner) is going to carry this out. I shall wait to see what
further proposal he has to make.

Sir GEORGE TURNER. -
I have already said that I propose to go back upon the clause in the Bill,
and to alter the word "may" to the word "shall."

Mr. SYMON. -
Yes, but the difficulties which oppress me do not end there. They are in
relation to the relative position of the Commonwealth and the states. If
these deficiencies occur, will you not create possibilities of irritation and
conflict between the Commonwealth and the states which might better be
avoided?

Sir PHILIP FYSH. -
They would occur in any case.

Mr. SYMON. -
There will be difficulties, but let us minimize them as much as possible.
My honorable friend said that this might have some effect in keeping down
the cost of the Commonwealth, but I confess that I am unable to see how
that can be. The Commonwealth Treasurer will have as much inducement
to spend money, and there will be no more control over his expenditure,
than if you had left the Bill as it formerly stood. If you wish to limit the
expenditure of the Commonwealth you should introduce some direct
provision such as that which we have already struck out. I thought that that
provision should be struck out because it was derogatory to the federal
authority to put such a limitation in the Constitution. If we are going to
trust to the integrity, the honesty, and the good sense of the Federal
Parliament which we are about to create, and which will be as good a body
as this Convention, we may fairly leave to it the duty of dealing
economically with the Commonwealth revenue, and maintaining the
solvency-I have no, objection to the use of that word-of every state. I see
nothing to be gained

by the honorable member (Mr. Henry) from the amendment, after the explanation which has been given by the Premier of Victoria; and although we might have avoided the debate which has taken place if we had not inserted the word "shall" for the word "may," the amendment has been robbed of its possible evil effect by that sagacious political medical practitioner. I think, however, that it would be better to get back to the word "may," so as to leave it open to the Federal Parliament to exercise its discretion in regard to these matters, in order that it may arrange such terms and conditions as will insure both to the Commonwealth and to ever state the full advantages to be derived by any consolidation of the debts.

Mr. BARTON (New South Wales). -

I am one of those who think that the proposal to compulsorily take over the debts of the states is one which has a good deal of danger in it. I do not propose to add much to the exhaustive speeches which have been made upon this subject, but I should like to meet one argument that has been often advanced, and that is, that if you take over the debts you should take over the railways, because the railways are the assets for the debts. But the assets for the debts are the consolidated funds of the different colonies. I pointed out in Sydney that the public debts of the colonies are secured upon their, Consolidated Revenue Funds. There may be some argument for taking over the debts, though not taking them over absolutely, when we consider that the most elastic source of revenue in the colonies is transferred to the Commonwealth. But I do not see how that affords an argument for taking over the railways also, as I think more than one speaker has suggested, for the plain reason that, although the railways have been constructed out of borrowed money, the railways are not the security for the debts, but the consolidated revenue is. I believe it would be a very unpopular thing in the colony from which I come if Sir George Turner's proposal were carried.

Mr. ISAACS. -

It would be a popular thing here.

Mr. BARTON. -

It might be popular here; but, of course, we are bound to tell each other our difficulties, and I think it would be an extremely unpopular proposal in New South Wales.

Mr. WALKER. -

It would make it very difficult to get 80,000 votes.

Mr. ISAACS. -

I cannot see why it should be unpopular.
Mr. BARTON. -

I do not know why it should. But all along there has been a rooted objection—I cannot explain everything I hear—to any proposal which might involve a compulsory taking over of the debts. I must say that, not being an expert in subjects of this kind, I look most particularly to the question which is before us of making a Bill which our respective constituents will take. I am bound, therefore, to give expression by my vote to the feeling I have as to the opinion held in the colony from which I come, always, of course, bearing in mind that there may be a different opinion in other colonies, but knowing that all of up, are bound to avoid, as far as we can, those matters which are so entirely unpopular in the colonies from which others come as to imperil the safety of the Bill. That is really the position, I think, in New South Wales on this subject. I am of the opinion that the sooner the Commonwealth takes over a very large proportion of the debts the better it will be, but I think that is a question really for the Commonwealth to decide. We are here in a position in which we cannot predict what will be the right degree to which the debts should be taken over by the Commonwealth, standing as we are, possibly, on the threshold of a Federation, but certainly not being able to predict the varying conditions which will arise when it is accomplished. We have recognised that consideration in providing for the bookkeeping system. By that we have admitted that we are standing outside of all the conditions under which the federated country will be living, and not able to predict in what way the financial question will work itself out. No doubt, intimately connected with this question is the question of the debts. I think the objection to our taking upon ourselves the risk of the proviso—the large objection which we avoid when we agreed to the bookkeeping system as providing a basis of experience—equally applies to the case of the debts. If it becomes at any time a desirable thing to take up the debts, at any rate, as they fall due, that will be a matter which will appeal equally to the Commonwealth and to the states as we proceed in the life of the Commonwealth. That will be a matter which we may certainly trust our own people to decide for themselves when the time comes, and I will be perfectly content with whichever way they may decide, because I believe they will be actuated by quite as much common sense as we are, and they will have the advantage of a vast deal more experience than we have. Under these circumstances, I think it will be wiser to leave this matter to be moulded by events—to be decided by the result of federation as it comes. I agree with the objection which my right honorable friend (Mr. Reid) took to the position that would be created by
taking over these debts—a position involving the payment of such a very
great amount of interest, in addition to the ordinary expenses of the
Commonwealth, as would necessitate, unless Sir George Turner's
expedient is carried out, the adoption of a Tariff that would force a
particular policy on the Federation. Although I shall be found, if I take any
part in public life after federation is established, supporting a fiscal policy
which I believe to be the best for a country in this stage of development, I,
for one, will never consent to anything being implanted in the Constitution
which would enforce a particular line of policy on the Federation. It is our
duty to leave their hands wholly unfettered in all their methods of self-
government. We are here to frame a constitutional machine, and to make
those necessary conditions with respect to certain material interests which
will give us safety in entering into a Federation. When we have done that-
and I do not think this is necessarily one of them—I think that there we
should stop, that we should certainly not do anything which forces a
particular line of policy on the people who are going to be called, not into
existence, but into another form of constitutional capacity. We should
leave such matters as these to be decided by them, knowing very well that
they are our own people, and that they will decide better by the light of
experience than we can do without it. That is the feeling I have on the
subject. Much as I should like to see the Commonwealth take over a large
portion of the debts within a reasonable period after its establishment, I do
not think we are here to force it to do so by means of any particular line of
fiscal policy, which I think free-trader and protectionist alike should refrain
from endeavouring to enforce beyond what we would not be able to call
free-trade if you put them in that kind of bondage. Well, then, there comes
Sir George Turner's expedient, by which he hopes to minimize this
difficulty—the expedient of returning or refunding to the states according
to the proportion of the debt taken over to the revenue of the
Commonwealth. I am rather inclined to distrust that portion of the existing
clause. I think if the Commonwealth either takes over these debts, or a
large proportion of them, it should pause well within the limits of the
revenue of the Commonwealth, and not hand itself over to a bargain
between the Commonwealth and the states, on lines of payment and refund
between the Commonwealth and the states, which will create an
objectionable state of things, which will be a standing subject, not only

Mr. KINGSTON.

[P.1630] starts here

of friction, but of endeavours to obtain better treatment. That would form a
difficulty which, I think, would tend to worry the revenue out of the
Commonwealth.

Mr. KINGSTON. -
Won't you have it under the existing state of things?

Mr. BARTON. -

You have too much of it in the Bill as it stands. The difficulty which will arise, it seems to me, will be this. Where a state is bound to make a refund to the Commonwealth, if this is intended to be a guarantee of its solvency, it is that particular state which may have to make a refund. We do not know what the possibilities are, and in that event, if the state is in that financial condition which makes it unable to pay that refund, what is the good of the provision there? Because it is very well to say you can hypothecate a portion of the revenue, but you will do that with results which will injure the credit of the state, and, in injuring the credit of any one state, you will be injuring the credit of the Commonwealth. It seems to me to present a difficulty which we would do better to avoid.

Sir GEORGE TURNER. -

If the state was in such a position that it could not repay the Federal Parliament, would it be in such a position that it could not pay its English creditors?

Mr. BARTON. -

That may be. I do not think it is a good position to create. It is not a good position to raise as a possibility on the face of your Constitution things of that kind which are intimations of a condition which we do not expect to have, and which we think the prosperity that federation will bring is considerably likely to prevent. I do not think that conditions and possibilities of that kind ought to be raised by anything we do in the Bill. I think we would arouse suspicion very largely which we ourselves do not entertain.

Mr. SYMON. -

The Convention has already negatived Mr. Henry's amendment contemplating that very condition.

Mr. BARTON. -

That may be, but the difficulty I see looming in Sir George Turner's proposal is this one which he has explained, and which he says he will get rid of in this way, but which I am afraid will not be got rid of, because if the condition arose there would be a state of uncertainty established in regard to state revenue as well as federal revenue, which would not place the Federation or the colonies, in a good position, but which, on the contrary, would damage the credit of both.

Mr. ISAACS. -

They have got that practically in Canada.

Mr. BARTON. -

That may be, but because Canada has managed to avoid the danger there
is no reason why we should open a door to that danger for ourselves. I do not think it is a good thing to do. We are not bound by the precedent of Canada. Where we see the matter has been tested in another country by a provision of its Constitution, where we find being so tested it has proved a success, and where there is nothing in the difference of condition or temperament between the peoples to prevent the success in the one from being a precedent for success in the other, we may rely on a precedent of that kind. But I think we have to satisfy all those conditions first. The Canadian debts, compared with ours, are not a very serious matter. The position in which the provinces have been put by the Canadian Constitution has rendered it very unlikely that provincial debts will ever occupy a serious place. And that is exactly the condition we do not create by this Constitution, nor does any one pretend that he wants to create that condition. It is a condition that will arise under something nearer to unification than anything which we intend to propose. The difficulty being avoided in that way in Canada, we need not trouble ourselves with that precedent. On the whole, as it would be more injurious to the prospects of the Bill if Sir George Turner's proposal were carried, I think it would be wiser not to insist upon it. Any one who believes that this question is solvable, and reasonably solvable, by the Commonwealth and the states as a matter of arrangement, may trust to their having the same common sense which Sir George Turner imputes to all his fellow members in the Convention. Having that belief, I do not know any reason why we should take what is practically a leap in the dark. We do not know how the proposal would work, and not knowing that, we are doing far better by placing ourselves in the position of enabling the Commonwealth to decide, as circumstances arise, what will be the best policy for them at a particular time.

Mr. HIGGINS. -

In taking away from the states their principal and most flexible means of revenue, do not you think it would be expedient to have some guarantee for the state creditors?

Mr. BARTON. -

I quite agree that there is a difficulty, raised there. You transfer the larger source of the consolidated revenue, which is the security, and it may be that the Commonwealth will take that into very serious consideration. You may be quite sure that, as the Commonwealth will be merely a representation of the various states, the interests of the various states in having their debts taken over, if it is at a particular time necessary or advisable to take them over, will be so well represented in the
Commonwealth that the question of policy will be solved in the direction of the desire of the representatives of the states. That being so, I think we need not fear to leave them to act for themselves.

Mr. FRASER (Victoria). -

Mr. Chairman, I desire to say-

Mr. BARTON. -

I was going to ask that progress be reported.

Sir GEORGE TURNER (Victoria). -

Before progress is reported, I desire to point out that, as I previously said, I worded my amendment in very wide terms in order to open up a discussion on the question. At the same time, I was not prepared to go the length of taking over the liability of the debts themselves. What I want really to get at would be this—that the clause in the Bill as it stands would simply read in this form:—

The Parliament shall take over the whole of the public debts of the states, &c.,

and then strike out a portion of the clause at the end. The only further alteration I would now desire to make is simply to leave out the reference to taking over the "rateable proportion," as it is inconsistent with taking over the whole of the debts. If I cannot get at that position by some means, I would simply propose to throw on the Commonwealth the liability to pay the interest on the public debts of the states.

The CHAIRMAN. -

We are now only considering an amendment on a proposed amendment. If we negative the amendment on the proposed amendment, and then negative the original amendment, we can go back to the consideration of the clause.

HONORABLE MEMBERS. -

Divide!

Mr. BARTON (New South Wales). -

I may state that there is a difficulty about taking a division to-night, because I know that there are several gentlemen absent who never expected a proposal of this kind to be made. It was not expected that any proposal for the compulsory taking over of the debts of the states would be brought forward, and consequently several honorable members are absent who will be here tomorrow. I do not know whether the committee will consider it to be fair to postpone the taking of a division on the question until tomorrow. I think myself it would be eminently fair. If a division were taken in the absence of several members who have a considerable interest in the question, it would only be treated as a snap division, and the whole matter
would be re-opened.

**Sir GEORGE TURNER. -**

Then the division must not be taken early tomorrow, because some members, I understand, will not be here until twelve or one o'clock.

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**Mr. BARTON. -**

I think there will be more said upon this question to-morrow morning if a division is not taken to-night. I believe there are two or three members who are likely to speak. Apart from that, I would suggest that it would be well to give an opportunity to the Right Hon. Sir George Turner to put his proposition into any shape be likes. In order to test the matter, I beg to move that progress be reported.

The motion was agreed to.

Progress was then reported.

The Convention adjourned at seven minutes past five o'clock p.m.
Tuesday, 1st March, 1898.

Commonwealth of Australia Bill.

The PRESIDENT took the chair at twenty-six minutes to eleven o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on clause 98 (see page 1540), and on Sir George Turner's amendment on the amendment proposed by Mr. Holder, for Mr. McMillan (see page 1577), as amended by the substitution of "shall" for "may," to insert after the word "shall" the words "be liable for the public debts of the states existing at the time of the Commonwealth."

Mr. BARTON (New South Wales). -
The difficulty in connexion with this amendment is that it does not appear clear in what way the matter is really to be adjusted. Is the Commonwealth to be liable to the states as a guarantor, or is it to become the transferee of the debts? Some words should be added to the amendment to make the intention clear.

Mr. ISAACS. -
It follows the Canadian Act.

Mr. BARTON. -
I am not quite sure how that Act has been read, but this seems to be a rather doubtful way in which to express the matter. There might be in case of any question coming before the courts a serious difficulty with regard to it.

Mr. SYMON (South Australia). -
I understood that Sir George Turner did not intend to press the amendment in this form, but that he would adopt clause 98 with a slight alteration.

Mr. DEAKIN (Victoria). -
In the absence of Sir George Turner, I may state that I have in my hand a copy of the Bill which he used yesterday when discussing this clause with me. The word "shall" is there substituted for "may" in the existing clause 98, and there are other notes which show that he did intend to adopt clause 98, with certain modifications.

Mr. BARTON. -
He wished to make his proposal like clause 98, excepting that it should
be compulsory, and that the words relating to rateable proportion should be omitted.

Sir JOHN DOWNER (South Australia). -

I understood that the amendment was moved by the Hon. Mr. Holder for the Hon. Mr. McMillan, and that Sir George Turner's proposal was an amendment upon it. I voted for that amendment, intending to vote against the proposal as amended. I desire to adhere to the clause in the Bill as it stands now.

The CHAIRMAN. -

If the committee desire it they can either negative or pass Sir George Turner's amendment, and then they can either negative or pass Mr. McMillan's amendment as amended.

Mr. REID (New South Wales). -

It will be understood that if the word "shall," or any words containing the word "shall," is struck out, that is not a mere formal striking out with a view to the same thing being proposed again. If we negative the amendment with the word "shall," it will not be competent for the Right Hon. Sir George Turner or any other honorable member to propose a similar amendment until the recommittal stage.

Nothing has been inserted in the clause yet, still less has the clause been inserted in the Bill. The committee have not, therefore, come to any final conclusion whatever. The Legislature of Western Australia has suggested that we should strike out the word "may," and that is the next amendment I shall put.

Sir GEORGE TURNER (Victoria). -

I mentioned yesterday that my desire really was to adopt clause 98 of the Bill with modifications. There is only one alteration that I wish to make in the clause. It would then read-

Parliament shall take over the whole-
I would leave out the words "or rateable proportion."
of the public debts of the states.

Then the clause would go on down to the last four lines, which have reference to the rateable proportion of the debts of the several states. Those words I would propose to omit as a consequential amendment. To simplify matters, I think it would be wise now to withdraw the amendment I moved yesterday. I only submitted it tentatively, in order that the subject might be discussed. With the permission of the committee, I will withdraw it, and I will move the omission of all the words in the Hon. Mr. McMillan's
amendment after the word "all," with a view to the insertion of other words.

The amendment of Sir George Turner was, by leave, withdrawn.

Sir GEORGE TURNER (Victoria). -

I beg to move-

That Mr. McMillan's proposed amendment be amended by the omission of all the words after the word "over."

Mr. HOLDER (South Australia). -

I would ask is this a convenient way of dealing with the question? In my opinion, the simplest plan would be to at once dispose of the amendment of the honorable member (Mr. McMillan). We may either carry it or reject it, or accept a part of it.

The CHAIRMAN. -

The amendment of the right honorable member (Sir George Turner) is perfectly in order, but it would perhaps be more convenient to withdraw the amendment upon and the amendment of the honorable member (Mr. McMillan) and go on with the clause.

Mr. HOLDER. -

I would ask if I can withdraw the amendment of the honorable member (Mr. McMillan)?

The CHAIRMAN. -

The amendment has not yet been inserted in the clause. It is no part of the clause, and therefore can be withdrawn.

Mr. HOLDER. -

Do I understand you to say that the amendment can be withdrawn?

The CHAIRMAN. -

Yes.

Mr. HOLDER. -

Then I would like to withdraw it.

Mr. GLYNN. -

Will that necessitate another division upon the substitution of the word "shall" for the word "may"? If so, certain honorable members will gain a point.

The CHAIRMAN. -

I think the simplest way would be to withdraw all these amendments and to go on with the clause as it stands, taking a division as to whether the word "shall" should be substituted for the word "may" in the clause.

Sir GEORGE TURNER (Victoria). -

I am not afraid to take any vote upon that question, and so that there may be no imputation of any false work being done, I am willing to withdraw my amendment.
Mr. VENN (Western Australia). -

The procedure seems to me most confusing. Are we being asked to swallow our previous votes? I have watched our proceedings most carefully, but I cannot understand our present position. Yesterday we divided upon the question of the substitution of the word "shall" for the word "may." Are we now to understand that that division is to go for nothing, and that we are to start from where we were yesterday morning?

Mr. GLYNN. -

It is very good tactics.

Mr. REID. -

Nonsense! A division would have to be taken in any case upon the amendment of the honorable member (Mr. McMillan).

Mr. VENN (Western Australia). -

It seems to me most extraordinary that we should be asked to go back to the position in which we were yesterday morning, and without rhyme or reason.

The CHAIRMAN. -

If the right honorable member (Sir George Turner) insists upon moving his amendment, I shall have to put it.

Mr. BRUNKER (New South Wales). -

I think it is necessary that the members of the Convention should really understand our true position, after the vote which was taken yesterday. Before giving any vote or expressing any opinion myself, I should like to know in what position we should stand, whatever the treatment of the amendment of the honorable member (Mr. McMillan) may be?

The CHAIRMAN. -

I may explain that the word "shall" has not been inserted in the clause. Nothing has been inserted in the clause. The honorable member (Mr. Holder) moved, for the honorable member (Mr. McMillan), that certain words be inserted in the clause. Then an amendment was moved upon that amendment, and the word "shall" was substituted for the word "may." Now the position is that the word "shall" stands in an amendment which may or may not be inserted in the clause. We have come to no conclusion whatever in regard to the clause itself. We cannot take the word "shall" out of the amendment of the honorable member (Mr. McMillan), but we need not put his amendment in the clause.

Mr. BARTON. -

The amendment of the honorable member (Mr. McMillan) can be negatived.
The CHAIRMAN. -

Yes.

Mr. HOLDER. -

I will ask the right honorable member (Sir George Turner) if he is prepared to withdraw his amendment?

Sir GEORGE TURNER (Victoria). -

My only object is to prevent confusion. I am willing to withdraw the amendment, but some honorable members seem to be opposed to that course. If I withdraw my amendment, and the amendment of the honorable member (Mr. McMillan) is withdrawn, I shall have to move the substitution of the word "shall" for the word "may" in the clause. The question as to which word should stand should be tested now or later on. However, as many honorable members who yesterday voted for the substitution of the word "shall" for the word "may" in the amendment of the honorable member (Mr. McMillan) appear to object to the withdrawal of my amendment, I do not care now to ask leave to withdraw it.

Mr. BARTON (New South Wales). -

I will explain that the amendment of the honorable member (Mr. McMillan) is a proposition which has not yet been inserted in the Bill. A word in it, the word "may," has been omitted, and another word, the word "shall," inserted. In no other way has the amendment been altered. If the amendment of the Right Hon. Sir George Turner, providing for the insertion after the word "shall" of the words "be liable for the public debts of the

Sir GEORGE TURNER. -

That amendment has been withdrawn.

Mr. BARTON. -

Then the substance of the amendment can be proposed as an amendment of the clause itself. As to the doubt of the honorable member (Mr. Venn) as to our position, I would point out that we have yet to vote upon the question whether the word "may" in the clause shall be substituted for the word "shall." The propriety of that alteration must be debated again in any case.

Dr. COCKBURN (South Australia). -

If we go on with the amendment of the honorable member (Mr. McMillan) the right honorable member (Sir George Turner) keeps the advantage which he gained yesterday, but if that amendment is withdrawn, and we go back to the clause, he loses his advantage. The rule of the Convention seems to be that when the right honorable member (Mr. Reid) finds himself in a minority, we must go back upon our decision.
Mr. REID. -
What is the good of saying that? Surely when I am present I have the right to discuss any proposal before the Convention.

Dr. COCKBURN. -
You have all the right, and a great deal of power.

Mr. REID. -
I have only the same right as any other man.

Dr. COCKBURN. -
As a matter of fact, when a division is taken in which the right honorable member is in a minority, it is afterwards found necessary to reconsider the matter. I generally protest against this procedure, but as yesterday I happened to be in a minority with him, I will not protest against it now, because it may allow yesterday's minority to be converted into a majority. Therefore, I think that we had better stand by the ordinary rule, and give the right honorable member credit for the excellency of this tactical proposal.

Sir JOHN FORREST. -
It will save time in the end.

Dr. COCKBURN. -
Perhaps so. At any rate, I am not averse to an arrangement which may turn a minority, of whom I am one, into a majority.

Sir JOHN DOWNER (South Australia). -
What it is proposed to do is, not to depart from the rule, but to strictly observe it. The proposed clause of the honorable member (Mr. McMillan) -

The CHAIRMAN. -
The honorable member (Mr. McMillan) did not move his proposal as a clause. He wished to insert certain words in a clause of the Bill.

Mr. OCONNOR. -
Mr. McMillan's amendment was given notice of as a clause, but it was moved as an amendment.

Sir JOHN DOWNER (South Australia). -
If the amendment and the amendments upon it are withdrawn, the clause will be open for discussion, and the right honorable member (Sir George Turner) will be at liberty to move that the word "shall" be substituted for the word "may."

Mr. REID (New South Wales). -
I think that the remarks of the honorable member (Dr. Cockburn) were quite uncalled for. I have made no proposition or suggestion. When I arrived here yesterday afternoon there was a certain proposition before the Convention to which I addressed myself, and I do not think I should be singled out as though I had taken a course which no other honorable
member takes. Every honorable member has a right to address himself to
every proposition before the Chair. I do not claim any rights other than
those possessed by every other honorable member, and I do not think that
remarks such as those of the honorable member (Dr. Cockburn) should be
made. The object of them is apparent.

The CHAIRMAN. -

I suggest that we now go on with the business. The question before the
Chair is-

That the amendment of the honorable member (Mr. McMillan) be
amended by the omission of all the words after the word "over."

Mr. HIGGINS (Victoria). -

I am glad that at last we understand the proposal of the right honorable
member (Sir George Turner). He practically desires to retain the provisions
of clause 98, except that he wishes it to be obligatory upon the
Commonwealth to take over all the debts of the states.

Sir GEORGE TURNER. -

Yes, upon the terms laid down in clause 98.

Mr. HIGGINS. -

Clause 98 provides for the taking over of the debts of the states, subject
to a right upon the part of the Commonwealth to be afterwards indemnified
by the states. Yesterday I voted against the amendment of Sir George
Turner with great misgiving, because I knew that his intention was right;
but the more I have thought over the matter, the more I am convinced that
the minority were right in opposing him. Still one important advance was
made by the large vote which was
taken yesterday. It made it apparent that the members of the Convention
are determined that some guarantee shall be given to the state Treasurers.
But what is equally apparent is that the proposal of the right honorable
member will not give such a guarantee. The desire is to give a guarantee,
and there must be some process evolved which will not leave the state
Treasurers absolutely helpless after the establishment of the Federation.
But, at the same time, this proposal will not do it. If the idea were that the
debts were to be taken over by the Commonwealth, and the
Commonwealth were to have no recourse against the states, it would be a
guarantee.

Sir GEORGE TURNER. -

But an unfair one.

Mr. HIGGINS. -

That might be, but it would be a guarantee.

Mr. ISAACS. -
Mr. HIGGINS. -

More than a guarantee.

If that were the idea—that the Commonwealth were to be responsible for these debts, and were to have no recourse as against the states—that would be something like a guarantee, and, perhaps, it might be a wrong thing; but what are we to say about a guarantee of this class when we find the Commonwealth can come back on the states for any difference? Where is the guarantee there? It is an instance of what I referred to the other day, as keeping the promise to the ear and breaking it to the hope in a remarkable degree. If the Commonwealth feels that it can come upon the states for any deficiency, where is the motive to the Commonwealth to impose the requisite taxation to obtain a sufficient amount to meet the necessities of the state Treasurer? Although I voted in the minority, I am very glad that the committee has so strong a sense of the importance of giving some guarantee to the states Treasurers, but this is not the way to do it. It has been said that we must trust the Federal Parliament, and the influences upon the Federal Parliament, to secure that there shall be a sufficient guarantee to the states—a sufficient surplus to the states. I would go as far as any one in trusting the Federal Parliament, but I want to see that there is a sufficient motive in the Federal Parliament to provide the necessary surplus to, the state Treasurers, and I cannot find it. The Federal Parliament may be trusted to do its best for its taxpayers—its constituents—but then the Federal Parliament has no sufficient motive to see that a state Treasurer is not embarrassed. The Federal Parliament will know that if it does not provide a sufficient surplus to the state Treasurers, the latter will have to tax the people but it is a very different thing for the Federal Treasurer to feel that he must tax the people, and to feel that he must leave the taxation to the state Treasurers. When you have to deal with a cantankerous dog, I would far rather not tread on his tail myself—I would let the next fellow do it; and it is the taxpayers' tail that has to be trodden upon. There are occasions which I can conceive when the Federal Treasurer might say: I should like to put state Treasurers, or some state Treasurer, under the obligation of treading upon the taxpayers' tail.

Mr. REID. -

Some taxpayers think that taxes are the readiest method of getting rich.

Mr. HIGGINS. -

The point I am addressing myself to is that this does not give security to the state Treasurers, and I think it is only justice that security should be given to the state Treasurers when we are taking away from them the chief means and the most flexible device for meeting the interest on the debts. If I have £10,000 worth of property, and I have £8,000 worth of debts, I
ought not to give away £5,000 worth of that property without making some provision to meet my debts. What I fear is this: That if there be no guarantee given, our state stocks will in a sensible degree be depreciated. If the outside creditor finds that the Customs and Excise are going over to the Federal Parliament,

and if there is no guarantee given of any amount coming back, it is only reasonable to suppose that there will be a great dislocation in the money market as regards the state bonds. It is only fair that when we have entered into obligations for the various states with the English creditor we should see that no reason is given for supposing that we may make any default or deficiency. There is another point I wish to refer to. To my mind, no one has yet answered Mr. Holder's argument in the slightest degree, and he urged a great objection to making this clause obligatory. No one has answered Mr. Holder's argument that you are giving a premium to the bond-holders by the system proposed of making this obligatory.

Sir JOHN DOWNER. -

Sir George Turner admits that by saying you could not convert until the expiration of the loan.

Mr. HIGGINS. -

Exactly; may I indicate the position in this way? It is quite true that under ordinary circumstances you cannot convert until the end of a loan, but let us consider this. Suppose you have got a state bond carrying 3 percent. at 96 in the market, and suppose the holder of the state bond finds the Federal Parliament has backed that bill, it is not unreasonable to suppose that he will regard it as more valuable than the state bond, and I think Mr. Holder's suggestion of a 96 bond going up to 104 is not unreasonable.

Mr. HENRY. -

But the holder of the bond would take a lower rate of interest.

Mr. HIGGINS. -

No; I am assuming that there is a 3 per cent. bond in existence which has only the backing of Tasmania, and the price of that bond is at 96; if, however, you get in addition the backing of the whole Federal Commonwealth, do you mean. to say that bond will not rise in value?

Mr. REID. -

Of course it will.

Mr. HIGGINS. -

That is so, and a present will be made to the bond-holder, but I admit that present will not be at the expense of the Federal Commonwealth or of the state.

Mr. HOLDER. -
But it will be the gift of a valuable security.

Mr. HIGGINS. -

Yes, that is the case.

Mr. SYMON. -

The same present will be made, but not to the same extent, by the mere fact of federation taking place.

Mr. HIGGINS. -

I must follow out my point. I quite agree that it is not a present made at the expense of the state or the Commonwealth, but it is a present if the bond should rise suddenly, by reason of the backing of the Federation, from 96 to 104. I am assuming that there is to be no conversion at all, but that the Federal Parliament has come under the obligation of paying the debt. If we can devise means by which the bond-holder is not to get that present without some equivalent being given for it, surely we ought to accept that expedient. It is quite possible that even those who hold long-dated bonds, say twenty or thirty years, from the states mi

Mr. HOLDER. -

Hear, hear; you give it away.

Mr. HIGGINS. -

At the same time, I quite well see that more can be made of this point than is needful. I have considered it very carefully, and I am quite assured of Mr. Holder's argument being unanswered. Therefore, we ought to try to keep the credit of the Federal Commonwealth, and not give it away without some equivalent.

Mr. GLYNN. -

Are you not assuming that by dividing your assets you are doubling your security?

Mr. HIGGINS. -

That is a conundrum which I will not attempt to answer. The position is that, strongly as I am in favour of giving some strong guarantee to the states Treasurers, I do not think we can do it by making it obligatory on the Federal Treasurer to take over the debts, but, above all, it will be no guarantee to the states if the obligation is coincident with a provision that the state Treasurer is to indemnify the Federal Treasurer against any deficiency. I am not at all impressed with the other argument used with such effect by the Premier of New South Wales, namely, that by that means you absolutely compel the Federal Parliament to impose high import duties. I think it is hardly worthy to press that argument in the way it has been. The Premier of New South Wales says to us practically-"You
know I believe that there must be high import duties, but I do not want my people in New South Wales to know that is the case." I do not think that is worthy of the people of New South Wales. The people of New South Wales will understand the thing as perfectly as we do, and they know thoroughly well that there must be high import duties in order that we may be able to prevent the insolvency of certain states. It may be all very well for New South Wales, where only a comparatively small proportion of the revenue is derived from Customs and Excise, and where they sell their capital assets and treat them as revenue.

Mr. REID. -

Will not those assets be come all the more valuable when enterprise and settlement are attached to them?

Mr. HIGGINS. -

I quite admit that, but I wish to go on with my argument. I would not even so far reflect upon the security of New South Wales by even saying that I believe it to be good. The evil which we have in this matter is that we have not imagination enough to look at the position from the other point of view. Because the Premier of New South Wales does not want to go to, the people of New South Wales and say frankly that after federation there must be considerable import duties, because there are considerable debts and large interest payments to be made—because he does not want to go to the people with that in his election speeches, we are to be put to all this terrible embarrassment. So far as we are concerned, that is not our business. The people of New South Wales know perfectly well that to meet the large interest on our debts there must be large customs and excise duties, and we may as well face the position frankly at once. I am sure the people of New South Wales will be willing to reciprocate any frankness which may be displayed.

Mr. WALKER. -

Would not the hypothecation of the railway income make up the deficiency?

Mr. HIGGINS. -

I think so, but that is not proposed yet. I must deal with the proposal as it stands. I do not think it is a question of protection and free-trade, because you can get far more money out of revenue duties than you can out of protective duties, but the point is undeniable that you must have a large income by way of Customs and Excise. Why cannot we admit that frankly in our Bill? There was a suggestion which was made yesterday by Sir George Turner, to which I find I made allusion in Adelaide, and I am surprised it has not been followed up this morning. I watched closely this morning to see if Sir George Turner would follow up that idea, which is
very fruitful. It is this: Why not amalgamate the Tasmanian amendment with the provision that the Federal Commonwealth is to, be the hand to pay the interest upon the, lowest scale of borrowing? There is a very suggestive and thoughtful amendment put by Tasmania, but which I think goes too far. It is in effect that each state is to have paid for it so much principal and interest as will correspond with the debt which is, having regard to the number of people in each state, the lowest debt of each of the colonies. I would suggest that all that should be done by the Federal Parliament is to leave the principal of the debt still an obligation on the state, but to insert a provision to the effect that the Federal Parliament shall pay the interest upon each state's debt up to a certain limit, and that that limit shall be the lowest scale of borrowing. For instance, if Western Australia has only borrowed £40 a head, there shall be interest on £40 a head paid by the Federal Parliament for each of the states.

Mr. HENRY. -
That is the Tasmanian proposal.

Mr. HIGGINS. -
Very much the same. I think the Tasmanian proposal has not had sufficient attention paid to it yet-I am very glad Mr. Henry referred to it-and I think the reason of that is because my honorable friend (Mr. Glynn) was the first to propose in this committee to take over the whole of the debts. That, I believe, is the reason why the Tasmanian amendment has not got due attention.

Mr. HENRY. -
It deserves more consideration.

Mr. HIGGINS. -
I was surprised that Sir George Turner allowed Mr. Glynn's amendment to go without any division or debate, and then proposed it himself. I did not understand it, because Mr. Glynn's amendment raised the very question at issue.

Mr. GLYNN. -
My amendment provided for some amalgamation, for some wiping out of debts, but Sir George Turner's does not.

Mr. HIGGINS. -
Quite so. I think that Mr. Glynn's amendment, if I may say so with all respect, was better considered than Sir George Turner's amendment, and, therefore, it ought not to have been negatived, and then the same proposal, but in a cruder form, put before the committee. I think it was rather hard on Mr. Glynn, who deserves every credit there is for having raised this point. In my opinion, we might achieve the two objects in view. We might avoid
the backing of the principal by the Federal Parliament, and, at the same
time, secure to the states Treasurers a certainty that, without recourse to
them for indemnity, there shall be a certain proportion of the interest paid. I
know that any suggestion made by a private member will not have, and
ought not to have, that attention which it would receive if it came from a
responsible Minister of the Crown.

Sir GEORGE TURNER. -

We are all equal here.

Mr. HIGGINS. -

We are all equal here; but I am speaking practically. I say it is quite right
that a proposal coming from my right honorable friend very justly gets
more attention than a proposal coming from a private member, and I do not
at all complain of it. But I throw out this suggestion that the guarantee shall
be limited to the interest-the interest on the lowest scale of borrowing-and
that there shall not be an obligation on the Federal Parliament to back the
bill for the principal. You may have in that direction a reasonable
compromise which will give the state Treasurers the certainty that at least
they will have so much of the interest paid, and enable them to tell their
people that there will not be any obligation on the Federal Parliament to
back the principal of the debt.

Sir GEORGE TURNER. -

How are they going to get that money? Must not they borrow it?

Mr. HIGGINS. -

I think we must admit and confess the fact that we must get, through the
Customs, a large amount, by means of taxation, to meet our interest. We at
present get through our Customs the means of paying our interest, and we
shall have to do it here-after. The only objection to this course is that taken
by the Premier of New South Wales, who practically says:"I
do not want to tell my people (what every person knows) that there must be
a large amount of revenue raised through the Customs." I say that this
Convention ought not to accept that position. We are going to be frank
with the people of Australia; we know that they are now paying large
amounts through the Customs to meet the interest on their debts, and we
know that they will have to do it for many years to come. In that spirit,
therefore, I would suggest that there should be another alteration of the
amendment. I think the Premier of Victoria has already altered his
amendment three times.

Sir GEORGE TURNER. -

And I will alter it three times more if that will facilitate the decision of
the question.
Mr. HIGGINS. -
I am quite sure that the Premier of Victoria will-

Sir WILLIAM ZEAL. -
You seem to have a great down on the Premier of Victoria.

Mr. HIGGINS. -
The honorable member, as usual, has made a statement which is absolutely unjustifiable. I am not going to withhold any criticism from Sir George Turner, or anybody else, if I believe it to be true. Sir George Turner knows I will say to his face what I would not say behind his back, where I would say far better things. I have no hesitation in pointing out that the same gentleman who spoke about all the portfolios or offices in the Judiciary being already filled by allocation among the members here, is the very same gentleman who has stated that I have unjustly attacked the Premier of Victoria.

Sir GEORGE TURNER. -
What is the difference between taking the lowest rate of interest, as you suggest, and what we are now paying?

Mr. HIGGINS. -
I do not quite follow the right honorable gentleman.

Sir GEORGE TURNER. -
As I understand it, you say that the guarantee is to be at the lowest rate of interest paid by any of the states.

Mr. HIGGINS. -
No; you find what has been the lowest borrowing per capita, and guarantee the interest on that. For instance, Victoria or Western Australia has had the lowest scale of borrowing per capita hitherto.

Sir GEORGE TURNER. -
Yes, about £40 per head.

Mr. HIGGINS. -
Well, the suggestion is that you should guarantee the interest on that lowest rate of borrowing per head.

Sir GEORGE TURNER. -
If you fix £40 per head all round, and use the surplus for paying the interest on that portion of the state debts, that will be a distribution of the surplus on that basis, and the Convention has refused to sanction that.

Mr. HIGGINS. -
For the first five years the amount of the surplus is to be ascertained by the amount received in each state from Customs revenue. After that time, I hope it will be a per capita distribution. All I say here is that, having regard to the figures, there can be no serious injustice done to any state under the arrangement suggested if the interest be apportioned per capita, according
to the number of people in each state. The right honorable gentleman's idea evidently is that as the rates of interest vary, and as the terms of the loans vary, there will be difficulty in carrying out such a scheme, but I say that all the different debts can be reduced to a common denominator in very much the way that Mr. Glynn proposes. There is a grave difficulty owing to the terms of the loans and the rates of interest being different, but the first sug

Mr. HOLDER. -

That is so.

Mr. HIGGINS. -

It is possible to reduce all the debts of the states to one common denominator, and have them expressed in one average debt, bearing one average interest, and having arrived at that, you can then say-"We will make the Federal Parliament take over the liability to pay the interest on a certain proportion of the states' debts"-that is the lowest proportion-and the surplus will eventually be distributed per capita. I have to submit this, therefore, and I only hope it will be taken up by our leaders, because I think it will to a large extent meet the difficulty that confronts us.

Mr. BARTON (New South Wales). -

I will ask the Convention, Mr. Chairman, to adopt the suggestion you made a little while ago as to the manner of putting the various proposals to the committee. It is perfectly competent for us now to negative Mr. McMillan's amendment, and then it will be competent for Sir George Turner to propose the omission of the word "may," from the original clause of the Bill, and, that being carried, to move the insertion ,of the word "shall," and afterwards the remainder of his amendment. By this means we shall take a step forward in the way of getting on with our work. And I think it is time to do that. We have had a long discussion on the matter, and I believe that each of us. knows pretty well what the opinions of the others are on the question.

The amendment of Sir George Turner was agreed to.

Sir GEORGE TURNER (Victoria). -

I now beg to move-

That the word "may" be omitted from the words "Parliament may" in clause 98.

Sir George Turner's amendment was negatived.

The CHAIRMAN. -

The question now is, that the words "shall take over," proposed to be inserted in clause 98, in lieu of the word "may," which we have just struck
Mr. HOLDER (South Australia). -

I do not make any apology for spending a little more time on the very important question we discussed all day yesterday. I spent several hours last evening in making a few calculations which I thought would be useful to the Convention, and I am going to give them to the Convention in a few minutes. I want to speak chiefly because of certain remarks that were made by Sir George Turner last evening, and to dispose, if I can, of certain criticisms that he levelled at statements which, early in the day, I had made in respect of the conversion of public debts. I repeat that I do not make any apology for dealing with this question, because whatever sentimental advantages there may be about federation, whatever advantages-and there are many-to trade and commerce there will be connected with federation, all through the sittings of our Convention, in the three places where we have sat, there has been running frequently this note-"What can we tell the electors whom we represent they will receive as actual profit from the proposed federation? "Now, to my mind, the only cash dividend which federation can pay is the cash dividend to which I am going to direct attention. There will be commercial dividends, dividends of finance, dividends of sentiment—all these things will accrue—but the only one cash dividend which federation can pay, the only one cash argument we can use to our constituents in recommending them to adopt federation will be the profit arising from any possible conversion of our loans. That is taken for granted by practically all those who, in the press, have written on federation with any financial knowledge and experience; that is the only argument I have heard used, even in this Convention, in favour, from that point of view, of the federation we are striving to frame. In order that I may clear away some misunderstandings which surround this question, I want to say that if I were dealing, as a state Treasurer, with state loans, I should say that a state Treasurer could not profitably convert any state loan except as it was becoming due. And the reason I say that is because no state Treasurer has anything he can give to the bond-holders in the way of better security or advantage, unless he gives an extravagant extension of the term of the loan, to induce them to accept any conversion scheme. If I were a state Treasurer, dealing with state bonds, I should be hopeless about effecting any profitable conversion of loans excepting as the bonds approached the due dates. But in this case the position is entirely different. Here we contemplate a Federal Treasurer, who will have at his back a federal security, which, I think, without argument, would be taken by everybody to be a better security than
the security of any individual state. However, as I have heard even that questioned, I must spend a moment or two on the point, but only a moment or two, and discuss whether the security which the Federal Treasurer will have at his disposal is likely to be a better security than that which any state Treasurer has to offer. I will put it this way: The security which the different states offer to-day is evidently a varying quantity. That is proved by the fact that on the London market the stocks of the various colonies of even date and even interest-bearing capacity are at different prices, and the differences in those prices measure the different estimates which the London bond-holders, speculators, and stock-brokers put upon the difference in the security of the various colonies.

Mr. DOUGLAS. -

That is not the only difference.

Mr. HOLDER. -

I do not want to go into details; those are the main reasons. Now, it must, I think, be apparent to everyone who looks into the facts that if these colonies federate, and the debts are taken over by the Commonwealth, the least that can happen will be that the cheapest stock among the five colonies there represented must be raised to the level of the dearest stock of the five colonies; because the security behind the federal stocks—whether they be issued to take up the present South Australian, or Tasmanian, or Victorian, or Western Australian, or New South Wales stocks—will be one and the same throughout. Therefore, as it is inconceivable that the value of the lowest stocks at the present time can be less under federalization than the value of the highest of our stocks at the present time, we must come to the conclusion that the value of federal stock must be at least as high as the best stock of the five colonies. Take, for instance, to illustrate that point, the case of five commercial men, all of excellent standing, but one of whom is of rather better standing than the other four. Good as his paper may be in itself, the paper of the five, of whom he is one, must be better than that of the best of the five singly, because you have the security of the best of the five and of the other four as additional security.

Mr. DOBSON. -

You are forgetting altogether the liabilities of the other four colonies.

Mr. HOLDER. -

I am not contemplating an increase of the total indebtedness of the colonies here represented. If the indebtedness were increased my assumption would be affected accordingly. I am contemplating simply the transfer of the existing amount of debts of each colony throughout the group. Now, I think I may go further, and say that while New South Wales 3 per cent. stocks are worth to-day £101 per cent., the federal security will
make them worth at least £104 per cent. I am within the mark exceedingly well within the mark-in supposing that after the inauguration of the federation of these colonies the value of our stocks will rise by more than 3 per cent. above the present value of the stocks of New South Wales and of Victoria. Anything less than that cannot be considered likely for a moment. I assume, then, the very low price of £104 per cent. for federal stock. What is the next point? New South Wales stock to-day being £101, if the federal stock be at £104, there is a profit of 3 per cent. to be made on the stock of New South Wales. Victorian 3 per cents. to-day are at £101, and there will, therefore, be a profit of 3 per cent. to be made for the Commonwealth on Victorian stock. South Australian 3 per cents. stand at £100. There is, therefore, £4 per cent. to be made with regard to those stocks. Tasmania has no 3 per cent. stock, and I have, consequently, had to take her 31/2 per cents., and make a calculation as to what the corresponding price of Tasmanian stocks would be if they were 3 per cents., and I find that the price would be £99. So that there is 5 per cent. to be made upon Tasmanian stocks. The price of Western Australian 3 per cents. is quoted at under £97, so that there is actually 7 per cent. to be made on Western Australian stocks by making them not local, but federal, stocks.

Mr. GLYNN. -

What do you calculate would be the price of Tasmanian 3 per cents.?

Mr. HOLDER. -

£99. Honorable members will see that I have not been able to spend sufficient time to make these calculations actuarially correct down to the odd shillings and pence. To have done that would have occupied many days, whilst I only had last night in which to make my calculations. But, for all practical purposes, as being sufficient for what we are doing, these figures which I am giving are a very close approximation to the truth, without going into a most extensive actuarial calculation; and I may add that I have been guided to a large extent in making these calculations by the suggestions contained in the amendment of my honorable and learned friend (Mr. Glynn), and also by the suggestions embodied in the Tasmanian amendment.

Sir PHILIP FYSH. -

How is the Federation going to lose these sums you have mentioned?

Mr. HOLDER. -

I thought that that was by this time so clear that I need not go over the point again. But I will do it again in order to make the matter clear to the mind of the honorable member. The question I am asked is: How the
Federation can possibly lose the amounts I have mentioned by a compulsory and immediate conversion of local into federal stocks? Really, I should have thought that that was such a very elementary point that it was the mere ABC of the question, and that it was not necessary to say any more about it to honorable members of this Convention, who are assumed to have gone into the question. However, I must answer the interjection. If we do anything under this Constitution which will have the effect of raising the price of some of these stocks from £97 up to £104, it must be apparent to the most superficial thinker that we shall make a present of £4,500,000 to the bond-holders. How is it a present to them? Because we are giving to them what would have enabled us to make a bargain with the bond-holders—would have enabled us to make better terms than we could possibly make, by handing over to them for nothing this enormous advantage of federal security, which would actually increase the value of Western Australian stock by the amount of £7 per cent. The Federal Treasurer would thus be giving to the bond-holders an advantage to the value of £4,500,000, which advantage otherwise employed would have enabled him to make immensely better terms for the Commonwealth. If the Federal Treasurer were worth his salt he would go to the bond-holders and say—"If you like to stay where you are I have no power, if I had the will, to compel you to change your position. But, if you like, I am willing to share with you the sum of £4,500,000 which we can make by turning the stocks of the colonies of Australia into Commonwealth stocks. I am willing to give you a Commonwealth stock in exchange for the stock you now hold if you will make it worth my while to do so." And the probabilities are that the bond-holders would be glad to come to terms with the Federal Treasurer in return for the bonus of 1 per cent. and the Commonwealth stock which he would give to them.

Sir GEORGE TURNER. -

Do you contemplate giving Commonwealth stock at existing rates of interest?

Mr. HOLDER. -

That does not matter for the purpose of my argument. I am now giving to the Convention in a few minutes the result of many hours of work. If I were to follow up the pathways by which I have come to these conclusions, I should be occupied in addressing the Convention for a much longer time than I wish to speak. I ask honorable members to give me credit for having arrived at these results by direct methods, without going over the steps of the pathways by which I have come to my conclusions. Taking round figures, the debt of New
South Wales at the present time is £57,000,000. Now, I contemplate that the Federal Treasurer would give the holders of New South Wales bonds a bonus of 1 per cent. to induce them to convert their stock to a Commonwealth stock. That leaves 2 per cent. profit on the conversion. If New South Wales chose to take it in cash, she would receive £1,140,000 in money, or if she chose-following the suggestion of Sir George Turner, which I have no doubt expresses what is more likely to be done-to take it

Sir GEORGE TURNER. -
You are forgetting that the loans mature at different periods.

Mr. HOLDER. -
I have taken the period of maturity at an average of 30 years.

Sir GEORGE TURNER. -
A lot of our loans have more than that time to run.

Mr. HOLDER. -
As I have explained before, for the purpose of calculations of this kind you have to adopt a common denominator, and I have taken the suggestion of Mr. Glynn as a means of arriving at my conclusions. Taking all the factors of the case into consideration, I adopt 30 years as the common denominator. Now, in the case of South Australian stocks there would be a profit which would result in £705,000 capital gain, or an annual saving in interest of £35,000 a year. The debt of Tasmania amounts to £8,000,000. The market price being assumed to be on an average £99, the capital gain on these stocks would be £323,000, or a saving of interest of £16,000 a year. Western Australian stocks are only at £97, so that there would be a much larger gain.

Sir JOHN FORREST. -
They are higher than that ordinarily.

Mr. HOLDER. -
Then the right honorable gentleman has unintentionally misled me. I asked him this morning for the current price of 3 per cents. He told me £96 5s., and I said that I would give Western Australia credit for £97.

Sir JOHN FORREST. -
They are at nearly £100.

Sir PHILLIP FYSHE. -
You take currency into account?

Mr. HOLDER. -
I have said so before. The lowest quotation have seen for Western Australian 3 per cent. stock was £98, and if I had not asked Sir John Forrest, I should have based my calculations on £98 but when the right honorable gentleman told me that the lowest quotation was £96 5s., I gave his colony credit for £97, so as to leave a sufficient margin. However, the
difference is very small, because the whole debt of Western Australia is only £8,000,000. That gives on the basis I have mentioned a profit of £480,000 capitalized, or an annual saving of interest of £24,000. The total, worked out for the whole Commonwealth, with a slight alteration for Western Australia—which alteration would not be a material one—would give us this result: That there would be a capital advantage gained amounting to £3,588,000; or if that capital advantage be utilized in the way of reduction of interest, then we have a total annual saving of £179,000 a year. If that be so—and I defy successful criticism—

Sir GEORGE TURNER. -

The assumption is that in order to get Commonwealth security the bond-holders are willing to give up nearly £180,000 a year?

Mr. REID. -

On £140,000,000 of debt.

Mr. HOLDER. -

In return for receiving at the hands of the Commonwealth a bonus of £1,400,000. That is a very large bonus, a very considerable temptation. Without it they would not come in, but with it I feel certain that they would. There is not only an advantage to the bond-holders under this scheme, but there is an advantage to be held out to those whom we represent of a large saving to their states, which would go a long way towards paying the original cost of entering into federation.

Mr. ISAACS. -

Has the honorable member calculated the probable amount of depreciation of state stock in consequence of the Commonwealth taking over the revenue which is the fund for its payment, and yet not being bound to pay the obligations?

Mr. REID. -

That will increase the profit of the transaction.

Mr. HOLDER. -

I am much obliged to the Attorney-General of Victoria for his interjection, because I should probably have forgotten to answer the point, and as it is so immensely in my favour, I should have regretted passing it over. My honorable friend (Mr. Glynn) holds to the view, I believe, that federation may possibly result in decreasing the value of state stock. He takes it that federation may decrease that value, because it takes from the states some of the income out of which they have been accustomed to pay their interest. Now, I do not think federation will do so. That result has not followed in other parts of the world under federation. I should be sorry if I
thought it might be so, because I hold the view that the state should have the power to borrow for the purpose of developing their territory and resources, and if we diminish the value of the state stocks we might very seriously limit the power of the states to properly develop their territory. I do not think so; but if it did come about, if even temporarily on the formation of the Commonwealth state stocks fell 2 per cent. less than these rates here, it would add to the profit I have just mentioned a, a little over £2,000,000.

Mr. ISAACS. -
Do you call a loss to our creditors a part of the profits?

Mr. REID. -
Creditors! It is their own doing to disparage their securities.

Mr. HOLDER. -
I am going to say the next thing I wish to say, not in the heat of debate, not on the spur of the moment, but with the utmost deliberation and knowledge of what I am saying. I do, not care one bit what happens to the stock-holders through this federation scheme. No one would be more bitterly opposed to repudiation than I. But stock-holders when they buy their stock take all the chances of the market, and this federation is among the chances of the market. Just as I would not grudge to the stockholders any advantage which comes to them from a rise in prices, so I do not feel responsible to them for any disadvantage which comes to them from any fall in prices.

Mr. REID. -
Owing to their want of confidence in their own securities.

Mr. HOLDER. -
It would simply be through some loss of confidence on their part. It is something worth learning to learn that one of the great things to be thought of by the Convention is that we must protect the interest of the bond-holders. I did not know before that one of our duties is to protect most carefully the interests of the British bond-holders.

Mr. ISAACS. -
It is the duty of every debtor not to deprive himself of the means to pay his creditor.

Mr. REID. -
Rothschilds must be about somewhere.

Mr. HOLDER. -
Is that what you think federation means?

Mr. ISAACS. -
Common honesty.

Mr. HOLDER. -
Common honesty means that we should not ruin these states, and thus render them unable to pay their debts. Nothing we do looks in that direction. All we do looks in quite the other direction. I believe it will come to this in the very early days of

the Federation if the Federal Treasurer is worth having: We will give to the bond-holders for any security they have to-day a very much better and more valuable security, and we will give it to them on terms advantageous to them, but still more advantageous to ourselves. If honorable members, when they go back to their respective colonies, want a good argument with which to recommend federation, here is one, and take away this one and we have no financial argument left.

Mr. DEAKIN. -

No one proposes to take it away.

Mr. HOLDER. -

No one proposes to take it away.

Mr. DEAKIN. -

No; it is just as possible under the one provision as under the other.

Mr. REID. -

Then you can leave the "may" in.

Mr. HOLDER. -

I have to go back to elementary finance again.

Mr. FRASER. -

Hammer it in.

Mr. HOLDER. -

It does seem necessary in some cases to repeat over and over again before you can get the truth in, but I am going to repeat it once more, in the hope that it will be understood. It is suggested that all these advantages of which I spoke may be gained if we give a guarantee in the Constitution, by waiting till the bonds fall due. Let us look at this position. It is suggested by my honorable friend (Mr. Deakin)-

Mr. DEAKIN. -

I did not suggest that.

Mr. HOLDER. -

I cannot see what else was in the interjection. However, I will answer what I thought was in the interjection, and what I know is the idea prevailing in some cases. The idea prevailing in some minds is that we can secure all we ought to secure, whether we give the Commonwealth guarantee now or not, by simply waiting till the stocks fall in. What does that mean? Some of the stocks will be falling in shortly.

Mr. FRASER. -
£18,000,000 of Victoria stocks will fall in in ten years.

Mr. HOLDER. -

£18,000,000 of Victorian stocks out of £140,000,000 will fall in in ten years. All these stocks will not fall in for many years, and if we are to wait calmly on our oars till those stocks fall in, it means that this sum of £179,000 a year, which we may save in the way of interest, is not to be saved till years have passed, and as they have passed have gradually enabled us to retrieve the initial error we made in giving bond-holders for nothing a very valuable security. If it is proposed by any one inside or outside of this Convention to give this guarantee now, even to give it by implication in such a way as to raise the market value of the stocks, and then because we had made a blunder, wait twenty, thirty, or perhaps more years till we can retrieve that error, surely that is not a position which will be taken up by men with their eyes open. It might be taken up by us if we were not awake to the facts of the case. Here is an opportunity, without injuring our right to reconvert these stocks, as, I said, may fall in 30 or 40 years hence; here is an opportunity right away, if we give the Federal Parliament large enough powers, to secure an annual gain of £179,000, or, if it pleases to take it in cash, a gain of over £3,585,000. I do hope that the committee will not insist on the word "shall" remaining in any part of the clause, but, while it gives full and ample power to the Federal Government to convert, in the interests of the colonies, the stock as it may become payable, it will not compel them to do so at the outset.

Mr. DEAKIN. -

The word "shall" does not compel them to do it at the outset

Mr. HOLDER. -

It looks like it I it is meant to make people believe it does.

Mr. REID. -

It is equivalent to an endorsement on the bond.

Mr. HOLDER. -

If anybody ought to insist on avoiding any shadow of doubt on the possibility of this scheme, it is the small states. It does not matter much to New South Wales that she would save £57,000 a year she can do without it. It does not matter supremely to Victoria that

Sir JOHN FORREST. -

We do not care for £24,000.

Mr. HOLDER. -

If £24,000 is nothing to Western Australia, I regret the time we spent a few days ago in trying to make special terms for that colony; but if it is
nothing to her I am quite sure that there are some sources of expenditure to which £24,000 can be fairly applied greatly to the advantage of the Commonwealth. However, I will conclude by repeating the hope that we will take care to guard against all possible breath of doubt on the possibility of such a scheme as this, and to leave the Federal Treasurer's hands entirely untrammelled, so that he may do whatever at the time may seem best. It may seem best to him to follow the suggestion of Mr. Glynn; it may seem best to him to follow the suggestion of Tasmania; but do not let us tie him down to either or both of the suggestions or to any scheme. Let us give him a free hand, and, doubtless, he will use it well.

Mr. DEAKIN (Victoria). -

I wish to say a few words in reply to the very impressive address of my honorable friend (Mr. Holder). The word "shall" does not require that any particular scheme of taking over these debts shall be adopted. The word "shall" does not imply that they shall be taken over at once, or at any price, or at any cost. The word "shall" simply imposes an obligation upon the Federal Treasurer to give effect to this provision at the earliest date at which it will be profitable to the Commonwealth, and a desirable thing to do. The only difference between "shall" and "may" is that while the word "may" carries with it the possible implication that the Commonwealth may take an entirely independent stand, and disregard state loans altogether, the word "shall" is intended to carry with it the implication that under proper business conditions, and in a proper business way, the best means of federalizing the debts shall be adopted, in order to gain the advantages which Mr. Holder has dwelt upon to-day, and which, however speculative, those of us who vote for the word are no more blind to than he is himself.

Mr. REID (New South Wales). -

It is astonishing how these legal disquisitions on the meaning of "shall" and "may" become inapplicable when applied to financial transactions. If an Act of the Imperial Parliament were passed prescribing that the Rothschilds shall take over the debts of a South American republic, and shall pay the interest every year, I think the legal "shall" and "may" argument would disappear, and the bond-holder would be delighted to find himself in possession of a South American bond for which he would get interest at Rothschilds every half-year; and with a provision that the debt shall be taken over by Rothschilds for all time, and the interest paid for all time by the Rothschilds.

Mr. DEAKIN. -

The honorable member mistakes-

Mr. REID. -

Will the honorable member allow me to finish what I am about to say,
and then perhaps an interruption will be unnecessary?

Mr. DEAKIN. -

I hope so.

Mr. REID. -

The mere appearance in this Constitution of the word "shalt" according to the honorable member's meaning of the word "may," shows the absolute want of a necessity to put it in. If you may do a thing it gives you the absolute power of converting it into shall whenever you like, according to the wisdom of the existing situation, and the Federal Treasurer, who can read the shall into may, can deal with the bond-holders; but the Commonwealth

Treasurer who has branded on him the word "shall" cannot, because there is an absolute necessity to do it, and if there is not an absolute necessity to do it why put in the word? Is it not an attempt to make it an absolute necessity, and where is the guarantee to the states if it only means "may"?

What was the object of my right honorable friend's proposal? It was to guarantee on the establishment of the Commonwealth that the interest on the debts shall be paid at once. The right honorable gentleman does not deceive himself with the legal disquisitions of my learned friend. He does not mean what my learned friend has said. He means it as a genuine business transaction to relieve the states of a certain given sum for interest on a certain given event happening. Therefore, since "may" has all the force of "shall," in the wisdom of the Commonwealth, the Commonwealth, retaining the discretion, can negotiate with the bond-holders, but if it has no discretion it cannot, I cannot understand what all this discussion is about. May I mention another strong point? We know that in the money market of the world all sorts of vicissitudes take place. Clouds come over the financial sky, and sometimes state bonds go down with a run, as our bonds went down in 1893. I suppose our bonds now are worth £20 or £15 in every £100 more this year than they were worth in 1893. Under the word "shall," if any such disturbance in the London market came about, we could get no benefit from it, because the bond-holders of the states would be protected by the "shall" in the Constitution Bill, and the duty of paying the interest which the Commonwealth had taken over-because if he gets his interest every half-year, and there is a liability behind it to pay the principal when it is due, what more does a bond-holder want? The Commonwealth under some cataclysm in the money market may step in and save an enormous sum on the colonial debts by substituting the Commonwealth security.

Mr. FRASER. -
Our 3½ per cents. went down to £82 at a very critical time, and our 4 per cents. went down to below par.

Mr. REID. -

That is so, and now 4 per cents. are about £118, I think. These vicissitudes in finance show what a magnificent opportunity the Federal Treasurer may have.

Mr. SOLOMON. -

If he had the cash to do it with.

Mr. REID. -

Does my honorable friend mean that the Commonwealth will not be a stronger body financially in credit than a state?

Mr. SOLOMON. -

Perhaps comparatively.

Mr. REID. -

If the states are as strong as the Commonwealth will be, what is all this fuss about these strong solvent states? What does all this fuss and fear about insolvency and embarrassment mean?

Mr. ISAACS. -

If you leave us our revenue we are perfectly satisfied with our position.

Mr. REID. -

Does not the honorable gentleman see that under the word "may" the Federal Treasurer can do all he wants to do? I frankly say that I am absolutely opposed to the word "may," and that I consider the consent of the states should be necessary; but as I can see there is a large majority against me on that point, I wish to go for the next best thing, from my point of view. The next best thing from my point of view is that if it is to be handed over to the Commonwealth it should be handed over so that the Commonwealth can do its best for the states and the Commonwealth, whereas if you hand it over under the "shall" it amounts to a financial indorsement of the securities of the states, and all the possible gains of the conversion disappear. I do not wish to be understood by Sir Philip Fysh as saying that there can be no operation of that sort possible. I think if you are simply exchanging one state bond for practically another, the advantages would be so small that, probably, you had better wait till the bonds run out. But if you can exchange, as we believe we would, a stronger security, then the chances of a conversion become infinitely greater. For instance, if we could get a British guarantee behind our state loans, we could go into the market to-morrow and save millions. So, in a much smaller degree, we could gain a great advantage by getting the Commonwealth endorsement and letting the endorsement be in the hands of the Treasurer, so that he
could put it on when it was an advantage to the states and the Commonwealth to put it on. The use of the word "may" will leave that position, while the use of the word "shall" will take all the advantage of that position away. Let me point out to those who say that the security of the Commonwealth would not be much better than the security of the states that they destroy their own argument, on the faith of which they asked this to be done. Because they say the Commonwealth is taking over the Customs revenue, and the Customs revenue being taken over, the financial position of the states becomes much weaker.

Sir GEORGE TURNER. -
Because the states do not know what their revenue will be.

Mr. REID. -
But does not the right honorable member see that, while he is aiming at a thing which he has consistently aimed at all through the Convention, he is in this case aiming at it by means of a circuitous process, which is disastrous to the Commonwealth in the case of conversion or possible conversion of the public debts? The right honorable member's object is one which we cannot quarrel with, because he has put it fairly and clearly from the first; but the right honorable member is not on the same ground when he wishes to secure his object in this way. It is the wrong place in which to secure his object.

Sir GEORGE TURNER. -
Will you help me to secure it in another place?

Mr. REID. -
The right honorable member must not expect me to give up my convictions in order to help him against my judgment. I would like here to draw attention to a remark made by Mr. Higgins, which I emphatically repudiate. I do not mind what some of the Melbourne papers may say of me—it does not matter a straw to me; but I do object to a member of the Convention stating that any course of mine in this matter is influenced by a coming election.

Mr. HIGGINS. -
I did not mean to say that.

Mr. REID. -
I am very glad to hear the honorable member's statement, because I wish to point out that my attitude on this question is exactly the same as it was in Adelaide. My honorable friends know that my ground on this matter, as on nearly every matter, is precisely the ground that I fought for in Adelaide when we were not thinking of elections.

Sir EDWARD BRADDON. -
Did not you say the other day that no profit was to be made by
conversion?

Mr. REID. -

By conversion of a state's loan, unless you offer better security—certainly.

Sir EDWARD BRADDON. -

The better security was an admitted fact.

Mr. REID. -

I think my honorable friend will see that it is not necessary to argue that if you offer a better security to a man you have, at any rate, a chance of making a better deal.

Sir EDWARD BRADDON. -

Yet you said there was no such chance.

Mr. REID. -

Only with reference to the ordinary conversions which states have attempted. I have mentioned the case of New South Wales. We had an inquiry made in London from the best financial authorities, and we found that in the case of our securities we could not convert them to any decided advantage. But the case is essentially different if the whole strength of the colonies is united in a Federation. The situation becomes different; the security becomes stronger, and that makes all the difference. I only add these words to what has been said by Mr. Holder, because I wish to assure the Convention that what I am saying now is simply the result of all my inquiries before the Convention met at Adelaide, and I am now taking up exactly the same position as I did then.

Sir JOHN DOWNER (South Australia). -

I understand from Mr. Deakin, who is not here just now, that he looks upon the word "shall" as directory, and not mandatory, and that the effect will be - "You way do it, and you ought to do it; we give you our advice, we think you ought to do it, but you may please yourself." Now, I don't think it is well to put words in the Constitution which will be differently interpreted by different people. Lawyers may say that under certain circumstances "shall" and "may" have identically, or almost identically, the same meaning; but this Constitution is not to be adopted merely by the legal profession. It is to be adopted by the great public of Australia - and will every member of this Convention pledge himself to tell his colony that it makes no difference whether you say "shall" or "may"? Will not the effect be, if you substitute "shall" for "may," that there will be a certainty of difference, or, at any rate, a doubt on the subject sufficiently strong to make ever elector whose views are against the compulsory taking over of debts the opponent of federation?
Sir EDWARD BRADDON. -
How many of them are there?

Mr. REID. -
A great many in some parts of Australia.

Sir JOHN DOWNER. -
That is a matter as to which Mr. Reid will say one thing and Sir Edward Braddon will say another.

Mr. REID. -
I can speak better for my own colony than he can, at all events.

Sir JOHN DOWNER. -
And, as I was about to say, each will, probably be absolutely accurate within the limits of his own experience. This discussion has taken a long while. We have not had any new argument that was not used at an earlier stage of the Convention. It appears to me that many think that a constant repetition of identically the same arguments will in time alter the opinions of those whose opinions are already formed. I can only say, for my own part, that I came to the Convention at its first meeting with a strong disposition to support the compulsory taking over of all the debts. As the matter developed and was discussed—not here, because I cannot say that any fresh light has dawned upon me here—I saw all the difficulties which have been pointed out with infinite repetition here, and I saw clearly that the result would be no benefit at all to the Commonwealth or to any state, but a benefit to persons whom we had no disposition to unnecessarily assist. Having come to that conclusion, I thought that if any conversion were to be done in respect to these loans, it should be done by the state, and could not be done very well by the Commonwealth. If the Commonwealth—no, I won't repeat the argument; it has been repeated so often that I think it is almost time we realized that we have exhausted the subject, and that the time has come for taking a vote on it, yes or no, and getting on to some other business. For my own part, the conclusion to which I was forced, and which no argument has shaken me in, is that it will be no benefit, either to the Commonwealth or a state, but a great advantage to other people, if this taking over of debts were made compulsory, and that conviction remains unshaken. I think the clause is well considered—certainly it was carefully considered. The conclusion embodied in that clause was arrived at after an immensity of argument, though no light has been thrown upon it in this discussion. So, without going over that ground of argument again, I shall simply content myself by saying, with reference to the argument of Mr. Deakin, that it would be a pity to insert a word which lawyers may construe one way and the general public another, and that generally the clause, as it stands at present, is substantially that which
should be adopted.

Mr. DOUGLAS (Tasmania). -

I think the honorable gentleman (Sir John Downer) voted for the word "shall" being inserted.

Sir JOHN DOWNER. -

Yes.

Mr. DOUGLAS. -

But now he appears to have come to a different conclusion.

Sir JOHN DOWNER. -

Not at all.

Mr. DOUGLAS. -

Then I would like to know what he meant by voting recently for the word "shall"? It appears to me that "shall" is better than "may," and I quite agree with the honorable member (Mr. Deakin) that the use of this word does not insist on the Federal Government proceeding at once or at any particular period to take over the whole of the debts. I would like to draw the attention of honorable members to the position of the finances of the several colonies.

Sir JOHN DOWNER. -

"Shall" and "may" in the amendment meant the same thing.

Mr. DOUGLAS. -

"Shall," it appears to me, has a different meaning from "may." "May" is always understood by lawyers as being indefinite, and in regard to state finance it is surely better to have words that are explicit, clear, and cannot be misconstrued. Now, sir, according to the return which has been submitted to us, the total debts of the several colonies amount to something like £170,000,000 altogether. But we find this, that between the present date and 1900, Victoria has to borrow a considerable sum of money. This return, I may mention, was made up in 1895, and therefore I presume the figures are not exactly what they are at the present time. Between 1895 and 1900, Victoria would have to raise £3,517,722; New South Wales, £5,036,350; South Australia, £1,930,000; Western Australia, £14,435; and Tasmania. £92,770; making a total of £10,591,277. Between 1901 and 1905—that is, during the next seven years—the sum of £11,970,050 has to be raised, making over £22,000,000 between the present time and 1905. Now, how is that money to be dealt with? Will it not be for the benefit of the states as well as the Federation that the debentures to replace those moneys should be guaranteed by the Federal Government instead of by the local Governments? In the first clause of this Bill it is stated that we are to be a
community bound together for ever and ever-amem. That appears in the first clause. Now, if we are to be so bound what does it mean? Does it not mean that one and the other shall help and assist each other, supposition there may be a deficiency at any particular moment? But where is the probability of a deficiency arising? New South Wales takes upon itself to say this: Unless you do exactly as we wish you to do we shall pack up and be off; we won't join the Federation. New South Wales took the same course with respect to the Federal Council, and has continued to take it up to the present day, although the Federal Council Bill, when before the British Parliament, was actually altered in order to suit the views of Sir Henry Parkes, and to induce New South Wales to come into that Union. If she had done so, and we had gone on with the Federal Council, we should have gradually worked into the position which we are now trying to achieve, but which, as things are, we are not very likely to reach. In fact, I think we are further off from federation at this moment than we were in 1891. It is to be hoped that this system of threatening one another is not to be continued. Sir, I cannot understand the arguments which Mr. Holder used with respect to the position the colonies would be placed in by federalizing the debts. He puts it in this light, that the value of the debentures would be so much raised; but would not the same argument apply to paying off the debts? I am not alluding to conversion at all. I am alluding now simply to the consolidation of the debts. As we required to borrow to pay off the debentures that from time to time became due, instead of getting the loans at a discount, we should get them at a premium, and as the value of the federal bonds rose in the market, so would the value of the particular borrowings rise in the same proportion. There are two classes of investors in the market. One is the jobber, and the other is the person who simply desires to make a profitable investment. The longer the term the better they like it. All such persons as trustees go in for investment, and do not care about buying and selling. The jobber, however, wishes to buy and sell. What does it matter to the colony if the value of the bonds go up 50 per cent.? The colony only pays £100 per £100, and if it gets a premium so much the better for the community at large. I cannot understand the position that is taken up by the Hon. Mr. Holder. He has certainly gone much more elaborately into figures than I have done. I am simply stating my view of the matter. Even supposing that the debentures fell in value, what effect would that have? The Federal Parliament would simply make a saving. Some honorable members appear to imagine that the colony they represent is to be called upon to pay for the other colonies, but I think that those
other colonies would repudiate any such idea. New South Wales happens at this moment to be in a flourishing condition, but are not the other colonies also in the same position? It is said that the population of Victoria is not increasing, but the men who have left Victoria have gone to Western Australia, and Western Australia is making good use of them. The community at large gets the benefit of their labour. Why should we not take the position put by Mr. Higgins, and, assuming the lowest amount of debt of any of the colonies, consolidate on that principle? The state Treasurers would then know exactly what they would have to do. Under the Bill as it stands they would not know what their position would be until the Federal Parliament had agreed to a Tariff, determined upon its expenditure, and made up an account. We could get rid of these difficulties in the manner that has been proposed, and the state Treasurers could then impose whatever taxation was necessary to meet their requirements. It is absurd to talk about insolvency. The word "insolvency" has come into our discussions from New South Wales, but I do not think any honorable member would use the expression with regard to his own colony. Mr. Coghlan's statistics were issued by the Government of New South Wales, and I think we have a right to assume that the Right Hon. the Premier of New South Wales is more or less responsible for them. Those statistics convey some very wrong impressions as regards the condition of affairs. We find that Tasmania has, during the years 1895 and 1896, increased the return from her revenue by some £70,000, and it appears that for 1897 the improvement will be even greater. There is, therefore, no doubt about that colony, particularly when we consider the present position of her mines. It appears to me that we cannot do better than adhere to the former amendment substituting the word "shall" for "may." It is an extraordinary thing that, after we have had a division and agreed to an amendment by a majority of nearly twenty, we should be asked to retract simply because of some statements that are made by the representatives of New South Wales. I hope that honorable members will give an independent vote on this subject, and re-affirm their former decision.

Mr. WALKER (New South Wales). -

As a layman, I must admit that I have been surprised to find that some lawyers seem to think that the words "shall" and "may" have a somewhat similar significance. It seems to me that "may" is a better word for our purposes, because it leaves a discretion to the Federal Treasurer, whereas "shall" would be mandatory.

Mr. ISAACS. -

It is not the Federal Treasurer, but the Federal Parliament.

Mr. WALKER. -
It is within my own recollection that British 3 per cent. consols have been as low as £89. To day the 23/4 per cent. consol-a stand at £112 10s. That shows how important it is that the Treasurer of the Commonwealth should be at liberty to choose his own time for a large financial operation of this kind. I cannot follow the remarks of those who oppose the Hon. Mr. Holder's views. He has put his views in a very succinct and clear manner, and I indorse everything he has said. It would be a great mistake to insert the word "shall," as it would at once raise the market value of all the state stocks. Some people think that that would be so much the better. So it would for the bond-holders, but I fail to see that it would be better for the Federal Parliament, whose duty it would be to convert with the greatest advantage to the community. I do not wish to take up more time, but I could not refrain from offering these few remarks.

Question-That after the word "Parliament" in clause 98 the words "shall take over" be inserted-put.

The committee divided-

Ayes ... ... ... ... 18
Noes ... ... ... ... 19

Majority against the amendment 1

AYES.
Berry, Sir G. Kingston, C.C.
Braddon, Sir E.N.C. Peacock, A.J.
Brown, N.J. Quick, Dr. J.
Deakin, A. Solomon, V.L.
Douglas, A. Trenwith, W.A.
Fysh, Sir P.O. Turner, Sir G.
Glynn, P.M. Venn, H.W.
Gordon, J.H.
Grant, C.H. Teller.
Henry, J. Isaacs, I.A.

NOES.
Barton, E. Hassell, A.Y.
Briggs, H. Henning, A.H.
Brunker, J.N. Higgins, H.B.
Carruthers, J.H. Lee Steere, Sir J.G.
Cockburn, Dr. J.A. O'Connor, R.E.
Crowder, F.T. Reid, G.H.
Dobson, H. Symon, J.H.
Forrest, Sir J. Walker, J.T.
Fraser, S. Teller.
Hackett, J.W. Holder, F.W.
PAIR.
Aye. No.
Clarke, M.J. Downer, Sir J.W.
Question so resolved in the negative.
The CHAIRMAN. -
Inasmuch as the last vote decided the questions raised by the amendments suggested by the Western Australian Legislature, I shall not put those amendments.
Clause 98 was then agreed to.
The CHAIRMAN. -
There are some new clauses proposed by Tasmania, but they seem to me to have been already decided. I shall therefore not put them, with the exception of one which has not been the subject of discussion.
Amendment suggested by the Parliament of Tasmania-
That the following new clause be inserted after clause 93:-
93A. The Commonwealth may from time to time lend to any state, on such terms and conditions as the Parliament may prescribe, any sum or sums of money borrowed on the public credit of the Commonwealth.
The amendment was negatived.
Mr. GLYNN (South Australia). -
Honorable members will see, by referring to page 5 of the list of amendments, that I originally proposed to insert the following provision in the Bill:-
A petition of right may, in such manner as Parliament may prescribe, be presented and maintained by a subject against the Crown in all cases in which were the claim against a subject damages might be recovered or relief granted. The leader of the Convention is willing to accept the spirit of that proposition, but he has asked me to change the wording of the amendment. He has given notice of a new clause, which is marked 73A, and I now beg to move-
That the following new clause stand part of the Bill:-
73A. Proceedings may be taken against the Commonwealth or a state in all cases, within the limits of the judicial power, in which a claim against a subject might be maintained.
I might mention, for the information of the non-legal members of the Convention, what the general law is as regards remedies against the Crown. There is a right of action against the Crown upon a petition of right presented by a subject, in all cases where there has been a breach of contract by the Crown, or where moneys, and, I believe, latterly, lands
which belong
to a subject have got into the possession of the Crown. But there is no
claim by way of petition of right for damages for a tort or injury not arising
out of contract.

Mr. HIGGINS. -
"The Queen can do no wrong."

Mr. GLYNN. -
Yes, upon the principle that the Queen can do no wrong; and, inasmuch
as she can do no wrong herself, she cannot appoint an agent to do wrong.
The position is very clearly laid down in the case of Feather v. The Queen.

Mr. HIGGINS. -
There is an action against an agent of the Queen, who professes to act
with her authority.

Mr. GLYNN. -
Yes. You cannot sue the Queen, but you can sue her agent, because it is
assumed that if he has done wrong he has acted outside the scope of his
authority. But there is no right of action against the Crown for what is
technically known as a tort.

Sir JOHN FORREST. -
There is no right of action in England.

Mr. GLYNN. -
I am now speaking of the English law. It has been somewhat modified in
the Straits Settlements, and in one or two other parts of the empire, I
believe, by giving a right of action for tort in certain cases, but I do not
think that this extended right of action has ever been given in any of the
colonies. Conditions justifying actions for damages against the Crown,
however, are almost as frequent as actions for breach of contract. In
Canada a man sued the Crown for damages received in connexion with a
railway accident, but he was debarred of remedy there, although he
suffered serious injury, because of some defect in the railway laws not
conceding this right. The position has been laid down in regard to the
Queen in the case I have already mentioned, that-

Where the land, or goods, or money, of a subject have found their way
into the possession of the Crown, and the purpose of the petition is to
obtain restitution, or if restitution cannot be obtained, compensation in
money; or when a claim arises out of a contract, as for goods supplied to
the Crown or to the public service-

the Crown is bound to refer a petition of right to the courts for decision,
because it is provided by Magna Charta that justice cannot be denied, sold,
or delayed. By this action, similar rights of action are given to the subject
against the Crown in cases in which the subject can maintain a claim against another subject. The proposed new clause extends this right of the subject against the Crown by enabling a state or citizen to sue the Commonwealth or a state, not only for breaches of contract, but also for torts. I fail to see why, under our modern system, this right of action against the Crown should not be given in cases of tort. The matter is referred to in Burgess's Political Science and Constitutional Law. In that work the writer, in speaking about the American Constitution, states that the eleventh amendment, which in its terms is restrictive, is merely a declaration of the sovereignty of the states as against citizens of other states; and he says that whenever the courts have an opportunity of putting in as defendant the agent they do so, because it is considered that this abnegation of a remedy is impolitic. Not only does my proposal give a slight extension in the region of torts to the remedy of the subject against the Crown, but I believe that it is absolutely necessary to preserve the, existing remedy. It is exceedingly questionable whether, under clause 73 of the Bill, we have not taken away the remedy now given by petition of right against the Crown. It may be said that this matter might be left to the Federal Parliament, but the powers of Parliament to, give a remedy subject to the consent of the Crown for tort against the Crown are limited by the delegation. The Federal Parliament, as the Bill stands at present, could not give a right of action against the Crown, assuming, of course, that the Crown in its prerogative capacity consented. Clause 73 deals merely with procedure; it does not extend the existing law. I mention this matter because it has been said by some honorable members that this provision should not be put into

the Constitution, and that an Act of Parliament could deal with the extension; but I do not think that it could. If honorable members look at sub-sections (6) and (7) of clause 73 they will see that they contain provisions for the extension of the judicial power to all cases in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth, or where a matter arises between the states, but it is plain that the limitation upon procedure by prerogative or injunction against the Crown is continued. Therefore, unless this provision is inserted, the Federal Parliament will have no power to extend the right of action against the Crown by any Act. I would further add that the German Constitution, in three or four of its final clauses, practically gives the rights that I seek to give against the Crown.

Mr. HIGGINS. - Does the honorable member intend to provide that an action for assault
and battery may be brought against Her Majesty?

Mr. GLYNN. -

Yes. Of course an action is never taken against the Queen in persona, it is always taken against an agent. Under the Railway Acts, we sue the Commissioners of Railways, because the Crown has, to some extent, given up a portion of its prerogative.

Mr. SYMON. -

The Federal Parliament could provide for this extension.

Mr. GLYNN. -

I doubt it. By clause 73 you are not extending the existing law.

Mr. ISAACS. -

Why is this provision more necessary in this Constitution than in any other?

Mr. OCONNOR. -

You cannot take away the prerogative by implication, you must take it away expressly.

Mr. GLYNN. -

Of course. That is one of the objects of the amendment.

Mr. BARTON. -

If you had not some clause of this kind in the Constitution, believe that the best part of clause 73 would be nugatory.

Mr. GLYNN. -

Yes. That is why I moved the amendment in its original form. The honorable member (Mr. Isaacs) says it is not in any other Constitution, but he will find it in the German Constitution.

Mr. ISAACS. -

I am speaking of British Constitutions, where the Royal prerogative is behind.

Mr. GLYNN. -

There is no British Constitution that we can make a comparison with. The American Constitution is a close analogue, and that Constitution continues the old English law. Although there is no Royal prerogative there is a sovereign Commonwealth and a sovereign State. The distinction is not between a monarch and a republic, but the sovereignty of the state itself. For the same reason it has been decided in America that you cannot bring an action against the Commonwealth for tort, though you may in contract. According to an Act passed in 1855, if the Court of Claims decides that a right lies, and what the remedy ought to be, an Act of Parliament is introduced to give effect to it. The German Constitution practically embodies the same procedure, and gives a right against the State.

Mr. HIGGINS. -
But the German Emperor has a "mailed fist."

Mr. GLYNN. -
I do not think that affects the judicial power of the courts within the Federation itself. I would ask honorable members to consider that if you do not put this in you have not in the Constitution such a surrender of prerogative by the Crown as would justify the Federal Parliament in passing an Act. I believe the Act would be **ultra vires** unless that was put in. That is why I suggested my amendment. I think Mr. Barton and Mr. O'Connor will support the position I am endeavouring to lay down.

Mr. SYMON (South Australia). -
I sincerely hope this new clause will not be introduced into the Constitution. Honorable members have only to read it to see what an extensive ground it covers, and what a very dangerous clause it may be to put into the Constitution. At present, as the honorable member ver points out, of course there are certain limitations in regard to proceedings against the Crown, that is, against the Government of the state, and these limitations are always dealt with when they require to be amplified or further restricted by means of legislation in the ordinary way. But this provision would insert in the Constitution a power enabling anybody to bring an action for any purpose or subject whatever against the Commonwealth or the state, unrestricted in any way or fashion.

Mr. BARTON. -
Then what is the meaning of the words "within the limits of the judicial power"?

Mr. SYMON. -
It means, as far as the Commonwealth is concerned, these subject-matters referred to in clause 73. The judicial powers of a state are absolutely unlimited.

Mr. BARTON. -
I beg pardon. The clause expressly limits that.

Mr. SYMON. -
No. This is wide enough to enable actions of all sorts and descriptions to be brought against the state without any restriction or limitation.

Sir EDWARD BRADDON. -
Does this go further than the Crown Redress Act of Tasmania?

Mr. BARTON. -
There will be practically the same results as regards the Commonwealth. Mr SYMON. - I cannot answer that question in detail, but this is putting in the Constitution what you may find to be a very serious embarrassment in relation to the conduct of business, which may involve the
Commonwealth or state in litigation. After all, it is a very large order to put in the Constitution. We may be all agreed that there ought to be great facilities for proceeding against the Crown; that the prerogative ought not to be invoked in many cases as a defence in which it could be invoked. But that is a matter for legislation and procedure. I call attention to the fact that if this is procedure, as I think it is, very clearly it ought not to be in this Constitution at all. At present we know what the prerogative is. I recollect very well that in the Bill as it came from the Convention of 1891 there was a clause introduced that no proceedings could be brought against the Commonwealth or the state unless with the consent of the Commonwealth or the state. That was eliminated in the Judiciary Committee. That was confirmed at the session in Adelaide, because it was thought inadvisable to introduce what was really procedure, and that the state should declare whether the particular suit should be brought with its consent or not, or under what limitations. Therefore, this clause is just as much a matter of procedure as the clause proposed by Mr. Glynn originally, and in substitution for which he has moved this clause.

Mr. KINGSTON. - Is it any more necessary here than in a provincial Constitution?

Mr. SYMON. - Not a bit.

Mr. BARTON. - The provincial Constitutions are plenary in their powers. This is a strictly limited Constitution.

Mr. SYMON. - It is only limited in a certain way. Of course, I attach much weight to Mr. Barton's view. He says that clause 73 will be entirely nugatory. I dissent from that. Clause 73 defines the limitation of the judicial power, but it is inoperative until the Commonwealth Parliament passes its Judiciary Act. If the Federal Parliament chooses to say that petitions of right shall be abolished, or that petitions of right shall extend to cases of wrong as well as to cases of ordinary contract, the Federal Parliament can do so; but if you put this in the Constitution it changes its character—if it is intended to have any effect—from a matter of procedure to a matter of absolute substance and right, and it enables, no matter what embarrassment it may cause to the Government, any person whomsoever to bring an action in respect of any matter free from all restrictions.

Mr. FRASER. - Might the safety of the Commonwealth be put in danger?
Mr. SYMON. -

It might be subjected to the very greatest embarrassment. I am strongly in favour of removing some of the restrictions that now exist. I think the Act of New South Wales with regard to proceedings against the Commonwealth is much wider than in our colony. We have enlarged the proceedings in railway matters by enabling actions to be brought against the commissioner for damages. I should like to see the other existing restrictions removed, and to see facilities given, but these can all be dealt with as they arise; but that is a very different matter from inserting in the Constitution a provision, the far-reaching consequences of which we cannot foresee.

Mr. DOBSON. -

But if the Federal Parliament takes a narrow view of the matter there will be no redress.

Mr. SYMON. -

The Federal Parliament will be just as able to take a wide view as we are. My honorable friend, who is a great advocate of strengthening the Royal prerogative, should remember that this is interfering with it, when we are unable to deal with it in detail, and unable to specify the particular consequences that will flow from the insertion of this clause. This is a very wide and large question indeed. It is one that, I venture to say, it is impossible to deal with satisfactorily now, because each question in respect to the removal of restrictions must, I venture to think be dealt with on its own merits, and in relation to the concession that ought to be made in that particular case. Mr Reid asks if the clause were omitted, would the Federal Parliament not have power to deal with the whole subject? Mr. Barton thinks not, but I venture to think, with great diffidence, that it will.

Mr. HIGGINS. -

Is not this more than mere procedure? I am with you to a large extent, but if you give the subject the right to sue in an action at law, which he had not power to do before, is not that a matter of substantial right?

Mr. REID. -

Might it not be a power incidental to the other powers to make this provision.

Mr. SYMON. -

Yes. I want to point out this to Mr. Higgins. In a certain sense of course this is a matter of substance. It is a matter of substance if you insert in the Constitution the absolute right of anybody to bring an action against the Crown, free from all possible restrictions, but it is procedure, and can be affected by procedure through the instrumentality of an Act of the Federal Parliament.
Mr. REID. -
It must be a matter affecting the prerogative.

Mr. SYMON. -
Specially mentioned in the Act. I do not say we might not do it in this Act. What I say is this: It is a matter affecting the prerogative. We are still under the Crown. When this union is consummated every suit brought, though nominally against the Commonwealth or state, is against the Crown. It is competent for the Federal Parliament, with the assent of Her Majesty, to declare that a petition of right shall lie for wrong as well as contract.

Mr. FRASER. -
Then we need not put it in this Act.

Mr. SYMON. -
Yes; but if we do put it in this Act, I warn honorable members of the impossibility of determining the consequences. It may be infinitely better for us to leave it to the Federal Parliament. Is it competent for the Federal Parliament to deal with it? Mr. Barton thinks not; I think it is. It is just as competent for the Federal Legislature, of which the Queen is a part, to deal with it, as it is for us to deal with it in this Constitution, which is to be enacted by the Imperial Parliament.

Mr. GLYNN. -
The Federal Parliament can affect the prerogative, but only within the limits prescribed by this Act.

Mr. SYMON. -
This is entirely a matter of prerogative.

Mr. GLYNN. -
Yes.

Mr. SYMON. -
Very well. I ask where is there anything in this Constitution which enlarges or restricts the prerogative of the Crown?

Mr. GLYNN. -
Clause 2 of the Act. You have a limitation there.

Mr. SYMON. -
The honorable member is playing a kind of practical joke upon me when he says that limits the prerogative of the Crown.

Mr. GLYNN. -
It takes away the right of appeal.

Mr. SYMON. -
That is not the point we are discussing. Clause 2 says that the Act shall
bind the Crown. Of course it does; but where is there a word in the Act that says that a British subject, a citizen, shall be unable to bring any action against the Crown that he is entitled to bring now?

Mr. GLYNN. -

That is not the point.

Mr. SYMON. -

That is the point. Unless there is some limitation upon that right of a citizen of Australia, it is entirely at large; it is as extensive as it was before. Therefore, it is a matter which can be regulated by the Federal Parliament just as effectually as by any local Parliament. At any rate, that is my point. I warn honorable members that it is a very serious thing to put in a provision of this kind, sweeping away this prerogative entirely in matters in which it may be most important to preserve it, subject to some limitations.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. SYMON. -

I do not intend to add much to what I have already said. Before adding anything, I should like to say that I rather misunderstood Mr. Glynn's interjection referring to clause 2. I understood him to mean that clause 2 practically took away the right of a citizen to sue the Crown, whereas what he meant, as I understand it, was that the existence of clause 2, of course, places under the control of this Constitution, when finally passed into law, and having Her Majesty's assent, the prerogative in respect of such matters as are effectively dealt with there. But I would like to point out to my honorable friend that whilst clause 2 undoubtedly places these restrictions on the prerogative, a much wider scope has been given to proceedings against the Crown in all these colonies and in England than at one time existed. At one time it was supposed that no proceeding could be taken against the Crown unless for money claimed. Then it was enlarged to meeting claims against the Crown, which was proceeded against under petition of right, in respect of damages for breach of contract. And then that has been still further extended, permitting proceedings to lie against the Crown in respect of inequity-claims in respect of injunction, or for specific performance. And in Australia it is necessary there should be a further extension, as has been the case in our own colony, because of the circumstance that the state is practically a common carrier in running the railways. Therefore, provision ought to be made to facilitate actions against the Crown in respect of breaches of contract or of damages resulting from the state carrying on that particular business. To that extent, of course, there has been a very great widening of the scope for proceedings against
the Crown, but this new amendment, if it is to give effect to the intentions which Mr. Glynn has indicated, would practically have the effect, as a matter of principle, of repealing the maxim that "The Queen can do no wrong," because it would enable all actions which might be maintained against a private citizen—that is, according to my honorable friend's view—to be maintained free of all restrictions against the Crown. Now, I do not think that that is the scope that the leader of the Convention intended to give it. My honorable friend (Mr. Barton) confines it undoubtedly to the strict limits

Mr. BARTON. -

Quite so.

Mr. SYMON. -

And if that is the limitation, which I can appreciate, I ask my honorable friend to consider whether it is not merely procedure. If the amendment were intended to have the effect which I think Mr. Glynn was under the impression it would have, then undoubtedly it deals with the matter of principle. It extends to the principle that "The Queen can do no wrong." If, on the other hand, it is limited to the provisions of clause 73, which prescribes the scope of the judicial power, then it is procedure, and procedure pure and simple. We must have a Judiciary Act passed immediately after this Constitution comes into operation, and the Federal Parliament meets, or the whole of the Federal Government, so far as the administration of justice is concerned, would be at a perfect stand-still. Still, this mode of proceeding against the Crown, which is the Commonwealth in this case, would have to be prescribed under that Act; and so far as it affected the prerogative it would require to be specifically mentioned, and the Royal assent would be necessary to render the prerogative effective. Therefore it would be infinitely better to leave this matter to the Federal Parliament to deal with in the Judiciary Act, which will embrace everything that is essential to give effect to the judicial clauses of this Act, and to bring them into operation. Then, I think myself, some confusion may arise in consequence of the reference to the state in the words "Proceedings to be taken against the Commonwealth or a state in all cases within the limits of the judicial power." Now, it does not appear to me that we ought to interfere in any way with the functions of a state to regulate the proceedings which it, as a quasi-independent political entity, may prescribe for the regulation of its own legal proceedings. I think that, in any case, reference to the state ought to be removed from this provision; but my objection goes further and deeper, and seeks to prevent the
insertion, first of all, of what seems to me to be an unnecessary provision, one which may have consequences that we can hardly foresee, and one which could be effectually dealt with in the procedure enactment of the Federal Parliament, giving all the necessary elements, and providing all the necessary conditions, under which the judicial power is to be exercised. But if Mr. Barton's view is correct, at any rate, it is doubtful whether the Federal Parliament will have the power to go to the length, if it desired, of such an amendment as this. Then the proper way would be to give it the power to say that the Federal Parliament shall have the power of legislating with regard to the proceedings to be taken against the Commonwealth or the state in all cases there.

Mr. BARTON. -
We come a good deal closer together there.

Mr. SYMON. -
My honorable friend will quite understand that, although I do not entertain the doubt he has on the subject—in fact, I have no doubt whatever that the Federal Parliament have ample power to do this, and I rather deprecate inserting a matter of this kind in the Constitution, which, as I think, is unnecessary, and which must produce embarrassment—but if my honorable friend feels, at any rate, it is doubtful whether the power would exist in the Federal Parliament, then, I think, the proper way to accomplish it would be, not by direct act of legislation in the Constitution, which could not be altered except under the clause for the amendment of the Constitution, and which would enable any disagreeable or troublesome person to harass not only the Commonwealth but a state in any way he pretty well pleased. I have nothing to do with the government of the country, and I am not in Parliament, but if I were either in the one or the other, I should strongly resist any provision of this kind, much as I should wish to see some further enlargement of the powers of the citizen to sue the Crown. And, although we use this expression—suing the Commonwealth and suing the state—we have made no alteration in the existing constitutional system, which is that it is the Crown we are dealing with, and, therefore, either you are seeking to introduce a mere matter of procedure in relation to actions against the Crown or else you are repealing a principle which ought not to be repealed, except in relation to particular instances and specific cases, which should be dealt with prudently and with care.

Mr. KINGSTON. -
This interferes with the state legislation.

Mr. SYMON. -
I have already pointed out why this does not interfere with the independent powers of the states relating to these proceedings.

Mr. GLYNN. -
There would have to be an Act of Parliament to carry out clause 73.

Mr. OCONNOR. -
You must give a right for the Commonwealth to proceed against a state as well as for the state to proceed against the Commonwealth.

Mr. SYMON. -
Is not that power procedure as clearly as anything can possibly be?

Mr. OCONNOR. -
No, there is no cause of action now.

Mr. SYMON. -
There is a judicial power.

Mr. BARTON. -
That gives power to the court.

Mr. SYMON. -
The right of action arises under that judicial power. How you are to maintain that right of action is, however, procedure. There might be a right of action by the state against the Commonwealth, but that is an action by the Crown against the Crown. It is not here as in America, where the state of Georgia can proceed against the state of Massachusetts, and each state sues in its own name. That state of things cannot exist here, because these colonies are to form a union "under the Crown." Therefore, if one state sues another state, it will be a case of the Queen suing the Queen.

Mr. HIGGINS. -
Is there not all the more need for a provision that the Crown may sue the Crown?

Mr. SYMON. -
That is not what you are doing under this amendment.

Mr. HIGGINS. -
That the Crown represented in the Commonwealth may sue the Crown represented in the state?

Mr. SYMON. -
If a state sues a state now, it is the Crown suing the Crown. Necessarily there would have to be some provision to regulate that, but it is all a matter of procedure, and would be dealt with by the Judicature Act. If you want to provide for every possible circumstance in which difficulties of procedure may arise you would fill this Constitution with them. The danger of this clause, I again point out, is that it comes uncommonly near conferring an absolute right under colour of regulating procedure.

Mr. GLYNN. -
Why shouldn't it?

Mr. SYMON. -

I say that it should not. It would be flying in the face of all constitutional principle and of the right of the states to regulate their own procedure to put anything of the kind in this Constitution. If the Convention is prepared to say that a man may sue the state, it may be for assault and battery, arising perhaps out of some question mentioned in clause 73, all I can say is-let the Convention do it.

Mr. DOBSON. -

How could a Commonwealth official commit an assault within the scope of his authority!

Mr. SYMON. -

That is a matter which the High Court would decide, and decide most effectually, and my honorable friend would be perfectly satisfied with the decision of the High Court.

Mr. GLYNN. -

There would be no remedy if this were not put in.

Mr. SYMON. -

There would be no remedy if it were put in, because no one is liable for the unlawful acts of his own servant.

Mr. DOBSON. -

No one could hold the Crown liable because a Crown officer did some act quite outside his functions.

Mr. DOUGLAS. -

If the Crown were so liable there might be an action against the Western Australian Government in regard to the case in which the Attorney-General of that colony was assaulted.

Mr. SYMON. -

Yes, we might have a case of the Western Australian Attorney-General suing Sir John Forrest's Government in connexion with the assault mentioned by Mr. Douglas.

Mr. BARTON. -

He would not get that right under clause 73.

Mr. SYMON. -

I am aware of that. I am afraid that we are going beyond the matter of procedure, which Mr. Glynn desires and Mr. Barton does not. Mr. Glynn argues the question as though, in reference to the case of the Queen against Feather, this would enable actions of tort to be brought against the Crown. Mr. Barton does not wish that. He wishes the matter to be kept strictly
within the limits of the judicial power.

Mr. BARTON. -

I wish either to confer through the Constitution or through power under legislation, the right upon the subject to bring actions in all cases which are set forth in clause 73, because I think those rights should be conferred.

Mr. SYMON. -

That is what I understand my honorable friend directed his attention to; and if the effect of this amendment were simply to empower the Parliament to deal with this subject, there would be comparatively little objection to it. But if it is introduced into this Constitution in this shape, it is necessarily dangerous, much too wide for the purpose intended, and of course-if it is wrong-and I venture to think it will be found to be wrong-it will be irremediable without an amendment of the Constitution.

Mr. BARTON. -

Would this satisfy my honorable and learned friend?-

The Parliament may make laws conferring the right to proceed against the Commonwealth or a state within the limits of the judicial power.

That confers rights.

Mr. SYMON. -

I think I may say from hearing that read that it obviates the objection I have to a large extent, although it does not seem to me to be necessary that we should introduce it into the Constitution. However, that is not a matter of very great consequence.

Sir JOHN DOWNER (South Australia). -

I have always on this subject held that there is no earthly reason why the Crown should not be sued, wherever the subject may be. I have not taken this view because I hold what are considered generally to be too pronouncedly liberal views, but simply for the reason that there is no earthly reason that I can see why Government officials should be able to do wrong and a private person have no rights against him.

Mr. HIGGINS. -

Do you think that "The Queen can do wrong"?

Sir JOHN DOWNER. -

I do not want to have a mere verbal discussion. I think the Queen's officers can do wrong.

Mr. HIGGINS. -

And that you should be able to sue the Queen's officers?

Sir JOHN DOWNER. -

We have decided, with the consent of Her Majesty herself, that the Queen can do wrong. Let me take, first of all, the amendment which Mr. Barton has suggested to Mr. Symon. Suppose there is a power given to
legislate. There has to be an interval between the confering of the power and the exercising of it. Under the existing laws of all the colonies the Crown is liable in respect to certain wrongs. The s not hold in England, and as the result-in consequence of there being no remedy for accidents caused through negligence and other reasons-all the Legislatures of all the colonies have passed legislation by which they provide, not in words but in substance, that the Crown can be sued. Therefore, to raise the question now about wishing to interfere with the legal and constitutional maxim that "The Queen can do no wrong" would, I say, mean interfering with the rights of citizens in a number of cases already.

Mr. BARTON. -

That maxim is practically done away with in respect to actions against the Crown in New South Wales.

Sir JOHN DOWNER. -

I understand that the maxim that "The Queen can do no wrong" is practically abolished in New South Wales, where actions can be brought in tort or contract. Therefore, so far as the mother colony is concerned, the maxim that "the Crown can do no wrong" has ceased to exist as regards actions against departments of that colony. Supposing we did not put this provision in. We should give the Commonwealth power to take over the railways on terms which might be agreed upon, but they would not take over the Acts of Parliament under which the citizen has a right to proceed against the Crown in regard to any wrong done to him by the state as owner of those railways. The Commonwealth would thus take physical possession of the railways and incur no liability.

Mr. ISAACS. -

Under an Act of Parliament, of course.

Sir JOHN DOWNER. -

Under an Act of Parliament, but it would incur no liability until it chose to create a liability by its own legislation. We are thus handing over a number of state powers which the citizens have, and have exercised more or less to their own satisfaction, to this new body. Is it unreasonable for the subject to say-"I wish my present rights to be conserved in this handing over. I know what my state has done in the past, and what it has done satisfies me, but I do not know what the Commonwealth may do. I am handing myself over body and soul to the Commonwealth, but I do not want you to take from me those rights of action which for many years I have had and have exercised under the existing Constitution; and you are leaving me to be dependent upon the legislation of another body over which I shall have much less control than I have over my state legislation
at the present time"? It appears to me to be manifestly inexpedient to leave it to the legislation of the Commonwealth. I do not care about the wording of the clause so much, but I am dealing with the substance of it. I contend that it is a right and proper provision to be embodied in this Constitution at its inception.

Sir JOHN FORREST. -
I do not agree with you.

Sir JOHN DOWNER. -
I can quite understand the objection of my right honorable friend (Sir John Forrest) who would like the maxim-"The Queen can do no wrong " to read "The King can do no wrong." He has said to me, in discussing this matter-"We might have all sorts of actions brought against us." Well, why not? Why, because you have the longer purse, and a greater power of fighting your opponent, should you be exempt from action if you do wrong as a state, when the humblest citizen is not exempt from any responsibility for any injury done by him to his fellows?

Mr. ISAACS. -
Would the honorable member mind saying how this provision would cure any injustice?

Sir JOHN DOWNER. -
This clause is intended-I am not sure about the wording of it myself-

Mr. ISAACS. -
I do not speak of the wording of it.

Sir JOHN DOWNER. -
What I understand it to mean is that one of the fundamental principles of the Commonwealth will be that within the limits of the judicial power the subject shall have a right of action against the Crown. That is really what it comes to.

Mr. ISAACS. -
Not creating any right but giving a remedy.

Sir JOHN DOWNER. -
It is both creating a right and giving a remedy. How can you say that it is merely giving a remedy when a man who wishes to bring an action is confronted by the legal maxim-"The Queen can do no wrong."

Mr. HIGGINS. -
He has a right against an officer, but you want to say that he shall have a right against the Crown.

Mr. BARTON. -
He would have no right against an officer except in so far as the
Constitution creates that right.

**Sir JOHN DOWNER.** -

Let me deal with the principle and not with the wording of the clause. I say that the object of Mr Glynn in moving this amendment was to say that whenever a subject had a right of action against another citizen within the limits of the judicial power under this Constitution, he should, under the same conditions, have a right of action against the Commonwealth. That is the way I understand him, and so understanding him I entirely approve of the action he has taken. Surely the time ought to be nearly passed when the Government, on account of its long purse and great power, can set a subject at defiance when one subject cannot do the same with another?

**Sir JOHN FORREST.** -

In the interests of the people.

**Sir JOHN DOWNER.** -

It is in the interests of the Minister who wants to get out of a liability for his action.

**Sir JOHN FORREST.** -

No.

**Sir JOHN DOWNER.** -

What have these statutes been passed for in the different colonies? What was the statute of New South Wales passed for under which actions of wrong can be maintained? I understand my right honorable friend to say that a similar Act has been passed in his colony.

**Sir JOHN FORREST.** -

Twenty years ago.

**Sir JOHN DOWNER.** -

What was it passed for? It was passed because there were wrongs done by Governments for which the unhappy subject had no redress.

**Sir JOHN FORREST.** -

Simply to facilitate things.

**Mr. ISAACS.** -

Could not that be done by Parliament even if this were not in the Constitution?

**Sir JOHN DOWNER.** -

I will come to that in a moment, if my learned friend will excuse me; I cannot deal with two things at one time. I am dealing now with a broad general principle in the way in which I wish to see it carried out, treating it as a fundamental principle which might well be inserted in the Constitution, that when we are handing over the right to take our railways, and the sole power to impose and collect customs duties, we at least might say to this new body we are creating: The humblest subject shall have as
much remedy against you as if you were a subject instead of a representative of the Queen. That is a right and just thing, and it is being affirmed more strongly, year by year, in every British-speaking community. We have not advanced so far in South Australia as they have in New South Wales, but the march is strong and sure, and the time is not far distant when the petition of right and all these special provisions will be done away with, and the same remedy will be given to the subject against the Crown as the subject is liable to himself. I think we might, on the attempt to found this great Commonwealth, just advance one step, not beyond the substance of the legislation, but beyond the form of the legislation, of the different colonies, and say that there shall be embedded in the Constitution the righteous principle that the Ministers of the Crown and their officials shall be liable for any arbitrary act or wrong they may do, in the same way as any private person would be. We are not, in doing that, very much extending what has been done in New South Wales. We are extending what has been done in South Australia, although there we have passed an Act by which we make the Railways Commissioner liable for torts, and that Act was passed on account of a gross wrong which was done for which there was no remedy, and in which the Crown was about to set up the defence that the Queen can do no wrong. What is the use of our saying, can we interfere with this great constitutional principle? We have all interfered with it; some have almost, if not quite, destroyed it, and with Her Majesty's assent, or will interfere with it, and ultimately quite destroy it. Why not do it now? Has my right honorable friend any fear that he will be worried with vexatious actions?

Sir JOHN FORREST. -

In your Act you limit the liability in railway actions.

Sir JOHN DOWNER. -

I know that our Act does not go far enough. I agree with my right honorable friend there, but he does not seem to appreciate it.

Sir JOHN FORREST. -

I do appreciate it.

Sir JOHN DOWNER. -

In South Australia we have remedied the disease a little, but not sufficiently. In New South Wales they have almost cured the disease, although, perhaps, even now there are some of the old clumsinesses remaining which make the procedure less convenient than it ought to be.

Sir JOHN FORREST. -

Make it easy to fleece people.
Sir JOHN DOWNER. - My right honorable friend thinks that Governments are so much more liable to have verdicts given against them than are private individuals.

Sir JOHN FORREST. - I do.

Sir JOHN DOWNER. - I do not think anything of the kind.

Sir EDWARD BRADDON. - Banks also.

Sir JOHN DOWNER. - I expect the banks deserve what they get, but so far as Governments are concerned, that is by no means my experience.

Sir JOHN FORREST. - It is mine, any way.

Sir JOHN DOWNER. - But if it be so, and if Governments are peculiarly victimized in legal proceedings it will be on account of that very difficulty of getting at them. Make the mode of procedure against the Government as easy as it is against anybody else, and a sense of fairness will come in which will prevent any injustice being done to the Government. But make it difficult to get at them, strew the path with thorns, and you will create a prejudice in the public mind which will probably cause the Government to be victimized in the exceptional cases.

Sir JOHN FORREST. - There is not the slightest difficulty in getting at the Government now. If you have a contract it is as easy as possible.

Sir JOHN DOWNER. - Of course it is. If you commit a wrong should it not be as easy as possible?

Sir JOHN FORREST. - You cannot do it in England, any way.

Sir JOHN DOWNER. - Of course they do not. We have many statutes here giving remedies to the subject which, although assented to by the Queen, are by no means in force in England. We are here establishing a Constitution truly under the Crown, but in many respects vastly different from the English Constitution. I think this principle is a very proper one. It ought to be affirmed, and put in the Constitution. It is not a matter of procedure. It is the establishment of a right which will not exist unless the words are put in. If you want to give the right, you have to put it in. If you leave it out, you negative the right. If you only give the Parliament the power to establish the right, then you are,
to some extent, negativing the right. I do not know that it is worth while to have much discussion about the question—Can the Parliament do this without express words? I quite agree with Mr. Barton that it could not.

Mr. ISAACS. -

You think Parliament could not?

Sir JOHN DOWNER. -

I think it has not the power.

Mr. ISAACS. -

How is it done in Canada? How is it done elsewhere?

Sir JOHN FORREST. -

Put it in the powers of the Parliament.

Sir JOHN DOWNER. -

We spend time enough in discussing things here, and when every one is agreed that this clause is not to be adopted in the form in which it is printed, but is only to be a power of the Parliament, it is not worth while to discuss the question of whether it is absolutely necessary to put in the words. Where there is a wide difference of opinion, it would be safer to do it. I agree with Mr. Barton that there is no power, because sub-section (37) of clause 52 reads—

Any matters necessary for or incidental to the carrying into execution of the foregoing powers, or of any other powers vested by this Constitution in the Parliament or Executive Government of the Commonwealth, or in any department or officer thereof.

I venture to say that these are not necessary or incidental to the execution of any powers. The Commonwealth will come into existence under this Constitution plus English law, one of whose principles is that the Queen can do no wrong. That is the foundation on which the Constitution is established. Then, how can you so interpret sub-section (37) as to say that, incidental to the carrying out of the Constitution, the Parliament which is established on the basis that the Queen can do no wrong, may provide that the Queen can do wrong?

Mr. ISAACS. -

How did you do it in South Australia under your Constitution?

Sir JOHN DOWNER. -

I do not think there is the least analogy with state Governments. When we come to the Federal Judicature, we have a special code for them. They have immense powers, much greater than any Supreme Court has, but they have much more limited powers than any Supreme Court has as well. Within their ambit they are immense; in numbers, they are comparatively few. This is a code of their powers, and, in my opinion, construing sub-
section (37) of clause 52 with clause 73, I do not think there would be power in the Parliament to create a right of action against itself which it was the very essence of its establishment should not be created without express words authorizing that to be done. I do hope that the committee will carefully consider whether they will not go further, whether there is any reason for a this timidity. Why should not the Government be liable at the suit of any one? I can see no principle in right and justice. We are gradually destroying it year by year, but in a properly careful way we only do it by degrees, but seeing that in the senior colony they have substantially done it altogether, and that none of that terrible mischief has been worked which is anticipated by Sir John Forrest, that there is no more multiplicity of actions against the Government in New South Wales than in other colonies, I want to know why we should not, in establishing this Constitution, interfere if you please with this prerogative, at all events, to the extent to which the senior colony has done, and establish in the subject at once and for ever in the Commonwealth of Australia the right to obtain a remedy when a wrong is done by the Government, in the same way as he would have if the wrong were done by a private citizen.

Mr. DOBSON (Tasmania). -

I am in sympathy with the clause, because I think, if we are to keep pace with the march of the times, the Constitution Bill ought to contain a direct declaration that the Commonwealth may be sued by a subject for a breach of contract, or for a wrong done by any of its officials.

Mr. ISAACS. -

Is not that so without any such clause?

Mr. DOBSON. -

I do not think it is so.

Mr. ISAACS. -

Then we want a great deal more than this in.

Mr. DOBSON. -

It was argued in the Judiciary Committee, and it was argued in other places, that the moment the Commonwealth is established the Parliament will, as a matter of course, pass a Crown Redress Act, giving the subject the right to sue the Queen. But why should we not, in drafting the Constitution, insert these words if there is any doubt about the subject? My learned friend (Mr. Symon) says it is a question of procedure. My learned friend (Mr. Isaacs) says it is a question of so much importance that there is power to do it without stating it in the Bill.
I say it is a question of remedy.

Mr. DOBSON. -

Mr. Symon says let Parliament go on to declare so-and-so as the mode in which it shall be done. Why not let the Constitution declare that there shall be the right, and let Parliament go on, if you like, to pass an Act saying within what limits and under what restrictions it shall be carried out?

Mr. SYMON. -

Constitutionally that right exists now.

Mr. DOBSON. -

If our leader, who has suggested this clause, will tell us that it is unnecessary there is an end of it, and as every moment of our time is precious we had better end the debate at once. I think it was put in by Mr. Barton on the ground that he and the Drafting Committee think most decidedly that it is necessary. If there is any doubt about the point, is it not a matter of such great importance that it ought to appear in the Constitution? I think I shall give my honorable colleagues an unanswerable argument why it should be there. We all have to preserve state rights, and we are here to enlarge the powers, privileges, and advantages of our citizens when we have created our Commonwealth, and not to take them away. You have given over your post and telegraph offices. Now, suppose by some gross neglect or delay on the part of an officer a letter or telegram is delayed, affecting a large commercial transaction, costing some unfortunate citizen £5,000, £500, or £100; if that officer had remained a state officer, the citizen would have had his remedy against the Crown in the state.

Sir PHILIP FYSH. -

Would he?

Mr. DOBSON. -

Certainly. At all events, under the Crown Redress Act of Tasmania, he would have. As you are transferring certain services of the states to the Commonwealth, you should also guard the rights which every citizen should have against the Commonwealth officers, and which, under similar circumstances, he would have against the state officers. Can it be imagined that, if there be a remedy against the state officers, there should be no remedy against the Commonwealth officers until the Commonwealth Parliament have passed an Act providing that the Commonwealth officers can be sued? I think the example given by Mr. Symon-

Mr. SYMON. -

I did not intend that as an example in support of any contention.

Mr. DOBSON. -

I think the example given by Mr. Symon is hardly so appropriate as
those we usually hear from him. I take it that if a post-office or telegraphic official punched my head-

Mr. SYMON. -
That is impossible.

Mr. DOBSON. -
You do not know what may happen in a democracy.

Mr. SYMON. -
In Tasmania.

Mr. DOBSON. -
I should sue the man in his personal capacity.

Mr. PEACOCK. -
You would knock him down if you were a Britisher.

Mr. DOBSON. -
It would all depend on the size of the official. In reference to the other important question raised by Mr. Symon as to whether the word "state" is properly used in the provision-"Proceeedings may be taken against the Commonwealth or state," I spoke of that to Mr. Barton before lunch, and, although I was not then in favour of it, I believe Mr. Barton will be able to give very good reasons why "state" should be maintained. Does it at all follow under the Crown Redress Act that if a state officer does a wrong against the Commonwealth-deprives, it of revenue, for instance-does it follow that the Commonwealth Attorney-General shall sue the state Attorney-General? I therefore think that Mr. Barton has done wisely in putting in the word "state" as well as "Commonwealth," because the provision goes on to state "in all cases within the limits of the judicial power." I do not like the proposal that the Commonwealth "may" make the laws. That does not carry us any further than at present, because the Commonwealth may make

laws if there is nothing expressly to prevent it making them. But what is to happen if a wrong is done, or a contract is broken, before such an Act be passed? I should prefer to leave the words as they stand, winding up, to suit Mr. Symon, with "in such a manner and subject to such restriction as Parliament may determine." That would leave it to the Federal Parliament to put on their own limitations and restrictions, and to declare the mode of procedure. But as the proposal at present stands, there would be engrafted in the Constitution the fact that every man has a right to sue if the Queen has broken any contract or committed any wrong.

Mr. OCONNOR. -
There would not be any right, even then, until the Parliament has legislated. Your proposal is the same as Mr. Barton's.
Mr. DOBSON. -

If we engraft in the Constitution that every man has a right to sue, we can surely trust to Parliament to make proper and wise arrangements under which the Queen could be sued. I do not see that the objection raised by Mr. O'Connor has much weight. Although I mistrust the Parliament in matters where self-interest is concerned, I trust them in the matter of a Crown Redress Act. I am in sympathy with the clause as it stands.

Mr. OCONNOR (New South Wales). -

I have a proposal to make which I think ought to unite a good deal of the opinion that has been expressed. My proposal is that this power to deal with claims against the Crown should not be inserted in the Constitution, but should be given to the Federal Legislature. There can be no doubt, we all agree, that the prerogative right to prevent justice being done is simply a barbarism, and ought to be swept away in every country with responsible government. In New South Wales we have swept it away. It is true that in that colony it has been swept away under the guise of procedure, but the procedure there takes away the right of the Crown to refuse redress. Under our procedure any subject can bring an action, not only on contract, but in tort.

Mr. HIGGINS. -

What year was your Act passed?

Mr. OCONNOR. -

I cannot say. The procedure now in our colony applies, not only to contracts, but also, by judicial decisions, to wrongs. In all the colonies there are provisions, wider or narrower, cutting down the prerogative right not to be sued. We must all agree that the Commonwealth should so proceed that in any case in which a man has a cause of action, whether on a wrong or a contract, his right should not be trampled upon by the state any more than by an individual. I quite admit that in dealing with this matter we are opening up a very large question indeed.

Mr. FRASER. -

The state would very likely be fleeced by unscrupulous men.

Mr. OCONNOR. -

Does not the same remark apply to anybody who has the bigger purse-to corporations and banking institutions?

Sir JOHN FORREST. -

The state is the biggest body.

Mr. OCONNOR. -

there can be no ground on which a state could have the right to do wrong or break a contract any more than an individual. I admit that the Crown has to employ an enormous number of persons in various transactions which
bring them into contact with subjects. The Crown employs policemen and officers of various kinds. That is the case particularly in this country, where the Crown enters into business of many kinds. I can quite understand that in many of these cases it might be desirable not to give an unlimited right of action. Let us take, for instance, the case of the survey of a gold-field. A mistake made there as to places or boundaries might result in a wrong, which, if followed to the fullest extent, would require thousands of pounds of compensation. The Crown has always the risk of liability through the small neglect of duty on the part of any of the thousands of officials it employs.

In a technical sense it is right that the Crown should be sued, but, on the other hand, in the public interest it is right to restrict the power of action and the power of recovering damages, exactly on the same principle that the right of action and damages are restricted in the case of the railways, or in the case of ship-owners. The liability of the latter is on a certain percentage to the tonnage of the ship. There is a principle of public policy underlying all this. In such matters you have to deal with large numbers of persons. The state might be involved in claims for immense sums by reason of the failure to perform some duty on the part of any of the thousands of people engaged in the public service, and there should, therefore, be some restriction and limitation on actions of the kind. That is only one illustration. But another illustration may be given. Take the case of the large force of police in the city. Some constable might be guilty of small negligence in not keeping the crowd from behind a particular barrier, or in putting a barrier in such a way that a crush follows with destruction to property. It may be that would be negligence on the part of an agent of the Crown, but it is another matter to say that the Crown should be liable for all the damage. I give these illustrations in order to show that, although it may be a proper thing to give the right of action against the Crown, still there underlies all a principle of public policy which makes it necessary to safeguard the right in every instance. We cannot safeguard that in this Constitution. In giving this right, some regard must be had to all the circumstances.

Mr. SYMON. -

And specific cases or classes of cases.

Mr. OCONNOR. -

And specific cases or classes of cases must be considered. That may be done by the Federal Parliament. My proposal gives power to the Federal Parliament to legislate on matters of this kind. The next question is as to
whether it is necessary to give this power to the Federal Parliament. It has been interjected by Mr. Isaacs that in his opinion it is not necessary. This matter has been the subject of a great deal of consideration by the members of the Drafting Committee, including Mr. Barton, and the conclusion I have come to entirely corroborates what Mr. Barton has stated on the matter.

Mr. HIGGINS. -

May I ask you one question? Is it your idea the remedy should remain against the officer if you get a remedy against the Crown?

Mr. OCONNOR. -

I was not dealing with detail of that kind. I only proposed to furnish another illustration of how the question ought to be dealt with in Parliament, where all the qualifications and conditions might be considered.

Mr. HIGGINS. -

I understood you were a party to the amendment, as at first considered. Was it your idea if there was a wrong done by an officer, acting under the impression there was an Act of the Commonwealth giving him power, that the remedy should be taken away as against the officer, and only remain as against the Crown?

Mr. OCONNOR. -

No. In that case I apply the principle to its fullest extent. If two persons are concerned in a wrong they are both equally liable. In the case the honorable member mentions, the officer would be liable just as much as the Crown. I need not, however, enter into that matter now. Although my opinion at first was that the right should be given in this bare way, I have been impressed by the arguments used by Mr. Symon and others in regard to the immense importance of the questions that are involved in taking away the prerogative right. Coming back to the question as to whether it is necessary to give this power to the Parliament, I have no doubt whatever in my own mind it is necessary. The powers of the Parliament are limited entirely within the four corners of the Constitution. There might be powers incidental to the carrying out of the powers given in the Constitution, but there is no power except such as are necessarily implied from the powers already given in so many words. There is no power here to take away that portion of the prerogative which enables the Government to resist any claim. The claim against the Government is not a matter of procedure: it is a matter of right. The reason a subject cannot sue the Crown is not because there is no procedure, but because no action by the subject will lie. Unless you give a right by the subject against the Crown,
the prerogative right of the Crown to say that the Crown can do no wrong is still continued. Therefore, I say that the right of the Crown not to be sued is not a matter of procedure, but one of prerogative right. You cannot take away the prerogative right except by express language, and that must be admitted by any one who has considered the subject. No right of the Crown can be taken away except by express language. I say there is no language here which will bear, even with the most strained construction, the interpretation of taking away this prerogative right of the Crown. I have heard some reference made to the last sub-section of clause 52, but that does not touch the matter. It only gives the right to exercise all powers which may be necessary for carrying into effect the powers which have already been given. That might give a right regarding procedure if there was power to take away the prerogative right of the Crown, but it does not go beyond that. Is there any such power given under the Judiciary? The power under the Judiciary is simply a power to entertain a question when brought before it, but the right to entertain a claim against the Crown when brought before it does not give a right of action against the Crown. Inasmuch as it does not appear anywhere, either expressly or impliedly, that this right of the Crown to defeat the claim of a subject is taken away, and as we all want to give power to the Federal Parliament to take away that right under such limitations as may be thought necessary, I think that power ought to be inserted in the Constitution. What objection can there be to inserting it in the Constitution? I think I gathered from what my honorable and learned friend (Mr. Symon) said, that he saw no objection to doing so, and I myself cannot understand what objection there can be.

Mr. ISAACS. -

Are you speaking of the clause as printed-73A?

Mr. OCONNOR. -

No; I do not think the honorable member was here when I began my remarks. What I said was, that I can quite see there may be a good many objections to give the right in the Constitution in that bare way, and therefore I propose to ask Mr. Glynn to substitute for his clause the following:-

The Parliament may make laws conferring rights to proceed against the Commonwealth or a state in respect of matters within the limits of the judicial power.

Mr. KINGSTON. -

Ought, not that to be put in clause 52 instead of clause 54?

Mr. OCONNOR. -

That is a matter of drafting. I have no particular objection to its being put in clause 52; but we may as well settle the principle now. This puts it
beyond all question that the Parliament has a right to legislate in regard to these matters. I do not think any one denies that the Parliament should have that right, and the sole question is whether the right is given here in the Constitution already. I say it is not given. I am not aware of any portion of the Bill from which it can be inferred that it is given, and giving the right in this way enables the Parliament to take all care that the prerogative right is protected, so far as it is necessary to protect it consistently with justice to the subject.

Mr. FRASER. -

Why bring in a state as well as the Commonwealth?

Mr. OCONNOR. -

I am glad the honorable member reminded me of that point.

It is done for this reason: You will observe that the power here to make laws giving a right to proceed against the Crown or a state is confined only to those subjects which are within the limits of the judicial power. Now, under clause 73, the judicial power extends to certain matters:-

(1) Arising under this Constitution or involving its interpretation.

Of course those are matters of law.

(2) Arising under any laws made by the Parliament: (3) Arising under any treaty: (4) Of admiralty and maritime jurisdiction: (5) Affecting public Ministers, consuls, or other representatives of other countries: (6) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

Mr. ISAACS. -

That is utterly unlimited.

Mr. OCONNOR. -

Yes, that is unlimited.

Mr. ISAACS. -

And you give this power conferring rights?

Mr. OCONNOR. -

I beg the honorable member's pardon. That sub-section cannot touch the question or limit the rights in any way; it is a mere matter of procedure.

(7) In which a writ of mandamus or prohibition is sought against an officer of the Commonwealth: (8) Between states.

In answer to Mr. Fraser's question, I would point out that power is given here for proceeding by one state against another. Now, at, the present time, an individual could not proceed against a state for it wrong; an individual could not sue a state.

Mr. FRASER. -

But could not a state Parliament grant that permission to sue which you
now seek to put in the Commonwealth Bill?

Mr. OCONNOR. -

The state might grant the permission.

Mr. FRASER. -

Then why interfere?

Mr. OCONNOR. -

For this reason: These subjects of jurisdiction are subjects which arise under this Constitution, and in giving this jurisdiction regarding subjects arising under the Constitution you must also provide for your remedies. It is an idle thing to say that there shall be certain jurisdiction to deal with disputes arising under the Constitution if a state cannot site another state. If you say here that one state may site another state, or that an individual may sue a state, in the courts of the Commonwealth, you must make some provision by which the right to sue is given to the state and against the state. Inasmuch as you deal with questions here which involve the settling of questions between state and state, or between the individual and the state, before the Commonwealth courts, you must give the right of action also, without which this right to sue is of no value whatever.

Mr. ISAACS. -

You want to grant a substantive right which would not otherwise exist.

Mr. OCONNOR. -

No. I will give the honorable member an illustration. Suppose, for instance, some work, say of irrigation, is erected by a state in one of our rivers that injures some citizen of the Commonwealth, and he wants to bring an action against the state; we will say he is a citizen of another state, and, therefore, he must bring the action in the Federal Court, the state which is sued, if its procedure do not allow it to be sued, may say-"That is all very well; as a matter of procedure, this right is given to you; but, inasmuch as the Crown call do no wrong in this particular state, there is no power to bring the Crown into court in this state, and therefore there is no cause of action." Therefore it is that, in order to give completeness to the rights which the procedure evidently intended to confer, you must give the right to sue a state in the same way as you give the right to an individual to sue the Commonwealth.

Mr. HIGGINS. -

I thought you were speaking of actions by an individual against a state—not between states.

Mr. OCONNOR. -

So I was, but the honorable member will see that this clause is incomplete at present. It will be necessary to complete the clause by
putting in the power which is given in America, and which necessarily exists here, that not only may actions between states be brought, but actions between a citizen of one state and a citizen of another state, or between a citizen of one state sued another state. That is an omission which must be remedied.

Mr. HIGGINS. -

It was left out advisedly by our committee.

Mr. OCONNOR. -

That can be considered later, but in order to complete the circle of remedies with which we are dealing, and give vitality to some very important rights which have no doubt been given under our decisions here regarding subjects of legislation, something of this kind must be done. I would suggest to the committee that it is necessary we should give a right to proceed against a state as well as against the Commonwealth. After all, it is merely a permissive power. All these questions will be discussed by the Federal Parliament, with the opportunities and knowledge necessary to do justice to the Crown and to the public.

Mr. SYMON. -

Would you preface your amendment by saying "Without limiting the power of the Parliament under the Constitution"? The object of that would be to prevent it operating as a limitation.

Mr. OCONNOR. -

I do not see how it could operate as a limitation. It deals with a specific question, and it seems to me to cover the whole ground.

Mr. ISAACS (Victoria). -

This is a matter of extreme importance. I am not at all satisfied that we should be right in inserting this clause or anything like it. No doubt the views presented by Mr. O'Connor are worthy of our most careful consideration, but in the limited time afforded to us, I am not able to say that we should not be doing wrong by agreeing to such a clause. If we assume that it is necessary, we must also assume that it is necessary in relation to many other subjects in the Bill. What are we doing? We are proposing to put in a clause which will supplement sub-section (37) of clause 52. That sub-section is in the widest possible terms.

Mr. OCONNOR. -

It is not proposed as a supplement to that.

Mr. ISAACS. -

What I say is, that it is intended in effect as a supplement to that and to all other powers given to Parliament in the Bill.

Mr. OCONNOR. -

It is an express power.
Mr. ISAACS. -

Yes, and that means that it is considered that the expressed and implied powers already given are not sufficient.

Mr. OCONNOR. -

Yes.

Mr. ISAACS. -

The Parliament has by clause 52 full power and authority to make laws for the peace, order, and good government of the Commonwealth with respect to a large number of matters that are set out. This is a power that is without limitation. The Parliament may legislate, for example, with respect to the Federal Judicature and actions that may be brought, as well as on all the substantive matters mentioned in clause 52, and any Act passed is to bind the Crown. And yet we are told that the Parliament cannot legislate upon these matters in one particular direction. It is said that it cannot, when passing an Act upon any of these subjects, say that if any wrong is done, the state or the Commonwealth shall be liable, out of the public purse. Why cannot it make such a law? Why cannot it say that an individual should have redress out of the Commonwealth or the state purse if the subject on which it is legislating is one of the various subjects committed to its care? We are told that it is a matter of prerogative. Perhaps it is, but that does not except it from the powers of the Parliament. It is the Queen and the two Houses that are legislating, and when the Imperial Parliament passes this Constitution it will say-"You may affect the prerogative so long as when doing so you are within the limits of the powers conferred." In the Canadian Act there are no such words. As to a number of subjects, we are in exactly the same position as the Congress of the United States. The Federal Parliament is supreme within these limits.

Mr. OCONNOR. -

There is no prerogative to reckon with in the United States.

Mr. ISAACS. -

No; but the principle is the same, and if there were a prerogative it would be within the powers. In Canada they have taken away the right of appeal to the Privy Council in certain instances, and that affects the prerogative. There can be no distinction drawn between the two cases, so far as this particular point is concerned. Now, let us consider how far it is necessary. Does the honorable member mean to tell me that it is a matter of substantive right to say that you shall have an action for a wrong—a tort, as it is called? You have to assume first of all that there has been a substantive right that has been violated before you get the tort, and you are now urging
that power should be given to the Parliament to allow the remedy for a wrong to extend where it has not extended before. It is not creating rights except in the sense that every remedy is a right—a right of action, a right of going to one court, a right of appeal. You may talk of them all as rights, but they are only rights in a limited sense, and they are quite different from the substantive right which has been violated and which is the cause of complaint.

Mr. SYMON. -

It is a right to proceed.

Mr. ISAACS. -

Yes; and that, after all, is a question of remedy. I have misunderstood the Constitution altogether, and we shall have to recast it, if we are to be told that there is any direction in which the Federal Parliament cannot legislate within the limits of the powers committed to them. This proposal would possibly operate as an absolute limitations. Take a matter like that of immigration and emigration. Is it to be said that the Federal Parliament must not affect the prerogative of the Crown by saying whether foreigners shall be admitted or not? There are a number of prerogatives that are put within the reach of the Federal Parliament, and if it is necessary to insert this clause in one case it must be equally necessary in others. I am sure that it would be a cause of very great trouble. My objection to new clause 73A as printed is as I have stated, but my objection to the words used by Mr. O'Connor goes much further. I will point out why. My honorable and learned friend (Mr. O'Connor) proposes that the Parliament shall make laws conferring upon the individual the right to proceed against the Commonwealth or against a state. But I am afraid that that will take us very much further than any of us anticipate. Suppose that the state of New South Wales were using the water of the Darling in a way to which the state of South Australia objected. Would not this provision allow the Federal Court to say that New South Wales must be stopped? We come back to the old question as to the meaning of the word "matters." At first it was sought to pass over that word lightly, but the right honorable member (Mr. Reid) afterwards found that there was a good deal in the point raised by me in connexion with it. If the judicial power is to extend to all matters between states, the clause now submitted would enable the Federal Parliament to say that just as an individual riparian owner below stream may sue an individual riparian owner above stream for depriving him of a certain amount of water, so a riparian state below stream might sue a riparian state above stream.

Mr. HIGGINS. -
Does not this provision simply confer the right to proceed?

Mr. ISAACS. -
I think it goes much further.

Mr. GLYNN. -
We want to obtain for the states the right of action which the honorable and learned member seems to fear.

Mr. DOBSON. -
The proposal gives no right further than the right to proceed.

Mr. ISAACS. -
The right to proceed includes everything.

Mr. DOUGLAS. -
What does the honorable and learned member object to?

Mr. ISAACS. -
I think that the proposal goes very much further than any of us wish.

Mr. DOUGLAS. -
Does it give any more power to an individual in respect to this right to proceed against a state than he has now?

Mr. ISAACS. -
It gives rights which do not exist now. All I think we should do in regard to this matter is to see that sufficient machinery is put into the Bill to carry out the substantive portions to which we have agreed. We have agreed by passing clause 52 that certain matters, and certain matters only, shall be referred to the Federal Parliament. With regard to these matters there is no limitation of the power of the Federal Parliament, and to make this perfectly certain we have put in a provision which gives the Federal Parliament the power to do anything necessary for the due exercise of this power. In the United States Constitution they use the word "proper" where we use the word "necessary," and it has been held there that this provision is unlimited in its operation. It is not treated as an ordinary deed conferring power on an agent, but is regarded as an intimation to the Federal Parliament to exercise its own discretion as to what is necessary or incidental to the attainment of the objects it has in view. I do not want to allow the Federal Parliament to be able to legislate upon other matters, but so far as these matters are concerned, its control should be practically unfettered. To put in a clause such as is now suggested would, in my opinion, very seriously limit this power. Why should we do this, simply when it may lead us in a direction that we are not sure of? I think we should be doing wrong to put in this provision. But after the strong expression of opinion we have had from the honorable and learned member (Mr. O'Connor), I do not hesitate to say that I may be in error in the view I take. I have not had sufficient time to thoroughly consider this matter. My
honorable and learned friend has no doubt had more time to consider it than I have. I am merely expressing the thoughts that occur to me at the moment, but no doubt he feels more confident of his position, because he has given the matter the conscientious thought and attention which he gives to every subject with which he deals. Nevertheless, the provision seems to me to bear the construction which I have put upon it, and I think that it will not act so beneficially as the honorable member (Sir John Downer) wished us to believe it would act. He said that power was given in the Constitution to take over the railways. If any wrong was done by a state in regard to the railways, why should we not give the right to proceed against that state? If we look at the clause of the Bill relating to railways, we will see that the Commonwealth has no power to take over the railways without the consent of the stat

intended to give the Federal Court the right to adjudicate in certain classes of matters. These classes of matters are distinctly set out in clause 73, which tells us what matters the judicial power of the Federal Court shall extend to. These classes of matters being set out, there is a presupposition of rights, whether of tort or of contract. The Federal Legislature under the Constitution has the fullest power to legislate in regard to these matters, the fullest power to legislate substantively, and, therefore, also the power to legislate with regard to procedure. It seems to me that the measure is complete as it stands, and that we should be introducing an element of great doubt and danger by putting in this provision. I offer these remarks for consideration, because I think that the matter is one which concerns us all, more especially when we recollect that the judicial power extending between the states is not confined to matters confided to the Federal Parliament, but that there may be rights outside those matters. The states may have controversies outside the legislation of the Federal Parliament. When we say that the Federal Legislature should have power to legislate so as to confer rights to proceed, we may be getting outside the limits of the Constitution.

Mr. DOBSON. -

If all these amendments are shut out, and the Federal Parliament passed a Crown Redress Act, would the Queen have to consent to it?

Mr. ISAACS. -

No, not in person, because the Constitution says that the Queen shall have her representative here-the Governor-General.

Mr. DOBSON. -

But a measure derogating from the Queen's prerogative would, to some extent, be an alteration of the Constitution.
Mr. ISAACS. -

I cannot see that it would be an alteration of the Constitution any more than a similar measure passed by one of the colonies now would be an alteration of its Constitution. Constitutions have been given to each of the colonies. They give the local Parliaments no express power to derogate from that prerogative, but there is a power to legislate—a limited power—and within that limited power they can, if they choose, pass legislation derogating from the Queen's prerogative. For these reasons, I think that we should not adopt the proposal.

Mr. GLYNN (South Australia). -

I think that the best answer to the speech of the honorable and learned member (Mr. Isaacs) is the fact that in Canada, in 1875, they attempted a limitation of the prerogative, in general words, to take away the right of appeal to the Privy Council; but that enactment was held to be bad, and an Act, 51 and 52 Vict., had to be passed.

Mr. ISAACS. -

It was not held to be bad because there was no power in the Parliament, but because Parliament had not expressed its wishes.

Mr. GLYNN. -

In a case in Canada, which occurred not very long ago, an action was brought against the Railways Commissioners there to obtain compensation for serious injury which was the result of a railway accident. But this absurd principle which fences in the prerogative, and which might have been all very well 150 years ago, stood in bar to prevent the plaintiff from getting damages.

Mr. ISAACS. -

That does not affect the question.

Mr. GLYNN. -

It affects the policy of my proposal. My honorable and learned friend has pointed out that if we pass the clause as suggested by me, or the provision suggested by the honorable and learned member (Mr. O'Connor), we shall be giving certain rights of states against states under clause 73. That is what I want to do. I do not want federation to be merely a barren name so far as the colony of South Australia is concerned. As has been pointed out by the honorable and learned member (Mr. O'Connor), we are at the present time, as the Bill stands, only regulating procedure. The honorable and learned member (Mr. Isaacs) says that a question might arise in regard to the interference by New South Wales with South Australian interests in the Darling. Under the Bill as it stands South Australia can go to 50 courts, and get no redress; but if my proposal is carried, it will be
able to go into a federal court of justice and proceed against the offending state, just as one individual riparian owner can proceed against another.

Mr. ISAACS. -

I do not think the New South Wales representatives wish that.

Mr. GLYNN. -

They have plenty of wisdom in their heads, and they ought to see the effect of a particular amendment, but we are shifting about so much that it is almost impossible to understand when an honorable member know's what he is doing. I know perfectly well what I want to accomplish. I want to give all the provisions of clause 73 complete efficacy. I want to say whether you wish the Federal Judiciary to interfere between states. The Crown immunity applicable 100 years ago should not interfere with those rights. An honorable member says it can be done without amendment, but I very much question that. The eleventh amendment of the American Constitution was another side of this business. It was to take away a right granted by the Constitution, or impliedly granted by the Constitution, for a subject outside the state to sue the state. It was held that the state as well as the Commonwealth was sovereign, and there was an interference with the theory of the petition of right not by an Act of Congress, but by an amendment of the Constitution.

Mr. ISAACS. -

Does the honorable member refer to the case of Chisholm v. Georgia, when the Supreme Court decided that a state could be sued under the Constitution? It required the eleventh amendment to reverse that.

Mr. GLYNN. -

A man would have to live to the age of Methuselah to cultivate a memory equal to remembering all the cases which the honorable member is always referring to. Burgess, in referring to this anachronism of policy, says-

The Supreme Court has itself evidently felt the error of the limitation, and has rendered it nugatory wherever it has been possible to place the individual in the position of defendant instead of plaintiff in a suit in which the other party is a Commonwealth, and whenever it has been possible to make an officer of the Commonwealth in his personal character defendant in place of the Commonwealth itself.

There is a declaration by one of the first constitutional writers in America as to the advisability of removing these provisions from the Constitution. It was stated by Mr. Symon that this is a matter of procedure and ought not to be included in the Constitution. That does away with his pet idea of denying the right of appeal to the Privy Council in this Constitution. Why not leave that also to the Federal Parliament? One objection to relegating questions of this kind to the Parliament instead of settling them in the
Constitution is the fact that in the Federal Parliament many of these vexed questions which have been discussed in this committee will turn up again. We shall hear objections in the Parliament that if you confer this right of a state to sue another state you will be giving a right of action with regard to the riparian rights of, say, Victoria as against New South Wales. Even the very matter which we have fought out for weeks will be brought into the Federal Parliament and rediscussed with, perhaps, for some of the states, an absolute denial of rights. So far as the policy of the immunity of the Crown is concerned, it is monstrous that although £10,000 worth of damage was done to a subject in England by the Commissioner of Woods and Forests, the subject was absolutely debarred from exercising his right on this plea of the immunity of the Crown. Are we going to perpetuate such a stupid provision? The Crown is supposed to be the conservator of justice to the people, and is it to be allowed to stand in the way of justice? It is better to settle this question by the Convention itself now than to pass it onto the Federal Parliament. As a matter of policy, the sweeping away of these immunities of the Crown which place it in an anomalous position in regard to the subject is quite justifiable.

Mr. FRASER. -

Why should we settle what the Federal Parliament can equally, well settle?

Mr. GLYNN. -

Supposing a Bill were introduced into Parliament the objection of Mr. Isaacs that you would be giving a recognition of the right of one state to sue another state on the rivers question would be urged, and you would then have the whole rivers question introduced into the Parliament. We ought not to be talking here for weeks on a subject, and then by rejection of a motion of this sort in the Convention prevent the carrying out of a policy which, in other respects, we are supposed to have formulated. It is generally conceded that some amendment such as this is necessary, whether it be done in the Convention or by the Federal Parliament. If Mr. O'Connor thinks that it should be relegated to the Federal Parliament, and if my motion is carried, that can be done afterwards, but I will risk a division on this point. Consequently I ask the committee to support me in voting for this clause, which has been drafted by Mr. Barton.

Mr. BARTON (New South Wales). -

I wish to say a few words on this subject. At the outset I would say that I am not very particular whether this matter is dealt with by such a clause as drafted by the Drafting Committee or whether it is dealt with by a clause giving the Parliament power to deal with the subject. I can without much
difficulty meet my honorable friend (Mr. Symon), but I do hold a strong opinion that it would be necessary to provide for this matter in the Constitution in the manner we have provided for it in this draft or else to take the power for Parliament to make laws upon the subject. The question has been asked whether the Parliament cannot make laws affecting the prerogative. The answer is-"Yes" and "No." The Parliament can make laws affecting the prerogative in respect of any matter in which it has express power of legislation or a power necessarily implied. It cannot make laws affecting the prerogative in matters with respect to which it has no power to make laws.

**Mr. FRASER.** -
Can it not get authority?

**Mr. BARTON.** -
Not unless it gets the power in this Act.

**Mr. FRASER.** -
Cannot the local Parliaments get the power from home?

**Mr. BARTON.** -
They do not require to get authority from home, for this reason: That the local Constitutions empower the colonies separately to make laws for the peace, order, and good government of the community, and that is without restriction, except such small restrictions as are imposed by the Constitutions themselves, and, of course, the necessary restriction that they can only legislate for their own territory. The position with regard to this Constitution is that it has no legislative power, except that which is actually given to it in express terms or which is necessary or incidental to a power given. The result is that you might pass a clause giving judicial power to a court, but you cannot by the passage of that provision make the conferring of a right of action upon a subject something necessary or incidental to the exercise of that power, because jurisdiction simply means power to determine cases where a right of action exists. It certainly does not mean giving the right of action simply where jurisdiction is given. That is the starting point of difference in the argument between honorable members who have spoken and myself. Where there is a jurisdiction given, that is simply the right to try cases where there is shown a right of action. That jurisdiction does not confer a right of action upon anybody. Whether it is by the operation of the maxim that the king can do no wrong, or by any other cause, that a person has no right of action, he cannot have that right given to him under this Constitution unless there is a provision in the Constitution giving him that right, or a provision enabling Parliament to confer that
right upon him. That is really the difficulty of the position. That is where I seem to differ from Mr. Symon and Mr. Isaacs. This proposition is really made as a matter of safety. It will be a very awkward thing if it is discovered years after the Constitution is framed, instead of being discovered now, that where a subject has a valid right of action, except for the maxim that a king can do no wrong, he is precluded by the operation of that maxim under this Constitution. I grant that in respect of any matter in which the power of legislation is given, such as legislating about military defence and other matters, the plenary power of legislation gives legislative authority which includes more than the right of a

Mr. ISAACS. -
Do you, mean in respect of matters outside?

Mr. BARTON. -
Outside the powers granted.

Mr. ISAACS. -
What right have we to interfere in those matters?

Mr. BARTON. -
We have no right, so that the point is narrowed down to this: The question is whether any words in this Bill can be read to confer by themselves the right upon a subject to bring an action in the face of the maxim I have referred to, or whether apart from that there is any power conferred by the words of this Constitution-and by the words I mean the expression or necessary meaning of them-upon the legislative authority of the Commonwealth to confer these rights. Now, I have studied this matter considerably. The Drafting Committee have bestowed considerable attention upon it, and we are unable to see in any way that there is either a power given in the Constitution as it stands, or to the Commonwealth Parliament, to legislate so that these rights may be conferred, either by the Constitution in the former case, or by the statute to be passed by the Federal Parliament in the latter case, and that is our difficulty. I think it is better not to rely upon assurances that such a power is impliedly conveyed. I must say that, after all the attention we have bestowed upon the matter, we three members of the Convention who constitute the Drafting Committee, and who have considered it so carefully, have not been able to find a vestige of that power. It is natural-and I think this is how the question has arisen so late-in comparing a Constitution of this kind with the American Constitution one should first imagine, as most of us have imagined, that the granting of the judiciary power confers also either the right of action or the power to legislate with regard to the right of action. But the difficulty is this: The American Constitution has been framed in that way because it was an independent Constitution. It has been read
always to express the grant of power by the people, independent of all statutory authority. It has been treated simply as a declaration of the people, and one can understand why rights of action should be taken to be inferred by words importing merely a judicial power, because those who framed the Constitution probably came to the conclusion that it would be only for them to do so that those words defining the judicial power would be, for many purposes, practically useless, unless the people meant to grant the right of action in the cases mentioned. But that implication does not arise in a Constitution of this kind, or in the canons of the construction of the English statutes, and there is no way in which we, as members of the Drafting Committee, can see that it does arise. Consequently, if this power is not put in the Constitution as the right of a citizen, or so that the Parliament can confer the right, we are of the distinct opinion that in respect of many matters specified in clause 73-matters which arise between citizens and the Commonwealth or between citizens and the state-there would be not only no right of action conferred, but no power in the Parliament to confer that right.

Mr. HIGGINS. -

You want to leave the Parliament free to make laws if it sees fit.

Mr. BARTON. -

I am content with that. Where a claim is maintainable against a subject it should be maintainable also against the Commonwealth or a state. I can see that there may be some practical inconvenience arising out of that, but I am content to leave the matter in the hands of the Federal Parliament. Still I ask the Convention to go with me to that extent, lest we should arrive at a decision on matters which, after this Bill is passed, would prevent a subject from gaining any redress where his rights would have been in fringed if the other party had been a subject instead of a state or the Commonwealth, because, if that did happen, there would be no power to remedy that evil by statute. Now I come back to the beginning of my argument, to make the matter clear. You cannot, by arguing that there is power to limit the prerogative by a statute, argue in the Federal Constitution that you can limit the prerogative by a statute in cases where no power of legislation on extra-federal subjects is conferred.

Mr. ISAACS. -

We can deal with those subjects now.

Mr. BARTON. -

I do not think we should, but the difficulty that my honorable and learned friend is in is this: Where there is no express power in the Constitution, and
where there is no legislative power conferred in respect of the subject, his argument is: That because you can limit the prerogative right by legislation, therefore you can limit it to the extent of that extra-federal subject. I think that is really the position. I must urge that, if not the clause of which the Drafting Committee gave notice, the clause I read in answer to Mr. Symon, should be adopted, because there is danger of a serious difficulty arising, which two or three words might remedy by taking the whole course into the hands of the Federal Parliament, who may apply it according to the rights of the people which they have in charge.

Mr. OCONNOR (New South Wales). -

As Mr. Glynn has not been able to accept the amendment I suggested in place of his, I beg to move the insertion, before the word "Proceedings" in his proposal, of the following words:-

The Parliament may make laws conferring rights to proceed against the Commonwealth or a state in respect of matters within the limits of the judicial power.

An amendment was suggested by Mr. Symon, but I do not think it is necessary.

Mr. ISAACS. -

Will not that involve in implication that there is no power to make laws to proceed against any individual?

Mr. OCONNOR. -

Oh, no.

Mr. ISAACS. -

I do not know.

Sir JOHN FORREST. -

Mr. O'Connor's amendment would apply to a person.

Mr. OCONNOR. -

Either to a person or to a state.

Mr. SYMON (South Australia). -

What Sir John Forrest said has some bearing on a suggestion I was going to make. I was going to ask Mr. O'Connor if he would not substitute for the very equivocal and doubtful expression "rights to proceed" the word "remedy."

Mr. BARTON. -

Would "remedy" do?

Mr. SYMON. -

I think so.

Mr. BARTON. -

You want to include the right.

Mr. SYMON. -
Well, that is a remedy. What I want to point out is that nobody intends, by this Constitution, to give a right of action. You cannot give a right of action. It depends on something quite different-on what has happened between the Commonwealth and a citizen, the state and a citizen, or between citizen and citizen? The right to proceed is merely a remedy. Therefore, I agree with Mr. Isaacs, who points out the confusion that may arise, and also what "rights to proceed" means. The Federal Parliament may have some difficulty in determining what their legislation can be within the scope of this expression-"Rights to proceed." I was greatly impressed by what Mr. Barton said. It comes to what is a remedy. You want to give an individual a right of remedy against the Crown exactly as he has a right against an individual. It is all a pure question of remedy. If Her Majesty chose to answer a petition of right in a question of tort with the usual form of words-"Let right be done," right would be done.

Sir JOHN DOWNER. -

No.

Mr. SYMON. -

I say it would.

Sir JOHN DOWNER. -

No.

Mr. SYMON. -

I note the emphasis of my honorable friend, but his interjection is not an answer to my statement. We want to allow Parliament to do what it pleases with regard to the rights it has.

Mr. OCONNOR (New South Wales). -

I am sorry to say that I cannot accept the suggestion. What we want to deal with are rights. The reason why you cannot bring an action against the Crown is that the Crown can do no wrong in the eyes of the law. Therefore, we want to give Parliament the power to confer rights.

Mr. GLYNN (South Australia). -

I should like to say that I will accept Mr. O'Connor's amendment, and to explain that as my clause was drafted it stated "in such manner as Parliament may prescribe"-really a reference to what was originally suggested.

Mr. O'Connor's amendment was agreed to.

Mr. Glynn's proposed new clause, as amended, was further amended by omitting the remainder of the clause.

The clause, as amended, was then agreed to.

Mr. GORDON (South Australia). -
I beg to move the insertion, after clause 74, of the following new clause:-

74A. The plea that any law either of the Parliament of the Commonwealth or of any state Parliament is *ultra vires* of the Constitution shall not be raised in any court except as follows:-

1. As to a law of the Parliament of the Commonwealth by or on behalf of a state.

2. As to a law of any state by or on behalf of the Commonwealth.

But nothing contained in this section shall prevent the plea being raised that there is a conflict between any law enacted by the Commonwealth and any law enacted by a state.

I shall move this new clause in as few words as possible. The first proposal contained in the clause is that, as to a law of the Parliament of the Commonwealth, the question of *ultra vires* shall not be raised by any private citizen, but, only by the Parliament of a state. Let us look at how this will work. A federal law, in the first place, has to be discussed by the House of Representatives, in which all the states are represented in proportion to their varying populations. Then it goes to the Senate, where the states are represented in equal numbers. It runs the gauntlet of criticism by the press and by the constituents both of the Federal Parliament and the states Parliament, and ultimately it reaches the solemnity of law. My contention is that no private individual should be allowed to contest that law in the courts. It may be said that the law will possibly abridge the liberty of some individual citizen or make some deduction from his rights. But it is so with nearly every law. There is scarcely any law which does not affect a citizen's material interests in some point or another, but the test of whether the law is legitimate is the interest of the majority of the people. If the law is passed after having run the gauntlet of criticism in the House of Representatives, by the Senate, and by the public, my contention is that it should only be impugned by a Parliament of a state. It is a question, after all, of the rights of a majority. The states Parliament would be the sentry along the line of the dividing power between the states Parliament and the Commonwealth. As

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Mr. SYMON. -

Because the law of the state cannot be *ultra vires*, but the law of the Commonwealth may be.

Mr. GORDON. -
It may be that the law of the state may infringe on the law of the Commonwealt

Mr. SYMON. -

But the law of a state now cannot be *ultra vires*.

Mr. GORDON. -

But the proposition is this: At present the law of a state is passed by the majority of the representatives of the people of that state. The same proposition holds good in a Federation. A federal law is passed by a majority of the representatives of the people in Parliament assembled, and ought to have the same binding effect on the individual as it would without the Federation. As regards a federal law, I contend, with much respect, that the state Parliament Should be the sentry along the line of the dividing power, between the powers of the two bodies, to say whether or not there is any infringement of the power. As regards a state law, the Federal Parliament is the sentry along the line.

Mr. HIGGINS. -

Suppose the sentry is asleep, or is in the swim with the other power?

Mr. GORDON. -

There will be more than one sentry. In the case of a federal law, every member of a state Parliament will be a sentry, and, every constituent of a state Parliament will be a sentry. As regards a law passed by a state, every man in the Federal Parliament will be a sentry, and the whole constituency behind the Federal Parliament will be a sentry.

Mr. REID. -

They would not all be in the swim, to use Mr. Higgins' elegant phrase.

Mr. GORDON. -

They could not.

Mr. HIGGINS. -

You would have to get the state Parliament to move.

Mr. GORDON. -

Yes. If this proposition is not carried, some individual will have to move, but the same reasons which would cause an individual to move would cause the Parliament to move if individual interests were to any serious extent affected. In the case of a federal law the state Parliament would be on the alert always to see that its sphere of action was not improperly infringed.

Mr. WISE. -

How is the state Parliament going to raise the question?

Mr. GORDON. -

By a process which can very easily be devised, by the intervention of the state Attorney-General-
Mr. WISE. -

On fictitious suits.

Mr. GORDON. -

Not necessarily. It may be raised on an abstract proposition.

Mr. WISE. -

The essential virtue of our system is that the courts deal with concrete propositions.

Mr. GORDON. -

That is the present system, but we are creating a new system. There is no scientific reason in law why an abstract proposition of law should not be submitted to the courts, or why the Attorney-General of a state on the one hand, or the Attorney-General of the Commonwealth on the other, should not intervene in the same fashion, probably on the same lines, as an Attorney-General now intervenes in a divorce suit. How this principle would have worked in the American Constitution is illustrated by the Treasury Notes Case. When the Congress of the United States issued Treasury-bills in 1862—a measure absolutely required to save the nation—none of the states having the honour of the nation at stake would have disputed the legality of that issue. It was left to a single individual to paralyze for a time the whole nation, by raising the question of the legality of the notes.

Mr. SYMON. -

His individual rights were at stake.

Mr. GORDON. -

Clearly; but surely my honorable friend sees that where we have government by majority individual rights must give place to the interests of the majority? That is true as to the laws of God himself. The law of gravitation, which governs the spheres, makes the boy fall out of the apple tree. Nature, which is so seemingly careless of the individual life, is careful of the type. What are we doing here? We are binding by majorities minorities everywhere. The whole scheme of federation is the binding of a minority by a majority. In fact, every modern system of government is simply a scheme for effecting the will of the majority. This proposal will make the law valid until upset in the way proposed: It can only be impugned afterwards by the Federal Parliament, or, on the other hand, by the state. I think it is monstrous that after the Federal Parliament has passed a law expressing the will of the majority of the people, or after a state Parliament has passed a law expressing the will of the majority of the people, any individual should be allowed to impugn it. It is quite possible, it is highly probable, that many individuals will be affected by it, but why
should one individual be allowed to upset a law which is carried in the interests of the majority? The test of whether or not a law is righteous is this—is it required in the interests of the whole?

Mr. WISE. -

Suppose the majority decide that there shall be no equal representation in the Senate?

Mr. GORDON. -

Those who are outvoted will be bound by it. Are we not binding, or attempting to bind, by this federal scheme a powerful minority in New South Wales and in other colonies who declare that they are being robbed of their rights?

Mr. WISE. -

We are.

Mr. GORDON. -

If the majority desire it the minority will be bound, and no matter how much they howl—no matter how much they cry out that they are being robbed of their rights—they will be bound by this scheme of federation if the majority say they are to be bound by it. Where is the argument of a right of the individual when in this very scheme of federation we are taking away what so many hundreds of thousands of persons conceive to be their precious rights?

Mr. SYMON. -

It is not a law which is ultra vires.

Mr. GORDON. -

The honorable member will see that I am not declaring that any law which is ultra vires is not ultra vires. I am simply limiting the area of attack.

Mr. SYMON. -

The man who is ruined by it is not to take that point.

Mr. GORDON. -

We must postulate of all our Parliaments that they will not pass laws which are ethically indefensible. We must also postulate that they will pass laws which may do injuries to individuals; but I contend if any serious individual injury is done, or any injury is done to a number of persons whose interests really require to be protected, the state will intervene and assist them, on the one hand, if it is an infringement by the Federal Parliament. On the other hand, the Federal Parliament will intervene and assist them if it is an infringement by the state Parliament. But once an Act of Parliament has reached the solemnity of the law expressing the will of the majority of the people, I contend that no individual should be allowed to bring it into court, but that it should be left in the case of a federal law to
the state, and in the case of a state law to the Federal Parliament. If any one
looks through the list of American decisions under the head of "Legislature," he will see that no injustice would have been done, but that a
great deal of justice would have been done, and a great deal of litigation
saved, if this principle had been the law there. In the Treasury-notes cases
which I have mentioned, a single individual, in his own selfish interests,
almost paralyzed the whole nation. They had to get over the difficulty
by the subterfuge of appointing to the Supreme Court Bench a Judge who
was known to be favorable to the Government's view. But for that there
would have been an absolute paralysis in America for the time being. If
this provision had been in force that only the state could impugn a federal
law it would never have been done, because the states, having the honour
of the country at heart, would not have dared to interfere with the law. I
know that I have against me a large number of the lawyers of the
Convention, a timid and conservative class, as Herbert Spencer points out,
who are fearful of change.

Mr. BARTON. -

Then the real boldness is to be bold enough to muzzle the citizen.

Mr. GORDON. -

I admit that there is this objection to the principle: That it does prevent an
individual from bringing a law into dispute. But it is a question of the
balance of convenience. I do not shut my eyes to the desirability of
everything being perfect if we can make it perfect. But there is always a
screw loose in mundane affairs, and we cannot have everything. The
balance of convenience is in favour of allowing the state on the one hand,
or the Commonwealth on the other, the sole right of impugning each
other's laws. That would leave an interspace between the two for
acquiescence, which would become a force in the Constitution. The
acquiescence of the state in the law of the Federal Parliament, or the
acquiescence of the Federal Parliament in the law of the state, even if the
laws did cross a little the strict and rigid line of either of the powers, would
become a force in the Constitution. There would be an interspace for the
genius of legislation to play in. No workable Constitution should be
without room for play. The genius of the British Constitution is based on
acquiescence in improvements. The inherent difficulty in all written
Constitutions is the absolute rigidity or legality of the Constitution.

Mr. SYMON. -

Do you think acquiescence would make a law if the law passed by the
Commonwealth Parliament was ultra vires?

Mr. GORDON. -
It would until the law was impugned. If the state did not impugn that law it would remain in force. It is a law, and it could be allowed to be valid by the force of acquiescence. And here is another point. The proposal which I am supporting, to some extent keeps a remnant of parliamentary sovereignty over the strict interpretation of the courts.

Mr. FRASER. -
That is too abstruse for laymen altogether.

Mr. GORDON. -
Well, I think not. I am sure that if the honorable member applies his mind to the subject he will see it is not abstruse. If a statute of either the Federal or the states Parliament be taken into court the court is bound to give an interpretation according to the strict hyper-refinements of the law. It may be a good law passed by "the sovereign will of the people," although that latter phrase is a common one which I do not care much about. The court may say-"It is a good law, but as it technically infringes on the Constitution we will have to wipe it out." As I have said, the proposal I support retains some remnant of parliamentary sovereignty, leaving it to the will of Parliament on either side to attack each other's laws.

Mr. BARTON. -
How would they raise the question?

Mr. GORDON. -
Suppose it were a federal law, the Attorney-General of any of the states could intervene in an actual suit, or place an abstract question before the High Court.

Mr. SYMON. -
The state would not bother its head if the law only affected a few individuals.

Mr. GORDON. -
If the law only affected a few individuals, the state might not intervene, but it is possible that a law referring to only a few individuals may involve the benefit of the whole of the community.

Mr. SYMON. -
It is not a law if it is ultra vires.

Mr. GORDON. -
It would be law by acquiescence. It would remain a law until it was attacked.

Mr. BARTON. -
Sir Julian Salomons, in making that speech, was trying to say everything possible against the Constitution, and was regardless of everything but
attacking it.

Mr. GORDON. -

On a point of this kind, Sir Julian Salomons is an authority worth quoting.

Mr. SYMON. -

He is only an authority for the education of his own children.

Mr. GORDON. -

Sir Julian Salomons, is an authority who says that this Constitution will lead to a great deal of litigation. If we can minimize that litigation it will be a good thing.

Sir JOHN FORREST. -

That is a bad argument, I think.

Mr. GORDON. -

At any rate, it is an unselfish argument.

Mr. FRASER. -

The proposal would open many doors to litigation.

Mr. GORDON. -

No; the proposition would shut doors, and not open them. If it were left to the states to attack a federal law, or to the Commonwealth to attack a state law, these would be the only possible litigants on this point of _ultra vires_. That would shut out millions of people amongst whom it would be possible to find litigants. It would not, however, shut out an individual from attacking the administration of the law once the law was passed. The idea is, that no citizen should be allowed to attack what is the express will of the people.

Mr. HIGGINS. -

It is not the expressed will of the people if it be left to a Ministry or two Ministries without the assent of Parliament.

Mr. GORDON. -

But if it be passed by Parliament it is the will of the Parliament.

Mr. HIGGINS. -

But suppose they go beyond their power?

Mr. GORDON. -

It is still the expression of Parliament. Directly a Ministry seeks to enforce improperly any law the citizen has his right.

Mr. HIGGINS. -

What I mean is: There may be an act done by the federal power which is illegal. Suppose it happens that the Ministry of the state concerned does not wish to enforce that right against the federal power, there is no remedy at all.

Mr. GORDON. -
Then I say, if the Ministry of a state, controlled by the Parliament of that state, and controlled by public opinion, does not think it necessary to impugn the law, you may depend upon it that law is just and righteous.

Mr. HIGGINS. -
What about other states?

Mr. GORDON. -
It is open to all the other states to impugn the law.

Mr. HIGGINS. -
That cannot be done.

Mr. GORDON. -
I should say it is left open to the whole of the states to impugn any federal law. That, I think, is expressed in the clause. If the state does not impugn the law you may depend upon it, the law passed by the Federal Parliament is a righteous and proper law. If the Federal Parliament does not impugn a state law, it may be taken for granted that that law is a proper and legitimate one. It will be seen that it is impossible to draw a rigid line between the two authorities which are concurrently legislating.

There must be some overlapping, and some little technical friction between the laws. But it would be monstrous for citizens to take advantage of that and to drag the state Parliament or the Federal Parliament into court simply because what might be to the benefit of the whole nation interferes with private and individual rights. I am not shutting my eyes to the objection that the proposal might possibly do injury to some individuals, but I say there is the advantage that no one individual could do serious injury to the state—that no one individual could possibly paralyze the whole action of the state.

Mr. TRENWITH. -
And possibly he a "crank."

Mr. GORDON. -
Possibly.

Mr. DEAKIN. -
He could not paralyze the law unless it ought to be paralyzed.

Mr. GORDON. -
That is a relative question, and I contend the law of the majority should rule, as expressed by the law of Parliament for the time being.

Mr. HIGGINS. -
But you are expanding the Constitution without the formalities required for the amendment of the Constitution.

Mr. GORDON. -
This is designed to make possible the expansion of the Constitution by allowing some relief to the extreme rigidity of a written Constitution. It has that object, and it also has the object of preserving, as far as possible, parliamentary sovereignty over the extreme and technical interpretations of the courts. It has further the object of reducing the expense of litigation, and it has the advantage also, as I think, of maintaining, to as large an extent as is practicable in a written Constitution, the will of the people, which in some measure must be subordinated, of course, to the contract, and has to be interpreted by the courts on the strict lines of legal refinement. The courts have only functions to perform, they have no discretion. It is possible, according to the strict reading of the Constitution, that one individual might paralyze the whole political desire of a state on the one hand, or of the Federal Parliament on the other hand. This subject has been dealt with by some exceedingly able writers. One series of articles appeared in the Weekly Herald, of Adelaide, by Mr. Heggaton, advocating a proposition of which Mr. Holder has given notice. The effect of it is that under certain conditions a law of a state Parliament or of the Federal Parliament should not be open to be attacked. I am prepared to support the honorable member, but this is a proposition which goes half-way, and which leaves either law to be attacked if it injures the Commonwealth or the state, or inflicts injury on any individual of the Commonwealth or of a state which calls for intervention. The machinery required is simple. It could be done by a reference to the court, or by the intervention of the Attorney-General of the state or of the Commonwealth. All our rights depend to some extent on the probity of the Attorney-General for the time being. In criminal matters, he has the right of presenting or of not presenting a bill, and in divorce cases he also has the right of intervening. The guardianship of our individual rights, I may say of all our rights and liberties, rests for the time being on the Government in power. That is no new proposition. I know that the objection may be raised that this would place the private citizen in the power, to some extent, of the Attorney-General of the day-an officer of a faction-but that is the system of government under which we live.

Mr. SYMON. -

I do not think so.

Mr. GORDON. -

If the Parliament of South Australia passed a law demanding a contribution of £10,000 from the honorable member, he would have to pay it.

Mr. BARTON. -

Our civil rights are not in the hands of any Government, but the rights of
Mr. GORDON. -

Even that embraces a very large body of rights, and the principle is the same. We have to rely in many of our relations on the probity of the Attorney-General, on the probity of the Parliament, or, to go further down, on the probity of the community. Upon all these grounds I contend that the amendment is one that ought to be passed. It leaves the whole executive power open to attack. Once a law is passed anybody can say that it is being improperly administered, and it leaves open the whole judicial power once the question of \textit{ultra vires} is raised. Under the clause, as I have amended it, it will not prevent the plea of \textit{ultra vires} being raised where it is accompanied with the plea of a conflict of law. If there is a state law and a Commonwealth law on the same subject, every citizen is entitled to know which he should obey. If he joins a plea of \textit{ultra vires} with a plea of conflict of law, that ought to be heard. The clause expresses only one limitation, and it is on the question of who shall raise this plea upon a subject which has been legislated on only by one of these great powers—the Commonwealth on the one hand, or the state on the other. Once either of these powers has passed a law, my contention is that they are the guardians on the dividing line who are to watch each other and to see that that line is not improperly crossed.

Mr. TRENWITH. -

In the event of injury being done by a law that they had not the right to challenge, although it was unconstitutional, how would they be compensated, supposing it had been in operation for some time before complaint was made?

Mr. GORDON. -

My contention is that if the Commonwealth passed a law that caused injury to a number of citizens of a state, the Parliament of that state would be up in arms, and they would have their constituents and the press behind them.

Mr. SYMON. -

What proportion of citizens would you suggest?

Mr. GORDON. -

Such a proportion as would negative the proposition that the law was for the good of the majority. That is the test now. Every Tariff involves somebody in loss. It is not a question of loss to the individual, but of the legitimacy of the law, and the interests of the larger body of the people. We must make it a postulate that our Parliaments will not pass ethically bad
laws. We are bound to suppose that these laws will be legitimately passed in the interests of the majority, and for the reasons I have given I hope that this clause will be agreed to.

Mr. WISE (New South Wales). -

One of my honorable friend's most agreeable characteristics is the versatility with which he from time to time takes up positions that, to the ordinary mind, appear to be not only different, but mutually destructive. At one time we have him posing as the vehement champion of state rights, and insisting on the strictest line of demarcation between the powers of the Commonwealth and of the states. At another time we find him moving an amendment which, in its effect, would obliterate all distinction between the Federal Commonwealth and the states.

Mr. TRENWITH. -

How does that appear?

Mr. WISE. -

If the honorable member had only moved this amendment when we first met in Adelaide, and had carried it we should have been saved many months of discussion. All that would have been necessary then would have been to frame a Constitution in about six clauses, declaring that there should be a Commonwealth Parliament, that the states Parliaments should remain, that the powers of the Commonwealth Parliament should be whatever the states Parliaments allowed them to be, and that the powers of the states Parliaments should be whatever the Federal Parliament allowed them to be. That would have been our Constitution. The amendment, as it stands, provides that whatever law may be passed, taking the first branch of it, by the Commonwealth, it is not to be declared *ultra vires* if the five Attorneys-General of the several states agree that for any reasons of state they will wink at any violation of the law, and allow any person affected injuriously by it to suffer.

Mr. TRENWITH. -

That is not fair—the five Attorneys-General.

Mr. WISE. -

Yes. We have been striving all through to erect an independent Commonwealth with certain clearly-defined subjects of legislation, and to provide very strictly that the rights of a state should not be impinged upon by the undue exercise of the powers of the Federal Parliament. In order to prevent that, we have constituted a Supreme Court to interpret the laws of the Parliament. But the honorable member now comes forward and says that the Parliament is to make the laws, and that the Ministers of the day are to interpret them. The Parliament may make what laws it pleases. It
may make laws altogether outside the subject of the matters referred to it by clause 52, but unless in each state there is a majority sufficiently strong to sway the Ministers in power for the time being, those laws will not be declared to be *ultra vires*.

Mr. TRENWITH. -

If there is a majority strong enough in any one state that will be sufficient.

Mr. WISE. -

If the Federal Parliament chose to legislate upon, say, the education question—and the Constitution gives it no power to legislate in regard to that question—the Ministers for the time being in each state might say—"We are favorable to this law, because we shall get £100,000 a year, or so much a year, from the Federal Government as a subsidy for our schools," and thus they might wink at a violation of the Constitution, while no one could complain. If this is to be allowed, why should we have these elaborate provisions for the amendment of the Constitution? Why should we not say that the Constitution may be amended in any way that the Ministries of the several colonies may unanimously agree? Why have this provision for a referendum? Why consult the people at all? Why not leave this matter to the Ministers of the day? But the proposal has a more serious aspect, and for that reason only I will ask permission to occupy a few minutes in discussing it. Not that I believe that it will be carried, but I think it is an echo of a widespread misapprehension which prevails outside as to the duties and functions of the Supreme Court. It very often seems hard to a layman that that which has been enacted by Parliament should be declared to be illegal by a Supreme Court when the statute is called into question during litigation between two citizens. It is hard, but like everything else in politics, it is a choice of evils. The question is: Whether it would not be of much greater disadvantage to the whole community to bring in the Supreme Court as an interpreter of the Constitution before any precise case was taken before it, than it is to leave the individual to suffer the hardship of finding that the Act upon which he relied was really invalid? I will not use my own language in explaining the position, but, to have it put upon record, I should like to quote a passage which occurs on pages 154 and 155 of Dicey's Law of the Constitution. After pointing out that the American Supreme Court exists to interpret the Constitution, and to see that effect is given to its provisions, the writer goes on to say that—

The power, moreover, of the courts, which maintains the Articles of the Constitution as the law of the land, and thereby keeps each authority within its proper sphere, is exerted with an ease and a regularity which has astonished and perplexed continental critics. The explanation is that the
Judges of the United States control the action of the Constitution, but they perform merely judicial functions, since they never decide anything but the cases before them. It is natural to say that the Supreme Court pronounces Acts of Congress invalid, but in fact this is not so. The court never directly pronounces any opinion whatever upon an Act of Congress.

What the court does do is simply to determine A. is or is not entitled to recover judgment against X.; but in determining that case the court may decide that any Act of Congress is not to be taken into account, since it is an Act beyond the constitutional powers of Congress.

If any one thinks this is a distinction without a difference he shows some ignorance of politics, and does not understand how much the authority of a court is increased by confining its action to purely judicial business.

In a book prepared by you, sir, entitled A Manual of Reference for the use of Members of the National Australasian Convention, to which frequent reference has been made, the matter is further dealt with. You say, at page 126, in words that I would like to adopt as part of my argument:-

No doubt the power given is very great, but it is exercised in a manner and by a body which affords the least possible chance of friction and quarrels between the central and the provincial governments. A veto by the central authority has to be exercised at a time when the public attention of the provincial electors is directed to the matter; at a time when, perhaps, party spirit runs high, when angry passions pervade both factions, and when the subject-matter is invested with an importance which is not intrinsic, whereas a declaration by a court that the statute is invalid is withdrawn from the sphere of politics. Each individual and each state looks upon it that such declaration is given only in pursuance of the Constitution. Public attention is probably directed to other matters, and the question has, in many cases, shrunk into its native insignificance; and "it is to the interest of every man who wishes the Federal Constitution to be observed that the judgments of the federal tribunals should be respected, and they take it that the courts are the protectors of the federal compact, and that the federal compact is, in the long run, the guarantee of the rights of the separate state."

If the proposal of the honorable member (Mr. Gordon) was carried into effect—though of that, I think, there is not the slightest chance—it would follow that any person who was aggrieved by an unconstitutional enactment would have to persuade the Attorney-General of the state or of the Commonwealth, as the case might be, to in some way set the law in motion to ascertain the legality of the enactment, If the enactment was one
which affected a matter exciting strong party feeling, the result would be
that the abstract question of its validity would have to be argued before the
court at a time when public feeling was excited, although it would be of the
utmost importance that the decision of the court should be entirely free
from all suspicion of political bias. Then, too, the enactment might be valid
in parts and invalid in other parts, or it might be impossible to interpret it in
the abstract. It is impossible to foresee the bearing of a statute upon all
possible cases, and it is only when a case comes for determination before a
court that the court is able to say that in that particular case the statute does
or does not afford protection to the citizen who has relied upon it. The
honorable member's proposal would remove at once the greatest of all
safeguards to the impartiality and usefulness of the Federal Court, by
taking away from it its right to deal with matters which are brought, as
lawyers term it, to a distinct issue, and with precise and definite points, in
regard to which the full bearing of every word of the judgment could be
appreciated? Instead of the court being able to determine the legality of an
enactment in its bearing upon any particular case, there would be
considerations introduced which were utterly foreign to the atmosphere of
the tribunal, and that would seriously impair the public confidence in a
court which, with us, as in America, will, I believe, prove to be the ultimate
protector of the liberties of the people. Then, too, the amendment is in its
form so complicated that its practical working will be impossible. The
honorable member said truly that the Attorney-General constantly
intervenes now. But he intervenes at the expense of the individual. The
individual presents his case, and gives a guarantee for costs. Under this
proposal all that would happen would be that the individual who wanted to
assert
his right would have a barrier placed between him and the obtaining of
justice. He would have to satisfy the Attorney-General for the time being
that he would be able to pay the costs of any action, and he would have to
bring sufficient political pressure to bear upon that officer to get him to
move in the case, and finally he would be left to contest the matter in his
own interests and in his own name. The result would be that the rights and
liberties of every citizen in the community would be placed at the mercy of
a chance parliamentary majority.

Mr. GORDON. -

That is the position now—the rights and liberties of every individual are at
the mercy of a parliamentary majority.

Mr. WISE. -

The honorable member is now speaking of rights in respect to legislation.
If the Parliament of South Australia were to pass a law contravening the Merchant Shipping Act

**Mr. GORDON.** -

I am not speaking of Imperial legislation.

**Mr. WISE.** -

Suppose the Parliament of South Australia wanted to get rid of the Plimsoll Mark Act—even though there were a majority it would be invalid, but according to the honorable member, when, we have here a case exactly analogous, if the Constitution limits the power of the state, and enacts that certain powers shall belong exclusively to the Commonwealth Parliament, and that if the state deals with them it invades the authority of the Commonwealth Parliament, the individual is to have no rights unless he can persuade the Government of the day to take up his case. It is in the interests of the poorer and uninfluential classes of the community, it is, in the interests of the minority, that this amendment should be rejected, because it places an obstacle in the way of obtaining that justice which ought to be free to every individual in the community.

**Mr. HIGGINS (Victoria).** -

I should like to add my protest against this new clause. I am bound to say something, because the honorable member (Mr. Gordon) says it is only the conservative and timid lawyers who would venture to oppose this proposal.

**Mr. GORDON.** -

I did not say that. I said as a rule the legal profession is, according to Herbert Spencer, a timid and conservative class.

**Mr. HIGGINS.** -

That may be so, and if the honorable member says he did not make that statement it is all right. Anyhow, I thought he said that only conservative and timid lawyers would oppose this clause. There is no doubt the intention of the honorable member is excellent. He wants to diminish litigation. If he can show that this will diminish litigation to any material extent, and, at the same time, will not involve us in a great many dangers to our liberties, I will go with him, but he has not shown anything of the sort. As Mr. Wise has shown, it will throw an unpopular minority into the power of a chance Ministry of the day. We must see to-day that the rights of individuals, even unpopular individuals, are preserved in the Constitution. I think Sir John Forrest said that I personally had not got sufficient respect for the rights of individuals.

**Sir JOHN FORREST.** -

No.

**Mr. HIGGINS.** -

Do I understand him to refer merely to private property?
Sir JOHN FORREST. -
Not the same respect as I have.

Mr. HIGGINS. -
I understood the honorable member to put himself on the very highest pedestal, and by contrast to put me on the very lowest. At all events, I feel that if this were carried, an unpopular individual, to obtain his rights and liberties, would have to go cap in hand to and be at the mercy of the Government of the day. I was thinking of the pig-tail case which occurred in California, and which I alluded to some time ago, where an abominably unjust law was passed against Chinamen. It was passed to persecute them in regard to their pig-tails, which they regard with exceptional reverence. That law was declared to be unconstitutional as a law passed by a state. I ask honorable members to consider the great difficulty there would be in getting the Federal Congress or Federal Executive to interfere in the case of Chinamen, so as to enforce their rights in such a case. There was an exceptional law which should never have been passed. It was distinctly a persecuting law. Any practical politician would see the great difficulty there would be in appealing to a Federal Executive, especially if there was an election approaching, to enforce the just rights of Chinamen in such a case. The same thing might happen supposing a federal law were passed which was outside the Constitution. Supposing that a majority of the state concerned happened to regard the man as unpopular supposing a law were passed that no one bearing the name of Jones should be admitted into the state of Virginia, the law might be directed against a certain person named Jones, and it would be unconstitutional, and Jones could not enforce his rights to go into that state. I ask, is he to be compelled to go cap in hand to the Attorney-General of the state of Virginia to enforce his rights? I feel that, with the very best intentions, my honorable friend is making the gravest of mistakes. So far as regards the main purport of the amendment, it would mean this: That you could only get a point of this sort decided by having a state or Commonwealth intervening as a party. You would turn judicial questions into political questions. You would proclaim - "Here is a question between the state and the Commonwealth; here is a political question"; and you would make the Judges partisans. It is one of the great advantages of private persons being able to raise these points, and not the states or the Commonwealth, that you keep the judicial bench free from the taint of political partisanship. I feel that the more you look at this thing all round, the more inconsistent it is with the very first principles of justice. It may be said - "Even supposing the law does go beyond the Constitution in some
degree, surely it ought not to be left to a private person to upset it." I say it ought to be upset at once and at the very earliest point. As soon as ever you find it has gone beyond the bounds you ought to say - "This thing is illegal." Otherwise you will leave to the Ministry of the day these powers of which you are so careful, giving them to a majority of the states and to a majority of the people. You would allow the Ministry of the day to exercise a suspending power as to whether it would enforce a law or not, which is most dangerous. It is one thing to induce a Government or Parliament to pass an unjust law, and it is quite another thing to induce a Government for one excuse or another to hold its hand from acting. What I fear is that you would often induce the Government to withhold its hand from acting, for fear it would incur opprobrium or unpopularity. I sincerely hope the amendment will not be carried.

Mr. GORDON (South Australia). -

Of course the objections raised are those I expected, only I think they might have been put with even greater force. And there is a great deal more to be said in favour of my motion than I have been able to say. I agree at once with the interpretation of Mr. Wise that this measure is a simple method of amending the Constitution by acquiescence. I intended it to be so, and that is not a demerit—it is a merit—of the proposal. As for the argument that you might as well have no Constitution at all if you allow amendment by acquiescence, that seems rather wide of the mark. People going into a partnership lay down the general terms of that partnership, but they may be qualified by consent. But you must have in your partnership general rules laid down. There are the general lines laid down in the Constitution, which within certain limits may be modified as agreed, so that the honorable and learned gentleman's argument in that view, I think, fell to the ground. Mr. Higgins enforced the argument as to the rights of the individual. Now, I have already said that I think those individual rights should be subordinated to the general rights of the community, and to their interests as expressed in the law for the time being. I object altogether to the objection that party faction would govern. What would govern it would be the sense of the community for the time being. However, as there appears to be no hope of carrying the proposal, I must content myself by submitting it to the committee.

Mr. Gordon's proposed new clause was negatived.

Mr. WALKER (New South Wales). -

It is with a feeling of considerable responsibility that I now propose new clause 117A (to follow clause 117), which is as follows:-

If the colony of Queensland adopts this Constitution, or is admitted as a
state of the Commonwealth, nothing in this Constitution shall be taken to impair any right which the Queen may be graciously pleased to exercise by virtue of Her Majesty's Royal prerogative or under any statute in respect of the division of Queensland into two or more colonies; but so that the Commonwealth shall retain the powers conferred on it by this Constitution to impose terms and conditions in respect of the establishment of any such colony as a state.

Clause 117 reads as follows:-

A new state shall not be formed by separation of territory from a state without the consent of the Parliament thereof, nor shall a state be formed by the union of two or more states or parts of states, or the limits of a state be altered, without the consent of the Parliament or Parliaments of the state or states affected.

We are all aware that one of the reasons why Queensland is not with us to-day is that in the Parliament of that colony the members for the Central and Northern Divisions voted against the Federal Enabling Bill because they were afraid, from the way in which the measure was introduced, that Queensland would be made one electorate, and that the members of the Federal Convention would therefore be largely elected by people resident in the Southern Division of the colony. In that case, they feared, if clause 117 became a part of the Constitution, they would be deprived of the right of petitioning Her Majesty which they now have. It may be, perhaps, in the recollection of honorable members that on the 9th April I presented at Adelaide a petition to the Convention from the Central Queensland Territorial Separation League. That petition has had the attention of the Queensland electors, and has not been dissented from. I think it would be well if I read a few extracts from it, showing the grounds on which the petitioners desire that a new clause shall be inserted in this Constitution so as to facilitate the entrance of Queensland into the Commonwealth. Before doing that I may mention that the colonies of Victoria and Queensland were separated from New South Wales on petition, and without the approval of the Parliament of New South Wales. In fact, Victoria would never have been able to secure separation from New South Wales if the consent of the New South Wales Parliament had been required. At the time Queensland was made into a separate colony, Her Majesty, as will be seen from the extracts I will presently read, reserved the right to separate Queensland into two or more colonies. The memorialists, amongst other things, made the following statements:-

That, by Acts passed by the Parliament of Queensland, that colony has for certain administrative purposes been divided into three parts, described as the Southern Division, the Central Division, and the Northern Division
respectively, with the several boundaries described in the 1st schedule to this memorial.

That in every one of the Government Financial Separation Bills introduced unsuccessfully into the Queensland Parliament from time to time since 1871-

They have had Financial Separation Bills introduced more than once.

the colony was proposed to be divided into three parts-South, Centre, and North.

That the Queensland Federal Enabling Bill, introduced last year, provided for the three divisions being constituted as separate electorates.

The Premier, Sir Hugh Nelson, when moving the second reading of this Bill, said-"Take the Northern and Central districts. We all know that they have a perfectly legitimate aspiration, that they are looking forward to the day when they will be formed into separate states. Why should they not? I propose that they shall of necessity be represented at this Convention by dividing the colony into three electorates-Northern, Central, and Southern, each sending its own representatives. This is a burning question with the electors of the Northern and Central districts."

That is the first time they brought in a Bill in which it was proposed that the members of the Convention should be chosen merely by the members of the House of Assembly. Further on, and this is a matter to which I wish to draw the particular attention of honorable members, the memorialists say-

That the inhabitants of the Central Division have for many years desired the privilege of self-government, and to that end have repeatedly and almost unanimously claimed the boon from the Parliament of Queensland, as well as by petition from the Imperial Government. They rely, not only upon the provision made in past Imperial legislation for the protection and benefit of communities placed in the position of the petitioners, but also upon the implied promise of the Duke of Newcastle, in his despatch of the 18th August, 1858, addressed to Sir William Denison, the Governor of New South Wales, in which he stated that "It will be desirable that the Crown should possess the power of dividing further the territory now created into the colony of Queensland by detaching from it such northern portions as may hereafter be found fit to be erected into separate colonies"; and also upon his despatch to the Governor of Queensland, Sir George Bowen, dated 14th September, 1861, in which he said-"I am not prepared to abandon on behalf of Her Majesty's Government the power to deal with districts not yet settled as the wishes and conveniences of the future settlers may require."
The petition ends as follows:

That a clause of the Commonwealth Bill of 1891 contains the provision that subsequent to the passing of the Act of Union no state shall be subdivided, except with the sanction of the Parliament of that state; and your memorialists have reason to apprehend that the same provision will be contained in the Bill of the Convention.

That is so at the present time.

That the enacting of such a provision would be calamitous to the Central and Northern Divisions of Queensland, and leave them perpetually at the mercy of the more numerous but less productive populations of the Southern Division.

That, as an act of simple justice, your memorialists therefore pray that provision may be made in the Constitution Bill of the Convention for the admission of the present colony of Queensland into the Federation as three separate autonomous provinces or states.

Well, of course, we could not think of admitting the present colony of Queensland into the Commonwealth as three different states, because that would give them an undue representation, but my amendment overcomes that difficulty. And I must here express my thanks to the leader of the Convention for putting my proposal into proper form. I therefore hope that the Convention will see their way to adopt this new clause, because it may be the means of facilitating the entrance of Queensland into the Federation.

I have shown this clause to several members of the Queensland Legislature whom I have met in Melbourne, some of them representatives of Southern Queensland.

Mr. BARTON. -

Whom do you say you have discussed the matter with?

Mr. WALKER. -

With several members of the Queensland Parliament.

Mr. BARTON. -

With any representing Southern constituencies?

Mr. WALKER. -

Yes, among others, with the representative of Maryborough, and they did not see that Queensland will be in a worse position if this clause is passed than she is at present. Southern Queensland will be in no worse position if the power to petition Her Majesty remains as it now stands. I have myself resided in the three districts of Queensland, so I can speak from personal knowledge. Since the early "sixties" there has been a continual movement for separation, and so much is this state of public opinion in Queensland recognised that the headquarters of one Supreme Court Judge are
at Townsville, of another at Rockhampton, and the remainder of the
Supreme Court Judges have their head-quarters in Brisbane. The clause I
now propose practically says to the people of Queensland-"If you join the
Federation you shall have the same privilege as regards dividing your
territory as you have now."

Sir EDWARD BRADDON. -
They have been told that by the Secretary of State for the Colonies.

Mr. WALKER. -
Yes. I shall not detain the Convention further, but if there is anymore
information which I can give to honorable members, I shall be most happy
to give it. I have shown my proposed clause to a good many members of
the Convention, and, so far as I can gather, the feeling is that it seems to be
only reasonable that Queensland should not be put at a disadvantage by
coming in. At present a large portion of Queensland would be put at a great
disadvantage if they came in and this Constitution was not altered, because
they would, for all time, lose the opportunity of being separated, except
with the consent of the Queensland Parliament, and many years might
elapse before they could get the relief for which they have petitioned Her
Majesty the Queen.

[The Chairman left the chair at five o'clock p.m. The committee resumed
at thirty-five minutes past seven o'clock p.m.]

Mr. DEAKIN (Victoria). -
I understood, before the adjournment, that the leader of the Convention
was about to offer some remarks on this clause, and awaited with interest
what he had to say upon it. For my own part, there seems to be one
amendment and one addition necessary. I have, since the adjournment,
learned that a similar provision obtains in the Constitution of Western
Australia, and it seems to me that the clause should be made to apply also
to the

Mr. KINGSTON. -
Why not make it general?

Mr. DEAKIN. -
Perhaps that would be better still. But it is interesting to know that the
conditions which this clause is intended to meet pertain to more than one
colony.

Sir JOHN FORREST. -
We do not want it to apply to us.

Mr. WALKER. -
Is it not the case that Queensland has not made a special effort to come
into this Federation owing to the necessity for this provision?

Mr. DEAKIN. -
But that is not a reason why Queensland should be the only colony referred to in the clause, nor is it a reason why the proposal should not apply to all the colonies. It seems to me that the amendment suggested by Mr. Kingston would be an improvement; but I would suggest that the proper provision is that which is already found in the measure before us, and that is the reservation to the Federal Parliament of the power of subdivision. The exercise of such a power during the separate existence of the colonies would naturally be vested in Her Majesty, but after the establishment of union the proper authority in which to vest such a power would be the Federal Parliament.

Mr. WALKER. -

Look at clause 117.

Mr. DEAKIN. -

That clause provides that a new state shall not be formed by separation from another state without the consent of the Parliament thereof. If any power of subdivision is to be given it should be to the Federal Parliament, as such a provision would be more in accordance with a Federal Constitution. In fact, it would be embarrassing to give to Her Majesty such a power, when the state to be subdivided was a member of a federal body, in whose Constitution and whose representative strength such a subdivision would make serious alterations.

Sir EDWARD BRADDON. -

But Queensland apparently does not intend to become a member of the Federation.

Mr. DEAKIN. -

The matter can only be considered from the point of view of the possibility of her becoming a member. I am in favour of Mr. Walker's proposal, with the amendment indicated, and with the suggestion made by the Premier of South Australia that instead of confining it to an individual colony the clause should be made to apply generally, and that the power of subdividing should be transferred to the Federal Parliament.

Mr. SYMON. -

You would not make it apply to any other colony as to which the same power does exist?

Mr. DEAKIN. -

It is not necessary, because clause 117 provides for every other instance in which such power of subdivision may be required.

Sir JOHN FORREST. -

Is there any such provision in regard to Queensland?

Mr. DEAKIN. -
So I understand. The provision in clause 117 can only be exercised with the consent of the colony to be subdivided. But in two states at least—Queensland and Western Australia—there exists a special power in their present Constitution for subdivision without the consent of the states.

Sir JOHN FORREST (Western Australia). -

Although I am quite aware that there is a provision in the Constitution of Western Australia that Her Majesty in Council may subdivide the colony, I think it very unlikely, at any rate under any circumstances we can foresee at the present time, that that event will ever take place unless it is desired by the Legislature of the colony. I am not aware that in the Constitution of Queensland there is any provision for the separation of the colony, although I know that there has been a good deal of controversy in regard to the matter.

Mr. KINGSTON. -

Is there any special provision in your Constitution Act?

Sir JOHN FORREST. -

Yes. I think the Imperial Government has pretty well laid it down that it will not subdivide Queensland without the consent of its Legislature. That has been the position, I think, which has been taken up, if not actually in words, certainly in effect. Although the fact is stated in the Constitution of Western Australia that Her Majesty in Council may subdivide the colony, I suppose that power is inherent in the Imperial Parliament in regard to any British colony. Although it would probably be easier to subdivide Western Australia than it was to subdivide New South Wales, still I take it that the power is inherent in the Imperial Parliament to subdivide New South Wales, Queensland, or any other British colony, if it chooses to do so. But we know very well that that is not likely to take place, at any rate, under circumstances that we can foresee. I cannot think that the proposal of Mr. Walker is one which I should support, because I take it that the subdivision of Queensland is not likely to come about unless with the consent of her people, and that would come about just as easily under a federal form of government, subject to conditions, as it would come about under existing conditions. I do not think it belongs to us particularly to pave the way specially for Queensland in this matter. Queensland, no doubt, will be able to look after herself, to manage her own business in her own way, and, as she is not represented here, I think we should treat her as we treat every other colony in the group, that is, pave the way for her to come in, leaving it to her people to determine hereafter whether it shall or shall not be subdivided.

Mr. ISAACS (Victoria). -

I shall be very glad if some honorable member who is more familiar with
the Constitution of Queensland than I am can tell us precisely where this alleged power of subdivision exists.

Mr. WISE. -

It is in their Constitution.

Mr. ISAACS. -

I shall be very glad if some honorable member will point it out to me. So far as I have been able to gather, the Imperial Act of 1855, 18 and 19 Vict., chapter 54, provides that the northern boundary of New South Wales may be altered by letters patent. Section 7 of that Act provides that whenever the Crown does alter the northern boundary of New South Wales, it may constitute the portion north of the newly-constituted boundary into a separate colony or separate colonies. Now, Her Majesty did in 1859, by letters patent, alter the northern boundary, and constituted a colony. It converted the Moreton Bay district into Queensland.

Mr. HIGGINS. -

Then is not the power exhausted?

Mr. ISAACS. -

I am not aware whether any power of subdivision exists apart from Imperial legislation.

Mr. BARTON. -

It is only Imperial legislation, I think, and then there is the Boundary Act of 1895.

Mr. ISAACS. -

That Boundary Act of 1895 does not, I think, touch this particular point. That is the Act requiring the consent of the colonies to a decision on this point.

Mr. KINGSTON. -

That is merely an Act of agreement.

Mr. BARTON. -

It says that where any colony has been or is altered afterwards by letters patent, those boundaries shall be considered the boundaries of the colony.

Mr. ISAACS. -

That is a short Act of two or three clauses dealing with the point of the consent of a state, but I don't think it touches the point now before the Convention.

Mr. WALKER. -

That Act only refers to the boundaries of existing colonies and does not deal with severance.

Mr. ISAACS. -
That Act is the 58th or 59th Victoria of 1895. It provides that where the boundaries of a colony have, either before or after the passing of the Act, been altered by Her Majesty the Queen by Order in Council—by letters patent—the boundaries so altered shall be deemed to be from the date of the alteration the boundaries of the colony fixed, and the consent of the colony shall be required to the alteration of the boundary. As I have said, I do not think that affects the present position. So far as I am personally acquainted with the law—I do not pretend to a close acquaintance with it—that is the position. The 7th section of the Act gives power to alter the northern boundary of New South Wales by letters patent. That has been done, and territory severed from New South Wales has been erected into a new colony called Queensland. It looks very much as if the power given by letters patent has been exhausted. I am aware the separatists, as they are called, in certain parts of Queensland have urged on the Imperial Government that there still exists an unexercised power to further subdivide Queensland. Whether that be correct or not I do not know. The Home Government have said they do not abandon the claim to do it, but on what ground that is urged I am not aware. We are not in a position to say there is such a power, and until we are clear on that point we might be taking an extraordinary step if we put in a clause dealing with the matter.

Sir EDWARD BRADDON (Tasmania). -

I think it would be prudent, in the interests of the Commonwealth, to retain this power in the hands of the Queen, even if no immediate necessity arises for such retention out of the existing Constitution of Queensland. We know that it is at present admitted by Queenslanders themselves that they have no power of dividing their territory. At the present time the people of Queensland seem to be in a very puzzled condition on this question. The northern and central portions of that colony desire to be separated. They desire Queensland to be divided into three colonies, and not very long ago—I think some two or three years ago—the Secretary of State for the Colonies forwarded the information that no such division might be made until the colonies are federated. Federation, therefore, had to precede the division of Queensland. Now, apparently there is a movement in the northern part of Queensland, which has for its object the reversal of the order of things, and making the division of Queensland precede federation. As the matter stands at present, there is a direct flying in the face of the advice received from home, and no hope whatever is offered to the people of Northern Queensland of obtaining the division for which they ask. They have first to federate, and it would certainly not impede that federation if we retain this provision in the Constitution Bill,
which gives Her Majesty the prerogative to say whether that division shall take place or not.

Mr. BARTON (New South Wales). -

Among the parliamentary papers published in Queensland will be found in the Votes and Proceedings for 1893 a synopsis of Imperial legislation relating to the separation of Australian territories, and the creation of new colonies therein, and the establishment of government therein. In that synopsis (page 1036) reference is made by quotation to the Acts which seem to deal with this matter. The first is 3 and 4 Vict., chapter 62, section 2, which recites-

Whereas the said colony of New South Wales is of great extent, and it may be fit that certain dependencies of the said colony should be formed into separate colonies, it shall be lawful for Her Majesty, by letters patent to be from time to time issued under the Great Seal of the United Kingdom of Great Britain and Ireland, to erect into a separate colony or colonies any islands which are now, or may hereafter be, comprised within or be dependencies of the said colony of New South Wales.

Then, 5 and 6 Vict., chapter 76, section 51, provides that-

It shall be lawful for Her Majesty, by letters patent to be from time to time issued under the Great Seal of the United Kingdom of Great Britain and Ireland, to define as to Her Majesty shall seem fit, the limits of the colony of New South Wales, and to erect into a separate colony or colonies any territories which now are, or are reputed to be, or may hereafter be, comprised within the said colony of New South Wales: Provided always that no part of the territories lying southwards of 26 degrees s

13 and 14 Vict., chapter 59, section 32, provides-

And whereas by the said firstly-recited Act of the sixth year of Her Majesty power is reserved to Her Majesty, by letters patent to be from time to time issued under the Great Seal of the United Kingdom of Great Britain and Ireland, to define the limits of the said colony of New South Wales, and to erect into a separate colony or colonies any territories which then were, or were reputed to be, or thereafter might be, comprised within the colony of New South Wales: Provided that no part of the territory lying southwards of the 26th degree of south latitude in the said colony of New South Wales should by any letters patent as aforesaid be detached from the said colony of New South Wales: And whereas it is expedient that the power reserved to Her Majesty as aforesaid should be extended over certain parts of the said territories lying southwards of 26 degree of south latitude upon the application of the inhabitants thereof: Be it enacted that it shall be lawful for Her Majesty from time to time upon the petition of the inhabitant householders of any such of the territories in the said proviso
mentioned as lie northward of 30 degrees of south latitude to detach such territories from the colony of New South Wales, and to erect such territories into a separate colony or colonies, or to include the same in any colony or colonies to be established under the powers of the last mentioned Act; and all powers and provisions of the last mentioned Act in respect of any new colony or colonies to be established under such Act shall extend to any new colony or colonies to be established under this enactment.

Then there is a provision in the New South Wales Constitution Act, section 7, that-

It shall be lawful for Her Majesty, by letters patent to be from time to time issued under the Great Seal of the United Kingdom of Great Britain and Ireland, to erect into a separate colony or colonies any territories which may be separated from New South Wales by such alterations as aforesaid of the northern boundary thereof.

Further, the 24th and 25th Vict., chapter 44, section 2, provides-

It shall be lawful for Her Majesty, by such letters patent as aforesaid, to annex to any colony which is now or may hereafter be established on the Continent of Australia any territories which, in the exercise of the powers hereinbefore mentioned, might have been erected into a separate colony: Provided always that it shall be lawful for Her Majesty in such letters patent to reserve such powers of revoking or altering the same as to Her Majesty shall seem fit; or to declare the period during which such letters patent shall remain in force; and also in the revocation or other determination of such letters patent to exercise in respect of the territories referred to therein or any part thereof all such power and authority as might have been exercised if the said letters patent had never been issued.

And then the petition says-

It is assumed that the foregoing citations establish these facts-

(1) In the beginning the Crown carried out the details of administrative government and restricted legislation.

(2) By the Act of 1842 (5 and 6 Vict., chapter 76), the separation of the two functions-division of territories and establishment of colonies-was first indicated, the reservation of the divided power to the Crown being distinctly stated. By this Act the elective principle was first introduced.

I mention this to show the position taken up by those who advocate separation.

(3) By the Act of 1850 (13 and 14 Vict., chapter 59), the reservation to the Crown of the power to separate territories was re-affirmed; but with the right vested in the inhabitants of Australian territories to call for its
exercise. As regards government, the elective principle was continued, and the power to the Legislative Council, established under the preceding Act, and the Act presently cited, to establish an enlarged form of Legislature, either of one or two Houses, with either partly nominative or wholly representative. By the 37th section of this Act these powers were extended to all new colonies from time to time created on separated territory, and it thus became the constitutional, charter of Australia, and on which or from which all the Australian Constitutions have been framed or devised.

The New South Wales Constitution Act of 1853 and the recent Western Australia Constitution Act were both submitted to the Imperial Government on this authority, of which no diminution has hitherto been attempted, except by the 18 and 19 Vict., chap. 54, by a provision in which the form of Legislature and Government in new colonies was directed to be in accordance with those in force at the time in New South Wales. This proviso was repealed by the 24 and 25 Vict., chap. 44 (1861), and the provisions of the 13 and 14 Vict., chap. 59, are the only ones in force at the present time.

That seems to be the position which the petitioners took up, that the division is possible, and ought to be carried out, under Act 13 and 14 Vict., chapter 59.

Mr. HIGGINS. -

Is not the power of creating new colonies exhausted?

Mr. BARTON. -

In all these cases the power may be given by letters patent from time to time. The power is not exhausted as long as there is territory to operate upon.

Mr. ISAACS. -

Her Majesty might have constituted a portion of that territory into a colony.

Mr. BARTON. -

She might. She might have made Southern Queensland into a colony, and not dealt with the remainder. Then the question arises, whether the power might not be exhausted by the territory to be operated upon being also exhausted—whether these powers are such as entitle Her 'Majesty, after making a subdivision, to make a further subdivision of the same territory. There is a doubt as to whether the alteration of boundaries can be read so widely as to mean the separation of territory. Having explained the position of the petitioners, who seem very urgent in their claims, I feel considerable doubt and difficulty about this clause myself. I should be very loath indeed to omit any reasonable provisions from this Constitution which might satisfy the inhabitants of Queensland as to the terms on which they might
hereafter come in-not terms affecting the Commonwealth, but terms affecting the relations of one part of that territory with another part. It might be wise to provide that nothing should be done by this Constitution which should determine any existing right of the Crown to be exercised as this Act specifies upon the call of the inhabitants, and there, probably, the Convention will be agreed. I do not complain of the form of the clause, because I have had a hand in drafting it myself. It simply refuses to impair any right that may exist. The real question is whether, taking all these Acts into consideration, there is really anything to be conserved.

Mr. WISE. -

It can do no harm.

Mr. BARTON. -

No, I am inclined to think it can do no harm; but I recognise that the electors of Southern Queensland are in a majority, and that Southern Queensland has all along resisted this separation, and claimed from the Imperial Government the right of determining when the separation should be made. That is to say, the people of Southern Queensland, being in a majority in the Queensland Parliament, have all along urged that they are the people who should determine the question of separation; and, that being so, I am in doubt whether, by the passing of this clause, we may not generate some friction which will be rather adverse to the interests of federation. It is quite true that the passing of the clause will not derogate from their claim, because, if Her Majesty has no right to subdivide the colony further, this provision will have no effect. On the other hand, we should be careful not to put into the Bill anything which is merely blank cartridge, as in that case this provision would be. I do not want to give any strenuous opposition to the proposal. We should, however, consider it well, and if we agree to it, it might be well for the President to telegraph to the Queensland Government-who, so far as the Convention is concerned, represent the colony-the text of the clause, and to ask for their opinion upon it. Our action in passing the clause would not have finality at this stage, and this might be a good opportunity to get the opinion of the Queensland Government.

Mr. SOLOMON. -

Which Government may or may not represent the people of the colony.

Mr. BARTON. -

Yes; but in, regard to any colony which is not represented here, we must assume that the Government is the only authority which can present the opinions of the people. The clause raises a difficulty, and the question arises whether we should embody it in the Constitution, or whether it
would not be better that a telegram should be sent to the Government of Queensland, intimating that the clause had been proposed, and inviting their opinion upon it. That could be done at the present stage, and would prevent any trouble if, as might happen, the clause were negatived. Perhaps it might suit the views of the honorable member (Mr. Walker) to withdraw the clause until a reply could be obtained. That would preserve our right to deal with the matter, because we could at a later date insert the clause upon the recommittal of the Bill if we found that the views of the Government of Queensland sustained the opinion that the clause was one which should be passed. I would suggest to the honorable member that, as a middle course, and one which would not involve friction-because, although we may put the clause into the Constitution, and take it out again, we may arouse jealousy and friction, which would do no good, in the face of our desire to see Queensland a member of the Federation-he should withdraw the clause until we can hear from the Government of Queensland. That course would not leave the memory of any past wrong. At the Present time we are not quite sure of the effect of the proposal, although members of the Queensland Legislature-one of them representing a southern constituency-

Mr. WALKER. -

The Chairman of Committees.

Mr. BARTON. -

Although these gentlemen have told the honorable member that the provision is a good one, we might get a more authoritative pronouncement by taking the course I suggest.

Mr. WALKER (New South Wales). -

I have much pleasure in complying with the suggestion of the leader of the Convention, more especially as it will give our Queensland friends another opportunity of knowing that it is our wish to act in a thoroughly federal spirit, so far as that colony is concerned. I may mention for the information of honorable members that when Queensland was established as a separate colony, on the 10th December, 1859, its total population was under 30,000; it is now about 470,000-a very considerable increase in 38 years. The portion of Queensland which does not want federation at present, but which wishes to make provision for it, contains 170,000 people-a population as large as that of the great colony of Western Australia. I have no doubt but that if we follow the suggestion of our leader good will eventuate. I have no other object than to do what I can to bring the great colony of Queensland into the Federation, being one of those who think that the Federation of Australia will never be complete until we are
surrounded by water as our natural boundary. With the permission of the committee, I beg leave to withdraw the proposal in the meantime.

Mr. SOLOMON (South Australia). -

I object. I would like to point out to the Convention that this is a much more important clause than it seems to have been considered by the leader of the Convention, who has pointed out the various enactments under which the different colonies have been established. He has pointed out that by some means, which he did not well define, we might, by putting in a clause of this kind, arouse a spirit of jealousy in the people of Queensland. He suggested that the way to get over this difficulty is for this Convention to appeal to the Government of Queensland to learn their opinion upon it. The Government of Queensland have had ample opportunity, had they chosen to be as earnest in the cause of federation as the other colonies, to be represented in this Convention. It is not to the Government of Queensland that this Convention should desire to appeal. I believe this clause has been drafted by the Drafting Committee.

Mr. REID. -

No; mainly by Mr. Walker.

Mr. SOLOMON. -

It was submitted, I believe, by Mr. Walker, and drafted by the leader of the Convention, and it was meant to provide an easy means by which the people of Queensland could approve of this Constitution. We must all recognise that every delegate here is most anxious that federation should be completed by the admission of Queensland upon the same terms that we are being admitted ourselves. In another portion of this Constitution we find that with regard to other states coming in it will be necessary, perhaps, later on, for a bargain to be made between the Commonwealth as then established and the new states seeking admission. We all recognise that the difficulties in Queensland have been, first of all, a generally greater desire for the separation of the colony into three portions than for federation. We must all admit, that, had it not been for the peculiar action of the Government of Queensland, that colony would have been represented in this Convention. I have no need to call attention to the telegrams that we received at different times from the representatives of that Government as to their desire to join in the deliberations of this Convention. We know perfectly well that those desires, as expressed in their telegrams, could not have been in earnest, or they would have been represented here. And what does Mr. Walker seek to do now? He seeks to place the colony of Queensland in a position that they would be able to come into this Federation, when it is formed on precisely the same advantageous terms as the other colonies who are now taking part in it.
Mr. BARTON. -
That is not the object of Mr. Walker's clause.

Mr. SOLOMON. -
Of course it is not all the object of that clause.

Sir JOHN FORREST. -
Queensland in have to come in on better or worse term than the other colonies. The new term might be better.

Mr. SOLOMON. -
We will admit that; but I am sure that neither Queensland nor any other colony would seek to be admitted on better terms than the smaller colonies are admitted. But one thing those who have sought Mr. Walker's aid desire is that they shall not be prejudiced, and that they shall still have a right, if necessary, to subdivide their colony.

Mr. WALKER. -
Subject to Her Majesty's will.

Mr. SOLOMON. -
Subject, of course, to Her Majesty's will. And the clause is so drawn that I cannot see for a moment, nor has the leader of the Convention pointed out, one reason that could possibly lead to any friction or any possible jealousy. The honorable gentleman talks about the possibility of friction, and about the possibility of arousing jealousy in Queensland in this matter, but he has not shown us any reason for it. What point is there in the whole clause, from first to last, that can possibly give occasion for any jealousy on the part of the people of Queensland?

Mr. BARTON. -
On the contrary, it might arouse the most intense jealousy on the part of South Queensland, which, at present, has the majority.

Mr SOLOMON. - Well, we all know pretty well that, as far as the south of Queensland is concerned, we have very little hope from that portion of the colony in regard to federation-very little indeed. It is more the central and the northern portions of Queensland that we have to look to for the majority of the people being favorable to federation. This clause seeks to do two things-first of all, to permit the colony of Queensland to come into the Federation, and next to preserve their right in reference to the subdivision of the colony at a later date; and, more than that, it provides against any objection that might be raised by the members of this Convention as to the representation of the separate portions of Queensland,
by stating that if that colony is subdivided in the future, by permission of Her Majesty, in accordance with her prerogative, those states shall then only come into the Federation on such terms as may be made with the Commonwealth. Will the leader of the Convention, or any other honorable member, show me a single legitimate reason for refusing to mollify the people of Northern and Central Queensland by a clause of this sort, or a reason why we should not place such a clause in our Bill? I would like to hear some other members of this Convention, who are, no doubt, as anxious as I am myself—as anxious as most of us are, I believe—to see Queensland represented in this Convention, and joining the Federation, because without that colony it will be a very incomplete Federation of Australia.

Mr. WALKER. -
It will be lop-sided without Queensland.

Mr. SOLOMON. -
A very lop-sided Federation indeed. I would like those honorable members to show some real cause for withdrawing this new clause.

Mr. WISE. -
It is only temporarily withdrawn for a day; it will be brought on again.

Mr. SOLOMON. -
For what reason is it withdrawn?

Mr. WISE. -
To get the views of the Government of Queensland; we shall not be bound by them.

Mr. SOLOMON. -
That is a reason we have no justification for descending to. The views of the Government of Queensland on this point are not such as should influence this Convention to any extent.

Mr. WISE. -
Probably they would not.

Mr. SOLOMON. -
Our experience of the Government of Queensland has not been, so far, of the most satisfactory description.

Mr. WISE. -
We can discuss their views when we get them. Why occupy time in the discussion of the matter now?

Mr. SOLOMON. -
I hope the honorable member (Mr. Walker) will reconsider the subject before he withdraws the clause on the off chance of it being considered,
probably next week, when a great many honorable members of this Convention will be in a hurry to get away to their own colonies, and when it will not have a fair chance of being fully and fairly discussed. This clause appears to me to have been carefully drafted, and it is calculated to obtain the approval of the majority of the people of Queensland. Of course, there may be an anti-federal feeling on the part of some people in the southern part of Queensland, where the mercantile community are in strong force, and where they recognise that under federation they will have a powerful opposition—or rather, I would say a powerful competition—from the merchants of Sydney operating against the merchants of Brisbane; but the central portion and the northern portion of Queensland look upon it from a far wider stand-point. If the question of being represented in this Federation had been put to the citizens of Queensland in the same way as it was put to the citizens of New South Wales, Victoria, and South Australia, we should have seen ten Queensland representatives sitting here with us to frame this Bill. I ask the honorable member not to withdraw his proposal, but to insist on having it discussed, at any rate, at greater length than it has been discussed.

Mr. WISE. -
And of losing it.

Mr. SOLOMON. -
I do not think so. There would have to be more cogent reasons given why it should be rejected than have been given before it would be lost. I hope it will be fully considered before the honorable member withdraws it, on the off chance of having it discussed on another occasion with the fullness that its importance demands.

Mr. BROWN (Tasmania). -
I suppose it will be readily recognised that no one has more sympathy than I have with any proper attempt to secure the inclusion of Queensland in the Federation of the Australian colonies; but it appears to me that if we adopt the clause proposed by Mr. Walker we shall be making a mistake, and if we postpone that clause for the purpose of consulting the Government of Queensland as to their views about the inclusion of it in the Bill, we shall be making a still greater mistake. With all deference to the leader of the Convention, it appears to me that, while his suggestion is admirable as a matter of courtesy, it will be an entire mistake as a matter of business to adopt any such course. We have already objected on two or three occasions to the inclusion of the name, of a particular colony for special treatment. We know that there was strong objection to the special mention of Western Australia—and both on the ground that it would be a mistake to adopt the suggestion of the leader of the Convention, and also
because it is unnecessary, I hope that this proposal will be withdrawn. I would ask the attention of the Convention to clause 114 of the Bill, which relates to the admission of existing colonies to the Commonwealth from time to time, and I would put it to honorable members whether it would not be quite as well-I think it would be rather better-to accomplish the object of the mover of this new clause by simply recommencing clause 114, and inserting some such words as "or any subdivision of such colonies." I will just read the first few words of the clause to which I refer:-

The Parliament may from time to time admit to the Commonwealth any of the existing colonies of-

And then follows a direction for the insertion of the existing colonies which have not adopted the Constitution. If, after these words, we were to insert the words "or any state formed by the subdivision thereof," it seems to me that we should accomplish all that we ought to be asked to accomplish. It would, in my opinion, be a great mistake to encumber this document which we are preparing, and which we hope will last if not for all time at any rate for, many years, perhaps for centuries, with the mention of any particular colonies, if we can by any general terms accomplish otherwise what we desire. I take it that all we desire is to leave the power open, not only for Queensland, but for any subdivision of Queensland, to come in on terms agreed upon; and by the adoption of such words as I have mentioned rather than by the insertion of a special name, as proposed by Mr. Walker, we can best accomplish our object. For this reason, I hope that the clause will be either withdrawn or rejected, and that such an amendment as I have suggested will be made in clause 114, which will give all that Queensland can desire to meet the case of her possible subdivision.

Mr. OCONNOR (New South Wales). -

I do not think that the honorable member who has just spoken (and with his views as he expressed them I entirely agree) has quite touched the difficulty here. Queensland will be as free up to the time when she joins the Commonwealth (should she join it) as she is now to take advantage of any Imperial statute regarding the subdivision of her present territory. The difficulty about her subdivision is this: At any time, if the Parliament of Queensland agreed, she could be subdivided. But the Parliament will not agree, and the party in the minority are seeking to invoke the power of the Imperial Parliament against the majority in opposition to subdivision. If Queensland came into the Federation under clause 117, she could only be admitted on such terms as the Federal Parliament thought fit to impose.

Mr. HOLDER. -
That is to say, by becoming a state under the Federal Parliament she loses her power to subdivide?

Mr. OCONNOR. -

That is so. So that the difficulty really cannot arise until Queensland desires to join the Federation. If this clause of Mr. Walker's were carried it would be at once an incursion by this Convention into the most dangerous area of Queensland party politics. We cannot conceal from ourselves that if this clause were put in the Constitution it would be, on the face of it, taking part with the separatist party, which might do incalculable injury in regard to the rest of Queensland. A proposal has been made, and I think a very good one, that my honorable friend (Mr. Walker) should withdraw this clause for the present; but I do not altogether fall in with the suggestion that the President of the Convention should make a communication to the Government of Queensland.

Mr. KINGSTON. -

I hope not.

Mr. OCONNOR. -

I quite agree with what has been said by Mr. Solomon and Mr. Brown. We ought not even to go to the length of making any appeal to the Government of Queensland officially on this matter, because I think it would be just as near the mark to ask the Premier of New South Wales some question regarding the policy of protection or freetrade in that colony, or any other question of local party politics, as to ask the views of the Government of Queensland at the present time on the question of federation. I think it may be very desirable, in order that we should not dismiss a proposal of this kind without the fullest consideration, that the views of the Government should be ascertained, but I think they might be ascertained by our leader in an unofficial way; and before we finally decide this question we will have the advantage of having those views, and will be able to decide for ourselves how far they represent the views of the whole of Queensland, how far they represent the views of the separatist party, and in what way they will throw light on what we are to do in the decision of this question. Anxious as I am to see Queensland join the Federation, my own view at present is that we might be doing more harm than good by putting in the Constitution any provision which would seem to lean towards one party rather than another in the local politics of Queensland.

Mr. DOBSON (Tasmania). -

I rose simultaneously with Mr. Solomon to point out the same arguments as he and two others have submitted, probably better than I could have
done. I desire to remind the Convention of one thing which I think adds weight to the words which have fallen from Mr. O'Connor. It appears to me the Government do not represent the colony of Queensland on the question of federation. I say that with some hesitation. I do not for a moment say that the Government of Queensland are not the right authority for any one to communicate with privately. But I would just call the attention of the Convention to what happened when the Enabling Bill was before their Parliament, which ended in our friends not being with us here. The Bill was introduced by the Government. A member of the Opposition asked Ministers to pledge themselves, I think, to the effect that the three divisions of the colony which they desired to obtain should to some extent have their proportional number of delegates, instead of having ten men elected by the whole of the colony, ignoring the division in which the separatist party want the colony to be divided. The Ministry declined to give that pledge, a debate ensued, and the Bill was rejected, I think by a majority of one. We have before us the distinct fact that the Ministers were in a minority, and that the Enabling Bill was negatived by a division, which showed that the Opposition, or the separatist party, practically, on that occasion at all events, had a majority in the Parliament. Under these circumstances it appears to me that it would be suicidal for us to interfere in any way in this matter. I do not think the suggestion that the President of the Convention should communicate with the Ministers is a wise one. I think the only thing which can be done is that Mr. Walker, or possibly our leader (Mr. Barton), should, in a distinctly private way, take any step he likes to take.

Mr. BARTON. -
I have drafted a telegram to Sir Hugh Nelson now, as from myself, setting out the clause, telling him what has happened, and asking him if he can favour me with the views of his Government.

Mr. DOBSON. -
That is the only thing which can be done, and I even fear that doing that much, and having this little debate, will get us into hot water. We know from what happened that Southern Queensland and the Government will not be in accord with this clause. We know perfectly well that the fact that some of us wish to pass the clause will make some of our northern friends in Queensland look with some suspicion and hostility on the Convention. The matter appears to me to be one which we should leave severely alone.

Mr. WALKER (New South Wales). -
I still intend to withdraw the clause, with the permission of the committee. I am very glad that Mr. Barton is going to take the action he has indicated. I will follow that up by a private telegram to Sir Hugh Nelson, and, with the permission of the committee, I will bring forward the
clause at a later stage.

The clause was withdrawn.

The CHAIRMAN. -

I may point out that Mr. Holder's new clause is proposed to be put as the last clause of the Bill, and that if Sir John Forrest wishes to propose his new clauses he should do so now, to follow after clause 102.

Sir JOHN FORREST (Western Australia). -

Honorable members are aware that no mention is made in the Bill as to the mode of appointment of the Governor of a state. I believe the result of that omission will be that the Governors of the several states will be appointed by Her Majesty in the way in which they are now appointed. Honorable members will also [P.1703] starts here recollect, that, in 1891, a provision was placed in the Bill by which the states had power to legislate in regard to the office of Governor of a state. That provision was excised in Adelaide, I think very wisely, and there is now no provision in the Bill for the appointment of a Governor of a state. We have provided that the Governor-General shall be appointed by Her Majesty, but we have said nothing whatever, as far as I can recollect, in regard to how the office of Governor of a state is to be filled. I hope that no one will think that I have any desire, to weaken the bonds which unite us to the great mother country. Every one of us, I think, is agreed that the Federation we are trying to create—in fact, it is mentioned in plain words in the preamble—shall be a Federation under the Crown of Great Britain. But it seems to me that if we are to have a real federation of these colonies that federation will be very much weakened if we have each state with a Governor, appointed by Her Majesty, from home.

Sir EDWARD BRADDON. -

How can that weaken it?

Sir JOHN FORREST. -

I will show the honorable member directly. In 1891 the idea was—and, of course, it is more so now, because there is nothing to the contrary in the Bill—that each state should have a Governor appointed by Her Majesty as at present, that that Governor should have the right to correspond directly with the Secretary of State, and that there should be no bond of unity between the Governor-General, as head of the Commonwealth, and the Governor of a state. I think that will be altogether foreign to the Federation I desire to see established. The Federation we may have most experience of is that of Canada, which, like that of Australia, is based on responsible government. In Canada the Lieutenant-Governor of a state holds office during the pleasure of the Governor-General.
Sir EDWARD BRADDON. -
  Canada is not federated.

Sir JOHN FORREST. -
  The honorable member may, perhaps, be able to explain that. At present I
believe Canada is federated, and the Federation there is most like the
Federation we are trying to constitute here, namely, a Federation based on
responsible government. I recognise very fully the chief objection to
having Governors appointed by the Federal Government. It is generally
thought that the colonies would suffer in prestige thereby. There is no fear
of that. We know very well—and if we don't know now it is time we did—that
these colonies when we become a Commonwealth will cease to have that
prominence in the world which they enjoy at the present time. On the 30th
of August, 1888, in an address delivered at Sydney—I quote this to show
that I have not only thought of the matter now—I used words which are as
applicable to-day as then, and which embodied my opinion. Speaking on
the subject of federation, I said—

  No doubt there are great difficulties and great prejudices to be overcome
before federation takes place, for the different colonies and their different
Governments will lose their prominence, and the Dominion Government
will alone be known in the world. This is a very serious obstacle to the
ambitions of each colony, and will play an important part in preventing the
federation of Australia. For instance, we may all know who is the President
and Ministers of the United States, or the Governor-General and Ministers
of Canada; but how few of us know anything, for instance, of the local
Governments of the state of California, or of the province of British
Columbia? The states and provinces are merged in the Central Government
and Legislature, and it will be difficult to convince the colonies of
Australia that it is desirable to sink their individual prominence and
become merely a factor in the Central Government

Mr. REID. -
  Is that in Bryce?

Sir JOHN FORREST. -
  No, these are words which I used myself.

Mr. REID. -
  They sound exactly like Bryce.

Sir JOHN FORREST. -
  The words are my own.

[P.1704] starts here

Mr. REID. -
  Bryce's book was not published then, but the style is the same.
Mr. HOLDER. -
Perhaps Mr. Bryce copied Sir John Forrest.

Sir JOHN FORREST. -
I do not say that, but the words I have quoted are the words I spoke at a gathering in Sydney in 1888. If we are not prepared to face this question of lost prestige-for that is what it comes to-we are not prepared for federation. Another reason why I think the Governors of the various states ought to be appointed by the Federal Government is that we should desire this Constitution to be self-contained.

Mr. SYMON. -
Hear, hear.

Sir JOHN FORREST. -
My friend (Mr. Symon), in the early part of this session, while addressing himself to the constitution of the High Court, used these words-
I understand we are creating a nation which is to be self-contained, self-sufficing in every possible respect.
If that applies to the constitution of the High Court, surely it should also apply to the appointment of the heads of the states in the persons of the Governors.

Sir EDWARD BRADDON. -
Are we creating a Federation under the Crown?

Sir JOHN FORREST. -
Yes, and it will not be less under the Crown because the Lieutenant-Governors, or whatever we call them, are appointed by the Governor-General.

Mr. SYMON. -
A federal monarchy.

Sir JOHN FORREST. -
I desire with my friend (Mr. Symon) that this Federation should be self-contained. Speaking for myself, I desire that the very highest post on this great continent should be open to our own public men. That would give dignity to our public life. At the present time in our own small Governments we do not go out of our own colonies for officers to fill the highest posts in the land, leaving out the position of Governor. We have our own Chief Justices and Puisne Judges appointed by the local Government. If there be a High Court established, as there will be under the Federal Constitution, the Judges of that court will be selected from the public men of Australia.

Mr. SYMON. -
And they will dispense final justice.

Sir JOHN FORREST. -
I don't know about that.

Mr. SYMON. -

Oh, I think so.

Sir JOHN FORREST. -

If we are prepared to trust the Federal Government to appoint the Judges of the High Court, and also other officers to carry on the business of the Government, why should we refuse the right to appoint our state Governors? At present we must remember our field of selection is very much restricted in appointing Chief Justices, Puisne Judges, and other high officers. But when we have the whole of Australia to select from, our area will be very much enlarged, with the result that better men may be appointed. In selecting a Lieutenant-Governor for a state the Government would not be restricted to the state in which that officer would have to perform his functions, but would have the whole of Australia to select from.

Mr. KINGSTON. -

You have disqualified the Judges for that office, have you not?

Sir JOHN FORREST. -

There would be a wider selection, with the exception of the Judges.

Mr. WISE. -

In the states the Judges are not disqualified for the office of Lieutenant-Governor.

Sir JOHN FORREST. -

There is difficulty enough at the present time in obtaining prominent English statesmen and noblemen to take the position of Governor in these autonomous colonies. When we have federation the prestige of these smaller Governorships will be very much lessened. The states then, although they will be autonomous, will not be autonomous to the same degree as at present. Under such circumstances, will the difficulty of obtaining Governors not be very much greater? Does any one think we shall be able to attract prominent English statesmen and noblemen to come here as state Governors? If we are not able to do that—and we certainly will not be, because we are scarcely able to do it now—we will find that the men selected for the position by the Imperial Government will not be so experienced, or in any way better qualified to uphold the dignity of the office than persons who could be obtained in Australia. I admit freely that there may be some difficulty in the colonies in obtaining suitable persons. There always is a difficulty in obtaining highly-educated cultured persons in new communities. There may be a difficulty probably in the early days in obtaining the most suitable persons to fill these offices.
The same argument would apply with some force to the appointment of the Judges in the various states, and it will apply also to the appointment of Judges of the High Court of the Commonwealth. If we continue the practice of giving these high offices to gentlemen from the other side of the world there will be less inducement to persons of culture and education to remain here, and we shall be less likely to secure a leisured class. This Constitution is not for to-day or for to-morrow, but for all time. We believe that Australia, will, under this Constitution, grow into a great and prosperous nation. All these offices should by right belong to the people who have made the colonies what they are, and who are doing their best to build up on this side of the world a Greater Britain. Some honorable members would leave this matter to the states, as was done in the Bill of 1891. I am altogether opposed to that proposal, because you would not be likely to obtain a constitutional government by such means. You would have a Governor elected by the people, who would probably feel himself to be stronger than the Government itself. An elective Governor is not, in my opinion, quite consistent with responsible government.

Mr. KINGSTON. -

Suppose you gave the Federal Parliament power to legislate on the subject of the mode of appointment.

Sir JOHN FORREST. -

I should not object to that, but my own feeling is that we shall be acting wisely, and certainly consistently, if we leave to the Federal Government, which, of course, represents the Federal Parliament, the disposition of all the offices of the state. If they are worthy to appoint to the great offices of Judges of the High Court, I can see no reason whatever why they should not also be intrusted with the appointment of the Governors of the states. I do not believe that the present plan, if continued, will work well. It is no use trying to deceive ourselves by thinking that the states will be absolutely independent of the Federal Government. That would not be a real Federation.

Mr. BARTON. -

You differ altogether from Mr. Freeman. He says that that is a Federation.

Sir JOHN FORREST. -

My idea is that we want some connecting link between the states and the Federal Government. If you have a Governor who is independent of the Federal Government, and who can correspond with the Secretary of State quite independently of the Federal Government, you will find that the Federation we are building up will not be perfect. The only reason that can be given against the Governors of these states being selected from the
Australian people, is the absence of suitable persons of education and culture amongst the politicians of this country. If that is the case now—and I do not think it is—it surely is not a reproach that will last for ever. As time goes on it will disappear, and the best means of insuring its disappearance is to hold out every inducement to persons of education and culture to remain here. - We should not tell the citizens of Australia that it is not to be open to them to aspire to the highest offices in the state, and that those offices are to be reserved for persons brought from the other side of the globe, who may have no sympathy with them in the work in, which they are engaged. I beg now to propose the insertion, after clause 102, of a new clause 102A, which is as follows:-

In each state of the Commonwealth there shall be a Governor, who shall be appointed by the Governor-General in Council, and shall hold office during the pleasure of the Governor-General, but for no longer than six years in any one state at any one time.

If that is agreed to I will then propose the following new clause:-

All references or communications required by the Constitution of any state, or otherwise, to be made by the Governor of the state to the Queen shall be made through the Governor-General, as Her Majesty's representative in the Commonwealth, and the Queen's pleasure shall be made known through him.

Mr. BARTON (New South Wales). -

I do not think this is a clause which need take up much of the time of the Convention, although my right honorable friend has, in moving it, departed, to some extent, from his golden rule of brevity.

Sir JOHN FORREST. -

How long was I?

Mr. BARTON. -

Not very long. I do not recognise the force of the argument that, because the colonies have to face a possible loss of prestige under the Federation, that is a good reason for taking away a little more of that prestige. If it is true that there will be a diminution of prestige, I suppose it would be important to those who do not wish to have that prestige further diminished not to take another step in the same direction, which certainly is the sum and substance of this proposal. We have, from the beginning, had before us, with certainly some exceptions, but to a large extent, the idea of a Federation as defined by Mr. Freeman. Now, Mr. Freeman, in his History of Federal Governments, lays it down that as between the Federal Commonwealth and the states the one should be sovereign in its sphere just
as the others are sovereign in their sphere.

**Sir JOHN FORREST.** -

Then you would let them appoint their own Governors.

**Mr. BARTON.** -

I do not say that. I say that as between the Commonwealth and the states the one should be sovereign in its sphere just as the others are sovereign in their sphere, and that is a question of the relations between them. It would certainly destroy any approach they might make to coming within that definition to leave the highest office in any of the states to be made the subject of appointment by the Governor-General of the Commonwealth. There would no longer be that independence of relation to which the right honorable member objects, and which is one of the essences of a Federation. So far as you depart from the independence of the state, as between it and the Commonwealth, in all matters relating to purely internal government, you depart from the definition of federation which every philosophical writer on the subject has given. Nor do I think the precedent of Canada furnishes any reason why we should adopt the course taken in that case. It is well known that, although Canada is called a Federation, it differs in many serious respects from a Federation, and that the individuality of the states, which every one of the states concerned in this endeavour to federate maintains as a prime object, would suffer, not in prestige merely, but in actuality, by the adoption of such a clause. I do not think we shall be doing wisely or well if we adopt a clause of the kind. We should be departing from what is the fair and authentic idea of a Federation for the mere purpose of taking away a prestige, the loss of which, if it did take place, would be lamented by a great many of those who will have to vote for this Constitution. That is not the way to commend the Constitution to the people. It will rather have the effect of inducing many of them to reject it, and for that reason alone I should be strongly disinclined to agree to any such proposal.

Sir JOHN FORREST. -

It will come someday.

**Mr. BARTON.** -

My right honorable friend has asked what reason is there against this proposal. He might as well ask what reason is there against the Governor-General appointing the Judges of the states. To what extent would this remain a true Federation if such a provision were inserted in the Constitution?

**Sir JOHN FORREST.** -
You would object more to the state doing it.

Mr. BARTON. -
My right honorable friend's argument might be extended to the appointment of any class of officers. It is only a question of degree. What would be the result of such an argument in a system of federation?

Sir JOHN FORREST. -
Would you let the state Governments make these appointments?

Mr. BARTON. -
No.

Sir JOHN FORREST. -
We are in accord in this.

Mr. BARTON. -
I believe that, as these colonies propose to federate under the Crown, the appointment of the Governor-General should come from the Crown; and, for a very similar reason, the appointments of the Governors of the states should come from the Crown. My right honorable friend, by his interjection, has given us a remarkably good reason why we should not adopt the new clause. He has stated that the only reason that can be urged against its adoption is that there are not enough good men in the colonies to fill the position of Governors. There may be enough competent men for these positions, but that is not the reason why I think that the power of appointment should be in the Crown. If my right honorable friend wants to declare that the citizens of the Commonwealth shall be eligible for the position of Governor—though I should not follow him there—he might have some reason for putting a declaration of that kind in the Constitution. I take it, however, that the appointment of persons in the Commonwealth to the position of Governors would probably result in the appointment of men who had led the life of political partisans, and who were, therefore, less fitted for the office than men outside the Commonwealth.

Sir JOHN FORREST. -
The same argument would apply to the appointment of the Judges.

Mr. BARTON. -
No. A man who belongs to apolitical party is advocating the views of that party day by day, but a man employed in the business of an advocate has to deal with various sets of men and various sets of cases. If the right honorable gentleman only knew the effect of his profession upon the mind of an advocate, he would know that the training of an advocate does not unfit him to take a calm judicial view of things. But a man who had lived a life of political partisanship would be unfitted for the position of Governor.

Sir JOHN FORREST. -
We have had cases of Premiers being appointed Judges.
Mr. BARTON. -
That may be so. If my right honorable friend wants to increase the range of choice, his more rational course would be to declare that citizens of the various states shall be eligible for the position of Governor.

Sir JOHN FORREST. -
They are eligible now.

Mr. BARTON. -
Yes; and there is an instance upon record in which a citizen of New Zealand was appointed Governor of a Crown colony. I am not, however, seriously concerned in arguing this point. I take it for granted that the citizen of a state is eligible for the office of Governor, and I have read and heard it urged with some warmth that if the Crown were to take more account of distinguished colonial citizens in making some of its appointments, that would tend to bind the empire more closely together. But, by limiting the range of appointment, as the right honorable gentleman proposes, the inevitable result will be that the Governors of the various states will be Australian citizens, and I do not think that any good can result from this restriction. In my opinion, it is better to leave the po

Mr. DOUGLAS (Tasmania). -
In the Convention of 1891 there was a member named Mr. John Forrest. Amongst us at the present time is a gentleman called Sir John Forrest.

Mr. HOWE. -
The Right Hon. Sir John Forrest.

Mr. DOUGLAS. -
Oh, well, have it as you like. It appears that the two names signify the same individual; but I should like to know what has caused the alteration of his opinions?

Sir JOHN FORREST. -
I cannot remember what was done seven years ago at this moment.

Mr. DOUGLAS. -
What is the object of allowing the Governors of the states to be appointed by the Governor-General?

Sir JOHN FORREST. -
I do not think this question was ever discussed in the Convention of 1891.

Mr. DOUGLAS. -
What good would be obtained by carrying into effect the right honorable member's proposal? Is it not desirable that the Governor of each colony should be a gentleman who has not been so associated with the politics of that colony as to have become a partisan?
Sir JOHN FORREST. -
He might come from Queensland and go to Tasmania.
Mr. BARTON. -
Would the people of Tasmania like that?
Mr. DOUGLAS. -
Such an appointment might be made, but it has always been found desirable to leave the power of appointment with the Home Government. Why not appoint We Governor-General from amongst the people of the colonies, and then go to the fountain-head, and provide that he be elected as the President of the United States is elected? What has been our object in this federation? Has it not been to separate the states Governments as far as possible from the Federal Government? This is attained to some extent by having the Governors of the states appointed by the Home Government.
It is to be hoped that the Commonwealth will not be so far separated from the British Government as was proposed in 1891. It is well known that at the Convention of 1891 some strongly republican opinions were held, and many of the views which were then expounded by Sir George Grey were more or less of a republican nature. The right honorable member was upon that occasion strongly opposed to the appointment of the state Governors by the Governor-General.
Sir JOHN FORREST. -
I do not think so—I was opposed to the election of Governors.
Mr. DOUGLAS. -
It would be as well for the right honorable gentleman to explain to us the reason of his change of opinion.
Sir JOHN FORREST. -
I do not think I have changed my opinion.
Mr. DOUGLAS. -
What advantage would it be to the community if the Governor-General were allowed to appoint the Governors of the colonies? Why not leave the appointment of the Governor-General to the people of the colonies, and provide for a plebiscite for the purpose? The proposal before us is not necessary, and if it were carried we should have to alter several other clauses in the Bill to give effect to it. It is to be hoped that the Convention will stick to the old institutions, and that the Governors of the several colonies will be independent of the Governor-General. If every enactment of the local Parliaments must go through the Governor-General—which is what the provision of the right honorable gentleman means—the effect would be that the states would come more under the influence of the Governor-General and of the Parliament of the Commonwealth. That has not been our object from beginning to end. Our object has been to retain
for the slates certain rights, powers, and privileges independent of the federal power. It is to be hoped that we are not going to make an unification in that respect. We have agreed that we will not adopt the Canadian system, but, as far as possible, according to circumstances, we will adopt the principle that each state should be independent of the Federal Parliament.

Sir JOHN FORREST. -
Would you have the Presidents and Speakers appointed from home?

Mr. BARTON. -
Would you have them appointed by the Commonwealth?

Mr. DOUGLAS. -
Sir John Forrest is altogether abroad on this question. The better plan would be to deal with this as we did with another matter recently. Let us give Western Australia the privilege of having a Governor appointed by the Governor-General. No doubt that will suit the honorable gentleman; but, so far as we are concerned, we do not want this, and as far as possible, we will not have it. As far as Tasmania is concerned, there is no doubt we shall send a petition to the Queen asking her not to recognise such a position. I feel confident that the mother colony—although she is a sort of mother-in-law on the present occasion—will also go in for the same thing, and have a proper Governor appointed, instead of the nominee of a nominee, as the honorable member proposes. I hope we shall stick to our institutions in a proper manner. When the proper time comes, no doubt these colonies will form a nation, but that time has not yet arrived.

Mr. WISE (New South Wales). -
As one of the representatives of the mother or mother-in-law colony, I am afraid I shall not please Mr. Douglas in the view I am going to take. I feel great hesitation in taking an adverse view to that of the leader of the Convention in a matter of this kind. I recognise that there is a certain logical inconsistency between the amendment and the strict theory of a Federation. At the same time, we are not to be governed by theories in dealing with practical affairs. The amendment appears to me to be a fair practical solution of an exceedingly difficult question. One of the chief objections urged against union is the increase of expenditure in government. One of the difficulties is how to reduce the expenditure upon state Governments without diminishing their efficiency. Nothing could be more absurd than the maintenance of six vice-regal courts in the several provinces after a Governor-General has been appointed representing Her Majesty in her dealings with Federated Australia. If this clause is not put in there will be a necessity imposed on each state of getting an alteration of
the Constitution by an Imperial Act, a difficulty which will vary more or less in the different states, but which will certainly exist, and cannot be overcome for a long period. If, however, this amendment is passed, we at once secure to the people of every colony that for which they have been asking for a long time, namely, that the Governor appointed by Her Majesty shall be one acceptable to the people of the colony. I do not regard this proposal as being in any way a derogation from Her Majesty's prerogative. Her prerogative will be exercised by the Governor-General and the Ministers of the Commonwealth, just as truly as it is exercised by the Secretary of State in Downing-street. The appointments to the Governorships of the various colonies will be appointments by Her Majesty, whether they are made through the agency of the Ministry of the Commonwealth or through the agency of the Ministers in London; so that, from any point of view, the prestige will remain the same. Such prestige as attaches to the nominee of the Queen will attach to the nominee of the Governor-General of the Commonwealth, in whom it is proposed to vest the appointment of Lieutenant-Governor, but there will be this difference—that the people of each state will inevitably, through their Ministers, be consulted before the Governor-General nominates anyone to that high position. There is another consideration. I look forward to a great alteration in the duties and powers of the Lieutenant-Governors after the Commonwealth has been established. I look forward to seeing the Lieutenant-Governors occupying a much more important political position than they do to-day, and a much less important social position. If we are to have anything like economical administration of the various colonies, there must be a diminution of the parliamentary apparatus in all of them. Probably we may see one Chamber only in each colony, and in that case it may be that we should desire to have a Governor performing purely political functions, as the Governor of an American state does, for the purpose of expressing the executive will of the community, and acting as a restraint upon Parliament when it comes into conflict with what he believes to be the popular opinion of the state. In many ways the position of Governor must be modified.

Mr. GLYNN. -

You cannot modify it unless you change clause 102 of this Constitution.

Mr. WISE. -

I am not sure that the honorable member is right. I do not see that that really touches it. The consideration I wish to bring before the Convention is: That in view of the probable change in the position of the Governors of states, this proposal, which virtually leaves to the people of each state the
selection of their own Governor—because no one can imagine the Governor-
General, which means the Ministry, appointing any Lieutenant Governor
without consulting the Ministry of the state as to the fitness of the person to
be appointed—raises the question whether we should not embrace the
opportunity in this Constitution of pointing out to the people concerned the
opportunity for a diminution of expenditure which may be of a very useless
kind. No one feels a higher admiration than I do for the gentlemen who fill
the positions of Governors in the various colonies, but, at the same time, I
dare say that they would be the first to admit, if at liberty to speak frankly,
that the Government Houses, to-day, in the various colonies have to a
considerable extent outlived their original purpose—I will not say their
usefulness. That Government House which, in the old days, was the centre
of a society composed of military and civil officials, fulfilled a purpose of
a very distinct and useful kind, but a purpose which it may be doubted can
be occupied now that society has widened, and when the social duties of a
Governor so much encroach upon his time as to leave him little
opportunity of performing the other duties appertaining to his position.
Now, Government House necessarily, not through any fault of those who
fill the position, but from the circumstances of the colonies, sets what is
altogether a wrong standard of manners and culture. It holds up to the
people of the colonies an ideal which is not a true ideal, either of manners
or of culture, and that is a necessity of the situations necessity which
cannot be removed, but which, as the colonies grow, and as the social circle widens, must every day increase. Consequently, I welcome a
proposal of this kind, which gives the colonies an opportunity of
expressing an effective voice in the selection of their Governor. I welcome
it also for the reason put forward by my right honorable friend (Sir John
Forrest) that it does offer a reward to merit in men born and bred in
Australia, because it opens up new opportunities of usefulness to the chief
executive officer of the community—the Lieutenant-Governor—and because
it binds more closely together the various states in a union in which they
will all find their best expression. The fact that this proposal is moved by
the right honorable member is sufficient evidence to us here and to
everybody outside that it is in no way aimed at weakening the strength of
the tie between Australia and Great Britain. If it were, I should not be
found supporting it. I believe the amendment is a very valuable one—I am
certain that it is a very important one and, if it is carried, I am confident it
will

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go a very long way to commend this Constitution to the popular approval
of Australia.
Dr. COCKBURN (South Australia). -

I thoroughly indorse a great many of the remarks which fell from Sir John Forrest in moving this proposal. It seemed to me at the time as if the mantle of the great tribune of the people, Sir George Grey, had descended on his shoulders, because the eloquence with which he appealed to us to keep the highest offices of state in this country within the reach of the citizens of Australia, appeared to be quite familiar to my ears. But there are practical difficulties in the way. As has been pointed out, it is necessary to guarantee the independence of the states in relation to the Commonwealth. Now, let us consider who would be the gentlemen appointed to the positions of Governors of the states by the Federal Executive. They would be creatures of the Federal Executive, of course, and would be essentially party men.

Sir JOHN FORREST. -

Why should they be creatures of the Federal Executive?

Dr. COCKBURN. -

Because they would be appointed by the Federal Executive, and the appointments would

Mr. HIGGINS. -

There is only one party in Western Australia.

Sir JOHN FORREST. -

The Judges are appointed by the Executive, and surely they are not creatures of the Government.

Dr. COCKBURN. -

That is a different thing altogether. Judges are not politicians, and this patronage will be given to men who will continue to be politicians.

Sir JOHN FORREST. -

The appointments to the judicial bench are often political appointments.

Dr. COCKBURN. -

If this system of appointing state Governors is carried out, the highest office in the state will be much more of a political office than it is to-day, and that would lead to a most disastrous condition of things. If the Lieutenant-Governor is to be, in the first place, something of a politician, and his appointment is to be conferred by a party Government, it will be given to a partisan, and I cannot think of anything more likely to be obnoxious to a state, which may not be high in favour with the Federal Government, because, in some states the Federal Government might not desire to conciliate the feelings of the state, and might appoint a member of a party opposed to the party in power in the state-I say I cannot imagine anything more obnoxious to states than the appointment of old politicians as Lieutenant-Governors.
Mr. HOWE. -
Old politicians have made the best Judges on the bench up to the present time.

Dr. COCKBURN. -
The Judges are removed altogether from politics, but the Lieutenant-Governor cannot be so much removed from politics.

Sir JOHN FORREST. -
Why not? How much influence has a Governor of a colony in its politics?

Dr. COCKBURN. -
I ask the Convention to bear in mind that the nominee-the creature-of the Federal Executive, backed up by the power of the federal authority, would be in no mean position, but in a position of considerable power. While I am entirely with the desire of Sir John Forrest in this matter, I do not see how his proposal can be carried out without exceedingly grave danger. I think it is absolutely necessary that the proposition laid down by the leader of the Convention should be given effect to, namely, that the independence of the states in relation to the Commonwealth with respect to these appointments must be secured. Now, there is one way of reconciling these two positions, and I beg to move, as an amendment to the clause-

That all the clause after "Governor" (line 1) be struck out with a view to the insertion of the following words:-"And the Parliament of the state may make such provisions as it thinks fit as to the manner of the appointment of the Governor of the state, and for the tenure of his office, and for his removal from office."

Sir JOHN FORREST. -
That was struck out at Adelaide.

Dr. COCKBURN. -
The right honorable member is now alive to considerations which he did not then recognise, or, at any rate, which he did not then express with the same eloquence. He is alive to the fact that we ought to make the highest offices of Australia open to the sons of Australia, but, at the same time, I am sure he is not desirous of carrying that out in any way obnoxious to the state. By the adoption of my amendment each state can carry out the honorable member's views in the way that seems best to the people of that state. I think it would be a mistake to make the position of Governor elective. No state in a condition of sanity would make such a provision.

Mr. SYMON. -
That is the provision in force in America.
Dr. COCKBURN. -

But the Governor in America is essentially the head of a political party, and therefore occupies an entirely different position from that of the Governor of one of these colonies. Indeed, the very reasons which make his election proper in America make it improper here, because we do not want to see the Governor of a state a partisan. Very considerable powers lie in the hands of the Governor of a state. He has the issue of the writs for the federal elections. That is not placed in the hands of the Governor in Council.

Sir JOHN FORREST. -

Oh, surely, it is.

Dr. COCKBURN. -

I think not. I think it is in the hands of the Governor of the state. Undoubtedly that is a prerogative. The issue of writs for the election of Members of Parliament, and also the dissolution of Parliament itself, are still prerogatives which are exercised by the Governor without the consent of the Executive Council, that is to say, without the formal consent of the Executive, although Governors who understand the matter do not do these things without the knowledge of, and without consultation with, their Ministers. But, unquestionably, it is part of their office to be able to do so, and, therefore, under this system the office of Governor might become more political than it is at present.

Sir JOHN FORREST. -

How is it that this system has worked well in Canada?

Dr. COCKBURN. -

It has not worked well in Canada, I believe. I am not so well up in Canadian precedents now as I was six or seven years ago, when the matter was fresh in my memory, but I have seen, over and over again, in the writings of those who are most conversant with the methods of Canada, the very objections which I have mentioned raised, namely, that worn-out politicians, old party men, who have done excellent service, who have served their party in their day, and who are entitled to something, and whom, at the same time, the federal authority wants to get rid of, to shelve, are raised to these appointments. Now, that has given rise to a good deal of offence, and we desire to avoid all that here. I certainly want to see everything that Sir John Forrest has proposed carried into effect in such a manner as will in no way imperil the future of the Commonwealth, and, therefore, with a view of carrying out all that the honorable member desires, and at the same time without doing anything which all authorities have recognised is a wrong to the state, I beg to move the amendment I have already indicated.
Mr. REID (New South Wales). -

I think this is a very interesting discussion, but entirely out of place here. These are matters to be settled by the states themselves. I cordially agree with my honorable and learned friend (Mr. Wise) that one result of this Commonwealth, if it ever comes about, will be that the system of local Governors and the parliamentary systems of the several states will be entirely remodelled on economical lines, but the way that is to be done will be left for the states themselves. We are framing a Constitution for the whole Commonwealth. There is an entire difference between the Constitution of Canada and the Constitution being framed by this Bill. In the case of Canada everything not expressly left to the states comes under the jurisdiction of the Canadian Dominion. The exact opposite of the case is here. Everything not expressly mentioned in the Commonwealth Bill is left within the jurisdiction of the states. The United States principle has been adopted here as opposed to the Canadian principle. That being so, it would be entirely foreign to the scope of this Bill to depart from its principle by providing for these matters being taken out of the hands of the states. I believe the improvements contemplated will take place, but they can take place by means of state legislation. I fear that if we place this proposal in the Constitution, we shall simply create another prejudice against the Bill.

Sir EDWARD BRADDON (Tasmania). -

My honorable friend (Mr. Douglas) has expressed his surprise at the change of attitude of Sir John Forrest between 1891 and the present time. Sir JOHN FORREST. -

What did I do in 1891?

Sir EDWARD BRADDON. -

Still greater is his change of attitude since the beginning of this Convention at Adelaide and the present time.

Sir JOHN FORREST. -

Why?

Sir EDWARD BRADDON. -

Because the right honorable gentleman was then an advocate of keeping up the sovereign rights of the states.

Sir JOHN FORREST. -

I am now.

Sir EDWARD BRADDON. -

Not at all. The right honorable gentleman has made a comparison between the states the Commonwealth as they will be and the provinces of Canada. But the provincial Governments of Canada are simply so many
municipal councils—glorified municipal councils, I believe, they have been called and the right honorable gentleman is apparently prepared to bring our sovereign states down to the level of the provinces of Canada. If he will only think of the arguments already advanced against his proposal he should be satisfied. It has been clearly shown that to make the Governor-General in Council the appointer of the several local Governors would be to make them the nominees of the Federal Executive Council—the Federal Ministers—and therefore, necessarily, it would be almost a partisan arrangement, which must have disastrous results to the various states.

Sir JOHN FORREST. -
It has not been so in Canada.

Sir EDWARD BRADDON. -
The right honorable gentleman goes back to the case of Canada, where the form of government is not a federation, but a confederation.

Mr. SYMON. -
A unification.

Mr. GLYNN. -
And where the federal body can repeal local Acts.

Sir EDWARD BRADDON. -
Yes. Yet the defender of the rights of the states of Australia is trying to reduce them to the level of the provinces of Canada. I do not believe that the right honorable gentleman himself hopes to see that done.

Sir JOHN FORREST. -
A small colony like Tasmania need not trouble about that.

Sir EDWARD BRADDON. -
Size is not everything. A bladder may be large, but there is little in it. He has admitted that there is not the material here for the production of a body of men from whom provincial Governors can be selected.

Mr. SYMON. -
If the material is here the Queen could select from that material.

Sir EDWARD BRADDON. -
But I am showing how the right honorable gentleman has failed to make out his case so as to put any strength into it. According to his own showing, there are no people of culture, or education, or so forth here.

Sir JOHN FORREST. -
You quite misunderstood me. I did not say that.

Sir EDWARD BRADDON. -
My right honorable friend said something like that. When I heard the right honorable member speaking I was wondering if he was going on to say that there would have to be started a university for the education of Governors, with a master of deportment, and all that sort of thing, and that
not do so was a disappointment to me. I hope we shall leave the Bill as it stands in this matter, that we shall not interfere with the prerogative of the Crown in regard to the appointment of state Governors, and that we shall maintain our state Governors in the high position they occupy, and, what is more, in the perfectly independent position they occupy as between parties and parties.

Mr. Howe (South Australia). -

I was very much pleased indeed to hear such a genuine ring of Australian patriotism emanating from my old friend (Sir John Forrest).

Mr. Symon. -

Did not you expect it?

Mr. Howe. -

I expect everything that is good from Sir John Forrest, and this is one of the best proposals I have ever heard emanating from him. So far as I am individually concerned, and so far as I recollect the discussion in the Sydney Convention of 1891, Sir George Grey raised a different question altogether—in fact, his motion was tantamount to severance from the old country.

Mr. Kingston. -

No.

Mr. Howe. -

With that I had no sympathy whatever, and the mantle of Sir George Grey, I would remind my honorable colleague, not yet fallen on the shoulders of Sir John Forrest.

Dr. Cockburn. -

He is nearly as eloquent, and is going very much in the same direction.

Mr. Howe. -

The contention of Sir George Grey was, why should Australia permit the Governor-General to be even nominated by the Home Government? I have no sympathy with that contention at all. I do not believe in "cutting the painter" in any shape or form; but after Australia is federated under a Governor-General, appointed by the Crown, I see no reason why a state should not have a Governor appointed by the Governor-General, or otherwise by the Federal Parliament. It has been said that prominent politicians would be appointed to the position. What is the history of the state from which I come? Prominent politicians who are lawyers, every one of them, are now administering justice on the bench of South Australia, and one of them has discharged the duties of Governor on many occasions, and throughout the length and breadth of the colony his justice has never
been impugned by a single soul. I do not see why the Federal Parliament should not appoint one of the prominent politicians to the position of Governor of a province. I would not allow a state to interfere in this matter. Politicians lead their party to victory, and suffer with them in defeat, and there may be an unconscious bias existing. Moreover, if we allow a state to choose its own Governor, and we have a powerful Government, perhaps presided over by a genius like our right honorable friend (Mr. Reid), what is to prevent him from appointing himself to the position? Nothing at all. If it is going to be left to the state to appoint its own Governor, and there is a strong Government in power in that state, it would be quite open for the Premier to be appointed if he desired to take the position. I desire to take out of the hands of the local Government the power to appoint any member of the Executive Council as Governor. I have no objection to the Federal Parliament assuming that function, as a very proper function for it to perform. I was pleased to hear the arguments brought forward in favour of this new departure. Are we in Australia—a nation of nearly four million people—going for ever to send home for Governors to rule over the destinies of each separate province? Have we not men amongst us equal to any who could be brought from home? Are we not likely to have here men superior to those whom the British Government might choose to send out to administer our affairs? Have, we not men who have done great service to the country, and men who are born Australians, who could fill the position satisfactorily? Why should we not give the highest positions in this country to those who belong to the country, and who are pure Australians, instead of sending 12,000 or 13,000 miles for a stranger? In every particular I say Australia for the Australians," and every position which Australians are equal to fulfilling with credit to themselves and honour to the country should be reserved to them.

Mr. SYMON (South Australia). -

I doubt very much if the amendment will go the length which my honorable friend (Mr. Howe) wishes. It hardly, in language at any rate, declares that these posts are to be reserved for Australians. What the amendment really amounts to is this: That it would be just as possible for the Governor-General in Council to choose the Governor of a state in England as it would be for the Queen under the present system. My objection to the amendment is not founded on any of the reasons dealt with at so much length. It does not appear to me that the question is that of the material available in Australia for the appointment of states Governors. Nor is the question whether it is desirable or not that political partisans should be appointed. Further, I do not think that the amendment proposed
by Sir John Forrest involves any question whatever, even if the amendment
were carried, of "cutting the painter."

Sir JOHN FORREST. -

I would not move it if it did.

Mr. SYMON. -

I hope both Sir John Forrest and myself would be found resisting any
proposal which involved a step in the direction of separation. It appears to
me that the real objection to the amendment is that stated by Mr. Reid, that
it really seeks to interfere with the state Constitutions. This amendment in
its first line is to the effect-"In each state of the Commonwealth there shall
be a Governor." What right have we, in the Federal Constitution, to declare
that? What right have we to interfere with the Constitutions of the states,
which will remain, practically, independent states within the
Commonwealth? We are not seeking to interfere in any way with the
existing state of things in relation to the head of the Executive. But the
proposal would involve us in a difficulty. Having declared there shall be a
Governor for the state, the proposal goes on to prescribe, not that the
existing state of things shall continue-subject, of course, to the Imperial
authority, and to the control of the state itself-but that the Governor shall
be appointed for all time under the Constitution, until that is altered, by the
Governor-General in Council. And that we are asked to do without the
consent of the state. It is not for this Convention to take a step of that kind.
It would be interfering in the highest-and I venture to think the most
improper-degree with the functions of the state, which we seek to preserve.
It is a state interest and a state matter entirely; and, therefore, without going
into the large question raised by Mr. Wise as to the social and other
functions of the Governor, or Lieutenant-Governor, we ought to abstain
from taking one step beyond what we are obliged to do in interfering with
the existing government of the autonomous states.

Sir JOHN FORREST (Western Australia). -

I wish to make a few observations with regard to some of the arguments
that have been used. The only good argument, I think, which has been put
forward was that of Mr. Symon. That may be an argument-I think it is one-
which requires careful consideration; but, at the same time, in 1891 we
dealt with this matter in a way in which we specially gave power to the
states to legislate in the direction of appointing Governors. I think, myself,
that those who oppose the proposition now must really be, in favour of
elective Governors.

Mr. REID. -

No, no.

Sir JOHN FORREST. -
That most likely would be the result. Mr. Barton asked why should we restrict the area of selection of state Governors to the Australian Continent. I might ask him a similar question-why restrict the area of the Judges of the High Court to the people of Australia? What would he or any one else think if it was proposed, or

thought of for a moment, that in appointing the Judges of the High Court under this Constitution the selection should be made from the Bar of England? I do not think that would meet with the approval of the people here, but it seems that what is sauce for the goose is not sauce for the gander. They are willing to limit the area of selection of the High Court, but they are not willing to limit the area of selection with regard to the Governors of the various states. We have some foundation, at any rate, for the argument which we use. We have the United States of America, in which Governors are elected. That, of course, I do not approve of. I think it is not consonant with our ideas of responsible government to have the chief executive officer appointed by the people. I think friction is more likely to arise under such a system than if you place the Governor in a constitutional position, as we do, by appointing him as the representative of the Queen. Then we have the case of Canada. I have been through Canada. I have had the pleasure of visiting Government House in the state of Ontario, and I found a refined and cultured gentleman dispensing the hospitality of Government House there—not to such a large extent as in the city of Melbourne, but certainly in a way which I think would meet with the approval of every one. We have facts there to guide us. We find that the system adopted in Canada—at any rate as far as my experience goes, which is certainly not a great one—has worked well. Now, it has been said some that this would weaken the tie between the mother country and ourselves I repudiate that idea altogether. I should withdraw this motion, and not say a word in support of it, if there was any chance whatever that there could be any weakening of the tie between the mother country and ourselves. My object through life has been to strengthen that tie, not to weaken it. I believe we owe a deep debt of gratitude to the great mother country, and that we cannot do too much to repay all the good we have received from her. In regard to the statements that we would have politicians as Governors, I can see no objection to that. Retired politicians occupy high offices all over the world. We know that in England the highest offices in the state are occupied by Judges who were prominent politicians in their day. There is scarcely one of these colonies in which you will not find gentlemen who have been prominent politicians, and even party politicians, occupying the chief judicial offices.
Dr. COCKBURN. -

To whom would they owe their allegiance?

Sir JOHN FORREST. -

I do not think our Judges owe allegiance to anybody except the Crown. We know that the Chief Justices of some of the colonies have been Premiers and party politicians, but I have never heard a word said against them on that ground. Then it is stated that the Governor would exercise an influence in local politics, but that is carrying the matter too far. We know that, under our form of responsible government, the Governor does not interfere. There has been no instance, certainly for many years past, in which a Governor has tried to interfere, or has had the opportunity even of interfering, with local politics. You may depend upon it that if a prominent Australian were appointed to the position he would know enough of constitutional government to prevent him from doing anything so foolish. I believe that, if we leave this matter to the states, we shall very soon have elective Governors. I need not give the reasons, but the trend will be in that direction. Sir Edward Braddon said I stated that persons of education and culture could not be found here. I stated that there might be some difficulty on that account, and that it might be used as an argument, but, I do not think there is much in it. We know that until a few years ago all the Governors of these colonies were civil servants, who had in many cases worked themselves up from humble positions. We had a squatter from New Zealand (Mr. Frederick Aloysius Weld) as a Governor in Western Australia, and he performed his functions admirably, although I admit that his was an exceptional case, as he had special social advantages and great family influence in England. Then we had Sir Frederick Broome, who filled the office with credit. He was a squatter in New Zealand, and afterwards a writer on the Times, and in all these colonies we have had professional Governors filling the office with credit and advantage to all. I see no reason, therefore, why we should not find persons in Australia fitted for these positions. I say that there are such persons now, but we are not making a Constitution for today or to-morrow, but for all time. The only argument of any force against this proposal is that advanced by Mr. Symon, but, at the same time, I think we shall be acting more in the interests of the states if we adopt this plan than if we leave the matter to the states themselves, when the result will be that we shall eventually have elective Governors.

Question-That the words proposed to be struck out stand part of the proposed new clause-put.

The committee divided-
Ayes ... ... ... ... 24
Noes ... ... ... ... 12
Majority against Mr. Cockburn's amendment ... ... ... 12
AYES.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Peacock, A.J.
Brunker, J.N. Quick, Dr. J.
Deakin, A. Reid, G.H.
Downer, Sir J.W. Turner, Sir G.
Fraser, S. Venn, H.W.
Glynn, P.M. Walker, J.T.
Hackett, J.W. Wise, B.R.
Henning, A.H. Zeal, Sir W.A.
Holder, F.W.
Howe, J.H. Teller.
Isaacs, I.A. Forrest, Sir J.
NOES.
Barton, E. Leake, G.
Braddon, Sir E.N.C. O'Connor, R.E.
Carruthers, J.H. Solomon, V.L.
Clarke, M.J. Symon, J.H.
Douglas, A.
Higgins, H.B. Teller.
Kingston, C.C. Cockburn, Dr. J.A.
Question so resolved in the affirmative.
Question-That the proposed new clause be inserted in the Bill-put.
The committee divided-
Ayes ... ... ... ... 10
Noes ... ... ... ... 26
Majority against the clause 16
AYES.
Briggs, H. Peacock, A.J.
Cockburn, Dr. J.A. Venn, H.W.
Deakin, A. Wise, B.R.
Hackett, J.W.
Howe, J.H. Teller.
Lee Steere, Sir J.G. Forrest, Sir J.
NOES.
Braddon, Sir E.N.C. Kingston, C.C.
Brown, N.J. Leake, G.
Question so resolved in the negative.

The CHAIRMAN. -

Does the right honorable member (Sir John Forrest) desire to move his second clause?

Sir JOHN FORREST. -

No, Sir.

Mr. HOLDER (South Australia). -

I beg to move-

That the following new clause stand, part of the Bill:-In the event of any law passed by the Federal Parliament being declared by any decision of the High Court to be *ultra vires* of this Constitution the Executive may, upon the adoption by absolute majorities in both Houses of the Legislature, within six months after the decision of the High Court, of resolution thereto directing, refer the law to the electors under section 121, and if approved as therein provided the Constitution shall be deemed to have been enlarged, and the law shall be conclusively deemed to have been *intra vires* of this Constitution from the passing thereof.

In the opinion of our constituents, or of a great many of them, one grave objection to this Constitution is that over everything is the High Court. In the opinion of many, the legal formulae and legal proceedings usurp in this Constitution the place which the people have occupied in the state Constitutions. If we accept the Constitution, the final appeal will be, not to the people as represented by the Parliaments, but to the High Court. I admit freely that as the Constitution is a deed of partnership, it is absolutely necessary to have the High Court to interpret it, and to see that the various co-partners keep in all that they do within the four corners of the deed to which they have agreed. At the same time, so rooted is the objection to the position which law occupies in this Constitution that it will be well if we
can meet that objection in any way by placing in the hands of the people the final appeal, at least in some cases where the final appeal would otherwise be to the High Court. I do not need to quote from many opinions of others to support what I have said as to the general view that federation means a great deal of law. I noticed in the daily papers in this city a few days ago a report of an address by Professor Harrison Moore, the professor of law at the Melbourne University, in which he said that the legal profession had not had very much to do of late, but that under the Federal Constitution now under consideration the lawyers would have plenty of work. I do not take that comment as coming from one who is hostile to federation, but simply regard it as the expression of Professor Harrison Moore's deliberate opinion that federation under this scheme would mean any amount of work for the lawyers. That is just what the people do not want, and if we can by any means lessen the law work and place the final decision of some matters in the hands of the people, from that point of view we shall do well. I can quite conceive that again and again the Federal Parliament might pass laws involving comparatively small extensions of the Constitution as we have it before us, but yet involving such amendments as, if the people were appealed to, they would certainly indorse-amendments not of sufficient weight and importance to be submitted to the people for their endorsement unless the laws in question were challenged. Therefore, in this amendment I propose that in the event of any law passed by the Federal Parliament being declared by the court to be *ultra vires*, then the Federal Parliament may, by an absolute majority of both Houses of the Legislature, within six months of the adverse decision of the court, submit the matter to the electors for a referendum in the same way as provided in the clause dealing with ordinary amendments of the Constitution. We have deliberately decided previously that the Constitution should only be amended by direct appeal to the electors, in which the vote shall be counted in two ways. I do not propose to alter that provision in the slightest degree. We have provided that measures altering the Constitution shall only come into force after they have been carried by absolute majorities of both Houses. I include the same provision in this clause. Before a matter can be sent to the referendum, both Houses must by absolute majorities agree thereto.

Mr. Higgins. -

If so, how do you improve the position by this clause?

Mr. Holder. -

The honorable member asks me what effect my clause would have. I will suggest a case. Suppose that it is desired to effect an alteration in the Constitution. The steps necessary for that now would be to introduce into
the Federal Parliament a Bill to amend the Constitution. That Bill must go through its various stages, be passed by absolute majorities in both Houses, and must then go to a referendum of the people. But suppose that without any knowledge on the part of the Parliament that that would be the case the major portion of the Bill was found to be outside the limits of the Constitution, and that it was held to be *ultra vires*. Honorable members will begin to see what this clause would achieve in that event. Supposing in this case the Bill had been passed without any belief by the Federal Parliament that the provisions were *ultra vires* of the Constitution, and some months afterwards the courts were petitioned to exercise jurisdiction, and pronounced the measure *ultra vires*; if, then, the Constitution had to be amended in the ordinary way, it would follow that, after the Bill had been passed, after some steps might have been taken under it, after it had been pronounced *ultra vires*, the whole matter would have to be begun again at the very beginning. You would have once more to introduce a measure to Parliament, to pass it through all its stages, to take a vote of the people, so that all your work has to be done again, whereas under my clause the procedure would be this: The court pronounces the Bill *ultra vires*; at once, or at anytime within six months thereafter, the two Houses of the Legislature are asked to pass addresses, if they consider it important enough, and think it right to do so, and all the time that would otherwise be spent in passing a new measure through Parliament is saved, because the carrying of the two resolutions would not take nearly so long as the passing of an Act of Parliament. And then this provision comes in. If on the referendum the majority of the states and of the people approve-

The Constitution shall be deemed to have been enlarged, and the law shall be conclusively deemed to have been *intra vires* of this Constitution from the passing thereof.

Mr. GLYNN. -

Is not that putting matter of legislation in the Constitution?

Mr. HOLDER. -

No, I do not contemplate for a moment putting any legislative matter in the Constitution.

Mr. GLYNN. -

That is what its effect will be.

Mr. HOLDER. -

I do not see how that result could come about.

Mr. ISAACS. -

This makes it retrospective altogether.
Mr. HOLDER. -

I will answer that interjection, which certainly has great weight.

Mr. OCONNOR. -

Will the honorable member answer this question: Supposing a law is affirmed by this process, and afterwards another law involving the same question is proposed, is that also made good, or must there be a referendum for that?

Mr. HOLDER. -

I have two interjections to answer. I will deal first with that of the Attorney-General of Victoria. In reply to his statement that this makes the law altogether retrospective, I simply say that the proposal is to make the law retrospective in this sense: That during the interval throughout which it was, according to the judgment of the court, ultra vires, the decision of the people afterwards could make it intra vires.

Mr. ISAACS. -

That might make persons criminals who were not otherwise criminals. It might not have been an offence to do a certain thing if the High Court declared the law to be ultra vires, but if that law was made intra vires from an antecedent date, all the persons who did that thing might be subject to punishment.

Mr. HOLDER. -

I have great respect for the eminent legal authority of the Attorney-General of Victoria, and he may help me to overcome that difficulty, and attain the advantage I seek to attain. Mr. O'Connor asks me, if this were adopted, and under a certain referendum a certain Bill was declared to be intra vires, whether that position would cover any similar Bill adopted afterwards? My answer to that is this. I wish it should do so, that the enlargement of the Constitution should be not merely for the inclusion of the particular measure which had been passed, but for the inclusion of the particular matter concerning which otherwise that Bill had been, but for the referendum, ultra vires. I do not profess to be a draftsman, and I gather that the Drafting Committee have been kind enough to undertake - especially for lay members - to put into proper phraseology any resolutions which the Convention has by a majority declared to embody principles which they wish to have included in the Bill. So I am content, if the Convention adopts my proposition as being an indication of its will, to leave the wording of the clause as it shall appear finally entirely in the hands of the Drafting Committee, and shall be very glad of any help they can give to suggest a method of covering what the honorable member has suggested, so that my intentions may be fully met. I

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do feel that in any question where the point of the law *ultra vires* is raised, not the High Court but the people ought to be the final appeal - that if I or any one else is on the other side of this controversy concerning a measure, and I take the ground that it is *ultra vires* or that it is not, the final appeal concerning what the Federal Parliament may do ought not to rest with the High Court, which can simply determine it on the dry question of law, but ought to rest with those people who, themselves, have the right to say whether or not the Constitution shall be enlarged to take in the particular question at issue. I do not hesitate to affirm that, if we can place this final appeal in the hands of the people instead of keeping it in the hands of the High Court, we will have done very much indeed to popularize this measure, not only in South Australia, but in other colonies. For I do assure honorable members that the presence of so large a number of lawyers as there are in this Convention has helped to give colour to the suggestion, which is very widely prevalent, that this Constitution is being made for the lawyers and for the courts.

Mr. SYMON. -

Nonsense!

Mr. GLYNN. -

That is pandering to the popular cry.

Mr. BARTON. -

I think my honorable friend ought to do his best to dispel any such base slander as that.

Mr. HOLDER. -

I can assure my honorable friend that I will do my best to dispel any such base slander as that. I am not stating a matter in which I express my own thought or my own feeling, but I repeat that in what I said just now I am expressing the thought and the feeling of a great many persons outside the Convention who are not so well informed as we are. If we can remove a misapprehension, if we can cure a ground of distrust, by making the people themselves the final arbiters in their own cause, we shall surely be doing well, and by doing that we will not be endorsing, but will be going the very best way possible to refuse an indorsement to that opinion which was dissented from just now.

Sir EDWARD BRADDON. -

Why not make them the first arbiters, too?

Mr. SYMON. -

Why not make them the High Court at once?

Mr. HOLDER. -

I have already shown that the adoption of my clause would save a large amount of time. It is quite impossible that the people can sit as Judges,
because the function of Judges is one thing, and the function of electors of the Commonwealth is quite another thing. I am not confounding these two. The people are absolutely incompetent to judge whether a certain law is or is not *ultra vires*, and I would not dream of committing that charge to the people, for there are no persons less fit than the general electors—taken all together on a referendum—of any country to decide whether this or that is true law.

Mr. ISAACS. -

You say the people accept the position in law; but they are asked whether they will change the Constitution.

Mr. HOLDER. -

That is exactly it. I would never dream of asking the people to reverse a legal decision arrived at by the High Court. I have been specially careful in the form of the amendment to avoid any such thing. I do not dream that the High Court will on one day say that a certain Bill is *ultra vires*, and that the people shall the day after, or some months after, say the court was wrong. That is not what I suggest. I suggest that the people should accept the decision of the High Court that the law was *ultra vires*, but should say it ought not to be *ultra vires*—that the Constitution should be enlarged so that such a decision could not be given again. I do not wish to leave it to the people to say that the decision was wrong, but to leave them to say that the Constitution should be so enlarged so as to make such a decision impossible in the future. That is a different thing from making the people Judges or giving them a judicial position. I really feel very hopeless as a layman addressing the Convention on a very technical legal point like this. I quite anticipate—and though this is not a wise thing to say, I do not mind saying it—I quite anticipate defeat before I sit down. At the same time, I shall not cease to regret defeat if it comes, nor shall I cease to believe that this way out, or some other which the Drafting Committee could easily suggest, ought to be adopted, so as to avoid the possibility of anybody outside saying, with any appearance of truth, that this is a lawyer-written Constitution. I want to move the motion in a slightly different form. I want to leave out the word "High" before "Court" in each case, so that the word "court" only shall stand. I mean that word to cover not merely the decision of the High Court, but the decision of the last court of appeal from the High Court, if that appeal be made. With that alteration, I move the amendment standing in my name.

Mr. BARTON (New South Wales). -

I move that progress be reported. I wish to make a statement without
discussing the question. I should like honorable members not to go away when progress is reported, because I wish to get an order for the printing of the Bill with the amendments so far, and for the Drafting Committee's amendments to be embodied pro forma in the Bill. In order to do that the standing orders will have to be suspended, and that requires the attendance of a majority of the House.

Mr. DOBSON (Tasmania). -

Would it not be better for the leader of the Convention (Mr. Barton) to answer the arguments of Mr. Holder, and let a division be taken? If we do not take a division tonight we shall occupy the whole of tomorrow in discussing this question, which includes that of the High Court, the referendum, and deadlocks.

Mr. BARTON. -

After the opinion some persons outside seem to hold about lawyers, I shall leave the discussion of this matter to the laymen.

The motion was agreed to.

Progress was then reported.

The standing orders having been suspended,

Mr. BARTON. -

(New South Wales) moved-

That it be an order of this Convention that the amendments prepared by the Drafting Committee be embodied in the Bill pro forma, and that the Bill, as amended to this day, be printed.

The motion was agreed to.

Mr. BARTON. -

The ordinary course will be the reconsideration of the clauses, and after that, if necessary, the recommittal when the last, of the new clauses and the preamble have been dealt with. It might appear well to make it one stage of recommittal, instead of having a reconsideration stage also. I will leave that to the consideration of honorable members between this and to-morrow.

The Convention adjourned at twenty minutes past ten o'clock.

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Wednesday, 2nd March, 1898.

Petitions-Order of Business-Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-five minutes past ten o'clock a.m.

PETITIONS.
Mr. REID presented petitions from certain bank's trading in New South Wales, and from the Sydney Chamber of Commerce, praying the Convention to preserve the existing right of the Queen's Australian subjects to appeal to Her Majesty from decisions of the local courts.

The petitions were received.

ORDER OF BUSINESS.
Sir JOHN FORREST (Western Australia). -
I desire to suggest to our honorable leader (Mr. Barton), if he can conveniently arrange it, that the more important questions should be submitted before those questions which are not so important. I regret to say, as I have already said, that I will have to leave on Wednesday next, and I should like to have an opportunity of voting on some of the remaining important clauses. I desire also to suggest to honorable members that if they have proposed amendments of clauses they should give notice of them. I should be sorry if, after clauses had been decided in a certain direction, the decisions of the Convention were reversed after we leave, if that would not have occurred had the representatives of Western Australia, who have to take their departure next Wednesday, been able to remain here. Although I know I am asking what I have no right to ask for, still I may point out that we have been here a long while, and that we who represent Western Australia occupy a different position from other members of the Convention who are members of Governments, Western Australia being so far away. I hope that the leader will be able to arrange the business so as to meet the wishes of the representatives of Western Australia, to some extent at any rate.

Mr. BARTON (New South Wales). -
I take it that such a course as my right honorable friend has suggested is more one for the Convention to consider than for me. The Convention is the best judge of the relative importance of the various clauses of the Bill. One can quite understand, as an illustration, that Sir John Forrest would not like to leave Melbourne without having an opportunity of taking part in the discussion with reference to dead-locks. Perhaps that is one of the most important matters that will be reconsidered. I can quite understand his
position, and sympathize with him in it; but it is really a question for the Convention itself to determine.

Sir JOHN FORREST. -

The Convention will follow you in the matter.

Mr. BARTON. -

When the clauses dealing with Money Bills were taken early at Adelaide, in order to accommodate my right honorable friend, there was a specific motion on the subject, which was put to the Convention and carried. I would suggest to him that if he desires to take any such course as that, he might now give notice for to-morrow in reference to any clauses which he wishes to be considered before others. I think it would be rather too much to ask me to take upon myself to judge what, in the view of the Convention, would be the relative importance of the clauses. That is so much a matter for the Convention to determine that it would be rather impertinent for me to make any assumption on the point.

Mr. HOLDER. -

Could not we sit late to-night and push on?

Mr. BARTON. -

We might sit to-night, but I do not think that that would give Sir John Forrest the assistance he wants.

Sir JOHN FORREST. -

Perhaps the ordinary orders will do.

Mr. BARTON. -

If the honorable member will say what clauses his mind is most exercised about, perhaps the Convention will meet his wishes in the matter.

Sir JOHN FORREST. -

The dead-lock clause, for one.

Mr. BARTON. -

Well, any amendments I have to propose on the reconsideration of clauses before that are not, speaking for the Drafting Committee and myself, perhaps very serious—such as would take a long time to settle. Some of them are almost drafting amendments, but still such as involve consulting the Convention as to the policy of those amendments. I am not aware of any intention to re-open any clause which will take a long time, except that Sir George Turner wishes to re-open clause 9, to again consider the question of each state being made one electorate in elections to the Senate; and also clause 24, in reference to the question of the quota; and, of course, both those provisions come before clause 56A—the dead-lock clause. It may be that the Convention would look favorably on a motion of
the kind I have suggested if Sir John Forrest gave notice of it now.

Sir JOHN FORREST. -
We will see how we get on.

Mr. ISAACS (Victoria). -
Sir George Turner desires to re-open other clauses in addition to those mentioned by the leader of the Convention, for instance, the clause relating to bounties and other questions.

Mr. BARTON. -
But the clause relating to bounties will come on later than the dead-lock clause.

Mr. ISAACS. -
Yes, but I do not want any misapprehension to get abroad that Sir George Turner wishes to confine reconsideration to the matters mentioned by the leader of the Convention.

Mr. BARTON (New South Wales). -
I understand that Mr. Reid desires to reopen the rivers question.

Mr. REID. -
I am getting my amendments printed.

Mr. BARTON. -
The question of rivers comes before the question of deadlocks, and if Sir John Forrest is anxious to get the dead-lock question considered before the rivers question and other questions which also precede it in order, and some of which may take a little time, I think his best course is to give notice of motion on the subject. There are circumstances which we all understand that might cause many honorable members of the Convention to look with favour upon a proposal of that kind.

Sir JOHN FORREST. -
The rivers question is perhaps just as important as the question of deadlocks.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on Mr. Holder's proposed new clause (see pages 1717-18).

Mr. SYMON (South Australia). -
My honorable friend (Mr. Holder) began his speech by indicating that he was moved to submit his new clause by three considerations. One was that there was the grave objection entertained by many people to the Constitution we are framing that over all was the influence of the High Court. Now, I am not sure that that represents accurately anything in the nature of an objection that is entertained by people in any of the colonies.
On the contrary, it seems to me that, instead of there being—at least amongst a section—a feeling that the Constitution is overspread by the High Court, or any of the courts, there is a desire that we should still further multiply the courts which are to concern themselves with this Constitution, and the institutions to be established by it, for, instead of having enough courts, we are to have one more—the Privy Council—by way of appeal from the Federal High Court, which, my honorable friend thinks, overspreads this Constitution. My honorable friend said that there would be necessarily a great many questions of law in connexion with the working of this Constitution, and he referred, in support of that statement, to some expressions made use of by Professor Harrison Moore, with regard to the employment which would thereby be found for the lawyers. My honorable friend having stated that, proceeded to move his amendment, which will not in any possible particular lessen the evils (if they are evils) to which he called attention. He proposes, under this amendment, that every question in relation to the validity of laws, either of the state or of the Commonwealth—those laws having first passed through the crucible of investigation by the High Court—shall, by the cumbrous and expensive method of seeking to get rid of the decision which may have been pronounced by the tribunal appointed under the Constitution, be submitted to a referendum of the people.

Sir JOHN DOWNER. -

Laws altering the Constitution.

Mr. SYMON. -

First of all, I take leave to deny that any body of people in Australia, whose voice is entitled to any weight, will so misunderstand the position of the High Court in this Constitution, in relation to questions of ultra vires, as to think that, instead of being an advantage, it will be a positive disadvantage to them when the union is consummated. The High Court is really and most properly appreciated and understood as being the guardian of the interests of the states as well as of the interests of the Commonwealth; as the protector of the freedom of citizens as well as of the rights of the states. They understand that it might be possible, but for the intervention of the High Court, for the Commonwealth to pass laws that interfered with the rights and with the integrity of the states constituting the Commonwealth, and that it might also be possible, on the other hand, for the states to pass laws which would to a certain extent infringe upon the rights of the Commonwealth. The High Court is to occupy the position of arbiter between the two—it is to be the daysman that is to go between the states on the one hand, and the Commonwealth on the other. It is for that
purpose that the High Court has been established. If there is too wide a
power in regard to disputes upon questions of encroachment under
legislation, if it is considered that the High Court might frustrate the object
of the Constitution, then the remedy is not to increase the expense in
remedying the difficulty, but to sweep away the High Court altogether, and
to say that we will rest content with some other method of adjusting the
differences between the constituent parts of the body politic of the
Commonwealth. Now, sir, my honorable friend's amendment only needs to
be examined by the light of what we have already provided in the Bill in
order to secure its prompt rejection. My honorable friend put it that he did
not wish this amendment to establish a court of appeal in the ordinary
sense in regard to decisions of the High Court. But it must amount to one
of two things. This reference to the mass of the people must be either in the
nature of a court of appeal from the decisions of the High Court, or simply
an alternative method of amending the Constitution by authorizing what
has been called in question.

Mr. HOLDER. -
That is what it is.

Mr. SYMON. -
My honorable friend accepts the latter description. Now, sir, of course in
either case it means an expenditure. This referendum—which as proposed
here is a kind of lop-sided referendum, as I shall show in a minute—means
an expenditure, superadded to all the cost and delay of litigation, of
£30,000 or £40,000 or £50,000, which a referendum to the people of the
Commonwealth is estimated to cost.

Mr. HOLDER. -
And which any alteration of the Constitution must c

Mr. SYMON. -
I will come to that in a minute. I shall not overlook that consideration. If
this referendum is to be in the nature of a court of appeal, the proposal will
be constituting the people-the

mass of the people—a court of appeal against the decision of the tribunal
which they themselves had constituted.

Mr. HOLDER. -
That is absurd; you are setting up a man of straw in order to knock it
down.

Mr. SYMON. -
My honorable friend's whole proposal is a man of straw, and I am
endeavouring to treat it as such, in order that the slightest wind may knock
it over. We know that the same difficulty arose in Switzerland, where it
was sought to constitute the Federal Assembly a court of appeal from the decision of the High Court. For some years-between 1848 and 1875-the experiment was tried, but it was found to work so detrimentally to the best interests of the people of Switzerland that they repealed it, and placed the High Court of Switzerland above political influence, and above the control of what was a political tribunal.

Mr. HOLDER. -

Hear, hear.

Mr. SYMON. -

Of course, I know that my honorable friend assents to that. I know that he would not be so lost to every sense of propriety as to suggest that there should be an appeal from the High Court to the Federal Parliament, or to any state Parliament in regard to a state law; but I am pointing out that some honorable members may not take the view my honorable friend takes as to the amendment of the Constitution, and they may be prepared to take the view that it will be well to have some other tribunals body introduced with a view of controlling the decisions of the High Court in matters considered to be matters of public policy. Therefore, I do not point out the case of Switzerland because my honorable friend thinks we could do the same here, because such a step would be abhorrent under our Constitution. The next point is that this is an amendment to secure an amendment of the Constitution in case the Federal High Court, which is the body in whom we repose the custody and care of our liberty from all kinds of legislative and executive encroachments, decides, in regard to a particular law of the Commonwealth, that it is *ultra vires*. If the question is of sufficient importance to warrant an amendment of the Constitution, let the Constitution be amended under the provision of clause 121 in the ordinary constitutional way. Why not? But if the matter be not of sufficient importance, why are we to be put to the enormous expense of from £30,000 to £50,000 for a referendum on some matter which is of not sufficient importance for it to be proceeded with in the ordinary way? Then my honorable friend-of course being driven to find some reason why we should adopt this method rather than the method we have all agreed to up till now under clause 121-says there would be a saving of time. Now, what would be that saving of time? Under this provision, should the High Court decide that a particular law is *ultra vires*, my honorable friend proposes that the Executive Government should be able to come down to the Federal Parliament with a resolution, which has to be carried by absolute majorities in both Houses, in exactly the same way as a Bill which might be introduced under the clause providing for amendments in the Constitution. The only time that would be saved would be any possible diminution of
time involved in the difference between carrying these resolutions and carrying a Bill directed as far as possible to the same object. The saving of time would be a mere bagatelle. Is it worth while purchasing that saving by disorganizing the whole of our method-cumbrous as some think it is-of amending the Constitution? The game is not worth the candle. It is not worth considering for a moment, seeing that the method prescribed in this amendment is absolutely identical with the method provided in regard to ordinary amendments of the Constitution.

Mr. HOLDER. -

Purposely identical.

Mr. SYMON. -

Then what is the use of debating it? This amendment may be described as another means of spending £30,000 or £50,000 on a referendum, without the safeguards which should be essential in every possible proposal for amendment of the Constitution, in a debate upon the different stages of the Bill. The machinery we have got with regard to amendments of the Constitution would be as effectual and more satisfactory than what is proposed in this amendment. I agree that if this means anything it means neither more nor less than an amendment of the Constitution. Mr. O'Connor, in a very pregnant interjection made in the course of Mr. Holder's speech yesterday, said:"How would you deal with the case of a Bill going in substantially the same direction and dealing with the same subject-matter?" Mr. Holder replied that he would leave it with the Drafting Committee to frame a provision to deal with cases of that kind. But the objection entirely dissolves the whole ground on which the honorable member bases his amendment, because it would have the effect, as I think Mr. Glynn interjected, of introducing into the Constitution the legislation which was called in question by the Federal High Court.

Mr. LEAKE. -

It is also retrospective in its effect.

Mr. SYMON. -

That is the point I was coming to, and I am much obliged to the honorable member for calling my attention to it. But I do not wish to elaborate the point, because it must be seen that the proposal has that vice. In addition to that, what does my honorable friend (Mr. Holder) do? We all of us have the interests of the states at heart; but my honorable friend leaves the state law to be declared *ultra vires*. Under this proposal you are to protect the laws of the Commonwealth in an extraordinary and burdensome way, but not the state laws, which the High Court may declare to be *ultra vires*. Why should not the people of the states have a similar
power of saying that their law is perfectly good, and that they want it? That is what I meant by saying that this is a lop-sided arrangement. If you want to amend the Constitution, amend it; but if you are dealing simply with a law declared to be *ultra vires*, then I say that the states should be treated equally with the Commonwealth, and it should be open to their particular citizens to say whether or not they approve of the proposed alteration of the law. But you would introduce the greatest complication into the Constitution by doing anything of the kind. An amendment of the Constitution is a matter of grave importance, and to say that a Commonwealth law declared to be *ultra vires* by the High Court is to be placed in a different position, and is to be treated in a special way, in which a law of a state declared to be *ultra vires* is not treated, is grossly unfair. You must, to be just, deal with both the states and the Commonwealth upon the same method in regard to alterations of the Constitution.

Mr. HOLDER. -

Will you support me if I put that in?

Mr. SYMON. -

My honorable friend should not ask me to support such a proposition as that, because he knows that I would do nothing of the kind; but I say that if his proposal is to be adopted with regard to the laws of the Commonwealth, it is unjust that the states should not be treated in the same way. I say that the states and the Commonwealth should have the same advantage in this respect.

Sir JOHN DOWNER. -

And why confine it only to questions of *ultra vires*?

Mr. SYMON. -

Exactly. Why not say, that all laws of the Commonwealth shall be valid in all respects, and that all laws of the states should also be valid? Then we should get into a nice pickle. If a law is of vital and serious consequence to the Commonwealth, and is declared to be *ultra vires* by the High Court, there is under the Bill an appeal to the people, by means of the provision for amending the Constitution. Let that appeal be made, and let the Constitution be amended; but do not let us introduce, a further opening for expense, and also for injustice, by an inefficient means of really amending the Constitution, but which at the same time will leave unredressed the grievances which may exist on the part of the state. I therefore hope that this amendment will be rejected as altogether unnecessary, and as cumbrous and expensive; and as not even having the colour of bringing about the redress of difficulties, which my honorable friend stated at the outset, because the provision is not one which will have
the effect of diminishing the possibilities of litigation under this Constitution. No one more deeply sympathizes with the object of the clause than I do, but some more effectual way must be devised to deal with this question. This, instead of being an improvement, will be a distinct blemish on the Constitution we have to frame.

Mr. ISAACS (Victoria). -

I agree with Mr. Symon that there are difficulties raised which are almost insuperable against the clause as it stands. There is not a single point in which more facility is given for amendment of the Constitution than already exists in the Bill. You want under this clause, as you want under the 121st clause, an absolute majority of both Houses. You also want a majority of the states voting, and a majority of the people voting.

Mr. BARTON. -

An absolute majority of both Houses directing a referendum, not for passing a law.

Mr. ISAACS. -

But they have already passed a law, and I take it that if you can get an absolute majority of both Houses directing the referendum, there is no practical difference between that and an absolute majority again passing the law. Because they virtually passed the law as far as they could. Therefore, it seems to me there is no advantage gained from the stand-point of desiring a better means of getting an amendment of the Constitution. Then, I feel that it is open to the destructive criticism that it makes the law retrospective, and after the court, possibly the Privy Council, has decided that the law is *ultra vires*, and people have acted on that decision, being compelled to, act on that decision, or being compelled to refrain from acting on the decision of the court, as the law is positive or negative; then we should have under this referendum a law made operative as from the time of its original passing, and penalties, both personal and pecuniary, might be incurred through no fault of the individuals who had incurred them. That seems to me to be a defect to which we cannot close our eyes.

Mr. WISE. -

Besides, it would punish everybody who took the advice of a man who interpreted the law properly.

Mr. ISAACS. -

It compels everybody who has obeyed the decision of the higher courts to act, or refrain from acting. That is a position which none of us would willingly get into, and the retrospective action is wrong. I quite sympathize with the moving spirit that actuated Mr. Holder, because I feel, as I said before, that our means of amending the Constitution are lamentably defective. It is an attempt by Mr. Holder to prevent the strict interpretation
of the law from running counter to public opinion, even public opinion which may be definitely expressed by means of a referendum. Complaints have been made, as we know, in America that the Supreme Court is master of the Constitution; that there is no appeal from it, and that the means of amending the Constitution to get rid of any particular decision, which time and circumstances have made utterly contrary to the feelings of the nation, are practically irremediable. I should say, in reference to the so-called safety-valve that has been provided in America, even that one stigmatized as being only tolerable because it avoids a worse state of affairs, namely, swamping the Supreme Court, is a mode which I find Mr. Dicey refers to and does not reprove. In the last edition of his work on the Constitution, 1897, pages 166 and 167, he actually points out without disapproval, and, in fact, with

a certain amount of approbation, the possibility of appointing more Judges to the Supreme Court; the new Judges being, as he says, lawyers who share the convictions of the ruling party. When we see that state of things referred to in such terms by so eminent and impartial a writer as Mr. Dicey, we must not lightly treat the considerations brought forward by Mr. Holder and dismiss them from our minds. I agree that the mode he suggests is one which we can hardly follow. If it were proposed that a law passed by both Houses, and thus expressing what is desired by public opinion—and by some strict construction of the Constitution that desired end has been found impracticable—and that, both Houses having agreed to that law, it should be competent for the Executive, upon an absolute majority of either House, to send it to a referendum of the states and the people, I could understand that a better remedy was provided, because you would have the states protected on the original vote passing the Bill, and again in the referendum. If that course were adopted, I think this clause could be framed so as to give us a better position than we, have under the Bill. But if we agree in the first instance that both Houses sho

Mr. BARTON. -

What is the honorable member's suggestion?

Mr. ISAACS. -

The adoption by an absolute majority in either House of Legislature, instead of by both Houses. It presupposes both Houses have passed the Act; that the Act is declared to be invalid; that subsequently public opinion has been found to be of such a nature as to press for an adoption of such a law, and it is impracticable, because the Constitution does not admit of it. Then either House must pass by an absolute majority a resolution, and the Executive must refer the law to a dual referendum of the states and the
people. A double protection would be given, and that would ease the minds of a great many people, not only in this colony, but, I dare say, in New South Wales, as to the question of an amendment of the Constitution. It does not touch the question of deadlocks in ordinary legislation, but only the amendment of the Constitution, and would go far to pave the way for a better understanding on the subject than we now possess.

The CHAIRMAN. -

I may shorten the debate if I point out that the amendment suggested by Mr. Isaacs would be tantamount to an alteration of the decision already arrived at in clause 121. In that clause it is decided that majorities of both Houses are necessary to alter the Constitution. If Mr. Isaacs' amendment were carried it would negative that proposition, and I do not think we can do that at this stage.

Mr. ISAACS. -

I should like to mention one consideration which has not perhaps occurred to your mind. I understood the decision was that, if the two Houses came into conflict, the question should be referred on a motion passed by absolute majorities of both Houses. But this is not a question of conflict between the two Houses, but where the two Houses have agreed, and the Supreme Court has said that it is outside the Constitution. That seems to me a totally different question, when the two Houses may not be in conflict, but either House may pass this resolution, and then the Executive can refer it. I think that is a great distinction.

The CHAIRMAN. -

I would point out that clause 121 says that the provisions of the Constitution shall not be altered except in the manner following—that is, by an absolute majority of the Senate and of the House of Representatives. That seems to me to be conclusive.

Mr. BARTON (New South Wales). -

I share in the objections which so many honorable members have offered to this clause. I certainly hope that I shall not be taken to be speaking simply as a lawyer, and with a desire that this Constitution should be under the law and lawyers, when I express my objections to it. I agree with what has been said to the effect—although there is a great weight to be attached to Mr. Holder's argument—that the clause will operate as an appeal from the High Court to a popular authority—an appeal to an authority which, at any rate, is not a competent authority on a question of law. As to the question of making a law, the people ultimately are no doubt the best authority, but on the question as to the reading of a law they can scarcely be the best authority. There is a difficulty in this clause which also presents itself to
me—that is, it works only one way. Where a law has been decided by the
High Court to be ultra vires, by this appeal to the people it may be decided
to be intra vires of the Constitution from the beginning. Take the case of a
law which the High Court decides to be within the Constitution, and which
the people have a very strong opinion is outside the bounds of the
Constitution, and that the court has been wrong there. Now, if it is right to
make a clause of this kind operate for the purposes of appeal in the one
case, it is equally right to make it operate for the purposes of appeal in the
other.
Mr. ISAACS. -
That is not necessary. The people have it in their power to repeal an Act
if they do not like it.
Mr. BARTON. -
In this case the object is to enable the people to make valid that which
under the Constitution is invalid. If you make the clause work one way,
what reason is there for not making it work the other? With reference to the
general effects of the clause, it seems to be clear that where the High Court
has wrongly decided a matter to be intra vires of the Constitution, you
provide no sort of way of dealing with it excepting by repeal. It may be
that repeal is the easiest method. This amendment is intended to get rid of
the decision of the High Court, which may be perfectly correct in law. I do
not think that is a course which will commend itself to our general sense
and experience as being desirable. I know that we are providing for new
conditions, and there is weight to attach to every argument which relies
upon the novelty of these conditions. But still I do not think that this is a
course which should commend itself. If you take the case of any decision
of the High Court that a law is ultra vires—and the position would be worse
if Mr. Isaacs' amendment were adopted—having got that decision from the
authority you yourselves have set up as the ultimate arbiter, within your
own bounds at any rate, on questions of constitutional law, you then say
that the finding of that tribunal may be rendered nugatory just as the
Executive, having a majority in Parliament, may choose by submitting it to
the people. It may be assumed that the Executive will feel the popular
pulse before they do it. The conclusion then is, that you deliberately
weaken that will be the effect, although it may, not be the intention—the
authority of that tribunal. Would not such a provision operate very badly? I
quite see that the Hon. Mr. Holder has not submitted his clause with the
view of taking the appeal from the High Court to the people on a matter of
law. All I am arguing is, that the effect of the clause would be the same as
if he had done so. There is not much difference between saying, as is said
in this clause, that when the High Court has decided a matter to be ultra

vires you may remit it to the people, who may determine that it is within
the powers of the Constitution, which would be a reversal in one sense of
the decision of the High

Court, and saying boldly, and at once, that if the High Court declares the
law to be ultra vires the people may decide that it is intra vires.

Mr. SYMON. -

It is a matter of form.

Mr. BARTON. -

Yes, the difference between these two procedures is simply a matter of
form. In the clause the words are used "and the law shall be conclusively
deemed to have been intra vires of this Constitution from the passing
thereof." The peculiarity of this part of the clause is very striking, because
the words I have read follow these words:"and if approved as therein
provided the Constitution shall be deemed to have been enlarged." If the
Constitution is to have been deemed to have been enlarged for that
contingency it is only because the law was ultra vires. If you carry that
further and say that it is intra vires, what do you want with any
enlargement? It is quite inconsistent. It amounts to saying that the
Constitution has been enlarged, and that is only necessary if the law was
ultra vires. And yet it is followed by the words:"and the law shall be
conclusively deemed to have been intra vires," which is to decide that the
High Court was not right but wrong.

Mr. KINGSTON. -

That is like the passing of a Validating Act.

Mr. BARTON. -

No; a Validating Act does not put things in that way, and I say that that is
an objection of more than form. When you say that the Constitution shall
have been deemed to have been enlarged, you decide that the Constitution
requires amendment in that particular, but when you say that the law shall
be conclusively deemed, to have been intra vires from the passing thereof,
then you decide that the Constitution does not require amendment. There is
very considerable not only ambiguity, but contradiction in the proposal.
What are we asked to authorize the people to do-to decide that the High
Court was right? In which case their decision could only have effect if it
operate as an enlargement, or to decide that the High Court is wrong, in
which case the Constitution is sufficient from the beginning. We ought to
know which road we are to take before we vote on the clause. It seems
tome that the objection there is a strong one, and that it requires some
answer. I shall not now repeat the arguments adduced by other honorable
members against the clause. That is unnecessary. But I do say that I have
not been at all convinced that it is our duty to adopt the clause.

Mr. ISAACS. -

There is one additional difficulty, which my honorable friend (Dr. Quick) has suggested. The Constitution would be deemed to be enlarged by the passing of a law, but if you wanted to alter or amend it you could not do so.

Mr. HOLDER. -

That is the point Mr. O'Connor mentioned last night.

Mr. BARTON. -

That is to say that, the law having been passed, and the Constitution having been enlarged, the Constitution has been amended.

Mr. ISAACS. -

That is all. You could not alter a word of it.

Mr. BARTON. -

No, you would have to take the question of whether the Constitution was really amended or enlarged; but the decision might mean that the Constitution did not require enlargement at all.

Mr. HOLDER (South Australia). -

I will deal with the speeches in the order in which they were given. I note that, although the Hon. Mr. Symon said that the matter was not worthy of a moment's consideration, he proceeded to talk for about half-an-hour about it, and his speech consisted mainly in setting up bogies that were not in the amendment, and knocking them down again after they had sufficiently frightened the Convention. I need say no more about these bogies, because they were not present in my mind, and they do not appear in the amendment. I am obliged to the Hon. Mr. Isaacs for the speech he delivered, which shows that the feeling of which I have a knowledge is also within his knowledge the feeling that the Constitution we are framing is somewhat too rigid, that the modes of amendment are few and difficult, and that greater ease of expression of the popular will would be an advantage. I am pleased to have the recognition which the honorable and learned member gives of the fact that these views are not confined to South Australia. As to the particular points raised both by Mr. Isaacs and the Hon. Mr. Barton, I want to say this: That what is contemplated is actually an amendment of the Constitution. It is not intended to be an amendment by a side-wind, but an amendment with all the necessary delay and all the necessary expense which it is contemplated any such amendment should involve. I did not imagine for a moment that I was going to make a short cut to any amendment of the Constitution by which damage might be done to either state or national interests. I think that I have duly safeguarded both state and national interests, while
providing a speedier method of altering the Constitution. So far as the objection raised by the Hon. Mr. Barton on the matter of a law being declared *ultra vires* is concerned, there is no idea of submitting to the popular verdict any legal decision of the High Court or of any court. When the Parliament determines under this clause to refer any matter to the people they accept the verdict of the court as being true and right. If they do not accept it their course will not be to refer it to the people, but to send it to a court of appeal. The fact that they do refer it to the people shows that they recognise that the matter was outside the powers of the Federal Parliament, and that they seek to have those powers enlarged. The form of words adopted means this—that the enlargement of the Constitution is to be somewhat dated back. It is to be retrospective, not in the sense of a challenge, but rather the reverse, of the decision of the court. The enlargement of the powers is made retrospective cover the particular question at issue. With regard to the last point mentioned by Mr. Isaacs, on the suggestion of Dr. Quick, I referred to it yesterday evening when replying to an interjection from the Hon. Mr. O'Connor. I can conceive of almost no case where the enlargement of the Constitution would not be sufficiently clear and definite in its outline to enable anything to be done which might be required in the future. I will take a case as illustrating the general trend of the amendment. Supposing such a case occurs as occurred recently in the United States, and that an Income Tax Bill is passed by the Federal Parliament. It is discovered—though I do not think it could be under our Constitution, I am merely discussing it as an illustration—that the Federal Parliament has exceeded its powers. The High Court or some other competent court rules to that effect. The conviction of the Federal Parliament is that the people intended that they should have this power, and that it is owing to an oversight or to a technical defect in the law that they have not the power. Now, two courses may be taken. They may rely on clause 121. In that case the Bill which has been passed by the Federal Parliament, and declared *ultra vires* by the High Court, would be laid aside, and a measure would be introduced for the amendment of the Constitution. That measure would have to be passed by both Houses, and a vote of the people taken upon it. If the vote was given in the affirmative, a new Bill would have to be brought in providing for the income tax. The first law would be absolutely set aside, and a very considerable delay would take place, although the popular will had all along been in its favour, and the popular belief was that the making of such a law was within the powers of the Federal Parliament. My clause would shorten matters very much. As soon as the court declared the Bill to be *ultra vires* the Federal Parliament could
refer the matter to the popular vote. If the vote was given in the affirmative, then that law would have been from its first passage *intra vires*. The enlargement of the Constitution enabling the Federal Parliament to pass an Income Tax Bill would be dated back to the time when the Bill was first passed, and it would have been all along the law of the land. The financial arrangements of the whole Commonwealth, which might have been made on the faith of that Income Tax Bill being *intra vires*, would not be upset, as they would be if a new Bill had to be introduced. I am afraid that there is only too much force, however, in the suggestion of the honorable and learned member that my proposed new clause-I did not see it before-is in conflict with clause 121. I will therefore forestall any declaration to that effect upon the part of the Chair by asking leave to withdraw my amendment. I hope, a little later on, after consultation perhaps with the honorable and learned member, to bring forward a proposal which will not be antagonistic in its terms to clause 121, and which will tend to make the amendment of the Constitution in accordance with the popular will as speedy a process as possible.

*Sir EDWARD BRADDON.* -

Does the honorable member think that if an appeal were made to the people to upset the judgment of the Supreme Court, the case could be so clearly put before the electors that they would be able to give an intelligent verdict upon it?

*Mr. HOLDER.* -

I should not dream for an instant of asking the people to consider, much less to either confirm or reverse, any decision of any competent court, because I do not think that they would be competent to pronounce an opinion in regard to such a matter. But I would allow the people to say-"The Supreme Court is right, and to cure the defect in the Constitution which has been sprung upon us we want to see it enlarged, so that another similar decision will be impossible." I do not propose to ask the people to adjudicate upon the decisions of the Supreme Court, but I wish to give them power to enlarge the Constitution in accordance with the decision of the Supreme Court.

Mr. Holder's proposed new clause 121A, was, by leave, withdrawn.

Preamble:-Whereas the people of [here name the colonies which have, adopted the Constitution] have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to make provision for the admission into the Commonwealth of other Australasian Colonies and possessions of Her Majesty: Be it
therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:-

Mr. GLYNN (South Australia). -

I beg to move-

That the following words be inserted after the word "Constitution" (line 2):-"humbly relying upon the blessing of Almighty God."

I wish to move the insertion of this form of words in the preamble, because I think that it embodies the spirit of the nine suggestions in regard to this matter made by the various Houses of Parliament which have considered the Draft Constitution. The words I wish to insert are simple and unsectarian. They are expressive of our ultimate hope of the final end of all our aspirations, of the great elemental truth upon which all our creeds are based, and towards which the lines of our faiths converge. They will, I think, recommend the Constitution to thousands to whom the rest of its provisions may for ever be a sealed book. If our whole ceremonial life is not touched with insincerity and its symbols are not empty and vain, if there be a reality greater than we can grasp at the back of all our aspirations; a mind as eternal as time, and infinite as space, to which the phenomena of the world and our lives are but a passing phase; if the invocation of the Divine blessing and sanction upon the many occasions of our daily life is not a mere empty formality we cannot, at the moment of entering into a union so full as this of the possibilities of good and evil, of contentment or regret - of, in the words of Jeremy Taylor, felicity or lasting sorrow - refuse to give expression to the central fact of all our faiths. In an affirmation of pure reverence and submission such as this, the adherents of all creeds, sinking their differences of form and method, can join, and will find the spirit of toleration in them growing strong under a sense of their common aim. It will thus become the pledge of religious toleration. We may be met again by mere considerations of propriety. We may be told that everything has its appropriate time and place, and that words of faith should not be embedded in the preamble of an Act of Parliament. But I would point out that this objection proves too much, and, if pushed to the full limit of its application, would deprive half the offices and courtesies of life of their highest significance. The stamp of religion is fixed upon the front of our institutions, its letter is impressed upon the book of our lives, and that its spirit, weakened though it may be by the opposing forces of the world, still lifts the pulse of the social organism. It is this, not the iron hand
of the law, that is the bond of society; it is this that gives unity and tone to the texture of the whole; it is this, that by subduing the domineering impulses and the reckless passions of the heart, turns discord to harmony, and evokes the law of moral progress out of the clashing purposes of life. In these days of too-often dying ideals, when thoughts that once would burn are chilled by the besetting touch of commonplace; when utility seems the measure of virtue, and the greater passions pale under the searching rays of reason; when affection, love, duty, the divine but reckless instincts of patriotism, have been expressed in the language of metaphysics, or become the subjects of mental pathology; when the ardour that fires our noblest aims is damped by a calculating cynicism, and the glow of poetry goes out before the glare of materialism; it is well that we should set in our Constitution something that may at times remind us of ideals beyond the counter, and of hopes that lift us higher than the vulgar realities of the day. I speak not as one whose mind is braced beyond the measure of his neighbours by an adamantine faith, or any of those consolations that come from the larger hope. Say what we will, there are moments, short though they may be, when the puzzle of life and destiny staggers the sense, when the shadow is cast and obscures the vision, and the best of us feel our weakness and loosening grip of the unseen. Then it is that the symbols of faith and reverence attest their power and efficacy, and brace the reeling spirit with a recovered sense of the breadth and continuity of man's consciousness of an inscrutable Power ruling our lives. This is the basic principle, the central theme, of all our creeds and dogmas—the great elemental truth, in which all their differences disappear. Let us, then, in no spirit of Pharisaism—for we speak as much for others as for ourselves—fix in the Constitution, this mark of the Omnipotent, this stamp of the Eternal, this testimony of feeling, or it may be but of desire, in which faith may find a recommendation, and doubt discover no offence.

The CHAIRMAN. -

I would call the attention of the members of the committee to the fact that a number of amendments have been suggested by various Houses of Legislature which are in effect of a similar nature to the proposal of the honorable member (Mr. Glynn). I would, therefore, suggest that any honorable member wishing to bring the amendment into conformity with the language of any of these parliamentary suggestions should move an amendment upon it inserting the words suggested by the Houses of any of the colonies. All these suggestions are

Mr. HIGGINS (Victoria). -
In Adelaide I voted against the insertion in the preamble of a form of words proposed by the honorable member (Mr. Glynn), and it is with regret that I shall have to repeat that vote—at the present time, because the Constitution contains no provision to obviate the had effect which the insertion of these words will have. I am glad that I am so far justified in my opposition to the proposal made by the honorable member in Adelaide by the fact that no Assembly and no person has suggested the insertion of the words which were then proposed to be inserted by the honorable member. Those words were utterly inappropriate. I freely admit that the words which he now proposes to insert are not quite so objectionable, though I still think that the amendment could be improved upon. I say frankly that I should have no objection to the insertion of words of this kind in the preamble, if I felt that in the Constitution we had a sufficient safeguard against the passing of religious laws by the Commonwealth. I shall, I hope, afterwards have an opportunity, upon the reconsideration of the measure, to bring before the Convention a clause modified to meet some criticisms which have been made on the point, and if I succeed in getting that clause passed it will provide this safeguard. I shall have an opportunity then of explaining how exceedingly important it is to have some such safeguard. There is no time for me now to go into an elaborate history of this question so far as the United States of America are concerned. I have investigated it with a great deal of care, and I can give the result of my investigations to honorable members, who, I hope, will not believe that I would misled them if I could help doing so with regard to the effect of what has taken place there. Because they had no words in the preamble of the Constitution of the United States to the effect of those which the honorable member (Mr. Glynn) wishes to insert, Congress was unable to pass certain legislation in the direction of enforcing religion. There was a struggle for about thirty years to have some words of religious import inserted in the preamble. That struggle failed; but in 1892 it was decided by, the Supreme Court that the people of the United States were a Christian people.

Mr. BARTON. -

That decision was followed practically by the decision that they were a Christian people.

Mr. HIGGINS. -

Yes. That decision was given in March or February, and four months afterwards it was enacted by Congress that the Chicago Exhibition should be closed upon Sundays, simply upon the ground that Sunday was a Christian day. The argument was that among a Christian nation you should enforce Christian observances.

Mr. BARTON. -
Could they not have closed the exhibition on Sundays without that enactment?

Mr. HIGGINS. -

I think the honorable and learned member will hear me out in this, that there is nothing in the Constitution of the United States of America, even indirectly, suggesting a law of this sort. No doubt, the state of Illinois could have passed such a law, because it has all its rights reserved. But there was nothing in the Constitution enabling the Congress to pass a law for the closing of the exhibition Sunday. As soon as ever those parties who had been working for the purpose of getting Sunday legalized throughout the United States found that decision given in February, 1892, that "this is a Christian nation," they followed it up quickly, and within four months there was a law passed for the closing of the exhibition on Sunday.

Mr. WISE. -

Was that held to be constitutional?

Mr. BARTON. -

It has not been challenged yet.

Mr. HIGGINS. -

It has been in force for five and a half or six years, and it was struggled against, as my honorable friend will know. There was a strong monetary interest against it, and they, no doubt, took advice, but I will say frankly that I am not aware that it has been held to be constitutional. I understand though that there has been no dispute among the legal men in that country as to its being constitutional. Honorable members will hardly realize how far the inferential powers have been extended in America. I should have thought it obvious, and I think Mr. Wise will agree with me, that the Congress had no power to pass a law of that sort.

Mr. WISE. -

I admit that your statement puts a very different complexion on the matter.

Mr. HIGGINS. -

I hope it does, because it will become a very important matter. I should have thought that it was not within the scope of Congress to pass a law, no matter how righteous, to close the exhibition on Sunday, but I find, on looking to a number of decisions in the United States, that it has been held again and again that, because of certain expressions, words, and phrases used in the Constitution, inferential powers are conferred upon the Congress that go beyond any dreams we have at present. I know that a great many people have been got to sign petitions in favour of inserting
such religious words in the preamble of this Bill by men who know the
course of the struggle in the United States, but who have not told the
people what the course of that struggle is, and what the motive for these
words is. I think the people of Australia ought to have been told frankly
when they were asked to sign these petitions what the history in the United
States has been on the subject, and the motive with which these words have
been proposed. I think the people in Australia are as reverential as any
people on the face of this earth, so I will make no opposition to the
insertion of seemly and suitable words, provided that it is made perfectly
clear in the substantive part of the Constitution that we are not conferring
on the Commonwealth a power to pass religious laws. I want to leave that
as a reserved power to the state, as it is now. Let the states have the power.
I will not interfere with the individual states in the power they have, but I
want to make it clear that in inserting these religious words in the preamble
of the Bill we are not by inference giving a power to impose on the
Federation of Australia any religious laws. I hope that I shall be excused
for having spoken on this matter. I felt that it was only fair that honorable
members should know that there is a damner in these words, if we are to
look to the precedent of the United States. I will help honorable members
in putting in any suitable words provided that we have sufficient
safeguards.

Mr. LYNE. -

Will you explain, before you sit down, where the particular danger is?

Mr. HIGGINS. -

The particular danger is this: That we do not want to give to the
Commonwealth powers which ought to be left to the states. The point is
that we are not going to make the Commonwealth a kind of social and
religious power over us. We are going into a Federation for certain specific
subjects. Each state at present has the power to impose religious laws. I
want to leave that power with the state; I will not disturb that power; but I
object to give to the Federation of Australia a tyrannous and over-riding
power over the whole of the people of Australia as to what day they shall
observe for religious reasons, and what day they shall not observe for that
purpose. The state of Victoria will be able to pass any Sunday law it likes
under my scheme. It can pass any law of that sort now; but surely it is a
proper thing for a state, and it is not a proper thing for the Commonwealth,
to exercise this power. I feel that honorable members who value state rights
reserved
to the states, who value the preservation of the individuality of the states
for state purposes, will agree with me that it is with the state we ought to

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leave this power, and that we ought not to intrust it to the Commonwealth. For instance, our factory laws are left to the state. Those laws provide for a certain number of hours of rest, and that employés shall not work on Sundays, and so forth. If we leave the factor laws to the state we should also leave this question of the observance of Sunday to the state. I will not take it from them. At the same time, I am not going, no matter what the consequences are, to help to intrust this power to the Commonwealth. I want the people of the different states to manage their own affairs as well as they can. I may say frankly that I, rightly or wrongly, am one of those who think that the Christian or religious observance is no good if it is enforced by law. I am one of those who think the religious observance is of no value unless it is the outcome of a man's own character, and the outcome of a man's own belief.

Mr. SYMON. - You do not want to keep it always stuck up in the form of a sentence in your bathroom.

Mr. HIGGINS. - My learned friend, I believe, is staying at the Melbourne Club, and I am glad that they have taken the opportunity to inculcate sound doctrine upon him.

Mr. WALKER. - Is not there an acknowledgment of the Almighty in the schedule of the Bill? Is not this perfectly consistent with the schedule?

Mr. HIGGINS. - No; I think the honorable member will see that a recital in the preamble to the Constitution is a very different thing from an oath which may be taken in a court of justice or anywhere else.

Mr. DOUGLAS. - You will find that you can make an affirmation without referring to Almighty God. Any person can make an affirmation who has no belief in Almighty God.

The CHAIRMAN. - I do not think the honorable member is in order in making a speech.

Mr. HIGGINS. - I thank the honorable member for being disorderly under the circumstances. I think there is a good deal of force in what he says, but I also see this, that the taking of an oath in a court of justice or on taking office is quite a different thing from having in a well thought-out preamble to a Constitution any reference to religious belief.

Mr. WALKER. - It is prescribed in the schedule.
Mr. HIGGINS. -

That may be, but a schedule is quite a different thing from a preamble.

Dr. QUICK (Victoria). -

I have no doubt that the Convention ought to thank the honorable member (Mr. Higgins) for the warning he has thought fit to give; at the same time, I, for one, see no cause for fearing that any of the dangers he has suggested will arise from inserting these words in the Bill. He has said that under the American Constitution, in which no such words as these appear, certain legislation has been carried by Congress forbidding the opening of the Chicago Exhibition on a Sunday. If under a Constitution in which no such words as these appear such legislation has been carried, what further danger will arise from inserting the words in our Constitution? I do not see, speaking in ordinary language, how the insertion of such words could possibly lead to the interpretation that this is necessarily a Christian country and not otherwise, because the words "relying upon the blessing of Almighty God" could be subscribed to not only by Roman Catholics and Protestants, but also by Jews, Gentiles, and even by Mahomedans. The words are most universal, and are not necessarily applicable only to Christians. I see no reason whatever for fearing that any danger will arise from placing the words in the preamble. This is a Constitution in which certain powers are conferred on the Parliament of the Commonwealth. I do not know that the placing of these words in the preamble will necessarily confer on that Parliament any power to legislate in religious matters. It will only have power to legislate within the limits of the delegated authority, and the mere recital in respect to the Deity in the preamble will not necessarily confer on the Federal Parliament power to legislate on any religious matter. Whatever may have been the legislation of Congress as to the Chicago Exhibition, there may be reasonable grounds for doubting as to whether it may not be ultra vires. Mr. Higgins has vaguely alluded to certain words and expressions in the Constitution of the United States. I do not know what those words are which could have justified such legislation, but in reference to this Bill I challenge any one to point out any clause which would justify the Federal Parliament in legislating on any religious matter. If there is such a clause in the Bill, then by all means strike it out or modify it, but, until Mr. Higgins can point to a clause in the Bill which will authorize the Federal Parliament to legislate on religious matters one way or the other, his apprehension as to dangers is altogether without foundation, and it should not in any way influence this committee in deciding on the question whether we should put in the preamble words simply recognising the existence of Almighty God and
that reverential feeling to which the Deity is entitled. I hope that after due consideration, and in face of the strong recommendations of all the Parliaments of Australia, and the numerous and influential petitions which have been presented to the Convention by the inhabitants of Australia, honorable members will give more respect to the Parliaments and the people of Australia than to the warning held out by Mr. Higgins.

Mr. BARTON (New South Wales). -

Before the amendment is put, I should like to say a few words in explanation of the position I hold. I am quite aware that since it was debated in Adelaide there has been considerable argument and a certain degree of warmth about this matter. Just as I thought that the mover of the amendment in Adelaide, which amendment was defeated, might well not press it to a division, so I had hoped that we should have had no amendment of this kind moved here. If such an amendment is to be made, I will say, at the outset, that the form of this one is the least objectionable which could be devised, for my friend (Mr. Glynn) consulted the Drafting Committee about the form of the amendment, and, so far as they in that capacity could offer any opinion, they thought it was as good a form as could be put in. But, with regard to the substance of the matter, I have all along thought that it is, to a certain extent, a danger to insert words of this kind in the preamble. Mr. Higgins has clearly put before us the difficulty which arose in the United States—a difficulty which arose out of a decision without any such words in the Constitution, which led to a decision and an enactment, and which it is probable we do not want to see arising under our Constitution. My honorable friend (Dr. Quick) has argued that if, in the absence of any such words in the Constitution of the United States such things could happen as have happened under that Constitution, our case will be no worse if we put words of this kind into the preamble of the Constitution of the Commonwealth. I am rather of the contrary opinion to that of my honorable and learned friend. I think that if there is a danger of a body of religious laws being passed or of decisions being given by a court, without words of religion in the forefront of the Constitution, in its very preamble, that danger, by every consideration of experience and common sense, would be increased by putting in an express amendment which might be construed as a peg on which to hang such further decision or such further enactment. The court, I know, in the case that was in question, went outside the Constitution for its material. It referred to the Declaration of Independence, which was the precursor of the Constitution that had been entirely swept away by the Constitution of the United States. It referred to the grants to the planters and to those who had taken up the
plantations in America, as well as to the charters and enactments under
which they were governed. The court referred to all those things, and to
every piece of paper on which it could lay its hands, for the purpose of
deciding that the United States was a religious nation, and inasmuch as
these expressions, which were dug up by the court in grants, were used as
much under a Catholic as under a Protestant regime, but under no other
regime, they then decided that the United States were not only a religious
nation, but also a Christian nation. Now, I think that those matters are
better left in the hands of the states. The states have certain plenary powers,
which we do not wish to cut down, except so far as may be necessary for
the purpose of federal government. The states have power to impose
Sunday observance laws. Each state-and it is only of states that the
Commonwealth will be composed-has power to regulate these things
within its own territory, and the territories of the states together make up
the sum of the territory of the Commonwealth. So that there is power in
existence to deal with these matters without duplicating that power. The
danger is, if we are to pay any attention to the decisions in the United
States, that the thing that was done in the United States is more likely to be
done here if we duplicate that power, because the result will be a
conflicting body of laws dealing with religious matters and the observance
of the Sabbath. Now, I do not look on that prospect with any degree of
pleasure; I do not think that that will be a state of things which will be
desirable under our Constitution. I have no desire to add anything further,
except that I do not wish to be understood as withdrawing from the opinion
I expressed at Adelaide, but the views I expressed there, in opposition to a
similar amendment, may have perhaps received some confirmation from
the facts as to the United States enactments and decisions which Mr.
Higgins has brought forward in the course of this debate, and which were
mentioned partly by me some days ago, when speaking on another clause. I
do not think there ought to be the slightest acrimony of any kind in a
debate on this subject. It is really a pity that we have to vote on such a
subject, but I feel quite sure that it will be debated in a spirit entirely
reverential on both sides. For myself, I hope I have not introduced a word
which would enable any one to say that I have dealt with this matter in any
factious or party spirit, and any idea of faction or party must be eliminated
from these proceedings. If a division is called for-and I must say that I do
not like divisions on these questions-I shall, as a matter
Mr. LYNE (New South Wales). -

Having moved, in the New South Wales Parliament, a motion somewhat
similar to the one now moved by Mr. Glynn, I took considerable interest
in, and paid great attention to, the remarks which were made by Mr.
Higgins, and I may say that I would not hesitate for a moment, if I thought there was any menace to the powers of the states in adopting this proposal, to vote in opposition to the way I voted previously on the subject. But I cannot see that there is any menace to the states at all, or that any power will be taken from the states by inserting this amendment in the preamble of the Constitution. As one honorable member—I think it was Dr. Quick—said, certain actions have been taken by the states in Congress where there is no mention of the Supreme Being in the preamble or in the Constitution at all; and, if we leave this amendment out of the preamble, that power will be much the same as it is in the states. Now, all we do by this amendment is to define something more definite than has evidently been defined in the Constitution of the states. Remembering that the Federal Parliament will represent the various states to a very great extent, I think that anything that might be feared in the way Mr. Higgins suggested could be put on one side at once. Moreover, I recognise this fact—that the insertion of this amendment will assist very materially in the acceptance of the Constitution. It may be, and probably is, a matter of sentiment—I suppose none of us pretend to be actuated on a question of this kind other than by sentiment—but I feel convinced that the insertion of this amendment in the preamble will influence a large number of votes in favour of this Federation Bill. Not having heard anything to shake my belief that that will be so, I shall adhere to the vote that I gave on a previous occasion.

Mr. DOUGLAS (Tasmania).—

When this subject was broached in Adelaide, I took the opportunity of stating that I could not see the utility of inserting these words in the preamble of the Commonwealth Bill, and my opinion has not in anyway altered up to the present time. I should like to know what is the object honorable members have in view in desiring the insertion of these words? Do these words convey to the public mind any particular idea that their insertion in the preamble of this Bill would make us a religious people? The words in question are "humbly relying on the blessing of Almighty God." Now, do not we all rely upon the blessing of Almighty God in our daily transactions? Certainly. But do we set forth that fact in all our letters and documents by which we communicate with one another? Certainly not. No doubt the supporters of this amendment desire to make the public believe or fancy that they will become a religious people if such words as these are put into the preamble of this Bill. Do we do this at the present time in our ordinary legislation? Do not we all know that it is a mockery that the House of Commons at the present time commences its sittings, day
by day, by having prayers read in that assembly? The Speaker of the House of Commons reads the Lord's Prayer before proceedings are commenced, but it has crowned into such a farce that nobody attends the House until the prayer is over. Do we want to introduce that system here?

Mr. PEACOCK. -

It is done here.

Mr. DOUGLAS. -

I believe that there are still some legislative assemblies in Australia where they commence the day's proceedings by reading the Lord's Prayer. It was originally done in Tasmania, but it was soon found out to be a perfect piece of mockery, and abandoned.

Mr. ISAACS. -

Do not you have any reference to the Supreme Being in the Governor's speech in Tasmania?

Mr. DOUGLAS. -

We used to have the Lord's Prayer read in the Legislative Council, but it became a matter of such indifference that the custom was given up. I do not know whether you have it in your Parliament in Victoria.

Mr. PEACOCK. -

Yes; in our Legislative Council the President reads the Lord's Prayer.

Mr. DEAKIN. -

And nearly all the members know it now.

Mr. DOUGLAS. -

When any honorable member became a candidate for the position of a representative of his colony in this Convention, did he go down on his knees and pray Almighty God to confer a blessing on him in order that he might secure a position here? Of course, we all have these good feelings in our minds when legislating here, as is shown when we come to anything which suggests brotherly feeling or action, and, therefore, why insert these words in the preamble to the Bill?

What is the object of inserting these words? Is it to make the people believe that they will be more religious if the words are inserted? Shall we be more religious if we put them in? Will it have any effect whatever upon us? Why, it is all nonsense—a sham and a delusion—like many other things that have taken place here! I presume that I am ordinarily as religious as any member of this Convention, but I do not make a parade of it. I take my Sunday walks, but I do not do as the Quaker did, who said to his assistant—"John, if you have sanded the sugar and wetted the currants, you can now come in to prayers."
Mr. WALKER. -
It was not a Quaker who said that.

Mr. DOUGLAS. -
Well, it was somebody like the honorable member, then.

The CHAIRMAN. -
Order.

Mr. DOUGLAS. -
The honorable member presents a large petition, praying for the insertion of this amendment, and thinks he has done a great deal of good to the community by so doing. Now, does that do any good at all? Do we pay any attention to it? Dr. Quick says we all have some religious views, and even Hindoos and Mahomedans-although I presume there are very few Mahomedans here-even religious Hindoos and religious Mahomedans would not apply the words of this amendment in the same sense as we apply them, nor are they applied in the same sense by Christians of one character and Christians of another. And we know that there are at least about 120 different descriptions of Christians, and, it may be, many more. The insertion of these words would be a mockery, and that is the reason I voted against their insertion before. I want to be sincere, and I do not want to make the people believe by going into the street and saying-"I am a religious man," that, therefore, I am a religious man.

Mr. PEACOCK. -
They would not believe you if you did.

Mr. DOUGLAS. -
A man's actions and not his words denote what he is, and hypocrites in religious circles do more harm to religion than is done by persons outside religious circles. I oppose this amendment because I believe it will minister to, hypocrisy to put these words in the Bill. I sincerely and truthfully believe in the Almighty Power, but I do not wish to introduce any reference to that Power in the preamble to this Bill. You do not introduce it in your ordinary Acts of Parliament, and, therefore, why should you want to introduce it now? You know what happens in the House of Commons in England, as I have told you, and surely you do not want the same farce to be enacted here. I agree with our leader that we had better leave these things alone. I hope with him that a division will not be taken on this subject. Let every member of the Convention give his voice on the question; but let it end there. I do not think it is a matter in which, in a community like ours, a body like this Convention, which has been brought here for a particular purpose, should interfere. We should be travelling out of the range of the purpose for which we were sent here by inserting such words in the preamble to this Bill. If the question goes to a division, I shall
I desire to say just a few words, because I think there is a more serious question involved than the mere insertion of the words of this amendment. I am sure that we all listened with great pleasure to the speech of Mr. Higgins on the subject. He reminded us of the decision in America that the Christian religion is a portion of the American Constitution, and of the enactments that were passed in consequence. I do not know whether it has occurred to honorable members that the Christian religion is a portion of the English Constitution without any decision on the subject at all. It is part of the law of England which I should think we undoubtedly brought with us when we settled in these colonies. Therefore, I think we begin at the stage at which the Americans were doubtful, without the insertion of the words at all, and I would suggest to Mr. Higgins to seriously consider whether it will not be necessary to insert words distinctly limiting the Commonwealth's powers.

There are words printed in an amendment to that effect.

I feel more strongly than ever that that ought to be done, because I can very well understand the way in which the very persons who are presenting petitions and asking for this recognition would resent the consequences if they found that the religious control was taken away from the state and put into the Commonwealth. For my own part, I think it is of little moment whether the words are inserted or not. The piety in us must be in our hearts rather than on our lips. Whether the words are inserted or not, I think they will have no meaning, and will have no effect in extending the power of the Commonwealth; because the Commonwealth will be from its first stage a Christian Commonwealth, and, unless its powers are expressly limited, may I legislate on religious questions in a way that we now little dream of.

I desire simply to say that I strongly support the position of Mr. Glynn.

The amendment was agreed to.

The preamble, as amended, was agreed to.

The title of the Bill was agreed to.

The question now is that I report the Bill, with amendments.

Before the Bill is reported, with amendments, I would like to mention
one matter, and to obtain an expression of the opinion of the committee upon it. There is a little difficulty which has arisen because of the order to print the Bill showing the amendments. That involves very careful and undivided attention on the part of the Clerk of the Convention (Mr. Blackmore), and the difficulty that arises is this: Unless he has some time during which the Convention is not sitting to facilitate the printing of the Bill, as ordered to be printed yesterday, with the amendments in the form in which honorable members would like to see them before the Convention entertains the question of the reconsideration of clauses, the Bill in that form will not be ready till Friday morning. Honorable members can easily understand that with night sittings, and sittings up to five o'clock in the afternoon, the time of the officers of the Convention has been closely occupied. They have to do more work than perhaps many of us know of after the hours of the sittings of the Convention. A print of the Bill can be obtained by half-past ten o'clock to-morrow morning, if the Convention does not sit this afternoon, and honorable members will then have the Bill in a form showing the amendments that have been made both by the Convention and in drafting. They would thus, of course, be able to deal with the question of the reconsideration of clauses much more conveniently, as they would have the Bill as it left the Convention in Sydney, and the Bill as it stands now, on the right and left hand pages respectively. Mr. Blackmore says that if the Convention do not sit this afternoon he will be able, by keeping the printers at work all night, to have the Bill in that shape by half-past ten o'clock to-morrow morning. I would put it to the committee whether that would not be the more desirable course to take. I am very sorry to have to make this suggestion, especially because of my honorable friend (Sir John Forrest); but I put it to the Convention whether it would not be more desirable to have the Bill to-morrow morning at half-past ten, by not sitting further to-day, than not to be able to have it till Friday. If we sit this afternoon Mr. Blackmore cannot attend to the preparation of the Bill in the way I have mentioned. I would ask the committee to indicate wh

Sir JOHN FORREST. -

Have we not the print of the Bill as far as it was agreed to in Sydney?

Mr. BARTON. -

We have had that all the time before us; but since the Bill was dealt with in Sydney a number of clauses have been amended. While we have been sitting here, a large number of amendments have been made. Some clauses have gone out entirely; others have been altered very much in their scope; and in dealing with the question as to whether a clause as it now stands in
the Bill should be reconsidered, it obviously would be more convenient to see before us the clause as it actually now stands, otherwise some confusion may arise.

**Sir JOHN FORREST.** -

Could we not deal with the dead-lock clause? The deadlock clause has not been altered.

**Mr. BARTON.** -

I am reminded, as an illustration of what I mean, that there was an amendment to be proposed by Sir John Forrest in clause 48, that after the words "this section shall not apply" there should be added the words "to the office of any Minister of the Crown in any state." I understand that the position now is that since we sat in Sydney that matter has been decided in such a way that the amendment is unnecessary and could not be put. As a matter of fact, I believe it has been put in as a drafting amendment. I regret exceedingly that there should be any occasion whatever for our delaying our work even for two or three hours; but when the question is one of choosing between a course which will facilitate the proceedings and a course which will rather tend to confuse honorable members I must say that my own opinion, at any rate, is in favour of not sitting this afternoon, in order that we may have the print of the Bill as quickly as possible.

**Mr. HOLDER (South Australia).** -

I hesitate to express any lack of concurrence with the views of our leader; but as it appears that the chief, and indeed the only, reason why we are unable to go on is that the services of the Clerk are required elsewhere, I would ask would it not be possible for Mr. Blackmore to render those services elsewhere, and for the Assistant Clerk to perform the work at the table, so that we may be able to proceed with the discussion of some matters which might be dealt with this afternoon?

**Mr. BARTON (New South Wales).** -

I have ascertained that Mr. Blackmore cannot get this Bill in print by to-morrow morning unless he has the assistance of the Assistant Clerk. It requires the undivided attention of both to achieve that result. In answer to the question of Sir John Forrest just now, as to whether we could not go on with the dead-lock clause, I may say that I myself would be delighted to be able to do so; but the difficulty presents itself that you cannot go on with the proceedings of the Convention without the officers at the table, and if we are to have a print of the Bill tomorrow morning, it is necessary that both clerks should be engaged on the Bill.

**Sir JOHN FORREST (Western Australia).** -

It seems to me that the Convention is at the mercy of the officers. Supposing they were both ill for two or three days, should we have to
adjourn? I really think some plan should be adopted so that the delegates-many of them from distant colonies-should be able to get on with their work. Surely it is possible to make an arrangement by which certain clauses might be discussed this afternoon.

Mr. BARTON. -

I only wish we could.

Sir JOHN FORREST. -

The delay does not matter to some honorable members perhaps, but it matters a great deal to us from Western Australia. I really think there ought to be some means by which we could discuss the dead-lock clause, for example, to-day. I do not suppose we could come to a decision on it to-day-it is not likely we could do so-but, at any rate, we might discuss the question. I appeal to the honorable the leader to try and devise some plan by which this proposed adjournment may be avoided.

Mr. LYNE (New South Wales). -

I have felt—and I dare say other members of the Convention have felt—that, not having kept an accurate record of the amendments as we have gone along, I scarcely know how the various clauses have been amended, and I think it would shorten very much the debate on some of those clauses if we could get a print of the Bill showing accurately what we have done. I spoke to the honorable the leader of the Convention about that matter the other day, and if we cannot get such a print until Friday morning, providing we sit this afternoon, I would certainly recommend that we adjourn over this afternoon, so as to get the print to-morrow morning. I think we will save time by doing that. There are many things in the Bill, perhaps, as it now stands, which may obviate the necessity for considering some of the matters that have been deferred. Under these circumstances, I think we ought to adjourn over this afternoon.

Mr. KINGSTON (South Australia). -

Sir Richard Baker, I have such knowledge of your capacity as Chairman, that I am prompted to ask if you think the temporary absence of the clerks from the table would prevent the satisfactory transaction of the business of the committee?

The CHAIRMAN. -

In answer to the question of the right honorable member (Mr. Kingston), I would say that if the Government of Victoria has some gentleman to place at the disposal of the Convention who can write a fair hand, I think we can go on without the clerks for to-day.

Mr. ISAACS (Victoria). -

I can only say, on behalf of the Government of Victoria, Mr. Chairman,
that we shall only be too happy to help you in any way if it is considered desirable for the Convention to sit this afternoon.

The CHAIRMAN. -

I would now suggest that, inasmuch as this is an arrangement which throws a good deal of burden upon me, some matters of minor importance might be considered this afternoon before I finally report the Bill. There are four such minor matters. First of all, there is the name of the Commonwealth, in connexion with which an amendment has been submitted by Mr. Symon. Secondly, there is the question of citizenship, in regard to which notice of several amendments has been given. Thirdly, there is the question of the power of the Commonwealth to legislate concerning religious questions; and, fourthly, there is the amendment proposed by the Right Hon. Sir George Turner in reference to the federal capital. If we could dispose of those four matters, at any rate, this afternoon, we should have made some advance. I will now put it that the following clauses be reconsidered-

Mr. SYMON (South Australia). -

Mr. Chairman, will you allow me to suggest that it would be rather inadvisable to put the whole of the clauses that are suggested for reconsideration together. The four subjects you have mentioned may involve a very great deal of, debate. At least, some of them may; and if we are to have this clean reprint to-morrow or on Friday morning-

The CHAIRMAN. -

We cannot do that according to our standing orders. The amendment that can be proposed is on the question that I report the Bill to the full Convention, with amendments.

Mr. BARTON (New South Wales). -

The question can be put separately as to each clause on the question that the clauses be recommitted. Upon the motion that you, sir, report the Bill to the House I will, if it meet with the view of the committee, move as an amendment that the clauses you have specified be recommitted.
Mr. SYMON (South Australia). -

A great body of drafting amendments have been introduced into the Bill by the Drafting Committee. They are not all formal. We have come to the stage when we have to consider them.

The CHAIRMAN. -

No, they are in the Bill.

Mr. SYMON. -

But we are now going to reconsider the Bill.

The CHAIRMAN. -

No; only two or three clauses in it at present.

Mr. SYMON. -

I submit that each honorable member who wishes a clause to be reconsidered should be able to move that that clause be reconsidered, on the lines, you, sir, have suggested. For instance, I have a matter for reconsideration in clause 3. I think I should be able to move that that clause be reconsidered and when my amendment is disposed of then some other honorable member can move a similar motion with regard to the next clause for reconsideration. But I point out that if we move the reconsideration of a whole body of clauses at once, we shall get into a perfect muddle, because it is stated that we shall have a reprint of the Bill to-morrow morning, and we do not know at what stage of the discussion we shall be at that time. The whole thing will, therefore, get into a confused state. We have a multitude of amendments to reconsider, and unless we have some sort of regularity it will be a strain upon honorable members to keep their attention on the work we are engaged upon. Therefore I suggest that you should call upon some honorable member to move that a particular clause be reconsidered.

The CHAIRMAN. -

There is no difficulty whatever. I think the honorable member does not exactly understand the position. It is this: On the motion that I report the Bill with amendments an amendment can be moved to reconsider certain clauses. Then, when that is done, I shall report the Bill to the Convention. Then this committee will have finished and done with the Bill altogether, and it will be for the Convention-the whole House-to say whether or not they will recommit the Bill or any portion of it. There is no difficulty about the procedure, nor will any confusion arise.

Mr. ISAACS (Victoria). -

May I ask if what you have stated, sir, goes as far as this: That we can ask for any clauses already dealt with to be reconsidered?

The CHAIRMAN. -

Yes.
Then we could ask to take a clause for the purpose of reversing any
decision already given?

Yes.

Mr. ISAACS. -

That is news to me. I did not know that that was so under the rules of the
South Australian Parliament.

Mr. DOBSON. -

Are you not going to reverse the decision as to bonuses?

Mr. ISAACS. -

We are going to try, but I did not know that we could do it at this stage. I
thought the only means of doing what we desire was when the Bill was
reported to the Convention, when I thought that we should have to, ask the
Convention to recommit the clause in question. I am therefore a little bit
taken by surprise as to the procedure. I quite agree with my honorable
friend (Mr. Symon) that it is impossible to know exactly where we are until
we have not only a clean print of the Bill in our hands, but have also had
some little opportunity of reading it. I have gone as carefully as I can
through the amendments circulated by the Drafting Committee, and I
have had them incorporated in my own copy of the Bill.

Mr. SYMON. -

You have been more industrious than most of us have been.

Mr. ISAACS. -

But I am still somewhat unable to consider these amendments without
reference to the whole Bill. I think we should be able to reconsider the
clauses with reference to the Bill as a whole, and we shall have to get a
clean print of the Bill, and have some little time to read it, before we can
do that with confidence. I have no doubt that you, sir, will be able to
pursue the same course in the future as you have pursued in the past, and
not restrict us too much to bare technicalities, but that you will allow us to
thrash out the questions that come before us in the way in which they
should be thrashed out. I hope that nothing will be hurried. I feel that we
are in this position: That we ought not, especially in view of the enormous
distance that seems to separate some of us on some vital questions, to do
anything to close up the whole matter, and send the Bill to the people with
the absolute certainty of its being rejected-in some quarters, at all events.

Sir WILLIAM ZEAL. -

Rubbish!

Mr. FRASER. -
That statement is not a very wise one to make.

Mr. ISAACS. -

Well, I am going to be very frank indeed with this committee.

Sir WILLIAM ZEAL. -

You wish to make political capital out of it.

The CHAIRMAN. -

This debate is irregular. I have said that I will act without the clerks if certain small matters are gone on with, but if larger matters are to be gone into, I shall have to withdraw that offer.

Mr. ISAACS. -

Perhaps I have been drawn into a discussion that is, to a certain extent, irrelevant. However, I wish to say that I can only treat in the way it deserves to be treated, and the way the rest of the community will treat it, such a remark as has just been made.

Sir WILLIAM ZEAL. -

The public can judge you.

Mr. ISAACS. -

I know that no weight is attached to such remarks.

Sir WILLIAM ZEAL. -

Not to remarks of yours.

Mr. ISAACS. -

But the time has come when we should not lay ourselves open to the charge by our fellow delegates of not expressing our mind fully and clearly, and we should devote ourselves to making the Bill such a measure as will commend itself to the sense of the people for their acceptance. We ought not to do anything which will be hurried, and which will make the Bill impracticable. Therefore, I hope that something will be done to give us a further opportunity of reviewing what has been done; and, as I said before, the Government of Victoria will be most happy to assist the Chairman in providing any necessary clerical assistance.

Mr. REID (New South Wales). -

I think that if we adopt the suggestion which you have made, Mr. Chairman, it will be a very wise expenditure of the rest of the day; but I suppose it is understood that our adoption of that solution will not in any way prejudice our rights in regard to moving any subsequent amendments in the same clauses of the Bill?

The CHAIRMAN. -

After the Bill is reported, any clause can be recommitted.

Mr. REID. -

To put the matter pointedly—because my case will be that of others—on clause 3 I intend to propose an amendment. The fact that we only discuss
the one matter referred to in clause 3 now will not prejudice my right of moving a further amendment on the clause hereafter?

The CHAIRMAN. -

Not in the slightest degree.

Mr. REID. -

Then I think that every one's rights are fully preserved.

The CHAIRMAN. -

The right honorable gentleman will see that the Convention, as a whole, committed this Bill to the committee of the whole House for consideration, and the full Convention is not supposed to know what goes on in committee. The committee will report what they have done to the Convention, and it is for the Convention to recommit any clause they like.

Mr. HOLDER (South Australia). -

I quite agree with my honorable and learned friend (Mr. Symon) that it will be a mistake to recommit four subjects at once, with a view of employing the time of this Convention. These four subjects might occupy four days. Therefore, it will be far better, if we can do so, to reconsider simply one subject at a time.

Mr. BARTON. -

If the discussion upon these subjects lasts over to-morrow, it will be all the better for honorable members who wish to read the Bill through.

Mr. HOLDER. -

Would it not be better to reconsider one of these matters at a time, and then the Chairman could again put the question that the Bill be reported, and another clause could be recommitted as an amendment upon that? Then the Chairman could again put the question that the Bill be reported, and a third clause could be recommitted. Is not that possible?

The CHAIRMAN. -

I am afraid that the procedure suggested by Mr. Holder is not possible unless we suspend the standing orders. I shall, if it be the wish of the Convention, put the question that clause 3 be recommitted forthwith, and if that be carried I will put the other clauses which have been mentioned. If we have not finished the discussion to-morrow, it is entirely in the hands of the committee as to what course they will adopt.

Mr. LYNE (New South Wales). -

If the course suggested by the Chairman is adopted, perhaps the leader will say whether we shall be able to get a copy of the clean print of the Bill to-morrow, or if we shall have to wait until the following morning? My objection to this course of procedure was because it was stated that if we
Mr. BARTON. -
That was what I was informed at first.

Mr. LYNE. -
I am anxious to get on as rapidly as possible; but I do not desire to delay the obtaining of a clean print of the Bill.

The CHAIRMAN. -
I understand that the clean print will be here at half-past ten o'clock to-morrow morning. I only made the suggestion which I have made in order to let the committee decide some minor matters upon which the time today might be profitably expended.

Mr. BARTON (New South Wales). -
I will ask honorable members to allow the question to be put now, so that we can get on to the first recommitted clause. It, is obvious, I think, from what has been stated, that the rights of honorable members to move further amendments in the clauses which will be recommitted will not be forfeited.

Clause 3 was recommitted for the purpose of considering the question of the name of the Commonwealth; clause 52 was recommitted for the purpose of considering the question of Commonwealth citizenship new clauses to replace clauses 109 and 110, omitted, were ordered to be considered; and clauses 118 and 120A were also recommitted.

The CHAIRMAN. -
The clause now before the committee is clause 3, which has been, recommitted for the further consideration of the name.

Clause 3. - It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of [here name the colonies which have adopted the Constitution] (hereinafter severally included in the expression "the said colonies") shall be united in a Federal Constitution under the name of "The Commonwealth of Australia"; and on and after that day the Commonwealth shall be established under that name.

Mr. SYMON (South Australia). -
I beg to move-
That the words "The Commonwealth of" (line 10) be struck out.

That will leave the clause to provide simply that the colonies shall be united in a Federal Constitution, under the name of "Australia." Now, my honorable friend (Dr. Cockburn), earlier in the present session, moved in this direction in connexion with a later clause, but it was pointed out at that time that that clause did not deal specifically with the name, that the clause
now under reconsideration dealt with that subject, and that the amendment
he then proposed could be more properly dealt with under this clause.
Now, honorable members will recollect that in Adelaide I moved in the
same direction. On that occasion there was a very short debate, and not
wishing to press the matter exhaustively then, but rather to leave it until
after the Bill had been before the public and the Legislature, pursuant to
the Enabling Act, I did not on that occasion press the matter to a division;
but I wish to tell honorable members that I intend to press the question to a
division on this occasion. I only desire to utter one or two sentences,
because it seems to me the matter is so plain that any one who will
consider it for a moment will agree with my view, and that it will be
unnecessary for me to occupy a long time in commending it, as I do, to the
acceptance of honorable members. I wish to clear away the misconception
in the first place that I have any objection whatever to the word
"Commonwealth," or to the use of the word "Commonwealth," in this Bill.
I have no objection to that where it is confined to the expression of the
political Union. In the preamble honorable members will find that what we
desire to do is to unite in one indissoluble Federal Commonwealth—that is
the political Union—"under the Crown of the United Kingdom of Great
Britain and Ireland, and under the Constitution hereby established."
Honorable members will therefore see that the application of the word
Commonwealth is to the political Union which is sought to be established.
It is not intended there to have any relation whatever to the name of the
country or nation which we are going to create under that Union. The
second part of the preamble goes on to say that it is expedient to make
provision for the admission of other colonies into the Commonwealth. That
is, for admission into this political Union, which is not a republic, which is
not to be called a dominion, kingdom, or empire, but is to be a Union by
the name of "Commonwealth," and I do not propose to interfere with that
in the slightest degree. The first clause says—This Act maybe cited as the
Commonwealth of Australia Constitution Act." I assent to all that. Then
comes clause 3, which says it shall be lawful for the Queen, by and with
the advice of Her Majesty's Most Honorable Privy Council, to declare by
proclamation that, on and after a day therein appointed, not being later than
one year after the passing of this Act, the people of the colonies
enumerated shall be united in a Federal Constitution under the name of—I
say it ought to be "of Australia." Why do we want to put in "the
Commonwealth of Australia"? We are there by our Constitution giving the
name to our country, and, to the united people who are to be established as
a nation under the Constitution. By what name, I would like to ask
honorable members, will they call this Federal Union? It will be called by
the name Australia, whether we like it or not.

Sir EDWARD BRADDO. -

The Dominion of Canada is called Canada, and why object to this?

Mr. SYMON. -

I cannot understand why honorable members should be afraid to put in the Constitution the name by which the country will be known. Sir Edward Braddon very properly reminds me that, in the case of the Dominion of Canada, Dominion is no part of the name, and it is known as Canada. Then, why not say it in the Constitution?

Sir EDWARD BRADDO. -

There is no occasion to put it in the Constitution.

Mr. SYMON. -

Why not call it by the name by which it is to be known? We are embedding in this Constitution a name for this country which is not intended to be used. The name we intend to use is Australia, and that is the name we are entitled to use. If we are as patriotic as I believe we all are, we ought to provide that the country shall be called Australia. We do not want a double-barrelled name, and such a mouthful as the Commonwealth of Australia, or the Dominion of Australia. The political Union is the Commonwealth, the name of our country is Australia. That is the name we should emblazon on the very, forefront of this Constitution, and no other. What possible objection can there be to it? We know quite well that in the United States of America they did not, in their Constitution, call themselves the republic of the United States.

Mr. ISAACS. -

If Queensland does not come into the Federation, will she not be a part of Australia?

Mr. SYMON. -

If she does not come in she will not be part of the political Union of Australia. We can recall the fact that some years ago it was sought by the oldest colony of the group to appropriate to itself the name of Australia.

Mr. ISAACS. -

As a geographical expression.

Mr. SYMON. -

It might be a geographical expression, but, so far as we are concerned, we hope and believe-it is our aspiration-that the whole of the Australian colonies, from sea to sea, will be united under this Constitution. If any one of the states stands out she must continue to be known by her state name, as distinguished from Australia, which will represent the Federal Union.
Sir WILLIAM ZEAL. -
She will still be in Australia.

Mr. SYMON. -
She will be within the continent, but not within the Union.

Sir WILLIAM ZEAL. -
You cannot legislate her out of existence.

Mr. SYMON. -
Nobody is attempting to do that.

Sir WILLIAM ZEAL. -
You are.

Mr. SYMON. -
The honorable member misapprehends the position, and I invite him between now and to-morrow morning to consider it with more care. I was not dealing with the geographical position at all. We all admit that we are dealing with the political Union.

Mr. FRASER. -
But if it is not a Union of Australia through Queensland not joining, how will the case stand?

Mr. SYMON. -
We will call ourselves Australia, and we will not interfere with her calling herself Queensland.

Mr. FRASER. -
Other parts of Australia might not join.

Mr. SYMON. -
We will not be interfering with any other part of Australia-we hope that there will be no other part out. But we have to give the name which we believe to be the most appropriate to our country, and that name is Australia. That is the name we are giving it under the Bill, except that word calling it the Commonwealth. I am not objecting to "Commonwealth." Commonwealth is the name I prefer for the political Union, because it is not a republic. I prefer it to Dominion, or anything else, if we want to describe a political Union. When you are calling your country the Commonwealth of Australia you are using an absolutely senseless redundancy of expression, when the word "Australia" is all you want.

Mr. FRASER. -
We have got accustomed to it.

Mr. SYMON. -
Are we not more accustomed to the word "Australia"?

Mr. FRASER. -
Not; in this way.

Mr. SYMON. -
Do not we value the name of Australia a great deal more than Commonwealth? Surely we do.

Mr. FRASER. -
There is nothing in it.

Mr. SYMON. -
Mr. Fraser says there is nothing in this, but Mr. Douglas says there is, and I agree with him that it is a mistake to put in the word "Commonwealth" in this place. You may use any expression to define the political Union; you may call it Dominion, Commonwealth, or anything else, but when you come to give the name to the nation which you wish to establish you do not want a double-barrelled name—you want Australia or United Australia.

An HONORABLE MEMBER. -
That would be a double-barrelled name.

Mr. SYMON. -
Not double-barrelled in that sense. It would get rid of the point that Mr. Isaacs has referred to. At any rate, I prefer the simple name, Australia. We are all proud of it, so let us put it in the Bill. It is the name everybody will wish to call the Commonwealth by when this Federal Union is accomplished. We do not speak of the Kingdom of England, and the United States of America was not called the Republic of the United States of America. Their Constitution describes it as the United States of America. It was essential to put in the words "of America," because America comprises a great many other countries besides the United States.

Mr. SOLOMON. -
Suppose Western Australia stood out, what would happen?

Mr. SYMON. -
The position would be that we should be the United States of Australia, and Western Australia would be as she is now.

Mr. SOLOMON. -
That would be a very funny anomaly.

Mr. SYMON. -
Where is the anomaly? Does not my honorable friend see that if Western Australia and Queensland stand out they will be outside of the Commonwealth of Australia?

Mr. SOLOMON. -
Commonwealth is the principal portion of the term.

Mr. SYMON. -
No, you might call it the three united colonies of Australia.
Mr. FRASER. -
Supposing Western Australia and Queensland united, there would be two Commonwealths.

Mr. SYMON. -
Then they would have to find another name. I do not believe for a moment that those colonies will stand out. But supposing that they do, and if we call ourselves Australia, that will be an additional reason to them to come into the original and more triumphant Union. It will be an inducement to them to join, because otherwise they will not only part with their inheritance in a great country, but their inheritance in its name.

Mr. LYNE. -
Does the honorable member think it is worth fighting about?

Mr. SYMON. -
I do. My honorable friend, like myself, is proud of Australia and of the name, and I want to see the name Australia, without any prefix or anything of that kind, inserted in the Constitution. I am just as proud of Australia as I am, in other respects, of England.

An HONORABLE MEMBER. -
Scotland, you mean.

An HONORABLE MEMBER. -
What about Ireland?

Mr. SYMON. -
I include Scotland; and Ireland comes in for a share of my affection; but I do want the name Australia." It is a beautiful name it is more beautiful in itself than the name "Commonwealth" in this connexion. Whilst I am agreeable to have the political designation retained-and I have no objection in the wide world to that-I want the name of the country to be established in the Bill, so that the nation shall be described by the name which we shall call it.

Dr. COCKBURN (South Australia). -
This is a different question to the one which was raised before. When Mr. Symon proposed the motion in Adelaide he proposed to eliminate the "Commonwealth" altogether, which is a different proposal to what he is now making. I think the motion now moved is the correct one, and will recommend itself to a large majority of the Convention, just as the proposition formerly made by Mr. Symon to strike out "Commonwealth" was rejected by a large proportion of the Convention. It is not proposed in any way to alter the name by which the political
entity is to be known—it is to be still the Commonwealth of Australia; it is simply the question of the title of the country. It is only right that this should be Australia, a simple name, so that if any state stands out of the Union, and any one says he is a citizen of Australia, it should not be necessary to ask him whether he comes from the Commonwealth or from a dissenting colony. The Commonwealth should be synonymous with Australia, and with that view I support the proposal.

Question—That the words "The Commonwealth of" proposed to be struck out stand part of the clause-put.

The committee divided—
Ayes ... ... 21
Noes ... ... 19
Majority against Mr. Symon's amendment ... ... 2

AYES.
Berry, Sir G. Kingston, C.C.
Braddon, Sir E.N.C. Lyne, W.J.
Brunker, J. N. O'Connor, R.E.
Carruthers, J.H. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Downer, Sir J.W. Reid, G.H.
Fraser, S. Solomon, V.L.
Fysh, Sir P.O. Walker, J.T.
Hackett, J.W. Zeal, Sir W.A.
Higgins, H.B. Teller.
Isaacs, I.A. Barton, E.

NOES.
Briggs, H. Grant, C.H.
Brown, N.J. Hassell, A.Y.
Clarke, M.J. Henry, J.
Cockburn, Dr. J.A. Holder, F.W.
Crowder, F.T. Howe, J.H.
Dobson, H. Leake, G.
Douglas, A. Lee Steere, Sir J.G.
Forrest, Sir J. Moore, W.
Glynn, P.M. Teller.
Gordon, J.H. Symon, J.H.

Question so resolved in the affirmative.
The clause

[The Chairman left the chair at three minutes past one o'clock p.m. The committee resumed at five minutes past two o'clock p.m. The Clerk of the
Dr. QUICK (Victoria). -

I beg to move-

That the following new sub-section be inserted after sub-section (21):-

XXIA. Commonwealth citizenship.

I propose to confer upon the Federal Parliament the power to deal with the question of Commonwealth citizenship. I have looked through the Bill very carefully, and I do not see the slightest allusion in it to a federal citizenship. We are creating a new political organization, entirely different from that of the states and from that of the even wider political organization-the empire. I do not think that this Constitution should touch the question of state citizenship, or in any way define the power of the states Parliaments in dealing with the qualifications of state citizenship, and of its incidence, its rights, and its liabilities. I have also given notice of a proposed clause defining Commonwealth citizenship, but I will not refer to it at the present time, although it might hereafter be inserted. It defines what constitutes Commonwealth citizenship, but it would not in any way dispense with the desirability or necessity of conferring on the Federal Parliament some power to deal with the question of state citizenship. This sub-section will stand entirely upon its own merits, and without reference to any cast-iron definition which may or may not be inserted in the Constitution. It will confer upon the Federal Parliament the power of defining the qualifications of Commonwealth citizenship, the mode of acquiring those qualifications, and also the mode of losing those qualifications. The Constitution would not be complete unless it had in it some such provision. It is quite true that in one of the earlier clauses of the Bill it is stated that, upon the passing of the Constitution, the people of the various colonies of Australasia joining in the Constitution are to be created a Federal Commonwealth under the Crown.

Mr. DOBSON. -

Does not that create them citizens?

Dr. QUICK. -

No, it does not in any way define citizenship. It refers to the people without in any way defining or stating the mode of ascertaining who are the people. If the word "people" in this earlier section is to be considered as giving the test of citizenship, then all the people within the jurisdiction of the Commonwealth of all races, black or white, or aliens, will be
considered members of this new political community. What I want to see inserted in the Bill is a constitutional definition of citizenship.

Mr. HIGGINS. -

Not in the Bill.

Dr. QUICK. -

I want to see either a constitutional definition in the Bill or the power conferred on the Federal Parliament to define what constitutes citizenship. If that be done, then of course there will be two citizenships within this United Australia. There will be the citizenship of the state in which a person resides, the rights and duties of which will be determined by the laws of the state, and there will be the wider federal citizenship, the rights and duties and incidence of which will be defined by the Federal Parliament. In submitting this proposal, I am not without precedent, because I find that in most of the great Federal Constitutions of the world, there is provision in express terms in the instrument itself for the ascertainment and determination of a common citizenship. In the Constitution of the German Empire, Article 3, there is this provision:-

There shall be a common citizenship for all Germany.

What we want is a common citizenship for the whole of this Australian Commonwealth. Then Article 4, section 1, says-

Under the supervision and legislative control of the empire shall be the right of citizenship.

That corresponds with the section which I propose to add to clause 52. Article 43, section 1, of the Swiss Constitution contains this provision:-

Every citizen of a canton is a Swiss citizen.

That acknowledges a citizenship higher than the citizenship of the canton. It acknowledges in express terms a citizenship of the Federation.

Mr. SYMON. -

Would not every citizen of a state be a citizen of the Commonwealth?

Dr. QUICK. -

No; there is no such provision in the Constitution. In the Constitution of the United States which preceded the amendments, there is a distinct recognition of the United States citizenship, because, although it does not create a citizenship in express terms, still, in the clauses relating to the qualifications of the President, there is a proviso that no person shall be qualified to be elected as President unless he has been a citizen of the United States for a certain number of years. Then, in referring to the qualifications of senators, there is a proviso that no person shall be a senator, or shall be elected a senator, unless he is a citizen of the United States of a certain number of years standing. So, also, with reference to the office of member of the House of Representatives, it is provided that no
person shall be a member of the House of Representatives unless he be a citizen of the United States of a certain number of years standing. There is no express provision that there shall be a common citizenship of the United States.

Mr. GLYNN. -

Yes, in Article 14.

Dr. QUICK. -

I am about to come to that. When Article 14 was agreed to all doubts upon the question of federal citizenship were completely and for ever removed, because it is therein provided that-

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

Before that article was passed there was some doubt as to the origin of the United States citizenship referred to in the clauses I have mentioned relating to the qualifications of a resident senator and member of the House of Representatives. It was then contended that the United States citizenship proceeded from or originated in the state citizenship. But the 14th article did away with the doctrine of the origination of the federal citizenship in the state citizenship, and provided for the distinct creation of a federal citizenship apart from and independent of the state citizenship, and made the federal citizenship the avenue to the state citizenship by the provision that all natural-born and naturalized subjects of the United States should be citizens of the United States and, qua citizens of the United States, citizens of the states in which they resided. That article places the matter beyond all doubt, and furnishes a precedent, combined with the provisions in the other Constitutions to which I have referred, which I think we ought to follow in the Constitution we are now preparing. We ought either to place in the forefront of this Constitution an express definition of citizenship of the Commonwealth, or empower the Federal Parliament to determine how federal citizenship shall be acquired, what shall be its qualifications, its rights, and its privileges, and how the status may hereafter be lost.

Mr. SYMON. -

You had better define it in the Constitution. Dr. QUICK. - I am disposed to think that there ought to be something in the nature of a definition in the Constitution. In my mind, a reasonably approximate definition would be that which I have drafted, to the effect that all persons resident in the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Federal Parliament, should be
citizens of the Commonwealth. That is not a complete definition, it is only an approximation of what I consider a definition. The conditions of citizenship seem to me to be that the citizen shall be either a natural-born or naturalized subject of Her Majesty the Queen, and resident within the Commonwealth, and that he shall not be under any disability imposed by the Federal Parliament. Such a disability might be imposed under the clause which we put into the Bill some time ago, empowering the Federal Parliament to deal with foreign races and undesirable immigrants. The Federal Parliament is empowered to declare that these races shall be placed under certain disabilities, among which might be that they shall not be capable of acquiring citizenship. The definition which I have suggested would not open the door to members of those undesirable races, and it would empower the Federal Parliament to exclude from the enjoyment of and participation in the privileges of federal citizenship people of any undesirable race or of undesirable antecedents. I hope that this proposal will not be opposed and denounced in the manner which has become somewhat fashionable in the Convention. Every generalization which is brought forward to interpret the Constitution, and to set forward more plainly the advantages that it is supposed will accrue from the union, if it goes an iota beyond what is absolutely or technically necessary, is denounced as a proposal to placard the Constitution. I hope that a proposal to define federal citizenship and the status of members of this new political organization will not be pooh-poohed, and spoken of as a proposal to placard the Constitution. In my opinion, there are certain substantial rights and advantages which would accrue from the placing in the Constitution of an expressed recognition of the federal citizenship. The Constitution empowers the Federal Parliament to deal with certain external affairs, among which would probably be the right to negotiate for commercial treaties with foreign countries, in the same way as Canada has negotiated for such treaties. These treaties could only confer rights and privileges upon the citizens of the Commonwealth, because the Federal Government, in the exercise of its power, could only act for and on behalf of its citizens. Therefore, it is desirable that the Constitution should define the class of persons for whom these rights and privileges would be gained. By placing in the Constitution a definition of citizenship, or by providing for its creation, we do not interfere with the citizenship of the states, which I propose to leave exclusively within the jurisdiction of the states themselves, nor do we interfere with that wider relationship which affects us all as subjects of Her Majesty and members of the great British Empire. We are affected by this
relationship by virtue of our position as British subjects. It is, however, a relationship entirely different from that which will be created by this Constitution. A citizenship of the Commonwealth will, of course, be much narrower than our subject-ship of the empire. In my opinion, it would be a manifest imperfection in the scheme of union not to make provision in some shape or other to enable the Federal Parliament to deal with and legislate upon the subject of membership of the Commonwealth. Without in any way dealing with the questions to which reference is made by the other amendments and clauses on the notice-paper, and without in any way suggesting that federal citizenship should come into conflict with state citizenship, or that state citizenship should overlap federal citizenship, I propose to give to the Federal Parliament power to deal with this important question. Without such a provision as I wish to insert, I think the Constitution would be manifestly defective.

Mr. OCONNOR (New South Wales). - I am sure that the honorable member will have no reason to apprehend that the exceedingly important question which he has raised will not be properly dealt with. We all recognised, when we were dealing with clause 110, the extreme importance of the question which has been raised. I am entirely in sympathy with my honorable and learned friend as to the necessity for dealing with this question, but I think that it would be a mistake to deal with it in the way he proposes. I think it would be a mistake to give to the Federal Parliament the power of determining the qualifications of citizenship under the Commonwealth. In my opinion, the honorable and learned member's quotations from the other Constitutions all bear out the principle that in the making of a Constitution that which gives the right of citizenship and which includes citizenship is defined. Let me for a moment consider the proposal to give this power to the Federal Parliament. The Federal Parliament could do nothing in the way of defining the qualification of citizenship or the rights of citizenship beyond the limits of the Constitution. Now, you may regard the citizen from two points of view. In the first place, as regards his rights as a member of the Commonwealth, and in the second place, as regards his rights as a member of the state. The latter aspect seems to me much the more important. But let us take first his position in regard to the Commonwealth. Under the power which you have given to the Federal Parliament to make laws regulating immigration and aliens, you embrace every possible set of circumstances under which any person may enter the bounds of the Commonwealth. As you have power to prevent any person from entering any part of the Commonwealth, you have also the power to prevent any person from becoming a member of the Commonwealth community. There
is no territorial entity coincident with the Commonwealth. Every part of the Commonwealth territory is part of the state, and it is only by virtue of his citizenship of a state that any person within the bounds of the Commonwealth will have any political rights under the Constitution. Of course, when I speak of a state, I include also any territory occupying the position of quasi-state, which, of course, stands in exactly the same position.

Mr. WISE. -

Is that clear?

Mr. OCONNOR. -

If the territory does not stand in the same position as a state, it is admitted to political rights at the will of the Commonwealth, and upon such terms as the Commonwealth may impose. Every person who has rights as a member of the Commonwealth must be a citizen either of some state or some territory. It is only by virtue of his citizenship of a state or of a territory that he has any political rights in the Commonwealth.

Mr. WISE. -

Before the 14th amendment was passed it was very much questioned whether a citizen of Washington had any rights at all, because Washington was only a territory.

Mr. OCONNOR. -

Yes; but what the honorable and learned member says really supports my argument. The thirteen original states occupied a very small portion of the area now forming the United States of America, and of course the question might arise as to what the position of a person who is not resident of or a citizen of any state, but a resident of a territory, might be in relation to the Commonwealth. But I do not think that that question will arise here, because we cannot imagine, I think, any portion of the Commonwealth becoming a territory now, unless it has been a state at one time-unless it is some portion of a state which has been ceded to the Commonwealth, and in the cession to the Commonwealth there is no doubt that care will be taken to define what the rights of the residents of the territory would be in regard to the political rights of the Commonwealth. It appears to me quite clear, as regards the right of any person from the outside to become a member of the Commonwealth, that the power to regulate immigration and emigration, and the power to deal with aliens, give the right to define who shall be citizens, as coming from the outside world. Now, in regard to the citizens of the states—that is, those who are here already, apart from these laws—every citizen of a state having certain political rights is entitled to all the
rights of citizenship in the Commonwealth, necessarily without a definition at all.

Mr. DOBSON. -

Would not every voter be a citizen? One man, one vote.

Mr. OCONNOR. -

Exactly. The only rights which citizens have, as regards the Commonwealth, are political rights; there are no other rights I know of as yet. I have not heard any other rights mentioned. All those political rights are given by virtue of the person being resident in a state. It is only by virtue of such residence that he becomes entitled to those rights. So far as the power of the Commonwealth to legislate is concerned, the Commonwealth, under the two powers I cited, can regulate who shall be citizens of the state coming from outside, but the Commonwealth cannot interfere with the rights of those residents of the state who are entitled to political rights, and no such clause as the honorable gentleman proposes to put in can give them any such rights. Suppose, for instance, it should be thought desirable to insert some provision in a Bill passed by the Commonwealth that the rights of all citizens of the Commonwealth should be equal in regard to the ownership of land through every state, or that the rights of the citizens of other portions of the Commonwealth should be equal in regard to the ownership of mines or the right to mine, or take any other privilege or right which you may think fit; to make any general rule of that kind would be to interfere with the autonomy of the states. The states have, under the Constitution, already an absolute right to deal with everything except that which is taken away from them, and unless you place in the Constitution some distinct definition of equality of citizenship throughout the states or of some rights which a citizen of the Commonwealth will have through the states you cannot do it by legislation of the Commonwealth afterwards. Taking these two branches, which

must include every point of view from which you can regard this question of citizenship—that is to say, the rights of those who enter from outside, or the rights of those who are here already, the Commonwealth has abundant power to legislate as regards those who come from outside, and it cannot legislate, even if you put such a power as this in, as regards those who are here already.

Mr. DEAKIN. -

Do you say that this sub-section gives an extension of the power, then?

Mr. OCONNOR. -

I say it cannot. I have said already that, in regard to those coming from outside, you have quite as much power as you can possibly require; you
have the ampest power. As regards those who are here already, if the giving of any right of citizenship infringe on the rights of a state you cannot do that; you cannot take away the right of a state by implication in that way. Therefore, I am driven to the conclusion that it would be an incomplete way of effecting the honorable member's object to simply give this power over to the Commonwealth.

Dr. QUICK. -

It would not interfere with state rights, as you suggest. It is only intended to deal with Commonwealth rights, not state rights.

Mr. OCONNOR. -

What Commonwealth rights are there?

Dr. QUICK. -

Rights conferred by the Constitution.

Mr. OCONNOR. -

If they are political rights, they are conferred already by virtue of a person being an inhabitant of a state entitled to certain political rights, in such state. The honorable member cannot intend to give a different right to a citizen politically under the government of the Commonwealth from the right of a citizen of any state. The rights are coterminous-coincident-and the political rights of every citizen of the Commonwealth who is within the Commonwealth arise by virtue of his being a citizen of a state.

Dr. QUICK. -

Who is a citizen of the Commonwealth? You do not define who he is.

Mr. OCONNOR. -

I have said already that I have no objection to some definition being given in another clause, laying down who shall be citizens of the Commonwealth for what it may be worth, and I can see one point of view in which there may be some reason for it. What I am pointing out now is that this proposal does not enlarge in any way the right to deal with the question, because the rights of the states politically are absolutely secured by the Constitution in its present form. But I see no objection to some kind of a definition being given of the rights of citizenship, that is to say, that every citizen of a state shall be a citizen of the Commonwealth, for this reason, that I can see one aspect in which new rights are given to the whole Commonwealth, that is to say, rights which they hold as members of the Commonwealth. The right to appeal to the courts of the Commonwealth is a new right. For instance, at the present time a resident of New South Wales cannot sue a resident of Victoria, except by going through a certain process, and getting judgment, and having that enforced, but he cannot sue him directly.

Mr. ISAACS. -
He may go to Victoria and do it.

Mr. OCONNOR. -
That altogether depends on where the cause of action arose.

Mr. ISAACS. -
If you get your defendant you can sue him.

Mr. OCONNOR. -
I know that there are circumstances under which you can do it, but we all know that there are circumstances under which, although you may have the clearest possible claim against a person, you cannot sue him, from the difficulty of the citizen of one colony suing a citizen in the courts of another colony.

Mr. HIGGINS. -
Is there any difficulty about trusting the Federal Parliament in this matter?

Mr. OCONNOR. -
I have said that I do not see that such a trust in the Federal Parliament would be effective. I sympathize with the honorable member's view, but I think it will be carried out by some kind of definition of citizenship, and I was pointing out the only aspect in which it appears to me it might be desirable to have some such definition, and that is, you are creating new rights to citizens of the Commonwealth as citizens of the Commonwealth in regard to your courts. You establish courts for the Commonwealth, and every citizen of the Commonwealth is entitled to the use of those courts.

Mr. HIGGINS. -
Who is he?

Mr. OCONNOR. -
That is what has to be defined. A citizen of the Commonwealth is at present any person who has political rights which the Constitution gives him, which he gets by virtue of being a resident of a state. That is exactly the reason upon which the citizenship definition in the American Constitution stands.

Mr. HOLDER. -
Would it not avoid difficulty to leave the Federal Parliament to define it from time to time?

Mr. OCONNOR. -
That really gives no power whatever. It does not carry out the honorable member's object, because the power to deal with persons coming from outside, in regard to their being members of the community, is given in the powers to deal with immigration and aliens. The power to deal with
citizens of states is limited by the rights of the states at the present time, and if you want really to have a definition which gives some right and some entity to a citizen of the Commonwealth, as different from a citizen of a state, I think you ought to do it in some way by definition.

Mr. ISAACS. -

When the Constitution America was framed, they did not think it necessary to define a citizen.

Mr. WISE. -

And they got into great trouble in consequence.

Mr. ISAACS. -

They found it necessary to introduce the definition by an amendment of the Constitution.

Mr. OCONNOR. -

That, the honorable member knows well, was caused by the intrusion of the negro question. You will find in dealing with this question of the definition of citizenship, that you will have to be very careful in your definition, because it would be rather too limited a definition to confine it only to persons who are natural-born or naturalized subjects, unless you are dealing simply with the political aspect. I think it would be better if reconsideration was given to clause 110, under the head of "States." I think it is in that place that the consideration of this matter should come.

Dr. QUICK. -

That has been rejected.

Mr. OCONNOR. -

I think that clause was rejected a little hastily. There are very good reasons why it should be reconsidered from the point of view which has been put by the honorable member.

Dr. QUICK. -

That only deals with interstate citizenship, not federal citizenship.

Mr. OCONNOR. -

The only kind of citizenship it is necessary for you to deal with is a citizenship of that kind.

Mr. WISE (New South Wales). -

As one of those who strenuously denied that there was a necessity to define federal citizenship, I entertain some doubt, as Mr. O'Connor does, whether this proposal really meets the difficulty. I feel, as he does, that to confer on the Parliament the power to deal with federal citizenship does not give them the power to define the citizenship. They can only act within the limits of the Constitution, and, inasmuch as it might be necessary in defining the citizenship to trench in some way on the rights of the state, or to limit in some way the citizenship of the state, or to make certain
consequences follow from being citizens of the state, it might be held that the matter is open to doubt, that any definition passed by virtue of this proposal would be ultra vires. I apprehend that the very much better course will be to withdraw the amendment, and to discuss the question on clause 110, when a clear definition can be put in which will deal with this matter thoroughly. For reasons which I will not mention, because the whole matter will have to be discussed, I feel that it is absolutely necessary for the Bill to contain a definition of citizenship, but whether this will do it or not is open to doubt. I would ask the honorable member whether he has really considered the objections put forward by Mr. O'Connor? It appeared to me, from some of his interjections, that Mr. O'Connor's argument was not appreciated by him.

Mr. HOWE (South Australia). -

As usual, there are conflicting ideas among the legal fraternity, and really it is very difficult for laymen to come to a conclusion.

Mr. REID. -

There is no dispute amongst blind men.

Mr. HOWE. -

That has been the cause of the delay in this Convention in coming to conclusions. We have eminent men whom we respect and esteem, and it is only necessary for one eminent lawyer to make a proposition to cause another lawyer to rise and try, to knock it down.

Mr. REID. -

As a jury, you look on and decide.

Mr. HOWE. -

I heard legal gentlemen admit the other night that they had confused each other, so that this is some revenge, so far as I am concerned. But I will put one practical point to this Convention. It seems to me that in building up this nation we say that in Federated Australia commerce shall flow free and untrammelled from the centre of the Commonwealth to its circumference, and I say that it is not right for a state to have the power of declaring that any citizen within that state shall be penalized because he happens to have property in one state and resides just over the border in another state. Why should a special imposition be placed on him? Are we going to allow any state to treat a resident citizen of Federated Australia as an absentee, merely because he owns property in one state and resides in another? Of course it is quite right that his property should pay the impost levied on property in that state, but he should not be penalized because he happens to reside in another state. Such a thing would be an injustice, and no true
federation can exist if this distinction between citizens of the
Commonwealth is maintained. The Federal Parliament should have power
to disallow any such restriction if any state seeks to place it on any citizen
of the Commonwealth.

Mr. HIGGINS (Victoria). -

I confess the idea was new to me before Dr. Quick gave notice of his
proposal, but it occurred to me, when we were dealing with clause 110,
that there was need of some power to deal with Commonwealth
citizenship, and the only question is as to whether Dr. Quick's mode of
doing this is sufficiently good or not. I understand that Mr. O'Connor and
Mr. Wise are in favour of this proposal in principle, and it is a mere
interpretation of what I think are ordinary words as to whether Dr. Quick's
amendment will meet the requirements of the case. Clause 52 provides
that-
The Parliament shall, subject to the provisions of this Constitution, have
full power and authority to make laws for the peace, order, and good
government of the Commonwealth with respect to all or any of the matters
following:-

Then follows a long list of matters, in which Dr. Quick proposes to insert
"Commonwealth citizenship." So that the amendment means that the
Parliament shall have power and authority to make laws for the peace,
order, and good government of the Commonwealth with respect to
Commonwealth citizenship. Who, unless he were a lawyer—I appeal now to
the sympathies of Mr. Howe—could ever think that the Parliament could not
make a law stating what Commonwealth citizenship shall be? Of course,
there have not been any reasons given as to why this amendment should
not be inserted. Mr. O'Connor, as the
draftsman in charge of the Bill at the present time, is naturally diffident and
timid about inserting this new proposal without full consideration, but,
although I listened carefully to what he and Mr. Wise said on the subject, I
failed to find any reasonable doubt in the speech of either of those
gentlemen. Of course, if the object which Dr. Quick has in view can be
more clearly attained by an amendment on his proposal, I shall vote for the
alteration, but I believe in having the fewest possible words for this
purpose, and Dr. Quick has put his amendment in two words,
"Commonwealth citizenship."

Mr. KINGSTON. -

He might strike out one word, and leave it "citizenship."

Mr. HIGGINS. -

All I want is to leave the hands of the Federal Parliament free, so that, if
it thinks fit, inasmuch as it has power to deal with alien races, it should also have power to deal with Commonwealth citizenship. I shall support the amendment.

Mr. GLYNN (South Australia). -

I shall have to oppose Dr. Quick's amendment, although I would really go further than he intends. His object is to have a common citizenship, and he proposes to define that in a proposed new clause, 120A, which reads as follows:

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth;

and he now wants to give power to Parliament to vary that subsequently.

Mr. ISAACS. -

It is not clause 120A that he is proposing now.

Mr. HIGGINS. -

It is his amendment in clause 52-to insert "Commonwealth citizenship" as a new sub-section.

Mr. GLYNN. -

I am quite aware of that, but what I want to understand is whether Dr. Quick will propose the insertion of clause 120A, and also put it in the power of the Parliament to vary the Commonwealth citizenship under clause 52? That is the point about which I am doubtful. But I desire to point out that Dr. Quick is not going as far as they have gone in America or Germany. There is a common citizenship both of the Commonwealth and of the states in America. Citizenship of the Commonwealth carries with it citizenship of the states, and the Constitution provides that immunities and privileges enjoyed by the citizens of a particular state shall be equally shared, when in that state, by the citizens of all the other states. Now, the German Constitution makes a declaration that there must be a common citizenship. It does not state that the Parliament of Germany will have the power of providing for a citizenship of the empire, but that there must be a common citizenship of the whole empire, and that the privileges which are given in one part of the empire would apply right through the whole empire. That is to say, there is a Commonwealth citizenship and a state citizenship running the one with the other-a perfect equality of rights. All that is done in Germany is that Article 3 of the Imperial Constitution declares that there shall be a common citizenship for all Germany, and that the rights of the individual citizens of any state must be extended to the individual citizens of any other state as long as they come within the jurisdiction of the former state; but the German Constitution also provides that Parliament-and here is the distinction-may define what the conditions
of that common citizenship are to be. The Constitution declares that there must be a common citizenship, but it leaves the determination of the particular terms of that citizenship to the Parliament. That is different from the proposal of Dr. Quick.

Mr. KINGSTON. -

You want citizenship of the states and citizenship of the Commonwealth to be uniform?

Mr. GLYNN. -

Yes; but it had better be provided for by a separate clause as in America. All persons born in the United States are citizens of the Commonwealth and of the states in which they reside.

Mr. HIGGINS. -

But we need not jump before we come to the stile. We can leave citizenship to be settled afterwards by the Federal Parliament.

Mr. GLYNN. -

But I want to prevent the Federal Parliament having power to cut down citizenship. By adopting this amendment you will really limit the effect of the provision which Dr. Quick desires to insert as clause 120A. If you here empower Parliament, from time to time, to limit the Commonwealth citizenship, you will prevent us subsequently enacting in the Bill that Commonwealth citizenship shall be state citizenship, or vice versâ, because you are putting it in the power of Parliament to say what citizenship is to be, although you may subsequently attempt to provide that the citizenship of the state shall be the citizenship of the Commonwealth, and vice versâ. If you adopt this amendment you will not thereby declare, as in Germany, in Article 3, that-

There shall be a common citizenship (indigenat) for all Germany, and the members (citizens or subjects) of each state of the Confederation shall be treated in every other state thereof as natives, and shall consequently have the right of becoming permanent residents; of carrying on business; of filling public offices; of acquiring real estate; of obtaining citizenship; and of enjoying all other civil rights on the same conditions as those born in the state, and shall also have the same usage as regards civil and criminal prosecutions and the protection of the laws.

Mr. KINGSTON. -

What do you suggest as a proper parallel here? To what extent would you go?

Mr. GLYNN. -

I would provide by proposed clause 120A, or by an amendment of it, that
there shall be a Commonwealth citizenship.

**Mr. KINGSTON.** -

What definition do you suggest?

**Mr. GLYNN.** -

The American definition—that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the Commonwealth and of the state in which they reside.

**Mr. KINGSTON.** -

Would you make it "born or naturalized" in Australia?

**Mr. GLYNN.** -

I would probably suggest that; but at present I am not saying what ought to be done when we come to deal with proposed clause 120A. I am only pointing out that if you adopt this amendment you will be tying your hands as to what you will subsequently do when dealing with clause 120A. You cannot put it as an addition to the Constitution if you vest the power of varying it in the Parliament. I hope Dr. Quick will not insist on putting this into clause 52, but will stick to his proposed clause 120A, in connexion with which he will have support.

**Mr. ISAACS (Victoria).** -

I hope we shall agree to Dr. Quick's proposal. I do not consider the case of Germany or the United States and the question of inserting a definition of citizenship in this Constitution as at all analogous. What they were doing there was this: They were creating a new sovereign state, above which, of course, from the very nature of the case, there was no superior. In connexion with the creation of a new state a sovereign State—they felt it necessary in Germany to make some provision for an Imperial citizenship. As to the United States, they omitted, although creating a sovereign State, to define what was citizenship of that new State—the nation—and they found it necessary, certainly through the negro question, to define at a later time what a citizen was. But here we do not stand in the same position. We have the citizenship of the British Empire on the one hand, and the citizenship of the state on the other. What we want to do is, not to insert a definition of citizenship of the Commonwealth in the Constitution, but to give power to the Parliament to provide against any contingencies which may arise, but which are out of our range of vision at present. We wish to provide for that possible case, and at the same time not to create a definition either too extensive or too narrow. What we should do, therefore, is to follow the course proposed by Dr. Quick, and simply insert power to legislate with regard to Commonwealth citizenship. If that is found to be unnecessary, it will never be acted upon,
but, if it is found to be necessary, it can be acted upon to the extent of the necessity; and the definition can also be altered if it is found on trial to be either too wide or too narrow. I have, therefore, much pleasure in supporting the proposal.

Mr (South Australia). - I shall also support the amendment of Dr. Quick, and I trust that it will be carried. I cannot conceive that in the adoption of legislation on this subject Parliament would do aught else than make the definition uniform and of general application. If there was any necessity for making that clear, the insertion of the words "uniform citizenship of the Commonwealth" would accomplish that, but I hardly think it is necessary. I am impressed with the importance of taking power as occasion arises to define what shall constitute citizenship of the Commonwealth; and the Bill at present is altogether deficient in regard to giving any power to the Commonwealth Parliament to legislate on this subject. It seems to me it is a very difficult matter, and one with which we should not attempt to deal here, but rather should refer it to those who, when necessity arises to adopt some legislation on the subject, will have all the facts before them, and may reasonably be supposed to be able to make the best provision for the purpose in connexion with the subject. My honorable friend (Mr. Glynn) referred to the principle which he said obtained, I think, in Germany, where only native-born Germans, or those who are naturalized in the empire, are admitted to the privileges of citizenship. I asked in the course of his remarks how would that apply to citizens of the Commonwealth. It is a very difficult thing to deal with. If you provide that only those shall be citizens of the Commonwealth who were born in it or have been naturalized, you will undoubtedly be putting too strict a limitation on citizenship. It would be simply monstrous that those who are born in England should in any way be subjected to the slightest disabilities. It is impossible to contemplate the exclusion of natural-born subjects of this character; but, on the other hand, we must not forget, that there are other native-born British subjects whom we are far from desiring to see come here in any considerable numbers. For instance, I may refer to Hong Kong Chinamen. They are born within the realm of Her Majesty, and are therefore native-born British subjects.

Sir EDWARD BRADDOCK. - Are British treaty ports British territory?

Mr. KINGSTON. -

Hong Kong is undoubtedly a British possession, and a Hong Kong Chinaman is undoubtedly a native-born British subject. Thus, honorable members will see what difficulties might arise if the privileges of citizenship of the Commonwealth were extended to all British subjects. If
that were done, we should be landed in a difficulty against which it is well to provide. I think the very best, thing under all the circumstances is to do-what is recommended by Dr. Quick, and give to the Federal Parliament power to, legislate on this subject as occasion arises. I have no fear whatever but that they will make wise provisions on the subject-provisions uniform throughout the Commonwealth—for extending to all British subjects those privileges which they ought to possess, while at the same time safeguarding the rights of the Commonwealth.

Mr. OCONNOR (New South Wales). -

I would like to point out to Dr. Quick that he proposes to give a power to the Commonwealth to legislate in regard to a matter which is not mentioned from the beginning to the end of the Constitution. The word "citizen" is not used from beginning to end in this Constitution, and it is now proposed to give power to legislate regarding citizenship.

Mr. KINGSTON. -

It was in the Bill.

Mr. OCONNOR. -

There is no portion of the Bill which gives any right of citizenship, or points out what citizenship is.

Mr. HIGGINS. -

The word "citizen" occurred in clause 110, although it is now struck out.

Mr. OCONNOR. -

The words in clause 110 do not define any right of citizenship; they prevent certain restrictions upon it. I would point out to Dr. Quick that he is proposing to give a power to regulate or describe rights of citizenship, when we really do not know at present what is meant by a citizen. I confess I do not know what the honorable and learned member means by that term. Does he mean only the political rights which you give to every inhabitant of a state who is qualified to vote, or does he go beyond that, as the American decisions have gone, and describe every person who is under the protection of your laws as a citizen? The citizens, the persons under the protection of your laws, are not the only persons who are entitled to take part in your elections or in your government, but every person who resides in your community has a right to the protection of your laws and to the protection of the laws of all the states, and has the right of access to your courts. If you are going to define citizenship for the purpose of giving these rights, you must say clearly what you mean by citizenship. You leave it to the Federal Parliament to say what citizenship is; and I think there is a great deal in what Mr. Glynn says, that we must not hand over to the
Federal Parliament the power to cut down the rights the inhabitants of these states have at the present time. If we do not know what you mean by citizenship—

Mr. ISAACS. -

Commonwealth citizenship.

Mr. OCONNOR. -

Exactly. But if we do not know what you mean by citizenship—whether you mean to restrict it to political rights or to the right of protection under your laws, which every person, whether a naturalized subject or a person for the time being resident in one of these communities, possesses—we may drive the Federal Parliament into some difficulty, in which it is not at all unlikely that some cutting down of what we believe to be the rights of citizenship may take place. I would point out that under the Bill the power of dealing with aliens and immigration gives an abundant right to the Commonwealth to protect itself, and, of course, the right of defining citizenship will have to be exercised with due regard to any laws which might be made regarding the position of aliens. I would ask my honorable friend (Dr. Quick) to say if he has considered how far he means the Federal Parliament to go in the definition of citizenship, and what he means by citizenship? Because, unless we have a clear idea of that, it seems to me that we are handing over to the Federal Parliament something which is vague in the extreme, and which might be misused.

Mr. TRENWITH (Victoria). -

The honorable member who has just sat down has assumed a possible difficulty that I cannot conceive is likely to occur. He assumes that unless we define clearly what we mean by citizenship, the Federal Parliament may take such action as will infringe some liberties which we now possess, and which we ought to possess. When we remember that we have provided in the Constitution that both Houses of Parliament shall be elected on the broadest possible franchise, it seems to me to be utterly impossible to conceive that such a Parliament will proceed to infringe any of the liberties of the citizens. But it may be necessary for many reasons to declare some form of citizenship, and if such a necessity arises, Dr. Quick's proposal empowers the Federal Parliament to deal with it. If it be found that there is no necessity to legislate—that citizenship is sufficiently clearly defined, without any definition by Act of Parliament, by the usage of the Commonwealth, then no legislation for that purpose will be passed. But it certainly does seem that for the purpose of dealing with the varied conditions which prevail here, and the various sorts of men we have in these colonies, there
should be a clear provision in the Constitution empowering the Commonwealth to decide what is to constitute that other citizenship that we are creating. We know pretty clearly what constitutes a citizen of Great Britain. We know what constitutes a citizen of our various states. But we are at present creating a dual citizenship—retaining the rights of citizenship which the inhabitants already possess, and, in addition, conferring what I think most people will be even more proud of, the citizenship of the Commonwealth of Australia. For that reason I think it extremely desirable that there should be a power on the part of the Commonwealth Parliament to define what is to constitute Commonwealth citizenship. I confess I was afraid of this clause when I first saw it. I was afraid that possibly it might lead to an Act of the Commonwealth infringing the right of a state to deal as it thought fit with the citizens within its borders, so long as it did not infringe upon that broader citizenship of the Commonwealth. But, on looking into the matter, it seems to me to be clear that the power given by this clause is a power that need not necessarily be used, and when it is used is only a power to define that greater and broader citizenship of the Commonwealth—a power which the Federal Parliament should have, and will obtain by the adoption of this proposal.

Mr. SYMON (South Australia). -

I only wish to say a word or two about this proposal. I think that Dr. Quick will probably see that his amendment may be raising a very serious difficulty on the one hand, or else that it is unnecessary on the other. I quite agree with him as to the necessity under some circumstances of giving some definition as to what shall be a citizen of the Commonwealth, but underlying the whole of that is this fundamental principle: That the citizens of the states are the citizens of the Commonwealth. That is the fundamental principle we must have regard to, and I ask my honorable friend to say whether a citizen of the Commonwealth is not a citizen of the state? I have no objection whatever to some definition being inserted similar to that which appears in the United States Constitution defining what shall be a citizen. My honorable friend himself has an amendment on the paper with that object in view, but if you are to insert this provision to give the Commonwealth Parliament power to deal with citizenship of the Commonwealth, you are giving it a power which might induce it to declare that some particular set of citizens in the state should not continue any longer to be citizens of the Commonwealth, or to enjoy the rights and immunities of the citizens of the Commonwealth.

Mr. TRENWTH. -

That is so highly improbable that it is scarcely worth while considering it.
Mr. SYMON. -

My honorable friend (Mr. Trenwith), whose views I have listened to and to whose opinions I have always paid great attention, asks in what way the Commonwealth can interfere with the citizenship of the Commonwealth. We have specifically empowered the Commonwealth to deal with the question of aliens.

Mr. WISE. -

Either this clause will be utterly ineffective or it will give the Federal Parliament power to outlaw certain persons.

Mr. SYMON. -

Mr. Trenwith has said he was not at first inclined to support this amendment, and I think that if he gives it further consideration he will feel that it is utterly unnecessary to do so, and that it is unwise to put into the hands of the Commonwealth Parliament a power which might be likely to be exercised, as my honorable and learned friend (Mr. Wise) has said, for the purpose of outlawing citizens of the state who are citizens of the Commonwealth. Of course the Federal Parliament would not do such a thing as that, and, therefore, it seems to me that it is unnecessary to put in such a power. Is there any person whom the Federal Parliament, by virtue of this provision, could make a citizen of the Commonwealth who would not already be a citizen of a state? You cannot do it. There is nothing to which this can possibly apply. You have given the Federal Parliament power to deal with the question of aliens, immigration, and so on, to prevent the introduction of undesirable races. Under that provision you enable the Federal Parliament to legislate within certain limits, and in a certain direction. Under that they may, within those limits, take away, or they may restrict, the rights of citizenship in a particular case. That is what we intend them to do. I am not going to give carte blanche to the Federal Parliament to say who shall and who shall not be citizens. The object of all who are represented here is that the Union of these states is of itself to confer upon the citizens of the states the rights of citizens of the Commonwealth.

Mr. HIGGINS. -

You may depend upon it that the states will see that this is kept up.

Mr. SYMON. -

I agree with the honorable member, and I also think it is unlikely that the Commonwealth will seek to derogate from it, but I will not place a power in the hands of the Commonwealth which will enable them to derogate from it, and if that is not done it will be merely a dead letter. Is there any citizen of the Commonwealth who is not already a citizen of the state?
State citizenship is his birthright, and by virtue of it he is entitled to the citizenship of the Commonwealth. When you have immigration, and allow different people to come in who belong to nations not of the same blood as we are, they become naturalized, and thereby are entitled to the rights of citizenship.

**Sir EDWARD BRADDON.** -

They are citizens if they are British subjects before they come here.

. - That is a point I do not wish to deal with. But they become citizens of the states, and it is by virtue of their citizenship of the states that they become citizens of the Commonwealth. Are you going to have citizens of the state who are not citizens of the Commonwealth?

**Mr. KINGSTON.** -

In some states they naturalize; but they do not in others.

**Mr. SYMON.** -

Then I think they ought to. The whole object of legislating for aliens is that there should be uniformity.

**Sir EDWARD BRADDON.** -

They would not have that in the Federal Council.

**Mr. SYMON.** -

Very likely not. What I want to know is, if there is anybody who will come under the operation of the law, so as to be a citizen of the Commonwealth, who would not also be entitled to be a citizen of the state? There ought to be no opportunity for such discrimination as would allow a section of a state to remain outside the pale of the Commonwealth, except with regard to legislation as to aliens. Dual citizenship exists, but it is not dual citizenship of persons, it is dual citizenship in each person. There may be two men-Jones and Smith-in one state, both of whom are citizens of the state, but one only is a citizen of the Commonwealth. That would not be the dual citizenship meant. What is meant is a dual citizenship in Mr. Trenwith and myself. That is to say, I am a citizen of the state and I am also a citizen of the Commonwealth; that is the dual citizenship. That does not affect the operation of this clause at all. But if we introduce this clause, it is open to the whole of the powerful criticism of Mr. O'Connor and those who say that it is putting on the face of the Constitution an unnecessary provision, and one which we do not expect will be exercised adversely or improperly, and, therefore, it is much better to be left out. Let us, in dealing with this question, be as careful as we possibly, can that we do not qualify the citizenship of this Commonwealth in any way or exclude anybody from it, and let us do that with precision and clearness. As a citizen of a state I claim the right to be a citizen of the Commonwealth. I do not want
to place in the hands of the Commonwealth Parliament, however much I may be prepared to trust it, the right of depriving me of citizenship. I put this only as an argument, because no one would anticipate such a thing, but the Commonwealth Parliament might say that nobody possessed of less than £1,000 a year should be a citizen of the Federation. You are putting that power in the hands of Parliament.

Mr. HIGGINS. -

Why not?

Mr. SYMON. -

I would not put such a power in the hands of any Parliament. We must rest this Constitution on a foundation that we understand, and we mean that every citizen of a state shall be a citizen of the Commonwealth, and that the Commonwealth shall have no right to withdraw, qualify, or restrict those rights of citizenship, except with regard to one particular set of people who are subject to disabilities, as aliens, and so on. Subject to that limitation, we ought not, under this Constitution, to hand over our birth right as citizens to anybody, Federal Parliament or any one else, and I hope the amendment will not be accepted.

Dr. COCKBURN (South Australia). -

I think the Commonwealth should keep in its own hands the key of its own citizenship. Some colonies are somewhat colourblind with regard to immigration, other colonies may be somewhat deficient in their ideas as to naturalization. If we place in the hands of any state the power of forcing on the Commonwealth an obnoxious citizenship, we shall be doing very great evil to the Commonwealth. This power should be in the hands of the Commonwealth; it should itself possess power to define the conditions on which the citizenship of the Commonwealth shall be given; and the citizenship of the Commonwealth should not necessarily follow upon the citizenship of any particular state.

Mr. BARTON (New South Wales). -

We have provided in this Constitution for the exercise of the rights of citizenship, so far as the choice of representatives is concerned, and we have given various safe-guards to individual liberty in the Constitution. We have, therefore, given each resident in the Commonwealth his political rights, so far as the powers of legislation and administration intrusted to the Commonwealth are concerned. Let us consider the position. Before the establishment of the Commonwealth, each subject is the subject of a state. After the Commonwealth is established, every one who acquires political rights-in fact, every one who is a subject in a state, having certain political rights, has like political rights in the Commonwealth. The only difference between the position before the institution of the Commonwealth and
afterwards is that, so far as there are additional political powers given to any subject or citizen, he has the right to exercise these, and the method of exercising them is defined. So far the right of citizenship, if there is a right of citizenship under the empire, is defined in the Constitution. Now, each citizen of a state is, without definition, a citizen of the Commonwealth if there is such a term as citizenship to be applied to a subject of the empire. I must admit, after looking at a standard authority—Stroud's Judicial Dictionary—that I cannot find any definition of citizenship as applied to a British subject. No such term as citizen or citizenship is to be found in the long roll of enactments, so far as I can recollect, that deal with the position of subjects of the United Kingdom, and I do not think we have been in the habit of using that term under our own enactments in any of our colonies.

Mr. HIGGINS. -
You had it in the Draft Bill.

Mr. BARTON. -
Yes; but the term has since disappeared, and it disappeared owing to objections from members of the Convention. I am inclined to think that the Convention is right in not applying the term "citizens" to subjects residing in the Commonwealth or in the states, but in leaving them to their ordinary definition as subjects of the Crown. If, however, we make an amendment of this character, inasmuch as citizens of the state must be citizens of the Commonwealth by the very terms of the Constitution, we shall simply be enabling the Commonwealth to deal with the political rights of the citizens of the states. The one thing follows from the other. If you once admit that a citizen or subject of the state is a citizen or subject of the Commonwealth, the power conferred in these wide terms would enable the Federal Parliament to deal with the political rights of subjects of the states. I do not think the honorable member intends to go so far as that, but his amendment is open to that misconception.

Mr. HOWE. -
 Trust to the Federal Parliament.

Mr. BARTON. -
When we confer a right of legislation on the Federal Parliament we trust them to exercise it with wisdom, but we still keep as the subject of debate the question of whether a particular legislative right should be conferred on the Federal Parliament. When you give them the right then you may trust them to exercise it fully.

Mr. HOWE. -
And wisely.
Mr. BARTON. -

If the honorable member's exclamation means more than I have explained, then the best thing to do is to confide to the Commonwealth the right of dealing with the lives, liberty, and property of all the persons residing in the Commonwealth, independently of any law of any state. That is not intended, but that is what the expression "Trust the Federal Parliament" would mean unless it was limited by the consideration I have laid down. I am sure Dr. Quick will see that he is using a word that has not a definition in English constitutional law, and which is not otherwise defined in this Constitution. He will be giving to the Commonwealth Parliament a power, not only of dealing with the rights of citizenship, but of defining those rights even within the very narrowest limits, so that the citizenship of a state might be worth nothing; or of extending them in one direction, and narrowing them in another, so that a subject living in one of the states would scarcely know whether he was on his head or his heels. Under the Constitution we give subjects political rights to enable the Parliament to legislate with regard to the suffrage, and pending that legislation we give the qualification of electors. It is that qualification of electors which is really the sum and substance of political liberty, and we have defined that. If we are going to give the Federal Parliament power to legislate as it pleases with regard to Commonwealth citizenship, not having defined it, we may be enabling the Parliament to pass legislation that would really defeat all the principles inserted elsewhere in the Constitution, and, in fact, to play ducks and drakes with it. That is not what is meant by the term "Trust the Federal Parliament."

Mr. HIGGINS. -

You give the Federal Parliament power to naturalize.

Mr. BARTON. -

Yes; and in doing that we give them power to make persons subjects of the British Empire. Have we not done enough? We allow them to naturalize aliens. That is a power which, with the consent of the Imperial authority, has been carried into legislation by the various colonies, and, of course, we cannot do less for the Commonwealth than we have done for the colonies.

Mr. KINGSTON. -

Such legislation is only good within the limits of each state.

Mr. BARTON. -

Yes; and here we have a totally different position, because the actual right which a person has as a British subject—the right of personal liberty and protection under the laws—is secured by being a citizen of the states. It must be recollected that the ordinary rights of liberty and protection by the
laws are not among the subjects confided to the Commonwealth. The administration of the laws regarding property and personal liberty is still left with the states. We do not propose to interfere with them in this Constitution. We leave that amongst the reserved powers of the states, and, therefore, having done nothing to make insecure the rights of property and the rights of liberty which at present exist in the states, and having also said that the political rights exercisable in the states are to be exercisable also in the Commonwealth in the election of representatives, we have done all that is necessary. It is better to rest there than to plunge ourselves into what may be a sea of difficulties. We do not know to what extent a power like this may be exercised, and we should pause before we take any such leap in the dark.

Dr. QUICK (Victoria). -

I understood that, under the Federal Constitution we are creating, we would have a dual citizenship, not only a citizenship of the states, but also a citizenship of the higher political organization—that of the Commonwealth. It seems now, from what the Hon. Mr. Barton has said, that we are not to have that dual citizenship; we are to have only a citizenship of the states.

Mr. BARTON. -

I did not say that. I say that our real status is as subjects, and that we are all alike subjects of the British Crown.

Dr. QUICK. -

If we are to have a citizenship of the Commonwealth higher, more comprehensive, and nobler than that of the states, I would ask why is it not implanted in the Constitution? Mr. Barton was not present when I made my remarks in proposing the clause. I then-anticipated the point he has raised as to the position we occupy as subjects of the British Empire. I took occasion to indicate that in creating a federal citizenship, and in defining the qualifications of that federal citizenship, we were not in any way interfering with our position as subjects of the British Empire. I took occasion to indicate that in creating a federal citizenship, and in defining the qualifications of that federal citizenship, we were not in any way interfering with our position as subjects of the British Empire. It would be beyond the scope of the Constitution to do that. We might be citizens of a city, citizens of a colony, or citizens of a Commonwealth, but we would still be, subjects of the Queen. I see therefore nothing unconstitutional, nothing contrary to our instincts as British subjects, in proposing to place power in this Constitution to enable the Federal Parliament to deal with the question of federal citizenship. An objection has been raised in various quarters—as by the honorable and learned members (Mr. O'Connor and Mr. Wise)—to the effect that we ought to define federal citizenship in the
Constitution itself. I have considered this matter very carefully, and it has seemed to me that it would be most difficult and invidious, if not almost impossible, to frame a satisfactory definition. There is in the Constitution of the United States of America a cast-iron definition of citizenship, which has been found to be absolutely unworkable, because, among other things, it says that a citizen of the United States shall be a natural-born or naturalized citizen within the jurisdiction of the United States, and it has been found that that excludes the children of citizens born outside the limits of this jurisdiction. That shows the danger of attempting definitions, and although I have placed a propose

Mr. WALKER. -

Is not a citizen of the state, ipso facto, a citizen of the Commonwealth?

Dr. QUICK. -

It required the 14th amendment to place that beyond doubt in the American Constitution. In the proposition which I have put before the Convention I do not desire at all to interfere with state citizenship. I leave that entirely to the states. In my opinion, it is in no way desirable to trench upon state citizenship. But I think we are entitled to place in the Constitution a provision empowering the Federal Parliament to deal with the incidence of Commonwealth citizenship, its mode of acquisition, the status it confers, and the manner in which it may be lost. It has been suggested by, I think, the honorable and learned member (Mr. Glynn), that a definition of citizenship should be accompanied by something in the nature of inter-state citizenship, that is, that the citizens of one state should be entitled to all the privileges and immunities of the citizens of another state. But I would point out that such a provision would be inconsistent with an amendment already placed in the Constitution. We have already eliminated interstate citizenship, upon the ground that it might interfere with the right of each state to impose disabilities and disqualifications upon certain races. I am sure that the Federal Parliament would not be able, under the provision which I wish to insert, to legislate in regard to state citizenship or to in any way enlarge the Commonwealth rights or privileges at the expense of the rights of the states. The power of the Federal Parliament could only be exercised in regard to the privileges and rights contemplated by the Constitution itself. I may point out roughly some of the rights which are contemplated by the Constitution. There is the right to assert any claim which a citizen might have upon the Government, the right to transact any business he might have, the right to seek the protection of the Government, to share its offices, to engage in its administrative functions, to have free access to the
ports of the Commonwealth and to its public offices and courts of justice, to use its navigable waters, and to all the privileges and benefits secured by the Commonwealth for its citizens by treaties with foreign nations. In my earlier remarks I did not enumerate more than the last of these rights. When the Federal Government is negotiating with foreign nations, say for treaties of commerce, and certain rights and privileges are obtained thereby for the citizens of the Commonwealth, it ought to be able to point to a definition of Commonwealth citizenship. I am amazed at the force and the consistency with which technical objections are being raised against every proposal calculated to improve and popularize the Constitution. One would imagine that this was to be a mere lawyers Constitution, and that everything that seems to go beyond mere legal literalism must be rejected.

Again, I ask are we to have a Commonwealth citizenship? If we are, why is it not to be implanted in the Constitution? Why is it to be merely a legal inference? It is all nonsense to say that the Commonwealth Parliament is going to cut down and reduce the state citizenship. It will only deal with federal citizenship. Why should not the Federal Parliament be able to deprive any person who broke the Commonwealth laws of the Commonwealth citizenship? Would not that be within the functions and jurisdiction of the Commonwealth Parliament? I think that it would be strictly within its functions. If we are not to provide for this Commonwealth citizenship, what will be the position of those residing in territories which may hereafter be created? The honorable member (Mr. Walker), among others, is desirous that a certain portion of territory shall be set apart as within the exclusive jurisdiction of the Commonwealth for a federal capital. That is a view which I share with him. But I ask what will be the civic status of the inhabitants of the federal territory? I hope that the provision which I have brought forward will be dealt with by the Convention, not from a strictly legal aspect, but from the broad and comprehensive point of view from which we have been accustomed to deal with it when upon the public platform we have informed our people that by federation they will be placed upon a higher plane of citizenship. I would ask is a provision of this kind to be rejected merely upon technical grounds?

Mr. SYMON (South Australia). -

I think we ought to protest against its being suggested that any of us are opposing this provision upon technical grounds. This is a very much larger question, and it is a question deserving of all the earnestness and energy which the honorable member (Dr. Quick) has thrown into its discussion. But when he submits as a reason for carrying the provision that it should
not be dealt with as a lawyers' question, and one dealing with the rigid legal interpretation of the Constitution, I venture, with great respect and emphasis, to dissent from his position. This is a matter which goes to the very foundation of the Constitution which we are framing. At the very root of the proposed Union is the invitation to the citizens of the states to join the Federation, and to obtain, as their reward, citizenship of the Commonwealth. My honorable and learned friend has enumerated a number of things which might or might not be done under this provision. Will he tell me whether it is not a fact that the Federal Parliament could, under this provision, take away the citizenship which might be obtained by joining the Union?

Mr. ISAACS. -

Under other clauses of the Constitution, the Federal Parliament could take away the franchise from any one.

Mr. SYMON. -

The honorable and learned member is now dealing with another matter. Would not the provision which is now before us confer upon the Federal Parliament the power to take away a portion of this dual citizenship, with which the honorable and learned member (Dr. Quick) has so eloquently dealt? If that is the case, what this Convention is asked to do is to hand over to the Federal Parliament the power, whether exercised or not, of taking away from us that citizenship in the Commonwealth which we acquire by joining the Union. I am not going to put that in the power of any one, and if it is put in the power of the Federal Parliament, then I should feel that it was a very serious blot on the Constitution, and a very strong reason why it should not be accepted. It is not a lawyers' question; it is a question of whether any one of British blood who is entitled to become a citizen of the Commonwealth is to run the risk—it may be a small risk—of having that taken away or diminished by the Federal Parliament! When we declare—"Trust the Parliament," I am willing to do it in everything which concerns the working out of this Constitution, but I am not prepared to trust the Federal Parliament or anybody to take away that which is a leading inducement for joining the Union.

Question—That the proposed new sub-section (31A) be inserted—put.

The committee divided—
Ayes .... ... 15
Noes .... ... 21
Majority against Dr. Quick's amendment ... ... 6
AYES.
Berry, Sir G. Howe, J.H.
The next question is Mr. Higgins' proposed new clause in lieu of clause 109, which was struck out.

Mr. HIGGINS (Victoria). -

I was not aware that this clause would come on so soon; but, inasmuch as I have spoken to the words in the preamble so recently, I think I shall be able to save honorable members the infliction of a long speech on this subject. My idea is to make it clear beyond doubt that the powers which the states individually have of making such laws as they like with regard to religion shall remain undisturbed and unbroken, and to make it clear that in framing this Constitution there is no intention whatever to give to the Federal Parliament the power to interfere in these matters. My object is to leave the reserved rights to the states where they are, to leave the existing law as it is; and just as each state can make its own factory laws, or its own laws as to the hours of labour, so each state should be at full liberty to
make such laws as it thinks fit in regard to Sunday or any other day of rest. I simply want to leave things as they are. I do not want to interfere with any right the state has. I merely want to make it clear that, having inserted in the preamble of the Constitution certain words which, 'according to United States precedents, would involve certain inferential powers, there is no intention on the part of the Convention to confer even inferentially these powers on the Federal Parliament. I want, in this respect, as I said, to preserve the states' rights intact, but upon my former amendment I went too far, according to the views of the members of the Convention, and, therefore, I am only going to the extent of making it clear that the Commonwealth Parliament is to have no such power. I went too far on my former amendment, inasmuch as I said that neither a state nor the Commonwealth was to have this power. I did that because the then existing clause 109 only referred to a state, and provided that-

A state shall not make any law prohibiting the free exercise of any religion.

Well, I did not know that the Convention was willing to go so far as it has gone, and strike out the whole of that clause as to the state. However, it has done so. I beg to move the insertion of the following new clause to replace clause 109 already struck out:-

The Commonwealth shall not make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

I may state that most of this clause, with regard to the making of laws, is already in the American Constitution, either in the original Constitution or by way of an amendment of the Constitution. In the Constitution of the United States there is a provision that the Federal Parliament is not to make any law prohibiting the free exercise of any religion, and there is also a clause, the very first amendment of the Constitution, that the Federal Parliament is not to make any law for the establishment of any religion. In the original Constitution you will find also a clause to the effect that there is to be no religious test required as a qualification for any post or office. The only difficulty, therefore, is in respect of these words about imposing religious observances, and that part, as I have already indicated this morning, is rendered necessary by the inclusion in the preamble of our Constitution of words which they have not got in the America
will interfere with the power the states now have. Therefore, I have moved this new clause.

Mr. REID (New South Wales). -

If my honorable friend could point out in the Bill any subject allied with religion which would make it necessary to put such a clause as this in the Bill, I would vote with him.

Mr. HIGGINS. -

The preamble.

Mr. REID. -

That can only be amended by reference to the people.

Mr. BARTON (New South Wales). -

I feel some hesitation about voting for this proposed new clause. It was proposed originally in clause 109 that-

A state shall not make any law prohibiting the free exercise of any religion.

Well, that clause has been struck out. It was decided that we should not prevent any state from making a law prohibiting the free exercise of any religion. That was done partly on the ground that we did not desire to interfere unnecessarily with the states. But clause 109 was struck out on the more solid ground, that there was no likelihood of any state ever prohibiting the free exercise of any religion—that there had been nothing of the kind in the past, and that there was not the slightest reason to expect the occurrence of any such thing in the future; that the more the institutions under which we live expanded, the less likelihood there was of any religious persecution of any kind. Now, if we hold that view with regard to the state, why should we not hold it in regard to the Commonwealth? If that is the reason which makes us strike out a clause prohibiting any state from making any law prohibiting the free exercise of any religion, why should we not hold that as a valid and sufficient reason against inserting any clause prohibiting the Commonwealth from making any law prohibiting the free exercise of any religion? If we feel secure from religious persecution under the Parliaments and the Governments of the states, what reason have we to fear that we shall be subject to religious persecution under the Federal Parliament, which it is supposed will be superior in character to the Parliaments of the states? If the fear does not exist in the one case—and we think so little of it as to cause us to strike out clause 9, as we did—why should we entertain the same fear with regard to the Commonwealth any more than we entertain it in regard to the states?

Mr. WISE. -

You might say the same thing as to Congress.

Mr. BARTON. -
Certainly there is a decision in the United States to the effect that it is a Christian nation. What does that decision amount to? Is it not really a decision based on the fact that the institutions of England, under the common law, are Christian institutions, which, so far as they are not interfered with by any written Constitution, belong to citizens of the United States, as having been brought over by them as British subjects, and kept by them from that day to this? If that is the ground of the American decision, which I suspect it is, the same thing applies in some of these colonies. Decisions have been given to the effect that there colonies are Christian communities. I remember a case in which that doctrine was expounded at length by the late Chief Justice Martin, of New South Wales. Now, if the colonies are Christian communities, the common law of England will apply to the Commonwealth, except so far as this Constitution alters that law; and if it is part of the common law of England that we shall be regarded as a Christian community, what fear is there of our suffering any dangers of the kind indicated in the amendment, simply because we are a Christian community? I do not see any danger of the kind to be anticipated. I think that because we are a Christian community we ought to have advanced so much since the days of State aid and the days of making a law for the establishment of a religion, since the days for imposing religious observances or exacting a religious test as a qualification for any office of the State, as to render any such dangers practically impossible, and we will be going a little too far if we attempt to load this Constitution with a provision for dangers which are practically nonexistent.

Mr. HIGGINS. -
That is the question—are those dangers non-existent?

Mr. BARTON. -
I do not think the fact that we may be held by law to be a Christian community is any reason for us to anticipate that there will be any longer any fear of a reign of Christian persecution—any fear that there will be any remnant of the old ideas which have caused so much trouble in other ages. The whole of the advancement in English-speaking communities, under English laws and English institutions, has shown a less and less inclination to pass laws for imposing religious tests, or exacting religious observances, or to maintain any religion. We have not done that in Australia. We have abolished state religion in all these colonies; we have wiped out every religious test, and we propose now to establish a Government and a Parliament which will be at least as enlightened as the Governments and Parliaments which prevail in various states; therefore, what is the practical
fear against which we are fighting? That is the difficulty I have in relation
to this proposed clause. If I thought there was any-the least-probability or
possibility, taking into consideration the advancement of liberal and
tolerant ideas that is constantly going on of any of these various
communities utterly and entirely retracing its steps, I might be with the
honorable member. If we, in these communities in which we live, have no
right whatever to anticipate a return of methods which were practised
under a different state or Constitution, under a less liberal measure of
progress and advancement; if, as this progress goes on, the rights of
citizenship are more respected; if the divorce between Church and State
becomes more pronounced; if we have no fear of a recurrence of either the
ideas or the methods of former days with respect to these colonies, then I
do suggest that in framing a Constitution for the Commonwealth of
Australia, which we expect to make at least as enlightened, and which we
expect to be administered with as much intellectuality as any of the other
Constitutions, we are not going to entertain fears in respect of the
Commonwealth which we will not attempt to entertain with respect to any
one of the states. Now, we have shown that we do not intend these words
to apply to our states by striking out clause 109. That might be a provision
that might be held to be too express in its terms, because there may be
practices in various religions which are believed in by persons who may
enter into the Commonwealth belonging to other races, which practices
would be totally abhorrent to the ideas, not only to any Christian, but to
any civilized community; and inasmuch as the Commonwealth is armed
with the power of legislation in regard to immigration and emigration, and
with regard to naturalization, and also with regard to the making of special
laws for any race, except the aboriginal races belonging to any state-
inasmuch as we have all these provisions under which it would be an
advisable thing that the Commonwealth, under its regulative power, should
prevent any practices from taking place which are abhorrent to the ideas of
humanity and justice of the community; and inasmuch as it is a reasonable
thing that these outrages on humanity and justice (if they ever occur)
should be prohibited by the Commonwealth, it would be a dangerous thing,
perhaps, to place in the Bill a provision which would take out
of their hands the power of preventing any such practices.

Mr. HIGGINS. -
Do you think that the Commonwealth has that power under the existing
Bill?

Mr. BARTON. -
I am not sure that it has not. I am not sure that it has not power to prevent
anything that may seem an inhuman practice by way of religious rite.

Mr. HIGGINS. -

I want to leave such matters to the states.

Mr. BARTON. -

But inasmuch as we have given to the Commonwealth the power of regulating the entry of that class of persons, and the power of regulating them when they have entered, is it not desirable that in that process there shall be left to the Commonwealth power of repressing any such practices in the name of religion as I have indicated? If it be necessary that there should be some regulative power left to the Commonwealth, then the argument that we should leave the matter to the states does not apply, because we give such a power to the Commonwealth.

Mr. HIGGINS. -

Then all crimes should be left to the Commonwealth?

Mr. BARTON. -

No; because you do not give any power with regard to punishing crime to the Commonwealth, but you do give power to the Commonwealth to make special laws as to alien races; and the moment you do that the power of making such laws does not remain in the hands of the states; and if you place in the hands of the Commonwealth the power to prevent such practices as I have described you should not defeat that regulative power of the Commonwealth. I do not think that that applies at all, however, to any power of regulating the lives and proceedings of citizens, because we do not give any such power to the Commonwealth, whilst we do give the Commonwealth power with regard to alien races; and having given that power, we should take care not to take away an incident of it which it may be necessary for the Commonwealth to use by way of regulation. I have had great hesitation about this matter, but I think I shall be prevented from voting for the first part; and as to establishing any religion, that is so absolutely out of the question, so entirely not to be expected-

Mr. SYMON. -

It is part of the unwritten law of the Constitution that a religion shall not be established.

Mr. BARTON. -

It is so foreign to the whole idea of the Constitution that we have no right to expect it; and, as my honorable and learned friend (Mr. Symon) suggests by his interruption, I do not think, whatever may be the result of any American case, that any such case can be stretched for a moment in such a way as to give Congress power of passing any law to establish any religion. I do not suppose that there is a man in Congress who would suggest it; and I have no doubt that the same court that decided that the
community was a Christian community would say that the United States Congress had no power to establish any religion. The only part of the matter upon which I have had the least doubt (having become more confirmed in my opinion since I have considered the matter further) is the latter part of the proposal, which is that no religious test shall be required for any place of public trust in the Commonwealth. I do not think that any such test would be required, and the only question is whether it is possible. I have come to the conclusion that it is not possible. Therefore, my disposition is to vote against the whole clause.

Mr. REID. -
I suppose that money could not be paid to any church under this Constitution?

Mr. BARTON. -
No; you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.

Mr. WISE (New South Wales). -
I can conceive of no matter more fit for state control than that of religious observance, and, therefore, I am utterly unable to follow the leader of the Convention (Mr. Barton) in his contention. There should not be any opening for doubt as to the power of the Commonwealth to exercise control over any religion of the state. I wish I could share Mr. Barton's optimistic views as to the death of the spirit of religious persecution. But we have seen in our own time a recrudescence of that evil demon, which, I fear, is only scotched and not killed. At any rate, the period during which we have enjoyed religious liberty is not long enough for us to be able to say with confidence that there will be no swinging back of the pendulum to the spirit of the times from which we have only recently emerged. Consequently there is some reason for the alarms which have been expressed by a very large body of people, who have not been represented in this Convention, by long petitions, but who none the less are entitled to be considered when we are framing this Constitution, and who, rightly or wrongly—for my own part, I believe rather more wrongly than rightly—believe that the agitation for the insertion in the preamble of the words which we have i

Mr. HIGGINS. -
We had 38,000 signatures to a petition from the people in Victoria against the inclusion of these words in the preamble.

Mr. WISE. -
I am very glad to hear it. That strengthens my argument. if 38,000
citizens of Victoria sent a petition against the inclusion of these words, not because they disapproved of the words in themselves, but because I suppose they were afraid that the inclusion of them would confer upon the Commonwealth some power to legislate with regard to religious observances, I say that fears of that sort should be respected. I know a considerable body of people in New South Wales, who, perhaps, have not made themselves heard in this Convention by petitions, who are actuated by the same alarms. Now, why should we not meet the scruples of these gentlemen as we met the scruples and feelings of another class of the community, when we put the words to, which I have alluded into the preamble? We none of us here believe in our hearts that these words added much to the preamble, but we put them in, as we thought, because they were a just satisfaction of a, certain sentiment. May we not support this on the same ground? May we not say:"We will clear away once and for ever any doubts which you may feel by making it clear that all matters of religious observance and control over religion shall be left to the states to which they naturally belong." Is the fear which is expressed groundless? If it had not been for the speech of Mr. Higgins this morning we might say that the fear was absolutely groundless, and that it was impossible that the Commonwealth should exercise, or seek the power to exercise, any control over religious observances. Yet, when we have the example of the United States, not six years old, I do not think the leader of the Convention can carry the force of conviction to us here, when he asks us to believe that there is no fear whatever of the Commonwealth exercising a power which we cannot believe would be exercised by any state. Supposing the Commonwealth is swayed by some popular feeling, such as swayed Congress in 1892, and some law were passed, say, dealing with Sunday observance, which might reflect the wishes of the majority of the people, but which would be most distasteful and persecuting to a minority. In a matter of religious feeling, a minority are entitled to the utmost respect and should have their feelings guarded.

Mr. FRASER. -

Is not the majority entitled to respect?

Mr. WISE. -

Certainly.

Mr. FRASER. -

A very small minority might shock the great majority of the people.

Mr. WISE. -

Let every one follow his own religious observances without shocking anybody, and do not let him impose his rule on anybody else. I am pointing
out that when we have got that example before us, we cannot shut our eyes
to the fact that there is something in the argument which has been raised.
When we find that the American Constitution took that power, without the
words in the preamble which we have inserted to-day-without even the
support of that contention which we have given by putting these words in
the preamble-we ought to take care to put plainly in the forefront of the
Constitution the provision that the Commonwealth shall not interfere in
any way with the rights of the states to regulate religious matters. How can
it be said that the observance of Sunday in Northern Queensland would
shock the people of Victoria? There is no doubt the observance of Sunday
is largely a matter of climate, and a great many religious observances are
matters of climate. It might be that one rule should prevail in the tropical
portion of this country, and another rule in the south. It ought to be made
perfectly clear that the opinions of a large number of persons in one portion
of the Commonwealth, as to adopting a certain method of observance of
Sunday, shall not prevail in other states, and that those persons shall not
have it in their power to impose a restraint on people in other districts, and
that they shall not be able to impose a uniform method of Sunday
observance. There are many other questions of a similar kind that might be
referred to. What I fear is that we have not yet any sufficient security
against a revival of the feeling which has existed for centuries, but which
has not been able to make itself felt during the last 50 or 60 years in
British-speaking countries, but which I believe, still exists in the hearts of
hundreds and thousands of men only waiting for an opportunity to assert
itself. If we put in Mr. Higgins' amendment we shall remove those fears
and establish a sound principle, and, I believe, will commend the
Constitution to a very large number of those who at present are doubtful as
to its effects.

Dr. COCKBURN (South Australia). -

May I ask the honorable member who moved the amendment whether
there is any other power the exercise of which is forbidden to the
Commonwealth?

Mr. HIGGINS. -

I do not think there is an express prohibition.

Dr. COCKBURN. -

I think there is not. It seems to me that by making one exception we are
introducing a whole atmosphere of ambiguities; that is to say, the
Commonwealth at present can only exercise such powers as are explicitly
vested in it. If, in addition to that, we forbid the exercise of some power,
we leave an ambiguous area between the powers specifically vested in the
Commonwealth and the powers forbidden. That opens out a whole circle of
ambiguity in this respect.

Mr. HIGGINS. -

I think I was wrong in what I just now stated; there is a prohibition with regard to the states in clause 108, and there was a prohibition as to the states in clause 109.

Dr. COCKBURN. -

There are many prohibitions with regard to the states. I am very much in sympathy with Mr. Higgins, and if he can point out any case of this kind I would go with him.

Mr. OCONNOR. -

Clause 109 was a prohibition, but it has been struck out.

Dr. COCKBURN. -

It seems to me that by passing this provision we shall open the door to the possibility of doubt as to the Commonwealth having more powers than we have vested in it.

Mr. WISE. -

There is a prohibition with regard to interference with trade and commerce.

Dr. COCKBURN. -

That is a limitation of power which is wholly vested and explicitly placed in the hands of the Commonwealth. It is simply a limitation of the exercise of its executive power, but this is of a different description. It seems to me that by introducing this clause we shall run the risk of indicating that there is another sphere of powers which, though not specified as belonging to the Commonwealth, are not forbidden.

Mr. HIGGINS. -

The 117th clause says that a new state shall not be formed by the separation of territory from a state without the consent of the Parliament of that state. That forbids even the Federal Parliament forming a new state.

Mr. WISE. -

Clause 95 provides that preferences shall not be given.

Dr. COCKBURN. -

That is a limitation of the executive power, and none of the instances advanced have satisfied me on the point I have endeavoured to lay before honorable members. I see clearly in my own mind that an exception in this respect will throw some doubt as to the whole scope of the powers of the Commonwealth. By inserting these words, it may be decided that there are some powers in the hands of the Commonwealth which are not explicitly recognised and stated.
Mr. FRASER (Victoria). -
I entirely agree with our leader in this matter. I do not see that there is any necessity for this clause. We are now a homogeneous people, and the safer plan is to leave us so.

Mr. HIGGINS. -
That is what we want to do.

Mr. FRASER. -
I am not so very sure about that. If you pass this date all sorts of extraordinary practices may be resorted to that would, as I have already interjected, shock the whole community.

Mr. WISE. -
Suppose the Federal Parliament passes a law allowing Sunday newspapers, would the Victorians like that?

Mr. ISAACS. -
They would have no jurisdiction.

Mr. WISE. -
Yes, they would, if this is struck out.

Mr. ISAACS. -
Under what clause?

Mr. WISE. -
Under the same clause as in America.

Mr. FRASER. -
If the Federal Parliament chooses to act in this matter of Sunday newspapers, the people will be cognisant of all that is done.

Mr. WISE. -
We do not think them wrong in New South Wales.

Mr. FRASER. -
The probability is that a majority of the people of New South Wales think that it is wrong to allow Sunday newspapers, but they have not the courage to put them down. I believe that is the real fact. I believe that the public men of New South Wales, have not the courage to tackle them. That is about the answer to that interjection. If the public men have not courage to deal with these matters, of course the public will follow them in various devious paths. I do not see the necessity for this clause. I hope that we are not going to be driven to accept all sorts of extraordinary proposals simply because of something that has taken place in the United States. We are able to take care of ourselves, and I think the clause would do more harm than good.

Sir EDWARD BRADDON. -
What harm would it do?

Mr. FRASER. -
It might offend the susceptibilities of a homogeneous people, and in that way cause trouble and difficulty. There would be no danger in omitting the clause, but there may be danger in putting it in.

Mr. SYMON (South Australia). -

I beg to move, as an amendment—

That all the words down to "and" be omitted, with a view to the insertion in lieu thereof of the following:—"Nothing in this Constitution shall be held to empower the Commonwealth to require any religious test as a qualification for any office of public trust under the Commonwealth."

I do not oppose the earlier part of the clause on the same ground as I put before, because I am satisfied in regard to those matters, to which attention was directed when clause 109 was under discussion, that under the ordinary operation of the common law any inhumanities and cruelties could be effectually stopped.

Mr. HIGGINS. -

By which Parliament?

Mr. SYMON. -

By either the state or the Commonwealth Parliament. I mention that to show that I do not change my view that that part of the clause is objectionable. But I hold strongly that in consequence of the insertion of the new words in the preamble it is desirable that some provision should be made to make it clear that these words are not to overspread the whole Constitution.

Mr. ISAACS. -

Would not your view be carried out by leaving the residuum of the clause just as it stands?

Mr. SYMON. -

I should have no objection to that, but I think it would be better to say that the Constitution shall empower the Commonwealth to impose any religious test. I sympathize with Mr. Higgins in his fear that the insertion of the words we put in the preamble might lead to an impression amongst a larger or smaller section of the community that it would be possible to impose some religious test, and that the sentiment conveyed by the words might overspread the Constitution in some way. My honorable friend desires that there should be something in the nature of a counterblast, for the satisfaction of those who may entertain that apprehension.

Mr. FRASER. -

There is no necessity for it.

Mr. SYMON. -

There is great force in what Mr. Fraser says, but there are a number of us
who, for reasons which do not militate against our deep reverence and the deep faith that may be in us, think that the words inserted in the preamble are, at all events, open to misconstruction on the part of a larger or smaller section of the community. I do not wish to enter into the subject, but I felt that, and it is with a view of getting rid of any apprehension of that kind, and of securing every vote possible for this. Bill, that I think it well to yield to the view that has been expressed so forcibly by Mr. Higgins.

Mr. FRASER. -

That is the only argument in its favour.

Mr. SYMON. -

It is a strong argument. We have inserted certain words in the preamble, and we should put in as a solatium, if you like, to those holding opinions in opposition to these words, something else on which the may rely.

Mr. DOBSON. -

Would not the amendment leave it open to the Federal Parliament to dictate to any state that it should not open its picture galleries and museums on Sunday?

Mr. SYMON. -

There, is no power under the Constitution that would enable the Federal Parliament to do that. I am satisfied that it is embodied in the Constitution as a part of the unwritten law that no church establishment shall prevail, and that religious freedom shall be observed.

Mr. KINGSTON (South Australia). -

I shall support the amendment in the form in which it has been proposed by Mr. Higgins. There is a great deal of force in the suggestion that, in view of the amendment in the preamble, we should make a declaration of this description in the broadest possible terms, for the purpose of allaying any apprehension that might otherwise be entertained on the subject. As the matter stands at present, the states have full power, if they so desire, to legislate. The Commonwealth will, undoubtedly, also have power to legislate in respect of a matter of this description, so far as the affairs of the people of any race for whom it is necessary to adopt special legislation are concerned. That power is expressly given to the Federal Parliament, and I have no doubt whatever that in the exercise of it a law might be passed concerning special races, and prohibiting the free exercise of their religion, or imposing something in the nature of a religious test. I do not think that power ought to be given to the Federal Parliament. It is a matter of purely domestic concern, with which the states are particularly qualified to deal. If we carry the amendment in the way in which it is now proposed, we shall secure to the states the power which
they at present possess, and which they can be trusted to exercise with an intimate knowledge of all the local circumstances. We shall prevent any unnecessary interference by the Federal Parliament in a matter of domestic concern, and we shall allay those fears which have been referred to by various honorable members. I trust, therefore, the amendment will be agreed to as proposed.

Mr. LYNE (New South Wales). -

I voted this morning for the amendment of the preamble moved by the honorable member (Mr. Glynn), but in speaking upon that amendment I said that I had been struck by the remarks of the honorable member (Mr. Higgins), though I did not see how the amendment then before the committee could bring about the results he seemed to think possible. The amendment which the honorable member is now moving will, however, get rid of the possibility of danger. As was said by the honorable and learned member (Mr. Wise), Sunday observance is to a very large extent a matter of climate. In New South Wales we open our museums, our art gallery, and other places of public resort upon Sundays, though I think that in other colonies that is not allowed. It would be hard, however, if a state in the northern part of the continent, where, in consequence of the extremes of the climate, the people require some recreation upon Sunday were prevented by the Commonwealth from doing what we have done. Then, take the case of Sunday newspapers. We in New South Wales do not object to the publication of newspapers upon Sunday, as the honorable member (Mr. Fraser) would object here.

Mr. FRASER. -

I did not say so.

Mr. LYNE. -

That was the conclusion I drew from the honorable member's interjections. However, that is beside the question. What I really want to impress upon honorable members is that it is not a wise thing, where you have a number of states to deal with, to allow the Commonwealth authority to decide how Sunday should be observed. The Commonwealth authority might have that power if this provision were not inserted in the Bill. To my mind, if the proposal of the honorable member (Mr. Symon) were carried, you might as well knock out the whole clause, because it takes the kernel out of it. I hope that the Convention will carry the proposal of the honorable member (Mr. Higgins) as it stands.

Mr. WISE (New South Wales). -

I should like, in two sentences, to put forward a matter to which I invite the attention of the honorable and learned member (Mr. Symon). If the arguments which prevailed in, the Supreme Court of the United States in
1892 were to prevail in the Commonwealth Supreme Court, the Commonwealth authority would have an implied power to administer the common law in respect to the observances of Christianity. Of course, I may say at once that I cannot understand the decision of the United States court.

Mr. HIGGINS. -

Still it exists.

Mr. WISE. -

Yes. Unless the amendment of the honorable member (Mr. Higgins) were carried, the Commonwealth authority might, under the ruling of the Supreme Court of the Commonwealth, have this implied power. For this reason, I appeal to the honorable and learned member (Mr. Symon) to withdraw his amendment, so that we may take a vote upon the clause as it stands.

Mr. FRASER. -

The decision of the Supreme Court might be the opposite to what the honorable and learned member proposes.

Mr. WISE. -

Of course it might.

Mr. FRASER. -

Why should we interfere at all?

Mr. WISE. -

That is what I think. I would leave it to each state to do as it pleases in regard to Sunday observance, but I would deprive the Parliament of the right to make any laws at all upon this subject.

Mr. OCONNOR (New South Wales). -

I hope that the honorable and learned member (Mr. Symon) will not withdraw his amendment. I intend to support it. It appears to me the only provision before us for which there is any justification. I do not know that it is absolutely necessary, but I think that it would be as well for us to have it. With regard to the provision suggested by the honorable member (Mr. Higgins), I think that it would tend to run us into danger rather than, as the honorable member wishes, to enable us to avoid it. Upon the face of the Constitution the Commonwealth has certainly no power whatever to deal with religion, either directly or indirectly.

Mr. HIGGINS. -

Will you explain why they have these words in the first amendment of the American Constitution?

Mr. OCONNOR. -

The provisions of the American Constitution in regard to the powers
handed over to the Federal Parliament are not nearly so definite as the provisions of our Constitution.

Mr. HIGGINS. -

The American Constitution has no recital in the preamble such as we have just inserted in our Constitution.

Mr. OCONNOR. -

Yes. But the amendment of the American Constitution to which the honorable and learned member refers was rendered necessary by the fact that there is not the definite division of powers in that Constitution that we have in our Constitution. I cannot imagine that clause 52 gives any ground from which it could be argued that the Federal Parliament has the right to interfere in regard to the exercise of religion, or to deal with religion in any way.

Mr. KINGSTON. -

Except in regard to special races.

Mr. OCONNOR. -

Of course, in regard to special races the Federal Parliament could make any laws it liked, and I think it very desirable that it should have that power.

Mr. KINGSTON. -

Would it not be better to intrust this power to the states?

Mr. OCONNOR. -

No, I do not think so. I think that the power to deal with alien races is given as an exclusive power.

Mr. KINGSTON. -

It was put back.

Mr. OCONNOR. -

Directly it is exercised it becomes an exclusive power, and there is no doubt that it will be exercised. By putting into the Constitution words prohibiting the Commonwealth Parliament from making certain specified laws you create the implication that the Parliament has power to deal in other respects with religious observances. If you looked at the prohibition containing this provision, you will find that it deals expressly with Sunday observance, with the exercise of religion, with the establishment of religion, and with the imposition of religious observances. But it might very well be argued that the closing of places of public amusement on Sundays does not rest upon any of these grounds; and if you inserted a provision of this kind in the Constitution, there would be the strongest possible implication that the Federal Parliament would have the power to legislate in regard to social questions which had a religious aspect other than those expressly excluded from its jurisdiction by this provision. That
is the danger you are likely to run into by putting this limitation in the Constitution. The Commonwealth Parliament will have no right whatever to interfere with these matters unless by some implication arising out of a provision of this kind. With regard to the subject of the amendment of the honorable and learned member (Mr. Symon), there is no doubt that the Commonwealth might have the right to impose any form of oath which it thought fit as a qualification of office. I am quite willing however, that some such provision as the honorable and learned member has suggested should be inserted in the Constitution, so that it would not be possible for the Commonwealth to require a religious test.

Mr. FRASER (Victoria). -

I think that if we give the right to an infinitesimal minority to come here and indulge in extraordinary practices, under the pretence that this is a new religion, we may have all the theatres and all the music-halls in Australia open on Sundays. If that is possible we ought to do what we can to provide against it.

Mr. HIGGINS (Victoria). -

I want if I can to recommend the Commonwealth Bill and get it carried. But why should we be faced with this difficulty? You have put in the preamble a religious recital which is not in the Constitution of the United States of America, but you have not put in the safeguard against religious intolerance which they have there. I ask honorable members how I shall face that difficulty? There is a grave suspicion evidenced by what I said that there were 36,000 distinct signatures upon this very point. I do not think it is too much for me to say that we ought to reassure those persons. They may be wrong. It may be right, as my friend (Mr. Barton) says, that there is no power b

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

The committee divided-

Ayes ... ... ... 22
Noes ... ... ... 19

Majority against Mr. Symon's amendment... ... ... 3

AYES.

Berry, Sir G. Henry, J.
Braddon, Sir E.N.C. Holder, F.W.
Brown, N.J. Howe, J.H.
Clarke, M.J. Kingston, C.C.
Deakin, A. Lee Steere, Sir J.G.
Dobson, H. Lewis, N.E.
Douglas, A. Lyne, W.J.
Downer, Sir J.W. Trenwith, W.A.
Fysh, Sir P.O. Wise, B.R.
Glynn, P.M.
Gordon, J.H. Teller.
Henning, A.H. Higgins, H.B.
NOES.
Barton, E. Leake, G.
Briggs, H. Moore, W.
Brunker, J.N. O'Connor, R.E.
Cockburn, Dr. J.A. Peacock, A.J.
Crowder, F.T. Quick, Dr. J.
Forrest, Sir J. Venn, H.W.
Fraser, S. Walker, J.T.
Hackett, J.W. Zeal, Sir W.A.
Hassell, A.Y. Teller.
Isaacs, I.A. Symon, J.H.
Question so resolved in the affirmative.
Question-That Mr. Higgins' proposed new clause be inserted in the Bill-
put.
The committee divided-
Ayes ... ... ... 25
Noes ... ... ... 16
Majority for the clause 9
AYES.
Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Brown, N.J. Isaacs, I.A.
Clarke, M.J. Kingston, C.C.
Deakin, A. Lee Steere, Sir J.G.
Dobson, H. Lewis, N.E.
Douglas, A. Lyne, W.J.
Downer, Sir J.W. Moore, W.
Fysh, Sir P.O. Peacock, A.J.
Glynn, P.M. Trenwith, W.A.
Gordon, J.H. Wise, B.R.
Henning, A.H. Teller.
Henry, J. Higgins, H.B.
NOES.
Barton, E. Leake, G.
Briggs, H. O'Connor, R.E.
Brunker, J.N. Quick, Dr. J.
Cockburn, Dr. J.A. Venn, H.W.
Crowder, F.T. Walker, J.T.
Forrest, Sir J. Zeal, Sir W.A.
Fraser, S.
Hackett, J.W. Teller.
Hassell, A.Y. Symon, J.H.
Question so resolved in the affirmative.

Mr. BARTON (New South Wales). -
I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again.
The motion was agreed to.
Progress was then reported.
The Convention adjourned at two minutes to five o'clock p.m.
Thursday, 3rd March, 1898.

Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

The CHAIRMAN. -

The question with which the committee has to deal first is Mr. Symon's new clause, to take the place of clause 110, struck out.

Mr. SYMON (South Australia). -

I beg to move—

That the following new clause be inserted in place of clause 110, struck out:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

The clause which I now propose in substitution of clause 110, struck out, is the first paragraph of section 2 of the fourth article of the American Constitution. It provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. I would direct attention to clause 110 as it originally stood. Honorable members will recollect that there was an amendment upon that clause which was debated in this Convention the other day. That amendment was similar to an amendment which was inserted in the United States Constitution after the war, going further than the original provision, and dealing with a changed state of things. There was considerable debate in the Convention upon the clause, which eventually was struck out, as going a great deal too far beyond the necessities of the case which we were required to provide for. I will just point out in one word the difficulty that impressed me at the time the debate was proceeding, and led me to vote against clause 110. That clause was as follows:-

A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth nor shall a state deny to any person within its jurisdiction the equal protection of the laws.

The effect of the first part of that was that apparently the citizen of one state would not merely enjoy the privileges and immunities he would be entitled to as a citizen of the Commonwealth on entering another state, but would carry with him into that other state any special privileges and
immunities he enjoyed in the state from which he came: That was illustrated by several honorable members by interjections as to what would be the position if a member of one state who held immunity from military service, afterwards became a resident of another state where that immunity would still attach to him, although such an immunity did not attach to the ordinary residents of that state. That, of course, was a condition of things the consequences that might follow from which we could not foresee. Therefore, clause 110 was struck out. But in the course of the debate honorable members will recollect that it was pointed out that, unless some provision were inserted, there was a fear that a state might legislate so as to disqualify

the citizens of another state from holding land within its borders. The possibility of such an occurrence was very grave. In the course of the debate I used that illustration myself, and I confess that I recoil, if that possibility could exist, from the effect of my own argument. I think it would be imperative, if there were a risk of anything of that sort occurring, that we should introduce words into the Constitution so that no state could be at liberty, by laws of its own, to disqualify the citizens of another state from, for instance, holding land within its borders, or enjoying the same privileges and immunities as its own citizens would have.

Sir JOHN FORREST. —

What about coloured races?

Mr. SYMON. —

That matter is dealt with, my right honorable friend will see, under a special provision of this Constitution.

Sir JOHN FORREST. —

How would it be in a case of this sort: Suppose a Chinaman going to Western Australia from Victoria and claiming to have a miner's right?

Mr. SYMON. —

If he were a citizen of Victoria, and went to Western Australia, he would be entitled to the privileges and immunities of a citizen of Western Australia only. That is the effect of my amendment.

Sir JOHN FORREST. —

That is, he would be able to get a miner's right?

Mr. SYMON. —

If the law in my right honorable friend's colony permitted him to have it. Under clause 110 as it stood, we felt that the effect would be that if a citizen of Victoria went to Western Australia, although by the law there he might be disqualified from holding a miner's right, still he would take with him the privileges and immunities of a citizen of Victoria, and be entitled
to hold a miner's right. My amendment, however, is that all he would be able to enjoy in Western Australia would be the privileges and immunities of a citizen of Western Australia.

Sir JOHN FORREST. -
What is a citizen of Victoria?

Dr. QUICK. -
It is not defined.

Mr. SYMON. -
My honorable friend (Dr. Quick) has framed a definition to be inserted in clause 120A. I do not know whether he desires to move that, and if so whether he desires to modify or restrict it in any way. But if it would be convenient to the Convention that Dr. Quick's proposal should be considered in connexion with the amendment I am moving, I should be agreeable to that being done. At any rate, I do not think that there is any necessity for defining a citizen. Citizenship is another matter, but there would be no difficulty or confusion from the use of the word citizen in this clause. I only wish this matter to be put on a proper footing, and I should be quite willing for Dr. Quick's amendment to be discussed at the same time as my own; or, for the matter of that, I should be content to have the two amalgamated.

Mr. ISAACS. -
Would a Western Australian resident coming to Victoria have the right of voting whether he became a resident of Victoria or not?

Mr. SYMON. -
No.

Mr. ISAACS. -
Under this proposal, why not?

Mr. SYMON. -
Because that matter is specially provided for in another part of this Constitution. The state regulates the exercise of the franchise within its own limits, and that matter would be exempt from the operation of this provision.

Mr. ISAACS. -
Why? You say that the citizens of every state shall have the rights and privileges of the citizens of the federal states.

Mr. SYMON. -
No. In America the same provision is in operation. My honorable friend will see this provision word for word in the United States Constitution. My amendment is word for word the same as clause 1 of section 2 of Article 4 of the American Constitution, which provides that-
The citizens of each state shall be entitled to all privileges and
immunities of citizens in the several states.

That has been working in America for over 100 years without confusion. At any rate, there can be no doubt at all that a citizen going from one state to another state ought not to take with him or have recognised in that other state the privileges and immunities of the state from which he goes. That should not be the measure. The measure should be the privileges and immunities of the citizens of the state to which he goes. If they are less than he enjoyed before he must submit to them; if they are greater he gets additional advantages.

Sir JOHN FORREST. -

Our laws only apply to the Asiatic alien, and he would not be affected by this, I have no doubt.

Mr. SYMON. -

A person coming from another colony to my right honorable friend's colony would be entitled to the privileges and immunities enjoyed by the citizens of that colony, no more and no less. What we have to guard against is this: I apprehend that we do not wish that any state should disqualify, or lessen the privileges and immunities of, citizens of other states should such citizens enter within its borders. As the Bill now stands, it might be within the power of one state to say that no citizen of another state should hold land within its boundaries, or that they should hold it only under certain conditions. It should not, however, be possible for such an enactment to have force. Every citizen of the Commonwealth should be entitled to hold land in any state under the same terms as were imposed upon citizens of that state. If a citizen of Western Australia went to Victoria he should be able to hold land in Victoria upon the same terms, and subject to the same qualifications and limitations, as a citizen of Victoria.

Sir JOHN FORREST. -

Could he be prevented from doing so? Would the Bill, the object of which was to prevent him from holding land, get the Royal assent?

Mr. SYMON. -

Of course, the absolute control by a state of everything within its own borders is retained by this Constitution, except in respect to such matters as are expressly handed over to the Commonwealth.

Sir JOHN FORREST. -

But subject to the Imperial control.

Mr. SYMON. -

The Imperial authorities might not interfere. Of course, these are mere possibilities that I am discussing. This is the principle involved: Is it not desirable that a citizen of Western Australia should have the same
privileges and immunities as are enjoyed by a citizen of Victoria, and vice versa? If we do not insert such a provision as this in the Constitution, I do not think we shall have a Commonwealth citizenship at all.

Sir JOHN FORREST. -
I do not think that could happen.

Mr. SYMON. -
I do not know about that. A state might do a great many things which would come uncommonly near to taking away advantages from citizens of other states, and this possibility is so grave that it ought to be very seriously considered. The arguments which I used in opposition to clause 110 will give me serious pause, unless some provision of this kind is introduced into the Constitution.

Mr. KINGSTON. -
How would you define the word "citizen"?

Mr. SYMON. -
I do not think that it is necessary to frame a definition of "citizen." A citizen is one who is entitled to the immunities of citizenship. In short, a citizen is a citizen. I do not think you require a definition, of "citizen" any more than you require a definition of "man" or "subject."

Mr. ISAACS. -
Would you include a corporation in the term "citizen"?

Mr. SYMON. -
Why not?

Mr. ISAACS. -
Well, in America they do not.

Mr. SYMON. -
I do not see why a corporation existing in one colony should not have the rights of a corporation in another colony. Otherwise you defeat the objects of this Constitution.

Mr. ISAACS. -
I agree that that ought to be so, but the word "citizen" will not include a corporation.

Mr. SYMON. -
Well, in my opinion it should. I think, however, though I am not prepared to say definitely, that other provisions in the Constitution would deal with that case. Clause 52 provides that we are to have uniformity, and I think would prevent any difficulty in regard to corporations, quite apart from the question of the meaning of the word "citizen." But if you ask me whether a corporation might not come within the definition of "citizen" to a certain
extent—not, of course, in regard to the right of the voting and so on—I should say that it would. The difficulty is one that requires to be met. Although I admit that the amended American Constitution goes further than anything we require, and is directed to a particular and special condition of things, this provision seems to me absolutely essential, and, in my opinion, the Constitution would be incomplete without it.

Mr. ISAACS (Victoria). -

There is one word in the proposed clause which, when the honorable member was speaking, did not strike my attention as it does now. I read the clause as if it provided that the citizens of each state should be entitled to all the privileges and immunities of all the citizens of the several states; but I find now that it is not so. The words in the clause are "in the several states," so that possibly it would not have the disadvantages which I thought at first it would have. I am afraid, however, that it will not do what the honorable and learned member wishes. In Dr. Burgess's work, vol. 1., pages 255-256, it is pointed out that Germany adopted a provision of this kind with the fall intention that is actuating us now. This is what the writer says about it:--

This is simply the old provision of Article 4, secure 2. of the Constitution of the United States. that "The citizens of each state" (Commonwealth) "shall be entitled to all privileges and immunities of citizens in the several states" (Commonwealths). It was fashioned from this provision. It was discovered and demonstrated in the Constitutional Assembly of 1867 that this provision would not secure the civil liberty throughout the German State which that body intended to establish, The difficulty was solved, not by fixing the immunities and privileges of citizenship in the Constitution, but by vesting the Legislature of the General Government with the power to deal with all these subjects by statutory provisions.

That is precisely what the honorable and learned member (Dr. Quick) tried to do yesterday. The provision which the Convention threw out yesterday is that which has been proved by experience to be the only one which in Germany could carry out the object wished for. The provision which they moulded upon the provision in the American Constitution failed to carry out that object, and I am afraid that the provision of the honorable and learned member (Mr. Symon) will also fail to do so.

Mr. KINGSTON (South Australia). -

I agree with what has fallen from the honorable and learned member (Mr. Isaacs). I think that we made a mistake yesterday when we rejected the amendment of the honorable and learned member (Dr. Quick), and I trust that before we finally separate, we shall be able to include that amendment in the Constitution, or, if not, to adopt a provision similar to that which was
suggested by the honorable and learned member (Mr. Glynn), which would have made the clause read as follows:-

A state shall not deny to the citizens of other states the privileges and immunities of its own citizens.

That, I understand, would mean that a Victorian citizen, whether a Chinaman or any one else, going, say, into the great province of Western Australia, would be entitled to all the privileges and immunities of a citizen of Western Australia. If Western Australia had legislated to restrict the rights of Chinese within her borders, a Chinaman going there would be subject to that restriction, but if no restrictions had been imposed upon Chinese residing within Western Australia, it would be impossible for Western Australia, simply because a Chinaman came from another colony, to treat him differently from the way in which Chinese residents there were treated. It seems to me an anomaly to use the word "citizen" in this Constitution, if you neither define it nor make provision for its definition. I asked the honorable and learned member (Mr. Symon), what was his definition of "citizen," and I understood him to say that a citizen was a man who had the rights of citizenship. That reminded me of the definition once given of an archdeacon, who was described as a reverend gentleman who performed archidiaconal functions. Such a definition may be all very well in humorous conversation, but we have already been warned about the impropriety of inserting anything of this character in the Constitution. I trust that we shall make this Constitution perfectly intelligible within its four corners, and I do not think we can do that without adopting some provision of the kind suggested by the honorable and learned member (Dr. Quick).

Mr. DOUGLAS (Tasmania). -

I take it that what is required is that the position of citizens of the Commonwealth should remain practically what it is now, and that each citizen, when he went out of his own state into another, should be liable to the laws of that state, but to no special laws. On the other hand, he should not be able to carry with him any particular privileges. It seems to me that we should take care to prevent the states from passing any law which would restrict the rights and liberties of citizens of other states who happened to come within its borders.

Mr. SYMON (South Australia). -

The criticism of my honorable and learned friend (Mr. Isaacs) is, of course, perfectly sound. This provision does not provide all that we should like to provide. His citation from Burgess shows that probably something
further will be required, but so far as the clause goes, honorable members will see that it is essential that such a provision should be introduced into the Constitution. Otherwise, we fall short of giving to the citizens of each state the privileges which it is intended that this Union shall confer upon them. The only real objection to the provision is that it does not go so far as may be necessary to give complete citizenship. But to the extent to which it does go, and following upon the lines of the American provision, which has worked so advantageously for over a hundred years, it seems to me essential that we should introduce it into the Constitution.

Dr. QUICK (Victoria). -
I do not propose to be as severe in my criticism of the provision of the honorable and learned member (Mr. Symon) to-day as he was in his determined opposition to my proposed clause yesterday. I would point out, however, two difficulties in the way of adopting his provision. The first is that there is no definition of the status of "citizen." The clause does not say whether a citizen is a ratepayer of a state, an adult male, or any member of the population of a state-men, women, children, Chinamen, Japanese, Hindoos, and other barbarians. Who are the citizens of a state?

Mr. SYMON. -
That depends upon the law of the state upon the subject.

Dr. QUICK. -
So far as I am aware, there is no law in any colony defining colonial citizenship or state citizenship. I am merely adopting the line of argument which my honorable and learned friend adopted yesterday, in taking advantage of technical points.

Mr. SYMON. -
That was not my line of argument.

Dr. QUICK. -
The honorable and learned member gives no definition of state citizenship, but he proposes to place in the Constitution a provision relating to state citizens. At the present time there is no such entity as a state citizen. The status of elector, or ratepayers or member of the population of a state may exist, but the status of citizen does not exist. I am surprised that my honorable friend, with all his learning and acumen, has proposed to place in the Constitution a provision containing a term of which there is no definition, even in Professor Morrison's Dictionary. Another objection is this: The clause proposes to impose the obligation upon all the states to treat the people or citizens, as the honorable and learned member has described them, of other states upon the same terms as apply to their own citizens. Does not that
provision interfere with state rights?

Mr. SYMON. -
Not a bit.

Dr. QUICK. -
Why should the honorable and learned member endeavour to interfere with state rights, when he has been one of the most determined advocates of and sticklers for the independence of the states?

Mr. SYMON. -
Are you not going to give citizenship throughout the Commonwealth?

Dr. QUICK. -
This is a Bill to establish a Federal Commonwealth, and while there may be strong arguments in favour of defining federal citizenship, I contend that there is no occasion for us to go further and to attempt to define state citizenship. On these two grounds I think that the proposed clause should be rejected.

The CHAIRMAN. -
It will be advisable if Dr. Quick desires to move his new clause that he should move it as an amendment on this one, so as to save two discussions on the subject.

Mr. WISE (New South Wales). -
I am sorry it is impossible to obtain the last edition of Cooley's Constitutional Limitations. There is a most valuable note in it upon the importance of similar words in the American Constitution, which were introduced by an amendment as ancillary to the clauses relating to the freedom of trade. Judge Cooley points out that since that amendment has been introduced these words have been found of the utmost importance in preventing interference by the several states with the trade of their neighbours, under various pretexts. He points out that under these words such a tax as that on commercial travellers in New Zealand would have been declared illegal, although it could not have been touched under the freedom of trade clause. Devices really aimed at limiting trade between the states, although ostensibly taking another form, were dealt with under this amendment, and without it they could never have been prevented. I trust the amendment will be carried in this form, or perhaps Mr. Symon can see his way to alter the word "states" to "Commonwealth," which, I think, would meet Dr. Quick's view.

Mr. SYMON. -
If you move that, I will accept it.

Sir JOHN FORREST. -
What is a citizen? A British subject?

Mr. WISE. -
I presume so.

Sir JOHN FORREST. -

They could not take away the rights of British subjects.

Mr. WISE. -

I do not think so. I beg to move-

That the words "each state" be omitted, with the view of inserting the words "the Commonwealth."

I apprehend the Commonwealth must have complete power to grant or refuse citizenship to any citizen within its borders. I think my answer to Sir John Forrest was given a little too hastily when I said that every citizen of the British Empire must be a citizen of the Commonwealth. The Commonwealth will have power to determine who is a citizen. I do not think Dr. Quick's amendment is necessary. If we do not put in a definition of citizenship every state will have inherent power to decide who is a citizen. That was the decision of the Privy Council in Ah Toy's case.

Sir JOHN FORREST. -

He was an alien.

Mr. WISE. -

The Privy Council decided that the Executive of any colony had an inherent right to determine who should have the rights of citizenship within its borders.

Mr. KINGSTON. -

That it had the right of keeping him out.

Mr. WISE. -

In our case he was within our limits, but he was not allowed to sue in our courts.

Mr. BARTON (New South Wales). -

If it is a fact that citizens, as they are called, of each state are also citizens of the Commonwealth, there may be some little doubt as to whether this is not providing for practically the same thing.

Mr. WISE. -

No, there may be territories that is what I want to provide for.

Mr. BARTON. -

In other portions of the Bill we use the words "parts of the Commonwealth" as including territories, so that the object of Mr. Wise would be met by using the words "citizens of every part of the Commonwealth" or "each part of the Commonwealth." Mr. Wise will see that that follows the ordinary phraseology of the Bill, and I do not think it alters the meaning of what he intends to propose. I leave it to his
consideration, because it would make the clause more consistent with the rest of the Bill. I still take objection to the use of the word "citizen" here without a definition, and I understand the definition is to be proposed by Dr. Quick. As this will be the only part of the Bill where the expression "citizen" occurs, I would like to support the suggestion of the Chairman that Dr. Quick should move his clause as an amendment on that of, Mr. Symon. Then the definition will be in the only clause which deals with the subject. As to ordinary matters, the part of the Bill called the Act has made some provision. Clause 7 of the covering clauses, as redrafted, provides that-

This Act, and all laws made by the Parliament of the Commonwealth in pursuance of the powers conferred by the Constitution, and all treaties made by the Commonwealth, shall be binding on the courts, Judges, and people of every state and of every part of the Commonwealth, anything in the laws of any state to the contrary notwithstanding.

So anything conferred by the Constitution or by any law under the Constitution upon any subject or citizen, as he has been called, will be retained by him, inasmuch as the liability to obey the laws involves the protection of the laws, so that a good deal of what is sought by this clause is already conferred by clause 7. As to the general object of Mr. Symon's proposal, I confess I am strongly in favour of it. My only doubt is whether we should not rather cumber the Constitution by using the word "citizens," and requiring a definition of citizens when we use it here, and when the ordinary term to express a citizen of the empire might be used. We are subjects in our constitutional relation to the empire, not citizens. "Citizens" is an undefined term, and is not known to the Constitution. The word "subjects" expresses the relation between citizens of the empire and the Crown.

**Sir GEORGE TURNER.** -

Is a naturalized alien a subject?

**Mr. BARTON.** -

He would be a citizen under the meaning of this clause.

**Sir GEORGE TURNER.** -

Suppose you say "subject" without definition, would that include naturalized aliens?

**Mr. BARTON.** -

Yes. Dr. Quick's definition is: Persons resident in the Commonwealth, either natural-born or naturalized subjects of the Queen, and if they are subject to no disabilities imposed by the Parliament they shall be citizens of the Commonwealth. Why not use the word "subject," and avoid the necessity of this definition?
Dr. QUICK. -
This definition does not interfere with the term "subject" in its wider relation as a member of the empire or subject of the Queen.

Mr. BARTON. -
No, but the definition of "citizen" as a natural-born or naturalized subject of the Queen is co-extensive with the ordinary definition of a subject or citizen in America. The moment he is under any disability imposed by the Parliament be loses his rights.

Dr. QUICK. -
That refers to special races.

Mr. BARTON. -
But if he is under any disability under any regulation of the Commonwealth he would cease to be a citizen, however slight that disability might be. I doubt whether the honorable member intends that. There is power by law to regulate the people of any race requiring special laws. There may be some purely regulative law passed, not imposing any special restriction on any person of that kind who may be a subject of the Queen. That regulation, if it were of the mildest character, under this definition, would deprive him of his rights.

Dr. QUICK. -
The regulation would have to specify the ground of disability.

Mr. BARTON. -
Yes; but my honorable friend says not under any disability imposed by the Parliament. Would not the difficulty be that if he were under any slight disability for regulative purposes, all his rights of citizenship under the Commonwealth would be lost?

Mr. KINGSTON. -
There might be a special disability on minors.

Mr. BARTON. -
That might be one of the disabilities. Of course here the disabilities as to minors would not matter much, but I would like to put this consideration to Dr. Quick, that if we use the term "subject," or a person subject to the laws, which is a wider term, we shall avoid the necessity for a definition of "citizen." You might say a subject or resident being the subject of the Queen.

Sir GEORGE TURNER. -
Subject to the laws will be too wide.

Mr. BARTON. -
Yes, it might be. The expression "resident subjects of the Queen" would avoid the necessity of having a definition of a term which only occurs in
one place in the Constitution. I do not know how Mr Symon would take the
suggestion, but it is far better not to import the word "citizen" here if we
can deal with it by a term well known in the constitutional relations of the
empire between the Queen and her subjects.
Mr. SYMON (South Australia). -

I have expressed the opinion, whether rightly or wrongly, that the word
"citizen" does not require a definition at all in the Constitution. We are not
dealing with rigid terms or with a Constitution which is not to be perfectly
elastic, and under the construction and interpretation of the Constitution the
word "citizen" seems to me to be capable of very easy determination. It is
one of those expressions which in the Constitution is just as easy of
determination as the word "person." I really do not see where the difficulty
is.
Mr. ISAACS. -

It has been found very difficult to define it by decisions in the United
States.
Mr. SYMON. -

There is no man in Australia who is more profoundly versed in
constitutional law than Mr. Isaacs, and he knows that every point and every
question has been the subject of more or less debate and discussion, and
will be until the end of time.

The words "subject," "person," and "citizen" can be made subjects of
controversy at all times if occasion requires it. At the same time, it does not
affect the principle that there should be a definition of "citizen," either in
the form suggested by Dr. Quick or by Mr. Barton. I will be quite content.
The principle is what I am contending for: The principle that our labours
will be incomplete unless we make the rights of citizens or subjects in one
state to extend to the citizens of another state who may go from one state to
another. There ought to be no possibility of any state imposing a
disqualification on a person in the holding of property, or in the enjoyment
of any civil right, simply because he happens to belong to another state.
That would not give us the uniformity of citizenship we all desire, and
therefore I am willing that the word "citizenship" should be defined as Dr.
Quick suggests, with perhaps some modification. I also support the
suggestion from the Chair that the two propositions might be considered
together. The clause would do something to meet the difficulty, not
perhaps finally or conclusively, as Mr. Isaacs, said, but at any rate to a
large extent and almost completely.
Would this do:-

Any subject of the Commonwealth, resident in any part of the Commonwealth, shall be entitled to all the privileges and immunities of subjects resident in other parts of the Commonwealth?

Mr. SYMON. -

I should be quite satisfied with that.

Dr. QUICK (Victoria). -

There can be no doubt that this subject is surrounded with considerable difficulty, and probably any decision arrived at will be reviewed either by the Drafting Committee or the Convention at a subsequent stage. The Hon. Mr. Wise's suggestion to amend the Hon. Mr. Symon's clause so as to make it read-

The citizens of the Commonwealth shall be entitled to all the privileges and immunities of the citizens of the several states,

offers a method by which the difficulty might be solved, but a definition ought to precede any legislation on the subject, and I shall therefore propose that the new clause of which I have given notice defining citizenship be placed in front of the words proposed by Mr. Symon. It is as follows:-

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth.

Mr. Symon's words would then follow:-

And the citizens of the Commonwealth shall be entitled to all the privileges and immunities of citizens in the several states.

Mr. SYMON. -

Is it necessary to leave in the words "natural-born or naturalized"?

Dr. QUICK. -

That is a detail that is open to discussion. I feel that there is a considerable difficulty in connexion with this definition, but, as it has been suggested, I will propose it, and leave the committee to amend it if they think proper. The words proposed to-day may not give exact expression to the views of the Convention, but it would be a very serious mistake if some provision of this kind were not inserted in the Constitution.

The CHAIRMAN. -

The amendment proposed by the Hon. Mr. Wise is now before the Chair.

Mr. WISE (New South Wales). -

I will withdraw my amendment for the time being, to enable Dr. Quick to submit his amendment.

The amendment was, by leave, withdrawn.

Dr. QUICK (Victoria). -
I beg to move—
That the following words be inserted at the commencement of the proposed new clause:—"All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth."

Sir JOHN FORREST (Western Australia). -
That, of course, makes the clause much wider. The Hon. Mr. Symon proposes that any person coming into a state shall be subject to the laws of that state. This amendment provides that he shall be subject to the laws of the Commonwealth. That might be found to be inconvenient, and I do not think it can be necessary. I shall, therefore, vote against the amendment.

Mr. ISAACS (Victoria). -
I am afraid that the amendment is far too wide, unless we say that the disabilities imposed by Parliament may extend to birth and race. This would, notwithstanding the rights conferred under clause 52, deprive Parliament of the power of excluding Chinese, Lascars, or Hindoos who happened to be British subjects.

Mr. WISE. -
Might not place of birth be a disability?

Mr. ISAACS. -
It would be difficult to persuade me that place of birth is a disability that could be imposed by Parliament. The amendment provides that a natural-born subject of the Queen, unless he is liable to some disability imposed by Parliament, such as lunacy, shall be a citizen of the Commonwealth. It does not say except such persons as Parliament chooses to exempt, and it seems to me, from the very nature of the expression, that this cannot refer to place of birth. That is not a disability imposed by Parliament, and unless a natural-born or naturalized subject of the Queen does something or gets into such a condition as amounts to, so to speak, a disqualification, he would be entitled to be admitted as a citizen of the Commonwealth. I am quite sure that the doubt is at all events sufficiently great to cause a very strong feeling against the thing. We could not insure such an interpretation as honorable members desire. The effect of it certainly may be, and I think probably will be, what I have stated, and it seems to me that the only safe course to adopt is to do what Dr. Quick proposed to do yesterday.

Mr. GLYNN (South Australia). -
When this matter was before the Convention on a former occasion in connexion with clause 110, I raised this very point, but I did not succeed in
getting honorable members to pay any attention to it: Its importance evidently was not recognised. I intended, when Dr. Quick's amendment was proposed, to make an addition to it, so that it would read as follows:-

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth and of the state in which they reside, and shall be entitled to all the privileges and immunities of citizens in the several states.

The one clause would then cover everything, and I put this forward for the consideration of the honorable member. He may not wish to go to the extent of saying that they shall be citizens of the state in which they reside, but the latter words would embody the principle Mr. Symon is now suggesting, and which I suggested on clause 110.

Mr. BARTON. -

What about territories?

Mr. GLYNN. -

There is power under the Bill to make special laws with regard to territories, and I am not sure that we could not constitute a certain class of citizenship for the territories.

Mr. BARTON. -

That power would be exercised subject to the Constitution. If you make the matter safe so far as the citizens of the territories are concerned in the Constitution, legislative power could not interfere with them.

Mr. GLYNN. -

I understand that you can make any provision you like as to representation and otherwise until the territories become states. Their position in the Constitution is purely provisional. I can see the force of the point, and I admit that my amendment does not cover it. The proposal I have suggested puts the definition in the same position as in America. Citizens of the Commonwealth are citizens of the state in which they reside, and they also have, as Mr. Symon suggests, the privileges and immunities of citizens of the several states. There is only one other means by which you could do what is wanted, and perhaps it is the best: That is to adopt the principle of the German Constitution, which says that there shall be a common citizenship, and that the rights of the citizens in one state shall attach to the citizens in the other states. That would place it in the power of the Federal Parliament to declare what are the conditions of citizenship. There would be power under a provision of this kind to say that an alien should not be a citizen until he had resided five years in the colony, while the citizenship would be uniform in its character throughout the Commonwealth. In America, aliens have been prevented from
becoming citizens unless they have resided in the place for five years. They must then be citizens for seven years before they can stand for Parliament. Honorable members will see that by adopting the principle of the German Constitution we could prevent any special rights being given to aliens, and I think it would be better in that form. I desire to call attention to this point also, that even if you do not define citizenship at all in the Constitution there would be very little harm done. It seems to be forgotten that in the American Constitution the word citizen is used. It is not used in our Constitution. In the original American Constitution the word "citizen" is for instance used in connexion with representation in Parliament. A man must be a citizen for seven years before he can be returned as a representative, so that there is a special reason for the definition given to the term citizen. Here we do not use the word citizen. We use the word "resident" only. The qualification for a Member of Parliament is residence for three years, and very little harm will be done if we leave out "citizen" altogether. If the Convention do not adopt a suggestion such as that I have made, the better plan will be to fall back on the principle of the German Constitution, which would enable us to make special laws regarding aliens. I would like to mention, in connexion with what Mr. Isaacs said as to aliens, that this provision would not interfere in the slightest degree in the way of preventing aliens from coming in, because it is only when the aliens get inside the Commonwealth that this provision is to apply to them. The decision of the Privy Council in the case of Ah Toy v. Musgrove was that an alien had no right to land here, but that decision does not affect his citizenship after he has landed. Mr. Musgrove, then Secretary for Customs, prevented Ah Toy from landing. Ah Toy brought an action for assault and battery against him, but the Privy Council held that that action could not be justified.

Mr. HOLDER (South Australia). -

I think that there are grave objections both to Mr. Symon's proposed new clause and to Dr. Quick's amendment thereto, and the objections are perhaps even more grave in the case of the amendment than they are in the case of the original motion. No chain is stronger than its weakest link, and therefore citizenship throughout the Commonwealth would not be more restricted than it was in the colony which least restricted citizenship. There might be one state in the Commonwealth which gave citizenship far too freely, in the opinion of the other states of the Commonwealth, and yet, according to Mr. Symon's proposal, the state which was so lax in its methods and conditions of granting citizenship would confer citizenship all through the Commonwealth, in so far as related to citizens of that state.
who went to reside in other states.

Mr. SYMON. -

No; the citizens of the lax state would be limited, when they went to another state, to the privileges and immunities of that other state.

Sir GEORGE TURNER. -

I read your proposal in precisely the other way.

Mr. SYMON. -

They do not take with them to that other state the privileges and immunities of citizenship of their own state. They only get the privileges and immunities of the state to which they go.

Mr. HOLDER. -

I still think the words might be interpreted to mean what I thought they meant.

Mr. SYMON. -

I did not intend that.

Mr. HOLDER. -

I accept that statement of the honorable member, but I submit that his proposed new clause might be interpreted as I interpreted it by some authority, and, in that case, we should be landed in a very unfortunate position. Dr. Quick's amendment is even worse, because it provides that-

All persons resident within the Common-wealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth.

Now, it might be easily conceivable that, simply because a man was born under British rule in India, China, or elsewhere, therefore, of necessity, on arriving in one of these colonies, he could claim citizenship of the Commonwealth. Is it not a mistake to stereotype in the Commonwealth Bill at this period our opinions on this subject? Would it not be better to authorize the Federal Parliament to deal with this question, not once only, but from time to time as circumstances and conditions may change? I hope that both the proposals will be withdrawn or negatived, and that at a later stage an opportunity will be given to Dr. Quick to try again what he tried yesterday, a provision which, as then proposed, or with a slight alteration of the words, would give to the Federal Parliament power to determine the citizenship of the Commonwealth from time to time, and thus to meet any changes of conditions, which certainly ought to be met if they arise, but which cannot then be met if we now arrive at some decision and stereotype it once for all in this Constitution.

Sir EDWARD BRADDOCK. -

I submit there is a still better course open to us, and that is to give
consideration to the amendment proposed by the Assembly of Tasmania, which has received up to the present time no attention whatever.

Mr. GLYNN. -

Not sufficient attention, at all events.

Sir EDWARD BRADDON. -

The amendment is to omit clause 110, and insert the following now clause:-

The citizens of each state, and all other persons owing allegiance to the Queen and residing in any territory of the Commonwealth, shall be citizens of the Commonwealth, and shall be entitled to all the privileges and immunities of citizens of the Commonwealth in the several states, and a state shall not make or enforce any law abridging any privilege or immunity of citizens of the Commonwealth, nor shall a state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws.

Now, there is a clause that covers the whole ground—a clause that is all-sufficient for the purpose-bearing in mind that every provision is made for securing to the Commonwealth that its citizens shall not be people of alien races to any considerable extent. There are in India some 150,000,000 British subjects, but of those 150,000,000 people very few indeed could stand the test applied by the Natal Immigration Restriction Act, which I think has been adopted already in Western Australia; which will no doubt be adopted in other colonies of Australasia, and which will be effective in keeping from our shores the natives of India who cannot pass the education test that is applied under the Natal Act. This education test is one which would debar some 149,000,000 at the least out of 150,000,000 from qualifying, and would so keep them out of Australia. There you have a very much wider disability—and I think a very wholesome disability—which goes far and away beyond that suggested by the learned and honorable member (Mr. Isaacs). I think if we took this clause into our consideration, it might be found to do all that is required for us.

Mr. TRENWITH (Victoria). -

It seems to me that the clause that has just been read by the Right Hon. Sir Edward Braddon—the one suggested by the Tasmanian Assembly—would land us in greater difficulties than anything we have thought of yet, and I think we shall be incurring a very great risk in endeavouring to define who is in future to be considered a citizen of the Commonwealth. We have a right to deal to-day with what we think is right for to-day, but we have no right to tie the hands of the future people of the Commonwealth in this connexion. Therefore, I think it would be extremely wise to reject both of these amendments, with the view, as suggested by Mr. Holder, of getting
back, if we can, to the proposal which we had before us yesterday, and which says exactly what I think we ought to say in connexion with all questions, namely, that the Parliament shall have the power to deal from time to time, as necessity dictates, with the question of citizenship, if we are to deal with the matter at all. The clause we have here, proposed by Dr. Quick, reads as follows:-

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth.

I think it has been shown that it would be unwise to insert that provision in the Bill. The Attorney-General of Victoria suggested that there may be here—indeed experience has shown that there will be—as in various countries of the world, races within the nation that remain distinct; that do not blend with our people; that are by their existence and by their rapid increase inimical to the well-being of the whole community. This has been made very manifest in America. Any student in the history of America must see that the negro population is a disturbing factor which is increasing with immense rapidity.

Mr. SYMON. -

They did not make them citizens; they gave them the franchise.

Mr. BARTON. -

They were made citizens.

Mr. TRENWITH. -

They were constituted citizens under an impulse of generosity that we must all admire; but the circumstances that have since developed prove that that act was extremely unwise, and America is only prevented from taking this right of citizenship from the negroes by the rigid cast-iron character of its Constitution. Now, we are here making a Constitution, and we must be careful not to do something which may seem for the moment wise, but which may tie the hands of the future people of the Commonwealth from doing what they, judging from circumstances altogether different from those we are acquainted with, positively know to be wise. It seems to me we have already power in the Commonwealth to deal with aliens, and we have power to declare in a certain sense the character of citizenship in connexion with the form of naturalization that may be adopted. And if more than that is required—and I think it is—it is sufficiently and adequately provided by a simple declaration that, in future, the Commonwealth Parliament shall have the power to deal with Commonwealth citizenship. Now, I think that if any of these proposals were carried, what would happen would be that a citizen coming from another state would not be
entitled to all the immunities possessed by a citizen of the state from which he came, and if be happened to be a Chinaman, coming from a state where no disabilities were imposed on Chinamen, and went, say, to Western Australia, where very rigid disabilities are imposed, I think he would have to be subjected to the disabilities that existed in the state into which he came. But we have to remember that this Bill has to be carried, if at all, not by a Convention like this, where most of the members are intimately acquainted with constitutional law, intimately acquainted with constitutional history, and are experts upon the exact definition of terms—men who know exactly what will accrue from any resolution we pass here—but it will have to be carried by the people, who will be scared by a suggestion which they do not clearly understand—that they may be perhaps compelled to give within their own respective states privileges and immunities that are given in other states, because the persons coming to them from those other states are citizens of those other states. I see a great deal of danger from that point of view in voting either for the proposal of Mr. Symon or for the proposal of Dr. Quick, and I hope that if these proposals are not withdrawn they will be negatived, because I think we are sufficiently safeguarded in the power we already possess to deal with naturalization and with aliens; and I am afraid we may, perhaps, in a way we do not now see, tie the hands of the future people of the Commonwealth by carrying either of these proposals.

Mr. WISE (New South Wales). -

My mind has waivered very much during this debate. I have come to the conclusion that my original suggestion was wrong, that the best form of all in which the original amendment could be moved is that in which it was proposed by Mr. Symon, and that then no definition such as is suggested by Dr. Quick will be really required, because, if we allow each state to make its own standard of citizenship, we shall reserve all the rights of the states, and obviate all the difficulties contemplated by Mr. Trenwith, by retaining to each state the right to determine the qualification of its own citizens. And then we will make a provision that is necessary as part of the Federal Constitution, that when a man has acquired citizenship in one state he shall be entitled to the right of citizenship in the other states.

Mr. HOLDER. -

That is to say, if one state has been lax in its gift that laxity must govern the whole.

Mr. WISE. -

Not at all. All this, of course, is to be subject to the general power
conferred on the Commonwealth by subsection (26) of clause 52 to make special laws for particular races. Probably it would be more apt to use these words:-

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled to all privileges and immunities of subjects resident in other states or parts of the Commonwealth, but this section shall not apply to the people of any race in respect of which the power conferred by sub-section (26) of clause 52 can be exercised.

That would give Parliament every control, and prevent the states from being coerced in respect of the coloured races, while it would get over the difficulties which have been suggested by attempting to define Commonwealth citizenship. I would like to say one word as to the necessity for the clause at all. Mr. Inglis Clark has written a memorandum which I shall be very happy to show to any one here, in which, after pointing out, as I endeavoured to mention just now, that the clause was necessary to prevent discriminating legislation for the real purpose of interfering with the freedom of trade, but for some other purpose ostensibly, goes on to illustrate the kind of cases in which the clause has been effective in the United States.

Mr. Higgins. -

Is the concrete case you have in mind the commercial travellers' tax?

Mr. Wise. -

The commercial travellers' tax was put on between two states, and dealt with, not under the commerce clause, but under this clause. Another one is that between the State of Maine and the adjoining states. Mr. Clark says-

There was a public road running from an adjoining state into the state of Maine, which was used in common by the residents of both states, and the people of Maine felt they had a grievance against the adjoining state in regard to the repair and maintenance of the road. The legislature of Maine passed a law forbidding a citizen of any other state to bring any action for damages on account of injuries received from the defective condition of the road in the state of Maine, but the law did not impose a like disability upon the citizens of the state of Maine, and the law was declared unconstitutional, because it violated the provisions of the 14th amendment of the Constitution of the United States.

That is a very clear concrete illustration of the necessity for a clause of this kind.

Mr. Symon (South Australia). -

I think some misapprehension has been developed during the debate, on which I fancy the objections to this clause have been founded. I think the amendment of Dr. Quick is not open to some of the criticisms which have
been levelled against it. All he does is to say that all persons within the
Commonwealth, being natural-born or naturalized subjects of the Queen,
shall be citizens of the Commonwealth. Some honorable members have
been dealing with them as though by making them citizens of the
Commonwealth we are conferring upon them the franchise, and so on. We
are doing nothing of the kind. It is merely giving the persons resident in the
Commonwealth the privileges of the law applicable to all the recognised
inhabitants.

Mr. BARTON. -

The rights of free men.

Mr. SYMON. -

All that Dr. Quick's definition does, it appears to me, is to give the
inhabitants of the Commonwealth the rights of free men; that is to say, the
protection of the law?

Mr. HIGGINS. -

Which law—the Commonwealth law or the state law?

Mr. SYMON. -

Both laws. Dr. Quick's amendment refers to citizenship of the
Commonwealth, and, therefore, it would be rights under the Constitution of
the Commonwealth.

Mr. FRASER. -

In that case, does that override the state law?

Mr. SYMON. -

No.

Mr. FRASER. -

If they clash, which will prevail?

Mr. SYMON. -

The state declares its own law, subject to the exception in regard to aliens
and naturalization. If a man is a citizen of a state, he is a citizen of the
Commonwealth. The Commonwealth cannot take away that citizenship; it
cannot interfere with that citizenship. I am sorry that Dr. Quick felt that I
was urging it with undue determination, but that was the point which
influenced me strongly yesterday in regard to his amendment, which, I
think, went a great deal too far. The state citizenship is not interfered with,
and cannot be interfered with, by the Commonwealth unless under such an
amendment as was suggested yesterday, except in the cases governed by
the provisions of clause 52, as to aliens and naturalization. It cannot be
affected by it. The object of this amendment, I would point out, particularly
to my learned friend (Mr. Holder), is exactly the reverse of that
contemplated by the original clause 110, and that which he, in common with myself, feared would be a very unjust thing. That is under clause 110. Suppose there was a more lax citizenship in South Australia than in Western Australia. If a resident of South Australia went to Western Australia he would take with him his more lax citizenship, or his more extended rights there. But this is the other way about. If he went from South Australia to Western Australia he would only acquire, when he went there, the more restricted citizenship of Western Australia. For instance, the expression "citizen" does not mean only persons exercising the franchise; it includes infants and lunatics, if you like. Every one who is recognised as an inhabitant and is under the laws, is a citizen. Women in most of the colonies except South Australia do not exercise the franchise, but no one can say that they are not citizens. The object of my amendment is to say that when they go to another colony they are entitled to the rights conferred on the citizens of that other colony in the same way as though they had been residents or born there, subject to this: That if a woman goes to South Australia, she is entitled to all privileges and immunities of a citizen of South Australia, but she is not entitled to exercise the franchise until the conditions of the local laws on the subject have been complied with by her. The local Government has absolute control of that, and the only effect of this amendment, even with or without a definition, which I still think is unnecessary, is to place persons going from one state to another on exactly the same footing as the persons in the other state, and it seems to me that that lies at the very foundation of what we are trying to do under this Constitution. Every one, I think, recognises that something of this sort is essential. It may not go far enough. It does go a very long way, and it brings about that common citizenship which is expressed, to that extent at any rate, in the German Constitution, referred to by Mr. Glynn. I do not think the definition is necessary, but if honorable members think that some definition should be inserted, it is merely a repetition of the first part of the clause. All it amounts to is that all persons resident within the Commonwealth are entitled to the protection of the laws; but, without that clause as I have moved it, it is one which has the essential elements of our Constitution, and I venture to say that no definition is required.

Dr. COCKBURN (South Australia). -

If the word "citizen" simply means resident or inhabitant, why should we go to all this trouble about it? If it means inhabitant, what is the use of saying the inhabitant of one state going to another state shall be an inhabitant of that other state? It seems to me that if you are going to use the
word "citizen" in the sense of being equal to resident or inhabitant, and it is to have no other meaning such as has always been attached to it, we had better leave out the clause.

Mr. REID (New South Wales). -

I understand that Dr. Quick has moved, as a preface to the new clause of Mr. Symon, the amendment which stands in his name on the notice-paper?

Dr. QUICK. -

Yes.

Mr. REID. -

It seems to me that, so far as the amendment of Dr. Quick is concerned, we do not need to take the slightest trouble as to the citizens of the Commonwealth, so far as the Commonwealth is concerned. Every man who becomes an elector of the Commonwealth enjoys all the privileges of the Commonwealth Constitution and all the rights which he may get thereunder. Aliens are dealt with under special powers, and so with other races. Consequently, I think we are wasting a great deal of time in trying to define what a citizen of the Commonwealth is. We understand what "An elector of the Commonwealth" means. We understand what "A man who has got the suffrage" means. We also understand that no question can arise as to whether Commonwealth laws will equally apply to male and female persons, and so on. I thi

Mr. OCONNOR (New South Wales). -

I would suggest that Mr. Symon should accept the amendment suggested by Mr. Barton, so that his clause shall read-

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled to all privileges and immunities of subjects resident in other states or parts of the Commonwealth.

I am altogether in favour of the principle of Mr. Symon's amendment; but the word "citizen" creates a difficulty. If, instead of the word "citizen," we use the words "Every subject of the Queen resident in a state," it really means the same thing. The meaning to be given to the word "citizen" in Mr. Symon's amendment is not the narrow limited meaning of the citizen who can exercise the franchise, but it is the broad general meaning which the word has been held to have under the United States Constitution. It has been decided there that the word "citizen" has,

In its broad sense the word is synonymous with subject and inhabitant, and is understood as conveying the idea of membership of the nation, and nothing more.

Mr. ISAACS. -
Look at page 212, No. 14, and the next page, and you will see another decision.

Mr. OCONNOR. -

The decision referred to by Mr. Isaacs states that in regard to offences against the citizens of the United States for which punishment is prescribed in section 5508, the word "citizen" is used in its political sense, as it is in the 14th amendment, and is not synonymous with "resident, inhabitant, or person." When dealing with offences, the word "citizen" appears to be used in another way.

Mr. ISAACS. -

As it is in the 14th amendment.

Mr. OCONNOR. -

The reference my honorable friend has put before me emphasizes what I say, that the word "citizen" is used in its general sense, and at the same time there appears to be a particular sense in which it also may be used.

Mr. ISAACS. -

In a sense which is "not synonymous with resident, inhabitant, or person."

Mr. OCONNOR. -

Exactly. It has two meanings, but we are only dealing now with the one meaning-the general meaning. Mr. Isaacs' reference shows the danger that might be incurred by using the word "citizen," because it might have the restrictive meaning the last decision imposes. All we mean now is a member of the community or of the nation, and the accurate description of a member of the community under our circumstances is a subject of the Queen resident within the Commonwealth."

Mr. SYMON. -

A person for the time being under the law of the Commonwealth.

Mr. OCONNOR. -

A person for the time being entitled to the benefits of the law of the Commonwealth.

Mr. FRASER. -

But as the whole Constitution has been passed for the benefit of subjects, surely the clause is not necessary?

Mr. OCONNOR. -

That is another question. I am now simply dealing with the use of the word "citizen." It seems to me that the word "citizen" is not a proper word. The only reason I see for the amendment is the reason put forward already, and I would remind the honorable member (Mr. Fraser) that that reason is that there should be no power in a state to treat the inhabitants of another state differently from its own.
Mr. FRASER. -
Hear, hear.

Mr. OCONNOR. -
That is the only thing to be provided against. I think that Mr. Symon's amendment, if altered as Mr. Barton suggests, will carry that out. The alteration provides that every subject of the Queen resident in a state or part of the Commonwealth shall be entitled to all the privileges and immunities of the subjects resident in the other states or parts of the Commonwealth. The only meaning of that is that when the subject of a state goes into another state he will be treated equally with the subjects of the Queen in the state to which he goes.

Mr. SYMON. -
Hear, hear; no more and no less.

Mr. OCONNOR. -
A subject would only have the rights of inhabitants of the state to which he goes. He does not take with him the privileges of his own state.

Mr. ISAACS. -
Could that not be construed to mean that a subject of the Queen resident in one state should, although resident in that state, have all the rights, privileges, and immunities of a subject resident in another state?

Mr. OCONNOR. -
I do not think so. I am prepared to support the amendment, of Mr. Symon if altered as suggested.

Mr. ISAACS (Victoria). -
Might the amendment not mean that a subject resident in one state, and contemplating the continuance of that residence, is to have all the privileges and immunities of residents irk another state?

Mr. WISE. -
No, no.

Mr. ISAACS. -
It says that a subject of the Queen resident in one state shall have the privileges and immunities of a subject of the Queen resident in another state. It seems to me that the proposal is quite open to the objection I have mentioned. I fear that all the attempts to define citizenship will land us in innumerable difficulties.

Dr. COCKBURN (South Australia). -
Shall we not, by drawing those lines of distinction, be drawing lines which at present are not drawn in Australia? The words "subject of the Queen" introduce a dividing line among the Asiatics we have at present in Australia, some of whom are subjects of the Queen, and others of whom
are not. We want to deal with Asiatics on broad grounds without any such distinction, but the proposal if carried would prevent our doing so. The moment any legislation was introduced the question would arise as to which Asiatics were subjects of the Queen, say from Hong Kong, and which were. Asiatics which came from some other part of China and were not subjects of the Queen.

Mr. OCONNOR. -

Asiatics will be dealt with by special laws, which will be the same all through the Commonwealth.

Dr. COCKBURN. -

But the present proposal if carried would raise an initial difficulty in framing special laws. It might be urged that it was necessary to discriminate between residents who are subjects of the Queen and those who are not, and the amendment would introduce an element which would give rise to a great deal of trouble in the future.

Mr. HIGGINS. -

You want to keep both classes out.

Dr. COCKBURN. -

We desire always to deal with Asiatics on broad lines, whether they are subjects of the Queen or not; and in South Australia, and, I believe, other colonies, those lines of distinction are obliterated. In South Australia we make no difference between Chinese from Hong Kong and those from other parts of China. That, I think, is the most effective way of dealing with this matter.

Dr. Quick's amendment was negatived.

Mr. SYMON. -

Does Mr. O'Connor move an amendment?

Mr. OCONNOR. -

I thought my friend (Mr. Symon) would have accepted my suggestion.

Mr. SYMON. -

If Mr. O'Connor will move his amendment, I will be content with it.

Mr. OCONNOR. -

I would suggest words which I think will meet the criticism of my friend (Mr. Isaacs):

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in that latter state or part of the Commonwealth.

Mr. DOBSON. -

Don't you want to say that a citizen shall be entitled to the privileges of
the state in which he resides?
Mr. SYMON. -
Oh, no, that he already has.
Mr. DOBSON. -
But I mean on leaving one state and going to another.
Mr. ISAACS (Victoria). -
Take the matter of the income tax, for example. A subject from a state where there was exemption might claim exemption in another state, although there was no exemption in the latter.
Mr. OCONNOR. -
He could not be entitled to greater or less privileges than the inhabitants of the state itself.
Mr. ISAACS. -
Allow me to point out that the subject, although resident, we will say, in Queensland, is to have the same privileges and immunities as if resident in Victoria. In Victoria, if he were resident, he would have the right to claim exemption under the income tax up to a certain point. Under the proposal, although he is not resident in Victoria, he is to have that exemption.
Mr. SYMON (South Australia). -
That is the very point. My honorable friend (Mr. Isaacs) has really done more in his last few words to explain the true position of this matter than has the whole of the rest of the debate. The sort of thing he has mentioned is exactly the sort of thing to be remedied. In the debate, the whole question was whether any one state could impose an increased tax on the ground of residence in an adjoining state. There was a consensus of opinion that a state should not do so.
Mr. ISAACS. -
No.
Mr. SYMON. -
That was the consensus of opinion. There was a difference of opinion, but there was a strong feeling that that sort of thing
Mr. ISAACS. -
I am speaking of taxation for state purposes, and not for federal purposes.
Mr. SYMON. -
I am speaking of the same thing. Unless you have this amendment, or the amendment as modified by Mr. O'Connor, that state of things would prevail. Victoria might impose an income tax on its own citizens of 10 per cent., and a tax of 30 per cent. on people resident in South Australia who derived income from Victoria.
Mr. WISE. -
Or attempt to impose a fine of 50 per cent. on people from South Australia who tried to buy land in Victoria.

Mr. SYMON. -

Or impose a tax on commercial travellers, as was done in New Zealand. We ought really to be indebted to Mr. Isaacs for putting the point he did before us, for that is the very point we are seeking to remedy. The remedy may be open to criticism, but that a remedy is demanded is clear.

Sir GEORGE TURNER. -

The effect mentioned by Mr. Isaacs is not the only effect. If it were the only effect I would go the full length with you, and whenever we pass a law relating to absentees would make it operate outside Australasia.

Mr. SYMON. -

That is not the only effect.

Sir JOHN FORREST. -

Then that ought to be made clear.

Mr. SYMON. -

It is made clear by the amendment, which, I think, meets every case of the character, and prevents one state from imposing disabilities on the residents of another state.

Mr. ISAACS (Victoria). -

I would like to add that the point I placed before the Convention was only by way of illustration of how the proposal would operate. But apply the proposal to another matter. Under the Victorian Land Act land is selected by persons resident in Victoria only, but under the proposal before the Convention a subject, although resident in South Australia, could claim a right to select land in Victoria.

Mr. WISE. -

Hear, Hear. Subjects would not be Victorians, but Australians.

Mr. ISAACS. -

We are talking now of the purely state matter of selecting land for Victorian development, and yet it is proposed that a subject is to have the same right of selecting land in Victoria wherever he may reside.

Mr. REID. -

If you attach the condition of residence in case of land selection it surely means residence on the particular land selected.

Mr. ISAACS. -

Under the proposal a man will be able to say he must have exactly the same rights under the Constitution, if he did not reside in New South Wales, as if he did.

Mr. REID. -

Our land laws in New South Wales have not been framed in that way.
Mr. KINGSTON. -

Cannot you apply that to electoral laws as well?

Mr. ISAACS. -

It may apply to electoral laws. The electoral law of a state might say that a person not resident for, say, six months in New South Wales or in Victoria, should not have a right to vote, but under this he might be held to have such a right.

Mr. WISE. -

He would have to live six months in the same way in Victoria before he could vote.

Mr. ISAACS. -

It may give him the same rights as a person who has lived for six months in the state. Look at the wording of the provision. It states that-

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in the latter state or part of the Commonwealth.

These words are tremendous.

Mr. WISE. -

But if such privileges only attach after six months' residence to a person in a colony, they would apply to a person going into the colony.

Mr. ISAACS. -

Residence in some other part of the Commonwealth is made equivalent to residence in the state under this provision. I am afraid that it will carry the matter further than we intend to go. What has been said regarding the absentee tax shows to me more and more the unwisdom of attempting to define these things in the Constitution. I feel that we shall be landing ourselves in difficulties that we do not anticipate.

Mr. OCONNOR. -

That is a different question altogether.

Mr. ISAACS. -

No, it is the same thing, and this is an attempt—and it seems to me a dangerous attempt—to constitute a definition of Commonwealth citizenship. That is really what it comes to. I do press upon the committee once again the desirability of going back to the clause proposed by Dr. Quick.

Mr. OCONNOR (New South Wales). -

The last observation of the honorable and learned member (Mr. Isaacs) is quite inapplicable to this proposal, because it certainly does not deal with
any definition of citizenship at all. It only prevents the discriminative laws now made by a state against the subjects of other states. The answer to the point put before that by the honorable and learned member (Mr. Isaacs) is this: The use of the word "resident" cannot satisfy any condition of a state law regarding a period of residence.

Mr. KINGSTON. -

That would not touch the absentee tax.

Mr. OCONNOR. -

They cannot possibly have that, because if you have a condition that there shall be a residence of a certain period before a person can acquire a right of any kind, that period of residence is required from every inhabitant of the state, and it will be equally required from an inhabitant of another state. This proposal does not touch that question at all.

Mr. KINGSTON (South Australia). -

I am inclined to think that the remarks which have just fallen from Mr. O'Connor cut away the strength of the argument that a clause of this description would prevent an absentee tax being imposed. I am thoroughly opposed to absentee taxes which are levied by states on the inhabitants of other states of the Commonwealth, but, when it is put by Mr. O'Connor that this clause would not meet the case where a certain period of residence is required in a colony, then it is impossible to hold that it will exclude the operation of an absentee tax. Because what does this clause do? It provides that certain people, unless they have been resident or have worked or spent years in a colony may be subject to this special tax; so that it will not meet the case where a period of residence is required to prevent exemptions from the tax.

Mr. SYMON. -

It does not say that.

Mr. KINGSTON. -

I understood Mr. O'Connor to say that it was so. Either it does not meet the case or it does. If it does not, it has not the recommendation of abolishing the absentee tax. If it does specify a period of residence, it is open to the objection which Mr. Isaacs has raised that it would confer an electoral qualification such as is required in each state before a man can register on the electoral roll. Under these circumstances, it seems to me very hard to decide how to vote. I want to see a common citizenship. I think that any Commonwealth Constitution which is deficient either in its definition or its power of definition, as circumstances arise, is a mistake. We have been labouring here for some time to secure a definition. Various definitions have been offered for consideration which seem to me to be
open to a variety of objections. I think, therefore, that the better plan will be to go back to the amendment of Dr. Quick, and confer upon the Federal Parliament the power of defining, when occasion arises, what shall constitute citizenship of the Commonwealth. I wish to be clearly understood that in any vote I shall give against the insertion of a definition, I am not to be understood as being desirous of voting against a uniform citizenship, but rather am I to be accredited with the desire to confer upon the highest power, at the proper time, when it will have the best means of securing a proper definition, the full opportunity and authority of doing so.

Mr. SYMON (South Australia). -

I think that Mr. O'Connor has been rather misunderstood. What I understood him to say was that in the case of any state which imposes a condition of residence (for instance, in respect to the particular case put by Mr. Isaacs in relation to the taking up of land under any Land Selection Act), and which requires that there shall be personal residence (or, as we have it in South Australia, substituted residence, or any other form of residence for a definite period), that same condition shall apply to every inhabitant of every other state coming to live in the state imposing such conditions. The effect of this amendment would be to make the matter uniform. A state would be able to say that persons desiring certain privileges should have to reside within its territory for six months in a year, but not that residents from other states should be obliged to reside for twelve months whilst their own residents had to reside for only six. What we want is uniformity of law, so that the privileges of a citizen of one state shall be applicable to the subjects of another state, and be neither greater nor less than those that apply to the other states.

Mr. ISAACS. -

We want to get that if we can.

Mr. SYMON. -

What we want is uniformity. If, for instance, in the case of an income tax, it were provided that the residents in Victoria should pay 10 per cent., you should not be able to apply an income tax of 50 per cent. to the inhabitants of Western Australia holding property in Victoria. And so, in regard to residents, there should also be uniformity, so that if you have a condition of residence it must apply equally, whether the applicant for privileges resides in the state conferring those privileges or in another state. The condition seems to me as plain as possible, and that is what Mr. O'Connor intended to convey. Of course, you cannot prevent any state levying an absentee tax, or prevent it imposing conditions with regard to taking up land, but you should prevent it from imposing differential conditions with regard to the citizens of one state as compared with the conditions which you apply to
the citizens of another state.

Mr. OCONNOR (New South Wales). -

I beg to move—

That there be inserted at the beginning of Mr. Symon's new clause the following words:—"Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in the latter state or part of the Commonwealth."

Sir GEORGE TURNER. -

Cannot you reverse the mode, and say that the person outside the state shall not be subject to greater disabilities than a person in such state?

Mr. HIGGINS (Victoria). -

I think that Sir George Turner has exactly bit the nail on the head. The form of expression used in Mr. O’Connor's amendment is affirmative, and it operates too widely. I would suggest therefore that, as we have all a common obj

There shall be no discrimination by state laws based on residence or citizenship in another state.

That would attain the purpose exactly, and it would allow Sir John Forrest at the same time to have his law with, regard to Asiatics not being able to obtain miners' rights in Western Australia. There is no discrimination there based on residence or citizenship; it is simply based upon colour and race. It would also prohibit a law like that of the state of Maine, in the United States, alluded to by Mr. O'Connor, to the effect that a resident of an adjoining state should not be allowed to sue for damages in Maine for any want of repair of roads. What we want is to get a negative prohibition for the purpose of securing free intercourse between the various states. We want, as I understand it, to prohibit any discrimination which is based upon a false principle; and if you say that there shall be no discrimination made by state laws based upon residence or citizenship in another state I think that would answer the purpose. It is a form of expression which is preferable to the affirmative form used in Mr. O’Connor's proposal.

Mr. WISE. -

If you had a colony like Northern Queensland, where coloured labour is employed, you could not exclude them.

Mr. HIGGINS. -

That would not be a discrimination based on residence or citizenship in another state.
Mr. WISE. -

It might be.

Mr. HIGGINS. -

No, it would be based on colour. We want a discrimination based on colour. With regard to Dr. Quick's amendment, I would point out that we want to give the Federal Parliament power to dictate its own terms as to citizenship, but this is a distinct subject, and we should not mix up the subject of discrimination with citizenship of the Commonwealth. I think we need not have the two in the same clause. I would suggest to my honorable and learned friend (Mr. O'Connell), who appears to have charge of the amendment, that he should put the proposal in a negative form, such as I have suggested.

Mr. SYMON (South Australia). -

Of course we only want to arrive at a conclusion on this subject which will be satisfactory to all. The suggestion of Sir George Turner, as embodied in the form of words suggested by Mr. Higgins, puts the matter negatively, and we have asked for it to be put affirmatively. It is a matter of indifference to us how it is put, so long as the common object we all have is secured. I think, if Mr. Higgins will allow me to say so, that the better form will be the following:-

No citizen of a state shall be subject in any other state to a disability or discrimination not equally applicable to the citizens of such other state.

I prefer this form of words to the form suggested by Mr. Higgins, because his is more general.

Mr. HOWE (South Australia). -

A few days ago, when clause 110 was under discussion, the honorable and learned member (Mr. Glynn) made a suggestion which, I think, would meet the case entirely. I raised the question of absentee taxation when I spoke yesterday in regard to the proposition of the honorable and learned member (Dr. Quick). Mr. Glynn's amendment read thus:-

A state shall not deny to the citizens of other states the privileges and immunities of its own citizens.

I believe that that is exactly the provision which the committee desires, and I would suggest that the honorable and learned member (Mr. Glynn) should bring forward his amendment again.

Mr. OCONNOR (New South Wales). -

I think that the suggestion made by the honorable, and learned member (Mr. Symon) will do very well if the word

"citizen" is altered as I have suggested to the words "subject of the Queen resident in a state." The amendment which the honorable and learned
member has now drawn up, though it may have to be recast afterwards, will, I think, meet the present occasion, and to allow him to move it, I ask leave to withdraw my amendment.

Mr. O'Connor's amendment was, by leave, withdrawn.

Mr. Symon's proposed new clause was, by leave, withdrawn.

Mr. SYMON (South Australia). -

I adopt with gratitude the suggestions of the Right Hon. Sir George Turner and of the honorable and learned members (Mr. Isaacs and Mr. Higgins), and, with the consent of the committee, I will ask leave to substitute this motion for that which I have already made. I beg to move-

That the following words stand a clause of the Bill:-

No subject of the Queen resident in any state shall be subject in any other state to any disability or discrimination not equally applicable to the subjects of the Queen in such other state.

The clause was agreed to.

The CHAIRMAN. -

The next question the committee have to consider is the Right Hon. Sir George Turner's proposed amendment of clause 118.

Sir GEORGE TURNER (Victoria). -

Clause 118 provides that the seat of the Commonwealth Government shall be determined by the Federal Parliament. I think, however, that it would be wise to take care that, wherever the seat of government may be fixed, the federal authority shall have absolute control over it. Therefore, I propose to declare that it shall be within federal territory. I do not know that there can be any objection to this proposal, and I would leave it entirely to the Federal Parliament to say what the area of the federal territory should be. I therefore beg to move-

That after the word "Parliament," in clause 118 the words "and shall be within federal territory" be inserted.

Sir JOHN FORREST. -

Make it 100 square miles.

Mr. WALKER (New South Wales). -

I am delighted that our right honorable friend has proposed this. It may perhaps be within the recollection of honorable members that I made a somewhat similar suggestion in Adelaide. At that time my suggestion was thought to be premature, but now that we have had three sessions, seeing how prejudiced some persons are against leaving this matter without some such provision, I trust that the motion will be carried unanimously.

Mr. LYNE (New South Wales). -

On the previous occasion when this matter was under discussion I moved a motion in regard to the fixing of the site of the federal capital, which was
not pressed to, a vote. I now beg to move—

That the amendment be amended by the addition of the words "and within the colony of New South Wales."

Sir GEORGE TURNER. -

I shall have to move another amendment substituting "New South Wales" for "Victoria."

Mr. LYNE. -

Honorable members can laugh as they please, but I am going to press the amendment to a division. It is unnecessary for me to make a long speech. I have very little doubt in my own mind as to what the opinion of honorable members is in regard to this matter. I certainly think, however, that the Constitution should make some provision in regard to the location of the federal capital. I was never more satisfied of anything in my life than I am that, if the Constitution comes into force without a provision to the effect that the site of the federal capital must be within New South Wales, the federal capital never will be within New South Wales. I think it is as well to face this question at once, so that we may know who is in favour of having the federal capital in the mother colony, and who is against it. I consider that New South Wales is, beyond all argument, entitled to have the federal capital within its borders, and it is as well that we should know who are against this.

Mr. HOLDER. -

You will not find that out by taking a vote now.

Mr. LYNE. -

I think that we shall find it out pretty well. I think that any one who votes against the insertion of this provision may be considered as intending to vote hereafter against the locating of the federal capital within New South Wales.

HONORABLE MEMBERS. -

No.

Mr. LYNE. -

Well, I do not care for professions without acts.

Mr. PEACOCK. -

I might as well move that the site of the federal capital be Ballarat.

Mr. LYNE. -

I have no doubt that you would be more likely to carry that proposal than I am to carry my amendment.

Mr. PEACOCK. -

This is not the place in which to move such a proposal.
Mr. LYNE. -
I think that Ballarat would receive more votes than any place in New South Wales.

Mr. WISE. -
If it would be federal territory?

Mr. LYNE. -
Yes. It is a very simple thing to convert any part of a state into federal territory, and I have no doubt that the opportunity would be embraced by the people of Ballarat with great pleasure.

Sir JOHN DOWNER. -
We should have to buy the place first.

Mr. LYNE. -
It is all very well for honorable members to say that they are in favour of establishing the capital in some part of New South Wales hereafter, but that they will not vote for it now; but I think that we should decide the question at once. I regret exceedingly that I was overpersuaded on another occasion, and did not press my amendment to a vote. On this occasion, however, I will do so.

Mr. DOBSON. -
You are doing absolute harm to the colony of New South Wales.

Mr. LYNE. -
I do not think so. I am accustomed, to be the judge of my own actions, and I will be so now. I am as satisfied as that I am standing here that unless this provision is inserted in the Constitution the federal city will not be within New South Wales, at any rate not unless Queensland joins the Federation.

Mr. DOBSON. -
I shall vote for Ballarat.

Mr. LYNE. -
I have not the slightest doubt that you will. I think that most of the Tasmanians will vote for Ballarat, and that the majority of the South Australian representation will. I do not know what the erratic Western Australians will do-anything that will suit them at the moment. I think that, in justice to New South Wales, and as a matter of duty, I am called upon to propose this amendment at the present time.

Mr. WISE (New South Wales). -
Having regard to the old proverb that coming events cast their shadows before, one cannot help feeling a considerable amount of sympathy for the leader of the opposition-I mean the honorable member (Mr. Lyne)-for the position in which he finds himself.

Mr. LYNE. -
I do not want your sympathy.

Mr. WISE. -

I extend it to the honorable member most cordially, whether he wishes for it or not. I remember that, in 1891, at the first meeting of the Convention, a gentleman who is the avowed leader now of the opponents of federation, and who was then hostile to it, sta

Mr. LYNE. -

That is not true.

The CHAIRMAN. -

The honorable member is not in order in imputing an untruth to the honorable and learned member (Mr. Wise).

Mr. LYNE. -

Mr. Chairman

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The CHAIRMAN. -

I will not hear the honorable member. I must ask him to withdraw his interjection.

Mr. LYNE (New South Wales). -

Surely I can put myself in order by withdrawing. I think that your ruling, sir, is rather extreme. I do not wish to do anything disorderly, but when I heard a statement made which was not borne out by what I recollected of the facts, I interjected, perhaps rather hurriedly, that it was not true. What I meant to say was that, so far as I recollected, the statement was absolutely incorrect.

Mr. WISE. -

I accept the disclaimer of the honorable gentleman of the desire to impute any wilful inaccuracy to me, but I maintain that my statement was substantially correct, and that the bombshell thrown into the Convention of 1891 was a proposal to the effect that the site of the federal capital should be fixed by the Convention, and not left to the Federal Parliament to determine. I care not that there was some slight difference as to the place for the capital. The motion was the same. I do not know whether the intention was the same, but the effect will be the same. So far as one representative for New South Wales can do so, and perhaps one may speak with authority equal to that of any other, I utterly repudiate this idea. I have as much knowledge of the feelings of the Convention as the honorable member (Mr. Lyne), and perhaps more, and I am sure that there is no attempt whatever to exclude New South Wales from possessing the capital. So far as I can judge, the feeling of the Convention is all the other way.
HONORABLE MEMBERS. -

Hear, hear.

Mr. WISE. -

I believe that, if we were at liberty now, having regard to the obligations we owe to our constituents, to take a vote upon this question—and we certainly ought not to do so unless there is a strong feeling upon every side—there would be an overwhelming vote in favour of the mother colony. I also repudiate the idea that this vote will indicate the feelings of honorable members on this question. It will do no such thing. I do not know what will be done by my colleagues, but I shall certainly not vote in the division.

Mr. LYNE. -

You are not game, that is the reason.

Mr. WISE. -

The honorable member knows I have not got a reputation for any lack of gameness.

Mr. LYNE. -

I do not know anything of the kind, nor anybody else.

Mr. WISE. -

I have a strong conviction that the motion is ill-timed. Having that conviction, I shall be acting contrary to the intention of those who sent me here if I occupy a position which might have the effect of damaging the favorable consideration of this Bill elsewhere, and which ought not to have the effect of damaging in any degree the manner in which the Bill will be received in New South Wales. Sir George Turner's amendment has put it beyond all doubt that there is no idea of having Melbourne as the capital of the Federation. Mr. Lyne informed the people of New South Wales, a week or a fortnight ago, that there was a plot in this Convention to make Melbourne the capital.

Mr. LYNE. -

I never said so.

Mr. WISE. -

It was so reported.

Mr. LYNE. -

It was never so reported; the honorable member ought to be a little more careful.

Mr. WISE. -

I was referring to an interview with the honorable gentleman published in the Sunday Times, in which the honorable member was reported to have said that there was a plot, and that the capital was going to be in Melbourne.
Mr. LYNE. -
I said it was to be in Victoria-Ballarat.

Mr. WISE. -
Melbourne was the place reported.

Mr. LYNE. -
I never said so.

Mr. WISE. -
Then I am glad the honorable member was misreported.

Mr. LYNE. -
The statement was not published; it was not misreported.

Mr. WISE. -
Then my recollection is at fault. But the same statement was made in a leading article in the Daily Telegraph the next day. Sir George Turner's amendment has put it beyond all doubt that the capital is not to be in Melbourne or Sydney. It has put it beyond doubt that neither of those large towns will be the site of the capital. It is unnecessary to go into the reasons for that.

Mr. HIGGINS. -
Is Ottawa federal territory?

Mr. WISE. -
I am not sure; but I know Toronto was not in the old days of the Union, and Parliament House in Toronto was burnt down because the state and the municipality both refused to render any assistance.

An HONORABLE MEMBER. -
Were they insured?

Mr. WISE. -
I hope this motion will not be taken seriously, and I hope it will be made clear throughout the length and breadth of Australia that whatever vote is given has no significance whatever as indicating the feeling of this Convention upon the question of the site of the future capital.

Mr. TRENWITH (Victoria). -
I wish to make a few remarks.

The CHAIRMAN. -
I would remind the honorable member that I have to report this Bill shortly to the whole House, and I will not have an opportunity of going through it.

Mr. TRENWITH. -
At the request of the Chairman, I shall not proceed with my remarks.
Question—That Mr. Lyne's amendment be agreed to—put.

The CHAIRMAN. -

The "Noes" have it.

Mr. LYNE. -

I call for a division.

The CHAIRMAN. -

There were no Ayes.

Mr. LYNE. -

I gave my voice with the Ayes.

The CHAIRMAN. -

I heard no voice with the Ayes.

Mr. LYNE. -

I beg your pardon. I said "Aye" as distinctly as possible.

The CHAIRMAN. -

According to the standing orders under which we are sitting, there can be no division unless there is more than one "Aye." The standing order is 374.

Mr. LYNE. -

I think surely there should be fair play. I gave my voice with the Ayes.

The CHAIRMAN. -

I will put the question again, and if there is not more than one "Aye" there can be no division.

Question again put.

The committee divided-

Ayes ... ... ... 5
Noes ... ... ... 33

Majority against Mr. Lyne's amendment ... ... 28

AYES.

Brunker, J.N. Walker, J.T.
Carruthers, J.H. Teller.
Reid, G.H. Lyne, W.J.

NOES.

Berry, Sir G. Henry, J.
Briggs, H. Holder, F.W.
Brown, N.J. Howe, J.H.
Cockburn, Dr. J.A. Isaacs, I.A.
Crowder, F.T. Kingston, C.C.
Deakin, A. Leake, G.
Dobson, H. Lee Steere, Sir J.G.
Douglas, A. Lewis, N.E.
Downer, Sir J.W. Moore, W.
Mr. PEACOCK (Victoria). -

I beg to move—

That the following words be inserted:-"and within the colony of Victoria."

Mr. Lyne has made a statement here, as a member of this Convention, that it is the determination of honorable members, so far as their opinions are concerned, that they have settled beforehand that the capital is to be in Victoria. I do not believe it. I do not believe this is the proper place to decide the question, but I want to test the opinions of the members of the Convention as to whether it is their desire that the capital should be in Victoria.

Mr. LYNE (New South Wales). -

It is very evident to all those who have heard the speech of Mr. Peacock that this is done for a purpose.

Mr. PEACOCK. -

I have taken you at your word.

Mr. LYNE. -

It is being done for the purpose of trying to detract from the vote which has just been given. There is no doubt about that. It is not intended to be a conscientious vote.

Mr. PEACOCK. -

It is just as conscientious as the vote the honorable member just gave.

Mr. LYNE. -

Then the honorable member is very anxious that the capital should be in Victoria, because I was very anxious that it should be fixed to be in New South Wales.

Mr. PEACOCK. -

So am I that it should be in Victoria.

Mr. LYNE. -

Any one who attributes anything else to me is very much mistaken.

Mr. PEACOCK. -
I am anxious that it should be in Victoria, but this is not the place to decide the question.

Mr. LYNE. -

I am of opinion that this is the place to settle the question, and for that reason I have forced it to a division. I still think I am right. It has been stated that I said to a reporter in Sydney that it was intended by this Convention to have the capital in Melbourne. I regret that the gentleman who made that statement did not adhere more closely to fact. Unfortunately, he does not always do so. I think he gets a little excited at times. He becomes more excited than he should.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. LYNE (New South Wales). -

At the time of the adjournment for lunch I was giving the reason why I considered that this was an opportune time at which to decide in what colony the federal capital should be situated. I think that in the interests of the colony I represent that should be done, more especially as we are proposing to federate without our natural ally, Queensland. If Queensland was in, or was likely to come into the Federation there would be a chance of justice being done to New South Wales in the matter of the federal capital.

Mr. DOUGLAS. -

I object to that. What do you mean by justice?

Mr. LYNE. -

I mean exactly what the word expresses. I think it justice to New South Wales, as being the mother colony and the wealthiest colony in the group, to place the federal capital within her territory. I cannot see why there should be any objection to dealing with the matter now. I cannot see why those honorable members, who showed by their demonstrations a little before lunch that they were in favour of the federal capital being in New South Wales, should object to saying so by their votes at the present time. On the other hand, if honorable members are in favour of the federal capital being in any other colony, the honest and straightforward course is to say so now. It is not fair, it is not honest, it is not just, for any of the states to leave this question as a matter of doubt, because, being a matter of doubt, you may take my word for it that it is a matter of danger.

Mr. BROWN. -

We have heard that before.

Mr. LYNE. -

It is as well that the honorable member should hear it more than once. The danger must be apparent to all. For what reasons do my honorable
friends (Mr. Brown and Mr. Douglas) wish to have the matter deferred? Surely they do not anticipate that the federal capital is going to be in Tasmania.

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Mr. BROWN. -

It is not impossible.

Mr. LYNE. -

It is next to impossible. What reasons can the honorable members who represent Western Australia give for refusing to vote now?

Mr. VENN (Western Australia). -

We will not vote under compulsion.

Mr. LYNE. -

Do they want the federal capital at Perth or Fremantle?

Mr. DEAKIN. -

No, at Coolgardie.

Mr. LYNE. -

Probably; but they have no sufficient justification for refusing to give their votes now. Then there are the representatives of South Australia. Unless they desire to see the federal capital in Adelaide, what honesty is there in with-holding their votes?

Mr. SYMON. -

We do desire to see it in Adelaide, but our desires are not always accomplished.

Mr. LYNE. -

If talking to the Convention would do it the honorable member might succeed. I have not counted the number of speeches the honorable member has made, but the Right Hon. Sir John Forrest took that trouble, and he gave him the palm as being the principal talker in the whole Convention. Since then the honorable member has well maintained his reputation.

Mr. BROWN (Tasmania). -

I desire to ask, Mr. Chairman, if the honorable member is in order in addressing the Convention on the question of whether the federal capital should be in New South Wales? That has already been decided, and the question before the committee is that the federal capital should be in Victoria.

The CHAIRMAN. -

The honorable member is not in order in advocating that the federal capital should be in New South Wales when the committee have negatived that proposition.

Mr. LYNE. -
I have said all that I wanted to say on the subject. Although I was wandering, perhaps, from the strict rule under the South Australian standing orders, still, one proposition is so linked with another that it is very difficult to refrain from referring to any of the colonies. It was stated by the Hon. Mr. Wise that I had said that there was a plot in the Convention to place the federal capital in Melbourne. I denied that at the time, and I regret the honorable member made the assertion, because it is not in accordance with facts. What I did say, and what I believe, is that if a straight-out vote were taken in the Convention now, the federal capital would be in Victoria, and at Ballarat.

Mr. WISE. -
You never mentioned Ballarat at all.

Mr. LYNE. -
The honorable member is as correct as he is usually.

Mr. WISE. -
I challenge you to produce the report.

Mr. LYNE. -
What I say cannot be contradicted. The honorable member can appeal to the reporter to whom I spoke if he likes. What was reported I do not know. I have not been able to find the paper. A strong feeling exists in another colony on this subject, and it was for that reason I submitted my motion. The honorable member had no right to make the assertion he did make. He said also that he sympathized with me in the course I was taking. Thank heaven, his sympathy is not worth much. It is the sympathy of a party of one-of himself alone.

An HONORABLE MEMBER. -
What has that to do with federation?

Mr. LYNE. -
I have a right to reply to the honorable member. He made reference to his sympathy. I do not wish for his sympathy, nor have I ever had it. He would not offer it to me now excepting with a double meaning. I am reminded of a statement I once heard when a reference was made to him.

Mr. DOBSON. -
Is this in order?

Mr. LYNE. -
I think it is. When an honorable member attacks me I have a right to reply.

Mr. DOBSON. -
You have stated two or three times that you do not want his sympathy; why not let us get on?
Mr. LYNE. -

These interruptions will not affect me. I have heard the honorable member described by a man whom he very much admires as a gentleman who could not sit long in one place. That description was very apt and very good. The honorable member's mind travels with his body. It does not remain very long in one groove. I only wish to say further that I recognise that the Hon. Mr. Peacock has not submitted this motion with a view of getting a true expression of opinion upon, it or with a hope that it will be carried. The public outside will be able to see exactly what his motive is. I do not think that that motive will be indorsed by any large section of the community. The honorable member casts, or attempts to cast, ridicule in a small way on the proposal I submitted. I was in earnest in what I said and did, and I had ample justification. In my opinion, the federal capital should be placed in the colony which I represent.

Mr. SYMON (South Australia). -

I only wish to say-

Several HONORABLE MEMBERS. - Divide!

Sir GEORGE TURNER. -

We have only two days in which to finish this part of our work.

Mr. SYMON. -

Yes, and the whole of this proceeding is the most pitiable misuse of the time of the Convention that has ever taken place. It is utterly derogatory to the dignity and position of the Convention. I intend to vote against the motion. If a similar motion is brought forward on behalf of South Australia, I shall not walk out of the chamber; I shall vote against it, and for this reason, that this is neither the time nor the place, as we decided a week or two ago, for the determination of this question.

Mr. HOLDER. -

Nor have we any commission to decide it.

Mr. SYMON. -

No; and it is necessary that some one should express this view in no hesitating manner. The honorable member who has justsat down said that the Hon. Mr. Wise's conduct reminded him of something. His conduct reminds me of the nursery rhyme:-

There was a little girl who had a little curl,
Right in the middle of her forehead,
And, when she was good, was very, very good,
And, when she was bad, she was horrid.

Mr. BARTON (New South Wales). -
I should like to say one or two words on this subject before the division is taken. I have not been in the habit of taking up too much of the time of the Convention, considering the duties that are imposed upon me. I wish to add two or three words in approbation of what Mr. Symon has said. I take the same position entirely as he takes on this question. From 1891 down to the present moment it has been recognised by the representatives of the various colonies that it does not rest with them to choose the capital of the Commonwealth, and that a free people, through their free Parliament, should choose their own capital. That is the position I have always occupied in regard to this matter, and that has been the position of every Convention.

Mr. SYMON. -

And Mr. Lyne practically assented to it the other day when he withdrew his call for a division.

Mr. LYNE. -

Nothing of the kind.

Mr. BARTON. -

If any part of Australia or Tasmania were proposed specifically as the place for the capital of the Commonwealth, I should vote against the proposal, and I should expect the whole Convention except the mover to vote with me. I think it is quite out of place to make proposals of this kind; and when we know they are absolutely condemned to defeat, we are not

Mr. TRENWITH (Victoria). -

I rose before to speak on this point, and, in deference to your wish, Mr. Chairman, I resumed my seat, but, in view of what has since transpired, I desire to say now what I would have said then, namely, that I think the proposal to put the capital in any of the colonies by this Convention, is neither calculated to improve the prospects of federation, nor the prospects of that colony of ultimately securing the capital. So that from both points of view it is extremely unwise, not to say unpatriotic. I personally determined, before I was elected to this Convention, that I would not vote for any proposal to place the capital anywhere by a specific provision in the Constitution. I said that to the electors, and I believe most of the candidates in Victoria said the same thing, believing that the selection of the capital of the Commonwealth is a matter of legislation in the interests of the Commonwealth, and not a matter that ought to be in the
Constitution. I shall therefore vote against this proposal to place the capital in Victoria, not because at the present moment I am prepared to say it ought not to be in Victoria, but on the same ground as I voted against placing the capital in New South Wales, namely, because I thought this Convention is not constructed on the right lines to settle questions of that character.

Mr. HOLDER. -

And we have no authority to do it.

Mr. TRENWITH. -

I do not know that. It seems to me that the Convention has authority to do anything it chooses as far as putting together a Constitution is concerned; but it would be extremely unwise, and, I venture to say, unpatriotic, to do anything of the kind. I say that it would be unpatriotic to do so, because it would be prejudicial to federation; and it does seem to me that any proposal to do it here would, rather than be an effort to obtain an expression of opinion as to where the capital ought to be, have the effect of evoking an expression of opinion that would injure federation. I feel strongly on this point, and I feel that I would not be doing my duty unless I said so. I desire the federation of the colonies, and for that reason I wish to leave to the Parliament every question of legislation in the interests of the Commonwealth. Therefore I wish not to be misunderstood. When I voted against the capital being placed in New South Wales, it was not because my mind is made up that New South Wales is an improper place for the capital of the Commonwealth to be in; and when I vote against the placing of the capital in Victoria, as I shall do if a division is taken, it will not be because my mind is made up at present that Victoria is not a proper place for the capital of the Commonwealth; but because, in my opinion, this Convention ought not to pass any resolution on the point. I shall oppose any such proposal by every means in my power.

Mr. PEACOCK (Victoria). -

I desire to say that I certainly never would have moved my amendment but for the tactics that have been adopted. I hold the same views as most members of the Convention on this question. I have always been of opinion that the determination of the place where the capital of the Commonwealth is to be should be left to the Federal Parliament, but now an honorable member representing another colony has brought forward a proposal with regard to New South Wales, I feel it to be my duty to submit this amendment, and ask the members of the Convention to vote against it. If another honorable member will go with me I will take a division on the amendment, in order to show the people of Australia that the Convention is
determined that this question shall not be settled here, and that it is a matter purely for the Federal Parliament to decide. I am determined to show the people of Australia the tactics that have been adopted on this question.

Mr. MCMILLAN (New South Wales). -
I am absolutely out of sympathy with this move in every way, and I think that it will do nothing but bring this Convention into disrepute.

Mr. PEACOCK. -
Which move?

Mr. MCMILLAN. -
I was alluding to the proposal that the capital of the Commonwealth should be in the territory of New South Wales. That question had been absolutely settled already, and when we are trying to save time in order to bring our labours to a speedy conclusion it seemed to me almost childish to introduce it here.

Question-That Mr. Peacock's amendment be agreed to-put.
The committee divided-
Ayes ... ... ... 3
Noes ... ... ... 36
Majority against Mr. Peacock's amendment. ... ... 33

AYES.
Douglas, A. Teller.
Hassell, A.Y. Peacock, A.J.

NOES.
Barton, E. Howe, J.H.
Berry, Sir G. Isaacs, I.A.
Briggs, H. Kingston, C.C.
Brown, N.J. Leake, G.
Brunker, J.N. Lee Steere, Sir J.G.
Carruthers, J.H. Lewis, N.E.
Cockburn, Dr. J.A. Lyne, W.J.
Crowder, F.T. McMillan, W.
Deakin, A. O'Connor, R.E.
Dobson, H. Quick, Dr. J.
Downer, Sir J.W. Symon, J.H.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Glynn, P.M. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W. Wise, B.R.
Henning, A.H.
Mr. CARRUTHERS (New South Wales). -

I hope that this Convention will not agree to the proposal to add to clause 118 the words "and shall be within the federal territory," and I take the same broad ground which has been enunciated by the leader of the Convention. I use his own words, in which he said he would vote against any proposal to establish the capital of the Commonwealth in any place, because he preferred to leave the matter to the free Parliament of a free people to have its free choice. Now, you will distinctly be taking away from that free Parliament a free choice if you carry this proposal. You at once put outside the range of choice all the great capital cities of Australia. I do object to tying the hands of the Federal Parliament in such a fashion as that. Why should we assume that we have all the wisdom of the world in regard to the proper choice of a federal capital? There is absolutely no necessity to have this site on federal territory. It may be open to very good argument in favour of having it on federal territory, but we cannot shut our eyes to the fact that very good argument may be used against having the federal capital dissociated from those centres of trade and commerce and culture which exist in Australia. I, for one, look at the example which the United States has afforded us as one not worthy of being copied—to establish the capital almost in the wilderness, away from where commercial men, professional men, men of education, are wont to congregate, away from where their business keeps them together, and to set the affairs of the State, forsooth, to be conducted in some far distant place, where there are not those surroundings of civilization which tend to make life pleasant or to make society happy. I think that one of the results of establishing the capital of the United States at Washington, has been largely to divorce from political life some of the best elements of the community. We do not want to copy a mistake of that character. Let us contemplate for one moment the establishment of a federal capital, as has been proposed in some places, in the interior of Australia. There are many who advocate its establishment there on the ground that it will be easily defended.

Sir JOHN FORREST. -

Too hot.

Mr. CARRUTHERS. -

I do not say that all propositions in regard to this Constitution emanate from within the walls of this chamber, but it has been seriously proposed
that the federal capital should be established in the interior of Australia.

**Sir JOHN FORREST.** -

Only by lunatics.

**Mr. CARRUTHERS.** -

We can imagine, then, the establishment of the Federal High Court there, because it will have to hold its chief sittings in the federal capital. You will require a bar to attend there, and I undertake to say that almost for a century to come the leading members of the bar will be found practising their profession in the capital cities of the various colonies, and for litigants to engage a bar to attend to their cases in some distant so-called federal capital will mean to penalize litigants to an enormous extent before the Federal High Court. Again, take the class of men who will be eligible for election to the Federal Parliament which must sit in that federal territory. Men must go far away from their homes, far away from the society they are accustomed to.

**Sir JOHN FORREST.** -

That must apply to some, any way.

**Mr. CARRUTHERS.** -

It will not apply to so large an extent.

**Sir JOHN FORREST.** -

If it sits at Sydney it will apply to all the Melbourne people.

**Mr. CARRUTHERS.** -

Not to the same extent. I can assure the honorable member that the ground can be largely cut from under his feet in that respect. If it is in federal territory away from these cities it conveniences no one; it inconveniences every one. You will be largely handing over politics to political adventurers if you isolate the Federal Parliament from all the populous centres of Australia. You will not find men largely engaged in commerce, men largely engaged in professional pursuits, men who have large interests to look after in the various centres-you will not find these men willing to give up a large proportion of their time each year to go into the wilderness of Australia. Sir John Forrest says that the same thing will apply if we have the capital established in any leading city.

**Sir JOHN FORREST.** -

Why not?

**Mr. CARRUTHERS.** -

It will apply to some extent, but not to the extent that it would apply in the case I have just cited. Nearly all men engaged in mercantile pursuits or commercial pursuits can to some extent be conducting their business in whatever city they may be, can establish a branch business there; and a lawyer, a doctor, or an engineer will always find scope for the practice of
his profession in any of the great cities of Australia, but he will not find
that scope if he has to go to a little town in the bush. As it is a matter which
is fairly open to argument, and as the Convention has resisted doing
anything which would locate the federal capital at all, on the ground of
consistency, do not do that which at once by a negative vote says that the
capital shall b
adoption of the Constitution? I can assure honorable members that whilst
men may be slightly inclined to view with favour the Constitution, in view
of the fact that Sydney is not selected, they will go into open antagonism to
the Constitution when they find that by express enactment the claims of the
city of Sydney are absolutely to be shut out. Those claims can only be
appreciated by those who look at the fact that in the city of Sydney you
have the first capital of Australia, the mother city of Australia—a city whose
claims are regarded by its citizens, and many of the people of Australia, as
standing on higher grounds than the claims of any other city. I do not want
to urge the Convention to pass a vote in favour of the claims of one part of
the colony over another part, or of one, part of Australia over another part,
but I do say that nothing should be done now which will prejudice the free
choice by a free Parliament of a free people of a site for the capital, when
the time comes for that selection to be made.

Sir JOHN DOWNER (South Australia). -  
I agree with, I think, every word that Mr. Carruthers has uttered, and my
only regret is that when the narrower view was taken, and it was sought to
interfere with the free choice of a free people, he was found endeavouring
to fix the location of the federal capital.

Mr. CARRUTHERS. -  
Yes, but I only quoted Mr. Barton.

Mr. BARTON. -  
You spoke very strongly in favour of the view you thought I expressed.

Sir JOHN DOWNER (South Australia). -  
I listened to the honorable gentleman with great attention, and with quite
as much interest as attention, when he laid down what I think is an
absolutely true principle—that it should be left to the free choice of a free
people; and in the face of that statement I regret that he was a party to
producing so much of this discussion, and to endeavouring to provide that
it should not be left to the free choice of a free people. I follow my
honorable friend entirely in his later and broader view, which I am willing
to believe was his view throughout, but which he had not the consistency at
the moment to advocate. I have no fear of the dangers which the founders
of the American Commonwealth anticipated through the federal capital
being a central city. We can understand very well in this Convention that there was no reason for it. The Convention has met in Adelaide, it has met in Sydney, and now it is meeting in Melbourne; and I would like to ask any honorable member whether the locality where the meetings of the Convention were being held has had the slightest effect on the mind of any honorable member? It may have been beneficial. The changing of the locality is distinctly beneficial, because we have seen in many instances that the removal of honorable members from the more immediate influences that ordinarily surround them has developed a breadth of view which the limitations of home might have prevented. But apart from that, I would like to know what honorable member has been in any way influenced by his local surroundings where the meeting of the Convention was held in one place or in another, or has not conscientiously and thoroughly adhered to what he thought to be fair and right, quite apart from the place where it happened to be meeting? I think, therefore, the question of whether the federal capital should or should not be in a city is a matter of no consequence; but, following the last expressed view of my honorable friend (Mr. Carruthers), that this should be the free choice by a free people, I object to the amendment which has been moved.

Dr. COCKBURN (South Australia). -

I think it would be a great mistake for the Convention to attempt to locate the federal capital anywhere, but, on the other hand, I see no objection, but every advantage, in laying down a broad general principle, which is done by the amendment of Sir George Turner. A broad principle, I think, is necessary for the well-being of the Federation, and it is simply this: That wherever it is located the Federal Parliament is to be master in its own house, and not subject to the conflicting authority of any municipality or any other form of state government.

Mr. MCMILLAN (New South Wales). -

I think the principle we have to adopt is that wherever there is full power given with full discretion to the Federal Parliament, to leave that power to work out itself. Many of us may believe that no capital city of Australia ought to be the federal capital. Many of us may believe that it ought to be federal territory. But, at the present time, this does look like a side-blow at any attempt to make any city the federal capital, and while many of us might be against that, we would resent altogether an attempt to dictate to the Federal Parliament in a matter of this kind. It is just one of those questions on which it is not possible at the present time for us to give an opinion. It is a matter which will be surrounded by various circumstances
and conditions, and before the Commonwealth is formed there may be many reasons to alter the views we have at present. It seems to me, from every possible point of view, that it is better to leave the Federal Parliament to decide according to its own discretion and entirely untrammelled.

Sir JOHN FORREST (Western Australia). -

I am very much in accord with the proposal of Sir George Turner. It seems to me that the Federal Parliament we desire to constitute must have some habitation, and to locate it in one of the larger towns or cities of Australia would have one effect, at any rate, which, as far as I am able to gather, is not desired; it would lessen altogether the prestige of that colony. For instance, if we had the Federal Parliament and the Governor-General in Melbourne, we would have two Parliaments, perhaps within a stone's throw of one another, carrying on their business. We would have the Governor-General out on the hill there, and the Lieutenant-Governor somewhere else. The thing would be absurd. The state would be disparaged altogether. There are a great many here who are very much afraid that the dignity of the states will be imperilled when we have a Federal Constitution. I think, if there is one thing which would tend to lessen their importance and dignity, it would be to have the Federal Parliament and the Governor-General in the same place as the local Parliament. The local Government would be altogether over-shadowed by the Federal Government. I should very much like to see a new city erected in some suitable place, where we could all go in summer. It ought to be a cool place; indeed, the coolest place in Australia. It ought to be a place where we could build a federal city, looking forward with great ideas in our minds to the future. It ought to be a place where a city could be laid out which would be the admiration not only of the present but of future generations. I cannot help remembering that the lands of this territory, in the early days of the Federal Constitution, would be a source of great revenue. I should like to see it inserted in the Bill that the federal area should not be less than 100 square miles. No doubt, as Mr. Carruthers has said, such a federal territory might cause inconvenience at first, but this inconvenience would disappear as time went on. It would, no doubt, be inconvenient for the Sydney people to come to Melbourne, for South Australians to go to Sydney or Brisbane, or for the Western Australian representatives to come to the east. But these difficulties we have foreseen from the beginning, and I do not think they would get greater, but less, as time goes on. We have the examples presented by Washington and Ottawa, and I have never heard that there has been any desire to change what was adopted by the American people or the Canadian people. I hope, therefore,
that the proposal will be carried. I do not see how it would be possible to have a Federal Parliament unless it be situated on some territory over which it would have control. If the seat of the Federal Government were in Melbourne, the very Parliament House would have to be inside state territory, and there could be no federal army or police.

Mr. KINGSTON. - And the federal territory would be subject to state laws?

Sir JOHN FORREST. - And it would be subject to state laws.

Mr. SYMON (South Australia). - This amendment is a declaration that the federal capital should not be any already established town or city.

Mr. DEAKIN. - Unless the state is willing to cede it.

Mr. SYMON. - Then there is no necessity whatever for putting the provision in the Constitution.

Mr. FRASER. - Hear, hear; that is the point.

Mr. SYMON. - I intend to vote against the amendment, and I take exactly the view expressed by Mr. Carruthers, Sir John Downer, and Mr. McMillan. The intention of the Convention is to leave the choice of the federal capital to the Federal Parliament unlimited and unrestricted. To whatever extent the amendment goes it is a limitation in that direction. I agree with every word Sir John Forrest has said as to the undesirability—in fact, the impossibility—of choosing a site for the federal capital. I also agree with Sir John Forrest entirely as to the necessity of having the federal capital set apart. But the Federal Parliament is perfectly competent to do that, why should we, when we are disclaiming all intention of interfering with the Federal Parliament, seek to interfere with it in this apparently slight respect? The Federal Parliament would surely be perfectly competent to deal with the matters referred to. At any rate, if we do leave these matters to the Federal Parliament, let us leave them free of all restrictions, direct or indirect. For this Convention to peace any restriction would be to derogate from the position we have already taken up.

Mr. GLYNN (South Australia). - I quite agree with Mr. Carruthers that the hand of the Federal Parliament should not be forced. There is no provision in the American Constitution
putting a ban on state capitals. At the time the American Constitution was drawn provision was made that the capital was not to be within any of the states, but should be on territory ceded by the various states. The object was not to get rid of the danger of any pressure from outside, but to get rid of the danger of the states interfering with the independence of the Federal Government. It was not until 1800 that the present city of Washington was fixed. It was then fixed as the result of a bribe by Hamilton to Virginia and Maryland. The fact was that Virginia and Maryland, when the proposition was made some years before that the debts should be amalgamated, raised the objection that their indebtedness was exceedingly small. The proposition of Hamilton was to pool all the debts without regard to excess or minimum, but Virginia and Maryland were promised by Hamilton that Washington would be placed on the banks of the Potomac. That was not the result of any policy to exclude capitals. Many writers have said that as the result of having Washington away from the direct influence of the public, and away from the opportunities which would be afforded to politicians of mixing with the professional, literary, and other classes, Washington has become the centre of political cliquism and a good deal of corruption. I hope the restriction will not be provided for in the Constitution. It would be impossible to get sufficient federal territory near to any of the present capitals, and the result of putting such a provision in the Constitution would not only be inexpedient generally, but would have the result of alienating a considerable number of city votes. It might have the effect, as some representatives of New South Wales have said—although I know Mr. Walker takes a different view—of a number of votes in Sydney being cast against the Constitution rather than for it. A similar result might occur in Melbourne. The American federal territory was granted about 1800 by Virginia and Maryland, at a time when the land had practically no value. I ask the Convention whether it would be likely to get the quantity of land necessary within 10 miles radius of any of the present Australian capitals? I say it would be impossible. Either a large sum would have to be paid for it, or it would have to be granted by the state, and both of these would be next to impossible. By passing the amendment of Sir George Turner the Convention would exclude Sydney and Melbourne, and probably Adelaide, from all chance of ever becoming the site of the Federal Government.

Mr. HIGGINS (Victoria).—

I find from Longman's Gazetteer of the World that Ottawa, the capital of Canada, is in the province of Ontario. It may be right or it may be wrong, but it is not provided that it should be on federal
Mr. WISE (New South Wales). -

As has been pointed out, the voters of New South Wales may be embarrassed. An idea has been disseminated in New South Wales, and has found expression in the press, from what source I do not know, that Melbourne is to be the capital. There are a very large number of people in New South Wales who, from what has appeared in the public press, believe they would be specially prejudiced, and who would vote against the Bill if there were any chance of Melbourne becoming the capital of the Federation. Logically, I would be prepared to leave the matter to the Federal Parliament, who must declare the capital to be on federal territory. But, as a matter of tactics, I believe it would assist the passing of the Bill in New South Wales if the amendment of Sir George Turner were carried.

Mr. ISAACS (Victoria). -

I shall support the amendment of Sir George Turner. We practically admitted the principle in clause 53. In that clause we have given exclusive powers to the Federal Parliament. We say that the Federal Parliament shall have, amongst other powers, the power to make laws in regard to "the government of any territory which, by the surrender of state or states, and the acceptance of the Commonwealth, becomes the seat of government of the Commonwealth." It must be borne in mind our position is absolutely different. In the United States they were seeking, as we are seeking, to make a Government of enumerated powers. In Canada the Commonwealth has absolute power to make laws, subject to restrictions expressly set forth, so that wherever the seat of government is the Government may exercise legislative power. But here we have to take territory in order to give the Commonwealth exclusive jurisdiction. It seems to me, therefore, that the course pursued in the United States is the one to pursue here, on account of the similarity of the Constitution we are endeavouring to frame, and the difference between our position and that of Canada.

Question-That the words "and shall be within federal territory" proposed to be added be so added-put.

The committee divided-

Ayes ... ... ... 32
Noes ... ... ... 12

Majority for the amendment 20

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AYES.
Abbott, Sir J.P. Howe, J.H.
Barton, E. Kingston, C.C.
Berry, Sir G. Lee Steere, Sir J.G.
Briggs, H. Lewis, N.E.
Brown, N.J. Moore, W.
Cockburn, Dr. J.A. O'Connor, R.E.
Crowder, F.T. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Douglas, A. Solomon, V.L.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Fysh, Sir P.O. Walker, J.T.
Gordon, J.H. Wise, B.R.
Hackett, J.W Zeal, Sir W.A.
Hassell, A.Y.
Henning, A.H. Teller.
Holder, F.W. Isaacs, I.A.
NOES.
Brunker, J.N. Lyne, W.J.
Dobson, H. McMillan, W.
Downer, Sir J.W. Symon, J.H.
Glynn, P.M. Venn, H.W.
Grant, C.H.
Henry, J. Teller.
Higgins, H.B. Carruthers, J.H.
Question so resolved in the affirmative.
The clause as amended, was agreed to.
The Bill was then reported with amendments.
Mr. BARTON (New South Wales). -

Before I move that the report be adopted I had better ask leave for the standing orders to be suspended, with a particular purpose. Under Standing Order 304 it is provided that-

At the close of the proceedings of a committee of the whole House on a Bill, the Chairman shall report the Bill forthwith to the House, and if amendments have been made thereto, a time shall be appointed for taking the report into consideration, and moving its adoption; and the Bill, as reported, shall, in the meantime, be printed.

So that, amendments having been made in the Bill, it would be necessary under the standing order I have read to appoint a future time for the consideration of the report. We should thus lose perhaps a day; so that I beg to move-

That the standing orders be suspended to enable the report of the committee to be taken into consideration forthwith.
Sir JOSEPH ABBOTT (New South Wales). -
Before that motion is put I should like to know what opportunity is to be afforded to those who wish various clauses to be recommitted? If the report be adopted now there should be at the same time a motion to recommit.

Mr. BARTON (New South Wales). -
There will be. If we consider the report now an amendment can be moved for the recommittal of certain clauses. I have a number of amendments ready and printed, and I intend to move that the Bill be recommitted for the purpose of reconsidering the clauses in which I wish to move amendments. I suppose it will be competent for any honorable member to move to amend my motion by adding other clauses.

The motion was agreed to.

The PRESIDENT. -
I shall now put the question-
That the report be adopted;
and upon that motion it will be competent for the leader of the Convention to move an amendment for the recommittal of certain clauses.

Mr. BARTON (New South Wales). -
I beg to move-
That all the words after "That" be omitted, with a view of inserting the following words:-the Bill be recommitted in order to insert a new clause after clause 6 of the covering clauses; to amend clauses 10, 12, and 24; to omit clause 25, and insert a new clause 24A; to omit clause 26; to amend clause 27; to omit clause 28; to amend clause 29; to omit clause 42; to amend clause 44A, and insert new clause 44AA; to amend clause 52 by amending sub-section (12), and inserting new sub-section (31A); to amend clause 53; to omit the first paragraph of clause 56B; to insert in clause 73 new sub-section (7), and amend sub-section (8); to amend clauses 74, 77, 79, 80, and 83; to omit clause 86; to insert new clause 85A; to amend clauses 90 and 93; to amend clauses 95 B, C, and D, clause 99, and clause 101.

Mr. REID (New South Wales). -
I beg to move-
That the motion be amended by adding the following words:"Also for the purpose of adding words to clause 3, to insert words in clause 46, to add a paragraph at the end of clause 52, to omit sub-section (4) of clause 54, to insert a sub-section in clauses 73 and 74, and to add words to clause 101."

Mr. ISAACS (Victoria). -
I beg to move-
That the motion be further amended by the addition to the amendment of
the following words "to amend clause 9," clause 24-

Mr. BARTON. -
I have moved the recommittal of clause 24.

Mr. ISAACS. -
But I understand that that is only for a particular purpose. Will the clause be open to amendment by any honorable member?

Mr. BARTON. -
I take it that it will. By the recommittal of the clause I shall acquire the right to propose an amendment in it, and I take it that every other honorable member will acquire the right to propose an amendment of my amendment, or to propose a different amendment.

Mr. ISAACS. -
I would ask whether, when a clause is recommitted at the instance of an honorable member, for a particular purpose, it will be open to any honorable member to move any amendment upon that clause?

The PRESIDENT. -
I take it that it will be better, unless the Convention is afraid of opening up too much ground for argument, to simply recommit the Bill for the purpose of reconsidering certain clauses and certain new clauses, making no limitation in regard to the amendments it is intended to propose.

Mr. SYMON. -
I would point out that the Premier of New South Wales moved as an amendment the recommittal of certain clauses with a view to the addition of certain words. I presume that this limitation will be disregarded.

The PRESIDENT. -
That would depend upon the way in which the Convention asked me to put the amendment from the Chair. I shall put it in the largest form.

Mr. ISAACS. -
Then I need not ask specifically for the recommittal of clauses which have been mentioned by other honorable members?

The PRESIDENT. -
I propose to put it to the Convention that the clauses mentioned be recommitted, but where honorable members simply desire to reconsider a paragraph of a clause, I think it will suit the convenience of the Convention, as some of the clauses are very lengthy, if I simply put it that the clause be recommitted for the consideration of the paragraph.

Mr. BARTON. -
I take it that you will, sir, state the purpose for which it is proposed to recommit the clause, and that an honorable member will be able to move that the whole clause be thrown open to discussion.

The PRESIDENT. -
Where it is proposed to amend a clause by the insertion or the addition of certain words, I will put it that the clause be reconsidered, but where the suggestion is that a certain paragraph only shall be dealt with, I will put it that paragraph so-and-so of clause so-and-so be reconsidered.

Sir JOSEPH ABBOTT (New South Wales). -

I should like to point out that if a clause is recommitted simply to insert certain words, it does not matter what your opinion maybe, sir; the Chairman of Committees must be guided by the terms of the motion to recommit. If the recommittal of a clause is moved for the purpose of inserting certain words, when we get into committee we shall find ourselves in this position, that the Chairman, under the parliamentary rules, will feel that he is restrained from allowing any amendment except the specific amendment for which the clause was recommitted. I want it to be clearly understood that where clauses are recommitted they will be open to full

is not what, I think, the Convention desires.

The PRESIDENT. -

It will depend upon the mode in which the motion is carried by the Convention as to how the clauses can be dealt with in committee. I propose to put the question-where the recommittal is not limited to a certain paragraph-in a general form, so that the whole clause may be open for reconsideration. The Chairman of Committees will not then be hampered as the honorable member suggests.

Mr. TRENWITH (Victoria). -

It would be extremely inconvenient if a clause were recommitted for the purpose of dealing with a certain part of it, and, when we had made an amendment in that part, we found that that necessitated a consequential amendment in some other part which we were unable to make. For this reason, it seems to me advisable, where a clause is recommitted, to throw the whole of it open for discussion.

The PRESIDENT. -

There can be no doubt of the force of the honorable member's suggestion. At the same time, where it is merely proposed to recommit a paragraph of a clause, I think only that paragraph should be open for discussion, seeing that the various paragraphs deal with separate subjects. Where the motion is for the recommittal of a paragraph I do not propose to put the question that the clause be reconsidered, because that would be giving an opportunity for unnecessary discussion.

Mr. ISAACS (Victoria). -

I think that, under the circumstances, I had better name the clauses which
I desire to see recommitted. They are clauses 9, 24, 26-

Mr. BARTON. -
I have mentioned clause 24 generally.

Mr. ISAACS. -
Yes, but I want to mention it again, because I am not quite clear how this will be dealt with in committee. The clauses which I wish to have reconsidered are clauses 9, 24, 26, 27; clause 52, sub-sections (2), (3), (8), (22), (24). Then I want clause 52 to be recommitted for the purpose of reconsidering bounties, in case it should not come in under any of these particular sub-sections, with the power to put in a sub-section. It may, perhaps, be better to deal with it in clause 86B, but before I get to 86B there is clause-55. I only want to have that reconsidered with a view to the question of whether it shall be laws or proposed laws, which seems to be a very important matter. Then there is clause 56B.

Mr. BARTON. -
I have given notice to reconsider that.

Mr. ISAACS. -
But only for a certain purpose. Then there is clause 86B, to which I have already referred, also clauses 89, 92, 95A, 98, 121. Then there is clause 52, which we desire to have recommitted, with the view of dealing with the same subject as is raised by clause 95A, so that, if the committee thinks fit, we can give the Parliament power to make laws without reference to the railways. It is only the complement to recommitting 95A.

Mr. HIGGINS (Victoria). -
I want to amend the motion by inserting clauses 80 and 95B.

Mr. BARTON. -
I have given notice of those clauses.

Mr. DEAKIN (Victoria). -
I wish to move that clauses 13 and 68 be recommitted.

Sir PHILIP FYSH (Tasmania). -
I wish to recommit clause 90, for the purpose of moving a new sub-section.

Mr. HOWE (South Australia). -
I wish to propose a new sub-section in clause 52 to stand as 23A-invalid and old-age pensions.

Mr. WALKER (New South Wales). -
I wish to repropose clause 117A.

Sir JOSEPH ABBOTT (New South Wales). -
I think we had better move that the whole Bill be recommitted.

Sir JOHN FORREST (Western Australia). -
I have one or two clauses which I wish to amend, but, it seems to me, it
will take along time to get rid of those
already proposed. May I suggest to honorable members who propose
amendments, and I shall be glad to follow the same course myself, that
they should put their amendments in print? They should place the
amendments on the notice-paper to-morrow. It is very easy for honorable
members to get up and say I propose to amend a clause, but we may not
know that he intends to amend it at all. I intend to ask leave to amend
clause 45. My object is to allow Ministers of the Crown in the various
states to be members of the Federal Parliament.

Sir GEORGE TURNER. -
Will you put that in print?

Sir JOHN FORREST. -
It has been in print for several days. I also propose to strike out clause
56B, with a view to insert a new clause which has been on the paper for
two or three weeks.

Mr. DOUGLAS (Tasmania). -
Is it not desirable that all these proposed amendments should be in print
before we take them into consideration? It would be absurd for us to
consider all these various clauses without any previous knowledge of what
is proposed. We do not know in which direction the amendments will go,
and we shall come here quite unprepared unless we have these documents
before us so as to compare one alteration with another.

The PRESIDENT. -
That might be desirable and convenient; at the same time, the motions
now being submitted are perfectly in order.

Mr. HOLDER (South Australia). -
I desire to have leave to propose a new clause, to follow clause 93.

Sir RICHARD BAKER (South Australia). -
I would point out that this practically amounts to a reconsideration of the
whole Bill. We have already been here for seven weeks; are we to be here
for another seven weeks in order to enable honorable members to re-open
questions that have been already decided?

Mr. REID (New South Wales). -
I rise to a point of order.

Sir RICHARD BAKER. -
I am perfectly in order.

Mr. REID. -
That is for the President to decide. What I desire to ask is, whether it is in
order to interrupt honorable members in giving these notices? They are
titled to give them, and if they assume any alarming proportions, it will
be within the power of the Convention to strike out all those that they do not care to take.

Mr. BARTON. -

There are 31 already, in addition to the Drafting Committee's amendments.

The PRESIDENT. -

I think that Sir Richard Baker was perfectly in order in rising to speak to the question. Any honorable member may suggest the recommittal of any clause, and it is competent for any other honorable member to speak on the subject.

Sir RICHARD BAKER. -

I do not desire to say anything more.

Sir JOSEPH ABBOTT (New South Wales). -

I would ask the leader of the Convention if he is prepared to recommit the whole Bill? There are two clauses that I desire to have reconsidered- clauses 74 and 75.

Mr. BARTON. -

I propose a general recommittal of clause 74.

Sir JOSEPH ABBOTT. -

Consent to the recommittal of clause 75 also, and I will say no more.

Mr. BARTON. -

I cannot say what I will consent to yet. We are only now taking the course of indicating what the clauses, are that we desire to have recommitted.

Sir JOSEPH ABBOTT. -

If an honorable member moves a motion now he may be held to have spoken on it.

Mr. BARTON. -

No; honorable members are simply intimating what clauses they desire to have recommitted. They are not proposing their amendments.

Mr. ISAACS. -

No.

Sir JOSEPH ABBOTT. -

Apparently we are not bound by the rules of Parliament. There have been irregularities already.

The PRESIDENT. -

If there are any irregularities it is the duty of honorable members to call attention to them.

Sir JOSEPH ABBOTT. -
It is unjust to make a statement of that kind. The Hon. Mr. Isaacs made an assertion, and I answered it.

The PRESIDENT. -

I will ask the honorable member to kindly take his seat. I do not think the honorable member will desire to persist in a remark of that sort, and I will ask him again to withdraw it.

Sir JOSEPH ABBOTT. -

Then I won't. I do not think you could have heard what Mr. Isaacs said.

The PRESIDENT. -

I would ask the honorable member to exhibit that respect to the Chair which generally characterizes him, and to withdraw the observation.

Sir JOSEPH ABBOTT. -

I am sure you are under a misapprehension. I attribute nothing whatever to you, or to the Chair. What I said was that, apparently, we were not bound by the rules of Parliament, although we agreed to follow the rules of Parliament at our first sitting. I am not one who would reflect on the Chair for a moment, and I at once withdraw any words I used that you rule to be out of order. I should be exceedingly sorry to have any disagreement with the Chair.

The PRESIDENT. -

It is absolutely unnecessary for the honorable member to say anything more.

Sir JOSEPH ABBOTT. -

I was asking whether honorable members, being bound by the rules of Parliament, would, if they gave notice of motion for the recommittal of a particular clause, be taken to have spoken, and whether they would have a right to speak again. I want to have clause 75 recommitted.

The PRESIDENT. -

I think I shall be studying the convenience of the Convention in allowing every latitude consistent with the discharge of business. That is the rule I have endeavoured to adhere to, as I recognise that our proceedings are governed by certain standing orders, with which four-fifths of the members of the Convention cannot be expected to be familiar.

Sir GEORGE TURNER (Victoria). -

I desire to move that clause 93 be recommitted.

Mr. BARTON (New South Wales). -

I might intimate to honorable members who have not read the long notice I have caused to be distributed that the amendments it contains, with a very few exceptions, are little more than mere drafting amendments. They have been placed in the notice for recommit

The motion was amended accordingly.
Are we to understand that the motions we are considering will commit us to a reconsideration of all the clauses that have been mentioned, or is the question of what clauses shall be recommitted to be debated?

The matter is in the hands of the Convention. If they choose to sanction the recommittal of certain clauses they may do so. The motions may be put together or separately.

If we take each motion separately, and have to give our reasons for asking for the recommittal of each clause, we shall be kept here for a great length of time, because we should have to enter into the merits of the amendments we desire to submit. The better course would be to allow the clauses to be recommitted without debate.

I would point out that if these clauses are recommitted the committee will have the power of calling into force the standing order which enables any honorable member to move that the committee do now divide, when the discussion would be brought to a close. That would not, of course, be done under ordinary circumstances.

It is a distasteful thing to do.

Yes, and none of us would be likely to do it. I simply desire to point out that we will have the power in our own hands to stop the discussion.

What I fear is that we will not know what we are voting upon. A number of honorable members have intimated that they desire to amend certain clauses. If we knew what the nature of the amendments were we might reject the proposal for recommittal. I think it is too much to ask us to agree to the recommittal of a clause before we know what is the nature of the amendment to be proposed. That surely is not the procedure that is generally followed. If we saw the amendments we would know what to do.

We ought to have them in print by to-morrow morning.

Yes, but if we give leave to recommence now we may have to again discuss such Questions as the control of the rivers. That alone might occupy a week.
Surely you could not refuse to rediscuss that very important question.

Sir JOHN FORREST. -

I think, at any rate, honorable members ought to have an opportunity of saying whether they will allow the question to be re-opened or not, and they certainly will not have that opportunity if they vote on the motion for recommittal of a clause without any indication as to the nature of what is proposed.

Mr. BROWN (Tasmania). -

I am not quite sure if it be competent to include in the instructions to the committee on this recommittal that they should consider first those amendments of which notice has already been given.

Mr. HOWE. -

They are nearly all in print.

Mr. BROWN. -

If that course were adopted the objections of Sir John Forrest would be met, and we could proceed with the business without any interruption. I hope there will be no suggestion of adjourning the business in order to have proposed amendments put in print, because we already have a certain amount of work with which we can proceed. If it is competent to instruct the committee in the way I have indicated so that the business may be carried on, I hope that that course will be adopted.

Mr. BARTON (New South Wales). -

The standing orders have been suspended for the consideration of the report, or, rather, for the consideration of any amendment on the motion for report; but the instruction-will have to be the subject of a separate suspension of the standing orders, or, at any rate, a separate motion.

Sir JOHN DOWNER (South Australia). -

As far as the Drafting Committee's amendments are concerned, they are, as the leader of the Convention has said, substantially, endeavours to carry out the known wishes of the Convention in a better way than they were previously expressed. There are two or three matters of substance, however, to which the attention of the Convention will be called. We suggest that the whole of the Drafting Committee's amendments should be taken together. As to whether that course is adopted" however, the Convention will please itself. But to say that an honorable member has only to state that he wants a clause to be recommitted, in order to get it recommitted, would be a very inexpedient course to take. Are we to go back into committee for the purpose of reconsidering a question over which we may spend days?

Sir GEORGE TURNER. -

Not days.
Sir JOHN DOWNER. -
Who can fix the limits of discussion when once we are started? Certainly not my right honorable friend.

Sir GEORGE TURNER. -
The Convention can do so by moving that a division be taken.

Sir JOHN DOWNER. -
Exactly; but that would be a most ungracious course—a course which it would be peculiarly inadvisable to adopt.

Mr. ISAACS. -
Is it not as bad to refuse to reconsider a clause which an honorable member desires to have reconsidered?

Sir JOHN DOWNER. -
Any question of that kind can be just as well settled in the Convention as in committee, and in less time. If my honorable friends have fresh clauses to propose, or want certain clauses to be reconsidered, they can move accordingly in the Convention. There are substantially no new matters to be considered. It is only going over old ground again, and surely we have reached that stage when honorable members may fairly and justly be prevented from speaking more than once on the same subject, which is substantially all that is involved between taking matters in the Convention or going into committee. At this stage of the Convention, I think, we are justified in adopting the course I suggest in order to shorten the proceedings.

Mr. HOWE. -
It is all in the hands of the lawyers.

Sir JOHN DOWNER. -
If honorable members have fresh proposals to submit, they can tell the Convention so, and if the Convention thinks they are proper matters to be reconsidered they will be reconsidered; but if it is the old ground that we are asked to go over again, the Convention can reconsider that, too. At all events, we can express an opinion about such matters. Now, if all the motions for reconsideration have to be dealt with separately a great deal of time will be wasted, and, in my judgment, we shall save a considerable amount of time and dispose of them finally if we deal with them in the Convention instead of in committee.

Mr. FRASER (Victoria). -
I think it would be advisable that all the members who wish to have clauses recommitted should give notice of their proposals now and have them printed at once, and then we could deal with those proposals the first
thing to-morrow morning. If that course is not adopted, and we are to recommit clauses generally, the whole of our debates will be repeated over again, and we may take many weeks to finish our business. Now, some of us, even among those who are living in Victoria, cannot afford to give very much more time to this business; therefore the best way would be to compel honorable members to give notice in the way I have suggested, so that we can deal with those amendments to-morrow, and not be called upon to discuss matters outside them.

Mr. TRENWITH (Victoria). -

I would point out to my honorable friend and others who have urged that we should not give permission in this general way for the recommittal of clauses that if we do not adopt that course it is highly probable the proceedings will be very much more protracted than if we do adopt it, because any honorable member has the right to move the recommittal of any clause, and be can move the recommittal of each clause in a separate speech.

Mr. FRASER. -

Let honorable members give notice of their amendments now.

Mr. TRENWITH. -

The honorable member must see that we are in a novel position. The standing orders which we are working under provide there shall be an adjournment to give us time to do this thing, but at the request of the leader of the Convention, in the interests of expedition, we have suspended the standing orders, and honorable members are therefore not in a position to prepare and give notice and print their amendments and we are consequently adopting this course. But surely we can trust the good sense of the representatives to see that it is necessary we should come to a conclusion of our labours very soon. It is utterly impossible to keep this Convention together much longer, and, therefore, if we give this permission, as a matter of courtesy, very much as we give leave to introduce a Bill without notice, we shall get along much more quickly than by insisting that honorable members shall move for leave in the Convention as a whole, where we may be longer in discussing the various subjects than if we discussed them in committee. Because honorable members know that in the Convention they will only have the opportunity of speaking once, and an honorable member moving for the recommittal of a clause would, under those circumstances, feel it to be his duty to support his proposal by arguments on every side, whereas, if they can submit their proposals in committee, they will appeal in a few words to the good sense of honorable members to carry their views. In some instances the reasons
for doing that will be so obvious that it will be done at once, and in other
cases the reasons against doing it will be so equally obvious that honorable
members will refrain from speaking, and give a silent vote. Now, in view
of the immense number of recommittals sought, it seems to me that there is
no other course than to grant them, as a matter of courtesy, and trust to the
good sense of honorable members not to occupy more time in proposing
and discussing them than is absolutely necessary.
Mr. BARTON (New South Wales). -
I do not know whether it would suit the convenience of members of the
Convention, but there is a course which it seems to me might very well be
adopted. It is a view that has been frequently expressed. The Bill can be, if
necessary, twice recommitted. By doing that time may be saved. If the Bill
is recommitted merely for the purpose of the Drafting Committee's
amendments that I have proposed (which are mainly drafting amendments,
with one or two exceptions) and honorable members in the meantime write
out their notices of amendments and have them printed, then the Bill can
be again recommitted for the reconsideration of such provisions as are
embraced there. And when honorable members see the nature of the
amendments which we propose, it will take very little time to decide
whether they are amendments of substance, and whether there is the
slightest reasonable prospect of a decision which has been come to being
reversed. There are many cases, no doubt, in which there is such a
prospect. There are other cases in which I suppose honorable members
who are making the proposals may have no very definite expectation of
succeeding in reversing a decision.
Mr. SOLOMON. -
Are all the amendments to be proposed by you merely drafting
alterations?
Mr. BARTON. -
Not all. They cannot be left to the drafting stage, but they are endeavours
to carry out what has been gathered as the sense of the Convention, except
in two or three cases in which I have endeav
Mr. SOLOMON. -
You had better separate them.
Mr. BARTON. -
I would suggest that we take the matters which are in print at the instance
of the Drafting Committee, and also two or three other matters which are
mentioned in their notice, but which are not in the printed list.
Sir JOSEPH ABBOTT. -
You asked us to give notice of these proposals.
Mr. BARTON. -
I made several requests.

Sir JOSEPH ABBOTT. -

That has been done.

Mr. BARTON. -

It has been done in some cases, but I can assure my honorable friend there is a vast number of cases in which I have seen no notice of them at all. What I wish to suggest, in order to save a great deal of discussion, is that those matters which have been in print at the instance of the Drafting Committee or of myself may be taken now, in order to give time for other members who have not circulated their amendments to have them printed and circulated. That will give the Convention an opportunity at once to decide on its course, and will leave it perfectly open to obtain a second recommittal. The obtaining of a second recommittal will, under the circumstances, take no more time, but much less time than the obtaining of it now.

Sir JOSEPH ABBOTT. -

Why not take all the amendments that have been printed?

Mr. OCONNOR. -

We will have quite enough to go on with.

Mr. BARTON. -

If honorable members will withdraw their notices for recommittal in cases where they have not had their proposals printed, and let us go on with those which are in print, they can move for a second recommittal, and they can trust to the good sense of the Convention to grant it where there is any substance in the matter.

The motion, as amended, was agreed to.

The PRESIDENT. -

I will put the next motion, which is moved by Mr. Reid.

Mr. REID (New South Wales). -

I recognise the force of what has been said, and I think it would be greatly to the convenience of the Convention if those of us who have not given in print notice of the character of our proposed amendments are given an opportunity to do so. If we now carry a recommittal of the Bill for the purposes already mentioned, ample time will be given to all of us to put on the table in print the nature of our objects in proposing the recommittals. It will be understood, of course, that we will not be prejudiced by deferring our notices, because it would be a second recommittal.

Mr. BARTON. -

Certainly there will be no attempt on my part to refuse a second
recommittal all round.

Mr. REID. -

I quite agree that if, in matters likely to provoke a long debate, a clear majority of the Convention has made up its mind, it would save time if that mind were expressed on the proposal to go into the matter again. We have reached a stage, I admit, at which it is of great importance that we should save time. I am prepared to withdraw my proposals till I can put them in print on the paper. I will engage to have my proposals in print for tomorrow morning, and I suppose every other member can make an effort to do the same. I may say that the proposals for recommittal which we have agreed to will take us into next week. For instance, the clause about the dead-locks clause 56B - will lead to a long debate, so that honorable members will have plenty of time to put their proposals in print for the information of the Convention. I am sure that Mr. Barton's proposals will not be dealt with in two days. We will have plenty of time to put our proposals in print, without prejudice, I hope, to their, full discussion afterwards. On the understanding that I shall have an opportunity after I have put my proposals in print to move the further recommittal of the Bill, I ask leave to withdraw my motion.

Mr. HOLDER (South Australia). -

Before the question that leave be granted is put, I wish to suggest to the leader of the Convention something which I think is important. Just now the idea was that we should take those questions which were more debatable first, and leave those which were less debatable until afterwards. The course we are now about to pursue I am afraid will lead to this result: We will take mere drafting amendments and matters which are not specially contentious during the next two or three days when we have a full Convention, and then, next week, when a number of honorable members will have left us, we will be at the points where we ought to have the fullest attendance of honorable members. I ask the leader of the Convention to consider that point, and to take care that that does not happen.

Mr. BARTON (New South Wales). -

My amendments, with one or two exceptions, will not take any time to discuss, but where it is considered anything will take substantial time to discuss I could refrain from dealing with it on the first recommittal, so long as I have my right of proceeding with it on the second recommittal. I want to meet the convenience of members in every way. The reason it is wise to consider this schedule first is that it gives honorable members an opportunity to put their amendments in writing and have them printed. If any little further
time is required for that purpose, then instead of adjourning from half-past five until half-past seven I would ask for an adjournment from five o'clock to eight o'clock. By doing that we should be enabled to proceed with business.

The PRESIDENT. -

If I understand there is a general desire that all these motions, other than that already carried, should be withdrawn for the present, I will put it in a general way that honorable members who have moved the recommittal of clauses have leave to withdraw.

Sir JOSEPH ABBOTT (New South Wales). -

Some days ago Mr. Barton invited honorable members to submit in writing notices of motion of their desire to have clauses recommitted. I and others have done so, and why should we be placed at a disadvantage because other honorable members have not taken the trouble to give notice? It would only be fair to submit to the Convention every motion of which notice has been given, and which appear on the notice-paper. There are two notices of motion which I gave some weeks ago, and I cannot consent to the suggestion of the President. If the Convention chooses to reject my motion, well and good.

The PRESIDENT. -

Under the circumstances, I shall not put any motion for leave to withdraw which is not asked for.

Leave being given, Mr. Reid's motion was withdrawn.

Mr. ISAACS (Victoria). -

Mr. Reid having asked for leave to withdraw his motion for the present, I am bound to follow his example-on this occasion-the understanding being clear that I shall be at liberty to propose the same matter again. With all honorable members who have spoken on the subject, I do hope there will be an effort to save time, but also an effort to save the Bill. I hope there will be no difficulty thrown in the way of a fair reconsideration of such matters as honorable members generally think important. It is really important that there should be no idea outside that there is any attempt to avoid the fullest discussion consistently with a fair and reasonable time being afforded for that purpose.

Mr. SOLOMON. -

We have avoided that by reversing our decisions every second day.

Sir GEORGE TURNER. -

We are now trying to arrive at the original decision.

Sir RICHARD BAKER (South Australia.) -

In the House no honorable member can address the Chair more than once. I raise no objection when an honorable member confines himself to
withdraw his motion, but when a member proceeds to make a speech on
the merits or demerits of a particular question, it is time the standing order
is put in force.

The PRESIDENT. -
As that point is taken, I shall have to say it is well founded. Do I
understand that the honorable member (Mr. Isaacs) asks leave to withdraw
his motion?

Mr. ISAACS. -
I ask leave to withdraw my motion.

Mr. SYMON (South Australia). -
Mr. President, I have not spoken-

HONORABLE MEMBERS. -
Spoken, spoken.

Sir GEORGE TURNER. -
The honorable member has spoken three or four times.
Leave being given, Mr. Isaacs' motion was withdrawn.
Leave was granted to Sir George Turner (Victoria), Mr. Deakin
(Victoria), and Mr. Holder (South Australia), to withdraw their motions for
recommittals.

Sir PHILIP FYSH (Tasmania). -
There are notices of motion which have been printed for several days
past.

The PRESIDENT. -
All the motions not duly withdrawn will be put to the House.

Mr. REID (New South Wales). -
We have accepted the leader's proposal-

The PRESIDENT. -
I am afraid I must rule the right honorable gentleman out of order. Unless
there is any further request to withdraw I will put the remaining motions.

Sir JOHN FORREST (Western Australia). -
I ask leave to withdraw my motion.
Leave being given, the motion was withdrawn.

Sir PHILIP FYSH. -
Then I ask leave to withdraw my motion.
Leave being given, the motion was withdrawn.

The PRESIDENT. -
If there is no other motion for withdrawal, I will put the motions which
remain.
Sir JOSEPH ABBOTT (New South Wales). -
As Sir John Forrest, Sir Philip Fysh, and Mr. Holder have asked leave to withdraw, I also ask leave to withdraw my notice of motion.
Leave being given, the motion was withdrawn.

Mr. HIGGINS (Victoria). -
I happen to have been out of the chamber for a moment. I understand that if the honorable leader's motion for recommittal involves a clause as to which I have given notice, the whole clause is open to me.

Mr. BARTON (New South Wales). -
I was under the impression, Mr. President, that the intention was simply to discuss the notice I have given in the first instance. In that case the honorable member's purpose would be served by having his notice printed for the second recommittal.

The PRESIDENT. -
I think the motion of Mr. Higgins had reference to clauses 80 and 93B, both of which are in the motion carried at the instance of the leader.

Mr. HIGGINS (Victoria). -
I have already handed the few amendments I had in my mind to the Clerk, and these amendments are either printed or in the Clerk's hands. I do not want to have the same clause recommitted twice.

The PRESIDENT. -
The clauses mentioned by Mr. Higgins have already been recommitted at the instance of the leader of the Convention.

Mr. HOWE (Tasmania). -
I apprehend that clause 52 will be recommitted.

The PRESIDENT. -
Only as to a certain paragraph.

Mr. HOWE. -
My notice of motion in regard to this has been on the paper, and, as it is an important matter, I would like it discussed by the full Convention.

The PRESIDENT. -
Does the honorable member ask leave to withdraw his motion?

Mr. HOWE. -
I cannot be exceptional, and I ask leave to withdraw.
Leave being given, the motion was withdrawn.

Mr. WALKER (New South Wales). -
Although my notice of motion is in print, I ask for leave to withdraw it.
Leave being granted, the motion was withdrawn.

The PRESIDENT. -
The only clauses that have been recommitted are those recommitted on the motion of Mr. Barton.
The Convention then resolved itself into committee of the whole for the further consideration of the recommitted clauses.

Mr. OCONNOR (New South Wales). -

I beg to move-

That the following new clause (6A) be inserted after clause 6 of the covering clauses:

After the passing of this Act the Colonial Boundaries Act 1895 shall not apply to any colony which becomes a state of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

This new clause becomes necessary for this reason: There is an Imperial Act, called the Colonial Boundaries Act, passed in 1895, which gives the Imperial authorities power to fix the boundaries of the colonies, and makes provision that those boundaries shall not be altered except with the consent of certain self-governing colonies named in the schedule. If this provision were not inserted there might be a difficulty as to how the Imperial Act affected the right of the Crown to still deal with the boundaries of the States of the Commonwealth, and it is to make it clear that the Commonwealth has control over the boundaries within itself that the insertion of these words becomes necessary.

The new clause was agreed to.

Mr. OCONNOR (New South Wales). -

I beg to move-

That paragraph (2) of clause 10 be omitted.

It is proposed to omit the second paragraph of clause 10, with a view of dealing with the question, and with another matter of the same kind relating to the House of Representatives, comprehensively in one clause. Clause 10 provides for the keeping up of the electoral laws of the different states until the Parliament of the Commonwealth may legislate. We think it will be better to deal with the matter in one way, and I propose, therefore, that the second paragraph of clause 10 be omitted, in order that the whole subject may be dealt with comprehensively later on, when there will be one clause for both Houses. The one clause will be new clause 44AA, which is as follows:

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each state for the time being relating to elections for the more numerous House of the Parliament of the state shall, as nearly as practicable, apply to elections in the state of senators and of members of the House of Representatives.

Honorable members will see that in clause 44 there is a similar provision
to the one we are dealing with, but we think it will be better to deal with both matters together. That, as honorable members see, will make the provision very much shorter, whilst the difference really is that the second paragraph of clause 10 mentions a number of matters relating to local affairs in regard to which the same laws will apply to federal elections.

Mr. HIGGINS. -
Have you examined the local laws to see if they can apply?

Mr. OCONNOR. -
Oh, yes, we know what the local laws are.
The amendment was agreed to.
The clause, as amended, was agreed to.

Clause 24. - The House of Representatives shall be composed of members directly chosen by the people of the several states, according to the irrespective numbers; as nearly as practicable there shall be two members of the House of Representatives for every senator.

Until the Parliament otherwise provides, the member of members to which each state is entitled shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the Commonwealth, by a quota, which shall from time to time be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators; and there shall be one member for each quota of the people of the state. But [here name the colonies which have adopted the Constitution] shall be entitled to five representatives at least.

Mr. OCONNOR (New South Wales). -
I beg to move-
That all the words from the words "several states " (line 3) inclusive to the end of the clause be omitted, with a view to the insertion of the following words:-
"Commonwealth. The number of members chosen in the several states shall be in proportion to the respective numbers of their people. But if by the law of any state the people of any race are not entitled to vote at elections for the more numerous House of the Parliament of the state, then, in reckoning the number of the people of the state, the people of that race shall not be counted."

Mr. GLYNN (South Australia). -
Does not this amendment involve an alteration of the quota principle?

Mr. OCONNOR. -
No; that comes later on.

Mr. ISAACS (Victoria). -
This amendment provides that if by the law of any state the people of any
race are not entitled to vote, then, in reckoning the number of the people of the state, they shall not be counted. I should like to know whether the honorable and learned member has considered this in relation to the clause which gives the Commonwealth power to legislate with regard to the people of any race. Suppose that power is exercised by the Commonwealth in a manner over-riding the law of the state—is this provision sufficient?

Mr. OCONNOR (New South Wales). -

I think so, because the honorable member will see that what we want to get at is the number of persons to be counted. If by any law of any state persons of a certain race are not counted they will not be counted in this enumeration.

Mr. ISAACS. -

Will the honorable member consider it?

Mr. OCONNOR. -

Yes. At the present time I think it is sufficient, but I will consider it.

Mr. GLYNN (South Australia). -

The words proposed to be inserted are—

Commonwealth. The number of members chosen in the several states shall be in proportion to the respective numbers of their people.

And so on. That provision directly negatives proposed new clause 24A, which seems to continue the quota principle.

The CHAIRMAN. -

There is a mistake in the printing. The amendment should read—"Omit to the end of the paragraph," not "to the end of the clause."

Mr. GLYNN. -

That makes a difference.

The amendment was agreed to.

Sir GEORGE TURNER (Victoria). -

If there has been a mistake in the printing it will make a difference to the course of procedure which we shall have to take.

Mr. OCONNOR. -

Any of these clauses can be recommitted.

Sir GEORGE TURNER. -

The amendment that has just been agreed to proposed the omission of certain words at the end of the clause, with a view to the insertion of other words, which are set out. Lower down, clause 24A provides that—

The number of members to be chosen in each state shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the Commonwealth, by the quota.
If we retain the second paragraph of the proposed new clause we shall have to raise the question of quota when we are discussing it.

Mr. OCONNOR. -

The honorable member is quite right. It is necessary that the words at the end of the clause should be omitted, and that clause 25 should be omitted. Then the whole question can be raised again.

The CHAIRMAN. -

I understand that the third paragraph of the clause stands in.

Mr. HOLDER. -

That paragraph is contained in clause 24A.

The clause, as amended, was agreed to.

Clause 25 was omitted.

Mr. OCONNOR (New South Wales). -

I beg to move-

That the following words stand clause 24A of the Bill to follow clause 24:-

The number of the members of the House of Representatives shall be, as nearly as practicable, twice the number of the senators. Until the Parliament otherwise provides, the number of members to be chosen in each state, shall, whenever necessary, be determined in the following manner:-

I. A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators.

II. The number of members to be chosen in each state shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the Commonwealth, by the quota; and if on such a division there is a remainder greater than one-half the quota, one more member shall be chosen in the state.

But notwithstanding anything in this or the last preceding section, five members at least shall be chosen in each original state.

This clause is nothing more than a shortening of the provisions of two or three previous paragraphs. We have omitted clause 25 and the latter part of clause 24, and clause 26 is to be omitted. The provisions contained in these clauses have been embodied in this new clause. The Right Hon. Sir George Turner will see that there is nothing new in the clause which I am now proposing, though it embodies a principle, to which he has taken exception, but to which the Convention has already agreed.

Sir GEORGE TURNER (Victoria). -
As I intimated in Sydney, I propose to again test the feeling of the Convention with regard to the proposal to have a fixed quota. With that view, I move—

That the proposed new clause be amended by the omission of the words "The number of the members of the House of Representatives shall be, as nearly as practicable, twice the number of the senators," with a view to the insertion after the words "Until the Parliament otherwise provides" of the words: "each state shall have one representative for every 50,000 of its people."

In the Commonwealth Bill of 1891 we provided that each state should have one representative to every 30,000 of its people. That provision may, perhaps, have given us a somewhat large House of Representatives, but I think that the alteration which I now propose would provide a very reasonable number to commence with. As we know, provision is made for the increasing or the reducing of the number of members of the House of Representatives. But if we adopt the peculiar provision that the number of the members of the House of Representatives shall be determined by the number of senators, we shall be taking a very unwise step. I fail to see what connexion there can be between the number of the members of the Senate and the number of the members of the House of Representatives, which should limit the number of the House of Representatives in accordance with the number of the senators.

Mr. HIGGINS. -

Or with the number of the states.

Sir GEORGE TURNER. -

Yes, or with the number of the states. If we adopt this provision we shall be in the peculiar position that as population increases the number of the members of the House of Representatives must be determined by the number of members of the Senate. If new states came in, that would increase the number of senators, and the popular representation of the existing states, although their population might not have increased. Surely that, upon the face of it, would be unreasonable. Then, as was pointed out in Sydney, there might also be this difficulty: Some of the states would have five representatives in the House of Representatives, although their population would only entitle them to two. That, upon the basis upon which we worked in Sydney, would give a House of 78 members. But as these states became entitled as of right to their five representatives, the other states would have their representation reduced, because the provision is that the number of the House of Representatives must, as nearly as practicable, be twice the number of the Senate. Therefore, as the smaller colonies became entitled as of right to five representatives, colonies like
South Australia, Victoria, and New South Wales would be reduced in their representation. Then, taking the figures which were supplied in New South Wales, it may happen that in a very few years New South Wales will be entitled to a representation of 26 or 27 members, while, on the other hand, Victoria, whose population may not increase so rapidly as that of the sister colony, may have her representation reduced from 24 to 13. While I cannot deny that the representation of Victoria will be, in proportion to her population, I think we shall find it difficult to make the people of this colony understand why their representation should be reduced from 24 at the present time to perhaps 13, twenty or thirty years hence. But that would undoubtedly be what would happen if the figures which were quoted in Adelaide and in Sydney are correct. I am not prepared to say that they are correct, because they come from New South Wales, where other figures have come from. It is probable, however, that some of the colonies will increase at a greater rate than others, with the result that the representation of some of the colonies will increase while that of the other colonies will decrease. After thinking over the matter carefully I cannot see what reason there is why we should fix this quota at all, unless we are to have what is called the Norwegian system, but which is not that system, unless we are to have that system as a means of settling dead-locks by the two Houses meeting together. To my mind, that can be the only basis upon which we can rest any such position. This matter was very fully discussed in Sydney, and I propose now to set a good example with regard to these amendments. I do not propose to discuss them at any great length, because I am sure everything that was said in Sydney must be fresh in the minds of honorable members. We did take a division on the subject, but not in a full Convention. I think the matter is of so grave importance to some of the colonies that we are justified in having the matter reconsidered and voted upon again. This is undoubtedly a blot on the Bill which we ought not to allow to remain in. There is no reason whatever why we should adopt this system and not follow out the practice of 1891. It was also really adopted in Adelaide. That method is having some fixed number as a quota, if you like, on which the House of Representatives should be constituted. In the House of Representatives we provide for the representation of the individual people, and the population of the different colonies ought to be entitled to have representatives for a certain number of people. It may be said that will render necessary an immensely large House, but that has not been the experience in America. When it was necessary to prevent the House from becoming too large, steps were taken in that direction.
Mr. BARTON. -

But, as you put it, would it not require an amendment of the Constitution?

Sir GEORGE TURNER. -

No; my proposal is, until the Parliament otherwise provides, each state shall have one representative for every 50,000 of its people, so that it will be entirely in the hands of Parliament to make the necessary provision. The Treasurer will not allow the members to increase at so rapid a rate as to involve very heavy expense, and no doubt Parliament would say that, whereas 50,000 was considered a sufficient number when the total population was 3,500,000, now that it is 5,000,000 or 6,000,000 the number for each representative should be increased to 60,000 or 70,000. It will be wise to revert to the original number proposed, and with that object I move my amendment, to test the feeling of the Convention, so that, instead of having a fixed quota for all time, which would require an alteration of the Constitution to change we shall have a fixed number as I suggest. At present it is made absolutely a portion of our Constitution that, until we alter the Constitution by the very difficult mode we have adopted, the number of representatives in the House of the people must be decided by the number of members representing the various states. It is immaterial whether you have a state represented by four, five, or six members, but it is very material that you should have the people in the House of Representatives represented by a limited number in conjunction with the number in the Senate. It will be wise to retrace our steps and go back to what was originally proposed.

Mr. SYMON (South Australia). -

I would point out to the right honorable member that his amendment is not directed against the quota; it is directed against the relative proportion of members of the Senate and members of the House of Representatives.

Mr. BARTON. -

It proposes to omit the ratio, and to put in one member for every 50,000 people.

Mr. SYMON. -

I do not care what becomes of the quota if you can substitute something else which the right honorable gentleman desires, but I object very strongly to alter the relative proportion between the Houses. This is the old story of cutting away all the benefits we were supposed to acquire from a strong Senate. I point out that the honorable member's amendment now is not directed to the question of the quota so much as to the destruction of, the relative proportion between the two Houses.
Mr. WISE. -

Why not strike out the third line and let the first two lines stand?

Mr. ISAACS (Victoria). -

The first two lines involve the whole question. This is a matter which goes very deep down upon the subject. I would like to point out to honorable members that by putting in this provision something is put in that is absolutely novel in any Constitution. It is not only novel to a Constitution, but it is taking from the larger states—the most populous states—something beyond the concession that was agreed to, with regard to equal representation.

Mr. HIGGINS. -

Not agreed to, but given.

Mr. ISAACS. -

I should like to point out again to the Convention, as briefly as I can, the ground I took in Adelaide when this was first proposed. I would like to impress on honorable members what a rooted objection we have to it, and what an objection there is which can scarcely, if at all, be got over. It has been, accepted, by way of compromise and concession in this Constitution, by those who do not believe in it, as a principle that the two Houses should be appointed on totally distinct and antagonistic lines.

Mr. SYMON. -

No.

Mr. OCONNOR. -

Not antagonistic lines.

Mr. ISAACS. -

One to be the House of the people, and the other to be the House of the states, to check, or, if necessary, to checkmate the people, to use the words of a learned writer. The Senate we have agreed to is a concession, specially based upon the equality of the various states independently of their population. Indeed, we are to say that for the purpose of constituting the Senate population is to be disregarded altogether. But we have claimed that the House of Representatives—the National House—shall be framed on the basis of population, not population as checked, or altered by the Senate but population simply, and we claim that this is to be a House of Representatives, and representation is to have its fall sway. I do not hesitate to say that unless the people of Victoria are to have a genuine House of Representatives they will find considerable difficulty in acceding to this Constitution at all. I desire to make myself perfectly clear, because this is the moment to do so. We are now beginning to consider questions at a juncture when we should be acting dishonestly with each other if we did not speak frankly. Hereafter, if we should unfortunately find it to be our
duty to take a position adverse to this Bill, which I trust will not be the duty of any of us, we should justly be chargeable with had faith to our follow delegates, to the sister colonies, and to our own colony, if we did not express our views clearly and unmistakably in the Convention, so as not to allow particular questions to create any errors. Now, I would point out how very important this is. The Senate is not to be checked by the House of Representatives, but the House of Representatives is to be checked by the Senate.

Mr. BARTON. -

You mean that the Chamber that speaks second is always a check on the other.

Mr. ISAACS. -

No, I mean that you can make the Senate as large as you like without reference to population at all. But although the needs of the population may require a larger quota in the House of Representatives, and although there may be no need whatever to extend, the number of representatives in the Senate, the House of Representatives cannot, be altered without altering the Senate, and what is worse, without the consent of the Senate. I do not argue that this should be done without the consent of the Senate, but I want that consent to be required only, as in America. If, for the purpose of enabling the people to choose their representatives freely and voluntarily, we intend to say that there shall be one member for every 50,000 or 60,000 of the population, we may find that we have agreed in this way that there shall be only one member for every 100,000, 200,000 or 300,000 of the population. What opportunity will there be for a fair representation? The quota will be constantly altering, but the ratio will remain the same. When the people of the colonies are told that each state is to have six representatives in the Senate without relation to its population, they are also told that, although the population requires for a fair representation a quota less than that which prevails, the matter is to be governed, not by the population of the Commonwealth, but by the number of representatives in the Senate. What connexion is there between a House which is avowedly based upon equality of statehood without regard to population, and a House of Representatives elected on the basis of population? We are told that this is the most democratic Constitution in the world. Is it to be converted into the most conservative Constitution in the world? There is no Constitution that I am aware of under which the people's House cannot be constituted, if desired, on the basis of population pure and simple. Why have we departed from the example of America in this regard and slavishly followed it in
other respects?

Mr. SYMON. -

We do not object to the House of Representatives being based on population pure and simple. All we say is that the ratio should be preserved.

- That is not basing it on population pure and simple. In America the Constitution started by fixing the number of senators for each state at two. It was then provided that the House of Representatives should be constituted by giving not less than one member for 30,000 inhabitants. If no further legislation had taken place the House of Representatives would by this time have been enormous. There would have been from 2,000 to 3,000 members in it, but public opinion compelled them, as it always will compel them, to reduce the number by increasing the quota. Gradually, as the population increased, the quota went up from 30,000 to 40,000, and from 40,000 to 50,000, until now it is close upon 200,000. They did not trouble to ask themselves how many members there were in the Senate. What they did consider, was the number of people that each member should represent, and the House of Representatives then proposed an amendment of the law in that regard. The Senate has always agreed to these amendments, because it knew that if it did not the House of Representatives would simply be enlarged. Inasmuch as it is always for the benefit of the Senate to agree to such a Bill, there is no difficulty whatever. The House of Representatives, every ten years, proceeds to diminish its numbers proportionately by increasing the quota. Here we are to start with about one member to every 50,000 of the population. At a future period we may find that there is one member for every 100,000 of the population, and we may desire to make the quota one member for every 80,000. We could not do that without the consent of the Senate, and the difference between us and America is simply this, that if the Senate does not agree, the House of Representatives is kept lower in numbers and the representation is made more difficult than would otherwise be the case. But if the Senate does agree its numbers must also be increased. What a farce that is! We are told that if the population of Victoria, as was shown by the figures supplied from Sydney, increased to 4,000,000-

Mr. WISE. -

Are those Mr. Coghlan's figures?

Mr. ISAACS. -

They came from New South Wales. We are told that if the population of Victoria increased to 4,000,000, she would have on the basis of these figures 13 members, as against the 24 with which she starts the Federation.
Mr. WISE. -

Many of us would go with you to knock out the quota.

Mr. ISAACS. -

That is quite a different thing. You cannot alter the quota if you keep the ratio.

Mr. WISE. -

You can increase the number of members of the Senate.

Mr. ISAACS. -

Let us look at the position. If we want, owing to an increase of population in Victoria or New South Wales, to increase the number of members of the House of Representatives, so as to keep pace with the population, so as to allow the electors to have a full and free choice, and so as to prevent men of great wealth from having supreme command of the constituencies, then we are told that we must increase the number of members of the Senate. What necessity is there for increasing the number of members of the Senate? If the states are on an equal footing, what difference does it make to them whether they have each six members or twelve?

Mr. WISE. -

The Senate will be the people's House.

Mr. ISAACS. -

Then all the more reason why we should alter this. I agree that this proposal, with its attendant consequences, will go far to emasculate the House of Representatives, and this is one of the points on which we must make a stand. It is one of the points I do not see my way to yield. We have conceded equal representation in the hope of getting some concessions. Not one solitary concession has been made to us. On the contrary, the advantage has been pushed further than we anticipated. The only House the people of the Commonwealth, as a people, have to rely on is to be tied hand and foot to the Senate, and its number cannot be extended as the requirements of population demand. It may be said where is the injustice if there are 60 members, as there will be without Queensland, and those 60 members are evenly distributed over the Commonwealth? That is no answer. You might as well say that if there were twenty members, they would be distributed over the Commonwealth, but we want to see that the people of the Commonwealth have opportunities in moderately-sized constituencies for electing their House of Representatives. And this does not give any play to that, because, as I said before, it simply appeals to the Commonwealth to increase the Senate at the same rate, and the Senate may not comply with the request. And when we recollect that there is no,
provision for dead-locks—none whatever that is workable; and that this provision of the ratio of one to two is almost altogether futile, that is, the desirable so-called provision for dead-locks which is at present in this Constitution—it seems to me almost impossible to commit to the Commonwealth or to the Federal Parliament the gigantic interests at stake in this Federation. Now, I desire to take no uncertain ground in this matter, because it seems to me to be an objection which cannot be got over. There being no precedent for it, there can be no excuse for it, certainly not on the ground of economy, because on that ground we could reduce the number of the Senate. You could have three as well as you could have six senators, and the states equally represented. In America they have two, and the states are equally represented. But on the ground of economy it is idle to consider this question when we are framing a Constitution for the Federation. The whole basis of it is a Constitution of two Houses. The earth rests on the tortoise, but what does the tortoise rest upon? And when we get a Constitution resting upon the formation and operation of the House of Representatives as well as of the Senate, we may well ask ourselves what is the reason for departing from well-known rules and creating this new scheme of tying the House of Representatives to the Senate. The House of Representatives is the National House. It is supposed to be. It is supposed, I said, to be based on population only. The Senate is the States House—a false position as I understand it, but still we have constituted it. Why mix these two things to the disadvantage of the people's House?

Sir WILLIAM ZEAL. -

They are both people's Houses.

Mr. ISAACS. -

There can only be one reason for doing that, and that is aggrandizing the Senate or crippling the House of Representatives. Without reiterating the arguments I urged in Adelaide, I do say that this is a matter that I do not see my way to get over. There are some thing one would be glad to get over, but this is not alone a mistake, for it carries with it other mistakes because it carries with it a proposal for the two Houses to sit together. When we consider that, and consider that under these provisional don't propose to discuss them in detail, but I must just briefly refer to them, because they are in connexion with this, showing as they do, the results that flow from it—when we remember that, when those two Houses meet together this Constitution gives Tasmania 5 members in the House of Representatives and 6 in the Senate, making 11, while Victoria will have 24 members in the House of Representatives and 6 in the Senate, making

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30, we see that it gives Tasmania, a state that will contribute only one-tenth of the revenue that Victoria will contribute, more than one-third of the ultimate voice in the disposal of the revenue. I say it is impossible for us to accede to that. So far from extending our self-government, and making this a free and democratic Constitution, we are unmistakably, as it seems to me, taking the sure course of making the most conservative Constitution we have ever seen—more conservative than any colonial Constitution, and much more conservative than the British Constitution. For those reasons I do hope that the Convention will excise these words.

Mr. DOUGLAS. -
Give a dog a bad name, and you may kill him at once.

Mr. ISAACS. -
I do hope that the Convention will excise these words, not only to keep the Constitution in harmony with what we anticipated when we started, but for the purpose of making the Constitution a liberal Constitution, and not saying to the men—and I hope the women—in the future, who have the franchise under this Constitution, that they are restrained in the exercise of the function which is nominally given to them by the fact that the principle of equality of representation prevents them from exercising it as freely and fully as they deserve to do.

Mr. BARTON (New South Wales). -
I think the matter on which my honorable and learned friend touched the most lightly was the matter to, which he ought to have devoted most attention in his very elaborate and admirable speech—the fact that there is a provision in this Constitution to that effect that when there is a difference between the two Houses, under certain circumstances, they shall sit together, and that a majority of three-fifths shall carry a Bill. Now, we will put an instance of this kind. Supposing as a result of the adoption of the proposal of Sir George Turner there were a House of Representatives of 120 members, while the Senate stood at its original number of 30. There you have 150 members altogether. I am putting an illustration in fact first, which I think is the wisest thing to do in a matter of this kind. There you have 150 members with a provision that if they disagree and there has been a dissolution after which they still disagree, a vote shall be taken at a joint sitting; and that three-fifths of the members shall control the matter. Thus out of that number of 150, 90 votes would rule the roast, and, those 90 votes might be every one of them votes of members of the House of Representatives, while of the 60 there would be in that case 30 members of the House of Representatives and the whole body of the Senate.

Mr. ISAACS. -
But we do not accede to that joint meeting.
Mr. BARTON. —

No doubt you do not accede to that joint meeting; but for the present you must take the Constitution as it stands, unless we are to take it for granted that you are going to alter it wherever you will, and we are not going to take that for granted. Certainly, not to begin with. Now, I take it that a resolution which is likely to lead to that result is a resolution aimed, whether directly or not, at the subversion of every principle of federal government; that you cannot, if you retain this three-fifths proposal, consent to an amendment of this kind without contending that you intend to make this Constitution other than federal.

Mr. ISAACS. —

I do not intend to do that.

Mr. BARTON. —

I can quite understand my honorable friend wants the two things; but I say that, unless we intend to give him both, we should not give him this. If we intended to give him what he wants, which is a general referendum instead of a joint vote, then he may well ask for this as being consistent with that general referendum. But the very enormity of the one proposal will show honorable members the great enormity of the other.

Mr. ISAACS. —

They have no referendum in England, and yet they do not have this provision there.

Mr. BARTON. —

But the honorable member is leaving out of sight the fact that we are dealing with a Federal Constitution, and we do presume to preserve some equilibrium of power as respects the two Houses. I can understand those who think that there ought to be only one House either in a Federal Commonwealth or in an amalgamated Government taking up the position that, for instance, there should not be a House which Mr. Isaacs describes as a House to check or checkmate the people. If it is assumed that the people are only represented in one House the logical assumption to follow is that there should be only one House, and it is better for honorable members who think that to throw off the mask at once and move that there shall be only one House. If you are going to make one House all-powerful and the other House absolutely powerless and not fit to be occupied, by branding politicians on the ground that all they do must be futile—if you are going to take that course, why not say right out you are going to take it instead of adopting expedients of that kind?

Mr. ISAACS. —

Does the honorable member think it is fair to put it in that way, having
regard to the fact that in America there is no such provision as I object to, and yet there is not government by one House?

Mr. BARTON. -

It is fair, because I cannot understand my honorable friend making a proposal of this kind, and clothing it in the remarks which he made, unless he really feels that there ought to be only one House. If you are going to say that there should be only one House to determine everything, then you are saying that there should be only one House. If you are going to the Senate. But let the honorable member consider this position. If the powers of dealing with and amending Appropriation and Tax Bills, and the other strong monetary powers of the American Senate, as well as its executive powers, which are very large also,

were to be taken away from it in favour of responsible government, do you think that the Senate of America would consent to an alteration of the Constitution to that effect without being guaranteed some numerical proportion to the other House which would enable the Senate to be reasonable factors in discussions outside money matters? All that is desired, all that is attempted, in this Constitution is that, apart from Appropriation and Tax Bills, the Senate should have some voice in ordinary legislation, and it is not sought to give the Senate the powers which have been so often contended for by Upper Houses in respect to Money Bills. There is the whole difference of the case. Who would ever dream of proposing in the Senate of America to give up the great powers they have in that respect for a system of responsible government, unless some ratio was to be preserved between the two Houses which would enable the Senate, at any rate, to be considered a strong factor in ordinary legislation? It is not correct to say that one of the Houses here is devised or will act as a check or checkmate on the other. That is, with the greatest respect to my honorable friend, an entire misdescription of the position. One of these Houses is devised in order that it may give some representation to the corporate capacity of the states, and in order that the voice of those states may be heard in ordinary legislation whenever it is necessary for the representatives of a state to act together. That is the main object of the proposal of a Senate. The entirety of that object would be done away with if the proposal of my honorable friend were carried. As the honorable member (Mr. Symon) has pointed out, it is aimed, not at the quota which was so much objected to by Sir George Turner, but at the numerical proportion between the two Houses. The real object of this amendment, if it is carried, is to make impossible any provision for dead-locks, if any is necessary, unless there is some such method as a
referendum, because many honorable members say-"We had better take the chance of a national or general referendum than leave the Senate in this position, because the Senate then would be totally powerless in the event of a joint vote having to be taken." Therefore, this is a proposal, whether my honorable friend means it or not, to undermine the collective vote, and to make that collective vote a merely nugatory proposition, which, by consequence, would have to be taken out of the Constitution and make room for something more drastic for the purpose of entirely emasculating the Senate. I have always been in favour of working this Constitution by the method we know of—of the method of responsible government. I have always been in favour of so much preponderance of power being given to the House of Representatives as will make that responsible government something more than a name, and will insure the due working of that machine. I have always been ready to go that far. I have always insisted that there is justice in the position of the states themselves when they say that, granted you provide for the working of responsible government, you must outside that allow the states to have some voice in legislation as the entities of government that they are themselves. My honorable friend's proposition has relation to other clauses, for instance, to clause 9. I will read the clause as it appears in print now:-

The Senate shall be composed of senators for each state, directly chosen by the people of the state, voting, until the Parliament otherwise determines, as one electorate. Until the Parliament otherwise provides, there shall be six senators for each original state. The Parliament may, from time to time, increase or diminish the number of senators for each state, but so that equal representation of the several original states shall be maintained, and that no original state shall have less than six senators.

Mr. ISAACS. -

I do not think it touches that.

Mr. BARTON. -

I think it touches clause 9, for this reason: That Parliament may increase or diminish the number of senators for each state. That requires the assent of two Houses. If there is a proposition that the number, of the House of Representatives shall be increased without a corresponding proposition that the number of senators shall be increased that proposition may be expected to be rejected by the Senate. That is to say, if the matter is left open, as proposed by the amendment, that proposition may then be expected to be rejected by the Senate, and, under this dead-lock clause, if it is quite twice rejected, once before a dissolution and once afterwards, there may be a collective vote, which may be carried by a majority of three-
fifths, or, if my honorable friend has it his way, there will be instead of that collective vote a mass referendum, of which he thinks he foresees the result.

Sir GEORGE TURNER. -

I have never advocated a mass referendum.

Mr. BARTON. -

No. I was speaking of my honorable friend (Mr. Isaacs), whom I have always understood to be a proposer of a dual referendum as an expedient in the Constitution, and to prefer a mass referendum. I am taking that as his honest opinion. The result would be simply this: Either there would be a constant state of dead-locks whenever a proposition of this kind came up, which would be finished in the way which has been spoken of, according to the expectations of those who would support such amendments as this, a crushing of the Senate on each occasion; or else, if the Senate had its way, it could hold out, if it was not altogether held down by a collective vote or by a referendum, it could go on refusing the proposition to increase the number of the House of Representatives till the Senate, in its own good time, chose to pass the Bill with a provision that the proportion of two to one, or any other proportion they thought right, should be maintained. I do not think that propositions which are likely to be fruitful of dead-locks, and fruitful of disagreements, should find a place in this Constitution, and I do think it is some security to the smaller states, which they ought to have, that the Senate should bear some fixed ratio to the House of Representatives. I have heard of honorable members who before voted for this proposal for a fixed ratio say it might be guarded by the words-"Until Parliament shall otherwise provide." I have always held there should be no words in the Constitution which should be altered without the process for the alteration of the Constitution being gone through. I hope to adhere to that opinion. I hope I have not spoken at undue length. I know this is not a time for long Speeches on the question of the ratio of representation in the Houses, which is now being discussed for the third time. Much more I might say, but I shall leave the matter now, and ask honorable members not to accept the amendment.

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

The committee divided-
Ayes ... ... ... ... 25
Noes ... ... ... ... 15
Majority against the amendment 10
AYES.
Abbott, Sir J.P. Henning, A.H.
Question so resolved in the affirmative.

Mr. ISAACS (Victoria). - I have not had time to look at the last sub-clause, which reads as follows:-

But notwithstanding anything in this or the last preceding section, five members at least shall be chosen in each original state.

What is the precise meaning of those words?

Mr. BARTON (New South Wales). - It means those who have joined the Constitution in the first instance. You will find that in clause 9, as amended in Sydney.

The new clause was agreed to.

Clause 26. - When in the apportionment of members it is found that, after dividing the number of the people of a state by the quota, there remains a surplus greater than one-half of the quota, the state shall have one more member.

Mr. OCONNOR (New South Wales). -
I beg to move-
That clause 26 be omitted.
It is a necessary amendment, consequential upon the last one made.
The clause was struck out.
Clause 27. - Notwithstanding anything in section 24, the number of members to be chosen by each state at the first election shall be as follows:
[To be determined according to latest statistical returns at the date of the passing of the Act, and in relation to the quota referred to in previous sections.]

Mr. OCONNOR (New South Wales). -
I beg to move-
That the words "section 24" (line 2) be struck out, and that the words the last preceding section" be substituted.

Mr. HIGGINS (Victoria). -
I see in this clause that there is a gap after the words "as follows." At what stage is it proposed to have that gap filled up? Is it before this Bill is sent home, or afterwards?

Mr. OCONNOR. -
It is to be filled up according to the latest statistical returns, at the date of the passing of the Act, by the Imperial Parliament.

Mr. HIGGINS. -
You leave it for the Imperial Parliament to fill in the gap?

Mr. OCONNOR. -
Undoubtedly. The figures may change in the meantime.
The amendment was agreed to.
& (New South Wales). - I beg to move-
That the word "by" (line 3), be struck out, and that the word "in" be substituted.
The amendment was agreed to.
The clause, as amended, was agreed to.
Clause 28-Subject to the provisions of this Constitution, the number of members of the House of Representatives may be from time to time increased or diminished by the Parliament.

Mr. OCONNOR (New South Wales). -
I beg to move-
That clause 28 be omitted.

Sir GEORGE TURNER (Victoria). -
I want to call attention to the striking out of this clause. It provides that, according to the provisions of the Constitution, the number of members of the House of Representatives may be from time to time increased or diminished by the Parliament. We have made a special provision that the
number of the senators may be increased or diminished, and we have
determined that there shall be as nearly as practicable two members in the
House of Representatives to one member in the Senate. I assume that, as
we have done that, my honorable friend and his colleagues on the Drafting
Committee think that this clause is unnecessary. I do not know whether it
is so or not, but it maybe argued afterwards that as we have inserted a
power to increase the number of the Senate, we have no power to increase
the number of the House of Representatives. Consequently, a difficulty
may arise as to whether we could really carry out the intention of the Bill,
and from time to time, as necessity arose and the number of the senators
was increased, whether we should have power to increase the number of
the House of Representatives. However, I do not feel that I am called upon
to take the responsibility of moving in

this connexion. I assume that the Drafting Committee have carefully
considered the matter. I simply draw attention to it.

Mr. BARTON (New South Wales). -

The fact of the matter is this: In clause 24A there is a provision at the
beginning, which is absolute, that the number of members of the House of
Representatives shall be as nearly as practicable twice the number of the
senators, and that the number of senators to be chosen in each state shall,
whenever necessary, be determined in the manner set forth in the clause.
Then it is provided that the number of members shall be settled according
to a quota, the provision being that there shall be two members of the
House of Representatives to one member of the Senate, as nearly as
practicable. But there are governing words "until the Parliament otherwise
provides," which give the Parliament further scope to deal with the whole
question, except that the proportion of two to one is to be maintained. And
then if my right honorable friend will turn to clause 52 he will find that
there is a provision, in the shape of new sub-section 34B, that the
Parliament is to have power to legislate with respect to all matters in regard
to which provision is made by this Constitution until the Parliament
otherwise provides. So that we give power to make laws in respect of all
matters in regard to which provision is made by the Constitution, and
accordingly the Parliament is empowered to legislate whenever it is found
necessary.

Sir GEORGE TURNER. -

Surely that is determining the number of members?

Mr. BARTON. -

It is quite clear there is a power at any time to determine the number of
members until separate provision is made in that matter. But, at the same
time, I do not wish to express a strong opinion upon the point. We thought that this clause might well go out, but if my right honorable friend suggests that it should be retained, we will leave it in subject to reconsideration when we come to the adjournment for drafting purposes.

Sir GEORGE TURNER. -

I am content to be guided by the opinion of the Drafting Committee.

Mr. BARTON. -

We will leave the clause in at this stage.

Mr. ISAACS (Victoria). -

I would suggest to the Drafting Committee that they should consider at the same time this point: If this clause be left out, no Bill can be introduced for the purpose of increasing the number of members of the House of Representatives.

Mr. BARTON. -

I do not think that is so.

Mr. ISAACS. -

I think it is so. You could introduce a Bill to increase the number of the Senate, and then the law of the Constitution would operate upon that, and the number of the House of Representatives would be consequentially increased. This only emphasizes the objection I formerly had to the clause—but that matter is past and gone.

Mr. BARTON. -

It is quite true that a Bill would have to be introduced for increasing the number of the one without the other.

Mr. ISAACS. -

The way the matter presents itself to me is this: The only power by which the Parliament could act would be by increasing the number of the Senate, and, according to the Constitution, having done so, the House of Representatives would have to be as nearly as possible constituted in the proportion of two to one of the Senate.

Mr. BARTON (New South Wales). -

Then if necessity arose for increasing the number of the Senate, the provision is quite simple, inasmuch as the number of the House of Representatives it is provided shall be increased proportionately. So that the purport would be to increase the number of the House of Representatives at the same time as the number of the Senate was increased. It is, however, probably just as well that the clause [P.1840] should be left as it stands at the present stage.

The motion for striking out the clause was negatived, and the clause was agreed to.
Clause 29. - Until the Parliament otherwise provides, the electoral divisions of the several states for the purpose of returning members of the House of Representatives, and the number of members to be chosen for each electoral division, shall be determined from time to time by the Parliaments of the several states. Until division each state shall be one electorate.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "of the several states" be omitted, and the words "in each state" inserted in lieu thereof.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "Parliaments of the several states. Until division each state shall be one electorate," be omitted, with a view to the insertion of the words "Parliament of the state. In the absence of other provision each state shall be one electorate. No electoral district shall be formed out of parts of different states."

Mr. HOWE (South Australia). -

I should like the leader of the Convention to explain the meaning of the words "No electoral district shall be formed out of parts of different states." Has that ever been contemplated?

Mr. BARTON. -

Whether it has or has not been contemplated, it might be done unless it were prohibited. I think that the provision is necessary.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 42 (providing for the continuance of existing election laws until the Parliament of the Commonwealth otherwise provides) was omitted.

Clause 44A. - No elector who has at the establishment of the Commonwealth, or who afterwards acquires, a right to vote at elections for the more numerous House of the Parliament of a state, shall, whilst the qualification continues, be prevented by any law of the Commonwealth from exercising such right at elections for either House of the Parliament.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "has at the establishment of the Commonwealth, or who afterwards acquires" (lines 1-3), be omitted, with a view to the insertion of the words "at the establishment of the Commonwealth or afterwards has under the law in force in any state at the establishment of the Commonwealth."
Sir GEORGE TURNER (Victoria). -

It appears to me that this proposal would make a very important alteration.

Mr. BARTON (New South Wales). -

That is an alteration of substance which I will explain. I agree with the object of the clause as proposed to be limited by the amendment which I am now proposing. That is to say, I quite agree that any elector who, at the establishment of the Commonwealth or afterwards, has, under the law in force in any state at the establishment of the Commonwealth, the right to vote at elections should not be prevented by any law of the Commonwealth from exercising that right. But I wish to bring again under the notice of the Convention this point. The matter was discussed at Adelaide, and it did not receive as full discussion as it might have at the time. I wish to draw the attention of the Convention, lest honorable members should think that the matter had been in any way hastily done, to the effect of the provision inserted in Adelaide. I was induced to propose this as a matter of substitution, by the consideration that a great deal of harm might be done by the unlimited effect of the provision as in the Bill. Under the provision adopted in Adelaide, not only the elector who had at the establishment of the Commonwealth a right to vote at an election for the Legislative Assembly retained the right to vote for both Houses of Parliament of the Commonwealth, and could not have that right taken away whilst he remained qualified, even though the Commonwealth passed a law for a uniform suffrage. Not only could that be done—to which I did not object—but by the effect of the clause, as passed in

[P.1841] starts here

Adelaide, any state might alter from time to time its suffrage for its House of Assembly, and, having altered it, notwithstanding the existence of the Commonwealth, the person who acquired under that alteration a right to vote for the House of Assembly in that particular state might vote—although the extension of the suffrage gave it not only to women, but, perhaps, to such a class as the young persons of sixteen years of age who are now agitating in some places for a vote—withstanding the different suffrages of other states, at elections for either House of the Commonwealth. It all along struck me that in doing that we went too far; that we made a mistake in Adelaide. We did not make any mistake in Adelaide in allowing a person to retain, and preventing the Commonwealth from taking away from him, his qualification by any law in force at the establishment of the Commonwealth, but we made a mistake in leaving it open to every state to alter its own suffrage, which is right, but by altering its own suffrage to confer on persons not entitled to vote in other states the right to vote at
elections for the Commonwealth, because, as they were given that right under the law of the state, they, by the operation of this clause, would be entitled to the benefit of every successive alteration of the law, no matter to what length or depth it went, and in such a way that they would be entitled to influence, and very strongly influence, the composition of both Houses of the Commonwealth. While we may legitimately say that until the Parliament makes a law for a uniform suffrage, the suffrage existing in the states at the time of the establishment of the Commonwealth shall prevail for the election of members of both Houses of Parliament it is not a rational provision to allow it to be in the hands of any state, not merely to alter its own suffrage for its own internal Legislature, but to alter it in such a way that it might affect the composition of the two Houses of the Commonwealth Parliament, and the character of its legislation.

Mr. PEACOCK. -

Would not the effect of the proposal be that, if female suffrage were granted in Victoria after the establishment of the Commonwealth, it could not be exercised in elections for the Commonwealth?

Mr. KINGSTON. -

Yes; we would have it, and you would not.

Mr. BARTON. -

The right to vote which any person had at the time of the establishment of the Commonwealth would be continued. Alterations might afterwards be made in the suffrage of any state, which, if extended to Commonwealth elections, would, as I have said, affect the composition of both Houses of the Commonwealth Parliament and the character of its legislation. That is not a rational provision. It is a rational thing until the Commonwealth Parliament legislates to retain to every person the right which he possesses at the time of the establishment of the Commonwealth, but to do more than that would be to give the states power to legislate for the purposes of the Commonwealth. That is a power that the states ought not to have, and I do not think it is consistent with the freedom of state rights which we wish to confer. Our purpose is to protect the states in the management of their own internal affairs, in the election of legislators, and in the carrying out of state legislation. To give a state the power, after the Federal Parliament is established, of altering the composition and character of the Legislature and the legislation of the Commonwealth, would certainly be unwise. The states might be satisfied with the rights that existed at the time of the establishment of the Commonwealth, knowing that, by the influence they can exercise on the Parliament of the Commonwealth, they can secure any legitimate reform. If a state passes a law giving the suffrage to persons of sixteen years of age-and an agitation is already in force with that object-
that would certainly have a serious influence
upon the character of the Commonwealth Parliament.

Mr. KINGSTON. -

Where has that been seriously proposed?

Mr. BARTON. -

I have seen it in the newspapers already. Let the honorable member not be under a mistake about this matter. It is quite certain that movements for the extension of the suffrage will not cease at any point at which he thinks they will cease. These movements go on, from time to time, and those who have succumbed to them from the beginning have done so, in many cases, rightly. But these movements will go on. When you have granted female suffrage, then you will have an agitation for the extension of the suffrage to persons who are not of the ordinary age of discretion. It has begun already, and will continue. There is no use blinding our eyes to that fact, because we all of us ought to know it will come on. But, however that may be, the proposal is that the state should not be allowed after the establishment of the Commonwealth so to alter its law as to the franchise that whenever the Commonwealth comes to make a uniform suffrage it will be blocked because it cannot legislate against rights thus created, if one state has altered its law so as to give an expansion of the franchise with which other states do not agree. Still the suffrage of the Commonwealth cannot be made uniform without conceding the Same form of Suffrage, not only to that state, but to all the states in which no agitation for it exists. For instance, if in one state the suffrage were granted to persons of twenty or nineteen years of age, males or females, or both, and the Commonwealth wanted to make a uniform suffrage under this clause, it would be utterly impossible for the Commonwealth to do that without making that concession in every state, whether the persons in that state wished to have the concession mad to them or not. So that, by the action of one state, the Commonwealth would be left in this position: That it must either make a suffrage repugnant to the public feeling of all the states except one, or else not only leave the suffrage not uniform, but rugged and uneven; because it would be deprived of making the suffrage uniform, unless it acted in a manner acceptable to that one state. Now, I do not think it is right that by the action of one state the Commonwealth should be coerced in that manner. This clause would, in my opinion, be a serious blot in the Bill. I am perfectly willing to assent to it if it be amended as I propose, in which shape, I think, it would be entirely liberal to every state in the Union.

Mr. HOLDER (South Australia). -

I think this clause was put in because of a motion I moved in the
Adelaide Convention, and I regret exceedingly that, as the matter was fully discussed there, and this very issue we are now debating was raised and deliberately provided for, the question should be resuscitated now. Not at the instance of a private member, but at the instance of the leader of the Convention, we have here an effort made to upset the decision which was come to in Adelaide. I protest against this course of procedure, and I hope the Convention will stand by what it did in Adelaide. I am supported by a reference to clause 30, which is entirely in harmony with this clause, as it ought to be; but it is entirely out of harmony with this clause as the leader of the Convention seeks to make it. In fact, if this clause is altered as the honorable member now proposes, clause 30 will unquestionably have to be altered also. Clause 30 provides what we intended, namely, that until the Federal Parliament adopts a uniform federal franchise, the qualification of electors and members of the House of Representatives shall be in each state that which is prescribed from time to time (until the Commonwealth Parliament moves in the matter), as the qualification of the electors of the more numerous House of the Parliament of the state. The idea clearly was that until the Federal Parliament moved in the matter, the state Parliaments were free to make the franchise what they pleased. I remember that, at Adelaide, Victoria was mentioned. It was said that it was possible that in the near future Victoria might adopt the adult suffrage. The question was asked whether the franchise in Victoria would permit women to become electors, and it was distinctly stated that the clause, as then framed, would certainly permit them to exercise the franchise. Now, we are asked to go back and provide that only the franchise in force in the various states at the time of the establishment of the Commonwealth shall prevail. So that this extraordinary position would be the effect, that whilst in South Australia women had the franchise, in the other colonies they could not get the franchise until the Federal Parliament chose to give it to them. If the clause is altered as our leader wishes it to be altered, the right of the state Parliaments to expand the franchise would cease on the establishment of the Commonwealth, and the federal action in reference to the franchise might not be taken for some years.

Mr. MCMILLAN. -

Wasn't it a concession to South Australia?

Mr. HOLDER. -

I moved it as a special concession to South Australia; but when an honorable member—either Sir George Turner or Mr. Isaacs—pointed out that the concession ought not to be confined to one colony, but ought to be made large enough to take in any, colony which might desire to avail itself
of it, I at once saw the force of that argument. The Convention saw the force of the argument, and it deliberately determined that, until the Federal Parliament acted, the rights of the state Parliaments should be protected. It is that for which I am striving now. I do not want there to be an interval, up to which the state Parliament may act, but during which the state Parliament may not act, although the Federal Parliament has not acted. I want the right of the state Parliament to be protected up to the moment when the Federal Parliament moves. We have done that with everything else. There is not another case where we have stayed the power of the state Parliaments in these optional matters except by the action of the Federal Parliament. Then, why make an exception in this case? I ask honorable members to accept this amendment only with the omission of the words, "at the establishment of the Commonwealth." If those words are omitted we will give effect to what we desired in Adelaide, and in a somewhat more scientific way, I think, than we did then, but if we retain the words we will be reversing our decision in what seems to me to be a most mischievous way.

Mr. HIGGINS. - I find that it was carried by eighteen votes to fifteen votes.

Mr. HOLDER. - I beg to move-

That the proposed amendment be amended by the omission of the words "at the establishment of the Commonwealth."

Mr. BROWN. - Will the honorable member answer Mr. Barton's argument as to uniformity of suffrage?

Mr. HOLDER. - I did not think that that needed answering. If there was a uniform suffrage now, and it was desired not to depart from that uniformity, I think there might be great force in the argument that we should not depart from it. But there is no uniformity now. The only question is whether one out of five states shall have a special form of suffrage and the other four be the other way, or whether two shall have a special form of suffrage, and the other three be the other way.

Mr. MCMILLAN. - Did not we give up to the Federal Parliament the right of the states to determine the suffrage?

Mr. HOLDER. - As soon as the Federal Parliament moved, not before. If the honorable member will look up the debates he will see that the particular issue which is raised in this amendment was raised, debated, and decided then.
Mr. BARTON. -

How many things have we undone which were raised, debated, and decided then? Dozens! For instance what has the Finance Committee done, and very properly done?

Mr. HOLDER. -

We have, I am sorry to say, altered some things, but I have never heard any request made for this alteration. If the suggestion had come from any other member than the leader of the Convention I should have had no complaint to offer, although I should have given the same resistance to it.

Mr. BARTON. -

Am I deprived of the power of suggestion then?

Mr. HOLDER. -

If the honorable member (Mr. McMillan) will look at the debates, he will find that this particular issue was raised at Adelaide, and it was deliberately determined that the power of a state to extend its franchise should be protected till the Federal Parliament took action. We deliberately arrived at a conclusion then, and I do hope we will not upset it now. As to the leader of the Convention losing his personal rights, he has all these as an individual, and a weightier influence far beyond these. I do not like the idea of the special weight and influence which attaches to his position being cast, without the request of a single honorable member, so far as I know, against the decision so deliberately arrived at, and so consistently arrived at.

Mr. BARTON. -

I can assure my honorable friend that many members have been discontented with that decision ever since.

Mr. HOLDER. -

I do not know that any Parliament has raised its voice against it, or that the Sydney Convention raised its voice against it; and I hope the present Convention will adhere to its previous resolution.

Mr. MCMILLAN (New South Wales). -

So far as I understand the history of the affair, it was understood in the Bill of 1891 that each state, according to the American system, should have the right to decide its own franchise, and then, by a certain amount of evolution in public opinion, the Federal Parliament would have the right to dictate its own franchise. That, I think, was admitted by almost the whole of the Convention. Then came the question of South Australia, which we admitted was a great difficulty. A certain state of affairs existed there, and out of deference to that state of affairs, it was decided that no interference
should take place in existing conditions. Beyond that the whole matter was left absolutely in the hands of the Federal Parliament. It was looked upon as an infringement of the rights of the Federal Parliament to dictate the franchise in any other state outside South Australia. It was purely in deference to the condition prevailing in that colony that the clause was drafted. I recollect the debate very well, and I do not think the construction Mr. Holder puts upon it could very well be sustained. The point was brought up and it was settled that it should only apply to the people of South Australia.

Mr. HOLDER. -

I assure you the reverse.

Sir GEORGE TURNER (Victoria). -

My honorable friend the leader of the Convention appears to attach great force to something he has discovered something which none of us appear to have discovered - that an agitation has arisen to reduce the voting age from 21 years to sixteen years. I think we may dismiss that from our minds, because, if federation is to come about in a reasonable time, we need have very little, if any, fear that when the time arrives we will have reduced the age to sixteen. But this amendment certainly strikes a very unfair and unreasonable it would be to other colonies. South Australia had gone in the van and proposed the adult vote, but New South Wales and Victoria were discussing the matter, and probably would, before long, pass laws on the lines adopted in South Australia. I have no doubt in my mind as to what was the intention at the time. The intention was simply this: We said we were prepared to leave to the Federal Parliament the right to lay down a uniform franchise whenever they chose, but when they did, that they must not take away from anybody who had the right to vote that right. I pointed out then, as I do now, that if the right were simply limited to those who had it at the establishment of the Commonwealth, and a day or two afterwards, or a month or two afterwards, before the Federal Parliament legislated, Victoria should grant this right to the women of that colony, those women would not have any right to vote in the election for the Federal Parliament. That was thought to be very unfair, and, therefore, if my recollection serves me right, it was determined that all who had the right to vote when a uniform franchise was brought into operation should retain that right. If that be not done, see what will happen under this proposal. We should have a uniform franchise with an exception, which is this: That those who at the inception of the Commonwealth have the right to vote, and are not included in that franchise, are to still continue to exercise that franchise; that is, that the women of South Australia having
that power at the establishment of the Commonwealth will continue to have it even after the uniform franchise has been laid down by the Parliament. But, perhaps, a few days before the uniform franchise is established our friends in New South Wales will think proper to do justice to the women there, and give them a vote; and a little later we in Victoria may follow the good example of New South Wales and give our women a right to vote. Then we shall have the anomaly that the women of South Australia will have this right, whilst the women of New South Wales and Victoria, because those colonies extended the franchise to women rather later, will be deprived of that right. Surely that is not what we intend. We give the Federal Parliament full power to establish a uniform franchise, and if at that time the states have not thought fit to give the right of voting to certain persons within their colonies those persons will have to suffer. But I do not think we could cut it down any lower than saying that all who have the right to vote at the time of the fixing of the uniform franchise should continue to have that right. We should not, of course, after the federal franchise has been fixed, allow the states to impose a law having the effect of compelling the Commonwealth Parliament to give votes to persons whom it does not think ought to be enfranchised; but it is going too far, and doing what was never intended at Adelaide, and what the leader of the Convention has shown no justification for, to agree to the amendment which has been proposed. I am prepared to agree, so far as I see at present, that, when the Federal Parliament chooses to legislate early or late, as the time may be-after they have laid down such a uniform franchise as they think fit, all persons who up to that time have obtained the right of voting should have that right granted to them.

Mr. HIGGINS (Victoria). -

I should like to remind my honorable friend (Mr. McMillan) of what took place at Adelaide. If he looks at the report of the proceedings of the Convention there, page 732, he will see that Mr. Holder clearly expressed his views in the following words:-

What I wish is that these rights should be preserved which have been acquired up to the time that the Commonwealth makes its franchise.

Mr. MCMILLAN. -

I do not doubt the debate, but I doubt what the effect of the division was.

Mr. HIGGINS. -

This statement was made just before the division.

Mr. MCMILLAN. -

I am speaking of the effect of the vote that was given.
Mr. HIGGINS. -

I think that if my honorable friend looks at page 732 of the Adelaide debates he will alter his view. I may also say that some misapprehension has arisen as to the necessity for a uniform franchise being prescribed by the Federal Parliament. That is a mistake. The Premier of Victoria has just spoken as if the franchise must be a uniform franchise all over the states. But if honorable members will look at clause 30, they will see that it simply says that "Until the Parliament otherwise provides the qualification of electors of members of the House of Representatives shall be that which is prescribed in each state by the law of the state. So that the Federal Parliament can prescribe, if it thinks fit, that in Victoria males and females may vote, and that in South Australia males and females may vote, but that in Western Australia only males may vote. It is possible, and, inasmuch as the number of electors does not in any way act as the test of the number of the members of the House, it is not at all beyond the bounds of probability, that matters may be so arranged. Therefore I think the criticism of the leader of the Convention upon this provision must fall to the ground.

Mr. HOLDER (South Australia). -

I only desire to support what I said on this particular issue when it was raised in Adelaide. I would ask the attention of honorable members to page 1196 of the proceedings of the Convention in Adelaide, on 22nd April, 1897. I find it recorded there that Sir George Turner moved precisely the same amendment which I have moved, and used in support of it almost the same arguments. The amendment was to strike out the words "At the establishment of the Commonwealth," and a little later on the words were struck out. So that we voted there upon the same issue.

Mr. OCONNOR (New South Wales). -

My honorable friend is quite right as to what took place at Adelaide, but if he looks at the clause which was carried there, even after being amended by the Drafting Committee's amendments, he will find-as we thought-that the clause as it stands goes far beyond anything that he asked for, even in the course of the debate. I will point out why I say that. If the honorable member looks at clause 44A as it stands, he will find that it is provided there that if a right to vote has been granted by a state the Commonwealth cannot take away that right to vote, even though subsequently the state itself may have taken away the right to vote. That is the clause as it stands now. That is to say, so long as the qualification which gave the vote continues, although the qualification in the state may have ceased, the right to vote must be still continued, and cannot be altered for all time. That is to say, for instance, supposing it should be thought fit at any time to impose certain disqualifications upon persons who have a right to vote at the
present time-
Mr. HOLDER. -
Are you going back to alter clause 30?
Mr. OCONNOR. -
Supposing it was seen fit to impose disqualifications on persons voting now, notwithstanding that the persons would thereby be prevented from voting in the state, they would be still entitled to vote for elections in the Commonwealth.
Mr. ISAACS. -
What effect do you attribute to the words "whilst the qualification continues"?
Mr. OCONNOR. -
They are the words upon which I rely for the statement which I made just now. There is a difference made between that qualification and the right to vote. No person who has acquired the right to vote shall, says the provision, whilst the qualification continues, be prevented by any law of the Commonwealth from exercising such right at elections for either House of the Parliament of the Commonwealth.
Honorable members will observe that it is not while the right to vote in the state continues, but while the qualification continues, and it is clear that a blot would be placed against the establishment of the Commonwealth law, which I am certain was never contemplated. It seems to me that although Mr. Holder's opinion and view with regard to the matter were clearly expressed, yet this clause goes beyond his view, and, in addition to that, the views he expressed were so directly contradictory to the right to impose uniform legislation on this question that the Drafting Committee thought it fairly a matter for reconsideration. What is the position with regard to the preservation of these rights?
Mr. DEAKIN. -
If you substitute "the right to vote" for "qualification," it would get rid of the difficulty.
Mr. OCONNOR. -
It would; but I am only pointing out the condition in which the clause was left to show that there was a clear apprehension of what the honorable member intended. After all, what is the position in which the Commonwealth stands in this matter? Surely the intention is that this House, which is to represent the whole Commonwealth, shall have its franchise settled by the Parliament of the Commonwealth as early as possible, and that what we are speaking of as a uniform franchise shall be imposed. I agree with the honorable member (Mr. Higgins) that, as a
matter of law, it would not be necessary to have this franchise absolutely uniform throughout the Commonwealth. But the difficulty is this: The more differences you create in the franchises of the various states, the more difficulty there will be in arranging for anything like a uniform franchise. I hardly see the use or the necessity for legislation by the Parliament of the Commonwealth upon the subject, if it is met in every state by conflicting systems of franchise, of which any reconcilement is impossible. Therefore, it appears to me just that we should preserve the rights we know of, that is to say, all rights existing under laws in force at the establishment of the Commonwealth; but that in the interval no state should have the right to pass, perhaps, fantastic legislation to satisfy public opinion at a particular time, and to imprint that legislation upon the Constitution for all time.

Sir JOHN FORREST. -
A state might increase its representation.

Mr. OCONNOR. -
In this way a state might increase its representation. Whatever franchise may exist in any state, if this clause is to stand as the honorable member (Mr. Holder) wants it to stand, is for ever afterwards to be embodied in the political system of the Commonwealth, and cannot be altered. I say, let up preserve what there is, and what we know of; but do not let us give power to the states to increase the difficulties to uniformity, and to throw further obstacles in the way of anything like a universal franchise.

Mr. HOLDER. -
The difficulty can be got over by the Federal Parliament passing a franchise law.

Mr. BROWN (Tasmania). -
I should like to say a word in regard to the remarks of the honorable member (Mr. Holder), as to the action of the leader of the Convention in bringing before us the amendment which has been proposed. I think that, so far from the honorable and learned member being condemned or criticised in a hostile spirit for introducing an amendment which the close study that he has made of this subject has recommended to him, he should be thanked for what he has done.

Mr. HOLDER. -
I did not intend to make any hostile reference to the honorable and learned member's action; but the amendment nearly slipped through as a draftsman's amendment.

Mr. BARTON. -
Nothing of the kind. How can you say that, when I was ready to explain the amendment? If the right honorable member (Sir George Turner)
had not said a word, I should have explained the amendment.

Mr. HOLDER. -

I accept the honorable and learned members assurance.

Mr. BROWN. -

Passing away from this subject, I wish to point out to honorable members that if the clause which we are now considering is to remain as it stands, it will simply mean that, although we ostensibly give to the Federal Parliament the power to provide for a uniform franchise, that power can be only exercised in the direction of framing the franchise upon the broadest suffrage existing in any colony. I can understand that our friends from South Australia, with their ardent desire for maintaining female suffrage—

Mr. MCMILLAN. -

Their chivalrous desire.

Mr. BROWN. -

I can understand that, with their chivalrous and ardent desire to retain female suffrage for themselves, and to impose it upon the electors of all the states, they must be very much opposed to the amendment of the leader of the Convention. But I should like to point out that, in regard to this matter, as in regard to others, honorable members appear to be too much inclined to regard the Federal Parliament which we are about to create as a foreign body - as though it were a body which would be disposed to act in a hostile manner, and to tyrannize over the states, instead of as a body composed of those who will have a direct interest in doing the best they can to arrange the suffrage upon the best basis for all the states. If public opinion takes the turn which I have no doubt the honorable member (Mr. Holder) and others hope that it will take, and there is a general desire to include in future arrangements for elections the voting of women, the Federal Parliament can, of course, make provision for that.

Mr. HOLDER. -

I am content to leave the matter to the Federal Parliament.

Mr. BROWN. -

It appears to me that, in his opposition to the amendment, the honorable member is not content to leave the matter to the Federal Parliament. If we do not adopt the amendment proposed by the leader of Convention the practical result will be that the uniform franchise must be based upon the broadest possible suffrage now existing in any state.

Mr. HOLDER. -

That will be so even if the amendment is agreed to.

Dr. COCKBURN. -

The honorable member would not like to see the franchise based upon the Tasmanian suffrage.
Mr. BROWN. -

I do not think that that would be a bad basis for it. I am not at all sure that the honorable member (Dr. Cockburn) will not, before he is very many years older, see a revulsion of feeling in regard to the franchise of South Australia which will astonish him.

Mr. MCMILLAN. -

Tasmania is decently conservative.

Mr. BROWN. -

We all know that communities go a little astray occasionally; but they correct their mistakes again, and I think it is quite possible that those who are now such ardent advocates of the reform which is so dear to the heart of the honorable member (Dr. Cockburn) may perhaps see that they have gone a little too far, and they or their successors will perhaps desire to retrace their steps. The practical question which I wish to put before the Convention is this: That, as I understand matters, unless the amendment proposed by the leader of the Convention is carried, there can be no uniformity of suffrage except upon the broadest basis adopted in the most radical - perhaps progressive would be a less offensive word - colony of the group. I think that that is a provision which we should not place in the Constitution.

Mr. GLYNN (South Australia). -

There are two difficulties in connexion with this matter which we must recognise. There is the difficulty suggested by the leader of the Convention, that you ought not to place it in the power of a state to fix a maximum of uniformity, and the difficulty suggested by a representative of Victoria, that the women of Victoria, so far as the federal suffrage is concerned, should not be placed in a worse position than the women of South Australia. We are not going to argue the policy of this clause again, because it was settled in Adelaide, but I should like to suggest a way out of both these difficulties. It would lie this way, to provide for the insertion of words after "right" in the second line of clause 44A, to this effect, "similar to that enjoyed by the electors of any other state at the time of the establishment of the Commonwealth." The clause would then read:-

Any elector who has at the time of the establishment of the Commonwealth, or who afterwards acquires, a right similar to that enjoyed by the electors of any other state at the time of the establishment of the Commonwealth to vote at elections for the more numerous House of Parliament of the state, &c.

The position would then be this: If Victoria adopted adult suffrage, that
is, the South Australian suffrage, which is the maximum suffrage at present as to the right to vote, the women of Victoria would have the right to vote not only in the state elections, but also for representatives in the Federal Parliament because the right would be fixed by the similar or adult suffrage which obtains in South Australia. I think honorable members will recognise the expediency of adopting that course. As long as the change is made, subsequent to the establishment of the Commonwealth, to a suffrage in existence in any other state at the time of the establishment of the Commonwealth, then that extension of suffrage should apply to the federal as well as to the state Parliaments. That would conserve every right that Victoria asks for, and at the same time it would recognise the difficulty pointed out by Mr. Barton, that if you make a still further state change, for instance, by fixing sixteen years as the limit, that must not be the test of uniformity with regard to the Federal Parliament. It may be made by the Federal Parliament the universal suffrage, but it is not to be made the test of uniformity by the Constitution. Unless you make an amendment from the point of view of Mr. Barton, you will certainly put it in the power of the states to interfere with the breadth of uniformity of the suffrage. Then you will bring about this result: That any state may, after the establishment of the Commonwealth, bring about the change of suffrage to the extent enjoyed by any other state. If the committee wishes it, perhaps I had better propose that addition. Any state can establish the South Australian suffrage, and why should it not do so? There will be no diminution of the powers of the Federal Parliament, and, if Victoria wishes to extend its suffrage to the same extent as South Australia has done, why should it not be able to do so?

Mr. HIGGINS. -

It would exclude baby suffrage.

Mr. GLYNN. -

Undoubtedly it would. Mr. Kingston has pointed out that my amendment would make it apply to the same rights as are in existence at the time of the Commonwealth. That is quite fair. After the establishment of the Commonwealth, if there is to be uniformity on a broader basis, it must be the federal policy, because it is the Federal Parliament that would be affected by the change. I recommend the insertion of the words I propose in the old clause, instead of putting in Mr. Barton's amendment. If Mr. Barton's amendment is put in, I would ask for a change in the grammar, because at the present it is not correct. The word "has" only governs the last part of the disjunctive proposition, whereas it ought to govern both parts, and it should be put after the word "Commonwealth."

Mr. OCONNOR. -
Would there be any difference in the meaning?

Mr. GLYNN. -

There would be a difference in the grammar. My proposal may now be rejected and afterwards be carried out, because I notice to-day that what I proposed three days ago, and which was rejected, was adopted by the Convention.

I do not insist on the particular words I have suggested, but I think they would provide a way out of the difficulty.

Mr. HOWE (South Australia). -

I am sure the Convention owes a deep debt of gratitude to Mr. Glynn, because during the debates he has always been forward in offering a solution of many difficult questions. But in this particular instance I do not go with him, because he aims at uniformity. I believe, in electoral matters and as far as the franchise goes, that in the vigorous life of a free people each individual state should be allowed to work out its own destiny. What does it matter to the Commonwealth whether South Australia has female suffrage, or even if they go further, and say that every one who has attained the age of eighteen years shall have a vote? They can only send a certain number of representatives to the Federal Parliament according to the population of the state. It is not because we have two or three times the number of electors within our own boundaries that the other states have got that we should try to dominate any other state. Under this Constitution South Australia can only send seven members to the Federal Parliament, it matters not whether you give a vote to women or to people of eighteen years of age. Why should not each individual state be permitted to work out its political destiny in its own way? I do not believe in uniformity, even in families. So long as people are created as they are now, they should be allowed to do the best they can for themselves. If that applies to the individual, why should it not apply to the state? I cannot understand honorable members objecting to the state enfranchising its own people when they are limited by their population as to the number of members they can send to the Federal Parliament. So far as women's suffrage is concerned, if we pass the clause in the form in which it is proposed by the leader of the Convention, we shall undoubtedly say to the states that they are not to adopt women's suffrage.

Mr. DOUGLAS. -

It does not say anything of the sort.

Mr. HOWE. -

If they adopt women's suffrage it is not to apply to the Federal Parliament. That is the meaning of it. It is to insert the thin end of the
wedge to say that the states shall not work out their own destiny so far as the franchise is concerned. The only fear I have in regard to women's suffrage is that there may be an alteration in the franchise of the states that have it, and if so it will be owing to conservative influence. The vigorous life of the Commonwealth depends on the vigorous life of the several states that compose the Commonwealth, and I should be sorry to see any proposal carried that would interfere with the right of the people to adopt any franchise. I should object to a franchise being adopted by a state that would double the number of members it returned to the Federal Parliament. But so long as the representation is on the basis of population, I see no reason why the more populous states or the Federal Parliament should interfere with the state franchise.

Mr. GLYNN (South Australia). -

I beg to move my amendment in this form—

That the following be added to the clause:—Provided any such right acquired in any state after the establishment of the Commonwealth shall not be more extensive than the same right enjoyed in some other state at the time of the establishment of the Commonwealth.

An HONORABLE MEMBER. -

What will be the good of that?

Mr. GLYNN. -

It will enable any state to adopt a suffrage as extensive as that of South Australia. The complaint is that you tie us down to the narrow suffrage we have at present, and that if we do extend the suffrage the extension will not apply to elections for the Federal Parliament.

Mr. GORDON. -

Supposing that women's suffrage is adopted in Victoria to apply only to women having property.

Mr. GLYNN. -

It would not be so extensive as the suffrage we have in South Australia, and my proviso would meet such a case.

The CHAIRMAN. -

I would ask the Hon. Mr. Holder if he desires to submit his amendment?

Mr. HOLDER. -

Yes, I beg to move—

That all the words after "state" be struck out.

Mr. ISAACS (Victoria). -

We should be willing to consent to some such modification of the clause.
as this: To insert, after the word "afterwards," the words "and before the Parliament prescribes the qualification of electors for the Houses of Parliament." It would then read: "Any elector who has, at the establishment of the Commonwealth, or who afterwards, and before the Parliament prescribes the qualification of electors for the Houses of Parliament, acquired a right to vote," and so on.

Mr. MCMILLAN. - Is not that the same?

Mr. ISAACS. - No; it takes away one objection. Th

Mr. DOBSON (Tasmania). - If the Convention desires some compromise as between the clause as it stands and the amendment proposed by our leader, I think that Mr. Glynn's suggestion is an admirable one. There is an objection to the clause which makes me rather incline to the amendment of Mr. Barton. We ought not in this Constitution to interfere more than is absolutely necessary with state rights and state affairs. The clause as it stands will have the effect of exerting an influence in state politics. The representatives of South Australia-and I admire their earnestness and loyalty-have obtained women's suffrage, and are so much in favour of it that they are not content with having it themselves, but they desire to drag other states along with them. I hardly think that is quite fair. If you lay it down in the Constitution that if, after the establishment of the Constitution, any state enlarges or liberalizes- I think that is the favourite word-its franchise, that enlarged or liberalized franchise may be exercised in Commonwealth elections, you deliberately affect state politics, and in this way: If the Government in Tasmania, say, were advocating women suffrage, and if the Opposition were against it, you would put a weapon into the hands of the woman suffrage party by enabling them to say-"The ladies of South Australia have votes, and if you pass this Bill the ladies of this colony also will have votes for both Houses of the Federal Parliament." Now, there may not be very much in the argument, because I look forward to the time when the fact that the women of South Australia having votes will compel the Federal Parliament, in the interests of justice, to make the franchise uniform. I can well understand energetic politicians in opposition, who want to play a good card against the Government, running this proposal for what it is worth; but how absolutely unfair it would be to interfere with our state franchises. I do not think the honorable members for South Australia need to be so earnest in this matter outside their own state, and insist on grafting women's suffrage
on the franchise of other states.

Mr. HOLDER. -

We do not ask the other states to do that.

Mr. DOBSON. -

The South Australian representatives evidently want the other states to take a step forward faster than they are inclined to do. Whenever this matter comes forward, they try to engraft women's suffrage on to the franchise of every other state. Now, I ask them to leave us alone. As a representative of Tasmania, I ask them to leave the women of Tasmania to do as they like in the matter. May I point out to them that in the United States the movement in favour of the extension of the franchise to women is dying out? There are two or three little states in the backwoods where they are agitating for women's suffrage, but the movement, generally speaking, is not within the range of practical politics. The South Australian representatives are the champions of women's suffrage in their own colony. Well, they have women's suffrage there, and why should they not leave our women and the men in our Parliament to do as they think fit in regard to this matter? I say to them-'Do not hold out to the women of Tasmania a kind of bait to get them to go faster than they otherwise would go.'

Mr. ISAACS. -

Then you admit it is a bait to the women of Tasmania?

Mr. DOBSON. -

I admit that in many things we are going far too fast already, and I do not wish the representatives of these colonies to attempt to influence the women of our colony in regard to the franchise.

Sir JOHN DOWNER (South Australia). -

I do not know that there is anybody here who wishes that persons under 21 should have the vote. If there is, I should like him to say so.

Mr. HOWE. -

Your leader said so.

Mr. KINGSTON. -

The leader of the Convention did not say that he wishes it.

Sir JOHN DOWNER. -

What I said was that I do not believe anybody here wants the franchise to be given to persons under 21 years of age. I was not referring to anybody outside. Now, what are we discussing? You certainly have provided in the clause with regard to the amendment of the Constitution to the effect that the South Australian vote, being an adult vote, shall be allowed to continue. You want to carry that out logically, and therefore you provide that any other colony shall be allowed to adopt franchise laws similar to the franchise law of South Australia. I do not suppose that anybody wants to
provide more than that; but you want to make the provision of this particular clause broad enough to allow any other colony to extend its franchise to the same extent as the franchise has been enlarged in South Australia. The amendment of Mr. Glynn would certainly allow the colonies to make any laws they like—baby suffrage, I think, was one of the interjections I heard.

Mr. GLYNN. -

None of the states could do that. They could not go beyond the South Australian suffrage, and have baby voters.

Sir JOHN DOWNER. -

But I think the honorable member will admit that this does not relate to the present time, but to the time when this Bill is passed by the Imperial Parliament.

Mr. MCMILLAN. -

We are on very dangerous ground.

Sir JOHN DOWNER. -

I think so too, and if we are going to alter the clause at all we had better have a very precise limitation as to what we mean. Many of the colonies consider that, the South Australian law is an innovation on the laws that they are accustomed to, and I do not think that anybody in Australasia wants to go one bit further than South Australia has gone in the direction of extending the franchise.

Mr. DOUGLAS. -

Oh, yes; there are such people.

Sir JOHN DOWNER. -

Are there? I did not know there were. I do not think any responsible person in Australasia would contend for more than adult suffrage. That being so, may I suggest that we make the clause commence:-

No elector who at the establishment of the Commonwealth, or who, being an adult, has the right to vote at elections,

and so on. That is the wording we have used in clause 121, where we have provided that—

Until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails.

Mr. HOWE. -

That is the clause for amending the Constitution.

Sir JOHN DOWNER. -
Exactly. I must say, speaking for myself and not for anybody else, that it appears to me that it would be an exceedingly unreasonable thing if South Australia was placed in a different position from the other colonies. I think it is highly reasonable, seeing that we have recognised the position of South Australia, that the other colonies should have the same right. It might prevent much discontent, and it is only fair and just. I would ask the committee to consider whether, if we use the words I have already suggested, we shall not do all that is needed. I think that the amendment I have recommended would express all that is required. However, I only put it as representing my view of a proper policy to be adopted in this case. I do not suggest it on behalf of the Drafting Committee. I speak for myself only. In fact, the Drafting Committee has no politics. Their business is to draft. I think these words would do all that is wanted, and prevent much that is dangerous in the amendment proposed.

Mr. HOLDER. -

After the suggestion that has been made by Sir John Downer, I think the best direct way of taking a vote would be to accept his advice, and insert the words "being an adult" after the word "who" in the second line of clause 44A as it appears in the Bill, and then keep the clause as it stands. I have no doubt that Mr. Isaacs would accept that, but the amendment cannot be submitted until Mr. Barton's proposal is withdrawn.

Mr. BARTON (New South Wales). -

The suggested amendment would simply go to this extent: That if the Parliament of the Commonwealth wish to make a uniform suffrage, it would be of necessity that that suffrage should be an adult suffrage—that is to say, that it should include womanhood suffrage—and that, until the Parliament of the Commonwealth so legislated, the existing legislation of any colony would be preserved, together with such extension, but not beyond adult suffrage, as might be established. I think, on the whole, that I might consent to that amendment. I therefore withdraw my own amendment and accept this.

The amendments were, by leave, withdrawn.

Mr. ISAACS. -

Insert the amendment after the word "afterwards." "Who, being an adult," would mean at the time of the passing of the Bill.

Mr. BARTON. -

Yes. I beg to move—
That after the word "afterwards" the words "being an adult" be inserted.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I do not know whether there will be any objection to a further verbal
amendment; at any rate, it seems to me to be almost a verbal amendment. There was some question raised, I do not remember what it was, but perhaps Mr. Holder can help me, in regard to it, as to the word "qualification" in this clause.

Mr. KINGSTON. -

An elector would be liable to be disqualified for crime.

Mr. HOLDER. -

If the elector's name was struck off the roll he would lose his right to vote.

Mr. BARTON. -

Is not the right process to alter the word "qualification" to "right"?

Mr. KINGSTON. -

Qualification means registration.

Mr. BARTON. -

If the person has a legal right, he has to retain that legal right. Supposing he lost the legal right, but in some mysterious way retained the qualification, it is not intended that the law should help him? It is only intended that the law should help him if he has a legal right. I should say that, unless there is some reason given for what we did in Adelaide, which I do not recollect at this moment, the word "right" would be the proper word to use.

Mr. ISAACS (Victoria). -

In our Electoral Act a difference exists between the right to vote and the qualification. A man is qualified to become an elector.

Mr. KINGSTON. -

This is a limitation on the right to vote.

Mr. OCONNOR. -

Suppose a man has a right to vote in some colony by virtue of property. While the qualification continues to exist you cannot take away that right.

Mr. ISAACS. -

Suppose he has the right to vote by virtue of an elector's right, and that by some accident he does not renew his elector's right for a day. Is he to be deprived of his vote because he takes out an elector's right the day afterwards? The qualification exists, but the right to vote does not.

Mr. BARTON. -

Would you mind putting that again?

Mr. ISAACS. -

A man is qualified to become an elector. He has not the right to vote until certain conditions are fulfilled; he may have to register, or be may be
struck off the roll through some accident. His right to vote is gone through some accident, but his qualification continues. He is a person whose right would not be preserved under this clause, because it applies to the individual—the elector.

Mr. BARTON. -

If he loses the right in his own state by his own negligence, is it not right that he should lose the right also in the Commonwealth?

Mr. ISAACS. -

He may lose it without negligence; he may lose it without any fault of his own. That has been the case with tens of thousands in Victoria.

Mr. DOBSON (Tasmania). -

I was going to put the converse case. In Tasmania, and I suppose in every colony at every election, there are a number of persons whose names are on the roll, but who have lost their qualification. As our Electoral Act makes the roll the evidence of the qualification, you find a number of men who have sold their property to somebody else whose names remain on the roll, but who have lost their qualification, while the name of a man who has bought a property just after the roll has been made up, although he has the qualification, is not on the roll. I think we ought to consider whether the word "qualification" is to remain in the clause, because you may have a number of persons on the state rolls who have lost their qualifications, and who therefore, under this clause as it stands, would not be able to vote in the Commonwealth, but they would have a vote in the state. You will have a roll which governs all state elections, but which does not apply to Commonwealth elections, and you will have to direct an officer to go through the different state rolls, and see whether a man is entitled to vote for the Commonwealth, if you keep in the word "qualification."

Mr. DOUGLAS (Tasmania). -

The honorable member (Mr. Dobson) is perfectly correct in what he says. The rolls are made up from time to time. A man sells a property, and his name remains on the roll for years and years, because no notice is taken of the change of property. The man is not qualified to vote in strict law, but, as his name is on the roll, he is entitled to vote. Therefore the word "right" should be inserted in place of the word "qualification." He has not the qualification, but he has the right to vote, because his name is on the roll, and no objection

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can be taken at the time of an election to any person whose name is on the roll. Under the old system of voting a man, when he came up to vote, had to show his qualification, and, therefore, the roll should settle all questions of dispute. The only question which can be put to him is: Is this your name
on the roll? He signs his name, and he is not asked his qualification at all. The word qualification is entirely misleading. It does not carry out the meaning of the clause. Apparently it was put in because the draftsman could not consider it proper to use the word "right." I move-

That the word "right" be substituted for the word "qualification."

Mr. GLYNN (South Australia). -

I would suggest to my honorable friend (Mr. O'Connor) whether it would not be better to chance "elector" into "person," and make the clause begin-"Any person who at the time of the establishment of the Commonwealth is or afterwards becomes entitled to." As it stands, the word "elector" excludes persons who are not registered, and there is a very great body of people who are not registered. For instance, in South Australia there are a good many Germans who are not naturalized, but who, under a change in our laws, are becoming naturalized. They are entitled to become electors, but they are not electors, and they would be excluded under the clause as it stands. We do not want that to be brought about. It would apply to other colonies. The first part of the clause deals with persons entitled to vote under laws existing prior to the passing of the Bill. I hope the honorable member will consider the advisability of substituting "person" for "elector" in the beginning of the clause at a subsequent stage.

Mr. OCONNOR. -

It seems to me that the suggestion is well worth considering. The amendment was agreed to.

The clause, as amended, was agreed to.

Mr. BARTON (New South Wales). -

I move-

That the following new clause follow clause 44A:-

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each state for the time being relating to elections for the more numerous House of the Parliament of the state shall, as nearly as practicable, apply to elections in the state of senators and of members of the House of Representatives.

This proposed new clause is to be substituted for the last portion of clause 10, and for the corresponding clause dealing with the House of Representatives. These are clauses which prescribe that until the Parliament makes laws on the subject the laws in force in each state relating to certain electoral matters shall as nearly as practicable apply to elections in that state of senators and of members of the House of Representatives. This is a substituted provision which deals with both the elections to the Senate and the elections to the House of Representatives, and practically puts into one clause the work of two. It shortens up the
provisions by speaking of the laws relating to elections instead of enumerating certain laws which are parts of the electoral law, and it guards the change by inserting the words "subject to the Constitution," and saying the application shall be as nearly as practicable. It seems to me to be a beneficial shortening of the matter, and I propose that it should take the place of the two clauses which have been struck out.

The new clause was agreed to.

Clause 52. - (12) Fisheries in Australian waters beyond territorial limits.

Mr. BARTON (New South Wales). -

I beg to move-

That the sub-section be amended by the insertion, before "fisheries," of the word "Sea"; and the omission of beyond territorial limits."

Mr. ISAACS (Victoria). -

What I am going to say may be a little out of order, but I would like to draw the Drafting Committee's attention to the fact that in clause 52, sub-section (2), there has been a considerable change. Two matters in that sub-section seem to me to deserve attention. First, it is provided that all taxation shall be uniform throughout the Commonwealth. That means direct as well as indirect taxation, and the object I apprehend is that there shall be no discrimination between the states; that an income tax or land tax shall not be made higher in one state than in another. I should like the Drafting Committee to consider whether saying the tax shall be uniform would not prevent a graduated tax of any kind? A tax is said to be uniform that falls with the same weight on the same class of property, wherever it is found. It affects all kinds of direct taxation. I am extremely afraid, that if we are not very careful, we shall get into a difficulty. It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.

Mr. BARTON. -

We were inclined to the opinion that "uniform" would not apply so as to prevent the graduating of a tax. I am glad to have the suggestion from the honorable member, because the committee will be going into the matter again.

Mr. ISAACS. -

I will point out to the leader of the Convention the last words of the sub-section, and ask whether they are necessary in view of clause 89? The words are-"No tax or duty shall be imposed on any goods exported from one state to another." I want to point out that, though it might be thought
necessary no duty should be imposed on goods, it might be held possible to put a tax on persons passing from one state to another. I should also like to know whether this provision as to navigation and shipping is necessary in view of subsection (1)?

Mr. BARTON (New South Wales). -

I am very much myself, although I cannot say I represent my colleagues, inclined to the opinion that the trade and commerce sub-section is sufficient without the insertion of the words about navigation and shipping. The committee have not come to any conclusion about it, and I would prefer to leave the matter open until we arrive at what is called the drafting stage. As to whether the words in new sub-section (2) are necessary in the light of clause 89, a great deal might be said, and I will pay the matter the best attention.

Mr. DEAKIN (Victoria). -

As to the emission of "Navigation and shipping," I hope the honorable member is not overlooking the fact that there are many enactments requisite on the part of the colonies, in order to take advantage of the provisions of the Merchant Shipping Act, which are very indirectly, if at all, connected with trade and commerce, but affect in the the most important way the well being of seamen, the safety of passengers, and a variety of other matters of the same nature.

Mr. BARTON. -

In the United States they have been enabled to legislate on the subject under the trade and commerce clause.

Mr. DEAKIN. -

But there the interpretation of the trade and commerce clause, and in fact of the whole Constitution, from the days of Marshall downward, has been quite as liberal as any one could expect, and possibly more liberal than anything we can calculate on.

Mr. BARTON. -

I might mention that this is another of those matters still under the consideration of the Drafting Committee.

Mr. DEAKIN. -

If there be any effect of sub-section (8) as a limitation on sub-section (1), words might be added to make it clear that it was not a limitation. The sub-section in regard to navigation and shipping would then continue to have effect as regards matters not connected with trade and commerce.

Mr. BARTON. -

So as not to limit the construction of sub-section (1).

Mr. DEAKIN. -

So as not to limit the construction of sub-section (1), and give both
powers.

Sir JOHN FORREST (Western Australia). -

I would like to ask Mr. Barton whether it is intended to take away the state control of fisheries on the coast by this clause?

Mr. DEAKIN. -

It says "Sea fisheries."

Sir JOHN FORREST. -

But sea fisheries means fishing close to the port. It would not be desirable to take away any power from the state of legislating in regard to these kinds of fisheries. The words "beyond territorial limits," which it is proposed to omit, are very good words. The Federal Council, under the Imperial Act, has exercised the power of legislating for waters beyond territorial limits with great advantage to some colonies. Western Australia and Queensland have both Acts of the Federal Council which have been very useful in controlling fisheries, such as pearl fisheries, far beyond the 3-mile limit. It may probably be said that without those words the power would be there, but I see no reason why we should not take the power.

Mr. KINGSTON. -

You have no power unless it is given.

Sir JOHN FORREST. -

We have the power - we have an Act.

Mr. KINGSTON. -

Because the power is expressly given.

Sir JOHN FORREST. -

The power is expressly given by the Imperial Act, and I think we ought to take power for the Federal Parliament to legislate on matters beyond the territorial limits. I would like to ask what object Mr. Barton has in desiring to strike out "beyond territorial limits"?

Mr. BARTON (New South Wales). -

I have had considerable doubts about the sub-section all the time. If I remember rightly, it is taken from the Federal Council Act. I do not think any law has been passed by that body in connexion with the matter.

Mr. KINGSTON. -

Yes, in relation to both Queensland and Western Australia.

Sir JOHN FORREST. -

Yes, in regard to Queensland and Western Australia.

Mr. BARTON. -

The doubt I feel about the whole matter is this: What effective legislation can be passed in regard to fisheries beyond territorial limits, except so far
as that legislation relates to a commercial operation in connexion with the catching and selling of fish? That might possibly be dealt with under the navigation clause, or more presumably, under the commerce clause. I have a doubt as to the efficacy of this sub-section, and whether it is absolutely necessary to give the Commonwealth any rights in this respect.

Mr. DEAKIN. -
It is another of the powers derived from the Federal Council.

Mr. BARTON. -
A law giving such a right had better not be subject to conflict. If you have a state law for fisheries within the 3-mile limits under the state, and a Commonwealth law beyond the 3-mile limit, the unlucky fisherman who does not always know whether he is 21/2 or 3 miles away will get into the pickle instead of his fish.

Sir JOHN FORREST. -
The state now has no power to legislate.

Mr. BARTON. -
Within its territorial limits?

Sir JOHN FORREST. -
No, beyond.

Mr. BARTON. -
The state cannot legislate beyond territorial limits.

Sir JOHN FORREST. -
Yes, it can, in regard to British subjects.

The CHAIRMAN. -
I must ask the honorable member (Sir John Forrest) to allow the honorable member (Mr. Barton) to address the Chair.

Mr. BARTON. -
Oh, it is usual when I am speaking. I am afraid there is a great deal of law about the subject, and I thought that was the reason the honorable member asked me the question. I quite agree that every state has the right to legislate as to its own fisheries within the territorial limit of 3 miles, but it has no right to legislate beyond that limit. It is questionable whether the power as it stands in the Bill would enable the Commonwealth to legislate for anything beyond territorial limits. Although it has been taken and acted upon in regard to the Federal Council, and granted also that the states have power to legislate within territorial limits, it is nevertheless obvious that you come at once into a conflict of laws, because there are vessels which are occupied in fishing within the territorial limits, and which are at the same time often occupied in fishing without those limits, and very often the men having charge of those vessels will be unable to distinguish whether
they are within or without the 3-mile limit. It will be very hard on them that there are two sets of laws, because they will not know where they are. Fishing may sometimes be conducted by wealthy syndicates, but, as a rule, the persons employed in this occupation are a very poor and humble class, who certainly ought not to be bothered by having to ask whether they are under one set of laws or another. I can understand that the law in regard to fisheries within territorial limits might apply to the regulation of ships engaged in fishing outside those limits. But, in the first place, it is a doubtful subject for legislation, and might lead to conflicts. That is why I have proposed "Sea, fisheries." It will allow the Commonwealth to legislate with regard to the whole area.

Mr. ISAACS. -

What are "Australian waters"? How far do they extend?

Mr. BARTON. -

It is impossible to say. I suppose that with all my honorable and learned friend's ingenuity it would puzzle him to say what are "Australian waters." I question whether there is a lawyer in the land who could say. If you insert the word "Sea" before the word "fisheries," and leave out the rest of the provision, you leave one jurisdiction with regard to legislation, and get something clear, and something which the persons conducting, the fishing business can understand; but if you leave the thing as it is you will have something which is not very clear, because you will have a conflict of laws. If you leave the clause out it is possible that it may be done very well without. I do not know myself how far, even with the authority of the Imperial Parliament, any legislation with regard to fisheries may be applicable beyond territorial limits, except as affecting the regulation of the vessels conducting the trade, and that can be done under the trade and commerce or the navigation sub-sections. Consequently, I do not think there is much necessity for the sub-section at all. But my position is this: We do not want to establish a conflict of laws between the Commonwealth and the state with regard to a class of persons who will suffer severely from that conflict. We can, perhaps, do without the clause at all, because I do not know how far any power given to us by the Imperial Parliament will allow us to legislate upon the subject, except with regard to vessels engaged in the fishing trade, and that regulation can be done under the navigation and shipping provisions. We had better avoid falling into either the trouble of legislating outside our jurisdiction or of establishing a conflict of laws. If you insert the word "sea" before the word "fisheries" you will not fall into the trouble you may otherwise fall into. So far as the jurisdiction may extend from the coast outwards, the Commonwealth would be entitled to legislate in regard to these fisheries. Let me take the
case of the trawling operations which are now in progress upon parts of our coast. These operations extend over short distances, varying from 15 to 20 miles from the coast. It is obvious that a vessel conducting this trawling ought not to be under one set of laws when she is close to the coast, and under another set of laws when she is compelled to go further out to find fish. I take it that it would be a ridiculous state of things to have two sets of laws applying to such vessels. I shall move the amendment which I have suggested, but I should be just as content if the whole sub-section were struck out.

Mr. HIGGINS (Victoria). -

I hope that we shall keep to the words which have been taken from the Federal Council Act, unless there is a very strong reason to the contrary, as these powers have been given to the Federal Council by the Imperial authorities. I might inform the leader of the Convention that a few years ago an attempt was made in Tasmania to stop or to interfere with a Victorian fisherman, who was fishing for trumpeter off the coast. It is of importance that while we are trying to establish free-trade within the Commonwealth power should be given to the federal authority to say that there shall be no obstruction to fishing upon any part of the coast by any member of the Commonwealth.

Mr. KINGSTON (South Australia). -

I hope that the leader of the Convention will pause before he asks us to finally decide to strike out these words. Under the Federal Council Act power was given to legislate for the control of fisheries beyond the territorial limits; and, whatever the effect may be, there is no doubt that by the passing of that Act power was given to the Federal Council to do that which neither any particular state alone nor all the states collectively could do. It was a concession and a grant to Australia. As to its importance, I recollect being present at a session of the Federal Council when a Bill was introduced, I think by Sir James Lee Steere, affecting the control of pearl fisheries in Western Australian waters, but beyond the territorial limits. That Bill was, I believe, to some extent founded upon a similar measure passed at the instance of Sir Samuel Griffith, and which related to Queensland fisheries; and I have the most lively recollection that Sir Samuel Griffith, than whom there has been no greater federal apostle, always attached very considerable importance to this particular clause, as giving to Australia a power which was not possessed by the states, either collectively or individually. It seems to me that if we retain a clause of this description we ought to amend the previous clause, which regulates the
application of the laws of the Commonwealth, by providing that they shall run in Australian waters. Of course they only apply to British subjects and to British ships. That provision will necessitate either a definition of "Australian waters," or the constitution of Some authority by which this definition may be framed. For my own part, I am disposed to think that the better plan would be to provide this definition within the four corners of the Bill. By parallels of latitude and longitude that could be easily done, or the power could be declared to exist in the Imperial Executive or the Federal Executive or the Federal Executive, with the consent of the Imperial Executive, could by proclamation provide for the definition of what should be termed Australian waters. But the point to which I wish to direct especial attention is this: The Bill, as we passed it, gives us an authority which otherwise it will be impossible to exercise in Australian waters, and we have proof that this is a matter of considerable importance by the fact that the chief legislation of the Federal Council has been in connexion with the exercise of these powers. I ask the leader of the Convention not to lightly surrender the concessions to Australian self-government such as will be given if we retain the Bill as we passed it in Adelaide and Sydney, and in the shape in which we originally had it in the Federal Council.

Mr. BARTON. -

Is it much better than the blessed word "Mesopotamia"?

Mr. KINGSTON. -

I think it is of considerable importance. I think the Premier of Western Australia will say that it has been of considerable importance, and that he would be sorry indeed to lose it. If we had the good fortune to have representatives of Queensland in this Convention tonight, I am sure the same testimony would be forthcoming. As regards what has been said by Mr. Barton as to the possibility of the clashing of state regulations and federal legislation, my recollection and experience is that this legislation is generally prompted by the state which is nearest to the fisheries concerned, and that it simply harmonizes with the local legislation on the subject. If you had not this power it would simply stand thus: Instead of the possibility of the clashing of local and Commonwealth legislation you would be utterly without power to regulate the fisheries once those engaged in them had passed without the territorial limits. I think the possibility of clashing which has been referred to will be infinitely preferable to the absence of any Australian law to regulate the subject. I would urge Mr. Barton not to ask us at this particular moment, without further consideration, without an
opportunity of studying the legislation which has been passed on the
subject by the Federal Council, to commit ourselves, by striking out these
words, to a deprivation of Australia of a power which is sought to be
conferred on it willingly by the Imperial Government, following the course
which was adopted with regard to the Federal Council Act, and which can
undoubtedly be exercised to the advantage of Australia.

Mr. BARTON (New South Wales). -

I feel a difficulty about this matter, because I cannot understand how any
law, unless it was merely for the regulating and registration of vessels-

Sir JOHN FORREST. -

There is also the collection of duties in our case.

Mr. BARTON. -

I cannot understand how any law affecting fishing outside territorial
limits would be operative if once tested. It is all very well to say that the
Imperial Government can give us power to legislate outside territorial
limits, but the Imperial Parliament cannot give us any powers which they
do not possess themselves.

Mr. SYMON. -

How far is the limit to extend beyond territorial limits?

Mr. BARTON. -

That is what I say. The words here are "Australian waters." The words in
the Federal Council Act were "Australasian waters." Will any honorable
member point out the difference between Australasian waters and
Australian waters? Can he tell me where he finds the line of demarcation?

Sir JOHN FORREST. -

You can legislate for British subjects.

Mr. BARTON. -

You can; but that is shipping law, and you have power already to do that
under the Constitution. You would not get any additional power from the
words "beyond territorial limits."

Mr. KINGSTON. -

You would have to define the waters.

Mr. BARTON. -

Will any honorable member assist me in defining, within the limits of the
law, what Australian or Australasian waters are? It would be idle to take a
power to legislate which would break down immediately it was tested.

Mr. ISAACS. -

Can there be any Australian waters beyond the territorial limits?

Mr. BARTON. -

No. But in connexion with an Act like the Naval Agreement Act you may
make an agreement for the purpose of effectuating your compact. You may
say that certain ships shall not be taken beyond Australian waters, and you may define those waters, but the Act would simply be a contract between the two parties. If you were to attempt to define Australian waters except within the limits of a contract you would have no locus standi or aqua standi at all. The Queensland Fisheries Act does define Australian waters in the schedule. That is a Federal Council Act, and so far as it applies beyond the 3-mile limit it would if tested break down. Surely we are too sensible to take powers here which would break down in their exercise, and would make the Commonwealth not a power but a laughing-stock. I would suggest strongly that the words "in Australian waters beyond territorial limits" would have no application in law
to give them any validity. It would be an attempt to transfer power from the British authority to the Australian authority, which the British authority does not possess.

Dr. COCKBURN. -

It is the highway of Great Britain.

Mr. BARTON. -

Yes; Britannia rules the waves. The sea is a highway that belongs to all nations. We have a right of passage on it under international law; but how does that help us? Your jurisdiction is limited to the land and 3 miles of water around it. You have no more jurisdiction, and the Imperial authority could not give it to you.

Mr. SYMON. -

How could you regulate a fishery to which all the nations of the earth have access as well as yourself?

Mr. BARTON. -

Yes, and this was suggested to me. Supposing that the Commonwealth did pass such a law, and a German ship over 3 miles from land took no notice of that law, what could be done? I replied in the words which were attributed to a certain speaker when he was asked what would happen if he "named" a member. Then I was informed that the only thing the Federal Council ever did was to pass a law which, if it was tested, would be laughed at. We had better alter these words to "Fisheries," if we do not strike them out altogether. That will give the Commonwealth the power of legislating within its own limits, and outside them, if there is any power to legislate outside its limits. Is it not better, after all, that we should leave the state to legislate within its own borders? There can be no legislation outside that 3-mile limit, except under the navigation and shipping law, under which we have sufficient power to regulate matters for all practical purposes.
Mr. DOUGLAS (Tasmania). -

The original Act gives the power to the Federal Council to regulate the pearl-shell and beche-de-mer fisheries in Australian waters beyond the territorial limits. Then, in pursuance of that Act, in 1889 an Act was passed by the Federal Council limiting the power of the original Act by providing that-

This Act applies only to British ships and boats attached to British ships.

Therefore, the jurisdiction is complete. There was a very elaborate and most important decision delivered some years ago by Judge Cockburn with respect to a murder on the high seas. The question was whether in England a foreigner, a Dutchman, could be tried for a murder on the high seas committed beyond 3 miles from the territory. Although the man had been found guilty of murder, Judge Cockburn, one of our best, Judges, held on appeal that he could not be found guilty according to the English law, the murder not having been committed within the 3-mile limit. But this only refers to British subjects, and it is most important as regards Queensland and Western Australia that this power should be retained. Therefore, why not retain the words used in the British Act of Parliament giving the Federal Council the power? I see no difficulty in adopting the clause in the Bill as it now stands.

Mr. KINGSTON (South Australia). -

I take it that a British ship is floating British territory, and just as the British Parliament has the right to legislate in reference to that ship, so it has the right to delegate its right of legislation to another Legislature. That is what was done in connexion with the Federal Council, and it is what is proposed to be done here. Therefore, I hope we shall adhere to it. As pointed out by Mr. Douglas, that is the limitation affecting Queensland, and no doubt Western Australia, namely, that their control applies only to British subjects and to British ships.

Mr. BARTON. -

Then the navigation and shipping law goes beyond that power.

Mr. KINGSTON. -

I think not. That is distinctly provided. The other provisions of the Act only apply within the

Commonwealth and to ships whose port of clearance and destination is specified; but otherwise there is no power to legislate beyond the territorial limits. On a previous occasion the leader of the Convention made a similar point as to want of uniformity and clashing, arising from the state and Commonwealth jurisdictions. The preamble of the Queensland Act, which, no doubt, is followed in the Western Australian Act, shows that the very
reason for asking the Federal Council to legislate on this subject was for
the purpose of securing uniformity and preventing anything in the shape of
clashing—for extending Queensland legislation beyond territorial limits. The
recital in the preamble to the Act is as follows:—

Whereas, by certain Acts of the Parliament of the colony of Queensland,
provision has been made for regulating the pearl-shell and beche-de-mer
fisheries in the territorial waters of that colony; and whereas, by reason of
the geographical position of many of the islands forming portion of that
colony, vessels employed in such fisheries are, in the prosecution of their
business, sometimes beyond the territorial jurisdiction of Queensland; and
whereas it is expedient that the provisions of the said Acts should extend
and apply to such vessels during all the time they are so employed, and that
for that purpose the provisions of the said Acts, so far as they are
applicable to extraterritorial waters, should be extended to such waters by
an Act of the Federal Council of Australasia.

Mr. DEAKIN. —
The preamble to the Western Australian Act is identical.

Mr. HIGGINS. —
What is the number of that Act?

Mr. KINGSTON. —
It is an Act of the Federal Council passed in the session of 1888. I think
the leader of the Convention will see that the power so conferred for the
purpose of securing uniformity, and which has been exercised for that
purpose—

Mr. BARTON. —
You take the trade and commerce, navigation, and shipping provisions
together, and they give you every bit of this power, so far as those Acts
were valid.

Mr. KINGSTON. —
I do not think they give us any power to legislate beyond territorial
waters.

Mr. BARTON. —
Well, then, nobody else can.

Mr. KINGSTON. —
Not even the Imperial Parliament, with reference to a British ship, which
is a portion of British territory? I take it that it can, that it intended to do so,
and that it did. The Imperial Parliament passed a Bill conferring in good set
terms the power and the Bill was assented to in the ordinary course. A Bill
was passed by the Federal Council, in pursuance of that power, for
Queensland and also for Western Australia; each Bill was reserved for
Imperial consideration, and the Imperial consent was granted. I trust, at
least, that at this moment our leader will not ask us to strike out the provision.

Dr. COCKBURN (South Australia). -

I think the clause is very well as it is. We have toiled over the clause for an hour, and we have caught nothing. I think we ought to pass on to the next subject. Great Britain has given us a concession in the Federal Council Act, and I do not think we ought to inquire too closely into her title. We can assume that it is good enough. It would be a mistake to limit the extension of these fisheries outwards, and it would be a pity to bring them further inshore. It would be a pity to bring the federal authority within the territorial waters. The question of fishing within the territorial waters is a local question, much better left in local hands. It would be much better to leave the clause as it is, and to go on with the next business.

Mr. BRUNKER (New South Wales). -

I would suggest to the leader of the Convention that this matter should be given very much further consideration. It is one of far greater importance than perhaps honorable members can realize just now. I am one of those who have believed for very many years that our fishing industry has been very seriously neglected. I am also of the opinion that it might be made one of our most profitable resources. It is quite clear to me from the course the discussion has taken that this is a matter which might be further considered, and I would suggest to my honorable friend that we might postpone the consideration of the clause until he has been able to inquire into the technicalities and also to understand what has been done by the Federal Council.

Mr. BARTON. -

I do not think there is any doubt about the legal position.

Mr. BRUNKER. -

If there is any doubt about the legal position, we should have some power to deal with this matter from a local stand-point. It is said a little practical experience is worth a great deal more than theory. It happens that during the last fortnight or three weeks we have been experimentalizing in New South Wales in regard to trawling for deep-sea fishing. I am pleased to say that an hour or two ago I received a telegram from the person in charge of the trawling vessel to say he has had very great success again to-day. He says-

I am glad to find your opinion as to the Newcastle Bight has been borne out. We trawled there at different depths, and obtained over 15,000 fishes. We got these in three travels, and as much as one ton in one cast of the net. We have now tested waters 8 miles by 20 miles.
So he has been beyond territorial limits. The telegram goes on—

I am leaving for the Manning to-morrow, and will try the southern waters after that visit is made. I could not wish for more success than has been obtained to-day.

I think that is very pleasing information in regard to this industry, and, therefore, I suggest the subject should receive attention. We should endeavour to legislate in such a way that we will contribute to the benefit which is likely to be derived from the industry.

Mr. Howe. —

Take possession, that is the way to do it.

Mr. Brunker. —

I should like to know from the leader of the Convention whether it is likely anything can be suggested which would give us the power to treat this matter in the same form as it has been treated by the Federal Council? If the Federal Council can establish a law which gives the right to fish in Australian waters, I see no reason why this Convention should not give the Federal Parliament equally liberal powers.

Mr. Barton (New South Wales). —

I will ask, in a few moments, that progress be reported, because I think a little thought over this matter will lead us to a very early determination tomorrow morning. The position is that, under the commerce clause and the navigation and shipping clause, there is a right to deal with a British subject carrying on a trade. If people go fishing for pearl-shell, schnapper, or anything else, when they come back, and the fish is marketable, then the trade and commerce clause will apply. If the trade is conducted purely within the limits of the territory, then the state itself can deal with it. That is so far as licences are concerned—the mere licence for carrying on trade. The registration of the vessels themselves comes clearly under the navigation and shipping law, so that it seems, one way or another, there are already powers in the Commonwealth and the state which render any question unnecessary. I cannot see how the addition of the words would give any added powers or any particular validity to a law if the law exceeded that for the regulation of trade apart from it, and for the regulation of navigation and shipping. Decisions would be liable to be tested, and there would arise the danger of litigation, which honorable members depreciate.

Sir John Forrest (Western Australia). —

Before progress is reported, I would like to say that, in my opinion, no reason at all has been advanced why those words should not remain in the Bill. They have been in since 1891, and now it is suggested to remove them because some other words of a general character
may cover the ground. It should be plainly stated that the Federal Parliament will have power to deal with the question. An Imperial Act was passed giving the Federal Council power to legislate in this matter in regard to British ships and British people in the territories named in the Schedule. The Federal Council passed the Queensland and Western Australian Acts. Those Acts have been in force for years, and there has been no difficulty. Duties of customs have been collected, the trade has been protected, the pearl fisheries have been protected, police regulations have been enforced, and everything that was expected and desired has been attained. That being so, why should we hesitate to put these words in this Bill? The Imperial Parliament surely considered the question when they passed the law giving the Federal Council power; the Home Government thought of it when they advised Her Majesty to assent to the two Bills—the Queensland Act and the Western Australian Act; and it is rather too late for us to be afraid to give the Federal Parliament power in this direction. If we do not put these words in, it is questionable whether it will be within our power to legislate, because the Federal Council Act will be swept away, the Imperial Act will be of no effect, and we shall have to fall back upon the trade and commerce sub-section or the navigation and shipping sub-section in order to exercise authority. This matter is of considerable importance in connexion with the pearl fisheries, the beche-de-mer fisheries, and the deep-sea fisheries. We should not be acting wisely at all. I am speaking on behalf of a colony that has a great interest in this matter, and I am not saying too much when I urge honorable members to take the power under this Constitution which has been given to us after a good deal of trouble by the Imperial authorities. My honorable friend (Mr. Barton) says that the power exists already. We have been told that a good many times. Perhaps it does. But if it exists already, hidden away in other clauses, what object can there be in not having it inserted here in plain words? I hope that the words will be allowed to remain in the Bill. I presume that they refer to all kinds of fisheries. The pearl fisheries are the most important to us, and, of course, the deep-sea fisheries are also important. In regard to the 3-mile limit, I do not think that the Federal Parliament need trouble itself. It will be very undesirable that the sea within 3 miles of our coasts should be under the control of the legislation of the Federal Parliament. The Federal Government will not have the means of carrying out the provision without great expense. The police protection which will be necessary will be expensive. It will require an army of officers all over the coasts to supervise our local fisheries, and that can be better and more cheaply done by the local Government.
Mr. OCONNOR. -

The Western Australian and the Queensland Acts are preserved by this Constitution. All Acts passed under the Federal Council of Australasia are preserved.

Sir JOHN FORREST. -

That removes some of my objections, but there are other places besides Western Australia and Queensland. Some of the finest pearl fisheries in the world are located on the coast of the Northern Territory of South Australia.

Mr. KINGSTON. -

You might want to extend your Act.

Sir JOHN FORREST. -

Certainly we might. I hope the leader of the Convention will not be so—shall I say obstinate? No. I will say that I hope he will give way on this matter, as it is one that is considered of very great importance by the people of Western Australia, and, I am sure, also by all those colonies that have fisheries, especially pearl fisheries and beche-de-mer fisheries.

Mr. DEAKIN (Victoria). -

The Right Hon. the Premier of Western Australia need not have any apprehension with

regard to the local control of fisheries, inasmuch as it is only a concurrent power which is proposed. Until the Federal Parliament chose to exercise it the power of control in the several states would absolutely remain. I have no doubt that the control of fisheries within territorial limits would remain with them for all time. I interpose at the present moment to call the attention of the leader of the Convention to the fact that there are sections in both these Acts which a good deal exceed mere trade and commerce regulations, and regulations relating to navigation and shipping. In the Queensland Act there are provisions regulating the employment of Polynesian labour, and, curiously enough, the Western Australian Act also contains a special provision with regard to the coloured labour employed in those fisheries. I find, too, that in the schedule to the Western Australian Act jurisdiction is actually given, and with the Queen's consent, over the whole of an enormous territory of ocean. The boundaries are parallels of latitude and longitude, and an enormous slice of the Indian Ocean is brought within the scope of this Act.

Mr. SYMON. -

What will the Russians say to that?

Mr. DEAKIN. -

That is not a matter of concern, but a jurisdiction which Her Majesty's Government have thought fit to define cannot be a mere façon de parler.
The schedule to which I am drawing attention confers rights and powers which the Imperial Government have thought worth conferring. These circumstances might be weighed by the leader of the Convention and his colleagues before they lightly part with anything which contains a promise of a power. Personally I will seek to keep in this Constitution not only every power, but every promise or shadow of a power, we can obtain for the Federal Parliament.

On the motion of Mr. BARTON, progress was then reported.

The Convention adjourned at three minutes past ten o'clock p.m.
Friday, 4th March, 1898.

Petitions: Appeals to the Privy Council - Days of Meeting - Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

PETITIONS.

APPEALS TO THE PRIVY COUNCIL.

Sir GEORGE TURNER (Victoria) presented a petition from the Melbourne and Metropolitan Board of Works praying that the Convention would preserve the right of the Queen's Australian subjects to appeal to the Privy Council, and moved that it be received and read.

The motion was agreed to.

The CLERK read the petition, as follows:-

To the Right Honorable the President and the Members of the Australasian Federal Convention, in session assembled.

The petition of the Melbourne and Metropolitan Board of Works humbly sheweth-That your petitioner is a body corporate created by Act of the Parliament of Victoria, composed of representatives elected by the councils of the city of Melbourne and the municipal councils of the other 23 cities, towns, boroughs, and shires of the metropolis of the said colony, which comprises an area of about 160 square miles, with a population of more than 451,000, who will be responsible for rates to be levied by your petitioner.

That the principal duties assigned to your petitioner are to manage and extend the water supply of the said metropolis, and to undertake the sewering and draining thereof.

That in relation to the former of the said duties your petitioner is charged with liability to the Government of Victoria for a sum of £2,359,156, the balance of money lent for construction of the waterworks by creditors who are mostly resident in Great Britain. And for extension of the said works, and to sewer and drain the metropolis, your petitioner has borrowed £3,893,580 upon debentures, the holders of a large proportion of which reside in the United Kingdom.

That your petitioner will need to borrow upwards of another million of money for completion of the work now in hand, and will need to borrow successive millions at recurring intervals hereafter to meet the obligations so entered into.
That in expending the money so borrowed, and the revenue from water supply, your petitioner has entered into very many contracts and engagements with individuals and firms in this colony, New South Wales, and England. That those obligations, contracts, and engagements have been entered into with the mutual knowledge and confidence of both parties that, in the event of litigation arising out of them, recourse for the final settlement thereof could be had to the highest tribunal of the empire, Her Majesty the Queen in Council.

That, as your petitioner is informed, and believes, it has been decided by your honorable body that by the Bill for federating the Australasian colonies, which is under consideration, such right of appeal to the Sovereign shall be abolished.

That, as your petitioner respectfully submits, such abolition, if enacted and made law, would seriously derogate from the existing rights of creditors and contractors with your petitioner on the one hand, and of your petitioner on the other, and would materially weaken the credit and put a difficulty in the way of your petitioner when floating loans in the United Kingdom, as it will be necessary for your petitioner to do hereafter.

That apart from the aforesaid considerations, in so far as your petitioner represents and can speak for the inhabitants of the metropolis, your petitioner respectfully submits that to take away the right of Her Majesty's subjects in Australasia to appeal to Her Majesty is to break a connecting link between Australasia and the mother country, and that the binding of the Australasian colonies together does not necessitate, and ought not to be made the occasion for, in any way, unbinding Australasia from England.

Your petitioner, therefore, humbly prays that your honorable body will be pleased to reconsider the question of the Highest Court of Appeal and to strike out of the Bill for federating certain of the Australasian colonies the clause which would deprive Her Majesty's subjects in Australasia of the right of appeal to Her Majesty.

And your petitioner will ever pray.

Mr. WISE (New South Wales). -

I cannot, as a member of the Judiciary Committee, allow that petition to pass without calling attention to its inaccuracy.

The PRESIDENT. -

I do not think this is the occasion on which to discuss the petition.

Mr. WISE. -

Not as a matter of privilege?

The PRESIDENT. -

The motion was that the petition be received and read. It has been read.
Mr. WISE. -

Until a petition is read we do not know what is in it. There is a statement in this petition which is manifestly incorrect.

The PRESIDENT. -

There will be an opportunity of discussing the petition when the matter comes up in committee.

Mr. WISE. -

Am I in order in moving that the petition be printed?

Sir JOSEPH ABBOTT (New South Wales). -

I would submit that the honorable member is not in order, because a petition is printed as a matter of course. At any rate, it is so under the New South Wales standing orders.

The PRESIDENT. -

It is not so in this Convention. The standing orders of the House of Assembly of South Australia provide that notice must be given of a motion for the printing of a paper unless the motion is moved by a Minister. If the honorable member desires to move that this petition be printed he must give notice.

Mr. FRASER (Victoria) presented petitions from the Incorporated Institute of Accountants, Victoria; the Victorian Division of the Society of Accountants and Auditors Incorporated, England; and the Accountants and Clerks Association Limited, praying the Convention to preserve the existing right of the Queen's Australian subjects to appeal to the Privy Council, and moved that they be received.

Mr. WISE (New South Wales). -

Before that motion is put, I should like to ask the Hon. Mr. Fraser whether these petitions contain a statement similar to that in the last petition-namely, that the Convention has abolished appeals to the Privy Council?

Sir JOSEPH ABBOTT (New South Wales). -

I would submit that the honorable member has no right at this stage to interrogate any honorable member who presents a petition. That would practically allow the honorable member to make certain statements. Standing Orders No. 104 and 105 have reference to the manner of dealing with petitions. Standing Order No. 105 says-

No member shall move that a petition be printed unless he intends to take action upon it, and informs the House thereof.

If the honorable member is allowed to ask the Hon. Mr. Fraser questions, he is practically permitted to initiate a debate.

The PRESIDENT. -
I think the honorable member is in order. He can speak to the question that the petition be received, and in so doing he may ask any honorable member a question.

Mr. Wise (New South Wales).- Then I object to the petition being received, and I shall take the same course, if the Convention approves, with regard to all petitions in this form. I do so on the grounds that the petitions misstate what has been done by the committee. They declare that the Convention has abolished the existing right of the Queen's Australian subjects to appeal to Her Majesty in Council, and the expression is used—"The effect of depriving Australians of this right of approach to the Sovereign." I am not going to initiate any debate, but honorable members know that it is an utter misconception of the work of the Convention to say that we have abolished appeals to the Privy Council. No such thing has been done.

Mr. Fraser. - What have we done?

Mr. Wise. - All we have done is to say that there shall be no appeal as of right, but the prerogative appeal will continue almost if not entirely as heretofore. To say that the right of appeal has been abolished is to state what is not the fact. If the Bill becomes law, matters will practically be left in the same state as in Canada. That is to say, the Queen in Council will herself give permission to appeal in all cases of public importance.

Sir John Forrest. - Between states.

Mr. Wise. - And in all cases between states. The Queen and the Privy Council will have the right of interpreting the phrase "public importance," as they have done in regard to appeals from the Dominion of Canada. It is, I have no doubt, unintentional, but it is a complete misstatement and misconception of what has been done to say that the right of appeal to the Privy Council has been taken away. Sir John Forrest interjected that the appeal under the Bill would only apply to cases between states. That is not so. It will apply to questions between states raised at the instance of citizens, and to suits between citizens. In using the words "public importance" the Judiciary Committee have tried to adopt the language of the Privy Council itself in determining what appeals shall be allowed from the Dominion of Canada. It is a misconception that would be injurious to the future of the Bill, if it were allowed to pass, and if it were tacitly acquiesced in by a petition like this being received, that appeals to the Privy Council have been abolished. I object, therefore, to the petition being received.
Sir JOSEPH ABBOTT (New South Wales). -

It would be very wrong if the honorable member were allowed to take a course such as this with regard to petitions that are respectfully worded. Whether the petitions are erroneous or not with regard to the statements contained in them, I do not think it is at all usual, if the petitions are framed in proper and respectful language, to comment upon their contents, and the honorable member is only doing that for an ulterior purpose. Everything the honorable member has said now he could say on the debate with regard to the clauses, and on a more fitting occasion.

Mr. WISE. -

I wish to correct a misapprehension as soon as possible.

Sir JOSEPH ABBOTT. -

The honorable member wants to get some statements into the press, which I have no hesitation in saying are, in my opinion, absolutely incorrect. The statement of the honorable member that the right is not taken away by the Bill now before the Convention, so far as I can judge, is incorrect. It may be his opinion that that is not the case, but it is not the opinion of people outside who are deeply concerned in this question.

Mr. WISE. -

I want to move a misapprehension.

Sir JOSEPH ABBOTT. -

The honorable member has no right to interrupt me.

Mr. WISE. -

I rise to order. The honorable member has, unintentionally no doubt, imputed to me an ulterior purpose. I desire to be allowed to make reference to that.

The PRESIDENT. -

Does the honorable member object to the words as offensive?

Mr. WISE. -

Yes, unless the honorable member allows me to make an explanation.

The PRESIDENT. -

The honorable member cannot make an explanation to interrupt an honorable member who is in possession of the Chair. When the honorable member states that the words are offensive, no doubt Sir Joseph Abbott will qualify them.

Sir JOSEPH ABBOTT. -

I am exceedingly sorry that the honorable member is so sensitive.

Mr. WISE. -

I am not going to be misrepresented by anybody.
Sir JOSEPH ABBOTT. -

I must appeal to you, sir, to keep this unruly member in order. Every honorable member addressing himself to the Convention under parliamentary rules, as the honorable member knows, is to be heard without interruption, and I think gentlemanly instincts ought to lead honorable members to listen to one another without interruption. The honorable member has made a statement, and he takes exception to my charging him with having done so for an ulterior purpose. If that word "ulterior" is offensive to him in any shape or form, I will withdraw it. But I cannot imagine for what purpose, except that it might have an effect hereafter upon the public mind, the honorable member took this extraordinary course of objecting to the petition. The honorable member stated that no right which exists at present has been taken away.

Mr. WISE. -

I did not.

Mr. SYMON. -

The honorable member did not say that.

Sir JOSEPH ABBOTT. -

The honorable member said that every right which subjects now had was retained in this Bill.

Mr. SYMON. -

He did not say that.

Mr. WISE. -

I must ask leave to correct.

The PRESIDENT. -

The honorable member will have an opportunity of explaining afterwards, if he wishes.

Mr. WISE. -

Am I not at liberty?

HONORABLE MEMBERS. -

Chair!

The PRESIDENT. -

Order.

Sir JOSEPH ABBOTT. -

The honorable member takes a most unusual course. Evidently he wants to prolong the sitting of this Convention unreasonably. This extraordinary exception that he has taken to the petition might have been dealt with hereafter, at the proper time, and in the proper place. Whatever the honorable member said, the impression left upon my mind, and upon the minds of Sir William Zeal and Mr. Fraser, who are not novices in
parliamentary law, was that the honorable member said that practically nothing was proposed to be taken away from the subjects of the Queen in this Bill.

**Mr. FRASER.** -
That is what I understood.

**Sir JOSEPH ABBOTT.** -
If the honorable member refers to clause 75, he will see that it provides: No appeals shall be allowed to the Queen in Council from any court of any state, or from the High Court or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth or of any state or of any other part of her dominions are concerned, grant leave to appeal to the Queen in Council from the High Court. The honorable member tried to make out that these interests were the interests of the inhabitants of the state. That is absolutely true as a collective body, but as individuals it is absolutely incorrect to make such a statement. The honorable member knows well enough that under clause 75 the subject will have no right of appeal whatever. The state matters which affect the interests of the Commonwealth, or affect the state and not the individual, will be the subject of appeal.

**Mr. SYMON.** -
But they affect the individual and the state.

**Sir JOSEPH ABBOTT.** -
Again I would appeal to my honorable friend to bear in mind that it is disorderly for him to interrupt any honorable member who is addressing the Chair.

**Mr. SYMON.** -
I think the honorable member is very disorderly.

**Sir JOSEPH ABBOTT.** -
The honorable member invariably interrupts everybody who disagrees with him.

**Mr. SYMON.** -
I rise to a point of order.

**HONORABLE MEMBERS.** -
What is the point of order?

**Mr. SYMON.** -
That being the most good-natured and least interrupting member-

**An HONORABLE MEMBER.** -
That is not a point of order.

Mr. SYMON. -

The point of order is, that the remarks of the honorable member are not according to fact, and they are offensive, and ought to be withdrawn.

Sir WILLIAM ZEAL. -

That is no point of order.

The PRESIDENT. -

I call attention to the fact that the remark referring to Mr. Symon has been objected to as offensive. I should like to call the attention of honorable members generally to the fact that it is not usual to debate these matters at length. There will be an opportunity later on of doing so.

Sir JOSEPH ABBOTT. -

I am quite prepared to allow the matter to drop, but I say the course which has been taken has been very exceptional, and a course which I have never known to be taken in another place, during eighteen years that I have been there, with regard to petitions. Mr. Wise says he has no ulterior object. He said the word "ulterior" was offensive. As he had no ulterior object, he had no right to make the remarks he did.

Mr. SYMON (South Australia). -

I very greatly regret that at this early stage-

Sir RICHARD BAKER. -

I rise to a point of order, that is, that the discussion is altogether irregular. I will point out what May lays down on the practice with regard to petitions. Our standing orders 104 and 105 do not contain explicit words stating whether or not the question can be debated on the motion that the petition be received, but that is the practice, and that practice is in pursuance of the practice of the House of Commons, which is referred to in the following words by May:-

It will be observed that although the standing orders restrict debate to urgent cases (this is in reference to petitions), that restriction does not extend to a petition complaining of a matter affecting the privileges of the House, such a case being governed by the general rule that a question of privilege is always entitled to immediate consideration. But if the matter does not demand the immediate interposition of the House the course would be to appoint by order that the petition be taken into consideration on a future day, and be printed for the information of the House.

And, then, May goes on to lay down the practice that when a notice of motion is given, and the motion comes on that the petition be printed, the matter can be debated. I submit that at the present time this debate is out of order.

The PRESIDENT. -
I should be very glad to rule in favour of the point raised by Sir Richard Baker, but I do not think that our practice permits of it. I think that the motion which has been moved, that the petition be received, is open to debate; but still, at the same time, I would again venture to remind honorable members that there will be no opportunity of discussing this matter.

Our time is short; there has been a speaker on each side of the question, and probably that will induce an early conclusion of the debate.

Mr. SYMON. -
   In deference-
Sir WILLIAM ZEAL. -
   Oh, oh!

Mr. SYMON. -
   Why should Sir William Zeal, who is the greatest sinner in respect of interruptions, interfere on this occasion? We bear with him as long as we can.

Sir WILLIAM ZEAL. -
   I do not want you to bear or forbear.

Mr. SYMON. -
   I was going to say, in deference to the indication you, sir, have given, that I shall not continue the remarks I intended to make. I simply wish to deprecate, at this stage, the introduction of heat into a matter which is one purely of constitutional arrangement. I would deprecate, also, the fact that my honorable friend who has just sat down is more responsible than any other honorable member of this Convention for introducing heat into the discussion. I may say that I mean Sir Joseph Abbott. I heard him trying to fix the blame on Sir Richard Baker.

Sir JOSEPH ABBOTT. -
   My honorable friend should not be a listener.

Mr. DEAKIN (Victoria). -
   In order to save time, I beg to present petitions which, I believe, are worded in the same language as the last petition. One is from the Victorian Chamber of Manufactures, a second from the Society of Notaries of Victoria, a third from fifteen or twenty insurance companies, underwriters' companies, and other companies with foreign relations, and a fourth from the Cambrian Society.

Sir GEORGE TURNER (Victoria). -
   I beg to present similar petitions from the Melbourne Chamber of Commerce, the Melbourne Chamber of Mines, the Geelong Chamber of Commerce and Manufactures, the Federal Institute of Accountants, the

Sir WILLIAM ZEAL (Victoria). -

I beg to present similar petitions from the Victorian Employers' Union, the Pastoral Association of Victoria and Southern Riverina, and the Melbourne Wool Brokers' Association.

The petitions were received.

DAYS OF MEETING.

Sir JOHN FORREST (Western Australia). -

I should like to ask our leader whether it would not be possible for us to sit on Saturdays, and also every evening in the week? It has always appeared to me since I have been here that, seeing we have Sunday to ourselves, it is a great mistake to adjourn over Saturday. I would have moved this motion long ago if I had followed my own wishes. I think our labours have been so prolonged that we certainly ought to sit on Saturday, and I would be very pleased if we could sit every evening in the week as well. I ask fo

Sir RICHARD BAKER (South Australia). -

I join with Sir John Forrest in the remarks he has made. There is no one on whom the work will tell harder than on myself, but at the same time I am quite content to sit every night and on Saturday in order that we may finish this work.

Mr. BARTON (New South Wales). -

I am quite alive to the extreme necessity that exists for the Convention to give every possible attention to its work. I am rather of opinion, however, that the Convention has worked very hard. It might be possible to sit every night next week, but I should certainly be an objector to sitting on Saturday. I do not think some honorable members can realize the work cast on other honorable members and the officers of the Convention. I think, if they did realize it, they would see that there must be a small hiatus in the work of the week. There must be some rest on Saturday, and it is very wearying work for those who have duties outside their mere work at this table or on these benches to be expected to sit every night. The work which has been done in connexion with the Convention by some of us is very much harder than anybody supposes. I really do think that some consideration must be given to the fact that if the work is to be effective it must be done well. If it is to be done well, there must be time to do it. As far as I am concerned, I shall oppose any sitting on Saturdays. So far as the officers of the Convention are concerned, they must have a day on which to keep up the work. There is a vast deal of work
to be done in connexion with the Convention, particularly in relation to the Printing office, and it must be done at times when the Convention is not sitting. At the same time, a great deal of that work has to be done while the Convention is sitting. A great deal of work has to be done when the Convention rises. If the officers do not have Saturday to do some of the work it will be impossible to keep up with it, and, indeed, they ought to be entitled to a rest on Saturday. It involves sitting into the small hours every morning after the Convention has ceased sitting. I do not think that the Convention, as a matter of humanity, ought to ask anything of that kind to be done. Very hard work is being done for this Convention by the officers; I need not speak of any work that is being done by others. It is too much to ask this Convention to sit on Saturdays as well as five days and two nights a week. Up to the time of Sir John Forrest's departure, I shall be content to sit on Monday, Tuesday, and Wednesday next week.

Sir JOHN FORREST. -
I have to go on Wednesday.

Mr. BARTON. -
I cannot help saying that I think we ought to lay before ourselves, as Sir Richard Baker said the other day, the paramount claims of this Convention upon our attendance.

Mr. GLYNN. -
It was the same way at Adelaide; they wanted to clear off.

Mr. BARTON. -
I do not think that any necessity arising in any particular colony justifies any of us in departing from this Convention and its sittings unless it is of so pressing a character that great damage would be done to our particular colony by our absence from that colony. If such a case occurs, well and good; but if such a case does not occur, then the trouble of the whole matter should not be shunted on to the Convention. That is the position I hold in regard to it, and I hope my right honorable friend (Sir John Forrest) who, I know, has the work of this Convention at heart, may be able to persuade himself to stay until Wednesday week. There is no member of the Convention we are more glad to see on these benches, and there is no more popular member of the Convention.

Mr. DEAKIN. -
And nobody we shall miss more.

Mr. BARTON. -
I am sure we shall all miss him, and we are very anxious in completing our work to have his assistance. I therefore hope he will see his way to remain. For myself, I shall not be able to speak with the force and effect with which my right honorable friend has hitherto enabled me to speak by
his running fire of interjections. I shall miss him extremely if he takes his departure before we have concluded our labours. I hope, therefore, that he will stay. I will not ask honorable members to sit to-morrow, but I will ask them to sit every night next week, that is, on Monday and Tuesday, and, if necessary, to-night.

Sir GEORGE TURNER (Victoria). -
Honorable members have made arrangements on the understanding that the Convention would not sit tonight.

Mr. BARTON. -
So have I; but if it be necessary to sit to-night I must disappoint my friends.

Sir JOSEPH ABBOTT (New South Wales). -
I intended to give notice that I will move on Monday next-

That, unless otherwise ordered, the Convention shall sit each day for the future from half-past seven p.m. to half-past ten p.m.

Mr. BARTON (New South Wales). -
I ask my honorable friend not to give notice of that motion, and I will tell him why. It is perfectly competent for the Convention to sit every night. The only order on the minutes with reference to our sittings is that we shall meet every day at half past ten o'clock a.m. We can adjourn at what time we please. So that, without Sir Joseph Abbott's motion, we can sit every night in future if we see fit to do so. The only object of proposing such a motion, therefore, would be as a direction to myself, and there is no necessity whatever for that, because I am entirely in the hands of the Convention.

Sir JOSEPH ABBOTT. -
Under these circumstances I. certainly shall not give notice of the motion.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on-

Clause 52, sub-section (12). - Fisheries in Australian waters beyond territorial limits; and on Mr. Barton's amendment-

That the sub-section be amended by the insertion, before "fisheries," of the word "Sea"; and the omission of "beyond territorial limits."

Mr. OCONNOR (New South Wales). -
I do not think that anybody can doubt the absolute correctness of the criticism of the leader of the Convention upon the words of sub-section
(12) as they stand in the Bill at the present time, as a matter of law. But the
debate on this question has satisfied me that there are many practical
reasons why those words should remain unaltered. I am sure Mr. Barton
only expressed his opinion of the words themselves, and that he has no
very great wish either one way or the other. I will state briefly why I think
sub-section (12) should remain as it stands. We have, over and over again
in this Convention, shaped our course by considerations as to the practical
condition of things. It may be that the words in question are vague, but we
find in exactly the same words a distinction, accurate and definite, of the
sphere within which this jurisdiction has been already adopted in some
Acts passed by the Federal Council, which have been in force for over ten
years. During those ten years the fisheries of Western Australia and
Queensland have been controlled by those two colonies respectively, and
those colonies have exercised very important duties in regard to the
fisheries in question. I take it that we shall wish, as far as possible, in
regard to all matters handed over to us that we should occupy the place of
the Imperial Government, and be able to assure Queensland and Western
Australia that we will not derogate from their power of dealing with these
matters. Now, although we have preserved, by an early clause in this
Constitution, all rights existing under Acts passed by the Federal Council,
there would be a danger to those rights if those laws could be amended or
dealt with in any way. Interests have grown up, these spheres of influence
have been actually used, and the laws of these colonies have been brought
to bear on them. Therefore, I think it would be undesirable, by altering the
wording of this Act, to throw any doubt on the exercise of that jurisdiction.
There is another view, and I think a rather important one. No continent
such as ours could ever exist without having around it some right of control
over waters outside the ordinary territorial limits for some distance from
the coast, in the same way as rights have been claimed over fisheries off
Newfoundland, and other parts of the

world as being appendant to the ownership of the continent. It is only
proper, as we are beginning now, as representing the empire here, that any
right of control over these waters, no matter how far from the coast, should
not be abandoned, as it will be necessary for us. As by-and-by, this
continent will become a sovereign State, as it must some day, although
remaining a part of the British Empire, it is necessary for us now to see that
we begin to lay out what we think will be that sphere of operation and
influence round about this Continent of Australasia which we will require
in the time to come and which we are beginning to require now. Therefore, from the point of view of Imperial interests handed over to us in
this matter, I do not think we ought to abandon one jot of what we have acquired already. To show that this is the true description of the state of the case, I may point out that Western Australia goes 600 miles from the coast at the furthest point, and 300 miles from the coast at the nearest point, and extends her control right round the coast of that colony. Queensland's sphere extends from the southern point of Queensland away north to a considerable distance, and embraces a number of islands along the coast within the area of which these profitable sources of revenue to the colonies exist. Although I think that the criticism of Mr. Barton is perfectly justified, being brought face to face with the practical condition of things, I think we ought to leave subsection (12) as it stands.

Mr. SYMON (South Australia). -

I am very glad Mr. O'Connor has decided that it is better to retain the words of sub-section (12) of clause 52. The words as they stand may lead to the result that Mr. Barton indicated last evening, in seeming to give a power of legislation which would interfere with international law and affect foreign vessels or peoples engaged in these fisheries. But the provision in sub-section (12) which we wish to retain will always be subject to inter-national rights, whatever they may be, and, therefore, no confusion can possibly result from legislation. There are many conceivable cases in which we would not be able to exercise that control over crews and ships in Australian waters under the ordinary laws of navigation and shipping, unless we had some such provision as this. I think these words will be very effective and useful, and they have already been adopted and acted on.

Sir JOHN FORREST (Western Australia). -

I am very glad, too, that Mr. O'Connor has decided that it is better to retain the words of sub-section (12), and I thank him for the assurance he has given us on the question. I am aware of the narrow view—the legal view—of this matter, but I am glad Mr. O'Connor takes a broader and more Imperialistic view of this question. I think we should retain all we have got, and get as much more as possible. This continent of ours belongs to Great Britain, and the waters around it, at any rate, should be within the influence of the British Government. Therefore, I am very glad indeed that Mr. O'Connor has consented to allow these words to remain in the Bill.

Mr. BRUNKER (New South Wales). -

I am very pleased indeed that the reconsideration of this matter will lead to a concession which, I think, will prove to the advantage of all the colonies. When I made a suggestion in regard to this matter last night, I was not aware of the privileges that had been conceded to Western Australia, but since then I find that, in the Act dealing with this matter of
the fisheries, the following words occur:-

And whereas vessels employed in such fishery are, in the prosecution of their business, sometimes within and sometimes beyond the territorial jurisdiction of Western Australia.

I suggested last night that, seeing that this concession was made to the Federal Council, there is no reason why it should not be made to the Federal Parliament. I am very pleased indeed that we have come to a decision which we all approve.

The amendment was negatived.

Sub-section (12) was agreed to.

Mr. OCONNOR (New South Wales). -

I beg to move the insertion of the following new sub-section:-

The acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws.

Some question has been raised as to whether the Commonwealth has the power inherently of acquiring property under just terms of compensation; that is to say, whether it is not driven to bargain and sale only. It is quite clear that there must be a power of compulsorily taking property for the purposes of the Commonwealth.

Mr. FRASER. -

Certainly.

Mr. OCONNOR. -

And this clause is framed to provide for that.

Mr. FRASER. -

Are the terms to be stated?

Mr. OCONNOR. -

No, you do not want to state the terms in the Constitution. Of course an Act will have to be passed by the Commonwealth Parliament elaborating this enactment, and no doubt proper provision will be made in that Act for the method of acquiring lands, and the mode in which lands shall be obtained for the purposes of the Commonwealth.

The new sub-section was agreed to.

Clause 52, as amended, was agreed to.

Clause 53, subsection (2). - The government of any territory which, by the surrender of any state or states, and the acceptance of the Commonwealth, becomes the seat of government of the Commonwealth, and the exercise of like authority over all places acquired by the Commonwealth, with the consent of the state in which such places are situate, for the public purposes of the Commonwealth.

Mr. OCONNOR (New South Wales). -
I beg to move—
That the words from "with the consent of the state in which such places are situate" (line 7) be struck out.

The object of this amendment is to put in the most general possible terms the purposes of the clause. The clause gives a right of government for certain purposes to the Parliament, and it is just as well that it should be stated in such general terms that it will not be possible that any purpose which we do not think of now will be omitted.

The amendment was agreed to.

The sub-section, as amended, was agreed to.

Clause 56B, paragraph (1). - If the House of Representatives passes any proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if the Governor-General thereupon dissolves the House of Representatives, and if, within six months after such dissolution, the House of Representatives, by an absolute majority, again passes the proposed law, with or without any amendments that may have been made or agreed to by the Senate, and if the Senate again rejects the proposed law, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate.

Mr. BARTON (New South Wales). -

The amendment on the paper to be moved at this point is—
That paragraph (1) of clause 56B be omitted.

But I should like to mention that this is particularly an amendment of substance. It is a proposal to omit from the dead-lock clause the portion which was carried at the instance of Mr. Symon, in Sydney, leaving the rest of the clause to stand. Now, I stated yesterday, when we were discussing the propriety of taking this list of recommittal amendments, that so long as I had the right of moving amendments of substance at the second recommittal stage, I did not wish to force on the attention of the committee at this stage any matter which would occupy any great length of time. Therefore, I am in the hands of the committee with regard to this, as with regard to other matters of considerable substance. I think we are all agreed that this dead-lock provision

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will take some time to discuss, and perhaps it will be more convenient if I do not move this amendment now. But I should like to ask the Chairman whether I can retain my right of moving it at the second recommittal stage?

The CHAIRMAN. -

Certainly.

Mr. BARTON. -
Then, if it be the wish of the Convention, I will not move the amendment now.

Clause 73 (Extent of judicial power),
Mr. BARTON (New South Wales). -
I beg to move-
That the following sub-section be inserted as subsection (7):

In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

This, Mr. Chairman, is an amendment of substance, but the discussion of it ought not to occupy very long. It will be remembered that in the former committee this sub-section was left out. Now, I have come to the conclusion that it was scarcely wise of us to leave it out. The clause is that which States-

That the judicial power of the Commonwealth shall extend to all matters; and then follows a list of the matters, of which sub-section (7) was one. I proposed in the former committee to make it apply to matters in which an injunction is sought against an officer of the Commonwealth, but ultimately the sub-section was left out, on the ground that the proceeding could probably be taken without any express power being given for them. I am under the impression that we came to rather a hasty conclusion upon that matter, and that it would be advisable to restore these cases of judicial power. The question would be this: Whether without an express authority given in the Constitution to entertain such cases the High Court could grant a writ of mandamus or a prohibition or an injunction against an officer of the Commonwealth? Ordinarily speaking, any such proceeding as amounts to a proceeding against the Crown cannot be taken without an express Act to authorize it. A matter came before the Supreme Court of the United States, and there was a decision by the very high authority of Mr. Justice Marshall, which will help us to come to a conclusion whether we should retain these words or not. In the case of Marbury v. Madison, and in other cases, the following was the decision:-

It is only such Acts of Congress as are within the scope of their powers as conferred by the Constitution that became the supreme law of the land. Where such Acts are in violation of the Constitution, it is the province of the courts of the United States to declare the law void and refuse to execute it. The final appellate power upon all such questions is in the Supreme Court of the United States.

What happened in that case was that the United States Congress, without having this right of entertaining cases of mandamus or prohibition against an officer of the United States, had passed an Act upon the subject; but, inasmuch as the Constitution did not place in the hands of the High Court
the power to entertain these questions, it was held that an Act of Congress giving power to entertain them was not within the powers conferred by the Constitution, and was therefore a void Act. So that the power was not exercisable. The principle on which the whole matter rests is laid down in another case.

Mr. KINGSTON. -
Does it remain so still?

Mr. BARTON. -
So far as I am aware. I do not know that there has been an amendment of the United States Constitution to that effect. In the case of The Board of Liquidation against McComb, it was laid down that-

A state without its consent cannot be sued by an individual; and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter.

Then there is a statement as to the granting of a mandamus:-

But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a mandamus to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of mandamus and injunction are somewhat correlative to each other. In either case if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void.

The courts there declared to be null and void an unconstitutional law passed by the United States Congress to give such power. Consequently, it seems to me that it might be held here that the courts should not exercise this power, and that even the statute giving them the power would not be of any effect; and I think that, as a matter of safety, it would be well to insert these words.

Mr. SYMON. -
They cannot do any harm.

Mr. BARTON. -
They cannot do harm, and may protect us from a great evil.

Dr. QUICK (Victoria). -
I think the leader of the Convention has made out a good case for the re-insertion of these words, on the ground that without the sub-section in
question the clause would have the effect of limiting the particular class of writs or remedies which it will be within the power of the Federal Court to administer. But I should like to ask, for instance, would the court have power not only with regard to the three writs specified in the sub-section, but would it have power to issue writs of certiorari to bring up writs and quash them, and would it have power to issue writs of *habeas corpus* against an authority which might improperly imprison a citizen of the Commonwealth? It seems to me that the Supreme Court would be limited to the three classes of writs, and would not have power to issue other writs which it might be desirable that the court should issue.

**Mr. BARTON (New South Wales).** -

It is well determined that there is power to issue a writ of *habeas corpus* independently of words of this kind. That has been decided in America. It was decided that the right of a citizen to have the cause of his detention inquired into was clear; that the right of *habeas corpus* existed under the common law of England, and did not need any provision with regard to it whatever.

**Sir JOHN FORREST (Western Australia).** -

I should like to ask whether this power could be exercised against a Governor of a state for any act of his? Would it include the Governors of states acting under Ministerial authority?

**Mr. BARTON.** -

The Governor of the state is not an officer of the Commonwealth.

**Sir JOHN FORREST.** -

Could it apply to Ministers of state or the Governor of a state?

**Mr. BARTON.** -

No.

**Mr. GLYNN (South Australia).** -

Upon this subject I should like to call particular attention to an article which appeared in the *Law Times* on the 13th February, 1897. The article deals with this very point of the right to issue a mandamus against a Governor. It was decided in the case of Marbury v. Madison that an injunction could issue as regards the state courts, and the writer complains of this as an interference by one department of the state with another. He says -

But following the doctrine of this decision, or rather, of this extrajudicial fulmination - for the court had really nothing to decide except its own want of jurisdiction - the state judicatures have, almost without exception, asserted the power to control the executive department of their state Governments in what are called Ministerial matters which do not involve the exercise of an exclusive discretion, by sending writs of mandamus to
the heads of executive departments, and even in some instances to the Governor himself.

It is done, then, in America. There may be a slight distinction—one cannot answer questions of this kind on the spur of the moment—but it is a matter worth a little more consideration. We are putting it in

the power of the Federal Judiciary to interfere with the Federal Executive, which, in America, is complained of as an unconstitutional interference with the executive departments of the state.

Mr. KINGSTON (South Australia). -

I hope we shall not hastily adopt this amendment, but that we shall have an opportunity of further considering it. I understand that Mr. Barton proposes to give to the Federal Court a power which the authorities cited by Mr. Glynn seem to declare would extend even to the executive acts and restrain the executive action of the Federal Government. That power is not possessed in America, and to confer it here, when the states have been able to do so well without it, seems to me to be a step we should not take, except after the most mature consideration. No doubt we have had this proposal on our files, but still it is a matter of such moment that I make the suggestion of delay.

Mr. BARTON. -

What evil consequences can arise from it?

Mr. KINGSTON. -

The clashing of the courts and the Executive. We should be sorry to implant in the Constitution a provision by which the federal courts would have any control over the executive acts. For the executive act of the Commonwealth the executive officers would be responsible to Parliament, which, no doubt, would see due regard is bad to all constitutional provisions. But if we specially provide for interference by the courts in federal matters, we will be giving to the High Court of Australia a power it is unnecessary that court should possess, and which might, at various times, be exercised to the very great detriment of constitutional government.

Sir JOHN FORREST. -

It is not exercised in England.

Mr. KINGSTON. -

No, and why should we put it in this Constitution? We have already put it within the power of the Federal Parliament, by express provision, to legislate so as to confer the right of proceeding against the Crown. That seems to me quite sufficient. To further embody in this Constitution a declaration that the Judiciary should interfere with the Executive, or that it
should be within the judicial power to do so seems to me a retrograde step which cannot be defended.

Mr. SYMON (South Australia). -

The apprehensions just laid before the Convention are, I think, not well founded. The provision will not in my view enable the Federal High Court or any court to interfere in any way whatever with the political Executive of the Federation. The provision does not confer, and is not intended to confer, and I am sure Mr. Barton will agree with me in this-any right whatever to interfere in such cases. It merely gives a jurisdiction.

Mr. BARTON. -

Hear, hear.

Mr. SYMON. -

Applications may be made now.

Mr. BARTON. -

This proposal does not confer any right.

Mr. SYMON. -

I was going to say that it does not confer any right. It is a safeguard, because it will prevent any application for mandamus or prohibition, both of which are prerogative rights, being made in any court except the courts invested with federal jurisdiction. The provision says that if you apply as against an officer of the Commonwealth-

Sir JOHN FORREST. -

It might be against the Governor-General of the Commonwealth.

Mr. SYMON. -

No, but supposing it is? I will take that position, and say that it does not give any right to get mandamus or prohibition.

Sir JOHN FORREST. -

It is optional.

Mr. SYMON. -

It is not optional. It merely gives a jurisdiction in certain applications.

Sir JOHN FORREST. -

No.

Mr. SYMON. -

Will my honorable friend pardon me? We have had applications in my own colony-I don't know that this has been the case in other colonies-for mandamus and prohibition directed against officers or a body constituted under the Executive Government of the day, and the question has been raised whether or not that was an interference,. That was a case of seeking to proceed by mandamus for the performance of some act by the Executive
through somebody to whom the control had been delegated. It is not provided that the right shall exist to get the mandamus or prohibition.

Sir JOHN FORREST. -

It means nothing then?

Mr. SYMON. -

Yes, it means a great deal. It means that no court, except the Federal High Court, or other courts under the Federal Constitution, shall have the power to entertain such an application. If this provision be not inserted, it follows that anybody who is discontented with something done by an officer of the Commonwealth in any state might apply to the court of the state for mandamus or prohibition. He might not get it, but be might apply for it, and there are cases in which be would get it. But if this provision be inserted the application would have to be made to the Federal Court. That, I take it, is a safeguard.

Mr. ISAACS. -

Is this exclusive?

Mr. SYMON. -

Yes, as to the officers of the Commonwealth.

Sir EDWARD BRADDON. -

It is a limitation of the right of the people against the Crown.

Mr. SYMON. -

No; it is not a limitation. All it says is that an application for mandamus or prohibition against an officer of the Commonwealth must be taken to the High Court or other of the Federal Courts. An application cannot be made to a state court, although the incident which brings the application about may happen in a particular state. The right to mandamus or prohibition is not conferred one whit more than at present. The provision merely throws within the ambit of the jurisdiction of the federal tribunal the right to determine the question. That question will be determined by the ordinary law of England-by the principles of constitutional government and the prerogatives of the Crown. There have been prohibitions and writs of mandamus granted against officers of the Crown in England, as well as in other places, where the officer has not been exercising an executive discretion, but where he has been what might be called a conduit pipe through which money ought to pass from the Treasurer or some fund to the intended recipient. If an officer has not paid that money over, application may be made for a writ of mandamus to compel him. But it is not necessary to discuss these things now. The only question is whether the proposal confers a right on anybody, no matter what the circumstances or whether the application impinges on the prerogative, to obtain a writ of mandamus or a prohibition against an officer of the Crown. The provision
has not that effect at all. It is a safeguard and a limitation. It prevents an officer of the Commonwealth, whether Minister or anybody else, from being proceeded against in any state, in regard to the Commonwealth.

Sir JOHN FORREST. -
I should say it would be a very cumbrous and undesirable method.

Mr. SYMON. -
It would be very cumbrous and undesirable if an officer of the Commonwealth could be proceeded against in a state court.

Sir JOHN FORREST. -
In the colonies now, I think writs of mandamus are issued to prevent officers doing certain things.

Mr. BARTON. -
A mandamus is issued to compel the performance of a plain official duty laid down in an Act of Parliament.

Sir JOHN FORREST. -
I know the court interferes with officers of the Crown to compel them to do certain things. Prohibitions are common enough, even in the colony I come from.

Mr. SYMON. -
My honorable friend (Sir John Forrest) will see that the proposal before the Convention would not interfere in any way with the proceedings he has mentioned. Whatever jurisdiction the state courts have now in regard to writs of mandamus and to prohibitions against officers of the state will remain. All the provision says is that writs of mandamus and prohibitions against officers of the Commonwealth shall be within the jurisdiction of the Federal Court. The point that my honorable friend. (Dr. Quick) has referred to is one worthy of the attention he has given to it. The distinction is that writs of mandamus and prohibitions are prerogative rights, and these other cases are not.

Dr. QUICK. -
Is not habeas corpus a prerogative right?

Mr. SYMON. -
It is not a prerogative right.

Mr. ISAACS. -
You will have to put all sorts of other things in the provision.

Mr. SYMON. -
I think not. I doubt whether it is necessary to introduce the reference to injunctions but still there is no harm in saying that the only court having jurisdiction to deal with injunctions against officers of the Commonwealth shall be the Commonwealth Court. That was the object of the provision; at
any rate, it was the sole object that the Judicial Committee had in view in inserting it in the first instance. When the time came to revise the provision, some honorable members seemed to doubt whether it ought to be there, and it was eliminated. Second thoughts are the best, and I think the provision ought to be inserted.

Mr. ISAACS. -
Where is the necessity for it?

Mr. SYMON. -
The necessity is to bring all those applications for writs of mandamus, prohibition, and injunctions as against officers of the Commonwealth in the Commonwealth courts, and not to have them brought in the state courts, in which they undoubtedly ought not to be brought.

Mr. ISAACS (Victoria). -
The provision does not say that such an application shall not be brought in the state courts. It is not exclusive, and if the power to make such an application in the state court exists the insertion of these words cannot take that power away.

Mr. BARTON. -
It is an appellate jurisdiction, according to the American decision.

Mr. ISAACS. -
If it is an appellate jurisdiction it necessarily assumes there is power to make application to the state court to start with, and the provision would not derogate from that power. The judicial power is conferred in respect of certain matters. Power is given to legislate in respect of certain matters, and in all things incidental or necessary in regard thereto. Surely that covers matters such as writs of mandamus, injunctions, prohibitions, *habeas corpus*, writs and attachments, and everything which constitute the means of the court to carry out its decrees. Parliament has the fullest power to confer those powers. My great objection to the proposal is that it will operate as a limitation upon other provisions for judicial power. It assumes there is no, power to grant a mandamus. The latest American case I know of on the subject—it is not in Baker, though it was decided before that book was published—is the United States ex rel. Boynton v. Blaine, decided in 1891, and rep

The writ of mandamus cannot issue in a case where its effect is to direct or control the head of an Executive department in the discharge of an executive duty, involving the exercise of judgment or discretion.

Now, the converse of that is also stated:--

When a mere Ministerial duty is imposed upon the executive officers of the Government, that is, a service which they are bound to perform without further question, then, if they refuse, the mandamus may be issued to
compel them.

That power exists in the United States without any provision to the effect in the Constitution. And it would exist with us without any such provision. If we go putting in limitations, we should be in exactly the same position as we would if we put a series of limitations on the trade and commerce clause. We have heard it said frequently that if we put in these limitations on the trade and commerce clause, they will operate as a means of cutting down the wide operation of that clause. We are doing exactly the same if we put this in. What the Chief Justice of the United States stated was this:-

The writ of mandamus cannot issue in a case where its effect is to direct or control the head of an Executive department in the discharge of an executive duty involving the exercise of judgment or discretion. U.S. ex rel., Redfeld v. Windom 137 U.S., 636, 644. When by special statute or otherwise a mere Ministerial duty is imposed upon the executive officers of the Government; that is, a service which they are bound to perform without further question, then, if they refuse, the mandamus may be issued to compel them. U.S. ex rel. Dunlap v. Black, 128, U.S. 40, 48 The writ goes to compel a party to do that which it is his duty to do without it. It confers no new authority, and the party to be coerced must have the power to perform the act. Brownsville v. Loague, 129, U.S. 493,501.

What more do we want? If it is intended to go further, and put into this Constitution a power by which the court can have the right to do whatever it thinks just and proper on a mere application by way of mandamus, or prohibition, or injunction, then it is going a great deal too far.

Mr. SYMON. -

That you cannot prevent the application now you have just shown.

Mr. ISAACS. -

I think you cannot; but the court in construing such a clause would say there must have been some special reason for putting it in, and the only reason they could have for putting it in would be either to indicate that the previous power given was too small to confer it, and, therefore, would exclude other matters, or it would say that it was intended to enlarge that power and give a right to the court to act as it pleased on such application being made. Both of these positions I think we ought to avoid, therefore I would ask my honorable friends to consider very seriously before they insert this clause. It seems to be wholly unnecessary; it cannot work any good and it may work a great deal of harm.

Dr. QUICK (Victoria). -

I would direct the attention of the leader of the Convention to the fact
that the Constitution of the United States contains a distinct provision in favour of the writ of habeas corpus. Section 9 says-

The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

Mr. ISAACS. -

That is part of the Declaration of Rights.

Dr. QUICK. -

I would point out to Mr. Symon that the writ of habeas corpus is a high prerogative right, because, according to Storey, vol. 2, page 237:-

In England this is a high prerogative, issuing out of the Court of Queen's Bench not only in term time, but in vacation, and running in all parts of the king's dominions, for it is said the king is entitled at all times to have an account why the liberty of any of his subjects is restrained.

I think that lends force to some observations I made at an earlier stage of the discussion to this effect: That if you are going to have a section enumerating writs which it is within the jurisdiction of the High Court to issue, then that enumeration ought to include all possible desirable writs. The Constitution of the United States contains a distinct recognition of the writ of habeas corpus, and the section creating the jurisdiction of the Supreme Court of the United States does not enumerate any of those writs which it is now proposed to enumerate.

Mr. BARTON. -

That does not provide for the writ of habeas corpus. It recognises an existing writ, and it only says that it shall not be suspended.

Mr. ISAACS. -

It is like a declaration of rights.

Dr. QUICK. -

But in the Constitution of the United States there is no section such as is now proposed, limiting or defining the writs which may be issued by that court; it is left to the operation of the common law. Here it is proposed to put in a clause limiting and defining the class of writs to be issued to three, viz., mandamus, prohibition, and injunction. That, according to the great doctrine of limitation which has been so often impressed on the Convention, would exclude, by process of definition, the right to issue a writ of habeas corpus or a writ of certiorari. If there is to be a clause defining those writs, then I contend that it ought to be a complete definition and a complete enumeration embracing all possible writs for the enforcement of remedies, otherwise it is best to leave out the clause.

Mr. BARTON. -

The object of this clause is a very clear one, if I may mention it without
interrupting the honorable member. In certain cases the Supreme Court would have original jurisdiction, in others appellate. If you do not specially mention this, then in cases of mandamus, prohibition, and injunction, it can only have the ordinary appellate jurisdiction, but if you mention it specially as within the judicial power, and provide for it as an original jurisdiction, then a case may be taken straight to the court instead of having to filter through another court.

Dr. QUICK. -

I have not the slightest objection to the clause provided that it is made sufficiently comprehensive to include all desirable remedies. I contend that these other remedies are equally as desirable as are those three.

Mr. ISAACS (Victoria). -

If the court, under one of these sub-sections, has the power to deal with all cases arising under the Constitution it would have the power necessarily, or certainly the Federal Parliament would have the right to give the power, to exercise its jurisdiction by way of mandamus, or injunction, or prohibition.

Mr. BARTON. -

In the United States it is extended only to cases of law and equity arising under the Constitution, but it was held not to confer this power as an original power. It only exists as an appellate one.

Sir EDWARD BRADDON (Tasmania). -

I should like to ask the leader of the Convention whether this would be an exclusive right? If so, there is no doubt whatever that it would limit the liberties of the people of the states to some extent. Suppose, for instance, in any state a citizen had a grievance arising out of some neglect on the part of a federal officer, say a postmaster or a telegraph operator, would it be required by this clause that the person so injured, or fancying himself so injured, would have to proceed by way of mandamus or otherwise in the federal and not in his own local court, because of the exclusive jurisdiction we vest in the Federal High Court? If it is, then that citizen would be put to very considerable inconvenience by exercising one of his privileges of citizenship.

Mr. SYMON (South Australia). -

There is no doubt whatever if the possibility which Sir Edward Braddon has indicated could arise, it would be a very grave blunder, and it would be a mischief which we ought at all hazards to avoid; but that would not be the position. If such a case as he put were to arise, it would not be necessary for the person who was aggrieved or considered himself aggrieved by the federal officer to proceed in the Federal High Court. He could proceed in any federal court or in any court invested with federal
jurisdiction. In the United States these federal courts are distributed all over the country. There are circuit courts and there are other courts to dispense justice in all parts of the Commonwealth. That, of course, necessitates a network of courts, involving very great expense and very great complexity. With the view of avoiding all that expense and all that complexity, we have provided in the Constitution that the Parliament, instead of duplicating a lot of federal courts, may invest the courts of the states with federal jurisdiction. That is the course which will be adopted, because it is not contemplated that such applications as those should come before the Federal High Court. Therefore, if any citizen of the state had a grievance against a federal officer within that state, for the redress of which he required a mandamus or a prohibition, his remedy would be in the state to which he belonged-not to the local court or the Supreme Court of the state, but to that Supreme Court as invested with federal jurisdiction. He would not be compelled to go to the Federal High Court. He would have the remedy at his own door. Whether this clause is necessary or not is a matter I do not want to enter upon again. I agree with Mr. Isaacs that the federal courts would have the jurisdiction. What we want to prevent is that state courts shall have the jurisdiction over Commonwealth officers, and the remedy, if it was called for at all, would be a remedy enforceable within the bounds of the state at the door of the person aggrieved, and he would not be compelled to go away to the Federal High Court, in which the jurisdiction is not made to reside. That court would have jurisdiction, as a matter of appeal, from the decision of the court invested with federal jurisdiction.

Sir EDWARD BRADDON. -

That is all right.

Mr. DOBSON. -

Under clause 71 the Federal Parliament can give the Federal Court in a state only such jurisdiction as it thinks fit, and it may reserve some of these prerogative writs.

Mr. SYMON. -

It may, and that is reaffirmed by clause 76. The whole scheme of jurisdiction is laid down here in skeleton, so to speak. The Parliament would then invest, no doubt, certain of the courts of the states with federal jurisdiction, otherwise there would be a possibility of a grave miscarriage of justice.

Mr. ISAACS (Victoria). -

I did not, until a moment or two ago, quite apprehend the difficulties in
the minds of Mr. Barton and Mr. O'Connor, and if they will not mind following me for a minute I think I can clear away those difficulties. In the United States it is quite clear how it is held that the Supreme Court has nothing but an appellate jurisdiction in respect of mandamus, that is, as to Commonwealth officers, because the Constitution says that the only cases in which the Supreme Court shall have original jurisdiction are-

Cases affecting ambassadors, other public Ministers, and consuls, and those in which a state shall be a party.

This is not a case where a Commonwealth officer is a party at all, and, therefore, there is no original jurisdiction in any respect as to the matter of which we are talking. The Constitution goes onto say-

In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Therefore, as they have only appellate jurisdiction in regard to the merits of the case, they have only appellate jurisdiction in regard to an amendment in that case. But in our Bill we say-

In all matters-

III. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

IV. Between states:

the High Court shall have original as well as appellate jurisdiction.

The Parliament may confer original jurisdiction on the High Court in other matters within the judicial power.

Mr. BARTON. -

They would not be matters within the judicial power, and therefore would have to come into this clause.

Mr. ISAACS. -

Yes; but you cannot give a mandamus to the High Court in any matter which is not within the judicial power.

Mr. BARTON. -

We want it in the judicial power.

Mr. ISAACS. -

No. My honorable friend does not quite see what I mean. This is, only a remedy for carrying out the powers of the court, and you cannot put within the judicial power a mere remedy where there is no right. The great distinction between the Constitution as we frame it and the Constitution of the United States is that in the United States there is no original jurisdiction at all, in a case where the Commonwealth or a person suing or being sued on behalf of the Commonwealth is a party, and therefore you can
understand how a mandamus being a remedy in such a case is not within its original jurisdiction. But we put it within the original jurisdiction here, and it seems to me that a mandamus follows with it. It is only ancillary to the case, and it seems to me to follow the main issue.

Mr. WISE. - Are they ancillary to every case?

Mr. ISAACS. - I should say that they are ancillary to every case where the court has jurisdiction. No doubt it is in the power of the Federal Parliament to confer original jurisdiction within the judicial power, but you cannot have a mandamus outside the judicial power. Therefore, it appears to me that it is not analogous to the case of the United States.

Mr. BARTON (New South Wales). - I think that this matter can be put on a clear footing without much difficulty. Perhaps it will be necessary to read section 2 of Article 3 of the United States Constitution, so that we may see where the difference lies. That section says-

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public Ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

These are the jurisdictions of the High Court. Then we come to a paragraph defining the cases in which the jurisdictions are original, and those in which they are appellate. That paragraph is as follows:

In all cases affecting ambassadors, other public Ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

It is because of this limitation that the decision in the case of Marbury v. Madison appears to have been given. In other words, although jurisdiction was given as to cases arising out of the Constitution that itself was only an appellate jurisdiction. Jurisdiction was not given in any express terms as to writs of mandamus, prohibition, or injunction. Therefore there was only an appellate jurisdiction. When the United States Congress tried to confer an
original jurisdiction upon the Supreme Court of the United States, it was held that, as there was no such jurisdiction conferred by the Constitution, it could not be conferred by an Act of Congress, because such an Act was outside the Constitution. For that reason, the statute was held to be void.

Mr. ISAACS. -

At this juncture the difficulty arises, could the court grant a writ of mandamus except in the cases in which jurisdiction has been given?

Mr. BARTON. -

I think it would apply to any case in which, under the common law, or under any statute made for the furtherance of the duties imposed by it, you could obtain, we will say, a writ of mandamus. Similarly, it would apply in regard to writs of prohibition and injunction. I want honorable members to bear in mind that this is simply a provision conferring jurisdiction. It does not confer-and this answers the doubt of the Right Hon. Sir Edward Braddon-upon any person any new right. It does not give anybody a right to pursue in any way an officer of the Commonwealth, except such right as arises out of the known principles of law, which go to this extent: I will take the writ of mandamus as an illustration. Where there is a duty imposed by an Act of Parliament, and that duty has to be performed, not merely in relation to the Crown, but also for the benefit of the public, any person aggrieved by the non-performance of it may obtain a writ of mandamus. In the same way, where it is proposed to put into operation against him some process of the law, he, as a subject, having the right to have this process of law properly exercised, can obtain an injunction against its wrongful exercise. Those are the class of cases to which these provisions are intended to apply. If you did not put this power into the Constitution the result would be that it could only be exercised upon an appeal from another court. The position under this Constitution will be somewhat analogous to the position under the United States Constitution. In clause 73 we enumerate the judicial powers. We propose to include among them, as we did before, this power to decide cases in which writs of mandamus, prohibition, and injunction are applied for. Then, we propose to put into clause 77-and I think the honorable and learned member (Mr. Symon) will hear me out in this-the same words as to these writs. This will give the High Court original jurisdiction, as well as appellate jurisdiction, in these cases, so that when a person wishes to obtain the performance of a clear statutory duty, or to restrain an officer of the Commonwealth from going beyond his duty, or to restrain him in the performance of some statutory duty from doing some wrong, he can obtain a writ of mandamus, a writ of prohibition, or a writ of injunction.
Mr. ISAACS. -

Would not that be so under sub-section (3) of clause 77 in any case?

Mr. BARTON. -

I do not think that it would. My honorable and learned friend has argued that a provision relating to all matters in which the Commonwealth or a person suing or being sued upon behalf of the Commonwealth, or to which the Commonwealth is a party, would cover the case, but I do not think that it would. It is a grave question whether the expression "a person suing or being sued on behalf of the Commonwealth" does not mean a person who is being simply impleaded in an action of law. That is more strongly shown by reference to the other words of the clause, because original jurisdiction is given in cases to which the Commonwealth is a party, but only in respect to a person representing the Commonwealth, that is, a person suing or being sued upon its behalf. I think there is the very gravest doubt as to whether the words in subsection (3) of clause 77 would be sufficient authorization for an original jurisdiction. Now I come to the point raised by the honorable and learned member (Dr. Quick), that this does not specify all the writs in respect to which jurisdiction may be exercised. But it was not intended to do that. A writ of habeas corpus is a common law writ, in regard to which you have no trouble as to its exercise. It is one of the rights which the subject carries with him so long as he is within British territory, and there is no necessity to put enabling words as to that writ into the Constitution. Even in America, where they had acted up to the time of the framing of the Constitution under the rules of the common law of England, and where they still do so except where they have statutory provisions limiting or modifying or taking away its operation—even there it was not held to be necessary to place any provision in the Constitution to insure that the writ of habeas corpus should run. All that was held necessary was to protect the writ of habeas corpus by preventing it from being suspended under the circumstances mentioned in section 9. So we come back to

this position. What we want here in the case of these three writs, which are specially in their nature addressed to persons who may be carrying out the provisions of the statute law, is to enable proceedings against those persons to be taken directly in the High Court, instead of its being necessary to go first to another court and then to proceed on appeal to the High Court. If we do not insert a provision in regard to this matter into this clause, then in such cases application will have to be made first to some court other than the High Court, because you have not given the High Court jurisdiction.

Mr. ISAACS. -

But you have empowered Parliament to confer it.
Mr. BARTON. -

Yes; but application will have to be made to another court first, because you have not given the High Court original jurisdiction. The matter can only come before the High Court after it has filtered through another court, and by way of appeal. Is it not right, however, that the subject should be empowered, when he has a right to one of these writs against an officer of the Commonwealth, to go to the High Court at once-to the court which protects the Constitution-to obtain his rights under the Constitution? That is the sole question. The Premier of Tasmania seemed to have great doubt as to whether this provision did not confer rights. I would, therefore, point out to him that it does not enable the High Court to grant a prohibition or a mandamus or an injunction against an officer of the Commonwealth unless the law already enables that to be done. The object of it is to make sure that where a person has a right to ask for any of these writs he shall be enabled to go at once to the High Court, instead of having his process filtered through two or more courts. I think that the honorable and learned member (Dr. Quick) will see why other writs are not enumerated. This provision is applicable to those three special classes of cases in which public officers can be dealt with, and in which it is necessary that they should be dealt with, so that the High Court may exercise its function of protecting the subject against any violation of the Constitution, or of any law made under the Constitution.

New sub-section (7) was agreed to.

Mr. BARTON (New South Wales). -

I beg to move-

That the following words be added to sub-section(8):"Or between residents of different states, or between a state and a resident of another state."

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 74. - The High Court shall have jurisdiction, with such exceptions, and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any state . . . . . .

Mr. BARTON (New South Wales). -

I beg to move-

That the words "with such exceptions and subject to such regulations" (lines 2 and 3) be omitted, with the view to the insertion of the words "subject to such conditions."
My honorable friend (Sir Joseph Abbott) seemed to entertain the idea that the pass in of this slight amendment might affect his right to propose an amendment in the clause, but I think, sir, you will support my statement that it would be perfectly competent for him to move his amendment upon the second recommittal?
The CHAIRMAN. -
Certainly.
Mr. BARTON. -
Honorable members will see that this provision gives the High Court jurisdiction to hear and determine appeals, "with such exceptions and subject to such regulations as the Parliament may from time to time prescribe." The difficulty about the clause as it stands is this: That it allows the Parliament to legislate in reference to the jurisdiction of the High Court in regard to appeals in such a way that, little by little, the High Court may become the mere shadow of a Court of Appeal. That position arises because we have placed in a parenthetical part of the clause words which appear to be too strong. For these words I therefore propose to substitute the words mentioned in the amendment. The Parliament will still be able to prescribe regulations for the hearing of these appeals, but it will be unable to take aw
Mr. HIGGINS. -
Does that mean that a man will be able to appeal even in a case concerning only 10s.?
Mr. BARTON. -
I do not think so. The right of appeal relates to the question of law or fact that is decided. The Parliament might impose conditions of appeal, just as Orders in Council impose conditions of appeal, which would limit the right of appeal so as to exclude minor or trumpery cases.
Mr. HIGGINS. -
I understood that the object was to enable some common sense to be exercised in determining what appeals should be allowed. If the amount involved was not beyond a certain sum, there ought to be no appeal.
Mr. BARTON. -
It was exactly what the honorable member describes, and that is the object of this amendment. The question is: Which is the better way of saying the thing? We are afraid that if we say "with such exceptions and subject to such regulations," it will be in the power of Parliament by successive regulations to cut down the right of appeal.
Mr. ISAACS. -
Does not the honorable member think that if there is no power to make
exceptions, every man might appeal, even in connexion with criminal matters?

Mr. BARTON. -

I do not think so, but it is difficult to find suitable words.

Mr. SYMON. -

Would it not be better to adhere to the words we have got?

Mr. BARTON. -

There is a reference to the subject to which Mr. Glynn called my attention in Mr. Burgess' well-known book, which shows that a difficulty has arisen from the use of these words, and that it is a real difficulty. If the present provisions of the Bill are retained in relation to appeals to the Privy Council, and appeals can only be taken from the High Court or from the court of a state when the cases come within certain limits, and if in addition to that the Parliament is given the right to take away appeals, then the right might be limited not only on the side of the Privy Council, but also on the side of the High Court. The state court would really be the final court of appeal. What I object to is the retention of words which would enable Parliament so to cut down the jurisdiction of the High Court in appeal cases as to leave, in some cases, a person who has a right practically without any remedy by way of appeal.

Mr. ISAACS (Victoria). -

This amendment takes me by surprise. It is far more than a drafting amendment.

Mr. BARTON. -

It is not a drafting amendment.

Mr. ISAACS. -

When the clause was discussed before, an honorable member distinctly asked whether it related to appeals in criminal matters. I think it was asserted that, as the words now sought to be excised were in the clause, it would be within the competence of the Federal Parliament to prevent appeals in criminal cases. The clause, as it stands, provides that the High Court shall have jurisdiction, subject only to any exceptions Parliament may impose, to hear appeals from any Federal Court or from the Supreme Court of any state on judgments, orders, and sentences. Sentences would include criminal matters. I would point out, also, that if the state Legislature chooses to say that a decision of the Supreme Court of the state shall be final and conclusive, and without appeal, in any particular state matter, yet under the terms of this clause the provisions of that state legislation would be nugatory in that respect, and they would have a right of appeal under the Constitution. Surely we do not intend to do that. But let us carry the matter a little further. Let us take the case of a
man who has been fined in a police court for an assault. He appeals to the Supreme Court under the law of the state. Under this clause he could carry the case to the Federal High Court, notwithstanding any negative provision in the state legislation. We are not trusting the Federal Parliament. We are really taking it out of their power to prevent an abuse of the judicial machinery. I think that is going too far. I war, not aware that anything had occurred in the Convention that invited the alteration that it is now sought to make, and I think it will go very much further than any of us contemplate.

Mr. SYMON (South Australia). -

I join with the Hon. Mr. Isaacs in deprecating a change of this language. There is no doubt whatever that some tribunal or other should be able to say, when the details of the Judiciary Act are being dealt with, within what limits appeals in these various matters against orders, judgments, sentences, and so on, should take place. If we leave in the words "with such exceptions and subject to such regulations we undoubtedly leave it to the Federal Parliament to do that. If we take the words out and say "subject to such conditions" it would undoubtedly mean that in every case of every judgment, every order, every sentence, there may be a right of appeal, but the conditions under which it may be conducted are to be left to be regulated by the Federal Parliament. That would not be a desirable condition of things. This is one of the matters in connexion with which we should not tie the hands of the Federal Parliament, but we have to prescribe the machinery for carrying out the whole of these provisions.

Mr. GLYNN (South Australia). -

I have called attention to this matter two or three times already in the Convention, and, as the amendment is proposed, I may be allowed to refer to authorities who recommend a change in the direction suggested by the Drafting Committee. Under this and subsequent clauses you are taking away front the states the Court of Appeal they have at present—that is, the Privy Council—and you are putting it in the power of the Federal Parliament to deprive the states of the right of appeal to the Federal High Court. The proper procedure would be to give a complete appellate jurisdiction to the Federal High Court, but to say that the state or the Federal Parliament might declare that in particular cases the appeal should not be allowed. It is to the method of accomplishing what is desired that I object. We ought to arm the Federal High Court with absolute authority, but we ought to leave the power in the state, in the case of state laws, of saying that in certain cases appeals should not be allowed. You are proposing to emasculate the power of the High Court instead of taking away the right of appeal by a
state Act of Parliament, and that is the wrong way to proceed.

Mr. HIGGINS. -

Is the Federal Parliament under any temptation to emasculate the system of appeals?

Mr. GLYNN. -

The Federal Parliament has done it in America, and Mr. Burgess and several other writers point out the danger arising from the words used in the Constitution. I will first quote Mr. Wilson on Congressional Government. He points out that for many years the Federal Judiciary has had a distinct political complexion taken from the colour of the times during which its majority was chosen, and he says-

The federalists were backed by a Federalist Judiciary; the period of democratic supremacy witnessed the true triumph of democratic principles in the courts; and republican predominance has driven from the highest tribunal of the land all but one representative of democratic doctrines. It has been only during comparatively short periods of transition, when public opinion was passing over from one political creed to another, that the decisions of the Federal Judiciary have been distinctly opposed to the principles of the ruling political party.

That, it is pointed out, is owing to the dependence of the Judiciary for its jurisdiction on the High Court. Then Mr. Wilson also says that, in 1883, owing to a dispute as to the political complexion of the court, Parliament interfered and swept away the whole of its jurisdiction. He quotes these words as giving undue power to Parliament:-

The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe.

Then Mr. Wilson says-

A democratic Congress swept away root and branch the system of circuit courts which had been created in the previous year, but which was hateful to the newly successful democrats, because it had been officered with federalists in the last hours of the John Adams Administration.

That has been the result of keeping these words in the United States Constitution. I would call the attention of honorable members to the decision of the High Court itself. In the case of Turner v. The Bank of North America, it was distinctly laid down that the appellate jurisdiction of the High Court, except in one or two matters, was altogether at the mercy of the Federal Parliament. Mr. Burgess, in the last edition of his work Political Science and Constitutional Law, says-

The second limitation is the general one contained in Article 3, section 2, paragraph 2, which vests in the Legislature the power to regulate, and
make exceptions to, the appellate jurisdiction of the Supreme Court. This power of the Legislature over the Judiciary is a most serious one. It places the appellate power of the court very nearly at the mercy of the Legislature. The Legislature has made use of this power in the passage of the several Judiciary Acts, and I do not know that it can be said to have abused it.

Mr. Wilson says the contrary.

Mr. HIGGINS. -

He was a party writer. Mr. Burgess is impartial.

Mr. GLYNN. -

He is not so strong on the subject as Mr. Wilson. Mr. Wilson bases his judgment on the fact that in America attempts have been made to take away the jurisdiction of the Judges where the Judges have not been complaisant to Parliament. Mr. Burgess also says-

It seems to be, however, an unnecessary surrender of the independence of the courts to require that things which can be better accomplished by the rules of the court shall wait upon the pleasure or, possibly, caprice of the Legislature.

That has been the effect of the retention of these words in the American Constitution. I would ask whether it would not be better to allow the High Court to hear any appeals, and to make some specific provision to enable the state or the Federal Parliament to say that no appeal should be allowed in certain small matters? That is really the law of the English Judicature at the present time. If you want to take away the right of appeal, you do not pass an Act saying the Supreme Court is not to hear the appeals; you say, in these cases, no appeal is to lie. The general rule of law is that, unless the appeal is granted by an Act of Parliament, no appeal lies. There will be no interference with the complete jurisdiction of the Federal Court. That is what ought to be done.

Mr. HIGGINS. -

Do you want to leave the limitation of appeals to the Judges?

Mr. GLYNN. -

No; I want to continue the existing law, when the right of appeal will depend upon the law in the state, and not on the courts. If we abolish the appeal to the Privy Council, we should retain the same right to the state of going to the High Court as it has to go to the Privy Council, and we should apply the same rules as the Privy Council applies to small matters. I think the Privy Council has power to say that, although an appeal may be granted, it will not hear it.

Mr. OCONNOR. -

The Orders in Council issued with regard to the Privy Council deal with that matter.
Mr. GLYNN. -

The same thing can be done here by giving power to the Judges of the High Court to make rules. I think that is the true principle, and it should be carried out by a slight addition to the wording of the clause. I will again press this matter upon the attention of the Convention, because I regard it as very important.

Mr. WISE (New South Wales). -

The Convention owes a debt of gratitude to Mr. Glynn for the clear way in which he has put this question. I shall support the amendment of Mr. Barton in consequence of the very lucid exposition given by Mr. Glynn and the examples he has cited from the history of the United States. I recognise a very grave danger in putting it in the power of Parliament to limit in any way the right of appeal, and, consequently, the power to d

Mr. ISAACS. -

But there are County Court cases in which there is no appeal to the Supreme Court.

Mr. WISE. -

If a case is of sufficient importance to go to the Supreme Court it ought to be of sufficient importance to be appealable to the High Court. A County Court case can go to Privy Council by special leave.

Mr. HIGGINS. -

So can a case in any court go to the Privy Council by special leave.

Mr. WISE. -

I would not limit the right of appeal any more than it is limited at present, although I quite admit there may be a certain absolute right of appeal to the High Court conferred by this Constitution which does not exist in the case of the Privy Council. I am prepared to run that risk rather than run the greater risk of saying that the right of appeal to the High Court should be dependent upon a chance majority in Parliament.

Mr. HIGGINS. -

How does Mr. Barton's amendment cure the case?

Mr. WISE. -

By striking out the word "exceptions."

Mr. HIGGINS. -

But by imposing conditions you can practically prohibit a man getting into the court.

Mr. WISE. -

I don't think so, because any such Act would be held to be *ultra vires*. The honorable member knows that the power to impose conditions is granted, but it does not allow you to impose such conditions as would
render the right impossible.

Mr. ISAACS. -

But giving the right to Parliament is totally different.

Mr. WISE. -

Any condition which would prevent the right of appeal would be held to be *ultra vires*. There is one slight alteration which might meet the difficulty of the honorable member. We might put in the words "condition as to amount" but at the same time that might limit it too much. I think Mr. Barton's suggestion is the right one.

Mr. HIGGINS (Victoria). -

I hope the amendment will not be carried. I quite admit that Mr. Glynn has done good service in calling attention to the question, but we have to accept one of two risks. We have either to prescribe that every application or order, no matter how trumpery, is to involve a right of appeal to the High Court, or else we shall have to trust the Federal Parliament that it will not do injustice.

Mr. WISE. -

Every order of a Supreme Court of a state, that is the distinction.

Mr. HIGGINS. -

It might be the order of a Supreme Court for security for costs, or an order of the Supreme Court that certain particulars shall be given on a statement of claim, or an order that there shall be a certain thing done—say, a certain pleading, delivered in eight days, fixing the time within which it is to be done. According to that, we must give the party defeated a right of appeal to the High Court. That would be quite unworkable. It may be very important to have good law, but it is far more important that we should have an end to trumpery applications and some finality in small matters. Every court in the world has some limit as to appeals. For instance, in appeals to the Privy Council there is no right of appeal from our courts unless the amount exceeds £500 in one case and £1,000 in another. The Privy Council does not hear all appeals, and it needs a very special caw to induce it to hear an appeal as to a small sum. Then it said that there is a danger that the Federal Parliament may cramp or cripple the High Court by making the exceptions very numerous, and Mr. Glynn has read some passages on that point. Reading Burgess, it is very clear from that writer that there has been no abuse of the power at all by the Federal Parliament of the United States. The danger is more theoretical than practical. I ask honorable members what temptation or inducement will the Federal Parliament have to cripple its own court? The Federal Court is under its thumb in many respects, and, if anything, the Federal...
Parliament would be more inclined to go in favour of the federal jurisdiction. Where does the inducement come in to the Federal Parliament to cripple the powers of its own courts? It is true that the Federal Court has to stand between the states and the Commonwealth, but, at the same time, it is to the Federal Parliament that you give the power of appointing the Judges and removing the Judges. Although those Judges are to stand as buffers between the Federal Parliament and the individual state Parliaments, if you trust the Federal Parliament with that power I think it is only fair for us to trust the Federal Parliament to lay down some general rule, which is not applicable to a particular case, but to all cases, and to say that, inasmuch as the power; has not been abused in America, it will not be abused here. There was an abuse of a certain power in America when one party came into power and abolished circuit courts, but that is very different from abolishing generally the right of appeal. As Burgess says, there has been no instance known of an abuse of this power. There is no doubt there is a danger in theory, but not in practice, because, as far as we can see, there is no temptation. If Mr. Barton's words are introduced, the danger is equally great, because he says the High Court shall have power to hear appeals subject to such conditions as Parliament may prescribe, and so forth. I ask any honorable member if he cannot confirm me in this, that by imposing conditions you can practically interfere and take away the power of appeal? Supposing, for instance, there was an order made that interrogatories should be administered, and if Parliament said there should be no appeal from the order for interrogatories unless there was a deposit of £10,000 security, that would practically knock the thing on the head. First, there is no practical need for the provision; and, secondly, the proposed amendment will not cure the evil if there is one.

Mr. OCONNOR (New South Wales). -

I hope this amendment will be carried. I do not think we can bear too strongly in mind the fact that we are taking away the Privy Council appeal in a very large number of cases.

Sir EDWARD BRADDOX. -

I hope not.

Mr. OCONNOR. -

Whether it is done as; in the Bill, or in a more limited way, the right will be taken away to a very large extent. If we do not take away the right of appeal we are at any rate, substituting in very many cases this High Court for the Privy Council, and I think we should be very careful not to give power to Parliament to take away the right of appeal as it exists now, to the Privy Council.
Sir GEORGE TURNER. -

Do you mean to take away the right of appeal as it exists now or in the case of new appeals?

Mr. OCONNOR. -

No; this clause gives Parliament the right to determine the method of appeals. If you give it the right to make exceptions, you give it the right to except certain cases. Mr. Isaacs referred to appeals in criminal cases. There might be strong reason as a matter of general policy why there should not be appeals in criminal cases, involving, as they necessarily would great delay between the time of the passing of sentence and the carrying of it out. For that reason, I think appeals to the Privy Council in criminal cases are only allowed under very exceptional circumstances, but the case will be altogether different when you have a Court of Appeal sitting in Australia, the sittings of which can probably be made available for a criminal case in a very few weeks.

Mr. ISAACS. -

If a man is tried in a Supreme Court he has an inalienable right of appeal to the Federal Court. At the General Sessions he may be given a much heavier sentence, but he has no right of appeal to the Federal Court.

Mr. OCONNOR. -

With all respect, I do not think this touches that point.

Mr. ISAACS. -

That is what you are doing here.

Mr. OCONNOR. -

No; a man subject to a sentence of any kind is entitled now to appeal to the Supreme Court of the state.

An HONORABLE MEMBER. -

No, not under this section.

Mr. OCONNOR. -

I am taking it step by step, and I am taking the law as it is now. A man is entitled to an appeal to the Supreme Court in all the states.

Dr. QUICK. -

Unfortunately that is not the case in this country, although, I admit, it is by a mistake in our legislation.

Mr. OCONNOR. -

That may be; but I am speaking with regard to most of the colonies. It is true that there is a right of appeal generally in criminal cases.

Dr. QUICK. -

No.
Mr. OCONNOR. -  

Whether there is or not, there ought to be. There can be no question that if you allow a right of appeal in cases of property, there ought to be a full right of appeal, in all cases where a man's liberty, and perhaps his life, is involved. I am pointing out that there is a great deal of difference in restricting that right of appeal in a case where you have to appeal to the Privy Council, in which case the decision may not be given for some months, and where you can appeal to a Supreme Court in a few weeks. I think that the right of appeal in all criminal cases ought to be reserved to the High Court, which we have put here in place of the Privy Council. But you would put it in the power of the Legislature to take away that class of appeal altogether. It would be better to use the words here which would enable the Legislature to make a law leaving the determination as to the terms of appeals to the High Court. Probably the Federal Court would be the best authority to decide the conditions of appeals.

Mr. ISAACS. -  

Would not this allow a case to be reheard in the Full Court?

Mr. OCONNOR. -  

No; that would be to completely reverse the common law as we know it. 

Mr. ISAACS. -  

You are going to do that here. 

Mr. OCONNOR. -  

I do not think so. But whether that is so or not, this amendment would not make any difference one way or the other. I hope that earnest attention will be given to Mr. Glynn's appeal, and to the cases which he has cited. This is not an imaginary danger, and although we need not impute any improper or indirect motives to the Parliament, we ought to take care that this High Court, which we are setting up instead of the Privy Council, will insure an appeal in all cases where appeals ought to be allowed.

Mr. HOLDER (South Australia). -  

There is another matter which bears on this question, and which suggests the importance of exceptions. There is included in the 140 amendments suggested by the Drafting Committee an amendment in the latter part of clause 74 involving what is a new matter. It is not merely a drafting amendment. It refers to appeals from the Inter-State Commission. Surely it was intended that those appeals should only lie on questions of law. I cannot understand our allowing appeals on questions of policy or of fact. 

Sir GEORGE TURNER. -  

We fought several days against that.
Mr. HOLDER. -
Appeals on points of law certainly ought to lie, but not appeals on matters of fact.

Mr. KINGSTON. -
And appeals on points of law are not provided for in all cases.

Mr. HOLDER. -
I do not know that there may not be cases in which appeals on points of law would not be allowed. At the proper time I shall seek to make an addition to the clause; but in the meantime I shall ask the Drafting Committee to consider it.

Sir EDWARD BRADDOCK (Tasmania). -
If our adoption of this amendment depends on, or is justified by, the action we have taken up to this time with regard to the right of appeal to the Privy Council, I hope we shall pause before we accept it. I am not without hope that on further consideration this Convention will very much modify the decision in respect to the right of appeal to the Privy Council.

Mr. SYMON. -
I hope it will not.

Sir EDWARD BRADDOCK. -
That does not interfere with my hope. The honorable member will surely allow me to entertain and express a hope contrary to his own.

Mr. WISE (New South Wales). -
I think that if the amendment which Mr. Barton has proposed is negatived, we might leave the clause as it stands, and yet secure our object, which is to prevent any undue interference by Parliament with the High Court, by putting in this proviso:-
Providing that in respect of any exception or regulation prescribed by Parliament by virtue of this section, the High Court may grant special leave to appeal in any case under this section, but on such terms as to the court may seem fit.

Mr. ISAACS. -
And then the High Court may override the Parliament.

Mr. WISE. -
Precisely. That is what is intended.

Sir GEORGE TURNER. -
Had we not better abolish Parliament?

Mr. WISE. -
Orders in Council are made which will correspond to the exceptions and regulations provided for in this clause; but, in spite of that, the Privy Council always has power to disregard those orders, and to grant leave to appeal. The danger here-and it is a very grave danger-is that the powers of
the Parliament may be so abused as to destroy the jurisdiction of the court. This is only a weapon of defence against an unwarrantable attack.

Sir GEORGE TURNER. -

But Parliament can only act under the authority of the people.

Mr. WISE. -

On two occasions the power of the United States Parliament was invoked to destroy the authority of the High Court.

Mr. SYMON (South Australia). -

I cannot conceive it possible that the Federal Parliament or any other Parliament of an English speaking people will do anything to degrade or improperly interfere with the administration of justice, and that is what the contention amounts to. I am not wedded to either the one form of words or the other, but I undoubtedly think it would be a very grave mistake to introduce in this Constitution a provision which would in effect give unrestricted right of appeal in every case, without allowing Parliament to say that there should be some exceptions. For instance, a decision in which a fine of 5s. was imposed for common assault might be made the subject of appeal, and I do not think that any of us desire that that should be the case. The only thing we have to determine is whether we have such a district of the proper administration of justice that we are going to tie the hands of the Federal Parliament. I would be quite willing to assent to the words proposed subject to such conditions, if I thought those words would enable the Federal Parliament to restrict appeals to cases in which appeals ought to be allowed.

Mr. DOBSON. -

Why not insert "and with such limitations as to the amount involved"?

Mr. SYMON. -

Honorable members forget that this is a Constitution we are framing, and not a Judicature Act. For instance, there might be appeals against interlocutory orders. We are becoming altogether too technical; and if we are to proceed in this fashion, we might as well introduce in the Constitution the latest edition of Roscoe's Pleadings and Evidence.

Mr. GLYNN (South Australia). -

I know that great weight is to be attached to what Mr. Symon says, but I would like to point out that this possibility which he evidently believes never would arise has actually arisen in America. I have only quoted two cases, but I could have cited another authority who deplorer the existence of this power in Parliament. In view of these facts, what becomes of the allegation that such a thing is impossible? It has actually occurred in the
only Federation in whose Constitution these very words stand. This is one of those cases in which an ounce of fact is worth a pound of theory. Mr. Symon says that if we do not leave these words in there will be appeals in almost every case of minor importance, and that Parliament will have no power to interfere. But we do not wish it to remain in that way. I suggest that Parliament should be empowered to authorize that the state court or the Federal Court should have power to place restrictions on puisne appeals.

Mr. SYMON. -
That is a very intelligent proposal.

Mr. GLYNN. -
Well, I made that proposal before, and it is only a matter of drafting. If we retain these words we will really destroy the whole thing, and it seems to me that the object we have in view would be attained by inserting after the word "appeals" the words "in all cases in which they lie, and under such conditions and regulations as the High Court may prescribe by rules." Then the High Court may put, as the Privy Council does, a ban on appeals of a trivial nature. If the words we object to are retained they will put the whole jurisdiction of the High Court at the mercy of the Federal Parliament.

Mr. ISAACS. -
That is impossible under clause 77.

Mr. GLYNN. -
But clause 74 limits the operation of clause 77. In some cases there is an original as well as an appellate jurisdiction, but the foundation of the right of appeal in the High Court rests on clause 74, which contains the words to which I object.

The amendment was negatived.

Mr. ISAACS (Victoria). -
The amendment about the Inter-State Commission in subsection (2) of clause 74 would certainly have escaped my attention but for what has just transpired. I have a very strong objection to the words "Inter-State Commission" being inserted in this clause.

Mr. BARTON (New South Wales). -
I understood that the drafting amendments were to be placed in the Bill, but that that did not give away the right of any honorable member to canvass them at a later stage. The amendment to which Mr. Isaacs objects is merely an attempt to express the sense of the Convention as members of the Drafting Committee gathered it in the debate on the clause relating to the Inter-State Commission. There seemed to be, I will not say a general consensus of opinion, because some honorable member who said nothing might think
something the other way, but several honorable members said, without any opposition being manifested, that there ought to be provision for an appeal to the High Court from a decision of the Inter-State Commission. The amendment merely expresses that view, which we gathered to be the sense of the Convention on the subject. The honorable member will have every opportunity of moving to strike out these words at another time. I understood that we were simply going through the amendments that I proposed on recommittal, leaving the other amendments to be dealt with afterwards.

The clause was agreed to.

Clause 77 (Original jurisdiction of High Court)

Mr. OCONNOR (New South Wales). -

I beg to move-

That the following words be added to sub-section (3) of clause 77:-"or between residents of different states, or between a state and a resident of another state."

It is necessary to add these words.

Sir GEORGE TURNER (Victoria). -

I should like to know a little about this amendment.

The CHAIRMAN. -

It is the same as an amendment which we have already made in clause 73. It is consequential.

Sir GEORGE TURNER. -

"Or between residents of different states." Will not the effect of that be to alter the law as it stands by which, say, a person living in New South Wales can be sued by a person living in Victoria or South Australia? Will this provision take away the jurisdiction of the local courts and compel actions to be brought only in the Federal Court?

Mr. BARTON (New South Wales). -

This amendment does not, take away the jurisdiction of any local court.

Sir GEORGE TURNER. -

I am not sure that it does not.

Mr. BARTON. -

What the provision does is to give a certain jurisdiction to the High Court, which enables a litigant to go to the High Court in the first instance. Of course, in the case of an appeal he would go to the High Court first, but the High Court has original jurisdiction, and can entertain a case in the first instance. That is all.

The amendment was agreed to.

Mr. OCONNOR (New South Wales) moved -
That the following new sub-section (5) be added to the clause:
In which a writ of mandamus or prohibition, or an injunction, is sought against an officer of the Commonwealth.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 79. - The trial of all indictable offences against any law of the Commonwealth shall be by jury, and every such trial shall be held in the state where the offence was committed, and if the offence was not committed within any state the trial shall be held at such place or places as the Parliament prescribes.

Mr. BARTON (New South Wales). -

I beg to move-

That the words "of all indictable offences" (line 1), be struck out, and that the words "on indictment of any offence" be substituted.

The object of this amendment is simple. As the clause stood it provided that the trial of all indictable offences against any law of the Commonwealth "shall be by jury." This meant that, however small might be the offence created by any Commonwealth enactment, supposing an offence that should be punishable summarily, it would, nevertheless, have to be tried by Jury. Then there are cases of contempt which are, we know, indictable offences, and these, under the clause, would have to be tried by jury. The better way, however, is as we suggest, that where there is a power of punishing a minor offence summarily, it may be so punished summarily. But where an indictment has been brought the trial must be by jury. The object was to preserve trial by jury where an indictment has been brought, but such cases of contempt should be punishable by the court in the ordinary way. The clause as it stood would compel the trial of all contempts by jury, and so.

Mr. ISAACS (Victoria). -

When the clause was before us previously, I pointed out that I did not think it would have any real effect at all, because it is within the powers of the Parliament to say what shall be an indictable offence and what shall not. The Parliament could, if it chose, say that murder was not to be an
indictable offence, and therefore the right to try a person accused of murder would not necessarily be by jury.

Mr. BARTON. -

It might drive the Commonwealth to deal differently with this class of offences.

Mr. ISAACS. -

It might. If you say "on indictment of any offence," if it means proceedings by means known technically as indictment, that could be got over by what is known as a presentment, and then the trial need not be by jury at all. It could be got over in various ways by saying that the jury should be composed of two persons, or, of only one person. The alteration here proposed prevents the difficulty Mr. Barton refers to, but I must say that I do not see much effect in the clause as it stands in regard to preserving in all circumstances trial by jury.

Mr. DOUGLAS (Tasmania). -

There are many offences dealt with summarily which are indictable, and we must be careful not to do away with summary jurisdiction. That would not be at all desirable.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 80. - No person holding any judicial office shall be appointed to or hold the office of Governor-General, Lieutenant-Governor, Chief Executive Officer, or Administrator of the Government, or any other executive office.

Mr. BARTON (New South Wales). -

I beg to move-

That at the end of the clause there be added the words "of the Commonwealth."

The object of this amendment is to make it clear that a person, holding a judicial office may not hold any other executive office in the Commonwealth. Without this addition at the end of the clause, it might be possibly construed to mean that the Chief Executive Officer or Administrator of the Government is an officer of the state. To restrict the clause to what is really intended, that is to say, to prohibit all judicial officers from holding offices in the Commonwealth, we propose to add these words. There seems to be a strong opinion in the Convention that the holder of any judicial office should be prohibited from holding these Commonwealth offices.

Mr. ISAACS. -

Would he necessarily be excluded under the words as now?

Mr. BARTON. -
I do not say that; but I have an impression that he would. The words are-
"No person holding any judicial office."

Mr. SYMON. -
Any person in active service.

Mr. BARTON. -
Yes, as my friend says, any person in active service—any Judge who is not
a retired Judge.

An HONORABLE MEMBER. -
That would exclude a justice of the peace.

Mr. BARTON. -
No, I do not think it would. Primarily a justice of the peace was a
ministerial officer who inquired into indictable offences, and committed or
not, as there might be a prima facie case. But a justice of the peace has
since been invested by statute with summary jurisdiction. I question
whether that makes the office of justice of the peace a "judicial office."

Mr. HIGGINS (Victoria). -
Before the amendment is put, I desire to say I have given notice of an
amendment. I suppose this will be the proper time for me to submit that
amendment, as clause 80 has been recommitted.

Mr. BARTON. -
The amendment of the honorable member is for the second recommittal.

The CHAIRMAN. -
I understood the consensus of opinion was that on this particular
recommittal we should only deal with the amendments of the Hon. Mr.
Barton, and that afterwards there was to be another recommittal to deal
with the suggestions of other honorable members of the Convention.

Mr. HIGGINS. -
Very well, so long as that is understood.

Mr. BARTON (New South Wales). -
It might, perhaps, be desired to make an exception such as is suggested in
regard to the office of justice of the peace, but it is not intended that a
person who holds merely the office of justice of the peace should be
excluded.

Mr. SYMON. -
If a gentleman were offered the post of Lieutenant-Governor he would
not hesitate to resign his position as justice of the peace. I see no practical
difficulty in the way.

Mr. BARTON. -
I do not think myself there will be any practical difficulty. If the Convention consider it necessary to insert, after the words "judicial office," the words "not being that of justice of the peace," there could be no objection, but I think that would be overloading the clause.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 83. - No money shall be drawn from the Treasury of the Commonwealth, except under appropriation made by law.

Mr. BARTON (New South Wales). -

I beg to move-

That at the end of clause 83, there be added the words "but until the first appropriation the Governor-General in Council may draw from the Treasury, and expend, such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth under this Constitution."

This is an amendment of substance, which I will explain in a few words. Clause 83 means that no money can be spent unless Parliament passes an Appropriation Act. But before Parliament is in existence certain departments will have been transferred to the Commonwealth. These departments will have to be administered by the Commonwealth, and that will necessitate expenditure for the maintenance and continuance of the departments.

Mr. ISAACS. -

How about the expenses of electing the first Parliament?

Mr. BARTON. -

That might have to wait. One is so chary about giving power to spend money that is not appropriated by law that I and my colleagues on the committee have endeavoured to keep the power down as low as possible, so as to confine it to expenditure absolutely necessary for the administration of departments.

Sir JOHN FORREST. -

What would happen if the Government of the day did spend the money? Could the High Court do anything?

Mr. BARTON. -

Well, I am not quite sure about that. I do not think Sir John Forrest need have any particular apprehension that any of the results which he thought was threatened when the previous discussion was going on will come about.

Sir JOHN FORREST. -

It is a very important matter.

Mr. BARTON. -
The amendment reads "but until the first appropriation the Governor-General in Council may draw upon the Treasury, and expend, such money as may be necessary for the maintenance of any department transferred to the Commonwealth under this Constitution." It is obviously clear there must be some expenditure, and it is provided in the clause that no money shall be drawn from the Treasury except under appropriation made by law.

If the amendment were not passed, the Executive, in the organization of the departments, must be hampered. It is obvious that some provision must be made. No provision can be made by Parliament until Parliament is in existence, and any payments made in the interval would, at any rate, be technically breaches of the Constitution, unless they are provided for in the way the amendment suggests.

Mr. ISAACS. - Would the honorable gentleman not be disposed to say-"Until the first meeting of Parliament"?

Mr. BARTON. - I doubt whether that would be any good. You cannot expect Parliament to pass an appropriation immediately it meets. I take it for granted that possibly the first meeting of Parliament will be employed in providing for necessary expenditure of the Commonwealth, and that the session will be a financial session to begin with. Provision must be made for the ordinary services of the year, and that being done, an Appropriation Act will have to be passed. Under the circumstances, it may be Parliament would not care to sit after an Appropriation Act had been passed.

Mr. HIGGINS. - Are you not making the first Ministry independent of any appropriation? Are you not making the Ministry independent of Parliament, in the sense of enabling Ministers to say-"Oh, if you don't give us an Appropriation Act we can still spend."

Mr. BARTON. - I quite agree that is what might be urged against the clause. But the difficulty is that unless you pass the amendment you drive the Executive Government into making a daily infringement on the Constitution. If you begin the Constitution by having a daily infringement of that sort, you altogether weaken the authority of the prohibition against any appropriation which is not made by law.

Mr. HIGGINS. - The answer given before, when this matter was discussed in Sydney or Adelaide, was that the Ministry would draw expecting to be indemnified.

Mr. BARTON. -
Expecting to be indemnified by Parliament; but in drawing in that way they would be making a daily breach of the Constitution. Is it not better under all the circumstances of the case that the first Ministry should be invested with a power to draw so long as that power was limited to the necessary maintenance of departments? The department of Customs and Excise will go over at once to the Commonwealth, and salaries must be paid month by month. By proclamation the Commonwealth will take over the Postal and Telegraph, Quarantine, and other departments, and necessarily there must be an expenditure of money for the upkeep of these departments. If the Commonwealth have to expend money in this way, why should we enact that such expenditure is a breach of the Constitution? When we have that expenditure within our knowledge, why should we take such a step as to necessarily cause the first Ministry to make a breach of the Constitution?

Mr. FRASER. -
There is no danger.

Mr. BARTON. -
There is.

Mr. FRASER. -
But there is no danger of the first Federal Ministry spending improperly.

Mr. BARTON. -
There is no danger of the Ministry spending improperly, because, as

Mr. HOLDER (South Australia). -
There are two points which I want to suggest to the consideration of the leader of the Convention. The first is whether the words of the amendment will cover the expenses of the first election of the House of Representatives?

Mr. BARTON. -
No, they will not.

Mr. HOLDER. -
Then would it not be wise to insert, after the word "for," the words "the first election of Parliament and," or such other words as the Drafting Committee may suggest? The next point is that the clause, as it stands, to which the words of the amendment are proposed as an addition, is a little bare. While on the general principle, I think, no objection could be taken, yet still we all know there are emergencies which arise. There is such an emergency as the necessity for quarantine. I see that a vessel has just arrived on the west coast with smallpox on board, and it is possible that the Government there, in the emergency, might be run into an expenditure of
thousands of pounds.

Sir JOHN FORREST. -
We will spend it all right.

Mr. BARTON. -
That is covered by the clause as amended.

Mr. HOLDER. -
I am speaking of the clause as it stands, and as the position would be after the first appropriation. Under the clause there undoubtedly would be excess expenditure from time to time to provide for such cases as that of quarantine. Such expenditure would be a breach of the law, and whether or not some words should be inserted in clause 83 to cover such contingencies is worth consideration. It might be provided that expenditure necessary in such emergencies might be incurred, provided that the approval of Parliament was obtained within a time specified. Although every excess is covered by an Excess Bill, still the expenditure is a breach of the Constitution, and the point I have suggested is worth consideration.

Mr. BARTON (New South Wales). -
I doubt whether such a suggestion would be wise after Parliament is once constituted. You must then leave the Ministry responsible to Parliament, which has the power to indemnify the Ministry if any expenditure of the kind is incurred during recess. My only object is to prevent the expenditure I have mentioned being regarded as a breach of the Constitution. I have no objection to the insertion of the words Mr. Holder referred to as to the expenses of the first election of the House of Representatives. That might cover the other part of the ground.

Mr. KINGSTON. -
Could the Treasurer be restrained from going to excess of expenditure by an injunction?

Mr. BARTON. -
I doubt it very much.

Mr. KINGSTON. -
That is a very strong proposal, you know.

Mr. ISAACS (Victoria). -
I feel no doubt that the court would not grant an injunction.

Mr. BARTON. -
I do not think that in any such case an injunction would be granted. It could be granted, but I do not think the court would grant it.

Mr. ISAACS. -
In similar cases the courts have held that where it is a matter to a large extent of discretion as to what is necessary, they would not grant an injunction. Even in the case of a tax unless the tax were unconstitutional,
the courts would not grant an injunction.

Mr. BARTON (New South Wales). -

In New South Wales, about five years ago, when taxes brought down in the Budget and not sanctioned by law, were collected there was an attempt to bring a mandamus against the Collector of Customs—I think it was in the form of a mandamus—to compel him to admit some important articles free of duty under the Customs Act. The court said they must decline to exercise any such power at all, and that it was a matter in which they could not restrain an officer. That is a similar case.

Mr. ISAACS (Victoria). -

That is a similar case. I agree with Mr. Holder that it would be better to put in a provision for the first election. That is what I meant when I interjected in regard to the first Parliament. But while we ought to have a provision of this nature, we ought to make it as narrow as we possibly can, consistently with meeting the necessity of the case.

Mr. BARTON. -

Hear, hear; I quite agree with you.

Mr. ISAACS. -

I think we might fairly ask Mr. Barton to omit the word "appropriation," and insert the words "first meeting of Parliament."

Dr. COCKBURN. -

Say, until a month after the first meeting of Parliament.

Mr. ISAACS. -

No; until the first meeting of Parliament. When Parliament meets it will be alive to the necessity of providing for the immediate demands of the state. From the moment Parliament exists and is ready for work the responsibility of the Ministry ought to commence.

Mr. BARTON. -

You must allow the Executive to pay salaries up to the expiration of the current month. I think Dr. Cockburn's suggestion would meet the case.

Mr. ISAACS. -

I have no objection, provided there is a limit. We must recollect that Parliament is powerless to pass an appropriation until the Ministry think fit to bring down a message from the Governor-General. Therefore, I think it is right, taking that into consideration additionally, we should say that until a month after the first week of the Parliament the Governor-General in Council may have that power. I think we ought to limit it in that way—

Mr. BARTON. -

I will accept that.
Dr. COCKBURN (South Australia). -

I quite agree with the last speaker. A large responsibility will rest on the formation of the first Executive. We will imagine the case of Parliament being called together, and the first Executive not having the confidence of the House. What is the usual mode in which the House expresses in the last resort its want of confidence in the Executive? It refuses Supply, and the very fact of its refusing to make an appropriation will establish the Government as more omnipotent than ever.

Mr. BARTON. -

I have accepted the amendment which Mr. Isaacs has suggested.

Dr. COCKBURN. -

If the honorable member had said so, I would not have risen.

Mr. BARTON. -

I said so, and I thought that the honorable member heard me.

Dr. COCKBURN. -

I was only advancing this as a very cogent reason indeed for making the amendment, because otherwise the refusal of supply would place the Government in a better position than if an Appropriation Bill were passed.

Mr. BARTON. -

I beg to move-

That the amendment be amended by the omission of the words "the first appropriation of," with a view to the insertion in their place of the words"-the expiration of one month after the first meeting of the Parliament."

The amendment was amended accordingly.

Mr. HOLDER (South Australia). -

I would suggest to the leader that the words "before the elections or" be inserted after the word "necessary."

Mr. BARTON (New South Wales). -

I would rather have that later on, because the maintenance of this department is the first duty which the Government will have to do and then will come later on a provision for the elections. I beg to move-

That the amendment be amended by the addition of the words "and for the holding of the first elections of the Parliament."

The amendment was amended accordingly, and was then agreed to.

The new clause, as amended, was agreed to.

Clause 85 (Transfer of officers),

Mr. BARTON (New South Wales). -

I beg to move-

That clause 85 be omitted, with the view to the insertion in its place of another clause.

The redraft of this clause has been circulated. It has been redrafted in
consonance with the suggestions which were made to the Drafting Committee during the debate on the clause, and also by inserting in substance the amendment which was carried, and the amendment of Western Australia which Sir John Forrest supported, and which was only formally negatived on the understanding that it should be in some shape inserted. The new clause provides that when a department becomes transferred to the Commonwealth—that will be in the care of Customs and Excise at once, and in the case of the other departments when transferred under proclamations—then all the officers of that department shall become subject to Commonwealth control, but when an officer is not retained in the service of the Commonwealth he shall be entitled to receive from the state any pension—that is the word inserted according to the feeling of the committee-gratuity, or compensation which would have been payable to him under the law of the state if his office had been abolished. That is to take effect unless he is appointed to some other office of equal emolument in the state to which he belongs. It also provides that any officer who is retained in the service of the Commonwealth shall not lose any of his existing rights or rights accruing, that is to say, that the transfer to the Commonwealth service shall not prejudice him, and that he shall be entitled to retire from office at the time he would have been entitled to retire under the law of his state, and on the same pension or retiring allowance which he would have got from his state, that is to say, in the same way that would take place if his services to the Commonwealth were simply a continuance of the state service. Then the Commonwealth is charged with the payment to him of that pension or retiring allowance, but the Commonwealth is entitled to charge the state, and to be paid by the state, the state's proper proportion thereof, and that is to be calculated on the proportion which his term of service with the state bears to his whole term of service at the time of his retirement; so that the state pays absolutely its proportion. And in this case—this is the Western Australian amendment—the salary on which the calculation is made shall be taken to be the salary he was receiving at the date of his transfer to the Commonwealth.

Sir JOHN FORREST. -

Is it to the proportion payable by the state that the calculation applies?

Mr. BARTON. -

The Commonwealth pays the pension or retiring allowance, but it charges back to, and is paid by, the state a part thereof, to be calculated in the proportion I have named, and it is to that proportion payable by the state that this calculation applies. That carries out the amendment of my
right honorable friend.

Sir JOHN FORREST. -

The whole pension is calculated on the whole s

Mr. BARTON. -

We ventured to make an addition to the clause which, I think, will meet with the approval of honorable members. There will be cases in which officers will be transferred to the Commonwealth, not with the department in which they have been serving; their departments may not be transferred at all, but they may be officers necessary to the service of the Commonwealth, and there may be the consent of the Governor in Council of the state obtained to their being transferred. In that case they should not be prejudiced either. I think honorable members will admit that if a case of that kind arises, and the Commonwealth wishes to have the services of an officer, and it is arranged with the state he is serving that he shall be transferred to the Commonwealth, that transfer should not be carried out without his rights being preserved.

Mr. HIGGINS. -

If he belongs to no department?

Mr. BARTON. -

He must be an officer who at the establishment of the Commonwealth is serving in the public service of a state, but he may not belong to one of the departments transferred. There will be cases of officers of considerable ability whom the Commonwealth may wish to have in its service, and they may arrange with the state for their transfer to the Commonwealth. That is a case which is not provided for in the clause, and it appears to us to be a case of extreme hardship for an officer if his rights were not preserved to him. We have arranged to preserve them in this way: A person who, being at the establishment of the Commonwealth an officer in the public service of the state, when he is taken over with the consent of the Governor in Council of the state, shall have the same rights as if he was an officer of a department transferred to the Commonwealth, and had been retained in the service of the Commonwealth. I think that is manifestly just.

Sir EDWARD BRADDOX (Tasmania). -

I entirely approve of the major part of the amendment suggested here, inasmuch as it protects members of the civil service, but I think in the latter part of paragraph (3) there is some necessity for making a slight amendment. It says-

and for the purpose of the calculation his salary shall be taken to be that paid to him by the state at the time of transfer.
That is to say, as a matter of account between the Commonwealth and the state, the Commonwealth shall charge the state with a pension based, for the purpose of calculation, on his salary at the time when his services were taken over. That might work out unjustly as regards the state.

Sir JOHN FORREST. -
No.

Sir EDWARD BRADDON. -
I think so. In the great majority of instances—I believe in every instance where a pension is granted—that pension is based not upon the salary drawn by an officer on his retirement or resignation, but on the average of his salary for a term of years.

Mr. DEAKIN. -
It is three years with us.

Sir EDWARD BRADDON. -
It is usually from three to five years.

Mr. BARTON. -
Is it worth while fighting for?

Sir JOHN FORREST. -
It is not worth bothering about.
The clause was omitted.

Mr. BARTON. -
I beg to move-
That the following stand clause 85:-

When any department of the public service of a state becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the state, be entitled to receive from the state any pension, gratuity, or other compensation payable under the law of the state on abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time and on the pension or retiring allowance which would be permitted by the law of the state if his service with the Commonwealth were a continuation of his service with the state. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the Commonwealth shall charge to and be paid by the state a part thereof, to be calculated on the proportion which his term of service with the state bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the state at the
time of transfer.

Any person who, being at the establishment of the Commonwealth an officer in the public service of a state, is with the consent of the Governor in Council of the state transferred to the public service of the Commonwealth, shall have the same rights as if he were an officer of a department transferred to the Commonwealth, and had been retained in the service of the Commonwealth.

The new clause was agreed to.

Clause 86 (Transfer of land, buildings, vessels, &c.),

Mr. BARTON. -

I beg to move-

That clause 86 be omitted, with the view to the insertion of another clause in its place.

The clause was omitted.

Mr. BARTON (New South Wales). -

I beg to move-

That the following stand clause 85A:-

When the control of any department or service of a state is transferred to the Commonwealth under this Constitution

I. All property of the state, of any kind, used exclusively in connexion with the department or service, shall become vested in the Commonwealth; but in the case of the departments controlling customs and excise and bounties for such time only as the Governor-General in Council may declare to be necessary.

II. The Commonwealth may acquire any property of the state, of any kind, used but not exclusively used in connexion with the department or service; the value thereof shall, if no agreement can be made, be ascertained in as nearly as may be the manner in which the value of land, or of an interest in land, taken by the state for public purposes is ascertained under the law of the state in force at the establishment of the Commonwealth.

III. The Commonwealth shall compensate the state for the value of any property passing to the Commonwealth under this section; and if no agreement can be made as to the manner of the compensation, it shall be determined under laws to be made by the Parliament.

IV. The Commonwealth shall, at the date of the transfer, assume the current obligations of the state in respect of the departments or services transferred.

It will be necessary to make some explanation of this clause, because it goes perhaps beyond mere drafting. It only goes beyond a mere change of
draft of the clause, owing to those of the suggestions made in committee which we thought proper to accept. The original clause provided for the taking over of property necessarily appertaining to or used in connexion with any of the departments of the public service transferred to the Commonwealth either absolutely, or, in the case of the Customs and Excise departments, for such time as may be necessary. It was pointed out by several honorable members that there may be a property used partly for a department transferred to the Commonwealth and partly for state purposes which are not the subject of a transfer, that it would involve the passing over of a property not exclusively used, but partly used, for such a purpose, and that the Commonwealth would get what it wanted, but that the state had parted with more than it; was necessary to give to the Commonwealth, That we have dealt with in this new clause.

Sir JOHN FORREST. -

We wanted to have it done with the consent of the state.

Mr. BARTON. -

The feeling of the committee was this, that those things which were exclusively used for the department transferred should go over at once to the Commonwealth, while those that were not exclusively used might be left to an agreement between the Commonwealth and the state, that is to say, that there should be an option. We have provided for an option.

Sir JOHN FORREST. -

How?

Mr. BARTON. -

It is also provided-and, I think, with the generally-expressed desire of honorable members-that, instead of the Commonwealth having to pay the "fair value," which might mean the value in cash, the matter may be arranged between the parties, and, in the failure of any agreement, according to the provisions of an Act passed by the Parliament. The substance of the new clause is that, when any department or service is transferred to the Commonwealth, either at once, as in the case of the Customs and Excise department, or as provided for under clause 69, if the property transferred is used exclusively for the service transferred it shall become vested in the Commonwealth but in the case of the departments controlling customs and excise and bounties, only for such time as the Governor-General in Council may declare to be necessary. That is the only way in which we thought that the matter could be provided for.

Sir GEORGE TURNER. -

Will the provision in the clause enable the Governor-General to make a declaration at any time?

Mr. BARTON. -
I was coming to that. My right honorable friend will see that it will be necessary for the Commonwealth to pay the value of this property in some form or other, if not in cash, perhaps in stocks or bonds. The Governor-General must therefore, as a matter of practical necessity, declare for what tune the property is to be taken over by the Commonwealth in order that its value may be ascertained. As regards the property of a state used in connexion with the department or service which has been transferred to the Commonwealth, but not used exclusively by the Commonwealth, it is provided that its value shall be ascertained by agreement between the parties, if possible, but if no agreement can be come to, the value must be fixed according to the provisions of the Lands for Public Purposes Acquisition Acts, or corresponding Acts in force in the colon to which the property to be transferred belongs. We provide that the states shall be compensated by the Commonwealth for property which passes under the clause, but if no agreement can be come to as to the manner of compensation, it shall be determined by a law passed by the Commonwealth Parliament.

Mr. HIGGINS. -

But the Commonwealth Parliament will be one of the parties to the purchase.

Mr. BARTON. -

No; the Executive Government will be a party to the purchase. There must be some authority to determine the mode of compensation. It is the second sub-section which provides for the ascertaining. of the value. A separate sub-section makes provision for the manner of the compensation, that is to say, whether the compensation shall be in cash or bonds, or in some other way. Clearly, the High Court could not determine a matter of that kind. It is a matter of political arrangement between the Commonwealth and the state.

Sir JOHN FORREST. -

Will it be optional with the state to say whether property shall or shall not be handed over?

Mr. BARTON. -

If my right honorable friend will look at sub-section (3) he will see that it is not the state but the Commonwealth which has this option. Of course, the Commonwealth, as a general rule, will not take over property except such as is to be exclusively used for a service that has been transferred to it.

Sir JOHN FORREST. -

The clause does not contain the words "with the consent of the state."
Mr. BARTON. -

That is so, but you cannot carry a sale into effect without knowing the price. The price is a condition to be determined before the sale is made.

Sir JOHN FORREST. -

I thought that where property was not to be used exclusively by the Commonwealth there was to be no absolute power in the Commonwealth to take it over.

Mr. BARTON. -

I understood that the feeling of the committee was that the Commonwealth should have the option of saying whether it would or would not take over any property, but that the state should be able to arrange with the Commonwealth as to the price to be paid for any property taken over. If the parties cannot agree, the price is to be determined according to the law of the state in regard to the acquisition of property for public purposes.

Mr. KINGSTON. -

Is there any special reason for providing for two special modes of ascertaining the value of property?

Mr. BARTON. -

There is no attempt to provide for two different modes of ascertaining the value. The second sub-section provides for the ascertaining of the value, while the third sub-section provides only for the manner of the compensation. That was one of the most difficult clauses in the Bill to redraft, because of the very nature of its provisions. There are the three cases to be considered. There is the property exclusively used for a transferred service; that goes over to the Commonwealth absolutely, except in the case of departments controlling customs and excise and bounties, in which case it goes over to the Commonwealth only for a time to be declared by the Governor-General in Council. Then you come to the ascertaining of the price where property is used by the Commonwealth, but not exclusively used by it, in connexion with any transferred department or service. In this case the value is to be ascertained by agreement, or, failing that, by the ordinary law in force in the state for the ascertaining of the value of property acquired by the Government for public purposes.

Sir JOHN FORREST. -

The Commonwealth might take a quarter or half of a building.

Mr. BARTON. -

I do not think that is likely. There would probably be some arrangement made by which either the state or the Commonwealth would take over the
whole building. Then we come to the manner of compensation, which is to be decided by agreement, if possible, but, if no agreement can be come to, by the provisions of an Act passed by the Parliament of the Commonwealth. I strongly object to any one being a judge in his own cause, but in this case you do not allow one of the parties to determine his own cause, because the Parliament of the Commonwealth will not be a party to the transaction, but a body in which all the states will be represented. The fourth sub-section deals with that part of clause 69 to which the honorable and learned member (Mr. Higgins) objected. At his instance, I consented to agree to the striking out of the last two words of that clause. The provision finds its proper place in this clause, where there is a distinction between the price and the liabilities taken over.

Mr. ISAACS. -

Do the words "any property passing to the Commonwealth," which occur in sub-section (3), include property dealt with in sub-section (2)?

Mr. BARTON. -

The third sub-section provides for the manner of compensation in regard to any property passing to the Commonwealth. The matter was the subject of a long debate here. Honorable members, the Right Hon. Sir George Turner amongst them-suggested that the value need not necessarily be paid in cash, but that there might be some provision for an arrangement between the parties as to the mode of paying it.

Mr. ISAACS. -

Ought you not to put in the words "manner of the payment of compensation"?

Mr. BARTON. -

I think that the words "manner of compensation" are sufficient. The price will have been ascertained beforehand.

Mr. HIGGINS (Victoria). -

May I ask the honorable and learned member a question in regard to a practical difficulty? A custom-house is not an easy property to sell or to value. Is there not, therefore, need of a provision defining the basis of valuation which is to be applied? I suppose a big building like the Custom-house in Sydney or Melbourne is not to be valued upon the basis of the receipts for the last few years?

Mr. BARTON. -

I suppose not, unless my honorable and learned friend is going to suggest an amendment to that effect.

Mr. HIGGINS. -

The question is one of great practical difficulty. You can value the land easily enough, but not the buildings.
Mr. BARTON. -

The Acts dealing with the taking over of land in any state deal also with the taking over of buildings, so far as I know.

Mr. HIGGINS. -

Yes, but the value of a building like a custom-house, a state school, or lands titles office, would depend very much upon the use to which it could be put.

Mr. BARTON. -

There will be no good will to take over. I suppose that any authority wishing to arrive at a valuation would ask the question-"What did this building cost to build?" or "For what could a building of this kind be built?"

Sir PHILIP FYSH (Tasmania). -

I was waiting for the presence in the chamber of the right honorable member (Sir George Turner), because I presume that the last few words of sub-section (1) will apply more to border custom-houses than to other property. After seven years, the Commonwealth will find many of these custom-houses unnecessary, and it is provided that they may then be thrown upon the hands of the states.

An HONORABLE MEMBER. -

This provision will apply only to border custom-houses.

Sir PHILIP FYSH. -

Not only to border custom-houses. It will also apply to custom-houses at places like Hobart and Launceston.

Mr. HOLDER. -

Those custom-houses will always be wanted.

Sir PHILIP FYSH. -

The words to which I refer are these:-

But in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary.

Mr. HOLDER. -

That provision is to enable the Commonwealth to give up such border custom-houses as they may not require after seven years.

Sir PHILIP FYSH. -

The Commonwealth might wish to move the Custom-house from Melbourne to some other place. Of course that may be a far-fetched assumption; but in the case of a town like Launceston, the Commonwealth
might desire to give up the Custom-house, and to collect the customs duties at some other place upon the river. In such a case the building would be thrown upon the state, though it would be useless for any other purpose than that for which it has been designed.

Mr. HOLDER. -

The Federal Parliament will not be a body of foes.

Sir PHILIP FYSH. -

Certainly not. No one has trusted more to the future in connexion with this matter than I have, and I desire to continue my confidence in the Federal Parliament. But I should like some explanation of this provision, or, at any rate, to call the attention of honorable members to some of the difficulties which it may create.

Mr. GORDON (South Australia). -

Does not sub-section (4) involve the Commonwealth in the obligations of the states in regard to contracts entered into with officers of departments and services transferred? The first part of this clause contemplates the taking over of the officers chosen, but the concluding part of it seems to imply that the whole of the current obligations in regard to the departments are to be taken over. These obligations would include the contracts with the officers. An exception should be made of the obligations of the public servants, and that might be done by inserting after "state" the words "except as regards public officers."

Mr. OCONNOR (New South Wales). -

it is necessary to have some clause of this kind in the Bill. When a department is taken over it will, no doubt, have some contracts.

Mr. HIGGINS. -

Postal contracts, for example.

Mr. OCONNOR. -

Yes, there will be a number of matters of that sort that it will be necessary to transfer. The obligations of the departments to their officers are dealt with differently. The proclamation of the Commonwealth will no doubt be arranged in such a way that there will be no difficulty in ascertaining what those obligations are. I do not think there is any need for the alteration the honorable member suggests.

Mr. GORDON (South Australia). -

I do not think the honorable member has quite followed me. Part of the current obligations would be the contracts made by the state with its officers. It is not contemplated that the Commonwealth shall take over all the officers, but only such officers as it requires. If we stipulate that the Commonwealth shall take over every current obligation, would not that imply the taking over of the whole of the officers?
Mr. OCONNOR (New South Wales). -
I understood the honorable member, but
what is the contract between the Government and its officers? It is a contract that is terminable at any time at the will of the Government? The current obligations means only the obligations which exist at the time of taking over, and if there is any money due to a public servant at that time there is no reason why the Commonwealth should not pay it.

Mr. GORDON (South Australia). -
Right up to the moment of the establishment of the Commonwealth all these officers would be in the full employment of the state.

Mr. OCONNOR. -
Yes; but there is no right to continued employment, and there is, therefore, no obligation taken over.

Mr. GORDON. -
It might not be an absolutely legal obligation, but no Government in the world would discharge its officers in that way without compensation.

Mr. OCONNOR. -
Undoubtedly.

Mr. GORDON. -
Then the Commonwealth would either have to take over the whole of the officers or give compensation to those who were not required, or retain them until vacancies occurred which they could fill.

Mr. OCONNOR. -
Clause 85 provides for all that.

Mr. GORDON. -
There is a contradiction between the two clauses. If the honorable member is quite satisfied that the matter is clear, I am not going to press the objection. But it seems to me that there is a possibility of an obligation resting on the Commonwealth that it ought not to be asked to assume.

The new clause was agreed to.

Clause 90. - Until the imposition of uniform duties of customs-
I. The Commonwealth shall credit to each state the revenues collected therein from the duties of customs and of excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth under this Constitution.

II. The Commonwealth shall debit to each state-
(a) the expenditure therein of the, Commonwealth in the collection of duties of customs and of excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth under this Constitution.
(b) the proportion of the state, according to the number of its people, in
the expenditure of the Commonwealth incurred by reason of the original
powers given to it by this Constitution.

But any expenditure of the Commonwealth originated by the
requirements of the Commonwealth in respect of services or powers
transferred and not incurred solely for the maintenance or continuance, in
any state, of the services existing at the time of the transfer shall be taken
to be incurred by reason of the original powers given to the
Commonwealth by this Constitution.

III. The Commonwealth shall pay to each state, month by month, the
balance (if any) in favour of the state.

Mr. OCONNOR (New South Wales). -

I beg to move-

That sub-section (1) be amended by the omission of all the words after
"therein."

Sir GEORGE TURNER. -

How will it read? I cannot understand the amendment. There must be a
mistake.

Mr. OCONNOR. -

There is no mistake about it. If the honorable member will read the
clause he will see that it begins "Until the imposition of uniform duties of
customs." Then it says-"The Commonwealth shall credit to each state the
revenues collected therein." That is on the one side, and then on the other it
says-"shall debit to each state the expenditure therein of the
Commonwealth" in the collection of duties of customs and of excise, and
in the performance of the services and the exercise of the powers
transferred from the state to the Commonwealth under this Constitution."
The intention is to make a complete account on both sides. Under

Sir GEORGE TURNER. -

You simply say-"The Commonwealth shall credit to each state the
revenue collected therein." That would mean the whole of the revenue of
the state.

Mr. OCONNOR. -

No, you are dealing with the Commonwealth collections, and it is not
necessary to say-"shall collect the revenues of the Commonwealth therein."
That is implied.
Mr. HIGGINS. -
It may be implied, but if you put "Commonwealth" before "revenues" it might save trouble.

Mr. HOLDER. -
The Commonwealth have nothing to do with any other revenues but their own.

Mr. OCONNOR. -
We are dealing with their revenues.

Mr. ISAACS. -
Until they impose Uniform duties of customs they are state revenues.

Mr. OCONNOR. -
With all respect to the honorable member, I say that they are revenues collected under the laws of the state, but collected by the Commonwealth in the state. A credit and a debit account is to be kept in the Treasury books of the Commonwealth. I do not see that there is any difficulty. The honorable member (Sir George Turner) will see that the reason for striking out these words is that they are really unnecessary, because the account must include the whole of the revenues of the state collected by the Commonwealth.

Mr. HOLDER (South Australia). -
There is a clerical error in the amendment, and what should be done is to strike out all the words after "therein."

Mr. BROWN (Tasmania). -
I should like to know whether, in the absence of any express words, it will be perfectly clear that the revenues intended are only the revenues collected on account of the Commonwealth? I should like to ask Mr. O'Connor if it is necessary to put that in? In Tasmania we have a special police rate which forms part of the revenue of the state, and I have no doubt in other colonies there are also special rates. I think some words expressly conveying our meaning as to the revenues intended should be put in so as to state that the revenues are to be those collected on account of the Commonwealth, otherwise there may be some little misunderstanding.

Mr. HENRY (Tasmania). -
It appears to me we want some explanation why these words should be struck out. The language is so explicit as to the revenues we are dealing with that I should like Mr. O'Connor to explain why they should be struck out?

Sir GEORGE TURNER. -
Because they are not necessary.

Mr. HENRY. -
The language in the clause seems so clear and explicit, as conveying the
intention we all understood with regard to the clause, that I should like to hear some justification for striking out these words.

Mr. HOLDER (South Australia). -

I would suggest to the honorable member (Mr. O'Connor) that he should make the first sub-section harmonize with the second. In the second sub-section we have the words "the expenditure therein of the Commonwealth." Why not make the first read "The Commonwealth shall credit to each state the revenues collected therein of the Commonwealth"?

Mr. OCONNOR (New South Wales). -

I have no objection to that, and I am obliged to the honorable member for the suggestion. With regard to Mr. Henry's question, I quite agree with the honorable member that the words as they were in before were clear enough, but one of our objects is not only to have the form of the Bill clear, but also to have no unnecessary verbiage in it. Inasmuch as the words which we are dealing with must include the whole of the revenue of the state collected by the Commonwealth in the state, there is no necessity to distinguish the whole of the revenue of the state taken over, that is to say, Customs, Excise, and the transferred services. They are the only revenues of the state which will be collected by the Commonwealth. Therefore, there is no necessity to describe them. I think if the suggestion of Mr. Holder is carried out it puts the matter beyond all doubt. I beg to move-

That after the word "therein" the words "by the Commonwealth" be inserted.

The amendment was amended accordingly, and was then agreed to.

Mr. OCONNOR (New South Wales). -

I beg to move-

That, in sub-section 2 (a), after "Commonwealth," where it first occurs, omit remainder of sub-section, and insert "incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the state to the Commonwealth other than the departments of naval and military defence, lighthouses, lightships, beacons and buoys, and quarantine."

This is merely a drafting amendment as to the first part, and as to the second part it embodies a very important amendment suggested by Dr. Quick, that is to say, it makes from the beginning one of the original expenditures of the Commonwealth: Naval and military defence, lighthouses, lightships, beacons and buoys, and quarantine. These are services in respect of which no revenue is collected, and therefore they ought not to go into the accounts against the state. In addition to that, they
are matters in which the whole Commonwealth are concerned from the very first. As there is no revenue coming from them-

Mr. ISAACS. -

Is it correctly printed after "Commonwealth" where it secondly occurs?

Mr. OCONNOR. -

Yes.

Mr. HOLDER (South Australia). -

This was a matter very carefully considered in the Finance Committee, and concerning which we arrived at a very definite conclusion. If necessary, I am quite prepared to make a long speech on this subject to show cause why we should not retrace our steps now. I beg to move-

That all the words in the amendment after the word "Commonwealth"-

"other than the departments of naval and military defence, lighthouses, lightships, beacons and buoys, and quarantine" be struck out.

If that does not accomplish my object, I should be glad if Mr. O'Connor would tell me so.

Sir GEORGE TURNER (Victoria). -

I strongly oppose any amendment of this kind. I think the Bill ought to be left as it is. In 1891, in New South Wales, the system was adopted that the collections should be returned to the states, less a per capita charge for all the expenditure, and that is the strong point that was raised against that Bill. If we are to have a per capita system for expenditure I do not object, if you have a per capita system for the receipts as well; but I am certainly going to object as strongly as I can to any system by which we are going to divide the collection on a basis which means that you are going to charge a portion of the expenditure handed over on a per capita basis. This means an immense advantage, as was pointed out several times, to New South Wales.

Mr. OCONNOR. -

In what way?

Sir GEORGE TURNER. -

Because your expenditure for defence is far more per capita than it is with us.

Mr. REID. -

May not the Commonwealth spend less?

Sir GEORGE TURNER. -

The Commonwealth will not spend less, because we know that we have cut down our expenditure to the lowest point.

Mr. OCONNOR. -

According to this it is per capita.

Sir GEORGE TURNER. -
According to the amendment as put; that is what I object to. I am perfectly prepared that we shall follow out the Bill, which provides that whatever expenditure is incurred in the colonies with regard to the different matters handed over shall be charged against the colonies, and the balance of the receipts shall be handed over to them. But I do object to having a system under which you are going to have a portion charged on the actual expenditure, and another portion charged on another system altogether. This was one matter which I brought forward when this question was being discussed. I have always contended that the per capita method should start from the first, but a compromise was arrived at in the Finance Committee on the basis that, if we are not to have a per capita method from the start, we should not charge any portion of the expenditure on a per capita basis unless we charged the receipts on a per capita basis.

Mr. MCMILLAN. -
Better leave it as it is, or there will be a big fight over it.

Sir GEORGE TURNER. -
Certainly there will be a big fight over it, as far as I am concerned.

Mr. HENRY (Tasmania). -
I hope the committee will not leave the amendment as it is. It was clearly understood that we were to adopt the system of keeping separate collections of revenue for each state, and that accounts of the separate expenditure of each state should also be kept. In this matter of the defences alone, the expenditure on which is proposed to be made a charge per capita, there is a difference of from 4s. 10d. per head in New South Wales to 1s. 1d. in Tasmania. The expenditure on defences for New South Wales, according to the table published by Mr. Fenton, was in 1895-6, £205,000, or nearly £206,000, against Victoria's £163,000; and it was the recognition of the differences that existed in the expenditure of the several colonies that led us to accept the Financial Committee's scheme as submitted to and approved by this Convention.

Sir GEORGE TURNER. -
We have not allowed for new expenditure on the defences.

Mr. HENRY. -
It is provided in the Bill that any new expenditure on naval or military defences of an exceptional character is to be borne per capita by the several colonies; but I am quite satisfied that a proposal that will lay on Tasmania the burden of an additional £16,000 to £20,000 per annum on naval expenditure, as its share of the naval expenditure of the whole of Australasia, is a thing that Tasmania could not bear.

Sir JOHN FORREST. -
That is not proposed.

Mr. HENRY. -

I merely say that that would be the result of this amendment. Under the existing arrangement, as adopted by the Convention, each colony pays its own way, and Tasmania would therefore have to pay about 1s. 1d. per head; but under this proposed amendment we would be called upon to share in the expenditure of New South Wales, which is about 4s. 10d. per head. That is so obviously opposed to the whole plan of the financial scheme that I am sure the Convention will not entertain it for a moment.

Mr. MCMILLAN (New South Wales). -

I think the arguments of Dr. Quick were absolutely unanswerable, but as we have settled down to the plan in the Bill, and as it would involve a considerable amount of reconstruction if we altered it, and further, as the whole matter is to be for five years only, and its alteration would cause a large amount of discussion, I think it would be better to leave the thing as it stands.

Mr. OCONNOR (New South Wales). -

I wish to explain that this amendment was made by the Drafting Committee because of a suggestion of Dr. Quick, which appeared to us at the time to have the assent of a very large number of the members of the committee. We had no intention of altering in any radical way the basis of arrangement which had been made, but supposed that this amendment represented what was at the time the feeling of the committee generally. Of course, this being a matter of policy, and as the financial members of the Convention have expressed themselves very strongly against the amendment, I have no desire to press it. Personally, I think that the reason suggested by Mr. McMillan would be quite sufficient for allowing the matter to remain as it stands.

Sir GEORGE TURNER. -

As I read it the first part really hangs on the second.

Mr. OCONNOR. -

No, there is a sub-section which reads as follows:-

But any expenditure of the Commonwealth originated by the requirements of the Commonwealth in respect of services or powers transferred, and not incurred solely for the maintenance or continuance in any state of the services existing at the time of the transfer, shall be taken to be incurred by reason of the original powers given to the Commonwealth by this Constitution.

That was intended to provide for cases where the expenditure was not only for the up-keep of the services of departments transferred as they were
handed over, but for some new services and new expenditure incurred necessarily by the Government of the Commonwealth, and for federal purposes.

Sir GEORGE TURNER. -

We agreed to that.

Mr. OCONNOR. -

It was agreed that they should come under the head of original charges. The amendment will get rid of that difficulty.

Sir GEORGE TURNER. -

It seems to me the clause carries out exactly what you want.

Mr. OCONNOR. -

Instead of putting in the remaining words of sub-section (2) it is proposed to insert, after "Commonwealth," where it first occurs, the words-

incurred solely for the maintenance or continuance, as at the time of the transfer, of any department transferred to the Commonwealth.

Then the next amendment is to leave out certain words from paragraph (b), so as to make it read in this way:-

The proportion of the state, according to the number of its people, in other expenditure.

It is necessary, in order to preserve this system or method of dealing with the question, to amend the clause as I have indicated; but I am quite willing to strike out the words which Mr. Holder objects to.

Mr. ISAACS. -

Is there any virtue in the word "department" as distinguished from "services" in the proposed amendment? Are there not transferred services that do not appertain to a department?

Mr. OCONNOR. -

No; in all these cases departments are transferred under clause 69.

Mr. Holder's amendment was agreed to.

Mr. HOLDER (South Australia). -

I would like to ask Mr. O'Connor whether he would like to have inserted after the word "department" the words "of the service"?

Mr. OCONNOR (New South Wales). -

There is no necessity for that, because clause 69 expressly charges the Commonwealth with the control of departments. What we want to deal with is those departments as transferred. A department may be enlarged or a service may be performed in another way.

Mr. BARTON. -

The word "services" was used in another part of the Bill as referring only to property used in the performance of the services.

Mr. OCONNOR. -
What we want to bring into the account is the expenditure on the departments, and that is what is provided for. All through we have maintained the same wording to indicate, not the general services only, but the departments in working order at the time when they are transferred to the Commonwealth.

Mr. ISAACS (Victoria). -

This is a very important matter. There is no provision in clause 69 that the department of Customs and Excise shall be transferred, but it provides that "the control" of that department shall be transferred at a certain time.

Mr. OCONNOR. -

"The control and the functions."

Mr. ISAACS. -

I think we should use the same words here. I am afraid there is some difficulty about it.

Sir GEORGE TURNER. -

Put in the word "control," so as to say "the control of which is transferred from the state to the Commonwealth."

Mr. BARTON. -

That is a mere drafting amendment. I will see if it is necessary. I will make a note of it.

The amendment, as amended, was agreed to.

Mr. OCONNOR (New South Wales). -

I beg to move-

That, in paragraph (b) of sub-section (2) the word "other" be inserted before the word "expenditure," and that all the words of the sub-section after the word "expenditure" be struck out.

This is a consequential amendment.

Sir PHILIP FYSH. -

May I ask how the provision will read after this amendment is carried?

The CHAIRMAN. -

It will read as follows:-

(b) The proportion of the state, according to the number of its people in the other expenditure.

The amendment was agreed to.

The clause, as amended, was agreed to-

Clause 93B. - Notwithstanding the provisions as to free trade and intercourse between the states, the customs duties in the state of Western Australia as existing at the time of the imposition of uniform duties upon goods not originally imported from beyond the limits of the
Commonwealth may, if the state thinks fit, continue to be collected for five years with a deduction of 20 per centum per annum (that is to say), with a deduction of 20 per centum for the second year, 40 per centum for the third year, 60 per centum for the fourth year, 80 per centum for the fifth year. At the end of the fifth year, customs duties on all such goods shall cease and determine.

Mr. BARTON (New South Wales). -

This clause has been redrafted by the Drafting Committee to make more clear what we think is the intention of this committee, but no material alteration has been made in it. Honourable members will see for themselves how the clause reads now. We propose to put it into a little clearer form, which I think will meet with the view of Sir John Forrest. I beg to move-

That all the words after the word "Notwithstanding" (line 1) be struck out, and that the following words be substituted:-

anything in this Constitution, the Parliament of the state of Western Australia may, during the first five years after the imposition of uniform duties, impose duties of customs on goods entering that state and not originally imported from beyond the limits of the Commonwealth; and such duties (if any) shall be collected by the Commonwealth. But any duty so imposed on any article shall not exceed during the first of such years the duty chargeable on the article under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth respectively of such latter duty, and all such duties shall cease at the expiration of the fifth year after the imposition of uniform duties.

Mr. ISAACS (Victoria). -

I would invite the attention of Mr. Barton to the last sentence-"all such duties shall cease at the expiration of the fifth year after the imposition of uniform duties." Does the honourable member think that that is restricted to goods as they pass from one state to another?

Mr. BARTON (New South Wales). -

The word "goods" is only used before as to goods entering a state, and not going beyond the limits of the Commonwealth—that is to say, the intercolonial passage of goods, the duty on which is to cease at the end of five years. That is the object of the clause.

Sir JOHN FORREST. -

Other goods will be subject to the uniform Tariff.

The amendment was agreed to.

The clause, as amended, was agreed to.

Mr. BARTON (New South Wales).
I beg to move -
That in clause 101 (line 1), after the word "state," there be inserted the words "on a subject within the legislative powers of the Parliament."

This is an amendment suggested by the right honorable member (Mr. Reid). The original reading of the clause was:-

When a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

And it is now proposed to insert words which will make the clause read:-

When a law of a state on a subject within the legislative powers of the Parliament is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

It may be a mere matter of drafting, but my recollection of Mr. Reid's suggestion was that the words should come in after the word "Commonwealth." They have been printed, rightly or not, after the word "state," and I think that must be a misprint. Even without the insertion of these words, the clause would be interpreted to mean what the words convey. As, however, there seemed to be at the time rather a desire to insert the words, and as they do not mar the Bill, I propose to insert them.

Mr. REID (New South Wales). -

This struck me as a matter of very great importance. If my honorable friend (Mr. Barton) will look at clause 7 and also at clause 101, as they stand in the Bill, he will see that difficulty may arise. A law passed by the Commonwealth on a subject within its legislative powers might, in its operation, conflict with a law passed by a state on a subject on which the state retained exclusive powers-a subject over which the sovereignty of the state was left unimpaired. Now, a very grave situation is raised, because clause 7 provides that the laws of the Commonwealth shall be binding on every state and every subject of the state. Clause 101 follows this up, and provides that when the law of a state is inconsistent with the law of the Commonwealth-it does not say what kind of law, but includes every law-the law of the state shall, to the extent of the inconsistency, be invalid. I do not think we propose the Constitution should be so framed that a state law passed on a subject left entirely to the state should "go down" before a law of the Commonwealth on some other subject without any rhyme or reason, and without any reference to any consequence which may follow. This is a very difficult matter, and I admit that the more convenient arrangement would be to let it alone.

Mr. ISAACS. -
That would be the safest way.

Mr. REID. -

But it would I am afraid, practically deny the sovereignty of the states over matters left entirely to the states.

Sir GEORGE TURNER. -

The Federal Parliament will not have power to legislate on matters left entirely to the state. How, then, could the laws be inconsistent?

Mr. REID. -

My honorable friend will see that although the subjects might be different they might affect the same thing.

Mr. ISAACS. -

Give us an example.

Mr. REID. -

Any number of examples could be given. In the United States Constitution similar words are found, and I propose to follow this amendment up by a proposal giving the Federal High Court jurisdiction to deal with any subject of conflict between a Commonwealth law on a Commonwealth subject, and a state law on a state subject.

Mr. ISAACS. -

If there is any inconsistency between the Acts, you are going to let it remain.

Mr. REID. -

I propose that the High Court, if there should be a matter involving wrong or loss to an individual or a state, should have jurisdiction to deal with the conflicting interests.

Mr. ISAACS. -

And which law is to prevail?

Mr. REID. -

If we said which law was to prevail, we would foreclose the judgment of the court, which would have nothing left to decide at all. No matter how wrong the action of the Commonwealth might be as to state interests, it would have to go without adjudication, unless the question be referred to the High Court.

Sir GEORGE TURNER. -

But is it not a question of policy which law ought to prevail? That ought not to be left to the High Court.

Mr. REID. -

There seems to me a question of right under this. Surely the giving of sovereignty to a state on a subject is a mockery, if, when a law passed by that state is found to be inconsistent or in conflict with the operation of
a Commonwealth law on a Commonwealth subject, all the interest involved in the state and all the interest under the state law must go to the wall. The Commonwealth legislating on a subject within its jurisdiction might legislate with perfect propriety. A state dealing with a subject entirely within its power, over which subject the Commonwealth had no jurisdiction whatever, might also legislate with perfect propriety. But in the operation of these two pieces of legislation conflict might arise, causing injury to individuals. As the Constitution at present stands, however right and valid the exercise of the state jurisdiction was, the interests of the state would have to go down before the Commonwealth law. The High Court, under the present Bill, would have to say to the state-"Well, we are very sorry for you; this is a hard case; you are subject to a great deal of injury, but the Commonwealth Constitution provides that where there is any inconsistency or variance the Commonwealth law must prevail." The state would "go down" without the merits of the question being gone into at all. These are circumstances which must give rise to a great deal of hardship and dissatisfaction. I would prefer if my honorable friend would not propose the amendment just now. I have given notice of an amendment dealing with this subject, and it would be more convenient if there were a postponement.

Mr. Barton (New South Wales). -

I shall certainly consent to a postponement, because it was Mr. Reid who suggested the amendment in the first instance. I do not so far see that the clause would have the effect Mr. Reid thinks it would have, or that the addition of the words "on a subject within the legislative powers of Parliament" does anything but make it clearer. A law passed by the Commonwealth Parliament would be a law passed within the legislative power of that Parliament, which has no other power. The words do not make the clause any more cogent, although they might be deemed to make it clearer. I have no objection to the insertion of the words, and if my friend would like to move an equivalent amendment, I will withdraw the present amendment.

Mr. Reid (New South Wales). -

I admit that this amendment, when understood, will raise a very serious question, and it is quite possible that my honorable friend may conceive it to be his duty to take a view opposite to mine on this question. I admit that it is a matter which may involve very serious consideration, but I deem it my duty to bring the matter before the Convention, so that it can never be said hereafter that it was not decided.

The amendment was withdrawn.

Mr. Barton (New South Wales). -
The Drafting Committee has prepared and circulated amendments redrafting the railway clauses. I have had the advantage of a conversation with my friend (Mr. Isaacs) on the subject, and he agrees with me that they correctly represent the sense of the committee on the subject. The difficulty which has arisen about them is that, by a clerical error, we took power to recommit clauses 95B, 95C, and 95D, instead of clauses 95A, 95B, and 95C, and, as by following the present procedure we should have to leave in the Bill something which is already redrafted by the suggested amendments, I propose to reserve them for the second recommittal.

Sir GEORGE TURNER. -
They want a lot of altering.

Mr. BARTON. -
No doubt they do. I think that what has been prepared will carry out the sense of the committee as expressed at the time. Whether the committee remains of the same opinion is another question. I think it would be a very good thing if, after we get through these amendments, honorable members could have a fair print of the Bill placed in their hands on Monday morning. If honorable members would like to do that they can secure it by not going into any very debatable matter this afternoon. I could get an order to reprint before we separate, and the reprint would be in the hands of honorable members on Monday morning.

Sir JOHN FORREST. -
Let us get on with a few more clauses.

Mr. BARTON. -
I have to report the Bill now, and all I wish to do after reporting it now is not to go into committee again for the short space at our disposal this afternoon, but to get an order for reprinting. I am informed that I can get a reprint without a formal order if we report the Bill this afternoon, and no doubt we can get the matter into the hands of the printer.

Mr. HOLDER (South Australia). -
There were put into the Bill the night before last, 140 amendments of the Drafting Committee which are not likely to come directly under our notice. Would it be possible for us within the next hour to run through these amendments, so that the leader of the Convention could indicate their nature? I have no doubt that we should be able to accept them all without debate, but I do not think it is one of those matters we should take absolutely on trust without having our attention called to each amendment which was made on that occasion. I do not know how otherwise they can come before us, because they are already in the Bill.
Mr. BARTON (New South Wales). -

I think it would take longer than an hour to do it. I think an hour spent by my honorable friend with the Bill as amended in Sydney on one side, and the Bill as reprinted on the other side, as we have it now, would obviate the necessity for taking that course. Honorable members will see, I think, when they go through the amendments, that, unless in cases where the sense of the committee has been clearly expressed without an absolute amendment, no liberties have been taken with the work of the committee. But the amendments which have been made are merely questions of drafting, except where a clause has been allowed to pass as it stood with the intention that the amendment suggested in committee should be incorporated in the drafting. In those cases we have taken the liberty of putting them in, as practically acting under the instructions of the committee.

Sir JOHN FORREST. -

It is difficult to see what words have been put in, as the amendments are not shown in different type.

Mr. BARTON. -

A difficulty which has been raised is that these amendments are not put in block type. The reason that that was done was a very plain one. Honorable members desired to get a print of the Bill, I think it was yesterday morning. In order to do that it was only possible to print the Bill in the way we have done it, that is to say, the Bill as it left Sydney on the one side, and the Bill as theretofore amended up to Tuesday on the other side; but if the printer had got instructions to show the amendments by erased lines and block type, it would not have been possible to get the Bill ready till this morning-24 hours later. As honorable members were in a great hurry to have the Bill in their hands, we had to give instructions to have it done in that way.

Sir JOHN FORREST. -

Can it be done by Monday?

Mr. BARTON. -

We can get a reprint of the Bill on Monday, but if the other labour is to be cast on the printer of doing it in this form, there is a technical difficulty in the Printing office, because that kind of printing is most difficult and involves more care and labour in its execution than any other work you can impose on the printer.

Sir JOHN FORREST. -

It would be of very great assistance to honorable members if it were done.

Mr. BARTON. -
It might be of great assistance to honorable members.

Dr. COCKBURN. -

Run lines underneath, or show the amendments within inverted commas.

Mr. BARTON. -

We would not get it by Monday then, I am told at the table. There is one thing we can do before we have the adjournment for two or three days for the purpose of finally getting the amendments into consistency. We might give directions then to have the Bill, as we get the sheets done, reprinted in that way. We can think over that. That might be an assistance to honorable members, but to try and get this done now would only prevent the reprint from being in their hands on Monday morning. After all, it only involves the very slightest labour in the world. If an honorable member who is not quite accustomed to legal phraseology will simply take a clause on one side, and compare it with the corresponding clause on the other side, he will see at a glance what the amendments are. Not one of these amendments alters the sense, except where the Convention has practically directed it to be done.

Mr. SYMON (South Australia). -

There is one thing which I hope will not be overlooked, and that is the suggestion which was made by Sir John Forrest yesterday in connexion with the recommittals, and on the strength of which notices of recommittal given by all members except the Drafting Committee were withdrawn, with the view of having the proceedings we have about concluded carried out, and then with the view of having these recommittals take place. The suggestion was that the notices of these recommittals, with the specific amendments intended to be moved, should be handed in, so that honorable members should have them in their possession, and be able to see whether they would assent to any particular recommittal or not. There might be minor recommittals of clauses, which the majority of the Convention might not desire to have brought back again to the committee. We should be quite unable, if they were enumerated as they were yesterday, to determine at the moment whether or not there should be any objection to a recommittal. There might not be, and there might be. What I suggest is: That all those which were notified yesterday might, before we come to have them considered, be put in a list in the order in which the clauses appear in the Bill. That, at any rate, would effect a great saving of time.

Mr. DEAKIN. -

There is such a list on the table.

Mr. SYMON. -
Has it been circulated?

Mr. BARTON. -
I understand that that can be done.

The CHAIRMAN. -
If honorable members will hand in the amendments which they wish to propose, they will all be printed on Monday morning in their sequence.

Mr. SYMON. -
That will be a great convenience, no doubt.

Sir GEORGE TURNER (Victoria). -
Can we deal with an amendment to a clause which has not been recommitted?

The CHAIRMAN. -
No.

Mr. BARTON. -
You can move to recommit the clause.

Sir GEORGE TURNER. -
We were dealing with clause 74 this morning, and a most important alteration, which goes to the root of the whole Constitution, in my mind, has been made by the Drafting Committee by inserting the words "of the Inter-State Commission." That is allowing an appeal to the High Court from the decision of the Inter-State Commission.

Mr. BARTON. -
That was because it appeared to be the sense of the committee to have that amendment inserted.

Sir GEORGE TURNER. -
I am not blaming the Drafting Committee. When we adjourned for luncheon this clause was Under consideration, and I got back about one second after the bells had ceased to ring, having been detained on a departmental matter, and found that the committee had got to clause 77.

Mr. BARTON. -
You can move to recommit the clause again.

Sir GEORGE TURNER. -
But the honorable member may object when I ask the Convention to recommit the clause.

Mr. BARTON (New South Wales). -
I mentioned at the time-I think my right honorable friend was not in the chamber-that Sir Joseph Abbott had not lost any right he has to get a clause recommitted. This matter about appeals to the Privy Council I regard as all important one.
Sir GEORGE TURNER. -

It is not appeals to the Privy Council.

Mr. BARTON. -

In accordance with the intention of honorable gentlemen who wish to modify the question of appeals to the Privy Council, clause 74 would have to be amended to carry out their views. That question is so important that I certainly should not oppose a recommittal of the clause.

Sir JOHN FORREST. -

Have we not to give notice of the clauses we intend to ask the Convention to recommit?

The CHAIRMAN. -

No. If the notices of recommittals have been handed in they will be printed, and honorable members can move the motions when the proper time arrives. If any honorable member has not already handed in the motion he wishes to move for the recommittal of a clause, he can do it now.

Mr. OCONNOR (New South Wales). -

I would point out to the right honorable member (Sir George Turner) that I was in charge of the Bill at two o'clock, and it was because I understood that there would be a recommittal that I did not wait for him to come in.

The Bill was reported with amendments.

Mr. BARTON (New South Wales). -

I beg to move-

That the Bill, as reported, be considered on Monday.

I take it that the Bill will be printed between now and Monday, without any formal order.

The PRESIDENT. -

Yes.

The motion was agreed to.

Sir JOHN FORREST (Western Australia). -

What opportunity shall we have for moving the recommittal of the Bill for certain purposes?

Mr. BARTON. -

You can do that on Monday.

Sir JOHN FORREST. -

We shall be able to go on with its reconsideration at once, then?

Mr. REID. -

Yes.

Sir JOHN FORREST. -

It would be very convenient if we could get a list of the proposed amendments beforehand.
Mr. BARTON. -

I dare say that if notices of proposed amendments are sent in to-night they can be printed and distributed at honorable members' addresses to-morrow.

The PRESIDENT. -

It will be competent for honorable members upon Monday next to move the recommittal of the Bill or of any part of it.

The Convention adjourned at three minutes past four o'clock p.m., until Monday, 7th March.
Monday, 7th March, 1898.

Petitions: Appeals to the Privy Council-Commonwealth of Australia Bill.

The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITIONS.

Appeals to the Privy Council.

Mr. HIGGINS (Victoria). -

I have the honour to present a petition from the council of the Geelong and Western District Agricultural and Horticultural Society against the proposal of the Bill regarding the right of appeal to the Privy Council. The petition is printed, but I understand that, according to the standing orders of the South Australian Parliament, under which this Convention is working, printed petitions are allowed, although they are not allowed under the standing orders of the Victorian Legislative Assembly. I beg to move-

That the petition he received. The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

Mr. BARTON (New South Wales). -

I beg to move-

That the Bill be recommitted for the purpose of reconsidering clauses 56B, 95A, 95B, 95C, and 101.

I may mention that I am only moving for the recommittal of those clauses which were, at the first recommittal stage, deemed to be matters of great substance, such as to the clause relating to dead-locks, and the rearrangement of the railway clauses. I would also like to point out to honorable members that this stage seems to be the one that was the subject of an understanding to the effect that there was to be a second recommittal, in which honorable members, if they chose, could recommit other clauses of which notice has been given by them. I would like to say that it would scarcely do for me to read off the number of notices that have been given and move a motion for recommittal incorporating them, because some of them should not, I think, be subject to recommittal, although I do not intend to offer any active opposition to that being done. Therefore, I think every honorable member should be left to take charge of his own recommittal motion. It would be out of place were I to do so. I should also like to say that I think we might now make an effort to conclude the substantial business of this Convention during the present week. I propose
to sit to-night and to-morrow night, and, if necessary, on the other nights of
the present week, in order that the business maybe concluded. I think it will
be some temptation to those honorable members who thought of leaving
earlier that this effort will be made to conclude the business. I shall ask
honorable members to conclude the business, with the exception of the
drafting adjournment, by Thursday night.
Dr. COCKBURN (South Australia). -
    I beg to move-
    That clause 41 be recommitted for the purpose of inserting the words "in
    Council" after the words "Governor-General."
Sir JOHN FORREST (Western Australia). -
    I beg to move-
    That clause 45 be recommitted.
Sir PHILIP FYSH (Tasmania). -
    I beg to move-
    That clause 90 be recommitted.
Mr. WALKER (New South Wales). -
    I beg to move-
    That clause 117A be recommitted.
Mr. HOLDER (South Australia). -
    I beg to move-
    That clause 74 be recommitted.
Sir JOSEPH ABBOTT (New South Wales). -
    I beg to move-
    That clause 75 be recommitted.
Mr. DEAKIN (Victoria). -
    Is it necessary that these motions for recommittal should be moved now
    or as we come to the clauses in question? Most of the motions are in print.
The PRESIDENT. -
    It will be necessary, if there is to be a recommittal, either for the whole
    Bill to be recommitted or the clauses specified. Certain clauses have been
    moved for recommittal by the leader of the Convention, and the
    recommittal of other clauses has been moved by other honorable members.
    If other honorable members desire that further clauses should be
    recommitted, it will be necessary for them to move accordingly.
Mr. REID (New South Wales). -
    I beg to move-
    That clause 46, sub-section (4) of clause 54, and clauses 73 and 79 be
    recommitted.
Mr. HIGGINS (Victoria). -
    May I ask, before I move for the recommittal of any clause, if notice has
been given with regard to clause 56B, and whether, if any other honorable member has an alteration to make in that clause in place of the one which has been suggested by the leader of the Convention, he will be entitled to move it?

The PRESIDENT. -

I understand that the motion which has been moved by the leader of the Convention is for the recommittal of the four clauses he has mentioned for the purpose specified. Under these circumstances I take it that the discussion will be confined to the matters for which the clauses were recommitted.

Mr. HIGGINS (Victoria). -

I beg to move-

That clauses 56B, 80, 86, and 95B be recommitted.

The PRESIDENT. -

The motion of the leader of the Convention embraces the recommittal of clause 95B. Of course, it is quite possible for any honorable member to move for the recommittal of a clause without specifying the object of the recommittal.

Mr. HIGGINS. -

I also desire to mention that I have a new clause, which I shall move to insert after clause 93.

Mr. DEAKIN (Victoria). -

I beg to move-

That clauses 13, 55, 68, 70, 92, and 110B be recommitted.

Mr. ISAACS (Victoria). -

I wish to have recommitted those clauses of which notice has been given in the names of Sir George Turner and myself. I therefore beg to move-

That clauses 9, 55, 56, 89, 95A, 96, 98, and 121 be recommitted.

I understand that Sir Richard Baker has already intimated from the chair that when a clause is recommitted it is in the hands of the committee to deal with it altogether, so that, therefore, there is no danger that honorable members will not be able to propose any amendments they desire on recommitted clauses.

Mr. BARTON. -

I have not limited the recommittal of the railway clauses.

Mr. HOWE (South Australia). -

I beg to move-

That clause 52 be recommitted for the purpose of inserting a new sub-section (23A) to follow sub-section (23).
I beg to move-
That sub-section (8) of clause 52 be recommitted for the purpose of adding another sub-section (8A), and that clause 45 be recommitted for the purpose of striking out sub-section (3).

Mr. GLYNN (South Australia). -
I beg to move-
That sub-section (1) of clause 52 and clauses 93 and 93C be recommitted.

Mr. BARTON (New South Wales). -
Before the motions for recommittal are put, I just want to mention a matter to the Convention. It has been suggested to me that the debates on some of these recommittals may be really taken twice over eventually unless the Convention guards itself against that. One honorable member has made a suggestion that these motions for recommittal might, by some suspension of the standing orders, be taken one by one, and without debate. I know that that is repugnant to the feelings of some honorable members, but as the suggestion was made to me I think it only fair to mention it, and leave it in the hands of the Convention, as it may be that a majority of honorable members are in favour of either the one course or the other. I do not wish to suggest that course; but the matter is in the hands of the Convention, and the Convention may take that course if they wish to do so. I hope I may be pardoned for mentioning the matter, as an evidence of the anxiety of some honorable members to avoid double discussions at this stage.

Sir RICHARD BAKER (South Australia). -
I suggest, sir, that the course alluded to by the leader of the Convention be not adopted, but that we at once pass on to recommit the clauses which honorable members desire to have recommitted. Otherwise, we shall have all the debates twice over. I do not see any middle course; we must either divide at once on each proposal, or pass them all as a matter of course.

Mr. BARTON (New South Wales). -
In that case I think the right course for a body such as this Convention is to assent at once to all these recommittals. I cannot help thinking that to deal with them summarily without debate would scarcely be fair.

Sir JOHN FORREST (Western Australia). -
Would it not be possible to come to some arrangement to hear one speech on either side? That might be arranged.

Mr. DEAKIN. -
You arrange it, and we will agree to the arrangement.
Sir JOHN FORREST. -
Very well, and the honorable member shall speak first.

Mr. BARTON. -
Who is to arrange it?

Sir JOHN FORREST. -
It can very easily be arranged.

Mr. MCMILLAN. -
You had better select the men who are to speak.

Mr. PEACOCK. -
Sir John Forrest will select them.

Sir JOHN FORREST. -
I am quite positive that honorable members will not be able to say anything fresh in regard to these questions, so that if they speak again on the same subjects, they will have to repeat what has been said before. Remembering the number of times some honorable members have spoken on all these subjects, is it likely that they will be able to throw new light on them now?

An HONORABLE MEMBER. -
Time!

Sir JOHN FORREST. -
I won't belong. I feel sure that if honorable members enter into long discussions on these various subjects, we will have decisions from the Convention when it is limited in number, through some of us having had to return home, and then questions which have previously been decided by a full Convention will be finally decided by a Convention depleted of half of its members.

Mr. ISAACS. -
That is not the fault of those who remain.

Mr. BARTON. -
No, it will certainly not be our fault.

The PRESIDENT. -
The question is that the clauses mentioned in the various motions which honorable members have moved be recommitted.

Mr. ISAACS (Victoria). -
If I am not out of order at this juncture, may I ask the leader of the Convention if he has considered the question that was raised about uniform taxation? There is a decision on the question that I would like to put into his hands, and I think it would be a wise step if Mr. Barton would take the recommittal of sub-section (2) of clause 52 now, on the understanding that it will not be proceeded with if, on further looking into the matter, be finds
that it need not be reconsidered. Some very strong objections have been raised with regard to the difficulties in connexion with the imposition of taxation on property when there is to be uniform taxation. Some of us are rather afraid that, unless the provision in question be amended, there will be no power to impose graduated taxation.

Mr. BARTON (New South Wales). -

I am so anxious to make this the last substantive debate that I shall accept my learned friend's suggestion. With your permission, Mr. President, I will add to my motion the reconsideration of sub-section (2) of clause 52.

Mr. ISAACS. -

If you think it is unnecessary to go on with it you need not do so.

Mr. BARTON. -

Exactly.

Mr. Barton's motion was amended accordingly.

Sir EDWARD BRADDON (Tasmania). -

I beg to intimate that I desire to move, in committee, a new clause, to follow clause 92.

The PRESIDENT. -

The question is that the clauses mentioned by honorable members be recommitted, with the limitations stated in the motion.

The motions of honorable members for the recommittal of the clauses therein stated were agreed to.

The Convention then resolved itself into committee of the whole for the reconsideration of the Commonwealth of Australia Bill.

Clause 3. - It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, to declare by proclamation, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of [here name the colonies which have adopted the Constitution] shall be united in a Federal Commonwealth under the name of "The Commonwealth of Australia."

Mr. SYMON (South Australia). -

I beg to move-

That the words "Commonwealth of" be omitted from clause 3.

I do not wish to re-open the matter at this stage. I merely desire to state the reason why I venture to ask the Convention to reconsider the amendment which I propose, and which is submitted with a view to the insertion of the simple name "Australia" instead of "The Commonwealth of Australia" in this clause. The reason which causes me to submit this for the consideration of the Convention is twofold; first, that some honorable members, who were not present during the very short discussion which
took place when the matter was considered and voted on before, were under the impression that it was intended in some way to obliterate or remove the name of the Commonwealth, and the second branch of the reason is that I find the Drafting Committee have inserted an amendment which removes the difficulty which previously existed, and which seems to me to render it necessary that the Substitution I now suggest should be made. As to the first reason, I have no objection, and never had, to the use of the word "Commonwealth." As I pointed out the other day, "Commonwealth" is used as a name for the political union we are establishing under the Constitution, in the preamble, and all the succeeding clauses, and will be continued, just as before, throughout all the other clauses of the Bill as indicating the political union. All I seek to do is to declare that the name of the Commonwealth shall be the simple name to which we are accustomed—the grandest name which we can attach to it—that of Australia. As to the second branch of the reason, my honorable friend (Mr. Isaacs) tried at Adelaide to have an alteration made in order to redeem clause 3 as it then stood from what appeared to be somewhat of an absurdity. In that clause it is set out that the people of these colonies shall be united in a Federal Constitution under the name of the Commonwealth. Mr. Isaacs pointed out that that seemed to be an absurdity, that no such thing was ever heard of as uniting people in a Federal Constitution. He suggested that it should read "by a Constitution "or" united in a Federal Commonwealth." That suggestion was not entertained at the moment, but I observe that the Drafting Committee have, on reconsideration, adopted it. They have inserted in clause 3 the words "shall be united in a Federal Commonwealth under the name of-repeating the word 'Commonwealth'-the Commonwealth of Australia." What I want to do is to say:"shall be united in a Federal Commonwealth under the name of Australia." That is the amendment which I propose. Every honorable member knows that whether you add this double-barrelled expression to it or not the people of Australia will always call it Australia. Let us then put the name which will commend the Constitution to the people of Australia, and by which they will know it, in our Bill. Let us put it in the very fore-front of the Constitution. I should not be ashamed to have the name of Australia in the Bill. Every honorable member is actuated by the same pride of name as myself, and I hope that I may call on them to record their pride by putting the name in the foremost clause of the measure.

Mr. BARTON (New South Wales). -

I am not, I believe, wanting in the pride to which the honorable member alludes. I am as proud of being an Australian as most men are, and I see no reason for this
alteration. The matter has been discussed on several occasions, and twice decided. I would suggest to the honorable member that if there had been any particular value in any alteration it would have been in shortening the name by which the Constitution is to be cited, so that instead of saying in the first clause-'This Act may be cited as the Commonwealth of Australia Constitution Act, we should say-'This Act may be cited as the Australian Constitution Act.' That would have been less of a mouthful and would, perhaps, have been more convenient. I should have had no objection to such an alteration, but when it was suggested in Adelaide it was not adopted. I do not see why we should take out the name "The Commonwealth of Australia" and substitute for it the one word "Australia." We shall not be Australia without Queensland, although we shall be the only Commonwealth of Australia. We are entitled to take the name of the Commonwealth of Australia, but we are not entitled to take the name of Australia to ourselves any more than New South Wales was on a certain memorable occasion.

Question-That the words "Commonwealth of" proposed to be omitted stand part of the clause-put.

The committee divided-

Ayes ... ... ... ... 25
Noes ... ... ... ... 18

Majority against the amendment 7

AYES.
Abbott, Sir J.P. Isaacs, I.A.
Barton, E. Kingston, C.C.
Berry, Sir G. Lyne, W.J.
Braddon, Sir E.N.C. McMillan, W.
Brunker, J.N. O'Connor, R.E.
Carruthers, J.H. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Downer, Sir J.W. Reid, G.H.
Fraser, S. Trenwith, W.A.
Fysh, Sir P.O. Turner, Sir G.
Hackett, J.W. Zeal, Sir W.A.
Henning, A.H. Teller.
Higgins, H.B. Solomon, V.L.
NOES.
Brown, N.J. Holder, F.W.
Cockburn, Dr. J.A. Howe, J.H.
Crowder, F.T. Leake, G.
Mr. REID (New South Wales). -

I beg to move-

That the following words be added to clause 3:-"The Queen may at any time after the issue of such proclamation appoint a Governor-General, who may, before the Commonwealth is established, choose and summon members of the Federal Executive Council, and, with their advice, appoint such other officers as he may deem necessary, the salaries of such other officers (if any) to be such as Parliament may determine."

It appears that on the issue of a proclamation by Her Majesty a date must be named, within a year after the date of the proclamation, as the date on which the union takes place, and it has occurred to me-and this may be of great consequence-that it would be well that Her Majesty should have power to appoint the Governor-General before the date of the establishment of the union, because otherwise a great deal of confusion might arise. On that very day several important departments of the public service will become vested in the Commonwealth. Time will be extremely valuable, and we wish the Executive to get to work so that Parliament may meet as soon as possible after the union is established. I have, therefore, proposed this amendment. Of course, it does not compel the exercise of the power, but it enables the Governor-General to be appointed, and enables certain preliminary work to be done which can harm no one, and which may be a subject of review afterwards. I am not at all particular as to the words of the amendment, and if the Drafting Committee have any suggestion to make I shall be willing to withdraw it in order that they may deal with it, or to take any other course they may propose.

Mr. BARTON (New South Wales). -

Perhaps my right honorable friend's amendment may go a little too far. I have no objection, personally, to some proviso being inserted in the clause, but I think it would be better to insert it as a proviso to clause 4.
We are not proposing to reconsider that clause.

Mr. BARTON. -

I know that, but the right honorable gentleman has made a suggestion to the Drafting Committee. I think that the amendment may go a little too far. Of course, it is only by virtue of the proclamation which brings the Constitution into force on a day named that there can, under the Bill as it stands at present, be a Federal Executive Council. There can be no Executive Council until the Commonwealth is in being. Any appointments of this kind cannot be operative in any executive or administrative sense until there is a Commonwealth. There is nothing for them to operate upon until the Queen's proclamation takes effect, and the Commonwealth is called into being. Any appointment therefore made before the Commonwealth is in existence by virtue of the proclamation can only be made with the view of matters being ready upon the day named. I take it that it will be sufficient for that purpose if the Queen has power to appoint a Governor-General before the day named. If my honorable friend will limit the proposal in that way, I suggest that it should take this form: -

The Queen may at any time after the making of the proclamation appoint a Governor-General for the Commonwealth.

Mr. REID. -

That will do; I will accept that suggestion.

Mr. BARTON. -

I think that as a matter of drafting it should be made a proviso to the first provision it clause 4.

Mr. REID. -

I am willing to substitute that amendment for my Amendment.

The CHAIRMAN. -

It will not be necessary to withdraw the amendment, as it has not been stated from the Chair.

Mr. BARTON. -

I move-

That the clause be amended by the addition of the following words: - "But the Queen may at any time after the making of the proclamation appoint a Governor-General for the Commonwealth."

The amendment was agreed to.

Mr. BARTON. -

This amendment will be transferred afterwards to its proper place by the Drafting Committee.

The clause, as amended, was agreed to.

Clause 9. - The Senate shall be composed of senators for each state, directly chosen by the people of the state, voting, until the Parliament
otherwise determines, as one electorate. Until the Parliament otherwise provides, there shall be six senators for each original state. The Parliament may, from time to time, increase or diminish the number of senators for each state, but so that equal representation of the several original states shall be maintained, and that no original state shall have less than six senators. The senators shall be chosen for a term of six years, and the names of the senators chosen for each state shall be certified by the Governor to the Governor-General.

The qualification of electors of senators shall be in each state that which is prescribed by this Constitution or by the Parliament as the qualification for electors of members of the House of Representatives, but in the choosing of senators each elector shall vote only once.

Mr. ISAACS (Victoria). -

I move-

That the words "determines, as one electorate" be omitted, with the view to the insertion in their place of the following words:-"provides, in as many electorates as the Parliament of the state shall determine. Until division each state shall be one electorate."

The first sentence of the clause, if my amendment is agreed to, will then read in this form:-

The Senate shall be composed of senators for each state, directly chosen by the people of the state, voting, until the Parliament otherwise provides, in as many electorates as the Parliament of the state shall determine. Until division each state shall be one electorate.

Mr. SYMON. -

You simply reverse what is in the Bill by saying that there shall be as many electorates as the states may decide till Parliament otherwise determines.

Mr. ISAACS. -

It does not reverse it. The Bill at present says that until division there shall be one electorate. We say the same, but the Bill says the only power
competent to provide shall be the Parliament. We say that the state should have the power to define in the first place, and then the Parliament has power to override it if it chooses.

Mr. SYMON. -

It comes to the same thing.

Mr. MCMILLAN. -

Will there be any provision about having an equal number of electors in each district? Would the state Parliament have the right to divide the state as it likes?

Mr. ISAACS. -

I should say that it would have the right to divide the state as it pleases. I should imagine that the course to be adopted would in any case be what Sir John Forrest suggests, viz., that there would be three divisions; became by that means only would the state get the whole of its people to speak after the first section of senators, but that is a matter for the state to determine. Not only does the amendment, give to a state some power which it has not now, but it also does not leave the election of senators exposed to the overpowering of the country districts by the towns, and, therefore, I think it ought to be accepted.

Mr. SYMON (South Australia). -

I do not rise to debate the matter. I simply rise to gather exactly the effect of the amendment, with which, as I understand it, I am disposed to agree. My earned friend wishes to leave to the Federal Parliament the ultimate determination of whether the state shall vote as one electorate or as several electorates, but, in the meantime, instead of prescribing in the Constitution that the state shall vote as one electorate, he prescribes that it shall vote in as many electorates as the state Parliament shall determine.

Mr. ISAACS. -

And in the absence of their determining that question, as one electorate.

Mr. SYMON. -

Just so; but the ultimate control and determination of the number of electorates is to rest with the Federal Parliament under the amendment.

Mr. ISAACS. -

Yes.

Mr. BARTON (New South Wales). -

I have been one of those who have always regretted that the majority thought fit, in their wisdom, to insert the words "until the Parliament otherwise determines," with respect to this portion of the Bill. I have always been of the opinion that the state should vote as one electorate. However, in its wisdom the Convention decided at a previous session to insert the words "until the Parliament otherwise determines." I would
suggest that that amendment takes the matter far enough. To my thinking, it is an invaluable thing that the Constitution should, as far as possible, provide that the state should be represented as one corporate entity in the Senate. In the same way that local interests may be adequately represented in one National House, so I think it is right that the state should be represented free from any idea of locality narrower than the limits of the state in the Senate also. The federal object of the matter I have always understood to be this: That there should be one Chamber in which state interests should be represented as a whole. It is inconsistent, it seems to me, to suppose that the collective interests of the state can be rightly represented by dividing the state into so many electorates, which will necessarily import the idea of the local interests of districts instead of the collective interests of a state.

Mr. HOLDER. -
No senator will be able to speak for the whole of a state.

Mr. BARTON. -
Exactly. The contingent of a state to the Senate should be able to speak for that state as a whole, representing its citizens as a collective body, without their idea of the good of that state being warped by any local consideration whatever. So the matter will remain in the Bill as it stands unless the Parliament should choose to make other provision; but under my learned friend's amendment there will be two authorities. The Parliament of the state may divide the state into electorates, and then afterwards the Parliament of the Commonwealth may make other provision, so that there will be two dividing authorities. The Parliament of the state may divide the state into electorates, and then afterwards the Parliament of the Commonwealth may make other provision, so that there will be two dividing authorities instead of one. I take it that it is quite sufficient if you allow one dividing authority to deal with the question.

Mr. HIGGINS. -
It will produce much friction if you have two dividing authorities.

Mr. BARTON. -
Of course, every time you admit of the action of two independent authorities, one overriding the other, to the extent you do that you introduce the element of friction. It is one of the inevitable drawbacks of a Federation, but it is one of the elements which we should endeavour to minimize as much as possible in our Constitution. If my learned friend carries his amendment the result would be, that first the Parliaments of the states would provide for the manner in which those states should be divided, if divided at all; consequently, with five or six states, we might find one or two still remaining a collective electorate, another state divided into six electorates, another state divided into three electorates, and another state divided into two electorates. So that there would be actually a
raggedness, if I may use the term with all respect, in the method of representation of those states, which would go a long way to destroy the collective force of the Senate as a representative of state interests; and the more uneven you make that representation the less force you give to the collective representation established by the Senate as one whole body. If you provide so as to lead to a state of things the result of which will be that the states will be represented some as one electorate, some as six electorates, some as three electorates, some as two electorates—I am supposing that there are six senators to each state; and even that number may be limited, be it understood—then you will have a state of things which will be so uneven, that it will be hard to determine in what respect that Senate is acting for the general interests of the state. I do not think that is a good thing. Within the limits of this Constitution, I must admit that I desire that the representation of state interests should be effective. I have always taken it that so far as you can reconcile the representation of state interests, under a Federal Constitution, with the elements of responsible government, which we consider indispensable, you should leave the representation of those state interests fairly strong, and it is with that object that I feel myself compelled to dissent from the amendment. If the Bill is left as it stands, and after two or three elections there is shown to be a necessity for a change, then will be the proper time to make that change, and to make a division. It will be possible then for the division to be made in such a way as to give uniformity with regard to each state, so that each state may be represented in three electorates, or two electorates, or six electorates, as the case may be. That would be a fat better thing than having a ragged kind of representation, using the term again with all respect.

Mr. ISAACS. -

There would be a ragged representation in the House of Representatives, yet the same thing is proposed there.

Mr. BARTON. -

I beg my learned friend's pardon. It is not the same there, because it is an essential of the ordinary principles of general national representation under our idea of government by majorities, unless we adopt some such scheme as the Hare scheme, that there should be local representation. It seems to me to be an essential of the whole system of representation in the Sena

Mr. ISAACS. -

I was only objecting to the word ragged.

Mr. BARTON. -

I know, but my friend's objection takes him to that length, and takes me
to that length, too. I do submit that it would be an unwise thing altogether if we introduce another dividing authority with respect to the representation in the Senate, and in so doing lead to an inconvenience which will lessen the weight of the representation of each state in the Senate. I, for one, at any rate, cannot help thinking that the amendment should be opposed, and that the determination of the Convention in the past has been one which takes the matter far enough.

Mr. DEAKIN (Victoria). -

I do not rise to combat the arguments put forward by the leader of the Convention, because he simply expressed the logical federal view of the situation. He defended the only course which enables the Constitution to be perfectly symmetrical, by affording the opportunity to the states to be represented as units, while the other Chamber represents the electors. At the same time, there is a practical difficulty to which my honorable and learned friend did not allude, and which will weigh with a very large number of the electors in many of the colonies. The practical difficulty is that, unless there be embodied in this measure some requirement that the elections for the Senate shall be conducted under either the Hare system or a modification of it, the effect will be to place the whole representation of the Senate in each state in the hands of the majority of the voters going to the poll on any particular day.

Mr. HIGGINS. -

Is it not possible to have the Hare system, or some system like it, introduced under clause 10?

Mr. DEAKIN. -

If I had seen my way to embody a requirement for the representation of minorities in the Bill, I should have framed and moved it, but I have felt myself unable to do so. If my honorable and learned friend (Mr. Higgins) is more successful, I shall be happy to follow him.

Mr. BARTON. -

It would be better to leave that for the future.

Mr. HIGGINS. -

I think that clause 10 will give the Federal Parliament power to provide for the Hare system, or some modification of it.

Mr. DEAKIN. -

Under the Constitution as it stands the Federal Parliament has power to adopt what, for the sake of convenience, we may speak of as the Hare system, though it is generally admitted that there are modifications which render that system more easily worked. The experience of Tasmania is that the method which has been referred to as the single transferable vote, has provided a practical means of solving what was hitherto regarded as an
insoluble difficulty. We cannot to-day avoid the fact that, although the Constitution allows the Commonwealth Parliament to adopt the Hare system, and, also allows each state in providing for the election of senators to adopt, if it pleases, some means which will give some representation to minorities, the electors have no guarantee that any System of this kind will be adopted. Unless we give them some such guarantee, it will very seriously militate against the fate of this measure in the colony of Victoria. Here, as in most of the other colonies, the population of the metropolis bears a very large proportion to the population of the whole colony. In the metropolis the voting is invariably heavier than is the voting in the country districts. Of course, in constituencies centred in a country town the voting is often as high as, or even higher than, the voting in the metropolis, but in purely farming districts the voting, owing to the difficulty of reaching the poll, is almost invariably lower than in the country towns or in the metropolis. The farmers, already rendered anxious by the possibilities of federal action, will be still more alarmed if they foresee, as the result of the election for the Federal Senate, the transference to what has been termed "the mass vote of the population" of the whole of the representation of the state in that very important body—the Senate. Although I have not myself attempted the task, if the members of the Drafting Committee were to receive an instruction from the Convention to draft such an amendment as would indicate that it was the intention of the framers of this measure that the states and the Commonwealth should provide for the representation of minorities in the election of members of the Senate, I should be glad to support the principle. Otherwise, I shall be compelled to support the amendment of the Attorney-General, with which, as a matter of principle, I am not in accord. After all, his proposal is only contingent. His amendment leaves it at the option of the states and of the Commonwealth Parliament to legislate in regard to the method of electing the senators. It offers a concession to the stater, which it would be in their power to refuse. No state would be obliged to adopt this method of division. Any state that desired its senators to be elected by the whole colony voting as one electorate could continue the single-electorate system, and the Federal Parliament would still have the power in any case to require a uniform method of election throughout the Commonwealth. I think, however, that it would allay the apprehensions which have been awakened by this proposal for a single electorate which has been laid before us in its naked form, that is, without any requirement for the representation of minorities, if the skilful members of the Drafting Committee could propose an amendment requiring that, while the senators
should be elected by each state as one electorate, some provision should be made for the representation of minorities. What we desire is the representation, not merely of the metropolis and of the country towns of each state, but of the agricultural and pastoral interests, which are the backbone of Australia. They provide the largest amount of our exports, and are composed of that part of the population which undertakes the hardest task of production—the development of the land—which it is the duty of the State to encourage to the utmost of its ability. Instead of leaving it to the option of the states and of the Commonwealth to provide for the representation of minorities, we should place in the Constitution a direction to the effect that some method for the better representation of all the electors should be provided for.

Mr. BARTON. -

Would not that involve the insertion of something like a body of legislation in the Constitution?

Mr. DEAKIN. -

Certainly, if you were going to prescribe the system to be adopted.

Mr. HOLDER. -

Do not let us look in that direction now.

Mr. DEAKIN. -

I am not arguing that you should do that, but we might go so far as to require that some method should be adopted, leaving it to each state to adopt what method it thinks best.

Mr. WALKER. -

Clause 10 gives this power.

Mr. BARTON. -

I would not say "a method for the representation of minorities"—I think that the Hare system is a system for securing the proper representation of the people.

Mr. DEAKIN. -

It is generally spoken of as a system for securing the representation of minorities, but it is more properly described as a system for securing proportionate representation. It aims at giving every considerable section of the population its just representation, and practical experience in Tasmania and elsewhere has proved that it can accomplish that end. I am in favour of the position taken up by the leader of the Convention and trust that he will yet see his way to propose, not any precise method of proportionate representation, but some direction on the part of the framers of the Constitution to the states and Commonwealth Parliament, that some
method providing for proportionate representation shall be adopted.

Mr. GLYNN (South Australia). -

I should like to point out, in addition to what has been said by the leader of the Convention, that the amendment of the Attorney-General of Victoria makes a very serious difference in the edict of the clause from the point of view of those who believe that each state should elect its senators as one electorate, so that the senators may be able to speak with the voice of their whole colony behind them. Under the clause as it stands, the principle of single electorates is affirmed, but under the amendment there is a declaration, that the states shall make a division.

Mr. DEAKIN. -

The amendment says "may."

Mr. GLYNN. -

At the start there is a suggestion to the states Parliaments to divide, but if they neglect to divide there is a saving provision to the effect that, in that case, the single-electorate system will apply. But the direction of policy given by the amendment is undoubtedly to divide. If the states next upon the principle of dividing, and subsequently the Commonwealth Parliament enforces the single-electorate system, there will be a regular hub-bub, because we know that one of the most difficult matters to arrange, in any Parliament the, system of representation, I think it better to stick to the clause as it stands.

Sir JOHN FORREST (Western Australia). -

I voted against the principle in the Bill during the Adelaide session, and I hope to have an opportunity to vote against it again now. The idea seems be prevalent in the minds of honorable members that if each state votes as one electorate, every voter will be actuate by high, noble, and patriotic motives; but in practice it will not be so. We know very well that voters are human beings like ourselves, and are actuated by their sense of their own interests. If they happen to have their interests in a coal-mining centre they will vote to benefit what they consider to be the interests of coal mining. If they are living in a mining community they will be free-traders, and will vote in the interests of mining. If they are living in farming districts they will vote for the agricultural interest, and so on. Therefore, if you have each state voting as one electorate, the result will be that the large centres of population will have a preponderating influence in the return of members of the Senate. No doubt honorable members are very mach influenced in the views they take on this matter by the result of the election which returned the members of this Convention. I think I said, in Adelaide-
we have here, cannot but be a good one. Honorable members applying that to themselves will say—"The system which placed me at the head of the poll with 100,000 or 80,000 votes must be a good one." But will it continue to have that effect in the future? I do not think that it will. It seems to me that this is a matter which we should leave to the states. Surely they are wise and patriotic enough to be able to form a plan for the election of those whom they think will best represent them. They will be able to say, much better than we can, whether the colonies should be divided, and if so, how they should be divided. For that reason I shall vote for the amendment.

Dr. COCKBURN (South Australia). -

I think that the proposal is too complicated. It provides, in the first place, for one electorate. This arrangement can be altered by the state Parliaments, but their arrangement can be finally overridden by the Federal Parliament. I think that the proposal is too complicated, and therefore I shall vote against it.

Question-That the words proposed to be struck out stand part of the clause-put.

The committee divided-

Ayes ... ... ... ... 27
Noes ... ... ... ... 16

Majority against the amendment 11

AYES.
Abbott, Sir J.P. Higgins, H.B.
Berry, Sir G. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Brown, N.J. Kingston, C.C.
Brunker, J.N. Leake, G.
Carruthers, J.H. McMillan, W.
Cockburn, Dr. J.A. Moore, W.

Downer, Sir J.W. Quick, Dr. J.
Fysh, Sir P.O. Reid, G.H.
Glynn, P.M. Solomon, V.L.
Grant, C.H. Walker, J.T.
Hassell, A.Y. Teller.
Henning, A.H. Barton, E.
NOES.
Briggs, H. Lyne, W.J.
Crowder, F.T. Peacock, A.J.
Deakin, A. Symon, J.H.
Dobson, H. Turner, Sir G.
Forrest, Sir J. Venn, H.W.
Fraser, S. Zeal, Sir W.A.
Hackett, J.W.
Lee Steere, Sir J.G. Teller.
Lewis, N.E. Isaacs, I.A.

Question so resolved in the affirmative.
The clause was agreed to.

Mr. DEAKIN (Victoria). -
I move-
That in clause 13, the words "by lot" be omitted.
The amendment I suggest need not occupy more than a moment or two in discussion. It is a blot on the face of a measure of this kind to require that the division of the senators into two classes after the first election shall be made by lot. I could understand that device being adopted in the absence of any other means of determining which senators should have the longer period. But the poll itself ought to afford, or be taken to afford, a reasonable indication of the wishes of the electors in this respect, and it is a probable injustice, as well as a mistake, to fall back on the antique method of settling questions of the kind. I move, therefore, the omission of the words "by lot," which will leave it absolutely at the discretion of the Senate itself to determine, after it meets, on what method the division shall take place. If the Drafting Committee think fit, they can adopt the method of providing that the three highest on the poll should have the six years' tenure. If that be the sense of the Convention, I will now simply submit my motion.

Mr. HOLDER. -
What should be done in the case of an uncontested election?

Mr. DEAKIN. -
With six senators to be elected I can scarcely conceive an uncontested election possible. However, I submit the motion in order to avoid the adoption of a system in favour of which nothing but its antiquity can be urged.

Mr. OCONNOR (New South Wales). -
I think a great deal can be said in favour of the view the Hon. Mr. Deakin has placed before the Convention. In a constitutional matter of this kind we ought not to resort to deciding a question by lot unless there are no other means of determining the matter. If the Convention are willing to agree to the amendment, it might be left to the Drafting
Committee to decide whether any provision for the division of the Senate should take place, or whether the matter should be left to the senators themselves.

Mr. FRASER. -
Take alphabetical order.

Mr. REID. -
That arrangement would not suit "R" nor "Z" either.

Mr. OCONNOR. -
It would be very desirable to strike out this provision if some other means, could be found of putting in the Constitution itself the principle of division. That might be done as a drafting amendment.

Sir JOHN FORREST (Western Australia). -
In Western Australia this matter is decided by the number of votes a member gets. That seems to be a fair way, and one which would exactly meet this case.

Mr. LYNE. -
How do you do where there is no contest?

Sir JOHN FORREST. -
Then we take alphabetical order.
The amendment was agreed to.
The clause, as amended, was agreed to.

Dr. COCKBURN (South Australia). -
I move-
That in clause 41, after the words "Governor-General," the words "in Council" be inserted.
I think the omission of these words must be an oversight. It could never have been contemplated that the Governor-General should have the power provided in this clause without the advice of the Council.

Mr. OCONNOR (New South Wales). -
I think the clause had better remain as it is; for the first election there would be no Council.

Mr. REID. -
Oh, yes, there would be.

Mr. OCONNOR. -
It is a question whether these words would apply to the first election. I do not think it is a matter of very much moment, but, as a matter of course, the Governor-General is only the hand that issues the writ.

Dr. COCKBURN. -
The clause does not say so.

Mr. OCONNOR. -
The Governor-General could not arrogate to himself the power of making
appointments.

**Dr. COCKBURN.** -

But the clause gives the power to him.

**Mr. OCONNOR.** -

It must be exercised by the advice of the Council.

**Mr. ISAACS (Victoria).** -

There can be no doubt there would be a Council of the Governor-General before the first election, and that even if there words be not put in, the Governor-General would not act in such a matter without the advice of his Council.

**Dr. COCKBURN.** -

We do not know that.

**Mr. ISAACS.** -

If we put the words "in Council in one place and leave them out in others, the Constitution may be so construed as to intend the Governor-General to act without his Council in some instances where the words are not inserted, and to restrict the principle of responsible government only to those cases where the words are put in.

**Mr. HOLDER.** -

Look at clause 62.

**Sir JOHN DOWNER (South Australia).** -

The clause is right as it is. We have to be very careful to put the words "in Council." in the right place, and I do not think this is the right place. It is the Queen who summons Parliament.

**Mr. HIGGINS.** -

Mr. Holder is quite right; clause 62 is enough.

**Sir JOHN DOWNER.** -

I do not see how there are to be councillors for the first election. This is not a case in which the Queen nominally acts in Council, though in reality she always acts in Council. I can see great constitutional difficulty and objection to altering the clause.

**Sir JOHN FORREST (Western Australia).** -

At the Sydney Convention I objected to the words "in Council" being used, on the ground that the less often we used the term the better. "Governor-General" is a well-understood constitutional term, and there is no need for the addition " in Council." "Governor-General " means Governor-General with the advice of the Executive Council. For this reason, I hope the words proposed will not be inserted in the clause, as they would only create confusion. The Governor-General can only act without advice in one case, and that is in the case of the appointment of his
Executive Council.

**Mr. DEAKIN (Victoria). -**

The honorable member (Sir John Forrest) is under a misapprehension. If he looks at clause 68 he will find another special provision in which the Governor General alone is named, and it does not appear at present that in that clause the Governor-General in Council is intended. In other cases the honorable member will find that the Governor-General in Council is named. Two clauses I have named for reconsideration later both have reference to this particular issue. The clause referred to by Mr. Holder does not throw light on the question. Clause 70 provides-

In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a colony, or in the Governor of a colony with the advice of his Executive Council, or in any authority of a colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

**Mr. REID. -**

That refers to things taken over.

**Mr. DEAKIN. -**

In different colonies there are slightly different procedures, and the Commonwealth practice ought surely not to be varied according to the varying practice of the departments so taken over. The Commonwealth must lay down a reasonable rule for itself. The proposition of Dr. Cockburn has more force lent to it owing to the fact that in clause 68 the Governor-General is alone alluded to, while the Governor-General in Council is repeatedly alluded to. The clear implication appears to be that unless the words "in Council" are added it is always intended to convey some personal power. We should make up our minds what, it is we intend, and adopt some general form of words to imply that where the word "Governor-General" is found in the Constitution, it shall, unless the context distinctly otherwise implies, be taken to mean the Governor-General in Council.

**Dr. COCKBURN (South Australia). -**

If Sir John Forrest looks at clause 62 he will find he is mistaken.

**Sir JOHN FORREST. -**

I am not mistaken as to the Constitution.

**Dr. COCKBURN. -**

The honorable member says that "Governor-General" means "Governor-General in Council." Now, clause 62 expressly forbids such an
interpretation. It says that when the Governor-General in Council is mentioned it means he acts with the advice of the Federal Executive Council. That places the matter beyond all doubt. It is clear that when the Governor-General alone is mentioned he acts on his own responsibility. I do not think there can be much difference of opinion on that point.

Mr. REID (New South Wales). -
I really think that under the structure of this Bill it is absolutely necessary to put in the words "in Council," if we mean that writs for general elections are to be countersigned by a minister.

Mr. BRUNKER (New South Wales). -
I would suggest to the Convention that we ought to make this question perfectly clear. I point this out for the reason that at the present time in New South Wales under an Act of Parliament which prescribes that the Governor shall take action, there is considerable c

Mr. KINGSTON (South Australia). -
I draw attention to the fact that there is

Sir JOHN FORREST. -
No.

Mr. KINGSTON. -
Then let us say so. If honorable members refer to clause 63 they will see that the Governor-General and the Governor-General in Council are terms used in absolute contradistinction. There we find that the Governor-General may from time to time appoint officers to administer certain departments, but immediately afterwards it says that the Governor-General in Council may from time to time establish the departments which those officers are to administer. There, with regard to the appointment of Ministers, the Governor-General exercises his power without consulting the Executive Council, but with regard to any action in connexion with establishing the departments he is to act on the advice of the Executive. Therefore, the distinction is made in the Bill itself. The question we have to ask ourselves is-Do we intend that the Governor-General shall act with or without the advice of the Executive? It is intolerable to suggest the appointment of returning officers by the Governor without the advice of the Executive.

Sir JOHN FORREST. -
The honorable member does not understand. No one objects to that, but
we say that it is not necessary to put in the words.

The CHAIRMAN. -

Before putting the question, I may be permitted to point out that in clauses 37 and 40, which are not under consideration, the same words occur-"The Governor-General shall issue writs-and may dissolve the House of Representatives."

Mr. REID (New South Wales). -

Does not clause 41 refer to the issuing of writs and the sending of them to the returning officers?

The CHAIRMAN. -

I do not wish to argue the question.

Dr. COCKBURN (South Australia). -

Without wishing to argue with the Chairman, I would point out that clause 40 refers to the dissolution of the House of Representatives by the Governor-General. That is a prerogative, and in such a case he is not always guided by his Executive as to whether he will grant a dissolution or not. What we are now dealing with is not a prerogative matter-it includes the appointment of returning officers.

Sir PHILIP FYSH. -

Could the Governor appoint without the advice of his Ministers?

Dr. COCKBURN. -

Distinctly so, if the English language has any meaning.

Sir PHILIP FYSH. -

He could do so, but he never would do so. The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 45. - Any person who-

I. Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

II. Is attainted of treason, or has been convicted and is under sentence or subject to be sentenced for any offence punishable under the law of the Commonwealth or of a state by imprisonment for three years or longer: or

III. Is an undischarged bankrupt or insolvent: or

IV. Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; but this sub-section does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose
services are not wholly employed by the Commonwealth: or
v. Has any direct or indirect pecuniary interest in any agreement with the
public service of the Commonwealth, otherwise than as a member and in
common with the other members of an incorporated company consisting of
more than 25 persons: shall be incapable of being chosen or of sitting as a
senator or a member of the House of Representatives.
Mr. CARRUTHERS (New South Wales). -

I beg to move-

That sub-section (3) be omitted.

This clause was very shortly debated on the last evening of our sitting in
Sydney. I did not then press the matter to a division, because so many
deleagates were absent, but I indicated that I would take an opportunity of
having a division in this session. The object of my amendment is that
public men shall not be penalized unduly by a provision which will
disqualify them, perhaps for all time, from holding a position in public life
by reason of monetary misfortune. Clause 46, which follows, I do not
intend to amend. It provides that the seat shall be vacated by any member
who becomes bankrupt or insolvent, and then, the seat being vacated, the
member will have to go to his constituents for re-election. That is
practically the law in New South Wales, although I believe it is not the law
in Victoria. I think it is a sufficient penalty for a public man that be should
resign his seat and go before his electors when he takes advantage of the
law relating to insolvent debtors. It is going too far to say that because a
man by misfortune, and owing to circumstances over which perhaps he has
no control, is compelled to seek the protection of the court, he should
resign all public offices and practically retire from public life. What would
have happened in New South Wales if we had had such a provision in the
law? We have seen, not on one occasion, but on many occasions, not in
regard to one individual, but in regard to many individuals, men occupying
positions as Premiers, whose usefulness has not been questioned, who have
been compelled to have recourse to the protection of the Insolvency Court.
These men have resigned their position in Parliament, as they were
compelled to do by the Constitution Act; they have gone to their
constituents, and they have been elected or rejected by the electors, who
can judge them in the light of the knowledge they have relating to their
insolvency. They have not had their political careers closed. If there had
been such a law as this in operation, we should have had some of the
wisest and best men who ever guided public affairs in New South Wales
shut out from public life. We should have had Ministries destroyed, and
men who through misfortune, which, perhaps, was largely attributable to
the fact of their holding positions in public life, would have had their careers of usefulness closed for ever. I invite honorable members to pay attention to this aspect of the case. If you penalize politicians above all other men, what will happen? Suppose there is one public man and nine or ten others who become guarantee for a very large sum of money in connexion with some enterprise. We know that public men are often led into becoming guarantors as directors of companies, and they become guarantors on account of advances made perhaps for the purpose of pushing forward some enterprise which is practically for the development of some of the resources of the colony. Such a provision as this would mean that because there is one man out of ten who has to do something more than pay the debt, who has to stand the risk of losing his position as a public man, that man is put in a position to be black-mailed. You put him in a position where he alone can be pushed to an extremity, and a clause of this character would be used by creditors, who might have the opportunity of looking to half-a-dozen other men who have jointly become security on mortgages, bonds, or guarantees, who will press that man alone, because they know that he is the only one against whom such a lever of destruction can be used as to deprive him of his position in public life. Honorable members having been associated for many years with public life will know the bitterness which sometimes attaches to political warfare. Is not this provision the means of putting a powerful instrument in the hands of unscrupulous opponents? Such a thing would have been done in New South Wales over and over again if such a provision as this had existed in the law. The career of some of the brightest and best intellects of the public life of that colony would have been closed. It will be a misfortune to the Commonwealth if you brand with the stigma of permanent displacement men who, by reason of their services to the country, have neglected to serve their own interests. It has been one of the highest testimonies to the honesty of public men in Australia that they have been poor men. It has, perhaps, been one of the greatest sacrifices that public life has ever entailed in these colonies, where men of intellect, following their professions closely, or developing the resources of the country, may easily make fortunes, that public men should have thrown aside all these opportunities of advancing their own interests, and have devoted themselves to the interests of the country, thereby very often bringing ruin upon themselves and their families. That is a story that could be related over and over again with regard to the public men of Australia. After having faithfully served their country for many years, most of them, perhaps, have to see in their declining years poverty coming upon
themselves and their families. Now, here it is proposed to place an additional penalty upon our public men who, perhaps, have to seek the protection of the court through no fault of their own in nine cases out of ten. Having given up his professional pursuits, and having attached himself for years or for a lifetime to political affairs, a provision of this kind will place it in the hands of any creditor—a political opponent or otherwise—to absolutely close the door against that man's future public career by forcing him into the Insolvency Court. The electors of the country have a right to make their choice, and if they choose to be represented by a man who is compelled by the necessities of his life to become bankrupt or insolvent, surely it is not our business to take away that choice from them. A man may be guilty of a misdemeanour, he may have served a sentence of two years for a misdemeanour, he may have been guilty of some disgraceful offence, yet, under this Bill, that man can be elected. Yet it is proposed to stigmatize a man who may have to seek the protection of the Bankruptcy Court through being a director of a mining company, or through being connected with some financial institution which in boom time has flourished, and has then gone down, dragging others with it. You penalize such a man more than a man who may have been guilty of a crime. This Bill will allow any drunkard or vagabond in the community to be elected to Parliament; but you penalize beyond all these men a man who has served his country too well and who has not served himself sufficiently well, neglecting his own affairs, and thus allowed monetary embarrassment to fall upon him. I trust the Convention will strike out this sub-section.

Sir JOHN DOWNER (South Australia).—
I hope the Convention will not. There are certain sturdy principles implanted in the bosom of the nation we have been in the habit of calling English, and one of the things you will often hear from the class that is not highest in the community is the boast that they pay their way and owe no man anything. If it be necessary to provide that members of the Federal Parliament shall be irresponsible for their debts, let us know what we are doing, and have a special provision for that purpose in the Bill. But, meanwhile, I think it is a little hard that the creditor shall lose,

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and that the person who, by reason of superior ability, or of the position which superior ability gives him, has a credit which is artificial, and is enabled to trade upon it—

Mr. ISAACS.—
If he is poor through misfortune he can get his discharge.

Sir JOHN DOWNER.—
Exactly. The honorable member (Mr. Carruthers) objects to an
undischarged bankrupt being ineligible for election. Why is a bankrupt undischarged? He is undischarged because he has behaved badly. He is undischarged because he is a criminal to some extent.

Mr. SYMON. -
Because he is on his trial.

Sir JOHN DOWNER. -
Once in a way it may be, as Mr. Carruthers says, that it is the bankrupt's misfortune in that the time for obtaining his discharge has not

Mr. CARRUTHERS. -
He cannot be discharged under 30 days.

Mr. SYMON. -
Surely he could wait 30 days.

Sir JOHN DOWNER. -
I should think that for 30 days after a man becoming bankrupt the disgrace of it would be enough for him without anything else; and it will be a bad day for Australia, as it would be for any country, if bankruptcy is considered merely a venial matter, and not one that involves great disgrace.

Mr. TRENWITH. -
Hear, hear. It is too much so now.

Sir JOHN DOWNER. -
We are becoming thinner and thinner in regard to our commercial morality, and our morality in other directions is also becoming thinner. It is intensely to be regretted if our commercial morality become go thin that a man is not considered much the worse as a man because he does not meet his obligations with his creditors. It is a good condition to start with that a man shall have to pay his way if he is to be a member of the Federal Parliament. It will involve, in many instances, great self-sacrifice on his part, and a very good thing for the man if it does.

Mr. REID. -
A much better thing for him if it does not.

Sir JOHN DOWNER. -
In the case of a man who had been subject to the bankruptcy laws, and has not obtained his discharge, it would almost invariably be because he had done something disgraceful; and should he not therefore be incapacitated from any high office in the Commonwealth? To say that it should not be so would be putting a stamp of great inferiority on the moral opinions of the Commonwealth at the start. I hope the clause will be retained.

Mr. REID (New South Wales). -
I applaud the high moral principles of my honorable friend who has just sat down, and admire the sturdy honesty which he has commended, but we
must not forget that the greatest criminal under heaven is eligible, at the end of his sentence, to be a member of the Federal Legislature, whilst, according to this provision, a man who through some misfortune has become bankrupt and has not obtained his certificate will not be eligible. If his bankruptcy occurs just before a general election and it may be so contrived in regard to a man of great eminence, whose disappearance from politics is of great concern to a party—it could be easily managed that his case should not come into court until just after the election, and he would then become incompetent to be elected. I consider that a man who falls into financial trouble—and many do, not from dishonesty, but from sheer misfortune—perhaps the roguery of others—should be able to submit himself to his constituency for their judgment, to be re-elected. We sufficiently vindicate the cause of honesty if we leave him in their hands. If his conduct has been disgraceful, we can expect that the constituency will deal with him. But why should he be debarred from a career of public usefulness, when perhaps his financial troubles have been simply caused through misfortune? If we allow a tainted criminal, who perhaps has served a sentence of ten years for the greatest crime under heaven, to go to election, why should we stretch the cord so tightly in what may possibly be a case of absolute misfortune, absolutely free from crime?

Mr. MCMILLAN (New South Wales). -

I think that the remarks of the right honorable gentleman who has just sat down do not touch the kernel of this matter at all. I hold that a constituency is not a proper jury to try a case of bankruptcy. If a man fail to pay his obligations—and I should be sorry to say anything against any man failing, as we have seen some of the best men in these colonies during the last few years obliged to take that course—there is a prima facie charge against him which must be removed before he can rear his head as an absolutely honest man. And I say that if I were in a position like that, my own pride would prevent me from ever taking a seat in the councils of the colony until I had cleared myself before the court before which I had to appear. I agree with Sir John Downer that we are paring away matters in regard to honesty too much in these colonies.

Mr. REID. -

Still a man may be the most honest man in the world and be insolvent through the roguery of others.

Mr. MCMILLAN. -

No doubt a man might have his house burnt down, and through not being insured might be ruined. But why should we adjudicate upon this thing at
all? Why is it a matter for the courts? Is it not because it is a matter of public protection? And if it is a matter for the courts, then the courts alone should adjudicate upon it, and say whether a man is worthy of his certificate or not. I think the clause should be passed as it stands, because, as Mr. Isaacs says, in any case where a man fails through misfortune there will be no obstruction put by the courts in the way of his obtaining his certificate.

Mr. SYMON (South Australia). -

I think every one of us will agree that money ought not to be a passport to a position in public life, and that the misfortunes that any of us may incur at any period of our lives, in regard to monetary matters, ought not to be considered in any respect a cause of incapacity for rendering services to our country. But, at the same time, I feel that this provision now sought to be struck out is absolutely salutary, and without any of those disadvantages of a serious sort which have been so magnified, if I may so express it, by Mr. Carruthers. Mr. Reid has convinced me more than ever that the provision is a right one. Mr. Reid asks -Is it not a fact that the greatest criminal under the sun, after he has served his sentence, is a free man, and is eligible for election?

Sir JOHN FORREST. -

No; he is not in Victoria, nor in Western Australia either.

Mr. REID. -

Under this Constitution he is.

Sir JOHN FORREST. -

But he is not now.

Mr. SYMON. -

We make this great difference in regard to bankruptcy and insolvency; we declare that the disability is not to attach to a man who has had the pecuniary misfortune to be obliged to, have recourse to the Insolvency Court, but we say that while in many other respects a criminal after serving his sentence is considered, in a sense, a man with a free pardon, yet in the case of bankruptcy a man to be eligible must have obtained his certificate of discharge from the courts established by this Constitution.

Mr. REID. -

But-while a man who has committed a crime is eligible for election to the Commonwealth Parliament, a bankrupt may be in such a position that he cannot obtain his certificate before a general election takes place.

Mr. SYMON. -

But the criminal must have served his sentence. No criminal would be eligible for election to Parliament.

Mr. REID. -
Yes he is; he must have been sentenced to be ineligible.

Mr. SYMON. -

Then the distinction shows the care that has been taken. In the one case, in regard to criminals, the criminal is not eligible; but in regard to a bankrupt, he is eligible the moment he receives his certificate, which he will receive if his conduct is free from serious blame. The position is this: A man is adjudicated insolvent, his affairs are investigated, and, if he is innocent of any serious offence, he can obtain his certificate without much trouble.

Mr. CARRUTHERS. -

But his seat is gone.

Mr. SYMON. -

But does my honorable friend mean to say that in every case, except that of a politician, the Insolvency Court is to be the tribunal to examine into his conduct, but that in the case of a politician it is some constituency that is to inquire into it? That is really what my honorable friend contends—that in the case of a politician his constituency shall be the tribunal, and that they may re-elect him if they like. It amounts to this: It is an intimation that the constituency cannot get as their representative a man who has not the badge of bankruptcy upon him.

Mr. MCMILLAN. -

Suppose the bankrupt were elected, and then the judgment of the court were given against him?

Mr. SYMON. -

More than that, look at the handicap it gives to a man who has been adjudicated insolvent against a competitor in the same constituency. We know how appeals may be made to constituents on the ground of sympathy. We know how soft hearted we all are, and how easy it is to work upon our feelings. We have known that sort of thing before. A man goes before his constituents, and an appeal is made to them, and they say—"We will send him in because he will get his salary straight away." Let us keep these matters as free as we can. It is not the bankruptcy that is made the disability; he is only subject to the disability during the period when he has not obtained his discharge from the tribunal appointed under the Constitution to try him.

Mr. REID. -

He may have to go before the court just before a general election.

Mr. SYMON. -

It may be that in the bitterness of political strife an effort may be made
by some wealthy organization to have a man made insolvent, but I should like to know where instances of that kind have occurred.

Mr. HIGGINS. -
   It has been done.

Mr. REID. -
   In more than one colony.

Mr. GLYNN. -
   It has been done in South Australia.

Mr. SYMON. -
   At any rate, that would be an action of a very objectionable nature; but, at the same time, you have established a court for the purpose of investigating cases of bankruptcy, and it is to that court to which all matters should be referred for adjudication, and not to an electorate, which is not a competent tribunal, and which is not in a position to determine the issues as to whether or not the person is an honest debtor or not.

Dr. COCKBURN (South Australia). -
   Most of the speakers have been on one side of this question, but I take the unpopular side, and desire to say a word for the poor and unfortunate as against the rich and successful. It has been said here that financial failure necessarily involves great disgrace.

Mr. SYMON. -
   Nonsense; who said that?

Mr. REID. -
   The argument means nothing else.

Dr. COCKBURN. -
   The words were used. I think that the retention of the words of paragraph (3) of clause 4 would be a mistake, if for no other reason than this: That they involve the possibility of the processes of the courts being used for political purposes. It has been said that an insolvent can get his certificate within 30 days.

Mr. LYNE. -
   He cannot do that.

Dr. COCKBURN. -
   No an insolvent cannot get his certificate within 30 days or within anything like that time. And do not the words in question lay the court open to the charge of inducing delays, with a view of making it impossible for an unfortunate insolvent to regain his seat in Parliament, or to become a candidate if an election is pending? It is all very well to discuss this matter theoretically, but coming down to it practically in its actual bearings, I can call to mind a case in the
mother colony of Australia, and a case in New Zealand, where two men of
the highest probity, and of the greatest value
Mr. LYNE. -
I could give you another case in our own colony.
Mr. HIGGINS. -
Supposing most of the electors were insolvents, would they not be certain
to return their fellow insolvent?
Dr. COCKBURN. -
If most of the electors were insolvent, then the country would go to the
wall.
Mr. HIGGINS. -
But I mean in that particular insolvent's constituency.
Dr. COCKBURN. -
That is not likely at all; and on the broad question of whether a man in
misfortune has been culpable and dishonest, I think his own constituents
are competent to give as good a verdict as anybody else. I have always
been in favour of giving the largest choice to constituencies in selecting
their representatives. I think these words would place an insolvent in an
unfair position as compared with a criminal, because an adjudication of
insolvency does not necessarily imply crime. No crime is proved until a
verdict of guilty has been returned in a criminal court, and in the meantime
an insolvent should have as much right as an alleged criminal has. Taking
all the circumstances into account, if honorable members will look to their
own experience in their own colonies, I think that most of them will agree
with me that these words ought to come out. This provision does not exist
in all the colonies.
Sir JOHN FORREST. -
It exists in our colony.
Dr. COCKBURN. -
It does not exist in New South Wales.
Sir JOHN FORREST. -
It is law in your own colony, I believe.
Dr. COCKBURN. -
No, it is not; and I am informed that it is not law in New Zealand. The
absence of this provision in those colonies has been fraught with the
happiest results.
Mr. LYNE (New South Wales). -
This, to my mind, is a very important matter. The honorable member
who moves the excision of the words in question from the clause is only
carrying out what is the law of New South Wales at the present time. Dr.
Cockburn says that the same law exists in New Zealand, and I believe also
in Queensland. Certainly that is the law in South Australia. In the majority of the colonies, therefore, the law stands as the mover of the amendment is proposing that this law shall stand. I heard Sir John Forrest, on a previous clause, speak about taking things practically as we find them, and not looking too much to sentiment. I can tell the right honorable gentleman that the two last Prime Ministers of our colony would have been driven from office, and both of their Ministries would have been destroyed, had this provision been law in New South Wales. Schemes were laid to bring about the destruction of those Ministers and their Ministries, and those schemes would have succeeded if this provision had been the law of the land. It was only because under our law they could be re-elected that these schemes were not put into force. Under this provision you give power to monetary institutions to destroy any Minister or Member of Parliament who may happen to be in financial difficulties.

Sir JOHN FORREST. -
We are not all bankrupt in Australia, are we?

Mr. LYNE. -
Most men owe money, and some are in circumstances in which they are not able to pay their debts at once, although they are perfectly solvent if time be allowed them. They are in much the same condition as the banks in these colonies were a short time ago. Those banks were perfectly solvent, but they had not the power to liquidate their assets immediately, and they were therefore thrown into the Insolvency Court. In the same way any man may be subject to the same misadventure. I believe that in Victoria—perhaps Mr. Deakin can tell me if I am not correct—an insolvent cannot get his certificate, or does not, until he has paid 7s. in the £1.

Mr. DEAKIN. -
That is the rule. There are exceptions, but that rule is being applied under the new Insolvency Act.

Mr. LYNE. -
That is another objection to passing a provision of this kind. Although it is unfortunate that Prime Ministers and other Ministers of the Crown, as well as Members of Parliament, are not in affluent circumstances, in nine cases out of ten in which they become insolvent, that condition of affairs is brought about by their attention to public matters, to the neglect of their private interests.

Mr. ISAACS. -
The Commonwealth Parliament will have the power to frame its own bankruptcy law.
Mr. LYNE. -

No doubt. Under any conditions, if there is a Federal Parliament, and any of us here are members of that Parliament, I sincerely hope we will not be parties to the framing of a law which would in any way interfere with the rights of Ministers or Members of Parliament to re-election if they were unfortunate enough to have to go through the Insolvency Court.

Sir JOHN FORREST. -

What about those who are not unfortunate insolvents, but who are fraudulent insolvents?

Mr. LYNE. -

Then they will be convicted under the criminal law.

Sir JOHN FORREST. -

But perhaps not for a long time; not until after their re-election.

Mr. LYNE. -

Then they will very soon be turned out of Parliament.

Mr. SYMON. -

The provision as to criminals only applies to persons sentenced to imprisonment for three years or longer. Most of the sentences passed on fraudulent bankrupts in our colony are for two years' imprisonment.

Mr. LYNE. -

Whether an insolvent has been guilty of fraud or not cannot be decided until his examination takes place. If in the course of his examination he is proved to be fraudulent, then let him be proceeded against under the criminal law.

Mr. MCMILLAN. -

An insolvent's certificate may be suspended. What will you do then?

Mr. LYNE. -

The certificate of an insolvent who has not been fraudulent may be suspended, but if an insolvent is proved to have been guilty of fraud something more would be done than merely suspending his certificate. In New South Wales, as I have already said, deep schemes were laid against the two last Prime Ministers, and, if this provision had been law in that colony those schemes would have been carried out, with the result that the Premiers and their Ministries would have been destroyed. In Victoria, we have been told, an insolvent cannot get his certificate until he has paid 7s. in the £1. Now, a man might not be able to pay 7s. in the £1 through circumstances for which he was not in any way to blame, and then, under this provision, he would be debarred for all his life from becoming a member of the Federal Parliament.

Mr. OCONNOR (New South Wales). -

I wish to put a few considerations which, it appears to me, are necessary
to be dealt with. I think it would be a very bad way of settling this question if we were to take the hard cases that have been put, and determine it upon those cases alone. Surely we are not going to implant in this Constitution the principle that politicians are to be dealt with in a different way from other men in the community! What is the reason of making bankruptcy a disqualification? Because, prima facie, the affairs of a man who has

starts here
to go through the Insolvency Court are in such a state and of such a nature that be is not allowed to manage them himself. The court inquires into them, and takes charge of his estate.

Mr. LYNE. -

But the constituents have to decide whether he is fit to be returned to Parliament or not.

Mr. OCONNOR. -

I am coming to that. It is said-"Why not leave this question to the constituents of the insolvent?" Well, we all know what the operation of that would be. We know that steps would be taken to prevent the affairs of a bankrupt being brought under consideration before the election took place. Therefore he would submit himself to his constituents before they knew what his conduct had been. It is the easiest thing in the world to defer the examination of a bankrupt Member of Parliament until after his re-election. That is frequently done, so that often you have this position of things: A Member of Parliament becomes bankrupt, very few people know why; there is no examination for the period during which the writ is current; he is elected to Parliament, and afterwards an inquiry discloses a condition of things which would have induced his constituents, had they known the real state of affairs, to refuse to re-elect him. Although that condition of things may not lay him open to a charge of criminal insolvency, it may certainly stamp him as a person unfit to be a Member of Parliament.

Mr. REID. -

Should that not apply to the man who is charged with the committal of an offence, if it is to apply to an insolvent who has not been proved guilty of fraud?

Mr. OCONNOR. -

No; that is an entirely different case.

Mr. REID. -

It is a worse case.

Mr. OCONNOR. -

A man who is under committal for an alleged offence is assumed to be innocent until it is proved that he is guilty.

Mr. REID. -
So is a bankrupt or an insolvent.

Mr. OCONNOR. -

But the insolvent's affairs are in charge of the court. The insolvent has an adjudication of the court against him, and the court maintains its control over his affairs until it is shown that he has been guilty of no dishonesty. What can any man suffer from, if the law remains as it is, providing he has been a victim of misfortune such as has been referred to? The court is the very best possible tribunal to decide whether that is the case or not. If it is a case of misfortune, a discharge is granted to the insolvent. If it is not a case of misfortune, a discharge is not granted to him. Instead of considering this question from the point of view of politicians and hard cases, we must consider the public and the constituents concerned. This is a thing which should not be decided on hard cases, but on some general principles which we consider it right and fit to implant in this Constitution. I hope that the clause will be allowed to remain as it is.

Mr. TRENWITH (Victoria). -

I think that there is an aspect of this question that has not been discussed, and that is the effect of this provision upon the general honesty of the people. It is notorious that insolvency has become daily more frequent, and that less disgrace is daily being attached to it. It is notorious also that cases of insolvency always entail hardship upon the community, whether the person who is insolvent is unfortunate or fraudulent. But Mr. Carruthers seemed to me to urge the strongest reasons against striking out the words in question, when he said that public men are often called upon to take appointments on directorates that will lead them into positions of this kind. Why are public men called upon to take positions on directorates? Because they are assumed to be men of integrity, and public confidence is inspired by their names being attached to the management of those companies. Therefore, they should be given to understand that if they take this responsibility, which is alluring to the public, they must be especially vigilant, and give the public not only the guarantee of their names, but also their honest earliest vigilance in the management of those institutions to which they attach their names. I confess, at once, that my mind has been very seriously exercised about attaching this penalty to insolvency. I felt very strongly what was urged on the other side. I have been very carefully weighing the matter in the balance, and my view is that, although it may, and possibly will, work hardship in one or some individual cases, the general tendency of it will be for the benefit of the community, and for the elevation of the public honesty of the people. I have deplored, and most thoughtful men have deplored, the prevalence of
insolvency. We know how frequently, and with how little consideration, men go into insolvency and take advantage of the privileges of the Insolvency Court. In many instances they are enabled to hold their heads up as if the they had always paid their way. I do think, therefore, that this will be a salutary provision on public grounds. We ought not simply to consider its influence on the individual.

Mr. CARRUTHERS (New South Wales). -

I desire to reply to some objections urged to the proposal made by me. I will take the objections coming from the Hon. Mr. O'Connor, the Hon. Mr. Symon, and Sir John Downer, which have carried great weight in the Convention. They ask why we should place politicians on a different plane from other members of the community in regard to insolvency? Why should there be another tribunal to decide their cases? Was ever a weaker argument used? We know that whenever any member of the legal professions barrister or a solicitor-becomes insolvent, he call go on practising his profession. It is only when in the courts of insolvency he is found guilty of something amounting to a crime that the court will take away from him the right to pursue his occupation. Take the case also of a tradesman. If be becomes insolvent be can carry on his business the next day. He has not to wait until he gets his certificate of discharge. With reference to the public servants in all the colonies, although bankruptcy may cause a suspension, their offices are kept vacant for them until they have had an opportunity of getting a certificate of discharge. There is no other class in the community, looking at this argument and taking the reverse of it which is penalized as members of Parliament are sought to be penalized under this Constitution. Let us look at the matter now from the opposite standpoint. I will undertake to say that the clause as proposed will do more to undermine the honesty of public life than would the amendment which I have suggested. We have always heard it said that the poverty of public men was a great testimony to their honesty. Why was that? It was because these men in public life knew that they would not be branded as criminals if they did not seek the protection of the laws designed for the poor man. But supposing that you provide that a man shall absolutely sacrifice his public position if he becomes insolvent there will be a great temptation to public men who are poor not to have recourse to the protection of the Insolvency and the Bankruptcy Courts. You at once create a temptation which has never before existed in the public life of most of the colonies. Men who fear that they are being pursued, not with the ordinary force of the law, but with an exceptional rigour, will have a temptation presented to them, if they are weak, to adopt questionable means to save themselves from expulsion from public life. We would not
be elevating public life by inserting in the Bill a provision of this character. I should go with Sir John Downer and Mr. Symon if they proposed that a man who had been refused his certificate of discharge should be disqualified from holding his seat in Parliament, because the moment a certificate of discharge is refused a stamp of dishonesty is placed upon the insolvent's business transactions, and that should be a disqualification. But here there is no provision of that character, and the clause says that a man is to be deemed guilty before he is tried. You cannot within the 30 days, if any political opponent chooses to set the wheels in motion, get a certificate of discharge.

Mr. TRENWITH. -

If he is a good man, would not he be returned to Parliament again?

Mr. CARRUTHERS. -

He would; but the Ministry might be dissolved, and the whole state of affairs politically might be thrown into confusion. Are we to be told that three years afterwards an error, such as I have described, maybe remedied by the man being re-elected to Parliament? That is too big a price to pay in such a matter as this. I do hope, therefore, that the Convention will carry this proposal. If Sir John Downer and others who are wavering think that some protection is necessary, let it be provided in another sub-section that where a man is refused a certificate of discharge he shall be disqualified from holding his seat.

The amendment was negatived.

[The Chairman left the chair at eight minutes to one o'clock p.m. The committee resumed at ten minutes past two o'clock p.m.]

Clause 45. Any person who-

IV. Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; but this sub-section does not apply to the office of any of the Queen's Ministers of State for the Commonwealth or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Sir JOHN FORREST (Western Australia). -

I beg to move-

That the words "or of any of the Queen's Ministers in a state" be inserted after the words Ministers of State for the Commonwealth in sub-section
My object in moving for the insertion of these words is that the clause shall not apply to Ministers of the Crown in the various states. There was a provision in the Bill, in Adelaide I think it was, that a member of a state Parliament should not be eligible to be a member of the Federal Parliament. That provision was contained in the Bill of 1891, but it has been excised, and therefore in the Constitution there is nothing to prohibit a member of a state Parliament from being a member of the Federal Parliament. Unless the words I move to be inserted are inserted, a member of a state Government will not be eligible to be a member of the Federal Parliament. I can well understand that this arrangement may be inconvenient, and I should not oppose the introduction of a provision that one person should not be a member of a state Executive as well as a member of the Federal Executive. But we are confronted with a difficulty, especially in the beginning of the operation of the Federal Constitution. By-and-by, no doubt, as time goes on, the difficulty which we experience at the present time will not continue. The states will settle down, and the Federal Government will settle down, and it will be found that one man will not be eligible in the view of the electors to fill the two offices. But, at the beginning of the operation of the Constitution, we are confronted with this difficulty—that, unless these words are inserted, there is not one Premier, not one Minister of the Crown in the colonies, who will be able to nominate himself to be chosen as a member of the first Federal Parliament. To ask those who are in office at the present time, to ask those who are Premiers of colonies, to say, before they are eligible to be chosen even as a member of the Federal Parliament, they must resign all the offices they hold is, I think, absurd and not reasonable. I ask honorable members to insert these words, so that the clause shall not apply to any Minister of the Commonwealth or to any of the Queen's Ministers in the states. I think I need not say any more in regard to the matter. The thing seems to me clear enough. Unless honorable members wish to exclude all the Queen's Ministers at the present time in all the states they must vote for the insertion of these words.

Mr. OCONNOR (New South Wales). -

No doubt there are some inconveniences in adopting this proposal; but, on the other hand, there are greater inconveniences in not adopting it. I think the right honorable member has shown very good ground for carrying his amendment. The principal argument which appealed to my mind is that in this scheme of federation, particularly in the finance scheme which we have adopted, it is very necessary that the states should keep a sharp
lookout on the management of the finances of the Commonwealth, and it is highly desirable that the leading public men in the states should be in the Federal Parliament, particularly those leading public men in the states who can speak with the authority of office regarding the position of the finances of the states. Of course, under certain circumstances, it might be inconvenient, and, as the right honorable member pointed out, it would be very inconvenient to have a person occupying the dual position of a Minister in the Commonwealth and a Minister in the state. It is highly probable that the state Parliament will look after that. It is a matter we may very well leave the state Parliament to deal with. The amendment is an improvement on the clause, especially in aiding the Commonwealth at the beginning of its existence, and I think it ought to be carried.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 46. - If a senator or member of the House of Representatives-
I. Becomes subject to any of the disabilities mentioned in the last preceding section: or

II. Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

III. Directly or indirectly accepts or receives any fee or honorarium for work done or services rendered by him for or on behalf of the Commonwealth while sitting as such member:

his place shall thereupon become vacant.

Mr. ISAACS (Victoria). -

This clause has been recast by the Drafting Committee, and, as I gather, is intended to incorporate the provisions of clauses 46, 47, and 48 in the Bill as amended in Sydney. Very good work has been done by the committee in the attainment of brevity, but it seems to me that there is some little danger in connexion with this clause, and there are several points to which I should like to direct the attention of the honorable and learned member (Mr. O'Connor). The clause provides that-

I. Becomes subject to any of the disabilities mentioned in the last preceding section his place shall thereupon become vacant.

Sub-section (4) of clause 45 provides that any person who holds an office of profit under the Crown, not being the office of any of the Queen's Ministers of State for the Commonwealth, is to be the subject of a disability. Therefore, acceptance of the office of a Queen's Minister of State for the Commonwealth does not vacate the seat of a senator or member of the House of Representatives. Is it intended, or is it right, to make that a cast iron provision of the Constitution? I do not think that the
clauses of the old Bill made this provision.

Mr. OCONNOR. -

The clauses which have been remodelled were exactly to the same effect. That would have worked out in the same way.

Mr. ISAACS. -

I have no recollection of the committee coming to such a determination. In any case I should like to direct the attention of honorable members to the position that it is not left to the Commonwealth Parliament or to the people hereafter to determine whether a senator or member of the House of Representatives accepting the position of Minister of State for the Commonwealth is or is not to vacate his seat. But it seems to me that the matter ought to be left to the Federal Parliament. The next point to which I will direct attention is more serious. Sub-section (2) of clause 46 provides that the seat of a senator or member of the House of Representatives is to become vacant if he-

- takes the benefit . . . of any law relating to bankrupt or insolvent debtors.

Mr. HIGGINS. -

Does not a bankrupt take the benefit if he is given it?

Mr. ISAACS. -

A distinction has been drawn very clearly in many Acts, and is drawn in clause 46 of the old Bill. Sub-section (2) of the old clause 46 provides that the seat of a member is to become vacant if he-

- is adjudged bankrupt or insolvent, or takes the benefit of any law relating to bankrupt or insolvent debtors.

Thus a distinction is drawn between taking the benefit of the law, and being forced to take advantage of it. Some years ago a decision was given by Mr. Justice Fellows, which went very far in the direction of drawing a strong distinction between the case of a public servant who became insolvent, and one who was made insolvent, the becoming insolvent being thought a voluntary act. The result of the provision in the Bill is that, while a member taking the benefit of a

Mr. OCONNOR. -

The difficulty is got over by Sub-section (3) of the previous clause. A man's seat becomes vacant if he is the subject of any of the disabilities mentioned in clause 45, included among which are the disabilities mentioned in sub-section (3) of clause 45.

Mr. ISAACS. -

What is the meaning of sub-section (2) of clause 46?

Mr. OCONNOR. -

That sub-section refers to a voluntary act on the part of the bankrupt.
Mr. HIGGINS. -

Ought you not to have the same phrase in sub-section (2) as you have in sub-section (3) of clause 45?

Mr. ISAACS. -

Yes. That would get over the difficulty. If in sub-section (2) of clause 46 you put an express reference to a certain class of insolvency, that must exclude by inference any other class of insolvency. There is another point, and this is also a very serious one, to which the Premier of Victoria drew my attention before lunch. Sub-section (3) of clause 46 provides that the seat of a senator or member of the House of Representatives is to become vacant if he-

- directly or indirectly accepts or receives any fee or honorarium for work done or service rendered by him for and on behalf of the Commonwealth while sitting as such member.

No exception is made to meet the case of a Minister of the Crown. There is provision made elsewhere in the Constitution for the payment of salary to Ministers for services rendered to the Commonwealth, which might include his services as a senator. Clause 48A provides that-

Until the Parliament otherwise provides, each senator, and each member of the House of Representatives, shall receive for his services an allowance of £400 a year, to be reckoned from the day on which he takes his seat.

The allowance spoken of there might be regarded as an honorarium, or as a fee, but it is an allowance for "services," which is the word used in sub-section (3) of clause 46.

Mr. LYNE. -

What would be the position of a barrister or solicitor voting in connexion with a case in which he was interested outside?

Mr. ISAACS. -

The clause does not deal with that matter, though no doubt it is one of very great importance. Although most excellent work has been done by the Drafting Committee in recasting three clauses of the Bill, I think it is necessary that I should draw attention to these matters. I think that a very slight alteration would get rid of the difficulties to which I have referred.

Mr. OCONNOR (New South Wales). -

The last point which the honorable and learned member has raised no doubt requires attention, but I think the difficulty would be got over by the insertion of some words like these:

- directly or indirectly accepts or receives, otherwise than as is provided by this Constitution.
The matter is one to which the Drafting Committee will pay attention. With regard to the other matter of which he has spoken, I think that upon consideration he will find that no amendment is necessary. A member subject to any of the disabilities mentioned in clause 45 loses his seat under the provisions of clause 46. Amongst the disabilities in clause 45 is that mentioned in sub-section (3), which says that-

Any person who is an undischarged bankrupt or insolvent-

shall be incapable of sitting as a senator or member of the House of Representatives. So that directly a man became bankrupt or insolvent, and until his discharge, he is under one of the disabilities in sub-sections (3), (4), and (5). As soon as he comes under these disabilities his place becomes vacant. That deals with cases of compulsory sequestration, and leaves only those cases in which a man may voluntarily seek the assistance of the Bankruptcy Court. It is to deal with the latter cases that sub-section (2) is introduced. There are cases in which a man may make an arrangement with some of his creditors without insolvency, and yet this arrangement comes under the direction of the court, which has to give a certain legal effect to it. There are some cases in which a person may take the benefit of the insolvency laws by assignment or composition made under the direction of the court, and have a certain legal effect given to that arrangement by the court without actually becoming bankrupt or insolvent. It is to provide for cases of that kind that sub-section (2) was introduced.

Mr. HIGGINS. -

If you drop out sub-section (2) would it not answer your purpose?

Mr. OCONNOR. -

I do not think it would. The Bill would not then deal with cases of assignment or composition which take place under the guidance or protection of the court, and have legal effect given to them.

Mr. BARTON (New South Wales). -

I suggest that the words "otherwise than is provided by this Constitution" would meet the case.

Mr. HIGGINS. -

Is it intended that a member, on taking office, is to vacate his seat and be re-elected? If it is not, I think the clause would work out all right.

Mr. BARTON. -

It is not intended to impose that disability. The Constitutional Committee, during their work in 1891, did not provide for the vacating of seats by Ministers on the acceptance of office. It has been considered that the Statute of Anne really applies to a condition of things existing in that day which the progress of representative government has rendered a non-existing condition now. There is no longer the necessity for imposing that
disability on Ministers. The object of the Statute of Anne, in aiming at placemen, is no longer an object which applies to the office of Ministers of the Crown.

Mr. HIGGINS. -

You have the law in New South Wales.

Mr. BARTON. -

We have it in New South Wales and in Victoria, but not in South Australia, I believe. It is regarded now as an unnecessary burden. I agree with Mr. Higgins that, if the provision referred to be not made, the clause will work out all right. I think the Convention might very well adopt an amendment, which I now beg to move-

That in the first line of sub-section (2), after the word "services," the words "otherwise than is provided by this Constitution" be inserted.

Sir GEORGE TURNER. -

Does that let the Judges in?

Mr. BARTON. -

No, I do not think so.

The CHAIRMAN. -

Does this proposal come before the amendment of Mr. Reid?

Mr. REID. -

Yes.

Mr. BARTON. -

I will take those words, if they are inserted, to be a direction to the Drafting Committee to provide adequately for the contingency.

Mr. LEWIS (Tasmania). -

Is that not going too far? Does it not include the Judges?

Mr. ISAACS. -

This refers only to vacating seats on taking office.

Mr. BARTON. -

This provision is only to make seats vacant. A Judge would have first to get there, which he cannot.

The amendment was agreed to.

Mr. REID (New South Wales). -

I beg to move-

That in clause 46, after the word "Commonwealth," in the last line of the clause but one, insert "or for work done or services rendered in Parliament for or on behalf of any other person."

If this provision had been in the Constitution of the United States there would have been an opportunity of stopping a number of abuses in connexion with legislative measures. I do not suppose it happens in the
colonies at any rate, I know of no such case but it has been stated that Members of Parliament, even in the colonies, have accepted payment for putting Bills through the Houses. As I have said, I have never known of a case of the sort, but it is quite possible such things have happened. We do not wish such a condition of affairs to arise. If we disqualify a man for performing service for the Commonwealth for payment, it is equally important that he should be disqualified for accepting fees for work done in the legislative body. Under the latter circumstances the member works under false pretences. He appears to work in the public interest, when really he is accepting payment for putting measures through the Legislature. The words I have moved refer to quite a different class of cases to those we have just dealt with. My object is to prohibit Members of Parliament using their position for payment for advocating Bills and so forth.

Mr. ISAACS. -

What do you mean by "work done or services rendered"?

Mr. REID. -

You had better ask the Drafting Committee; I am using their words.

Mr. BARTON. -

These are the words inserted at the instance of Mr. Carruthers at Adelaide.

Mr. REID. -

This amendment refers only to the first line of the clause-"If a senator or member of the House of Representatives. The sub-section will now read:-

Directly or indirectly accepts or receives any fee or honorarium for work done or services rendered by him, for or on behalf of the Commonwealth, or for work done or services rendered in Parliament, for or on behalf of any other person.

This is a class of industry we want to suppress.

Mr. DOUGLAS (Tasmania). -

In the standing orders of the House of Commons it is laid down that members, either by themselves or by others, are prohibited from receiving fees for work done in the House of Commons. That is a standing rule I tried to introduce in Tasmania, and I think that Mr. Reid should go a little further, and insert the words-"either by themselves or any other person."

Mr. REID. -

I think that my amendment will cover every member.

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Mr. DOUGLAS. -

But the member very frequently is in partnership with others, and he
receives money indirectly through his office. This is a very common practice in regard to private Bills, and it should be prohibited. It would be well to adopt the words of the standing order of the House of Commons.

Mr. BARTON (New South Wales). -

The amendment of my right honorable friend deals to a large extent with the mischief provided for by the House of Commons in dealing with bribes. There is a passage in the tenth edition of May, page 81, which may be useful as dealing with the subject:-

So also the acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited by the severest punishments. In 1677 Mr. John Ashburnham was expelled for receiving £500 from the French merchants for business done in the House. In 1694 Sir John Trevour was declared guilty of a high crime and misdemeanour, in having, while Speaker of the House, received a gratuity of 1,000 guineas from the City of London after the passing of the Orphans.

It will be recollected that the powers, privileges, and immunities of the House of Commons will extend to the Federal Parliament under the Bill as it stands. May goes on:-

In 1695 Mr. Guy, for taking a bribe of 200 guineas, was committed to the Tower, and Mr. Hungerford was expelled for receiving 20 guineas for his services as chairman of the committees on the Orphans Bill.

I think that that is the kind of service to which my right honorable friend alluded.

Mr. REID. -

Yes.

Mr. BARTON. -

We read further in May-

Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members for professional services connected with any proceeding or measure in Parliament. A member is, accordingly, incapable of practising as counsel before the House, or on any committee. By resolution, 26th February, 1830, members of the House of Commons are prohibited from engaging, either by themselves or by a partner, in the management of private Bills before this or the other House of Parliament for pecuniary reward.

It is worthy of consideration whether a resolution of that kind is not merely declaratory of the rights of the House. May goes on-

Nor is it consistent with parliamentary or professional usage for a member to advise as counsel upon any private Bill, or other proceeding in Parliament.
There is a note referring to a resolution of June, 1858. That note says—

By resolution 22nd June, 1858, 113 C.J., 247, the Commons declared that it is derogatory to the dignity of the House that any of its members should bring forward, promote, or advocate in this House any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward.

The ruling of the Speaker regarding the scope of the resolution was reported, but to that report I have not had time to refer. This is a matter the House of Commons has always dealt with as within the scope of its powers and privileges, which powers and privileges will belong to the Federal Parliament under a preceding clause—I think clause 8—of the Constitution dealing with the matter. Under the circumstances, I ask my honorable friend to say whether it would not be advisable to leave the matter as it stands provided for by the Constitution. He may be quite sure that there will be a Parliament which will be no less prone to deal with matters of this kind than any Parliament we have any knowledge of. I confess I am a little doubtful about loading the Constitution with provisions of this kind, which, although when in the Constitution, are, in one sense, matters of legislation, are really regulations of Parliament on matters which are within its own particular province, and which Parliament may be well expected to deal with. There never has been any hesitation in a community with English representative institutions in dealing with matters of this kind. We have seen how these matters

have been dealt with by the House of Commons, and we have given the privileges of the House of Commons to the Federal Parliament. I do not think any one of us will anticipate that the Federal Parliament will be slow to avail itself of its privileges. Is it any more necessary to make provision for a matter of this kind than for a great many other matters which we may be quite sure Parliament will have under its cognisance, and which, when they are infringements of proper conduct as illustrated by the history of Parliament, will be dealt with in the way in which the British Parliament has always dealt with them. I am quite at one with Mr. Reid in his object, but I am rather inclined to think that the object would be served by leaving the matter to the operation of the Constitution as it is drawn.

Mr. REID (New South Wales). -

I must confess that, after listening to Mr. Barton, it is infinitely better this matter should be settled on the face of the Constitution than that it should come to pass some particular member should be arraigned before the House for having accepted some such reward as I have referred to. I had in my own mind the history of the working of the Constitution of the United
I wish to see put plainly on the face of this Constitution a rule which all members will have to abide by. If they did not abide by it there would be no plea of not knowing the law, or anything of that sort. I suggest, in the interests of the working of our parliamentary institutions, that this principle should be put in if only as a guide to honorable members who might perhaps not think it improper to receive payment for labour done, say, in connexion with private Bills.

Mr. ISAACS. -

If my honorable friend is going to do that, would it not be better to add the words "or corporation"?

Mr. REID. -

I will agree to that, and ask leave to amend the amendment so that it shall read "any person or corporation."

The amendment was amended by leave.

The amendment was agreed to.

Mr. KINGSTON (South Australia). -

I would suggest that we should probably carry out what we desire if instead of specifying on whose behalf anything might be done, we should simply say that any member of the Senate or House of Representatives who directly or indirectly received payment for labour done or for services other than those for which an honorarium was provided by the Constitution should be liable to this penalty.

Mr. BARTON. -

We have inserted words to that effect.

Mr. KINGSTON. -

It would make it just as complete and more effectual if we struck out all the attempted specification of the persons on whose behalf the work might be done. We should simply impose the penalty if he did work as a senator or member of the House of Representatives, and took any remuneration which is not provided by the Constitution.

Mr. BARTON. -

I will take a note of that matter.

Clause, as amended, agreed to.

Clause 52-The Parliament shall, subject to the provisions of this Constitution, have full power to make laws for the peace, order, and good government of the Commonwealth with respect to-

(1) The regulation of trade and commerce with other countries and among the several states.

Mr. GLYNN (South Australia). -

I beg to move-

For the purposes of this sub-section, waters shall be deemed navigable
for trade and commerce which, either by themselves or in connexion with other waters, are in fact navigated permanently or intermittently for trade and commerce with other nations, or among the several states.

I gave notice of this amendment after the printed list of amendments was issued. I have given notice of it with some hesitation, and it was only after I saw that the Right Hon. Mr. Reid proposed to add another sub-section that I did so. My desire is simply to leave the various colonies in the position in which they were when

the Constitution was drafted. I am not going to argue at length the policy of this matter. Honorable members will have it in their minds that a definition was introduced to give certainty as to what could be done, that is, as to the application of the principle of many of the American decisions to the river systems of Australia. It is not the application of the principle of the American decisions to the Darling only, but to the Murray, because there are many months in the year when the Murray, from Albury down to the mouth, is a navigable river.

Mr. LYNE. -

Are you sure that this will not extend to everything?

Mr. GLYNN. -

I will explain to the honorable member that it does not extend to everything. My amendment is to cover the case of a river which may be navigable six or eight months in the year, and which is not navigable during the rest of the year. That will leave out all the rivers which do not form part of the great chain of communication which the Darling and the Murray do among the various states. The proposal is to add to sub-section (1), for the purposes of this sub-section, that waters shall be deemed navigable for trade and commerce which, either by themselves or in connexion with other waters, are navigated permanently or intermittently for trade and commerce with other nations or among the several states.

Mr. REID. -

You provide that they shall be deemed navigable for trade and commerce during the particular time when they are not navigable.

Mr. GLYNN. -

The section does not state that they shall be navigable at all times.

Mr. REID. -

You say that they shall be deemed navigable even at the time when they are intermittent.

Mr. GLYNN. -

The right honorable gentleman will see that they are deemed to be navigable only for a certain purpose under sub-section (1), that is, for the
purpose of the Federal Parliament having jurisdiction to legislate in relation to them. That will take away from what might otherwise be the absurdity of declaring that a river is what it is not. I only want the definition for a specific purpose, the purpose of giving the Federal Parliament power to legislate over the several rivers. I would remind honorable members of what Mr. Isaacs said, in his clear and able speech on the rivers question, that the Judiciary has no power under the trade and commerce clause in America until the Parliament legislates. That, I understand, is the principle which is so clearly expounded by the honorable member.

Mr. REID. -
I will accept the honorable member's amendment if he will accept mine.

Mr. GLYNN. -
I should like to oblige the honorable gentleman, but the best way is to get my amendment in first, and then see what it looks like. I should like to shorten debate by not moving my amendment if Mr. Reid will consent to strike his out. However much I would regret the non-passing of my amendment, I am willing to sit down on these conditions. I wish to make one or two references to the speeches which were made on this subject after this clause had been put in with the general assent of the committee, because there was no division on the question, but it was subsequently struck out on an understanding-if not of all honorable members, at all events an understanding on the part of most honorable members-that if the definition were struck out nothing further would be done to interfere with the trade and commerce clause, and that there would be no attempt either by Victoria or New South Wales to introduce anything that would not leave the colonies in the position in which they are at the present time, except so far as the trade and commerce clause would, under the Constitution, affect their relative positions.

Mr. LYNE. -
Why not mention South Australia, as well as Victoria and New South Wales?

Mr. GLYNN. -
Because the surrender of this clause was made by South Australia. Some honorable members, whose votes would have carried the clause, expressed a great desire to do so, but, like Sir John Downer, they stated that they would rather have the clause struck out, upon an understanding that nothing else would be done. They did that in order to stop debate, which, we were afraid, would run into another fortnight; otherwise they would
have voted for the retention of this definition. I am sure from the speeches of some other honorable members that there was a general understanding that if this definition were struck out, nothing further would be done.

Mr. Reid. -
I announced my intention if possible to allow that to be the case, but I have made most diligent inquiry since then, and I find it is impossible.

Mr. Glynn. -
I understand that to be the case. Although the understanding was not general, I will show by quotations from Hansard that a great many honorable members did vote

I am prepared to take the risk of these general words so far as I am concerned, because I am quite in favour of any federal control over anything used for intercolonial purposes.

That is somewhat in the spirit in which I moved this amendment to give some control over rivers that are really to be used for federal purposes. Then Mr. Isaacs spoke, and, though he desired that something further should be subsequently added, still he did not object to the insertion of this definition.

Mr. Isaacs. -
Oh, yes.

Mr. Glynn. -
The honorable member's assent to its introduction was qualified by the expression of an inclination that something further should be added afterwards for irrigation and conservation.

Mr. Isaacs. -
I stated then, and I think now, that the word "navigation" is not sufficient. It should be "navigable."

Mr. Glynn. -
The honorable member used these words:-

I shall, however, support the insertion of these words, but I hope that hereafter we shall have some provision made with regard to conservation and irrigation.

Then, later on, Sir John Downer, at page 583 of the debates, expressed his belief that, as a matter of principle, the definition ought to be introduced, but that, in order to stop further discussion, he would vote against the definition, on a sort of general understanding that nothing further would be done. Sir John Downer said-

That amendment took into consideration all the views upon the subject. It dealt exhaustively with every question. The same reason which made me support the amendment of Mr. Isaacs makes me oppose that of Mr. Reid. If it becomes necessary, or will assist in any friendly understanding, to strike
out Mr. Glynn's clause, I would, although I should think it a mistake to do so, agree to that, rather than part with a misunderstanding.

There is an expressed condition that he gave his vote, on the understanding that nothing further would be done if this definition were struck out. There were several other honorable members who expressed themselves in a similar way. Sir John Forrest, for example, who was particularly strong on this being done as a sort of compromise, said, at page 605-

I rise for two purposes. First of all, I wish to express the hope that the very reasonable suggestion—and I think the best suggestion that could be made—of the leader of the Convention (Mr. Barton) will be generally accepted by honorable members. It seems to me that we shall never be likely to get any proposal which will probably secure more general approval.

The proposal of Mr. Barton was to strike out the definition, and he said if that was done he would not vote for the introduction of Mr. Reid's or any other amendment to a similar effect. That shows that we have support given on that understanding by Sir John Forrest. Then Sir Edward Braddon spoke on the subject.

Mr. REID. -

It is not necessary to go into detail after you have stated the general effect of the speeches.

Mr. GLYNN. -

I think it better to refer to these expressions of opinion.

Mr. REID. -

We shall get into a very long discussion.

Mr. GLYNN. -

I will not go into the merits of the definition, but I think it is necessary to prove these facts. Sir Edward Braddon said-

I think we might have come to a decision, and a satisfactory decision, on these matters, within five minutes or so, if the pronouncement of my right honorable friend (Mr. Reid) had been more definite in its terms—if he had given an unqualified engagement to withdraw his amendment.

It will, therefore, be seen that the question was asked, but no answer was given; but there is the intention of Sir Edward Braddon clearly stated that he would vote to strike out the definition as a compromise.

Mr. REID. -

Was it the same definition as this?

Mr. GLYNN. -
Practically the same definition, although I am not quite sure whether the word "navigable" was in it before. I put the word in now because it will strengthen, as some members suggested, the position of New South Wales in regard to the matter.

Mr. REID. -

If trade and commerce are carried along any river among the several states, surely that would come within the general words without the definition, because wherever intercolonial trade and commerce go, there the power to regulate it goes.

Mr. GLYNN. -

I take the position to be this: There have been state decisions in America on the question of intermittency, but the matter has not yet received judgment from the High Court, so far as I can find out, in America. I want the question of intermittency to be settled, because it is well that enterprise should not be stopped until, in the first place, the Federal Parliament has passed an Act, and then a judicial decision has been given as to the meaning of it. Because honorable members must bear in mind that this does not give the Judiciary control under the trade and commerce clause until an Act of the Federal Parliament is passed, and before anything can be done to interfere with the so-called rights of New South Wales that Act will have to run the gauntlet of the two Houses of the Federal Legislature. It may be rejected. The amendment was rejected by the casting vote of the Chairman, given, as you, sir, said, in the interests of the federal cause, not necessarily that you did not believe in the retention of the definition. Subsequently, Sir George Turner proposed an amendment which, in fact, was almost identical with the one of which Mr. Reid and Mr. Carruthers have now given notice. What was the result of that? As my definition has been struck out, apparently on a general understanding, the Convention expressed its disinclination to do anything by rejecting Sir George Turner's amendment by 35 votes to 8—a pretty conclusive expression of the view of the committee that the tacit understanding on which my amendment was struck out should not be broken. Is it fair that Mr. Reid should bring forward a proposal to limits the rights of South Australia, now that the definition, which was a federal one, has been struck out? I ask the committee to say that either the whole of the amendments shall be rejected, or that mine shall be put in as well as the others. If Mr. Reid's and Mr. Carruthers' proposals are carried, South Australia would certainly be in a worse position than she is in now. At present we can go into the courts of New South Wales and take action in regard to any breach of riparian rights which may have been taken away; but we are setting up in the Constitution a ban upon doing that. At present, we can take action in a court of the
offending state, but under this Constitution we abrogate that right. That is not fair, and will result in considerable opposition to the adoption of the Constitution in South Australia. I ask the Convention to adhere to the understanding arrived at when my definition was struck out, and insert none of these proposals, or to insert mine; and, in order to be on the safe side, I move the insertion of this definition, and hope that it will be put in.

Mr. HIGGINS. -
What is the meaning of your words "navigated permanently or intermittently"? If one single boat goes up and down a river once in ten years the river would be intermittently navigated.

Mr. GLYNN. -
Yes, because the power of navigation would exist. But the Judiciary will have to look into the facts of the case before it gives a decision as to whether a river is navigable or not.

Mr. HIGGINS. -
Do you intend to say by your definition of "navigable" that if there is one boat in ten years upon a river that river is "in fact navigated permanently or intermittently"?

Mr. GLYNN. -
A river would not be likely to be considered by the court to be a navigable river because there was a chance of going up or down it in a boat once in eight or ten years.

Mr. REID. -
Is there power to limit the application to rivers intermittently navigable?

Mr. GLYNN. -
There is not under the Constitution, but there is a decision in America as to whether a river is navigable when it can only be used for purposes of navigation for a few months in a year. In America the decisions upon the question of intermittency have had reference to rivers that are frozen in certain periods of the year. But the trouble here is that there is no water in the rivers for a certain period of the year. That is a different matter altogether; and when you come to apply American definitions to a river like the Darling, that perhaps has no flow for eighteen months at a time, it is a matter of doubt as to whether the trade and commerce clause will have any application. I wish to make the matter sure, and it is for that purpose that I move this amendment; but if Mr. Reid withdraws his, I will withdraw mine. I ask, however, in fairness to South Australia, that mine may be inserted if Mr. Reid's is inserted, although mine was previously rejected on the understanding that nothing would be done.
Mr. REID (New South Wales). -

I would like to suggest to my honorable friends from South Australia for their serious consideration, whether this definition would not result in limiting instead of enlarging the operation of the general words? I take it that this power of regulating trade and commerce among the several states—given in these particular general words will follow such trade and commerce everywhere.

Mr. BARTON. -

It will follow trade wherever it goes.

Mr. REID. -

Yes, wherever it goes, whether over a macadamized road, or over a bridge, or over railways, or on the waters of rivers, so long as trade and commerce is carried there.

Mr. ISAACS. -

Or into warehouses?

Mr. REID. -

If a warehouse is used for the purpose of intercolonial trade and commerce, and if any differential rate is imposed which has the effect of limiting trade and commerce, then the provision could extend to that warehouse I submit, because it would be antagonistic to the spirit of this provision if any such establishment were allowed by its rates to affect equality of commercial intercourse. Therefore, the attempt to say whether a river shall be deemed to be navigable is out of place and unnecessary. Suppose during the time the Darling is navigable intercolonial commerce is being carried on it, surely the power of the Commonwealth would be sufficient to say that that river, quite irrespective of whether it was used permanently for the purpose of trade and commerce or not, was in fact used at all for that purpose. The power of the Commonwealth would apply to it just as that power could be applied to a road which was unpassable for the period of a year. Would it not be absurd to say that a road that was not passable through any cause for the period of a year was not to be deemed a road at all? Knowing as we do that the court would administer this provision free from quibbles, and would not allow a river which was used for trade and commerce to be interfered with in a way which would prevent trade and commerce flowing upon it, what need is there for inserting this definition? If we define rivers we should define roads. But that is unnecessary, and, therefore, I submit that the power of the Commonwealth under the provision in the Bill is sufficient to extend over all rivers that are used for trade and commerce, whether permanently or intermittently navigable. But I say it is a perfect excrescence to put that
particular provision in this clause, and, further, that my honorable friend
has asked for something that he has already got in the Bill.
Mr. ISAACS (Victoria). -

I think we do want something in this Bill in the way of a definition of
"navigable" rivers, by reason of the differences between the definition of
navigable rivers in America and English decisions with regard to navigable
rivers. I have said before on m

Mr. REID. -

How can that bear on any thing under the inter-state trade an commerce
clauses?
Mr. ISAACS. -

There is no definition of a navigable river in this Bill at present, and one
is certainly wanted. But this is one of those things in which I quite despair
of doing anything in the direction I desire, because of the tremendous
expressions of opinion the other way. Still, there is a very grave danger, as
Mr. Reid has said, that the insertion of Mr. Glynn's definition may tend to
limit the clause. What the honorable member wants to do is to say that
navigable waters shall include rivers which are in fact navigable
permanently or intermittently for trade and commerce with other nations,
or among the several states. But when he turns his proposal the other way
and says that, for the purposes of sub-section (1) of clause 52, waters shall
be deemed navigable for trade and commerce which, either by themselves
or in connexion with other waters, are in fact navigated permanently or
intermittently for trade and commerce with other nations, or among the
several states, he introduces a limitation.
Mr. GLYNN. -

Will you support my amendment if I change it as you suggest?
Mr. ISAACS. -

I should certainly prefer that the amendment should say that rivers are
deemed to be navigable, if they are in fact navigable for trade and
commerce between the several states or with foreign countries.
Mr. REID. -

No one objects to that.
Mr. ISAACS. -

That would take us out of the doubt as to whether the American or the
English decisions are to be followed here. The amendment may operate as
a limitation of sub-section (1) of the clause, if it is inserted there-I do not
think that that is a proper place to put it in. I should say that if it is to be put
in at all it should be added to sub-section (8), where we deal with
navigation and shipping. If the amendment is altered to this form-"Rivers
shall be deemed to be navigable if they are in fact navigable for trade and
commerce among the states and to foreign countries," there would be no risk of limiting the first sub-section. But after the terrific expression of opinion we have had on this matter one cannot but despair of doing anything satisfactory in regard to it.

Mr. BARTON (New South Wales). -

I am in very grave doubts as to whether Mr. Glynn will gain anything by inserting this definition in the Bill. I am inclined to agree with both Mr. Reid and Mr. Isaacs that, as submitted, it amounts to a limitation. And, even if it is altered in the way Mr. Isaacs has suggested, I do not think it would really work any good thing for the benefit of the object which Mr. Glynn has in view. If we are to attach any value to what has gone before in the interpretation of such a clause as the trade and commerce clause, it strikes me that the commerce that goes on among the states, or between any part of the Commonwealth and a foreign country, is under the regulation of the Commonwealth, and it does not seem to me to matter where the commerce is found. A river may be practically a road which is for the time being impracticable. Commerce may be impracticable on a river which for a time is too shallow, if not dry. But whether the commerce arises and takes place from one state to another, no matter how many states may intervene, then, whether that commerce be carried by road, river, or rail, it seems to me to be interstate commerce, and subject to the jurisdiction of the Commonwealth authority. If that is so-and it seems to me a quite sound view-there is no necessity for any definition. I speak with some feeling on this subject, because from the beginning to the end I have been prepared to take the risks of the trade and commerce clause, whether as regards the use of water or the regulation of traffic, and I have consistently opposed any limitation or definition which might in any way control the power of the Commonwealth to deal, as to it seems just, within the limits of the Constitution, with any trade or commerce between the states. That is the position I hold now, and I think, therefore, that Mr. Glynn's amendment is unnecessary. I do not think it can take any effect in extending the power of the Commonwealth to deal with inter-state trade and commerce wherever it finds that trade and commerce; and I am perfectly willing that that power should be properly maintained by the Commonwealth.

Mr. GORDON (South Australia). -

I have felt very keenly on this subject, as honorable members know, and I am rather inclined to ask Mr. Glynn not to press his amendment. While I think that a definition of this kind is exceedingly desirable, I agree with Mr. Isaacs that it is more than difficult to insert a definition in this Bill.
Moreover, I cannot conceive of the High Court holding that the River
Darling, which is the crux of this question, is not a highway of commerce,
whatever the English decisions under the common law have been.

Mr. BARTON. -

The High Court will not have to decide whether the river is navigable,
but whether there is an infringement of the power of the Inter-State
Commission to regulate commerce on that river.

Mr. GORDON. -

I am aware that it is a contradiction in terms, but I think a river may be a
permanent highway for commerce even if navigation on that river is not
continuous. It is a permanent highway for commerce, with certain
interruptions during the year. But I cannot imagine the High Court
deciding that the Darling is anything but a navigable river.

Mr. HIGGINS. -

Is it a permanent highway for boats or buggies?

Mr. GLYNN (South Australia). -

It is sometimes a mistake to vary one's amendments in deference to the
wishes of honorable members. When I first introduced my amendment,
"navigable" was the word I used, but, in deference to representatives of
New South Wales, I changed it to "navigated." Then the very honorable
members who induced me to make that change attacked the amendment. It
is a dangerous thing to bow to the prejudices of your opponents in any
way. In order that the amendment may be submitted as I originally drafted
it, I now ask leave to amend it by substituting the word "navigable" for the
word "navigated."

The amendment was, by leave amended accordingly.

Mr. SYMON (South Australia). -

I doubt very much the expediency of pressing this amendment or whether
it will
carry the matter any further than we have had it before. The amendment is
a very laudable effort by Mr. Glynn to settle a very difficult question. But I
voted against it before for two reasons-one, because it was unnecessary,
and possibly a limitation; the other because I thought it would lead to the
clearing away of another amendment proposed by Mr. Reid, and in order
that everything might then be left to the operation of the general trade and
commerce clauses. As Mr. Glynn said, we are now face to face with other
amendments which raise the whole question again, and he was placed in
the position of being practically compelled to move his amendment. Still, I
would point out to him that whilst the object of the amendment is to
prevent the possibility of doubt as to the application of American
authorities with regard to what is meant by a "navigable river," it is not exhaustive, because the American courts, in dealing with this matter of navigation, took into consideration the question of irrigation. Their conditions are very largely the same as ours, and this is just one of those cases in which the courts of these colonies, like the courts of America, must be influenced by local conditions and local enterprise in the application of the law. That is what we look for, and that is what we hope for. If an amendment of this sort were introduced, it would be necessary, in order to make it thoroughly exhaustive, to add some such words as these-

"And in applying this definition regard shall be had to the necessities of water conservation and of irrigation" It would be impossible to do justice by practically giving a direction to the Federal Court to hold a river navigable without taking into consideration the necessities of irrigation in the different localities. I would ask the honorable member to reconsider the position from that point of view.

Sir JOHN DOWNER (South Australia). -

I would also ask the honorable member not to press his amendment, and I would, at the same time, ask the Right Hon. Mr. Reid and the Hon. Mr. Carruthers not to press the amendments of which they have given notice. They all deal with practically the same question, and I think we may be content with the general words "regulation of trade and commerce." In the evolution of the Constitution it may be found that those words have no necessary application to navigation. Commerce may, under certain conditions, be better served by irrigation than by navigation. Navigation is the test in some countries, simply because they have no other criterion: but, as was pointed out by Mr. Isaacs in the great speech he delivered on the subject, circumstances have made a different test applicable in certain parts of America. Mr. Glynn wants to put something in to preserve the rights of navigation. Mr. Reid wants to put something in to preserve the rights of irrigation. In my opinion neither is necessary, and the clause had much better be left alone. With all sympathy for Mr. Glynn, I shall vote against his amendment, just as I shall vote against the amendment to be proposed by Mr. Reid. I understood that an agreement was come to.

Mr. REID. -

Do not say that.

Sir JOHN DOWNER. -

It was uncommonly like an agreement on the part of the right honorable member.

Mr. REID. -

That is unfair. I distinctly reserved to myself the right to move an amendment.
Mr. HIGGINS. -
Could not Mr. Glynn's amendment be postponed until after Mr. Reid's amendment was dealt with?

Sir JOHN DOWNER. -
It would be more convenient to consider Mr. Reid's amendment first, and with that object in view, I beg to move:-

That the consideration of sub-section (1) and sub-section (2) be postponed until after the consideration of sub-section (8).

The CHAIRMAN. -
I would ask the Right Hon. Mr. Reid whether he intends to move the proposition that stands in his name, because he did not get leave from the Convention to do so?

Mr. REID. -
I thought I did.

The CHAIRMAN. -
I have the President's memorandum here.

Mr. REID. -
I thought I had leave. The Hon. Mr. Carruthers' amendment will, however, raise the same question.

The motion for the postponement of sub-sections (1) and (2) was agreed to.

Clause 52, sub-section (8). - Navigation and shipping.

Mr. CARRUTHERS (New South Wales). -
I beg to move-

That the following words be added to sub-section (8):-"But so that as regards rivers, the utilization of the waters thereof for navigation shall be subordinate to the conservation of the said waters by and within any state to meet the requirements of such state and its people."

There is no doubt whatever-and I say this on the authority of the leader of the Convention, and of the paper by Mr. Inglis Clark, which has been printed by order of the Convention-that under the Bill as it stands the right of a state to conserve water, and to utilize water for irrigation purposes, is made subordinate to the right of the Commonwealth to use that water for navigation, and for the purposes of the subsection relating to trade and commerce. No one will gainsay that position. Looking at the matter in that broad light, it amounts to this: That navigation is to be the paramount consideration in connexion with all the streams of Australia, whether it is carried on intermittently or permanently, and that neither the states nor the people of the states are to have the right to use the water for the development of their own territory without any danger of hindrance on the
part of the Federal Government. That position may be eminently satisfactory to the colonies of Western Australia still until the Federal Parliament chose to legislate. We are asked now to give up rights which we believe to be essential to the progress and development of a large portion of Australia, and to trust to the sense of justice of some body which will act in the dim distant future. I say that, so far as the colony of New South Wales is concerned, the interests involved are too gigantic to be relegated to any arena in which uncertainty and risk may hold supremacy. When it was under discussion before, a large proportion of the members of the delegation thought that if we left the matter stay in the position in which it rested in Adelaide, or if we struck out all references to rivers, that matters would be satisfactorily ended. But I think most honorable members now see that instead of a satisfactory solution of the difficulty the difficulty is only intensified. So far as Victoria is concerned, I am credibly informed by the gentleman who presides over the Melbourne Water Supply that even the water that is used to supply to the city of Melbourne is created by a diversion of waters which otherwise would flow into the Murray River; that the Yan Yean water supply to this great city is one which may be held illegal under the provisions of this Constitution, unless there is an exception made in regard to it. Surely honorable members will never hesitate to say that to divert water continually, year after year in greater quantities, from its natural channel, to give a supply to one of the largest cities of Australia is not, to some considerable extent, interfering with the volume of water which would otherwise flow into the bed of the Murray. At any rate, it places in this one respect it is a very pointed instance the actual requirements and needs of the population of one locality for its daily purposes at the mercy of a majority for the time being legislating in the Federal Parliament. The majority may have trade or other interests which will impel it to do a wrong. I do not say it will do a wrong, but it may do a wrong. More than that, we have the risk that these works, in whose construction a large capital has been embarked, may at any moment be declared illegal. The risk is too great; the uncertainty is one which ought not to be created. No uncertainty has existed in the past, and there is no reason to create any uncertainty. If we take the rivers which will be most largely benefited by this—the Darling and the Murrumbidgee—I find there that this is a fair sample of the expenditure which has been incurred—an expenditure which will necessarily have to be incurred for similar works—on two runs abutting on the Darling River in New South Wales. There has already been an expenditure of £25,000 in erecting dams and making cuttings in order to give a supply to those two runs, Albermarle and
Terrawheena. That expenditure has been undertaken simply because the persons whose money was put into the enterprise felt that there was some security of title which they would get to those works. What has been the result of that expenditure? The result of the expenditure so far as the profitable occupation of the land is concerned, has been that one lake-

The CHAIRMAN. -

I must ask honorable members not to hold conversations in the chamber.

Mr. CARRUTHERS. -

I am sure that honorable members who are not paying any attention to my remarks, will be very ready to vote irrespective of the facts which are adduced, and which I say are of vital concern.

Sir JOHN FORREST. -

We have heard them before.

Mr. CARRUTHERS. -

I have no doubt that those who are not intimately concerned in this subject can hardly realize the intensity of the feeling which has been provoked by the proposition of the Convention to interfere with those rights. I was saying, sir, when you interposed that the expenditure on those two runs has resulted in the filling of a lake, 17,000 acres in extent, to a depth of 17 feet at the inlet, and feeding from that lake into creeks running from it to a distance of from 17 miles to 25 miles back. Suppose it were held that the works were illegal, that they diverted an enormous quantity of water, as they do, from the Darling, and it was held to be necessary to cut the main dam which holds the water back, what would be the result so far as benefiting the navigation is concerned? It would take from six to seven months for that water to flow back into the Darling. The flow back would be so slow as not to appreciably influence the waters for the purpose of navigation at all. It is only in times of flood, when the banks of the Darling overflow, that these lakes and their tributary system can be replenished with water. If that water supply were allowed to flow back to the Darling, and the works were held to be illegal, the flow would be so slow as not to appreciably influence the supply of water for navigation. But what did these works effect? Albermarle run is 1,000,000 acres in extent; Terrawheena run is 850,000 acres in extent; and there are two other runs also abutting on the works. Over 4,000,000 acres, by this joint expenditure of the proprietors, is rendered fit for profitable pastoral occupation. Take away from these men the security to their works, and you at once destroy the value of all their properties; you diminish the occupation right to the land; you diminish the productiveness of that large area. Here is another very potent fact worth
taking into consideration—that these very works in the interior of our colony have not merely increased the water supply on the soil, but have improved the climatic conditions, that whilst these lakes are filled more showers of rain fall, and that the rainfall gets to within a distance of 25 miles of the lakes and the creeks which are filled. So that we have this double gain: The climate itself is improved, and the country itself is rendered more profitable for occupation. That is one work which is undertaken along the river at an expenditure of £25,000. Other similar works could be undertaken along the whole course of that river, but who would undertake them when he would have no security of tenure whatever; when at any moment the Federal Parliament chooses to legislate antagonistic to the interests of these men their titles are swept away, their expenditure goes for naught, and they have nothing to show for their enterprise or for their work? Honorable members must know that it is the state of uncertainty which is created as to matters of this kind which at all times will prevent the application of enterprise and the expenditure of capital. And it is proposed, if this Bill is left as it stands, to leave matters in such a state of uncertainty that no sane man in New South Wales would expend one penny piece on any waterworks in any part of that dry interior, and the Government itself would not be justified in expending one shilling piece of the revenue of the people of New South Wales on any system of water conservation or irrigation in regard to the waters which flow into those rivers which are the subject of controversy and conflict. The immediate result will be, until the Federal Parliament has legislated, the stoppage of all those necessary works which are required if our territory is to be developed and profitably and permanently occupied. I said before that so far as the Darling is concerned, and I say so far as the Murrumbidgee is concerned, Australia would be the gainer if every drop of the water were taken out of those rivers for irrigation and conservation, and the river beds were dry. I say it again, that it would pay New South Wales, it would pay the Commonwealth, to largely compensate the colonies which are injured by the loss of navigation rather than that there should be any impediment to the full and free development of our territory by the best use of its waters, and I have no fear whatever of the use which may be made of the argument. If the day is to come when the Darling and the Murrumbidgee are to be drained dry for irrigation purposes, Australia will be all the happier and all the better for that day having arrived. It is only a blind policy which, for the sake of keeping things as they are, will prevent us from using things better than they have been used in the past. The day is not far distant when railway carriage will be made so cheap as to compete absolutely and profitably with water carriage. The prices are coming nearer
and nearer every day. If the day ever comes when the navigation of these rivers has to be destroyed to secure water conservation and irrigation the volume of traffic will be so great as to profitably employ lines of railways on each side of the river at very low rates. But we shall never have any large volume of traffic if, whenever the suggestion is made to divide the water for conservation and irrigation, the threat of the power of the Federal Government is held over the enterprise. I do not think it wise to detain honorable members at any great length in regard to this matter, because it has already been so fully debated. I think that the vote arrived at upon a previous occasion was arrived at under a grave misconception of the results which will follow from it. Honorable members voted for the amendment of the Attorney-General of Victoria because they thought that irrigation and water conservation would not be threatened; but under the Bill as it stands water conservation and irrigation are made subservient to the whim and will of the Federal Parliament and of those who get a majority there.

Sir WILLIAM ZEAL. -

The Attorney-General of Victoria voted with you.

Mr. CARRUTHERS. -

I know that, but subsequently the proposal was made that where the rights of water conservation and of navigation came into conflict, the rights of water conservation should be subservient to those of navigation. On that proposal we who represent New South Wales were in a minority, and we were in a minority largely owing to the fact that a great many honorable members did not realize that, as the Bill stands, the enterprise of Australia in the direction of using water in accordance with modern science, to make land more productive, is absolutely fettered. No scheme for taking water out of any of our rivers can be entered upon without the permission of the Federal Parliament. Private capital is a timid thing at the best, and, under these conditions, will never be invested in waterworks, while public capital will be invested only at great risk. Consequently, a great impediment has been put in the way of the reasonable and progressive development of our territory. For that reason I ask honorable members to place the matter beyond all controversy and doubt by clearly enacting, in accordance with modern science and engineering, and in the cause of the progress of Australia, that navigation must take a subordinate place to water conservation and irrigation.

Mr. ISAACS (Victoria). -

From the beginning, I have been in favour of making irrigation and conservation the first charge, so to speak, upon the waters of our navigable rivers. I have always endeavoured to put it to the Convention, that by
leaving the trade and commerce clause to operate without any qualification whatever we are running a very serious risk. If the American decisions are to be followed, the absolute certainty is that navigation will be regarded as the dominant purpose in regard to these rivers. I intend to support the amendment of the honorable member (Mr. Carruthers), but I wish to propose an amendment in it which will carry it a little further. As it stands, it does not relate to irrigation, but merely to conservation. I do not think my honorable friend will have any objection if I make it refer also to irrigation. I therefore beg to move—

That the amendment be amended by the insertion, after the word "conservation," of the words "and to the use for irrigation purposes."

The proposed clause will require some qualification, but I understand that attention is paid to the verbiage of these provisions when the sense of the committee in regard to them has been obtained. If the committee is going to accept the modification of the trade and commerce clause with regard to conservation, I apprehend that there will be no objection to including irrigation. I do not intend to speak at any great length upon this subject. I wish, however, to state once again that it is of intense importance to Victoria that all her powers of irrigation shall not be curtailed in the way in which they may be curtailed if the amendment which has been proposed is not carried. I would like to refer, in a very few words, to the latest decision of the Supreme Court of the United States in regard to this matter, and it carries the question to the

very verge. In 1896 the court gave a decision in this case-strange to say this decision was unanimous, a most remarkable thing for that court—placing the claims of navigation beyond all other claims. The decision was given in the case of Gibson v. The United States, 166 United States Reports, 269. The heading runs thus:-

Riparian ownership of navigable rivers subject to the

Mr. BARTON. -

How did the case arise?

Mr. ISAACS. -

In regard to an Act of Congress permitting of the construction of a dyke by the United States in a certain island of the Ohio River, whereby damage was done to Mr. Gibson. Chief Justice Fuller places the matter beyond all possibility of controversy. He says—

All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and although the title to the shore and submerged soil is in the various states, and individual owners under them, it is always subject to the servitude in respect of navigation
created in favour of the Federal Government by the Constitution.

That was a statement, in as terse and vigorous language as it is possible to conceive, that everything must yield to navigation. The position is too important for Victoria and New South Wales to overlook. Therefore, I ask honorable members to reverse the decision which was come to upon a former occasion. I see no useful purpose to be served by reiterating the arguments which I used then, and which must be fresh in the minds of honorable members. I simply content myself with moving my amendment.

Mr. REID (New South Wales). -

I would have been very glad indeed if we could have avoided raising this most difficult and troublesome matter again. I congratulate my honorable friends who preceded me on dealing with the question in a brief way, and I hope that I and others who follow will do the same. I have taken a great deal of trouble over this matter, in the hope that I might be able to see some way out of the difficulty without asking the Convention to reconsider the interests of water conservation. I have had the officers connected with the New South Wales system of rivers and water supplymen of vast experience, who have been in the public service of that colony for many years-in consultation with me frequently. All I can say is that, after having had the benefit of their advice, I find it absolutely impossible to leave this matter in the position in which it is left in the Bill. If the states rights of legislation in connexion with the improvement of their resources by the use of water were on a par with the power of the Commonwealth, I might be prepared to let the matter stand at that, but as this Constitution is framed the Commonwealth power of navigation is absolutely supreme and binding on all the states and on all the subjects, without the slightest opportunity of appeal or revision. Clause 7 makes the Commonwealth laws binding on the states and on their inhabitants, and another clause confirms the supremacy of the Commonwealth laws. The fact—the bald naked fact—remains that if this Constitution is passed as it stands, whilst the Commonwealth will be invested with the duty and the paramount power of carrying out that duty for water conservation and improving the interests of navigation, it will not own, in the slightest, duty of any kind to the states with reference to the power of water conservation. It would be infinitely better to hand over the power and duty of water conservation to the Commonwealth than to leave matters in their present condition. Then the Commonwealth would have an equal duty, an equal trust, and an equal power in dealing with the vital requirements of the states in connexion with the development of their resources. But, unfortunately, as matters stand, the enormous interests involved in the development of the resources of the
colonies are entirely "out of sight in connexion with the administration of the powers of the Commonwealth as to navigation. We may be told that, notwithstanding this, those powers will be used in such a way as to protect the interests of the colonies in reference to water conservation. That statement is not a sufficient satisfaction. In the nature of the case if works involving large expenditures of money are constructed there must be some better guarantee than that which a state can give to any water conservation trust. Under the Commonwealth laws no state giving a water concession could give the slightest guarantee that that water concession would be observed. The supreme power may at any moment, for a good object we admit, destroy the utility of a work of conservation dependent on the waters of the rivers of the interior. While matters are left in that state every business man in the Convention must admit the condition is one which would be deplorable in the interests of Australian growth and development. These are large facts. What is the particular obstacle in the way of this obviously benign and true law of progress and development? What mysterious forces are arrayed against those large national interests? I deny that commerce is arrayed against them in any legitimate sense. Commerce is far more involved, and the interests and development of commerce are far more involved, in the interests of water conservation in connexion with those rivers than any section of the Commonwealth. But that is looking at commerce in a broad light; I regret to say very much that during this debate some of those who represent trading interests on the rivers of New South Wales have absolutely failed to think of anything else. They have absolutely failed to consider the vital duties and obligations of persons who occupy and administer the Government of that colony. Every remark I make is absolutely applicable to the sister colony of Victoria; indeed, my remarks apply with tenfold force to Victoria. From a list of works which I have before me I find Victoria has sunk enormous sums of money in costly works depending on those waters. We in New South Wales hope to do the same. Large and beneficent schemes are now approved by the highest scientific authority. On what basis can these enterprises be conducted if there is an external supreme power which, either by its officers or by a board of navigation, or by its own policy, may put the whole of those vested interests into a state of uncertainty and confusion? The learned Attorney-General of Victoria has cited a case which, if we did not know it, would show exactly the same sort of decision which must arise from the facts I have stated. If the Supreme Court of the Federal Commonwealth had to decide on the Bill as it stands, it would absolutely have no course open to it but to follow the law laid down in the case cited by Mr. Isaacs. The Commonwealth law must override the state law against the mightiest
interests that might be at stake, and would override those interests without rhyme or reason. Just to show the peculiar state of those rivers in New South Wales, and how they differ almost from any other river we have any knowledge of, I have had a return prepared showing from the year 1883 down to 1887 the period in which those rivers were unnavigable. I will first take the River Murray. I find that at Albury during those fifteen years the river was unnavigable in each of those years for a period ranging from 18 to 44 weeks, the average period during which the river was unnavigable being 31 weeks in each year.

Mr. GORDON. -
Is that throughout the entire length of the river?

Mr. REID. -
No. I am taking different stations, beginning at Albury, where the river was unnavigable for 31 weeks out of every 52.

Mr. HIGGINS. -
For what draught of boats?

Mr. FRASER. -
There is only one class of boat.

Mr. REID. -
A sort of barge. There are no large steamers go up the river, which may be said to have been unnavigable for any kind of vessel.

Mr. FRASER. -
They are flat-bottomed boats.

Mr. REID. -
I will now take the river at Moama, which is a long way down from Albury. During the fifteen years the river there was unnavigable for certain periods ranging from four to twenty-five weeks, and the average was fourteen weeks in every year. At Euston, which is a very much greater distance down than Albury, the river during this period was unnavigable for a period of eleven weeks in each of the fifteen years. I should mention that, in the years 1887, 1890, 1891, 1894, and 1895, the river was navigable all the year round.

Mr. DEAKIN. -
At what particular point?

Mr. REID. -
At Euston.

Mr. DEAKIN. -
There are places lower down where there is a smaller depth and navigation is stopped, when there is plenty of water, at Euston.
Mr. REID. -

That is understood; the river varies along the entire length. I am taking recognised points, and saying that at Euston the river for five years was navigable all the year round. Now, take the Murrumbidgee at Hay, which is a long way down, a point at which navigation is now common. I think it is the chief port of the Murrumbidgee. The return is for a period, not of fifteen years but of thirteen years, from 1885 to 1897. During those thirteen years the river was unnavigable on an average 22 weeks in each year. That is without a single work of water conservation on its banks; and so far as the Murray is concerned, without a single work in New South Wales of water conservation. Now, I come to the Darling River at Walgett. During the same thirteen years the average is eighteen weeks in each of those years when the river was not navigable. Then at Bourke the average was 23 weeks during which the river was unnavigable in each year. At Wentworth, hundreds of miles down, at the junction, out of a whole period of fifteen years, between 1883 and 1897, there was an average of thirteen weeks in each of those fifteen years during which the river, even at Wentworth, was unnavigable. In some of these years, I should mention again, the river was navigable without interruption. Now, dealing with these rivers, upon which large works of water conservation have not yet been started, I think honorable members, as men of business, throwing aside particular colonies, must see that in the case of rivers of such enormous length, whose facts are these facts, the question of water conservation, if it is to assume any importance, must interfere with navigation. It must do so; even without any of these works navigation stops for weeks and weeks in every year. Now, with the precarious supply of water for navigation, how infinitely more precarious is the supply for water conservation, if there is a superior power which has only to do with navigation, and has no duty no trust to observe with reference to irrigation! I do not want to follow this matter further, because honorable members have discussed the matter fully, and they have heard it discussed over and over again. But what I should like to say is this, that respecting water conservation, and showing some regard for it, and putting it upon some basis of security, will in no sense impair the legitimate interests of commerce. For instance, take the Murrumbidgee. During the busy part of the year they never have any trouble with the water. The water comes down from somewhere about the end of June up to about the end of November. Every year there is plenty of water during the busy commercial season. Every clip on the Murrumbidgee is shorn then, and long before then.

Mr. FRASER. -

At the end of October.
Mr. REID. -

So that practically the great system of commerce along the Murrumbidgee is secured by nature, by the fact that during the time it is wanted for commercial purposes there is plenty of water. Nature has provided for navigation at the right time of the year. Why should not this Convention pay some sort of regard to the vital interests at stake if this country is ever to become a great nation? What possible way of making Australia a great nation is to be found unless these vast fertile dry plains of its interior are allied with the energies which water produces? This is the great duty and destiny of Australia, and navigation is practically safe, because, let me say that navigation is just as great an interest to the persons and a greater interest to the persons in each colony who live along the banks of the rivers than it possibly can be to anybody else. Who can have a stronger interest in the river being improved for navigation than the persons whose property and whose stores have to be conveyed by that navigation? So that navigation has friends all along the line. But the business consideration comes in, and our answer to those who say that water conservation is safe is this: That whilst we hope this is a thing that will be regarded by the Commonwealth legitimately and intelligently, people will not sink millions of money on that security; people will not engage in large schemes of water conservation if they know that any day in the year somebody superior to them and beyond their control can destroy the fruits of their industry. Few people will invest large sums upon that security, and it is because we want some sort of security for these future schemes, which must take place, that I ask this Convention in some way or other to recognise the necessity of protecting these great developments of the future in connexion with these extraordinary rivers. My honorable friend (Mr. Carruthers) has put his proposition in a form which I shall be glad to see carried. I will vote for it; but if the Convention will not support that proposition—in plain terms, making the interests of water conservation superior to navigation, which I believe—I will make another attempt to introduce my words in the place of those of Mr. Carruthers. They do not go quite so far as his do, and if his amendment is not carried I will certainly move mine.

Sir JOHN DOWNER (South Australia). -

I am not going, like some speakers, to repeat the arguments used before, because I think we ought to arrive at finality, and not make the same speech twice, at all events, in the same Convention. As far as this question is concerned, I say I thought we had arrived at an agreement—at a simple
method of submission; not the agreement we wanted, not the contention we have been striving for so long, but that by simply trusting the trade and commerce clause, and hoping that they would evolve, through judicial decisions, something that is fair and right, we trusted ourselves to the Federal Constitution of Australia. As far as our own colony is concerned, we undoubtedly have been the subjects of much animadversion. We have been considered to have thrown away, to a large extent, natural rights in order to produce some friendly agreement with respect to federation, but we have been in no way complimented in any direction for the conclusion that some of us assisted in obtaining.

Mr. ISAACS. -
How did you possibly give up anything?

Sir JOHN DOWNER. -
I say that when I, as one of the South Australian delegates who has taken a great interest for many years in this question, who has studied it from an international stand-point, and, I hope, from a colonial stand-point as well-

Mr. HIGGINS. -
From an Australian stand-point?

Sir JOHN DOWNER. -
I mean Australian, and when I say colonial I do not refer to one colony. When I voted as I did it was in the belief that the trade and commerce clause would probably be sufficient to give to everybody all that was required, and to give my right honorable friend (Mr. Reid) all that he requires. It appeared to me that under the trade and commerce provision, before it would be competent for the Federal High Court to interfere with any use by New South Wales of any of the waters of the rivers running through her territory, it would have to be shown that it was injurious to trade and commerce. That might be by the destruction of navigation or of other causes. Injury to trade and commerce might be done by protecting navigation when trade and commerce would be better assisted by other methods of government. It appeared to me that the American decisions for the most part, and nearly the whole of the European treaties, have practically no bearing on the question at all. As far as the European treaties were concerned, they arose in regard to streams which were navigable, and could not be rendered unnavigable, in countries that had no end of water for irrigation purposes, and where the whole question was the question of navigability.

Mr. FRASER. -
But irrigation is not so important there as here.

Sir JOHN DOWNER. -
That is what I am endeavouring to point out. In the countries from which the precedents had been gathered—and referring first to the European countries—the treaties there made were only founded on what is fair and right, that it was not a friendly act to use the water of a stream in such a way as to injure the freedom of your neighbour to the legitimate use of the stream in the same way. But there was no question of irrigation there. They had any amount of water for that purpose; they only dealt with what was a friendly and a reasonable thing as between persons having an equal right to use the gifts of God. They decided these matters according to their own local surroundings and local requirements. And so with the great rivers in America the same course was followed in deciding what navigability was. They said that a river had to be kept navigable, and that it was an unfriendly act between states, as it would be between individuals in a state, to use the rivers in such a way as to injure the enjoyment of them by others. But when they came to remote parts, where irrigation became of superior importance to navigation, then the rule that was acted upon was the same—that what was a friendly thing to do was that you should not injure your neighbour; but that rule was applied in an absolutely different way. That was why I voted for allowing the general words, which I thought every one agreed upon until I heard the remark by the leader of the Opposition in New South Wales (Mr. Lyne), and which I thought the Premier of New South Wales (Mr. Reid) fairly agreed to.

Mr. Reid. -

It is too bad to say that, when, as a matter of fact, I said distinctly that I could not be definitely sure whether I could agree to them.

Sir John Downer. -

I have heard the right honorable gentleman say different things on the subject.

Mr. Reid. -

It is a notorious fact, and I think my statement to that effect might be accepted by the pattern of chivalry in this chamber.

Sir John Downer. -

I do not profess to be a pattern of chivalry.

Mr. Reid. -

You do not act like one sometimes.

Sir John Downer. -

There are times when one has to say what one thinks about matters, and one has to speak the truth always.

Mr. Reid. -

Then speak the truth now, and do me justice.

Sir John Downer. -
Then I must say that I have heard the right honorable gentleman say that he was willing to take the clause as it stood.

Mr. REID. -

I distinctly said that I could not definitely state whether I could accept the provision as it stood, but I said I would make inquiries, and if I could possibly fall in with the suggestion I would; but I reserved to myself the right to re-open the subject if I found that I could not accept the arrangement. When Sir Edward Braddon said that the matter could be settled in five minutes if I would give an undertaking, I replied that I could not do so.

Sir JOHN DOWNER. -

We had a committee—a special committee of the Convention—to consider this question, and unquestionably I understood the right honorable gentleman, and did not misunderstand him, as saying that he was willing to take things as they stood.

Mr. REID. -

It is not so. These things are not in Hansard. I appeal to you, sir, if you did not hear me make the statements I have just referred to in this chamber?

Sir JOHN DOWNER. -

But we had a special committee, which was a committee appointed by the Convention.

Mr. TRENWITH (Victoria). -

I rise to a point of order. I submit that it is altogether unimportant as bearing upon this question what Mr. Reid said, and that Sir John Downer is not in order in discussing that matter. The question is what is a wise thing for us to do under the circumstances.

The CHAIRMAN. -

It would be far better if the honorable member in possession of the Chair were to confine himself to the amendment under discussion.

Sir JOHN DOWNER (South Australia). -

I shall accept your suggestion, sir. I was going to refer to what took place in the course of the proceedings of the committee to which I have alluded, and which was a quasi-public body, although we had no reporters there. When we come to the words used publicly in the Convention by the way of interjection, we have had statements by the Premier of New South Wales that he was not prepared to accept this settlement. In fact, the whole fight had been over whether South Australia would be satisfied with accepting this. The question had not been whether New South Wales would be satisfied or whether Victoria would be satisfied; the whole question was
whether South Australia would be satisfied. South Australia complained about and wanted some rights over the Darling, but those claims were abandoned. South Australia wanted the preservation of the navigability of the rivers throughout the Commonwealth. That claim was abandoned. The whole substantial conflict between our colony and New South Wales upon this subject throughout the discussion-leaving out occasional interjections, which are, however, comfortable things to be able to fall back upon-was whether there should be some special provision inserted giving South Australia a right over the Darling. That was the substantial power. But leaving that, and dealing with the matter with which there has been no discussion at all, the right honorable gentleman asks, in the speech he has just made, is navigation so important? I say that if navigation is not so important, then the Parliament of the Commonwealth will be able to deal with it; and if it is for the benefit of the nation, and in the interests of equality of trade between the states, the court will support it. Navigation is most important, says my right honorable friend, to the people along the river, and most important to persons holding property in New South Wales. That may or may not be so. It may be that it will be more convenient and that is the whole test—for many people to use the waters of the Murray so as to destroy its practical use to South Australia for purposes of navigation. I expect that if New South Wales did so she would do it for the best possible motive—for assisting herself, and not bothering about any one else. I attribute great business ability and utter selfishness to New South Wales—no more and no less. I know enough of the people of New South Wales to convince me that they would never attempt to do a thing merely to annoy their neighbours. I have a higher opinion of the people of New South Wales than some of their own representatives have. My opinion of them is that they have a high federal sense of what is right and just. They have been the leaders in the movement for federation, and I refuse to believe that they would, from motives of selfishness, assist to destroy the movement which for years they have been trying to build up.

Mr. FRASER. -

We are all selfish, then.

Sir JOHN DOWNER. -

It is well that we should be to a large extent selfish, because if we do not look after ourselves we shall find great difficulty in getting somebody else to do it for us.

Mr. LYNE. -

South Australians have got a pretty good share of it, too.

Sir JOHN DOWNER. -
We have only asked, here and in Adelaide, that, as the river that is now in
question is undoubtedly a navigable stream, you should give us the same
rights as are always conceded by treaty between hostile nations. It is not an
unfair thing for us to say to New South Wales, in respect of this common
property-"If you want to continue friends and brothers, as you are now, at
events, do not be more unfriendly to us than a foreign nation at our door
would be." If there was a provision inserted in this Bill preserving the
navigability of the navigable rivers of Australia, my difficulties would have
been over; but New South Wales pointed out that the trade and commerce
clauses were all that America had to preserve their rivers, and yielding
partly to superior force-

Mr. REID. -
Yielding because you could not help it.

Sir JOHN DOWNER. -
And partly, I admit, to the consideration that I did not think it made very
much difference, assented to the course the New South Wales
representatives desired the Convention to take. The right honorable
member will see that I am perfectly frank, as he accused me of being the
other day; in fact, I am always the same. Now, they have been fighting and
saying they want this amendment, which we would not concede to them.
Having previously got what they said they wanted, they did what they
always do-as far as my experience of them throughout this Convention
goes-they asked for something else.

Dr. COCKBURN. -
They are regular Oliver Twists-they ask for more.

Sir JOHN DOWNER. -
Yes, they do ask for something more. They ask to have conceded to them
by an Imperial Act of Parliament what the whole qua

Mr. REID. -
Nothing of the kind; the courts are open to both states after this Bill
becomes law.

Mr. TRENWITH. -
After you have put in the Commonwealth Bill a provision to the effect
that you can do what you like with the river.

Sir JOHN DOWNER. -
Yes; and what is the use of our going to the courts if we have not got any
rights left?

Mr. REID. -
We do not seek to take away any of your rights.

Mr. FRASER. -
South Australia has no rights, so that after all she will only be in the same
position then as she is now.

Sir JOHN DOWNER. -

Then the object of this Constitution is to keep up a war between two states.

Mr. REID. -

No, there has never been any war; we have snagged the river for your benefit at our own expense.

Sir JOHN DOWNER. -

The right honorable gentleman said that they had never interfered with our rights, but I replied that they had threatened to do so, and they now say that they want the right to do so if they please.

Mr. REID. -

No, we only want the right to our own waters.

Sir JOHN DOWNER. -

They want to secure the position they take up by means of a provision in this Bill which is to establish federation, and that is a monstrous thing. Why should Mr. Reid distrust the Federation which he seeks to establish?

Mr. FRASER. -

Why should you put the cart before the horse?

Mr. REID. -

Hear, hear; that settles you.

Sir JOHN DOWNER. -

If Mr. Fraser will explain what he means to me privately, I will devote an hour or two to trying to understand it.

Mr. HIGGINS. -

Where is the horse and where is the cart?

Sir JOHN DOWNER. -

No doubt Mr. Fraser's interjection is all right, because Mr. Reid applauded it.

Mr. HIGGINS. -

Mr. Fraser voted with you before.

Mr. DEAKIN. -

Then it must have been a mistake.

Sir JOHN DOWNER. -

As I cannot follow Mr. Fraser's interjections just now, I will go on with my remarks in my own way. We first decided this question on the ground of international rights. Those rights we have practically abandoned. We then wanted specific provisions as to navigation over certain limited portions of rivers. That was opposed, and we were defeated, and we had in
the end nothing left but the bare words "trade and commerce," and nothing to hope for from those words except that the High Court would follow the analogy of the American decisions, and come to conclusions similar to those of the American courts. Was ever such perfect absolute trust and confidence displayed before? Was there ever such an abandonment of international rights on specific matters that might fairly have been specified in a Federal Constitution, that was to prevent appeals to American or other courts, and so to begin a great nation with a good and sound mutual understanding? Mr. Reid and other members from New South Wales have told us from time to time that there is nothing in all this, that it is all child's play, that it makes not the slightest difference whether this amendment is in the Constitution or not. They say they will never interfere with the navigability of the rivers, and yet they have been fighting about this matter as if they meant to interfere with the navigability of rivers. They have told us they will never want any more water from those rivers than is necessary for the purposes of irrigation, but we must look at the past. They admit they have bounced us a bit.

Mr. REID. -

Never a little bit.

Sir JOHN DOWNER. -

But they say that, after all, their bouncing is harmless. They certainly did bounce us in their own colony, and they treated us discourteously in ours.

Mr. REID. -

Not so; we never took any notice of you.

Sir JOHN DOWNER. -

Is not that discourtesy?

Mr. REID. -

It is best never to take any notice of naughty little boys.

Sir JOHN DOWNER. -

That is just the attitude of the honorable member in this Convention. He treats other honorable members who differ from him as naughty little boys; but let me assure him that he will never get an understanding with such a place as Victoria on this question, much less with New South Wales.

Mr. REID. -

You cannot divide New South Wales and Victoria on this question.

Sir JOHN DOWNER. -

I am not going to attempt to create division of any kind. The honorable member tried to attract Victoria by appealing to the selfishness of this colony, but I do not think he was very successful. I think the representatives of Victoria understood what it all meant, and that he left them pretty well as they were. But without going into the intentions of Mr.
Reid, let me point out that after we spent three or four days over this important question, and every argument that could be used had been used, and a practical assent—in spite of Mr. Reid's disclaimer, a practical agreement—had been come to on the part of the senior colony that if this were done they would be satisfied, Mr. Reid protested, on behalf of New South Wales, that this ought not to be done, and finally carried his own way by a majority. I ask the Convention is it too much to re-open the question now and insert in the Bill a provision which will obviate a continuance of the old troubles and difficulties—troubles and difficulties which the gentlemen who oppose this amendment say never can happen, or which will never come to anything? I can only say that I hope and believe that the Convention will adhere to the position it has taken now, believing that if they cannot put a well-defined federal scheme into this Bill dealing with rivers whose course extends through more than one state they will, at all events, not insert a provision that will affirm the right of any colony to destroy every Inter-State right as between colonies in rivers which are navigable, and which run through more than one state, and expect this Constitution to be accepted on a basis that would not be endured even between nations that were not friends. I heard what my right honorable friend said as to the statistics he has worked up, and as to the dates.

Mr. REID. -
I did not work them up; they were worked up by my officers.

Sir JOHN DOWNER. -
I am sure the right honorable gentleman did not do it. I refer to the statistics which have been obtained, and which show that the rivers are not always navigable. They are often non-navigable, but still they are distinctly navigable in the view of international jurists. They are navigable for a sufficient length of time to come within the rules they have laid down, and I simply now—in the face of my own colony condemning the South Australian delegates for having departed from their original determination to have an express declaration and provision in the Bill to preserve their right to the reasonable use of the waters of the Murray, and for having been satisfied to trust to the trade and commerce clause-appeal to the Convention not to further derogate, on the motion of New South Wales, from that which New South Wales has all along been contending for, and which, having obtained, she now wishes to supplement.

Mr. REID (New South Wales). -
As a personal explanation, I again say, and I hope the honorable member will accept my assurance, that the honorable member's statement as to my
having expressed my readiness to accept the trade and commerce clause as a satisfactory solution of the question is absolutely incorrect, as every member of the committee knows, with the exception of himself. It is also absolutely incorrect that in this Convention I ever made any statements of the kind to which the honorable member has referred. I distinctly said, and I think it is in the records, that I reserved to myself the right to re-open this important question if, after inquiry, I found it necessary to do so.

Mr. GORDON (South Australia). -

While giving every weight to the explanation the Right Hon. Mr. Reid has made, I certainly understood from the right honorable gentleman, and from the whole of the delegation from New South Wales, that they would accept the provision in the trade and commerce clause governing navigation as a satisfactory solution of this question. I will quote what Mr. Reid said himself, as reported on page 83 of our Hansard. He stated-

That is the interpretation of the Hon. Mr. Barton as to the effect of the trade and commerce clause.

a much greater power over us in respect to some of these rivers than perhaps some of us thought. But I say in regard to the federal power-the fair and honest power which lies at the heart of federation-I do not care what its consequences are, I accept them.

Mr. REID. -

Hear, hear; that is, the regulation of commerce over all our rivers.

Mr. GORDON. -

The honorable gentleman also said-

Therefore I cannot be accused-neither I nor my honorable friends from New South Wales-

of disputing this proposition: That for every inch of water navigable in New South Wales, and capable of being used for intercolonial trade, we give up any pretence to exclusive control.

Mr. REID. -

Hear, hear.

Mr. GORDON. -

What does that mean?

Mr. REID. -

The control of navigation.

Mr. GORDON. -

Why did the right honorable gentleman give the measure of the water? If the English language means anything-and there is no better judge of the English language than the right honorable gentleman-that sentence implies
that the right honorable gentleman, for himself and his friends, is willing to give the Federal Parliament the right to control all these waters for navigation.

Mr. REID. -
And give no water conservation altogether. That is nonsense.

Mr. GORDON. -
Certainly. The right honorable gentleman knew what he was talking about. He was answering the argument that there should be some control over the water for irrigation and navigation, and he said:"For irrigation I object; for navigation, to every inch of the waters in New South Wales that is navigable, New South Wales has no exclusive right."

Mr. REID. -
You are quite right. I said for irrigation I object; for commerce assent.

Mr. GORDON. -
Now my right honorable friend seeks to make irrigation superior to navigation, and he is executing a complete right-about-face on this subject.

Mr. REID. -
No, two different things.

Mr. GORDON. -
I think I understand the simple words of the English language and the right honorable gentleman said:"We object to any control over irrigation, but we give the Federal Parliament, whatever the consequences, control over every inch of the water in these rivers which is capable of being used for navigation."

Mr. REID. -
I would do that now.

Mr. GORDON. -
Then I do not understand the right honorable member, because he says that if the water is required for irrigation, navigation must go by the board. Of course, it would be unfair to pin any member of the Convention to the opinion he expressed at any one period of the discussion. I suppose we have all varied a little, and if the honorable member would admit that he had executed a right-about-face everybody would agree that he had simply exercised the right to change his opinion.

Mr. REID. -
It is a wonder you attacked me so bitterly if I gave you all you wanted.

Mr. GORDON. -
The right honorable gentleman knows I would not attack him. I am only putting in simple language the two different positions he has taken up in the matter. But to come right to the heart of Mr. Carruthers' proposition, when I opened the debate on the rivers question I hinted that possibly there
should be a dominance of irrigation over navigation. That was more than hinted, it was expressed, and if the Convention after hearing the arguments on the question has to concede that point—and many honorable members are apparently prepared to concede it—it must not be put in the form suggested by Mr. Carruthers. The honorable member's proposition would mean that any one colony could pump a river dry to the detriment of those below.

Mr. HIGGINS. -
It must be irrigation for Australia.

Mr. GORDON. -
Exactly; and when Mr. Reid, in the rhetoric which we all admire, talks about Australian development, and the evolution of the destinies of Australia, that surely does not mean the development of New South Wales to the detriment of the other colonies. If we are to concede the dominance of irrigation over navigation, let it be subject to this qualification, that the water shall be justly used by those colonies through which the rivers or their continuations run. It cannot be disputed that if Mr. Carruthers' amendment is carried in the form

in which it is proposed, New South Wales can pump the rivers above Victoria dry, and Victoria in its turn can take every drop of water which comes to it, and leave South Australia, through which the river, if allowed to flow, would run to the sea absolutely without a drop of water. Would such a provision as that carry out the destinies of Australia?

Mr. REID. -
They are not all interested in your wool barges.

Mr. GORDON. -
No, but there is such a thing as justice. This is a phrase which the right honorable gentleman himself used—"To secure to all the colonies as fair and equal a use of our natural opportunities as we have ourselves." That is all we are asking. Would we have a fair and equal use of the natural opportunities afforded by our great rivers if New South Wales cut a ditch and turned the whole of the waters of the rivers above Victoria for three months of the year into one of the dry lakes of New South Wales, which is quite possible. Would it be a fair and natural use of our opportunities if Victoria did the same thing as to such of the waters which come down to her? That would be a most unjust and unequal appropriation of these natural opportunities. I will vote against the amendment of Mr. Carruthers, on the understanding which I certainly had with many other honorable members that we were going to rely on the trade and commerce clause. But if we are going to turn the Federal Parliament into an irrigation trust, because that is what it means—
Mr. HIGGINS. -
No, the Federal Parliament will have no control.

Mr. GORDON. -
If the amendment is carried it will have some control over irrigation.

Mr. HIGGINS. -
No; only for the purpose of New South Wales.

Mr. REID. -
No. It is general in its application. It is not applied only to New South Wales.

Mr. HIGGINS. -
Read the words.

Mr. REID. -
It does not mention New South Wales.

Mr. HIGGINS. -
It says-"To meet the requirements of such state and its people."

Mr. REID. -
Any state.

Mr. GORDON. -
My right honorable friend will not dispute that it leaves to New South Wales the right to take every drop of water out of these rivers within her own boundaries. Can my right honorable friend say that that is not the meaning of this clause?

Mr. TRENWITH. -
And never let it go any further.

Mr. GORDON. -
And never let it go any further. That may possibly appeal to the selfishness of people in the various colonies; but will it appeal to common sense, to natural justice? It is a reversal of that natural justice which underlies the apportionment of waters under the provisions of the common law. Surely the honorable gentleman cannot seriously contend that they should embody in the Constitution a proposition which is a reversal of all the dicta of that natural justice which governs communities and really keeps the world sweet. It cannot be that they wish to embody in the Constitution a proposal of that kind. Therefore, if we are going to formally concede the predominance of irrigation over navigation, and if we are going to carry any proposition to that effect, it must have this qualification— and I am now using the words, as nearly as I can remember them, of an amendment which Mr. Isaacs formerly introduced-"on a basis of distribution of such waters just to the several states through which the rivers by themselves or by their continuations run."

Mr. ISAACS. -
Who is to determine the justice?

Mr. GORDON. -

Only somebody sitting as a jury. We cannot absolutely define what is going to happen under all the provisions of the Constitution. We must leave something to the sanction of justice which will animate the Federal Parliament and the subsidiary bodies it will appoint to consider these matters. I see the difficulties, of course, but the difficulty of arriving at an idea of what this will lead to is nothing as compared with the difficulty of conceiving what will happen, if the clause is carried without any qualification. There then we will embody in the Constitution the possibility of an absolute injustice, and crystallize a selfishness unknown to any civilized nation. I think it will be a disgrace and a blot to the whole Constitution if that proposition is carried without amendment, and, therefore, I move, although I shall vote against the clause even if it is amended-

That the clause be amended by the addition of the following words:-"upon a basis of distribution of such waters just to the several states through which the rivers by themselves or by their continuations run."

Mr. DEAKIN (Victoria). -

I do not propose to enter into the question whether individual members have altered the view they have taken on this question during the progress of our debates, but certainly trust that there has been on this, as on many other questions, a gradual awakening to the seriousness of the issue with which we are dealing, and the insufficiency of the proposals which were, in the first instance, in all good faith, submitted and agreed to in the endeavour to meet the emergency. When the question as to the control of rivers was first mooted, the various interests which the different colonies had in the use of these waters were but vaguely appreciated and ill-defined. One of the many educational results of the debates has been that a clearer view has gradually dawned on the Convention of the real magnitude of the interests with which they are dealing, than which, from a material sense or from the point of view of the producer, none is greater. It involves a question of inestimable importance to the whole of the interior of Australia, of which the rivers are veritably the life-blood. As that life-blood is dealt with so will be the future possibilities of its development limited or extended. Under these circumstances, sir, though careful to avoid any repetition of the remarks already made, I do not scruple to ask the attention of the committee for a few moments, in the endeavour to reply to one or two arguments which have been urged, notably by Sir John Downer, whom I regret not to see present. He is so courteous and conciliatory, and at the
same time unyielding, that, while be is difficult to answer, his charming
demeanour makes it painful to disagree with him and yet disagree with him
one must, if one considers even the basis which he himself offers for the
opinion he enjoys. He says he claims no more than that there should be
embodied in the Constitution a proviso that the united colonies of Australia
shall in the future in this connexion deal with each other on the same basis
as hostile nations have agreed to deal with each other in Europe and
elsewhere, on a fair and friendly footing. Now, as a matter of fact, he will
be unable to produce for the consideration of the Convention a single
illustration from the Continent of Europe where a river used for the
purposes of irrigation has ever formed the subject of international
questions. The only irrigating rivers in Europe are those of France, Italy,
and Spain, which flow wholly within the territory of the states concerned,
and have as yet afforded no opportunity for any difference of opinion on
this point. The rivers in regard to which international agreements have
been made, and of which the River Danube is an excellent example, are not
rivers used for the purposes of irrigation, even to an infinitesimal extent.
As a matter of fact, the only river, so far as we

know, in which different states are interested, and in which this question
has assumed any importance, is the River Rio Grande, dividing Mexico
from the United States of America, and there the Mexican Republic, so far
as I know, has never been able to obtain any official recognition of its
claims from the United States Government, although that river, in many
portions, has been almost entirely deprived of its water at certain seasons
of the year. When the honorable and learned member, therefore, points us
to these old-world precedents, and even to new-world precedents, he will
find himself unable to discover a single fact which tells in his favour.
Consequently, while admitting with him that the fair and friendly spirit is
the only spirit in which a Federal Union should regard such problems, it is
to be noted that in no case has the extraordinary interest which the use of
irrigation attaches to the water of any particular stream raised the question
between nations. Cordially supporting the amendment of the Attorney-
General of Victoria, I feel able to regard the question from the Victorian
point of view somewhat less anxiously than he does, for the Victorian
works are existing works-and the rights of existing works at all events
ought to be preserved under any federal compact. Even if those rights be
not preserved, the fact remains that the only river in Victoria from which
we draw any quantity of water, and which is ever available for navigation,
is the Goulburn River, which practically has never been used, and is never
likely to be used, for navigation purposes. Under these circumstances, we,
in Victoria, though we may form a decided opinion on the principle involved, can afford to regard this question comparatively free from the claims of self-interest. Repeating in a single sentence the remarks as to physical conditions which I have previously made, and upon which this solution of the problem entirely depends, I will say a word or two on the general merits of this question. It is quite possible that further researches and a combination of the researches already begun will enable the Federal Government to deal with the Murray and its tributaries in a way which will prove that the present conflict between navigation and irrigation is unreal, and that all the navigation which it is possible for these rivers to afford may continue to be afforded, together with the greatest possible use of their waters for the purposes of irrigation. During a previous sitting I gave reasons for the belief that this is a very probable solution of the difficulty. Under these circumstances it may be said that we are fighting a shadow. But that is not so, inasmuch as the Constitution, as it stands, governs the future of Federal Australia, not only by its express statements, but also by its implications. This Constitution expressly states that the regulation of trade and commerce is to be referred to the Government of the Commonwealth, and the case of Gibson v. The United States, which was quoted by the Attorney-General of Victoria, places it beyond question that the trade and commerce provisions, without the addition of a single word, give the Commonwealth the most complete control of all the streams that may be navigable, and even give the power to improve them for the purposes of navigation, to a degree which might be wholly destructive of the irrigation interests of the country. Taking into account the implication, which we are necessarily obliged to weigh, from that case and from other cases cited by Chief Justice Fuller in giving his decision, we have to consider the matter not only as a question affecting New South Wales and South Australia. Nevertheless it tends to assume that aspect. While the representatives of South Australia can afford to appear here as the advocates of unrestricted navigation, if they obtained the water of these inland rivers under that plea, they would, of course, be able to use them for both navigation and irrigation. South Australia is in this regard fortunately situated on the lower part of the Murray. She will be able to use the waters of these inland streams for irrigation, the use of which for that very purpose may have been denied to the people of Victoria and New South Wales, on the plea of the necessities of navigation.

Mr. TRENWITH. -

Cannot the people higher up object if the rivers there are made
unnavigable by the use of the water lower down?

Mr. DEAKIN. -

The rivers cannot be made unnavigable by the use of the water lower down. What South Australia is struggling, for in this connexion is the water. She desires to get this water, not merely for purposes of navigation, but also for purposes of irrigation. This makes, from another aspect, the strength of her case. As has been excellently stated by a Lombard writer, to sacrifice irrigation to navigation is to spend four sovereigns for the purpose of seeing a halfpenny float. I have already guarded myself against any exaggerated anticipations of the particular use of these waters in the interior. I have used the word "irrigation" in its widest sense. In my opinion, these streams in the interior of New South Wales will be used to provide water for men, women, and children, and for the tens of thousands of cattle and the millions of sheep that the land will sustain. I include this use under the term "irrigation." Irrigation in the largest sense includes the use of water for domestic and stock purposes. Without the right to use the water for irrigation, the whole of the interior, of which the Murray is the chief artery, would be deprived of its chief value. Even those who contend most eagerly for the rights of navigation, or for the preservation of the opportunity to navigate, must realize that navigation is not an interest to be measured for a moment against the use of water for domestic and stock purposes, or against that irrigation which so enormously increases the production of land and multiplies the population which it is able to bear. If this be so, is it not possible for us, realizing the situation, to insert a provision in the Constitution, not in the words, perhaps, proposed by the honorable and learned member (Mr. Gordon), but in similar words, which will be advantageous to all parties concerned? I trust that I am not behind other honorable members in the confidence with which I am looking forward to the decisions of the Federal Parliament. The Federal Parliament will take a broad view, and will endeavour to consider all interests to the best of its ability; but it will be tramelled by the fact that this Convention has chosen to pass a Constitution in which the words "irrigation" or "domestic and stock supple," do not occur. If you go past the Federal Parliament to that exalted judicial body which will interpret its legislation; and whose decision will be binding upon the whole community, you will see that it must attach supreme importance to the fact that, while every care is taken to protect navigation and trade and commerce, so far as they can be served by transit upon the waters of these rivers, not a single mention is made of conservation or irrigation, which ought to be the supreme interest of the Convention as custodian of the rights of Australia.

Mr. GLYNN. -
Would you have any objection to the substitution of the word "improvement" for "utilization" in the amendment of the honorable member (Mr. Carruthers)? That might get over the American decisions.

Mr. DEAKIN. -

On the spur of the moment I will not say more than that might be so. Probably the representatives of New South Wales might be satisfied with language that would not go so far as the language employed by either the honorable member (Mr. Carruthers) or by the Premier of that colony.

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It seems to me that at the present time the Constitution is open to the grave and serious objections which they have raised against it because it ignores these interests.

Mr. HOLDER. -

They are state matters. We leave them to the states.

Mr. DEAKIN. -

How can we leave them to the states when we have deprived the states of all their power by making navigation the chief interest, and making its claims paramount?

Mr. HIGGINS. -

That is a mistake. The claims of navigation are not made paramount.

Mr. DEAKIN. -

The claims of trade and commerce are made paramount, and an additional clause conveys power over navigation and shipping. The provision in regard to navigation, unless restricted as it is not now restricted, would include the navigation of the rivers of the interior, as well as navigation upon the sea-board. Putting these clauses together, it seems to me that the Constitution makes navigation, as contrasted with irrigation, stock, and domestic supplies, of supreme and paramount importance. But even if I am incorrect in this belief, the Constitution allows foot-hold for such an opinion, and creates a doubt such as we should not allow to exist. Let us determine clearly what all these and other provisions mean. If we mean that the interests of the whole of the interior in these waters are to be confined to the interests of the people in having their goods carried on barges on the rivers, let us say so; but no more outrageous statement-no statement more out of harmony with the facts and needs of the situation-could possibly be made. If, on the other hand, we mean, what the Hon. Mr. Carruthers means, to give the states absolute control in this matter of the diversion of the water, and the Commonwealth no control, so that any state might divert the whole of the water in its territory without considering its neighbours-if we mean that which is an anti-federal proposal-let us say that
we mean it. If we mean neither of those things—if we mean that the Federal Government is to take fairly into its consideration the questions of stock and domestic supply and of irrigation, and consider these side by side with the question of navigation, and decide for that interest which is of the greatest importance to Australia regarded as a whole, and having done so, is to leave all the states the freest possible hand in the development of their resources of land or water, let us say so. The remarks of the Hon. Mr. Gordon and the interjection of the Hon. Mr. Glynn induce me to hope that the representatives of South Australia have the latter object in view, and that it may be possible to frame words which may be acceptable all round the Convention on this vexed question. It is a vexed question, and is certain to remain one. I know nothing which will furnish to the opponents of federation more weapons than the implications from American decisions under the present terms of our Federal Constitution, having in view our deliberate refusal to place qualifying words in the Constitution. It might even be contended that the water supply of Melbourne, which is partly drawn from a tributary of the Goulburn across the Plenty Ranges, ought to be cut off, in order that this unknown and insignificant tributary should be allowed to flow intact, because it might be wished to sail a boat once a year from the Murray a few miles up into the interior. Push the doctrine to its absurd and extravagant length, and that might be urged. It is in cases of this absurd kind that the opponents of federation will find most of their weapons.

Mr. HIGGINS. -

That would not be a substantial interference with navigation.

Mr. DEAKIN. -

I do not think it would. But I expect arguments of that sort from the platform so long as we neglect to put in the forefront in plain English what we mean. That we have not done.

Mr. HIGGINS. -

Why not put in plain English that the Federal Parliament may adjust rights?

Mr. DEAKIN. -

Personally, that is a proposal I am prepared to consider.

Mr. HIGGINS. -

That was proposed a few weeks ago.

Mr. DEAKIN. -

I am not at present affected by whether that was proposed or not. The Convention has reached another stage. I believe in the evolution of the Convention and our gradual education on these issues; on no issue is it
more necessary than on this. It is an issue of the first importance, which we
cannot afford to pass by or ignore. Our only safety lies in facing it frankly
and fully, and putting in the Constitution in plain words what are the
respective rights of the states and of the Commonwealth in regard to the
rivers of Australia. Having regard to the fact that I have already addressed
the Convention on this issue at an earlier stage, I have sufficiently
discharged my responsibility in the matter, and support the amendment of
my colleague (the Attorney-General for Victoria), and even the proposal
which has been made by Mr. Carruthers and Mr. Reid, as preferable to the
Constitution as it at present exists. At the same time, I frankly admit that if
any further amendment is moved which shall define the rights of the states
and of the Federal Government in this matter on lines of equity and justice,
I shall support that in preference to either.

Mr. HOLDER. -
Would you support Mr. Gordon's amendment?

Mr. DEAKIN. -
I do not think Mr. Gordon's amendment is sufficient. It goes too far, and
is not sufficiently explicit, an it ought not to be tacked on to that of Mr.
Carruthers. Had I drawn the amendment myself it would have been framed
in altogether different language from that adopted.

Mr. GORDON. -
I expressly said I did not pin myself to the words, so long as-the idea was
there.

Mr. DEAKIN. -
I understand that. The, attitude of my friend (Mr. Holder) is distinctly
encouraging. I have made it plain that what I desire is a clear definition in
the matter of the respective rights of the state and the Commonwealth. If it
be not possible to express them all in a definition, I, for one, would be
perfectly content to rely on the equity and justice of the future Federal
Parliament.

[The Chairman left the chair at six minutes past five o'clock p.m. The
committee resumed at half-past seven o'clock p.m.]

Mr. TRENWITH (Victoria). -
It seems to me that the amendment proposed by the honorable member
(Mr. Carruthers) is so distinctly anti-federal that this Convention ought not
to adopt it. The amendment would give the power to any state to absolutely
stop the flow of a river within its territory, and to use the whole of the
water for its purposes or the purposes of its people. Clearly that would be
giving away a right that states now have, or a power to dispute the power
of states to, use rivers that flow into their country. It cannot be expected
that people of a state who may be prejudicially influenced in this way
would vote for a Federal Constitution which contained such a provision. I respectfully submit that to adopt this amendment, if there was nothing else objectionable in the Constitution, would be fatal in at least one of the colonies to its adoption by the people. The more we discuss this matter, the more I am convinced that it is impossible to define, and that it is unwise to try to define, absolutely what shall be done in connexion with the rivers of the Commonwealth by this Convention. All that we ought to aim at is to provide that the most perfect tribunal shall have control of the Commonwealth rivers, because, if we pass this clause instead of framing a Constitution, we shall be legislating with reference to the use of the waters. Now, clearly, that is not one of our functions. It is no part of our duty to say definitely and for all time what interests shall be superior or what interests subservient in connexion with the water-ways and the water-rights of this continent. We have a right to assume that a Parliament elected by the people of the Commonwealth will know best from time to time what should be done with the people's property in its rivers, and we should aim, as it seems to me, at adopting some clause in this connexion that will leave the hands of the Federal Parliament free to legislate as circumstances arise in the interests, not of a state, but of the entire Commonwealth. It is sought here to declare in the Constitution that irrigation is of more importance than navigation. Now, I respectfully submit that irrigation to us is entirely new. We think and believe - and probably rightly believe - that there are immense possibilities for these colonies in connexion with the proper and scientific application of water to land; but, so far, all that we know of it is theoretical. We have had little or no practical experience, except so far as we have experimented, and then our experience would lead us rather to conclude that there is not the benefit in irrigation that some people think. But if we were perfectly assured from our experience that for our time, and under circumstances with which we are acquainted, irrigation was immensely more important than navigation, still it seems to me we should have no right to put such a provision in the Constitution. On the other hand, we have no right to assume that navigation is more important than irrigation. The amendments that have been moved and rejected go very much nearer in meeting the justice and the interests of the case than this proposal of Mr. Carruthers. The clause, as it originally stood - as we adopted it in Adelaide, so far as my memory serves me - provided that the Federal Parliament should have control of the rivers for the purposes of navigation, "and the use of the waters thereof."

Mr. SYMON. -
The River Murray, "where it forms the boundary between Victoria and New South Wales, to the sea."

Mr. TRENWITH. -

Unfortunately so. I think if that limitation were removed, the word; of that clause would meet the case better than anything that has been suggested. The danger which has been anticipated by the people of New South Wales was, it seems to me, an unwarranted fear. The Federal Parliament, it is urged, if it had control of the whole of the rivers of the Commonwealth, might so legislate as to prevent the colony in which they mainly were from using them to the best advantage for its people. Now, all our experience is contrary to such a supposition. All our experience leads to the conclusion that Governments usually look to the whole interests of the area over which they have control, and Governments are more likely (judging from past experience) to err on the side of giving undue consideration to vested interests, and interests that have had existence, than to err on the side of insufficiently considering them. The Hon. Mr. Carruthers and the Right Hon. Mr. Reid have urged very strongly that the interests of New South Wales would be prejudiced, because, if irrigation works or conservation works were entered on, they might be rendered absolutely worthless by the action of the Federal Parliament. Now, I am not able, from my experience, to think of a single instance in any of these colonies, at any rate, or in any British community, where a Parliament has passed legislative measures which have injured vested interests without adequately compensating those who possessed those vested interests. Therefore we have no right to assume that the Federal Parliament will at any time act in a way to prejudice the interests of people who have expended money under authority, or without hindrance, without not merely compensating, but more than compensating, them for the loss they have sustained by such legislative action. Further, I think that the argument has an extremely shadowy basis. Now, I remember that Mr. Isaacs, the Attorney-General of Victoria, moved the following clause:—

The navigability of rivers which, by them-selves or in connexion with other rivers, are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states. But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation and irrigation to such extent as in the opinion of the Inter-State Commission is not unjust or unreasonable, having regard to the needs and requirements of any other state for such purposes.

I respectfully submit that if this proposal were altered by substituting the Federal Parliament for the Inter-State Commission, it would meet all the
requirements of the case. It would not say, in effect, which was the more important interest, but that both these interests-navigation and irrigation—should be under the control of the Federal Parliament. Now, I remember it was urged against that clause, when it was moved, that persons would not know when they could undertake expenditure in connexion with irrigation or conservation works, but it seems to me that that is not so. If this power were given to the Federal Parliament there would be no difficulty, whenever it was contemplated to undertake extensive works in connexion with the waters of the Commonwealth, in appealing to the Federal Parliament for the passing of a Bill authorizing the construction of such works. This is the plan that is now adopted within the respective states. If any section or any district of a state desires to undertake irrigation or conservation works, it obtains authority from Parliament to do so. Having obtained that authority, there is no hesitancy whatever in the mind of any person as to how far they can go. They obtain their authority under an Act of Parliament in distinct terms, defining their powers, and defining to what extent they are limited in the exercise of those powers. Surely that authority might easily be vested in the Federal Parliament. Of course, it might be urged that this would lead to delay and loss of time; but I would respectfully submit that in the event of a state desiring to divert any waters within its limits for irrigation or for conservation purposes, if there were no national objections or no Commonwealth objections, a Bill submitted by the state so desiring would pass through the Federal Parliament, just as a similar Bill is passed through our states Parliaments, when presented by the localities interested in the undertaking authorized by the Bill, almost without discussion, very often in a single night, and sometimes within a few minutes. It does not seem to me that there is any danger in giving to the Federal Parliament a power to control and not to administer. It is urged that the Federal Parliament could not administer irrigation works in the various states. Without agreeing to that contention, I say unhesitatingly that there is no necessity that it should. It is quite possible for it to have control without in any way having administration. It would simply have to say aye or nay to any proposal for the erection of waterworks. Then there would be perfect security to South Australia, to Victoria, or to New South Wales that they would not be unfairly restricted in the use of the waters within their own territories. It has been urged that Victoria is in the same boat in this connexion as New South Wales that it has rivers which are tributaries of the Murray that would come under the control of the Federal Parliament, and that, therefore, the representatives of Victoria should vote for the motion submitted by Mr. Carruthers. As a representative of Victoria, I do not wish to retain for Victoria any power to act unfairly in this or any other
connexion.

Mr. REID. -

Who is acting unfairly?

Mr. TRENWITH. -

I am not urging that anybody has acted unfairly, I am dealing with the argument that the representatives of Victoria should vote for this proposal because it would give them some advantage. I respectfully submit that it would give them an unfair advantage that they do not require. I can easily suppose a case that has been brought very near to our minds during the last two or three months. We have been suffering from an unprecedented drought, and many small watercourses that have not been dry for a number of years are absolutely dry to-day. There may come a time when the principal water-course of all Australia may be so reduced by drought that if New South Wales were to use all the water it might think to be necessary in the interests of its people, Victoria and South Australia would not get any water at all. In such a contingency it would be advisable to so distribute the water as to maintain the lives of the inhabitants and of the stock in all the states. If, however, this motion was carried the Federal Parliament would have no power in the matter. Clearly the Federal Parliament should have such power in order to preserve the Commonwealth from rain. If I am in order, I should like to move the omission from Mr. Carruthers' amendment of all the words after "But," with the view of submitting the amendment previously proposed by Mr. Isaacs, with the exception that I would substitute the Federal Parliament for the Inter-State Commission.

Mr. ISAACS. -

I stated at the time that I was perfectly willing to accept that.

Sir JOHN FORREST. -

Was that moved before?

Mr. TRENWITH. -

No; the Inter-State Commission was moved before.

Mr. ISAACS. -

Practically it was moved.

Mr. OCONNOR. -

That is exactly the position it would be in if you left yourself to sub-section (1) of clause 52.

Mr. ISAACS. -

No.

Mr. OCONNOR. -

You can only operate by legislation under sub-section (1).
Mr. TRENWITH. -

At any rate, this seems to me to be a position in which it would be wise to leave the Commonwealth no power to prevent any state from preparing a Bill giving such powers as it desired to have, and having it submitted to the Federal Parliament, and, I believe, carried if there was no objection to it in a very few hours. Then, instead of proceeding with any uncertainty, the parties' desirous of undertaking the work would know exactly what they were entitled to do, and they would have the authority of the Federal Parliament for doing it. I see Mr. Reid laughs and shakes his head at the suggestion.

Mr. REID. -

No; I was laughing at your remark that the Bill would pass if there was no objection to it. I suppose it would pass.

Mr. TRENWITH. -

If there was any reasonable objection to it I have no hesitation in saying that no state should be empowered to act in a way which was unjust to other states. In New South Wales, I assume-I know it is so here - if persons want to undertake a work on State property they have to ask for and obtain an Act of Parliament authorizing them to undertake much work. I remember that some years ago not an irrigation work, but a railway work, was undertaken in Riverina by some Victorian capitalists. They desired to obtain the right to make a railway on New South Wales territory, and they asked for and obtained from the Parliament of New South Wales the right to make that railway - I think it was from Moama to Deniliquin. In the same way, if any state desire to give to any of its people the advantage of water conservation or irrigation, there is not a doubt that the state Parliament would readily give that permission, unless there was a real menace in the proposal to some other state. And if that was so, who will say, when we are talking about federation-when we are providing a Constitution under which the Commonwealth shall be federally governed for certain purposes-it is a correct thing to leave to a single state the power to act in connexion with matters which are inter-state properties, as rivers are, in such a way as to prejudice the interests of a neighbouring colony? If I am in order, sir, I would like to move that amendment.

The CHAIRMAN. -

The amendment of Mr. Isaacs to insert some words after "conservation" is now before the Chair, and unless it is withdrawn the honorable member cannot move his amendment.

Mr. ISAACS (Victoria). -

For the purpose of allowing my honorable friend to move that
amendment, I shall be only too willing to withdraw temporarily my amendment, with the consent of the committee.

The amendment of Mr. Isaacs was withdrawn.

Mr. TRENWITH (Victoria). -

I move -

That the amendment be amended by the insertion after "but" addition of the following words: "The navigability of the rivers which, by themselves or in connexion with other rivers, are in fact permanently or intermittently navigable for trade and commerce with other countries or among the several states. But so that no state shall be prevented from using any of the waters of such rivers for the purposes of conservation or irrigation, to such an extent as, in the opinion of the Parliament, is not unjust or unreasonable, having regard to the needs and requirements of any state for such purposes."

The CHAIRMAN. -

It will not read sense.

Mr. TRENWITH. -

It is very difficult, if not impossible, to draft an amendment on the spur of the moment, but when the committee arrives at a resolution on the subject the Drafting Committee is always very willing to draft an amendment to carry out that resolution.

Mr. HIGGINS (Victoria). -

It was quite refreshing to hear the last speech. I think the speaker caught the true federal spirit, whatever may be the effect of the amendment. I find, upon looking up the debates, that the proposal of the honorable member (Mr. Carruthers) was negatived by 35 votes to 8 votes. My name figures among the 35 who voted in the negative, and, so far as I can see, there is no reason for reversing that vote now. The matter has been again carefully debated, and, without being disrespectful, I may say that all the former arguments have been gone over, but nothing new has been adduced to cause us to change our minds. There are two points I want to put to honorable members. One of them is this: That the declaration that conservation and irrigation are to be superior and paramount to navigation should not be inserted in the Constitution. I think that we are very apt to forget what we are here for. We are here to provide machinery to enable-laws to be made, not to make laws ourselves.

Mr. KINGSTON. -

We are not irrigation experts.

Mr. HIGGINS. -

We are here to give, the people of Australia a free hand in legislation, so that they may be able to, say to what use these waters are to be put. We are
not here to stereotype in the Constitution a declaration as to, what we, in the year of grace 1898, believe to be of paramount importance in the matter. At the present time no one will deny—at least I have not heard it denied—that water conservation is a more important purpose than navigation. But are we able to say that this will be the case 50 or 100 years hence? Schemes have been mooted—some of them wild-cat schemes, and some which appear to be practicable—and suggestions have been made for the saving and conservation of water which, I think, will meet with more attention as the years go by. The water is given liberally enough from the skies, taking one year with another, and in the course of time it may be utterly unnecessary for the people who occupy the lands of the interior to divert water from the Darling or any other stream. That, of course, is not possible at the present time, and it will not be possible for years to come.

My second point is that Mr. Carruthers' proposal is provincial and retrogressive. Mr. Carruthers says—"That, as regards rivers, the utilization of the waters thereof for navigation shall be subordinate to the conservation of the said waters by and within any state to meet the requirements of such state and its people." Look at these last words—"to meet the requirements of such state and its people." It is not the conservation of waters for the purposes of Australia, but the conservation of waters for the purposes of the particular state through which the water happens to be passing. There is more than one state which may want waters for irrigation. There is no right on the part of any one state to drink up, as it were, all the waters passing through it. There is an old custom in Holland, when two old friends meet, of taking two pipes and one pot of beer, and they pass the beer turn about to one another for each to have a pull. But the man with the pot in his hand does not drink up the whole lot. That is the very position here. The man whose turn it is drinks down to a horizontal line around the pot. Two or three friendly nations—may I call them nations?—should make some joint arrangement, so that each may have the use of the long beer pot. A reference has been made to the existing words of the clause. It is said, in loose phraseology, that the existing words put navigation above irrigation and conservation. They do nothing of the sort. These words are, I say with respect, loosely used and wrongly applied. The very utmost the words say is not that navigation is put over irrigation, but that the Federal Parliament is allowed, if it think fit, to interfere with certain schemes of conservation and irrigation. Are we to trust the Federal Parliament or not? Is it reasonable to think, in the present state of things, that that Parliament, constituted as we propose to constitute it, would ever think of interfering
with the reasonable use of the waters of the rivers for conservation purposes? Surely that is a matter in which we may trust the Federal Parliament. It will not be a Parliament of fools, but one of reasonable men. If that Parliament sees that conservation for state purposes is essential, it will be sure to give full rein to the state for the purpose of effecting conservation. But the position becomes absurd. According to Mr. Carruthers' amendment, he wants to leave Queensland the power to dam up and use for conservation purposes all the tributaries in Queensland. He wants to leave Victoria with full power to dam up and use in Victoria all the waters of the Goulburn, Campaspe, and other tributaries; and wants to leave, of course, New South Wales similar powers. But the River Murray cannot be separated from its tributaries in that way. They are one joint stock; nature has made them a joint stock. I propose that we should leave to the Federal Parliament in plain language the adjustment of riparian rights as between states, leaving it absolutely to the Federal Parliament to say how the waters should be used.

Sir GEORGE TURNER. -

The adjustment of the riparian rights?

Mr. HIGGINS. -

The adjustment of the riparian rights would mean declaring the rights as between states.

Sir GEORGE TURNER. -

Would the Federal Parliament be able to create rights which do not exist?

Mr. HIGGINS. -

Certainly.

Mr. REID. -

I see. That is what you mean?

Mr. HIGGINS. -

I do not suppose I shall agree with the Premier of New South Wales in the matter. I put it straight and fair before him that I cannot in the least agree in the attitude he has taken up in this matter. I may be wrong, though I hope I am right, but I think that the right honorable gentlemen has shown this afternoon that real earnestness, which I, for one, certainly appreciate very highly. He showed an earnest desire to get a Constitution that he could recommend to his people. He is treating federation as a subject within the pale of practical politics. I have always discredited the statement that I have heard from time to time, that the right honorable member is not in earnest in regard to federation. I firmly believe that he is in earnest in regard to federation, and it is that earnestness which induced him to speak with such gravity upon
the issue just now before us. But, then, there is this to be considered. In America they have been suffering for years for the want of some federal control over irrigation purposes. Mr. Gordon read passages from the American books showing how strongly they desire to have a provision made for irrigation and conservation, which is so essential for the western states, so that it may be brought within federal control. In order to obtain relief they want to approach the Federal Congress and get a general law to regulate the subject. One attempt has been made to bring in the interests of Victoria. I am glad that Mr. Trenwith has disclaimed voting in this matter merely in the interests of his state. I do not think the people of Victoria are likely to regard him as less attached to Victoria because he has determined to treat this as an Australian subject. But the argument used is that if you do not make conservation superior they will be able to stop the Melbourne Water Supply from diverting some of the other streams upon the other side of the Dividing Range for the purpose of supplying the conduit pipe for the Yan Yean supply. I have seen that creek as it was and as it is. There is no doubt that if Jack's Creek were not diverted it would flow into the Goulburn, and thence to the Murray; but they have turned Jack's Creek into a channel, and it now helps the Melbourne Water Supply. I ask, is it possible that the Federal Parliament would interfere with anything of that sort? In the first place, the effect of diverting Jack's Creek would be infinitesimal on the Murray. All that Mr. Barton and Mr. O'Connor claim for clause 52, sub-section (1), is that the Federal Parliament will be able, by its rules in regard to navigation, to lay down principles which will avoid all substantial interference with the waters for the purposes of irrigation and conservation or water supply. It means this: That so long as the diversion of water is slight, or is reasonable for the purposes of the area which the waters are meant to serve, there will be no interference by the Federal Parliament. As I understand Mr. O'Connor's view of the law, it is that under clause 52, sub-section (1), there is absolute power for the Federal Parliament to intervene, if it thinks fit, and to say that you must not interfere with the navigation of the Murray or the Darling beyond certain limits. How could anyone say that the Federal Parliament would be justified under that in interfering with a diversion of a single creek? With regard to the amendment of Mr. Trenwith, which is based on the amendment of Mr. Isaacs, I think that, in principle, it is perfectly correct, but what I want to know is this: How does it add to the interpretation of clause 52, sub-section (1)? In what way does it add to the powers of the Federal Parliament? As I understand it, we might serve our purpose by leaving the whole thing to the Federal Parliament. At least, under clause 52, sub-section (1), we shall be able to leave to the Federal Parliament the
power to make an overriding law for the purposes of navigation, but it will not make any overriding law for the purposes of navigation which seriously interferes with the use of the water for irrigation purposes. We have had a long debate on this subject. We have divided upon it before, and there has been an over-powering majority against the proposal of Mr. Reid. I think he was only supported by five Victorians and two other New South Wales members, and there were 35 against him, and unless there has been some new ground which is to change the position I do not see any reason why we should not soon come to a division.

Mr. FRASER (Victoria). -

I will support the amendment of Mr. Carruthers, for the reason that I am satisfied that the states should have the right to use the waters within their own territory. If they have not that right you will give the right to the Inter-State Commission or to the Federal Parliament. We know perfectly well that the Federal Parliament will be composed of members from Western Australia, Tasmania, and other places, and I do not think they would take the same interest in the question as the other states directly concerned. This is a matter for the state Parliaments, and not for the Federal Parliament. It is said that a state might drain every drop of water in the rivers, but that could not happen for centuries to come. The rivers Edwards, Murray, Murrumbidgee, and the Darling, at certain times of the year— that is, in June, July, August, September, and sometimes October, or even in November—are in high flood. It is not possible to conceive that navigation could be practically interfered with during those months. If, therefore, we insist that we shall place this power in the hands of the Commonwealth Parliament or all Inter-State Commission, we shall deprive the states Parliaments of control over those waters. How would any sane man, as was said to-day, undertake to spend large sums of money upon irrigation and conservation when he would have before him the possibility of the Commonwealth Parliament dealing with that expenditure? It would be absurd. You would paralyze all expenditure on improvements. What is wanted is that millions of human beings shall be facilitated in every possible way in spending money to make the best use of the land. The Commonwealth Parliament is not the proper authority to do that. The state Parliament is the best authority to deal with such matters. It is absurd to say that those who are situated at the top of the rivers will take all the water. There is water falling in each one of the states, and the states which are situated on the upper portions of the rivers cannot take that water away. There are streams running into the Murray, the Darling, and the other rivers from Victoria,
New South Wales, South Australia, and Queensland. The streams running from these colonies will keep the rivers running within each colony even if the water above is partially taken away. But it would be impossible to take away the water. Such a thing might happen when we have 100,000,000 human beings in these colonies, but we need not bother our heads about that contingency. If we insist upon putting the rivers under the control of the Commonwealth Parliament or an Inter-State Commission, subject to all sorts of uncertainties, we shall do a very unwise thing, which will paralyze the expenditure of money on the lands and upon conservation and irrigation. With regard to conservation, as I said when I first spoke on the matter, any one who has travelled on the Darling River, the Edwards River, and other rivers, knows that there are large numbers of places where water is naturally conserved. With very slight assistance by the holder of the adjacent land, the water enters into large lagoons and lakes, and with a little damming up you can conserve water that will serve for months of the year. If you give this control to the Inter-State Commission they would really have to take this power away from the states, and the whole thing would be paralyzed. Let us do what we can do. The states at present have the power to take the water. Leave the matter as it stands. If you do that, you leave it as it has worked for years past. But if you change the system the people of New South Wales, or some parts of Victoria and of Queensland, were that colony to come into the Federation, would be naturally and properly alarmed. They would say-"The control of our waters is taken away from us and given to the Inter-State Commission, who will not understand the question, and may do what will be very injurious to our interests." It is not a proper thing to do that. It is far preferable to leave the matter as it stands, and to adopt either the amendment which has been moved by Mr. Carruthers or that of Mr. Reid. A lot has been said as to the Federal Parliament taking the control. It is a dangerous thing to give the Federal Parliament that power, because the Parliament will not be conversant with the subject. The authority conversant with the subject is the local Parliament. Even were they asked to deal with the question, the Federal Parliament might not be thoroughly alive to the vast interests concerned. The watering of the land is altogether more important than navigation. As I have said before, 99 parts to 1 of the traffic of the Australian colonies is now carried by the railway systems. The traffic carried on the rivers is an infinitesimal portion of the whole, and as trade and intercourse, and as the quantity of produce, increases, and as settlement takes place on the land, more produce still will be taken by the railways. Therefore, the railways will be able to carry at a cheaper rate-
in fact, they are cheapening their rates year by year. When the mass of produce which will be produced in these colonies ten or twenty years hence is taken by railway, the Railway department will be able to carry it at a cheaper rate than at present. And the rate of insurance on our rivers is really very high, and goes a long way towards paying for the extra freight on the railway systems. Even on the Edwards River, a run of a few miles, there is an insurance rate of from 10s. to 15s. per ton per mile on produce. The railways are capable of carrying the whole produce without detriment to the producer. Therefore, it would be an unwise thing, in my opinion, to put this matter under the control of the Federal Parliament. As I said before, these rivers are always navigable at the time of the year when there is ample water to spare for those who choose to navigate as well as for purposes of irrigation and therefore it would be far safer for us to leave the matter as at present, letting the states having control of the rivers within their territory. Therefore, I think it would be wise to adopt the proposals of Mr. Reid and Mr. Carruthers.

Mr. BRIGGS (Western Australia). -

This debate has lasted a long time, and I hope I shall not be considered obtrusive in addressing myself to the subject, because I shall speak with an unprejudiced mind, knowing very little about the matter, except what I have learned from what has fallen within my hearing during the several weeks the topic has been more or less under debate. Many honorable members of this Convention have spoken as advocates of their colonies. The New South Wales representatives have spoken with great fervour; so have the Victorians. Such has been the fervour shown on both sides that I should be almost afraid of the chances of the truth coming out, except that I remember that in the English courts of law it is said that the truth is most often discovered by means of the opposing intellects of keen and active men on each side. And, though we may have debated the question very keenly on each side in this Convention, I hope that when it comes to be considered subsequently, honorable members will rise from the position of advocates, and look at matters calmly as judges. We have a right to expect this from many of the gentlemen of the long robe who have taken part in this debate, who are qualifying themselves for high judicial positions, which they have a right some day to expect, and that form the summit to which every lawyer of eminence hopes to attain. I hope that on this question we shall be able to drop partisan feeling and look upon ourselves not so much as members for the various colonies, but as Australians, doing our best for the benefit of the nation as a whole. I know nothing whatever of the minor points in
connexion with this question, but from what I have heard in the course of this debate, I was led at first to believe that the matter is one which would best be left to the operation of sub-section (1) of clause 52. But I have been much impressed with the arguments of the New South Wales representatives that the powers of conservation and irrigation should be left in the hands of the states as at present. The states have done much in this direction already, and I am of opinion that we should leave as much as possible in their hands. And so I think that navigation being subsidiary will be more fitly dealt with by the Federal Parliament. I shall have much pleasure in voting for the amendment proposed by Mr. Isaacs, and amended by Mr. Trenwith, that the general question shall be left in the hands of the Federal Parliament. It has been mentioned that the conservation in some way implies a waste of water. Several honorable members have spoken in that sense. But I would impress upon them that the conservation of water means the preservation of water. I believe that, if water were wisely conserved, both irrigation on a large scale and navigation also could be carried on, and the flow of waters in these rivers would be increased and not wasted in its flow to the sea. I have much pleasure in supporting the proposal that the states shall have control of the conservation of the water and of irrigation, though I really think it would be better for the Convention to leave the matter to be dealt with under sub-section (1) of clause 52.

Mr. BARTON (New South Wales). -

I do not desire that this question should go to a vote without expressing my disinclination to support the amendment of my honorable friend (Mr. Carruthers). Now, I have been challenged a good deal upon a declaration that I made in favour of the sub-section relating to trade and commerce, and I should like to say something definite with regard to that, because I think it is only fair that, in the altered condition of things which has taken place since I made that declaration, I should restate my position. It is true that, in the debate on the 7th of February last, I stated that I considered that the trade and commerce provision was a sufficient one for the purpose of dealing with this matter and I said-quoting from a former speech—that I held there should be no provision beyond sub-section (1), and that that sub-section would best serve all our interests. I also used these words in the same speech:-

Still, I think, although this matter has been very fully debated, that there might be an adjournment, as we might find from the multitude of propositions that have been submitted that some arrangement could be come to that would satisfy the Convention generally. For myself I am not very hopeful of that. I am more hopeful that the decision come to will be
that sub-section (1) is sufficient for all of us.

I was then of opinion that we might well rely, and I think now we might well have relied, on the provision relating to trade and commerce among the several states and with other countries, going no further in that respect than the Constitution of the United States has gone. I find, however, even among those who are very anxious, and I think not unnaturally anxious, to pin me down to the statements I then made, that there are a good many who are themselves not satisfied with the trade and commerce provision, and who sought to define or limit the meaning of that sub-section by various proposals with regard to rivers. I find also, in regard to railways, that instead of my view that the provision in regard to trade and commerce might be regarded as sufficient, no fewer than four different proposals have been laid before us, and embodied in this Constitution, one at the instance of Sir George Turner-two, in fact, at his instance-one at the instance of Mr. Reid, and one at the instance of Mr. Grant. I do not think there is any one among us-I am not now speaking on the merits of these railway proposals-who will not admit that these proposals considerably affect the trade and commerce provision as applied to railways. I only wish to say that, while I adhere to my position so far that I cannot support the proposition that the powers with regard to trade and commerce, in respect of navigation, should be subordinated-using simply the words of Mr. Carruthers-to the conservation of the waters by and with any states, or, as it has been proposed, to the conservation and use of those waters for irrigation-while I wish to say that I adhere so far to my former position that I shall not support any proposal that the powers, as to the utilization of waters for navigation, shall be in express terms subordinated to the use of waters for irrigation, I also say that I wish it to be clearly understood that I do not lay down any further proposition on that question, except that I cannot go so far as to say that the one should be subordinated to the other. I should like to be permitted to say also-I say permitted to say, because the debate has been a tolerably long one for a recommittal debate-that I am no more able than I was at the beginning to follow the proposal of Mr. Isaacs. I am not able to say that I can assent, as a member of this Convention, to the proposal that the navigability of rivers, which should be a matter of evidence to be determined by the High Court, should be submitted to any other tribunal, unless it can be shown that to leave that matter to be dealt with by the High Court itself would be inconsistent with the provisions made in this Bill as to the Inter-State Commission. If it can be shown that there is a contradiction or a contrariety there, I might go so far as to say that the Inter-State Commission might deal with this question of the
navigability of rivers; but unless there is some inconsistency there, I believe, as I have believed all along, that a question of that kind is most fit for the determination of the High Court, and much more fit for its determination, and even for the determination of the Inter-state Commission, than for the determination of Parliament. As to these other decisions of questions of rights existing at the time of the establishment of the Commonwealth, however much those rights may grow pending legislation, and as they do exist at that time, and as any growth of them will only be in accordance with the legal position in which they crop up, I am of opinion that a well-constituted legal tribunal—not the Federal Parliament—is the best authority to deal with these questions. It will be asked—"Why not trust the Federal Parliament?" Well, I am not evincing distrust to the Federal Parliament; but if I did I should be in a very large company. What I say is that the Federal Parliament ought to deal with the making of laws within the powers intrusted to it, and ought not to deal with legal rights existing at the time of the establishment of the Commonwealth, under which rights, naturally, interests consonant with those rights will grow up. Therefore, the rational decision in that regard is to leave a competent tribunal to decide legal rights which ought to be within the determination not of the Federal Parliament, but of the tribunal we constitute for the purpose of deciding legal questions. Surely we are here, for the purpose of distributing the powers of legislation and adjudication to the proper authorities, and when we find matters are existing at the time of the establishment of the Commonwealth, although the interests under them may expand, still those matters are matters to be ultimately determined, as it is not to the Parliament, but to a consistently impartial tribunal, that we ought to resort for their determination. The legislation is for the Parliament; but the adjudication of rights should be left to the courts. Having held that position from the beginning, I hold it now in regard to Mr. Isaacs' amendment, and therefore I find myself unable to support that amendment. And I cannot support the amendment of Mr. Carruthers, because I do not see why we should determine that any one set of these rights—those of trade and commerce—in which we include navigation, and those of irrigation, should be subordinated the one to the other. It is far better that they should find their proper places under the growth of a Constitution, with such elasticity of position as the necessary circumstances of the Commonwealth will bring about.

Mr. FRASER. -

Navigation is under the control of the Federal Parliament.

Mr. BARTON. -
No doubt; but that does not of itself give the Federal Parliament the
determination of legal rights so far as they exist at the time of the
establishment of the Commonwealth; and all I ask for is this, that so far as
legal rights exist, no matter how large the interests that naturally grow up
under those rights may be, they should be determined according to the
maxims and principles which determine legal rights, and not according to
the other method. Mr. McMillan has suggested an addendum to the
navigation and shipping clause, as follows:-

Subject to the rights of each state in the use of waters solely within its
own boundaries for the purpose of conservation and irrigation.

Well, so far as the words "Subject to" mean that navigation and shipping
are to be subordinated to other rights, I am disinclined to agree with that,
because I think it is only consistent with the position I have maintained
from the beginning that I should not approve of a position of that kind. If
some such words as these "with due regard to" or "with due consideration
to the rights of each state to the use of such water with its own boundaries"
were substituted, then if we are to depart from the plain meaning of the
trade and commerce clause, I should be more inclined to support a
proposition of that kind than any other that has been put before us. I do not
wish to prolong the debate, but I thought it only fair that I should make this
statement.

Mr. ISAACS (Victoria). -

The Hon. Mr. Barton has referred to the amendment which I placed
before the committee some time ago, and which has now been revived by
my honorable friend (Mr. Trenwith). I do not hesitate to say that if that
amendment had been accepted we should have arrived at a fair and
equitable decision with regard to navigation on the one hand, and irrigation
and water conservation on the other. Mr. Barton says he could not support
the amendment, because he thinks the Federal Parliament is not the proper
body to determine the rights of the states, and that this duty should be left
to the Supreme Court. The fallacy of that argument lies in this
consideration: -day, in the persons of its Premier and its Minister of Lands,
and says, as we have said before, that irrigation and water conservation are
the primary needs of this continent, and that navigation, important as it is,
holds but a secondary place. They also say that the American decisions
show distinctly that, in America, everything else in relation to these
navigable rivers is in a position of servitude to navigation. That should not
be the case in Australia. The only point of difference between New South
Wales and ourselves is this: That while we agree with New South Wales
that irrigation and water conservation should not be blocked under

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any possible circumstances in favour of navigation, we part with them at this point, that we say that New South Wales should not take the whole of the waters of the Darling and of its other rivers for its own purposes, and deprive other colonies of the use of the rivers which, by their very existence and course, are the common property of Australia.

Mr. Reid. -
Such a thing would never happen.

Mr. Isaacs. -
If it would never happen, there can be no harm in accepting the amendment. The only fair way out of the difficulty is to say that no state should be permitted to take every drop of water in utter disregard of the needs of other states. To prevent that, there must be some impartial tribunal, and we have only to consider what tribunal it should be. Is it to be the Supreme Court? I say "No," for the reasons I have given?

Mr. Reid. -
Is not that an impartial tribunal?

Mr. Isaacs. -
I should say that it is impartial, but its jurisdiction ought to be confined to legal questions, and should not extend to questions such as are necessarily involved in the matter we are now considering. We should not bring the Supreme Court into political discussions under any consideration. We have then to ask ourselves whether it should be the Federal Parliament, or some body created by the Federal Parliament. I think that an Inter-State Commission, or some other body created by the Federal Parliament, might be the best, but I should be perfectly willing to accept the Federal Parliament as the arbiter. That would be fair to the whole of the three colonies immediately concerned, and, therefore, I do support again the amendment that I proposed the other day, and that has now been brought forward by Mr. Trenwith.

Mr. McMillan (New South Wales). -
We are brought again to the point at which we started before. We are trying to do the impossible. We cannot define, and we must either leave this matter to the sub-sections of clause 52, or absolutely define the rights of the states. I myself should not have cared to re-open the discussion. The strong point of the argument in New South Wales and elsewhere is this, that you can give no certainty to contracts unless you have these rights clearly defined.

Mr. Trenwith. -
Can you not give certainty by Act of Parliament?

Mr. McMillan. -
You can so far as the Act goes, but you can give no certainty in the
meantime that contracts may not be upset by that Act. Once you give the power to the Federal Parliament you lose all control yourself.

Mr. ISAACS. -

Mr. Carruthers' amendment gives no certainty.

Mr. MCMILLAN. -

I should have been glad to have left the whole thing as it was, but since that time I have had an opportunity of visiting my own colony. I, with the Right Hon. Mr. Reid and others, am anxious that the Bill should be acceptable to our colony. There is no doubt that this has become one of the most burning questions in connexion with federation in New South Wales. I am reluctantly compelled to come to this conclusion that if we touch the thing at all, we must put it beyond all doubt. Any such proposal as that of the Hon. Mr. Barton, to use the expression "with due regard," or "with due consideration to the rights of each state," would simply leave the whole matter in the same position as it is now. I confess that the weight of argument, with a view to the consummation of this federation, is entirely in favour of absolutely fixing the rights of the states to waters which flow entirely within their own boundaries. There was a proper course taken before with regard to the River Murray alone, which flows through different colonies, but in the case of the rivers which are entirely within the boundaries of one colony, it seems to me that we must give security to contracts, especially as those contracts must be undertaken, as we all admit, by the state itself, and as irrigation and water conservation are entirely a state question, and not a question for the Federation.

Mr. REID (New South Wales). -

I want to point out that Mr. Trenwith's amendment only throws the matter into greater confusion. After vesting the control of water conservation in the Federal Parliament, it makes the state powers subject to some Bill that is to be passed by the Federal Parliament. What conceivable Bill could cover every conceivable legitimate work of water conservation? It might take years to get a Bill passed, but in the meantime the enterprise and industry of a colony are to be left in the lobbies of the Federal Parliament, waiting month after month, while infinitely more important matters are engaging the attention of the Federal Parliament.

Mr. FRASER. -

What about the expense of getting the Bill?

Mr. REID. -

That is a trifling matter. I want to point out to the honorable member that his amendment makes confusion worse confounded. There would be some
sense in proposing that the Federal Parliament should take the whole duty over, because, then, owing a duty to water conservation, we may expect it to perform that duty. I am very glad to say that my colleague (Mr. Carruthers) has consented to withdraw his amendment. Of course it cannot be withdrawn so as to prevent Mr. Trenwith from taking a vote on his amendment, but I am authorized by my colleague to say that he is prepared not to press his amendment. I have had the assistance of my friend (Mr. O'Connor) in so remodelling my amendment as, I think, to put the matter before the committee not in so extreme a form as that presented by Mr. Carruthers. I intend to propose words which will in no sense assert the superiority of water conservation over navigation. It will simply leave the rights of the one and the rights of the other untouched, and then, if any question arises, it will be for the proper tribunal to decide that in accordance with justice. If honorable members will allow me to read this amendment, it, perhaps, may commend itself to them as a settlement of this matter. I propose, if the amendments are negatived or withdrawn to move that sub-section (8) be amended by the addition of these words:-

The powers contained in this sub-section, and those relating to trade and commerce in this Constitution, shall not abridge the rights of a state or its citizens to the use of the water of rivers within its boundaries for water conservation and irrigation.

Mr. ISAACS. -

That is all New South Wales.

Mr. GORDON. -

That is the same thing.

Mr. REID. -

What is this talk of taking every drop? It is the most hysterical nonsense in the world.

Mr. ISAACS. -

That is perpetuating your sole right.

Mr. REID. -

I am very anxious to protect the rights of every one. It only happens that we, by some misfortune of nature, have more rights than other people because we have more water and longer rivers. It is a great misfortune, but we could not help it, I can assure honorable members. It has been the subject of great vexation to our friends for years past. I am prepared to add any words to remove difficulties. I am prepared to leave out the words "within its boundaries." I will adopt any possible amendment to make it of general application.

Sir JOHN DOWNER. -

Do you object to "reasonable use"?
Mr. REID. -

I do not know that I would, in the interests of a settlement of this vexed question. I will take a moment to consider the effect of inserting those words, and when I move my amendment I will probably be found to have inserted them.

Mr. TRENWITH. -

Who is to be the arbiter?

Mr. SOLOMON. -

The High Court.

Mr. TRENWITH. -

That is impossible.

Mr. REID. -

That really is an objection to putting in these words. It sounds so reasonable to put such words in, but the unfortunate part is that putting such words in destroys the effect of the whole affair, because it does not make it a question of right. It makes it a question of accident what any particular person or authority will consider a reasonable use. I never heard of a tribunal that ever sat on a water question that did not consider the question of reasonable use. I do not think the words need be in, because surely any right possessed by any one is subject to reason.

Mr. BARTON. -

Put them in.

Mr. REID. -

I would put them in, except that I am afraid that it throws away the slightest ground for the protection of those waters.

Mr. MCMILLAN. -

It was settled six weeks ago.

Mr. REID. -

I am afraid that it unsettles the whole settlement. So far as there is some protection for the legitimate use of the waters not of one state, but of all the states, I am prepared to accept an amendment, but it must not take such a form that it is a matter of mere arbitrary judgment and discretion as to what is reasonable use. For instance, if a man were asked to build a house subject to the power of another man to knock it down if he thought fit, what re-assurance to the former would it be to say-"Oh, but the man who has that power is a most reasonable man; he will never do you an injustice, he is a man of the highest integrity"? The man will not build on such a condition, because the man of the highest integrity, especially if he had a contrary duty and the house was in the road, might somehow knock the house down, and there is no compensation hanging to it. The inherent
difficulty with us is that we want to place these business enterprises on a sound business footing, and this Bill does not do it, and no rights words short of preserving rights will do it so far as I can see. If during the next few minutes any one can suggest to me words which will preserve rights I will adopt them.

Mr. DOUGLAS. - What right have you now?

Mr. REID. - It has never been questioned yet, and that is a good right to have.

Mr. DOUGLAS. - You want to get a right, but you have no right.

Mr. REID. - What country are you talking about?

Mr. DOUGLAS. - The right of New South Wales to claim all the water.

Mr. REID. - What country is my venerable friend alluding to? I happened to be talking, not of one colony, but of all the colonies, and of all

Mr. DOUGLAS. - It does not appear so by the motion you put before the House.

Mr. REID. - My words are in general terms; I was not referring to any particular state. I am willing to remove any words which seem to point to any particular state.

Mr. HIGGINS. - It is not a question of words. There is a fundamental difference of principle.

Mr. REID. - No doubt there is a fundamental difference of principle. There are some gentlemen in this Convention who are prepared to leave vast business undertakings on an insufficient basis. We who are responsible for these enterprises, and for the development of a very large extent of country, cannot do that. We cannot consent to put the destinies of our country on that basis. That is the trouble. I would be glad to do so if I could.

Mr. HOWE. - Put it on a reasonable basis, that would be all right.

Mr. REID. - If my honorable friend were the arbiter of what was reasonable I would be satisfied.

Mr. Trenwith's amendment was negatived.
Mr. Carruthers' amendment was, by leave, withdrawn.

Mr. REID (New South Wales). -
I beg to move-
That the following words be added to the sub-section:-"The powers contained in this sub-section, and those relating to trade and commerce under this Constitution, shall not abridge the rights of a state or its citizens to the use of the waters of rivers for conservation and irrigation.

Mr. SOLOMON. -
You have not put in the word "reasonable."

Mr. REID. -
I will leave that until the millennium. I have also left out the words "within its boundaries," as they may seem to apply only to one colony. The words I have used are of general application, and will include the right of any state in waters which come from another colony.

Mr. GORDON (South Australia). -
It seems to me that this amendment carries us further than the amendment of the honorable member (Mr. Carruthers).

An HONORABLE MEMBER. -
Further back.

Mr. GORDON. -
Yes. If it makes us move at all, it is with a retrogressive movement. Nobody has ever disputed the dry legal right of New South Wales to use the whole of the waters of her rivers if she pleases. At the present time, New South Wales exercises that right subject to such supervision as the Imperial authorities might exercise upon the representation of the other colonies. If, however, this amendment is embodied in the Constitution, the power of the Imperial authorities will be negatived, and we shall be worse off than we are now.

Mr. BARTON (New South Wales). -
I should like to be shown in what way the amendment of the Premier of New South Wales is less just than that of the honorable member (Mr. Carruthers). It seemed to me that I could not vote for the amendment of the honorable member (Mr. Carruthers); but I shall have much less difficulty, so far as the amendment of the Premier of New South Wales is concerned, having regard to the position I have maintained from the beginning, and to the events which have occurred since. It seems to me that the amendment now before the committee is better calculated to preserve the rights of the various states than was the amendment of the honorable member (Mr. Carruthers), which subordinated the rights of navigation to those of
irrigation. This amendment simply provides that the existing rights of irrigation shall not be abridged.

Mr. GORDON. -

What we want is a mutual surrender.

Mr. BARTON. -

I should like to hear why the one amendment is worse than the other. My impression is that the amendment now before the committee is fairer than the amendment which has been withdrawn.

Mr. GORDON (South Australia). -

The amendment is a crystallization of the dry legal position against which we are contending. If federation means anything, it means the surrender of a portion of our rights all round in the interests of everyone. To crystallize this dry legal position in the body of the Constitution will make all the other colonies absolutely helpless by exhibiting their consent to it.

Sir JOHN DOWNER (South Australia). -

I beg to move-

That the amendment be amended by the insertion before the word "use" of the word "reasonable."

The word "reasonable" seemed at first to rather attract the Premier of New South Wales, but later on he said that he would postpone its insertion until the millennium. I do not see why we should postpone its insertion until then.

Mr. REID (New South Wales). -

To show my honorable friend that I am willing to meet him so far as I can, I will agree to the insertion of the word "reasonable" before the word "right"; but not to its insertion in any other place.

Mr. ISAACS. -

All rights are reasonable.

Mr. GLYNN (South Australia). -

I should like to draw the attention of the committee to the cases which the Attorney-General of Victoria cited some time ago. If I am not mistaken, in his reference to the subordination of the principles of the English common law to the necessities of irrigation in some of the states of America, he pointed out that the words "reasonable use" came into the decisions. I cannot find these cases now; but I remember perfectly well that the rights granted for the purposes of irrigation in abrogation of the general principle of English common law of riparian ownership provided for the "reasonable use" of the water. In regard to this principle of federal control,
I should like to draw the attention of honorable members to what has been done in Germany. In this connexion I should like to read the following passage from the German Constitution:-

Rafting and navigation upon those water-ways which are common to several states, and the condition of such waters; also the river and other water dues.

It is this principle that we wish to affirm in the Constitution.

Mr. ISAACS (Victoria). -

I am afraid that wherever the word "reasonable" is placed, whether before the word "rights" or before the word "use," it will not have the effect desired by the honorable member (Sir John Downer).

Mr. REID. -

At any rate, it would be a very good finger-post.

Mr. ISAACS. -

No. The insertion of the word "reasonable" before the word "rights" would, I think, have no meaning at all. If it were inserted before the word "use" it would restrain New South Wales, for example, from making an unreasonable use of the waters of its rivers for conservation and irrigation. But, I would ask, what is to be the standard of reasonableness? It would be reasonableness as between the necessities of irrigation and conservation, and the necessities of navigation. The question would not be asked as to the reasonableness of the use as affecting the rights of two states. When you give the power to control navigation to the Federal Parliament, and you say that nothing in that power shall prevent a state from making a reasonable use of its waters for irrigation and conservation, the reasonableness is to be judged as between the necessities of water conservation and irrigation and the necessities of navigation, and not as between the rights of two states.

Sir John Downer's amendment was agreed to.

Sub-section (8), as amended, was agreed to, as was also sub-section (1) which had been postponed.

Mr. BARTON (New South Wales). -

A rather important point has been raised with regard to sub-section (2), in regard to the question of uniformity of taxation. While there has been no express decision by the American courts as to the meaning of the words "uniform throughout the Commonwealth," there are expressions in one of the cases which render it necessary for us to use caution. I therefore ask for a little more time in which to consider this matter.

Mr. HIGGINS. -

To allow graduations and exemptions, is it?

Mr. BARTON. -
My own desire is that the Federal Parliament should be unfettered in the exercise of its taxing power, if it has to use any direct taxation at all. Whatever my own opinions may be as to the way in which that power should be exercised, it is necessary that the authority to which it is confided should have the power in full force. That being so, I wish to see that this authority is properly conserved. For that reason, I think it advisable to postpone the matter, and I therefore move that it should be postponed until after clause 80 has been considered. It would then come on immediately before the provision relating to finance and trade, to which it is so nearly related.

The motion was agreed to, and the clause postponed.

Mr. HOWE (South Australia). -

I beg to move the following new sub-section, to follow sub-section (23):—

XXIIIA. Invalid and old-age pensions.

I would not have brought this under the notice of the Convention again if I had not been encouraged to do so by those who, without due consideration, recorded their votes against me on the last occasion. It will be unnecessary for me to open up the whole discussion. The different points which I consider it advisable to bring before the Convention were of a general nature. It would be impossible for any one here to advocate a particular system of assistance for the aged poor. That is for the Federal Parliament to debate when the Government of that Parliament think it advisable to act upon public opinion. This is not the nebulous matter some members of the Convention think it is. It is a real live matter, and something tangible. It has been embodied in some of the platforms of the most powerful organizations in Australia. Not only that, it is advocated with enthusiasm by the leading philanthropists and greatest statesmen of the old country. But at this stage I will not unnecessarily occupy time by going into details. I will, however, as a justification for my action, read a few opinions which I have culled from the written and spoken words of the most eminent men. These extracts I shall submit to the Convention more for publication than anything else. It has been contended that state assistance to the aged poor would undermine thrift in the people. It is said that the people of the province or state, if they knew that, without any individual effort on their part, the state would provide for them when they arrived at a certain age, would be regardless, and that, consequently, the virtue of thrift would not be practised as it should be. One of the ablest writers of the day has stated this:

I know, sir, some people speaking and writing on this subject hold the
view that the State pensions will endanger individual thrift. These people can, in my humble opinion, know but little of the inner life of the people. I venture to believe that these pensions will greatly assist thrift—the people will take a more hopeful view of life, and will practise the economic virtues more thoroughly and effectively.

These were words spoken by one of the greatest statesmen of Great Britain. Then Mr. Charles Booth, who has made a life-long study of the question, than whom there is no greater authority—

Mr. DOUGLAS. -

Let us

Mr. HOWE. -

I am quite willing, but I do not think I have occupied the attention of the Convention unnecessarily. This is one of the most important measures, in my opinion, which could be brought before any Parliament, Senate, or Convention that every sat. It is a question of the alleviation of the distress existing among the deserving poor. Mr. Booth says—

With the poorest class, most of whose old people are in the workhouse or are receiving some parochial assistance outside, the proposal would be popular. These classes count up to more than half the population.

Old-age pauperism is very serious. Indoor relief lacks humanity, and outdoor encourages improvidence. We are therefore justified in seeking some better plan.

Now, Mr. Chamberlain, according to a report in the Times on 7th December, said, when speaking at Birmingham:—

Of all men belonging to the working classes, one in two is compelled, under our present system, if he lives to 65, to have recourse to parish relief. I say that this inadequate provision for old age of our working people is not only a disgrace, but is a danger to social order. I say that it is injurious to the individuals and to the nation.

Mr. Bartley, M.P., of the British Parliament, who has spoken and written a great deal on the question, says—

It ought to be impossible for any man who had spent his life honorably to be compelled to seek relief in his old age in the workhouse.

The opinions of Mr. John Morley are well worth quoting, and what he says is something which should animate whoever is Premier of the Federal Parliament to try and accomplish that which would no doubt redound credit to his Administration. Mr. Morley, speaking recently at Stoneleigh Park, said—

That he thought the man or the party who solved the question of preventing a man who had worked hard all his life, maintained his family,
had been a good citizen, from going in his old age to the workhouse would
deserve more glory than by winning great battles in the field.

Is it to be the Premier of New South Wales or Mr. Barton who is going to
introduce a measure for old-age pensions when he has the power to do so
by the Constitution we give to the Federal Parliament?. I do not think it is
necessary for me to say any more. The words I have quoted are better than
any I could speak. My only desire is to give power to the Federal
Parliament to achieve a scheme for old-age pensions if it be practicable,
and if the people require it. No power would be taken away from the states.
The sub-section would not interfere with the right of any state to act in the
meantime until the Federal Parliament took the matter in hand. I do not
believe in provincialism so far as old-age pauperism is concerned. In these
colonies men are born in one state, spend their manhood and best days in
another, and then return, broken down and unfortunate, to the land of their
birth, which owes them nothing. Is it to be contended that under such
circumstances the state of the unfortunate man's birth should be compelled
to support him? Surely the support of the aged poor could be better
accomplished by a Federated Australia. Wherever a man may roam within
the boundaries of Federation, he should know that in his old age
be need never fear the pauper's lot. I would compel every able bodied man,
in the heyday of youth, when he has the means, to make a compulsory
contribution towards a fund out of which provision would be made for his
old age. That is another reason why the federal authority should take it
instead of the state, because within the bounds of Federated Australia a law
can be enacted compelling that individual who is to receive the benefit to
contribute to the fund in which he is to participate in old age. I have much
pleasure in bringing forward this motion again, because I am assured that
those who reluctantly voted against me before will vote with me on this
occasion.

Mr. BARTON (New South Wales). -

I cannot allow the question to be put without saying that I have not
changed the opinion I expressed before. The honorable member may or
may not have made out a good case for providing invalid and old-age
pensions, but unquestionably what he has not proved is that this is a federal
and not a provincial concern. That is the whole question we have to decide,
because what we are more particularly concerned in in framing this
Constitution is to distribute the powers and functions with which we are
dealing, so that things which are properly federal will go to the
Commonwealth, and those which are provincial will go to the provinces. I
have not found that the honorable member has confined himself to the
question of fact-it is more than a question of fact, it is a question of right-as
to whether the Commonwealth should be burdened with this subject, or whether it should continue to be, as it is now, a matter for the states to decide for themselves. I am not going to argue whether or not the state should provide for invalid or old-age pensions, because that is not the question we have to deal with. The question is divided into two parts, first with regard to pensions for invalids. If we are to pension invalids we may as well take over the treatment of the sick poor generally. The treatment of the sick poor is in all the provinces, and it has been always, not only a particularly provincial matter, but an intensely local matter. Throughout, the dealing with the sick poor has been left to those who furnish the funds, sometimes assisted by the state. All that class of relief or assistance has been distributed in hospitals or otherwise in the districts concerned. Now it is proposed to make a great jump and to take it from the districts and place it in the hands of the Commonwealth. I do not see that a case has been made out for that. The matter should either remain as it is now, a subject to be dealt with by the districts concerned, or if you go further, it should be proved that this is a federal matter. With regard to old-age pensions, I think the same consideration prevails, except that there is a large agitation on foot for old-age pensions to be distributed by various States that we know of. We know an agitation has existed in Germany. We know how far it has gone in England. We know that there is a great agitation in some of the colonies, but until I came to this Convention I never heard it argued by any who were in favour of that system that it was a federal matter.

Mr. Howe. -

It is a federal matter in Germany, and 12,000,000 of people are under law.

Mr. Barton. -

That may be the case in Germany, but I have yet to learn that any one here has thought fit to take the distribution of functions and powers in Germany as an exemplar for an Australian Federation. Nor will I consent to be bound by the action of Germany as a precedent, when I consider under what circumstances the German Federation was brought about. If it was not made at the sword's point it was made at a distance uncommonly near it. In regard to old-age pensions, one would have thought that we would have some argument to show that the persons who become old, who would principally be of the working classes, should be dealt with by the federal authority as a matter of reason. Precedents from Germany will not affect the question. I do not think there is any precedent in any English-speaking country on the subject. What is the question or reason? Why
should there be old-age pensions in the Commonwealth, which does not deal with the territorial rights of the states, of the development of their lands, their railways, and their industrial occupation in any way except so far as it has power to frame a Tariff? It has not to do with any of these matters. Therefore, it seems to me that, inasmuch as the persons who are unable to assist themselves when they arrive at old age, and who, therefore, may be said to have some claim for assistance from the Government, have a much better claim if the matter is to be considered as a claim against the Government under whose regulations of industry their old age has come upon them, without provision being made for it. When one considers that the occupations of the people are more or less inseparably associated with the land which remains in the control of the state, and is regulated by that state, we must come to the conclusion that the conditions which lead to the pauperism of the old are conditions created by the state itself, if really the pauperism of the old is created by any conditions for which they are not responsible. If any conditions created pauperism in old age it must be those conditions which arise necessarily from the matters which are purely within the sphere of state control. If that is true—and I believe it is, with every respect for those who hold contrary opinions—I think those responsible for such conditions should take upon themselves the burden of ameliorating them, and those are not the federal power, but the power of the states. For these reasons I confess that my opinion has not been changed.

Mr. HIGGINS (Victoria).—

I intend to change my vote. I voted against this proposal when it first came on, but I intend to vote for it now. I think it due, however, to the members of the Convention to explain briefly my reasons. I vote now with much misgiving and after a great deal of thought. I am not at all surprised at the opposition which the proposal has met with from the leader of the Convention. I do not agree with what Mr. Holder said on the first occasion when it came before us that any one who would vote against this proposal was not a sincere supporter of old-age pensions. Many of us were a good deal hurt by that statement. I will tell the honorable member that I voted against old-age pensions in the Federal Constitution, because I wanted to see an experiment in old-age pensions made by the states. It seems to me that these Australian colonies are a grand field for experiments in such matters. I was hoping sincerely that we should have experiments here and there, and that we should learn by our mistakes, one colony from the other. I admit there is this argument to be urged: That is, I cannot conceive how you can apply a good old-age
pension law to a migratory population like that we have in Australia. What are you to do with a man who spends one-third of his time in Queensland, another third in Victoria, and the remaining third in Western Australia, as a miner? The difficulty is immense when you come to look into details. I am glad I voted against the matter in the first instance, because it has helped to give further time for thought. None of us should be too proud to alter a vote if he thinks he is wrong. With regard to the objection of the leader of the Convention, it was an argument that affected my mind a great deal in another form when the proposal was first put before the Convention. He says that your charities are under state laws, and how are you then to draw the line and say that old-age pensions are to be under the federal law? But when it comes to that, I would point out that our old civil servants with pensions, and the old soldiers in England with pensions, still have to go to the district hospital, and there is no clashing about it. I have, therefore, to say in brief—because I admit I have not the right to make a long speech upon this subject—that although I did feel that this attempt to put in the Federal Constitution the power to legislate upon old-age pensions was the outcome of an effort of certain of our Governments to shunt the obligations of dealing with these matters—there are two or three of our Governments which have come face to face with the necessity of dealing with old-age pensions, and I thought they were rather anxious to shunt the matter and say that it could be best dealt with by the Federal Parliament—I see now that I did them an injustice in having that opinion, and I do not think now that there was any such feeling in the minds of honorable members who supported Mr. Howe's motion. Therefore, I withdraw any such imputation as that. I realize that there are practical difficulties in a country so remote as Australia is, with a population so migratory as we have, in carrying out a scheme of old-age pensions in any state, and I feel justified in changing my vote upon the question upon the present occasion.

Sir JOHN FORREST (Western Australia). -

I voted with my honorable friend (Mr. Howe) on the last occasion when this matter was under discussion, and like my honorable friend (Mr. Barton) I see no reason to change my mind. I cannot agree with my honorable friend when he says that those who are responsible for the condition of affairs should bear the burden. It has been said by several honorable members that the people of Australia are migratory, and that they go from one colony to another. How then can it be said that the man who has spent most of his life in one colony or in several colonies, and who migrates to another colony in his old age, and becomes a burden on the state, has a right to consider that that state is responsible for him? We should remember, I think, that we are trying to build up a federation of
these colonies, and that the term "migratory" will scarcely apply, because whether we live in one part of Australia or another, we hope that we may always consider ourselves at home in our own country. It seems to me, sir, that under these conditions the state will be unable to deal with this question, seeing that people are constantly coming and going-living in one state when they are young, going to other states as they grow up, and perhaps returning to the former state when they grow old. How could a state deal with a matter like old-age pensions in as satisfactory a manner as the Commonwealth under circumstances of that kind? Of course, I do not wish any remarks I have made either on this or the former occasion to lead to the belief that I wish to encourage pauperism or to induce people to think that they can lead reckless valueless lives and become dependent on the state in their old age. That is not my object at all.

Sir JOHN FORREST. -
Nor, I feel, is it the object of my honorable friend (Mr. Howe). But I feel that this is a matter that should be within the discretion of the Federal Parliament to deal with. We are not asking for any hard-and-fast line to be laid down upon this matter, but simply that the Federal Parliament shall have power to deal with the question. Surely there should be no objection, considering the many powers we are giving to the Federal Parliament, to including amongst these powers the power to deal with this matter of old-age pensions. We hope that the barriers which now exist between us will, if not removed altogether, at least be to some extent removed; and, therefore, I cannot understand those who wish to restrict this great question to management by the states, when every one surely must see that the Federal Parliament, having control of the whole of the people of the colonies, will be in a far better position to deal with this difficult question than the states. At any rate, viewing the matter from this stand-point, I must support, to the utmost of my power, the proposal put forward by my honorable friend (Mr. Howe).

Mr. TRENWITH (Victoria). -
This subject is one to which I have given a great deal of thought, and one which I believe to be of very grave importance. I think it is imperatively necessary that the Governments of the various civilized countries of the world shall in the near future make some provision for the evening of the lives of those who have worn themselves out in the service of their country. Because, I hold that it is utterly unimportant where a man works, he is still working for his country. He may be a soldier prepared to fight for his country, he may be a civil servant working in one of the departments of
the state, or he may be a navvy assisting to build a railway which is to
develop the country in which he lives—he may be anything, but, so long as
he is working in the country, he is serving the rest of the people of that
country. When this question was before the Convention previously, I voted
against Mr. Howe's proposal to give the Federal Parliament at the
beginning the power to deal with old-age pensions. I believed then, and
believe now, that giving this power to the Federal Parliament will have the
effect of retarding rather than advancing this movement. I have, however,
since the matter was last before the Convention, consulted a large number
of persons whose opinion I value very highly, and I have arrived at the
view that the inclusion of this provision amongst the powers of the
Parliament will very materially add to the passage of the Bill when
presented to the people for their vote. Having that thought in mind, I have
resolved on this occasion to vote for the inclusion of the provision in the
Constitution at this stage. It will be remembered that I urged and held then
that ultimately, before the matter could be effectively dealt with, it would
require to be handed over to the Federal Parliament. My view was that the
states which undertook to legislate upon this subject would find that, with a
population so migratory as ours, the difficulty is too great, and would have
to ask the Federal Parliament to take the question up. I felt then, and I feel
now, that the fact of the states dealing with the

question, and seeing its difficulty in actual operation, and calling upon the
Federal Parliament to deal with it, would conduce to the old-age pensions
subject being legislated upon by the Federal Parliament at a much earlier
stage than would otherwise be the case. But in view of the widespread
feeling amongst the working classes that this question is so important, and
can be so much more effectively dealt with collectively than separately as
regards the states, I have resolved to vote for the amendment, and hope it
will be included in the Constitution, for the reason that it will be one other
inducement to a large number of persons to accept the Federal Constitution
when it is submitted. I hope that my fears—which I still hold—that the
inclusion of the proposals now may possibly temporarily retard the
adoption by the states of this principle will be more than compensated for
by the effectiveness of it when it is dealt with by the Federal Parliament.

The CHAIRMAN. -

I will put it that this proposed new sub-section be sub-section (24A) in
clause 52, instead of sub-section (23), because I think that divorce ought to
come after marriage.

Question-That the proposed new sub-section be inserted in the Bill-put.
The committee divided-
Ayes ... ... ... 26
Noes ... ... ... 4
Majority for Mr. Howe's sub-section ... ... 22
AYES.
Abbott, Sir J.P. Grant, C.H.
Braddon, Sir E.N.C. Hackett, J.W.
Briggs, H. Higgins, H.B.
Brown, N.J. Holder, F.W.
Brunker, J.N. Isaacs, I.A.
Carruthers, J.H. Kingston, C.C.
Clarke, M.J. Quick, Dr.J.
Cockburn, Dr. J.A. Solomon, V.L.
Deakin, A. Trenwith, W.A.
Douglas, A. Turner, Sir G.
Downer, Sir J.W. Zeal, Sir W.A.
Forrest, Sir J.
Fraser, S. Teller.
Glynn, P.M. Howe, J.H.
NOES.
Lewis, N.E.
McMillan, W. Teller.
O'Connor, R.E. Barton, E.
PAIR.
Aye. No.
Gordon, J.H. Dobson, H.
Question so resolved in the affirmative.
Clause 45, sub-section (4). - In the case of a proposed law which the Senate may not amend, the Senate may at any stage return it to the House of Representatives with a message requesting the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make such omissions or amendments, or any of them, with or without modifications.
Mr. HIGGINS (Victoria). -
I have not given notice of motion for the recommittal of this sub-section, but may I ask one question about it? It has been suggested to me that there is not anything to hinder the Senate, if its suggestions have not been accepted, from making other suggestions. I wish to ask the Drafting Committee, because it will become a very important matter, are they clear that, if a suggestion has been made by the Senate and it has not been accepted, the Senate is bound down to the duty of simply accepting or
rejecting the whole Bill?

Mr. BROWN. -

What is the meaning of the words "at any stage"?

Mr. HIGGINS. -

Quite so; of course that question might become very important. The leader of the Convention will see that it is an important matter whether there is to be only one suggestion or several.

Mr. BARTON (New South Wales). -

As I understand it, the proposal is that the Senate may, at any stage of the passage of a proposed law through the Senate, return the Bill to the House of Representatives with a message requesting the amendment or omission of any items or provisions therefrom.

Mr. KINGSTON. -

As long as the Senate has possession of the Bill?

Mr. BARTON. -

Yes, as long as the Bill is in the hands of the Senate. That means, I take it, a power not solely to send a Bill down at a stage at which

the measure has, at the moment, arrived at, but that if it arrives at a further stage in the Senate, there being in the meantime some settlement or no settlement with regard to the suggestion made, that the Senate would have power to make other suggestions. Whether it would have power to repeat the same suggestion is a matter I have not considered, but it seems to me that there is nothing in this clause to restrict the Senate, after making a suggestion at one stage of the Bill, from making another suggestion at another stage of the measure, as long as the Bill is in the course of its passage through the Senate.

Mr. BROWN (Tasmania). -

I offer the suggestion that in this, as in many other matters, if we try to define too closely and too accurately we shall be doing mischief instead of good. In this particular case I presume it would be a matter of arrangement in the standing orders of the two Houses as to how a Bill should be dealt with under the general powers given in the clause. It would be quite impossible and very unwise for us to attempt to do what can be better done by the standing orders of the two Houses.

Mr. GLYNN (South Australia). -

I should like to ask the Hon. Mr. Barton whether the last sentence of this paragraph does not require some qualification to make the amendments after a certain date subject to the standing orders? I think there is a stage in the passing of a Bill at which you cannot make any further amendments, and this might leave it open to the House of Representatives to deal with a
Bill at a stage at which the amendment could not be made.

Mr. BARTON. -

The Senate must have the Bill in its hands, otherwise it could not return it to the House of Representatives.

Mr. GLYNN. -

It says at any stage. The Bill might be returned at a stage at which it could not be amended. I merely mention the point.

Mr. BARTON (New South Wales). -

I think the point mentioned by the honorable member can very well be met by standing orders. In clause 51 there is power to make standing orders for the maintenance of the privileges and immunities of both Houses and for the conduct of the business, and I take it that within the powers given by statute any standing order by which these things could be done would be valid.

Mr. HIGGINS (Victoria). -

The reading given to sub-section (4) by our leader has come upon me as a surprise. The matter is really of very great importance. The understanding was that the Senate, being restricted in its powers as to Money Bills, is simply to have the right to make one suggestion.

Mr. BARTON. -

I never heard that said.

Mr. HIGGINS. -

It has been said by a number of honorable members.

Mr. SYMON. -

Nobody ever said that.

Mr. HIGGINS. -

I should like to test the question, and I beg to move-

That the words "at any stage" be omitted, with a view to the substitution of the word "once."

The amendment was negatived.

Mr. REID (New South Wales). -

I do not want to raise any long discussion upon the matter. It is a matter that has been thought over and debated for years. I simply desire to finally test the opinion of the Convention on the sub-section. From my point of view, as one of the members of the Convention who wish to maintain the rights of the House of Representatives over Money Bills, Bills imposing taxation, and Bills appropriating money for the annual service of the Commonwealth, upon lines similar to those observed in the old country in connexion with the House of Commons, I beg to move-

That sub-section

I confess I cannot see any difference between allowing the Senate to
amend Money Bills by altering them, and requesting the concurrence of the Lower House in the alteration, and not altering the Bill, but sending down a suggestion that a Bill should be altered in the other House in a similar form.

Sir JOHN FORREST. -

There is a great difference.

Mr. REID. -

I defer very much to the right honorable member on many points, but on this point I have an authority of greater weight, that of Sir Samuel Griffith, who was one of the chief authors of this Draft Bill as it stood in 1891. I notice that he, in his Notes on the Draft Federal Constitution, framed at Adelaide in 1897, makes these observations:-

Whether the mode in which the Senate should express its desire for an alteration in Money Bills is by an amendment in which they request the concurrence of the House of Representatives as in other cases, or by a suggestion that the desired amendment should be made by the Lower House, as of its own motion, seems to be a matter of minor importance. A strong Senate will compel attention to its suggestions; a weak one would not insist on its amendments.

Mr. DOBSON. -

That is why we have accepted the compromise which you are now trying to undo.

Mr. REID. -

What compromise?

Mr. DOBSON. -

That the Senate should have the power to suggest, and not the power to amend.

Mr. REID. -

That is what I am objecting to, and I thought I had made myself clear.

Mr. DOBSON. -

That is the compromise that was arrived at after hours of discussion.

Mr. REID. -

Exactly. And now I have the effrontery to ask the Convention finally to reconsider the matter, because I regard it as of very great importance. At the same time, I believe there is a large majority of the Convention against me, and that I shall not be able to convince them. I wish simply to discharge my conscience in the matter by bringing it under the notice of the Convention. I know that the Convention has among its ranks two or three antiquated tories, who cannot possibly be converted to anything in the
shape of radical legislation such as that which prevails in the House of Commons.

**Mr. DOUGLAS.** -

The House of Lords is not an elective body.

**Mr. REID.** -

I believe that is true; still I do not think it bears much on sub-section (4) of clause 54. I have always felt that any contention about the respective powers of the two Houses would be a positive calamity. It may-I hope it will not-yield disastrous results. The effect of the sub-section will be this: We give the Senate the right to go over each item in an Appropriation Bill, a Taxation Bill, or a Tariff Bill, and to suggest to us out of their wisdom and reflection alterations to be made in those Bills. If that is not inviting the other Chamber to exercise an equal judgment in financial matters, I do not know what is-and that would be a calamity. I believe the system which prevails in the mother country is the best for imitation by us. There should be only one financial House, and any attempt to create two would lead to disaster. Strong as my opinion is, I pay the utmost deference to the fact that the delegates have thought this matter out over again and again, and I simply express my views. If I find that I do not get sufficient encouragement on the voices, I certainly do not propose to call for a division.

**Sir JOHN FORREST (Western Australia).** -

I think, if I may say so with due respect, the right honorable member should be satisfied with what he has got. He knows very well that he has inserted in the Constitution a provision which does not find any place in the Constitution of any Australian colony except Victoria, that is, an express provision that the Senate shall not amend a Money Bill. We know very well that no such provision exists in any Australian Constitution except that of Victoria, in which I believe it got by chance, nor does it find a place in the great British Constitution, which the right honorable member so much admires. He knows very well that, although constitutional government exists, in two colonies the provision as to amendments is insisted upon where it finds no place in the Constitution Act. In Tasmania the Legislative Council amends Money Bills as it chooses without any battles being fought.

**Mr. REID.** -

That accounts for a good deal that I never could understand.

**Sir JOHN FORREST.** -

In South Australia they have a compact by which the power of suggestion which is embodied in this Bill is used by the Legislative
Council, although there is no provision to that effect in the Constitution Act. Here in this Bill we have an express provision that the Senate shall not amend not only an Appropriation Bill, but also any Taxation Bill. The right honorable member quoted Sir Samuel Griffith to show that there was very little difference between the power of suggestion and the power of amendment. I, with the greatest respect to that authority, think that there is a very great difference between the two powers. In the one case the Upper House merely sends back the Bill asking the Lower House if it will be good enough to amend the Bill, but the Lower House says "No, we cannot do anything of the sort," so that the responsibility of throwing out the Bill rests with the Upper House. In the other case, the Upper House sends the Bill amended down to the Lower House, and the responsibility of throwing out the Bill rests with the Lower House. I think there is a very marked difference between the two cases, because in one case the responsibility rests with the Upper House, and in the other with the Lower House. I think that this is the least that these honorable members who have urged so strongly-

Mr. SYMON. -

Antiquated tories, Mr. Reid says.

Sir JOHN FORREST. -

I do not care for that. I think he is a bigger tory than we are, and I do not know that he is any the worse for that. Seeing that we were defeated on two occasions in our endeavour to insure that the Senate should have absolutely equal power with the House of Representatives, and that we have not sought to renew the conflict, I think the right honorable member should be satisfied with the compromise arrived at, not altogether to our liking, but still the best we could obtain. I think we have all come to this conclusion that the clause as it stands is the best compromise we can get between those who wish the two Houses to have equal powers, and those who wish the House of Representatives to be paramount in regard to financial legislation. That being so, I hope the right honorable member will withdraw his amendment.

The amendment was negatived.

The clause, as amended, was agreed to. Progress was reported.

The Convention adjourned at two minutes past ten p.m.
Return: Appeals to the Privy Council-Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-three minutes past ten o'clock a.m.

APPEALS TO THE PRIVY COUNCIL.
Sir JOSEPH ABBOTT (New South Wales). -
I desire to lay on the table a Return of Appeals to the Privy Council against decisions of the Supreme Court of Queensland, from 1888 to 1898. It has been prepared under the sanction of the Chief Justice of Queensland. I beg to move that the return be printed.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.
The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.
Clause 55. - (1) Laws imposing taxation shall deal only with the imposition of taxation.
(2) Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Mr. ISAACS (Victoria). -
I should like to draw the serious attention of the committee to this clause. I am aware that the form in which it now exists was deliberately decided upon in Adelaide for a particular purpose; but I would call the careful attention of the committee to the consequences of that form, and ask honorable members whether we are not incurring, for the sake of a fancied security in one direction, very great danger in another direction? In clause 54 we have provided what the powers of the Houses in regard to Money Bills are respectively to be, and we are seeking to provide in clause 55 for further protection for the Senate. Now, in providing that further protection for the Senate, we have gone, it seems to me, a great deal too far, in the interests of both the Senate and the House of Representatives, and in the interests of the small states as well as of the large states. I suppose no one...
here wants to take any step which would have the effect of throwing the whole of the Commonwealth into confusion; but that is what clause 55, in its present form, may very easily do. What I am perfectly willing to accede to, in view of what has been decided upon in other directions, is this: That the Senate shall have the full power under the Constitution to decline to consider any measure, and shall have the warrant of the very words of the Constitution in declining to consider measures that do not comply with the provisions of the Constitution. But what I do strongly object to is this: That when the Senate has, with its eyes open, voluntarily agreed to deal with a measure, or when the House of Representatives has, with its eyes open, voluntarily agreed to deal with a measure in a certain way, and in each case a measure within the jurisdiction of the Parliament, it shall still be within the power of an individual in a state, after the measure has been passed, to bring the matter up before the Supreme Court, and have the deliberate will of both Houses of Parliament set aside. But that is what might easily happen, and what probably would happen, as the clause is now framed, if any mistake were to occur in an Appropriation or a Tax Bill. Honorable members will see throughout clause 54 the expression "proposed laws imposing taxation," and "proposed laws appropriating revenue," and so on. Well, it was pointed out very strongly and clearly that where that expression was used it is a political question that is involved, and the Houses of Parliament may, if they choose-it may be a question of emergency or it may not-deal with that matter as a political question. But when, in clause 55, we depart from that language of "proposed" laws, and use the phrases "laws imposing taxation shall deal only with the imposition of taxation," and "laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only," and also that "a law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation," it becomes a matter of constitutional law, which may be insisted on by the Supreme Court; and if any Act is proved, by some ingenious technical argument, to depart from the provisions of that clause; as, for instance, if it were held by the court that an Act which imposed taxation happened to repeal some other tax, or possibly if it contained machinery, the Act might be construed by the court as going beyond the clause, or, if being a law which appropriated the ordinary annual services, it contained an item or two beyond the ordinary annual services of the Government in regard to appropriation, it might be held that the law, not complying with this clause, was invalid. And it might be set aside at a time when Parliament was not sitting, and thus the whole
machinery of government might be brought to a stand-still. Now, that is a position which it is horrible to contemplate, and what I am prepared to do—and I think it is quite sufficient for the purpose—is to say that wherever we have got the word "laws" in clause 55, we should insert "proposed laws." Then if the House of Representatives ventured to attempt to break through the Constitution by sending up a Bill containing two subjects of taxation, the Senate would have those express words, and not merely an implication, to rely on in dealing with the Bill. There would be no question raised as to whether the relative positions of the two Houses of the Federal Parliament here were the same as the relative positions of the House of Lords and the House of Commons in England. The Senate, in such a case, would have express authority for saying that the Bill should deal with only one subject of taxation, and the whole of the people of the Commonwealth would support the Senate in refusing to assent to a breach of the Constitution by passing a Bill which contained two subjects of taxation. As the clause stands, a very doubtful question would arise, as may be easily understood, not simply a question of daylight on the one side and midnight darkness on the other, but a question in the region of legal twilight, where lawyers could hardly distinguish the one from the other. And suppose both Houses of the Federal Parliament, in perfectly good faith, accepted a Tax Bill as complying with the Constitution, and after Parliament rose from its session, some individual proposed to be taxed went to the Supreme Court and complained that the law imposing such taxation was unconstitutional, the Supreme Court, after all the struggles over the question in Parliament, and after the matters in dispute had been settled by the Legislature, might find it to be its solemn though reluctant duty to decide that the law in question was unconstitutional, therefore, not legal, and thus the whole scheme of taxation which that measure contained would fall to the ground. Again, if an Appropriation Bill purporting to appropriate the ordinary annual services of the Government happened, through an oversight in the hurry of drafting and passing the Bill, to contain one item which was not a part of the ordinary annual services, although there had been no attempt on the part of one House to override the Constitution, and no belief in the other House that there was any such attempt, so that the rights of both Houses were absolutely conserved as far as intention was concerned, yet that Bill, containing that one item, not complying with this clause, would have to be declared invalid. Surely it is not too much to ask for an amendment of this clause which will prevent such a thing as that?

Mr. DOBSON. -

The Supreme Court would never decide—that an Appropriation Bill was invalid because of such an over-sight, because the intention of Parliament
would be manifest to the court.

Mr. ISAACS. -

It is not a question of intention, but a question of effect. The honorable member knows that in America there is a provision that Bills for raising revenue shall originate in the House of Representatives.

Mr. MCMILLAN. -

If the word "Bills" were inserted in clause 55 instead of "laws," would not that cure the defect you complain of?

Mr. ISAACS. -

Yes; or if you used the term "proposed laws," as in clause 54.

Mr. DEAKIN. -

Many of us strongly supported that as a drafting amendment.

Mr. ISAACS. -

If the word "Bills" or the term "proposed laws" were used in this clause 55 there would be no objection. In answer to Mr. Dobson's statement, that the court would not take the view that an Appropriation Act was invalid because of a technical illegality, the result of an over-sight, I may point out that the same difficulty has been seen elsewhere. I was not aware, when I first raised this question in Adelaide, that the matter had been so strongly insisted on by the eminent Dr. Burgess, who points out on page 196, vol. I., of his Sovereignty and Liberty, that-

The House of Representatives itself has not the power, either by separate resolution, or by joining with the Senate and the President in a law to that effect, to permit the Senate, or any other branch of the Government, to originate a Bill for the raising of revenue; and I think it is at least a question whether, should the Senate or the President undertake to assume this power, and the House acquiesce in the usurpation, the individual may not defend himself in the courts of the United States against the collection from him of any tax so levied, on the ground of its unconstitutionality. It does not seem to me that the judicial power could excuse itself from taking jurisdiction under the plea that this is a political question. As a general principle, the distribution of powers by the Constitution between the different departments of the Government is a political question; but in this particular instance private property would be distinctly involved, and the United States courts have never declined jurisdiction where private property was immediately affected, on the ground that the question was political.

Mr. DOBSON. -

There is a difference between a political question and an omission caused by an error or an oversight.
Mr. ISAACS. -

The court would not consider whether it was an oversight or not. They would take the law and ask whether it complied with the Constitution. If it did not, they would say that it was invalid. They would not go into the question of what was in the minds of the Members of Parliament when the law was passed. That would be a political question which it would be impossible for the court to determine. We make this great distinction, but the same distinction is not preserved on behalf of the House of Representatives. We say that the great power of the purse—the power to originate Appropriation Bills—shall rest with the House of Representatives. And when we come to the question of the Senate's rights and privileges, we allow the validity of laws to be determined by the Supreme Court. In doing so we are making not only a mistake, but drawing a most unfair distinction between the two Houses.

Mr. HOLDER. -

A measure would be valid while it was a Bill, and invalid when it became a law.

Mr. ISAACS. -

That is a very terse and correct way of putting it, and it proves the absurdity of the provision. We are, in my opinion, making the Senate too strong a body. To allow these matters to be carried into the Supreme Court is to say that the Senate cannot protect itself, and that the states cannot protect themselves. Surely that is not to be thought of for a moment. We want a people's Constitution, not a lawyers' Constitution. We shall be making the Supreme Court, not the master, but the tyrant of the Constitution, by inserting a clause of this kind. I do strongly appeal to my honorable friends to alter the clause in some way. My view is that we should put in the word "proposed." At all events, we should do something in this direction, and we should at least make a distinct provision that if a Bill does not comply with this clause, the invalidity should go no further than the additional matter. That could be worked out no doubt in an Appropriation Bill, but

Mr. BARTON. -

Are not the annual services the annual expenditure proper to the public service?

Mr. ISAACS. -

Supposing that some compensation were being paid to a discharged public servant. That would not come within the ordinary annual services. It would not be proper to the public service of the Commonwealth. It would not be a payment for services rendered in the future, but for services
in the past. We all know that in connexion with the ordinary annual Appropriation Bills questions arise that make it very difficult to say what is and what is not an ordinary annual service. The affairs of Government, especially in money matters, are so complicated that I absolutely dread a proposal of this kind, which would offer an invitation to people who did not like a Taxation Bill, and could raise some objection to it, to take it into the Supreme Court, and, if necessary, to carry it to the Privy Council. What a fearful state of confusion we would be in if a trouble of that kind arose! This leads me to say—and I would ask the Drafting Committee to bear the point in mind—that we ought to have some provision in the Bill rendering it possible for a case to be stated and questions to be put to the Supreme Court in regard to matters of doubt as to the legality or constitutionality of a Bill.

Mr. Barton. - Could not that be provided for by an alteration in sub-section (37) of clause 52?

Mr. Isaacs. - I should be satisfied on that point if that is so.

Mr. Higgins. - Would it not be better to say "any infringement of the provisions in this section shall not affect the validity of the law if passed"?

Mr. Isaacs. - Some words to that effect were proposed by the Right Hon. Mr. Reid, in Adelaide. They would do, but still, I think, the words proposed ought to go in.

Mr. Higgins. - I admit that; but we might insert the other words to make assurance doubly sure.

Mr. Isaacs. - Yes, it would be a desirable addition in any event, but we should have to put the same words in certain other clauses, and we ought to have the words proposed in. We should otherwise be saying that laws which do not comply with this provision shall be invalid, and that they shall not be invalid. I beg to move-

That the word "proposed" be inserted before the word "laws."

Mr. Glynn (South Australia). - I am opposed to the insertion of the word "proposed," because I think that such an amendment would be nothing more than a whittling down of the protection given by the clause to the Senate. This is not a matter of procedure. The question was discussed in Adelaide from two points of view—the protection of the states through the Senate, and the procedure
between the two Houses. We have determined that this is not a matter of procedure, but a protection to the electorates the Senate represents. We can imagine a case in which the Senate, through carelessness, or because of there being a majority in sympathy with the House of Representatives, would allow a law in breach of these provisions to go through. What protection would then be left to the states? Absolutely none.

Mr. **ISAACS.** -

That assumes that the senators may neglect their duty.

Mr. **GLYNN.** -

Of course it does; but it also assumes that there may be a majority in sympathy with the House of Representatives in the Senate, which has power to stop this class of legislation. The German Constitution goes to extraordinary lengths in the protection of minorities in the Senate. Fourteen out of 58 members can stop the hand of pressure. That indicates a determination that minorities shall not be paralyzed by chance majorities in the Senate.

Mr. **HIGGINS.** -

In Germany they would not treat a law as invalid because of an irregularity.

Mr. **GLYNN.** -

I think they would, because it is fixed in the Constitution. There is no special court, but the general courts would undoubtedly protect the states. What Mr. Isaacs seeks to do is to prevent the question of *ultra vires* arising after a law has been passed.

Mr. **ISAACS.** -

No. If it is *ultra vires* of the Constitution it would, of course, be invalid.

Mr. **GLYNN.** -

The honorable member says that, unless we put in the word "proposed," it would be open to any citizen to challenge the law on the ground that it incorporated two classes of laws, which the Constitution says shall not be done.

Mr. **HOLDER.** -

You would give the courts power to upset all the Parliament has done.

Mr. **GLYNN.** -

Are we not protecting the Senate by saying that no law shall be passed contrary to the Constitution. If you allow the mere chance of a law going through-

Mr. **DEAKIN.** -

The mere chance of a law going through! What a comment on the Senate.
Mr. GLYNN. -

It might go through owing to carelessness or because there was a majority. We know that majorities are sometimes the result of understandings in reference to matters of policy, and there might be a majority in the Senate in favour of the policy of the House of Representatives. Our principle is to protect the rights of the states—not of all the states only, but of each individual state—as against a majority in the House of Representatives or even in the Senate itself. Dr. Burgess does not urge a change of policy. This question has never cropped up in the United States, but he puts a supposititious case, and says that if there was an agreement between the House of Representatives and the Senate to allow an Appropriation Bill to be brought in by the Senate that agreement would not destroy the constitutional right of a subject to test the question of whether the law was *ultra vires*. Dr. Burgess does not state that the fact that a law can be subsequently tested is an injustice, and it is somewhat significant that he deals with this question under the heading of the special protection granted to individuals as against the encroachment of the parliamentary power.

Mr. SYMON (South Australia). -

There is no doubt that it is of the very highest importance that we should strengthen the Senate, and keep it strong and powerful, in the interests of all the states in the Federation, and particularly in the interests of what are called the smaller states. I am inclined to agree with Mr. Isaacs in regard to this provision, and to take the view that it really is a provision inserted for the purpose of strengthening the Senate, so far as regards its procedure, against the House of Representatives, and not for the purpose of constituting a base from which an attack may afterwards be made on laws which the Senate, either by a majority or through carelessness, may have elected to pass, although not pursuing the procedure laid down in the clause. It appears to me, resolute as I am in my desire to strengthen the Senate, that this provision is inserted to enable the Senate to say to the House of Representatives—"If you make a tack to a Taxation Bill, we shall decline to entertain it, and will send it back to you."

Mr. DEAKIN. -

No one objects to that.

Mr. SYMON. -

Precisely; and that is the limit to which this protection ought to go. The principle is not to secure the invalidity of the law, simply because this procedure has been infringed, but to place an instrument of defence in the hands of the Senate against the encroachment of the House of Representatives. To that extent I think it is ample. If a Bill were sent up to
the Senate encroaching upon this procedure, they would at once say to the House of Representatives-"This is a violation of what has been laid down in the Constitution as to the procedure to be followed, and we will not listen to you for a moment." I believe that the members of the Senate from the other states besides the small states would join in vindicating their position in that fashion. It is a very different thing to say that if the Senate willingly allow an irregularity of that kind to pass, the whole taxation system of the country shall be set at nought or thrown into disorder. There may be great difficulty in carrying out the idea. We ought to take care that the system is made perfectly safe and perfectly secure so that there shall be no violation of it. There is difficulty in doing that, and at the same time avoiding what is not intended to be secured, namely, the protection of the Senate against its own wilful and its own negligent acts. So long as you strengthen the Senate by giving the power, that is all the provisions are intended to do. Ordinarily, I suppose, these powers would be embodied in the rules or standing orders as between the two Houses. We have put them as part of the compromise we have entered into, and, therefore, they appear in the Constitution. But, I think, something ought to be done to guard against the mischief which Mr. Isaacs points out, whilst at the same time preserving to its fullest extent the protection to the Senate which is given here.

Sir JOHN DOWNER (South Australia). -

I sincerely hope the amendment will not be carried. This is not a matter of form, but one of vital substance to the Constitution. Parliament is given an opportunity from time to time by a resolution of both Houses, or without any resolution at all, to deprive the states and the Senate of the greatest of all protection; that is, that no Bill shall deal with more than one subject-matter.

Mr. ISAACS. -

Are they not capable of protecting themselves and saying-"We will not consider it"?

Sir JOHN DOWNER. -

I am not so dull as not to have followed the honorable member. The Constitution is not superior to the Senate or the House of Representatives, but can be altered. But it is not to be frittered away by a too facile Senate.

An HONORABLE MEMBER. -

Or a temporary wave of popular fervour.

Sir JOHN DOWNER. -

Or a temporary wave of popular fervour in the House of Representatives.
We are not merely legislating for the Senate that happens to be in esse, but for all time until the Constitution shall be properly altered.

Mr. HIGGINS. -

Is not the object of the clause to secure to the Senate its full power of amendment in regard to Bills, except certain limited Bills?

Sir JOHN DOWNER. -

To prevent "tacking"; that is practically what the clause is for.

Mr. BARTON. -

It is to secure both bodies from the effects of popular passion.

Sir JOHN DOWNER. -

It was agreed, after discussion, that the Senate should not be allowed to alter Money Bills, at any rate, so far as the ordinary Appropriation Bill is concerned. The object of this was to prevent the House of Representatives by indirect means tacking onto Money Bills, which the Senate could not alter, other provisions to which the Senate might be much opposed. That method, after a great deal of thought and much discussion, was adopted. That did not interfere-and very rightly and properly did not interfere-with the procedure in Parliament. But in effect it was said that if the procedure resulted in a law dealing with more than one subject-matter that law would be invalid, and the court would be the vindicator of the Constitution.

friend (Mr. Isaacs) considers that his motion is only a matter of form. Does he think it a matter of much substance?

Mr. ISAACS. -

I do. I think it is a matter of great importance to the people that they should not be thrown into great confusion financially.

Sir JOHN DOWNER. -

And would the people be thrown into great confusion financially by the House of Representatives taking care to obey the Constitution? So long as the Constitution is obeyed, and more than one subject-matter is not dealt with in a Bill, it will be all right.

Mr. DEAKIN. -

So long as the Senate does not pass it.

Sir JOHN DOWNER. -

I do not understand my honorable friend (Mr. Deakin)-"So long as the Senate does not pass it."

Mr. DEAKIN. -

Yes; you are putting all the blame on the House of Representatives, ignoring the fact that both Houses must equally accept the measure.

Sir JOHN DOWNER. -

Granting the Senate is incapable, what is the good of the Constitution?
Why not say that the whole law of the land shall be administered-

Mr. TRENWITH. -

The object of the clause is to protect the Senate; if it does not want protection, why interfere subsequently?

Sir JOHN DOWNER. -

I think the operation of the clause would be to weaken the Senate. The object is to increase the power of the House of Representatives.

Mr. ISAACS. -

Clause 55?

Sir JOHN DOWNER. -

The amendment the honorable member has moved is distinctly for the purpose of weakening the Senate.

Mr. ISAACS. -

No, no.

Sir JOHN DOWNER (South Australia). -

If the honorable member does not mean that he is doing worse than he intended, because the inevitable result would be the weakening of the Senate. I thought from the speech of Mr. Isaacs that that was what he did mean. That I take to be his meaning from his interjections from time to time, because he has said the finances would be disorganized.

Mr. ISAACS. -

It seems that the Constitution is, made for the Senate, and not for the people.

Mr. DEAKIN. -

Not even for the Senate.

Sir JOHN DOWNER. -

Now it is coming out. The Constitution is made for the people and the states on terms that are just to both.

Mr. DEAKIN. -

It is made for the lawyers under this clause.

Sir JOHN DOWNER. -

I do not think so. If you say "Trust the Parliament," no Constitution is required at all; it can simply be provided that a certain number of gentlemen shall be elected, and meet together, and, without limitation, do what they like. Victoria would not agree to that. But there is a desire to draw the very life-blood of the Constitution, so far as the states are concerned, by this insidious amendment, which would give the Houses authority from time to time to put different constructions on this most important part of the Constitution. I hope we will do as we have done in many instances before, in matters that have been much debated-adhere to the decision we have already arrived at.
In the earlier stages of the history of the Convention we heard the doctrine propounded of "Trust the Federal Parliament." It seems that doctrine has been exploded, and that we are approaching another doctrine-"Do not trust the Senate." Here is a privilege supposed to be put in the Constitution especially to protect the Senate, and to increase its power, influence, and independence. Now it is assumed that the Senate cannot be trusted—that the Chamber for whose special benefit, honour, and dignity this power is to be inserted cannot be trusted. You cannot trust it or its President, or its majority, to avail itself of its own privileges; you want to place a power in this Constitution in another body outside the Senate to protect the privileges of the Senate. I, for one, have a higher opinion of the authority, influence, and independence of the Senate than those who now want to hedge about the Senate with this judicial protection. In the first place, it is not necessary to hedge the Senate about with this judicial protection. The Senate should be quite capable of protecting and defending itself against any invasion of its privileges from another Chamber. There are two methods in which the privileges of the Senate can be defended; first, there is the President, whose absolute duty it would be to rule out of order any Bill from the House of Representatives infringing or violating those privileges. It would be the prerogative of the President to do this, absolutely regardless of the opinion of the Senate itself. The President has not merely to act upon a point taken by a member of the Senate, but is placed in his position to act of his own motion, without waiting to have his attention directed to any particular clause infringing the Constitution. It would be the duty of a President to say that the Bill was out of order, and it would then be sent back to the House of Representatives with an intimation to that effect. I venture to question whether even a majority of the Senate would dare to attempt to override a decision of the President. We are asked to assume, firstly, that the President would not do his duty; then we are asked to go further, and assume that the majority would either wink at infringements of the Constitution or fail to do its duty. Secondly, we are asked to create a judicial body outside Parliament, with power to declare that after the Bill has been passed, it is ultra vires, not on the ground of substance, or that it deals with a matter with which it has no substantial jurisdiction to deal—one could understand that—but that a Bill is ultra vires on the ground that there has been some mistake in procedure in the progress of the Bill through Parliament. It would be, in my opinion, an absolute degradation of the Federal Parliament to allow such power to be exercised even by a judicial body, not only on account of the
inconvenience which might result, as pointed out by Mr. Isaacs, but also on account of the absolute indignity it would inflict on the Federal Parliament. The Supreme Court would have undoubted and righteous jurisdiction on a point of substance. But it is another matter to say that the Supreme Court should have power to interfere in a technical question of procedure in reference to a Bill passed by the two Federal Houses, and declare a Bill on that ground to be *ultra vires*. We ought to fairly trust that that House which is clothed with privilege to exercise that privilege will preserve it, and we ought not to assume that that House will not do its constitutional duty.

**Mr. CARRUTHERS (New South Wales).** -

It is worth while considering the stages that a proposed law has to go through, and the opportunity afforded to a member of either House or a member of the Executive to call attention to any infraction or infringement of the Constitution. It does not require a majority of the members of the House of Representatives to insist that the Constitution shall be obeyed in the matter of procedure; it only requires one solitary member to rise to a point of order, and the Speaker has to give a legal interpretation of the rules of procedure. It only requires one member of the Senate to call the attention of the President to the fact that a Bill is introduced contrary to the Constitution for that proposed law to be ruled out of order. It does not require a majority of the states to insist that the Constitution shall be obeyed, because a majority of the states cannot by resolution infringe the Constitution. Neither House could pass the standing order which would give the majority power to dissent from the Speaker's or President's ruling. The standing orders only confer certain explicit power. They give no power to either House to pass an order which would enable its members to amend the Constitution.

Therefore, the protection is absolutely effective, when one member of either House can by raising a point of order arrest the passage of a proposed law which infringes the rules regulating procedure. Then, after the law has been passed by both Houses, it is presented to the Governor for his assent. Under constitutional usage we know that the Governor always insists upon the Law officer of the Crown giving him a certificate that everything necessary to be complied with by law has been complied with. The Attorney-General for the time being has to give a certificate to the Governor, and we may be sure that that practice will be followed under the Federation. That is sufficient protection. Then there is the other ground, that this is a proposal to protect the rights of the people against the encroachments of the Legislature. I take the reverse proposition—that this is a proposal which will tend to inflict vast damage upon the people. Let us
imagine that a Bill has passed Parliament imposing federal taxation. It has been in operation for five years. At the end of that time some skilled lawyer discovers a small flaw in the law. He discovers that in its operation the law has revealed that it includes some other subject besides the imposition of taxation. By this time the public finance has been built upon that law; the state finance, which depends on federal finance, has been also built up and administered on that law. Then the law is declared to be unconstitutional by the Federal High Court. Protection for the public! It maybe that some man who wishes to evade taxation is protected, but the general interests of the community are thrown into absolute chaos and confusion. The financial position of the states is wrecked. A return of the money collected has to be made for, perhaps, five years back, revenue has to be raised by some new contrivance; the states themselves, which by our Constitution have to depend for their finance upon the certainty and security of the federal finance, have their affairs also thrown into confusion. The idea of this protecting the public against the encroachments of the Legislature can be easily brushed aside when we see the danger that will attach to the whole of the community if we allow laws which have received the assent of the Legislature to be upset on a mere technicality. The finances of the state will never depend upon anything safer than the security of the public finance. Public finance rests on legislation imposing taxation. We have never yet heard in these colonies or in England, under the Constitution which we know, of cases where, after a Parliament had passed Acts imposing taxation (which measures are always very keenly criticised, and with difficulty borne by the people who have to pay the taxation), those Acts have been assailed as to their validity. We have heard of them being assailed as to their administration, but never as to their validity once the Royal assent has been given to them. We shall be creating a great danger to the Constitution if we allow the federal and state finance to depend upon a construction which may be placed upon laws affecting the validity of these laws at the date of their passage. I shall cordially support the amendment of Mr. Isaacs.

Mr. TRENWITH (Victoria). -

In this discussion we should consider what is the object that the clause we are now discussing is designed to achieve. We have decided that there shall be government by two Houses, and that in all general questions they shall have coordinate powers. But we have decided in connexion with finance that the people's House, in accordance with an axiom of the British Constitution, shall have control of the purse. In order to secure that we provide that the Second Chamber or Senate cannot amend a proposal which provides for the raising or expending of public money. It has been
shown by experience that unless we make some provision against it, the House of Representatives may tack some extraneous matter on to a Money Bill, and thereby force it through the Senate. In order to prevent that, we have provided in the procedure that the Senate may object to deal with a Bill in connexion with which there is a tack. Why is that provision inserted? Not to protect the people at all, except to insure strength to resist on the part of the Senate. If the Senate feels no disposition to resist, if the Senate sees no tack or any extraneous matter in the Bill, there is no protection to the people in saying that the law shall be *ultra vires*, if it happens to be passed contrary to the procedure which we have provided. I impress this on honorable members, that all we are seeking to do in this clause is to protect the Senate from being coerced, but if we do not insert such an amendment as Mr. Isaacs has proposed, we shall render it possible for a law to be passed with the unanimous consent of both Houses, under the impression that it is in accordance with the prescribed procedure, and having in it no point that either of the Houses objects to. Yet an ingenious lawyer may at some time discover that there has been, inadvertently on the part of both Houses, a slight overlapping of forms of legislation, and that there is in a Money Bill some extraneous matter, and therefore the law is *ultra vires*. There are a large number of people who fear that this federation, when adopted, may lead to an extensive crop of litigation. I submit that no portion of the Bill is more likely to lead to ingenious searching for the purpose of instituting litigation than this procedure which is now proposed. If there is some slight infraction of the procedure it may be decreed that a law passed by both Houses, and assented to by the Crown, is *ultra vires*, not on the ground that it has dealt with anything that both Houses might not have approved of, not that it has dealt with anything outside the Constitution, but that it has dealt with some constitutional question perfectly within its rights, in a manner not prescribed and somewhat irregular. Surely an Act of Parliament ought not to be declared *ultra vires* by a court outside the Parliament which represents the people simply because there has been some slight mistake in the procedure—a mistake that was not known to any member of either House at the time the law was made, and a mistake that was only discovered subsequently by some extremely ingenious man, who exercised all his faculties in order to show that there had been some slight departure from the procedure laid down, and the law would then have to be declared *ultra vires*. I hope honorable members will not perpetrate such an outrage upon the people as to leave all their financial arrangements liable to be upset on such a ground. Honorable members should recollect the cause for
which this procedure was adopted. There would be no harm to the people if 100 different subjects of legislation of which the people approved, and which were in the interests of the people, were passed in one Act. There can be no objection if all those laws are constitutional and are all desirable, and if they have the approval of both Houses. The only objection that could be raised would be that there might be a conflict between the Senate and the House of Representatives, and the House of Representatives might desire to jamb down the throat of the Senate something that it did not want. This procedure will protect the Senate if we provide that it shall only apply to proposed laws, but if we say that this shall apply to all laws, and that subsequent to the laws being passed by both Houses, and assented to by the Crown, they may be declared ultra vires on account of a lapse which nobody noticed at the time, it will be utterly absurd, it will serve no useful purpose, and I believe it will lead to extreme inconvenience and disorganization.

Mr. OCONNOR (New South Wales). -

I quite agree with Mr. Trenwith that the object of the provision is to protect the Senate from being coerced by the House which has the power of the purse primarily. But the question between us is not whether you should take away that protection, but whether you should allow the Senate itself to give up, whether by accident or design, on any particular occasion, the protection which the Constitution has implanted there for its benefit. The protection of this Constitution is given, not for the Senate for the time being, but for the people of the states whom the Senate represents. The question really is whether, for the purposes for which this provision is designed, that is to say, the protection of the people of the states, as states, it is necessary that this provision should stand which makes a Bill illegal if these provisions are not complied with, or whether it should be made merely a matter of parliamentary order between the two Houses? I think we have all had some experience in the different colonies of making this simply a matter of parliamentary order. In all the colonies, I think, certain powers are given to the Assembly by the Constitution, and certain powers are given to the Upper House. But we know, in most of the colonies at all events, these powers are construed in one way in one House and in another way in the other House. I will take New South Wales, for example. There is, as all lawyers agree, and as I think all constitutional lawyers agree, distinct power in the Upper House to amend Money Bills. But that power has never been exercised, for this reason, that although the Upper House has constantly asserted its right of amendment, and has amended Money
Bills, the other House has just as constantly refused to recognise that right, and has put the Bills under the table. The result has been that in regard to all questions of that kind, although the law exists giving that power to the Upper House, it has never been exercised, and for this reason: The House that has the power of the purse, by reason of the popular voice behind it, has always been able to put an alternative before the Upper House, and to say to it: "You must either fall in with our views, and not amend, or you must be a party to bring about confusion and chaos in the public accounts." This pressure can be brought to bear on the Senate so long as your provisions remain provisions which can be waived by it if it thinks fit. If the power given for the Senate's protection may or may not be held to upon any occasion as the Senate thinks fit, the question we have to consider is whether the people of the states are sufficiently protected. Is it not necessary to fix this provision in the Constitution in such a way as to make it above the Senate and above the House of Representatives, above majorities, and above even popular feeling and clamour?

Mr. TRENWITCH. -
Are you not forgetting, in comparing your local Parliament with the proposed Commonwealth Parliament, that the Commonwealth Parliament will have a High Court to appeal to?

Mr. OCONNOR. -
I am quite aware of that, and I am much obliged to the honorable member for his interruption, because it enables me to point out that, under the proposal of the honorable and learned member (Mr. Isaacs), the power of the High Court cannot be brought to bear upon this point. Under the Bill as it stands the power of the High Court can be brought to bear on the question; and I wish to see these questions decided, not by a majority in the House of Representatives, or even by a majority in the Senate - which majority may be produced by all sorts of circumstances and occasions - but by that tribunal which we are setting up for the decision of all these questions.

Mr. ISAACS. -
If the House of Representatives and the Senate were both unanimous, and the law were passed, would you still allow the Supreme Court to set it aside?

Mr. OCONNOR. -
If it were illegal.

Mr. ISAACS. -
It is all a matter of procedure.
Mr. OCONNOR. -

That is begging the question. Even under the circumstances mentioned by the honorable and learned gentleman, if the rights we are giving under this Constitution to the House which represents the states are to be of any value at all, we should not put it into the power of a majority in the House of Representatives or in the Senate to bargain them away, or to give them away at their will. The only argument which it appears to me has any force whatever against these provisions as they stand is the argument that they may prove inconvenient in working. I quite agree that it would be an inconvenient thing to have a law which had been passed in accordance with the wishes of a majority of the states and the people declared invalid after it had been in force for some time because of some technical flaw. My answer to that objection is this: That if you make it so important a matter that the provisions of the Constitution shall be observed, the Government which introduces a Bill, and the Houses which have to consider it, will take very good care, under the spur of this obligation, to see that everything is done in order and without illegality. This is not a new question. There are in clause 52 a vast number of powers which are handed over to the Federal Parliament. If the Federal Parliament exceeds its right of legislation in regard to these powers the Supreme Court can set its errors right, and I am astonished to hear the honorable member (Mr. Trenwith), who has always had such a clear appreciation of the principles of this Constitution, speaking of it being a degradation to have Acts of Parliament or the will of Parliament overriden by a court. We have established this court because we anticipate that it will be impossible, even with the utmost good-will upon the part of the Federal Parliament, to keep always within the limits of the Constitution.

Mr. TRENWITH. -

What we are providing here is that a perfectly constitutional thing may be declared illegal because of a slight irregularity in procedure.

Mr. OCONNOR. -

With all respect to the honorable member, he appears to me to be begging the question. If it were a perfectly constitutional thing, it would not be illegal. The question we have to determine is whether we should not make it a sine qua non that certain provisions of the Constitution shall be complied with. There is no difference between the position in which an Act would stand under the provisions of clause 52 and the position in which it would stand under the provisions of the clause we are now considering. In any case a heavy obligation is put upon the Government and upon both Houses to take care that laws which are passed are within the four corners of the Constitution. If the Constitution is to be of any value at all, we must
put the Federal Government and Parliament under the strongest obligation
to see that its provisions are followed. There is not one of these provisions
in regard to which any question can be raised. I quite admit that it follows,
from what I have said, that we should make the Constitution absolutely
clear, and that there should be no mistake about the lines of limitation
which are laid down in it. It would be a disastrous thing to have a doubtful
form of expression, making it difficult for the Parliament, with the utmost
good-will, to keep within the limits of the Constitution. But that is merely a
reason for making the wording of the Constitution absolutely clear. In my
opinion, there can be no doubt about the wording of subsection (1) or (2).
It might be desirable to amend sub-section (1) in the direction suggested by
the Attorney-General of Victoria so as to make it clear that the collection
of taxation, as well as its imposition, was intended. There can be no doubt,
however, in regard to sub-section (2). A Government introducing measures
dealing with
either of the matters referred to in the sub-section could not have any
difficulty in determining what came within these provisions and what did not. It is a matter to be considered whether the provisions of sub-section
(3), in regard to the ordinary annual services of government, are
sufficiently clear. One cannot but be impressed with illustrations of the
kind put forward by the honorable and learned member (Mr. Isaacs). A
Government might have to make some payment, such as a gratuity, which
might properly come within its annual services, but which is not one of the
ordinary services of the Government. There might be other matters to
which it would be perfectly proper for a Government to give its attention,
and it would be disastrous if by reason of any provision in the Constitution
it were prevented from doing so. But these difficulties can be overcome by
the proper consideration of the terms of the Constitution. I submit that the
question raised here is a very much more important one than it seems to be
thought by some honorable members. I think it is the very essence of the
Constitution that we should preserve the form which has been adopted
here, and that we should make the necessity of its adoption imperative
upon the Government and the Parliament, subject to the liability of their
acts being declared invalid by the Supreme Court in the event of the
directions of the Constitution not being followed.

Mr. REID (New South Wales). -
I must frankly confess my astonishment that the most invaluable point
which has been brought before the Convention is not immediately
recognised by every member of this Chamber. I confess that I did not
notice the point at first, but now that it has been brought under my attention
I think that it is one of the most vital importance. My honorable friend's argument becomes a singularly weak one, when we observe that the same care which has been taken in connexion with the rights of the Senate has not been taken in connexion with the rights of the House of Representatives. According to my honorable and learned friend, there should be a High Court to watch over the two Houses in regard to matters of procedure, and to see that they strictly observe their own rules; but this High Court is to take cognisance of the doings of only one House, not of both. If the House of Representatives, under the previous clause, shut its eyes and allowed the Senate to originate a Taxation Bill, and that Bill was passed, no power upon earth could come in and vindicate the rights of the people.

An HONORABLE MEMBER. - How could the Senate originate a Taxation Bill?

Mr. REID. - My answer is, how could the House of Representatives put more than one subject of taxation into a proposed law? If it will be possible for the House of Representatives to put two subjects of taxation into a proposed law, in spite of the clear words of the Constitution, it will be equally possible for a Taxation Bill to be originated in the Senate without any one t

outrage upon its rights and privileges and upon the rights of the Constitution? The supposition is preposterous. Therefore, we come down to a single point, that by accident, in some trivial unimportant respect, which even no member of the Senate admits to be of consequence, the whole system of finance may be upset and the policy of the Government thrown into wreck. Surely we do not propose to build the Constitution upon sand. The use of the words "proposed law" in the previous clause condemns the change in the next clause. The rights of procedure in both Houses must be absolutely respected, and we can leave it to each House to respect them, and to see that they are respected. It is not likely, for instance, that the House of Representatives would ever allow the Senate to initiate a Taxation Bill, or that the Senate would ever allow the House of Representatives to put two subjects of taxation in one Bill. The thing is incredible. But it is also incredible that if some unimportant slip occurs, the whole structure of the Constitution is to be dislocated. It is incredible that we, as reasonable men, will allow a thing of that sort to be done, now that our eyes have been opened. I confess that up till now my eyes were not opened to this danger.

Mr. LEWIS. -
You proposed it yourself in Adelaide.

Mr. REID. -

But I never saw the force of this point.

Mr. LEWIS. -

I understand that you proposed it yourself.

Mr. REID. -

I suppose it is getting unfashionable in this Convention for honorable members to accept an assurance made by another honorable member, but I am sure that Mr. Lewis is not a member of that sort.

Mr. LEWIS. -

Oh, I accept your assurance, but I understood that you proposed it.

Mr. REID. -

That may be; but this point, I am ashamed to say, never struck my attention. Because, as a matter of business—not merely as a matter of the rights of the two Houses—what two men would go into partnership for the purpose of transacting most important business with a deed of partnership so drawn up that some outside person could come in and upset everything they did? What sort of deed are we trying to draw up? Are we drawing up a deed of partnership that will be at the mercy of every unemployed lawyer in the community? Are we going to allow any person in the street to throw the whole affairs of the Commonwealth into confusion because he has nothing else to do, and has discovered some technical flaw in what has been done?

Sir EDWARD BRADDON. -

Why did you not discover this difficulty before?

Mr. REID. -

I say that it is wonderful that it was not seen before, and I tender my grateful thanks to those who have discovered it and brought the matter up; and I wish that, in fairness, Mr. O'Connor would apply the same condition to the clause referring to the House of Representatives as we have applied to the Senate. If the Senate is to be protected against itself by some one in the street, let the House of Representatives be protected against itself by some one in the street, too. I think that that one point is fatal. Either the word "proposed" must be struck out of the previous clause, or it must go into this clause; because there is no reason why one House should be allowed to outrage public rights because of a word in the Constitution whilst the other House has no such right. But I hope, speaking apart from political considerations altogether, that we shall take care not to allow any individual or court to enter the domain of Parliament, and investigate the procedure in reference to an act of legislation. The thing is unknown in any English community, and I think we ought not to introduce it here.
Mr. BARTON (New South Wales). -

I wish to make a few observations with regard to the objection, not, I hope, in any captious spirit. I quite see the stand-point from which Mr. Isaacs and others have addressed themselves to the question. But it seems to me that the argument which has been raised by Mr. Isaacs as to this last sub-section of clause 55, is really an argument for greater clearness in the Constitution; because it seems to be admitted that if the words of the Constitution are placed beyond dispute, then the confusion to which my honorable and learned friend alludes cannot arise. Consequently, the real meaning of the argument is this—"I could not say what I have said if your Constitution were absolutely clear." This is an objection to the form in which the provision stands, and an objection to form only, and not to substance, because it is admitted that these matters can only arise by way of confusion, and consequently it must be admitted that they can only arise where there is room for confusion in the Constitution. If, therefore, sub-section (3) is made clear, or if it be clear already, as I think it is, then it seems to me that the objection fails. But there is a further objection. That is, that there should be a perfect consonance between the two Houses, by which a law which may offend against the provisions laid down in clause 55, but may be, nevertheless, passed and assented to, may then come before a judicial tribunal and be pronounced invalid. That is quite true but, at the same time, the answer to the position is this (and it has been well put by Sir John Downer): That if there is a danger of that kind, one can scarcely conceive of the House of Representatives sending up a Bill in a form exposed to that danger. If that be so, the argument is not a practical one; it is merely fanciful. Because if the danger of a Bill—of a law-being declared invalid by reason of its including things which this clause says shall not be included is a real and practical danger, then, in proportion to its realness, it is apparent that the greatest care will be imposed upon the House of Representatives not to send up Bills in such a form as may frustrate their own ends. It seems to me, then, that with a little practical common sense and caution, which we must attribute to every body which will have the carrying out of any arm of this Constitution, the danger becomes less than practical. Then, it is said again, and urged by Mr. Reid very strongly, that clause 55 will protect the Senate, but that the House of Representatives derives its only protection from clause 54; and that, if we protect the Senate by making those laws invalid which offend against the measures taken for its protection, we should extend the same provision to laws in which the Senate may offend against the rights of the House of Representatives. At
first sight that looks like a very good argument, and I must say that when I
first heard it in Adelaide it impressed me considerably. But I pointed out
(also in Adelaide) what the answer to it was. And the answer is clear.
Clause 54 does not deal with the state in which a law that has been
assented to finds itself. Clause 54 is a provision relating to procedure only,
but clause 55 relates to the validity of laws.
Mr. ISAACS. -
That is what we complain of.
Mr. REID. -
That is our objection.
Mr. BARTON. -
I have no objection to that being your objection.
Mr. TRENWITH. -
Have you any objection to remediying the objection?
Mr. BARTON. -
But when we are considering the weight of argument based upon that
distinction we must remember that it is no part of the functions of the court
to examine into questions of procedure, and, therefore, it is no part of the
court's function to inquire what steps have been taken in Parliament in the
making of a law. Nor would it be a wise thing to provide in the
Constitution that the court should have power to examine into the
procedure adopted in Parliament for the passing of any law. But the
difference really is, that we cannot trace on the face of the law which has
been passed when

clause 54 has been infringed or what the extent of the infringement is, if
any; you cannot see upon the face of the law where it originated, or in what
House it was amended, if it was amended at all. But with regard to clause
55, the matter is clear, because you can see upon the face of the law
whether, when it purports to impose taxation, it goes beyond that purpose,
or whether the law deals with one subject of taxation only; you can see
upon the face of the law whether an annual Appropriation Act deals with
matters beyond the annual appropriation.
Mr. ISAACS. -
Can you?
Mr. BARTON. -
There is thus upon the face of the law the important material which is
appropriated for the decision of the court-the very transgression beyond
legal provision, the very matter which the court can take in hand, and with
regard to which it may say-"This must stop, it is illegal." But if the Senate
were to originate a Tax Bill, or to amend an Appropriation Act or Tax Bill,
and that Bill were to be passed into an Act; if the Senate were to pass a Bill imposing a burden on the people, and that Bill were to be passed-in either of these cases it would be impossible for any legal tribunal to say, upon the face of the law, whether any such infringement of the Constitution had taken place.

Mr. REID. -

So that confusion that can be covered up need not be provided against?

Mr. BARTON. -

That is not so at all. I do not see the slightest relevancy in that remark, or any approach to relevancy. So that it becomes perfectly clear that one matter is a matter of procedure and that to give a legal tribunal the power of interfering with regard to that which is inherently a matter of procedure would be an unwarrantable power of interference with Parliament to give to any court. I am astonished at it being claimed that anything should be done which would give the court power to instigate an investigation of mere parliamentary procedure. But those matters which happen under clause 55 do not turn on questions of procedure, inasmuch as if an infraction of the Constitution occurs, it is apparent upon the face of the Bill which makes the infraction, and the material is there for judicial determination. That is the difference between the two clauses, and it is of no use trying to mix up matters of procedure with matters of actual inviolability apparent on the face of the laws, and to say that you are to apply the same conditions to one as to the other.

Mr. REID. -

It may be mainly a matter of inviolability of procedure.

Mr. BARTON. -

But the test whether a matter is one of procedure or not is this: Matters of procedure do not appear upon the face of the laws, but matters of illegality in regard to the provisions of the Constitution are such as are apparent upon the face of the laws which infringe upon the provisions of the Constitution.

Mr. REID. -

If two subjects of taxation are put in a Bill, and the Bill is passed, surely you would see upon the face of that Act the wrongfulness of the procedure?

Mr. BARTON. -

The argument does not apply at all, for this reason: If you put two subjects of taxation in one Bill, the two subjects are apparent upon the face of the measure, and it is apparent that there has been a wrong procedure. But that is not the question. The question is not that, but whether there is illegality apparent upon the face of the measure, because, whether it is
under clause 54 or clause 55, we are not here for the purpose of giving power to a judicial tribunal to investigate mere matters of parliamentary procedure. But in matters of procedure which are so important as to become matters of substance, affecting the very viscera of an Act of Parliament, where you can see that those matters of substance offend against the provisions of an Act of Parliament, then it is proper to give power for the matter to be investigated by a judicial tribunal. Clause 54 is therefore quite coe-where, in fact, it is a tack as well as an Appropriation Bill—that will be apparent on the face of the law, and is therefore within the functions of the judicial tribunal, because the court is enabled to deal with what appears upon the face of such laws when they emerge (if they ever do emerge) from Parliament. As to the mere matter of procedure, I quite grant that there are matters of procedure involved in clause 55 the same as they are involved in clause 54, but the point is this: Whether, as between clause 54 and clause 55, it is not a fact that in infractions of clause 54 material for judicial determination is on the face of the Act, while in infractions of clause 55 there is no such material to be found at all?

Mr. TRENWITH. - They both deal with procedure.

Mr. BARTON. - Of course they both deal with procedure, and a man and a goat are both animals, but it does not follow that they are the same thing. I am astonished that my honorable friend does not see that while matters of procedure may be common to both subjects involved in clause 54 and clause 55, there is something beyond mere procedure in the questions involved in clause 55, something which stands out on the face of the law when passed, and with regard to clause 54 there is absolutely nothing of the kind for a court to take hold of. Besides, one would consider that the strongest defender of popular liberty would admit that where questions simply involve the relations of two Houses inter se in the shape of conducting business, however important and substantial they may be, it is not a part of the province of us, who are making a Constitution, to set a tribunal to watch over the manner in which they conduct their procedure alone; but where there is a question of right involved, where there is a question which brings on to the face of a law an infraction of right, then the fact that there is also procedure involved should be no stoppage to the action of a judicial tribunal, because what it inquires into is not the procedure, but the infraction of express terms in the Constitution apparent on the face of the
law. I think that is the real difference between the two clauses. It is not a fact that clause 54 is a clause solely for the protection of the House of Representatives. It confers corresponding rights. The argument fails there, because as to clause 54 there are rights given to the Senate with reference to certain classes of Bills appropriating or imposing fines, or demanding or appropriating licence-fees or fees for service.

Mr. ISAACS. -

They are only exceptions, though.

Mr. BARTON. -

They import a right. My honorable friend cannot get out of it in that way. He cannot say, because it reads as an exception it does not also confer a right. The test of that is this: Let the Senate originate a law which contains a provision for imposing or appropriating fines or penalties, or which enables a demand or appropriation of fees for licences or fees for services, and that law is valid within the Constitution. The Senate has a right to originate the law, and therefore this provision conveys a right. Now, there is a further provision there. While the Senate is prohibited from amending laws imposing a tax or appropriating money for the annual services of the Government, sub-section (4) gives the Senate the right to make suggestions, so that while there are rights given here to the House of Representatives to originate Tax and annual Appropriation Bills, while the Senate may not amend those two classes of Bills, there are certain other classes of Bills which it can originate, there are certain other classes of Bills which it can amend, and besides that, under sub-section (5):

Except as provided in this section the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

It has, moreover, the power of suggestion in Money Bills. Then there are correlative rights given by clause 54. Any one who argues that the right of the House of Representatives under that clause is not protected is exposed to this answer: Neither are the rights of the Senate under that clause protected by any reference to the High Court? The fact is that they are mere matters of procedure, and do not go beyond procedure, however much they may involve substantive rights in their relation to the people. While they only appear as matters of procedure the result of it is this: That as each House has rights under that clause so each House may claim equal protection, but those who are arguing that clause 55 should be maintained are met with the objection that under clause 54 the House of Representatives has not correlative protection. The answer to that is that under clause 54 the Senate has not correlative protection.

Mr. REID. -
The rejoinder to that is that in clause 55 all the Senate's rights are enumerated, but none of the other House's are enumerated, so that they do get a protection.

Mr. BARTON. -

I was coming to that. The sum of my honorable friend's argument in regard to clause 54, when he says that the rights there conferred, being rights of the House of Representatives, are not protected by a reference to the High Court, falls to the ground, because there are correlative rights under that very clause given to the Senate, and it is not sought to make these rights protected by the court either. Why? Because they are not those subjects which you can trace on an Act of Parliament. When you come to clause 55, my honorable friend is right in saying in one sense they are protections to the Senate. Let us examine the matter a little. Is it right that there should be tacking? There is not an honorable member in the Convention who will not say that it is wrong. This clause in itself is a clause to prevent tacking, therefore, it is a clause to do right-for whom?-for the people themselves. What is the good of our arguing this question on the basis of the rights, inter se, of the two Chambers, when the whole life of both these Chambers is that they are servants of the public? For whom are these protections in clause 55 introduced? Is it for the Senate they are introduced? No, it is for the public. It is to prevent one House of Parliament from making a tack, and by that tack obtaining the passage of a law or its rejection at the price of a popular conflict. So that if there is to be no popular conflict, a wrongful law is to be passed; and if right is to be done, there is to be a popular conflict. That is the very state of things which has existed in these colonies, and which it is the object of that clause to prevent. But what is the use of saying that is a clause for the protection of the Senate when it is in its very essence a clause for the protection of the people? That is the answer to the argument. It is not because some of these matters are in form a prohibition to the House of Representatives, they are protections to the Senate and injuries to the House of Representatives. Let us then consider the position of these Houses one with another. One would imagine if the clause operates, as they call it, as a protection to the Senate, therefore something is taken away from the House of Representatives. If there is a sum total, and you give a certain amount to the Senate instead of leaving it all with the House of Representatives, then by so much as you give the Senate the argument is that you take away from the House of Representatives. If that is so, let somebody tell me what right is taken away from the House of Representatives and given to the Senate. What right is there in any House
of Representatives so to confuse the constitutional functions of two Chambers as to import into a measure of legislation, and obtain for it the assent of the highest authority, which measure of legislation amounts in itself to a cutting down of constitutional rights, not provided for the sake of the members of the Chamber, but provided for the protection of the people? That is the answer I have to all this. It seems to me that constitutional rights given to the Senate, or constitutional rights given to the House of Representatives, under this Constitution cannot for a moment be dealt with or thought of or spoken of as rights given to this Chamber or to that Chamber. They are rights given to the people in the two different aspects in which the people stand under a Federal Constitution—one set of rights given to the people as a constitutional whole at large in proportion to numbers, the other set given to the persons who form the whole entity of a state, and who elect a contingent to the Senate. So that there is no question of taking away rights from the House of Representatives and conferring rights upon the Senate. We are not here to deal with the particular rights of particular Chambers; we are here to deal with popular rights, and to see that those popular rights find expression in adequate language. When we have done that, we have done all we are commissioned to do with reference to the relations between each other of the two Houses, and the validity of laws passed by both of them. To sum up then, I submit that the argument of my learned friend (Mr. Isaacs), in favour of his proposal to insert the word "proposed" amounts really to an argument that the law is not sufficiently clear. If he does not think so, I should be glad to know in what way it is suggested that it should carry out the same objects, and yet be made clearer. I think that "the ordinary annual services of the Government" are words which are well understood, and which no court can mistake. It may be that they may make it necessary for the Appropriation Bill to be rather rigidly guarded when it is brought before Parliament, but that is one of the inconveniences necessary to the doing of right.

Mr. ISAACS. -

Suppose you had in the Appropriation Bill, a grant of £500 payable to John Brown, and it was not one of the ordinary annual services of the Government: could not the court, under this sub section, set the whole law aside?

Mr. BARTON. -

There is no doubt that I might be tempted to return the same answer to that question which a speaker on a memorable occasion returned.

Mr. ISAACS. -

It is a very good reason for not having the clause in the Bill.

Mr. BARTON. -
It is no reason for not having the clause in the Bill. If my learned friend thinks that the words as they stand are liable to confusion, if he thinks that the ordinary annual services of the Government do not sufficiently define the ordinary annual Appropriation Bill—an Act which the Government must pass to carry on its own existence—let him suggest some better form of words. Let him make the clause clearer, and by so much as he makes it clearer he loses the whole point and effect of his own argument. If the court were to decide that this grant of money to John Brown is part of the ordinary annual services of the Government, let it be so; but if it is not to decide the question we will soon find that out, and it can be rectified in six hours.

Mr. TRENWITH. -
But in the meantime the whole Bill goes.

Mr. ISAACS. -
The whole law goes.

Mr. BARTON. -
In the meantime the whole Bill need not go. We know very well that the whole Bill does not go under these circumstances, and I am astonished that some of my honorable friends have not sufficient recollection of Victorian history not to tell us that.

Mr. ISAACS. -
We have too vivid a recollection of Victorian history to allow this to pass.

Mr. BARTON. -
Well, summing up, if the argument is that the sub-section should be made clearer, let us have suggestions for the clearing of the sub-section, and, in proportion as those suggestions are good, the necessity for my learned friend's amendment diminishes; but I submit that where a law bears on its face the evidence of an infraction of the Constitution, we should be entitled not to allow the process of that law to be regulated by mere methods of procedure, but to submit them to the determination of the court, because of the evil which appears on their faces. Then, as regards the objections taken to clause 54, I submit that under that clause the rights of the Senate and the House of Representatives are correlative rights, but that we are not here to confer rights on Chambers, except by way of making them instruments of the rights of the people—that so far as we assume to do that we do that sufficiently under clause 54, a clause relating to procedure, without invoking a judicial tribunal to interfere with mere matters of procedure; but that where the matters are not only procedure, but go beyond procedure, so as to be matters which carry on their
Mr. HOLDER (South Australia). -

I agree with those honorable members who desire to see a strong Senate established under this Constitution; but, at the same time, I am not one of those who will make a mere fetish of this Senate, who will on every possible occasion drag in the question of state rights, as if somehow or other through the magic of the High Court, and not the Parliament established by the people, the state rights were to override the people's rights, and the rights of the people were to be forgotten altogether. Those who have been taking that position, which many have taken against the amendment too, have not been arguing for a strong Senate. They have really been arguing for a High Court-a High Court to be brought in on every possible pretext; a High Court which is to override the Senate and the House of Representatives, and everything else; a High Court which is to so dominate this Constitution as to make it not a Constitution which we would desire to endow a free people with, but a Constitution which we well might shrink from coming under. Now, the arguments which have been used against Mr. Isaacs' amendment, following out first those that have been used last, are that there is no effort here to give a special protection to the Senate that is not given to the House of Representatives. We have been asked by Mr. Barton whether it is not an important matter to prevent tacks? Now, I ask any responsible politician whether it is not just as important to secure that all appropriations of public revenue shall originate in the Lower House as it is important to prevent tacks? The first is surely as important as the other. And yet we are told that the prevention of tacks must be carried to the extent of going to the High Court; but that in the other case we must leave the matter to the determination of parliamentary procedure through the various stages of the Bill. Now, if, for argument's sake, we believe the special support of the High Court is to be given under clause 55, certainly that same special support ought to be given under clause 54. I believe, however, that we shall have a Senate so strong in itself that it will not require to be spoon-fed by the High Court. I believe the Senate will be strong in its reputation with the whole body of the people of the Commonwealth, and I refuse to believe that the Senate requires to be put in a sort of subsidiary position to the High Court lest it might not be able to protect itself, and thus to make the High Court do for the Senate what it cannot do for itself. Our honorable leader says that matters under clause 54 are purely matters of procedure, and, therefore, as matters of procedure they would not appear on the face of the measure. Now, I dispute both those arguments. I dispute first that matters under clause 54
are matters of procedure, concerning which no definite evidence can be brought before the High Court. I would point out to my honorable friend that the journals of the Houses of Parliament would show the separate stages of the measure in question, and would clearly exhibit whether the procedure prescribed by clause 54 had been observed. Therefore, the High Court could be put in a position to decide the matters under clause 55, particularly questions touching an Appropriation Act. I dispute the statement that all that concerns an Appropriation Act is limited by this clause to what appears on the face of the measure itself. In an Appropriation Act we should have so many hundred thousand pounds for this, and so many hundred thousand pounds for that, and other items; but we should have no detail whatever. In no Appropriation Act passed by any Parliament is there given small details of the amounts appropriated. An Appropriation Act would often include amounts of £10,000, £15,000, £20,000, and larger sums, the details of which would be lost altogether in the mass of votes included in the Act. Therefore, it is quite impossible for any court to tell from the mere construction of an Appropriation Act whether the items do comprise moneys required for the ordinary annual services of the Government, even if that phrase "ordinary annual services of the Government" were beyond dispute. Personally, I do not know what the phrase means, and I do not suppose it is possible for anybody definitely to say what it means.

Mr. REID. - With a new Government it will be a very difficult matter to know what are "ordinary annual services."

Mr. HOLDER. - Yes; but every item must be an annual expenditure, not one which comes on specially. Now, we all know that all sorts of special emergencies arise in every country, and that special provision has to be made for every such emergency.

Mr. ISAACS. - Would £50,000 for contingencies be regarded by the court as money appropriated for the ordinary annual services of the Government?

Mr. REID. - That would be a nice question for the High Court to determine.

Mr. HOLDER. - Extraordinary amounts would have to be voted specially under this provision. But I want to urge another reason why I decline to accept the first of the arguments brought against Mr. Isaacs' amendment. Mr. O'Connor said it was not right that a majority of the Senate at any one time, or a majority of the House of Representatives, should have it in their power.
to waive any material point in this Constitution. Now, I desire to say, in reply to that argument, that it is not a question of a majority of either or both Houses of Parliament. Given a measure which has passed both Houses of Parliament—a measure which was originated in the House of Representatives, and read a first, second, and third time; then going on to the other branch of the Legislature, and there read a first, second, and third time—it should be competent, not for a majority of either House of Parliament, but for any single member of either House of the Legislature, to raise a point as to the form of the Bill, and to have the Bill ruled out of order by the President of the Senate or the Speaker in the House of Representatives, and thrown under the table. Surely that is a sufficient protection. As the President of the Convention reminds me, it would be the absolute duty of the Speaker, in the House of Representatives, and of the President, in the Senate, to look into the matter, each on his own account, without waiting for the question to be raised. Now, I ask honorable members which is the more important body to deal with this question—the High Court, the members of which may or may not have had any experience of parliamentary procedure, and who, therefore, would deal with the question according to legal procedure as a matter of dry law, or the President of the Senate and the Speaker of the House of Representatives, who will be practised Members of Parliament, gentlemen who have had many years' experience of parliamentary procedure? If we want a tribunal before whom this matter should come for final decision, the President of the Senate or the Speaker of the House of Representatives would each be a better tribunal than even the High Court, of which we have heard so much. I think we are far safer in leaving our rights in the hands of the President and Speaker than in the hands of any one else. But I want to put a little more stress on the fact I just mentioned, namely, that one dissentient member could prevent the passage of an informal Bill if Mr. Isaacs' amendment be carried. It has been said that states might be bought over, that the representatives of different states might be won to support a particular measure or a particular Government, because of some promises of expenditure in their states. Now, is it likely that the whole of the representatives of one state would lend themselves to that kind of thing, even if one or two would do so—and I am not going to believe even that? Surely there would be at least one representative out of the whole Senate and one member of the House of Representatives, who would have individuality enough, and strength enough, to get up and challenge the order of any particular measure which might be disorderly under this clause of the Constitution.
Mr. ISAACS. -

They would not all sit on the same side of the House.

Mr. HOLDER. -

I should think not. They would not all be Ministerialists, or all members of the Opposition, or all members of any particular party; and I cannot believe that any Bill which contained anything objectionable at all could pass through both Houses of the Federal Legislature without finding some one member of either of the two Houses who would rise to a point of order, and have such a Bill laid aside of necessity as being out of order under this provision. A further point which I would like to press upon the attention of honorable members is: That this clause as it stands practically leaves open many paths leading to a precipice. The limitation by which a decision of the High Court might upset the whole Commonwealth law involves that those pathways are all left open. Now, our custom is to believe that prevention is better than cure-that it is better to place an obstacle on a path leading to a difficulty rather than to leave the people to walk along that path until they are on the very verge of the precipice. Clause 55 uses the term "laws," and not "Bills" or "proposed laws," so that honorable members will see that, under clause 55 as it stands, a Bill containing half-a-dozen subjects of taxation-a measure which may be an Appropriation Act with a tack or with anything else objectionable in it-may be introduced perfectly legally, and whilst it is only a Bill no objection could be taken to it. No member could rise in his place and object to the Bill as being disorderly, and no President of the Senate and no Speaker of the House of Representatives could rule the measure out of order.

Mr. DOBSON. -

Surely that cannot be so. Would not the Speaker be justified in guarding the rights of the House of Representatives, even though no honorable member raised a point of order?

Mr. REID. -

Would not the President of the Senate be justified in guarding the rights of the Senate?

Mr. HOLDER. -

What I was going to point out is: That while under clause 54 a Bill is illegal under certain conditions, under clause 55 there is no word of condemnation of any Bill. A Bill may be not merely a measure which includes different methods of taxation, but may be an Appropriation Bill with a tack, and yet, while it is only a Bill, it is all right under clause 55. No member can call attention to the fact that it proposes to violate the
Constitution, and the Speaker of the House of Representatives, or the President of the Senate, cannot rule that the Bill is out of order, so that, not until you are on the very verge of the precipice, in fact, until you have taken your fatal step, and have your foot just over the chasm and cannot recover yourself, is the measure to be pronounced illegal.

Mr. BARTON. -

Is that so? Would not the President of the Senate or the Speaker of the House of Representatives be bound, as Presidents and Speakers are now, to point out to their respective Houses that the law proposed to be adopted was illegal?

Mr. REID. -

And are not the President and Speaker better guardians of our rights than the High Court in this case?

Mr. HOLDER. -

If I was a member of the Federal Parliament, and such a measure was submitted, I should ask the Speaker-"Is this Bill out of order?" And, if Mr. Isaacs' amendment is not passed, the Speaker would certainly have to say "No."

Mr. BARTON. -

I think he would have to say "Yes." He would have to say that any Bill which was unconstitutional was out of order.

Mr. HOLDER. -

But under clause 55 the Bill would not be unconstitutional until it became an Act.

Mr. BARTON. -

Oh, yes, it would.

Mr. HOLDER. -

As far as the speech of our leader indicates, he is bound to substitute for the word "laws," in clause 55, the word "Bills" or the term "proposed laws," so as to make such measures illegal from the start.

Mr. BARTON. -

Not necessarily. Before you could demonstrate that, you would have to maintain this position: That the Speaker or President cannot say a Bill is out of order which proposes to abrogate the Constitution.

Mr. HOLDER. -

But the Bill is not out of order, under clause 55, until it becomes an Act.

Mr. ISAACS. -

And it may be amended and brought into perfect legality before it is passed.

Mr. HOLDER. -

Yes, it could be altered to make it constitutional, but as long as it is a Bill
it is to be legal, whatever it contains, and it ca
Mr. DOBSON. -
  You have acted as Attorney-General to some purpose.
Mr. HOLDER. -
  It does not require a legal member to point out this defect. It is obvious to the lay mind.
Mr. DOBSON. -
  It is a legal quibble.
Mr. HOLDER. -
  I am sure that the honorable member will not say that when he sees the absolute distinction that is drawn between "proposed laws" and "laws" in clauses 54 and 55. It is no legal quibble to distinguish between "proposed laws" and "laws," or, as we are more accustomed to call them, between "Bills" and "Acts." They are different things, so that the distinction cannot be overlooked. Therefore, there is no legal quibble in the matter at all. If we are going to say that these laws are to be illegal at their end, we had better say they are to be illegal at the start. To say that Bills shall be legal up to the point at which they become Acts, and illegal afterwards, is to say what is absolutely absurd, and what will land us in an awkward situation, from which there is no escape. I hope that the Convention will adopt Mr Isaacs' amendment. I rejoice to find that, a little while ago, support was given to that amendment by Mr. Symon, because, in speaking on an amendment I proposed a few days ago, he was anxious the High Court should be over everything, and that the people should not prevail.
Mr. SYMON. -
  I did not say that. I never said that.
Mr. HOLDER. -
  I took the other side on the occasion I refer to, and the honorable member was found on the opposite side of the hedge to me. To-day I am glad to have his assistance, and I am pleased to find that he is not anxious to exalt the High Court, but prefers to trust the Federal Parliament, which will represent the people as states and as a nation. Make it illegal for the Parliament to do this thing if you like, but do not allow the High Court to come in after the Parliament has, not only by a majority only, but by every individual member of both Houses, assented to a certain course. There is one remark I want to make. It is said that tacks ought to be dealt with differently from procedure because they are for the protection of one House against another. Is there any matter in which tacks are for the protection of one House against another more than in the matters referred
to in clause 54? If we are to have "proposed laws" in clause 54, we must have it in clause 55. I do not regard this as a degradation of the Senate. I want to save the Senate from its unwise friends, who think that it will be of no use unless at every turn it has the power to drag in the High Court. I ask those who believe that the Senate will protect the states to give the Senate the right it ought to have, and to insert the word "proposed" before "laws" right through these clauses.

Mr. HIGGINS (Victoria). -

I have sat quiet and amazed at the obstinacy with which this perfectly innocent amendment has been opposed. I confess that the money clauses of the Bill have been my despair. I, to say the least of it, feel very grave doubt as to whether they are workable, and particularly in connexion with a responsible Government. The committee have been carried into the regions of the abstract, and I want to put before them certain concrete cases applying to the amendment that has been proposed by the Hon. Mr. Isaacs. What I want to say is, that unless that amendment is carried the powers of the Senate will be curtailed. If a Bill is introduced for the imposition of a tax upon land, and the Senate wish to make a suggestion that the same amount of money may be raised by virtue of a tax upon sports, they cannot make that suggestion, simply because the Bill would then contain two subjects of taxation.

Mr. DOBSON. -

Where is the harm of that?

Mr. HIGGINS. -

Clause 55 says that such a law would be invalid. I am speaking from some little experience in our local Parliament. A Charities Bill was introduced, and it was proposed to raise the money for the charities by means of a sports tax, and additional rates upon ordinary lands and buildings. Supposing that money was required, and the House of Representatives said that it should be raised by a tax upon lands, the Senate might then say-"Oh, no, we can raise the same amount of money by means of a tax on sports and lands." That suggestion could not be made, because if it were adopted there would be two subjects of taxation in the Bill and the law would be invalid. I will take another instance: It is provided that laws imposing taxation shall deal only with the imposition of taxes. Under that provision the Senate can make no condition to a law imposing taxation, and it will have to accept the taxation as it stands, or not at all. The law will otherwise be treated as invalid, and the taxpayers could then re-fuse to pay anything. Then sub-section (3) says-"A law which appropriates revenue or moneys for the ordinary annual services
of the Government shall deal only with such appropriation."

Mr. REID. -

Every Appropriation Bill will go before the High Court.

Mr. HIGGINS. -

Exactly. Every honorable member who has had any experience of Parliament will see the difficulty of ascertaining the limits of the ordinary annual services of the Government.

Mr. DOBSON. -

That difficulty ought not to be so very great.

Mr. HIGGINS. -

I think that the honorable member has had experience as Treasurer as well as Premier, and I would ask him whether he can say what is meant by the ordinary annual services of the Government?

Mr. DOBSON. -

I have never been Treasurer.

Mr. HIGGINS. -

Sir Philip Fysh is a Treasurer of large experience, and he knows the difficulty. I am, however, dealing with the point that you are curtailing the powers of the Senate by refusing to accept Mr. Isaacs' amendment.

Mr. DOBSON. -

Safeguarding them.

Mr. HIGGINS. -

Supposing that an Appropriation Bill is brought up from the House of Representatives providing for the ordinary annual services, and providing, amongst other things, for the payment of light-house keepers, the Senate might think that this provision for the payment of the light-house keepers should not be carried unless a provision was also inserted dealing with the light-house keepers who had been dispensed with.

Mr. DOBSON. -

We should put them in a separate Bill.

Mr. HIGGINS. -

Yes, but the Senate would be deprived of the right of making the suggestion. I want honorable members, who have been wakened up by the state rights' drum being beaten, to frankly face the position. This is not an attack upon state rights at all. It is simply a question of the practical working of the Constitution. I feel that any advocacy I can use will be treated with suspicion by certain honorable members, and I should have preferred to remain silent under the circumstances. I think, however, that certain honorable members are misconceiving the object with which Mr. Isaacs has moved his amendment. I tell them frankly that there is no attack, or idea of an attack, on the privileges of the Senate. I want to put it as
plainly as I can that, by opposing the amendment, they are depriving the Senate of a certain elasticity in the exercise of its powers. The position, to me, is simply ridiculous. As soon as the word "Senate" is uttered there is a sudden wakening up of dry bones. Honorable members are at once on the alert to defend the Senate. Some of us hardly care to mention the Senate at all. We are like a man walking along a street in which there is a hen; the hen sees the man coming, and, thinking it is being chased, runs in front of him instead of going to one side. Surely we are able to deal with the merits of the proposal without regard to the quarter from which it emanates. It is quite true that some of us have not the same strong notions about the constitution of the Senate as others. But, speaking for myself, I have no intention at all of weakening the Senate. I want both Houses to be strong; but if they are strong they must be liberal. It was Roderick Dhu who used to use the whistle when Fitz-James blew the horn. The leader of the Convention has used the whistle, and he has called all his bold clansmen around the standard of state rights. There is no desire to make any attack on the Senate, or upon so-called state rights. If this proposal had been put forward by the Right Hon. Sir John Forrest, it would have been carried almost without a dissentient.

Mr. SYMON. -
You ought not to say that.

Mr. HIGGINS. -
What I have said is not disrespectful to Sir John Forrest.

Mr. SYMON. -
We are dealing with all these things on their merits.

Mr. HIGGINS. -
I am sure the honorable member has seen through it, although he is as bigoted a state rights man as any here.

Mr. SYMON. -
Not bigoted.

Sir JOHN FORREST. -
What have I done?

Mr. HIGGINS. -
You have done admirably. I have no more to say excepting that I hope the matter will be dealt with on its merits.

Mr. MCMILLAN (New South Wales). -
I have listened attentively to one of the ablest debates that has yet taken place in the Convention, conducted entirely by legal members. One of the difficulties here is that we are mixing up two absolutely different things. I am quite willing to allow that the Hon. Mr. Isaacs' amendment ought to be
made in sub-section (3), because it is absolutely impossible, in a matter of that kind, to define what the ordinary annual services of the year are. I would like honorable members to look at the wording of these different sub-sections. The first sub-sections are absolutely plain, and they embed in the Constitution a right that can always be watched and vigilantly safe guarded. "Laws imposing taxation shall deal with the imposition of taxation only." Surely this is very clear language, upon which points of order and questions in relation to the forms of the House will not arise.

Mr. ISAACS. -

If you were to bring in a Bill to impose one tax, would it include a power to repeal another on the same subject?

Mr. OCONNOR. -

Undoubtedly.

Mr. ISAACS. -

Mr. Barton has given an opinion that it would not.

Mr. MCMILLAN. -

We have the ablest lawyers divided on this question, and what is the layman to do?

Mr. KINGSTON. -

Would it include machinery clauses for collection?

Mr. MCMILLAN. -

I should think not. One of the objects of these sub-sections is so to provide for the management of our business that the faults and errors of the past shall not be repeated. Quarrels have often been caused between the two Houses owing to the slovenliness and the unfairness which has dominated the local Parliaments. These quarrels should never have occurred, and we want to prevent them. We are putting the House of Representatives and the Senate in an entirely different position from that of the local Legislatures. Now, I go right on just in the same way. The sub-section reads-"Laws imposing taxation, except laws imposing duties of customs and excise-"There you have the exception of a thing which it is difficult to deal with in the same form, and it is very properly excepted. Then we read-"shall deal with one subject of taxation only." Where is the difficulty about keeping that in view? Is not that a fair -"Laws imposing duties of customs shall deal with duties of customs only." Where is the difficulty about that?

Mr. REID. -

There is no difficulty before you try. But you get a long Customs Tariff, and you may find a few words in the Bill that will raise a point of law.

Mr. MCMILLAN. -

I do not know that. The whole thing will go through such a strict
supervision that it would be almost impossible when you get to the end of a Customs Tariff to find anything out of the parliamentary rules and procedure. But when we come to sub-section (3), I say that the amendment of the honorable member ought to go in. There is no analogy between the two Houses. I do not go into the question as to whether the previous clause, which has not been recommitted, ought or ought not to have been recommitted. I deal entirely with this clause. I do not deal in the refined manner of some honorable members in regard to the effect on the Senate or on the House of Representatives. Some honorable members who are entitled to be heard have said that the amendment of Mr. Isaacs weakens the Senate. Another honorable member of very high legal ability has said that not to put the amendment in would weaken the Senate. What are we to do?

Mr. TRENWITH. -
And yet this clause is throwing legislation into the hands of those people who cannot agree.

Mr. REID. -
The lawyers.

Mr. MCMILLAN. -
The lawyers?
Mr. TRENWITH. -
Yes, thrusting it on them.

Mr. MCMILLAN. -
That is one of those commonplaces which are always used. There is no clause or sub-clause of any Bill in the world, even if it were framed by an angel from Heaven, that would not be the subject of litigation.

Dr. COCKBURN. -
The disagreement is not legal, but constitutional.

Sir EDWARD BRADDON. -
You do not get lawyers from Heaven.

Mr. ISAACS. -
No, lawyers are sent there; they are not drawn from there.

Mr. MCMILLAN. -
Looking at the clause from a common-sense point of view, are the provisions a vital condition of the Constitution? Was it worth our while to spend days and weeks thrashing out these matters as a compromise to the financial scheme? We are dealing now with one of the great compromises of our financial scheme. Is that compromise, of vital importance in the financial scheme, to be made a matter of simple procedure in the House, liable to the judgment of a Speaker or a President? Or is it, like hundreds of
other things, embedded in the Constitution, so that, if at any time there be an infringement, the law passed would be invalid, and the High Court would protect the people of the country? Apart from all legal quibbles, that seems to be the plain English of the fact. Speaking as an ex-Treasurer, I say that it is impossible to safeguard you in the third section. I would be quite willing to put in the word "proposition," or "Bill," or anything of the kind. All the arguments used to-day are valid against the third sub-clause. But, as against the other sub-clauses, looking at it as a matter of English, and as clearly defining the rights in the Constitution, it seems to me that they ought not to be disturbed.

Mr. DOBSON (Tasmania). -

I trust that honorable members will be loyal to the financial clauses, which were fixed up after such an amount of speaking and thinking. The arguments which honorable members have used in favour of Mr. Isaacs' amendment tell, to my mind, most decidedly against it. As Mr. Isaacs commenced by saying that the Senate was hedged round with too many protections, I think we may discard the suggestion of Mr. Higgins that the amendment would not weaken the Senate. It would not weaken the Senate if the House of Representatives were determined to do everything fairly and squarely, and consider every proposal on its merits. But the moment the House of Representatives commenced any tricks whatever, the clause would be a protection to the Senate. I regard it far more as a protection to the people. If Mr. Chamberlain is right, and I think he is, the classes of every community are divided into those that have, and those that have not. This is a protection to those that have; you cannot take anything from the mail who has no property, or has not anything in his pocket. All these money clauses have been fixed up as a compromise. This clause is to protect people who will have to bear the brunt of taxation, who keep up the credit of the community, and who, in point of fact, have something to tax. The argument I have not heard answered is that of Mr. O'Connor, who says that if the clause be left as it stands, there is the court to declare that any law which infringes the Constitution is illegal. If you put in the word "proposed," as Mr. Isaacs suggests, no matter how illegal the law may be, the people would have no protection-the High Court is robbed of the opportunity of being the interpreter in the most important matter of taxation. Look a moment at the practical arguments suggested by Mr. Carruthers, who has told us how a Bill becomes law. Compare these arguments with those of Mr. Reid, who imagines that the man in the street will find a flaw in some Act which has passed through its various stages. A
Premier in the Cabinet instructs the draftsman or Attorney-General to prepare a Bill, and if the Minister and the Attorney-General cannot see the flaw, they must have very little common sense or they are corrupt. The measure then goes to the House of Representatives, the members of which, or their Speaker, or any one of their members, must have taken leave of their senses if they cannot see that the proposed law deals with more matters than one of taxation. The Bill goes to the Senate, and the President and every member there must either be corrupt, or have taken leave of their senses, or they would see any flaw there may be. Mr. Reid points out that somebody may find a flaw when the Bill has passed through all these stages under the eyes of the very men whose duty it is to see the plain language of the Constitution carried out. The right honorable gentleman has supposed an absurdity.

Mr. REID. -

Therefore you do not need this particular safeguard.

Mr. DOBSON. -

You need the safeguard in case the House of Representatives be overcome by the tumult of the people who want something done which, though not quite illegal, is not fair. Then the safeguard is a protection to the people and it does help the Senate, not so much as a Senate, but as the Second Chamber in the bi-cameral system we have adopted. What is the use of our adopting this system and then honorable members trying to knock it down the next moment, as suggested by Mr. Higgins? We want to keep the system.

Mr. HIGGINS. -

I want to keep it, too.

Mr. DOBSON. -

I hope I have as great respect for the people as any honorable member opposite. The only difference is that those honorable members want the people's voice determined by one kind of machinery and I want it determined by another. The clause as it stands is the best machinery I have yet heard suggested in order to provide that the House of Representatives are not enabled, by possibly having a President of the Senate in touch with them, to do anything that is illegal. I heard an honorable member say that any member of the Federal Parliament could prevent an infringement of the Constitution. Suppose the Lower House do let a Bill go through which contains more than one item of taxation, or that an Appropriation Act contains something which is not for the annual service of the year, and that Bill goes through to the Senate. If that President were in touch with a very radical or liberal Government in the Lower House, all he has to do is to say that, as the Bill has passed the Lower Chamber, he does not take the
responsibility of ruling it illegal. That determines the matter.

Mr. REID. -

No, it does not.

Mr. DOBSON. -

My honorable friend is wrong in saying that any one member can stop that illegality. Mr. Holder says that if a proposed law deals with half-a-dozen systems of taxation the Speaker of the Lower House would not rule it out of order. That honorable member has had the privilege of being Attorney-General of South Australia for a few weeks. I have never had the opportunity of holding that office, and, I am sorry to say, I cannot pretend to the law attainments of the honorable member. But I cannot conceive that a President or a Speaker would not rule out of order a Bill which infringed the very A B C of the Constitution. Mr. Isaacs spoke of the annual Appropriation Bill containing an item of £500 to John Smith as a gratuity.

Mr. ISAACS. -

I said simply "John Smith, £500."

Mr. DOBSON. -

Well, I suppose that John Smith is an old servant, or somebody who is entitled to compensation, and there is no difficulty whatever in paying John Smith his gratuity, or paying a gratuity of £100 to Postmistress Jones, in any Appropriation Bill or by a separate Bill. Where is all the trouble? Mr. Higgins has spoken as if the financial clauses were full of doubts and difficulties, and no one could understand them. I have come to an utterly opposite conclusion. I come to the conclusion that they are a thoroughly plain and admirable set of clauses. I do not see that after weeks and weeks of discussion they should be altered at the last moment for the express purpose, as Mr. Isaacs has admitted, of taking away some of the strength of the Senate.

Mr. ISAACS. -

I did not say that.

Mr. REID (New South Wales). -

I wish to trespass for a moment in order to brush away a fallacy which was put forward by Mr. Barton, and which has just now been repeated. What is the basis, so far as the public are concerned, of a Taxation Bill or an Appropriation Bill? The agreement of the two Houses expressed in the Bill, which receives the Royal assent. All the argument which bears on injury to the public as flowing from both Houses agreeing falls to the ground. The basis of the right to tax the people is fulfilled when the two Houses agree that the people shall be taxed. The only basis of
parliamentary working as it affects the people is that the two Houses shall pass either one or two Bills, or 50 Bills. The question whether Parliament expresses its agreement in one or two Bills is, so far as the people outside are concerned, a matter of absolute indifference. It is a matter of procedure entirely between the two Houses, and in no sense affects the public. What matters it to the public outside whether you tax them by Acts A, B, and C, or by Act A? The basis of taxation is that both Houses have come to the conclusion that a law shall be passed imposing taxation.

Mr. FRASER. -
Supposing there is a "tack," and the people are against it.

Mr. REID. -
Let us take that. In a Constitution which has no express provision against "tacking" there has never been a successful attempt—there has never been passed in Victoria an Appropriation Bill with a "tack." Victoria was thrown into confusion year after year—

Mr. FRASER. -
And that is what we want to prevent.

Mr. REID. -
I tell you that in the Constitution—

The CHAIRMAN. -
Will the right honorable member kindly address the Chair?

Mr. REID. -
I should like, Sir Richard Baker, to appeal to you to protect me from those violent attacks on the part of my friend (Mr. Fraser). The very name "tack" is enough to send him into a red heat. There has never been a "tack" in the history of Victoria. And why? Because there are a number of gentlemen in the Legislative Council who could see the thing was wrong, and would not tolerate it.

Mr. FRASER. -
It was wrong.

Mr. REID. -
High-minded patriots who felt it was

Mr. MCMILLAN. -
Are you not putting Parliament over the Constitution logically by your arguments?

Mr. REID. -
Upon my word, it is a great amusement to me to hear those interruptions. Am I not "putting Parliament over the people"? Is not Parliament put over the people in order to devise measures of taxation?

Mr. MCMILLAN. -
I did not say "people"; I said "Constitution."

Mr. REID. -

I beg your pardon. Has not the Constitution created Parliament to impose taxes on the people? So far as the Constitution is concerned, the basic principle of taxation is that the two Houses are of one mind. The moment the Houses are of one mind as to any proposed tax, the basis of that tax is complete, and the question whether it is on one sheet of foolscap or on two, is a matter affecting procedure. It is a mistake in procedure if you put the two taxes on one sheet of paper in stead of two; but if the Houses are agreed upon the tax, irrespective of that bit of paper on which you put them, the moral basis of taxation is complete. The only question that remains is the question, therefore, of procedure. And now I come to this point. If this were a matter affecting substance in any sense, there would be a good deal in this contention. But we can leave both Houses to see that substantially their rights slid privileges are not infringed. Is it not most unlikely, first of all, that the House of Representatives will deliberately infringe a provision of the Constitution by putting in things that are unconstitutional?

[The Chairman left the chair at two minutes past one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. REID. -

I was anxious to point out that Mr. Barton, whilst his answer was complete in form, did not give an answer that was complete in substance, because he did not touch the case of an Act which might, in some trivial respect, be exposed to the decision of the High Court, and might be ruled out owing to that trivial technical defect. But I will deal with the matter of substance under that—the case of an attempt to interfere seriously with the privileges laid down in the Constitution with reference to these Bills. I submit that, if there is one subject on which the House can be safely left to look after its own interests it is as to the assertion of its constitutional rights, especially when they are expressed in the plain words of the Federal Constitution. It transcends belief that any Senate worthy of the name would be a party to the surrender of rights and privileges which are part of the statute law. It is impossible to conceive. Therefore, we have in the Senate a sufficient protection of the Senate and the Constitution, even if we could conceive of the almost incredible thing that a deliberate attempt would be made in the Upper Chamber to bring up a Bill that would be open to the objection that it is illegal and contrary to the rights of the Senate. What Government would be so foolish, having any interest in the passing of a measure, as to bring forward that measure in a form offensive to the Constitution? We know, as practical men, that with the greatest skill in the
world little errors and small infringements of rights creep in which are not much regarded by sensible men, which have no bearing on the public interests, and we do not desire that on such grounds the deliberate intention of the Legislature should be frustrated, because the moral sanction for any taxation or appropriation of money is the assent of the two Houses of Parliament. If we could conceive it possible that the House of Representatives would deliberately, on a matter of substance, break the law of the Constitution by bringing in a Bill at variance with its provisions, it is positively incredible that we will ever have a Senate in Australia which would surrender its own rights and privileges and allow such a Bill to pass. The first is incredible, and the second is even more so. Therefore, why should we throw our most serious measures open to the risk, on the ground of a mere technicality, of being upset, and our affairs thrown into confusion? So far as the public are concerned, if the two Houses assent to a proposition, if their minds agree upon a series of propositions, so far as the public outside are concerned it is immaterial whether these propositions find their place in one Act or three. Now, I come to the object of this provision, that a Bill imposing taxation should only propose one form of taxation, leaving the customs out. What was the intention of that? To protect the public? Nothing of the kind; because if both Houses were agreed upon the two parts which might appear in one Bill it would not matter, because their representatives in both Houses were ready to pass the tax; and it would be immaterial, if both Houses agree to pass the two subjects of taxation, whether it is expressed in one Act or two. Therefore, we come to the fact that the expression of these subjects in separate Acts was to protect the Senate, to enable the Senate to exercise its judgment freely, and to deal with large measures of taxation on their merits; so that if it approved of one subject of taxation, it should have the liberty of approving of it without being compelled to approve of another form of taxation which it disliked. So that the object of this provision was entirely in the interests of the Senate, to enable the Senate to exercise its wisdom and discretion unfettered by any difficulty. That being so, surely we will leave the Senate to be the guardian of its rights in this respect. I strongly feel it would be a disaster if this clause were left in its present form. It is now admitted on all sides that it will not do to leave sub-section (3) in that form. Now, the principle is exactly the same with regard to the other.

Mr. MCMILLAN. -

No. The difference is this: You can define the first, but you cannot define the third.
Mr. REID. -

Surely my honorable friend knows that that definition will be subject, not to the skilled persons in the two Houses as well as their President and Speaker, but to certain persons sitting on the Supreme Court Bench, possibly ignorant of parliamentary procedure, and the necessity you impose on that bench is this: That, no matter what the terrible consequences may be, if a Bill only technically invades these words, that Bill must be destroyed by the bench. Is that the position in which we should place serious acts of legislation—that a court sitting in judgment would have to tell the people from the bench that the law was substantially in accordance with the provisions of the Constitution; that on all broad and serious grounds such as business men would regard there was absolutely not one word to be said impeaching the validity of the Bill; but, unfortunately, in line 51 there was a certain expression used which the court must hold, being compelled to decide according to statute law, did not impose taxation, but went beyond that, and therefore the Act must be annulled. It seems to me that position is so preposterous that we should not have had to speak on the subject. It should have recommended itself to the common sense of all of us. Just picture the position of law, and especially of financial law, in Great Britain if such a thing were possible as the reviewing of an Act of Parliament imposing taxation because of some technical flaw in the procedure of its passing.

Mr. DOUGLAS. -

They have no Constitution in England except custom.

Mr. REID. -

They have the best in the world.

Mr. ISAACS. -

Hear, hear. The nearer we get to it the better it will be for us.

Mr. REID. -

There is one good thing about it—and I think my honorable friend, as the President of a Legislative Council, will agree with me here—it never allows Judges to undo acts of legislation because some clever lawyer has found some small flaw in them. If the clause is passed as it stands, it will create a new form of industry. What prospects of notoriety it will give to ambitious sucking lawyers, who, by scanning Acts of the Federal Legislature, might be able to discover flaws upon which to raise points before the High Court. What a preposterous position it will be if, because of the infringement by a hair's breadth of line 3 of sub-section (4) of section something else, an Act of the Federal Parliament is set aside.

Dr. COCKBURN. -
Then you had better not have a written Constitution, because such a possibility is inseparable from a written Constitution.

Mr. REID. -

These provisions are intended to secure the independence of the Senate, but surely honorable members have not such a craven view of the Senate, which they have taken such pains to create, as to believe that it would allow any substantial outrage of the provisions securing its independence and integrity! The assumption is the most degrading one that has been expressed in regard to the Senate. It will be a poor corrupt inept body if it allows an outrage upon its substantial rights without a word of complaint or notice. If that is the sort of Senate that our friends are looking forward to, it should be wiped out of the Constitution altogether. How can we put rights in the guardianship of a body of that kind if it cannot be trusted to preserve its own rights? This idea of buttressing the states' Senate by the Federal High Court involves a want of confidence in the integrity of the Senate. Its independence is absolutely guaranteed even if the amendment is passed. All that it would have to do would be to see that its independence was not violated, and in all substantial respects it would see that it was not. But occasionally, even in the wisest bodies, there is a lapsus, a slip, not of principle, not affecting seriously the rights of the House. It would be absurd to allow a wretched little accident of this kind to be afterwards made the basis of a solemn application to quash an Act of Parliament. Such a thing has never been heard of in connexion with any legislative body in the world. In the United States such a thing is impossible.

Mr. DOUGLAS. -

What about the income tax appeal there?

Mr. REID. -

The Income Tax Act there was upset upon a question of substance. An Income Tax Act was passed by Congress, but the High Court held that under a certain provision of the Constitution such a tax was unconstitutional and illegal, because it could not be equally apportioned between the several states. That was a question of substance, and a proper ground upon which to annul the law. There was there a violation of a cardinal principle of the Constitution. But how could there be a violation of a cardinal principle of the Constitution if some words slipped into a particular measure which had no consequence at all, but created merely a technical flaw. The Senate will look after matters of substance, but it is proposed that matters of a purely technical character should be left to lawyers and the High Court to look after. If the validity of our laws is to rest upon such a precarious position as this, there is rather a gloomy outlook for the Commonwealth. I will point out one provision in clause 54,
by the violation of which the public might be substantially affected. It is provided in sub-section (3) of clause 54 that the Senate may not amend any proposed law in such a manner as to increase any proposed charge or burden upon the people. If the Senate increased a proposed charge upon the people that would be a violation of a cardinal principle of the Constitution. But is there any provision which says that if the Senate doubles the burdens of the people any one can go to the High Court and protest against this unconstitutional outrage? No, not a word. A Bill might be sent up to the Senate proposing the expenditure of £3,000,000, but the Senate might double the expenditure and make it £6,000,000, and a corrupt weak blind House of Representatives might accept the amendment and pass the Bill. Would not that be a flagrant outrage of the Constitution, substantially affecting the people who had to find the money? But no remedy is provided for such a state of things. No one could go to the High Court and seek protection against such action upon the part of the Senate. Why? Because the provision only affects the House of Representatives. The heavenly Senate would not be affected by such action. A provision of this kind only gives that sublime body more latitude, more scope, for the doing of grand and noble things. This is a rotten position to take up, and I hope that honorable members will see that, when we give certain rights to each House we can safely leave each House to secure respect for these rights. If a House is so low, weak, and corrupt, as not to be willing to maintain its own rights, all the courts in the world cannot make it straight and honest, and a source of respect to the people. If a solemnly-considered measure of legislation, under which a multitude of things had for years been done, was taken by a young lawyer into the High Court, and upset upon a trivial point, what a farce it would be. What a position in which to place the law-making pow

Sir EDWARD BRADDON. -

The right honorable member has been very slow to see the point himself. Mr. REID. -

If I have been, surely my right honorable friend will give me credit for seeing it now that I do see it. But I find that I have done myself an injustice. Since the adjournment for lunch, my attention has been directed to a speech which I delivered in Adelaide, and in which I put the very views that I am now expressing. I had, however, forgotten that I had spoken upon the subject in Adelaide. If you want to buttress the Senate, to protect its rights as defined by the Constitution, do so; but do not allow some other authority to annul solemn acts of legislation upon trivial points. Do not let our legislation be the sport of technical lawyers upon the
assumption that the Senate will not look after its own rights. There is nothing more absurd in the world than to suppose that the Senate would pass a Bill which would outrage the provisions of clause 54.

Mr. DOUGLAS. -

Then the right honorable member need not object to it.

Mr. REID. -

My honorable friend is the most successful man I know in not seeing what occurs. You talk and reason before him, and after you have appeared to have explained everything he makes a remark that might as well have been made at the other end of the world. I feel strongly about this matter, and I will tell honorable members why. I would protest against a provision allowing a Bill passed by the House of Representatives to be taken before the High Court upon a technicality. Upon precisely the same grounds I would object to a measure representing the matured determination of both Houses being put in that position. I hope that the amendment will be carried. The whole ground has been given up by the consent of honorable members to the amendment of sub-section (3). But I base my remarks upon the broad principle that the concession is worth nothing unless it recognises that matters of procedure should be settled in the Houses themselves; that they are matters which pre-eminently must be safeguarded and watched by the Houses themselves. The principle applies to both Houses equally. I hope that the majority of honorable members will decide this matter upon its merits, and that they will remember that it is the work of the Senate as well as the work of the House of Representatives that will be played with upon technical points if the amendment is carried.

Sir JOHN DOWNER (South Australia). -

I agree with the right honorable member (Mr. Reid) that matters of procedure should be settled by the Houses themselves. We have listened to speeches which, whether they happen to be right in substance or not, carry conviction from the force with which they are delivered. But during the time my right honorable friend was speaking I have been trying to think in between the lines. I can see clearly enough that what is sought to be done is practically to reduce the relative position of the House of Representatives and the Senate to the relative position of the House of Commons and the House of Lords—a position that was well enough defined in its origin, when the powers of the two bodies were nearly co-ordinate; but now the undoubted powers of one body have infringed upon the powers of the other, until it has become a mere vetoing body, with no power of origination, and able to apply the veto only at its peril. Now, let us see
what the right honorable gentleman means to do. He asks-"Why impose these limitations? You can have three Bills dealing with these special matters. They have to be dealt with separately now; but suppose the two Houses agreed that they should be dealt with collectively, what invasion of the Constitution would there be?"

Mr. REID. -

No one said that there would be no invasion of the Constitution; but no wrong would be done to the people.

Sir JOHN DOWNER. -

My right honorable friend argues thus: He asks, if you can agree in singulis, why cannot you agree in globo?

Mr. REID. -

My honorable friend misunderstands me.

Sir JOHN DOWNER. -

I think not. If you can agree to things one at a time, why cannot you agree to them half-a-dozen at a time?

Mr. REID. -

I said that the law would prevent such a thing being done, and that the Senate would see that it was not done.

Sir JOHN DOWNER. -

My right honorable friend, in the warmth of his declamation, did not put it in that way. He put it in the way that I am putting it, both before lunch and after lunch.

Mr. REID. -

Will my honorable friend allow me to explain? I said that, so far as the people were concerned, if the two Houses agreed to measures of taxation, it was immaterial whether they dealt with one, two, or three subjects; that if both Houses agreed to such a measure, it would not be a wrong upon the people. But I went on to say that such a thing would never happen, because the Senate would see that no such infringement of the Constitution took place.

Sir JOHN DOWNER. -

I do not think that I have misunderstood or misrepresented my right honorable friend in the smallest degree, though I tried to put the substance of what he said without the elaboration with which he sought to disguise his thoughts. "If," he says, "the two Houses agreed that they might deal with several subjects of taxation in the one Bill, as well as in several Bills, there would be no wrong done to the people, because these Houses represent the people." And here comes the subtle little attack on the Constitution. "If the Senate chooses to agree with it, where is the danger?" So that although we are establishing a Constitution having no analogy to
the English Constitution, in which the Commonwealth is to be supreme in some ways, and the states are to be supreme in others, there being an agreement that we require a protector of the settlement, as it were, my honorable friend says:"Do away with that protector altogether; do not endure for a moment that interference of the Supreme Court that you establish for the purpose of preserving your Constitution, and preventing it being destroyed by the brute force of the majority, and leave the protection of the Constitution, not in the hands of a body in which you have confidence, but leave it to be interpreted, from time to time, by the Houses of Parliament, according to the varying views the Members of Parliament may have."

Mr. REID. -

Give us a protector under clause 54 as well as under clause, 55.

Sir JOHN DOWNER. -

Will my right honorable friend allow me deal with one subject at a time? I rarely interject myself, and it is just as well for a man who thinks he has a thought worth explaining that he should be allowed to make his explanation without unnecessary interruption. Following out my thought, I ask the representatives of the smaller states to consider the matter, because, as my right honorable friend explained in the magnificent speech we have just listened to, it goes to the very root of the cardinal principles of federation. It is said we have sought to establish a Constitution by analogy to the House of Lords and the House of Commons in England. But we know that there is no analogy, or, if there were an analogy, we should have to consider what would be a very solemn and serious question-whether we should have federation or a general amalgamation.

Mr. MOORE. -

Unification.

Sir JOHN DOWNER. -

I hate the word "unification," and will not use it. I have said before that there is much to be said for amalgamation. I can understand that there might be an immense amount of money saved by amalgamation in the way of carrying on the government of the country, and there might be an immense amount of force from the head of the Commonwealth which you cannot get from the partial disintegration which is involved even in federation. But it is not our mission to establish an amalgamation of these colonies. We are here under Bills passed by our various colonies, and there is a claim for federation, and not a claim for merging the colonies in one common concern. That being so, my right honorable friend's speech is like the amendment which the Attorney-General of Victoria has moved-the
speech and the amendment are in the same direction, to take away the very safeguards which will prevent this federation becoming an amalgamation. Let us work this argument out a bit. My right honorable friend says-"If the two Houses can agree to a subject in a Bill singly, why should not they agree to a Bill dealing with half-a-dozen different subject-matters of a similar kind?" There you get the whole doctrine of tacking introduced without a moment's hesitation or delay. Who is to be the judge? Who is to say whether there is an agreement or not? The House of Representatives begins with the power of which they and the Senate are the sole judges—not the Senate for all time, but the Senate for the time being—as to whether more than one subject-matter shall be introduced into one Bill. We all know how much the colour of things alters in the process of passing through a House. Opinions at the initiation of a Bill are not at all the same as the opinions at the conclusion. We ourselves have altered our opinions from time to time, and I should have a low opinion of any one of us, if after meeting with the men we have here, we could still say that all our opinions were the same as they were at the beginning. Debate is for the purpose of informing our minds, and enabling us to form a better considered judgment, and most of us have at times, in consequence of debate, varied our opinions or entirely changed them. This proposal will give a power for the House of Representatives to mix any number of subjects in one Bill, and, if the other House will agree to that, it is to be all right. That is the proposal. But will you allow me to suggest—suppose the other House does not agree to it? Shall we not have the whole mischief "in one act"? The House of Representatives says-"Well, gentlemen, we represent the people, and we are going to put into this Bill one or two little taxation matters."

Mr. KINGSTON. -

What do you think the Speaker will say to that?

Sir JOHN DOWNER. -

Will my right honorable friend leave the Speaker alone for a moment, because I disagree altogether with my right honorable friend upon this question? The House of Representatives will say-"We will introduce one or two little things which are necessary, and without which it will be difficult for the business of the Commonwealth to be carried on; at the same time we shall introduce a few little things which you do not like, and then when we send up the whole altogether if you say that you do not like some of the things which we include in the Bill, we will respectfully ask you to consider the whole in one." Is not that tacking? Is not that the very thing that this Bill has been carefully framed to prevent? Is it not the House of
Representatives setting the Senate at defiance, and saying-"You dare to stop the work of the Commonwealth in spite of the fact that we have included in our measure something which you are indisposed to agree to!"

Of course we should have the Senate, by the most ordinary evolution and without any trouble, gradually ceasing to be a States House altogether, losing all its independence, all the protection that the Constitution intended to give to it, and becoming in the position of the House of Lords, with not even a vetoing power, but with practically a revisory power-without any capacity at all to exercise a veto on matters of finance. Is that what we want? I know that there are some who think that we might just as well let the majority of the people of Australia rule, and not bother about the states at all. For those views I entertain the profoundest respect. On this question of unification or amalgamation I am very open myself; but I only say that is not our mission here at all.

Mr. DEAKIN. - Open to what?

Sir JOHN DOWNER. - Open to conviction.

Mr. DEAKIN. - I have not noticed it.

Sir JOHN DOWNER. - My honorable friend, who, I observe, thinks that I am hard to convince, as he said on a former occasion, is of opinion that I must be always the same way. I think my experience of my honorable friend is that he often gives the most excellent reasons for arriving at different conclusions, and, while admiring the marvellous ability of my honorable friend, I regret that it has not forced him to the inevitable result.

Mr. ISAACS. - If the result be inevitable be would have to arrive at it.

Sir JOHN DOWNER. - It is, unfortunately, not always so. We have listened to a great speech from Mr. Reid, which must have made a great impression upon everybody.

Mr. HIGGINS. - Have you not smashed it up?

Sir JOHN DOWNER. - My honorable friend thinks I have not, therefore it is not a fair thing for him—who, I understand, takes the same view as myself on this subject, though probably from loyalty to his colony he has slightly diverged from his original opinion—to interject in a sardonic spirit, when he knows that I have not done what he suggests at all. However, I am sure that, like myself, the honorable member is trying to do the best he can. But I do venture
respectfully—not to warn this committee, because that would be presumptuous, but to ask the assistance of the committee to show me if I am wrong in saying that this amendment, which has been introduced and explained from various and inconsistent points of view by the Attorney-General of Victoria, does not, as has been demonstrated with most absolute clearness by the Premier of New South Wales, go to the very root of the matter we have been fighting for from beginning to end, of whether the Senate is to be dominated by the House of Representatives. Thus we are forced—after, forsooth, the 1891 Convention and the three sessions of this Convention—back to the elementary consideration of whether this body is to be analogous to the position of the House of Lords in England, and we have the English Constitution brought in, and an appeal made through our patriotism, and "God save the Queen," and all that sort of thing. That is not the question which we have to deal with. We have to do our best to arrange a Constitution which has very little analogy to the English Constitution, but, at the same time, from the circumstances of our birth and the love of country, we have to adhere to the English Constitution as nearly as is consistent with the altered condition of things. I again say that I hope that this amendment will not be agreed to. As the debate has developed, it has shown that the proposal goes to the very root of the principles that underly all Federations—the principles that underly the American, the Swiss, and the Canadian Constitutions. The amendment is, in fact, a distinct attempt, in a most clever and wonderfully insidious way, whilst denying that the doctrine of tacking ought to exist, to preserve it at the same time. Just one word to the Attorney-General of Victoria. I am not at all certain that, even if he carried his proposals according to the way he has variously explained his intentions, he would produce quite the result that he wants. It might be possible that he might find himself in the hands of the Supreme Court at an early stage, and at a later stage as well. If no Bill can be introduced containing more than one taxation proposal, then the guardian of the Constitution would say—"You must not introduce it," and a mandamus might be issued.

Mr. ISAACS. -
   A mandamus against Parliament?

Sir JOHN DOWNER. -
   What a shocking thing!

Mr. ISAACS. -
   Did you ever hear of such a thing?

Sir JOHN DOWNER. -
   Then is Parliament to do what it likes?
Mr. HIGGINS. -
You never heard of a mandamus being obtained against Parliament.

Mr. ISAACS. -
If that is the sort of Constitution you want you had better let us know it.

Sir JOHN DOWNER. -
I know that, with the liberal views of my honorable friend, he wishes the Supreme Court to do nothing.

Mr. ISAACS. -
That is a mere nisi prius advocate's way of putting it.

Sir JOHN DOWNER. -
No; the nisi prius advocacy is on the other side. I think it is rather a strange way of wishing to protect the Constitution; but is the honorable and learned member quite sure that if he gets this he gets anything? If under the Constitution it is to be "proposed laws" instead of "laws," does not he think that if the Constitution is valid in the beginning, because it ends in its fruition in an Act of Parliament, the Act of Parliament may not be the subject of consideration by the High Court? It is worthy of his consideration.

Mr. ISAACS. -
Is an Act of Parliament a proposed law?

Sir JOHN DOWNER. -
The High Court is the protector of the Constitution. What we provide is that "the law" shall not be so-and-so. My honorable friend wants to provide that "the proposed law" shall not be so-and-so. Does he mean to say that the High Court would have no power there? We are to take care that the Constitution is preserved, and that the relative rights of the two Houses are not violated. In the end I suppose it will work out as it has in America, in peace, order, and good government, and in thorough good feeling, and these lawyers' quibbles that my friend Mr. Reid—who I forgot for a moment is a lawyer-introduced, will be as naught compared to the great heart of the people, that will take care that the Constitution is worked out properly. I do not want to detain the committee any longer. I sincerely hope that the speech we have listened to from the Premier of New South Wales will not alter what I believe to be the opinion of the majority of the committee, that this power, which has been very carefully considered in every Convention—

Mr. ISAACS. -
It was not in 1891; it was not in the 1891 Bill.

Sir JOHN DOWNER. -
Yes, it was.
Mr. ISAACS. -
Will you find it?
Sir JOHN DOWNER. -
It was carefully considered before the Senate was so much crippled. It was carefully considered at every stage, debated at every stage, most thoughtfully thought out at every stage.
Mr. ISAACS. -
Perhaps I am wrong.
Sir JOHN DOWNER. -
Shall we, on a magnificent speech, alter the very basis of federation, and establish a Constitution which, in the result, will be found in a very little while to make the states of Australia become one State, and subject to the arbitrary will of the numerical majority of the people as a whole?
Mr. DOUGLAS (Tasmania). -
It is always interesting to hear the Treasurer of New South Wales giving his views and his reasons, because we are taken very much by his mode of addressing the Convention. There is one part of his speech which I think is not altogether applicable to the Senate. If the Senate does not agree with his views at once, then he says they are deficient in common sense, they are deficient in reason, and they know nothing about government. What was the object of bringing forward this motion if it was not to place some restriction on one of the powers of the Senate? Let us look at the conduct of the honorable member on a previous occasion on the same subject. We must recollect that sub-section (4) of clause 52 gives power to the Senate to send suggestions down to the House of Representatives. Now, only fancy a case such as that put by the Treasurer of New South Wales. He not only asserts that it has a right to put in an Appropriation Bill anything which the House of Representatives thinks proper, but says he would prevent a message from being sent down, supposing such a thing was done, from the Senate to the House of Representatives, finding fault with such a proceeding as that. Then he goes further, and he says, what is the use of a Senate? I would prefer to see only a House of Representatives rather than have a Senate that has no power. What is the object of the Senate? What do you want with a sort of curb upon the House of Representatives? It is well known that it is only through the continued pressure of the House of Commons against the House of Lords that the House of Commons has assumed all the power. Is not the object of our Constitution just to prevent that? Is not the object of our Constitution to prevent the corruption which gradually arises from the superior power? Who are the persons who carry out the encroachments? The Senate cannot carry out any encroachments; the House of Representatives can, and the Senate is just as much a portion
of this Constitution as is the House of Representatives. Then, in order that
the Constitution may be carried into effect, you appoint a Federal Court.
Now, don't have a Federal Court, strike out those clauses which give power
to create a Federal Court, and we will know our position. The honorable
member, when I interjected about the Constitution of England, said:"Oh,
that is the best form of Constitution; let us commence the custom at once;
start with two Houses, and see which will prevail." We know that the
possession of power always tempts a House to increase that power. The
House of Representatives has full power under the Bill to deal with all
monetary matters. The Senate cannot deal with these matters except by
way of suggestion, and that would have been denied if the honorable
member could have had his own way. Yet he says we are such
ignoramuses that we do not understand anything which is produced here.
Cannot we see the object of this insidious proposal on the part of the
Attorney-General of Victoria? We could not see it at the time, but as he
went on explaining we saw at once

what the object of it is, and it is to pre-vent the Senate as formed under this
Constitution from carrying it out. If there is one member on this point who
is more inconsistent in his mode of reasoning than any other it is the
Treasurer of New South Wales. He talks and talks, and he is very glib in
his mode of talking, but where is the substance of his logic? There is no
logic in it at all, it is most inconsistent, and if we only watch the progress
of his speech we will find out how very weak the sum and substance of it
all is. It ends in a shadow, and all we have to do is to throw it on one side
and go on our own common sense, I suppose because we are more matured
than he is. As regards the clause as it now stands, what does it do? It says
that every particular measure shall be confined to its own particular
subject. The honorable member says:"Oh, but what does it matter? If we
mix up three or four things together, and we pass them through the two
Houses, it ought to be the law of the land." We know that many men will
vote in this way: One man is willing to vote on one line of argument and
another is willing to vote on another line of argument, but in order to save
what he is anxious for he votes contrary to his opinion on one subject,
whereas if he wants to carry out a thing he votes for another, and the result
is that you do not get a fair vote. The honorable member says:"You should
not confine the Appropriation Bill to a strict appropriation. We know what
has been done in the various colonies by the Legislative Assembly in
respect of that subject. It is well known that they have been able to carry
out, from time to time, things which ought not to have been carried out,
but, in order not to interfere unnecessarily with the appropriations, Bills
have been passed very much contrary to the opinion of the Legislative Council of the particular colony. In New South Wales there is a fight about to come on between the Council and the Assembly, and, therefore, the honorable member is merely paving the way, in order, as it were, to strengthen his position in that respect in his own colony. We have had quite enough of New South Wales and its powers in this Convention, and the sooner we express our own views and opinions on these subjects the better it will be. I trust the Convention will stick to that portion of the clause as it stands. As regards the next section, it is of very little importance as regards the dealing with those particular measures, such as the Appropriation Bill, which is entirely in the House of Representatives, subject only at the present time to the advice of the Senate, but which the House of Representatives need pay no attention to. But now, under this clause, the Senate will be perfectly justified in refusing to pass a Bill where it contained anything which was not clearly and distinctly within an appropriation clause. I trust that the committee will stick to the clause.

Mr. KINGSTON (South Australia). -

I shall support the amendment of my learned friend (Mr. Isaacs), and I hope I shall be able to discuss the matter without any reference to unification or state rights, both of which matters appear to me to have been introduced in this discussion altogether unnecessarily. It seems to me that those who resist this amendment are forced to this position: They cannot trust the Senate, they fear that the Senate will be either corrupt, or ignorant, or careless of its rights, and that, although it is made by the Constitution the guardian of certain parliamentary rights, it will weakly surrender them unless a watchful eye is kept over it by the High Court. Observe the contrast drawn between the Senate and the House of Representatives. The House of Representatives is honest, alert, capable, and no such security, is wanted. Why, sir, it is a distinction which all advocates of a powerful Senate ought to resent in every possible way. I draw no such distinction between the two Houses of Parliament. I believe that both Houses will be honest, will be capable, will be deeply sensible of their rights, and acute and alert to maintain them. What has been our experience in the past in connexion with our provincial Constitutions? Have we found that one has been allowed to encroach with impunity on the privileges of another? Nothing of the sort.

Sir JOHN DOWNER. -

Most certainly.

Mr. REID. -

If it has it was always the Upper House.
Mr. KINGSTON. -
I think not. Each knowing its rights has been careful to maintain them.

Sir JOHN DOWNER. -
One has tried to destroy the rights of the other.

Mr. KINGSTON. -
When you resist an amendment of this sort you suggest not only failure on the part of the Senate to appreciate what its constitutional rights are, but also corruption, it seems to me, or incapacity in the highest places as regards the presiding officers of both Houses. What is the effect of this provision as it stands? It would undoubtedly cast upon the Speaker of the House of Representatives equally with the President of the Senate the duty of scrutinizing every measure which was introduced, and ruling it on his own motion, without objection being taken, as irregular and not proper to be entertained if it in any way contravened the provisions of the Constitution. I believe thoroughly in the honesty of the Parliament that is to be. I make no distinction between the two Houses. I am sure that the result will be that no Bill will pass either House which can be fairly said, taking a broad constitutional view of the case, to contravene these plain provisions.

Mr. DOBSON. -
Then the High Court will never interfere.

Mr. KINGSTON. -
But, at the same time, there is this possibility, that in minor matters in which opinions may differ, the opinions of skilled experts, such as the Speaker of the House of Representatives and the President of the Senate, backed up by practically the unanimous view of those two bodies, are liable to be overruled by an expression of the High Court of Australia, constituted possibly of people who have little or no knowledge of constitutional practice.

Mr. ISAACS. -
A majority of the court.

Mr. KINGSTON. -
I say, in a matter of that sort, I would infinitely prefer to take the opinion of the presiding officers of both branches of the Federal Parliament than the opinion of any High Court, seeing that the President and Speaker would be assisted in the interpretation of the Act by the views of honorable members who surround them. We might have it overruled in a matter of this sort by the High Court. Here is a provision that laws imposing taxation shall deal only with the imposition of taxation. I think a question was put by Mr. Reid or Mr. Isaacs to Mr. McMillan when he was saying how plain it would be to construe a matter of that sort:"Would that justify the inclusion of a repealing clause in an Act of Parliament imposing taxation?"
I question very much whether it would. I am inclined to doubt, for example, whether, in an Act proposing to substitute an income tax for a land tax, a measure repealing the existing land tax and providing an income tax would not be altogether beyond these provisions; and, although most properly assented to, and ruled, from the constitutional aspect, to be in order, I doubt whether it would not be liable, at the instance of an acute lawyer, appealing to those who will be comparatively ignorant of constitutional practice, to be declared null and void. I am inclined to think you would require to have your land tax repealed first, or two Bills running concurrently, one to repeal the land tax and the other to substitute the income tax; and I am sure a majority of honorable members here know what inconvenience that would cause.

Mr. ISAACS. -

And, as Sir Samuel Griffith suggests, you might have to submit another Bill containing the machinery for the collection of your income tax.

Mr. KINGSTON. -

I was going to point that out also. Clause 55 provides that laws imposing taxation shall deal only with the imposition of taxation, and I am inclined to doubt whether it authorizes the insertion in a Taxation Bill of the machinery necessary for the collection of the tax.

Mr. REID. -

No, it does not.

Mr. KINGSTON. -

I do not think it does. I ask the Drafting Committee to consider this, and I would suggest that it is very often convenient, in a Taxing Bill, to provide the machinery for the collection of the tax. And yet, under this clause, the whole of a Customs Act might be invalidated by the incorporation of the usual machinery for the collection of the tax. Further-and I see that Mr. Deakin proposes to deal with this question—here is a provision that you shall not, in a Bill imposing duties of customs, impose duties of excise also. Now, honorable members know perfectly well that it is highly desirable to deal with the two things at the same time. They have an intimate mercantile connexion with each other, and to deal with the one and leave the other untouched would expose us to the gravest inconvenience. If we pass this clause, with the amendment Mr. Isaacs has proposed, we will undoubtedly have the two Houses of the Federal Parliament watchful of each other. Each of the pre-siding officers would be jealous lest, inadvertently, an unconstitutional provision should be accepted by his House, for which mistake he would, in some measure, be
held responsible and to blame. Under these circumstances, I cannot contemplate the possibility of any objection to the clause if it be amended as proposed by Mr. Isaacs, at least any objection equal to the disadvantages which would unquestionably accrue if you allowed the decision of Parliament, and the rulings of the President of the Senate, or of the Speaker of the House of Representatives, to be subject to the ruling of the High Court. Why, sir, in connexion with our meanest and smaller courts, we provide that if an appeal is to be exercised, it must be exercised within a certain time, or the right of appeal is gone; but in this measure we are asked to provide that the decision of the President of the Senate, or of the Speaker of the House of Representatives, is to be open to challenge for all time; under the circumstances to which Mr. Reid has referred, and with the consequences depicted by other speakers. Look at the inconsistency with which the question is dealt with in the previous clause. One of the most vital questions, the taxing of the people, the spending of the public funds, properly confided to the popular House, is put in this way—that it shall only apply in connexion with "proposed laws." You might just as well suggest that the House of Representatives will be careless of its rights; that it will tacitly authorize and practically approve of a measure which emanates from the Senate, and which originates both taxation and expenditure, and under such circumstances as that, when the whole Constitution is practically turned topsy-turvy on one of the gravest financial questions, and there is no remedy whatever, once an Act is assented to; but, on the other hand, in connexion with these small matters, there is a proposal that the High Court is at all times to have the power of review, although it could not interfere in a grave question of the character to which I have referred. It seems to me that in a matter of this sort experience of the past should tell us that, when we have marked out, in precise language, the relative rights of the two Houses of Parliament, we are abundantly justified in confiding in them the duty of maintaining their respective rights, and we know perfectly well that under this Constitution they will be completely protected.

Mr. DEAKIN (Victoria). -

The honorable and learned member for South Australia (Sir John Downer) paid me the distinguished compliment of referring to me as always appreciative of the arguments urged by my adversaries. On this occasion, and in connexion with this subject it is scarcely possible to return the compliment. For the honorable member deals with this question, not in the judicial manner with which we are familiar, but with much of the
warmth and force of the forensic advocate. It makes one almost despair of political discussion, if honorable and learned members of his eminence and ability fail to distinguish between the several interests involved in propositions of the importance of the amendment recently submitted. A proposal affecting the financial powers of the Commonwealth will affect both Houses, and may therefore be made the platform of a discussion upon their rights, privileges, and powers. But the proposal submitted by the Attorney-General of Victoria did not necessarily involve any such consideration, and was expressly aimed at a difficulty of quite another kind. The whole discussion, so far as it has turned on the relative power of the two Houses, valuable and interesting as it may have been from other aspects, is beside the issue which my honorable and learned friend desires to raise.

Sir EDWARD BRADDON. - It does affect the Senate.

Mr. DEAKIN. - I admit it; but on a proposal of this kind its possible effect, its relation to the whole constitutional system, and particularly to the relative power of the two Houses, is not really involved. We have a right, speaking in this Chamber where there are no party divisions, where we are not under the necessity of supporting a party standard as we are elsewhere, even while subject to conscientious doubts as to whether it is being raised at the right moment or in the right manner; but now when we are seeking to establish the basis of a Constitution which will affect the whole future of this country, we are expected to take the propositions submitted solely on their merits, and in the light of their purpose. We ought to distinguish the unforeseen and unintended operations which they may have in other directions, and not make them the chief feature of our debates. That is not desirable here.

Sir JOHN DOWNER. - I do not think there is any unforeseen or unexpected operation here.

Mr. DEAKIN. - So far as I am informed there is. The position we are placed in is this: At this stage of the debate, I, for one, frankly accept the financial compromise arrived at in Adelaide, and to which a reiterated assent was given in Sydney. I will not at this stage be any party to attempting to interfere with that settlement in any particular or in any degree. It is not on that side that the amendment appeals to me at all. There is no desire to obtain a reconsideration of what we regard as the final settlement of the financial powers of the two Houses. What we say is, that quite apart from the financial powers of the two Houses, a practical issue of the greatest
moment is involved. Honorable members urge that this clause, with others, was inserted as a compensation to the Senate. It was part of the adjustment made between the two Houses so as to protect the Senate against aggressive tacking by the House of Representatives. That was the origin of the clause and the object of its insertion. But from the manner of its insertion, and of its expression, an entirely unexpected result has followed. If it be necessary to add further safeguards to those already existing in the Constitution against aggression on the part of the House of Representatives, or in order to further fortify the Senate against attack, I, for one, would willingly assent to them. The arguments of the Hon. Mr. Carruthers appear to have fallen on deaf ears, but, as he pointed out, if there be embedded in the Constitution a direct enactment that no proposed laws for taxation including more than the one subject of taxation, and no proposed Appropriation Bill going outside the ordinary services of the year, can be legally dealt with, both the Speaker of the House of Representatives and the President of the Senate would not only be authorized, but would be imperatively required, in the discharge of their duty, to rule such a measure out of order at any stage of its existence.

Sir JOHN DOWNER. -

Suppose they did not?

Mr. DEAKIN. -

If the honorable member can suggest any other addition by which, if necessary, even outside persons or bodies can be enabled to challenge a Bill during its discussion, or at any time prior to the Royal assent being given, I would say that such securities, however unnecessary they may appear to be, if they will satisfy honorable members opposite, should be given. I would concede to the honorable member any protection that his fertile ingenuity can suggest to enable all criticism to be focussed on any measure submitted to the Legislature during its passage or prior to the Royal assent being given, so that at no time should that province which has been marked off for the Senate be trespassed upon either wilfully or unintentionally by the House of Representatives. But it is after this that the considerations which weigh most with myself and with those who have preceded me arise. It is after the Governor's assent has been given, and after the law has been brought into operation, and has had its natural effect upon the pockets of the people, that we say that even if there has been an error of procedure it should then be too late to challenge the law. There is a period beyond which you cannot challenge the possession of real property, and that was law in days when such property was legally considered to be scarecely second in importance to life. In this Constitution no such
limitation of time is to prevail; but after all the solemnities of legislative consideration and enactment have been fulfilled, after the consent of the Queen has been given, after a financial policy has been launched, and the whole finances of the Commonwealth have been affected by it, it is yet to be possible to have the Act declared invalid because of some technical defect in the procedure by which it was passed. Surely honorable members, without distinction—those who are the heartiest supporters of the rights of the Senate, and those who are more urgent for the claims of the House of Representatives—will agree that the consequences here are too serious, too enormous, too fatal, to be allowed to operate unchecked, as they certainly could do under the clause as it stands. The case submitted by my right honorable friend (Mr. Reid), and by many other speakers, including the Premier of South Australia, is unanswerable. The weight of it lies in the fact that this one malignant consequence is no necessary punishment such as ought to follow a departure from the principles of procedure. The punishment falls not on the guilty persons, not upon the members of the Senate upon whom really the burden of such a blunder should rest, but upon the pockets and the fortunes of the people of the whole Commonwealth. They are to be penalized for a mistaken reading of their legal responsibilities by their representatives. No laws have a more direct operation upon the public than those that declare the sums that each citizen shall pay towards the expenses of the Commonwealth year by year. The annual services of the year may include in the future the votes for the railways, and through the railways and customs may affect the whole of the industrial operations of the people. And yet, as the clause stands, if there is any trifling and insignificant error of procedure in the passing of an Appropriation Bill the whole public service of the Commonwealth may be paralyzed.

The thousands of people who are dependent upon it may be deprived of their salaries, and the tens of thousands of persons affected in their activities in one direction or another by the public expenditure may also suffer. I put these as extreme cases, but as cases against which it is possible to provide, and for which we ought to provide. I ask honorable members, deliberately whether it is not possible to secure all that they may desire in the way of protection to the Senate without risking these tremendous consequences to the people of the Commonwealth in the event of an innocent mistake being made by both Houses of Parliament?

Mr. GLYNN. -

Would not all payments made under a law that had not been declared to
be invalid be valid?

Mr. DEAKIN. -

I am not at all clear upon that point. Other honorable members have painted with force the consequences of any slip, however innocent, in mere procedure, and I need not deal further with the matter. I would ask honorable members again if we are so barren of invention as to be unable to distinguish between the two things? Is it impossible to give in this clause the amplest possible protection to those rights of the Senate which honorable members desire to guard jealously without requiring that in the event of any failure to comply with these requirements an Act for appropriation or taxation is to go by the board, with all the consequences that may flow from the declaration that it was unconstitutional?

Mr. DOUGLAS. -

What is your amendment?

Mr. DEAKIN. -

We have a Drafting Committee, and if we are clear in our line of policy, and the Convention united in accepting a principle, the Drafting Committee contains members who are far more capable than I of putting the provision into the Constitution, if it be the will of the Convention. But is it the will of the Convention? First, we are seeking to discover that. The issues are separable, and ought to be separate. On the one side, there can be ample safeguards for the Senate, and on the other side there can be protection against the High Court's declaring Acts *ultra vires* for mere failure in procedure.

Sir EDWARD BRADDON. -

That is dealt with, is it not, in clause 54?

Mr. DEAKIN. -

So far as clause 55 is concerned, it contains expressions which may raise questions of procedure, either as to subjects that are included in a taxation measure, or the proposed expenditure that may be included in an Appropriation Bill. The last point I wish to make is that a mistake which could have been innocently made in the case of a Tax Bill or an Appropriation Bill must be very trifling and insignificant. In the case of the passage of a non-financial Act, which Act thereafter is pronounced *ultra vires* because it goes beyond the powers intrusted to the Parliament of the Commonwealth, the action of the High Court is justified, because the operation of that Act would otherwise continue indefinitely, and the Constitution, as a whole, would be rendered of no avail. But in all cases where a mistake could be made in procedure, either by the inclusion of some secondary taxable matter, or the inclusion in the appropriation of some item which ought not to be in the Appropriation Bill, the departure
from the line of procedure, laid down by the Constitution must be so small that it has escaped notice altogether, or the majority of both Houses of Parliament have thought it too trifling to deserve attention. The Governor, as advised by the Attorney-General, must have thought it not worth while de-laying the measure for; and yet for some mistake, which must have been inconsiderable from the very nature of the case, the whole public service of the Commonwealth may be paralyzed, or its taxation policy upset.

Mr. HIGGINS. -
I understood Mr. Barton says the word "law" in this section does not mean the whole Act, but this particular section.

Mr. BARTON. -
I am under the impression that the suggested adoption of "proposed law" and "law," instead of "Bill" and "Act," was for the purpose of enabling the enactments to be dealt with separately, each clause being an enactment.

Mr. HIGGINS. -
It means that each clause is invalid if there is an infraction of the rule in the smallest detail.

Mr. BARTON. -
No; I think not.

Mr. HIGGINS. -
Surely the word "law" means the whole law.

Mr. REID. -
You might have a law imposing two taxes, one of which had to be rejected.

Mr. DEAKIN. -
Which one? I do not remember in 1891, when the word "law" was under discussion, that Sir Samuel Griffith used the reason now put forward by Mr. Barton.

Mr. BARTON. -
I do not think it has been urged in regard to this particular section. It may be that this clause was left out when it was previously discussed.

Mr. ISAACS. -
It was discussed very closely in Adelaide.

Mr. DEAKIN. -
I venture to submit that this clause can be buttressed by any and every device which may be thought proper for the purpose of affording members of either House, or, if you like, the members of the general public, an opportunity of challenging any measure of taxation or appropriation before it is finally adopted and acted on. If the line be drawn at the passage of the
measure, and the Convention be satisfied that an innocent or inconsiderable error is not to be followed by disarrangement of the public finances or of a taxation policy, then, if we have not surmounted a great difficulty, we have avoided one. We shall have put it beyond the power of critics to say that, in order to preserve the rights of the Senate, which could have been amply preserved by other provisions we went out of our way to attach to a failure to observe the course of procedure between the two Houses in these matters consequences so tremendous that, since the days of Charles Lamb's story, when a whole house was burnt down for the purpose of roasting a suckling, we have had no such undue sacrifice or possible sacrifice of public convenience and public advantage. Surely the Convention, which has now seen the two paths which lie before us, can protect the Senate in the ampest way, and yet relieve us from the danger by which we are beset under the terms in which, unintentionally, no doubt, this clause has been drawn.

Sir EDWARD BRADDON (Tasmania). -

It is very curious to note the difference of tone of honorable members of this Convention, or some of them, between our sittings in Adelaide and the present time. When we disposed of this question in Adelaide there was no talk whatever of the Supreme Court depriving us of our privileges, overriding the Constitution, and all the rest of it. Mr. Reid, who now regards with horror and dismay the clause as it now stands, then thought so little of it as to say-"It is most discouraging to find we have spent three-quarters of an hour over a matter of absolutely no importance."

Mr. REID. -

There is a difference between you and me; I improve by time, and get more intelligence.

Sir EDWARD BRADDON. -

The honorable member's intelligence is not generally so lax. His perception is acute enough I am sure, and perhaps too acute for many of us. It is impossible to believe that if he fulfilled his duty to the Convention and the colonies, and there were then these dangers and difficulties underlying the clause as it stood, he should have failed to notice them. We wasted very little more time over the clause after the honorable gentlemen reproached us. We have now been dealing with the subject for four hours, and I think all through we have been dealing with a bogy that none of us need apprehend any evil consequences from. Mr. Reid says, and possibly he believes, that the proposed amendment is for the protection of the Senate. On the other hand, the honorable and learned Attorney-General for Victoria let out
plainly enough that it was for the limitation of the Senate's powers he
desired to see this amendment carried. We heard from another honorable
member something or other about the outraged people, and all that sort of
thing, which is said on every occasion when the Senate's power comes to
be the matter in question. We should bear in mind now, and at all times,
that this Senate, which is attacked whenever opportunity presents itself, is
to be just as much a popular body as the House of Representatives. We
should remember that we have intrusted the Senate with power, because it
represents the people just as fully as the House of Representatives. It
represents the same people in sections as will return the members of the
popular Chamber. I shall not waste any more time, as far as I am
concerned, and will only express the hope that we shall retain sub-sections
(1) and (2) as in the Bill, and that we shall amend sub-section (3), which
deals with the annual Appropriation Bill, so that the ambiguity which now
hangs about it may be dispelled. We all know what is meant by the
appropriations for the services of the year.

Mr. HIGGINS. -
"Ordinary annual services."

Sir EDWARD BRADDON. -
There is the difficulty which has to be got over. There are occasional
expenditures, sometimes of very insignificant sums, which are incurred
after the Estimates have been framed for the year, and which have to be
met, and Parliament almost necessarily approves of the expenditure
afterwards. If we could introduce into the third sub-section words which
will provide for the annual services of the year, covering something more
than the recurrent expenditure of the years as they go by, something which
will meet unforeseen expenditure, I think we shall have done by this clause
all that is required.

Sir JOHN FORREST (Western Australia). -
I regret that at this recommittal stage we should take up nearly the whole
day in discussing a matter which found no place in our discussions in
Sydney or in Melbourne until we have ar

Mr. ISAACS. -
This point was most distinctly put in Adelaide.

Sir JOHN FORREST. -
I did not say anything about Adelaide, I was referring to Sydney and
Melbourne. It is only when we have arrived at the final stage that this
matter has gained great prominence. We have lost a whole day.

Mr. REID. -
Not lost it.

Sir JOHN FORREST. -
Well, we have had to use the whole day in discussing it. The principal argument used by those who desire that the clause shall be amended is that both Houses will not recognise fully their powers and duties. My opinion is that both Houses will soon learn to act in accordance with the Constitution. If they make mistakes at the beginning and do that which is contrary to the Constitution, they will soon be brought up and made to know exactly the limits to which they can go. All the fear seems to be that the two Houses will do something which they will have no right to do. If that happens, it seems to me there should be a power, and the sooner it is exercised the better, to keep them within the limits and bounds of the Constitution.

Mr. Reid. -

Even in matters of procedure?

Sir John Forrest. -

In passing laws, at any rate. This Constitution which we are establishing is not to spend its own money, it is to spend the money of the people in the states. The Parliament is given limited powers only under the Constitution, and every one on this continent has a right to expect that the Federal Parliament will use that power within the limits of the Constitution. If they do not, I feel quite certain that they will soon learn to do so. The difficulties that have been raised by my honorable friends from Victoria as to the great dangers and difficulties that will arise owing to some action being declared *ultra vires* by the High Court are not well founded, because if such a thing occurs once or twice it is not, likely to occur again. We shall soon learn what is our legal position under this Federal Constitution. All the difficulties we have had placed before us will disappear once and for all. I agree with Sir Edward Braddon and others as to what shall be considered ordinary annual expenditure. It is such a wide question in some respects and so narrow in others that difficulties may occur. However, I am sure our leader will be able to attend to that, and I see no reason why we should alter sub-sections (1) and (2), which are as clear as noonday. If the Federal Government do not choose to keep within the limits of these two sub-sections the sooner they are taught to do so the better it will be for them and the Commonwealth.

Mr. Leake (Western Australia). -

I desire to explain in a few words my reason for supporting this amendment. The question as it presents itself to my mind is this: Whether the validity of any measure should be questioned during its passage through the Parliament, or whether it should be questioned after it has received the Royal assent? Surely Parliament, as the guardian of the
people's interests, is capable of protecting the people. Therefore it can well attend to the details of any measure which is passing through the hands of honorable members. Under clause 55, I take it that what is anticipated would be no more than a technical mistake. I agree with those honorable members who have urged that it would be a great pity to have to call in the assistance of the Supreme Court. We do not wish to see the Supreme Court made a branch of the Constitution in this way. If Parliament does that which it is supposed by some Honorable members it will do, we shall find Parliament disregarding a positive enactment of the Constitution. Surely the only reason which would impel Parliament to such an end would be the existence of absolute corruption. Not only mere corruption, but with its ramifications so extensive as to hold every-member of both Houses, including both the Speaker and the President. I, therefore, cannot, in these circumstances, throw over my trust in the Federal Parliament. I cannot see that, by the insertion of this amendment we, in any way further our rights, nor, indeed, are we derogating from that position of the Senate. As an illustration, I will assume that a Tariff Bill has been passed by the Federal Parliament, but owing to some technical mistake, the results to suspend the administration of the law until the aid of the Supreme Court has been invoked to determine the question of legality. Inasmuch as Tariff measures are generally retrospective, we can readily imagine the great inconvenience that this would cause. We know that where there is unanimity in regard to a measure, parliamentary criticism is blunted, and it is quite possible that under such circumstances a measure might be allowed to creep through Parliament to which some technical objection could be made. I venture to suggest that ample protection is afforded if you leave Parliament to attend to its constitutional duties. For these reasons I shall support the amendment.

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Mr. GORDON (South Australia). -

The proposition embraced in the amendment, and argued at such lengths and with so much eloquence, has for its object, it seems to me, the removing of a taxation law from attack upon the ground that it may contain some technical omission, or that in the course of its passage through Parliament some flaw in the procedure has occurred. But why remove a taxation law from attack upon that ground, and leave every other law open to attack? The proposition I made the other day would have removed all laws from attack.

Mr. HIGGINS. -

Other laws go beyond the Constitution. This provision merely deals with
an irregularity.

**Mr. Gordon.** -

The passing of a law in defiance of clause 55 would be, in fact, an infringement of the Constitution.

**Mr. Higgins.** -

In the one case there would be an irregularity only, but in the other the provisions of the law would go outside the Constitution.

**Mr. Gordon.** -

You can ticket these things as you please, but there would be an infringement of the Constitution. But, inasmuch as I am largely in sympathy with the opinion that no law which has been passed by both Houses of Parliament should be liable to attack, I am willing to go a long way to support the amendment. Still, why not express the object aimed at in so many words? Does not the provision look absurd as it stands? It says, in effect, that a proposed law shall not deal with two subjects of taxation, but that a law may.

**Mr. Holder.** -

A law cannot become a law until it has been a proposed law. One shuts off the other.

**Mr. Gordon.** -

There is a prohibition against a proposed law dealing with two subjects of taxation, but when a proposed law attains the solemnity of a law it may possibly deal with two subjects of taxation. In the inchoate stage a law cannot deal with two subjects of taxation. But why not say in so many words that no law imposing taxation shall be allowed to be questioned upon the ground that it includes more than one subject of taxation?

**Mr. Isaacs.** -

It means the same thing.

**Mr. Gordon.** -

Only a lawyer could make the decision necessary to an understanding of the clause, if the amendment were carried as it stands, whereas if the provision I suggest were inserted, everyone could understand it.

**Mr. Isaacs.** -

What would be the effect if the honorable members suggestion were followed?

**Mr. Gordon.** -

I have only worded it roughly, but the same object would be achieved as that which the honorable and learned gentleman now seeks to achieve. It would remove these laws from attacks upon the ground of a flaw in procedure, and that they were so removed would be patent to everybody. The provision as it stands throws upon the Senate the onus would be put
upon the Senate. There would be no conflict between the Houses, and the matter would not have to be referred to the High Court. I intend to move my suggestion in the form of an amendment.

Mr. ISAACS (Victoria). -

As the discussion has proceeded it has struck me more and more, that while the question incidentally touches upon states rights, the struggle has been more or less between the upholders of what are known as Upper Houses and the upholders of what are known as Lower Houses. To my mind the arguments which were addressed to the question of state rights were absolutely beside the question. Let us look at the clause as it stands, as contrasted with the preceding clause. We have been told by our honoured leader that clause 55 is not a matter of procedure.

Mr. BARTON. -

I said that it was not a matter of procedure only.

Mr. ISAACS. -

We have also been told that clause 54 not only gives rights to the House of Representatives, but also gives rights to the Senate. Therefore, there is no inconsistency in allowing the Supreme Court to supervise the operation of clause 55, and at the same time to have nothing to do with the provisions of clause 54. Clause 54 gives no rights whatever to the Senate. It is a clause cutting down the rights of the Senate. Clause 1 of Chapter I. is the first provision giving powers to the Houses. It is there provided that the legislative powers of the Commonwealth shall be vested in a Federal Parliament consisting of the Queen, a Senate, and a House of Representatives, "hereinafter called the Parliament of the Commonwealth."

When clause 52 and other clauses confide to the Parliament certain powers, prima facie these powers are co-ordinate in both Houses. Then we have clause 54, which says that the powers of the Senate, which would otherwise be co-extensive with the powers of the House of Representatives, shall be so much less in respect of taxation and appropriation; and, therefore, clause 54 gives no right whatever to the Senate, but it gives rights to the House of Representatives which the Senate is not to have. Therefore, we were perfectly right when we contended that where, under clause 54, you create a distinction which is to preserve the power of the purse to the control of the people who contribute to that purse, a distinction was made in not allowing the Supreme Court to safeguard those interests. When we come to clause 55, is there anything in that but procedure? I maintain-nothing; and I will proceed to explain why. Neither the Senate nor the House of Representatives gains one single iota of
jurisdiction under that clause. There is not a single word which gives power over any subject that is not given before. It only regulates the mode in which powers previously given are to be exercised. In other words, it is manner-not matter; and, in other words, it is pure procedure. Consequently, when we come to face the matter plainly, we are inevitably drawn to the position that we are asking the Supreme Court to supervise and protect the Senate in a matter of mere procedure.

Mr. GLYNN. -

Suppose the Senate introduced a Money Bill; would that be procedure only?

Mr. ISAACS. -

If the Senate introduced a Money Bill it would be mere procedure; but it would be procedure that the House of Representatives would not tolerate for a moment. The House of Representatives has to protect itself, and I agree with those who say that the Senate must be regarded as a pitiable thing if it is not strong enough to guard its own rights within its own walls. No power on earth can force the Senate to pass a Bill if it contravenes the provisions of the Constitution as we propose to make it. The whole people of the Commonwealth would rise against those who tried to force the Senate to pass such a Bill against the provisions of the Constitution. But when we have given to the people of the least populous states a Senate based on equal representation to protect their rights, and have conferred upon the Senate absolute equality with the House of Representatives, except as provided in clause 54, I think we have gone far enough to provide a body which ought to be, if it is not, strong enough to guard its own interests and the interests of the people it represents. Why do we want the Supreme Court to come and wet-nurse the Senate? Is there any reason for it?

Sir EDWARD BRADDON. -

Do you want a Senate at all?

Mr. ISAACS. -

What did the people of the smaller states say? They said-"We cannot trust the people of the more populous states to give us equal representation." But now they say-"We not only cannot trust the pe

Sir EDWARD BRADDON. -

Told by whom?

Mr. ISAACS. -

We have heard it over and over again.
Where?
Mr. ISAACS. -
In this chamber, I am sorry to say, over and over again. If the Senate has the courage of its opinions, and if they are honestly maintained, as I feel sure they will be, why do they want the Supreme Court to back them up? Apart from their negligence—apart from a mistake which may be common to both parties—are we to accept this position: That the Senate is a body which does not understand its business?

Sir JOHN FORREST. -
It may be overwhelmed.

Mr. ISAACS. -
How could it be overwhelmed? Imagine my right honorable friend (Sir John Forrest) overwhelmed in the Senate!

Sir JOHN FORREST. -
Or coerced.

Mr. ISAACS. -
Can any one imagine my right honorable friend or any of his Western Australian colleagues being coerced?

Sir JOHN FORREST. -
Leave the Senate alone.

Mr. GORDON. -
They would have to give way to the majority.

Mr. ISAACS. -
In their own House?

Mr. GORDON. -
Of course.

Mr. ISAACS. -
Of course, if they give way to the majority it shows that the majority are in favour of passing the proposed measure.

Mr. GORDON. -
For the time being, possibly.

Mr. ISAACS. -
If we are to understand that a minority is to govern this Commonwealth, that is a new position.

Mr. BARTON. -
No one has said that.

Mr. ISAACS. -
But that is what it comes to. If the Senate under this provision may find itself coerced, what does that mean? A measure is introduced into the House of Representatives, and strongly supported by a majority in the Senate, the Senate comes to the conclusion that it would be dangerous to
 resist it any longer, so the representatives of the smaller states in the Senate say-"There is such an overwhelming insistence upon this measure, which is plainly for the benefit of the Commonwealth, that it would be unsafe for us unsafe so far as our existence as a Senate is concerned-to resist it any further; we will throw the responsibility off our own shoulders, and pass the Bill, and then we will go to the Supreme Court of the Commonwealth, and make the Supreme Court take the responsibility of preventing the measure becoming law. We shall thus evade the responsibility of opposing the measure in Parliament. So that we shall have the final discussion upon the Bill removed from the House of Parliament, and it will be fought out by means of wigged and gowned advocates upon the floor of the Supreme Court instead of by representatives of the people. It is said that these words are plain. Let me put one or two cases, in order to show that they are not plain:-

   Laws imposing taxation shall deal only with the imposition of taxation.

   Now, Sir Samuel Griffith had pointed out that this provision does not include collection. It has also been pointed out today that it does not include machinery; and we do not know what other difficulties may arise. Now, take the next case:-

   Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only.

   What is a subject of taxation? It has been supposed that you can have an income tax imposed by means of one Act only. But if the income tax proposed to put a charge upon income derived from dividends it might be argued that that could not be put in the same Act as a tax upon incomes derived from rents, because a rent is a different "subject" of taxation from a dividend.

   Mr. SOLOMON. -

   They are both income.

   Mr. ISAACS. -

   Does my honorable friend mean to say that rents derived from houses are the same "subject" as revenue derived from dividends?

   Mr. SOLOMON. -

   Yes; they are both income.

   Mr. ISAACS. -

   I think there would at least be a good deal of argument upon the subject as to whether it would be possible to impose a tax on those two kinds of income; and I think that if my honorable friend were the Judge he would have to listen to a good deal of argument before he could decide the point, and would have some difficulty in deciding it.
Mr. SOLOMON. -
And should decide it in the same way.

Mr. ISAACS. -
I can conceive of no greater matter for debate as to what is a "subject" for taxation than this.

Mr. SOLOMON. -
Then you could not apply an income tax under one Act at all, but you would have to have different Acts of Parliament?

Mr. ISAACS. -
So you would, under this.

Mr. SOLOMON. -
And have a dozen lawyers to fight out the question?

Mr. ISAACS. -
I am glad that my honorable friend sees the absurdity of it. I would venture to say that there would be a considerable amount of legal argument on the point as to whether income derived from rents was the same "subject" of taxation as income derived from dividends, or as, say, a tax upon a man's own salary.

Mr. SOLOMON. -
So that you say that an income tax upon various sources of income would be a tax upon different subjects of income, and could not be imposed by means of one Act under this Constitution?

Mr. ISAACS. -
Under this Constitution I think it would be doubtful.

Mr. HOLDER. -
There is income from personal exertion, and income from property.

Mr. ISAACS. -
Exactly.

Mr. BARTON. -
Is it income from exertion only that is a proper subject of an income tax?

Mr. ISAACS. -
We know that the point I am referring to is open to doubt.

Mr. REID. -
It may be a laughing matter in this Convention, but it would be a very solemn and serious matter in a court of law.

Mr. OCONNOR. -
Suppose the point was raised as a mere-matter of order, would you not have to meet the difficulty in initiating the Bill?

Mr. ISAACS. -
I do not quite grasp the honorable member's point.

Mr. OCONNOR. -
I mean a matter of order in Parliament.

Mr. ISAACS. -

Then I should say that Parliament would do its best to obey this provision in the Constitution, and the ruling of the Speaker or the President would be given as he best understood it. If it had passed the House of Representatives and had gone to the Senate, and the President ruled that in his opinion it was a contravention of the Constitution, the House of Representatives would have to abide by that and alter it. If, on the other hand, the President, after giving the best consideration he could give to the matter, came to the conclusion that it was no infraction of the Constitution, and the Senate went on and passed the Bill, then I contend that the law should be valid, and I would not have it carried to the High Court to be decided afterwards.

Mr. GORDON. -

Do you want that same principle to apply to every law which is passed in the same way?

Mr. ISAACS. -

To make it perfectly logical, my honorable friend is right. We ought to carry this section into every law, and say the Senate should have the right to discuss every particular subject in clause 52 and clause 53 separately, under the penalty of invalidity. What I look at is this: You have a Senate which is composed on the principle of equal representation of the states, you have powers given to the Parliament, including the Senate, and except in the specific instances given in clause 54, the Senate has equal power by the very express words of the Constitution with the House of Representatives, and surely we can leave the matter there. Why leave the court to hold the rod of invalidity over its proceedings when you do not transgress the bounds of jurisdiction You have certain matters, and certain matters only, which are confided to the Federal Parliament, and as to all outside that the Parliament has no jurisdiction collectively or apart, and if the Parliament by its most solemn attempt tries to get beyond that limit, the High Court comes down and says you shall not go so far, and the states are protected; but within the sphere which is confided to the Parliament in mere matters of the manner of exercising their jurisdiction, what right has the High Court to obtrude? That is a mere matter of the political working out of the Constitution confided to Parliament. It does not guard state rights, it does not guard state interests. Under this provision it does seem ludicrous that if the Senate, after the best consideration it can give to a matter, thinks that there is no invasion of the clause, and the House of Representatives thinks the same,
any individual in the community may come forward and have the whole thing upset. It was said by Sir Edward Braddon that the matter was not mentioned in Adelaide. It was mentioned by several honorable members. I called particular attention to it in common with other members, and at page 580 of the Adelaide Hansard there is this passage in a speech by myself:

I do think there is the strongest danger, and I ventured to draw attention to it yesterday, that the Federal Treasurer might, after having a Tax Bill passed or an Appropriation Bill passed by both Houses willingly and with their eyes open find himself in this position: That some individual might challenge the Act through a court of law, which would be compelled to declare it invalid.

The honorable member will therefore see that it was distinctly challenged.

Mr. BARTON. -

It was expressly challenged by Mr. Reid, who moved to insert the word "proposed" before the word "law."

Mr. REID. -

That is so.

Mr. ISAACS. -

My right honorable friend (Mr. Reid) was not present when I referred to him this morning as having indicated the point.

Mr. REID. -

I had forgotten all about it.

Mr. ISAACS. -

For these reasons it seems to me we are running a great deal of risk when honorable members say that everything is a matter for the High Court, that it is no less a matter for the High Court under this clause than it is under any other clause. I admit that, if you have the clause there; but we object to putting it there; we object to leaving the clause in that condition. I quite admit—and that is the ground of our objection if you leave the clause in its present state it will be the duty of the High Court to inquire into this matter. I could not quite follow my honorable friend (Mr. Barton) when he said that another distinction between clause 54 and clause 56 was that on a Bill under clause 54 you had on the face of it an invalidity, while you had not an invalidity on the face of a Bill under clause 55. I put one instance to him which was: Suppose a sum of money were granted to an individual without statuary what it was for, it would not on the face of it show whether it was or was not for the ordinary annual service, and if any individual wanted to challenge the whole Act, he could do so by proving that, in fact, that grant was for some other purpose than the ordinary annual service. It would not be on the face of the Act, yet it would be
law if we had the word "law" inserted instead of the words "proposed law" in clause 54. There have been certain references to intentions. I intend to pass them by. I think we can all get credit for proper intentions. I think I have shown by my action in regard to this Bill as a whole that I have never attempted by any side-wind to weaken the Senate or to out down its rights or powers but I have always stood, and I always will stand, for, maintaining the powers of the House of Representatives and preventing its powers from being cut down. When we consider, after all, that the money to be dealt with in these Bills is contributed as to 2,500,000 of the people in an immense proportion, and by 700,000 persons in the other, is it too much to ask that the House of Representatives shall not be thrust into the position into which it is sought to thrust it, by such a clause as the present?

Sir JOHN FORREST. -
Surely those 700,000 persons have rights as well as the others.

Mr. ISAACS. -
Of course they have. I only want to leave the Senate in the same position as the House of Representatives in this regard. I do not want to show any difference between them, and clause 55 does show a difference between them. Clause 54 says the House shall have certain rights; if it chooses either not to know those rights for the time being or to waive them for the time being, it may do so, and there is an end of it.

Mr. SOLOMON. -
And it limits the rights of the Senate.

Mr. ISAACS. -
Certainly.

Mr. SOLOMON. -
What more do you want?

Mr. ISAACS. -
I want nothing more with clause 54; but when we come to clause 55, I say my honorable friends are not satisfied with the immensely strong position in which the Senate is entrenched. They are not satisfied with having the Senate composed on the principle of equal representation of the states to protect their state rights, with power to override the united will of the larger colonies as declared in the House of Representatives, and in the Senate too, but they want to have this possibility that, without accepting the responsibility of the situation, the Senate may choose to give way nominally at any particular point, and leave the Supreme Court to fight their battle for them afterwards. That is a position which I think is intolerable; and for other reasons which have been given much more
forcibly, much more clearly, than perhaps I could hope to do, by several honorable gentlemen, notably by Mr. Reid, Dr. Quick, and Mr. Deakin, it would be invidious, perhaps, to mention them all, but all those who have spoken have spoken with a great deal of clearness, lucidity, and force—I do hope that we will not allow this Constitution to go into operation with such a clause inviting litigation, inviting a self-abnegation of political duty on the part of the Senate as this would invite, and causing most probably a dislocation of the financial affairs of the Commonwealth.

Mr. BARTON (New South Wales). -

I should like to correct a misapprehension which I think my honorable friend (Mr. Isaacs) fell into at one time. I understand that when Mr. O'Connor was speaking some question arose as to whether a repeal of a Tax Act might be considered to be the imposition of taxation, and Mr. Isaacs quoted me as having expressed an opinion on that point. I should like to read the report of what took place then. It will not occupy more than a moment or two, but it will put the matter right for both my honorable friend and myself. While I was speaking at Adelaide, Mr. Isaacs asked me—

Would you consider the repeal of an Act to be imposing taxation?

Mr. BARTON. -

The repeal of a Taxation Act could not be for the imposition of taxation.

Mr. ISAACS. -

I should think it would not be.

Mr. BARTON. -

Unless it was accompanied with alternative provisions for taxation.

Sir GEORGE TURNER. -

Hear, hear.

Mr. ISAACS. -

Suppose you repeal one land tax and put on another, are you clear that that is not dealing with the imposition of taxation?

Mr. BARTON. -

If you place in any subsequent Act of Parliament provisions which are irreconcilably at variance with the provisions of a prior Taxation Act, there will be an implied repeal. If this be so, then it is no violation of the provisions of the Constitution if you turn an implied repeal into an express repeal. If there is a replacement of prior taxation by a later Taxation Act, the mere addition of a repealing clause would certainly not be an infringement of constitutional provisions. What can be done by implication can always be done by express statement.

And to that extent, of course, I said a provision repealing prior taxation
could be part of a law imposing taxation, as I undoubtedly think it could, because if you pass a law imposing taxation which follows and takes the place of another law imposing taxation, you thereby imply the repeal of the other law, and the repeal can certainly be made an express repeal, so that there is really no difference between us. I do not think we need be very much governed by Mr. Isaacs comment as to the question of one tax. In the case of the income tax, for example, I am inclined to think that the subject of taxation is income, and whether it be derived from rents or from any other source, it would still be income, and therefore liable to the tax.

Mr. ISAACS. -

You cannot be sure about that.

Mr. BARTON. -

We cannot be absolutely sure about anything. On that principle we ought not to try to make a Federal Constitution. I do not sympathize with that view. I say, we shall be as sure as we can be, and that is all we can do. I think Mr. Isaacs will be at one with me in that. I quite see with Mr. McMillan that the argument put forward rests to a certain extent on the contention that in sub-section (3) of this clause the word "ordinary" may be subject to misconception, though I do not know that it is. What is "ordinary" in the Appropriation Act, as understood, will not be a difficult question for the court to determine.

Mr. REID. -

Under the new Constitution it will be a difficult question for the court to determine.

Mr. BARTON. -

I can quite understand some honorable members who do not agree with me on this subject feeling doubt about the matter. It is very natural for them to feel hesitation about it; and if Mr. Isaacs and others, who object to what is considered the looseness of these words, had suggested an amendment by which that looseness would be corrected, and the matter in some degree more accurately defined, I could have understood their position. It appears to me that, to the extent of the accuracy of the definition, the strength of their argument would diminish. Mr. McMillan has suggested, with reference to the third sub-section, not the others, that the amendment to insert "proposed" might be adopted. Well, I am disinclined to the insertion of the amendment "proposed" there. I should be prepared to meet honorable members who have a hesitation about the clearness of the words used in the Bill if they will accept a suggestion which will help to clear up their own doubts. If they would do that, then I think they might consent to do without the word "proposed," because it is only because of their doubts that they want the word "proposed" inserted.
If their doubts are removed, I presume they do not want the word "proposed" inserted. No doubt it will be difficult to make the clause perfectly clear, but I do not know that it is impossible. We have had great difficulties to overcome in the course of our deliberations, and we have surmounted many of them.

Mr. REID. -

It will be a great misfortune if an Appropriation Bill goes before the court.

Mr. BARTON. -

I should feel disposed to vote as before, against the insertion of the word "proposed," for the reasons which I have already given. Some honorable members may think that words like the following would carry out their views more clearly. The words "or moneys" in sub-section (3) "The law which appropriates revenue or moneys for the ordinary annual services of the Government" and soon—may possibly be misunderstood, because they may go beyond a mere appropriation for annual services, and may possibly, by wine, be held to extend to loan moneys. My honorable friends may think well of some such form of words as these:-

The law which appropriates revenue for or in connexion with or in extension of public departments and services transferred to the Commonwealth or originated under this Constitution shall deal only with such appropriation.

That perhaps may meet the views of my honorable friends opposite.

Mr. DEAKIN. -

It is a great improvement.

Mr. BARTON. -

Of course, I do not know whether it would meet with their views or not. I think that perhaps it would be a little more precise than the words in the Bill, and also, besides being precise, I think it would have a somewhat larger signification, and might therefore help to take away part of their doubts. I think it is only right to those who oppose my view that I should say that the Appropriation Act should receive a liberal interpretation, and not be bound down altogether too rigidly, so that it could be held to be unconstitutional, because, in some particular, it crept beyond the bounds of this provision.

The CHAIRMAN. -

Your suggested amendment would require some verbal amendment.

Mr. BARTON. -

It might wind up with the ordinary expression "shall deal with," or, if it
suits honorable members better, "shall relate only to such ordinary appropriation." These matters might be dealt with in as open and liberal a way as possible, by substituting the words "relate only to" for the word "deal with," wherever those words occur. I am not saying that this suggestion clears up every difficulty that honorable members have, but it seems to me to have the merit of being a clear definition, and while I am not prepared at present to propose the amendment I now suggest, if honorable members who do not agree with me on the general subject consider that it carries out their views better than the words of the Bill, and think that these words are clearer, then, in deference to them, I may adopt these words, or even move them myself. I wish to deal in the most open fairness, with honorable members who are unable to take the same view as I do. In the first instance, I think it is necessary for us to oppose the insertion of the word "proposed." I do not want to go in for a repetition of statements and arguments already made, but I may briefly that the reasons which have been given have not shaken the arguments which seem to me to be dominant with regard to this question. If we reject the amendment to insert the word "proposed," and honorable members take the view I have expressed, and think that the words I have read will suit their purpose better, I shall no longer object to the amendment I have suggested, which will really perhaps be of use to the Convention in supplying something in place of the word "ordinary," which term has been objected to as capable of misinterpretation.

Mr. ISAACS. -

That would leave the whole difficulty as to taxation as it stands in the Bill.

Mr. BARTON. -

Yes, in other respects. I may say it is consistent with the view I have taken. The amendment is suggested on the grounds of an assumed confusion in the words. Any reason of that kind in favour of the insertion of the word "proposed" would diminish in its import in proportion as the words were made clear, according to what the majority of honorable members may deem to be clearness. That is the view I take, and it is only fair I should read out the form of words that I have pencilled down. If any other form of words can be suggested, I should have the greatest pleasure in co-operating with honorable members in trying to arrive at an agreement. Personally,

I do not think there is any serious difficulty in connexion with the words used in the Bill.

Mr. REID (New South Wales). -
I earnestly hope that the leader of the Convention will consider again the state of confusion into which the Commonwealth may be thrown if its annual Appropriation Bills are to be subject after passage to objections as to this or that item. It is not so difficult when a system of government has been in existence for ten or twenty years to gather from the practice in connexion with Appropriation Bills what are the ordinary annual services. Here we are introducing an entirely new system of government, and I defy any one, if it comes to a point of legal accuracy, to define what is an ordinary annual service, and what is not. It might be possible to do that, although the question is full of points, under certain circumstances. But with a new system of government, and with a first Appropriation Bill, it would be one of the most difficult things in the world to decide whether every item in the Bill was within the definition. If 1,999 items were within the definition, and the 2,000th item was held by the court to be outside the definition, the whole Appropriation Bill would go. Surely we do not want to throw the whole public service of the Commonwealth into hopeless confusion by having that one Bill, which is essential to the maxim that the Queen's Government must be carried on, declared invalid. I entreat my honorable friend to consider the question as it bears on these Appropriation Bills, at any rate. The House of Representatives will be in this position: That they will never be able to have their own way, because if the Senate objects to one item out of 2,000, and in consequence of that objection refuse to pass the Bill, the House of Representatives will have no redress. They cannot invoke the aid of the High Court in deciding whether they are right and the Senate are wrong. They must always go down—that is, in the last resort. I have no doubt they would meet together and endeavour to arrive at a sensible and a fair conclusion. It could not come to a question of law at the instance of the House of Representatives, because a Bill can only become law when the Senate has approved of it. If the Senate agrees that the items in an Appropriation Bill are legally within the definition of the Constitution, and are satisfied to pass the Bill, it should not be open to any persons on any one item to throw the whole public service of the Commonwealth into confusion. I am very glad that Mr. McMillan, as a business man, has seen the force of that argument, and that he proposes, so far as sub-section (3) is concerned, to support the amendment.

Question—That the word "proposed" be inserted before "law" in sub-section (1)—put.

The committee divided—
Ayes ... ... ... ... 17
Noes ... ... ... ... 27
Majority against the amendment 10
AYES.
Berry, Sir G. Leake, G.
Brunker, J.N. Peacock, A.J.
Carruthers, J.H. Quick, Dr. J.
Deakin, A. Reid, G.H.
Gordon, J.H. Trenwith, W.A.
Hackett, J.W. Turner, Sir G.
Higgins, H.B. Wise, B.R.
Holder, F.W. Teller.
Kingston, C.C. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Hassell, A.Y.
Braddon, Sir E.N.C. Henning, A.H.
Briggs, H. Howe, J.H.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Cockburn, Dr. J.A. McMillan, W.
Crowder, F.T. Moore, W.
Dobson, H. O'Connor, R.E.
Douglas, A. Solomon, V.L.
Downer, Sir J.W. Venn, H.W.
Forrest, Sir J. Walker, J.T.
Fraser, S. Zeal, Sir W.A.
Fysh, Sir P.O. Teller.
Glynn, P. M. Barton, E.
Question so resolved in the negative.

Mr. BARTON (New South Wales). -
There is something to be said on this sub-section which is perhaps
worthy of attention. An opinion has been quoted by my honorable friend
(Mr. Isaacs) from Sir Samuel Griffith, that it is worth considering whether
under the Constitution a law providing for the collection of taxation as well
as the imposition would not be ultra vires.

Mr. ISAACS. -
If in the same Bill.

Mr. BARTON. -
If in the same Bill, I mean. I am inclined to think myself, on the well-
known principle of law that when a power is given without that which it
could not have been effectually exercised, that power is also given. The
legislative power would also include machinery for collecting the taxation.
Mr. REID. -
The practice in some countries is to keep the machinery clauses away from the Taxation Bill.

Mr. BARTON. -
That has happened in New South Wales as well as in other countries. Bills providing purely for the amount and limit of the tax have been separated from measures which dealt with the assessment and collection, and in many cases very properly separated. It has been suggested, in the course of the debate, that after, the word "imposition" the words "and collect" might be inserted.

Mr. HIGGINS. -
Would that cover valuation?

Mr. REID. -
Oh, yes, that would be an incident in the collection!

Mr. BARTON. -
Valuation is a condition precedent to the imposition of a tax. The law which provides for the imposition and collection of a tax must also include valuation, and I think the words "imposition and collection" would cover the whole ground. The matter is one of considerable importance, and I should like to have the assistance of my honorable colleagues in the Convention. I do not think the amendment I have suggested will be necessary in sub-section (2), because that sub-section is a limitation dealing with matters apart from the necessity of the tax. In order that the matter may be debated, and as I am advised at present that it would be an improvement, I move that after the word "imposition" in sub-section (1) there be inserted the words "and collection."

Mr. SYMON. -
I would like to ask my honorable friend (Mr. Barton) what he proposes to gain by the insertion of the words?

Mr. BARTON. -
I thought I had explained that, but there was a good deal of conversation going on at the time, and I am not surprised that my honorable friend did not catch what I said. I explained that there were doubts in various quarters whether the restriction as to dealing with the imposition of taxation might not be read so as to affect the ordinary machinery clauses dealing with the collection. If there is any doubt of that kind, it would be as well to clear it up by the insertion of the words "and collection," so that all matters of machinery, such as valuation and assessment, indirect taxation, and regulations which are necessary to the imposition of customs duties, might be embodied in the same Bill.

Sir EDWARD BRADDON. -
Would not the power of collection be embraced in the power to impose taxation?

Mr. BARTON. -

That would be ordinarily included in the power to impose taxation, but when there is a sub-section so strong as to only deal with the imposition of taxation it would be as well to clear up the doubt.

Mr. REID. -

Coupled with the practice of most Parliaments.

Mr. HIGGINS (Victoria). -

I think the words suggested by Mr. Barton would be an improvement. May I suggest, however, as a matter of drafting, that if we simply use the word "taxation," so as to make the clause read-"Laws imposing taxation shall deal only with taxation," there would be no question then as to going outside taxation. The whole difficulty arises from the word "imposition," which may be said to involve a certain number of things.

Mr. BARTON (New South Wales). -

I should have explained before sitting down that the amendment which has been suggested to me, and which I have moved, might carry with it consequences which would have to be looked to. In clause 54, sub-section (2), it is provided that-"The Senate may not amend proposed laws imposing taxation." A law dealing with the imposition and collection of taxation would be a law imposing taxation.

Mr. SOLOMON. -

Does not one carry the other without all this?

Mr. BARTON. -

What I want to point out is the difficulty that the Senate cannot amend proposed laws imposing taxation. The question is: Whether, under the circumstances, the Senate would have power to amend a Bill dealing with the imposition and collection of taxation?

Mr. ISAACS. -

I do not think the Senate would have power.

Mr. BARTON. -

If my amendment were carried it would be provided that a law would not be invalid if it dealt with the collection as well as with the imposition of taxation. The question is whether the Senate would thereby be deprived, as it might be deprived, of the power of amendment if the law provided for both the imposition and collection of taxation I It has occurred to me-and I should have stated it before-that, in order that the House of Representatives may not be unduly hampered in dealing with matters of this sort, the words
"deal only with" might well be replaced by "relate only to" as of somewhat wider signification.

(Victoria). - Whatever we do here ought to be done in the light of day. We should not do anything which would, so far as we can see, have the effect of depriving either House of any power without openly expressing our opinion. Strongly as I am of opinion that the sub-section ought to be altered, I feel bound to say that if the words "and collection" are put in it will still be a law imposing taxation.

Mr. BARTON. -

I was afraid of this difficulty.

Mr. ISAACS. -

I feel no doubt the Senate would not have the right of amendment. If a Bill imposing taxation does anything else, it will still be a Bill imposing taxation, and the Senate would have no power to amend. That is why this clause has been put in. The whole clause is based upon that supposition, but at the same time it only emphasizes the incongruity of such a clause being present in the Constitution.

Mr. OCONNOR. -

There will be nothing to prevent the Government putting the machinery in one Bill and the tax in another.

Mr. ISAACS. -

The machinery very often affects the incidence of the tax, and, as Sir George Turner says, the machinery might be the most important.

Mr. OCONNOR. -

The Government having power to put both in one Bill, sometimes puts them in two.

Mr. ISAACS. -

But if the tax is of such a nature that no one could discuss its operation fairly until they saw the machinery, the Government would put the proposals in one measure. That, however, would be impossible in this clause, without depriving the Senate of its right to amend particular provisions. I am glad the leader of the Convention has called attention to the matter, and I have given my view.

Mr. SYMON (South Australia). -

I think it is better to bring out clearly the bearing of this amendment on clause 54, sub-section (2), which is the governing clause. It says the Senate may not amend the proposed laws imposing taxation and so on. The effect of introducing the words "or collection" would be to render it almost necessary to amend sub-section (2) of clause 54, prohibiting the Senate from amending proposed laws for taxation or providing for their collection. I do not think that is contemplated, and
it might possibly be placing a limitation on the powers of the Senate which we had better avoid. It would be better to leave the clause as it is, and leave it to the construction which would be fairly put upon it constitutionally, than to introduce words which may give rise to conclusions that we do not foresee.

Mr. BARTON (New South Wales). -

If necessary I will withdraw my amendment, in order to widen the clause by striking out the words "deal only with," and substituting for them "relate only to." There are provisions which might in one sense be desirable in the Bill, but they would be extraordinary if put in another Bill. They would find their place properly in a Bill of this kind, and where they relate to the imposition of the very tax proposed it seems to be difficult to leave them out.

Mr. ISAACS. -

It might give rise to some difficulty. I have no objection as that is pointed out.

Mr. BARTON. -

Well, I will not propose it.

Mr. BROWN (Tasmania). -

I desire to offer a suggestion to the leader of the Convention, that is, whether it would not be better to introduce a new sub-section to the effect that laws imposing taxation may include provisions for collecting taxes? That would be better than putting words into this clause which might give rise to the confusion alluded to by Mr. Symon. I quite see the difficulty that may arise.

Mr. TRENWITH (Victoria). -

The amendment now under consideration really does what Mr. Brown suggests. It says that a law imposing taxation may also provide for the collection thereof, it provides for the imposition and collection of taxes, and it says that very much more briefly than suggested by the honorable member, and it expresses the meaning quite as clearly and effectively. It is extremely desirable that there should be power to include machinery clauses in a Taxation Bill. The work of the Legislature will in all probability be sufficient to keep it going, and to multiply the Bills that must pass through, and to multiply the discussions that must ensue, would give to persons who are antagonistic to the measure a second opportunity of discussing the whole question on the machinery clauses. That would be extremely inexpedient and undesirable. It is suggested, and it is true, that sometimes when the Government have the option to include the machinery in a Taxation Bill they elect to send up separate Bills. It may be expedient
to do so, but it seems to me that it will not generally happen, and the Taxation Bill will be discussed more satisfactorily, under a more full and complete understanding, if the machinery clauses are included. I hope the amendment will be carried.

Mr. KINGSTON (South Australia). -

I should like to ask the leader of the Convention whether he considers the introduction of these words will prevent the Senate from amending the machinery clauses?

Mr. BARTON. -

I think it may.

Mr. KINGSTON. -

I hope it will. It occurs to me that to negative the power of amendment in the Senate with regard to the imposition of taxation, while giving them full power, if they so desire, of mutilating the machinery necessary for the collection of the taxation, would be to give them, by a side-wind, control over the policy of taxation of the Commonwealth, and that they ought not to possess.

Mr. DOBSON (Tasmania). -

I would point out that, when we come to deal with the clause as to disagreements, sometimes erroneously called dead-locks, we shall be weakening the Bill and putting in the hands of those who think there should be a provisions against such disagreements a very powerful weapon. It was pointed out in Adelaide by Mr. Barton that we had taken such great care to provide in the Bill against financial clauses which generally create dead-locks; that there was no necessity to go on to provide for dead-locks and disagreements in future. If you say that the Senate shall not amend in any way a complicated machinery Bill, you go a great way towards bringing about a dead-lock over simply the machinery clauses, which, however important in themselves, are really not a Taxing Bill. I gathered when I was in Adelaide that the word "taxation" only was to be used, and not the word "collection." It was intended to confine these Bills to taxation only, leaving the Senate power to improve and suggest alterations in the Bill simply framed as machinery for collecting taxation. I would call the attention of Mr. Barton to this question. I think we shall complicate the question of dead-locks if we put in the word "collection," because I think we ought to leave the Senate power to amend purely machinery Bills.

Mr. GLYNN (South Australia). -

It seems a pity that it is too late to adopt the suggestion thrown out in Adelaide-I think Mr. O'Connor first mentioned its and I subsequently drew
attention to it, that is, that it would be better to confine this restriction upon the Senate as regards amending the clauses of a Bill imposing taxation. We are adopting rather a clumsy way of attaining that end. Originally all Bills were Money Bills. As time went on money clauses were mixed up with general clauses in one Bill. The restriction on the Upper House ought to be that it ought not to amend money clauses in a Bill which might be general. If we make the provision in clause 54, sub-section (2), so that it shall provide that the Senate may not amend provisions imposing taxation, in any proposed law, we will accomplish everything we want. This point was raised in South Australia on one occasion. The Upper House there, I believe, claimed the right to amend a Bill so far as clauses which did not interfere with money matters were concerned. Why should not the Upper House have that power? A Bill dealing with, say, the appointment of Railways Commissioners, might contain incidental provisions for the appropriation of money, but should the Upper House be stopped from amending a measure of that kind? In the beginning, all Bills provided for the granting of moneys, the Crown, as a condition of supplies, redressing grievances, that is, legislating; but we have now passed on to a condition of affairs when Bills incorporate other provisions. This being so, I think we should direct our attention only to the money clauses of Bills, and that the prohibition should be put upon the Upper House not to amend clauses which impose taxation. That would necessitate a change in the wording of clauses 54 and 55, but upon consideration I think it will be found that this is the best solution of the difficulty.

Mr. OCONNOR (New South Wales). -

No doubt the amendment now proposed will place in the hands of the House of Representatives the absolute power of fixing the taxation in every detail. I think it was intended that the fixing of the financial policy should be left entirely in the hands of the House of Representatives. It appears to me, however, that, if we did not adopt the amendment, the Senate would be given the power to fritter away the sole right of the House of Representatives to deal with taxation. We all know from experience that the machinery of taxation, which involves its incidence, the exceptions to be made, and a number of matters of that kind, may be so altered as to cut down the collectable value of a tax by one-half. It might be that a machinery Bill would be so altered as to make the tax which was sought to be imposed not worth collecting. If we want to hand over to the House of Representatives the sole power of dealing with the financial policy, as I think we do, we ought to see that they get it wholly, and that no one else is allowed to fritter it away.

Mr. BARTON. -
There should be no power equivalent to the power of amendment given to any other body.

Mr. OCONNOR. -

Yes. Of course, as a matter of policy, a Government would very often prefer not to use the power it would have of depriving a Senate of the right to amend. It might be that it would be more to their interest to give the Senate power to express its opinion upon particular provisions, than to court rejection of the whole measure. But that can always be done. If, on the other hand, the Government thought it necessary to put their taxation proposals before Parliament as a whole, they ought to have the power to do so, and that power ought not to be cut down by any power of amendment in the Senate. If the amendment is not carried, it seems to me that, although it is not intended that the Senate shall have the power to directly interfere with the financial policy of a Government, it may be able to affect it very materially.

Mr. BARTON (New South Wales). -

I confess that when I first proposed the amendment I did not see the extent to which it went. But, having appreciated the extent to which it goes, I still feel bound to adhere to it. The difficulty that would arise unless you allowed the House of Representatives to include in these Bills the ordinary powers of assessment and collection would be, as the honorable and learned member (Mr. O'Connor) has pointed out, that, while you might have a certain tax imposed in the Bill fixing the amount of the tax, the machinery Bill might be subject to amendment by the Senate that the whole of the financial policy of the Government which introduced it, with a majority of the House of Representatives behind them, might be entirely subverted. That is a difficulty which, I think, none of us wish to create. Therefore, I am prepared to take the responsibility of adhering to the amendment. Holding the position I have always held, that the Senate should be a real body and not a mockery of state interests-while it should be a Second Chamber holding definite powers and rights as expressing the will of the people within the states which it represents-I have also held that we should only carry responsible government into effect by making it real and effective, and a power of amending a machinery Bill to the extent of making a tax not worth collecting would be equal to the power of amending a Bill imposing taxation.

Sir GEORGE TURNER. -

The machinery clauses of a Customs Bill, for example.

Mr. BARTON. -
Yes; the machinery part of a Customs Bill, or, what is more important the machinery part of a measure imposing, say, a land and income tax. The amendment of a machinery Bill connected with the imposition of land and income taxes might utterly destroy the value of the companion measure imposing that taxation. We have ha

Mr. SYMON. -

You do not want the words "and collection."

Mr. BARTON. -

I think it is better to have these words to make the provision clearer. If you speak only of the imposition of taxation, you are saying a great deal more than you say in a declaration, for instance, that Taxation Bills shall originate only in one House. If you say the Bill shall deal only with a certain subject, it seems to me that you are using words which may exclude machinery provisions, and are driving the Chamber which originated the Bill to send up a second measure containing the machinery provisions. I am not going to argue that the practice under this Constitution should be correlative to that of the Lords and Commons, but it is just as well to reflect what that practice is. May, at page 542 of the tenth edition, after saying that, by practice and usage based upon the resolution of 1678, the Lords are excluded from the power of initiating and amending Bills dealing with expenditure and revenue, goes on to say-

It follows, accordingly, that the Lords may not amend the provisions in Bills which they receive from the Commons dealing with the above-mentioned subjects, so as to alter, whether by increase or reduction, the amount of a rate or charge, its duration, mode of assessment, levy, collection, appropriation, or management; or the persons who pay, receive, manage, or control it; or the limits within which it is leviable.

I am not contending that the division of powers between the two Houses should be entirely upon the analogy of the relative position of the Lords and Commons. But if we look beneath the surface of the resolution regarding the powers of the Lords, I think we can see plainly that, when the Senate is restricted from amending proposed laws imposing taxation, it should not be able to deal with any machinery Bill in such a way as to affect the amount of the tax to be levied. That the Senate shall not have the power to affect the amount and extent of the tax to be levied; that it shall have the power of suggestion; that it shall not have the power of amendment; and that it shall have the power of rejection, are principles which are laid down in the Constitution. The question, to my mind, is whether it is not in accordance with these principles that machinery Bills
may be made part of Taxation Bills. I have come to the conclusion that they ought to be, and therefore I shall adhere to the amendment.

Dr. COCKBURN (South Australia). -

The leader of the Convention has treated this matter with great candour. He has pointed out that the introduction of these words carries us further than he at first conceived. To my mind, there is no doubt that their introduction extends the area of the Bills which the House representing the people of the states is forbidden to amend. I think we should pause before we disturb the Constitution as it stands, seeing that these clauses were only arrived at after very prolonged debate, and a very fierce fight upon the whole question. I do ask honorable members to pause before they add words which admittedly will have the effect of widely extending the area of proposals which the House representing the people of the states is forbidden to amend. I would like to ask, although I intend to resist these encroachments, whether the word "collection would mean the appointment of all sorts of officers without the Senate having the right to have any voice in the matter?

Mr. BARTON. -

I have already pointed out that it will include the persons who receive, manage, or collect.

[The Chairman left the chair at five o'clock p.m. The committee resumed at thirty-five minutes past seven o'clock p.m.]

Sir GEORGE TURNER (Victoria). -

There can be no question that this is a very important and, to my mind, an absolutely necessary alteration, if we are to give to the House of Representatives what I believe we all desire to give to that House in connexion with Money Bills. If we are to be bound, as it would appear we would be bound under the clause as it is proposed, to divide a Taxation Bill into two Bills, having one merely to impose the take and the other to carry out the necessary machinery in connexion with the tax, it must be evident to any of us who have had experience in regard to Taxation Bills that the Senate, having the power to amend the machinery Bill, will be able to render to a very great extent nugatory the Taxation Bill, if it so desires. It might be that the Treasurer would wish to have a tax imposed so that he would be enabled during a financial year to receive a certain amount of money, and he might make the instalment payable, as we have done with regard to our income tax, annually on a certain day. The Senate would be quite within its rights, I take it, in dealing with the machinery Bill, to alter annually into half-yearly, and so leave the Treasurer with half the revenue he desired to collect in that financial year. Take also the case of a Customs
Duties Bill. We all know the very intricate machinery you must have to properly carry out the Bill, and to provide for the various difficulties which would arise in administration. If we are to have that question absolutely open to be amended in any shape or form that the Senate may desire, we give them what, I think, will be too great a power of altering the Taxation Bill, because that undoubtedly will be the effect of it. I would suggest that we should so amend the first paragraph that it would read "laws imposing taxation shall relate only to taxation." I think the word "deal" is more limited than the word "relate," and I quite agree with our leader that it would be wise whatever alterations we may make, to alter the word "deal" into the word "relate." Then, I think, if we say, that the laws imposing taxation shall relate only to taxation, it will be quite open on that wording for the Government of the day to frame the Taxation Bill in two measures, if it is thought advisable to do so; or if it is absolutely necessary that the machinery for the collection of the tax should be in one Bill, as we have found it necessary in many of our Bills to incorporate both, it will be within the power of the Government and the House of Representatives to have full control over that measure. Under these circumstances, I do trust that whatever amendment we make in this clause we will take full power to see that, in addition to the imposition of taxation, the Bill will, at all events, relate to the collection of the tax. But I will be glad if our leader can adopt the words I suggest. They would be simple. I think they would be fair to both Houses, and that they would cover all that could be covered.

Mr. SYMON (South Australia). - I hope that Mr. Barton will not press the amendment to insert the words "and collection." The more one considers it the more objectionable it seems to be. When the amendment was first proposed, it struck me that it was either unnecessary or that it was going a long way beyond the settlement we made at Adelaide. And I think it is rather a mistake, at the eleventh hour, to re-open the whole of this financial matter, which, in relation to the two Houses, we determined, after very exhaustive debates, at the Adelaide session of last year. Now, the effect of this amendment is really to re-open the whole of that settlement.

Mr. BARTON. - I do not think that that is so.

Mr. SYMON. - We have inserted in sub-section (2) of clause 54 the words-

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.
That was a limitation upon the powers of the Senate, to which, after a considerable fight, we all agreed.

**Sir JOHN FORREST.**

To which we had to agree.

**Mr. SYMON.**

Yes, it was Hobson's choice, pretty much. It was founded upon what was called the compromise of 1891. Those of us who deliberately fought for co-equal powers in the Senate with regard to the amendment of Money Bills were confronted with what was described as the compromise of 1891, and it is in the recollection of the Convention that upon that occasion some honorable members who might have entertained a different opinion felt that it was necessary in the interests of federation, and in order to adhere to what was arranged in 1891, that they should give way and support the arrangement by which the power of amendment was abandoned, and a mere power of suggestion was accepted instead. Now, that having been done, and language having been adopted, after grave consideration, to carry out the intention of honorable members, we are asked, at the close of the present session, when we see the end of our labours approaching and I hope it will be a satisfactory end, to revive a discussion which we thought was to be buried for ever, so far as regards this federal union. I asked the Hon. Mr. Barton when he was speaking before the adjournment whether he was not satisfied that the words covered what he contemplated. If the words "laws imposing taxation," and the subsequent words, "the imposition of taxation only," cover machinery— and I am not prepared to say that they do not, then the object is accomplished, and we must submit. I do not wish to move any limitation on these words. If, on the other hand, they do not cover machinery, I say that this is not the time to re-open the discussion and to take away from the Senate the power it would otherwise have of expressing an opinion as to the establishment of a new department in the Executive Government. That is an attack on the powers of the Senate. It is an effort to reduce further the powers of the Senate in dealing with Bills. The Hon. Mr. Isaacs' amendment would have been less of an infringement of the powers of the Senate than this amendment will be.

**Mr. HOLDER.**

No doubt it would be.

**Mr. SYMON.**

I agree with my friend to that extent. I think it would be mischievous; in fact, it was because I was satisfied from the debate which took place that the words, as they are, are not likely to produce any evil result in the first sub-section of section 55 that I did not vote in regard to the insertion of the
word "proposed." I felt satisfied that the keenness of the members of the Senate, and the keenness and sense of duty of the President of the Senate, and the keenness of the House of Representatives, with the sense of duty of the Speaker, would be amply sufficient to prevent any possibility of harmful consequences from leaving the words as they are. But if you say that the words "laws imposing taxation" do not include Bills dealing with the machinery by which that taxation is to be enforced or exacted, then by introducing the amendment of my honorable friend you are still further paralyzing the powers of the Senate. If that is meant, why, of course, we will have to submit. But I ask honorable members to consider whether at this stage they are going to make a further onslaught on the powers of the Senate in relation to Money Bills than have already been embodied in the clause. We have already cut down the powers of the Senate to the bone in relation to Money Bills. Whether the Senate has to be a more democratic House, or a less democratic House, than the House of Representatives, we have shorn it of a great deal of its power, and we should be content with what we have already done. I call attention to the fact that at the Adelaide sitting we did depart from the compromise of 1891. Under that compromise the words were "laws for imposing taxation;" that is, laws with that intention. Now, the words are "all laws imposing taxation," no matter what the intention is. If a law imposes a burden by way of a tax then it comes within the class of Bill in regard to which the Senate is powerless as to amendment.

Mr. HIGGINS. -
There is an exception in regard to everything, but ordinary Taxation Hills.

Mr. SYMON. -
I know there are certain exceptions, but what do they amount to? It is whittled down to the lowest degree I am not complaining, and I never did complain. I strongly contend that the Senate ought to have as to Money Bills, except as to the Appropriation Bill, coequal powers with the House of Representatives.

Sir GEORGE TURNER. -
Co-equal representation?

Mr. SYMON. -
I am content with what we have done, and I do not wish to re-open the matter. I beg honorable members, who have all the advantage of the concessions which they have exacted from us, to be content.

Mr. ISAACS. -
"Concessions," did you say?

Mr. SYMON. -

I asked Mr. Barton not to press this amendment, or, at any rate, at this stage, when we are practically putting the finishing touches to the work on which we have been engaged, not to press this matter, which would re-open a very debatable subject, on which there might be a very acrimonious and very troublesome debate.

Mr. BARTON (New South Wales). -

Perhaps it might be possible to explain my position more clearly by one or two references. The Constitution provides against some matters which would be perhaps included within the rights of the House of Representatives in the absence of express provision. You, sir, have, in answer to a question I asked, referred me to a passage in May, and to that I shall come in a moment. I should like to premise that with a passage a page or two before in the same authority, in illustration of the matters with which we are dealing, saying, as I did in the afternoon, that it does not follow, because there is an analogy between the two Houses in this Constitution, and the two Houses in different Constitutions, that, therefore, the rights or powers of the two Houses should be regulated in the same way, when in one case the Constitution is that of a separate state, and in the other it is that of the Federal Commonwealth. There is a passage at page 550 of the tenth edition of May, which deals particularly with the very interesting controversy in regard to the repeal of the Paper Duties, in which Lord Palmerston took so important a part in 1860. It would be as well to call the attention of honorable members to that passage in illustration of the matters we are dealing with now. I wish to guard myself from being supposed that I place the Senate in the position of the House of Lords. I only wish to refer to the matter to this extent: That there is a point at which there might be a denial of responsible government, and I do not wish the powers of the Senate to extend to any point at which responsible government might be frustrated, or to take it up to that point. I desire the Senate to have all reasonable power, as I have always said. The following is the passage in May, at page 550, tenth edition, to which I refer:-

As the functions of the House of Lords in the grant or imposition of Supply and taxation are reduced to a simple assent or negative, it becomes necessary to examine how far the power of dissent may be exercised without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the Legislature, to withhold their assent from any Bill whatever, to which their concurrence is desired, is unquestionable; and in former times their power of rejecting a Money Bill had been expressly acknowledged by the Commons; but, until the year
1860, although the Lords had rejected numerous Bills concerning questions of public policy, in which taxation was incidentally involved, they had respected Bills exclusively relating to matters of Supply and Ways and Means. In 1860 the Commons determined to balance the year's Ways and Means by an increase of the property tax and stamp duties, and the repeal of the duties on paper. The increased taxation had already received the assent of Parliament, when the Lords rejected the Paper Duties Repeal Bill, and thus overruled the financial arrangements voted by the Commons. That House was naturally sensitive to this encroachment upon privileges; but the Lords had exercised a legal right, and their vote was irrevocable during that session.

There a distinction seems to be drawn between privileges and legal rights to the extent that it is asserted by May inferentially that there may be an encroachment upon privileges, which is, nevertheless, the assertion of a legal right.

The Commons, therefore, to maintain their privileges, recorded upon their journal, 6th of July, resolutions affirming that the right of granting aids and supplies to the Crown is in the Commons alone; that the power of the Lords to reject Bills relating to taxation was justly regarded by this House with peculiar jealously, as affecting the right of the Commons to grant the Supplies, and to provide the Ways and Means for the service of the year, and that the guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over Taxation and Supply, this House has it in its own hands the power so to impose and remit taxes, and to frame Bills of Supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate.

In accordance with these resolutions, during the next session, the financial scheme of the year was presented to the Lords for acceptance or rejection as a whole.

So it will be seen that one Bill was brought in to deal with the whole subject.

The Commons again resolved that the Paper Duties should be repealed; but instead of seeking the concurrence of the Lords to a separate Bill for that purpose, they included in one Bill the repeal of those duties with the property tax, the tea and sugar duties, and other Ways and Means, for the service of the year; and this Bill the Lords were constrained to accept. The Budget of each year has since that occasion been comprised in a general or composite Act—a proceeding supported by precedent. In 1787 Mr. Pitts entire Budget was comprised in a single Bill; and during many subsequent
years great varieties of taxes were imposed and continued in the same Acts. What I wish to point out with regard to that passage is that under this Constitution as it stands a controversy such as that which then arose would be impossible. Not that it would not be possible to include in one measure the repeal of Taxation Acts on a certain subject together with the imposition of other duties relating to that subject. That would be perfectly competent, I think, as I have already explained. But it would not be possible—or at least, it seems to me that it would not be possible—for one House to include in one measure the repeal of taxation upon a certain subject, and in the same manner to propose a substituted mode of taxation upon some other subject.

Mr. ISAACS. - Do you think that could not be done?

Mr. BARTON. - I think there would be great difficulty in doing it.

Mr. HIGGINS. - The honorable and learned member (Mr. O'Connor) thinks that it could be done.

Mr. BARTON. - In my opinion, the power exercised by the Commons upon that occasion probably would not, and could not, be exercised under this Constitution.

Sir GEORGE TURNER. - It could be exercised under the wording which I suggested.

Mr. BARTON. - That may be; but I should require further time to consider the matter. Then comes the passage to which you, Mr. Chairman, so kindly referred me:-

REJECTION BY THE LORDS OF PROVISIONS CREATING A CHARGE

The right of the Lords to reject a Money Bill has been held to include a right to omit provisions creating charges upon the people, when such provisions form a separate subject in a Bill which the Lords are otherwise entitled to amend. The claim of privilege cannot, therefore, be raised by the Commons regarding amendments to such Bills, whereby a whole clause, or series of clauses, has been omitted by the Lords, which, though relating to a charge and not admitting of amendment, yet concerned a subject separable from the general objects of the Bill.

So that, where there has been a Bill upon a certain money subject—taxation or appropriation-containing clauses separable from its main object, the Lords have not only rejected such clauses, but they have been found to be acting within their rights in rejecting them, and their action has been
accepted without any constitutional crisis. I will cite another passage by way of illustration:-

On the 30th July, 1867, it was very clearly put by Earl Grey and Viscount Eversley-

He, if I remember aright, was at one time Mr. Speaker Shaw Lefevre.

that the right of the Lords to omit a clause which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a Bill which they could not amend without an infraction of the privileges of the Commons.

Here are two very instructive passages upon the subject which I felt bound to put before the Convention by way of illustration. I am alive to the danger and difficulties of dealing with this subject, as it stands in the Bill, and I propose to amend the Bill. But there are dangers and difficulties whatever way we deal with the subject. The question is, which is the right way to deal with it, which is the way that in its tendency is, on the one hand, calculated to maintain and further the principle of responsible government, and, upon the other hand, not calculated to take away any responsible independence from a Second Chamber situated as the Senate will be situated—a Chamber which will be, not merely an Upper House, but a body created for the purpose of maintaining the rights and interests of the states, and elected upon a suffrage precisely the same as that of the House of Representatives. Considering all these matters, there seems to be great difficulty. In the first place, by this Constitution the Senate is protected—that is to say, the people whom the Senate represents are protected, because that is the right way to put it—from the danger of any such action as took place in connexion with the repeal of the Paper Duties. On the other hand, if my amendment is accepted, there will be a danger, or a risk—and we have to count the risks and the cost in all these cases—of the Senate being enabled to amend, by way of the omission of clauses, matters which are separable from the general objects of a Bill, and therefore, have not been regarded as between the two Houses of the Imperial Parliament as an object of the assertion of privileges by the Commons when the Lords have exerted their power of rejection.

Mr. ISAACS. -

A Bill which the Lords were otherwise entitled to amend is the expression.

Mr. BARTON. -

The honorable and learned member is referring to the last passage I read. It is still to be remembered that any loss which the Senate might be held to suffer by the operation of the amendment which I have proposed must be
read in relation to the passage—of course, only so far as it applies—which I have cited. And if it is read in that relation, then the operation of the amendment which I have proposed would not prevent the amendment, if the Bill has not these separable clauses in it, except to the extent that the Constitution, as it is proposed, in this first sub-section prevents any addition to a law imposing taxation at all—that is to say, a law which deals with the imposition of taxation only. If my amendment is adopted, it deals with taxation and machinery. If honorable members will refer to the last passage I cited from May they will see that whatever may happen under sub-section (1), and under the amendment I suggest, if it be carried, the case raised from page 551 of May is not really involved, because the passage relates to the inclusion in Money Bills of clauses which are separable from the general objects of those Money Bills, and which, if they were proposed, the House of Lords could not amend. That does not apply to machinery which is for the collection of taxation. That is not in the same category as is laid down in May, because the passage cited relates wholly to clauses which are separable, and are separable because they can be read independently of the general object of Money Bills. The I wish, if I may be permitted to do so, in order to make matters clearer as to what Mr. Symon has said, to refer to a passage in the Adelaide debates. I wish to make a short reference for the purpose of showing that in dealing with this question in Adelaide I treated the right to impose taxation as including the right to include in the Bill the necessary machinery for the imposition of a tax. On page 576 of the Adelaide debates, I am reported as follows:-

The question whether a law on the face of it exceeds the constitutional power as dealing with more than the imposition of taxation, dealing with more than the laying on of a tax and the machinery necessary for it, or whether it deals with two subjects of taxation at once, unless it is a customs law, that question, and also the question whether the annual Appropriation Act deals with more than the ordinary annual services of the year, seem to me to be deeply rooted in the Constitution and depend not merely upon the questions of relations of the Houses inter se, but on much larger considerations. For that reason the word used has been "laws," so that the Federal High Court may deal with them, and, if they infringe those principles, declare them unconstitutional. But where th

I might multiply quotations on this subject, but what I intended in Adelaide was what I intend to impress here, and that is, I understood this clause in Adelaide—and I am not sure that I was wrong as a matter of construction—to import, when it gave the power to impose taxation, the
power to legislate for the machinery without which the taxation could not be effective. If it was not for the strong words in this sub-section which go on to say that the law shall deal with the imposition of taxation only I should be inclined to adhere to that opinion now; but I have always understood this matter to include the right to impose the taxation, and, so long as the matter dealt with taxation only, the right to give also the necessary machinery for the collection of the tax. That is all I desire to convey by my amendment. I am desirous to convey now that which I asserted and believed to be the meaning of the whole provision in Adelaide, and speaking as I did on that occasion in objection to amendments which seemed to me to be rather calculated to unnecessarily cut down the position of the Senate in the Constitution-speaking as I did, I think with the approval of a large number of those who desire that the Senate should not be an unconsidered factor in the Commonwealth, I do not find that the position which I took up then was objected to by any honorable member, from which I conclude that the amendment I propose now, which is merely an explanation of the position I took up then, which simply carries into force, if it is carried at all, the meaning that I attributed to the words then, is entirely in consonance with what those who seemed to approve of what I said then were ready to accept. I do not agree with my learned friend (Mr. Symon), whose opinion I very much value, that this is a reopening of matters. I do not wish to do anything which may mean the ripping up of that which I have always considered to be a reasonable understanding with relation to federation, with relation to the powers as to Money Bills. It stood in 1891; it stood in Adelaide; it was not disturbed in Sydney; and I mean, so far as my efforts will extend, that it shall stand now. All I am endeavouring to do is to attribute a meaning to words in this Constitution, which I believed in Adelaide-and I explained my belief as I have read-that they did convey, which I am inclined to believe now they do convey, without a special explanation; but as to which I am in serious doubt, because of the very strong express nature of the words "shall deal with the imposition of taxation only." It is in order to remove that doubt, and for that purpose only, that I wish these words to be inserted, and I really do believe that the insertion of the words will carry out the real spirit of the understanding of 1891.

Mr. Reid (New South Wales). -

I have been thinking over this matter, to see if I could not make a suggestion which probably would meet with the approval of all parties. I would like to read a proposal which I think would get us out of all these
difficulties, in not only one or two, but three, of these sub sections. I would suggest, at the end of this clause, the insertion of the following proviso, whose wording no doubt the Drafting Committee will improve if it is passed:-

Provided that if any such law shall be found to violate this provision it shall not therefore be declared to have been illegally passed; but the part of the law found to be in fault as beyond the powers contained in the section may be declared to be null and void.

Mr. WISE. -

No laws are declared wholly invalid by the Supreme Court.

Mr. REID. -

I think my friends on the Drafting Committee will not take that view. The whole of the discussion has gone on the general assent that the effect would be to declare the whole law null and void.

Mr. ISAACS. -

How would you apply that to a case where two taxes were in the one Bill? Which tax would be preserved?

Mr. REID. -

That is the difficulty.

Sir GEORGE TURNER. -

That is not the point we are discussing now.

Mr. REID. -

I have been out of the chamber, and perhaps some other point has arisen.

Sir GEORGE TURNER. -

We are discussing the question of collecting the tax.

Mr. OCONNOR. -

The point is whether the machinery and the tax should be put into one Bill.

Mr. REID. -

It is clear on these words that the machinery cannot go into a Taxation Bill.

Sir GEORGE TURNER. -

The leader has moved an amendment to put in "imposition and collection."

Mr. REID. -

Then the Senate would have no power of amendment over the provisions of the Bill.

Sir GEORGE TURNER. -

Not the machinery clauses.

Mr. REID. -

With all my views about the two Houses, I would never wish to put the
Senate in that position. In New South Wales, as my friends will recollect, although I was supposed at the time to be on very strained terms with our Upper House, I put the taxes in short Bills, dealing only with the taxes, and put the machinery in a Bill which was open to amendment.

Mr. DEAKIN. -
How much of your tax did you lose by that?

Mr. REID. -
A great deal.

Mr. DEAKIN. -
20 to 30 per cent.

Mr. REID. -
No doubt, but it does not follow at all from that that we wish to take away anything we have given in this matter. I do not. I have clearly understood that the machinery of these matters should be open to the consideration of the two Houses. I have always read the Bill in that light, and I do not wish to alter that reading.

Mr. BARTON. -
I do.

Mr. REID. -
I am in sympathy with my honorable friend; I would like to see it altered, but I do not expect it to be altered.

An HONORABLE MEMBER. -
You are reversing the position.

Mr. REID. -
Don't fancy that I would not accept it with joy. There are plenty of things I would accept with joy which I have given up any hope of getting, therefore, I am not going to waste time over them. If we can get my honorable friend round with us, we will make grand assault on some of these fossilized notions in this Bill.

Mr. BARTON. -
The time is past for making a Christmas pudding for you and me.

Mr. REID. -
I am very sorry that I obtruded this proviso at the present moment, because I see we are on another point. When we have got rid of this point, I think it will be advisable to provide that there should not be annulling of the whole law because of any one point or another which is defective.

Mr. WISE. -
I do not think you will find it necessary.
Mr. REID. -

I know that the whole discussion has gone on the assumption that the whole law would be annulled. I shall be perfectly satisfied to leave it to the other consideration if any good authority can be given; but I am afraid that under these words the court would have to annul the law.

Mr. HOLDER (South Australia). -

I do not propose to be a party to diminish the power of the Senate or to withdraw from its right of review and amendment any measure which at present it would have the right to review and amend. At the same time, I want to point out that the difficulty we are in is of our own creation. We have distinctly, by vote to-day, determined that rather than trust our fellow colonists, rather than trust the two Houses of the Parliament we propose to constitute, we shall fly in every dispute to the High Court. It is simply an intolerable position, to my mind, that on every trifling detail, on every technical flaw, we shall fly to the High Court.

The CHAIRMAN. -

I do not think the honorable member is in order in reflecting on a vote of the committee.

Mr. HOLDER. -

I do not want to reflect on a vote of the committee; but I simply want to point out what the consequences of the vote are, so that I may with more effectiveness make a suggestion which I think we must adopt to get over a difficulty I see. It seems to me we are willing rather to hand over the interests of our respective states to the High Court, with all its technicalities and all its legalities, than to hand over the determination of these questions to the Federal Parliament. I want to ask honorable members whether they want to go this far, to say, if the court may go and upset on technical issues any Acts which the two Houses have passed, and the Governor-General has assented to, that the right to upset these laws shall not be a right open for all time? I can fancy the Federal Treasurer being almost unable to sleep with this thing like a nightmare hanging over him.

Mr. BARTON. -

We do not want to pass a Constitution as a cure for insomnia.

Mr. HOLDER. -

We do not want to pass a Constitution which will take sleep away from any man, or create a perpetual nightmare. I have already said that, in the opinion of many persons outside, the High Court is already like a nightmare over all these things. From day to day, in matters which we can easily remove from its path and place under the Parliament, we are adding to the authority of the High Court. We are placing ourselves more entirely in its power. I wish to suggest to Mr. Barton that the least we should do is
to add to the clause a proviso declaring that after a certain time-I should think, twelve months-an Act shall not be disputable on any of the grounds mentioned in this clause. Then though we should have twelve months' uncertainty-twelve months' possibility of all sorts of difficulties-still, at the end of that period there would be an end to the uncertainty. But, as the clause stands now, for ever and ever we shall have the possibility of laws which have been acted on upset. If we do nothing else we should, at least, insert some amendment which will put a limit to this possibility of upsetting all the financial and other arrangements of the Commonwealth in the way which is now possible.

Question-That the words "and collection" proposed to be inserted in subsection (1), clause 55, be so inserted-put.

The committee divided-
Ayes ... ... ... ... 16
Noes ... ... ... ... 26
Majority against the amendment 10
AYES.
Abbott, Sir J.P. Quick, Dr. J.
Berry, Sir G. Reid, G.H.
Brunker, J.N. Trenwith, W.A.
Deakin, A. Turner, Sir G.
Higgins, H.B. Walker, J.T.
Isaacs, I.A. Wise, B.R.
Kingston, C.C.
O'Connor, R.E. Teller.
Peacock, A.J. Barton, E.
NOES.
Braddon, Sir E.N.C. Hassell, A.Y
Briggs, H. Holder, F.W.
Brown, N.J. Howe, J.H.
Clarke, M.J. Leake, G.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Crowder, F.T. Lewis, N.E.
Dobson, H. McMillan, W.
Douglas, A. Moore, W.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Venn, H.W.
Fysh, Sir P.O. Zeal, Sir W.A.
Glynn, P.M.
Grant, C.H. Teller.
Hackett, J. W. Symon, J.H.

Question so resolved in the negative. Sub-section (1) was agreed to.

Clause 55, sub-section (2). - Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Mr. ISAACS (Victoria). -

I do not know whether it is worth while, after the last division, moving the insertion of the word "proposed" before the word "laws" in this sub-section. However, I shall move it, but in view of the vote we have just taken I will be content to have it decided on the voices. Still, I will not pass it without notice. I therefore beg to move-

That the word "proposed" be inserted before the word "laws."

The CHAIRMAN. -

Is not that substantially the same question as we have already decided?

Mr. ISAACS. -

If that is your opinion, sir, I will accept your ruling.

Mr. BARTON (New South Wales). -

I submit that it is not the same question, because it really amounts to this- I think that I ought to make this statement in fairness to Mr. Isaacs' contention-In the first amendment Mr. Isaacs proposed that Taxation Bills should deal with the imposition of taxation only. He now proposes that Tax Bills shall deal with one subject of taxation only. I think that is, a different question.

The amendment was negatived.

Mr. DEAKIN (Victoria). -

The next amendment in this sub-section needs but one or two remarks, inasmuch as it has been clearly placed before the Convention at an early stage. The amendments I ask the Convention to make are intended to have the effect of removing the separability which is here required between laws dealing with customs and laws dealing with excise. It appears to me, for reasons already given, that questions of excise cannot be effectively dealt with except in connexion with duties of customs, when goods subject to duties of customs are the subjects of excise. And it seems to me, whether the Tariff be protectionist or free-trade, that the Parliament of the Federal Commonwealth should be able to embrace both excise and customs in the same Bill. That is the practice which has always been followed in Victoria; although it has not been invariably followed in other colonies. Duties of excise should be linked with duties of customs as inseparable parts of one
policy. They could no more be properly dealt with apart than a bird could fly with one wing. It is absolutely necessary that they should be allied, and they can only be effectively imposed if they are included in the same measure. My amendment will provide that the Federal Treasurer, when proposing duties of customs, may also propose duties of excise.

Mr. DOBSON. -

Seeing that the question of excise on sugar is so complicated, would it not be better to deal with it separately?

Mr. DEAKIN. -

There would be nothing to prevent the Federal Treasurer dealing with excise separately if he chose, but what I ask the Convention to do is to remove the prohibition that rests on the Treasurer against dealing with any duty of excise in a measure imposing duties of customs. He could at any time introduce a separate measure, but he should not be absolutely prohibited from following what, as a matter of fact, is our rule of linking customs and excise together. As a rule, they cannot properly be dealt with apart. I think that the Convention is seised of the practical import of this amendment, and trust that it will be accepted, inasmuch as it will not deprive the Senate of any of its powers, whilst it will afford a guarantee to the Federal Treasurer that his policy will be either accepted or rejected as a whole, and not mutilated or distorted beyond all recognition.

Mr. DOBSON. -

What is your amendment?

Mr. DEAKIN. -

It is to omit, after "customs," in sub-section (2), the words "or of," and to insert the word "and"; to insert, after "customs," wherever it occurs, the words "and excise," and to omit line 6. The sub-section will then read as follows:-

Laws imposing taxation, except laws imposing duties of customs and excise, shall deal with one subject of taxation only; but laws imposing duties of customs, and excise shall deal with duties of customs and excise only.

The prohibition is retained that all laws imposing taxation shall deal with one subject of taxation only, but with this exception, that duties of customs and excise may be included in the same measure. I beg to move, first-

That the words "or of" be omitted, with a view to the substitution of "and."

Mr. BARTON (New South Wales). -

It is as well to refer to the 1891 Bill occasionally, so that we may know
where we started. In that Bill this sub-section read: "Laws imposing duties of customs on imports shall deal with one subject of taxation only." In Adelaide, therefore, the proposal was that as many subjects of customs taxation as necessary might be included in the one Bill, but that whether the Bill was for excise or for any other purpose the specific subjects of taxation should each be confined to a separate Bill. It was seen that that proposal was cumbersome and inconvenient. Then we adopted this proposal: That all laws imposing taxation, unless they were Customs or Excise Bills, should deal with one subject of taxation only. Having excepted Customs and Excise Bills from the operation of the clause up to that point, it was further provided that Customs Bills should deal with customs duties only, and that Excise Bills should deal with excised duties only. That is the proposal as it stands now, and Mr. Deakin wishes to alter it so as to make it read that Taxation Bills, excepting laws imposing customs and excise duties, should deal with one subject of taxation only, and that Taxation Bills imposing duties of customs and excise should deal with customs and excise only. I think we should have to consider the matter a little before we assented to the amendment. There is some danger about it. I agree that the 1891 provision was cumbersome and inconvenient.

Mr. DEAKIN. -

This has been the Victorian practice ever since the foundation of the colony, and it has never created any difficulty.

Mr. BARTON. -

The honorable member mentioned that in Adelaide, when we made the amendment. I think the subsection, it stands now, sub-section (2), was the result of an amendment proposed by him, modified on the suggestion of others.

Mr. DEAKIN. -

That is so.

Mr. BARTON. -

It represents the view the honorable member then held, modified to meet the suggestions that were then made.

Mr. DEAKIN. -

That was as far as I could get in Adelaide.

Mr. BARTON. -

I think it would be rather difficult to limit the clause in the way the honorable member suggests. We are dealing now with the validity of laws. We have rejected the proposal to alter "laws" to "Bills" or "proposed laws." We are now simply dealing with the validity of laws, and by this amendment we should be making laws invalid if they dealt with more than
one subject of taxation, unless they were laws imposing both duties of
customs and excise.

Sir GEORGE TURNER. -

That is not Mr. Deakin's intention, and the wording of the amendment
would not do.

Mr. BARTON. -

I have a doubt whether he intended that, but I wanted to point out the
misconception to which the amendment was exposed. If it were adopted,
taxation laws would have to deal with one subject of taxation only, with
the exception of laws which dealt with both customs and excise. If a law
dealt with customs singly or excise singly, it would be bad.

Mr. KINGSTON. -

Supposing you made it read in this way:-"shall deal with one subject of
taxation only, but duties of customs and excise may be imposed by the
same law."

Mr. BARTON. -

I think that would be a preferable amendment. In Adelaide we allowed
any number of articles subject to customs duties to be dealt with in the one
Bill, and any number of articles subject to excise duties to be dealt with in
the one Bill; but we provided that these two classes of Bills should be kept
separate. Reverting to the 1891 Bill, wherever you find excise mentioned,
apart from the corresponding clause, you will find it was confined to
articles subject to customs duties. So that the restriction imposed in that
Bill in reference to excise does not occur in this Bill, because in Adelaide
we came to the conclusion that the excise should not be limited to customs
articles, inasmuch as a Parliament representing free men should impose an
excise on anything it pleased, even if it had not imposed a customs duty. I
only wish to recall the position in Adelaide. The difficulty that presents
itself is this: There may be a meaning in my friend's amendment, not that
he intends it, which will make it necessary to put duties of excise and
customs into one Bill. We and he do not want that.

Mr. DEAKIN. -

I have altered the amendment.

Mr. BARTON. -

Apart from that, are we sufficiently advised to depart from what we did
in Adelaide? What we did there simply amounts to this: You may put all
your customs duties in one Bill, and your excise duties in another. The
argument proceeded that both Houses ought to be given an opportunity of
dealing with the subject of customs and excise separately, for the reason
that there might be men in both Houses who would agree with the customs
and be against the excise, or be in favour of most of the customs and be
against several of the excise duties. The question was really whether it might not be disastrous to the financial policy of the Government to put the measure into such a form as not to be capable of amendment, but must be rejected at a time when circumstances demanded an integral financial policy on the part of the Government. If my honorable friend's amendment is adopted we are in that danger again. If we are bound to put all these subjects or are at lib

chance to the Government and the House in which the Bills first passed, to have such a proportion carried as would substantially represent the financial policy of the Government.

Sir GEORGE TURNER. -

Is not that dictating the financial policy of the Government?

Mr. BARTON. -

It is not dictating the financial policy of the Government, but it is preventing-

Mr. SYMON. -

Its failure.

Mr. BARTON. -

The failure of the financial policy of the Government; but it might prevent an indirect or arrogant policy of that kind by the operation of one House alone.

Mr. KINGSTON. -

Do you want to protect an arrogant Government against itself?

Mr. BARTON. -

I wish, my friend would ask me something easier than that. I certainly do not wish to protect an arrogant Government against anything, but there are times when an arrogant Government has to be protected against what was formerly its majority.

Mr. HIGGINS. -

Mr. Deakin says you cannot impose an import duty on spirits unless you know what the excise is to be.

Mr. BARTON. -

Mr. Deakin says you are in the dark as to the import duties unless you know the corresponding excise duties.

Mr. REID. -

That cannot apply to the Senate, because they do not know what you put on by way of excise.

Mr. BARTON. -

I do not think it amounts to a very serious drawback, if I may use such a phrase in connexion with customs, because the financial policy of the
Government is announced when the Budget is brought down.

Mr. HIGGINS. -

A Government does not always adhere to the Budget.

Mr. BARTON (New South Wales). -

If the Government stick to their work the House will know what is intended. Members will know, when they vote for a particular Bill, by what excise it is intended to balance the customs duties. What you have to take into account in all these matters is the net result. The net result, if you put the matter in such a position as to invite dissension-I ought not to say invite dissension, perhaps, because it is a strong term, but so as to make dissension between the Houses - is likely to be a disturbance of the finances of the Government, unless the more cumbrous method of an appeal to the people is resorted to. On the other hand, the net result is likely to be a substantial gain, if the separation we agreed to in Adelaide is adhered to. On the whole, inasmuch as the real object of the clause is to prevent dead-locks from improper association or improper tacking, it is the more important that we should take care that there shall not be that tacking of Appropriation Bills. So long as we give reasonable liberty to both Houses within the limits of the law, the more careful we are to separate these two subjects, the more likely we are to prevent dissensions between the Houses. We all know, and our Victorian friends especially know, how very dangerous it is to multiply any cause of prolonged deadlocks. We do not want them; we want to provide against them.

Mr. WISE (New South Wales). -

I do not know whether Mr. Barton will accept that amendment. If I regarded the amendment of Mr. Deakin as a limitation on the powers of the Ministry, I should take the view of Mr. Barton, and oppose it; but it appears to me to be an extension of the Ministerial authority, because it enables the Ministry to introduce their financial policy either as a whole or in parts, and they will know beforehand what reception their policy is likely to meet. If their policy is not received as a whole, the Ministry can withdraw it, and introduce the same proposals in two Bills, so that the dangers anticipated by Mr. Barton of the financial policy being upset by a part being rejected and another part being accepted, are dispelled. There is, however, a more important reason why the amendment ought to be supported, though I do not apprehend that this was the view of Mr. Deakin in proposing it. If the amendment is not introduced, then, to a certain extent, the financial policy of the Commonwealth is dictated by the Constitution. There are a few of us liberals who believe that the customs duties should be as few and as light as possible. We liberals also believe
that there should be very few customs duties imposed without corresponding duties of excise.

Mr. SYMON. -

I am glad to hear you put it in that way—We liberals.

Mr. WISE. -

And, as liberals, we ask our friends in Victoria, who all represent one view in politics, to allow us the same opportunity of framing our financial policy in accordance with the doctrines of freedom. We believe that the policy of the Commonwealth should be to have very few customs duties, balanced by corresponding duties of excise, and I would only ask that my friend Mr. Deakin, who, I hope, will be the Federal Treasurer when he is converted from his conservative views on finance—

Mr. DEAKIN. -

I may be the Treasurer then, but not before.

Mr. WISE. -

I only ask that there may be an opportunity to deal with the financial policy as a whole. A Ministry would be seriously embarrassed by one part of a measure being accepted, and another being rejected. It might be an embarrassment quite as great, and in fact it might inflict far greater embarrassment on the Government, to have a portion of one Bill thrown out, which would give them the option of introducing the measure again in two separate Bills, than it would be to have one of the Bills carried and the other abandoned. I hope the amendment will be accepted as giving greater freedom to the Ministry and enabling the Ministry to introduce greater freedom into the Commonwealth.

Mr. SYMON (South Australia). -

I think it will, as I have altered it; but surely that is not the question at this stage.

Mr. SYMON. -

I was going to point out that the amendment, in order to carry out my honorable friends idea, would come in in the latter part of the clause. On the matter of substance, I do not take the same view as Mr. Wise. Whilst he puts it on the ground that it would give greater freedom to a Ministry in order to advance the liberal policy in which my honorable friend and myself so closely coincide, it would, at the same time, as he will see, greatly limit the power of the Senate to express any opinion whatever upon that policy. The object of this sub-section is to sever the two subjects of taxation, customs and excise, in order not to paralyze the Senate, but to give the Senate some voice, within the limits of the Constitution, on these two important subjects. If we alter that and say that both these very important matters of vital interest to the people and the Commonwealth
may be compulsorily included by the Ministry at any time in one measure, you immediately withdraw from the Senate the consideration of either one or the other.

Mr. WISE. -

That argument does not weigh with me, because I hold that the Ministry ought to be able to dictate the policy.

Mr. SYMON. -

So it should, but, as Mr. Barton has pointed out, the Excise generally follows the Customs. You first deal with the Customs, and then the Excise follow upon the same lines. This might operate very grievously in the case of Queensland, where the sugar duty is of the highest importance. It might be a matter of the highest consequence that they should have in the Senate, where there is equal representation, an opportunity of dealing with that subject alone, rather than that it should be complicated and mixed up in the Tariff Bill. This is another thing which we settled in Adelaide, and we ought not to interfere with it now, because it re-opens the question of the relations between the two Houses.

Mr. MCMILLAN (New South Wales). -

I think Mr. Symon is not quite correct in his historic reference. I think what we felt in Adelaide was that we ought not to have any hard-and-fast rule by which these two Bills, Customs and Excise, should go together, but I think the alternative proposal of Mr. Deakin gives that permission, if the Ministry of the day consider it better to put them together, as, no doubt, there is a natural relationship between those two Bills, which, under ordinary circumstances, cannot be dissevered. On the other hand, in dealing with a very powerful body like the Senate, it might be politic on the part of the Ministry, in order not to estrange the Senate from its taxation proposals, to send up two Bills instead of one. All that we insisted upon in Adelaide was to give the fullest flexibility to the Ministry in dealing with the matter. I do not see any financial objection to it, and the permissive character of the proposal renders it acceptable.

Mr. DEAKIN (Victoria). -

I wish to ask leave to withdraw the amendment as first moved, with the object of moving it so as to make the clause read as follows:-

Laws imposing taxation, except laws imposing duties of customs or of excise, or of customs and excise, shall deal with one subject of taxation only; but laws imposing duties of customs or of excise, or of customs and excise, shall deal with duties of customs or of excise or of customs and excise only.
I have put it in this form so as to place the meaning beyond question.
Mr. Deakin's amendment was, by leave, withdrawn, with the view of being moved again in the amended form indicated.

The CHAIRMAN. -

I will put Mr. Deakin's new amendment in this form—to insert after "excise," in the second line of the sub-section, the words "or of customs and excise."

Question—That the words proposed to be inserted be so inserted—put.
The committee divided—
Ayes ... ... ... ... 19
Noes ... ... ... ... 20
Majority against the amendment 1

AYES.
Abbott, Sir J.P. McMillan, W.
Brown, N.J. Peacock, A.J.
Brunker, J.N. Quick, Dr. J.
Fysh, Sir P.O. Reid, G.H
Glynn, P.M. Trenwith, W.A.
Higgins, H.B. Turner, Sir G.
Holder, F.W. Walker, J.T.
Isaacs, I.A. Wise, B.R.
Kingston, C.C. Teller.
Lewis, N.E. Deakin, A.

NOES.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Leake, G.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Crowder, F.T. Moore, W.
Dobson, H. O' Connor, R.E.
Douglas, A. Symon, J.H.

Forrest, Sir J. Zeal, Sir W.A.
Grant, C.H.
Hackett, J.W. Teller.
Hassell, A.Y. Barton, E.
Question so resolved in the negative.
The sub-section was agreed to.

Sub-section (3). - The law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Mr. ISAACS (Victoria). -
This sub-section, I think, presents features differing from those of either of the preceding subsections. I therefore beg to move-

That the word "proposed" be inserted before the word "law."

I have no arguments to offer beyond those which I expressed at an earlier hour of the sitting.

Mr. MCMILLAN (New South Wales). -

I shall vote for the amendment unless some better proposal is brought forward. As I said before, I see an infinite difference between sub-sections (1) and (2) and sub-section (3). It seems to me, however, that the end sought to be achieved could be arrived at by striking out the word ordinary. That, I think, is very unfortunate word use. We all know that for the services of the year there are often extraordinary charges to be met. Calamities, such as the bush fires which have recently occurred in Tasmania and Victoria, take place, and the expenditure which they necessitate is of an extraordinary character. I cannot understand how any quibble could arise if we simply spoke of the annual services of the year. That would include every item of expenditure, except something so glaringly unjust as to appeal to the national conscience.

Mr. ISAACS. -

I should hope that the expenditure caused by a bush fire would not be part of an annual service.

Mr. MCMILLAN. -

Would it not into the Appropriation Bill?

Mr. ISAACS. -

Yes; but not as an annual service.

Mr. MCMILLAN. -

The annual services of the Government are those which we distinguish from special grants and from loan services. The difficulty is that we have got rid of the phraseology to which we are accustomed, and instead of the words Appropriation Bill, we are using the word law.

Mr. ISAACS. -

A difficulty arises in connexion with the honorable members proposal to place expenditure incurred for bush fires in the ordinary, it would not be annual, and it would not be a service.

Mr. MCMILLAN. -

Then I shall vote for the best proposal to avoid sending these matters to the High Court.

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

The committee divided-
Ayes ... ... ... 23
Noes ... ... ... 15
Majority for the amendment 8
AYES.
Brunker, J.N. O'Connor, R.E.
Crowder, F.T. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Dobson, H. Reid, G.H
Forrest, Sir J. Symon, J.H.
Glynn, P.M. Trenwith, W.A.
Hackett, J.W. Turner, Sir G.
Higgins, H.B. Walker, J.T.
Holder, F.W. Wise, B.R.
Kingston, C.C. Zeal, Sir W.A.
Leake, G. Teller.
McMillan, W. Isaacs, I.A.
NOES.
Abbott, Sir J.P. Hassell, A.Y.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Cockburn, Dr. J.A. Moore, W.
Douglas, A. Venn, H.W.
Downer, Sir J. W. Teller.
Grant, C.H. Barton, E.
Question so resolved in the affirmative.
The CHAIRMAN. -
The question now is that sub-section (3), as amended, stand part of the clause.
Mr. BARTON (New South Wales). -
It might have been expected by several honorable members who were with me in regard to the amendment I intended to propose, and which I mentioned at an earlier stage, that I should propose it now. But, inasmuch as the matter is left as a mere matter or procedure, I am not at all sure that I shall proceed with my amendment. The effect of it would be to make the sub-section read in this way:-

The law which appropriates revenue for or in connexion with the maintenance or extension under this Constitution of public departments or services of the Commonwealth shall deal only with such appropriation.

I thought that this would get rid of that indefiniteness in the clause which was relied upon by the supporters of the word proposed as an argument in
favour of it. But I would like to intimate that, while I intended to propose this amendment if that of Mr. Isaacs had not been carried, I do not feel inclined to propose it now.

Mr. DEAKIN (Victoria). -

Then, sir, I beg to propose the amendment. It seems to me to get rid of an unfortunate ambiguity which attaches to the phrase ordinary annual services of the Government," without introducing any new element of doubt. The ordinary expenditure of the year covers the expenditure of the various departments of the Commonwealth; but difficult questions may arise as to what is ordinary and what is annual expenditure.

Mr. REID. -

Would not this limit the Bill very much?

Mr. DEAKIN. -

It may be taken as a limitation, but it undoubtedly expresses in plain terms the real nature of an ordinary appropriation of the year. I admit the limitation, but would consent to it in order to get rid of the unsatisfactory nature of the present phraseology.

Mr. MCMILLAN. -

You are trying to define what you cannot define.

Mr. BARTON. -

"In connexion with" is a very large term.

Mr. DEAKIN. -

It is, but it appears to me to cover our ordinary appropriations. Of course, I see that if the word "ordinary" is left out, as suggested by Mr. McMillan, that removes one very ambiguous expression from the existing clause, but as a mere question of drafting these words appear to me infinitely superior to the words of the clause.

The CHAIRMAN. -

It is proposed-

That after the word "revenue," the words or moneys for the ordinary annual services of the Government" be omitted, and that the words "for or in connexion with the maintenance or extension under this Constitution of public departments or services of the Commonwealth" be substituted.

Mr. DEAKIN (Victoria). -

I will ask, sir, for the amendment to be put by way of insertion.

The CHAIRMAN. -

Very well.

Mr. KINGSTON (South Australia). -

Under this provision we are trying to draw a very important distinction between matters affecting proposed laws and matters which shall affect
laws that have been assented to by the Governor-General; and I would like to ask the attention of the leader of the Convention, and of the Drafting Committee in particular, as to whether we are, in effect, making that distinction clear? Under clause 54 matters may be cured by the Governor's assent, which in clause 55, where the words "proposed laws" are not introduced, will be fatal. I suggest that this contention rests altogether on too slender a foundation and too attenuated a distinction. I should think that if the Attorney-General has in the ordinary course been called upon to advise the Executive with reference to the Governor's assent, it will be impossible for him to advise that that assent shall be given to Bills which are then before him, and which will come under the definition of laws contravening the provisions of the clause. To suggest that the chief law officer of the Commonwealth, under such circumstances, will altogether disregard the plain provisions of the Constitution, and advise the Governor-General, notwithstanding non-compliance with the provisions referred to, to give the Royal assent, seems to me to be contending for a position which is very difficult indeed to maintain. I trust that, if we intend to draw this distinction, we shall draw it in the clearest possible terms, and I ask the leader of the Convention if he is satisfied that the words which are to be found in the Bill are sufficient for the purpose, and whether some further steps ought not to be taken for making what we intend perfectly clear within the four corners of the Bill?

Mr. BARTON. -

As to the meaning of "ordinary annual services"?

Mr. KINGSTON. -

No; I am speaking to the question whether the distinction is properly drawn between a "proposed law" and a law, and as to whether it would be competent for the Attorney-General of the day, when a Bill is placed before him which fails to comply with the conditions with reference to proposed laws, to advise the giving of the vice-regal assent? I do not think the Attorney-General would be acting in accordance with his duty in giving any such advice, and therefore the distinction we have attempted to draw would utterly fail. If the leader of the Convention desires that that distinction shall be maintained, a further distinction is necessary, and should be made accordingly.

The CHAIRMAN. -

The proposed insertion in this sub-section only refers to "proposed laws."

Mr. KINGSTON (South Australia). -

But we have not yet adopted the sub-section as amended, and I am suggesting to the leader of the Convention that he might consider what is
the effect of inserting the word "proposed" Does it enable the vice-regal assent to be given to laws which do not comply with the provisions of the clause I have referred to?

Mr. BARTON (New South Wales). -
I understand my right honorable friend to be in some doubt as to whether this language is not loaded.

Mr. ISAACCS. -
He does not think it will "go off."

Mr. BARTON. -
There is a good deal to lead one to assume that it may have some effect of that kind, and that the language used as to a proposed law might possibly be held to apply to a law when passed. I am not expressing an opinion myself, but the position was previously put by Sir John Downer. I must admit that even under the stimulus of a heavy fee I should not be able to give a very direct opinion upon the point at once.

Mr. KINGSTON. -
Ought we not to make it clear?

Mr. BARTON. -
I think every legal member will share the difficulty I am in. I will undertake, as my honorable friend asks me, to consider the point. Of course there will be another stage at which the Drafting Committee will have to have its fling; but I must admit that I do not see, at the present moment, any easy way of curing the difficulty. I think there will be an ambiguity created. I suppose, under its decision, I am as a draftsman to take it that the Convention intended to deal simply with Bills as matters of procedure, and not to impose any restriction on the effect of Bills when carried into law?

HONORABLE MEMBERS. -
Hear, hear.

Mr. BARTON. -
I shall endeavour, of course, loyally to interpret the determination of the Convention in that way.

Mr. KINGSTON (South Australia). -
In order to make myself perfectly clear, this is the question which I would ask the Convention to consider: We have adopted a provision as to certain requisites in case of proposed laws. Suppose these requisites are not complied with in the case of the Appropriation Bill, and it is passed by both Houses, and is presented for the vice-regal assent, the first question is: Would the Law officers of the Crown be justified, notwithstanding that noncompliance, in recommending the Bill for the vice-regal assent? Of course, if they were not so justified then the assent would not be given, and
there would be an end of it, but, even assuming that they were justified, or that they gave the advice, and the assent was given, would the assent cure any defects which might otherwise prevail on account of the noncompliance with the provisions? Would the assent in such a case give validity by turning an unconstitutional Bill into a constitutional Act? I would suggest, in order to make it perfectly clear, that this proviso might be added:-

But the proposed law shall not be invalid by reason only of non-compliance with this subsection.

Mr. ISAACS. -
"But the law," not "the proposed law."

Mr. DEAKIN (Victoria). -
In view of the very important statement made by Mr. Barton, and its acceptance all round, I am prepared to ask leave to withdraw this amendment for the present. If be considers that the present amendment which he once favoured is necessary, he will naturally make it.

Mr. BARTON (New South Wales). -
I should like to be perfectly understood about that if my honorable friend will allow me to interpose. There has been a reconsideration of the Bill, and there have been two recommittals of the Bill, so that in a broad sense this is the third reconsideration. I should like to be understood as not desiring to ask the Convention to reconsider anything beyond the present stage if I can possibly avoid it. It would take a matter of the most extreme moment to urge me to ask the Convention to enter into; another stage of recommittal.

Mr. GLYNN (South Australia). -
I would like to draw the attention of Mr. Barton to a distinction which is pointed out by Burgess, in his Studies on Constitutional Law, between the possibility of a law being ultra vires under the two preceding sub-sections and under this sub-section. He says that on the two preceding sub-sections it is open to question whether an Act would not be ultra vires owing to the junction of two classes of taxation which are prescribed by the terms of the clause. He does not say that it would be ultra vires at all, but that probably it would be ultra vires. He raises the point.

Mr. DEAKIN. -
Have you the reference?

Mr. GLYNN. -
I cannot, unfortunately, find the passage.

Mr. BARTON. -
In what connexion is Mr. Burgess writing?
Mr. GLYNN. -  
We have passed subsections (1) and (2). At page 196 of his work—it was quoted by Mr. Isaacs this morning—Burgess raises the point whether it is a political or legal matter, or whether the courts could take cognisance of the function of two matters contrary to the provisions of the section—whether, in fact, they would declare a law which joined two matters which the section says should not be joined *ultra vires*. He says he thinks the courts would be entitled to do that, because it would be a direct violation of the immunity of a citizen.

Mr. BARTON. -  
Does not that depend largely upon whether a thing which is forbidden is a law or a Bill?

Mr. GLYNN. -  
He does not draw that distinction. It is under the question of the personal immunity of citizens that he discusses the matter. He says, under subsections (1) or (2), there would be a violation of an immunity of a citizen from a certain class of taxation unless imposed in a regular manner, but under the question of appropriation he raises this distinction. He says he does not think the law would be *ultra vires* at all, because there would be such an infinitesimal injury done to a private citizen that the courts would not take any cognisance of any proceedings he might take. I refer to this matter so that it may be considered, because he says the law in America is that appropriations are not to be made for more than two years, and if the appropriations, in violation of that provision, extend to three years, they would not be for that reason *ultra vires* of the Constitution. It is an important matter. We may really be only fighting a shadow in this discussion as to whether the Appropriation Bill will be bad. Once the Bill is passed, who is to challenge it if a citizen cannot? Only the Executive Government. Surely they are not going to stop the working of the departments of State by challenging an Act which is essential to the proper working of those departments?

Mr. REID. -  
Suppose a man under a taxation law has to pay £10,000 a year, would that be considered a trivial interest in the subject?

Mr. GLYNN. -  
That would affect a Taxation Act, not an Appropriation Act.

Mr. REID. -  
I thought you referred to sub-sections (1) and (2).

Mr. GLYNN. -  
No. I say, as regards the case put by the right honorable member, the
opinion of Burgess is that it would be *ultra vires*. He says it is a moot point, but probably it would be *ultra vires*. But he most distinctly states that the Appropriation Bill, notwithstanding its violation of the terms of the Constitution, would not be *ultra vires*, because the effect of the violation upon a particular citizen, one of 3,000,000, would be so small that the courts would not interfere; you could not really assess the damage to him. What position will we, therefore, be in? A citizen cannot interfere, and the Executive Government, which wants the Act to carry on the departments of State, will not interfere. Probably the passage of a Bill contrary to the provisions of the Constitution will not result in any stoppage of the working of the departments.

**Mr. Isaacs.** -

The difference is that the American Constitution speaks of the "Bill," and this clause refers to the "law."

**Mr. Glynn.** -

The appropriation law is a Bill.

**Mr. Isaacs.** -

No.

**Mr. Glynn.** -

What else is it?

**Mr. Barton.** -

When it is a law it is not a Bill.

**Mr. Glynn.** -

Does not a proposed law mean a Bill?

**Mr. Barton.** -

An intending purchaser is not a purchaser; a proposed law is not a law.

**Mr. Glynn.** -

A proposed law is a Bill, and, according to Burgess' dictum, a Bill under the amendment, as now carried, is equivalent to a proposed law. The matter is worth looking into by the leader of the Convention.

**Mr. Higgins (Victoria).** -

Professor Burgess' inference and Statements are very interesting, but they are not business. In making a Constitution we ought to be clear, and it is not a matter for us whether Professor Burgess, on the words used in the American Constitution, is right or wrong. I have no doubt that there are very strong reasons for his statement, but I think it is our duty, if we have a mind to express a thing, to express it thoroughly.

**Dr. Cockburn.** -

But we have so many minds.

**Mr. Higgins.** -
I think if there was one thing we understood in the last division it was that if the Appropriation Bill for the ordinary annual services of the Government happened to overstep the ordinary annual services it was not to be invalidated by the courts for that reason. I think that is what we voted for. I do not want to take an amendment out of the hands of anyone, but I have begged my honorable friends who have interested themselves in the matter to take it up, and I beg them still to do it.

Mr. KINGSTON. -
Move it yourself.

Mr. BARTON. -
As time goes on I begin more and more to think that the prohibition here is one simply on a question of procedure, and that the law would still be good.

Mr. HIGGINS. -
The law, if passed, will still be good. In making this Constitution we ought to be clear, and leave nothing to the court if we can possibly help it. I shall beg the President, who has taken an interest in this subject, to move an amendment if he will do so.

Mr. KINGSTON. -
No, you move it.

Mr. HIGGINS. -
I do not want to add one iota to what we have determined, but after the last division I want to put it into plain English, so that he who runs may read. The President's suggestion is that we should add to sub-section (3) the words-
But a law shall not be invalid by reason only of non-compliance with this sub-section.
That expresses our meaning. We do not want an Appropriation Bill to be treated as in all respects absolutely invalid, because in some particulars it goes beyond the limits of this Constitution.

Mr. REID. -
I am going to propose an amendment on similar lines, which will cover the whole clause; but I am waiting until Mr. Deakin's amendment is disposed of.

Mr. HIGGINS. -
I understand that Mr. Reid intends to propose-
The prohibition contained in this section shall not extend to reader invalid any law-

The CHAIRMAN. -
Perhaps we had better
Mr. DEAKIN. -
No, not now.
Mr. HIGGINS. -
Then may I move the insertion of an amendment before Mr. Deakin's amendment is put?
The CHAIRMAN. -
Not unless Mr. Deakin withdraws his amendment.
Mr. BARTON. -
The amendment which Mr. Reid has framed and which Mr. Higgins now desires to read to the committee, will come at the end of clause 55-not at the end of this sub-section; but there is nothing to prevent Mr. Higgins from reading it.
Mr. HIGGINS. -
I should like to see Mr. Reid's amendment carried, but I am afraid it will not be. I am afraid that he is asking too much having regard to the temper of the Convention; and, therefore, it is all the more important for me to put forward the more, modest proposal submitted by Mr. Isaacs, and then by Mr. Kingston. I want to have some opportunity of having those words inserted in this clause, and I think they would come best before Mr. Deakin's amendment.
The CHAIRMAN. -
That amendment-
But a law shall not be invalid by reason only of non-compliance with this sub-section,
will come at the end of the sub-section now under consideration.
Mr. HIGGINS. -
Then I shall bow to your ruling, and I shall move that those words be added to Mr. Deakin's amendment, in order to make it perfectly clear that our meaning is that the law in question is not to be declared invalid after both Houses have approved of it.

The CHAIRMAN.-I suggest that you should move that amendment afterwards. The present proposal is to insert, after the word "revenue," the words proposed by Mr. Deakin, with a view to striking out of the sub-section the words "or for the ordinary annual services of the Government."

Mr. SYMON (South Australia). -
I hope that those words will not be inserted. They amount merely to a repetition of the words we have already got there, with many more, words added to them. If you strike out the words "ordinary annual" then you get the word "services," which expression seems to me to cover everything that is included in the amendment, and is less liable to misconstruction, because
it is embodied in fewer words. If our difficulty is "ordinary annual" services, then it will be better to get something precisely directed towards that expression than to introduce the words "for the maintenance of the public departments or services."

Mr. BARTON. -

What will you do with regard to the words-"the law which appropriates"? It is evident that only one law is intended. Which of the laws is it? There might be 50 laws.

Mr. SYMON. -

The difficulty is as to what the appropriation is to be for, and that difficulty arises because we have used an expression there that is open to ambiguity, namely, the term "ordinary."

Sir JOHN FORREST. -

Why, not leave it "annual services"?

Mr. KINGSTON. -

Or "annual appropriations"?

Mr. SYMON. -

This amendment does not seem to me to improve the sub-section; it only puts in a larger number of words.

Dr. COCKBURN (South Australia). -

These words open a very wide door. They would cover almost all the "tacks" we could possibly imagine, and yet this clause is expressly intended to prevent "tacks." From the mere point of a nucleus, you could expand a whole department, and practically make an alteration of policy, on which the House representing the people of the states would have no opportunity of expressing their views.

Mr. DEAKIN. -

Oh, yes, they would.

Dr. COCKBURN. -

How?

Mr. DEAKIN. -

They could either make suggestions or throw out the Bill.

Dr. COCKBURN. -

They could either make suggestions or throw out the Bill, and paralyze the Government. Now, we do not want to attempt an impossible thing, or to put up with a manifest injustice. The words of the amendment are so wide that they give an unfortunate opportunity for carrying out large changes of policy without consultation with the House representing the people of the states.
Mr. BARTON (New South Wales). -
I suggested the words in the amendment for the protection and maintenance of the rights of those who now object to it most violently. Under the circumstances, I shall feel compelled to vote against the amendment, as those honorable members prefer the words in the Bill rather than the words I suggested. But I warn honorable members that they are now opening a field of conflict of which nobody can foresee the results.

The amendment was negatived.

Mr. HIGGINS (Victoria). -
I beg to move-
That the following words be added to sub-section (3):-"But a law shall not be deemed invalid in any court by reason of noncompliance with this sub-section."

It will be clearly understood that I am not going one step beyond what the committee has already affirmed. I wish to confine the application of these words to sub-section (3).

Mr. REID (New South Wales). -
I think it would be more convenient if I were to move my amendment, which deals with the general prohibition.

The CHAIRMAN. -
I would point out that the committee have already decided that sub-sections (1) and (2) shall stand. We cannot negative anything to which we have agreed.

Mr. HIGGINS. -
I understand you to rule that Mr. Reid's amendment is not in order.

The CHAIRMAN. -
I have not seen it.

Mr. DOBSON. -
Does the honorable member mean his amendment to cover a deliberate and wilful infringement of the sub-section?

Mr. HIGGINS. -
You may be quite sure that the Houses would not allow a deliberate and wilful infringement of the sub-section. The law is not to be deemed invalid in any court by reason only of noncompliance with the sub-section. The Houses may refuse to permit any violation of sub-section (3). The amendment is meant primarily to apply to an ordinary case of innocent infringement, but you could not draw a line between an innocent infringement and a deliberate infringement. What I want to do is to prevent an appeal to the court upon every trivial infringement of the rule that you must have in an Appropriation Bill only the ordinary annual appropriation.

Mr. KINGSTON (South Australia). -
I said some little time ago that I did not know what would be the effect of providing that any proposed laws should comply with certain requirements under clause 54. If Mr. Higgins' amendment is accepted, and we add to sub-section (3) a declaration that non-compliance with that provision with reference to proposed laws shall not invalidate laws, I have no doubt what its effect would be in connexion with clause 54. If you do not put in that safeguard, undoubtedly the laws will be invalid. If we are going to use the term "proposed laws," and protect laws after they have been assented to, we ought to do that in all cases.

Mr. HIGGINS. -
I knew that there would have to be an incidental amendment in clause 54.

Mr. KINGSTON. -
It is better to call the attention of the Drafting Committee to the difficulty, and to ask them to deal with the whole question by a general provision.

Mr. ISAACS (Victoria). -
Do I understand that the Drafting Committee will undertake to put sub-section (3) into such a form that it will give effect to the view of the Convention?

Mr. HIGGINS. -
They have said that they will not undertake to do that.

Mr. ISAACS. -
I understood the Hon. Mr. Barton to say that he would.

Mr. REID. -
He said he would consider it, but he did not, say that he would do anything.

Mr. HIGGINS. -
He would not make any promise, because he thought the insertion of the word "proposed" would create great confusion.

Mr. DOBSON (Tasmania). -
The argument that has been submitted by the Hon. Mr. Isaacs and others has been that some item, say £500, to compensate John Brown, might creep into an annual Appropriation Bill, that this might be found out by a man in the street, and that the High Court might thereupon be asked to declare the Bill to be invalid. Mr. Higgins has now introduced an amendment, the object of which is to avoid any such disastrous consequences, but be admitted that it would apply not only to an innocent, but also to a wilful and deliberate non-compliance with the sub-section. He urges that it would be impossible to separate an innocent from a deliberate infringement. I think that he, with his ingenuity in drafting, might find
words that would make the amendment apply only to an innocent mistake. If he will do that, I shall vote for the amendment, but not otherwise.

Mr. ISAACS. -

You would then have the High Court trying, the question of the *bona fides* of both Houses of Parliament.

Mr. DOBSON. -

If it was perfectly plain that a small majority was infringing the Constitution simply in order to coerce a minority, the law should be declared invalid.

Mr. OCONNOR (New South Wales). -

There is one fatal objection to the amendment, and it has been pointed out by the Right Hon. Mr. Kingston. It is that there might be some doubt as to whether the failure to comply with these matters of procedure in subsection (3) would or would not invalidate an Act which had been assented to. I am inclined to think myself that it would not, but if there is any doubt on that point it should be removed. Look at what the effect of the amendment would be with regard to the procedure under clause 54. That clause says that proposed laws appropriating any part of the public revenue or imposing taxation shall originate in the House of Representatives, and that the Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary services of the Federal Government.

Mr. HIGGINS. -

I admitted that it would necessitate a modification of clause 54, but I cannot deal with that clause now.

Mr. OCONNOR. -

I quite see that this involves the question whether it will be proper to pass some kind of amendment of clause 54. It would not be right to pass that amendment, for the reason that clause 54 is inte

Mr. Kingston. I ask Mr. Higgins whether it would really not be better to withdraw his amendment in favour of some general declaration as to the validity or invalidity of the Bill, such as Mr. Reid is about to propose?

Dr. COCKBURN (South Australia). -

I cannot understand where we are getting. We say distinctly a thing shall not be done, and the next moment we say that the thing may be done with impunity.

Mr. REID. -

You know that our books are full of standing orders which are not subject to legal tribunals.

Dr. COCKBURN. -
I regard what is now proposed as a most absurd and direct contradiction, and all I can say is that the proceedings pass my comprehension.

The CHAIRMAN. -

I do not think the amendment is a direct contradiction, or I would not put it. A "proposed law" is a Bill, and it is proposed that a Bill which deals with revenue shall deal only with appropriation; but that when such a Bill becomes an Act it shall not be invalid because of non-compliance with the procedure under this measure. As to whether the amendment is or is not a good one, I, of course, cannot pass an opinion.

Mr. REID (New South Wales). -

My friend (Dr. Cockburn) is a Member of Parliament of many years standing, and I am astonished at the remarks he has just made. There are all sorts of standing orders passed by the Colonial Legislature providing that certain things shall not be done, but if they are done the is no pretence of a court of law coming in because they are not done. Nothing is more familiar to the student of parliamentary law or business, and yet Dr. Cockburn seems to think it is something new. It would be a calamity beyond the power of expression of the deliberate legislation of Parliament were to become the sport of every man who has a pecuniary interest or an idle interest in endeavouring to upset it. I hope Mr. Higgins will withdraw his amendment, because I intend to move a general proposition applying to the whole of the clause. I do not know that I should propose it after the whole of the clause, if a part of it is negatived.

Mr. MCMILLAN. -

Is Mr. Higgins amendment necessary to this sub-section?

Mr. REID. -

No. I do not think my friend ought to propose it.

Mr. ISAACS. -

Mr. Reid may propose to amend Mr. Higgins amendment by inserting some other words.

Mr. REID. -

I do not see that I could.

Sir GEORGE TURNER. -

You could say "by the preceding section," or something like that.

Mr. REID. -

I could not say that as to the third sub-section, if Mr. Higgins' amendment were negatived.

Sir GEORGE TURNER. -

Not if Mr. Higgins amendment were negatived.

Mr. REID. -

I am inclined to give the whole thing up as a regular muddle.
Mr. HIGGINS (Victoria). -

Before we go to a division I want to say that I have not overlooked the point the President has referred to.

Mr. BARTON (New South Wales). -

May I correct a misapprehension? I have just been told that my friend (Mr. Higgins) is under the impression that I would not endeavour to carry out the intention of the Convention by inserting the words proposed. My intimation was exactly the opposite, because I said I should do my utmost to carry out the intention of the committee. My honorable friend (Mr. Higgins) need not therefore trouble about the amendment. I will see, in considering the drafting amendments, whether it is necessary to add to the present words, which I think are effective in themselves, and such steps will be taken as will fall in with his view.

Sir JOHN DOWNER (South Australia). -

I shall distinctly oppose anything of the kind. If the intention of the committee in putting in the proposed words is, as was intended by Mr. Isaacs in moving them, to transfer to the Parliament the power which, I think, ought distinctly to lie in the High Court, I shall oppose every attempt to carry out such intention.

Mr. BARTON. -

That is the intention of the committee.

Sir JOHN DOWNER. -

I do not know that it is the intention of the committee. I do not think it was clearly understood.

Mr. BARTON. -

I think it was the committee's wicked will.

Sir JOHN DOWNER. -

I am not sure it was their wicked will. I think it was a misapprehension on the part of the committee.

Sir GEORGE TURNER. -

Let us get on.

Sir JOHN DOWNER. -

I think we are getting on, and getting on very badly. We are destroying the whole fabric we have been creating. We are proposing to add to the amendment of the Attorney-General of Victoria something which I dare say he intended, but which he certainly did not say-

Mr. ISAACS. -

Oh, I said it distinctly, and I think it is included in what we have already done.
Sir JOHN DOWNER. -
Parliament is to be the sole judge—that is the point—and we take away the whole foundation of the protection.

Mr. REID. -
What is this relevant to? There is no proposition before the Chair.

The CHAIRMAN. -
Mr. Higgins' proposition is before the Chair.

Sir JOHN DOWNER. -
There appears to be a disposition to swept Mr. Higgins amendment, but I do not accept it.

Mr. REID. -
Then is no necessity for that amendment, after Mr. Barton's explanation.

Sir JOHN DOWNER. -
With great respect, I do not accept Mr. Barton's explanation.

Mr. HIGGINS. -
I am, going to withdraw the amendment if I am allowed.

Sir JOHN DOWNER. -
Then I will not say a word more at present.

Mr. HIGGINS (Victoria). -
Having regard to the distinct intimation of the honorable leader of the Convention, I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

The sub-section, as amended, was agreed to.

Mr. REID (New South Wales). -
I beg to move—
That the following words be added at the end of the clause:—"The prohibitions contained in this section shall not extend to render invalid in a law any portion thereof which does not infringe any such prohibition."

That is to say, so far as a law is good it shall not be ruled to be bad; but any part of it that is bad may be adjudged by the court to be null and void.

A case was put to me as to a Bill that contained two subjects of taxation. Under this provision the court would rule the first to be good, and any subsequent part of it to be bad. The first subject of taxation would not infringe the rule, but any other subjects in the Bill amounting to two or three subjects would be ruled to be bad. Of course, this can be put in proper language by the Drafting Committee.

The CHAIRMAN. -
Is this not a negation of what we have already done?

Mr. REID. -
Certainly not; I do not think it can bear that construction.

Mr. BARTON (New South Wales). -
I think it is quite clear what is meant by this amendment. I do not want to speak on the merits of the matter just now, but the meaning of the amendment is that certain prohibitions are contained in the clause. There may be a law which infringes the clause in part, but the rest of it does not infringe the clause. It is intended that the part that does not infringe the clause shall not be rendered invalid by the portion which is invalid.

The CHAIRMAN. -

The clause says—Laws imposing taxation shall deal only with the imposition of taxation." According to the amendment the law might be partly valid and partly invalid.

Mr. BARTON. -

That falls in with my view, because it embodies the objection I would urge to the clause in substance. The clause provides that a Bill dealing [P.2086] starts here

with the imposition of taxation shall deal with taxation only, and that laws imposing taxation shall deal with one subject of taxation only. That is an express prohibition which would render invalid any law which controverted either of these propositions. The next amendment is that where a law by one or more provisions controverts this provision it should be valid in those portions which do not controvert the provision. I do not say at present that I am not opposed to this amendment, but the meaning is quite clear.

Mr. REID (New South Wales). -

I would point out that the clause, not having been passed, it is perfectly competent to qualify it without negating its contents. That is the ground on which I put the amendment.

The CHAIRMAN. -

There is a doubt, about it, but I do not wish to curtail the opportunity for arriving at a conclusion. I confess I cannot understand the amendment.

Mr. SYMON (South Australia). -

I venture to submit that, before this question is put to the Convention, we ought to have it in the shape in which the Drafting Committee think it ought to be passed.

Mr. BARTON. -

Is the honorable member prepared to wait until next week?

Mr. SYMON. -

Perhaps we could get it to-morrow morning.

Mr. BARTON. -

No.

Mr. SYMON. -

Very well. Of course, we have heard the intention of the amendment
expressed, but I am not certain that some of us will not have a difficulty in voting upon it unless it is made a little more definite, so as to get rid of those troubles to which Mr. Barton has referred. I think Mr. Reid would get a better vote if he adopted the course I suggest.

Mr. GLYNN (South Australia). -

Mr. Gordon and myself prepared a clause to accomplish what Mr. Reid wishes to do, but as Mr. Gordon is absent on business, I cannot move it now. I confess I cannot understand the amendment, but the effect of what we intended to propose would have been to render the part imposing taxation invalid; but the general matter joined with it would be valid. The portion imposing the taxation would be invalid, and that would be a check upon the House of Representatives, which would be the offending body. The general part joined with it, however, would not be invalid.

Mr. BARTON (New South Wales). -

I am rather doubtful about the policy of adding these words. The Right Hon. Mr. Reid proposes to add a proviso to Sub-sections (1), (2), and (3). His proviso is to the effect that where a law has been passed which would otherwise be invalid, because part of it offends against prohibitions contained in this clause, it shall be valid except as to that part which offends. If the amendment of the honorable and learned member (Mr. Isaacs), inserting, the word "proposed" in sub-section (3) had been rejected, I am inclined to think that this proviso could have been added to the third sub-section. But I do not see how it can apply to sub-sections (1) and (2). They provide that laws imposing taxation, except laws imposing duties of customs or excise, shall deal with one subject of taxation only. The difficulty about this proviso is this: Take a law dealing with some other matter in addition to the imposition of taxation. If you say in regard to such a law that, except so far as it infringes the prohibition of this clause it shall be good, that means that the part imposing taxation shall be good; but that the part which does not impose taxation shall be, or may be, bad. Then, dealing with the case as it is affected by sub-section (2), if there are two subjects of taxation dealt with in a law, as, for instance, land and income taxation, or customs and excise, or customs and land, its provisions with regard to one of these subjects shall be good, but with regard to the other subject shall be bad. To put it scripturally, the one shall be taken and the other left. But which one shall be taken, and which shall be left?

Mr. REID. -

The provisions in regard to the first subject would not infringe the prohibition, because, if left by itself, it would be the only subject dealt
Mr. BARTON. -

But my right honorable friend does not specify his preference; he does not tell us which we are to take, or which the High Court, or the Federal Parliament, or any one is to take. A difficulty arises here. In my opinion, there is no necessity for the proviso in regard to the first and second sub-sections.

Mr. ISAACS. -

Suppose provisions relating to a land tax were put into an Appropriation Bill, and the provisions relating to the land tax came first, which would be chosen?

Mr. REID. -

Are we dealing with a lunatic asylum?

Mr. BARTON. -

If my right honorable friend is right in saying that the first subject dealt with is to be taken, and the other left-

Mr. REID. -

Had we not better put in a special clause, providing that provisions relating to land, taxation shall not be put into a measure relating to appropriation or income tax, to prevent the lunatics in regard to whom we are legislating from making this confusion?

Mr. BARTON. -

We can never tell what a Government will or will not do.

Mr. REID. -

What about the Senate? They will not be a lot of old women. Would a Senate swallow such an attack upon their rights as is contemplated? I do not know what sort of Parliament we are about to create.

Mr. BARTON. -

I do not know either. Sometimes I think that many of us are tending towards the creation of a Parliament which shall have every power if you hold up your right hand, but no power if you hold up your left hand. I do not think that this is the way to make a Constitution. What seems to me to be the real matter at issue is this: If the amendment of the honorable and learned member (Mr. Isaacs), inserting the word "proposed" in the third sub-section, had been carried, this proviso might have applied to that sub-section; but, in regard to sub-sections (I) and (2), it seems to me unnecessary. Perhaps, if my right honorable friend will consider the matter between this and to-morrow morning, we shall make progress more quickly, and, in order to give time for that consideration, I will, with his consent, move that progress be reported.

Progress was reported.
The Convention adjourned at nine minutes past ten o'clock p.m.
Wednesday, 9th March, 1898.

Petition - Appeals to the Privy Council - Leave of Absence: Mr. James - Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

PETITION.

Mr. DEAKIN (Victoria) presented a petition from the Hardware Association of Victoria, praying the Convention to preserve the existing right of the Queen's subjects to appeal to Her Majesty from decisions of the local courts.

The petition was received.

APPEALS TO THE PRIVY COUNCIL.

Sir EDWARD BRADDON (Tasmania). -

I desire to lay on the table a Return of Appeals to the Privy Council against decisions of the Supreme Court of Tasmania, and I beg to move that it be printed.

The motion was agreed to.

LEAVE OF ABSENCE.

Sir JOHN FORREST (Western Australia). -

I beg to move-

That seven days' leave of absence be granted to the Hon. Mr. James, on account of private business.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention then resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on-

Clause 55. - (1) Laws imposing taxation shall deal only with the imposition of taxation.

(2) Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

(3) The law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation; and on Mr. Reid's amendment to add the following words to the clause:-
The prohibitions contained in this section shall not extend to render invalid in a law any portion thereof which does not infringe any such prohibition.

Mr. REID (New South Wales). -

I have just written out an amendment which I wish to substitute for the one I moved yesterday evening.

Mr. Reid's amendment was, by leave, withdrawn.

Mr. REID. -

There was great force in the observation made last night, that my amendment scarcely provided for the case of a law which contained more than one subject of taxation, and that, therefore, the court would be left in doubt as to what to do in such a case. I have thought over this matter carefully, and I confess I feel more strongly than ever that this Convention cannot seriously mean that if some mere technical infringement has occurred the whole substantial basis of legislation shall be destroyed. Such principles of legislation are unknown, so far as I am aware, to any Constitution in the world, and certainly if they actually are in any other Constitution in the world they should not be in any Constitution carefully drawn, which studies the working of the Commonwealth. I propose to put my amendment in another form, but first I will explain that the term "proposed laws," which occurs in sub-section (3) of clause 56, and in several places in clause 54, is now covered by the kind promise of our leader to look into the matter, and use what words, if any, are necessary to make it clear that the intention of the Constitution as to such laws is that they shall be regarded as matters of internal procedure, and not for the review of the court. Now, the whole of clause 54 and the third sub-section of clause 55 are covered by that promise, so that we have simply left us staring in the face this position: That, while a matter of vital consequence, such as the Senate doubling a charge on the people, will be only, a matter of procedure, and an irregularity although a substantial wrong to the people, touching them in their pockets, it will be a matter which cannot be disturbed by appeal to the High Court. Now, I most heartily concur in that position. We must all take certain risks in a matter of this sort, hoping that the two Houses of the Federal Parliament will be sufficiently independent to do their duty to the Commonwealth; and if there is one point on which we may be assured that each House will do its duty honestly and loyally, if we study the history of such Houses all the world over, it is a matter of its own rights and privileges as defined by the statute law. A House of Parliament can be trusted to preserve its own rights if they-are expressed in plain words in the Constitution.

Sir EDWARD BRADDON. -
How could a Senate double a tax on the people without the concurrence of the states?

Mr. REID. -

I did not refer to a tax; I referred to a charge—a burden on the people. Well, that is a thing that is not to be done. Still, if it is done by both Houses, regarding them from the very low level from which they were regarded all yesterday, as Houses that were not to be trusted to defend their own rights and the principles of the Constitution—if the two Houses were of the low pattern that seemed to be considered likely, according to the debate yesterday, and if they did infringe the Constitution in such a gross way that the Senate was allowed by the House of Representatives to double a charge—a burden on the people—

Sir EDWARD BRADDON. -

Would that ever happen?

Mr. REID. -

I say that it would never happen. The House of Representatives would never allow such a thing to happen. And so I say the members of the Senate will be men of equal respectability. I cannot understand this doubt, when the Senate is made to play so vital a part in the history and destinies of this new nation. I cannot understand why the men who deliberately put the Senate into the Constitution to play such a part are the first to believe that it will violate and surrender its own privileges.

Sir EDWARD BRADDON. -

Who said that it would?

Mr. REID. -

Now, I do not wish to be brought into the dreary debate we had yesterday by means of any interjections. I hope that we shall not waste any time over this matter to-day. I feel it would be a calamity if we were to waste any more time over it.

Mr. TRENWITH. -

It will be a calamity if we do not make this matter right.

Mr. REID. -

I will say no more on the subject, but simply propose my amendment, and point out that I do not ask the Convention to prevent a law imposing taxation being brought into court; but, if it is brought into court and if it is found to contain some matter, perhaps mere surplusage, which is nevertheless a technical infringement of the Constitution, it shall not, under the provision that a law of taxation shall deal with the imposition of taxation only, be ruled out as invalid simply because it contains some surplus technical matter. That is one point I wish to prevent. The other
point is this: If in some complex measure imposing, not simple taxation, but some complex taxation, there is an inadvertent evasion of this rule, and the court, looking through keen legal spectacles, see something in it that seems to belong to a different subject of taxation, that the whole scheme of finance of the Commonwealth shall not be at the mercy of a point of that kind. And if the Act is found to invade the provisions of the Constitution, to the extent that it does invade the provisions of the Constitution it should be rubbed out, but the vital matter should not be rubbed out. Therefore, I beg to propose the addition to the clause of the following words:-

The provisions of sub-sections (1) and (2) shall not invalidate any part of a law imposing taxation which does not infringe such provisions. If any such law contain more than some subject of taxation, the tax first in order of enactment shall be taken to be properly enacted.

Then, any other matter, amounting to a second subject of taxation, will be ruled out.

Mr. DOBSON. -

Does the leader of the Convention withdraw his proposal in favour of this amendment?

Mr. REID. -

This amendment has nothing to do with the leader's suggestion. It covers new ground. If the leader's promise had covered this ground also, I would not have proposed my amendment. But Mr. Barton does not approve of this amendment, and therefore very properly does not make any promise concerning it. This amendment covers a bit of ground which is left unprovided for, and if I did not move this proposal, some surplus, perhaps idle, harmless, matter would invalidate a Taxation Bill.

An HONORABLE MEMBER. -

Might.

Mr. REID. -

It would, as a matter of law. There is no "might" about it, If it was a case of "might," we could trust to chance. That is one class of case in which a Bill might be ruled out. The other class is this: There is one subject-matter of taxation, but, unfortunately, there seems to be involved, according to the decision of the court, a different subject-matter of taxation, and then the whole tax goes with all the revenue, and all the labours of Parliament are wiped out. We do not want to place so grotesque a provision in the Constitution, and expose ourselves to such serious circumstances, when we can provide safeguards for the vital clauses of a Bill.
Mr. DEAKIN. -

If that is the reason, will the right honorable gentleman say why this proposition, which appears so fair and equitable, ought not to apply to all legislation, whether Tax Bills or any other matter?

Mr. REID. -

I think it ought to.

Mr. DEAKIN. -

Ought there not to be an independent section?

Mr. REID. -

I think there ought, but we are now on this particular matter, and I wish to conclude the discussion. If my amendment is carried, the Drafting Committee will take this matter into consideration. If the amendment is not carried, I do not see how such a clause could be adopted.

Mr. ISAACS (Victoria). -

I am sure we are all—I will not say all, but, at any rate, all on this side—strongly in sympathy with Mr. Reid in his endeavour to insert some such clause as that which he has proposed. I have no doubt Mr. Reid framed the amendment in the way he has in order to get the sense of the Convention, and leave it to the Drafting Committee to properly frame hereafter. As the amendment stands, I scarcely think it would carry the matter any further. It only provides that a law which does not infringe on the provision shall not be invalid.

Mr. REID. -

It deals with a law, part of which infringes on the provision, and part of which does not.

Mr. ISAACS. -

That is the whole difficulty. There is no portion of the clause which says that a part of the law which contravenes the provision is invalid. A law contravenes the Constitution if it does not comply with the section.

Mr. DEAKIN. -

What is a law?

Mr. MCMILLAN. -

Has there ever been such a proposal in any law?

Mr. ISAACS. -

I do not think there has ever been the same necessity for such a proposal. It is this particular clause which needs such a proposal.

Mr. MCMILLAN. -

And you are going to make one more extraordinary law.

An HONORABLE: MEMBER. - It is an error.

Mr. ISAACS. -

If it be an error, it is a compensating error. It is to prevent the utter
confusion we might and probably would get into unless we had some such proviso. I strongly support, in its spirit, the clause proposed by Mr. Reid. I agree with Mr. Reid that we should not spend much time over the question. We expressed our views at length yesterday, on the understanding that they would be put in shape by the Drafting Committee. There being no misunderstanding as to the intention of the Convention, I shall content myself with merely expressing my approval of the proposal.

Mr. OCONNOR (New South Wales). -

I think the suggestion of Mr. Deakin is well worth thinking over, as to whether there should not be some general clause dealing altogether with the question of the validity of laws. That is a matter which the Drafting Committee might very well take into consideration, without any definite opinion being expressed about it. The objection to the amendment is that if it be inserted here, it must also apply to clause 54. If you have the proviso inserted in the present clause, and not in clause 54, any irregularity under clause 54 would make a law invalid. And what an absurd position it is putting the Constitution in to declare that a certain procedure is to be followed, and, as part of that very section, to further declare that whether the procedure be followed or not, the law will not be invalid.

Mr. KINGSTON. -

Is the proviso not in clause 54?

Mr. OCONNOR. -

No, it is not.

Mr. HOLDER. -

Only procedure is dealt with in clause 54.

Mr. OCONNOR. -

I do not think my friend (Mr. Holder) apprehends the argument I am putting. If the proviso be inserted in clause 55, it ought also to be inserted in clause 54.

Mr. HOLDER. -

One deals with proposed laws and the other with laws.

Mr. OCONNOR. -

That is the reason the proviso is not necessary under sub-clause (3). You pick out a particular clause, and state the procedure, and immediately afterwards say that whether the procedure is followed or not it does not matter. The result would be that the Commonwealth Parliament would be in a position to ignore procedure and take its chance as to whether a portion of the law passed was invalid. The proposal of Mr. Reid should not be adopted, but I think the suggestion of Mr. Deakin might be followed,
and laws which might be rendered invalid should be provided for in some general way in the Constitution.

Mr. BARTON (New South Wales). -

The effect of Mr. Reid's amendment would be the same, and is intended to be the same, as if the word "proposed" moved by Mr. Isaacs yesterday had been inserted in sub-sections (1) and (2).

Mr. REID. -

That proposal of Mr. Isaacs was intended to take the matter out of the power of the court, but my proposal does not take it out of the power of the court.

Mr. BARTON. -

If the word "proposed" had been inserted it would have been a matter merely of procedure, so that no court could interfere. If the present amendment be made, then the part of the law which does not infringe the prohibition stands good, and the part which does infringe the prohibition is bad. That is just the same effect as if the matter were regulated by a procedure between the two Houses—as if one House had refused to deal with a law until an amendment was made, and that amendment was made. Then there would be a valid law. In the same way, if Mr. Reid's amendment be carried, the part of the law which is valid would remain, and the other part would be invalid. I do not want to take up a strong position on this matter. It may be there is room for a rule applying to the validity of all laws, providing that the part which is not subject to the ban laid on it by the Constitution shall remain good as a statute. Otherwise, we may find that statutes comprehending a large field of work may be rendered invalid, because of one infringement. Take a statute which, in some one small particular, infringes or usurps the legislative rights of the states, the whole statute might have to be declared invalid, unless there is some section applying to all statutes.

Mr. HIGGINS. -

There is no provision, other than as to Money Bills, that the whole law shall be invalid.

Mr. BARTON. -

There is no provision that the whole law shall be invalid, but the question is whether there is not some uncertainty which might as well be cleared up.

Mr. HIGGINS. -

If a law goes outside the powers, it is invalid only to that extent.

Mr. BARTON. -

How is it clear that that is so with regard to the remainder of the Constitution?

Mr. HIGGINS. -
Because this is the only part which deals with form of laws.

Mr. BARTON. -

If I were quite certain that my honorable friend (Mr. Higgins) is right about that—I am not saying that he is not—there would be no necessity to think further over Mr. Deakin's suggestion. But I rose to point out that the practical result of this amendment would be much the same as if Mr. Isaacs' amendment had been carried yesterday. I do not wish to enter into a lengthy debate. We covered so much ground yesterday that it would be trifling with the Convention to make a long speech.

Mr. DEAKIN (Victoria). -

The position of my honorable and learned friend (Mr. Higgins) may be perfectly correct. It may be that without any special provision the practice of the High Court, when declaring an Act *ultra vires*, would be that such a declaration applied only to the part which trespassed beyond the limits of the Constitution. If that were so, it would be a general principle applicable to the interpretation of the whole of the Constitution. Has Mr. Higgins considered the effect on that principle of an express declaration in regard to this particular class of Bill? Is it not possible that, from the express declaration in regard to Tax Bills, the implication may be drawn that the method does not apply to other legislation?

Mr. ISAACS. -

There is no similar clause in regard to other Bills.

Mr. REID. -

Should the point be raised at this particular place?

Mr. DEAKIN. -

There is a distinction drawn by this clause between the measures to which it relates and the bulk of federal measures. That distinction turns upon the procedure with is to be followed in regard to these particular laws. That renders it necessary either to adopt the proposal of Mr. Reid in regard to this particular clause, or to take care when a general clause is drafted, if it be thought well to draft one, that, in addition to making provision in regard to laws in general, it should be perfectly clear that the clause applies particularly to laws imposing taxation under sub-sections (1) and (2) of the clause before the Convention. Under the circumstances it certainly appears desirable that the proposal of Mr. Reid should be adopted, and that the question as to whether a general clause in supplement should hereafter be passed maybe taken into consideration when it arises. If that general clause be so framed as to embrace not only the general body of law, but also the Tax and Appropriation Acts, then, of course, the special qualification proposed by Mr. Reid might be removed. But, until it
is removed, the distinction is so clear between the operation of this clause on those measures and the general operation of the Constitution on all measures, that the proviso proposed by Mr. Reid had certainly better be preserved.

Sir JOHN DOWNER (South Australia). -

I would very much like to assist my honorable friend (Mr. Reid) in carrying out his view, if I saw any way of doing it. But, the more this matter is thought about and discussed, the more it seems to be impossible to do what Mr. Reid requires, and the more impossible it seems to alter the clause without making a mesa of the whole thing.

Mr. TRENWITH. -

We have made a mess of the clause as it is.

Sir JOHN DOWNER. -

I do not think that. We may assume that the Legislature will know how to do its work and observe the law.

Mr. REID. -

Then why the High Court?

Sir JOHN DOWNER. -

And when it is provided that a Taxation Bill shall only include one subject, surely that is intelligible enough.

Mr. KINGSTON. -

You do not want the High Court to enforce the Constitution?

Sir JOHN DOWNER. -

I do not want Parliament to have the right to capriciously override the Constitution.

Mr. REID. -

This amendment will prevent Parliament doing that.

Sir JOHN DOWNER. -

I wish my right honorable friend to understand that if I could see any way of following him in the direction he suggests, I should be glad, so that it might be said a law is not altogether bad because it is bad in part. The difficulty is in working that out.

Mr. DEAKIN. -

You need not do it now.

Sir JOHN DOWNER. -

Mr. Reid, with all his ingenuity, has been driven to the rough-and-ready expedient of saying that, if two or more subjects of taxation are included in a Bill, the first shall be held to be good and the rest bad.
Could not you leave that to the Drafting Committee?

Mr. REID. -

We must show our mind on the subject.

Sir JOHN DOWNER. -

If a tack were put in the Bill first, that is the part that would be held to be good. There is only one other thing that I desire to say to Mr. Deakin, and that is, that there never will be any declaration by the court that a statute is *ultra vires*. All the court can do under the Constitution is to refuse to enforce the statute.

Mr. REID (New South Wales). -

I hope that this discussion will now be brought to a conclusion proposed to take Taxation Bills into procedure, and to say that they should not go before the High Court. The Bill, as it stands, will send them into the High Court if they are irregular. Our propositions are therefore not the same. As to the remarks made by Sir John Downer, I appeal to all the members of the Convention whether any Senate with these powers of rejection, put as they are so plainly and forcibly in this Bill, would ever allow a Lower House to tack anything on to a Bill? It is not Conceivable that any proceeding of that kind would be permitted by the Senate.

Mr. MCMILLAN (New South Wales). -

It seems to me that the amendment is very objectionable from this point of view. In one of the sub-sections we distinctly say that no one law shall deal with two subjects of taxation, but here we are absolutely prophesying a breaking of the law. It is unreasonable under any one provision to indicate that a certain thing shall not be done which is as clear as daylight, and which is not a matter of extreme definition, and then to put in a provision that the same thing may be done, and, under certain circumstances, shall be done.

Mr. REID. -

Surely you do not want to say that on a mere technicality a law may be declared invalid.

Mr. MCMILLAN. -

I cannot understand how there could be such a technicality.

Mr. REID. -

Because you are not a lawyer.

Mr. MCMILLAN. -

No; the lawyers have taken a very large part in this discussion, and I have followed them very closely, but my intelligence tells me that this is not a fair way of dealing with the subject. While I recognise the good motives with which the amendment has been introduced, I shall have to vote against it.
Mr. HIGGINS (Victoria). -

I desire to correct an impression which I wrongly conveyed yesterday evening, in answering an interjection by the Hon. Mr. McMillan. I think it will rather re-assure some honorable members if I can show that this amendment will not be the means of allowing intentional infringements of the rules laid down in clauses 54 and 55. Clause 57 says that the Governor-General is bound not to give his assent to a Bill if it infringes the provisions of the Constitution. It is only in the event of a Bill having accidentally escaped even the watchfulness of the Governor-General that this provision will come in.

Mr. HOLDER. -

And the mistake will be so immaterial that nobody will have noticed it.

Mr. HIGGINS. -

Yes. The Bill will have to pass through the ordeal of review-first, in the House of Representatives; secondly, in a jealous Senate; and thirdly, before an impartial Governor-General.

Mr. REID. -

Who would be advised by the Attorney-General.

Mr. HIGGINS. -

Yes. The words used in the section are-"He shall declare, according to his discretion, but subject to the provisions of the Constitution, either that be assents to it in the Queen's name or that he withholds assent." The Governor-General must, therefore, only give his assent if the Bill complies with the Constitution.

Dr. COCKBURN (South Australia). -

The amendment would offer a premium on slovenliness. If the House of Representatives know that they have to be careful they will be careful. If they know that they can correct mistakes afterwards they will have an inducement to carelessness. The Right Hon. Mr. Reid has said that we are speaking of the Senate as if it will be a weak and incompetent body, but the amendment would be a reflection on the House of Representatives. It is equivalent to saying that they are incapable of exercising the vigilance necessary to insure that the laws that they pass will be valid.

Mr. REID. -

The Income Tax Bill of the United States was passed by the two Houses.

Dr. COCKBURN. -

A hard-and-fast line causes no injustice when it is known that it cannot be violated without punishment. If you make a law that sometimes can and that sometimes cannot be infringed with impunity, it is always harsh and
unjust in its operation.

Mr. REID. -

If the infringement can be wiped out no harm is done.

Dr. COCKBURN. -

We agreed to these clauses after careful consideration. I am with the honorable member so far as he seeks to minimize that feature of a written Constitution which exposes all laws to the charge of invalidity, but when the honorable member proposes to do so at the expense of the Senate only, I cannot support him.

Mr. REID. -

The expense of the Senate!

Dr. COCKBURN. -

Yes. The right honorable member is no doubt very consistent with regard to the Senate. As he was in the beginning, he is now, and ever will be. The whole trouble has arisen owing to our having departed from the true principles of federation in the first instance, and sought to diminish the powers of the Senate. Give the Senate its proper powers, and the difficulty will disappear.

Mr. DOUGLAS (Tasmania). -

Attention has been called to clause 57 by Mr. Higgins, but there is a proviso to that clause which says that the Governor-General may return to the House in which it originated any proposed law presented to him, and may transmit therewith any amendments which he may recommend to be made in such law. We are asked to pass a rigid law saving that a certain thing shall be done, and then to pass another law saying that it shall not be done. We know that every Government is more or less corrupt, and that a Ministry will often ask the House of Representatives to pass a Bill without any regard whatever to the Senate, simply because they believe that that Bill will be satisfactory to their own party. We ought not, therefore, to give away such a safeguard as that which we have already provided. We have said that a Taxation Bill shall deal only with taxation, and Mr. Reid wants the House of Representatives to be enabled to send any Bill up to the Senate. If any irregularities take place the Bill is not to be held to be an infringement of the Constitution. I think that we should bring the discussion to a close as soon as possible.

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

The committee divided-

Ayes ... ... ... 15

Noes ... ... ... 27
Majority against Mr. Reid's amendment ... ... 12
AYES.
Brunker, J.N. Peacock, A.J.
Carruthers, J.H. Quick, Dr. J.
Deakin, A. Trenwith, W.A.
Fysh, Sir P.O. Turner, Sir G.
Higgins, H.B. Walker, J.T.
Holder, F.W. Wise, B.R.
Isaacs, I.A. Teller.
Kingston, C.C. Reid, G.H.
NOES.
Abbott, Sir J.P. Hassell, A. Y.
Braddon, Sir E.N.C. Henning A.H.
Briggs, H. Howe, J.H.
Brown, N.J. Leake, G.
Clarke, M.J. Lee Steere, Sir J.G.
Cockburn, Dr. J.A. Lewis, N.E.
Crowder, F.T. McMillan, W.
Dobson, H. Moore, W.
Douglas, A. O'Connor, R.E.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Glynn, P.M. Venn, H.W.
Grant, C.H. Teller.
Hackett, J.W. Barton, E.
Question so resolved in the negative.
The CHAIRMAN. -
The question now is-That the clause, as amended, stand part of the Bill.
Mr. BARTON (New South Wales). -
I should like to say, by way of explanation in reference to the vote which has just been given, that I was not able myself to vote for the amendment to make a structural alteration in the first and second paragraphs, because I did not see how it could be applied. But I would like to assure my right honorable friend (Mr. Reid) that the matter will receive the attention of the Drafting Committee, and, notwithstanding the difficulty about a recommittal, if his substantial object can be secured, the provision shall be redrafted, and I will place the redraft in his hands, in order that the matter may be dealt with by means of a proposal which would carry out his object.
Mr. REID (New South Wales). -
I accept the vote which has just been given as a distinct negative of the principle for which I have contended, and I do not think that any intelligent member of this Convention would have voted against it on any other ground. Because we know that, when the mind of the committee is made up on a matter of principle, the Drafting Committee will put the provision they agree to in proper legal shape. So that I am glad to think that my honorable friend does not distinctly oppose my proposal in principle, but owing to some defect in the way it is put.

Mr. BARTON. -
Because I could not see the way in which it could be applied.

Mr. REID. -
It is a thousand pities that it was not accepted as a mere opportunity of ascertaining the will of the committee on a matter of substance, leaving the expression of that substance to be framed by more trained intellects.

The CHAIRMAN. -
I hardly think it is right to discuss, after a vote has been taken, whether that vote is right or wrong.

Mr. REID. -
I feel that without some provision in regard to the matter the Constitution will be open to serious objection.

Mr. SYMON (South Australia). -
I wish to declare for myself that I did not vote against the amendment proposed by my right honorable friend (Mr. Reid) with any desire to express an opinion upon the principle.

The CHAIRMAN. -
I do not think the honorable member is in order.

Mr. SYMON. -
I will ask the indulgence of the committee.

The CHAIRMAN. -
Will the honorable member take his seat?

Mr. SYMON. -
I wish to make an explanation.

The CHAIRMAN. -
A certain amount of latitude is allowed to the leader of the Convention, but it is not in order for honorable members to make explanations as to why they gave their votes on a division. Otherwise we shall have a debate after every division.

Mr. SYMON. -
I will not say that in reference to the amendment at all; but I will say that
as to this clause, which has not yet been put by you from the Chair, I quite agree as to the advisability, if it could be done, of some provision being inserted which would make only that part of the Bill in which the vice existed bad, and would preserve the remainder of it. The difficulty under this clause is that it is not a particular part of the law which has been passed which is bad, it is not because some other subject has been added to the imposition of taxation that either the one or the other is bad, it is a combination between the two; and how you are to assert that principle in any way under this provision, and how you are to have a proviso that on the Royal assent being given the law shall be good in any event, I cannot see.

Question-That the clause stand part of the Bill-put.
The committee divided-
Ayes .... ... 33
Noes .... ... 10
Majority for clause 55 23
AYES.
Abbott, Sir J.P. Howe, J.H.
Braddon, Sir E.N.C. Leake, G.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Clarke, M.J. McMillan, W.
Cockburn, Dr. J.A. Moore, W.
Crowder, F.T. O'Connor, R.E.
Dobson, H. Peacock, A.J.
Douglas, A. Quick, Dr. J.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fysh, Sir P.O. Turner, Sir G.
Glynn, P.M. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W. Wise, B.R.
Hassell, A.Y. Teller.
Henning, A.H. Barton, E.
NOES.
Berry, Sir G. Isaacs, I.A.
Brunker, J.N. Kingston, C.C.
Carruthers, J.H. Trenwith, W.A.
Deakin, A.
Higgins, H.B. Teller.
Holder, F.W. Reid, G. H.
Question so resolved in the affirmative.

Clause 56. - It shall not be lawful to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue or moneys to any purpose which has not been first recommended to the House in which the proposal for appropriation originated by message of the Governor-General in the session in which the vote, resolution, or law is proposed.

Mr. ISAACS (Victoria). -

In clause 56 there is an alteration which I have to propose, and which I think my honorable friend (Mr. Barton) will agree is practically a necessary amendment—I scarcely think more than a drafting amendment. The clause might lead to misunderstanding if left in its present form. When the Bill was framed in Adelaide there was some power given to the Senate to originate appropriations in a minor degree. Clause 56, as then framed, distinctly referred to both the Senate and the House of Representatives in regard to a Governor's message in respect of those appropriations. But now, as I read the Bill, it is only the House of Representatives that has any right to initiate a law appropriating any part of the public revenue or any money. Therefore, to still use the phrase, "the House in which the proposal for appropriation originated," seems to me inartistic, and might possibly lead to misunderstanding hereafter. Consequently, I propose to alter that by moving the following amendment:-

That after the word "House" (line 5), the words "of Representatives" be inserted, and that the words "in which the proposal for appropriation originated" be struck out.

Mr. Reid. -

Before you move that, there is a prior amendment which I desire to move.

Mr. ISAACS. -

I have almost finished, and when I have explained my amendment I will withdraw in favour of the right honorable gentleman. I wish to point out that the clause as I desire to amend it will read-

It shall not be lawful to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue or moneys to any purpose which has not been first recommended to the House of Representatives by message of the Governor-General in the session in which the vote, resolution, or law is proposed.

Mr. GLYNN. -

Why not strike out the word "first"?
Mr. ISAACS. -

Of course that is another question altogether. There has been an alteration made in clause 54, which I think will not affect my proposal at all, because, although the Senate is given power to insert provisions for "the imposition or appropriation of fines, or pecuniary penalties, or for the demand, or payment, or appropriation of fees for licenses or fees for services under the proposed law," it is expressly stated that that "shall not be taken to appropriate any part of the public revenue or moneys;" and inasmuch as the only appropriation that can be proposed, in a proper legal technical sense, would be by the House of Representatives, therefore, I intend to move this amendment. But, as my right honorable friend (Mr. Reid) desires to move a prior amendment, I will postpone the formal moving of mine for the present until the right honorable gentleman has had an opportunity of proposing his.

Mr. REID (New South Wales). -

My amendment is one that I certainly would not propose if I were assured that a failure to comply with this clause strictly would not invalidate a piece of legislation; but I am afraid that the words at the beginning of the clause-"It shall not be lawful to pass any vote, resolution, or proposed law," might, under a Federal Constitution, beheld to invite or sanction an interference with the procedure of the Houses. Mr. Barton yesterday pointed out a distinction between clause 54 and clause 55. There is not the same friction in a provincial Legislature as there may possibly be under a Federal Constitution, especially with a High Court constituted to deal with questions arising under that Constitution. With a court having such jurisdiction all sorts of questions may be brought forward that would not be brought forward in the ordinary course of provincial legislation. I am afraid that these words amount to a prohibition. "It shall not be lawful," that is to say, any breach of this will be contrary to the law.

Mr. BARTON. -

I do not think them will be any more danger than there is under the colonial Constitution Acts.

Mr. REID. -

Those of us who are Ministers, in our practical experience, know that there is sometimes a danger that a preliminary vote on a Bill may be taken before a message is brought down.

Mr. KINGSTON. -

In our Parliament the message need not be brought down before the third reading.

Mr. REID. -

I know that on several occasions a point has been taken in our House, as
a matter of procedure, that a message has not been sent down.

Mr. BARTON. -
In our House the word "first" has been taken to refer to the initiation instead of the passing.

Mr. REID. -
Sir Joseph Abbott will probably know, but I remember that I took a point of that kind against a Bill on one occasion when a subsequent stage had been arrived at.

Sir JOSEPH ABBOTT. -
The Constitution Act says no resolution or Bill shall be introduced without a message.

Mr. REID. -
Yes, unless it is first recommended. I think we may safely leave out the word "first," and let it read which has not been recommended to the House." The House would mean the House of Representatives. The message would have to come before the Bill left the House and was sent to the Senate. So long as there is substantial compliance with the law, that is, a message brought down before the Bill goes to the Senate, it will avoid some inconvenience.

Mr. BARTON (New South Wales). -
I think the spirit of Mr. Reid's amendment is perfectly just. The practice which has prevailed in some of the colonies goes a little further than in the House of Commons. In cases of recommendations as to grants of money in the House of Commons, the message may be brought down at any time before the passage of the measure. Of course there is a difference. These matters are not always merely a recommendation, but they mean the consent of the Crown. For instance, there are cases affecting the prerogative. In that case I believe the consent of the Crown must be first notified. I think the practice of the House of Commons might be found sufficient for the House of Representatives in the Federation. Therefore I think the proposal of Mr. Reid is one which we might well adopt. I do not think there is much difficulty about the words-"It shall not be lawful." They exist in the colonial Constitutions, and I think they have been construed to enable the court to inquire into the question as to whether a message has ever been brought down. These things are taken to be rightly done after a statute has been passed. It is pointed out to me that the words are-"vote, resolution, or proposed law." With reference to a vote or resolution, not the passage of law, there is no possibility, as a rule, of court of justice having to inquire into the matter. Apart from that doubt, I think that the suggestion that the recommendation may be brought down by
message at any stage before the passage of vote, resolution, or proposed
law is desirable, and I shall support it.

Mr. REID (New South Wales). -

I would suggest that there will perhaps be a little trouble in the clause if
my amendment is carried as I proposed it. I would prefer that Mr. Barton
should look into the matter, because I am afraid that difficulty would still
arise owing to the structure of the clause. I will not move my amendment,
but will leave it to Mr. Barton to see if he cannot make it clear that so long
as the message is sent down to the House before a certain stage the Bill
shall not be liable to be questioned.

Dr. COCKBURN (South Australia). -

I wish to speak to the amendment of Mr. Isaacs. The Senate still retains

Mr. BARTON. -

I have thought over that matter. I think it will not do that, because the
words in the 54th clause are that such a measure shall not be taken to be an
appropriation.

Mr. KINGSTON. -

They ought not to do it without a Governor's message.

Dr. COCKBURN. -

I quite agree with Mr. Kingston. Such Bill cannot pass without a
message.

Mr. BARTON. -

It would not require a message under clause 54.

Dr. COCKBURN. -

This 56th clause says the appropriation of any part of the public money
or revenues. Mr. Barton surely recognises that this is a very important
point. It seems to be another exhibition of the enormous appetite which has
been shown by some honorable members for devouring the Senate. The
more they get the more they want.

Mr. DEAKIN. -

It is too tough.

Dr. COCKBURN. -

I do not dare for a moment, even with bated breath, to question what the
leader says on a point of this kind, but he has not given me an absolute
assurance. Will he give me an absolute assurance that the danger which I
have indicated does not exist!

The CHAIRMAN. -

Mr. Isaacs' amendment is now before the committee.

Mr. BARTON (New South Wales). -

Now that my honorable friend (Dr. Cockburn) has mentioned this matter,
I would like to say that the clause has been left in its present form so far
because of a doubt which the Drafting Committee entertained as to whether such vote, resolution, or proposed law referred to in the 55th section would not require a message if it were an expenditure within the acceptation of the proviso of the first part of the 54th clause. In other words, the doubt they entertained for a time was whether a proposed law containing provisions to impose or appropriate fines, or for other pecuniary penalties, or for the demand, or the payment or appropriation, of fees for licences or fees for services under the proposed law was not an appropriation as far as the appropriatory part was concerned, which would require a message. It is for that reason that the words as they stand have been left in so long. We have since considered the matter, and I think I can say, for my honorable friends and myself, that we entertain no doubt upon the subject, and that the words in the proviso to the first part of clause 54-"But a proposed law shall not be taken to appropriate any part of the public revenue or moneys," will be construed to mean that by the law of the Constitution such things are not to be an appropriation and will not require messages. To be perfectly frank with my honorable friend, we did entertain a doubt for some time, but that is now removed.

Dr. COCKBURN (South Australia). -

May I ask whether clause 56 is not far more inclusive with regard to laws for appropriations than even the 54th clause, which only deals with proposed laws for appropriation? Clause 56 covers that and a good deal besides. Does not that indicate that this clause is more stringent than clause 54?

Mr. HIGGINS. -

It is an insidious attack upon the Senate, is it not?

Dr. COCKBURN. -

It is not insidious but open. I thought I saw through it in a moment. I would ask Mr. Barton if these words "vote or resolution" being added to "proposed law" will not amount to making this clause far more comprehensive in its object than clause 54?

Mr. KINGSTON (South Australia). -

I understood that the proviso to clause 54 was meant to enable the Senate to originate laws which simply provided for fines and pecuniary penalties. I understood the proviso to clause 54 was intended to enable the Senate to originate measures which appropriated revenue only in a limited degree, but I never understood that it was intended to remove the safeguard which is contained in every Constitution, that there shall be no appropriation except by the Governor's message. In support of this, I would remind the leader of the Convention that clause 56 has been altered from its original
shape. The shape in which it first appeared was that the law had been first recommended to the House of Representatives, but it has been altered. Now it has to be first recommended to the House in which the proposal for an appropriation originated.

Mr. BARTON. -

I think that was done in Adelaide.

Mr. KINGSTON. -

The only proposal for appropriation which can originate in the Senate will be in those cases which are covered by the first proviso to clause 54.

Mr. ISAACS. -

And they are declared not to be appropriations.

Mr. KINGSTON. -

The form of clause 56, particularly the alteration to which I call attention, shows that the intention of the framers of the Constitution was that a message should be addressed to the Senate in relation to these matters I ask the leader of the Convention, whilst it has been decided that these minor measures of appropriation may originate in the Senate, not to go further, and to throw away the safeguards generally imposed in connexion with the appropriation of public funds, and that wherever such a measure is originated, you must have the Governor's message to protect it.

Sir GEORGE TURNER. -

The Bill does that as it stands, because it declares that that is not an appropriation.

Mr. KINGSTON. -

I listened with the greatest interest to Mr. Barton's remarks, and he put that as the position. I venture to suggest that that was not the intention of the Convention hitherto. That is shown by the fact that the clause, in good set terms, declares that you may send a message to the Senate in regard to appropriation, and the only message in connexion with appropriation is in connexion with minor matters.

Mr. BARTON. -

In connexion with what matters?

Mr. KINGSTON. -

As to matters of this sort-fees and fines. They are minor in their nature, but still they may be of very considerable importance.

Mr. BARTON. -

Does not the Constitution say in express terms, in the second part of the first sub-section of clause 54, that such a law shall not be taken to appropriate any part of the public revenue?
Mr. KINGSTON. -

That is what I am objecting to. That is introduced there as a qualification in reference to origination.

Mr. SYMON. -

That proviso in clause 51 merely means that you will not call these Appropriation Bills, but still they deal with money.

Mr. KINGSTON. -

My point is this: That whilst you may well let matters of that sort originate in the Senate, it is not desirable, either as regards the House of Representatives or the Senate, in connexion with these minor matters to throw away that control over the purse which is vested in the Executive; and which is evidenced by the giving or with-holding of a Governor's message. The leader of the Convention will see that, according to the terms in which clause 56 has been framed, it is evidently intended to apply to both Houses, and I hope it will be so continued, and that the Senate shall not be given, any more than the House of Representatives, the power of originating measures of this sort for the expenditure of public funds unless it is recommended by the Executive.

Mr. MCMILLAN (New South Wales). -

I think the contention of my right honorable friend (Mr. Kingston) is perfectly right. It was understood, when we passed this clause in Adelaide, that a message would be sent even to the Senate, and this clause shows clearly that that was the intention, because it says-

It shall not be lawful to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue or moneys to any purpose-

That seems to me so large and expansive that it really takes in everything, even the service of an officer, but it was clearly understood that a Bill which, for convenience or any other reason, might be introduced in the Senate, even if it incidentally included a payment for the services of an officer, or for some purpose of that kind, or a Bill causing expense, should not be looked upon as a Money Bill. I do not know exactly what the full purpose of the amendment of Mr. Isaacs is, but I am as staunch as any honorable member to see that the power of the purse in respect to the origination of Bills shall be exclusively kept in the House of Representatives. But honorable members know that in the transaction of parliamentary business you often leave the Second Chamber with very little to do, and there are many measures which might just as well be introduced into the Upper House as into the Lower House. Therefore, it does seem to me that the clause as it stands is perfectly right, and carries out the intention which we had in Adelaide, and does not infringe on the right of the Lower House over the initiation of all money measures.
Mr. REID (New South Wales). -
I think my honorable friend (Sir Joseph Abbott) will support me in this statement, that, in the case of an Australian Constitution with a clause similar to clause 56, it is usual to interpret the clause as requiring a message for any Bill which entails expense on the public exchequer.

Sir JOSEPH ABBOTT. -
That is so; but I think in Adelaide it was purposely put in this way.

Mr. REID. -
In New South Wales I know that rule is maintained.

Sir JOSEPH ABBOTT. -
Yes.

Mr. REID. -
I know that I have often had to consult either my friend the Speaker or the Clerk of the Assembly as to whether the Bill would come within such a definition.

Sir JOSEPH ABBOTT. -
You could not introduce into the Upper House a Health Bill, because it incidentally created an office.

Mr. REID. -
Exactly; we have cured that state of things in clause 54, but no one ever intended, I think, to take away the control of the public exchequer from, not the House of Representatives, but the Executive Government. The Governor means the Executive Council, and the Governor sends a message because the Executive Council originates or is prepared to sanction the origination of a Bill involving expenditure, and if that control were taken out of the hands of the Executive Government, no financial system would be possible. Private members might bring in Bills involving a large drain on the Treasury, perhaps very popular, but entirely out of season in view of the State of the public finances, and the Government would be thrown into a very undesirable position. The Government should have this control that no measure which will involve a drain on the Treasury and you cannot distinguish as to the amount of the drain-can come in or go into law without the sanction of the Executive Government, and that is what a message means. Without such a safeguard, I think we would be put into a very undesirable position.

Sir GEORGE TURNER (Victoria). -
If I followed my right honorable friend (Mr. Reid) correctly, this Bill does not carry out his wishes, because no message is necessary for the passage of a Bill
Mr. REID. -

It would require a message on a different ground—the ground that it involved the expense of administering the Act.

Sir GEORGE TURNER. -

This would involve the expense of administering the Act.

Mr. REID. -

Yes; but we get the same point in a different shape. Although not attempting to appropriate money, it would still be a Money Bill.

Sir GEORGE TURNER. -

In clause 56 it is provided that it shall not be lawful to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue, until a message has been sent to the House in which the appropriation originates. That assumes that a proposal to appropriate a part of the public revenue can originate in the Senate. I do not think it can do so under this Bill.

Mr. MCMILLAN. -

Subject to clause 54.

Sir GEORGE TURNER. -

Not even under clause 54. My reading of the Bill is that nothing which is an appropriation of the public revenue within the meaning of the Constitution can originate in the Senate. Clause 54 provides that laws appropriating any part of the public revenue shall originate in the House of Representatives; that is, all laws which in any shape or form appropriate public revenue must originate in the House of Representatives; but then, to get rid of the difficulty in regard to the small matters, we have declared that a proposed law which deals with certain fines and payments for services shall not be taken to appropriate revenue at all.

Mr. REID. -

It does not contain words to this effect—"and shall not be deemed to be a Money Bill because it entails expense on the public exchequer." No such words as those are in.

Sir GEORGE TURNER. -

We have not used the words "Money Bill" in any clause. A Money Bill is a wider expression than a Bill appropriating revenue.

Mr. REID. -

But the appropriation here is of fines, penalties, fees for licences, or fees for services under the proposed law. As regards expenditure under a proposed law out of the public exchequer, it is not made necessary to have a message in connexion with that.

Sir GEORGE TURNER. -
I admit my honorable friend's position, that this is very limited in its operation. It deals only with fines, or demand, or payment, or appropriation of fees for licences, or fees for services. It is very limited, but at the same time it does seem to me that you, cannot originate in the Senate any Appropriation Bill. Therefore, it is misleading to say, in clause 56, that the message is to be sent to the House in which the appropriation originated, because there is only one House in which the proposed expenditure can possibly be originated, and to have the section uniform, it does seem to be necessary to say—and in fairness also to point out exactly the position—that the message can be sent only to the House of Representatives. If I thought that the Senate could originate any expenditure of the nature described in clause 54 as appropriation, I would certainly insist that the message should be sent first, because so long as a message has to be sent, so long has the Government of the day the control that it ought to have over the expenditure, As it appears to me that that appropriation within the meaning of clause 54 can arise only in the House of Representatives, I think the message should be limited to that House only.

Mr. BARTON (New South Wales). -

I hope I shall be understood as having answered my honorable friend (Dr. Cockburn) merely to the extent of the question he asked, which was whether a Bill, as I understood him, for one of the purposes indicated in the first sub-section of clause 54 would necessarily require a message. It seems to me that the words in the sub-section of clause 54 are so strong that such a Bill shall not be taken to appropriate, are so without limitation that, it is reasonably clear that such a Bill would not require a message under clause 56. But, as Dr. Cockburn points out, there still remain two other cases, and those are the cases of a vote or resolution, and there is nothing about the vote or resolution which he speaks of in the provision in the first part of clause 54, so they stand out unqualified, and it must be that they would require a message. Now, what are these votes or resolutions? The votes or resolutions that are meant here, according to practice, may be simply the votes or resolutions which afterwards find their concrete form in Bills, and the real question is whether we need trouble about the words "vote or resolution" at all whether they need ever have been in any of the Constitution Acts. Even if I am right in thinking that a Bill of the character indicated in the first part of clause 54 does not require a message, still I do not find anything in the Constitution to do away with the necessity of a message, even in the Senate, for a vote or resolution, if such a vote or resolution is taken in the Senate. But now let up, come to the practical side of the question. Under this Constitution, with the Ministry practically responsible to the House of Representatives, as they will be if this
Constitution is carried, is it likely that a Minister responsible to that House, no matter which House he sits in, will ever bring down a message to the Senate? It seems to me to be most unlikely that be will, and therefore there is not any serious practical difficulty.

Mr. ISAACS (Victoria). -

I would like to point out what we did in Adelaide. As the Bill stood in 1891, and as it stood before an alteration was made in Adelaide, clause 56 ran as follows:-

It shall not be lawful for the House of Representatives to pass any vote, resolution, or law for the appropriation of any part of the public revenue or the produce of any tax or impost to any purpose which has not been first recommended to that House by message of the Governor-General in the session in which the vote, resolution, or law is proposed.

That was altered in Adelaide, as follows:-

It shall not be lawful for the Senate or the House of Representatives to pass any vote, resolution, or proposed law for the appropriation of any part of the public revenue or moneys to any purpose which has not been first recommended to the House in which the proposal for appropriation originated by message of the Governor-General in the session in which the vote, resolution, or law is proposed.

Then the words which I seek to excise, viz., "in which the proposal for appropriation originated," were inserted in Adelaide, because the word "Senate" was inserted in the first line, as well as the words "the House of Representatives," which had stood there previously.

Mr. OCONNOR. -

You will remember that there was no difficulty then, because at that time the proviso to clause 54 had not been inserted.

Mr. ISAACS. -

The proviso was not the difficulty.

Mr. OCONNOR. -

No; that is the difficulty now.

Mr. ISAACS. -

The difficulty is that in Adelaide we altered clause 54 so as to stand-

Proposed laws having for their main object the appropriation of any part of the public revenue or moneys, or the imposition of any tax or impost, shall originate in the House of Representatives.

When it was recognised by the insertion of those words that there would be Bills which were for the appropriation of moneys, but in respect of which Bills appropriation was not the main object, it became necessary that
we should insert, in clause 56, a provision that a law for appropriation or vote or resolution for appropriation in the Senate also required a message. But when we altered that again in Sydney and added a proviso, it became perfectly clear that there could be no appropriation in the ordinary sense which could originate in the Senate. Consequently, it seems to me that we have to go back, in regard to clause 56, from the position we took in Adelaide. We have to strike out the reference to the Senate, which has been done by the Drafting Committee, and we have also to strike out the words "the House in which the proposal for appropriation originated."

Mr. BARTON. -

Could not a vote or resolution originate in the Senate? Technically it could.

Mr. ISAACS. -

There is nothing to prevent the Senate from voting just as it pleases, but an improper vote would not have the slightest weight. It is necessary to put in these words, because if they are put in it will not be possible for the Senate to pass a vote or resolution for appropriation in the ordinary sense at all. Clause 56 covers votes, resolutions, and proposed laws, and, if the amendment I suggest be carried, it will not be lawful to pass a vote or resolution or proposed law till the message authorizing the appropriation has first come to the House of Representatives. It will be possible for the Senate to appropriate public revenue or moneys, or to impose taxation in the sense of fines, pecuniary penalties, or fees for licences or services, because that is expressly provided by clause 54 not to be an appropriation. In this connexion, I should like to point out that there is a passage in the tenth edition of May which seems to me somewhat at variance with the words of the rule of the House of Commons upon which the 273rd standing order of the Victorian Assembly is based. The passage to which I refer will be found on page 547. It is as follows:-

Relaxation of Commons' privileges. - The claim to exclusive legislation over charges imposed upon the people was formerly extended by the Commons to the imposition of fees and pecuniary penalties, and to provisions which touched the mode of suing for fees and penalties, and to their application when recovered; and they denied to the Lords the power of dealing with these matters. The rigid enforcement of this claim proved inconvenient, and, in 1849, the Commons adopṫ.6d a standing order, based on a resolution passed in 1831, which gave the Lords power to deal, by Bill or amendment, with pecuniary penalties, forfeitures, or fees, when the object of their legislation was to secure the execution of an Act; provided that

[P.2104] starts here
the fees were not payable into the Exchequer, or in aid of the public revenue; and when the Bill shall be a private Bill for a local or personal Act.

I am rather inclined to think that that proviso is incorrect, and I would ask the leader of the Convention to consider it. I should like to add that it is important to include the words "vote and resolution" in this clause, because a vote may not be a harmless thing. When a Supply Bill is passed to be applied to the satisfaction of such votes as may be agreed to-by the Assembly in, say, "the present session of Parliament," each of these votes is all authorization under the terms of the Act of Parliament for the disbursement of money.

Mr. BARTON. -

There is a difference in the Commons' resolution as to fees. Fees are not within the allowance in any case where they have to be paid into the Exchequer.

Mr. ISAACS. -

If the honorable and learned member will look at page 830 of May he will see that the text of the proviso appears to be at variance with the standing order.

The CHAIRMAN. -

The practice of the House of Lords is to pass Bills containing provisions making appropriations, appointing officers, and so on, but the Commons take no notice of these provisions. In former times they used to print them in different type, but I believe in later times they do not even do that. The provisions are printed in the ordinary type, and they are passed by the House of Commons as though they were not there. They are supposed not to be in the Bill, though they really are in it.

Mr. ISAACS. -

I believe that that is so, but I cannot find, in the standing order under which it is done, the proviso that in all cases the money must not go into the public revenue.

Mr. BARTON. -

That is provided in the second sub-section of the 44th standing order of the House of Commons.

Mr. ISAACS. -

Is not that sub-section entirely distinct from the first sub-section?

Mr BARTON. - The first sub-section deals with pecuniary penalties and forfeitures, the second sub-section refers only to fees.

Mr. ISAACS. -

If the proviso does apply, I think we ought to reconsider the first part of clause 54.
Question—That the words proposed to be inserted be so inserted—put.
The committee divided—
Ayes ... ... ... 17
Noes ... ... ... 26
Majority against Mr. Isaacs
amendment ... ... 9
AYES.
Barton, E. O'Connor, R.E.
Berry, Sir G. Peacock, A.J.
Brown, N.J. Quick, Dr. J.
Brunker, J.N. Symon, J.H.
Deakin, A. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Higgins, H.B. Walker, J.T.
Leake, G. Teller.
McMillan, W. Isaacs, I.A.
NOES.
Abbott, Sir J.P. Hassell, A.Y.
Braddon, Sir E.N.C. Henning, A.H.
Briggs, H. Holder, F.W.
Carruthers, J.H. Howe, J.H.
Clarke, M.J. Kingston, C.C.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Crowder, F.T. Lewis, N.E.
Douglas, A. Moore, W.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Venn, H.W.
Fraser, S. Wise, B.R.
Fysh, Sir P.O.
Grant, C.H. Teller.
Hackett, J.W. Gordon, J.H.
Question so resolved in the negative.
The clause, as amended, was agreed to.
Clause 56B (Dead-lock provisions).

Mr. BARTON (New South Wales).—
It is my intention to move the omission of the first paragraph of this
clause, that being, the portion which was carried by
the honorable and learned member (Mr. Symon) in Sydney, but I find that
notice has been given of several amendments. I therefore think it right that
opportunity should be allowed for the moving of those amendments. Then
I shall satisfy my object by voting against the first paragraph if it is put separately.

The CHAIRMAN. -

In order to enable all amendments to be moved, I will put the paragraphs of this clause separately.

Paragraph (1). - If the House of Representatives passes any proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if the Governor-General thereupon dissolves the House of Representatives, and if, within six months after such dissolution, the House of Representatives, by an absolute majority, again passes the proposed law, with or without any amendments that may have been made or agreed to by the Senate, and if the Senate again rejects the proposed law, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate.

Mr. SYMON (South Australia). -

I do not propose to move the first amendment of which I have given notice. What I propose to do is to move my second amendment—

That, after the word "Representatives" (lines 6-7), the following words be inserted:-"which dissolution shall not take place within six months of the expiry of the House of Representatives by effluxion of time."

As honorable members will recollect, this clause includes two alternative methods by which at least the first stage in the proposed solution of the imaginary dead-lock difficulty is to be arrived at. The first method is that which was carried in Sydney upon my motion, and deals with what has been referred to shortly as the consecutive dissolution. There is to be a dissolution, first, of the House of Representatives, supposing upon a serious question of public importance there is a disagreement between the two Houses. After the return of the new House of Representatives, if they re-affirm the measure in regard to which the dissolution took place, and there is still a disagreement between the Houses, the Senate must go before its constituents. That was the first branch of a proposal, and following that there was the other suggestion about the joint meeting of the two Houses. The other proposal, which was embodied tentatively—in fact, both were embodied tentatively—was that in the event of disagreement there should be a simultaneous dissolution of the two Houses. And superadded to that came the ultimate mode of reaching what was hoped to be finality, by a joint meeting of the two Houses, who should arrive at a decision on the conditions specified. Now, the amendment I propose in clause 56B—that is, the first of the two alternative amendments—is intended to bring that first one into harmony with the second, so that we may then have the two on
identically the same footing as to the periods which are to elapse before the position shall arise indicated by the amendment.

Sir JOHN FORREST. -
That is the second paragraph.

Mr. SYMON. -
No; it is the first paragraph.

Sir JOHN FORREST. -
You want an alternative system still.

Mr. SYMON. -
No, I do not want an alternative system. I propose to adhere as strongly as I can to the first alternative, that is that the Senate shall not be dissolved until after there has been a dissolution of the House of Representatives.

Sir JOHN FORREST. -
I do not think we are taking the right course of procedure, and I am afraid we shall get these things mixed up.

Mr. WISE. -
Would it not be more convenient to take a test vote on the question whether the first two words of clause 56B, "If the," shall stand?

Mr. BARTON. -
I thought of suggesting that.

Mr. SYMON. -
We cannot deal with this matter without re-opening the whole subject of the solution of dead-locks, and I think we should deal with it at once.

Sir JOHN FORREST. -
But we must have something to vote on.

Mr. SYMON. -
I am quite aware of that.

Mr. BARTON. -
We might take a test vote on the question whether the first five words of the clause-"If the House of Representatives," shall stand part of the clause. If those words are struck out, I will move the omission of the rest of the first paragraph. If they are allowed to remain in, then the whole of the rest of the paragraph will be open to amendment.

Mr. SYMON. -
I see no objection to that. All I want is that we shall have the whole subject to deal with. I should like to assist in shortening the time we occupy over it in every way I possibly can, so that we may arrive at a decision of this question to which we have all devoted great attention, and which is the most troublesome, as it is the most important, matter that we
have been concerned with for some time past. But I want to say to Sir John Forrest that my amendment does not affect the possibility of testing the alternative which he suggests, and which is intended to prevent the dissolution of the Senate.

Sir JOHN FORREST. -

Then we ought to have joined forces.

Mr. SYMON. -

So we shall join forces. Down to the words "will not agree," in the second last line, Sir John Forrest's amendment and mine are identical. We are absolutely at one.

Sir JOHN FORREST. -

Then let us take that part.

Mr. SYMON. -

Of course, there ought to be no confusion as to the votes we give.

Sir JOHN FORREST. -

Our amendments are not in exactly the same word's down to the words "will not agree," but substantially they are the same.

Mr. SYMON. -

I think they are identical.

Sir JOHN FORREST. -

No, I assure you; I have compared them.

Mr. SYMON. -

If my right honorable friend will point out any word in my amendment that varies from his own amendment down to the point I have mentioned, I shall be very happy, to give way, but I think he will find that they are the same down to the second last line. Sir John Forrest proposes to strike out the words "the Governor-General may dissolve the Senate," and to insert the words "House of Representatives may present an address to the Governor-General reciting the facts, and praying that a full conference of the two Houses of Parliament may be convened," his object being to avoid a dissolution of the Senate altogether. Now, I believe in a dissolution of the Senate at some stage, and under certain circumstances, under this Constitution. I think it is a right and proper thing that a House elected on the broadest possible suffrage, and having a constituency, should go, when the proper occasion arises, to that constituency to get the mandate of that constituency. What the occasion is to be when that is to be brought about, it is for this Convention to determine. But I think that is the only difference between Sir John Forrest's amendment and mine, namely, that he does not like a dissolution of the Senate, and proposes to avoid it by substituting directly a joint sitting of the two Houses. I think that is the position. Therefore, adopting Mr. Barton's suggestion, if we take a division on any
words to ascertain whether the provision shall stand at all, then we can go on to move the subsequent amendments, and Sir John Forrest, having voted against Mr. Barton's amendment, if it is put that way, will be able to insert his own words after the words "will not agree."

Sir JOHN FORREST. -

You had on the paper a notice of an amendment which you were going to move, and those are the words I copied in framing my amendment.

Mr. SYMON. -

I find that Sir John Forrest is quite right. I had the clause reprinted.

Sir JOHN FORREST. -

A little bit altered

Mr. SYMON. -

Only the words "on that account."

Sir JOHN FORREST. -

And also the words "substantially the same."

Mr. SYMON. -

At any rate, we will have an opportunity of comparing them. I do not think there was any alteration in substance.

Sir JOHN FORREST. -

No, I think not; but in the words there was an alteration. Down to the words "will not agree" we are substantially in accord.

Mr. SYMON. -

And I hope we shall be substantially in accord and absolutely successful in the end.

Mr. ISAACS. -

Your congratulations are rather early.

Mr. SYMON. -

Of course, they are subject to qualification.

Mr. BARTON (New South Wales). -

While I wish to eliminate the first paragraph of clause 56B, embodying the amendment carried by Mr. Symon in Sydney, I do not wish to submit my proposal in any such way as will prevent, if my proposal be lost, the amendment of the rest of this paragraph. If I move the omission of the whole of the paragraph, the question will then be-"That the words proposed to be omitted stand part of the clause;" and if the Convention resolve that question in the affirmative, and defeat my amendment in that way, the words of the paragraph would not be subject to further amendment. Therefore, if I moved the amendment in that way, and failed to carry my proposal, I should deprive honorable members of the opportunity of
amending the paragraph. However, I do not propose to do that. I propose to move the omission of the first five words of the clause-"If the House of Representatives." If the Convention decide that these words shall stand part of the clause, the remainder of the paragraph will still be open to any other amendments honorable members wish to move. If those words are eliminated, I shall take it that honorable members will assent to the elimination of the whole paragraph the consecutive dissolution.

Mr. WISE. -
That will not interfere with Sir John Forrest's proposed amendment.

Sir JOHN FORREST. -
Oh, yes, it will.

Mr. BARTON. -
I hope this explanation will make the matter clear. If my amendment is confined to the omission of the words-"If the House of Representatives," pro forma, and if the amendment is not carried, the remainder of the paragraph will be open to amendment; whilst if my amendment is carried, it will be taken as a test vote, and as an indication that we are to strike out the whole of the paragraph.

Mr. WISE. -
Then Sir John Forrest's amendment could come in.

Mr. BARTON. -
Yes, the way would be absolutely clear for Sir John Forrest to move an amendment in place of this paragraph. If the whole paragraph be omitted, it will still be open to Sir John Forrest to move an alternative paragraph to take its place.

Sir JOHN FORREST. -
What are you going to move in its place?

Mr. BARTON. -
What I am going to move in its place is "nothing." I wish to eliminate the paragraph altogether. If my amendment is carried, and the whole paragraph is omitted, room will be left, even then, for the substitution of another paragraph. I therefore beg to move-

That the words "If the House of Representatives" be omitted from the first paragraph of clause 56B."

If my amendment is carried it will be taken as an indication that the committee wish to get rid of the whole paragraph.

Mr. KINGSTON. -
And have no provision for dead-locks.
That amendment by Mr. Symon was carried in Sydney at a time when it was the opinion of the majority of the committee that there should be some provision for a dissolution of the Senate, and when a proposal for a simultaneous dissolution of the House of Representatives had not been brought forward. A number of members voted for Mr. Symon's amendment as some means of dealing with possible causes of dead-locks—I will not say probable, but possible dead-locks. Those members, after having voted for the amendment, were of opinion that the simultaneous dissolution was a better provision, and they, therefore, voted for the latter in the hope that the first paragraph might afterwards be eliminated. I have always felt that it is sufficient to provide for a simultaneous dissolution of the Senate and the House of Representatives so far as you provide for dissolutions arising under the circumstances laid down here. It must be recollected there is nothing in the paragraph, and it would perhaps not be easy to put anything in the paragraph, to specify what will happen when either House is in fault. We are bound to assume, under the circumstances such as are indicated here, that each House is acting from a sense of public duty. It would, therefore, be an injustice to the House of Representatives that in all cases of conflict the House of Representatives must be dissolved before the idea of dissolving the Senate is taken into consideration. The other paragraph gives leave to dissolve the two Houses simultaneously. But I wish to come back to the argument that if the Governor is to reserve the power to dissolve the two Houses simultaneously, he will still have the power of dissolving the House of Representatives without also dissolving the Senate, if there is any fault on either side—and it is as likely the fault will be on the part of one House as it is that it will be on the part of the other. So you provide for circumstances in which sometimes one House will be wrong in the result and sometimes the other House will be wrong in the result, and to all these circumstances you apply the one undeviating rule that, before the Senate is dissolved, the House of Representatives shall be dissolved. I do not think that is just.

Sir JOHN FORREST. -

It is the case now.

Mr. BARTON. -

Where you have to ascertain the opinion of the people of the Commonwealth as to a question which has divided the two Houses, and which they have not succeeded in solving, the general plan is to take the sense of the people in the way that is proposed in the second paragraph—by a double dissolution. That I take to be a sufficient provision. I am one who thinks that under this Constitution dead-locks will be very infrequent. It would have been well if public opinion had stopped at the provisions
which are made in clauses 54 and 55. But public opinion has not done that, and demands something more. While dead-locks are, in the opinion of most us here, unlikely, and while we think there will be very few, and that most of the causes of them have been provided against, the public are of opinion that some further provision is necessary in case dead-locks do occur. What should that provision be? It should not be embodied in the provision which gives liberty to do such an unjust thing as to dissolve the House of Representatives before the Senate, when the fault may not be the fault of the House of Representatives at all.

Sir JOHN FORREST. -
What is done now?

Mr. BARTON. -
In most of the colonies only one House is dissolved. I quite admit that, there may be something incongruous in that. At the same time, my friend will remember that in some of the colonies the Second Chamber is a nominee House, and it is not much use dissolving that.

Mr. SYMON. -
In our colony (South Australia) the Second Chamber is elective.

Mr. BARTON. -
And in other colonies the Second Chamber is elective, and no Ministry has yet dissolved the Second Chamber in case of a dispute.

Mr. SYMON. -
The mere existence of the power has provided the remedy.

Mr. BARTON. -
The mere existence of the power has provided the remedy, and so I say with reference to this proviso. If you provide for a simultaneous dissolution the mere existence of the power is likely to provide the remedy.

Mr. ISAACS. -
Is that not because the vote of the people, on a dissolution of the Lower House, governs the whole question?

Mr. BARTON. -
That may be so, to a certain extent. I am not insensible to the fact that in the Federal Constitution the vote of the majority of the people, as distinguished from the majority of the votes in the separate states, would be the strong vote, and in the end the prevailing vote. I do not think you could make a Constitution in this form supporting the scheme of responsible government, unless you have confidence that that would be the result. I have myself no fear but that that would be the result. But it is an unjust thing to give such a power where circumstances only can demonstrate which House is in the right. It would be unjust to give the power to
dissolve one of the Houses first, whether the House dissolved were in the right or in the wrong. The difference between this Constitution and those of the separate colonies is a very strong one. We have not in any of the colonies a Second Chamber which rests precisely as the First Chamber does, on the popular vote, and which is supported by precisely the same suffrage. In the Commonwealth, both Houses appeal to constituents possessing the same suffrage and voting in the same way. It is true that one House appeals to the whole Commonwealth, and the other appeals to the states separately. That is the difference in the position of the two Houses. But the body of electors are really the same body acting in two different capacities. That may be a subject of some complication, but it is perhaps the inevitable result of a Constitution such as this, when the utmost has been done to liberalize the composition of the Second Chamber. We have done our utmost to liberalize the composition of the Second Chamber, and we have put ourselves in the position that, if it is right to dissolve one of those Houses, it is right to dissolve both. If there is to be a right to dissolve the unoffending Chamber as well as the other, we shall be doing an injustice, which I certainly think ought not to be contemplated by a Constitution such as this, which in every other particular makes most strenuous efforts to be just. I do not wish to detain the committee at greater length at this stage. I believe the provision which Mr. Symon obtained the insertion of in Sydney was consented to at a time when it was not thought the provision for dead-locks would go further. When it was found that the arguments in favour of a double dissolution prevailed—we were getting on towards the end of a session truncated through various circumstances, particularly in reference to the colony of Queensland it was thought wise to go back at that stage and move the recommittal, so as to eliminate my honorable friend's provision. But the men who voted for the double dissolution did so in the full belief that, before the Constitution was finally adopted, the provision for the consecutive dissolution would be struck out. I think I have done a duty to the Convention in endeavouring to take the sense of honorable members on this subject.

Sir JOHN FORREST (Western Australia). -

I sincerely hope that we shall be able to come to some reasonable decision on this matter without any lengthy debate. I may say, in the beginning, that I have all along been opposed to a provision for dead-locks. In Sydney I voted in favour of omitting such a provision, feeling that the same forces which regulate public life at the present time will be in existence when we have a Federal Parliament and a Federal Government, and that disagreements will
be much more unlikely under a federal form of government than under our local Parliament. I desire that the procedure to be followed in the future should be based on the procedure we have always followed, and are following now, and on the procedure which exists in the great mother country. If a difference occur at the present time between two Houses of Parliament in any of the colonies with elective Upper Houses—and several, including that which I represent, have elective Upper Houses—there is no provision for a dissolution of the Upper House. During the last quarter of a century, no great differences ha

Mr. REID. -
You are not satisfied as to the money clauses.

Sir JOHN FORREST. -
Members want everything settled, and settled precisely in their own way.

Mr. ISAACS. -
You want to follow the practice of those Houses, and tell us that is federation.

Sir JOHN FORREST. -
We have been able after a defeat-

Mr. REID. -
What?

Sir JOHN FORREST. -
A defeat.

Mr. REID. -
What on? You cannot tell us.

Sir JOHN FORREST. -
Those who desire that no provision should be made for dead-locks—and they had a very respectable following, as to some of us, at any rate-finding themselves in a minority, were quite content to provide some means of dealing with dead-locks, should they occur. With that view, Mr. Symon moved the first paragraph, the first two or three words of which we are now dealing with. Mr. Symon's proposal was a sort of compromise. It was not at all in accordance with the wishes of myself and many others, but we accepted it, and we carried it, very much to the disappointment of those who wished for the referendum, and appeals to the whole mass of the people on every conceivable trifling occasion.

Mr. REID. -
Or to the High Court.

Sir JOHN FORREST. -
However, the provision was inserted in the Bill. And then Mr. Carruthers—I hope he is present, because I have something to say about him—and my right honorable friend (Mr. Reid) proposed the second part.
Mr. REID. -
I was the real culprit.

Sir JOHN FORREST. -
And we were induced to support these two honorable gentlemen by a promise which was not carried out.

Mr. REID. -
Not a promise.

Sir JOHN FORREST. -
Yes, a promise which was clearly understood by me when I gave my support to those two honorable members, and if it had not been for my support and that of others the second paragraph would not have found a place in the Bill. We were promised that, in the event of that paragraph being carried, dissolution of the Senate would be avoided. I am willing to say for the honorable members to whom I have alluded that when they gave this assurance it was in good faith.

Mr. REID. -
I never gave any assurance.

Mr. ISAACS. -
Who gave the assurance?

Sir JOHN FORREST. -
The right honorable member (Mr. Reid) and the honorable member (Mr. Carruthers).

Mr. REID. -
Oh, no.

Sir JOHN FORREST. -
At any rate, Mr. Carruthers gave the assurance to me, and I understood that Mr. Reid was behind the assurance.

Mr. PEACOCK. -
Where was the assurance given?

Sir. JOHN FORREST. - In Sydney. Mr. Carruthers said means would be taken to eliminate from the clause, as proposed by Mr. Symon, the provision as to the dissolution of the Senate. I do not know whether Mr. Symon's memory is the same as mine on that point.

Mr. SYMON. -
I remember that.

Sir JOHN FORREST. -
It is clearly in my mind, and on that understanding I voted for dealing with dead-locks by means of a joint meeting of the two Houses with a three-fifths majority. My friends were unable, and I admit the difficulty, to
do as they hoped they would be able to do. That their intention was to eliminate from this clause the provision as to the dissolution of the Senate, I am absolutely positive. However, it was not done, and therefore we find these two clauses somewhat in opposition to one another, and two or three alternatives given to the Government of dealing with the matter. That is an altogether unsatisfactory plan, because in my opinion we should have one method of settlement, and not two or three. I have, however, tried to explain the reason why these opposing elements find a place in the Bill, that is, so far as my vote influenced it. The proposal that I favour is that the Senate should not be dissolved at all.

Mr. WISE. -
Vote with Mr. Barton on the next division.

Sir JOHN FORREST. -
I shall do nothing of the kind. I distrust the honorable member when he comes to me with a gift. I should like to see some simple plan adopted. I do not want to see any dispute between the two Houses carried on for months and months simply in order to gratify adventurous and aspiring politicians.

Mr. REID. -
The referendum is short, sharp, and decisive.

Sir JOHN FORREST. -
The referendum is unwieldy, and would not be effective. My objection to the dissolution of the Senate, as proposed in the Bill, is that it would give the Executive Government too much power. It is an engine that could be used by the Executive Government to coerce the Senate. Payment of members has always been a potent influence in preventing a dissolution, and since its introduction dissolutions have been almost unheard of. There was an exception in the case of New South Wales, but as a rule Ministers are unwilling to ask for a dissolution, knowing, as they do, that their friends will be thrown out in the cold, and that their pay will be stopped. That is one reason why dissolutions will not be very frequent under this Constitution. With regard to the referendum, I can understand the people in a colony like Victoria, which is comparatively small in area, and which has a metropolitan press that circulates everywhere within its boundaries, taking a very keen interest in any dispute between the two Houses, but is it likely that the people of Tasmania, of Queensland, of Western Australia, or of South Australia would take any great interest in a matter of the kind? Look at the daily press. Even in the city of Melbourne the reports of our proceedings that are published by the newspapers are as meagre as possible. This shows that the people of Australia are not taking any very keen interest in what we are doing. The press know what the public want. If a subject is interesting to the public they will not neglect it. You need not
look further than the sporting news to ascertain what interests the people of Victoria, and, in fact, the whole of Australia. The sporting news is very full, but even in the city of Melbourne only very short reports are published of the proceedings of this Convention. I say, therefore, that it is too much to expect the people of distant colonies to take any keen interest in any question in dispute between the two Houses, and it will be found that the referendum will only be taken advantage of by the people in the crowded centres of population. That is my opinion. If other honorable members agree with me, why cannot we devise some simple and more speedy method of meeting the difficulty? If the Houses cannot agree, even after a dissolution of the one House, then let them meet together, and let a three-fifths majority determine the matter. I mention a three-fifths majority, but that is a point on which every honorable member may have his opinion. That would be a much better plan than having either a simultaneous or consecutive dissolution, and trying to kick up a row in every part of Australia, when the people do not perhaps care two-pence about the particular question in dispute.

Mr. REID. - Would it not be simpler to have one Chamber, and to get rid of the House of Representatives?

Sir JOHN FORREST. - Do you want that?

Mr. REID. - With this Constitution.

Sir JOHN FORREST. - Then why do not you advocate it? By following the plan I am suggesting we shall be going along a well-beaten track and not along tracks that will lead, we do not know where. We should be following the precedent of the British Constitution, which provides that the Lower House may be dissolved. That is the plan that has been adopted in every British colony, and that is all that we want. By a dissolution of the Lower House we can most effectually ascertain what the opinion of the public is, because the people will take an interest in a general election, although they will not take an interest in a referendum when there is no one asking for their votes and trying to gain seats in Parliament. By a general election we get the votes of the people.

Mr. ISAACS. - Will you consent to be bound by the result?

Sir JOHN FORREST. - I say that if the two Houses cannot agree, they should meet together and
settle the matter in dispute. The world has not been made for to-day or to-morrow, and we are no dependent for our existence or our well being upon the passing of any measure immediately. If there is a grave dispute, no one loses much by delay. Under this Constitution the Senate will be continually changing. Every three years one-half of the members will go out. If they are opposed to what is the popular view they will not be re-elected, and in six years it will be possible for the people to alter the whole personnel of the Senate.

Mr. PEACOCK. -

The Government may be dead in the meantime.

Sir JOHN FORREST. -

It does not matter about the Government being dead; we have to think about the country, and whether I am in the Government or the honorable member is in the Government the country will go on. This desire to coerce the one branch of the Legislature is wholly opposed to my ideas of constitutional government.

Mr. PEACOCK. -

You have not had any experience yet of an Upper House.

Sir JOHN FORREST. -

Because you have been unable to get particular measures passed you want to have only one House, and you had better say so.

Mr. REID. -

And that the Upper House.

Sir JOHN FORREST. -

No, to have one House; to have the control of that House, and to do as you like. I shall oppose Mr. Barton's amendment, as I am not in favour of the first part of the clause, at any rate, down to the word "agree," being struck out. I hope that those honorable members who voted with Mr. Symon for the insertion of the words will not change their opinions now. We were induced to support the second part of the clause on the understanding that the words providing for a dissolution of the Senate would be excised, and that understanding has not been carried out.

Mr. WISE (New South Wales). -

I hope that there will be no confusion as to what we are voting for. I would have risen to order when my right honorable friend was speaking, but that I did not want it to appear that I desired to stop him in the remarks he was making. I would now ask you, Mr. Chairman, whether the debate should not be confined to the

discussion of

Sir JOHN FORREST.
Mr. WISE. -

If there is to be a dissolution of the Senate, the question is whether it is to be simultaneous or consecutive with the dissolution of the House of Representatives?

Sir JOHN FORREST. -

We have not got to that yet.

Mr. WISE. -

We want to get to that as soon as possible.

Mr. SYMON. -

Before there is a dissolution of the Senate, there must be a dissolution of the House of Representatives.

Mr. WISE. -

What we have first to decide is, whether sub-section (1) is to stand. If it is, then, of course, Sir John Forrest's proposal cannot be made.

Mr. SYMON. -

Yes, it can.

Mr. WISE. -

I can understand Mr. Symon desiring to get a vote in favour of his proposition from those who are really opposed to it.

Mr. SYMON. -

No.

Sir JOHN FORREST. -

What the Hon. Mr. Barton said was that if the words were struck out that would be an intimation that the first part of the clause was to go. If the words are retained, any honorable member can propose to amend the remainder of the clause in any way he may desire.

Mr. WISE. -

That is what I am pointing out. If the words "If the House of Representatives pass any proposed law" are struck out, that is to be a test vote as to the whole of the first sub-section. My right honorable friend desires to have the first sub-section struck out.

Sir JOHN FORREST. -

Not the whole of it.

Mr. WISE. -

He will get into technical difficulties if he does not. The first words of the right honorable member's amendment, as printed, are-"If the Senate reject or fail to pass." He can move the insertion of these words after the first sub-section has been struck out. He can make it a test question as to whether there shall be a simultaneous or consecutive dissolution. Mr. Symon, in asking that it shall be a consecutive dissolution, displays great
adroitness in persuading Sir John Forrest to vote with him, but that will not be a straight vote. If the right honorable member will consider the matter, he will see that, by voting for Mr. Symon, he will be voting on a question which is to decide whether there is to be a consecutive dissolution.

Mr. SYMON. -

Nothing of the kind.

Mr. WISE. -

Then it will not be a test vote at all. If we desire to take a test vote upon this question, let it be a clear test vote. I understood Mr. Barton to say that the test vote was to be on the question of whether we are to have a consecutive or a simultaneous dissolution. When we have dealt with that it will be open to Sir John Forrest to submit his amendment.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. SYMON (South Australia). -

I am sorry to refer again to the matter of procedure, but I am sure that my honorable and learned friend (Mr. Wise) was not serious when he said that I gave expression to the views I did in order to get opponents to my proposal to vote with me. I do not wish that. I do not wish any one who is an opponent of the whole of my provision to vote for it on any assumption that, at some time or other, he may be able to succeed in doing what he wishes himself. It is a customary form of military tactics, if you cannot succeed in defeating your opponents when they are united, that you must try to defeat them in detail. My honorable friend is quite right in that, but as it comes from one who is opposed to the views which Sir John Forrest and myself hold in substance, it loses, perhaps, some of its weight. Now, the proposal of my honorable friend (Mr. Barton) is to take a vote on the first words. I do not see how it can be a successful test vote on anything, because Mr. Barton says that if the words be retained, then it is competent for any one to move a subsequent amendment. If the words, therefore, are retained, Sir John Forrest, who agrees with me as to the dissolution of the House of Representatives in the first instance, will be able to move his amendment in substitution for what I wish at the end of the clause, and therefore the whole thing would be settled. If, on the other hand, the words are struck out, that means that the whole clause goes by the board, and it drives out of this clause the provision for the dissolution of the House of Representatives, upon which those who voted for it before are agreed.

Mr. WISE. -

I do not think that is the intention.
Mr. SYMON. -

But it is the effect. I do not wish that there should be any misapprehension on that score. The only difference between my honorable friend (Sir John Forrest) and myself is that which arises at the end of the paragraph after the word "agree," where, instead of having a dissolution of the Senate, which I propose, Sir John Forrest says-"I do not wish for a dissolution of the Senate, but for a joint sitting of the two Houses." That could be moved by way of amendment, and, if he were defeated on that, we could fall back upon what was done in Sydney—the dissolution of the Senate, and a joint sitting of the two Houses. So that the course is clear that way. On the other hand, if the whole were struck out, the course is not clear, because you defeat what my honorable friend has no intention of defeating, if his own proposal is not carried.

Mr. ISAACS (Victoria). -

The position, it seems to me, is this: If we keep in those words which the leader of the Convention has moved to excise, we must keep in a provision for an alternative dissolution.

Mr. WISE. -

That is the intention, at any rate.

Mr. ISAACS. -

That will be the necessary effect unless we strike out the whole of the second paragraph.

Mr. SYMON. -

Would you kindly put that point again?

Mr. ISAACS. -

I say that if the words which Mr. Barton has moved to excise be retained, then, unless the committee omit the second paragraph of clause 56B, it will necessarily retain the provision for an alternative dissolution.

Mr. SYMON. -

Oh, no.

Mr. ISAACS. -

That must be the effect.

Mr. SYMON. -

If the committee decide to retain the second portion.

Mr. ISAACS. -

Yes, I say unless the second portion is excised.

Mr. SYMON. -

Certainly.

Mr. ISAACS. -

If the second portion is struck out it only strikes out the provision for an alternative dissolution. If that portion is struck out, he then comes with
greater effect and greater facility to his proposal on the second sub-section, which is really to cut out from that second sub-section the provision for dissolution. Sir John Forrest does not agree at all with the first sub-section.

Mr. SYMON. -
Yes, with all of it except the dissolution of the Senate.

Mr. ISAACS. -
That is all there is in it.

Mr. SYMON. -
No there is the dissolution of the House of Representatives.

Mr. ISAACS. -
That is provided for afterwards in the Bill. If you take out the dissolution of the Senate that is all there is in this first sub-section. To provide in this sub-section simply for a dissolution of the House of Representatives is nothing.

Mr. HIGGINS. -
There is no use trying to persuade Sir John Forrest about this; he will stick to his own opinion.

Mr. ISAACS. -
I simply wish to point out that if Sir John Forrest is desirous of an alternative dissolution of the two Houses, the House of Representatives first, and the Senate afterwards, he will vote for the first sub-section. The honorable gentleman knows that in another part of the Bill it is already provided that the Governor may dissolve the House of Representatives.

Sir JOHN FORREST. -
But there is nothing about a consecutive dissolution.

Mr. ISAACS. -
The honorable member does not catch what I am saying. In another part of the Bill it is provided that the House of Representatives may be dissolved.

Sir JOHN FORREST. -
We know that; that has nothing to do with the Upper House.

Mr. ISAACS. -
Quite so. Let me go on to state further that the first sub-section of clause 56 provides nothing at all except this, that, in addition to dissolving the House of Representatives, you may dissolve the Senate afterwards, consecutively or alternatively. If Sir John Forrest supports Mr. Symon's sub-section, he supports the proposal to dissolve the Senate.

Sir JOHN FORREST. -
No, I propose to move an amendment in respect to that.

Mr. ISAACS. -
In the second sub-section it is provided that if the two Houses do not agree, there may be a simultaneous dissolution.

Mr. WISE. -
Sir John Forrest can move it in the second sub-section.

Mr. ISAACS. -
If the only particular in which Sir John Forrest differs from the second sub-section is with regard to simultaneous dissolution, all he has to do is to excise these words, and he carries his point. He may do as he pleases, but I warn him, and he will find that I am perfectly right, that when he votes for the first sub-section, if, unfortunately, he should carry it, he will be either stuck with the alternative dissolution, or else we shall have to cut out the whole of the second sub-section.

Sir JOHN FORREST. -
So we will.

Sir GEORGE TURNER. -
I do not think you will.

Mr. ISAACS. -
Then we shall have the Bill in a state of confusion. I should like to say a word about the merits of the matter. I do earnestly hope that the committee will take this as a test vote as to whether there shall be an alternative dissolution at all. That is the point on which I am going to vote. That is the aspect in which the leader of the Convention has placed the matter before the committee, and we may thoroughly understand that we are not to be embarrassed by trivial matters of procedure such as those raised by Mr. Symon and Sir John Forrest. I take it there cannot be anything more unjust than that when a dispute arises between the two agents of the people - the two Houses of the Legislature - one must always and under all conceivable circumstances be assumed to be in the wrong. It does not matter what the nature of the objection of the Senate may be to a Bill presented to it by the House of Representatives. It does not matter whether it is a total or a partial rejection. It does not matter how public opinion has been manifested through the press or by public meetings or otherwise. It does not matter how large the majority is in the House of Representatives that carried the proposal; but, simply because the Senate chooses to deny the advisability of passing that measure into law as the House of Representatives wants it, the House of Representatives is assumed, forsooth, to be in the wrong. Then the position taken up by those who advocate the alternative dissolution is this: Let the House of Representatives go to the country; let the House of Representatives, and that House alone, accept the risks. If they come back with the verdict of the country in their favour we can gracefully yield; we take no risk - say the senators - none whatever. We do
not brave public opinion, but in taking up this position of absolute refusal we drive the
other House either to go to the country, or, under the penalizing influence of a dissolution, to yield against their better judgment practically the rights and requirements of the people. Why should that be? We have had quite enough of it in the colonies. When Sir John Forrest referred to what had taken place in this colony, he brought forward a set of circumstances that tell very heavily against his suggestion. He says-"Why will not a dissolution of the House of Representatives alone be enough?" For the simple reason that be will not take the next necessary step that is to allow that dissolution to determine the matter. He would say-"If the House of Representatives were dissolved, and they came back strengthened in their previous opinion, then the Senate will not yield; that dissolution was for the whole people, and it does not bind the Senate in any way. True it is, you have got a majority in the two large colonies, but the three colonies sending in a minority of representatives to that House have decided to upset the proposition, and, therefore, that dissolution is to go for nothing."
All the expense, all the trouble, all the risk, is to go for nothing. If Sir John Forrest is willing to accept the position as it would be in England or in this colony, that a dissolution of the Lower House is to govern the matter finally and decisively, I am willing to accede to that. But he will not take that position.

Sir JOHN FORREST. -
That is not the rule here, even.

Mr. ISAACS. -
Of course, it is the rule.

Sir JOHN FORREST. -
It does not follow.

Mr. ISAACS. -
It must follow.

Sir JOHN FORREST. -
Oh, no.

Mr. ISAACS. -
What is a dissolution for?

Mr. SYMON. -
Then there would be no dead-lock.

Mr. ISAACS. -
That would get rid the dead-lock. The dead-lock would have been the cause of the dissolution, and the dissolution would have been resorted to to settle that dead-lock.
Mr. MCMILLAN. -
Does not a dead-lock generally lead to a compromise, not to an absolute settlement?

Mr. ISAACS. -
I do not know what it leads to, except that it shows that the other House was wrong, and the other House must give way partially or totally. My honorable friend knows that no less an authority than Sir Frederick Pollock has pointed out very recently that the reason why there are no dead-locks under the British Constitution is not because opposition is tolerated on the part of the Upper Chamber, but because by the working out of the Constitution it is found that in the last resort the voice of the people at large must govern; and when he gives his celebrated illustration of a mechanism whereby the hour hand is governed by one set of works, the minute hand by another set, and the striking part by a third set, with no means whatever of making them work in unison so as to tell the correct time, he points out that in England, under the British Constitution, that is solved by making the popular verdict the absolute decisive factor.

Mr. GLYNN. -
Because they are like the clock. The same machinery moves both Houses practically.

Mr. ISAACS. -
Very likely. I am pointing out, in answer to Sir John Forrest when he invited our attention to the British Constitution, that in the last resort it is not because the power is equally divided among the Houses, but because in the last resort there is only one power—the power of the people at large. When we are invited to make no provision for dead-locks, because we are told that dead-locks will not occur, because the good sense of the people, the good sense of the Houses, will avert them, I say that is not the experience under the British Constitution.

Sir JOHN FORREST. -
I think it is.

Mr. ISAACS. -
It was not until 60 years ago that that principle was formally engrafted on our Constitution—the Constitution was, in fact, changed to that extent that the House of Lords cannot withstand the voice of the people.

Sir JOHN FORREST. -
We have had no dead-locks for twenty years in these colonies.

Mr. ISAACS. -
Why? Because the out come of the struggles we have had is that the people here by their decisive voice govern the whole matter as they do in
England, and no Upper House will dare to stand against the voice of the people spoken at a general election.

Sir JOHN FORREST. -

What do you want the provision for at all?

Mr. BARTON. -

I would point out that I am not making my proposal on any ground that the Senate is an Upper House.

Mr. ISAACS. -

My honorable friend did not use the argument that Sir John Forrest used when he invited our attention to the British Constitution, and asked us to stand on what he called the beaten track of that Constitution. I am answering his argument, and I am saying that if we are to take that stand we should follow it out to its logical result.

Sir JOHN FORREST. -

I said the Constitutions of these colonies, too.

Mr. ISAACS. -

The Constitutions of these colonies are precisely the same, and when the appeal was made from the Queensland Parliament, in their celebrated dispute, to the Privy Council, they were told that the Legislative Council and the Legislative Assembly there should stand in these matters in the same, or as nearly as possible in the same, relative positions as the two Houses in England. Therefore, if we are to accept the British Constitution as the standard, the nearer we get to it in that respect the better. I repeat that we will accept the position that the voice of the people at large will determine these matters. Whether we take that road or the views which have been put diversely, and amongst them the view put by Mr. Barton, it brings us round to this position: In any aspect it is unjust, it is irrational, to penalize the House of Representatives first in all circumstances, and leave the Senate in a totally different position, a position where, to use the words of a celebrated comic opera, it can display its "heroism without risk."

Sir JOHN FORREST. -

That is very stale.

Sir EDWARD BRADDON (Tasmania). -

I rise principally to point out the position in which I think we are placed at the present moment. That position, as I see it, is this: That if the Convention agree to the amendment to strike out certain words at the commencement of the paragraph, it means that the paragraph will be struck out, and that nothing which is contained in that paragraph can be introduced hereafter, whereas, if we disagreed with the amendment to strike out the paragraph, it will stand and be open to any amendments honorable members may think fit to propose. Perhaps the leader will tell
me if I am right in so understanding the position?

Mr. BARTON. -

That is very near it.

Sir EDWARD BRADDON. -

I would like to say, by way of reply to the Attorney-General of Victoria, that he, to my mind, has advanced conclusive arguments why there should be no dissolution of the Senate. He says, and says very properly, that the popular voice heretofore in these colonies has, through a dissolution of the Assembly, brought the Council to reason and prevented dead-looks. If that be so as between a House of Assembly and a Legislative Council elected on a different franchise, or in some cases not elected at all but nominated, how much more so will it be the case when the appeal made to the country by the members of the House of Representatives will be an appeal made to exactly the same electorate as the Senate would have to appeal to? The whole people of the Commonwealth would be the people appealed to by members of the House of Representatives, and if there was a dissolution of the Senate the members of that House would have to appeal to precisely the same constituency, that is, to the whole electoral body of Australia.

Mr. WISE (New South Wales). -

I hope that we shall not drift into a long debate through a misunderstanding of the procedure. I rise, sir, to ask you a question which, I hope, will limit the discussion to a precise issue. The question I desire to ask is whether, supposing Mr. Barton's motion to excise these words be carried, he having intimated that he desires that vote to be taken as a test vote upon the question whether there should be a consecutive or a simultaneous dissolution, it will still be competent for Sir John Forrest to move the amendment in his name which is in print? I understand that the leader of the Convention desires that the question whether there should be a consecutive or a simultaneous dissolution, should be settled once and for all. I do not think it is necessary to discuss that question. Arguments upon each side have been heard ad nauseam, and all that is necessary now is to vote upon it. But it appears to be thought that if the proposal of the honorable and learned member (Mr. Barton) were carried, inasmuch as by implication it would excise that part of the clause which provides for the dissolution of the House of Representatives, the right honorable member (Sir John Forrest) would not be able to move his amendment. I desire to know whether, if the proposal of the leader of the Convention is carried, it will still be competent to the right honorable member (Sir John Forrest) to move the amendment of which he has given notice?
Mr. SYMON (South Australia). -

Before you, sir, answer that question, it is necessary to put another. If it is desired to take a test vote upon the question whether we shall have the simultaneous or the consecutive dissolution, and the amendment of the Right Hon. Sir John for the adoption of the consecutive dissolution?

Mr. WISE. -

Certainly not.

Mr. SYMON. -

If the amendment of the Right Hon. Sir John Forrest is negatived, he wants to support the consecutive dissolution. But if you take a test vote now as to whether we should have the Consecutive or the simultaneous dissolution, the right honorable member will be shut out, and, to use a popular phrase, he will have only one "go" for his money.

Mr. WISE. -

Let him move his amendment now.

The CHAIRMAN. -

I take it that, inasmuch as paragraph (1) provides for the consecutive dissolution, if the committee strike it out that will be an indication that honorable members do not want the consecutive dissolution, and it will be impo

Mr. WISE. -

The question I asked was whether, supposing the amendment of the honorable and learned member (Mr. Barton) were carried, it would still be competent to the Right Hon. Sir John Forrest to move his amendment?

Sir JOHN FORREST (Western Australia). -

If the honorable and learned member (Mr. Wise) would look after his own business, and let us look after ours, I think we should get on better. I would point out that the honorable and learned member (Mr. Symon), and myself are both willing to allow the words of the first paragraph as far as the word "agree," in line 15, to stand. I, however, should like to see the words, "the Governor-General may dissolve the Senate," at the end of the paragraph, struck out. I think that the question might be put that all the words of the first paragraph as far as the word "agree" stand part of the clause, and then both the honorable and learned member (Mr. Symon) and myself, could vote with the Ayes. Of course, if that question were negatived the remaining words of the paragraph would have to be struck out, and we should be free to go on with the second paragraph.

Mr. DOBSON. -

Why not move your amendment first?

[P.2119] starts here
Sir JOHN FORREST. -

I understand that the amendment of the honorable and learned member (Mr. Symon) is before mine.

Mr. BARTON (New South Wales). -

It seems to me that the course I originally indicated would have been the right one to pursue. I wish to leave out the first paragraph; but I indicated that it would suit my purpose to allow any amendments which honorable members wish to make in that paragraph to be moved. Then, if the paragraph, as amended, contains any principle with which I disagree, I can vote against it as a whole. I, however, do not wish to put any honorable member in a difficulty. It occurs to me that perhaps the best thing to do would be to withdraw my amendment, and to leave the field open for any amendments which the honorable member (Mr. Symon) and the Right Hon. Sir John Forrest may wish to propose. If, after these amendments have been dealt with, the paragraph is still objectionable to me, as retaining it principle or principles with which I disagree, I shall ask honorable members to vote against it.

Mr. Barton's amendment was, by leave, withdrawn.

Mr. SYMON (South Australia). -

I shall not press the second amendment of which I have given notice. It has been suggested that as far as the word "agree," in line 15, the first paragraph of the clause carries out the joint intention of the Right Hon. Sir John Forrest and myself. The words following the word "agree" the right honorable member desires to strike out, with a view to inserting other words. I think that we might take a direct vote upon the proposal of the right honorable member, and, if it is negatived, we can then deal with the remaining words of the paragraph providing for the consecutive dissolution of the Senate.

Sir JOHN FORREST (Western Australia). -

I beg to move-

That after the word "agree" (line 15), the following words be inserted:-
"then the House of Representatives may present an address to the Governor-General reciting the facts, and praying that a full conference of the two Houses of Parliament may be convened: And thereupon the Governor-General may convene such conference: And if the proposed law be affirmed by a majority of three-fifths of the members present, and voting thereon at such conference, it shall be deemed to have passed both Houses of Parliament, and shall be presented to the Governor-General for the Queen's assent."

Mr. GLYNN (South Australia). -

I should like to point out that the putting of this amendment will render it
impossible for any one to move an amendment in the earlier part of the paragraph. A good many honorable members may be willing to support the proposal of the leader of the Convention that the first paragraph be struck out; but it does not follow that they will support the second paragraph, providing for the simultaneous dissolution, in the form in which it stands in the Bill. The first paragraph provides that the second passing of a measure by the House of Representatives must be by an absolute majority; but the second paragraph does not. That is a very material difference.

Sir JOHN FORREST. -
If the honorable and learned member has any amendment to propose, I shall be willing to withdraw mine.

Mr. GLYNN. -
I was going to suggest, in view of the fact that the leader of the Convention desires to retain only the provisions of the second paragraph, that it might be desirable to amend the first paragraph to make it provide that if a Bill were passed by the House of Representatives in one session, and again in the next session, whether after an election or not, by an absolute majority before or an ordinary majority after an election, and were then rejected by the Senate, you might proceed by way of the simultaneous dissolution. Now, that would be a qualification of the second part of the clause as it stands, because the second part really provides for the joint dissolution on the rejection of the Bill, the measure having been passed by the House of Representatives by an ordinary majority.

The CHAIRMAN. -
I would suggest to honorable members that we had better deal with one thing at a time. We are dealing now with the first paragraph of 56B. When we have determined that, we can afterwards strike out the second paragraph, or amend it so far as is not inconsistent with what we have then done.

Mr. GLYNN. -
But it might be convenient to make a modification in the first paragraph that would affect the second paragraph.

Sir JOHN FORREST. -
I will be very willing to withdraw my amendment if the honorable member wishes to attempt to do that.

Mr. GLYNN. -
Oh, never mind; I will propose an amendment on the second paragraph.

Sir JOHN FORREST. -
All right.
Mr. HIGGINS (Victoria). -

Whatever may be arguable, we want business done. This proposal of Sir John Forrest's will not satisfy the populations of the larger states, is disagreeable to the inhabitants of the smaller states, and will not achieve the purpose of any particular party.

Dr. QUICK (Victoria). -

I hope no action will be taken to destroy the dead-lock provisions as settled in Sydney, at any rate, in so far as the double dissolution is concerned. I regard with a considerable amount of uneasiness the proposal which now proceeds from Sir John Forrest. I am apprehensive it is intended to break the settlement of the dead-lock provisions as determined in Sydney. I am willing to accept reasonable provisions as embodied in the Bill for the settlement of dead-locks. I am willing to loyally adhere to this compromise; but if any effort to disturb this settlement is successful, I venture to say it will be a disastrous sort of arrangement.

Mr. SYMON (South Australia). -

I do not quite agree with Dr. Quick. If there had been any settlement at Sydney we ought to be very chary about disturbing it, but there was no settlement at Sydney. What we did there, as Mr. Barton has pointed out, was that, near the close of our session in Sydney, after we had debated the matter with great exhaustiveness, and earnestness, and with a sincere desire to settle it, we were unable to arrive at an absolute settlement, and the alternative dissolution was inserted, in order that we should have both those things in the Bill for consideration in the interval. After discussions and divisions on the referendum, there was also inserted, at the instance of the representatives of New South Wales, a provision for the joint sitting of the two Houses, but there was no settlement. Therefore, we disturb nothing by what we are doing now, but we are about to arrive at a settlement, if we can, and those of us who are strongly in favour of the consecutive dissolution, and who do not want to see the Senate under the perpetual menace of the Executive Government of the day, wish to assure the House of Representatives that if it disagrees with the Senate, or if the Senate disagrees with the House of Representatives, it shall be on the ground that they do not represent the voice of the people. And we say they shall be asked to go before the people to ascertain whether they have, or have not, a mandate to support the particular measure about which the disagreement has arisen. If they come back from the appeal to the people with that mandate, the same result will follow as Mr. Isaacs pointed out. The Senate will give way in all probability. If it does not; if the issue is so momentous that the Senate feels that it is impossible it should give way-

Mr. PEACOCK. -
That is not the question we are on now.

Mr. SYMON. -
Pardon me, it is.

Mr. PEACOCK. -
That does not arise under the proposal of Sir John Forrest.

Mr. SYMON. -
Some of us desire to retain the consecutive dissolution. We may be right or we may be wrong; that is for the Convention to determine. Sir John Forrest says-"I prefer, instead of dissolving the Senate at all, that, immediately after the dissolution of the House of Representatives, and the disagreement continuing, there shall be a joint sitting of the two Houses to solve the difficulty." Very good. The honorable member says-"I want to move an amendment to have that decided." Now, if the Convention are against those of us who vote with him on that amendment, then comes the question of the consecutive dissolution of the Senate, on which the right honorable member falls back. Therefore, it seems to me that the true way is to take the issue on the amendment as to whether there shall be a joint sitting immediately there is disagreement subsequently to the dissolution of the House of Representatives and the disagreement continuing, or whether there shall be a dissolution of the Senate first. That seems to me to be the issue.

Dr. QUICK. -
Are you going against the dissolution of the Senate?

Mr. SYMON. -
Certainly not.

Sir JOHN DOWNER (South Australia). -
I do not quite agree with those who say, we did not come to a resolution at our last session in Sydney. I think that we did. It is true that the resolution we came to was not in the form in which this provision appears in the Bill. But honorable members who have the whole history clearly in their memories will recollect that my honorable and learned friend's amendment was carried first. Then, that being unsatisfactory to many members of the committee, the provision which is in the second paragraph of clause 56B was moved. And, although I opposed it-I am just speaking about my understanding of it-I venture to say that it represented the deliberate views of the majority of the committee, and that the first paragraph would have been struck out if the standing orders would have allowed that to be done. But that could not be done.

Mr. DEAKIN. -
Hear, hear.
Mr. MCMILLAN. -
    The object of our Sydney decision was to give time to consider the matter.

Sir JOHN DOWNER. -
    I am against the whole thing.

Mr. PEACOCK. -
    What whole thing?

Sir JOHN DOWNER. -
    I am against any provision for dead-looks.

Mr. HIGGINS. -
    The cat is out of the bag.

Mr. WISE. -
    You cannot carry this Bill without it.

Sir JOHN DOWNER. -
    That is simply the honorable member's opinion. But I am merely stating fairly what

Mr. MCMILLAN. -
    It was not a final settlement.

Sir JOHN DOWNER. -
    Each man has to answer for himself. We must reach finality about everything some day. I thought, and still think on reconsideration, that, rather than incur any serious risk to the cause of federation—although I disapprove wholly of this clause, and always have disapproved of it—I will accept this second paragraph rather than cause any danger to federation, because I think that danger to federation would be a greater evil than this incident of federation.

Sir EDWARD BRADDON. -
    What serious danger do you allude to?

Sir JOHN DOWNER. -
    I look on all these provisions as being utterly useless.

Mr. HIGGINS. -
    A good tory principle.

Mr. WALKER. -
    Unnecessary.

Sir JOHN DOWNER. -
    I look upon anything of this kind as being unnecessary. I listened with pleasure to the speech of the Attorney-General of Victoria, who,
dissolution of the House of Representatives must of necessity operate on the Senate. Mr. Isaacs was reasoning from a different experience altogether, but I accept his reasoning for a moment.

Mr. ISAACS. -

Will you concede that as a principle in the Constitution?

Sir JOHN DOWNER. -

I always listen to my friend's arguments, and he will not complain if I follow them for a moment.

Mr. ISAACS. -

You will not follow them far enough, that is all.

Sir JOHN DOWNER. -

While Mr. Isaacs urged that the principles of internal government should apply to federal administration, he showed, or thought he showed, that the voice of the people had to rule in the end, and that, although the Legislative Council was not dissolved, still the dissolution of the Legislative Assembly resulted in returning members with an authority which operated as a mandate to the members of the Legislative Council. Either my honorable and learned friend thinks that argument will apply to federation or he admits the argument has nothing to do with the question. As I am certain my honorable friend would never use an argument which had nothing to do with the subject, I suppose he thought his argument was relevant to what we are discussing.

Mr. HIGGINS. -

You are very logical.

Sir JOHN DOWNER. -

Looking at the matter from this point of view, I say my friend has shown us there is no necessity for anything at all—that the power to dissolve the House of Representatives would be all-sufficient, and that the voice of the people, as given in the elections, would be so express that the Senate would be unable to resist it. I am dealing with this matter from my friend's point of view. If I be asked whether I agree with that point of view, I say I do not agree with it a bit. I do not think there is any possible relevancy between the internal constitution of the state and that which the Federal Constitution will be. All those amendments that are being attempted are intended to weaken the power of the states and increase the power of the numerical majority.

Mr. HIGGINS. -

Why should they not?

Sir JOHN DOWNER. -

Whatever form the amendments are put in, they all have the same object. They all intend that in the long run the states have to sacrifice their
individuality and authority, and become subservient to the vote of the majority of the general people of the colony.

Mr. MCMILLAN. -

Do you say you will accept the settlement?

Sir JOHN DOWNER. -

At the present time I say that if I am convinced—because I have to be convinced—that it would be accepted as something which would be satisfactory to the majority of the members here, so that they may go to their constituents and recommend it to them, I would rather agree to what I call the Sydney settlement than see the cause of federation in danger. But I do not know. I suppose we shall have a proposition for a general referendum in a moment or two, and then we shall all be adrift again. We shall have no certainty, whether we stand by the resolution come to in Sydney or not, that we are any nearer the good understanding which should exist amongst us in order that our influence may be brought to bear on our constituents. So far as I am concerned, I mean to suspend my judgment at the present time in order to see a little further how this thing is going. My own view in the matter is not altered in the smallest degree. The more argument and discussion there is, the more I see that there is only one of two ways. One way is not to consider such a thing as dead-locks, but to banish the word, and leave the solution of the difficulties to the good feeling of the people and the good working of the Constitution. The other way is the proposal of Mr. Reid to subject the states to a popular referendum, and thereby destroy their individuality.

Mr. HOLDER. -

Why not discuss one thing at a time?

Sir JOHN DOWNER. -

I think it would be much better if we were to discuss one thing at a time. The question is very much involved, seeing that the whole ground is covered in clause 59.

Mr. HOLDER. -

You will save time if you take each point separately.

Sir JOHN DOWNER. -

That is exactly what I do not mean to do. If we keep on striking out this and that we shall at last have to insert something we do not like at all. It is much wiser for us to deal with the whole thing at once, and understand what we are doing. Take a test vote if you like; that is what I would wish. But Sir Richard Baker cannot say that any vote is a test vote. It is quite impossible for us to prevent a question being put again afterwards. It is impossible by excising this and that paragraph to deal with the question at
Mr. HOLDER. - 
Suppose now that we put something in?

Sir JOHN DOWNER. - 
If the committee will strike out the whole of the paragraph and put nothing in I will go with them. But the Sydney settlement-

Mr. ISAACS. - 
There was no Sydney settlement.

Sir JOHN DOWNER. - 
In a sense there was not. It was voted for by members with wide differences of opinion; and in that sense there was no settlement. There was a distinct vote in Sydney, the result of which is represented in the second paragraph, and that I do not think was intended to be conclusive. I want to hear a little more of other proposals which may be made before I elect in which way I shall vote.

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

The committee divided-

Ayes ... ... ... ... 15
Noes ... ... ... ... 28

Majority against the amendment 13

AYES.
Braddon, Sir E.N.C. Grant, C.H.
Briggs, H. Hassell, A.Y.
Brown, N.J. Lee Steere, Sir J.G.
Clarke, M.J. Lewis, N.E.
Crowder, F.T. Moore, W.
Dobson, H. Venn, H.W.
Douglas, A. Teller.
Downer, Sir J.W. Forrest, Sir J.

NOES.
Abbott, Sir J.P. Leake, G.
Berry, Sir G. McMillan, W.
Brunker, J.N. O'Connor, R.E.
Carruthers. J.H. Peacock, A.J.
Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Reid, G.H.
Glynn, P.M Solomon, V.L.
Gordon, J.H. Symon, J.H.
Hackett, J.W. Trenwith, W.A.
Henning, A.H. Turner, Sir G.
Higgins, H.B. Walker, J.T.
Holder, F.W. Wise, B.R.
Howe, J.H.
Isaacs, I.A. Teller.
Kingston, C.C. Barton, E.
Question so resolved in the negative.

Mr. BARTON (New South Wales). -

I would suggest that, as this matter has been considerably debated both in Sydney and here, we should take an early vote on the paragraph.

Mr. KINGSTON (South Australia). -

I shall be found supporting the retention of the provision for a consecutive as well as a double dissolution. It occurs to me that, whatever was the necessity for providing some means for the settlement of deadlocks in Sydney, it has been greatly increased since then by the introduction of debatable matters in connexion with which it is very possible that there may be a conflict of state interests and of the interests of the people as a whole. I allude particularly to the power which is given to the Federal Parliament to deal with questions of railway construction and extension in a state, and I allude, above all,

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to the fact that there is for ever confided to the Federal Parliament the duty of distributing amongst the states, in such proportions as they please, a sum which at the very outset will be between £4,000,000 and £5,000,000, and which as time goes on must increase. There is no subject on which there is more likely to be a conflict amongst the states—a scramble, a bitterness, a trouble—than this, and we should be altogether wanting in our duty if we did not do all we can for the purpose of securing harmony between the representatives of the states in the Senate, and the people of the states themselves, and harmony also between the House of Representatives and their constituents. When this provision was originally proposed by the Hon. Mr. Symon, in Sydney, I confess that I did not see the full force of it, but the more one examines it, the more it appears to be just and fair and right so far as the House of Representatives is concerned. If you have not a provision of this sort, what is the position? Although the House of Representatives may have had some dispute with the Senate in a Parliament which has ceased to exist, and although they may have gone to their constituents, and secured from them a fresh mandate, if they come back and renew the discussion, and the Senate hold fast to their original position, you cannot send the Senate to thei

An HONORABLE MEMBER. -

Again?
Mr. KINGSTON. -
Yes. Is that fair? The members of the popular House would be subjected to two dissolutions before the Senate were referred back to their constituencies for an expression of their views, and that seems to me to be a monstrous proposition. Why should we do anything of the kind?

Sir JOHN DOWNER. -
Why should we do anything at all?

Mr. KINGSTON. -
I have already dealt with that point. I say that by the introduction of fresh matter into the Bill, we have increased the probability of dead-locks and disputes to an alarming extent, and we should be wanting in our duty if we did not do whatever we could to provide a facile means of ascertaining whether the Senate, as well as the House of Representatives, were supported by their constituents.

Sir JOHN FORREST. -
That is the second provision you are dealing with.

Mr. KINGSTON. -
I am referring to the two.

Mr. HIGGINS. -
Do you intend to support both?

Mr. KINGSTON. -
I do intend to support both. I do not think there is any room for doubt as to the course I propose to take.

Sir JOHN FORREST. -
A double dissolution after a single dissolution?

Mr. KINGSTON. -
Yes, as an alternative, at the option of the Executive.

Mr. ISAACS. -
How will that test the Senate?

Mr. KINGSTON. -
In the first instance, there will be an election for the House of Representatives, and that will test the feeling of their constituencies. Then you will have the option, if the dispute is still continued, of sending the Senate to their constituencies.

Mr. ISAACS. -
Double expense.

Mr. KINGSTON. -
An expense not to be lightly undertaken. Look at it in this way. There has been a dispute on a live question—and we can only anticipate that powers of this sort will be put into force in connexion with live questions—and in the natural order of things there is a dissolution by expiration of time. The
House of Representatives go to their constituencies, and are fortified by the expression of their views. The members come back fresh from the country and renew the contest. The Bill is carried by the necessary statutory majority, and sent up to the Senate; and are we to be told that the Senate can still say-"Although there is very good ground for believing that you have the mandate of the constituencies in favour of the proposal which you make, we will hold fast to our position, and make you go through the idle form of going to the people a second time before you can ask us to test our position by going to our constituents"?

Sir JOHN FORREST. - I did not propose that.

Mr. KINGSTON. - I am happy to say that my right honorable friend's proposal was negatived, and now we have the proposal of the original Bill before us. My position is this: As long as both Houses feel that they are liable to the same test and the same penalty as regards being sent to the constituencies, you will do away to a very great extent with the probabilities of disagreement.

Mr. HIGGINS. - Is not that answered by the second paragraph, if you have a simultaneous dissolution?

Mr. KINGSTON. - But this is the position I put to the honorable member: A House of Assembly, fresh from its constituents, renews its contest with the Senate, and is it fair to require that House to again go to its constituents by means of a double dissolution before you can require the Senate to be similarly tested? I think not. I do not think that a clause of this kind will often be required to be put into operation. I think the very moral effect of it would secure all that is required. And I would say in this connexion, as was stated by Mr. Symon when he originally introduced the proposal, that it is founded on South Australian legislation. The position there is that if in any Parliament a Bill is passed by the House of Assembly and rejected by the Council, and in the next successive Parliament it is similarly treated by the Legislative Council, either both Houses can be dissolved or writs can be issued for the election of a third of the members of the Legislative Council under circumstances in which no fresh writs will be subsequently issued till the numbers are reduced by vacancies or retirements to the number originally named in the Constitution. We have never had to have actual recourse to a provision of that sort, but the effect of it, I believe, has been to conduce to much greater harmony between the two Chambers of
Legislature-harmony such as we are striving to secure in the Federal Parliament which is to be established.

Mr. ISAACS. -
Because you have only one constituency there—the people of South Australia.

Mr. KINGSTON. -
We have various districts.

Mr. ISAACS. -
Yes, but still—

Mr. KINGSTON. -
Furthermore, there is a greater difference in the character of the constituencies there than there will be under the Federation. Of course, there is a property qualification there, and there is no such difference in regard to the federal franchise; but so far as the Federal Parliament is concerned, although the difference in the grouping may be greater, I venture to assure my honorable and learned friend that there is a greater difference in the position of the two Chambers in the South Australian Parliament than there will be in the case of the Federal Parliament. The position, therefore, for which I contend in connexion with the retention of this clause, is that you do not require in all cases before you can send the Senate to its constituencies that the House of Assembly shall accompany it, but that there shall be power when, as it were, the House of Assembly is fresh from its constituents, to dispense with the useless form of sending it again.

Mr. ISAACS. -
But that is not the position under this clause.

Mr. TRENWITH (Victoria). -
It appears to me that the first of these clauses is extremely unjust, and is likely to lead to an unfair use of the Constitution. It proposes in the event of a dispute between the two Houses to penalize, by a consecutive, or a prospective consecutive, dissolution, one House. Then we might have a dispute arising between the two Houses, in which, if there were any considerable pressure, the Second Chamber might say—"Well, we will wait a bit, and bide the result of the dissolution of the House of Assembly." Now, that seems to me to be altogether inequitable.

Mr. SYMON. -
Why should not they?

Mr. TRENWITH. -
For the reason that it will be very much in the nature of a gamble. The
Second Chamber may say and act as if it believed that in this conflict "it is all to nothing with us; if the Assembly is sent to its constituents, and has a majority after it has been so sent in favour of the proposed law, we will give in"; whereas if there were a double or a joint dissolution, upon further disagreement of a character that became so acute that it could not be otherwise settled, the position would be entirely different, and there would be equal pressure upon both Houses to concede. With the prospect of a consecutive dissolution there is not equal pressure on both Houses. It seems to me that, as both Houses are part of the Constitution, both Houses ought, in obedience to their duty to the people, to do everything they can to concede whatever is reasonable to the opinions of each other. When they both have equal obligations in this connexion, they will both have the fear of equal pressure to induce them to concede, and in the event of a dispute becoming so acute that, in obedience to their view of what was right to their constituencies, neither House could concede any more, and there was still a difference between them not capable of being bridged over without a dissolution, surely the penalty should be on both Houses, and not on one only. It seems to me, therefore, that if the first clause were struck out, and we were left with the clause providing for a double dissolution in the event of dead-lock which could not be settled by any other means, we should be placing (as we ought to place) both branches of the Legislature on exactly the same footing, both liable to the same penalty. Because it is a penalty.

Mr. WALKER. -
It will be a greater penalty on one House than on the other; in the one case the term of election is six years, and in the other only three.

Mr. TRENWITH. -
If both Houses are dissolved the penalty is the same. The penalty is the turmoil, the trouble, and the expense of a general election. That is a penalty which honorable men, feeling that they are fighting fairly in the interests of the people they represent, will never shrink from incurring.

Mr. WALKER. -
The penalty involves the sacrifice of a seat tenable for six years in the one case and not in the other.

Mr. TRENWITH. -
The penalty is equal; there is no six years involved in the dissolution.

Mr. WALKER. -
The members of the Senate will, at any rate, stand to forfeit the second half of their term.

Mr. TRENWITH. -
There is no such question involved in the dissolution. The penalty is the possible loss of the seats the members hold, and the expense, labour, and
trouble of an election. It seems to me, in this matter, what should be considered is the interests of the people; and it is in the interests of the people that they should be relieved, as far as practicable, from unnecessarily frequent elections, because, while a general election is an expense and a hardship upon representatives, if it is extraordinary or premature, it is also an expense and a hardship upon the people who take part in it, who must lose time in voting, and who must occupy time in making themselves acquainted with the views of the candidates in connexion with the election.

Sir EDWARD BRADDON. -

Then why extend the evil?

Mr. TRENWITH. -

It seems to me that you minimize the evil by making a dissolution joint instead of consecutive, because otherwise one House can, in the most airy manner, submit the other House to dissolution without any fear of a penalty upon itself; but if both Houses are to be dissolved, in the event of their not being able to agree, you have a much greater inducement for them to come to an agreement, if that be at all possible.

Sir EDWARD BRADDON. -

You admit that the Senate would yield to the popular vote in favour of the House of Representatives?

Mr. TRENWITH. -

That is not the point entirely. It would more frequently yield after a dissolution than before. My view is that if you have a Constitution which entails upon them the possibility of facing their constituencies, you will make both Houses more careful not to disagree unless they have very strong reasons for so doing. But if you have one House only to be sent to the country, you offer no inducement to the other House to be reasonable. They will say in an airy manner—"It means only that they will have to go to the country. If instead of that, we had to go to our constituents we would give in to the w

Mr. DOUGLAS. -

Is an abomination.

Mr. TRENWITH. -

I do not say that, but I feel that as the provisions are being passed in this Bill they will be an abomination. A large number of honorable members desire that the Senate should be the dominant House. I am confident that a large number feel that the Senate will be the dominant House.

Mr. SYMON. -
There is no chance of that under this Constitution. The Senate has been gradually reduced to impotence.

Mr. TRENWITH. -

I am very much afraid that in this Constitution as we have it the Senate will be, to a prejudicial and baneful extent, dominant in resisting legislation that the people desire.

Mr. WISE. -

Why, under this Constitution, the Senate will be the democratic House.

Mr. TRENWITH. -

It is easy to say that; but a declaration of that character proves nothing. The democratic House will be the House in which all the people are represented equally. The Senate will not be such a House; it will be a House in which the people in one constituency will have eight or nine times as much political power as the people in another constituency. How any one can declare that that will be a democratic House, I cannot understand!

Mr. DOUGLAS. -

Because they are to be elected by the general public they are not democratic.

Mr. TRENWITH. -

I have not said that; but I say that, because one section of the public is eight times more powerful than another section in the election of the Senate, it cannot be democratic. I hope there will be very few cases of disagreement between the Houses. I am inclined to think there will be very few, but, if disagreements arise, as undoubtedly they will, there ought, if this Constitution is to be equitable, to be penalties—if there are penalties for disagreement—inflicted on both Houses. I am not asking for any concession or favour for the House of Representatives any more than for the Senate, but I am urging that no consideration or favour should be given to the Senate which is not given to the House of Representatives.

Sir JOHN FORREST. -

You are not giving the Senate the same powers, but you want to inflict the same penalties.

Mr. TRENWITH. -

No, because to give them the same powers would render federation absolutely impossible.

Mr. MCMILLAN. -

It is not worth while discussing that question.

Mr. TRENWITH. -
I agree with that, and, if honorable members will pardon me, I will decline to take note of any further interjections. It seems to me that the point I have urged is worthy of consideration. We are framing a Constitution which must be accepted by the people. Whatever honorable members may think about the system, they must know that there is a very strong prejudice in the public mind, in, at any rate, two of the colonies, against the Second Chamber, or what they have been accustomed to call the Upper House. Rightly or wrongly, that prejudice exists, and the prospects of federation turn upon the prejudices of the people not being unduly roused. There is a very grave danger that their prejudices, as I will call them for argument's sake, will lead to the defeat of federation. I confess that there have been bitter reasons in this and some of the other colonies for those prejudices. At any rate, the prejudice is there, and if a proposition goes to the people for their sanction that obviously penalizes one House, there will be a strengthening and spreading of that prejudice which will be injurious to the carrying of this Bill. I earnestly hope that honorable members will decide to adopt this provision, which may not, and in many instances I believe will not, lead to a double dissolution very frequently. If we do not provide some remedy, there will be an inducement offered to one House to remain in its condition of obstinacy, knowing that it has nothing to lose—that it has first the power of penalizing the other Chamber and then it can back down.

Mr. DOBSON (Tasmania). -

We discussed the rivers question for ten days, we spent five days discussing the railway rates, and a whole day and night in discussing one clause at our last sitting. Therefore, I think we may be pardoned if we devote a few hours to the discussion of one of the most important questions in relation to the Constitution. The subject is divided into three parts. First, there is the point expressed by Sir John Downer—that our Constitution is so admirably framed that the causes of dead-locks have been diminished almost out of existence, and the ordinary disagreements which will take place about social and industrial legislation do not want these drastic changes which honorable members are suggesting.

Mr. DEAKIN. -

The Premier of South Australia has expressed exactly the opposite opinion.

Mr. DOBSON. -

I am aware of that. From the king of democrats, as the Premier of South Australia is, and from the first lieutenant of democrats (Mr. Trenwith), we could expect no other gospel; but it does not follow that that gospel will be one of prosperity for the people of Australia. I believe firmly that this is a
bogy, and that we want no provision against dead-locks and disagreements. I am of opinion that there is no danger of dead-locks, but now we are going to have such a provision made, and I admit the feeling of the Convention is against me on that point. Are we to have a consecutive dissolution, or are we to have both Houses sent to the same people at the same time? The simultaneous dissolution for which Mr. Kingston has argued would be a very great blot on our Constitution, and I do not follow him in the arguments he has used. Both these Houses are elected by the same people under manhood suffrage, but they have not both the same privileges. When Mr. Kingston asked-"Why should one House be penalized more than another?" I would say for the simple reason that the House of Representatives has all the financial privileges. It dictates the financial policy of the country. It controls the public purse; it forms the Government, and it unmakes the Government; and with all these privileges, does it lie in the mouth of my honorable friend to say that both Houses should go to the country together? Why penalize one House more than the other? That is a false way of putting it, but even if it was true it is an unfair way to put it. The House which dictates the policy, the House which brings in some financial scheme, ought to have the courage of its opinions, and if it is satisfied that it is right, when the other House refuses to pass its measures, it ought to be proud to go to the country, face the music, and get a verdict from the people.

Mr. HIGGINS. -

This does not apply to financial measures only.

Mr. DOBSON. -

I am perfectly well aware of that, but my honorable friend (Mr. Isaacs) was arguing that both Houses should be penalized together. He was arguing that it would be most unfair to send the House which controls everything to the country without the other. I am arguing that it is the logical sequence of things—it is fair play, justice, common sense. The Senate has no power in connexion with finance and revenue compared to the House of Assembly, and therefore the House which brings in financial measures ought to go to the country first. I can hardly conceive that there can be any arguments on the other side in favour of a simultaneous dissolution as strong as those in favour of making the House of Representatives go to the country first.

Mr. ISAACS. -

It may have just come back from a general election with a policy indorsed.

Mr. DOBSON. -
If we provide by-and-by that it shall not be dissolved until after the expiration of six or twelve months, it will get rid of that objection. Surely my honorable friend's interjection does not do away with the arguments I have been using? I think that the Senate will have the common sense, and the intelligence, and the patriotism, in nineteen cases out of twenty, to follow the policy of the House of Representatives when it has recently come back indorsed with a verdict by the people. I join issue with Mr. Isaacs, and I regret to have to join issue with so very learned a member. He said that the argument as to the House of Lords, instead of being an argument in favour of Sir John Forrest, was an argument against him. I think Sir John Forrest was perfectly right in what he said. Mr. Isaacs pointed out that the British Constitution allows the will of the people to have its way. The British Constitution, as it is written, does nothing of the kind, because the House of Lords tomorrow can reject a financial measure if they like. But the House of Lords never refuse to carry out the will of the people, with some exceptions which I will point out; not because of the Constitution, but because of their common sense, because they are in touch with the people, because they know their duty, and because they help the House of Commons to work properly and intelligently the two-Chamber system.

Mr. ISAACS. -
Because it is part of the Constitution now that they shall not do so.

Mr. DOBSON. -
In order to demolish my honorable friend absolutely, let me give him one or two illustrations of what the House of Lords have done. When Sir William Harcourt brought in perhaps the most democratic tax which the English nation or the people of any colony have ever seen, the House of Lords passed it without a murmur. I believe the Duke of Devonshire did make a very few murmurs; he said he could not keep up Chatsworth, and the people of England would be deprived of the pleasure of seeing his beautiful country residence, but the House of Lords passed the Bill. What did they do when the Home Rule Bill came up? It came up to the House of Lords, backed, according to Mr. Isaacs and Mr. Higgins, by the verdict of the people-backed by the Gladstonian Government. Did the House of Lords then regard the verdict of the people? No; the House of Lords ventured to think that the verdict of the people was wrong, and six years ago they absolutely rejected the Bill. Now, you find that the House of Lords, looking into the far future, and weighing this momentous question, which involved the separation of the empire, were right, and the people were wrong. That is the benefit of your bi-cameral system.
Mr. GLYNN. -
You are dealing with large assumptions now.

Mr. DOBSON. -
Let me give my friend (Mr. Isaacs) another illustration.

Mr. HIGGINS. -
But that is a wrong one.

Mr. DOBSON. -
What did the House of Lords do when the Gladstonian Government sent up an Employers Liability Bill - a most democratic measure, in favour, I suppose, of the miners' and labour organizations throughout the United Kingdom. The House of Lords put the Bill into the waste-paper basket, and absolutely refused to carry out the will of the people, because of their common sense and their desire to do what they thought was fair. And what do you see now? Three or four years pass by, another Bill goes up to make the employer absolutely liable, with a limit as to amount, for injury to his employé, not making any part of the damage which is done fall on either the Government or the employe, but making it all fall on the employer. This Bill, introduced by Mr. Chamberlain, goes up to the House of Lords, and the House of Lords, being in touch with the people, desiring to work the bi-cameral system properly, and seeing that the Bill has elements of fairness in it, what did it do? The Bill was passed, because it was in accordance with common sense and reason, whereas the Bill sent up by Mr. Asquith was not in accordance with what they thought was fair play. Here is Mr. Isaacs using this argument against Sir John Forrest when then a property or conservative franchise, I could believe more than I do now in the argument that both Houses ought to go together. But, considering that they both come from the same people without their being any difference whatever, surely the House of Representatives should go first to the country, and then if it comes back indorsed with a verdict from the people, the Senate being elected by exactly the same electorate, ought to pass the measure, and if it does not it will be on account of some great step forward which means industrial or social revolution. In that case, what is the meaning of the bi-cameral system if it is not to give to our people the safeguard of having a Second Chamber in your Constitution, which cannot be frightened or coerced by being told that it has to go to the electors also?

I therefore hope, as we have rejected the amendment of Sir John Forrest in favour of the Senate never going to the people, but of both Houses voting together, that we will shrink from having a simultaneous dissolution, but will make the House of Representatives responsible for its
policy, face the electors first, and then after that you may dissolve the Senate if you like. I do not approve of it, but I suppose we will have to consent.

Mr. GLYNN (South Australia). -

I intend to vote for the excision of the first paragraph. I had some doubt as to what I would do until Mr. Dobson got up, but certainly the analogy he drew between the House of Lords and the Senate, endeavouring to support the action of the Senate by the history of the House of Lords, has determined me to oppose the first part of the clause. If the Senate is to be at all analogous to a House in which I believe three form a quorum, in which a good many members may vote by proxy, within which some members never go once in six years—if the Senate is to represent a House like that, I am not going to do anything to protect it.

Mr. DOBSON. -

You do not answer my arguments.

Mr. GLYNN. -

I do not know where your arguments came in; you were dealing largely with assumptions.

Mr. DOBSON. -

I was giving facts.

Mr. GLYNN. -

The honorable member said that the House of Lords were the saviours of the unification of the empire by the fact that they saved public opinion from having precipitated the empire into disintegration. The honorable member was really dealing with assumptions there.

The CHAIRMAN. -

Does the honorable member think that this is strictly relevant to the clause?

Mr. GLYNN. -

I am afraid that it is not relevant to the clause; but, unfortunately, the bad example of going off at a tangent was set to me by the last speaker. I rise principally to mention that, although I shall vote for the excision of the first paragraph, I shall endeavour to amend the second paragraph in the direction I previously indicated. I am desirous that it should provide that when the Senate has rejected a measure passed by the House of Representatives by an ordinary majority, if in the next session, without the intervention of a general election, that measure is again passed by the House of Representatives by an absolute majority, or after the intervention of an election by an ordinary majority, and is again rejected by the Senate, the Governor-General may dissolve both Houses. If you allow the dissolution of the two Houses directly a disagreement occurs, you prevent
the Senate from exercising its functions as a check upon the Lower House in staying the hand of precipitate legislation, but the provision that I desire to see carried into effect will not penalize the Senate, and at the same time it will prevent any deadlock.

**The CHAIRMAN.** -

I would point out to the honorable and learned member (Mr. Glynn) that if he votes against the first paragraph of the clause, and that paragraph is omitted, he cannot put into the second paragraph a provision of very much the same effect as the provision contained in the first paragraph.

**Mr. SYMON (South Australia).** -

I rise to point out to the honorable and learned member what you, sir, have just stated, that, if the first paragraph is omitted it will be impossible to mould the second paragraph in such a way as would accomplish his purpose. I agree with him that we must be careful that we do not give undue weight to the arguments of those who support the simultaneous dissolution, because that arrangement would have the effect of practically penalizing the Senate for doing the work which it was appointed to do. The Senate is to be constituted upon a twofold basis, and for two purposes. It is to be the States House, and that is the only circumstance which gives it dignity and lends it strength. We are also creating a bi-cameral system of legislation. No one has ever disputed that that is what we are doing. One of the essentials to the system is that the Senate shall be a revising and suspending Chamber. In so far as it will be the States House, it should not be subject to any dissolution at all. If it is there for the purpose of protecting the freedom of the people and the integrity of the states, you ought not to menace it in any shape or form. It is only in respect to its functions as a revising and suspending Chamber that you have any right whatever to subject it to dissolution or to any other form of coercion.

**Mr. HIGGINS.** -

If you dissolve the Senate as a revising Chamber you must also dissolve it as a States House.

**Mr. SYMON.** -

I know that that follows. It is because we, who, in Adelaide, resisted any kind of concession, and resisted the proposals for settling dead-locks suggested by the honorable and learned member (Mr. Wise), feel the pressure of the cause of federation that we are willing to make this great stride for the advancement of the cause, and to submit to the Senate being dissolved. I would not support a proposal allowing the Senate to be dissolved if it were not that I believed that public opinion, certainly in
some of the larger colonies, desires to have some control over the Senate by a provision which will allow it upon occasion to be sent to its constituents, of whom they form part. What I want to point out to honorable members is the danger of disregarding the constitutional rule that, when you are dealing with a revising and suspending Chamber, you are paralyzing its functions and reducing it to a condition of impotence if, the moment it disagrees with the other House of Legislature, it is threatened with dissolution. It is a perfect farce—a ridiculous monstrosity—to pass a provision of that kind.

Mr. FRASER. -

According to your theory, the Senate will not disagree with the House of Representatives at all.

Mr. SYMON. -

I do not believe that there will be serious disagreement upon one subject of legislation in a thousand. Of course, we must not expect perfect immunity from the ordinary causes of difference between Houses of Legislature; we must submit to that. But we know perfectly well that dead-locks, bringing about a kind of temporary wreck of constitutional government, are next to impossible. They have never occurred in America, where the Senate is clothed with all kinds of executive and other powers, of which, if I may use the expression, the Senate created in this Constitution has been despoiled. Here you have a Senate which cannot possibly be a class Chamber. Whether it will or will not be the democratic House, as the honorable and learned member (Dr. Cockburn) and others of us think, it cannot possibly be a class Chamber, because it will be elected upon absolutely the same suffrage as the members of the House of Representatives.

Mr. HIGGINS. -

They have dead-locks frequently in America, and they always end in favour of the Senate.

Mr. SYMON. -

My honorable and learned friend is mistaken.

Mr. ISAACS. -

No, he is perfectly right.

Mr. SYMON. -

Not at all. There have been differences there, but there has never been a dead-lock resulting in the stoppage of civil government, which, of course, is what a dead-lock really means.

Mr. ISAACS. -

The people have had to give way.
My honorable and learned friend has solved the whole question in that remark. Common sense, the genius of the English-speaking people for government, always leads to the settlement of these matters.

Mr. DEAKIN. -

You have three divided powers of government, unable to work in harmony.

Mr. SYMON. -

They are unable to work in harmony for a moment, and a disagreement comes, but a settlement is arrived at and the machinery goes on again.

Mr. DEAKIN. -

The machine politics go on.

Mr. SYMON. -

It has been proposed that where the two branches of the Legislature do not come to an agreement after an interval of three years, which would give ample time for the consideration of the subject-matter of the disagreement, they should meet together as one body and settle the question by the determination of the majority of members, the two Houses voting together. What is the good of our seeking to create a Senate at all if the moment it exercises its powers the Executive Government is able to say-"You shall be sent about your business"? A man would scorn to hold office as a Senator under such conditions. It would be a pusillanimous position to hold. However opposed the measure sent to the Senate might be to public feeling, or to the sentiment of the majority of the Senate, this body would not be able to set its face against it in order to secure time for further consideration. Because if it did, the majority of the other House, who would be represented of course by the Executive Government, would say-"Unless you withdraw your position or assent to some compromise, whether you like it or not, you must go to your constituents." I ask honorable members is that the position they are going to place the Senate in? It is a position to which I, for one, will never assent, and if the alternative of the consecutive dissolution is a double dissolution, that is, the moment a disagreement takes place there shall be a simultaneous or double dissolution, then the Senate will have to exercise its functions at the peril of having to go to its constituents, and that, I say, will be a serious blow to this Constitution. Those representatives who come from the larger colonies must remember this, that whilst it might not affect the smaller colonies so much as the larger colonies, it will have the most disastrous effect, because you will have six senators going to their constituents as against 25 or 26 going to their constituents from the House of Representatives at the same
time; and the six men from the Senate would be practically overwhelmed by the power of the representatives from the Lower House who were going to their constituents.

Sir WILLIAM ZEAL. -

That is what they intend.

Mr. SYMON. -

Possibly. I do not say whether that is the intention, but I take leave to point out, in all seriousness, with every desire to have as perfect a Constitution as human brains can devise in this connexion, that we should take care that they do not emasculate the powers of the Senate as they will do, I emphatically believe, if they put it in the power of the Executive Government of the day, representing a majority of the House of Representatives, to send the Senate to its constituents for doing the very thing it was brought into being to do.

Mr. ISAACS. -

Or

Mr. SYMON. -

No, not for refusing to do it. The Senate is answerable to its own constituents. There is not a man in that Senate who will hold office for more than three years.

Mr. HIGGINS. -

Six years.

Mr. SYMON. -

He has to go to his constituents every three years.

Mr. HIGGINS. -

Every six years.

Mr. SYMON. -

Half of the senators have to go their constituents at the end of the first three years.

Mr. HIGGINS. -

But each senator is elected for six years.

Mr. SYMON. -

Half of the members of the legislative body have to go to their constituents every three years; and will not that keep them in touch with the manhood and womanhood suffrage of the colonies? Of course it will. To say that you are to be apprehensive of all sorts of evils to the Constitution when the interval between one election and another is so short as that is to do injustice to the ordinary courage of humanity.

Mr. ISAACS. -
That would be a good reason for not dissolving the House of Representatives at all.

Mr. SYMON.-

I say that that is the principle which underlies Mr. Dobson's argument, and that is the analogy with the House of Lords and every other Second Chamber which exercises the function of a revising and suspending Chamber. If it exercises that function, you are to give it credit for honesty and *bona fides*. If it is still out of harmony with the Lower House, let the Lower House go to their constituents, with whom the Upper House says the House of Representatives is not in harmony. If the members of the House of Representatives come back from their constituents with a mandate for that particular piece of legislation, this Senate, like every other Second Chamber, will be bound to give way. If the Senate do not give way, then I say, at once, and unhesitatingly, send it to its constituents. That is the proper course to be adopted. As to the House of Lords, it has no constituents. But that fact is all the stronger in favour of my view in regard to the Senate, because, if the House of Lords, having no constituents except the general expression of public opinion, yields to the views of the people expressed through the House of Commons, returned after a dissolution, how much more will the Senate, answerable to a constituency, yield, under similar circumstances, in the same way? If the matter in dispute is one of vital importance to the state the Senate may hold out for a time against the first mandate of the people, but, beyond that, it will not hold out for one moment. Therefore you will have a far better Constitution, and one not merely free, but also just, beyond all the experience of the past, if you leave this a consecutive, and do not make it a simultaneous dissolution.

Question-That paragraph (1) of clause 56B stand part of the clause-put.

The committee divided-

Ayes ... ... ... 28

Noes ... ... ... 17

Majority for the paragraph 11

AYES.

Abbott, Sir J.P. Holder, F.W.
Braddon, Sir E.N.C. Howe, J.H.
Briggs, H. Kingston, C.C.
Clarke, M.J. Leake, G.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Dobson, H. Lewis, N.E.
Douglas, A. McMillan, W.
Downer, Sir J.W. Moore, W.
Forrest, Sir J. Solomon, V.L.
Fraser, S. Venn, H.W.
Fysh, Sir P.O. Walker, J.T.
Gordon, J.H. Zeal, Sir W.A.
Grant, C.H.
Hassell, A.Y. Teller.
Henning, A.H. Symon, J.H.
NOES.
Berry, Sir G. O'Connor, R.E.
Brown, N.J. Peacock, A.J.
Brunker, J.N. Quick, Dr. J.
Carruthers, J.H. Reid, G.H.
Deakin, A. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Hackett, J.W. Wise, B.R.
Higgins, H.B. Teller.
Isaacs, I.A. Barton, E.

Question so resolved in the affirmative.

The CHAIRMAN. -

The question now is that paragraph (2) stand part of the clause.

Mr. WISE (New South Wales). -

Without in any way commenting on the vote which has just been given, I trust I may take it as expressing the opinion of the committee that what I, at all events, term the Sydney compromise will not be interfered with. I should have preferred to see the alternative removed. But the committee have decided otherwise, and I, in very few words, desire to reiterate the opinion I expressed in Sydney, that it is desirable the second sub-section should remain as it is in the Bill, so that the Ministry of the day shall have the option of dissolving either one or both Houses. I have never disguised my opinion either here or elsewhere that this alarm about dead-locks was, to a very considerable extent, imagination. I have spoken as strongly as any one against the introduction of any of these mechanical and artificial devices for overcoming dead-locks. But I am not blind to the sentiment outside this chamber. I know the ghost of dead Victorian controversies is still alive and walking, and it has walked outside the limits of this colony into New South Wales. I do not hesitate to declare, as I did in Sydney, my deliberate opinion that unless we make this concession to the popular opinion, even though we may think it popular ignorance, on the question involved in the second sub-section, we will very seriously damage the prospects of the
Bill, if we do not altogether destroy our ability to recommend it to the electors. I never made use of an expression of this kind at any period of the debates before. I have studiously refrained from saying anything of the kind. But I do believe that this is the most critical part of the Bill so far as the opinion of the New South Wales voter is concerned, and I trust the committee will do, as I believe they intended to do by their last vote, adhere strictly to the compromise arrived at in Sydney.

Mr. SYMON (South Australia). -

I beg to move-

That in the second paragraph all the words from "If the House of Representatives" down to "by effluxion of time" be struck out.

This is to raise the issue which Mr. Wise has just pointed out, as to whether we are to retain an alternative method or process of dissolving the Senate and the House of Representatives. I venture to think that that would be a manifest absurdity. It would leave untouched the last part, which was introduced in Sydney, in order to secure absolute finality, at the instance of Mr. Reid and Mr. Carruthers. With that last part I wish to say I entirely agree. If after the dissolution-

Mr. PEACOCK. -

It is no good talking.

Mr. SYMON. -

As I have said, I agree with the last part, though no doubt I may be altogether wrong.

Mr. REID. -

Never mind, you are on the winning side.

Mr. SYMON. -

That is something.

Sir GEORGE TURNER. -

For the present.

Mr. SYMON. -

I am quite willing to still adhere to the method of reaching absolute finality by a meeting between the two Houses. What the majority should be is a matter open to discussion. Without repeating what has already been said, I move that the first part of the second paragraph be struck out.

Sir GEORGE TURNER (Victoria). -

Up to the present I have not been able to take an active part in the discussion, although I should very much have liked to do so. But I do feel that now we have arrived at such a critical moment in connexion with federation that, no matter what the cost may be to myself, I am bound to give expression to my views on the subject. I do entreat those who voted with the majority, if they desire to see all the colonies come in, not to press
too far the advantage they have obtained by the last division. I had to
appeal earnestly in Sydney to honorable members to give the larger
colonies the concession which was given in the second part of the clause as
an alternative. I felt then that to have a dissolution of the House of
Representatives, and then a dissolution of the Senate, was something that it
would be impossible to take to our people with any hope of success. I did
trust that at our meeting here in Melbourne we would have left out the first
provision, and would have rested entirely on the operation of the clause
which made a double dissolution the mode of determining those
difficulties. However, we have by a considerable majority decided we will
not do that, and I earnestly hope that by as large a majority we will decide
to have this alternative proposal. I feel the gravity of this present moment
so greatly that I am bound to urge as strongly as I can on all those who are
friends of the movement not to press too far what has been done. I believe
that if they do-and I say this without any heat and not in any way as a
threat-I believe that if they do take out this second portion of the clause as
proposed by Mr. Symon, they are ruining any chance we in Victoria have
of carrying this Federal Bill.

Mr. ISAACS (Victoria). -
May I ask my honorable and learned friend (Mr. Symon) to withdraw his
proposed amendment for a moment? I want to insert some words which
were in the clause as passed in Sydney but which have been omitted, no
doubt, with a view on the part of the Drafting Committee of eliminating the
first paragraph. Now that that paragraph has been restored, so to speak, it
will be necessary, in order that the clause may read properly, that the words
I have referred to be restored.

Mr. HIGGINS. -
Would you not put in Mr. Lyne's amendment first?

Mr. ISAACS. -
No; that comes lower down. I move-

That in the fourth line of the second paragraph, after the words
"Governor-General may," the words "instead of dissolving the House of
Representatives alone" be inserted.

These words were taken out of the clause, as I believe from the internal
appearance of the clause, by the Drafting Committee, merely because they
anticipated the first paragraph would be struck out.

Mr. SYMON (South Australia). -
I ask leave to withdraw my amendment for the present.

The CHAIRMAN. -

The honorable
Mr. BARTON (New South Wales). -

Before we go any further I have a suggestion to make. Now that we have attained consecutive dissolution, I should like to see some means by which those proceedings can be treated alternatively. I suggest that it would be better, in lieu of using the words "instead of dissolving the House of Representatives alone," to follow to a certain extent the wording of the first paragraph. It would be better, I think, if after the word "agree" the words were inserted, "and the House of Representatives in the next session again passes any proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree." Then the two proceedings stand on the same footing, and it would be competent for the Governor-General to adopt either of them, and, in choosing one or the other, to see that the same processes were gone through before he applied the remedy of consecutive or simultaneous dissolution.

Sir GEORGE TURNER. -

That ought to be so.

Mr. BARTON. -

That ought to be so. Mr. O'Connor reminds me that, as the matter stands now, if the words of Mr. Isaacs were inserted, and the House of Representatives passed a law which the Senate rejected, or failed to pass it with amendments to which the House of Representatives had agreed, there could instantly be a simultaneous dissolution. Instead of that, I think it wiser that the simultaneous dissolution should be on the same footing as the consecutive dissolution, and that the same process should precede it. That was the intention of the Convention in Sydney, and I think it is the intention now. I beg therefore to move-

That the following words be inserted after the word "agree": "and the House of Representatives in the next session again passes the proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives do not agree."

The CHAIRMAN. -

The position is this: The Hon. Mr. Symon has moved to strike out all the words down to "effluxion of time." Inasmuch as prior amendments have been suggested, Mr. Symon is willing to withdraw his amendment for the present. Mr. Barton now wants to introduce certain words after the word "agree." If those words are inserted, Mr. Symon cannot then move to strike out the words down to agree. In order to enable every issue to be voted upon, it would be better for the honorable member to move, as a test question, the omission of all

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the words down to "agree."

Mr. BARTON. -

In dealing with the first paragraph I withdrew my amendment in order that certain other amendments might be considered without let or hindrance. Then I asked for a vote upon the paragraph. I would ask the honorable member to consider the words on which he is now moving his amendment as paragraph (2). It is only as a matter of print that they are not so. If that were done, the honorable member's amendment could be dealt with, and then the other words could be put as a paragraph.

The CHAIRMAN. -

I would point out that we have adopted a uniform procedure right through. We have never separated a paragraph. The words in the second paragraph really form only one paragraph, inasmuch as it all hangs together. The procedure we have adopted all through is the procedure I have suggested. If I put the question that all the words down to "agree" be struck out, and if that is not carried, Mr. Barton's amendment can be put. If it is carried the rest of the words can be struck out.

Mr. SYMON (South Australia). -

Per-you, Mr. Chairman, will forgive me for pointing out that although the paragraph is not divided in print, and the two parts of it, are connected, I wish the second part, as to the joint meeting of the two Houses, to be attached to the first paragraph as the final method of settling the question of dead-locks.

The CHAIRMAN-I think we ought to adopt a uniform procedure.

Mr. SYMON. -

Then I shall move my amendment in the form you suggest—that all the words down to "agree" be struck out.

Mr. GORDON (South Australia). -

I have been one of the staunchest supporters of my honorable friend (Mr. Symon) in all his exertions-bold and brilliant as they have been—to maintain the power of the Senate, but in this proposition I think he is making a mistake. I would ask those honorable members who represent the smaller states to vote for the clause as it stands, especially if it is altered as suggested by Mr. Barton. That is as much as we can expect. The position is exceedingly grave, and I appeal to those who like myself have been loyal supporters of the powers of the Senate not to assist the honorable member in his amendment.

Sir JOSEPH ABBOTT (New South Wales). -

When the Hon. Mr. Symon submitted his proposal in Sydney I was one of those who voted against it, and who took every possible step to defeat it. I regarded the matter then as being fairly and satisfactorily settled. I voted
today for the retention of these words in the clause, for the reason that I thought that it was settled. I said in Adelaide and in Sydney that I had no great fear of dead-locks, because sooner or later the will of the people would prevail, although it might not prevail as rapidly as some politicians might desire. I intend to vote against Mr. Symon's proposition, and to support the amendment suggested by Mr. Barton.

Sir JOHN FORREST (Western Australia). -

While I should be very glad indeed to do anything that would meet with the general approval of honorable members, and while I desire now, as I have always desired—perhaps more than some honorable members think, but I know my own feelings best—to assist honorable members who have great responsibilities and great obligations, I cannot believe that the insertion of these two provisions in the Bill will commend our work to those who come after us. What are we asked to do? We are asked first to give the Government of the day power to dissolve the Lower House. We are next asked to give the Government of the day power to dissolve the Senate, and then we are asked to give the Government of the day further power to dissolve both Houses. This is very cumbersome machinery, and the wisdom of honorable members should have enabled them to devise some more simple plan. The simple plan that I suggested has not been entertained. I have never seen in any Constitution alternatives given as to procedure. The Ministry of the day may say that they will go this way or that they will go that way; but surely to goodness we ought to lay down in the Constitution some one effective plan for meeting the difficulties that are likely to arise. My own amendment having been lost, I have no very strong feeling about either of these provisions, but I am not prepared to assent to the insertion of both of them in the Bill. We ought to adjourn the debate, with a view to some better plan being devised.

Mr. HIGGINS. -

I thought you wanted to get home.

Sir JOHN FORREST. -

I am not going home for a week now. If the discussion is proceeded with I must vote with my honorable friend (Mr. Symon) to strike out the alternative procedure. At the same time, I should be only too glad—and I recognise the responsibilities of honorable members who represent Victoria and New South Wales—to join in formulating some plan which would be looked upon with favour by them but I am not going to make myself a laughing-stock—for this is really what it comes to—by voting for these two systems. They were never inserted in Sydney with the view that
they were to be permanently incorporated in this Bill, but with the view of
one taking the place of the other; and the second paragraph was inserted, I
point out again, by the representatives of New South Wales (Mr.
Carruthers and Mr. Reid) with a view to avoiding the dissolution of the
Senate. That was the object they had in view, but that object has not now
been carried out, and those who voted with them in Sydney are now asked
not only to vote for the dissolution of the Senate consecutively, but also to
give the Government of the day power to dissolve both the Senate and the
House of Representatives simultaneously.

Mr. BARTON. -
   If a disagreement takes place twice in two consecutive sessions.

Sir JOHN FORREST. -
   I do not think it is a reasonable settlement, and I shall not vote for it.

Mr. REID (New South Wales). -
   I think I ought almost to apologize to the Convention for speaking at this
stage, because I really think we are rapidly approaching a position in which
it becomes perfectly immaterial what amendments are passed and what are
rejected.

Mr. ISAACS. -
   Hear, hear.

Mr. REID. -
   I feel extremely depressed by the shape in which this Bill is. I am
profoundly impressed with the feeling that it may fail to command the
support of the majority of the people of the colonies. I feel that to attempt
to secure a supreme and final authority in this Commonwealth on the part
of a small minority of Australians against a large majority of Australians
must break down. When we view the source from which the revenue is to
come to carry on this Commonwealth, and when we find that time after
time those who represent a minority of the taxpayers gain their way and
mould this instrument, which was to be designed to express the national
will, in such a way that when the national will is expressed it can be
indefinitely thwarted.

Mr. DOUGLAS. -
   What are we here for?

Mr. REID. -
   Upon my word, only some heavenly intelligence can describe how the
honorable member got here.

Mr. DOUGLAS. -
   The right honorable gentleman need not be insulting in his remarks and
behaviour
Mr. REID. -

The honorable member is so perpetually interrupting-

Mr. DOUGLAS. -

Oh! Oh! what about you?

Mr. REID. -

I endeavour to interrupt so as to throw a little oil of lubrication over our proceedings, but my honorable friend's voice always seems to be leading me to the vicinity of a steam sawmill.

Sir EDWARD BRADDON. -

Are you lubricating the proceedings now?

Mr. REID. -

I regret to say, in reply to the representative of the smallest of the colonies, who has so steadfastly trampled upon the rights of the majority of the people of this country-

Sir WILLIAM ZEAL. -

Rubbish!

The CHAIRMAN. -

Order! Order!

Mr. DOUGLAS (Tasmania). -

I rise to a point of order. Has the right honorable member (Mr. Reid) a right to designate us in that way?

The CHAIRMAN. -

I do not think the right honorable gentleman's remarks were out of order. It was strong language that he used, but whether it was tasteful or not is not for me to decide.

Mr. REID. -

It is distasteful for me to have to sit here week after week and notice that the almost invariable result is to subordinate the wish of the majority of the people of Australia to an absolute minority; and I cannot sit here any longer without expressing-

Mr. DOUGLAS. -

I rise-

The CHAIRMAN. -

Order!

Mr. REID. -

Without expressing-

Mr. DOUGLAS. -

I rise-

The CHAIRMAN. -

I must ask the honorable member (Mr. Douglas) to keep order.
Mr. REID. -

Without expressing to this Convention my profound disappointment that proposals the most fair and equitable in character are rejected and overwhelmed by what is practically a solid phalanx of gentlemen absolutely determined to prevent this Constitution from expressing the will of the people whose taxes will maintain the Commonwealth. Now, sir, there is actually an opposition-now that these gentlemen have gained all their own way and have prevented a dissolution of the Senate-there is, I say, actually a serious attempt to prevent, as an alternative, the dissolution of that body.

Sir JOHN FORREST. -

A simultaneous dissolution.

Mr. REID. -

The simultaneous dissolution of the Senate; I thank my right honorable friend for the correction. What presumption is there that the House of Representatives, when a difficulty arises between the two Houses, must be the House that fails to represent its constituents, and must be the House that is to be first sent to its constituents as a punishment for the difficulty which has arisen? Because, so far as the representatives in either House are concerned, it has a penal effect upon them to send them to their constituents. And this settlement which has been arrived at today amounts to this: That there is a presumption that the House of Representatives, by the part that it has played in the dead-lock which arises, should be punished and sent about its business, so that the electors will have an opportunity of electing it again. Now, what presumption can there be that the members of the other branch of the Legislature may not be to blame, and that the members in the Lower House do not really represent the people? Because it is no question about a referendum. It is a question of an appeal in both cases to the electors; and yet Sir John Forrest suggests that we ought not even to give the Executive the option of sending both Houses to the people at the same time, which contention I say without hesitancy can only be based upon the underground presumption that what is called the Upper House is sure to be right.

Sir JOHN FORREST. -

I did not say that.

Mr. REID. -

But you always act as if it were so. The right honorable gentleman's course of action all through this Convention has been based upon a solid attempt, designed to make the Senate master of the situation, and to make the representatives of the people-viewing the people as one nation-play a
subordinate part. What is the meaning of the opposition to this proposal but that? When we have two elective Houses, does not the House of Representatives play a humiliating part when, if a difficulty arises between the two Houses, it must go first, without rhyme or reason, to the electors? Of course, the right honorable gentleman and those who support him are gentlemen for whom personally we have the highest respect and esteem, and they are, I admit, fighting a brilliant and successful battle for the colonies they represent.

Mr. DOBSON. -
For the people of Australia.

Mr. REID. -
The honorable member as a man to voice the wishes of the people of Australia! The honorable member to assume to speak in the name of the people of Australia!

Mr. DOBSON. -
I don't.

Mr. REID. -
It is a most unfortunate thing that so far the men who should have the most right, by their position, to speak for the people of Australia, have had to speak with very little weight in this assembly. But I make no complaint of that at all. We are here as equals, to do our best to bring about the formation of a sound and wise Constitution. My honorable friends may be absolutely just in all they are attempting to do, but as one who wishes to see this enterprise so concluded that those who will have to bear the heat and burden of great battles to make this the law of the land shall be put in such a position that they can go to the electors and conscientiously recommend this Bill, I feel bound to say that I see no prospect of doing that. I hoped that I would never raise my voice to prejudice any man's mind against this measure. However much I am bound to disapprove of it in its present state, I hoped I would, for the sake of union, abstain from saying a word or using my influence to divert a vote from this Bill, even though I personally could not adopt it. But I want to be put in a better position than that-I want to be put in such a position that I can go before the people of New South Wales, who have so large a share in this matter, whose consent to this Bill is absolutely necessary, so that we may be united-I want to be put in such a position that when the vote is to be taken, I can go from one end of the colony to the other and ask the people to accept this Bill. If this battle between the rights of the larger number of the electors and the taxpayers of Australia is always to be decided against the majority and in favour of the minority; if this is to be carried so far that in the parliamentary difficulties between the two Houses, on the very face of the
Constitution there shall be planted an inequality, so that the members of the House which represents the nation shall be punished by a deprivation of their seats, while the other House, where the states are represented, and which is deserving of all respect, is saved an appeal to the electors, how can I be expected to do that? If a difficulty arises between the two Houses every fairminded man will say we must not in this Constitution raise any presumption against either one House or the other; that since the difficulty is a matter between the two Houses, and it has reached a phase at which a reference must be made to the constituents, that there is no rule of honesty or equality which should compel one set of representatives to go to their constituents, lose their seats, and fight a battle, while the others, who may be to blame, whose views may be absolutely opposed to the views of their own constituents, may sit quietly by and see the result of the battle; and if it is found that, though the senators are wrong, after the others come back from the heat and burden of this great political contest, they can quietly pass the Bill and retain their seats.

Sir JOHN FORREST. -
That is the case now.

Mr. REID. -
Where?

Sir JOHN FORREST. -
In all these colonies.

Mr. REID. -
Well, I am not advocating that.

Mr. BARTON. -
There are no two Houses with the same suffrage in the colonies.

Mr. REID. -
I am not advocating that; and how different is the position in my own colony. Even taking the views of many of my respected opponents who champion the cause of the Upper House—even these gentlemen will admit that our Upper House would never attempt to claim many of the rights put in this Constitution. The whole spirit of the Constitution is being deformed and twisted in such a way that no man who has any sort of belief in democratic government could possibly support it; and this is the last straw.

Sir JOHN FORREST. -
Oh, oh!

Mr. REID. -
I speak as one having some knowledge and experience of Australia. My honorable friend happens to represent some very successful gold-fields at
one extremity of the continent, but I am brought more in touch with the
great bulk of the Australian people, and the honorable member may allow
me, at any rate, to have some knowledge of their feelings.

Sir WILLIAM ZEAL. -
His opinion is as good as yours.

Mr. REID. -
Absolutely so. I did not want to bring the hornet out of his nest. I
absolutely admit that. All that I ask my right honorable friend is that he
will allow me to have the right to express my opinions without
interruption. I am not under the iron rule of my honorable friend in any
way. I am at liberty still to express my opinions free from his interference,
or the interference of the President of another Legislative Council. We
have had a little too much of this.

Mr. DOUGLAS. -
Is the honorable member in order in abusing members in this way? We
have had quite enough of that.

The CHAIRMAN. -
I think the right honorable gentleman had better address himself to the
question.

Mr. REID. -
I ask your protection, sir, from the interruptions of my venerable friend.
If he were any ordinary man I would not ask your protection, but he
possesses so much vigour and agility.

Mr. DOUGLAS. -
I again ask is the honorable member in order?

The CHAIRMAN. -
There is no point of order.

Mr. REID. -
If my honorable friend did not possess such extraordinary agility I would
not ask you, sir, to protect me, but I am afraid every moment that the
honorable member will fly at me. I hope my honorable and venerable
friend will permit me to proceed with my remarks. I say we have come to
the last straw. When this distinction is sought to be established, when the
two Houses are in conflict, between the one House and the other, I say at
once that I feel so keenly the difficulty of the task which is left to me that I
am bound to speak in the plainest way. Honorable members of this
Convention come to me time after time, and say to me:"Now, Mr. Reid, it
all depends on you. If you only fight the battle of this Bill, all will be well.
We all look to you." But I am sorry to say, that when I endeavour to put
this Bill in a shape which will enable me to go to the people and use all the
weight of my energy in its favour, I receive very little consideration from
those gentlemen who so lightly invite me to fight the battle of this Bill.

Mr. Howe. -
You get all your own way.

Sir John Forrest. -
We expect courtesy from you.

Mr. Reid. -
It may be that I get all my own way, although I am not aware of it; but I am anxious about another and a vastly more important matter, that is, that the people of these colonies shall have their rights fairly recognised, which is of infinitely far more importance to me than whether I or any other member of this Convention gets his own way. I feel deeply oppressed by a feeling that even in the best possible shape we may have the gravest difficulties in persuading a majority of the people to support the Bill.

Mr. Gordon. -
Cheer up.

Mr. Reid. -
I do not need to feel any personal emotion of sorrow in this matter, because if, unhappily, our desire to accomplish this bond of union fails it is not the people of New South Wales who will need to be most anxious. It is not the people of New South Wales who will need to be most concerned or alarmed. I do not speak in that sense at all, but I feel that this Bill is so rapidly losing its national character that our prospects of getting the national approval for this Bill will fail. Talk as we may about the referendum, talk as we may about the democracy, this Bill cannot possibly pass unless we gain the goodwill and support of the democracy of Australia. What earthly use is it for us to put this Bill before the people of Australia, unless it is in some sort of shape that, at any rate, convinces them that those who, in an especial manner will represent them, will have some sort of fairness and equality in the distribution of political power? Now, it is in these cases of dead-locks that the Constitution endures its greatest strain. We may hope - and it may well be that in the future all the fears about which we are exercising ourselves so anxiously will prove to have been absolutely groundless - that these two Houses will be composed of men who will be able to settle all their quarrels in a manner that will involve no risk of serious collision. That is a fate which we all hope to be in store for the Commonwealth. But when we have to meet the critics of the Bill, when we have to go before a more or less hostile audience and find all these difficulties harped upon, all these difficulties fully and painfully represented, we then, I fear, will find that people want something more than a pious trust in Providence that all will go well. They want to
see on the face of this machine some sort of confidence that it will work well, that it is designed to work well; and one of the best contrivances for making the Constitution work well will be a contrivance to secure, when difficulties occur, that the two Houses of Parliament can go to the people upon some terms of equality and fairness. There is no sort of fairness in the consecutive dissolution of the two Houses of Parliament. It leaves the ease and the comfort of the situation entirely to the members of one House, who may happen absolutely to misrepresent their constituents. I do not ask for that in this matter. All we ask is that, at any rate, there shall be some power to send both Houses impartially-I do not say to receive the verdict of a majority of the people of Australia-to their respective constituents; and unless some arrangement of that sort is made, I think honorable members ought to see that it is impossible for us to take up this Bill with any sort of enthusiasm, with any sort of confidence, that any of our efforts will succeed in gaining for it the stamp of popular approval.

Mr. BARTON (New South Wales). -

This will be a convenient time for me to say that I believe we shall deal more effectively and more calmly with this proposal if we are not impelled to our decision under any sense of heat that may have been caused by the very vigorous speech of my right honorable friend.

Mr. SYMON. -

Do you think that speech will advance conciliation?

Mr. BARTON. -

I do not think I ought to be asked that question. I think there is every excuse for any member of the Convention who feels that, by any means, steps are being taken, or are likely to be taken, which may make his chance of carrying the Bill in his colony a weaker chance. Therefore, I think every consideration is to be given to any honorable member who, under these circumstances, talks with some warmth. I am not about to express any critical condemnation of the speech we have just heard. We all know that my right honorable friend feels and speaks strongly on many occasions, and we must, I think, always recollect that amongst the most successful and powerful members of such bodies as this are to be found men who, on occasions, will speak with the whole strength of the feeling which they entertain. But, sir, I do think there may be an influence caused sometimes by extreme warmth of speech which does not tend to the peaceful solution of a difficulty, and I think there may be a possibility that some of my honorable friends, who have fallen under the lash of the right honorable member's criticism, may be somewhat aggravated for the moment, although I believe they will see before very long that this is a
mere ordinary case of warmth of debate.

Mr. GORDON. -

It is only a cracker, not a lash.

Mr. BARTON. -

I do not share in my right honorable friend's extreme fears, for the reason that I do not yet see in the Convention a sign of the acceptance of the amendment of my learned friend (Mr. Symon). I believe that the majority of the Convention will reject the amendment, and retain the power of simultaneous dissolution, as an alternative to the second dissolution which has been carried. I believe that will be found to be the strength of the feeling of this debate, and therefore I am not going to express any want of confidence in the Convention in that regard, because I believe that they will act in that manner which will tend to secure the proper appreciation and support of this Bill when it comes before the electors of the various colonies. I do not share the opinion of my, right honorable friend (Mr. Reid) when he says that this Constitution is rapidly losing its national character. I have watched the formation of this Constitution ever since the first Convention in 1891, and so far as the constitutional side of the Bill is concerned, I can freely affirm that every amendment on that side of the measure that has been made has been made in the direction of that democratic feeling which has the sympathy of my right honorable friend (Mr. Reid). In making the suffrage of the Senate the same as that of the other House; in providing that under circumstances even the Senate can be dissolved; in making a dozen other amendments on the constitutional side, we have departed from the Bill of 1891 exactly in the direction in which popular feeling has moved. I think the Convention is to be congratulated for its appreciation of popular feeling, and I believe it will give that appreciation still greater scope in the remaining course of the Bill. Therefore, I am not now expressing any want of confidence in the Convention. I believe it will do not only what it considers right, but will consider, within just bounds, that which is wise to secure the popular support, without which this Bill is mere paper. We are very nearly arrived at the hour at which we generally adjourn in the afternoon, and I suggest to you, sir, that you should leave the chair a few minutes earlier than is usual, because I do not want the speech which has been made to be replied to in a speech of equal warmth at the present stage. I believe the consideration which will take-place in the meantime will tend to the greater success of our efforts.

Sir EDWARD BRADDOCK. -

The reply will be cool enough.

[The Chairman left the chair at forty-eight minutes past four o'clock p.m.}
The committee resumed at half-past seven o'clock p.m.]

Mr. MCMILLAN (New South Wales). -

I am sorry that the right honorable member (the Premier of New South Wales) is not in his place. It is just as well, perhaps, that, by the moderate tactics of the leader of the Convention, a pause was made after that very bombastic attempt of his to put reason and judgment aside, and to appeal to the passions of the audience.

Mr. WISE. -

It was a speech humiliating to New South Wales.

Mr. MCMILLAN. -

There are only two reasons why an honorable member should rise to address himself to this Convention. The first is that he wishes to state his views, and to give a reason for his vote. The second is, and it is a very worthy one, that when he finds that many are waiving, he should get up and do what he can to influence their decision in his favour. This is not a House made up of belligerent parties, but a great National Convention, sitting in a calm and pure atmosphere to frame a Constitution for all Australia. It is natural that any honorable member in such a body should try, by the most persuasive language, to win votes to his side of the question. But the right honorable member has followed a third course. It seems to me that in this, and in many of the heated speeches which he has made at different times during the sittings of the Convention—speeches which have done an incalculable amount of harm—it has been his de-sire, instead of soothing and persuading honorable members, to irritate them, and to render them antagonistic. Why, in a Convention like this, should we have it reiterated, ad nauseam, that some of us are tories, and some democrats, that some of us do not represent the opinions of the people, whilst others do? Have not four-fifths of the members of this Convention been elected upon the broadest possible suffrage? And is not each one equally a representative of the colony from which he comes? The right honorable member, and, I think, all the official members of the Convention, if I may call them so, have received the utmost respect from what I may call the private members of the Convention. We have recognised the position of responsibility occupied by the Ministers of the Crown here, and I myself have often stifled my own feelings in deference to them and to save the time of the Convention. But I think it is a pity that some of those who have been insulted and maligned did not take a sterner course at an earlier period of our sittings. I feel that during the remainder of this session, whatever may be the views that any honorable member has
arrived at calmly and deliberately as the result of the operations of his intellect and his conscience, they should be respected. We have no right to be flaunted and to have absolute insults hurled at us by certain honorable members, and attempts made to threaten us into subservience. There is no need for any of this braggadocio. It is only the small man, the man who feels weak, and who wants crutches to walk with, who indulges in that sort of thing. My right honorable friend (the Premier of New South Wales) is a man of great intellect, of large experience, of wonderful eloquence, and he has no right to resort to the mere dodges of the hustings in an assembly like this. Now, sir, as to the question that is before us, I have myself followed a principle throughout the whole of our proceedings as fairly and faithfully as I could, and that was this—that when, after the heat of controversy, any principle that was considered vital was embedded in this Constitution, I was determined not by any sideward or by any disingenuous dodge to take away the elements of strength from that broad and vital principle. Now, let us look at this matter, which is really historical in its effect. I never made a fetish of equal representation; but it is clear, and nobody has allowed it more clearly than the Right Hon. the Premier of New South Wales, that it is not possible to have representation of the states without equal representation.

Mr. HIGGINS. -
That was the mistake he made.

Mr. MCMILLAN. -
But when that was agreed upon I desired to be faithful to that principle, and that principle involved a strong States Chamber, guarding the rights and principles of the states as laid down in this Constitution. And from the very beginning—and I say this with all respect—many of the men who reluctantly gave way to that equal states' representation, with the exception of a few who had the courage of their opinions, have been trying throughout the whole of our proceedings to fritter away the value of that great right. Now, how are we going to deal with this matter before us? I have always looked upon this Second Chamber, not merely in its position as a states' rights Chamber, but as carrying out the principles of bi-cameral government. And as time goes on, and our states increase, and our federal feeling grows, and the federal strength becomes greater, I believe that the bi-cameral character of this States House will be higher than even its States House principle.

Mr. HIGGINS. -
We all agree in that.

Mr. MCMILLAN. -
Therefore, I ask-

"Do we believe honestly in the principle of bi-cameral government; do we believe that for many years, perhaps centuries to come, men will not be trained so effectively in politics, in public life, and the people will not be trained so effectively in this kind of government, as to make it possible and prudent to do away with some supreme check of this kind, imposed with the view of giving time for the people to think?"

Now, I do justice to honorable members opposite. I think that, although many would prefer to have only one Chamber, especially in local Legislatures, still, if we erect a Second Chamber, I am sure that my honorable friends do not want willingly to emasculate it. I am sure they will allow that that Chamber must be competent, and that it must have sufficient strength in it to carry out this mandate, and that any provision which would put a threat upon it would hang a sword over its life, would render it impotent, and would at the same time prevent honorable high-class men of intellect in the country from coming into it. Now, I want to see that position preserved in this House. And I do say that if you create any machinery which, under the guise of settling dead-locks, will really be used to create dead-locks, you will strike a blow absolutely at the power and dignity of that House. It is very curious to note the evolution of feeling, or of opinion, throughout the whole of this question. In the Bill of 1891 there was no provision for dead-locks. When we met in Adelaide, my honorable friend (Mr. Wise) and others, with fear and trembling, proposed some concrete views; but it is only very lately that the idea of having absolute finality has dawned upon us at all. I say distinctly that those who believe in the national referendum for finality are the only people who have the courage of their opinion. If you do not have the national referendum, by which you will get at the absolute majority of the people, then any other finality is absurd. But I do not believe there is any necessity for such finality.

Mr. HIGGINS. -

You speak from the conservative reactionary point of view.

Mr. WISE. -

This has nothing to do with conservatives or liberalism.

Mr. HIGGINS. -

I think it has.

The CHAIRMAN. -

I must ask honorable members to allow Mr. McMillan to address the Chair without interruption.

Mr. MCMILLAN. -

If the whole of the members of this Convention were photographed, and a stranger were asked to pick out the man who is the most typical tory of us all, he would pick out my friend (Mr. Higgins). There must be an absolute
divorce in that gentleman between his political inclinations and his actual intelligence.

Mr. HIGGINS. - Do you not mean a difference between my appearance and my intelligence?

Me. MCMILLAN. - There is no doubt a difference between your appearance and something else. I will just refer to the proposal at the end of the second paragraph—the proposal that the two Houses shall meet together: Will anybody say there is real finality in that? It is no doubt a piece of machinery to create finality in the meantime, but is it a finality that gives confidence, or satisfies anybody? It is nothing of the kind. I hope that the proposal will be thrown out, and that some means may be found of reverting to what we did in regard to what I call this ridiculous proportion between the two Houses. I hope there may be some means of avoiding what I think is one of the greatest blunders that has been perpetrated in the Convention. I should have spoken my mind on this point only for my absence from Sydney at the time. If anybody had told us at the beginning of our meeting in Adelaide that such a radical proposal would have been made as the dissolution of the Senate, one-half of the members, so-called tories, would have almost had their hair turned. And now, forsooth, because certain conservatives—I forget the other part of the vocabulary of my honorable and learned friend—those reactionary conservatives—

Mr. SYMON. - Antiquated.

Mr. MCMILLAN. - I will not say antiquated. But because certain reactionary conservatives say they are willing to go so far as to dissolve the Senate, believing that that may bring about a settlement, and that that is sufficiently far to go on a stage of coercion, are they to be told they do not represent the great democracy of Australia? The thing is absolutely absurd. The way these words have been bandied about in this Convention is absolutely absurd. Whatever anybody can blame me for, they cannot convict me of inconsistency. I said in Sydney, as I said in Adelaide, that I was willing to agree to a reasonable mode of settling deadlocks if anybody could put in a concrete shape an arrangement that would not absolutely annihilate the principle of federation; that would not absolutely interfere with the strength of the Senate, which is the great safeguard of the people and of the country under this system of bi-cameral government. I voted against all these proposals in Adelaide and Sydney, except the proposal of Mr. Symon. I
stopped at that, and I go no further. I am entirely opposed to the simultaneous dissolution of the two Houses. What is the position? Are not the whole of these provisions framed to deal with the settlement of questions initiated in the House of Representatives? The attacking House is naturally the House of Representatives, which frames the legislation, and surely it is enough to, say that after the House of Representatives has been to the country, in the way we have been accustomed to in carrying on our business under the British Constitution, if there is not a settlement of the dead-lock with the Senate, which we originally never intended to dissolve except in the ordinary-way, and which is supposed to represent the continuity of our national life, then, as a last resort, the Senate may be dissolved. That is as far as it is possible for concessions to go.

Mr. ISAACS. -

Do you mean a simultaneous dissolution?

Mr. MCMILLAN. -

I mean a dissolution first of the House of Representatives, and then, if that fails to bring about a settlement, a dissolution of the Senate. Honorable members have said that this may never be put into force, and that is probable. They any that it will be, to a certain extent, a deterrent, but I do not want to turn a deterrent into a coercive threat.

Mr. HOLDER. -

What if that does not settle the dispute?

Mr. MCMILLAN. -

Then I say, leave it alone. We are dealing now with, a written Constitution, and with a Federal Government, in which the rights and, privileges of the states are preserved. If, after all these arrangements and all this circumlocution, a law is not passed it will be better to wait until the people have made themselves thoroughly acquainted with the subject. One of the great curses of modern politics is the desire to legislate on everything. Our Appropriation Bills will be in no danger, because the rejection of an Appropriation Bill would be equal to a revolution. There is no fear of the Senate attempting to veto any law that is necessary for the good government of the country, and the only laws that they would attempt to veto, as a rule, would be such as were experimental, and such as the people probably did not want. These are my feelings in the matter. I am sorry that the conversation has gone so far that I now find myself separated from honorable members who have voted side by side with me on this question, who did not believe in any solution for dead-locks, who thought that the principles of common sense, of common patriotism, and of mutual concession, which have distinguished English
statesmen and English legislation would operate in the future in the Commonwealth of Australia, and who said, as our fathers did, so will we do.

Sir JOHN FORREST (Western Australia). -

The thanks, not only of myself, but of many honorable members, are due to the Hon. Mr. McMillan for the very high-toned and generous speech that he has been good enough to deliver. My own inclination at the present time would be not to say anything, because I, with others, felt very much pained at the speech we had to listen to from the Right Hon. Mr. Reid. If I did not represent a great colony, and if I had not its interests to conserve, I certainly would not rise at the present moment to say anything. Because on an occasion of this sort many will think that the less we say the better. I recognise quite as fully—or, at any rate, I desire to recognise as fully—as does my right honorable friend (Mr. Reid) the great responsibility that rests upon him in regard to this Constitution, and in regard to the work we are carrying on. No one, I think, will deny that a great responsibility—probably greater than that which rests upon most of us—rests upon him. I wish to acknowledge that most frankly. But we must not forget that we are here on his invitation. We have been elected by the various colonies to come here as their representatives, but we come especially, and the whole matter originated, on an invitation from New South Wales that we should assemble and confer with the representatives of that colony in order to try and form a Federal Constitution which would bind us more closely together than we are at the present time. Now, I am afraid that the right honorable gentleman in the eloquent—I think it was eloquent—speech he addressed to us forgot that he was addressing a representative gathering such as we have the honour to be, and he must have thought he was addressing some political gathering somewhere in his own colony. I do not know that I have the best right of any one in this Chamber to find fault with others, because I have the reputation of being somewhat brusque myself. But I wish to say this: That if ever here or elsewhere I have said anything that was not in good taste, or that was rude, I regret it, and should be the first to withdraw it whenever I had so far forgotten myself. Now, we have not come here to be lectured. We have not come here, I take it, to be treated with the greatest courtesy. We have not come here to hear our colonies, or the representatives of our colonies either, disparaged or in any way treated other than with the greatest courtesy. I have not come here to be told that I represent a colony far away to the west, and that I represent a few gold-diggers or a few gold-fields, I have not come here to be told that the tax payers of New South Wales are entitled to any more consideration than the tax payers I have the honour to represent. I am not here as a
suppliant asking for anything from any one, or desiring charity from New South Wales. But I am here as the representative of a self-governing country, trying to do my duty, and in doing that duty not desiring to obtain anything from anybody. I take it that every individual in every one of these colonies—in Western Australia as well as in every other colony—is as much interested in this Constitution as any other individual in any other part of Australia. An individual in New South Wales or in Victoria (which are the two largest colonies) has no more interest in this Constitution than an individual in the country I have the honour to represent. We are as self-reliant and capable of managing our own affairs and interests in one part of Australia as they are in other parts. In fact, if I wished to use the boastful language of my right honorable friend, I might say that 160,000 people in Western Australia raise as much revenue as 500,000 in his colony. Therefore, every man, woman, and child in Western Australia is as self-reliant as three in the colony he comes from.

Mr. CARRUTHERS. -
Not under this Constitution.

Sir JOHN FORREST. -
I do not know what will be the case in the future, but that is the case at the present time. Why do I say these things? I say them with this object: To show Mr. Reid that we, who come from Western Australia, and I am sure I can speak for the people in other colonies, care not for his threats, and will not be coerced. Now, as to the merits of this question. They have been shown very clearly by Mr. McMillan, so that very few words are required from me. As he said, the idea of dissolving the Senate never occurred to the Convention in 1891, and it occurred first, I believe, when it was suggested by Mr. Wise in Adelaide, and he received, no support.

Mr. DEAKIN. -
I proposed it in 1891.

Sir JOHN FORREST. -
But I think the honorable member got no support.

Mr. DEAKIN. -
Very little.

Sir JOHN FORREST. -
In Adelaide it received very little support. It received much greater support in Sydney than was ever anticipated, and now we are told by the right honorable gentleman that if he does not get the double dissolution—a simultaneous dissolution—the whole fabric of this Constitution will come to naught; that he will not be able to say to his people that it is a Constitution
worthy of acceptance, because, forsooth, there is not embedded in it the simultaneous dissolution of the House of Representatives and the Senate. I regret to see that there is all over this colony, and in New South Wales, and, I think, in South Australia, a determined dislike to the Legislative Council—the Upper House, as it is called. I do not know why that should be, but the fact remains that honorable members, even in this Convention, cannot divest themselves of the idea that the Upper Houses, which they so much dislike in their own colonies, are to be represented in this Constitution in the Senate. Those honorable members, however, who do not like the Upper House in their own colonies, forget to tell us that this Upper House is to be elected by the same people, on the same franchise, as the House of Representatives, and that it will be more representative of the masses of Australia than the Lower House itself, which will only represent certain districts.

Mr. HIGGINS. -

Only 30,000 or 40,000 electors in your colony.

Sir JOHN FORREST. -

Honorable members know very well that I have been opposed all along to any dissolution whatever of the Senate. I have been opposed all along to any provision to prevent dead-locks, believing, like my honorable friends (Mr. Barton and Sir John Downer) and many other members, that the good sense and patriotism of the people will be quite sufficient in the future, as it has been in the past, to meet any difficulties which may arise. I have given way, certainly unwillingly, to try and meet the wishes of those who desire that the Senate shall be dissolved. Now that we are going to have a dissolution of the Senate, I care very little whether it is a consecutive dissolution, or whether it is a simultaneous dissolution.

Mr. WISE. -

It makes a very great difference to New South Wales.

Sir JOHN FORREST. -

The honorable member will make himself believe that anything will affect New South Wales. He did not say so in Adelaide. I suppose he is gathering up these ideas as he goes along, and he will tell us that the whole people of New South Wales think as he thinks, when, perhaps, he knows very little about it.

Mr. WISE. -

I do not agree with them.

Sir JOHN FORREST. -

I am very glad to hear that.
Mr. WISE. -

But I recognise their beliefs.

Sir JOHN FORREST. -

I do not believe that they know much about these matters. I do not believe that many persons among the masses who have votes care two straws whether it is a simultaneous dissolution, or whether it is a consecutive dissolution. I make bold to say that, and I believe I am not very far off the mark. We have been told that this will wreck the Constitution, and that that will wreck the Constitution, that we cannot go back to our constituents with this or that. We have been told this often, but I want to point out to honorable members that, although I come from a far distant country, with not a very large population, it is just as difficult for me to convince the 160,000 persons over there as it is for the Premier of Victoria or the Premier of New South Wales to convince his 1,000,000 people. I think perhaps it is more difficult in my case. We know very well in the case of Victoria and in the case of New South Wales they will be able, when they get the Bill passed, to show their people that there is a great future before them, a great profit, and a great outlet for their industries and their produce. But we will not be able to show the 160,000 persons in Western Australia that that is the case. I shall not be able to do it. I make bold to say, and I know it to be true, too, that it will be more difficult for me to convince my 160,000 people, because I shall have to show them that they will put money into their pockets. That is what I will not be able to show. I have said, over and over again, that the desire for free markets and for an outlet for their produce is stronger in the minds of the people of these colonies than is their desire for nationhood. That is the lever which is urging them on, and that lever is absent in the case of Western Australia. Therefore, when people talk about the difficulty they will have when they go back to their colonies and their people they only think of themselves. They think that I and those who are like me, in Western Australia, Tasmania, and South Australia, will have no difficulty whatever; that the small number of people there are less intelligent than the people in their large towns; that they are not so careful of their own interests, and that therefore they will be easily bamboozled. I do not think that will be the case. My idea of the task before me is, that it is far more difficult than it is for any other Premier in this Convention. I agree with my honorable friend (Mr. McMillan). If after there has been a dissolution of the Lower House and, after a reasonable time, a dissolution of the Senate they cannot agree, I do not think they want the law. My idea is that we should better wait until they do agree. It will be a law which is a great invasion on the rights of a large number of people, some new-fangled idea
put forward for some purpose or other. It seems to me that that kind of law can very well wait for a time. We know very well that people are careful of their own interests. We have never had a case yet in any of these colonies where the Upper House has ever interfered seriously with an Appropriation Bill unless there has been an attempt on the part of the Lower House to coerce the other. Every year we pass our Appropriation Bills through the Legislatures without a word. In the Constitution of Western Australia, as in this Bill, there is a provision allowing suggestions to be made by the Upper House, even with regard to the provisions of an Appropriation Bill. Attempts have been made there by members of the Council to have these suggestions put forward, but they have never succeeded. Therefore, the experience we have to guide us shows that all these difficulties which are imagined in the minds of imaginative people will not exist when we get to business. We have all gone far enough. Those who believe in no dissolution of the Senate at all have agreed that there shall be a dissolution. Further than that I am not prepared to go.

Mr. TRENWITH (Victoria). -

It seems to me that an extremely undesirable tone has invaded our discussion. In my opinion, there was ample justification for the heat displayed by the right honorable gentleman who has just resumed his seat. I think it was a mistake upon the part of the Premier of New South Wales to adopt the tone which he did, though I entirely agree with the arguments which he used. The Premier of Western Australia has pointed out that in the Bill of 1891 there was no reference to a dissolution of the Senate. He has pointed out that in the successive meetings of the Convention the idea of a dissolution of the Senate has received greater and greater support. That is the truth, and it is a significant sign of the progress which is taking place in all the colonies. We ought not to shut our eyes to the fact that there is growing with immense rapidity in the minds of the people a feeling that there must be some means of quickly settling disputes arising between their agents.

Mr. DOBSON. -

That is at variance with history, and common sense.

Mr. TRENWITH. -

The honorable member will pardon me for not taking up time in dealing with the historical aspect of the question. I hear an honorable gentleman interject "The Trades Hall." You will pardon me for saying that I have never mentioned the Trades Hall in this Convention. I have never referred to that section of the community which I may be said most distinctly to
represent. Yet this is a question which will have to be settled by that section of the community.

Sir EDWARD BRADDON. -

No; we have to settle it.

Mr. HOLDER. -

The people have to settle it.

Mr. TRENWITH. -

It will have to be settled ultimately by the people of Australia, and in Australia 80 per cent. of the people work for wages, and belong to the labouring classes. I have never before referred nor do I intend to continue to refer now, to this section of the community, and I think that the interjection was a most ungraceful one.

Mr. PEACOCK. -

It was in very bad form, whoever made it.

Mr. TRENWITH. -

It was certainly not warranted by any action of mine at any setting of the Convention. I was pointing out that a certain feeling is growing up. If we are in earnest about federation we cannot afford to disregard the opinions of the people. Like the right honorable member (Sir John Forrest), we may be of opinion that the people know very little about these matters; but we must not forget that, whether they know little or much about them, their vote is the final issue to which the Constitution is to be submitted, so far as Australia is concerned. I would therefore urge it upon honorable members most earnestly, and with all the force of which I am capable, that the Constitution has in it principles which are extremely distasteful to the bulk of the people. But federation itself is so alluring that the people may be induced to accept the Constitution with all its faults, because of its great material advantages, and, perhaps, because of advantages which appeal to them more indirectly—its sentimental advantages—the advantage, for instance, to be derived by wiping out the arbitrary geographical lines by which the colonies are separated, and creating a nation which shall secure respect among the councils of the nations of the earth. We should, therefore, if we can do it without sacrificing principle, be willing to put into the Constitution any bait that may be to the people an added reason for accepting what, on very many grounds, they see to be fraught with serious danger. Whatever may be the faults of the manner in which the Premier of New South Wales dealt with this question, he told an important truth when he said that we had arrived at the most critical point of the discussion. We ought to be prepared to concede everything that we can fairly and honestly concede, even
though the propositions put forward are not exactly approved by our judgment, so long as we can see no serious danger in them. If it be true that there is no serious danger in providing for the dissolution of the Senate after a dissolution of the House of Representatives has taken place, there can be no serious danger in giving the alternative to the Executive of the day to either dissolve the one House as a test, with the intention, if need be, of dissolving the other later on, or to dissolve both Houses at once. As I pointed out when I spoke in regard to the first paragraph of the clause this morning, there is a feeling, be it right or be it wrong, that the Convention has aimed at making the Senate unduly strong, to the extent of making it the dominating Chamber. The opinion is held outside that the Convention, instead of making the Senate a House of revision and of reasonable delay, has aimed at making it the dominating power in the Commonwealth. I am not urging that this is the aim of honorable members. So far as I can, I am, and always have been, anxious to say nothing to hurt or offend the feelings of any honorable member.

Mr. DOBSON. -

Do you believe in reasonable delay?

Mr. TRENWITH. -

I do.

Mr. DOBSON. -

You just said that the people want to have everything settled quickly.

Mr. TRENWITH. -

I want to have things settled quickly, consistent with reasonable delay. To have things settled slowly may mean unreasonable vexing annoying delay, such as in some countries of the world has led to revolution. The honorable member spoke about history. Every one knows that in England in 1832 if there had been greater delay in conceding what was the wish of the people there would have been a bloody revolution among one of the most peaceful nations of the earth. Delay may extend until it becomes so unbearable as to lead to violence upon the part of people who hate violence. That is what I mean when I speak of reasonable delay. I do not mean the settlement of a question during the currency of a wave of passion, possibly of popular delusion. But surely there is nothing in the Bill, even with the provision for a double dissolution, which require the settlement of matters in such a hurry as to deny reasonable delay, careful consideration, exhaustive discussion, and the perfect understanding of the questions presented.

Mr. DOBSON. -

How long would your Parliament take to settle bi-metallism or the question of old-age pensions?
Mr. TRENWITH. -

I do not think I am called on to say how long I would give my Parliament to settle either or both of those questions, for two reasons. One is, I have not a Parliament all to myself, and perhaps that is a sufficient reason, so that I need not state the other. I ask my honorable friend (who I believe desires federation, as I believe almost all, if not absolutely all, the representatives in this Convention do) to believe me when I say that I am able to speak on this point with an authority that perhaps no other member of this Convention possesses. "Trades Hall" was interjected at me, and it does happen, from the position that I hold, that I am brought into contact with the masses of the people in all the colonies in a way that no other member of this Convention is. And possessing the knowledge that I do of the feelings of the great majority of the people who are to vote on this Bill when it is presented to them, I have no hesitation in saying that unless this clause is carried, they will leave me and others who earnestly desire federation, and who are willing to swallow a few provisions extremely repugnant, because important to the whole issue, without an argument that the carrying of this clause would give us. Honorable members know that there is a strong feeling, rightly or wrongly, that in this Constitution there should be a provision as to the ultimate settlement of the dispute for a reference to the people of any question at issue between the two Houses of Parliament, by means of the referendum. I see no hope of that being carried, and the fact of that being out of the Constitution will have an immense effect in turning many persons against this Bill. Given this double dissolution, I and others who think with me that there should be a referendum, feel that federation is so important, and the possibilities for these colonies under it are so great, that, desirable as it is, we may forego the referendum, hoping for the future to produce it. And we have thus placed in our hands an argument we may use, and that will enable us to say to the people-"It is true that this Constitution is not nearly so perfect as it ought to be from a democratic point of view; but, after all, it is more perfect than most of the Constitutions of the world, and although it does not contain the principle of the referendum, which we believe to be a just and proper principle, it has at least such a terror to the Upper House against uncertain, harassing, and wearying delay, that if they unreasonably resist a measure desired by the people, they may be dissolved and sent to their constituents the same as the other House of the Federal Parliament." Now, I do beg honorable members to try I do not want to bounce them, and I do not want to threaten that this Bill will not be carried, but in view of the importance of the issue-to weigh in their minds whether there is not
sufficient danger in this proposal from their point of view even to justify them in doing something which they consider is not reasonable, in view of the responsibility of wrecking all the work we have been doing if they decline to do this. I, the

Mr. WISE (New South Wales). -

Although I have already spoken very briefly upon this clause, I, with much hesitation, desire to obtrude my opinions for a second time on the committee; because I am satisfied that we have reached a most critical point in our deliberations, and that the vote we are about to give is pregnant with the future of either federation or disunion. I am not going to repeat the regrets which have been expressed from all sides of this chamber at the speech delivered by the Right Hon. the Premier of New South Wales. I share in those regrets for the reasons which have been expressed.

Mr. REID. -

And I accept them all.

Mr. WISE. -

But I do appeal to the committee to consider the position of those who, while they dissent from the views of the right honorable gentleman, are deeply in earnest in their desire to carry this Bill through, and successfully to meet the opposition which, unquestionably, we are going to meet in New South Wales. It has been my lot whilst this Convention has been sitting to pay two or three visits to New South Wales, and I have returned each time more startled perhaps than I can express by the strength of the wave of provincial feeling that is passing over our colony. I believe that we can explain the misapprehensions that at present have taken hold of our people, but we shall have infinitely more difficulty in explaining them if those who are opposed to us, who misunderstand what is going on here, and who invent arguments against us when they cannot find arguments from our proceedings—if those opponents can say with truth that the settlement which has been accepted for many months as a settlement which was arrived at in Sydney has been departed from here. If we were dealing with this matter now for the first time, and if the same strength of feeling were expressed as has been expressed to-day by Mr. Symon and Sir John Forrest, I believe I should be found voting with those gentlemen against this clause. But I have never disguised my conviction that this clause is a mere concession to popular ignorance. Still, as a practical politician, wishing to get this Bill through, I recognise that the public of Australia have accepted this clause as it stands, and the difference between altering a proposal of this kind and refusing to accept it in the first instance, is sufficiently marked for it to be
unnecessary for me to emphasize it further. The difficulty is that if this clause is struck out those who are the enemies of federation will scrutinize the division list, and will find that it is struck out by the votes of the three smaller colonies.

Mr. HOLDER. -

The three smaller colonies do not vote solidly in anything.

Mr. BARTON. -

That will not be so.

Mr. WISE. -

I hope I am not misunderstood. I am only expressing my own particular opinion.

Mr. HOLDER. -

If the clause is struck out it will be by the votes of Victoria and New South Wales.

Mr. WISE. -

With the exception of two votes from Victoria and two votes from New South Wales, the votes will be representative of Western Australia, South Australia, and Tasmania. I am speaking of the majority of the voters.

HONORABLE MEMBERS. -

No, no.

Mr. WISE. -

I am only saying if it is struck out; I hope it will not be.

Mr. BARTON. -

It is too early for such a prediction as that.

Mr. WISE. -

I am not prophesying, and I am afraid I am misunderstood. I am only urging that if the same vote is given on this question as on the last, there will be a certain amount of justification for the statement that the majority of the representatives of the three smaller states have outweighed the vote of the other colonies. My hope and trust is that the vote will be altered, and my endeavour is to induce honorable members to alter it, but if the same votes are given to strike out this clause as were given for retaining the other clause, there will be a certain amount of justification for the statement to which I have referred. In saying this I am speaking of the enemies of federation in New South Wales, because I do not pretend to speak for any other colony. And what would the votes be given for? They would be given to alter an arrangement that has already been arrived at. If this were being raised for the first time, I would be ready to vote for the other side, if any strength of opinion was expressed. Why I do not go over to the other side I will show; and it was an expression in Sir John Forrest's
speech that caused me to rise for the purpose of emphasizing my opinion. Sir John Forrest said there was very little difference between successive dissolution and simultaneous dissolution. I agree with him; but there is a difference which has possessed the opinions of the public, and which, if we ignore it, will prejudice the Bill certainly in New South Wales, and, I am assured by Mr. Trenwith, in Victoria also. Is it worth while to break a compromise which, after all, is a small matter, but which the public think of importance for historical reasons? I trust that it will in no way whatever be interfered with. I should be found strenuously opposing the referendum in any form whatever, or any arrangement to depart from a compromise which is thoroughly understood throughout Australia, and which has been reluctantly accepted by a great many, and, on the whole accepted, it may be, with great advantage.

Mr. MCMILLAN. -

It was mot accepted by the Convention in that way.

Mr. WISE. -

The honorable member may be right in saying that it was not accepted by the Convention in that way, but it has been accepted throughout the country in that way. And it has this greater advantage. The riddle of federation is how to reconcile responsible government with the Federal Constitution. There is only one way to solve the riddle, and that is to give the Executive of the day complete control over every part of the parliamentary machinery. You cannot get that complete control unless you place it in the power of the Executive to dissolve both Houses at the same time. Whether the Executive Movement will or will not work under these conditions only the future will inform us. But it gives a fair opportunity to responsible government to work on lines with which we are already familiar. If we leave matters as they stand, we shall close the mouths of those who say there has been a wave of tory feeling which justifies them in opposing the Bill they were previously prepared to support. I ought to apologize for using the word tory, although I am only using the word which we hear from our opponents. I do not like to sit down without entering the strongest possible protest against the suggestion, which I am sorry to say came from Mr. Higgins in an interjection, that there is anything in this proposal at all correlative between liberal and tory. There is no analogy, and there never will be, between the House of Representatives and the Senate and a Legislative Council and a Legislative Assembly. The suggestion is utterly misleading and dangerous to the cause of federation.

Mr. HOLDER (South Australia). -
It is important that some remarks should be made in respect to the suggestion thrown out by the last speaker. It has been suggested that if we take a certain course the electors in New South Wales will believe that that result was secured by the union of three colonies against two. I have seen statements in the press, said to have been made by a member of the Convention, which also went in the same direction. I take this opportunity of making the most definite declaration on this point—a declaration which can be supported by anybody who will take the trouble to look through the records—that on hardly any occasion have the representatives of the three colonies referred to voted solidly together against the solid representatives of the other colonies. On almost every important division there have been some representatives of Victoria against the rest, and some representatives of New South Wales against the rest, and the representatives of South Australia have almost always been equally divided. The representatives of Western Australia and Tasmania have frequently had some of their number on one side, while others with some of the representatives of South Australia have voted with the larger colonies.

**Mr. Barton.** -

The whole thing is a pure fabrication, which a glance at the minutes will disperse.

**Mr. Holder.** -

It is a pure fabrication, and, because I think that ought to be said in the most clear and outspoken way, I felt compelled to rise after Mr. Wise to make this statement, so that it might find an echo from one end of the proposed Commonwealth to the other. And now I should like to say a word or two on the point before the Convention. I wish to repeat what I said two or three weeks ago as to the difficulties of one colony being the difficulties of all. If it is hard to get 80,000 votes in New South Wales, or a sufficient number of votes in Victoria, that is a hardship which will be felt by all the colonies. It is our business, as a whole, to help New South Wales to overcome her difficulties, and it is for the other colonies to help us in South Australia to overcome our difficulties. We are here in one sense representing colonies, but we are here in a larger and better sense as the representatives of Australia, just as in a Parliament there are men representing given districts, but, taken altogether, they represent the whole country. And I feel that, apart from the honour of the position we hold as representing our own colonies, we are representatives a Australia. The difficulties of Australia are our difficulties. If we had had that in mind during the short time before dinner, and some time since—if we had thought more of the Federation we are building up
than of little personal feelings—some unpleasantness might have been saved. What is the question we have to discuss? Really, when we see how small it is, we will be surprised at the time taken over it, and the heat evolved. We have already determined that under certain conditions there must first be a dissolution of the House of Representatives, and, if the dispute continues, a dissolution of the Senate. Is it desired that alternative power shall be given to the Ministry to have more dissolution? Nothing of the kind. If that were proposed we could understand the warmth. The proposal is to give to the Executive the power, if circumstances in their view demand it, and the conditions surrounding the case require it, to dissolves the Houses simultaneously, instead of having them dissolved with a period of some months between. Is the question worth all the feeling that has been exhibited?

Mr. MCMILLAN. -

Do you think it would be really used as an alternative, and not adopted as a practice?

Mr. HOLDER. -

That interjection leads to a number of considerations which strengthen my position very much, and weakens the position of my honorable friend (Mr. McMillan). I do not hesitate to say that these cases of dead-lock will be so managed by the Executive that they will come up as nearly as possible before a general election of the House of Representatives. That would be taken as the opportunity for making the appeal to the electors, and the simultaneous dissolution would be the exception, and not the rule. Seeing that that is so remote a contingency, and that it is only to be resorted to as an alternative, is it worth while to fight any longer about the matter? We have decided that the two Houses may be dissolved, and surely we may now decide that they may be dissolved together instead of apart. That is the issue, and am we going to risk the whole scheme of federation upon it? Surely, having done the major thing, we may do the minor thing, and so assist the two greatest colonies in the group in getting this Constitution accepted by the people.

Sir EDWARD BRADDON (Tasmania). -

It is impossible to speak on this question without making some reference to the remarkable utterances of the Right Hon. Mr. Reid. I felt no temper about them at the time, and I feel no temper about them now, although he made a sweeping charge against the representatives of the smaller states—a charge which was in some senses ludicrous, and in every way inexcusable. For instance, he said that the representatives of the smaller states had no influence in the Convention. It is just because we have influence, and have been able to carry one or two proposals, that he has thought fit to make this
attack upon us. My feeling was not one of anger, but of regret-regret that the leader of this movement, to whom we have been loyal from the time when he asked us to meet him in Hobart in 1895, should have struck a blow at federation more serious than any blow that can be delivered hereafter by anybody else. There was no occasion for it. The Convention, by a majority, has carried the point as to consecutive dissolutions, and has shown that it is in favour of this remedy for dead-locks. I, personally, have always been in favour of the dissolution of the Senate as a means of disposing of difficulties when the two Chambers cannot agree. It is simply childish to say that, because some of us hesitate to accept an alternative and simultaneous dissolution, ruin must fall upon the fabric of the Constitution. If these opinions are held by some persons in the larger states, very different opinions are entertained in the smaller states, not by those who are occasionally stigmatized as tories, but by the most liberal members of the community. I should like to quote a few words on the subject from a radical source. They are as follows:-

It is absurd that there should exist a distrust of the manhood suffrage on which the Senate, unlike any Legislative Council, will be based.

Under the Constitution as it now stands, with a little circumlocution, the majority vote of two states—though it may be the minority vote of the Commonwealth—will rule the five states.

If the Australian Senate is to be a useless and ridiculous cipher, it had better vanish from the Constitution altogether. The trick of offering the small states a Senate, and, at the same time, taking from that Chamber every vestige of effective authority and power can excite only the contempt of serious and honest politicians.

That is not a tory utterance. It is the radical sentiment of Adelaide.

Mr. TRENWITH. -
Who is the author?

Sir EDWARD BRADDON. -
I do not know who is the author.

Mr. REID. -
It is a wonder that you do not put it down to me.

Sir EDWARD BRADDON. -
The right honorable member is capable of anything and he may have written the article from which these words are taken for the Adelaide Advertiser. During this short debate we have heard some extraordinary arguments in justification of the vote to be given for a double dissolution. Mr. Wise tells us that it is a concession of which he disapproves, but which is to be made to popular ignorance. Let us instruct the people so that this
popular ignorance may be dissipated, and we shall then get a vote on a fair
issue.

Mr. HIGGINS. -

Very few will agree with Mr. Wise on that matter.

Sir EDWARD BRADDON. -

The honorable member also said that if we were now dealing with the
subject for the first time he would vote against the double dissolution. One
wonders what he would do if it came to a third vote, seeing that he voted
against it on the first occasion, and in favour of it on the second.

Mr. DOUGLAS. -

He would not vote at all.

Sir EDWARD BRADDON. -

I hope that in this matter we shall be guided by reason, and that we shall
not be misled by any threat of the frightful consequences that will ensue if
we do not pass the clause. We have conceded, and willingly conceded, so
far as I am concerned, the form of dissolution proposed by the Hon. Mr.
Symon, and we might very well rest satisfied with that, knowing as we do
that an occasion for the application of these dead-lock provisions will very
seldom, and probably never, arise.

Mr. BARTON (New South Wales). -

I am not going to make a speech; I am only going to ask if I may not
appeal to the consideration and patriotism of the Convention to come to a
vote upon this matter? If arguments on the question can be answered more
satisfactorily than they have been answered, of course I have no right to
ask for a division to be taken now. But is there not a great deal of work
ahead of us? Have we not been sitting here for seven weeks tomorrow? Is
there anything new under the sun, or under the electric light, that can be
said for or against this proposal?

Mr. ISAACS (Victoria). -

In view of what the leader of the Convention has said, I refrain from
making any observations on this particular branch of the subject.

Question—That the words down to the word "agree" proposed to be struck
out stand part of the paragraph—put.

The committee divided—
Ayes ... ... ... ... 28
Noes ... ... ... ... 12
Majority against the amendment 16
AYES.
Berry, Sir G. Isaacs, I.A.
Mr. BARTON (New South Wales). -

I now beg to move the amendment which I indicated before the debate closed-

That there be inserted after the word "agree" the following words:-"and if the House of Representatives again passes the proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree."

Mr. ISAACS (Victoria). -

May I be allowed to put one matter, to my honorable and learned friend-whether it will not make the amendment clearer if he inserts the words "in the next session," in the first portion of the amendment, so as to make it apply both to the House of Representatives and to the Senate?

Mr. BARTON (New South Wales). -

I understand that the honorable and learned member desires the words to read:"and if in the next session"?  

Mr. ISAACS. -

Yes.

Mr. BARTON. -

NOES.

Briggs, H. Kingston, C.C.
Brown, N.J. Lewis, N.E.
Brunker, J.N. O'Connor, R.E.
Clarke, M.J. Peacock, A.J.
Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Solomon, V.L.
Fysh, Sir P.O. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Gordon, J.H. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W. Wise, B.R.
Higgins, H.B.
Holder, F.W. Teller.
Howe, J.H. Barton, E.

Question so resolved in the affirmative.
I have no objection to that, and I ask leave to amend my amendment accordingly.

The CHAIRMAN. -

The amendment is-

That the paragraph be further amended by inserting the following words after the word "agree": "and if in the next session the House of Representatives again passes the proposed law, and the Senate rejects the same, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree."

The question is that the words proposed to be inserted be so inserted.

Mr. GLYNN (South Australia). -

I will call the attention of the leader of the Convention to the fact that in this proposed amendment it is not required that the second passage shall be by an absolute majority, but in the other case-in the first part of the clause-the second passing must be by an absolute majority. I understand that the leader of the Convention wishes to preserve perfect uniformity in this matter. Of course, if it is intended that there shall be a difference it is all right, but it struck me that the omission might be a slip.

Sir JOHN FORREST (Western Australia). -

I should like to ask whether the leader of the Convention has not overlooked a point with regard to the interval between the two sessional. As the proposal stands, the two sessions might be within a day or two only of each other. There is nothing to prevent the Government proroguing Parliament, and summoning it a few days afterwards. It seems to me that there should be some interval provided for. I call attention to the matter.

Mr. BARTON (New South Wales). -

I will point out, Sir Richard Baker, that, there is a prompt remedy for that state of things. If the Government were to resort to the mere trick of proroguing for the simple purpose of getting a second vote on the same question in the way Sir John Forrest suggests, contrary to fair play, let alone the spirit of the Constitution, the unpopularity of such a step amongst their own supporters, to say nothing of the public outside, would be their punishment, and there would be a very heavy danger that they would have to pay for doing so. We will leave such a matter to the wisdom of the people who will have to deal with it.

Sir JOHN FORREST. -

In the first paragraph we have provided for an interval of six months between the two sessions.

Mr. BARTON. -

But that is a different thing. In the provision relating to the concurrent
dissolution, the order of things is this: If the House of Representatives passes the law, and the Senate rejects it, or fails to pass it, or makes amendments which are not agreed to by the House of Representatives, and the Governor-General dissolves the House of Representatives, then, in six months after the dissolution, if the House of Representatives again passes the proposed law by an absolute majority, the Senate may be dissolved if the same difference occurs again between the two Houses. But that is a limitation to prevent delay. That is the object of the six months' interval in the first part of the clause—not for the purpose of bringing about undue haste, but for the purpose of preventing undue delay; and undue haste would be ill for the Government that proposed it. Now, there is no particularly undue delay, I take it, if the whole of the next session is allowed within which these steps are taken. With regard to the absolute majority, I am disinclined to make an exception of that sort. It is not like the case of a consecutive dissolution. It is a case where there are disagreements between the Houses, and I do not see that in that case an absolute majority is required. The mere action of the principle of responsible government, which is applied to both Houses at the same time, is sufficient security for the due execution of this provision.

Mr. SYMON (South Australia). -

My honorable friend says, in reference to the possibility of this interval being a very short one, that no doubt Parliament or the Executive would take care to guard against that. I think that as we are dealing with very edged tools in this provision, and intrusting to the Executive a very drastic power, we ought to be careful that there is some minimum interval. Therefore, I beg to move—

That the amendment—

That is the consecutive dissolution, and you have a dissolution interfering before the Senate is interfered with. I do not want to make the interval too long, but I want to make it certain that there shall be an interval, and I think six months is the shortest that should elapse.

Mr. OCONNOR (New South Wales). -

The amendment of Mr. Symon is the exact reverse of the provisions in the former clause. The revisions of the former clause are for the purpose of necessitating speed. If this amendment were carried it would insist upon delay, and the question can only become so urgent as to make it necessary to apply these provisions, when it is of such a nature that it must be put through as early as possible. If you prevent that, by carrying the amendment, this remedy will, in many cases, be of very little avail.

Mr. SYMON. -

Then why say in the next session at all? If the object is to have it done
any speedier, there is no necessity for my honorable friend's amendment.

An HONORABLE MEMBER. -

One day might make a new session.

Mr. OCONNOR. -

We do not want a new session at all. The whole object of the amendment is that some interval may elapse, and the honorable member says next session; that may be more than six months, and the honorable member wants it to be at least six months. If the next session is more than six months, what more is wanted?

Mr. SYMON. -

That is if the matter is urgent.

Mr. OCONNOR. -

Then, if it is urgent, resist Mr. Isaacs' amendment.

Mr. TRENWITH (Victoria). -

I submit there is some justification for the suggestion that there should be some specified time. The object of requiring two sessions clearly is that there shall be an interval, but it is extremely desirable that the interval should be a reasonable one, because we may assume that before a dispute has arrived at an acute stage there has been some time and trouble taken over the proposed legislation. It would not be proposed unless in, the opinion of one or both Chambers it was necessary. Therefore we must be careful that we do not have undue delay in connexion with necessary legislation. If Mr. Symon would do what is frequently done in Victoria in connexion with measures in which it is proposed there should be an interval before they are submitted and voted on, fix six weeks instead of six months, you might be assured that there will be substantial delay. You would be secured against an unfair rush.

Mr. SYMON. -

That is all we want.

Mr. TRENWITH. -

I understand that.

Mr. MCMILLAN. -

Supposing a measure was sprung very suddenly upon the Parliament, and suddenly rejected, it would not come under the consideration of the public at all.

Mr. TRENWITH. -

I respectfully submit that a measure passed very suddenly, and suddenly rejected, would not be likely to be a measure about which this part of the Constitution would be brought into execution. Measures of importance,
such as will create disputes between the two Houses, are sure to be measures discussed at considerable length in both Houses, and, as Mr. Deakin points out, the Senate is not coerced into dealing with them. The Senate can take its time, even though the House of Representatives sends up a measure. It is not bound to deal with it the day it receives it. Therefore, I submit there is justification for the proposal, and we should concede it, even it it is distasteful to us.

Mr. SYMON. -
Will the honorable member allow me to point out the necessity for a longer interval than is given in Victoria? This is a Commonwealth matter, and you have the whole of Australasia to consider, and not one colony, if you we to get an expression of opinion.

Mr. TRENWITH. -
Of course, I am very anxious that we should in this connexion carry a proposal, if possible, nearly unanimously.

Mr. SYMON. -
Make it three months.

Mr. TRENWITH. -
Personally, I rose to point out that six months is too long; but perhaps three months would be a reasonable interval in view of the fact that such an extensive area has to be considered. I am reminded that in parts of Western Australia a letter takes three weeks for delivery. Therefore, we should require more time in Western Australia than in Victoria or New South Wales. However, if the honorable member will accept three months, I will support him.

Mr. OCONNOR (New South Wales). -
I hope the amendment will be passed as proposed. For such a matter as three months, is it worth while to, make a provision in the Constitution? The necessary steps to be taken by the Government itself will at least insure that delay, and, on the other hand, it may be very important to put the thing through in the public interests with so much rapidity that it would be impossible to allow the exact time in the Constitution. After all, it is not worth troubling about.

Sir JOHN FORREST (Western Australia). -
Mr. O'Connor overlooks the fact that the Senate may not put it through; there is a little safeguard there. But it seems to me that the words proposed by Mr. Barton, if they mean anything, mean another ordinary session. That is the intention of the honorable member moving it; but the way, in which it will be done will be to make a special session, as was done in South Australia,
where I believe that was done in order to get over this very difficulty. A new session was summoned three days after the termination of the other session. If that is the object of the honorable member-to try and rush the thing through by summoning another session immediately-I am sure it cannot be the intention of Mr. Barton. I am sure that, in his mind, another session meant another ordinary session; but seeing that the object of the mover can be frustrated, surely some reasonable interval should be made. I think three months a reasonable time, and it is certainly little enough. The honorable member (Mr. O'Connor) seems to forget that although you can take a horse to the water you cannot make him drink. Therefore, the sending of a Bill up to the Senate does not make the Senate pass it.

Mr. O'Connor. -
That will give you all the more time.

Sir John Forrest. -
I know that it will, but, at the same time, I think some interval should elapse, because if it is proposed to have another session it does not mean a manufactured session for the purpose, but an ordinary session.

Mr. Kingston (South Australia). -
My right honorable friend (Sir John Forrest) is a little in error as to what happened in South Australia. It was not any attempt to apply a provision of this sort. What happened was this: The Legislative Council threw out a Taxation Bill by carrying the motion that it be read this day six months. Under these circumstances it could not be re-offered for their consideration, and as it had been proved to the satisfaction of the majority of the members of that Chamber that they had made a mistake Parliament was prorogued, a new session was convened, the Bill was sent up again, the Council reversed their vote, and the Bill was carried. This has nothing whatever to do with it.

Mr. Deakin. -
It was done to oblige the Legislative Council.

Mr. Kingston. -
It was done to assist the Government and to oblige the Legislative Council; to enable them to correct their mistake at the earliest possible date. I am very glad to reflect that they took advantage of the opportunity which was offered. I would like to point out that if the proposal which is now suggested is adopted, we shall be whittling away this clause. As it left Sydney it provided that if the House of Representatives passed any proposed law, and the Senate rejected the same, or failed to pass it, or passed it with amendments to which the House of Representatives would not agree, the Governor-General could thereupon dissolve the House of Representatives. Nothing whatever was said there of a second session of
Parliament. What is the proposal now? We have already agreed to alter the clause so as to require a second passing of the Bill in a second session; but, not content with that, it is suggested that a certain interval shall intervene. Where is this to end? I submit that the matter can be fairly left to the discretion of the Executive Council, and that there is not likely to be any abuse of power. As regards the instance cited by Sir John Forrest, if there had not been the opportunity to give the Legislative Council a chance to reconsider their vote and alter their determination the finances of the colony would have been thrown into the greatest disorder. So here, if you limit the clause in the way proposed, I think it will be a great inconvenience.

Mr. ISAACS (Victoria). -

I very much regret that so fair and just a proposal as we are now dealing with, the double dissolution, in this case, should be granted with such difficulty and hesitation, and attempted by limitations to be rendered a most worthless.

Mr. BROWN. -

No.

Mr. ISAACS. -

It is so, because if you introduce an artificial restriction which cannot be got rid of by the consent of both sides and all parties, you are putting into the Constitution something which may impede its working. Why cannot we trust the powers Ministerial and legislative to work this properly and fairly? I should like to put one consideration to Sir John Forrest and to Mr. Symon, who fear that the new session will be called on unduly quickly. What is the object of it? It is in order that the House of Representatives may again pass the Bill. Does either of my honorable friends think that the members of the House of Representatives are going to do anything unfair, anything improper, to hasten a matter which will end their own existence as a House—which will drive them to the country.

Mr. DOBSON. -

Neither House will ever go to the country.

Mr. ISAACS. -

That will be the result. They cannot send the Senate to the country without going there themselves, and with a Damocletian sword of that sort hanging over them, I think they will be in no hurry to cut the hair which suspends it.

Mr. REID (New South Wales). -

There is another point I would like to mention, and it is one which might happen at the very beginning of the Commonwealth. We have fixed in the
Constitution the necessity to pass a Federal Tariff within two years after the establishment of the Commonwealth. The Parliament cannot very well begin work until, say, three months after the establishment of the Commonwealth. There may be a tremendous amount of trouble and difficulty, first in the Lower House to get the Bill carried through, and secondly in the Senate, and it might happen that at the close of all the difficulties connected with the Tariff it would be necessary to bring about a dissolution of both Houses in order to get a settlement at all. Now, this stipulation that there shall be an interval of six months between the sessions-

Mr. TRENWITH. -
Or three months.

Mr. REID. -
I understood it was six months.

Sir JOHN DOWNER. -
Or a second session at all.

Mr. REID. -
I understand that Mr. Barton's amendment proposed that there should be a rejection in one session, and then that the Bill should have to go up again in a subsequent session. It might be that the question on which the two Houses were at difference might be one of the most vital consequence to the well-being of the Commonwealth, tending, perhaps, to a state of the utmost tension and confusion. Why should we make the Constitution so inflexible that in a time of supreme national interest, to get a matter settled, we should have to wait three months? I think we must trust the Parliament a little in matters of that sort. During the debates in both Houses the measure and its merits will come very prominently before the people of the Commonwealth, and there is not time stipulated in this provision which would compel the Upper House in the second session to dispose of the matter in a summary way. The Senate will have the matter, to a very large extent, in its own hands. There is no power which can prevent the Senate from fixing a reasonable time ahead, perhaps a month ahead, for the second reading of such a Bill, in order to secure itself against any danger of that sort, if it feels that there is any necessity for it. If the House of Representatives were to attempt to jockey the Senate, because it had not dealt with the Bill in six weeks or two months, such tactics could only recoil on the heads of those who used them; they could not benefit them in any way. I therefore, in view of the fact that if these troubles ever occur they may occur on a matter of supreme consequence to the people, feel that an unreasonable delay over it may produce incalculable injury to the public interest. It is better to leave this matter in the hands of the Parliament,
especially for the reason I mention, that
the Senate itself, on the second occasion, can give itself sufficient time
before it allows the Bill to get into such a state that the Executive can
exercise the power of dissolution.

Sir JOHN DOWNER (South Australia). -

It appears to me, on the argument of my right honorable friend (Mr. Reid), that there is not the slightest necessity for a second session at all.

Mr. REID. -

I will take that if you like.

Sir JOHN DOWNER. -

You might just as well provide that during the same session the matter can be reconsidered.

Mr. REID. -

Well, we will take it that way.

Sir JOHN DOWNER. -

No, you will not take it either way, because I object to both ways. My right honorable friend need not suppose that I was mentioning this for the purpose of agreeing with him. I was mentioning it for the purpose of showing what I consider an absolute danger.

Mr. HIGGINS. -

You voted against this sub-section altogether. You wanted to make it nugatory.

Sir JOHN DOWNER. -

Now, what has that to do with it? Will my honorable friend, who is an equity lawyer, and highly logical, leave me alone for a minute? If he will, I shall be much obliged to him.

Mr. HIGGINS. -

Certainly, if you are afraid of being attacked by a logical man.

Sir JOHN DOWNER. -

There is no doubt that we are slowly frittering the thing away. We began frittering it away when my learned friend (Mr. Symon) proposed in New South Wales some way of curing dead-locks when there should not have been any way at all. "Dead-lock" is a word invented by the masses of the people to represent their determination to over-ride the legitimate exercise of the powers of the Constitution by those who are authorized to exercise them. We establish bodies with jurisdiction well defined, coordinate if you please, or not coordinate if you please; and we intend that both sides and the people shall agree before any measure can become law. When they do not agree, we say it is well that the measure should not become law, and because they do not agree somebody calls it a dead-lock. Who calls it a
dead-lock?
Mr. TRENWITH. -
Only the people.
Mr. REID. -
The most dangerous element in society.
Sir JOHN DOWNER. -
I agree with that, and probably no one knows better who they are than the right honorable gentleman who interjected.
Mr. REID. -
Quite right. I have found them here.
Sir JOHN DOWNER. -
And I, too, have found them here. I understood that they were found in considerable form during to-day, though I was not here at the time when the greatest development took place. A Constitution is intended to balance itself, and to be founded upon an agreement of the people and the states. Laws are not intended to be passed unless the people and the states agree. Agree by what means? By the throwing in of the clap-trap term "deadlock," and by the giving to one branch of the Legislature a distinct superiority over the other branch! That is what these dead-lock provisions mean in plain and simple English. However, we have said that we are going to make provision for dead-locks. I deeply regret that any proposal was ever made to tamper with this question.
Mr. TRENWITH. -
We have done with that now. Let us discuss what is before us.
Sir JOHN DOWNER. -
I was very sorry for an interjection which was made when the honorable member was speaking, and perhaps if he will leave me alone I will discuss the question before us. I say that it will be a great pity if we make what is intended by the leader of the Convention to be a matter of substance—because we know that he would not propose anything which was not a matter of substance—merely a matter of form. From that point of view I hope that the amendment will be carried. If another session could be held next day, there would be no necessity for another session at all; the matter might just as well be considered again in the same session.
Mr. SYMON. -
The proposal is a perfect delusion.
Sir JOHN DOWNER. -
The thing is a perfect farce and a sham.
Mr. REID. -
The whole thing.

Sir JOHN DOWNER. -
Yes, the whole thing.

Sir EDWARD BRADDON. -
You are making it that.

Mr. REID. -
You made it so long ago.

Sir JOHN DOWNER. -
I am afraid that we are frittering away the principle which should underlie the Constitution.

Mr. HOLDER. -
You are frittering away the value of this clause.

Sir JOHN DOWNER. -
In what way?

Mr. HOLDER. -
By supporting this amendment.

Sir JOHN DOWNER. -
I do not understand the honorable member, and I should like to hear him explain himself. I have the greatest esteem for him, but I have the sincerest doubts as to his views upon certain aspects of the federal question. If you are going to put into the Constitution a provision to the effect that there shall be two sessions when one session may follow the other at an interval of a day, the provision is a delusion and a sham. What is it you want to do? What did we do in South Australia? That is where these ideas came from. I wish we had never had any provision of this kind there, because then we should never have heard of it in connexion with this Constitution. The idea was to afford an interval of time in which the popular mind, as expressed in the House of Assembly, would have an opportunity for reflection. There must be a certain interval between the two sessions, in which public clamour might cease, in which a more quieted condition of mind might ensue, and from which a calmer judgment might result.

Mr. KINGSTON. -
You were the Attorney-General in the Government that passed it in South Australia.

Sir JOHN DOWNER. -
I am not complaining.

Mr. REID. -
You put them up to the dodge, probably.

Sir JOHN DOWNER. -
Well, I am very sorry. I dare say my right honorable friend has many things in his career to regret.
Mr. REID. -
I have not to regret meeting you.

Sir JOHN DOWNER. -
And I have never regretted meeting my right honorable friend, but I have regretted many things that I have heard him say.

Mr. REID. -
I regret that I cannot return the compliment, because I have never heard you say anything.

Sir JOHN DOWNER. -
Well, I am not going to be rude; I am going to be civil. As far as the precedent from which this is taken is concerned, the idea, good or bad, was, at all events, thoroughly intelligible—that you should interpose an interval during which public excitement might more or less cease, and a calmer judgment prevail.

Mr. KINGSTON. -
How did you provide for the interval in 1882?

Sir JOHN DOWNER. -
Well, I am not going to be cross-examined by the Premier of South Australia just now.

Sir GEORGE TURNER. -
By your own colleague?

Sir JOHN DOWNER. -
I prefer dealing with the subject we are now discussing. We distinctly provided an interval, as the Premier of South Australia must admit.

Mr. KINGSTON. -
Only a dissolution.

Mr. SYMON. -
That is better than an interval of three months.

Sir JOHN DOWNER. -
Yes; that is better than nothing. It may be insufficient, but at all events, it is something. But now it is provided that without dissolution, after both Houses have met—the House which represents the people and the House which represents the states—and have solemnly passed this constitutional decree, having performed the very functions for which they were created, which was to exercise independent judgments, although the results might end in disagreement, we are actually to destroy the authority of the Senate. How? By the very next day forcing them to meet again, and go through the same form, without any interval sufficient for the public excitement to be allayed. You pretend you are doing something when, of course, you know you are doing nothing. You call
them together again next day to repeat their disagreement, without a single circumstance having intervened, either from lapse of time, the expression of public opinion, or anything else-to meet again, and straight off settle the question on which they disagreed the day before. And if they do not agree, you bring in what Mr. Holder wanted to bring about, which is the domination of Australia, and of the states of Australia, by a numerical majority.

**Mr. REID.** -

No, if they fix such a short interregnum, you can make up for it by taking longer to deal with the Bill a second time.

**Sir JOHN DOWNER.** -

Yes, if you are treated that way, you have the power in your own hands.

**Mr. REID.** -

I do swear that the honorable member would take a long time.

**Sir JOHN DOWNER.** -

I know that my right honorable friend, judging probably from the time I am taking now, thinks that in such a case I would take a long time, if I were in the Senate. I admit that his surmise is quite right in my case. I admit there are persons on whom this terrorism could not be practised, or on whom, if practised, it would probably not be effective. But I am thinking of persons of weaker minds and wills, and I say that, as far as this Constitution is concerned, it is absolutely necessary to put some provision in this Bill which will strengthen the Senate and prevent it being intimidated in the way indicated. We have been frittering away the first principles of the Federal Constitution long enough.

**Mr. HOWE.** -

There is nothing left.

**Mr. REID.** -

Nothing left? You are due for your old-age pension if you say that.

**The CHAIRMAN.** -

I must ask honorable members not to hold conversations across the table.

**Sir JOHN DOWNER.** -

There is something left.

**Mr. HOWE.** -

Very little.

**Sir JOHN DOWNER.** -

Oh, yes, there is a good deal left. I am not going to say there is very little left, even to please a friend whom I respect. At the same time, I do not want to see any more taken out. We have made a great cardinal departure from the first principles which ought to regulate federation. That is the principle of the co-ordinate power of the states and the people. We have
established what we think a responsible Government, and we will have to wait to find out how it works out. A majority think they have made the Senate responsible entirely to the majority of the people. Now, not satisfied with having done what is a direct invasion of the principle on which federation can alone exist, they want to go still further, and to dwindle away the last remaining hope of the states—the hope of retaining some portion of their individuality. Frail as the amendment is to meet the necessities of the case, still it is something, and I shall vote for it.

Dr. COCKBURN (South Australia). -

I do not attach much importance to the insertion of the words "three months." The Senate may not be averse to the dissolution, but quite willing to accept the arbitrament of the people. In such case it would be a mutual convenience to join issue and consent to two sessions.

Mr. SYMON. -

Suppose they are not willing?

Dr. COCKBURN. -

I say it may be a mutual convenience to take two sessions with no very great interval between. On the other hand, if there be a wish for delay, there is all the necessary machinery to hand. The new session would have to be opened in due form, and, I suppose, there would be something in the way of an address in reply. We all know what that means if the members of the House wish for delay. The Bill would also have to go through all its stages.

Mr. SYMON. -

But see how unpopular such delay would make the members.

Dr. COCKBURN. -

Not necessarily, if they were in the right. As I have said, I do not attach much importance to the insertion of the words, because I think the Senate, representing the people's rights, would not be unwilling to face their constituents, and would be likely to agree to the necessary steps. Later on I shall move to alter the six months to twelve months. In the meantime, I do not think this matter of the insertion of the words of importance, and I shall not vote for their inclusion.

Mr. MCMILLAN (New South Wales). -

I think there is a very simple way of looking at this question. Surely the Senate would not reject a Bill, unless there was an important reason for doing so. I can scarcely imagine the Senate rejecting a Bill which would put the finances into any difficulty—say, the usual Bill for the expenses of the country. But, if the Senate did reject a Bill in calm judgment, is it not a
farce to think that under three months that judgment would be reversed? Surely it is only common sense that there should be a reasonable interval for consideration? After the large amount of rhetoric on this subject about delay, caution, and prudence, it seems ridiculous to talk about a delay of three months to give consideration to a great question.

Mr. TRENWITH (Victoria). -

With great respect, I submit to those who are objecting to this provision that they are fighting a shadow. If they meant anything when they said there must be two sessions they meant that the House of Representatives should have some interval to reconsider its position. It is no use to say that the Senate can delay it. Delay is not what is required as the ultimate end of a dissolution, but agreement, if possible. It would be just as well to say that a measure should be twice considered in the same session, as that there should be two sessions without an interval. I think that one session should be sufficient, but if there is to be a second consideration it ought not to be possible for Parliament to be prorogued for a day, to meet again in a state of heat and temper, and to pass the Bill without discussion. That is not the object of providing two sessions, and I would submit to my honorable friends, who in the main agree with me, that this is not a point worth fighting about. It is admitted generally that the Executive will allow some reasonable time, probably not less than three months, but it is urged that there may be occasions when, if a Bill is not carried, thewhole of the finances of the Commonwealth will be thrown into confusion. That could only happen on the rejection of an Appropriation Bill.

Mr. MCMILLAN. -

Which would mean revolution?

Mr. TRENWITH. -

Yes, and that is inconceivable. Delay in passing an important Taxation Bill might embarrass the Executive very materially, but it could not cause such embarrassment as would throw the whole of the finances of the country into confusion. If a Treasurer with a heavy deficit introduced a scheme of taxation, with a view to meeting that deficit, it might be extremely important to him that he should get the Bill passed, but if he did not he could go on for three months increasing the deficit. If the question of a second session were before us I should argue against it, but as provision has been made for it, it should be a second session such as we are accustomed to, with some reasonable interval. I would strongly urge on my honorable friends the desirability of conceding where we can concede. That is what I have always been urging on those who have been opposed to me, and I now
make the appeal to those who agree with me. This is a point we can concede without any serious danger. There may sometimes be considerable inconvenience, but that will be all. I hope that the discussion of this matter will not occupy much more time, but that we shall say that we are prepared to make concessions wherever we can, in order that we may obtain reasonable concessions when we come to ask for them ourselves.

The CHAIRMAN. -

Do I understand that Mr. Symon wishes to amend his amendment by making the period specified three months instead of six?

Mr. SYMON. -

Yes, sir.

The amendment was amended accordingly.

Mr. OCONNOR (New South Wales). -

I do not think that the honorable member who spoke last has really appreciated the seriousness of this limitation. Now, we have dealt with two ways of settling these dead-locks. The first was the proposal of Mr. Symon himself; and the second is that which is now under consideration. I think it is very desirable that the method in both these proposals should be the same. Now, under Mr. Symon's proposal, there is no interval at all required; and if honorable members look at clause 56B they will find that Bill may be sent up, sent back, and, in the same session, sent up again, and upon that a dissolution of the House of Representatives may take place. Now, what is the reason why there should be a difference between the method of treating the measure under the second proposal and under the first proposal of Mr. Symon? If there is a good reason in the one case there is a good reason in the other, and it appears to me that it is very desirable that a uniform method of dealing with the matter should be adopted in both cases. There is also a second reason, and, I think, a strong one.

Mr. MCMILLAN. -

Is there not a delay between the two dissolutions?

Mr. OCONNOR. -

We are not discussing that point.

Mr. ISAACS. -

There is no specified delay.

Mr. OCONNOR. -

The delay that would take place is not the delay of a dissolution, but the delay in the period of sending up the measure to the Senate the second time. Under Mr. Symon's first proposal there is no delay. The measure may be sent up a second time the same session. Why should there be a delay of three months in this case? What is the object of it? Surely the only object is that the country may be informed about the measure in all its details, and
may learn the merits of the controversy on both sides.

**Mr. TRENWITH.** -

That is not the only object. It is that the House of Representatives may have time to consider all the arguments, and whether it will insist on sending back the Bill.

**Mr. OCONNOR.** -

Surely that is a very weak argument. If the House of Representatives, which has had a measure before it, and which must have known in a general way the nature of the measure as it passed through, surely when the measure comes before it a second time it will know its own mind with regard to it. What is more, it can take any time it likes in considering the measure.

**Mr. ISAACS.** -

Both Houses can.

**Mr. OCONNOR.** -

Both Houses can take as much time as they like in dealing with it. A fair answer to Mr. Trenwith is, that both Houses have the matter in their own hands to take what time they consider fair.

**Mr. DEAKIN.** -

And neither House will be unanimous.

Mr. OCONNOR. -

Quite so. The Senate will have it in its own hands to deal with the matter within any time it thinks fit to take to deal with it.

**Mr. SYMON.** -

But it is for the House of Representatives to consider whether they will take the matter any further.

**Mr. OCONNOR.** -

They can take three months if they like, but you want to force them to take three months—that is the whole difference. Why force them to take three months with regard to a measure which, perhaps, as pointed out by Mr. Reid, may be a measure which it may be imperiously requisite for the good of the whole Commonwealth should be passed as soon as possible?

**Mr. ISAACS.** -

They would not unduly hasten the matter.

**Mr. OCONNOR.** -

No doubt they would not. The only object of delay is that the country may be informed of the controversy and learn its true bearings; and surely that can be done in the interval which must take place before the Bill can be submitted to them. What are the steps which must take place? There is
first of all the discussion in the House of Representatives, then the
discussion in the Senate, then public interest must be occasioned through
the matter being one of controversy between the two Houses; and the
measure must be sent up again, and again discussed. What is the value of
newspapers if during all that time the whole merits of the controversy from
beginning to end are not placed fully before the public? But not only that.
The measure is rejected, and the G

Mr. DOBSON (Tasmania). -
I fear I have not the courage to say all that I feel with regard to the blot
which has just been put upon the Constitution.

Mr. REID. -
Is this in order?

The CHAIRMAN. -
The honorable member is not in order in reflecting on a decision of the committee.

Mr. DOBSON. -
I think I have a right to express an opinion that the clause before the committee will, if passed, be a blot upon the Constitution.

The CHAIRMAN. -
The honorable member is quite in order in doing that, because we have not yet passed the clause.

Mr. DOBSON. -
I am going to express my opinion upon the amendment of Mr. Barton. I wish to say that I do not approve of it, and that I intend to support the amendment of Mr. Symon. But I regret that Mr. Symon has consented to alter the term from six to three months, because I cannot understand a man who has had experience of legislation imagining that you can give due time for consideration in important matters in three months, and I am more than surprised to hear the arguments of Mr. O'Connor, who actually argues against three months.

Mr. HOLDER. -
You want to put a few more holes into the clause, so that it will not work.

Mr. DOBSON. -
There is not a single honorable member, except Sir John Downer, who has tried to point out how what we have done and what we are professing to do is going to work. Let me say how I think it will work out. In ordinary times legislation will go on, and members of both Houses will display patriotism, intelligence, and industry, and will appear to do what is right for the country. But in a time of excitement, when there is a battle, say, between capital and labour, or in connexion with some other social
question, that will be the time when the Constitution will be tested. I submit that the committee by what it has done, and by what is before the Chair, are taking away the state rights for which we have been working for months. The committee has been depriving and robbing the states of equal representation in the Senate, and absolutely doing away with the safeguards of the bi-cameral system. Honorable members are putting into the hands of the Federal Executive such powers, such alternatives, and such engines for coercion as you will not find in any Constitution in the world. I think the language I have just uttered is not the language of exaggeration, but is the language of absolute fact. If it is not a fact, let any honorable member tell me of any Constitution in the world which gives to the Executive Government—to the Premier and his Ministers, who have the control of the public revenue and the financial policy of the country—the same power as we have given to them in this Constitution. Then, sir, when the time of popular clamour comes, and the members of the Federal Government want to retain their seats, by giving way to the popular clamour, which is simply history repeating itself, the way has been paved and made just as easy as it possibly can be. They have only to pass their Bill, it is then rejected by the Senate, the Parliament is prorogued, and another session is convened according to my friend's (Mr. Symon's) amendment within three months. It is little enough time I should think for all Australia to make up its mind. But "No," say my friend Mr. O'Connor and some other members—"Let the Government call a session the next day, let the session last but one hour, and enable them to pass their Bill, and then they have the states and the Senate at their mercy. The Bill comes back to the Senate, and if the Senate rejects it then there is this double dissolution."

Mr. Reid. -

But there will have been long debates in both Houses during the first session.

Mr. Dobson. -

Yes, and it has taken more than one long debate, as my right honorable friend knows to his advantage, to settle several questions in this Convention. The right honorable member knows that this Bill would have been utterly different if we had not had three or four long debates on different questions. I therefore say that the experience of this Convention—an experience under which the right honorable member has gained victory after victory—absolutely contradicts what we are engrafting in this Bill.

Mr. Reid. -

I should like to have them written down for me, so that I could brag about them.
Mr. DOBSON. -

Did not the right honorable member brag the other day when he got us to reverse our decision? Did he not say that he felt as if he had a crown of laurels on his brow?

Mr. REID. -

No; that is another kind.

Mr. DOBSON. -

If the right honorable member will only leave me alone, I will get on more quickly, and I have no desire to take up time.

Mr. DOUGLAS. -

He cannot help it.

Mr. DOBSON. -

The second session may be called after a day's interval; it may only occupy a day; the Bill is sent to the Senate; and then the Senate is absolutely at the mercy of the Government of the day. I ask, then, what becomes of state rights? What becomes of the good of your two Chambers? Honorable members seem to forget the very foundation on which the two-Chamber system rests.

Mr. BARTON. -

Does not Mr. Symon's paragraph which was kept in contain the very evil you are now protesting against?

Mr. DOBSON. -

I do not think it does. The House of Representatives has to be dissolved, and after it has been dissolved and has come back with the mandate of the country, when the people have spoken out, when the question has been ventilated, and the people have been educated, as they must be at a general election, then the Senate, being elected by the same manhood suffrage, will, I presume, in 99 cases out of 100, bow to the will of the people. I pointed out this afternoon how I thought that the House of Representatives, which has all the privileges, which has the government in its hands, which has the control of all the finances in its hands, is the Chamber which ought to go to the people first, and it is quite time enough to talk of sending the Senate there when it has refused to pass the Bill which happens to be the mandate of the people. What I want to refer to is, if I may say so with all respect, the very simple argument of my learned friend (Mr. Isaacs). I can hardly understand how he can have attained to such simplicity when he has had an education of Victorian politics for almost a quarter of a century. He says, when it comes to the House of Representatives sending this Bill a second time on to the Senate, does anybody believe that they will be so
foolish as to risk their seats or do anything which may send them back to their constituents? Why, sir, they will send the Bill on again to the Senate, knowing perfectly well that, as the senators have much more difficulty to get elected, have a much larger constituency to canvass, and have to go to twice as much expense to get elected as has a candidate for election to the Lower House, we shall never hear of a dissolution. I do not believe we shall ever hear of a dissolution, and that because no member of either House will care to risk his position, his comfortable seat, and charming club-house, and his £400 a year. You are appealing to the lower instincts of your future Australian politicians. You are absolutely depriving them of what would help them to be patriotic, and to consider the interests of their country, and you are inviting them to consider only their own interests. I do not believe that you will have the simultaneous dissolution once in twenty years. If we do not have the simultaneous dissolution, what will follow? The state rights will have gone; the two-Chamber system will have gone; we shall have deprived the people of the check of the Second Chamber. All that will be necessary will be to put certain machinery into motion, and after a delay of three months—according to the honorable and learned member (Mr. O'Connor) the delay need not be as much as three minutes—a count of heads will settle the question. I protest most respectfully and humbly against the blot it is proposed to put upon the Constitution. The honorable and learned member (Mr. Symon) showed me a Bill for the government of Ireland which he brought out with him from England. That Bill was framed under the direction of, and possibly by the hand of, the greatest liberal leader that the Anglo-Saxon world has ever seen—Mr. Gladstone—and it contains the provision that if the two Houses disagree an interval of three years must elapse, or the expiration of a quinquennial Parliament, whichever is the longer period, before there can be a dissolution of the two Houses. Mr. Gladstone thought that three years was not too long a time to allow for the education of the people and the politicians upon any important question.

Mr. REID. -

Perhaps three years were thought to be necessary for the education of the men of Kilkenny.

Mr. DOBSON. -

However honorable members may differ from me, I trust that I have advanced a few arguments to show that we are doing a dangerous thing, and I, on behalf of those who sent me here, offer my protests against the proposal.

Question—That the words proposed to be inserted in the proposed
amendment be so inserted—put.

The committee divided—

Ayes ... ... ... 27
Noes ... ... ... 17

Majority for Mr. Symon's amendment... ... ... 10

AYES.
Braddon, Sir E.N.C. Leake, C.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Clarke, M.J. McMillan, W.
Dobson, H. Moore, W.
Douglas, A. Peacock, A.J.
Downer, Sir J.W. Quick, Dr. J.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Fysh, Sir P.O. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W. Zeal, Sir W.A.
Hassell, A.Y. Teller.
Henning, A.H. Symon, J.H.

NOES.
Abbott, Sir J.P. Holder, F.W.
Barton, E. Howe, J.H.
Brunker, J.N. Isaacs, I.A.
Carruthers, J.H. Kingston, C.C.
Cockburn, Dr. J.A. Reid, G.H.
Deakin, A. Solomon, V.L.
Glynn, P.M. Wise, B.R.
Gordon, J.H. Teller.
Higgins, H.B. O'Connor, R.E.

Question so resolved in the affirmative.

The amendment, as amended, was inserted in the clause.

Mr. ISAACS (Victoria). -

There is one formal amendment which I mentioned earlier in the day—the words which were in the clause originally. They were struck out because it was the intention of the Drafting Committee to propose the excision of the first paragraph. That paragraph is now restored, and it will, therefore, be necessary to restore the words I have mentioned in order to give clearness to the second paragraph. I beg to move—

That, after the word "Governor-General," the words "instead of
dissolving the House of Representatives alone" be inserted.

In other words, this amendment will give the option, in clear language, of following either the first or the second paragraph.

Mr. GLYNN (South Australia). -

Before these words are inserted, I wish to call the attention of the committee to the effect it will have in relation to the first paragraph as it now stands. If there is a successive dissolution of the two Houses there may be no cure of a deadlock, whereas if there is a simultaneous dissolution of the two Houses there can be a cure of a dead-lock.

Mr. ISAACS. -

But that does not affect this question. The honorable member is dealing with a later matter.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I beg to move that progress be reported.

The motion was agreed to.

Progress was then reported.

PROGRESS OF BUSINESS.

Mr. BARTON (New South Wales). -

In reference to the course of business, I should like to say that, inasmuch as the discussion on the second recommittal has taken a longer time during the present week than was anticipated, I shall ask honorable members to sit up to at least eleven o'clock to-morrow night, and much later if necessary. I wish to see the business finished this week if practicable.

Mr. REID (New South Wales). -

I should like, in the interest of public business, to implore honorable members who represent some of the smaller colonies not to make speeches which provoke sometimes more heated retorts than one, on cooler reflection, would indulge in.

Sir JOHN DOWNER (South Australia). -

I would ask the right honorable gentleman who has just spoken not to repeat the speech he made this afternoon.

The Convention adjourned at six minutes past ten o'clock p.m.
Thursday, 10th March, 1898.

Queensland and the Federation - Leave of Absence: Mr. Henry - Commonwealth of Australia Bill.

The PRESIDENT took the chair at twenty-six minutes to eleven o'clock a.m.

QUEENSLAND AND THE FEDERATION.
The PRESIDENT. -
I deem it to be my duty to communicate to the Convention the fact that I yesterday received a telegram from representatives of various districts of Central Queensland, which I will lay on the table and ask the Clerk to read.

The CLERK read the telegram, as follows:--
Rockhampton, Queensland,
9th March, 1898.
To the Hon. the President of the Federal Convention.
We, the representatives of the people of Central Queensland in the Legislative Assembly, desire to place on record our conviction that the federation of the Australian colonies is absolutely essential for the safety and welfare of Australia. At the same time, we trust the Convention will make provision in the Constitution for the admission of Central and Northern Queensland as separate states of the Commonwealth immediately it is proclaimed, and irrespective altogether of whether or not Southern Queensland desires to join.

Mr. BARTON (New South Wales). -
I beg to move that the document be printed.
The motion was agreed to.

Mr. BARTON (New South Wales). -
Honorable members will recollect that I stated some evenings ago, with reference to a proposed new clause relating to the Queen's prerogative regarding the division of Queensland, that I would communicate with the Premier of Queensland and ask him to favour me with the views of his Government on the clause. I sent such a telegram, setting out the clause at length, and asking for Sir Hugh Nelson's views upon it. I have now received the following reply:-
Home Secretary's Office,
Brisbane, 2nd March, 1898.
To the Hon. E. Barton, Federal Convention.

We are indebted to you for the feeling of consideration which prompted you to suggest withdrawal of Mr. Walker's proposed new clause in the Draft Federation Bill, until the views of this Government had been ascertained. We do not think the clause would tend to promote the cause of federation in this colony.

HUGH M. NELSON.

I beg to move that the document be printed.

The motion was agreed to.

Sir JOSEPH ABBOTT. -

Mr. President, I had risen before you put the question.

The PRESIDENT. -

If the honorable member had risen before I put the question, he will be perfectly in order in speaking now, if he desires to do so.

Sir JOSEPH ABBOTT. -

No, I will not say anything.

LEAVE OF ABSENCE.

Mr. LEWIS (Tasmania) moved -

That seven days' leave of absence be granted to the Hon. J. Henry, on account of urgent private business.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the further consideration of the Commonwealth of Australia Bill.

Discussion (adjourned from the previous day) was resumed on paragraph (2) of clause 56B (Dead-lock provisions).

Mr. ISAACS (Victoria). -

I recognise from the debates which have taken place upon this clause that there is at last something like a recognition on the part of the Convention of the absolute necessity of providing some means of settling what are known as dead-locks. The question that we have now to determine seems to me to be what is the best and fairest way of achieving that object. We have adopted two modes—or rather one mode variously phrased, namely, the dissolution of the two Houses of Parliament—for effectuating our desire in that respect. There is also in the clause as carried at Sydney a provision for attaining finality, in the case of disputes between the two Houses, by what is called a joint sitting of both Houses. In the first place, the very fact that this provision for a joint sitting has been agreed to is a recognition of
the truth of the position that the mere adoption of a dissolution, whether it be consecutive or simultaneous, is not sufficient. It will be easily demonstrated that the plan agreed to in Sydney, and that has now come up for consideration again—the joint sitting—is not only useless, but, if effective, is worse than useless as a means of deciding finally the affairs of this Commonwealth. During the elections for the Federal Convention in Victoria there was nothing that was more strongly insisted upon by my Ministerial colleagues and myself than this, that nothing in the shape of a joint meeting of the two Houses should be permitted. I may add that no objection was more cordially approved of than that. I think I shall be able to show to those who say that a dissolution in any shape will be an effectual remedy to prevent or to settle dead-locks that nothing can be further from the actual truth. When we come to consider what is to be the ultimate means of deciding the great affairs of the Commonwealth, we are led inevitably to the inquiry—What form shall the ultimate tribunal take?

**Mr. DOBSON.** -

There is only one form left—the referendum.

**Mr. ISAACS.** -

Yes, in some shape. If I were to consult my own individual convenience and personal comfort I should not, in the face of the enormous opposition that has been manifested in the Convention, in some quarters especially, to the adoption of the referendum, address myself to the subject at all, or, if at all, at any length. I hope that in any event I shall not be accused when I have sat down of occupying too much time, but there is a duty that we owe not only to those who sent us here, but to the people of all Australia, and to the cause of federation itself: I am, therefore, impelled to ask the attention of the Convention while I state once more, as succinctly as I can, the reasons why the provisions in the Bill are not acceptable as a means of avoiding the disasters which would inevitably attend such dead-locks as would, not only probably, but almost certainly, arise in the working of this Constitution as at present framed, and why some other better mode should be adopted. I am not going to question the votes that have been already given, because that would not be in order. But what I am entitled to do, I apprehend, is, accepting the votes that have been given, to look at their consequences and consider their effects, and see how the Constitution will work with the clauses that we have already adopted. I cannot forget, sir, that on the floor of this chamber it was my duty, when in charge of the Adelaide Bill, to do all in my power to secure the acquiescence of the Legislative Assembly of Victoria in the principle of equal representation in the Senate. In that matter I was in a considerable amount of
difficulty. After combating, much against my own personal convictions and my own personal desire that, if it could be avoided, federation should be obtained without equal representation, I was forced to ask the Legislative Assembly by a majority, though not a very great majority, to accept the position. In like manner, I asked the same body to assent to the dual referendum in preference to the national referendum, because I desired, while considering the principles of equal representation, not to do anything that could possibly be avoided to minimize that provision. I did that, as I say, although I felt that there might be strong, and there are strong, objections to the adoption as a final means of determination of the dual referendum. There are conceivable cases where it would not be final, but I was willing to accept that risk, because I believed the risk would be a minimum. I will give practical reasons and practical results that have been obtained in another country on this subject in support of that view. I was willing to accept the risk, and after considerable difficulty the Legislative Assembly agreed to my view. But I found that while I asked the Assembly, and through them the people of Victoria, to consider the principle of equal representation in the Senate, and not to insist on the national referendum, it was in the full belief, not shared by those who still oppose me, that we should succeed at last in obtaining some concession in return for the very great concession we had made in those two directions. I was warned that my hope was without foundation, but I clung to that hope. I clung to the hope in Sydney, and when Mr. Lyne first brought on his proposal for the national referendum, before the dual referendum was put to the vote, I and my colleagues voted against the national referendum, still in the hope that the smaller states would assist us in carrying the dual referendum. I found when the matter was examined that no one could say for an instant, or did say for an instant, that this would put the smaller states in a wrong position. It secured to them the full rights of equal representation from the beginning to the end of the Constitution. It gave into the hands of the people of the states full control of the power which had been accorded to them in the constitution of the Senate, and by no means allowed the larger populations of the other colonies to over-ride them at the hustings, any more than they did in the Houses of Parliament. But that was refused. That proposal was rejected, and then, when the national referendum proposal was brought on again, I was compelled to vote for it. While I am thoroughly satisfied that, if the dual referendum were adopted it would do all that is necessary, preserving the rights of the state beyond the possibility of question, it would allow the people to act by their own direct voice in the last resort, and say whether or not the acts or the refusal of their legislative agents to act should be sustained. I may be asked, and fairly asked, what I have, in
point of fact, to sustain my opinion as to the practicability of the dual referendum. I have the fact that since 1874 the principle has existed in the Swiss Constitution. There, in case of difference on constitutional question, the matter is referred, or may be referred, to the people of the Federation and the people of the states, and the dispute decided by the dual referendum. In sections 18, 19, 20, and 21 of the Swiss Constitution can be found the provision to which I am referring. There is also a provision, which, of course, we do not seek to embody here, that if a certain number—50,000, I think—of the electors ask for a constitutional matter to be referred, it shall be referred to the people of the Federation and the people of the states.

Mr. DOBSON. -
Is there a dissolution of the Upper Chamber there?

Mr. ISAACS. -
No; I am now dealing with the question of whether allowing the vote to go to the people of the Commonwealth and the people of the states is effectual. I shall come to the question of dissolution in a moment. I now merely want to get rid of the argument that has been used, not by some of my honorable friends from the smaller states, but by some of my honorable friends who want the national referendum, and that alone, that the dual referendum is not sufficient.

Sir WILLIAM ZEAL. -
Have you considered the cost of the referendum as applied to Australia and as compared with the cost in

Mr. ISAACS. -
My honorable friend (Sir William Zeal) will see that that is utterly irrelevant to the point I am discussing.

Sir WILLIAM ZEAL. -
Oh, is it?

Mr. ISAACS. -
I shall come to an end much sooner if I am allowed to continue. In Switzerland, since 1874, there have been fifteen occasions on which constitutional questions have been referred to the people of the Federation and the people of the states. On every one of these occasions on some of which matters were rejected and on others were accepted—the people of the Federation were in accord with the states. There was not one single instance in which the majority of the states differed from the majority of the people.

Mr. GLYNN. -
The referendum was used to give expression to the jealousy of the federal
body. All measures were rejected up to 1875.

**Sir WILLIAM ZEAL.** -

Of course that is irrelevant.

**Mr. ISAACS.** -

If measures were rejected, they were rejected by both the states, and the people. My friend (Mr. Glynn) is now talking of federal laws, whereas I am talking of constitutional questions. In relation to federal laws, the matter does not go to the people and to the states, but to the people only. That is because both Houses have agreed-and, both Houses having agreed, it is not a question of settling dead-locks, but a question of putting the matter to the sovereign people by way of veto, just its matters are now put to the Crown here by way of veto. There is no Crown in Switzerland, and therefore the negative referendum, to which my honorable friend (Mr. Glynn) has referred, has no bearing on the question at all. I am now speaking only of constitutional matters, in which there is a dual referendum; and it cannot be too clearly borne in mind that in no instance since 1866 have the states and the population differed. I believe that the case in 1866 was on some question of weights and measures. Since then, for over 32 years, there has never been any difference between the states and the people. I take that to be the strongest evidence that, except in a minimum of instances, we shall have in the dual referendum a clear and absolute means of deciding disputes. As to the fairness of this dual referendum to the smaller states, I do not think anybody disputes that for an instant. But that has been rejected, and I am called upon to elect whether I am prepared to abandon the question of a referendum altogether, or whether I am prepared to ask for a national referendum. When the people of the small states, acknowledging the fairness of the proposal that was offered to them, still aid in rejecting it, they cannot blame me or any Victorian who says that the time has come when we must consider our own people. We have made a sacrifice in the nature of equal representation and in the nature of the dual referendum. These were offered time after time, like the Sibylline books, and the time has arrived when we must consider the mass of the people whom we represent—the amount of money they will contribute to the national exchequer, and their rights and liberties. Remember that while we have offered a scheme which does not allow the majority to over-ride the minority, we must be careful how we accept a scheme which, on the other hand, would allow the minority to override the majority. Holding the views I entertain, and considering the offers we have made, I do not find

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**[P.2175] starts here**

myself in a position, in loyalty to my opinions and my duty, to recede from
the position of attempting to obtain some finality on those questions by means of the direct influence and interposition of the people themselves in cases of necessity. When I was asked to face this question as to the probability of dead-locks, what did I find? I am in absolute accord with my right honorable friend (Mr. Kingston) in what he said yesterday, that this Bill, and more especially the numerous alterations we have made, are replete with liability to controverted questions which are likely to lead to some form of dead-lock.

Mr. DOBSON. -

The leader does not think so.

Mr. ISAACS. -

It is absolutely unnecessary to say that, in common with all the rest of the Convention, I entertain the most profound respect for the opinion of our honorable leader. And my honorable friend (Mr. Barton) knows that that is said with the most unfeigned sincerity. At the same time, this is a matter on which we are bound to act on our own opinion. We are bound not to yield on this overwhelming question to the opinion of any other man. Therefore, I am sure I shall be excused if, on this question, which I feel is near to the heart of those who will take an active part in determining this question finally in the colony of Victoria-I do not presume to speak for other colonies in dealing with this question here for the last time, I put before this Convention, with all the anxiety that I feel, the reasons why I urge them to accept the provisions for a referendum. They may disagree with me, but when they do, they will, I hope, see that I have not pressed this matter unduly upon them, and they will not think that I have pressed it upon them in a manner unworthy of its importance. Now, why do I think that the provision for dissolution is not sufficient? Let us consider what has already been done in the relations of the two Houses. First of all, it must be admitted that the resolutions of the Parliaments in some of the colonies-especially of New South Wales and Victoria-were that some provision for the referendum should be made, and in New South Wales an overwhelming vote was given that it should be by way of national referendum. If my memory serves me right, the dual referendum was agreed to in the Parliament of South Australia also. Here we have three popular bodies all asking for the double referendum.

Mr. DOBSON. -

That was before we had the simultaneous dissolution.

Mr. ISAACS. -

I think my honorable friend is right, but the question of a dissolution was before these Parliaments in every instance, and they considered that question. Having considered that question, they gave in their adhesion to
the referendum.

Mr. DOBSON. -

I think it would be more correct to say that they gave in their adhesion to some provision for dead-locks.

Mr. ISAACS. -

No; if the honorable member looks at the tabulated book of amendments on the table he will see that the referendum was the scheme proposed.

Mr. DOBSON. -

That is quite true, but it was for some one provision out of three.

Mr. ISAACS. -

Some final provision, and that is what we have to look to. I was proceeding to show what was done in these particulars; that, throughout the most populous colonies there has been a feeling that, if we followed the strict line of duty, both Houses would be national. In the other colonies it has been felt that the Constitution would be unacceptable in that form; and when the larger colonies yielded equal representation in the Senate I venture to say it was on the distinct understanding that, whilst one House was based on equal representation, the other House should be absolutely composed on the basis of national representation. Did the matter stop there? No. In the House of Representatives we went further. We went further than we did in 1891, and we conceded to the smaller states that they should not be overwhelmed even in that House—that Tasmania and Western Australia should not have even to put up with their fair share of representation in that House, but that they should have a minimum of five, and not four, as in the Bill of 1891. So that, instead of confining them to a proportionate share of representation in the House of Representatives, which would give them, roughly speaking, one-tenth of the voting power in that House, they were allowed to have approximately one-sixth of the voting power. So that they not only got equal representation in their own Chamber, but they got a larger proportion than was fair, according to the measure of the representation in the other Chamber. Surely that was thought to be enough. But no, another step was made; and now we have it in the Bill before us that the House of Representatives must never be constituted according to the needs of the population without increasing inordinately the members of the Senate. While the states as represented in the other House, while the states, regarded as units, remain states, the population, while eternally increasing, as we hope it will, is not to have the proper and reasonable number of representatives according to the needs of the population, except at the will of the Senate, that is, at the will of the smaller states, and except the Commonwealth joins in enlarging the Senate.
That was the other step taken. Now, in regard to the powers of the Houses, before I come to the result as shown in this clause. When we come to the powers of the Houses, we find that the Senate is protected in regard to all money matters in a way that no Upper Chamber in the world is protected.

Dr. COCKBURN. -

It is not an Upper Chamber.

Mr. ISAACS. -

It is not a House of Review?

Dr. COCKBURN. -

It is not an Upper Chamber.

Mr. ISAACS. -

It is not a House of Revision—is that the argument? Is it not the House in which the sober second thought of the people is to receive consideration? Is it argued that it is simply for special interests? Of course, it is an Upper Chamber in many respects.

Mr. REID. -

I protest against these interruptions. They have often got me into trouble.

The CHAIRMAN. -

I call attention to the standing order, which is perhaps not sufficiently observed, that no honorable member shall interrupt any other honorable member while he is speaking. I will endeavour to see that that order is observed more strictly in future.

Mr. ISAACS. -

I recognise the desirability of adhering to that rule, but, as far as I am personally concerned, of course, I do not object to any interjection which may tend, as it often does, to elucidate the matter, and by drawing forth a reply, may save more than one speech afterwards. I was proceeding to show to the best of my ability the relations of these two Houses, and I am going to point out that the relations of these Houses are such that, while the Senate has conserved to it such powers of independence as no other Upper Chamber in the world possesses, the nature of the subjects which are to be dealt with by these two Houses are more likely to lead to questions of dispute, and to protract the dispute, than in any unitary state. Take the one question, for the sake of argument, of taxation of the Commonwealth and the division of the surplus. They are really two questions, although properly speaking they depend upon one consideration. When we come, in the House of Representatives, to put forward a proposal to raise a certain amount of money, shall we not have it urged that some of the states require, as it was termed by one of their representatives, financial aid? And when the surplus comes to be distributed, as it will, no doubt according to what the Federal Parliament thinks just and fair, shall we not have
controversies of the most dangerous nature as to the amount that each state is to get? As the Constitution at present stands, there is no guarantee that any state shall get back a sufficient amount to pay its liabilities; and no one can help foreseeing that there will be struggles of a very bitter nature as to the division of the surplus. When we consider that these matters, which may be regarded as state rights, state claims you may call them-but they will be called state rights, because it will be said that the Commonwealth does not dare to allow any state to sink into insolvency—we shall have either the larger states compelled to wait for an improper and dangerous length of time to get the amount of money that is necessary for their state purposes, or they will be forced by the means of resistance confided to the powers of the Senate to yield to demands which they may think utterly unwarranted by justice. There are other matters which are patent upon the face of this Bill which will lead, without any difficulty of conjecture, to struggles of the same nature. And when we consider these things we are forced to ask ourselves of what effect will the dissolution be? Just imagine a case that may arise within the third year of the Federation, and perhaps earlier? After uniform duties have been established this contest, this scramble, for the surplus will commence. It will commence, in the first place, when the Tariff is proposed, and when the amount of money to be raised to carry on the Commonwealth and return money to the states is under consideration. It will also continue when the question of the surplus is introduced, and the question arises as to how it is to be distributed. Then we shall find in the Senate the members for each state standing up solidly, as a phalanx, for their state rights; and when the proposals are considered by the Parliament, and they have passed the House of Representatives and gone into the Senate, is it not a very probable state of things that we shall have three states together, or a majority at all events, refusing to accede to the provisions of the Bill as sent up by the House of Representatives? If it is urged by the senators of the smaller states that the safety of their colonies depends upon their sturdiness in maintaining their position, we shall have this deadlock, and then there is to be a dissolution. Now, let us see how the dissolution operates. The senators from the smaller states—we will say, for the sake of argument, from Tasmania, and I am not to be understood as making any reflection, because I am only putting it as a concrete case-go back to their colony, and the people there are asked - "Do you agree with our action in insisting upon this amount of money being given to Tasmania?" What will the people of Tasmania say? They will say, probably - "Oh, yes, we agree with you;" or they will say - "We are not quite sure whether we agree with
you or not; we recognise that you have stood up for us, and we will not be so politically ungrateful as to reject you in favour of some other men who wish to accede to the desires of the larger colonies." Indeed, we know that personal considerations, apart from the particular matter in question, may come forward, even if the people think there is an element of injustice in the stand taken by their representatives in that regard, and, yielding to that feeling of justice, they will never charge themselves with such ingratitude as to reject the men who stood forward as their champions. So the members of the Senate will come back after its dissolution on these questions, which are most fruitful of prolonged and difficult controversy, not with their judgments open. The senators will not then be able to yield, as they might before have yielded. They will come back with an imperative mandate to stand to the last, and to resist the claims of the House of Representatives. And then where is the finality of the matter? We may be told—"Oh, but the fear of the senators going to the country will be enough to make them yield." Now, I say that is an improper argument, because it assumes that either the Senate have asked for something they thought unjust, or that they will yield to something they think unjust—that they will surrender the rights of their state, not for the sake of compromise, not for the sake of peace, but for the sake of preserving their own seats and their own pay. I therefore say that so far from the dissolution clearing away that ground it will harden the matter, it will make the struggle more obstinate; it will land us, so to speak, in a political cul de sac, unless we adopt some further means of terminating the dispute. And what are the means of terminating the dispute suggested in this clause? That the two Houses shall meet together? Now, I seriously invite the attention of my honorable friends to this proposal that the two Houses shall meet together, and I would seriously ask them how that can possibly be accepted? What does it mean? It means that while you have equal representation in the Senate, that while you have an undue proportion of representation for the smaller states in the House of Representatives, that while you have a ratio of one to two, as between the two Houses, so that population does not get its fair number of representatives in the National House, you are then to go one step further, and, while you have already refused to allow the National House to be based upon representation of population purely, and you have acceded to the position of equal representation in the other House, you are then to take this further step, and a fatal step it seems to me, of introducing the principle of equal representation within the four walls of the House of Representatives, when you have united the two Houses in that Chamber. Now, I would seriously
ask this plain question of some of those honorable gentlemen who have suggested that we wish to be governed by one Chamber; that we wish to introduce the uni-cameral system. Who is it that favours that uni-cameral system? Those who want to maintain the two Houses separate, and allow the people, and the people only, to judge between them, or those who say that, in the last resort, there shall be only one House; that the two Houses shall be united, that there shall be no longer two Houses to decide the dispute, but, in the last resort, one House only, and one House which has to decide the question, not by a majority, but by a three-fifths majority? Let us see what that means in plain figures. It means that if there are five colonies in the Federation, Victoria will have 24 members in the House of Representatives and six in the Senate, making 30, or one member for every 40,000 inhabitants. Tasmania and Western Australia will have five members in the House of Representatives and six in the Senate, or eleven for a population of between 160,000 and 170,000 each, or one member for about 15,000 inhabitants. That is to say, in the final arbitrament of every legislative dispute between the two Houses of the Federal Parliament, including money matters, the question is to be decided in one Chamber, in which representation of the larger states is to be, even if you went by a vote of the majority, one member for every 40,000 inhabitants, while the smaller states are to be represented by one member for every 15,000 inhabitants.

Mr. GLYNN. -

Is that a fair way of looking at it?

Mr. ISAACS. -

I am going to follow the ruling of the Chairman, and decline to depart from the path of my argument; but let us go a step further. The question in dispute between the two Houses of the Federal Parliament is not even to be decided by a majority of the members of the two Houses sitting together, but by a three-fifths majority, and that, roughly speaking, will mean that, in the final determination of the dispute, Tasmania and Western Australia will each have one member per 15,000 inhabitants, while Victoria will have one member for about 60,000 or 70,000 inhabitants. Well, is that a state of things that we can regard as tolerable? And not only that; it means also the over-riding of all our struggles, and the result of all our struggles, in regard to the money powers of the two Houses respectively. I know no more anxious moment in the whole history of this Convention than that at which we resolved that the Senate should not have the power of amendment in Money Bills, and that it should have the power of suggestion. What will be the result if these two Houses meet together?
We know there is a bitter feeling even against that power of suggestion—at any rate, there is in Victoria; and there was a strong vote against it. But what will be the result? The Senate will say—"We can disregard that power of suggestion; we can reject the Bill; we need not go into details upon it, we will simply reject it; we will not trouble to send down suggestions to the House of Representatives, which that House may regard or refuse to regard as it pleases; we will not trouble ourselves to offer reasons; we know perfectly well that we shall be supported in our states if we are sent to them, and when we come back we will meet the members of the House of Representatives in the one Chamber with our terrific undue power of representation, and we then can finally decide whether the Bill in dispute shall or shall not pass." It will not be the Senate that takes that responsibility. It is departing from the principle of giving them the power of suggestion instead of the power of amendment; because that alteration was made so that the Senate, while retaining the powers of delay and revision, could at last assume the responsibility of finally accepting or rejecting a Money Bill. But this clause does not carry out that intention. This provision throws the responsibility—where? Not on the House of Representatives solely; not on the Senate solely; but on this new one Chamber—this uni-cameral institution which has been created by this clause to decide finally, not only ordinary subjects of legislation, but money matters as well. And although we may be able to do that, there is no power of amendment—as the clause stands, there would be power of amendment; but I do not think that was the intention with regard to money matters. But even if there is no power of amendment in that uni-cameral body, still it provides that the senators come in, deliberate, and vote on exactly the same footing as the members of the House of Representatives. That is to say, in a final determination of questions affecting the public purse, the small states have an advantage which was never contemplated when we were discussing the Constitution. Therefore, it seems to me impossible to accede to that, and one is almost tempted to add to the reasons which present themselves, from a consideration of this proposal, the recollection of the Scriptural denunciation—"Woe unto them that join house to house."

Mr. WALKER. -

What about terraces?

Mr. TRENWITH. -

That is unification.

Mr. FRASER. -

We have never heard that quotation before.

The CHAIRMAN. -

Order. Honorable members must not interrupt the speaker.
Mr. FRASER. -
But we want to know where he got that quotation from?

Mr. ISAACS. -
I have no doubt that, any allusion to Scripture would be news to some of my honorable friends, but still that allusion seems to me to be applicable all the same, and I do earnestly urge upon my honorable friends that this proposal for the joint meeting of the two Houses, under any conditions, under any circumstances, is a matter that is beyond acceptance, in my humble opinion, by the people of the larger states—certainly by the people of Victoria. Now, sir, if the referendum is refused in this Bill we shall be met by the proposition I reverted to in passing a few minutes ago, by some of my honorable friends, that dead-locks are a matter of antiquarian [P.2180] research. I think that is the favorite position taken up by my honorable friend (Mr. Wise). He has used it in various forms. Yesterday he spoke of the ghost of departed Victorian controversy; but, sir, that Victorian controversy lives in the memories of the people of Victoria, and it is a fact that if there is no such controversy in later years it is because the people of Victoria have demonstrated that they will tolerate no obstruction to their way when effectively expressed at the ballot-box. And when my right honorable friend (Sir John Forrest) said yesterday that we should adhere to the British Constitution, and adhere to the working of the two Houses as we find them in Great Britain, I could not help asking whether he was willing to accept the result of the general election which is decisive in England, but which he would not concede would be decisive in this Federation. I have never asked that the dissolution of the House of Representatives should finally determine the question. Honorable members know that I have stood as long as I could to the proposals which gave to the states their full measure of protection right through, and that it is only when I have been driven by the combination of votes of those who think that a national referendum is the sole means acceptable of settling these matters, and those who fear the referendum in any shape or form, although they admit it is fair to the smaller states—it is only when I am driven from that position that I am forced to take up this stand. That is a not a matter to be lightly disposed of. We know that that great constitutional writer and statesman, Earl Grey, in his work on Colonial Policy, recognised the difficulty that we are seeking to bring so prominently under the notice of this Convention, and he states there most distinctly that the result of his consideration of the matter was that he was driven to almost admit that one Chamber was the proper means of dealing with the legislative concerns in countries where you could not construct the Second Chamber in such a
manner as to make it yield to the express will of the people. No one here suggests one Chamber, and all my efforts have been to maintain the two Chambers in their integrity. What I am now fighting against is the destruction of the powers of the House of Representatives by means of the decisive veto of the Senate. We have been told yesterday also that we should be satisfied, because a great advance has been made on the Bill of 1891. The Bill of 1891 is not the test of the question at all. The Bill of 1891 was framed by men of great ability and experience, but who were not elected by the people directly, and with some notable exceptions, whom we find in this Chamber, I am proud to say, the gentlemen there were not in accord (may I say it with all deference and respect?) with the public opinion of the larger colonies, at all events, even in 1891.

Mr. MCMILLAN. -

The Bill of 1891 is a very good foundation, though.

Mr. ISAACS. -

Well, but I am saying that it must not be taken as a standard. Those who framed the Bill of 1891 were themselves appointed by the Legislaturess, and naturally they had a strong penchant for following the same principle in the construction of the Senate. And they took, in that respect, the American Constitution as their guide. Now, we know perfectly well that even in 1891 that would not have been tolerated in Victoria, and, I believe, not in New South Wales either. When the Bill was brought up in the Parliament of Victoria, reference to our debates will show that that would not have been tolerated even at that date. We are told that we should be satisfied, because we have made a great advance upon that time. Why, what was the basis of the Constitution in 1891? I say again, it slavishly followed, in that regard as in others, the American Constitution—a Constitution framed not on the
an argument which, if it had any substance in it, would be an argument to
destroy equal representation in the Senate altogether. I think it only right to
bring under the notice of this Convention formally a view that is taken in
England on this very Bill in this very respect. A most able article appeared
in the Spectator of the 25th of September, 1897, at the very moment, I
think, when our proceedings had come to an end in Sydney. There
appeared then, on the authority, no doubt, of the telegraphic accounts of
our proceedings, the most able article I allude to, that has been mentioned
in the Age newspaper a very little time ago. From that article in the
Spectator I will read half-a-dozen lines, because they bear so strongly on
this question, and because they give us the view of an impartial writer, and
one who is removed from our controversies as between larger and smaller
states—a writer who cannot be suspected of having the slightest interest in
the matter as between the various colonies. After dealing with the position
of the relations of the Houses, the writer says—

Obviously, therefore, it is quite conceivable that if questions arose in
which the interests, real or supposed, of the more and the less populous
colonies diverge, the two Houses would come into direct conflict. Not less
plainly it would be of great consequence to the Australian Commonwealth
that such dead-locks should be determined as speedily as may be, and also
in a sense which would commend itself, as far as may be, to the general
approval of the great body of the colonists.

I omit a few lines, because they merely give credit to the Convention for
endeavouring to meet this matter in a fair way, and they point out that we
did not take the step that was taken in America, where the small states
threatened to call in military aid, and where the large states threatened to
use military force. Those were the circumstances under which the
American Constitution was adopted. Then the writer proceeds—

We should have been glad if the representatives of the smaller states had
seen their way to allow questions dividing the two Houses to be made the
subject of a simple referendum. Such a sacrifice on their part might, we
think, have accelerated the development of that sentiment of common
Australian citizenship which is so desirable.

[3506]

Mr. WISE. - Who is the writer?

Mr. ISAACS. - It is a leading article. Now, there is an opinion written thousands of miles
away, not under the influence of our discussions, the writer not weighed
down by partiality one way or the other—a most masterly article, the main
subject of which is the relations of the Houses; and when the writer, deals
with that subject in that able fashion—which will be evident from the mere
perusal of the article—he gives his opinion as to what is right and what is
fair. Therefore it seems to me that the methods proposed so far are
inadequate. Inadequate to do what? Inadequate to solve the one
constitutional question which always presents itself in these troubles, and
that is to make the national law accord with the national will. The
dissolution of the Senate will never effectuate that. Then, when we come to
the question of the referendum, I am told that the objections to it are
mainly that it will destroy, first, representative government.

Mr. MCMILLAN. -
You speak of the national referendum now?

Mr. ISAACS. -
I am speaking of either kind of referendum.

Mr. MCMILLAN. -
There is a great difference.

Mr. ISAACS. -
Of course there is a difference. The only difference is that the national
referendum provides that the will of the majority of the whole people shall
govern in the final result, and the dual referendum provides, that the
majority of the people of the Commonwealth shall not be overridden by a
majority of the states, but that it cannot override a majority of states.

Mr. MCMILLAN. -
But your argument refers to the national referendum, I think.

Mr. ISAACS. -
The argument I am going to deal with refers to both, because it is said
equally of both of them that the reference to the people directly destroys
representative government, and, therefore, I think I am fair in saying that
this objection, which I propose to deal with as shortly as possible, applies,
if it applies at all, to both of them equally. Now let me clear away one or
two little subjects, as it seems to me, of mystification. We have heard it
clearly stated that the referendum will be destructive of representative
government and of responsible government. Let me, once for all,
distinguish between those two matters. Representative government is
possible without responsible government. In America they have
representative government, but they have no responsible government.
Therefore, we must distinguish very clearly between these two things. If
we want to preserve representative government, as I think we must, we
shall have to ask ourselves, first of all, what it is. Responsible government
means, as I understand it, the responsibility of the leaders of political life,
the Ministers of the Crown, to one House of Parliament. Representative
government means that the people, in providing their legislation and supervising their administration, do so through their representatives. It is of the utmost importance that we should not confuse these two matters. If we ask ourselves are we to preserve responsible government, then I say we must not have the meeting of the two Houses, because a Ministry that brings forward a proposal, and has a majority in the House of Representatives, and yet has to face the possibility of defeat, not by its own House, but by the joint operation of the two Houses, or by this new creation in the world of politics—this uni-cameral combination—will find itself responsible to what?—not to the House of Representatives, not to the Senate, but to this joint sitting. And I can conceive no more fatal blow at what we understand to be responsible government than an application of this provision to the two Houses sitting together. Therefore, this newfangled notion directs a most serious blow at responsible government, as well as possessing the defects and disadvantages I have already pointed out. Let us see as to representative government. Is representative government the be-all and end-all of our Constitution? It is a matter of common knowledge—I have referred to it very often, and I have never heard it challenged—that representative government, as we have it now, is, comparatively speaking, a thing of yesterday, because until 1832 there was no representative government in the sense in which we possess it now in England. The House of Lords and the House of Commons, as Bagehot points out, with unanswerable truth, consisted of the same people. The gentry of England, titled and untitled, and a few governing families, returned an absolute majority of the House of Commons. They did not represent the people; and it was only after that memorable struggle when the House of Commons assumed its new character, when the Constitution of England underwent an undoubted revolution, not only a reform but a revolution, that we first had the introduction of real representative government. That has been made still more clear by the broadening of the franchise down to the present time, and it is only by the broadening of the franchise that you get this representative government, with one essential consideration, which I will point out directly. Therefore this representative government, which has brought in its train responsible government, and which has brought also as a necessary consequence with it, and a necessary attendant, the supremacy of the people in its present form is a matter not possessing even the sanctity of antiquity. And are we to assume that representative government in its present form is to continue for ever, and to continue unchanged? I am one of those who believe that we shall always have representative government, and I believe that we shall always have
responsible government in British communities. I believe that they ought to be maintained to the last, and I wish to declare here, once for all, that I shall never be a party to changing the bi-cameral system to the uni-cameral system, or to destroy representative institutions or responsible government. But, sir, there is a strong and a growing feeling that representative government is becoming inadequate by itself to fulfil the duties that are imposed upon it, and when I suggest and support the proposal for a referendum, it is not with the design of supplanting representative government-far from it; but it is with this object: That while allowing representative government in the form of the two Houses to proceed unmolested, even by a direct vote of the people in any shape or form so long as they carry out the work of the people without hitch, without prolonged obstruction, then I say, when that prolonged obstruction takes place, that is to say, at the crucial point where representative government fails, where it breaks down, it is time that the people should be called in to manage their own affairs, which their agents admittedly are unable to manage for them. This is no new notion. It is not confined to Victoria. May I quote the words of a man whose name will be accepted as that of a master in political science? What does Goldwin Smith say?—

Parliaments are losing much of their importance, because the real deliberation is being transferred from them to the press and the general organs of discussion, by which the great questions are virtually decided, parliamentary speeches being little more than reproductions of arguments already used outside the House, and parliamentary divisions little more than registrations of public opinion. It is not easy to see how far, with the spread of public education, this process may go, or what value the parliamentary debate and division list will in the end retain. If monarchy, is primeval, Parliaments are the offspring of the Middle Ages, and for them, too, sand in the hour glass of history runs.

Mr. Barton. -

Is that a tendency to be resisted or encouraged?

Mr. Isaacs. -

Any tendency that the people have manifested in the direction of liberty and self-government ought to be encouraged. Parliaments are nothing but machinery, and I wholly dissent from the position taken up last night by some honorable gentlemen, who said that the dead-lock is only an invention by the masses of the people to prevent themselves from exercising their constitutional functions that were intrusted to them. Is not that putting the axe above its master? Is not that placing the created above the creator? Is not that saying that the people
whose lives, whose liberties, whose moneys are being dealt with are not the judges themselves, but that they are to be eternally the governed, not the self-governed. Therefore, I say that while we, from the necessities of the case, must preserve, and ought to preserve, representative institutions and parliamentary government, yet we ought not to be blind to this: That with the growth of population, with the expansion of social and commercial and industrial necessities representative government does not always carry out the duties which it is called upon to fulfil. And that is just the juncture where we should provide some means of allowing the action of the State to proceed in a healthy fashion. I may be told that I am all wrong.

Mr. DOBSON. -
Certainly.

Mr. ISAACS. -
I am bound to be told that I am all wrong, and, therefore, if I err, I want to show that I err in most excellent company; and I will call from the camp of my adversaries a witness whose judgment they will not question, and whose veracity they will not deny—a conservative, but a conservative who is not blind to the inevitable tendencies and necessities of the time. I will read a very few lines which I have extracted from Mr. Lecky's work, volume 1, page 240.

Mr. MCMILLAN. -
A liberal unionist.

Mr. ISAACS. -
The work was issued in 1896, and therefore embodies, I should may, the latest phase of thought on the subject. I think that this passage answers nearly every objection that has been raised, or, as I conceive, can be raised to the fairness of the referendum:

If the electorate is to judge policies, it is surely less likely to err if it judges them on a clear and distinct issue. In such a case it is most likely to act independently, and not at the dictation of wire-pullers. It is to be remembered, too, that the referendum is not intended as a substitute for representative government. All the advantages of parliamentary debate would still remain. Policies would not be thrown before the electorate in a crude undigested undeveloped state. All measures would still pass through Parliament, and the great majority would be finally decided by Parliament. It would only be in a few cases, after a measure had been thoroughly discussed in all its bearings, after the two Houses had given their judgment, that the nation would be called to adjudicate. The referendum would be an appeal from a party majority, probably made up of discordant groups, to the genuine opinion of the country. It would be an appeal on a question
which had been thoroughly examined, and on which the nation had every means of arriving at a conclusion. It would be a clear and decisive verdict on a matter on which the two branches of the Legislature had differed.

Let me come to another writer in 1897. Professor Sidgwick, in the second issue of his work, at page 559, having already spoken about the inadvisability in his opinion of direct legislation in ordinary cases, with which I need hardly say I most thoroughly agree, says-

There are, however, special cases in which the direct intervention of the people in legislation appears to me on the whole advantageous. The first case arises when in a Legislature constructed on the two-Chamber system, it is important to avoid a dead-lock resulting in a disagreement between the two Houses, that is, when the urgency of the need of some legislation on a particular point is generally recognised, but the Chambers cannot agree on the form that the legislation is to take. Under these conditions, a reference to the citizens at large has many advantages as a method of terminating a disagreement. The dignity of the other Chamber is saved if it has to yield to the people and not to the rival Chamber, while by the reference of a particular measure to the judgment of the citizens a more clear expression of the people's will is obtained than a general election of representatives can give. Again, the process is more educating, since a single definite issue is placed before the country. It also avoids the danger involved in the representative system that an interested or a fanatical minority of citizens may, by concentrating the whole voting power at a general election on a particular question, obtain a fictitious majority of representatives pledged to support this demand.

Mr. DOBSON. -

Both these quotations refer to real dead-locks, not to disagreements.

The CHAIRMAN. -

Order.

Mr. ISAACS. -

I do not know the difference between real dead-locks and disagreements, and if the honorable member can give me a definition it will help us to consider the matter.

Mr. BARTON. -

There is a very serious difference.

Mr. REID. -

I would not like to put it to an Irishman.

The CHAIRMAN. -

The honorable member must not interrupt.
Mr. ISAACS. -

I shall make only one more quotation upon this subject, and it is from Cree's work upon direct legislation. The writer says, at page 16:-

Direct popular legislation, under proper modes and forms, is at once democratic and conservative. It accords with the tendencies and spirit of the time; it will, we think, prove to be a calming and conservative institution. It will remedy some serious imperfections of our present system of law-making, and some evils of our political life. It will abate the rigour of our party system, break the crushing and stifling power of our great party machines, and give freer play to the political ideas, aspirations, opinions, and feelings of the people. It will tend to relieve us from the dominance of partisan passions, and have an elevating and educative influence upon the voters, by inducing them to consider measures on their merits as schemes of public policy instead of as mere party proposals. Public spirit will thus be cultivated, and intellectual exertion stimulated among the masses.

Writing, as he does, in 1892 he points out that had there been some such means in the American Constitution of consulting the will of the people the American conflict would in all probability have been averted. He goes much further than we desire to go, and further than we would go. He thinks that provision ought to be made for direct legislation in most cases. I adhere to the opinion I previously expressed, that the British Constitution is the best, but it is whatever Parliament chooses to make it at any particular moment, and the action of Parliament is decided by the will of the people. But here we say, in a cast-iron fashion, that there never shall be this outlet for public opinion. We say that decisions shall be arrived at only in a certain fashion, and that, if they cannot be arrived at in that fashion, the matters in dispute shall be left undecided. I think that this is utterly wrong. It is a mistake to put a block in the path of political progress. If we are told that, by doing what I venture to advocate, we shall sink the dignity of Parliament and destroy responsible government, this is my answer: If we were to adopt the proposal that the matter should be referred, as in some of the American states, and as in Switzerland in the case of federal laws, to the veto of the people after the two Houses of Parliament are agreed, the objection might be made that we were, to a large extent, destroying parliamentary responsibility. Mr. Lawrence Lowell, in a recent work upon Government and parties in the states of Europe, says that that argument is not justifiable, even in the case of Switzerland, because what takes place there does not impair the efficiency of parliamentary action and responsibility. But we do not bring forward any such provisions as they have in Switzerland. We say that each House, and every member of each
House, shall take the full share of responsibility for his action in supporting or repelling a measure, and that, when the two Houses agree, there is no need for the referendum. I would refuse to allow Members of Parliament to decline their responsibility by the adoption of the referendum in this way. Therefore, the objection which has been raised to the provisions in force in Switzerland in regard to federal laws do not apply to our proposal at all.

What I say is that, when both Houses have taken their full share of responsibility, when they have agreed that a matter is in dispute, and that it is the only thing that they have agreed upon—when one House maintains that the people earnestly and urgently desire the passing of a political measure, and the other House just as earnestly and as strenuously maintains that the people do not desire its passing; then I say, let the people decide. I think there is one argument, and one only—it is a short one—with which my opponents may be credited. It is that this is a most democratic Constitution because the suffrage provided for is manhood suffrage. That, as I intimated a little earlier, is in my opinion an essential provision, but it is by no means a sufficient provision. What is the use of manhood suffrage, if you so divide the constituencies that the minority may overpower the majority without recourse to the direct opinions of those who form the minority? When one of the Reform Bills—I think the Bill of 1867—was under consideration in England, Mr. John Bright, writing to one of his friends in Manchester, used words which, I think, ought to be borne in mind and written in the largest possible characters, in reply to the argument that this is a most democratic Constitution, because it provides manhood suffrage. Mr. Bright said, in effect, that disputes had arisen as to the extent of the suffrage, and as to whether it should be pure manhood suffrage or something short of that. But he continues—

I consider these differences of opinion upon the subject as of trifling importance when compared with the question of the distribution of seats and members. This is the vital point in the coming Bill, and unless it be well watched you may get any amount of suffrage, and yet find, after all, that you have lost the substance and are playing merely with the shadow of popular representation.

If his views are right, that is a complete answer to the argument that we ought to be satisfied that this is a democratic Constitution because it contains manhood suffrage. But, I say, if we so divide the representation as to give to Victoria in the final arbitration of disputes one member for every 60,000 or 70,000 of the population, and to Tasmania and Western Australia one member for every 15,000, we shall not have popular
representation; we shall lose that measure of popular representation which we have bargained and fought for in regard to the House of Representatives. I entertained strong hopes that when this session began we should, at least, frame a Constitution that we could take back to our constituents, and not only honestly, but earnestly and vigorously, recommend for their acceptance. I clung to that opinion tenaciously for a long time, and I hope that in the end it will not be falsified, and that my hope will not be frustrated. I share the expressed opinion of the Right Hon. Mr. Reid in this regard, that we ought to have a Constitution that we can take to the people, and press upon them as a boon and a blessing. We know, as the right honorable member (Sir John Forrest) reminded us yesterday, that the material interests of the colonies guide them in a large measure.

Sir JOHN FORREST. -
No doubt about that in your case.

Mr. ISAACS. -
When we consider that Victoria will have to bear an enormous share of the burden of this federation-

Sir JOHN FORREST. -
She will have all the profit, too.

Mr. ISAACS. -
When we consider that, we must make some allowance for the political views of the people who have to vote upon this Bill. I hope that that will be remembered at the last, but I fear that if the Constitution is maintained in its present form the people to whom we have to take the measure will turn to us and will say-"We have heard many protestations of your desire to trust the people. We have heard you say time after time that the will of the people must govern."

Sir JOHN FORREST. -
We have heard of that.

[P.2187] starts here

The CHAIRMAN. -
I would call the attention of the honorable member to Standing Order 146, which says that-

No member shall interrupt another member whilst speaking, unless (1) to request that his words be taken down; (2) to call attention to a point of order; or (3) to call attention to the want of a quorum.

That standing order has not been observed during the course of the debate, but my attention has been particularly called to it by the Right Hon. Mr. Reid, who requests that all interruptions of debate should be prevented.
Sir EDWARD BRADDON. -

I would submit, sir, that we are entitled to proclaim our approval of, or admiration for, speakers remarks, by interjecting "Hear, hear."

Mr. ISAACS. -

I was ventilating the opinion that we shall be asked when the Bill is placed in the hands of the people, and they turn its pages-"Where is this trust in us that we have heard proclaimed so loudly and so long; where are the provisions putting confidence in our capacity, our honesty, our ability to judge for ourselves in regard to matters that concern us? Where do we find the embodiment of this great principle of political progress that the people, who have to sustain the whole burden of government, who must obey the laws which are made, should have control in the making of them?" I take it that it is not sufficient that we should say to them-"You are free to select your governors, you are free to select those who are to rule you, you are capable of judging of policies and questions, and to elect those who are to rule your destinies; but you are not to be allowed, when your business comes to a standstill, when the machine of government-which has been constructed with so much care, and which works with so match expense and so much elaboration-breaks down, to step in and put an end to any disagreement between the two Houses of the Legislature." We practically say to the people-"You are, to see these two Houses, which are your agents, the members of which you pay, checking and obstructing each other, but you are to, have no voice in saying which of them is right, and which of them is wrong at any particular juncture." If we want to be true to our professions, if we wish not to falsify the hopes formed of us, and the opinions that we have expressed ourselves, we shall not hesitate to adopt a provision for a direct appeal to the people in case of necessity at that point where representative government has failed to justify the expectations of the people, and to carry out the plain duty and purposes for which it has been created.

Mr. WISE (New South Wales). -

I do, not think that any one can find fault with the Hon. Mr. Isaacs for introducing this subject, or with the tone of the speech in which he has given expression to his views. Although my honorable friend recognised that he was really in this committee championing a cause foredoomed to failure, he stated with literal accuracy, that in dealing with this matter we owe a duty to the people of Australia. No part of our deliberations will be followed more closely than the discussion upon this subject. It will be followed with peculiar interest, because there is no deliberative assembly I know of in which this subject has been discussed. There are few, if any, writings upon it. The literary contributions to the subject have been usually
by university professors, with an inclination towards the conservative party, and not by those who have had practical experience of political affairs. That is why I hope, not at undue length, to follow my honorable friend and to indicate to him and to those who may agree with him, that we are not, in resisting this demand for the referendum, contemptuous of the wishes of those who ask for it; but that we believe we have sound and well-grounded reasons for opposing the introduction into the Constitution in any form whatever of this pernicious principle. I intend to oppose in toto the novel and far-reaching proposal of my honorable friend

Whether he urges the dual referendum or the mass referendum, my objections are equally strong to both; and, indeed, I do not know that he seriously contends for the dual referendum. It is difficult to see how, if he advocates the referendum as a means of obtaining finality, there can be more finality in a dual referendum than in a dissolution of the Senate. If he advocates the mass referendum, there is the old objection that it is unjust, because it destroys the very basis on which federation rests. My answer to him will be directed against the referendum in any form. When I just now made use of the epithets "novel" and "far-reaching," I, almost inadvertently, summed up the arguments I am going to use. I admit that, because a political proposal is new, is not a ground for condemning it. I recognise, too, that the potency and the extent of the consequences of any proposal may be its strongest recommendation. But there is one test which, as practical men concerned with the affairs of State, we ought to apply to every proposal, and one only that I know of. 'Does it suit the people on whose behalf it is proposed? Is it in accord with the circumstances, the history, the traditions, and the requirements of the Australian people?' A good form of government is not the product of conscious effort; it cannot be suddenly constructed even by the planks of a labour caucus, but is the result of a national and healthy development. It should fit the people easily, as the bark of a tree fits its trunk and branches in every stage of growth. Now we, both by our British descent, and of our own deliberate choice, since we have had free institutions, have been trained in the theory and practice of parliamentary government, which rests upon a system of representation that is altogether incompatible with that power of direct legislation which is of the essence of the referendum. To make use of the referendum as we do in the Constitution, for the purpose of determining whether the Constitution shall be accepted or amended, is justifiable upon the simple ground of necessity. There is no other way of ascertaining what the people wish shall be the limits of the representative system. But when
once a Constitution has been framed, based on parliamentary government, which is a combination of the systems of Representation and of Ministerial Responsibility, I hope to satisfy the committee that to introduce into this Constitution, in any form, the principle of the referendum, is to introduce a subtle poison, which before long will altogether destroy the vitality of Parliament. I will follow my honorable friend as closely as I can in the course of his argument, and I will take first the only historical illustration which he referred to—the instance of Switzerland. I could not help thinking that he destroyed the whole value of that illustration, as an argument that would appeal to us, by the example he gave of one case in which the referendum had been used. He mentioned that it had been used—whether successfully or not I did not quite catch—over a question of weights and measures. Imagine having a referendum all over Australia to determine the weight of grocers' scales! It is only in countries where such trivial matters can become matters of first moment that the referendum is possible or desirable.

Mr. ISAACS. -

Does the honorable member say that was the only instance I gave?

Mr. WISE. -

No. After all, the value of any historic illustration depends upon the similarity between the circumstances of the country which is invoked as an example and our own circumstances. Is there any similarity between the history, or the circumstances of Switzerland, and the history and the circumstances of Australia? It is hardly possible in the first place to imagine a greater physical contrast than that between the wide and almost waterless expanses of this country, and the high mountains and deep valleys of Switzerland, which delay the growth of towns and separate the people by an immense variety of diverse local interests. Indeed, such is the isolation of the several parts of that most interesting little territory, that almost the only interest which they have in common is the love of independence. And as if the divisions set by nature were not wide enough, the people are separated further by differences of language, so that in a territory no larger than the western district of this colony, men in the French, German, or Italian districts cannot understand each others speech. Is it any marvel that, in a country so peopled and so situated, local government should flourish as local government has flourished nowhere else? In that country we find the police, the schools, the public charities, the asylums, and many other matters that are the concern in other countries of the Central Government administered by the people of the commune or the canton, meeting in their
hereditary meadows, and deciding, as their numbers permit, by the vote of every citizen on the affairs of the year. No wonder that in such a country the idea of parliamentary or representative government has never taken root; and that is what makes the example of Switzerland useless to us. The Swiss look upon a Member of Parliament as a mere mouth-piece of a class, district, or estate; and have never risen to the higher conception of an independent representative, deliberating and deciding in the general interest on behalf of the country as a whole. Why, sir, if the referendum had not been familiarized to the Swiss by the practice of centuries, it would have been absolutely necessary for some ingenious philosopher like my honorable friend to have invented some system like it; because, without the referendum in such a country, with the people so separated, there would be no means of obtaining an expression of the joint opinion of the community, and no means whatever of joining its separate atoms for any common purpose. I am not going from mere pedantry to follow a subject of this sort further. I do not know that any one would seriously point to the example of Switzerland as one that should be followed in Australia—the example of a country with no Parliament in the sense in which we understand Parliament, with no responsible government in any sense at all, with no such community of interests as exists here, and with every inclination to separate, and very little interest to come together. I was astonished that my honorable friend did not refer on this occasion to another example which he has touched on before, that of the United States. He might have done as many of those who write on the subject outside the chamber have done, dwelt with great pride and very natural satisfaction upon the extent to which this doctrine has found popularity in that vast community.

Mr. ISAACS. -

I did refer to it.

Mr. WISE. -

The honorable member in his speech at Adelaide or Sydney gave us some examples of the widespread popularity and the general use into which this practice had come in the United States. Any one who takes that view might go further. I believe there is not a single state in the American Union, except Delaware, in which in one form or another the referendum is not put into practice. There is, however, this to be remembered, when we argue by analogy from a country like the United States, that one state differs as much from another politically as in climate; and that of all countries in the world, when discussing it politically or in other respects, the United States is the one in regard to which we ought to use one of those "large maps," which Lord Salisbury once recommended to students of the Eastern question. The only way in which the argument about the use of the
referendum in the United States becomes of any value to us is by ascertaining, if we can, what the causes are which have promoted this general adoption of the doctrine.

No one has pointed out more clearly than the author whom my honorable friend cited-Mr. Cree-that the cause of the popularity of the referendum in the United States is the growing and wide-spread distrust in the honesty and the capacity of the legislative bodies. It is the most striking development of modern politics in the United States that no one believes in the power of Parliament to accomplish anything good. So strikingly is this spirit manifested that-without wearying the committee by giving many instances-in some states, as we know, Parliament is not allowed to assemble more than once in two years; and even then, in order to limit its capacity for mischief as much as possible, it is not allowed to remain in session for a longer period than six weeks. To show that I am not speaking at random when I say that it is this feeling of distrust and of dissatisfaction with Parliament that is at the root of the agitation for the referendum, I would like to quote a very short passage from a writer whose book is a storehouse of all modern knowledge on this subject-Professor Oberholtzer. The title of the book is, I think, On the Referendum.

Mr. ISAACS. -

No, The Referendum in America.

Mr. WISE. -

That is it. Professor Oberholtzer says-

Side by side with this movement to make codes of laws of our Constitutions, and to restrict in many ways the powers of the state Legislatures, has grown up a movement tending directly towards the almost entire abolition of these bodies. In nearly all the states, by the development of the last few years, the conventions have substituted biennial for annual legislative sessions. These sessions, now being held only half as often, are further limited, so that they do not extend over more than a certain number of days. . . . . This tendency seems to have everything to encourage it and give it greater growth. Those states which still retain the system of annual sessions, as, for instance, New York and New Jersey, constantly find cause for dissatisfaction, and the feeling of distrust for these bodies is taking deeper hold of the people every year. The feeling, indeed, has reached a conviction nearly everywhere that the powers of the Legislatures should be still further curtailed, and in but one state-Georgia-has there been shown any inclination to retain the original principles.
That is not the only method of limiting the powers of Parliament. Alteration after alteration has been made in the Constitutions of the states curtailing the subjects with which a Legislature may deal. A catalogue of these limitations is positively startling. In some states the legislative body, whether of the county or of the state itself, cannot vote a penny for the erection of a bridge, a gaol, or an almshouse; they cannot pledge the credit of the state for a sum exceeding £100; they cannot increase the salaries of public officers, and they cannot put a tax on limited companies, deal with the electoral laws, or purchase real estate, or establish schools. In all these matters, and even in matters or less magnitude, there is compelled to be a direct legislative vote by the people. The explanation of this mistrust, and righteous mistrust, of legislative bodies in America is not far to seek. Everyone now knows what was not open to writers on the American Constitution a few years ago, but what has been made public in more recent memoirs, namely, that the fathers of the American Constitution were moved by a deep mistrust of democracy. They endeavoured to give expression to that sentiment by framing a Constitution, at every turn of which the expression of the popular will should be checked or delayed. In dealing with the Legislature, the particular device was to separate the Executive entirely from that body—that fatal severance, which, it is no exaggeration to say, has caused the chief part of the political evils from which the United States now suffer, and has made between politics and the pursuit of all that is good and helpful in the community that divorce which is at the present time a distinguishing and shameful mark. It is no rash assumption that if the chief executive officers had seats in the Legislatures of their several states, so that they could be responsible for the framing of the measures, which they have to administer, many of the greater evils of American politics would never have grown up. But is this our condition? Do the symptoms of that political disease for which the referendum is demanded as a remedy exist in Australasia? Are our Parliaments debased and venal? Are they corrupted by a moneyed lobby? Do our leaders seek only their own private ends, and have our people lost all control over the Legislature and the Executive? One has only to ask those questions in order to have them answered; and it is a matter of just pride that we can put those questions, confident what the answer will be. If then we are not suffering here from any of those diseases in the body politic, which require the desperate remedy that has been demanded in the United States, of what avail is it to catalogue to us a long series of cases in which the referendum has proved useful in that great community? There is, as in the case of Switzerland, no analogy whatever
between the political condition of the United States, with their corrupt Legislature, their lack of responsible government, the absence of Ministers from the legislative body - and our Parliaments, which are the healthy representatives of public opinion, controlled by leaders whom the people trust, and who, being in the confidence of the people, are altogether subject to the direction of the people. If it were not that time pressed, I would like to illustrate still further the utter helplessness that an American feels in the face of the corruption that is everywhere about him.

Mr. DEAKIN. -

And also partly the ineffectiveness of their political machinery.

Mr. WISE. -

My friend has anticipated me. That helplessness drives the American to the referendum because of the utter ineffectiveness of the political machinery. Again I will quote-and it is the only quotation I shall make-a passage from the work of Mr. Cree, which I recommend to the perusal of all interested in the subject. Although his book is written in the strongest terms in advocacy of the referendum, every argument he uses shows that his advocacy rests on a confessed mistrust of Parliament, which cannot, in any degree, be applied to a country where the people are proud of their Parliaments. Mr. Cree, after speaking of the corruption and tyranny of the party machinery, and the inability of the individual voter to make his will felt in consequence of the tyranny, proceeds:-

Party government means supremacy of party leaders. In those leaders is practically vested the power to subjugate all the official agencies of the State to their will, so that such will becomes that of the State, and government by the people is only a fiction instead of a fact. The leaders of parties frame all political issues, declare all party policies, name all candidates for office, and the electors but choose between the rival organizations. But that is no more than a power to say to which oligarchy of managers or "bosses" they will confide the control of the State.

Under such a system the party, leaders do not need to consider public opinion, further than its approval or consent may he necessary to secure the adoption of their avowed purposes, and the election of themselves to power. But great and important as is this power of ratification or rejection of party programmes and party leaders, on the part of the voters, it leaves them without any real positive political initiative, and limits them to a sort of negative action. A choice at the elections between corporate parties is all that they possess, and this not only does not involve, but actually excludes, all expression of opinion on the part of the voters unless the contending parties represent clearly-defined conflicting policies on specific questions, or really stand for permanent diverse views and tendencies. The contention
of the parties for the favour of the electors assumes the fact of the existence of one or the other of these supposed cases. On no other assumption can the existence of party be for a single moment justified.

But so far as representing a clearly-defined line of action on specific measures of policy is concerned, we cannot recall a single case in the history of the United States where any great national party has done it.

I have dwelt at what may perhaps be considered excessive length on the example of the United States; because it seems to me that a great deal of undeserved credit is being given to this proposal by the imaginary support it is supposed to have received from the example of the United States. I might multiply quotations and fill the pages of Hansard, but I will only say that no one can read an American writer who advocates the referendum without seeing that his advocacy has one purpose, and one purpose only, namely, the substitution of the power of direct legislation for the incompetency and corruption of Parliaments. I am told there is very great feeling here that the referendum is necessary, because, although this fear of dead-locks has been admittedly exaggerated, there is still keen recollection of the old Victorian controversies. My honorable friend (Mr. Isaacs) did me the honour to adopt a phrase of mine in which I said the ghost of those dead controversies still walked in Victoria. May I appeal to him and to those who influence public opinion here as to whether it is not their duty to try and lay that ghost? Is that not a more patriotic purpose than keeping the ghost alive, and stimulating the fear which a bogey-haunted memory creates, and doing all to exaggerate the possibilities of conflict, and as little as possible to show them in their true light. I take a view that my honorable friend (Mr. Isaacs) I know dissents from. I take no exception whatever to the terms in which he expressed his dissent. The view I take is that we must run the risk, and ought to run the risk, of dead-locks. It is a trite saying, but it is none the less true, and deserves to be repeated in this connexion, that there is only one form of government in which a dead-lock is impossible, and that form of government is where the ruler is a despot. Dead-locks are the price we pay for constitutional liberty. Although it is true that as the Bill now stands, there are possibilities of differences, and although an ingenious arithmetical calculator might be able to point out that under certain conceivable circumstances those differences may not be resolved-still all the arguments against the referendum proceed on precisely the opposite presumption to that on which the argument of my honorable friend (Mr. Isaacs) appears to proceed. We proceed first on the assumption that we are establishing a Federation. All my friend's arguments, logically pursued,
went in favour of government by one Chamber. All my friend's argument, logically pursued, obliterated the distinction we have always kept before us, and which it is now too late to review. That distinction is, that this is a union of equal states, whose equality, or, at all events, whose individuality, is to be preserved so far as is compatible with the higher interests of the community. Then there is another assumption on which we proceed, but which, I think, my honorable friend ignored. That assumption is that federation is going to be worked by men who wish to keep the Federation together, and not by men who are going to use all their ingenuity to destroy it. When my honorable friend (Mr. Isaacs) quoted that memorable despatch of Lord Grey in favour of a single Chamber in these colonies he forgot, I think, the main reason that actuated Lord Grey, than whom, I suppose, a more sagacious statesman never controlled the destinies of Australia. According to my honorable friend, the only suggestion of Lord Grey was that there should be a single Chamber.

Mr. ISAACS. -

I did not say that. What Lord Grey said was be was almost driven to believe that was the only way out of the difficulty unless he could construct a Second Chamber which, while having co-ordinate powers in some respects, could be made amenable to the will of the people.

Mr. WISE. -

I am obliged for the correction. But I would remind my honorable friend that the reason for Lord Grey taking that course was that there was in the separate colonies no separate interest which could be represented in a Second Chamber—that there was no diversity of interest between those who hold seats in the Second Chamber, and those who hold seats in the Lower Chamber, which would justify a creation of two Chambers. But the essence of the Federal Constitution is that the Second Chamber is to represent interests which, although they combine in very many matters with the interests of those who sit in the House of Representatives, are nevertheless to some extent distinct. The Upper Chamber is a revising Chamber, but, what is more essential than a revising Chamber, it is to represent the states. Its separate existence is therefore justified; and we ought to be very careful before we take any step that would practically render its existence a mere sham. I find that the honorable member presented his view, as one might expect him to do, with the skill of an accomplished advocate, and refrained from putting the case for the referendum as high as it might be put. He may twit me with claiming too much, and with ignoring the fact that in this Constitution the referendum is only proposed for a certain specific purpose. Therefore, he may say the
references I have already given to America and Switzerland have little or no application: that he and his friends are only asking for the referendum, to use a phrase familiarized since the Adelaide meeting, as the medicine and not the daily food of the Constitution. No one appreciates the force of this argument more than I do, because at Adelaide I was almost seduced by it from the straight constitutional path. It was only when I came to give, as I have since done, fuller attention and examination to the reasons by which the proposal was supported, and the precedents appealed to, that I have arrived at the opinion which I believe now to be almost unshakeable, that the referendum in any form, under whatever guise introduced, or for whatever purpose, strikes at the root of parliamentary government; because it makes it possible for a Ministry to remain in office without discredit—and I lay emphasis on these words "without discredit"—when it is unable to carry through Parliament the measures which it advocates. Let us see for a moment how this referendum will work in actual practice. I pass over the objections which are common to all artificial proposals to solve a deadlock—namely, that they are encouragements rather than discouragements to controversy—and deal with the objections as they present themselves to me to this definite proposal of the referendum, whether it is dual or mass. One question I would ask, and I am surprised that the matter was not touched upon: Suppose there is a controversy between the two Houses, and everything is ready for putting this heaven-born device into operation—what form is the Bill to be presented to the country? In the form that it left the Assembly, or in the form that it left the Senate? If you put it in the form in which it leaves the Senate, you will put it in the power of the Senate to dictate the particular question that will be asked. Equally, you will put it in the power of the House of Representatives to dictate the question if you put the Bill in the form in which it left the House of Representatives.

Mr. ISAACS. -

That is just one of the defects in this joint sitting.

Mr. WISE. -

I am not speaking of the joint sitting now. I do not like it, but it has been agreed to, and I am not going to interfere with the Sydney compromise. Speaking of the referendum, I ask those who support it so glibly as being a solvent of all difficulties, to put themselves in the position of one who has to advise the Governor, and to consider the practical difficulty which will arise. If the Bill is to go to the people in the form in which it left the Assembly, what a temptation you put in the hands of a weak and possibly an unscrupulous Ministry to placate their supporters without incurring responsibility! If it is to go to the people in the
form in which it left the Assembly, every man who wants to get credit with his constituents, or every section that the Ministry desire to please, for the time being, will, or may, propose some amendment in the Bill. The amendment may be ridiculous; it may be intended as nothing more than a mere placard for the purpose of showing the constituents how busy their representatives are. It may be such an amendment that, if it ever became law, would wholly defeat the operation of the Bill. What does it matter to the Ministry of the day if such amendments be included? What responsibility will they have when they know the Bill will go to the Senate, that the Senate will reject it, that it will go thence to the people to vote upon the amendments, and all exactly as they left the Lower Chamber? Then there is another consideration. Suppose a vote is taken, and that the people declare against the Bill, which was supported by the Ministry in the House of Representatives, what are the Ministry to do? Are they to resign? Are they to dissolve? If they resign, and if responsible government is to be continued, what will be the position of their successors, who will be left to face a hostile majority in the House of Representatives, and who will have no option, except to dissolve the Parliament to face, it maybe, a hostile constituency? How can it be said that under this Constitution responsible government, as we understand it, is not interfered with? I am going over these considerations very hurriedly, because I recognise that time presses. What, again, is to be the position of the individual member? Suppose he votes either for or against the Bill, and that the vote in the constituency that he represents is antagonistic to the vote he has given. Is he to resign his seat or to continue in Parliament open to the reproach of representing a minority? How can it be said that any such conditions as those do not interfere with the independence of the individual member? Indeed, I am only afraid of developing at too great length what must be apparent to any one. Or look at the matter in this way. Supposing the Senate insists upon an alteration in the Bill. The Senate, which this device is intended to humble, may thus have it then in its power to do one of two things-either to compel a dissolution or the resignation of the Ministry. That is to say, if the vote of the people is against the view of the Ministry, the result of the referendum has been to shift political power from the House of Representatives to the Senate. In any way one looks at it it seems impossible that parliamentary government can be continued as it is to-day, that Ministerial responsibility can continue as we know it to-day, if we transfer the final control of these matters from Parliament to a direct vote of the people. Then there is a consideration of a different character. What are the kind of issues that are likely to be submitted to the constituencies under this proposal? If deadlocks do occur, let us remember that they will be very different from them
dead-locks with which we are familiar between the two Houses in our local Parliaments. All subjects affecting large social interests, all subjects affecting class interests, are practically, with the one exception of the Tariff, removed from the control and jurisdiction of the Federal Commonwealth. The matters about which disputes are likely to arise will be over the construction of the Constitution - such construction, I mean, as affects matters of procedure, not matters of law, which will come within the cognisance of the High Court. They will be rather matters of constitutional etiquette, matters in which the general public are not likely to take a very keen interest. My honourable and learned friend pointed out that the first disputes were likely to be brought about by the distribution of the surplus. I cannot imagine any kind of dispute more certain to solve itself than that; because so long as a dispute continues, not one of the contending parties will be able to receive any money.

Mr. ISAACS. -

That is the danger.

Mr. WISE. -

Such a difficulty is certain to settle itself if it occurs, and the dual referendum certainly will not alter that. It is difficult to see how the mass referendum can do so, except by overriding in every respect the interests and claims of the smaller states.

[The Chairman left the chair at five minutes to one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Mr. WISE. -

Before the premature adjournment which was so kindly conceded to me by the courtesy of the committee, I was endeavouring to point out that the questions which would have to be submitted to the determination of the people under this proposal were of a very complex character, and very different from those with which we had been made familiar by previous parliamentary disputes; and I had just said that I thought that all matters giving rise to a demand on behalf of one class, that the privileges of another class should be taken away, or that its own burden should be lightened, would not come within the ken of the Federal Parliament, but were relegated to the jurisdiction of the Provincial Parliaments. Those fertile sources of disputes would therefore be absent under this Constitution, and it would be more matters affecting the personal honour of Ministers-matters which I venture to term constitutional etiquette-which would give rise to those disputes. Now, it cannot be overlooked that those whom we are asked to call in as umpires in matters of this kind are the
uninstructed. The referendum is an appeal from the instructed to the ignorant. I am quite aware, sir, that the use of that phrase maybe misunderstood; but I know that in this Chamber we ought to speak our minds without fear that an opponent will seek, by using words out of their contexts to bring upon one either ridicule or odium. At the same time, in order to guard against misapprehension, so that my argument may not be weakened on that account, I desire to say that I in no way question the fundamental principles of democratic rule. I accept frankly and unreservedly, as the cardinal dogma of popular government, that a strength and depth of good judgment and discretion are developed in the massing and union of men, which is to the wisdom of the individual, however gifted, as the might of the waves of the sea to the pools which are left upon the sand by a retreating tide. But I altogether deny that the principles which justify a wide, or even a universal, suffrage have any application to this question of the referendum. The people are the best guides of what is good government, because the people are the first to suffer from, and suffer most from, bad government. But to admit that in the fullest terms as a justification for popular rule, does not involve the further admission that in all parliamentary disputes-which often depend upon matters of a highly technical character, and which frequently involve personal questions which those at a distance are not able to fully estimate-the great body of the people are the best judges. Quotations were made by my honorable and learned friend in support of the view he took, but there is one quotation of only two sentences so apt to the proposition I am now contending for, that I ask the pardon of the committee if I cite it. I am urging, remember, that to call in the electorate as a whole to determine that kind of dispute which is likely to arise between the two Houses is undesirable, from the particular nature of the questions to be submitted, and I will adopt the words of Bagehot, who says that to do so would be to submit to the government-

Of immoderate persons far from the scene of action, instead of to the government of moderate persons close to the scene of action.

It is to accept the judgment of-

Persons judging in the last resort, and without a penalty, in lieu of persons judging in fear of a dissolution, and fully conscious that they are subject to an appeal.

Those two sentences, put in words that I cannot hope to emulate, dispose of the argument which was put forward by my honorable and learned friend, that we ought not to count upon the fear of the Senate to avoid a dissolution as a means of getting out of the difficulties that he imagines
will arise. My honorable and learned friend spoke somewhat
contemptuously of the remedy provided by dissolution, and he may
perhaps urge that the argument that I have been using goes too far, because
it would preclude one who used it from advocating the settlement of
disputes by means of a general election. But there is this wide difference
between the determination of a question by general election and by direct
vote of the people: That in the former case there is allowed an interval for
reflection, an opportunity for repentance. In the case of a general election,
as we all know, there may be a strong wave of party feeling carrying
everything before it; but we know also that before effect can be given to
the expression of the popular will, as there evidenced, the seven or eight
men who are responsible for the execution of the measures they may enact
have a further opportunity of shaping that popular opinion, and, if
necessary, putting a check upon it. I am not going to run the risk of stirring
up recollections of past controversies; but I appeal to any honorable
member of this committee whether it is not within his own experience that
public opinion, as expressed by newspapers as expressed upon the
hustings, has been modified profoundly, but most usefully, by the Ministry
that came into office, purporting to give this public opinion legislative
form? It is that which makes a general election a real test of the true
opinion of the public, and distinguishes it from that expression of public
opinion which is furnished by a vote by means of the referendum, which
may be merely the evidence of some passing gust of popular passion.
There is one case that was referred to in a leading newspaper here, and the
reference was so pointed that I make no excuse for bringing it before the
notice of honorable members again. The incident in question has occurred
in a foreign country, so that I may cite it without danger of exciting passion
here. Something might occur here of such a character, but in another form,
as has occurred lately in France; and is there one advocate of the
referendum who would be prepared to trust to the French people to-day a
vote, aye or nay, upon the guilt of that unfortunate man, Captain Dreyfus?
But still, is there one of us who doubts that, in the long run, full justice will
be done to that man-either if he be guilty his guilt will be determined, or if
he be innocent his innocence will be proved. We do trust the people, but
what we trust is the deliberate judgment of the people; and that deliberate
judgment we obtain, not by chance votes on questions that are only
imperfectly understood, and in which the people take but little interest, but
by an expression of opinion obtained first in a general election, and then
more definitely voiced by those in whom the people themselves have
confidence. In fact, the advantage of a general election, to use a common
phrase, is that it gives an opportunity of appealing from Philip drunk to
Philip sober; but the referendum confines us to taking the opinion of Philip drunk or sober—and the probability is that he will be in his cups.

Mr. HIGGINS. -

Why?

Dr. COCKBURN. -

Is that your opinion of the people of Australia? What a shameful thing to say!

Mr. WISE. -

I am afraid that there must be some literal-minded Scotsmen present, but I think I have made my meaning sufficiently clear. What I designed to say was that there is a danger that if a single question is submitted to the people without the safeguard of a general election, if a single question is submitted to them in the way in which we know it can be submitted by a clever Minister, that question may be submitted to a vote which would not perhaps truly raise the real issue between the two Houses, but it would be a question that would have all the violence and vehemence of party feeling surrounding it. We ought not to rely upon that kind of opinion implicitly without the possibility of an appeal. Under the present system we have the possibility of appeal—an appeal which is frequently exercised; and, as I have already said, when, after a general election, the Ministry of the day attempt to give effect to the wishes of the people, these are often considerably modified to the contentment and advantage of the people themselves. It is to give that opportunity of reflection and appeal that we wish for a general election, and rely upon it rather than upon a sudden submission to popular passion, which, when once made, even though popular opinion may have failed to express itself accurately, is expressed irrevocably, and which, in place of having due regard to the questions likely to arise, would be expressed nine times out of ten without a full and complete knowledge of the questions with which the people were dealing—not from any defect in the people themselves, but from the very nature of the questions that are submitted, and from the fact that, as we must all recognise, the bulk of the people in this, as in every other country in the world, are quite apathetic about politics. But I come, now, to a more important matter—the argument to which my honorable and learned friend made allusion when he conceded that there was some strength in this particular objection that I am attempting to urge. It is that the referendum in this form, or in any other form, must undermine the influence of Parliament. If I am asked—"How?" I can only reply again by asking questions. How can we expect that Parliament will have the same position of importance that it has to-day,
when its deliberations are almost without effect, when its debates are indecisive, and its decrees liable to reversal? If the authority of Parliament is to be maintained, we can only keep it at its present high position by making the authority of Parliament supreme, and its decrees final. If, on the other hand, the people are to act as legislators, then the authority of Parliament, and with it the importance of parliamentary discussion, must suffer diminution. I am quite aware that some of my honorable friends attach comparatively little importance to the dignity of Parliament, and I know, too, that our views on this question of the referendum must be determined on this, the central point of the argument, by the views we hold of the importance of parliamentary government. Now, I believe, without going into any lengthy disquisition, that Parliament does possess some very striking advantages which we have been apt to consider of real importance. As a seat of ultimate sovereignty, it commands a respect, and offers an opportunity of usefulness, which makes its membership attractive to men of public spirit. As an instrument of public opinion, it controls Ministers, by questioning them upon their policy, by censuring them for their misdeeds, and ultimately by dismissing them from office. As representative of every class in the community, it insures that every interest will be regarded, and gives to all citizens a just confidence that no grievance will go for a lengthened period unredressed. In short, Parliament combines, and combines them in the highest degree, the two special advantages of the system of representation in that while it trains up a succession of competent men to undertake the service of the State, it at the same time enables the people by interpellation, by censure, and by dismissal to exercise an effective and prompt control over every executive act. There is a fashion now to disparage the qualities requisite for successful parliamentary government, and, in that country which is often held up to us as a model—the United States—the popular belief is that any one man is as good as another as a representative in Parliament. I entirely dissent from that view. I believe that a country is not well served if a view of that sort is encouraged. But if Parliaments are to be degraded from their high position, if they are not to be supreme, if Ministers are no longer to be held responsible for the passing of measures which they advocate, or the consequences of those which they enact, how can we hope that men of character will any longer seek admission to its membership? It is certain that men will not enter Parliament, except for purposes of self-seeking, unless they are assured a reasonable opportunity of doing good. But by every step by which we diminish the importance of Parliament, by so much do we lessen its attractiveness to men of individuality and men of
character. I believe there never was a period in our history when men of
individuality and men of character were more needed in the councils of the
state than they are to-day, when a noisy section of the community—not, I am
glad to say, at present a very influential one—is preaching as a message of
good tidings to the poor and suffering the reduction of every citizen in the
community to one dead level of mediocrity and sloth. If we want to combat
the pernicious doctrines of socialism, we can only do so successfully by
encouraging in the councils of the State those men who are trained to
govern, and who have the confidence of the people. I recognise, too, that in
another way Parliament must be degraded by the use of the referendum. I
have said before, that all through history, from the time of Julius Caesar to
that of the Third Napoleon, the referendum has been an instrument of
personal despotism; and, in the same way, there is no weapon which will
enable a Ministry to free itself from the control of a hostile majority in
Parliament so effectively as the referendum. How can we expect any
Ministry, threatened by parliamentary complications, to avoid the obvious
refuge which a measure of this kind offers: that it will not be buoyed up by,
may be a fallacious hope, but a hope which none the less would influence
an ordinary Cabinet that after some months, with the influence which a
Government is able to exercise over elections, and possibly the
manipulation of electioneering machinery, as we have seen in other
countries, they may be able to get a favorable verdict from that great
constituency, the people, which will enable them altogether to disregard
the opinion of the majority inside Parliament, and thus to escape from
salutary parliamentary control? It is in every way, however we may look at
the question, incompatible with the responsibility of Ministers as we
understand it today - I mean by that that Ministers should insist on carrying
the measures they introduce, and when they have carried them through
Parliament must accept the responsibility for their proper execution—it is
inconsistent with that Ministerial responsibility as we know it to-day, and
with parliamentary government as we know it to-day, to introduce in any
form or shape into this Constitution the principle of direct legislation by
the people. It is a system, too, which, for the reasons I have mentioned,
ought to be denounced in the very phrases which are invoked in its
support—"in the name of public liberty"—because, being a system which is
destructive of the character of public men, in the long run it, too, destroys
the right which the people now possess of exercising, as they only can
exercise, by means of parliamentary control and parliamentary discussion,
effective and prompt control over every act of the Executive Government.
Without that power resting in the people, in the first instance, to question,
then to censure, and finally to dismiss the instruments of their
authority—and only by means of parliamentary government can that right be fully exercised—any form of government must become one of two things—either a bureaucracy or a despotism. The only escape is a strict adherence to responsible government and to the parliamentary system as we know it to-day; and, to use the phraseology which has been used by those who insist on the acceptance of this principle, viz., to declare that those who resist it are antidemocratic, is to use words for the purpose of frightening the timid which have not any real bearing on the argument. I quite admit that in one form the proposal seems appropriate to democracy; but I cannot help re-collecting that there is no greater tyranny in the world than that which is exercised under the forms of democracy when the spirit of democracy is dead. The democrat whom I respect is not a man who is always shouting flatteries to a mob, and who is willing to become the instrument of any policy, however foolish, provided that he can get a sufficient number of people to vote that it is good. The democracy I favour is one which gives to every citizen in the community an equal opportunity of self-development, and which exacts, in an especial degree, from its chosen leaders, that they shall deserve the confidence which they receive and the obedience which they lawfully exact. To a democracy of that kind the system of representative government is most favorable, so that I, for one, decline to be frightened front opposing the referendum by being told that to do so is anti-democratic. I deny altogether that to oppose the referendum is to show mistrust in the people. I deny altogether that to oppose the referendum is to show disrespect to the sovereignty of the people, because I utterly decline to admit that trust in the people is best proved by a frequent summons to the ballot-box, or that you best vindicate the sovereignty of the people by a perpetual procession to the polling booth. I trust the people, I know the people should rule; but history and experience alike show that the people rule best when they are free to make their choice of their instruments, and that they rule most to their own advantage when those instruments have, through the institutions of the country, become competent to govern and have fitted themselves to satisfy the requirements of a free people. I am aware that the friends of the referendum brush aside considerations of this kind, by the comforting reflection that, after all, if a Parliament does not exercise so much influence, the press will exercise a greater influence; and I think my learned friend (Mr. Isaacs) contemplated, with considerable satisfaction, what he terms the "transfer of power" to the press. I believe I took the expression down correctly. The honorable and learned member was quoting, I think, Goldwin Smith.
Mr. ISAACS. -

I read that passage to show the opinions entertained in places very far distant from this country.

Mr. WISE. -

I am not quite sure whether it was Goldwin Smith whom the honorable member was quoting.

Mr. ISAACS. -

Yes. He says that the real deliberation has been transferred to the press, and that that is the general organ of discussion by which great questions are being virtually decided.

Mr. WISE. -

For my part, I agree with the argument, and I am not at all surprised to find that writers on the press consistently advocate the referendum. I have the greatest sympathy with the man who tries to glorify his own profession, and if I were a newspaper writer I should advocate the referendum without stint of printer's ink, because I am satisfied that government by referendum means, in practice, government by newspapers. Much has been said, and with truth, of the excellence of the newspaper press, so that for me now to bring forward arguments to show that the press is entitled to this dominant position would be to revive recollections of a quite unnecessary amount of after-dinner speechification. I concede fully all that can be said in favour of the press; but does it follow that we are compelled to admit that government by the newspapers is better than government by Parliament? I do not want my honorable and learned friend to think that I am guilty of any rhetorical exaggeration in putting this antithesis. I know perfectly well that all the columns of the newspaper which represents his views the idea that there is inconsistency between parliamentary government and government by referendum is strenuously denied. And I will confess that when I read the very able leaders in the Age newspaper insisting that there is no incompatibility between government by Parliament and government by referendum, and urging that the referendum was rather a device for strengthening Parliament than for weakening it, I have at times felt misgivings which might have ripened to the point of conviction if I had not been lucky enough to come across a very able work dealing with the whole subject entitled Representative Government, by Mr. David Syme. In that work I find this passage:-

The press at once forms and expresses public opinion. It performs all the functions of a deliberative assembly. There is not a question of home or foreign policy that is not as fully and ably discussed in its columns as in the debates of either House of Parliament, and in these discussions every
newspaper reader participates, becomes, as it were, a member of that vast assembly which may be said to embrace the whole nation, so widely are newspapers now read. Had we only the machinery for recording the votes of that assembly we might easily dispense with Parliament altogether.

Sir, whenever I am affected by the able arguments of the leader writers of the Age newspaper to a sort of belief in the possible compatibility of the referendum and Parliament, I turn to refresh my ancient faith to this passage from the work of Mr. Syme—"Had we only the machinery for recording the votes of that assembly, we might easily dispense with Parliament altogether" and I resolve that, so far as I am concerned, I will never give a vote for the construction of machinery for such a destructive purpose! To pass away from an argument of perhaps merely local application, and to look at the matter in its less restricted view, I ask what, after all, is a newspaper? At bottom, speak as highly of newspapers as we please, the truth is that they are merely commercial enterprises. To say that is no disparagement of newspapers. It is certainly no denial or oblivion of the high qualities of judgment, intelligence, capacity, and honour which must characterize the great journalist in every country. It is only an admission that newspaper writers, like other people, have to work under certain necessary material limitations. We are all, except perhaps artists or men of letters, hedged round in the exercise of our faculties, or the striving after our ideals, by the material necessities of life. Nevertheless, a newspaper has to be conducted in obedience to certain commercial necessities, which need not be particularized here, but which unfit it in a very special degree to be the ruler of a democratic country. The exigencies of the enterprise require that it shall be conducted by an almost absolute authority, whom the general public seldom know, whom they perhaps hardly ever see, whom they call never question, whom they can never hold responsible, and over whom they can exercise only a most remote and nebulous control. There may be, as Mr. David Syme suggests, no risk involved in the change of masters but for my part I would sooner trust the destinies of the country to the worst Parliament the people of Australia would elect, than to the best newspaper the mind of man has ever imagined. We have fortunately not yet reached the point when we are compelled to discuss what is to take the place of Parliament. Indeed, my complaint against the arguments of my honorable and learned friend, both to-day and upon previous occasions, is that he has not shown sufficient justification for the serious step which he proposes. He seems to overlook the gravity of the step which we are asked to take, and to treat it as a mere form of procedure. But it is something
much greater than that. The proposal is one which strikes at the very root of our institutions as we now know them. But in Australia—and long may we so continue—we have not yet reached the stage when it becomes necessary to destroy Parliament in the interests of democracy, and to reduce that body which, by the universal consent of the British people and by long custom, has been the depository and the executor of the sovereign power, to a mere committee stripped of all authority, and permitted only to make recommendations for the acceptance or rejection of a less instructed public. In concluding this part of my argument, I would like to refer to a most admirable pamphlet by Professor Jethro Brown, of the University of Hobart, a passage from which I ask leave to read. It is as follows:

"Looking back for a moment, we have seen that precedent does not warrant the application of the referendum in Australian politics; that history and reason condemn the principle which underlies it, as opposed to some of the clearest lessons of experience; that, as industrial progress is only possible where full scope is given to the utilization of special ability and special information, so political progress, while requiring a popular control of the rulers in order that the interests of the many may be consulted, is subject to the same law; that the will of the people which has stood the test of time is therefore, in the long run, our safest standard of legislation; that the majority, like the individual, can only lose by having its momentary inclinations gratified with invariable promptitude. For the successful working of democracy under existing conditions we need great men to lead it, skilled men to carry out its decisions, and finally, effective means for securing that its deliberate judgment shall be the standard of legislation. To each of these three requisites, the principle of the referendum is directly and manifestly opposed. By attributing ultimate authority to the fluctuating majority, it must tend to drive strong and independent men from politics, to lower the standard of legislation, and to increase the sense of popular despotism. It is an undue sacrifice of the qualities which go to make efficiency of government to the considerations of a slightly increased sympathy and a slightly increased educational influence. As such, its principles must be condemned. It is a desperate remedy, which can only be justified by a desperate disease."

I am aware that in the argument I have endeavoured to put forward I am open to criticism upon the ground that my distinctions are lacking, to some extent, in logical precision. I am as conscious of that as any critic, either here or outside, may be; but I believe that it is inevitable. I do not believe that it is possible to make any contribution to a debate upon a question of this kind, which is intended to be of practical value and not a mere academical study, without exposing oneself to the charge of a certain
degree of logical inconsistency. This is a matter where logical consistency inevitably leads to practical error. Certainly I am as sensible as any man can be of the grave difficulty of reconciling that power of direct legislation which seems an attribute of sovereignty with that independence and discretion of representatives, without which responsible government is a sham, and Parliaments are not Parliaments at all. I am as sensible as any man can be of the difficulty of reconciling the pertinacious claims of modern democracy, habituated to flattery, pampered by power, accustomed by a long series of successes to a blind confidence in its own judgment, with that free play of mental activity, that nice sense of personal honour, that high spirit, that lofty conscientiousness and sense of duty which are the distinctive marks of a representative of the real British type. I am deeply sensible—and no man who does not perceive the difficulty of the problem can have paid great attention to the development of politics—of the great difficulty of reconciling the claims of the people to direct rule, with the just, reasonable, and necessary independence of popular representatives. Of this, however, I am sure:—That it is not by giving a decision in favour of one side or the other, but by compromising the suit, that

the balance will be kept and the right path shown. To press to an extreme either the theory of direct legislative control, or the theory of complete representative independence, would be to make government in any part of Australia impossible, in the one case by crippling its authority, and in the other by depriving it of popular support. I think that in Australia our danger lies in an excess; and that the balance leans too much in favour of direct control of representatives by their constituents and too little towards the encouragement of personal independence. In politics, as in everything else, it is in the long run not intellect but character that tells; and while no high degree of mental power or insight may be needed for three-fourths of the concerns of government, yet there is always a residue which demands the exercise of the highest faculties, and which it is the test of statesmanship to handle properly. There will always, too, come times of sudden difficulty, when in a moment qualities of wisdom, sagacity, self-sacrifice, and courage will be required to save the State. Depend upon it when these hours of danger come, whether they arise from commercial crises, industrial disputes, or foreign complications, the men to guide the ship with safety will not be those who have crept and crawled into the public offices by "sinking," as it is called, their convictions upon doubtful issues, but those who have had the courage to declare their convictions and the honesty to act upon them. The public can never be well served if it degrades its public men, and no democracy will long retain its own liberty
unless its leaders are permitted to claim theirs. Men who violate their consciences to please a majority, who shrink from taking any action on their own responsibility, who practise servility to voters as a fine art of statesmanship, may flatter and gain credit for a time; but they will not prove the faithful guardians of the public interest in times of danger, or wise guides to a community along the paths of peace. As Burke has said most finely:

If we do not give confidence to the minds of our representatives and a liberal scope to their understanding; if we do not permit them to take a very enlarged view of things, we shall at length inevitably degrade our national representation into a confused and scuffling bustle of local agency.

It is this, sir, that I fear in the operation of the referendum:-That by diminishing the power of Parliament it will degrade members; that it will make Ministers narrow in their ideas and timid in their actions. To these considerations there is only one answer, namely-that parliamentary institutions in Australia have failed. It may be said that Parliament is an institution of British origin, which cannot bear transplanting from its native soil that its successful working requires the exercise of certain qualities of reticence and loyalty which members in this country have not acquired, and compels members to put certain restraints on their speeches and actions which are supposed to be incompatible with true democracy. I am far from denying that there is some strength in that consideration but I do ask with confidence-and to no audience could I appeal more successfully than this-whether there have not been times in the history of every colony when our representative bodies have proved themselves in spirit and capacity to be in no degree unworthy of their British origin? I am sure that my honorable friend, if he will permit me to call him so (Sir Graham Berry), whose services to this Convention, though unrecorded in Hansard, deserve our most grateful recognition, and form a worthy crown to a distinguished career of public service-would not readily admit that Parliaments are ineffective weapons of democracy! And I know that three-fourths of the foundations on which the liberties of New South Wales now rest were laid by the parliamentary genius of Sir Henry Parkes, a man who, it is my deliberate opinion, takes rank as a parliamentarian with Sir Robert Peel, Mr. Gladstone, and Sir John MacDonald. I am not going to revive old controversies, or to attempt to recall forgotten incidents. It would be extremely invidious to do so before an audience many of whom were actors in those great scenes! I admit, too, that there have been times when our Parliaments have not commanded or deserved respect; and, again, I will observe a discreet reticence as to when and where these
periods have occurred! This much, however, will be universally conceded: that, whenever we have had a great leader, we have also had a good Parliament. I have no wish to stir the embers of dead controversies, and I recognise that we must differ as to the policy these Parliaments pursued, and that this difference must to some extent affect our judgment of their capacity; but I claim that if we judge them not by our individual estimate of the value of their work or aims, but by the accuracy with which they have reflected public opinion, and the skill with which they have given legislative expression to public opinion, we shall be driven to the conclusion that in all the colonies, and at various periods, Parliaments have proved themselves the worthy and effective instruments of democratic sovereignty. As it has been in the past, so it will be again. Whenever we have leaders who will lead, and a Government that will govern—then we shall have Parliaments that will adequately represent the feeling of the country, and in which the people of the country will not be afraid to place their confidence. Certainly I have heard nothing that leads me to give up my belief in Parliament. I admit that there are defects in parliamentary government, as there are defects in any system of government; but I have heard no argument that disturbs me in the belief that any scheme that it has been proposed to substitute for parliamentary government might not breed evils still greater than those which it is designed to remedy. The evils which we have we know; but to rush in blind confusion into others that we can neither know nor estimate, and to do this not with a Constitution with which by long experience we are familiar, but with a Federal Constitution, every part of which is new, complex, and uncertain in its working, is rather the rashness of the doctrinaire than the wisdom of the statesman. In a word, I oppose the referendum because I believe it to be inconsistent with democracy. I believe it to be destructive of the greatest safeguard the democracy has ever had—the parliamentary system, under which more than any other I have ever read or heard of, the ideal of democracy, which is the progress of all, through all, under the guidance of the best and the wisest, can be most completely realized. For these reasons, I shall give my vote against any such subversion of the representative system as is of necessity involved in any recognition in this Constitution of the doctrine of the referendum.

Mr. REID (New South Wales). -

I think that the feeling of intellectual pleasure which we must have experienced in listening to two such able addresses—the first from our friend the Attorney-General of Victoria, and the next from our friend (Mr. Wise) will extend as widely as the circle of those who have the privilege of reading the reports of those splendid addresses. Now, after that, I wish to
say I feel some regret that this most attractive subject has been discussed at a length which is scarcely in proportion with the present stage of our proceedings. We cannot forget that this subject was discussed at great length in Adelaide, and again in Sydney. It is now our duty to endeavour to add fresh light rather than to repeat admirable arguments which we have heard before. I think our learned and eloquent friend (Mr. Wise) might have abridged his speech by one-half. I do not say that it would not have been a positive loss not to have heard every word of the speech. I have no hesitation in saying it is rarely I have listened with so much

pleasure to a speech in a deliberative assembly. My word will carry greater weight when I say I am totally at variance with the conclusions expressed by my honorable friend. No greater compliment could be paid to a man than to thoroughly admire the manner in which he has put an argument to which one is opposed. Mr. Wise has had the great advantage of speaking to an audience very much predisposed to the views he has expressed. I feel that in a matter of this kind a distinct service is rendered to the whole of Australia when the argument is put so fully and clearly on both sides. I wish to point out that a very large proportion of the speech delivered by Mr. Wise was entirely wide of the present point. We are not at present engaged in deliberating as to a choice of the referendum in its various phases. We are not now called on to discuss the respective merits of parliamentary government or government by referendum. We are now addressing ourselves to a clause which provides for a case in which our glorious system of parliamentary government has broken down. We are addressing ourselves now to a case in which the two most able, illustrious, and intellectual assemblies that ever met happen to be irreconcilably at variance upon some matter of practical legislation. The position which Mr. Wise has occupied to-day would suit a much older man. There is a charm in the view that we have reached the highest summits of perfection. It is very pleasing to be assured that the system of government which we enjoy is so perfect that it is impossible of improvement. If I could believe that, I should feel that all the dreams of the patriots of the past ages had been realized, and that humanity, so far as parliamentary government is concerned, had nothing to live for—that the only duty which future ages of human beings would have before them would be to guard against the slightest infringement of this inestimably perfect form of human government. But alas, sir, history talks with no uncertain voice! History tells us that parliamentary government, even so late as to be within the recollection of men now living, was one of the most degraded systems of bribery and corruption. We are told that those who were the
representatives, so called, of the people, were placed in that position not by the voice of the people, but by the influence of corrupt and corrupting Government and great aristocratic families. We are within living recollection of a time when parliamentary government, instead of being a pure instrument of the public will, was utterly degraded. If parliamentary government so recently was in such a state, is it possible that we so soon have thought out all the problems that surround this question so thoroughly as to leave it impossible to improve parliamentary government? Mr. Wise speaks of an appeal by referendum to the people as a "confused scuffle of local agencies." I fear that language only too truly describes an appeal to the people by way of general election. One object, aimed at by those who favour the referendum as a method of referring measures to the people is that degrading local influences, and conflict of principles and prejudices, which sometimes assume the most bitter shape, should not be allowed to prevent the voice and intelligence of the people from being fully and freely exercised. To-day, sir, we have in Great Britain one of the strongest Governments Britain has ever known. How is it that that Government stands to-day in a position of such marvellous strength? We recollect that there was an appeal to the people upon the question of Home Rule. After years of ineffectual struggle by means of parliamentary machinery the question came to such a phase that it became necessary at last to appeal to the constituencies. Was the voice of the people heard on Home Rule? Was it the anti-Home Rule convictions of the present conservative party that put into the House of Commons the present enormous majority? No. It was a Union between the church and the British publican. It was "beer and the Bible" that won the great battle for the Salisbury Government. Could anything be more in the nature of things than that when a general election is brought about on any great question it is impossible under our present system to confine the issue to the settlement of that question? People assert their right to think other questions of greater importance, especially questions which involve the pecuniary interests of large classes of the community. I submit that all those eulogies of parliamentary government, and the arguments in reference to general elections, as they bear on questions actually referred to the people, are entirely wide of historic accuracy. But I say again, we have nothing to do with that on the present occasion. If the proposal of the referendum is novel, is not the proposal for the joint sitting of the two Houses novel? I think the latter is quite as novel as the referendum; in fact, it is infinitely more novel.

Mr. WALKER. -

They have it in Nor-way.
Mr. REID. -

Thank you.

Sir JOHN DOWNER. -

You are not opposing it?

Mr. REID. -

I am not going against it. I am not one who thinks you can damn a principle by calling it new. I am simply pointing out the fact that the argument against novelty is a waste of time. That is all. The fact that both these propositions are novel shows the difficulty in which we are. My honorable friend says dead-locks are the price we pay for constitutional liberty. Is there any reason why we should go on paying that price? Is there no method of enjoying constitutional liberty without throwing the parliamentary machine into dislocation? When the parliamentary machine fails to work—that is to say, when the great patriots who wield the parliamentary power have not sufficient wisdom to agree on a measure of legislation—are the people whose agents they are, whose business they fail to transact, to remain dumb and powerless? The people have a different way of looking at such things. The people say—"We sent you into these two Houses of Parliament to legislate. When we find you, instead of carrying on legislation, quarrelling and making legislation impossible, you do not command our respect at all. You are failing in your mission, and if you cannot agree after many painful struggles between yourselves, we, your principals, we who put you there to do our work, ask you to refer your difficulty to us and allow the principals to settle what the agents cannot accomplish." Beneath this argument against the referendum there is the old conservative dislike of the people's will—the conservative contrivance—

Mr. WISE. -

That is not true of me.

Mr. REID. -

I do not accuse my honorable friend at all.

The CHAIRMAN. -

The right honorable gentleman objects to interruptions, I believe.

Mr. REID. -

I object to them because I seem to rather injure the people who interrupt me, that is all. I can assure Mr. Wise that, in my mind, I have no unkind or ungenerous thought of his views on this matter. I am speaking generally, apart from any personal application.

Mr. MCMILLAN. -

Why should you not give other persons credit for the same views with regard to the people as you entertain yourself?

Mr. REID. -
I do.

Mr. MCMILLAN. -

But you do not.

Mr. REID. -

I do. I simply say there are conservatives in this world. I am not making any personal application to any gentleman who is listening to me.

Mr. MCMILLAN. -

We all recognise the sovereignty of the people, and their will.

Mr. REID. -

What I wish to say is that we cannot be blind to the fact, as men of experience, that in politics you find two large classes with opposite dispositions. That is to say, there is one large class you find always opposing change, and another large class you find advocating change. Both classes may be absolutely honest and conscientious. The conservative may be even more honest and conscientious, I will say, than some in the front rank of those who advocate change. What I wish to point out is, without any personal reference, but as dealing with large classes in the political life of all countries, that we must throw aside, that is, from my point of view, absolutely any opposition which leads us to condemn new departures, simply because they are new.

Mr. MCMILLAN. -

Hear, hear, we all agree with that.

Mr. REID. -

Well, we all do, and yet we do not. We all do in principle and desire, but we find that the strongest argument as a rule against a thing is that it is new, and the very principles which were looked upon 50 years ago as qualifying an Englishman to be sent to gaol as a seditious person are now, by the conservatives of to-day, looked upon as eminently respectable, and only because they now exist in the institutions of the country. As long as they were not in the institutions of the country they were fraught with the seeds of national disaster, but the moment they were put in the Constitution of the country, and those who opposed them found they could get into office just the same, their great objection to those principles disappeared.

Mr. ISAACS. -

Retrospective patriotism.

Mr. REID. -

There are no more generous democrats in England now than among the conservatives. We have our working men's conservative societies; and that points to this—that whatever your political changes, whatever the interests and views derived from political party may be, when you come down to
the great body of the people of a country you strike the true sound level of political activity. Talk about a confused scuffle. Was that a confused scuffle, that proceeding which led to the election of this Convention? I have been too active in many of the electoral contests in my own colony—I have seen the thousand indirect influences which have poisoned the verdict of the people upon great questions of political principle too often—not to see the vast difference which prevailed at the polling booths on the day when the issue was the election of members to this Convention. Even there, I fear, such influences intruded to some extent; but, so far as the great body of the people were concerned, all appeals to passion were thrown aside, all the struggles of self-interest were thrown aside, and you saw in the way in which the electors registered their opinions free from the obstructions and cross purposes of a general election, that if Parliament does break down, and if the matter is of sufficient importance to be so settled, you will not go far wrong in sending it for settlement to the ayes or noes of the people of the country. But we are told that that compels the people to accept things in a Bill which they do not approve of. Is there a Bill which passes any deliberative assembly in the world of which that cannot be equally said?

Mr. HOLDER.

Will it be a scuffle when there is a referendum on this Bill?

Mr. REID.

I hope not. Many of us are Members of Parliament, and we know how true it is—and no one knows it better than Mr. McMillan—that many of us vote for the third reading of a Bill who do not approve of all the propositions in it. How many of us have the strongest objection to provisions in a Bill which, nevertheless, we vote for, because the good in it outweighs the evil.

Mr. MCMILLAN.

We bow to the majority.

Mr. REID.

Exactly; and why not bow to the majority of the people, when the people's representatives cannot do their work, and leave the job hanging up? If it is a trivial matter, do not waste time over it. Do not suppose that I favour the referendum except in cases of serious emergency and dangerous conflict between the two Houses. I am not enamoured of any novelty to that extent. I only advocate the novel proposal when a difficulty is a very old one, and has remained without a cure. And this difficulty of hitting upon some form of relieving the tension which arises between two deliberative assemblies when they are in conflict is becoming more and
more felt by the peoples of the world. My honorable friend (Mr. Wise) spoke of the growth of this movement in America. Well, it is a simple fact that this movement is growing in America. Mr. Wise said that it was because of the incompetency of the American Legislature. Is not any Legislature proved to be incompetent when it cannot agree about a Bill?

Several HONORABLE MEMBERS. - No.

Mr. REID. -

Well, is not the presumption raised that, if a body which is constituted to legislate, and does not legislate owing to disputes between two independent Chambers, that is a case in which legislation at any rate is made impossible?

Mr. WISE. -

Only for a time.

Mr. REID. -

My honorable friend says only for a time, and means, perhaps, only for a hundred years; but the pressing affairs of a great nation would not wait until rival assemblies composed their differences. They are altogether too important. My honorable friend (Mr. Wise) referred to Sir Graham Berry. A more unfortunate allusion in this connexion was never made. No one knows the awful strain and suffering that was thrown upon Sir Graham Berry when he was the undisputed representative of the whole of the electors of Victoria, and certain persons in another place refused to give effect to his proposed legislation. It is very easy to pay compliments to the old veteran now when the days of his fighting are past, but many a bitter and heart-breaking episode that old veteran went through when his only crime was that he represented the convictions of the people of this great country.

Mr. GLYNN. -

And they have forgotten it.

Mr. REID. -

Forgotten it! Were you here at the time? I do not think any intelligent man who followed the events of that disastrous struggle will say that its effects are forgotten. It blighted the progress of Victoria in a manner which it is impossible now to appreciate.

Mr. HOWE. -

You would think they had forgotten it judging from the last debates of the Victorian Parliament.

Mr. REID. -

Well, I am very sorry that my honorable friend takes me down to that. I simply wish to point out that this reference to Sir Graham Berry was the most unfortunate reference in the world. If there had been a referendum in
those days Victoria would have been an infinitely better and more prosperous country to-day.

Mr. WISE. -
If they could have dissolved the Legislative Council of those days.

Mr. REID. -
I don't know about that.

Mr. HIGGINS. -
Sir Graham Berry brought in a Bill for a referendum.

Mr. REID. -
I believe my honorable and learned friend (Mr. Higgins) is perfectly right, that Sir Graham Berry, in this heart-breaking struggle, introduced a measure to settle the matters in dispute by some reference to the people. However, I will pass away from that. We are dealing now, not with the past. We are bringing into existence a new and powerful Legislature. The difficulties which exist in a nation or in a single colony, the dangers which may arise, are intensified a hundredfold by the very nature of this Constitution; because the gentlemen who sit in the Senate are there as the sentinels of state rights and state interests. Their basis of position in the Senate is that they are there to represent and safeguard the rights and interests of the states. Well, then, there is another House, and they are created to advance and safeguard the rights and interests of the people as a mass. So that the two Houses are on a different basis, and the possibilities-I hope not the probabilities-of disagreement become infinitely greater under this Constitution than the possibilities of a like kind in other countries. Now, I say that we ought to try-and I am sure we will honestly try-to put in this Constitution something which will save these two Houses of Parliament from a conflict which may give rise to the most unfederal feeling. We know that one of the greatest evils of a conflict between two Chambers is that it often engenders a feeling of dislike, a feeling of hatred, a feeling of opposition, which, perhaps, will colour the events of many following years, and, I think, we cannot do a better thing than endeavour to put some safety-valve in this machine. We may hope that that safety-valve will never be wanted. It will be a grand thing for Australia if it never is. But if difficulty and misfortune should come to this new Legislature, we should all be anxious to solve their difficulties and soften their oppositions before they deepen into permanent dislike. Well, we are doing it. This Convention has recognised the necessity for doing it. It is now only a choice between methods, after all, because the parliamentary system in Great Britain has not yet provided anything beyond the ordinary dissolution to solve these difficulties. We must not forget this, that the
structure of this clause, as adopted by the Convention, recognises the great boon of the parliamentary appeal by a general election. The clause goes on to say that our ordinary and orthodox method of endeavouring to compose parliamentary disputes is exhausted, and even after your two Houses have been re-elected by the people, you then want something novel to bring the dispute to an end. So it is no argument against the referendum, therefore, to say that it is a novel proceeding. Indeed, it is not a novel proceeding, if you closely examine it. However, that is an immaterial question. What I myself wish to do is to establish a form of referendum to finally and quickly settle any such differences, if they should arise. A dual referendum I have already spoken of in the strongest terms. I utterly repudiate it.

Mr. MCMILLAN. -
I quite agree with you.

Mr. REID. -
I also feel bound to admit that there are strong arguments against any referendum, because of the enormous size of the future Federation, because of the great expense that would attend it, and because of the difficulty that would also attend it.

Mr. MCMILLAN. -
The general conditions.

Mr. REID. -
Yes. I recognise that it is a very strong argument; and the only thing which reconciles me to a provision which would cause so much expense and inconvenience, is the belief that this expense would itself prevent most of the insoluble difficulties between the two Houses, and that it would rarely, if ever, be used, and that, if it were used, it would only be used on some very great occasion. Now, I will name one. I believe that the most critical time in the history of this Commonwealth will arise in the first two years after its institution. We are thrown suddenly together, unused to working together, unhappily accustomed too long to working on opposite lines; and we are compelled within a short time, to perform one of the most difficult tasks that any Parliament in this world could be called upon to perform, difficult in every way, but especially difficult because of the tremendous struggle which must arise from the various interests, industrial and otherwise, existing on this continent. Now there comes the strain upon your constitution. A Tariff! Nothing is more likely, in my opinion, than a dead-lock upon that Tariff. Nothing more likely! A sort of dead-lock, too, which might throw the two Houses into great confusion. Because in no case could a state interest be more vitally at stake than in

connection with matters of Tariff and trade. All the subjects in this federal
charter sink into positive insignificance compared with that first great struggle as to the structure of the Federal Tariff, which will stamp and determine the industrial destinies of this Commonwealth for years to come.

Mr. MCMILLAN. -

Do you really think that would lead to a dead-locks matter of absolute compromise?

Mr. REID. -

If it would not, we need not trouble very much about dead-locks in this Constitution at all. If I could think that a Tariff would go through without, at any rate, a serious danger of a dead-lock occurring, I should not trouble very much about most other things.

Sir EDWARD BRADDON. -

How would you construct the Tariff?

Mr. REID. -

I will tell my honorable friend. The Tariff must of course take the shape of a Bill. You can have a referendum on the Tariff Bill just as you can have a referendum on any other Bill, and the question will be put as to whether that Bill shall be agreed to or not. Although it is quite true that that would be a rough-and-ready method, and that many people would not like many items in the Bill, yet they would consider the Bill as a whole, and if they approved of it on the whole they would vote for it. But may I point out to my honorable friend that the same thing happens with regard to every Tariff Bill that is considered and agreed to in a legislative Chamber? There are in every such Bill many items that many members do not like, but a man does not vote against the Bill because he does not like those items. A referendum on a Tariff Bill may bring about the greatest benefit that Australia could possibly derive from the Federal Parliament. What has been the curse of these colonies but the incessant friction between opposing parties on the question of protection and free-trade?

Mr. WISE. -

Does the right honorable gentleman think that the two Houses would compromise if they thought there was some expedient behind to which they could appeal?

Mr. REID. -

I have found, so far as my short experience and insufficient study go, that the fact that there is some expedient behind has the effect of making both Houses more reasonable; and the fact that there is nothing behind tends, as a rule, to make quarrels more likely. A quarrel will always last longer if a policeman does not come along the street. And when the two Houses are quarrelling, all our admiration of parliamentary government, and all our conviction that it is the most perfect system that human ingenuity ever
devised for legislating receive a shock; and when the perfect legislators are engaged in fighting instead of in legislating, the fact that the people are behind them, and that the issue may have to go to the people, will often destroy cabals and intrigues, and oppositions, which would grow rife but for that inevitable ordeal. So I say that if the fiscal policy of the Commonwealth went by way of referendum to the people, you might settle the fiscal question for Australia in a manner that could not be arrived at without such a method of ascertaining the real views of the public on that measure. But we are confined within a somewhat narrow position here, and I feel that the heart is taken out of my view of the subject, inasmuch as there is a majority here against the introduction of the referendum. I feel, therefore, crippled in any sort of effort to show that it would be a procedure worthy of adoption, because I realize on this subject that when the mind of the Convention is made up, it is not right that we should go further into such questions. Therefore, I think that I really ought to draw my remark's to a close, as an encouragement to others to follow my example, and I will sum up my observations on the point in this way: I believe it would infinitely recommend this Bill if some such provision were inserted in it.

That is my first position. My second is: Since we have to do something, I believe the best thing is to trust the people who are the source of all our parliamentary institutions, and whose representatives we are. The third point is: The institution of this method of solving dead-lock difficulties would be the most effectual way of preventing their recurrence. And my fourth point is: That if the committee will not favour the referendum, then I think the next best thing is the proposal of the Bill.

Mr. HIGGINS (Victoria). -

I want to say a few words. I feel myself in the position of the French general, at Balaclava, who said "This is magnificent, but it is not war." I think honorable members will recognise that I have taken up a strong attitude upon some questions that have come before this Convention, but I have not ventured to raise those questions again when they have been voted upon, because I feel that it would be utterly hopeless at the final stage to expect honorable members to alter their votes. But if this matter goes to a division, as I apprehend it will, I intend to vote with the Attorney-General of Victoria. For my own part, I shall not think of going into details upon the question, but I am bound to say that I think that there is no expedient which modern politics has devised so excellent for allowing a clear and crisp indication of public opinion to be given upon matters of public concern as the referendum. I think, also, that there are no means so
good for the political education of the people as being able to vote upon a
definite issue. I feel, also, that the argument about taking away the
responsibility from Parliament is absurd, when you see that each measure
has to go through the stage of a long second-reading discussion, then of
consideration in committee, and then of the report stage in the House of
Representatives, after which it has to be transmitted to the Senate for
further consideration, and again has to go through the same ordeals; and at
each stage members of Parliament have to express their opinions upon it;
and then the measure has to go to the people, who will have all the benefit
of the discussion which has taken place in Parliament and in the press in
regard to it. I think it would be almost more than human if I did not allude
with some satisfaction to the change of attitude that has taken place on the
part of our Ministers upon this particular question—I mean our Victorian
Ministers. I am glad that they have been converted since the last session of
this Convention, because I find on pages 927 and 928 of the Sydney report
that our three Ministers for Victoria on that occasion voted against the
proposal for the national referendum. I find that there were ten who voted
for it; and that in Sydney Sir George Turner, Mr. Isaacs, and Mr. Peacock
all voted against their colleagues. May I use the-language which I think I
ought to use? I am very glad that our Ministers are voting with their
colleagues on this occasion, that our Ministers are determined that they
will not always divorce themselves from the liberal sentiment of the liberal
people of Victoria.
Mr. OCONNOR. -

Does the honorable member think that that has much to do with us?
Mr. HIGGINS. -

It has not much to do with the question; but I think my learned friend will
recognise that at least I am justified, when I find that in Sydney, when
there was a chance of carrying this proposal, before the double dissolution
had been agreed to, when there was a speech from Mr. Holder and a speech
from Mr. McMillan which showed that, notwithstanding an unwillingness,
and certainly a misgiving, they were willing to give a national referendum
in the final resort; but our Ministers then voted against it, and threw their
whole weight in the scale against the national referendum. The national
referendum, as now proposed, is not the national referendum which Mr.
Lyne

proposed. What Mr. Lyne proposed in Sydney was a national referendum
as an alternative to a dissolution, so that the Ministry might have both
weapons; but what is proposed now is, that after a measure has been sent
up to the Senate in two sessions, and after there has been a dissolution of
both Houses and they cannot agree, then a national referendum is to come in, a thing which will not occur once in twenty, or thirty, or perhaps fifty years.

Sir JOHN FORREST. -
Where will the states be?

Mr. HIGGINS. -
My right honorable friend knows thoroughly well that I have taken a consistent attitude throughout on that matter. The whole principle of a States House is based on a false, a shallow, and almost a fraudulent principle. I acknowledge that a national referendum is inconsistent with the idea of a States House, and it was for that reason that I voted for it honestly. The principle of a States House is a complete mistake. It is only one new device for the purpose of interfering between the will of the people and legislation.

Sir JOHN FORREST. -
You want a unified Government then?

Mr. HIGGINS. -
I shall not be led into that question. This proposal ought to have been made, and ought to have been voted upon, at a time when there was a chance of carrying it, for we all recognise that there is not the least chance of carrying it at this stage, and also that if it were carried at this stage it would simply come in after the double dissolution, when the referendum would not be used once perhaps in a century.

Mr. ISAACS (Victoria). -
I omitted, it appears, to formally move the amendment I desired to move. I beg to move-

That after the word "amendment" the following words be omitted:-"The Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives, and the members present at such joint sitting may deliberate and shall vote together upon the proposed law, and if it is affirmed by a majority of three-fifths."

I move to omit only the words of the clause down to the word "three-fifths," with a view of allowing my honorable friend (Mr. Higgins) to move the amendment standing in his name on the business paper. I cannot allow myself to resume my seat without expressing my great pleasure at the very eloquent address which my learned friend (Mr. Wise) favoured us with, in fact, I experienced a more than ordinary amount of pleasure at the vigorous and excellent way in which he presented all the possible arguments against the proposal. But I should like to say and it is only fair to that admirable speech, to point out one or two fallacies that seemed to me absolutely manifest. The first, which may, be disposed of in two or three words, is
that the great distinguishing characteristic between this country and America is that in America they favour the referendum, because of the venality of their legislators and the corruption of their Legislatures, and that, therefore, they desire to counteract these deleterious influences by means of an appeal to the people. Had he reflected for a moment on the distinction between the two positions, I am sure his logical mind would not have suffered him to use that argument. In America, they say, we have such a miserable opinion of you as legislators, that though the two Houses agree and unite in expressing your will, your determination shall not pass into law until the people ratify it. Here we ask nothing of the sort. We say we have such an opinion of the character and competence of our Legislature that if you will only agree your will shall become law; but we also say, while not detracting from your character as men or your competency as legislators, if we find that you cannot agree in the great work you have been deputed to perform, then, should that failure attain such proportions, said stand in relation to matters of such urgency, that business of importance can no longer remain stationary, we only ask that the people may be called in to say for themselves which of their two differing agents is right and which is wrong. The next fallacy, which I think is as easily disposed of as the other, is that throughout, the thread of his speech there was a ring of nearly a century ago. I could almost fancy myself reading the magnificent utterances of the pre-reform days, when it was prophesied that should we get that reform "England's greatness was at an end; we should have mob rule. Once let in the democracy, once give votes to the labourers of England, then good-bye to all the magnificent traditions, and the still more magnificent future of the empire." It reminded one very much of the elder Earl Grey, who refused to be bound by any outside expression of opinion, and of Peel, who refused to go to the constituencies on the great question of free-trade, because he said it would prejudge the determination of Parliament. The whole spirit of my honorable friend's speech was - "Never mind the people; never mind their will; preserve the great fabric of constitutional architecture without regard to the people who are to occupy the edifice, and so long as we maintain the architecture, that is the only consideration." I think we have greater things to look at than that. He says, further, that a dead-lock is the price we pay for liberty. We may paraphrase that remark into language which brings home more clearly and nearly to our minds the true effect of the observation. Put into other language, it is "Fetters are the truest mark of freedom." If that is correct, my honorable friend's argument is correct. If it is incorrect, then his speech, magnificent
as it was, falls to the ground. I believe, sir, when we carry this appeal to the constituencies the people who regard it will say to us - "We see none of the proofs of the asseverations of your trust in us; we hear from your lips protestations of fidelity in the future of the Commonwealth, and in the capacity of its people." But I fear we shall be reproached in the words of 

**The Scholar Gipsy** -

Light half-believers of our casual creeds,
Who never deeply felt, nor strongly will'd,
Whose insight never has borne fruit in deeds,
Whose vague resolves never have been fulfill'd.

Mr. OCONNOR (New South Wales). -

I indorse to the fullest extent what has been said as to the brilliancy of the speeches to which we have listened today; but I think every member of the committee will admit that not a single vote is likely to be affected by them. I do not consider, however, that the time has been wasted, because there is such a strong opinion among persons in all the colonies as to the efficacy of the remedy of the referendum that I think it was due to the importance of the question that it should receive, even at this stage of our deliberations, further discussion. But now that all has been done which could possibly be asked for in this direction, it appears to me that, in view of the length of time during which we have been sitting, and the large number of practical questions which have to be settled before we separate, it is time that we came to a division. The clause as it stands represents a compromise between many conflicting opinions. Many honorable members who have been entirely opposed to any provision being made for dead-locks have given way in deference to the strongly-expressed desires of other representatives. The result is that an attempt is made in the clause to arrive at some method of attaining finality in disputes between the two Houses. Those who thought that the mass referendum was the proper method to employ have already expressed their views, and have voted upon them. I was among those who were inclined to think that the best way of arriving at finality was to adopt the mass referendum; but I could not deny the strength of the argument that, in a Federation like this, the application of the mass referendum meant the extinction of the identity of the smaller states in regard to any question submitted to its operation. Many of us favoured the mass referendum, but strong practical considerations led us to sink our personal predilections, and we have arrived at a method by which, after every possible means of discussion and consideration have been given to a question, if it cannot be decided by the representatives sitting in their separate Houses, it may be
decided by them sitting together. Although this may be a novel procedure, it is within the process of, and in accordance with, the spirit of parliamentary government, and I hope that, as this compromise is the result of our conflicting opinions, as it is the best compromise we can get as practical men who must come to a conclusion upon the matter, we should vote for the clause as it stands.

Mr. MCMILLAN (New South Wales). -

I think that the honorable and learned member (Mr. Isaacs), in order to make the issue clear, should tell us what words he intends to substitute for the words he proposes to omit from the clause.

Mr. ISAACS (Victoria). -

I am only too willing to meet the views of honorable members in any way that will be most convenient to them. When I first spoke I expressed myself in favour of the referendum, and I explained that I was quite willing to accept the dual referendum, but that I felt that the representatives of the smaller states would not vote for it in sufficient numbers to carry it. I also stated that as there appeared to be no chance of the acceptance of the dual referendum, and as I could not go back from the position I had taken in regard to the referendum, if I had to choose between no referendum and the national referendum, I should choose the national referendum.

Sir JOHN FORREST. -

You knew that we could not agree to that.

Mr. ISAACS. -

In order to test the question whether the referendum, in some shape or form, should be substituted for the meeting of the two Houses, as provided for in the clause. I moved the striking out of certain words. I understand, however, that it is now the wish of honorable members that I should move the insertion of certain words in order to obtain a vote upon the kind of referendum which should be adopted.

Mr. HOLDER. -

No; leave it open.

Mr. ISAACS. -

I propose, therefore, after the words "and if after such dissolution the proposed law fails to pass with or without amendment," to insert the words "the proposed law shall be referred to the direct determination." The insertion of those words will enable us to determine whether the principle of the referendum shall be adopted at all, or whether the provision in the clause shall be allowed to stand. If my amendment is agreed to, we can afterwards decide as to the method of referendum to be adopted.

Mr. OCONNOR. -

Then I understand that my honorable and learned friend withdraws the
amendment striking out certain words?

Mr. ISAACS. -

Yes. I do so in deference to the wishes of honorable members, some of them my own colleagues, who think that it would be better to insert certain words.

The amendment was, by leave, withdrawn.

Mr. GLYNN (South Australia). -

Before the honorable and learned member (Mr. Isaacs) moves the amendment to which he has referred, I should like to intimate that I have an amendment to propose in an earlier part of the clause. My amendment deals with a matter which I mentioned to the committee yesterday. Unless the words "or a dissolution of the Senate," which occur in the first paragraph, are inserted after the word "dissolution" in the first line of the last sentence of the clause, we shall be in this position: We might have a successive dissolution of the two Houses, and the dead-lock might still continue, because there could not be a meeting of the two Houses. The Ministry of the day, in deciding between a dissolution (if the House of Representatives followed by a dissolution of the Senate, and the simultaneous dissolution of both Houses, would have to adopt what would be the most efficacious way of getting rid of the deadlock, and would, therefore, be forced to provide for a simultaneous dissolution. Honorable members who are desirous that the double dissolution may be exercised as an alternative to the simultaneous dissolution will see the necessity of inserting the words I have read. The method of settling dead-locks by a joint meeting of the two Houses cannot be adopted after the successive dissolution of the two Houses, but only after a simultaneous dissolution. That is the effect of the clause as it is drafted. Whether honorable members desire that or not is another matter. I am not going to deal with the question of the referendum; but I want to reply to a statement made by Mr. Isaacs as to the unfairness of allowing the matter to be settled by a three-fifths vote of the two Houses. The honorable member pointed out that the result would be to deprive the larger colonies of any influence in the settlement of the question. Now, what would be the proportion of votes, taking the six colonies, because the probability is that Queensland will come in? There will then be 112 members at the joint meeting of the two Houses, and a three-fifths majority would be 67. Victoria and New South Wales would have a total of 62 votes, or 50 in the House of Representatives, and 12 in the Senate. To get an absolute majority on a state issue, they would simply have to obtain an additional five votes.
Mr. TRENWITH. - 
You are assuming that they would be all unanimous.

Mr. GLYNN. -
I am forced to that assumption by the predication of Mr. Isaacs, because he says that the reference would be one in which state prejudices would be dominant. I fail to see that there would be any danger to the larger states. In fact, the three-fifths, majority is an enormous concession to the prejudice or the timidity of the larger states. I do not myself think that the questions referred will be questions as between the larger and the smaller states at all. This principle was in force under the French Constitution of 1875, and in two divisions, in 1876 and 1884, the vote instead of being federal was a consolidated vote. The figures on the one occasion, on a matter in which state issues were involved, because it was a question of the right of the Senate to amend. Money Bills, were 526 against 249. In the other case, the question was that of the removal of the capital from Versailles to Paris, and the figures were 505 to 272.

The CHAIRMAN. -
It would be well to deal with one subject at a time, and we had better now settle the question of whether we are to have a referendum or a joint meeting of the two Houses.

Mr. GLYNN. -
I was simply replying to an argument used by Mr. Isaacs.

The CHAIRMAN. -
Does the honorable member intend to move an amendment?

Mr. GLYNN. -
No, I will not move an amendment, because I am not as much interested in the question as other honorable members are.

Mr. ISAACS (Victoria). -
Then I beg formally to move:-
That, after the word "amendment" in paragraph (2), the following words be inserted:-The proposed law shall be referred to the direct determination."

Sir EDWARD BRADDON (Tasmania). -
I rise to explain the vote I shall give on the motion, and I only do so by reason of an interjection to the effect that every honorable member who is in favour of the referendum would have to vote for this amendment. I am in favour of the referendum in its proper place. I believe that for many purposes of domestic legislation the referendum is a very happy instrument. The decision of such questions as those of female suffrage and payment of members might be referred by the
provincial Parliaments to the people with very great advantage, but I cannot possibly see how this instrument is to be used with effect in the case of any matter in dispute between the House of Representatives and the Senate, and particularly upon such a matter as a Customs Tariff. Such a question would be so involved and complicated that it would be impossible to make an appeal to the people in such a form that they could give an intelligent decision with regard to it.

Mr. DOBSON. -
There would he 300 issues instead of one.

Sir EDWARD BRADDON. -
Yes, and for that reason I shall record my vote against the amendment in favour of the referendum.

Mr. TRENWITH (Victoria). -
The question before us has been so exhaustively discussed, and we have reached so late a stage in the sittings of the Convention, that it would be altogether inexcusable for me to deal with it as fully as I should have liked, and as its merits under ordinary circumstances would deserve. There are one or two points that have been urged against the referendum that are such obvious fallacies that I may be allowed to refer to them. The first is that put by Sir Edward Braddon that the referendum is an excellent thing in its place, but that this is not its place, as it would involve the possibility of submitting to the people a measure containing a number of items.

Sir EDWARD BRADDON. -
Any complicated measure.

Mr. TRENWITH. -
Yes. I would respectfully submit to the right honorable member that almost every measure passed by Parliament has some objectionable features in it. Our process of arriving at legislation is such that those who introduce a measure and are responsible for it being carried are very often hampered in the construction of the measure in the first instance not by considerations of what is in the ultimate the wisest, but of what is likely to get through the House. People who introduce a measure are not at any time completely satisfied with it. Then when a measure is introduced on the floor of the House, our system of perfect freedom to each member in the House to amend invariably leads, in connexion with important measures, to such amendments as to dissatisfy in some measure almost every member in the House. After a Bill has gone through its second reading, and through its committee stage, it is fair to say that every member, or nearly every member, in the perfectly informed Parliament, is in the position of having to decide whether he will reject a Bill of which he in the main approves, or whether he will accept the clause or clauses of which he disapproves. Is
there any great hardship in submitting to the people a whole measure, generally containing some principle that is clear and perfectly defined, but surrounded, as it must necessarily be, by machinery, the incidents of which many persons must disapprove, although they approve of the principle? Assume the highly complicated case which the honorable member (Sir Edward Braddon) had in his mind, namely, a Tariff Bill. There would be exactly the same principle involved as in submitting to the people at a general election the question of whether there should be free-trade or protection. No person ever dreams on the hustings of arguing whether there shall be 25 per cent. on woollens, 15 per cent. on cutlery, or 27 per cent. on woodware. What is submitted is a principle that the electors can clearly grasp; and the details of which they can leave to be worked out by the competent men whom they elect to give effect to the principle. When a dispute arises between the two Houses upon so complicated a question as the Tariff, the dispute will not be over the 300 and odd items in that Tariff. The dispute will be over the principle of the Bill, which will either propose to introduce a protective system of taxation, or a Customs Bill for revenue purposes only. That will be

the principle submitted to the people, even if there are three thousand items embodied. Surely, then, there would be no more difficulty in deciding on this question by means of the referendum, unclouded by a thousand and one other considerations. If the question be difficult or impossible of intelligent submission to the people, there can be no stronger condemnation of our parliamentary system of government. At every general election there is submitted, not one complicated issue with 300 items in it, but possibly 100 complicated issues, each of them different from the other, and many of them containing complications within themselves as great as that to which the honorable member (Sir Edward Braddon) has referred. If the electors cannot decide intelligently on one issue with some complication surrounding it—an issue that has been thrashed out in both Houses of Parliament, in the press, on the platform, and in personal conversation with friends—how can they be qualified to give an answer at a general election, where there are not only a number of complicated issues, but, in addition, the personal element is introduced? The electors have, first of all, to discriminate with regard to the calibre of the candidate, and decide whether A. or B. is the more intelligent, and the more likely to give effect to their wishes. Unfortunately, in our system of parliamentary canvass, there is often dragged in much that is nearest to the souls and minds of the people. Religious difficulties are often drawn in, and the question is put—"Will you vote for an Orangeman or a Catholic?" Then, in addition, there is the
further question of personal character. There are all these issues, plus a complicate issue such as that to which Sir Edward Braddon has referred, and yet it has been declared, and truthfully and wisely declared, and the declaration is warranted by the history of parliamentary government that the general election is a splendid instrument. It is one of which we have every reason to be proud. But it is only an instrument, and an instrument in process of perfection. It is an instrument that is not by any means perfect yet, and one which in the not far distant past, instead of being an object of pride and veneration, was an object of condemnation and of shame. If we have been able to so improve it, is it not possible to improve it still further? My honorable friend (Mr. Wise), in his admirable speech—one that I listened to with probably more pleasure than any speech I have ever heard; a speech that was a marvel of graceful diction and research and erudition—pointed out that the introduction of the referendum was the introduction of a subtle poison that would undermine the representative system. I feel that the honorable member fell into the error of mistaking the means for the end. Parliamentary government is not an end. The crystallization in legislation of the people's will is the end, and Parliament is only a machine and means to that end. If it should happen, as I certainly do not think it will, in the evolution of economic science, that a very much better instrument than parliamentary government is discovered, I see no evil at all in parliamentary government being wiped out of existence.

Sir EDWARD BRADDON. -
Invent something better.

Mr. TRENWITH. -
That is it; and all I say is that up to the present nothing better has been invented. But up to the present parliamentary government has not completely fulfilled its object.

Mr. MCMILLAN. -
Has any human institution?

Mr. TRENWITH. -
No-

Mr. OCONNOR. -
This Constitution is not the place for trying experiments.

Mr. TRENWITH. -
But every other human institution has, in connexion with it, efforts to improve it. As in economic science, so in physical science.

Mr. FRASER. -
Very often they go back.
Mr. TRENWITH. -

True. Development after development and improvement on improvement take place, chiefly based on experiments that are often failures. Physical science does not stand still because experiments fail. It goes on until it succeeds, with the result that in physical science we have attained the power to stretch out our hand and seize the hurricane, and turn it into a steed to take us across the trackless ocean. We have been able to bottle up electricity, and make it take messages from pole to pole with the rapidity of lightning. All this has been achieved by experiment. The progress that we have obtained in economic science has also been achieved by experiment. When the franchise was extended in England it was an experiment. When the rotten boroughs were wiped out it was an experiment. When it was proposed to make the latter experiment, there was then said exactly what is to-day said of the experiment now proposed, namely, that it is subversive of wise government, because it lets into the functions of government the ignorant and ill-informed. That was exactly the argument urged against the Reform Bill in 1832, and, indeed, that was the only argument urged against that Bill. There were interests, there was bribery, there were personal considerations, but the only argument against the Reform Bill of 1832 was that the people were not fit to govern themselves, and that to let into the functions of government the masses of the people would be opening the halls of government to the uninformed and ignorant; and that it would lead to legislation by panic and popular delusion. But what is the fact? England never progressed in any portion of her history as she has since 1832. Although the franchise was extended then, it has been subsequently extended, and each extension of the franchise, each breaking-in of the ignorant uninformed people, so called, into the functions of government, has increased the stability, fixed and crystallized into the British Constitution and methods of government a certainty of peace, and an absence of violent revolutions, that other nations have no knowledge of.

Mr. MCMILLAN. -

That was under the present system of parliamentary government.

Mr. TRENWITH. -

Yes. When so much improvement has accrued from the experiments attempted on exactly the same grounds as these, and when it is admitted that, good as parliamentary government is, up to the present it is not perfect, surely that is an argument for trying an experiment which has recommended itself to our reason.

Sir JOHN FORREST. -

What do you recommend?

Mr. TRENWITH. -
The proposal of the Attorney-General of Victoria.

**Sir EDWARD BRADDON.** -
That has not commended itself to our reason.

**Mr. TRENWITH.** -
It has commended itself to our reason in one respect, because we have agreed that parliamentary government shall only be one factor in the change proposed to be made. And when parliamentary government has exercised all its ingenuity on a proposed alteration of the Constitution, then the masses of the people-the ill-informed ignorant people-are to be asked to say if they will agree to the proposal under our present system of parliamentary government. Therefore the honorable member (Sir Edward Braddon) is not right in saying that this does not commend itself to our reason. The only question is how far this method, which is admitted to be wise, shall be extended.

**Mr. MCMILLAN.** -
It is only a question of practical utility.

**Mr. TRENWITH.** -
I am endeavouring to deal with it on the ground of practical utility. I am showing that it has been decided by all the Parliaments represented here that when we have done our best by means of the stores of knowledge in this Convention—and they are great and when we have done our best and presented a Constitution which is the result of our combined wisdom and careful thought, the referendum shall be applied to it, and it shall not be made law even though we have agreed unanimously to it. There is no question of disagreement here. Even if we have agreed, and said unanimously, that it is the best Constitution the world ever saw, still it is not to be law until the people say aye or no.

**Mr. MCMILLAN.** -
Surely the honorable member can draw a distinction between the Constitution and ordinary legislation?

**Mr. TRENWITH.** -
Yes, there is a very great distinction. But if there is any argument at all in that remark, if the people are not competent to deal with it, the argument is that if a Bill such as we are preparing—which requires for its proper compilation immense research and knowledge of the history of all time, immense constitutional knowledge—may be referred to the people, how much more may be the comparatively trivial matters of ordinary legislation? There is just one other point in Mr. Wise's speech that I wish to refer to, which I think is worthy of consideration. I think it war, a rhetorical flight rather than a serious expression of his opinion when he spoke of the
vague and immaterial mass known as the people. Vague and immaterial! Why are there Parliaments at all? We do not want Parliaments for areas, we do not want Parliaments for unpopulated country; we want Parliaments for people. And how much driven into a corner must so capable a man be, when he felt it necessary to depreciate the people, and describe them as vague and immaterial? I respectfully submit to honorable members that no person desires to interfere with parliamentary government; least of all, myself. I have a profound veneration for parliamentary government; and when I see it flipantly said sometimes in the press, and hear it flipantly said sometimes on the platform, that parliamentary government is on its trial, I cannot help saying that if it is upon its trial it is bound to come out triumphant. Not necessarily that it is bound to triumph ultimately in its present form. Probably we shall graft many improvements upon it, but still retain it as parliamentary government. I say this proposed referendum is no subversion of parliamentary government, but that it is really an accession to its power and importance. It will be rather a means of relieving it in the few instances when it does fail to accomplish the end that it was designed for. As Mr. Reid put it, Parliament is a machine to do work. If a carpenter has a bandsaw which will not saw, he either sends it to somebody to improve it, or he sharpens it himself. If any workman has an instrument which will not do the work it is specially designed for, he will cast it aside and he will get some other tool which will accomplish the end be has in view. The end of Parliament is to achieve legislation. If it works smoothly, if it does its work, every one looks upon it with admiration and approval. We have decided, in the interests of the people, that there shall be two branches in our Parliament which we are about to create, and which in the main will work for the common good; but judging by past experience it will, perhaps very infrequently, and perhaps not once in a century, but unmistakably it will, some time come into conflict. Then these two portions of the legislative machine will fail to work. What is their work? It is to give expression in legislative form to the people's will. When they fail to do that they are standing still, and the people's desire is not accomplished. Can anything be more reasonable in such a contingency, and under such circumstances, than that the agents who have failed to agree should be called upon by their principals to stand aside and refer that matter to the principals themselves? There will be no derogation from the dignity of Parliament in that any more than there would be any derogation from the dignity of two agents of a commercial house who went out to do business for that house, but who failed to agree as to the terms of a contract to be entered into.
Would it be any derogation from their dignity to come back and say—"We disagree as to what is best in the interests of the firm in connexion with this contract. We shall be glad if you, sir, as the head of the firm, will instruct us"? That would be a rational common-sense business-like course to adopt in politics, which is the, business of the people. The Parliament is the executive committee of the people, not its master. It is not an institution to be reverenced and held up simply because of itself; it can only be reverenced and trusted by the people while it performs the work which the people designed it for. And that is the mistake my honorable friend (Mr. Wise) fell into when he confounded the end with the means. The end is the will of the people, and the means at present are parliamentary government, of which we are all proud. But I say it is better that the present means should go rather than that the end should be frustrated. I will not detain the committee longer. I urge on honorable members that this is an experiment that is not new, and one that will not work any injury, because it is only proposed here, not as in Switzerland, or as in America, as a continually acting part of the Constitution, but, to use the language of the honorable member (Mr. Wise), simply as a medicine when the Constitution has become sick, or rather when not the Constitution but the machine that works under the Constitution has become laid up, has become incapable of performing the functions for which it was designed. One expression Mr. Wise used seemed to me to cut entirely the other way. He spoke of the Republic of Switzerland; of its limited area; its diverse population; and the natural difficulties which it has to endure; the mountainous broken character of the country; the difficulty of getting from point to point; the three languages that the people have to speak; and yet with all those natural difficulties-difficulties that would throw any but a well governed country into the greatest confusion, Switzerland is one of the most prosperous countries of which we know one of the best-governed countries. Surely if there is no difficulty in submitting matters to the mass referendum of a diverse population, divided into three sections by language, having the greatest difficulty in understanding each other's views-surely, if in such a country as that, the referendum in its application to the forms of government can work such results as it does in Switzerland, clearly there is no danger of its working evil here, where we all speak one language, where, in the main, we have sprung from one stock, and where, generally, our aspirations and desires are very much akin. We should surely understand the measures submitted to us very much better than the people of Switzerland understand the measures submitted to them, and, if the referendum has done no harm there, I think we have a right to assume that here it will work good. Moreover, in Switzerland, the referendum has
proved not a revolutionary, but a conservative instrument. It has rather had the effect of delaying legislative changes than of contributing to too rapid legislative changes. Under these circumstances, I hope that all who wish for the referendum in any form, will vote for Mr. Isaacs' amendment, as I believe it will conduce to public confidence in this Bill, and if it is adopted in the Constitution I am certain that it will lead to the smooth, amicable, and pleasant working of the two Houses of Parliament.

Sir JOHN FORREST (Western Australia.) -

I should be very sorry to prolong this debate. I think that those honorable members who have addressed the Convention to-day have had what we may call a field day. Two or three honorable members have had the whole day to themselves, and I cannot think that the speeches which they have delivered, at any rate at such great length, were necessary at all. In fact, I have come to the conclusion some time ago that this Convention is being discredited by the length of time we devote to the consideration of particular questions. The people in all these colonies are getting tired of us, and I am sure that, speaking for my own colony, the chances of federation are not being improved by the length of time we are taking over the business.

Mr. MCMILLAN. -

Then let us get to a division.

Sir JOHN FORREST. -

Now, I would like to ask if those honorable members who have spoken to-day-especially I would like to ask my honorable friend (Mr. Isaacs), if he thinks for a moment, or ever had it in his mind, that he was going to influence any one to his way of thinking at this stage of the proceedings? I have an idea that he never thought for a moment that the lengthy, and, I have no doubt, able speech he delivered would change a single vote of any person here. If that is the case, is it business to speak at any great length?

Sir EDWARD BRADDON. -

Then let us get to the vote.

Sir JOHN FORREST. -

My objection to the proposed referendum, especially to a mass referendum, is very simple. I say that the referendum would annihilate altogether the influence of the states. How can any small state agree to the mass referendum when it would have no control in any dispute between the two Houses, seeing that its small population would be overwhelmed by the population of the larger states? I do not think that, in this Convention, we are expected to explore all our imaginations, or even to explore all the Constitutions of every part of the world in order to try experiments in the
way of altering the system of responsible government under which we are working, and under which we hope to continue to live. It seems to me that that should not be our object; rather, surely, we should desire to go along the well-beaten road of which we have knowledge and experience, and which has certainly worked well in the past, and, as Mr. Reid said in Adelaide, has raised our country to the highest pinnacle of greatness. It seems to me that those who desire that there should be this referendum, and especially this mass referendum, must be in favour of one House of Parliament only. I feel certain that they are, because it means only one House of Parliament. It is no use having two Houses of Parliament if one is to be subordinated to the other, and it means amalgamation or unification. Well, we are not prepared for unification or amalgamation, and therefore if this mass referendum is to find a place in this Constitution, and the difficulties between the two Houses of Parliament are to be settled by a reference to the whole of the people of the Commonwealth, it is impossible for me to advocate its acceptance in the colony I represent.

Mr. KINGSTON (South Australia). -

I simply rise for the purpose of defining the position I intend to take up with regard to this question. I shall vote for the amendment, which simply seeks to establish the principle that under some circumstances the people shall be consulted with reference to federal legislation.

Sir JOHN FORREST. -

Whenever there is a difference between the two Houses.

Mr. KINGSTON. -

Certainly not whenever there is a difference, but the honorable member will see that, as the amendment is proposed, a great deal of time has necessarily to elapse. Consultation will take place, and the two Houses will have to be sent to a dissolution; and I think it is highly improbable that the necessity will ever arise for the referendum being resorted to.

Sir JOHN FORREST. -

Do not put it in the Bill, then.

Mr. KINGSTON. -

But I say at the same time that it is an important provision that the will of the people shall prevail in national questions, and therefore I think that this provision should be in. I would remind honorable members that under the circumstances under which we are met here they should pay particular respect to the principle of the referendum. To suggest that the people are unable to express their views on this or any other question seems to me to imply a forgetfulness of the fact that not one line or letter of this
Constitution can become law until it has been referred to a referendum of the people of Australia, in which they will be called upon to express their opinion upon the whole of this Bill. I wish it to be perfectly understood that, whilst I, conceive that in national questions the people generally should be consulted by a mass referendum, I am not prepared to vote for a mass referendum in all cases, particularly in those cases where state interests are involved, and where there are conflicting interests in the different colonies. As has been put by Sir Edward Braddon, a question like adult suffrage would undoubtedly be a national question, in which the interests of the states are identical, and might well be determined by a national referendum. But, on the other hand, as regards a question which is one of the most important which it is proposed to leave to the decision of the Federal Parliament-as to the conditions under which the surplus is to be distributed amongst the different colonies, a matter involving £4,000,000 or £5,000,000 a year-I contend that it is essentially a state question, in which the interests of the states must, in the natural order of things, be absolutely conflicting; and to permit it to be decided on the basis of population, without taking into account the position of the different states, would be to place in the hands of the larger colonies an instrument of possible oppression which I, for one, would not be prepared to give to them.

Sir JOHN FORREST. - How could the two cases be divided?

Mr. KINGSTON. - I took some trouble in Sydney to introduce to the Convention a scheme for the division of cases for submission to the people. In the great majority of instances, when there is a necessity for a referendum, the national referendum should prevail, but when there is even a minority in the House of Representatives who desire, and, in the way I suggested, express their wish, for a referendum, not only to the people of Australia generally, but to the people of the states as well, let the dual referendum be resorted to. Under those circumstances, sir, and while I shall vote for the proposal, I could not vote for its general application in all cases. If it is subsequently desired that the dual referendum shall be resorted to in all cases I see no objection to that. It will seldom be resorted to; but it will aid in fully determining the question as to whether the action of the two Houses is consistent with the wishes of the people of the states. But to permit the mass referendum in all cases I could not agree to. I thought it was fair to make these few remarks to prevent any misunderstanding as to any subsequent action I might take.

Question-That the words "The proposed law shall be referred to the
direct determination" proposed to be inserted be so inserted-put.

The committee divided-
Ayes ... ... ... ... 15
Noes ... ... ... ... 30
Majority against Mr. Isaacs amendment. ... ... ... ... 15

AYES.
Berry, Sir G. Kingston, C.C.
Brunker, J.N. Peacock, A.J.
Carruthers, J.H. Quick, Dr. J.
Cockburn, Dr. J.A. Reid, G.H.
Deakin, A. Trenwith, W.A.
Gordon, J.H. Turner, Sir G
Higgins, H.B. Teller.
Holder, F.W. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Howe, J.H.
Braddon, Sir E.N.C. Leake, G.
Briggs, H. Lee Steere, Sir J.G.
Brown, N.J. Lewis, N.E.
Clarke, M.J. McMillan, W.
Dobson, H. Moore, W.
Douglas, A. O'Connor, R.E.
Downer, Sir J.W. Solomon, V.L.
Forrest, Sir J. Symon, J.H.
Fraser, S. Venn, H.W.
Fysh, Sir P.O. Walker, J.T.
Glynn, P.M.
Grant, C.H. Zeal, Sir W.A.
Hackett, J.W.
Hassell, A.Y. Teller.
Henning, A. H. Barton, E.
Question so resolved in the negative.

The CHAIRMAN. -
The question now is that the paragraph stand part of the clause.

Mr. HIGGINS (Victoria). -
I have given notice of a motion to strike out the words "of three-fifths" in this paragraph, as to the voting together. The position at present is, that after there has been a double dissolution, and the Houses cannot agree, there shall be a joint sitting, and then if it is affirmed by, a majority of
three-fifths of the members present and voting thereat.

Mr. REID (New South Wales). -

I wish to draw attention to some words before the words "three-fifths" in this paragraph, so that there shall be no misunderstanding on the very important subject of procedure when the two Houses have assembled. Although several honorable members disagree from me and say that it is not so, I gather from these words that after the dissolution on the Bill the only question for that joint sitting will be the question that the Bill do now pass.

Mr. BARTON. -

Or be now affirmed.

Mr. REID. -

Or that it be now affirmed. If that is understood I have nothing further to say. I only feel that the words are slightly open to ultimate disagreement perhaps, and it would be a great calamity if, when the two Houses did assemble, there was any quibble over procedure. If my honorable friends are perfectly satisfied that these words will allow of no other construction-

Mr. KINGSTON. -

Won't they permit or amendment?

Mr. REID. -

That is the point. If these words are such that they will not allow of any amendment or of going into details I am perfectly satisfied; but I am afraid that they are too open and vague; and after the turmoil of a general election over the Bill as it stood, and the disagreement as it stood, it would be a thousand pities if any difference arose in the joint sitting on such questions, because it would nullify the whole Constitution, and there would be no guide. One honorable member in the heat of a political conflict, aiming perhaps at, securing one point he had been identified with, might assert his right, when the Houses met to deliberate on the Bill and vote on the Bill, to test the joint sitting on a particular point, and what authority would determine the question whether he could or could not? I think it would be the general wish—certainly I feel rather anxious about it, because, if such points arise, there would be no authority to determine them, so far as I can see—that the Drafting Committee should take the matter into their consideration, and see that it is put, if necessary, beyond any doubt.

Mr. BARTON (New South Wales). -

I shall have great pleasure in seeing that this matter is thoroughly considered. At present the position of it seems to me to be tolerably clear. The Bill provides that if, after the dissolution, the proposed law again fails to pass, the Governor may convene this joint sitting, which is the subject of the last part of the clause, and that then the members present at the joint
sitting may deliberate and shall vote together. The words "may deliberate" mean that they can debate the subject, and the words "shall vote" mean that when they vote under this clause they shall vote as one body; they have to vote together on the proposed law. So far it is clear. Then if it is affirmed by a majority of three-fifths of the members present and voting thereon, it shall be deemed to have been duly passed. It is either affirmed or not affirmed. If it is affirmed—that is to say, if a motion that the proposed law be now affirmed is carried, it is taken to have been duly passed. I take it that if there is any possibility of making an amendment, which I doubt very much, that would not be an affirmation of the law; but if there is a majority of three-fifths, they will take care that there is no amendment.

Sir GEORGE TURNER. -

Can they not vote separately on each question in dispute?

Mr. BARTON. -

I do not think so. My belief, and it is a strong belief, of this as it stands is that if the law is affirmed, which seems to be the only question, it is taken to have been duly passed. The proposed law is only spoken of as a whole. The vote, it seems to me, must clearly be taken on the Bill. I will take care that the matter is reconsidered, and if after reconsideration any doubt remains we will clear up the doubt.

Mr. SOLOMON (South Australia). -

There appears to me to be another part of this paragraph which may possibly be liable to misconstruction. I fail to see that there is any necessity to put the word "a majority of" in the clause. These words may give rise to a difficulty in the future. Why should we not say "three-fifths"? If the clause is affirmed by three-fifths of the members present there can be no mistake about it. The word "three-fifths" is plain English and is simple, but if you retain the words "a majority of three-fifths," what does it mean?

Mr. HOWE. -

Move to omit the words.

Mr. SOLOMON. -

I beg to move-

That the words "a majority of" be omitted.

Will the leader of the Convention, as representing the Drafting Committee, tell me what the words "a majority of three-fifths" may be construed to mean?

Mr. BARTON. -

It seems to me that to be affirmed by a majority of three-fifths means the same thing as if it was stated that the law is affirmed by three-fifths.
Mr. SOLOMON. -
I would ask honorable members to omit the words "a majority of," because they are utterly unnecessary, and may lead to some difficulty.

Mr. KINGSTON. -
It would make it clearer.

Mr. BARTON. -
We may as well leave it to the Drafting Committee.

Mr. HIGGINS (Victoria). -
If the words "a majority of" are struck out, it will prevent me from moving an effective alteration of the word "three-fifths." If I had known that this suggestion was seriously entertained, I should certainly have spoken on it.

The CHAIRMAN. -
Perhaps the honorable member had better speak now to the two questions—one is a drafting question, and the other is a question of substance. The division on the former may be taken as a test vote on the latter.

Mr. HIGGINS. -
I am absolutely in your hands, sir. I have a very short speech to make with regard to the word "three-fifths." I wish to omit this word, so that the phrase will read that if the proposed law is affirmed by a majority of the members present and voting thereon it shall be taken to have passed.

Mr. HOWE. -
Oh, this was a compromise made in Sydney.

Mr. HIGGINS. -
May I correct the honorable member, for whose opinion I have the utmost respect? I, certainly, for one—merely one of 50—disclaim anything of a compromise an this clause.

Mr. ISAACS. -
There was no compromise.

Mr. HIGGINS. -
I hope it will be understood, as distinctly as anything can be understood, that I made no compromise on the clause. I want to omit the word "three-fifths."

The CHAIRMAN. -
I understand that the honorable member is willing to take the division on the amendment to omit the words "a majority of" as a test division on his own proposal to omit the word "three-fifths." It will come to the same thing.

Mr. HIGGINS. -
Yes; I understand that if Mr. Solomon's amendment be carried it will be a defeat of my amendment. What I want to do is to retain the words "a majority of " and to omit the word "three-fifths." My idea is to secure finality. After all this tremendous machinery has been brought into play we want at least to have some finality, in order that the business of the Queen in Australia may proceed. I appeal to practical politicians here who have had far more experience in practical politics than ever I have, if there is not, after all, one fundamental thing to be attained, that is, to get the business carried on somehow? Let the Queen's Government be carried on is the essential first condition to be achieved. Suppose you have an Appropriation Bill carried in two sessions, and rejected by the Senate.

Mr. DOBSON. -

Is that possible?

Mr. KINGSTON. -

You will have to wait for a double dissolution to get your Appropriation Bill.

Mr. HIGGINS. -

Keep an Appropriation Bill in your mind, because I am putting the most awkward case which can arise, and it is quite possible that it may arise. The Senate has full power to reject an ordinary Appropriation Bill if its suggestions are not accepted. Suppose that after an Appropriation Bill has been passed in two sessions the Senate persists in saying-"We will not have it," the next step is to be a double dissolution, an appeal to the people, and an appeal to the states. If after the elections the two Houses are still irreconcilable, they are to meet together as one body and to decide the matter in dispute by a majority of three-fifths. There might be 90 members in the joint body, 60 of them being members of the House of Representatives, and 30 members of the Senate, and, under this provision, unless 54 members voted for the Appropriation Bill it could not be passed. I as honorable members-I do not care whether they are liberals or conservatives, whigs or tories, members of the labour party or socialists-is this a state of things which, as practical men, we should allow to exist? If 53 members voted for the Appropriation Bill and 27 members voted against it, are we to allow the Bill to be thrown out and the whole of the civil service to be disorganized? All I want is that, to attain some kind of finality, we should let the majority rule.

Mr. SYMON. -

Suppose, when the two Houses met together, you could not get a majority for the Appropriation Bill, what then?

Mr. HIGGINS. -

Then the Bill would be thrown out, and a new Bill could be brought in.
Mr. SYMON. -

The same thing could take place under the clause as it stands.

Mr. HIGGINS. -

Yes, but it must be remembered that behind the 53 members who voted for the Appropriation Bill you would have disappointed, baffled, and angry constituents, and the result of the arrangement would be that the minority, or rather a fraction of the minority, would rule. Although mistakes are often made under majority rule, I have no hesitation in saying that things are much better under majority rule than they would be under minority rule. I would much rather give effect to the wishes of the people represented by the 53 members than to the wishes of those represented by the 37 members. The result of the provision in the clause would be to put a tremendous strain upon the Constitution. After all is said and done, the principle of majority rule is not a fetish, it is not a theory; it is merely the most practical of common sense. It means that, instead of people fighting and putting a strain upon their physical powers they shall meet together and count heads. The provision in the Bill would prevent that section of the people whose opinions were represented by the 53 members from having their wishes carried out, while a fraction of the people who were represented by the 37 members would have their wishes carried into effect. This question has nothing to do with the question of representation of the large and small states. It will be found that in both the Senate and the House of Representatives you will have very much the same proportion upon the one side as you have upon the other, and it will hardly ever happen that the question of dividing the small and the large states will arise. The question we have to consider now is whether the majority or the minority should rule? My experience is that among minorities you find as great divergencies of opinion as exist between the majority and the minority. All the malcontents flock to join those who say no, but the reasons actuating those who vote in the negative will be very different and very conflicting. The result of this provision is that the affairs of the country will be governed by a mere fraction of a minority, helped by the remaining members of the minority. In the wisdom of the Convention the instincts of right government possessed by the great bulk of the population have been trampled upon.

Mr. SYMON. -

That is not a very proper remark to make.

Mr. HIGGINS. -

I shall repeat it, because I feel that it is an absolutely proper remark. Rightly or wrongly, we have trampled upon these instincts in the respect
that we are going against the principle of the rule of the majority. I need not refer to the recent debates in which the question has been mooted; but I say if you want the Constitution carried you must give way to what certain honorable members will call a shibboleth—a fad—and you must allow the majority to rule in the final result. I appeal to honorable members to reject the amendment of the honorable member (Mr. Solomon). If the honorable member's amendment is negatived, I shall move to strike out the words "of three-fifths."

Mr. SOLOMON (South Australia). -
Perhaps it would save the time of the Convention if, temporarily at any rate, I withdrew the amendment I have proposed, to enable the honorable and learned member (Mr. Higgins) to move his amendment. My amendment really relates to what is merely a question of drafting.

The amendment was, by leave, withdrawn.

Mr. HIGGINS (Victoria). -
I beg to move—
That the words "of three-fifths" be struck out.

Mr. WALKER (New South Wales). -
The honorable and learned member (Mr. Higgins) seems to have forgotten that the joint meeting provided for in the clause is to be a meeting of the two Houses—the Senate and the House of Representatives—and that if a bare majority were allowed to carry the vote, the Senate would be out-voted every time.

Mr. HIGGINS. -
You assume that the members of the Senate will vote together.

Mr. WALKER. -
We have, I think, in the provision in the clause, very happily hit upon the correct proportion. The honorable member (Mr. Isaacs) gave us in Sydney a very interesting description of the Constitution of the Storthing of Norway, which, he told us, was elected upon a common basis. Twenty-five per cent. of the members of that body are elected from amongst the whole House to form the Lagthing, while the remaining members constitute the Odelstthing. If these two bodies do not agree, the combined House deliberates, and the measure before it must be passed by a two-thirds majority. Here we provide that there must be a majority of three-fifths, which is, I think, a fraction equivalent to the two-thirds majority required in Norway. I will use percentages to explain exactly what I mean. In the Storthing, one-fourth of course means 25 per cent.

Mr. ISAACS. -
One-fourth generally means 25 per cent. anywhere.

Mr. WALKER. -
It is provided in the Norwegian Constitution that a measure cannot be passed by the Storthing without a majority of two-thirds voting in its favour. A majority of two-thirds is equivalent to 67 per cent. of the members of the joint Houses. In our own case, the Upper House or Senate will be half as numerous as the Lower House, and the three-fifths majority will be equivalent to 60.

Mr. HIGGINS. -

Three-fifths equivalent to 60?

Mr. WALKER. -

Yes, out of 100. The 67 per cent. in the case of the Norwegian House only represents 89\frac{1}{3} per cent. of the Lower House. In our own case the 60 per cent. of the joint meeting represents 89.55 per cent. of the Lower House. If the Odelsting vote unanimously and the House of Representatives vote unanimously, they can practically have their own way, and this is, therefore, a very democratic proposal, and I trust that it will be carried.

[The Chairman left the chair at two minutes past five o'clock p.m. The committee resumed at thirty-five minutes past seven o'clock p.m.]

Question-That the words "of three-fifths" proposed to be struck out stand part of the paragraph-put.

The committee divided-

Ayes ... ... ... ... 27
Noes ... ... ... ... 10
Majority against the amendment 17

AYES.
Abbott, Sir J.P. Howe, J.H.
Braddon, Sir E.N.C. Kingston, C.C.
Briggs, H. Leake, G.
Cockburn, Dr. J.A. Lee Steere, Sir J.G.
Douglas, A. Lewis, N.E.
Forrest, Sir J. McMillan, W
Fraser, S. O'Connor, R.E.
Fysh, Sir P.O. Solomon, V.L.
Glynn, P.M. Symon, J.H.
Grant, C.H. Venn, H.W.
Hackett, J.W. Wise, B.R.
Hassell, A.Y. Zeal, Sir W.A.
Henning, A.H. Teller.
Holder, F.W. Barton, E.

NOES.
Berry, Sir G. Quick, Dr. J.
Brunker, J.N. Reid, G.H.
Carruthers, J.H. Turner, Sir G.
Deakin, A.
Isaacs, I.A. Teller.
Peacock, A.J. Higgins, H.B.

Question so resolved in the affirmative.

The CHAIRMAN. -

The question now is that paragraph (2), as amended, stand part of the clause.

Mr. SOLOMON (South Australia). -

There is another amendment which I desire to move, and which, I think, will have the consideration of the Convention. In the paragraph we find these words-

If it is affirmed by a majority of three-fifths of the members present and voting thereon, it shall be taken to have been duly passed by the Senate and the House of Representatives, and shall be presented to the Governor-General for the Queen's assent.

According to these words it does not seem to make any difference whether or not there happens to be present only one-half of the representatives of each House. It is laid down that a three-fifths majority would be sufficient to carry a Bill. I take it that the general desire is there should be a vote of three-fifths of the members of both Houses, and it is on that point I wish to take the feeling of the Convention. I do not wish to delay the proceedings any longer than can possibly be helped, and I shall make my remarks as few as possible. We do not want, in the joint action of the two Houses, a question of paramount importance, perhaps, to some of the states, to be decided by anything but three-fifths of the members. We do not want to decide such questions by three-fifths of those who happen to be present in the House, when, perhaps, only one-half the representatives of the Senate and half the representatives of the Lower House are in their seats. If there is to be an appeal to the two Houses, all of us who ask a reasonable solution of the difficulty desire there should be the voice of three-fifths of both Houses.

Mr. HOLDER. -

If members do not trouble to attend, it cannot be a very burning question.

Mr. SOLOMON. -

That, of course, may be a way of getting over the difficulty; still, we do not desire to have an important question trusted to the chance of members
thinking that it is of sufficient importance to attend in their places.

Mr. OCONNOR. -

Will not each House take care that all its members attend? They can make a call of the House.

Mr. SOLOMON. -

That is another probability or possibility, but I think it is desirable that if we are to put a provision in the Constitution affecting decisions of vital moment we ought not to trust the matter to the chance of the members taking a sufficient interest in it to insure their attendance. This has been put forward by those who fathered the whole of the provisions for dead-locks as a reasonable solution that there should be three-fifths of the members of both Houses sitting jointly to decide the question and to exercise the fullest possible powers, probably to veto the action of one House.

Mr. HOLDER. -

The clause says those present and voting; we do not leave it to chance.

Mr. SOLOMON. -

That is precisely where we do leave it to chance. The whole of the debate has pointed to the advisability of three-fifths of the members of the two Houses, sitting jointly, having the final power to decide, yet we are leaving the whole thing open to chance as to whether there will be a full and representative gathering of members of both Houses. I ask honorable members, and especially those who desire to protect, as far as they can, the state rights which we have striven to protect all through, to say that, in a case like this, where a vital question is to be left to the decision of the two Houses sitting together, there shall be a representative gathering, that there shall, at any rate, be the bulk of the members of both Houses present, and that the majority shall be something like the majority which we insist upon in some of our provincial Constitutions—that is, an absolute majority of the two Houses. I ask any honorable member who has taken part in implanting these provisions in the Constitution whether that is not honestly what the whole Convention means; whether the Convention does not mean that in a case like this, where we leave the question to the arbitrament of the two Houses, we shall not leave it to chance work?

Mr. HOLDER. -

We do say distinctly that it shall be a majority of those present and voting.

Mr. SOLOMON. -

That is not what is meant by a great many members. What we mean is that if we are going to leave the question, Not to amass referendum of the people, but to a referendum of the two Houses, because that is really what it will be, we should surround it with sufficient safeguards to provide that
the two Houses are properly represented. Therefore, beg to move the following amendment:—

That the words "present and voting thereon" be struck out, and that after the words "members" the following words be inserted:— "of the Senate and House of Representatives."

What have we meant all through? Have we not meant that there shall be an absolute majority of the two Houses? Have we meant to give away the whole of our powers, not to a mass referendum or a dual referendum, but to the two Houses sitting together, without some control as to the number of members who shall vote upon the question? Surely we do not intend that a question of vital interest to the states should be decided by three-fifths of the members present in perhaps a thin House. I admit that Mr. Holder's interjection as to the interest taken in it, providing that the House will be a full one, has a certain amount of reason; but, still, I would ask: Can we in a matter of this kind leave anything to chance? Is it not better, as we are making some hard-and-fast rule as to the mode of deciding the difficulty between

the two Houses, that we should also say exactly what we mean—that it should be a three-fifths majority of the Houses voting together, and not perhaps three-fifths of 50 per cent. of the members of the two Houses. I am sure there are members of this Convention who will recognise that this is a matter of importance, and that they do not wish to leave to the chance of what possibly may happen a question which may be of vital importance to some of the larger states.

Mr. BARTON (New South Wales).—

I hope that Mr. Solomon's amendment will not be carried.

Mr. DEAKIN.—

It will render the whole thing absurd.

Mr. BARTON.—

Under this Constitution, each House will have the power to make standing orders for the conduct of its business, and there is also power to make standing orders for the business of the Houses collectively. If honorable members will refer to clause 51—I think the last sub-section—they will see that there is ample power to pass standing orders for the business of the Houses severally and collectively. Mr. Solomon wishes to tie the matter up in this way: That unless three-fifths of the members of the Federal Parliament choose to combine and vote in the affirmative, unless so many members as out of the whole number of members of the two Houses will give a majority of three-fifths in all cases, the measure in dispute cannot be carried. Is it not enough to provide that there shall be a
majority of three-fifths of the votes of those present?

Mr. SOLOMON. -

Will the standing orders override this provision?

Mr. BARTON. -

No; but standing orders can be passed within a day providing for a call of the two Houses on such an occasion, and as each House has the privileges of the House of Commons, it can formulate such provisions as it likes to make a call of the House.

Sir EDWARD BRADDON. -

Under clause 51?

Mr. BARTON. -

Under clause 51, standing orders can be passed to meet any such case; and while the Houses have the same privileges and powers as the House of Commons, they have ample authority to make the reports of all such cases, and deal, by way of contempt, with persons who disobey the call of the Houses. It may be that they will never have occasion to go to that length, but they have the power to enforce the attendance of honorable members. If, however, Mr. Solomon's amendment is carried, it will be left in the power of a certain number of honorable members of the Federal Parliament to absent themselves for the purpose of defeating a certain proposal for which there was a sufficient majority, and I do not think that that would be right.

The amendment was negatived.

The CHAIRMAN. -

The question now is that the paragraph, as amended, stand part of the clause.

Mr. ISAACS (Victoria). -

I wish to draw the attention of my honorable and learned friend (the leader of the Convention) to one matter which I should like him to consider. It is this: The proposal is that the proposed law shall be submitted at a joint sitting of the two Houses. As the clause stands, must it not be the law as originally proposed by the House of Representatives that is submitted for consideration?

Sir JOHN FORREST. -

No.

Mr. BARTON. -

If the House of Representatives pass any law it seems to me that it is the proposed law which they pass concerning which the expression is used.

Mr. ISAACS. -

According to the wording of the provision as it stands—of which the Drafting Committee is not responsible; they have had nothing whatever to
do with it—it seems to me that if the House of Representatives passes a proposed law, and the Senate does not pass it, or passes it only with such amendments as the House of Representatives will not accept, even though the House of Representatives may pass the proposed law again, not in its original state, and a joint sitting of the two Houses is held to consider the matter, the general question arises—what is to become of it?

Mr. BARTON. -
Would it not be the proposed law with any such amendment as have been agreed upon?

Mr. ISAACS. -
It seems an important point.

Mr. BARTON. -
It is a matter of substance, not of drafting.

Mr. ISAACS. -
It is. But it is one for serious consideration. The honorable member said that he would consider whether these words "may deliberate and shall vote together upon the proposed law" involve making any amendment. I would suggest also for my honorable friend's consideration that the words would probably involve the power of making amendments, seeing that it is a legislative body that has to deliberate upon the proposed law.

Mr. BARTON. -
They must vote upon the proposed law if it is the same proposed law as before.

Mr. ISAACS. -
They are to vote upon it, but that does not necessarily mean amending. What does it mean? However, the honorable member will consider that. There is another consideration in connexion with, the matter. Passing a proposed law after the Senate has dealt with it may have one set of considerations applicable to it; but if, on the other hand, the House of Representatives passes a law that the Senate has not power to amend, another set of considerations may apply to it. There are many respects in which it seems to me that the clause will be difficult indeed to work, if it be not wholly impracticable, but these are matters of supreme importance to my mind.

Mr. SYMON. -
What would you like to do?

Mr. ISAACS. -
I do not suggest anything.

Sir JOHN FORREST (Western Australia). -
As I understand this provision, it surely means that the matter in dispute
between the two Houses will be clearly defined, and I take it will be subject to the decision of the two Houses when they come and sit together. That, I think, is what the words are intended to convey. Whether they actually convey that meaning, I am not quite sure, and I am much obliged to my learned friend (Mr. Isaacs) for calling attention to it. Surely it does not mean that the only matter the two Houses have to consider is whether the Bill agreed to by the House of Representatives is or is not to become law. It seems to me that it would be a one-sided arrangement that when they have met together the members of the Senate would only have to say whether they agreed to the Bill as passed by the House of Representatives, and that they would have no opportunity to place before that House the provision they desire to insert. Surely that is not what we mean. Surely what we mean is that the matter in dispute is to be considered by the two Houses sitting together, and, having considered the matter, then it is to be either inserted or left out, according to the vote of the two Houses sitting together under this clause. If it does not mean that I have been altogether under a misapprehension, and I appeal to my learned friend (Mr. Symon), who has taken a leading part in this matter, to let us know exactly what his view is. I have been under, the impression all along that the two Houses would sit together, that they would deliberate on the matter in dispute, and that the words would be either inserted or left out according to the voting prescribed by this clause.

Sir GEORGE TURNER. -
That would enable them to amend.

Mr. BARTON. -
Why should not the joint sitting be allowed by the clause to pass amendments by three-fifths majorities?

Sir JOHN FORREST. -
Not new amendments, only as to the matters in dispute between the Houses. As to the objection mentioned by Mr. Isaacs that they might amend a Money Bill, I take it that this clause is beyond the provisions as to Money Bills, that if such a thing, were to occur the two Houses would be able to amend even a Money Bill, if they came together, and so decided under this clause.

Mr. ISAACS. -
You don't want that.

Sir JOHN FORREST. -
I do want that. I want the two Houses, when they come together under this clause, to be absolutely supreme in regard to the matter in dispute, and to be able to settle that dispute. I had no idea whatever, and it never
occurred to me before, that when they met together it would only be for the purpose of assenting to the Bill desired by the Lower House, and that the provisions which the Senate desired to have inserted would not be within their power to insert. If that is the case, I think that this provision is absolutely worthless, and I should like to see it excised. In fact, I was very much inclined to move that it be excised, as I see no necessity for it at all. But if it is to be limited in the way now proposed, it is worse than useless from the stand-point from which I view it. Yesterday I moved to have these very words inserted in addition to the proposal of Mr. Symon, and they were rejected by a large majority. I wonder whether, if I were to propose to excise these words from this part of the clause, those members who voted against their insertion on my motion would vote against their excision now. If I had any encouragement at all I should very much like to move that this provision for the meeting together of the two Houses should be excised. Surely the simultaneous dissolution should be sufficient to satisfy any one. And if that does not conclude the matter—if after an appeal to the country, the states and the people having an opportunity to vote on the question, they have not come to an agreement, then I think we might fairly let the matter go: We do not want any further means of deciding the question. If the simultaneous dissolution does not prove effective, it will show that the people do not want the proposed law. Why should we then make provision for the two Houses sitting together in case of further disagreement, and, when they sit together, why should we allow them merely to indorse the views of the House of Representatives, without having any opportunity to consider the views of the Senate? I hope that some one will move the excision of the last paragraph. I should have much pleasure in supporting such an amendment. Even if the two Houses, when sitting together, had full power to consider the matters in dispute, I would still prefer that there should be no appeal from the decision of the people.

Mr. SYMON (South Australia). -

I cordially agree with what the right honorable member has said as to there being no, necessity for the joint meeting of the two, Houses. I have always believed that the dissolution of the Senate, either following upon or concurrent with the dissolution of the House of Representatives, would effectually prevent dead-locks from happening, or would solve them if they occurred. The provision in the clause indicates a weakness which requires very great consideration. But if my right honorable friend desires to test the question whether the two Houses should sit together in the event of a disagreement continuing after a double dissolution, he should move to strike out the last three lines of the clause.

Mr. HIGGINS. -
Can he not attain the same object by voting aga

Mr. SYMON. -

I think it would be better to take a test vote upon the question of omitting the last three lines. My right honorable friend may not want to disturb—I will not say the settlement—but the decision arrived at in the first half of the paragraph with regard to the concurrent dissolution of the two Houses. It appears to me that there are some matters requiring consideration so far as the proposal for the joint sitting of the two Houses is concerned. As the provision is, framed, it would appear that the only matter that could be referred to the joint body would be the law originally proposed, and any amendment agreed to by both Houses.

Mr. DEAKIN. -

Are you sure that amendments agreed to by both Houses could be dealt with? How would they become part of the measure?

Mr. SYMON. -

It seems to me that they would be treated as part of the proposed law. They ought to be so treated.

Mr. DEAKIN. -

I agree with that.

Mr. SYMON. -

The proposed law submitted to the House of Representatives would not be the law which that House desired to have passed if the consideration of amendments agreed to by both Houses were excluded. It would otherwise amount to this that you would be submitting to a joint sitting of the two Houses not the laws approved by Parliament up to that time, but the laws introduced by the Government of the day in their original shape.

Mr. KINGSTON. -

As passed in the House of Representatives.

Mr. SYMON. -

You would be driven back to the Bill as originally introduced to Parliament by the Government, or the Bill adopted by the House of Representatives with the amendments of the Senate agreed to by the House of Representatives. It is only if the House of Representatives disagrees with the Senate that a difficulty arises. That is the view that occurs to me in regard to this paragraph.

Mr. ISAACS. -

What is really to be submitted to the joint sitting is what is proposed by the House of Representatives and refused by the Senate.

Mr. SYMON. -

That is my honorable friend's way of putting it. It is probably a better
way than I adopted, but it comes to the same thing. What is submitted to
the joint sitting is what has been agreed to by the two Houses, that is, the
law proposed in the House of Representatives, passed with amendments,
and amended in the Senate so far as the Senate's amendments are agreed to
by the House of Representatives. That, at any rate, should be the proposed
law on which the joint sitting should express its opinion. It is not so
important to consider that as to consider the difficulty to which my
honorable friend has directed attention, and that is whether the joint sitting
should not also have before it the amendments of the Senate upon which
the disagreement arises. That is a very serious point. It does seem to me
that the amendments of the Senate upon which the disagreement arises
ought also to be submitted to the joint sitting.

Sir JOHN FORREST. -
That is the object of the meeting.

Mr. SYMON. -
Of course the object of the meeting is to arrive at an agreement. If you do
not take the course suggested, you put upon the Senate really the obligation
of declaring that they will not have the law at any price unless their
amendments are considered. If you wish to secure some result from the
joint sitting, the Senate's amendments on which the difference has arisen
should be considered. If you do not do that, then you carry to the joint
sitting the one question, of whether or not the Bill—which does not embody
what the one branch of the Legislature desire—should become law without
giving the joint sitting an opportunity of determining whether the
alterations suggested in the proposed law ought to have effect or not. That
is not a question of drafting, but a very important matter of policy.

Mr. MCMILLAN. -
Surely that is taken for granted.

Mr. SYMON. -
No; until the Hon. Mr. Isaacs pointed it out, we had not got to the length
of considering it. The Right Hon. Mr. Reid indicated to-day a doubt as to
what a deliberate vote on a proposed law might imply. The position is
ambiguous, and we ought to determine now what the scope of this joint
sitting is to be, and not leave on the

very threshold, perhaps, of this part of the Constitution a question of
procedure which might give rise to very grave difficulty. We ought to settle
it either by using language to exclude or to include the Senate's
amendments, and to make clear what "proposed law" means—whether it
embraces the amendments of the House of Representatives only plus the
proposed law, or whether it also covers the amendments of the Senate
agreed to by the House of Representatives.

Mr. MCMILLAN. -

What would be the sense of deliberating if they did not deliberate on all the amendments?

Mr. SYMON. -

The expression "deliberate" might be satisfied by a deliberation simply on the motion that the Bill do pass.

Mr. DEAKIN. -

They can discuss what they like, but that would be the question on which the vote would be taken.

Mr. SYMON. -

Yes. But when you go on to say "may deliberate and shall vote on the proposed law," then you leave us in doubt as to what "proposed law" means. This is not a question affecting the smaller states, but it is a question of how far the joint sitting is to deal with the proposed law and the amendments in respect to which the difference has arisen. Do you simply want to cast the law under the table if the disagreement continues, or are you to have a modus vivendi in respect of some or all of the Senate's amendments so as to get the law put on the statute-book, and to avoid the necessity of beginning de novo with the whole piece of legislation?

Mr. BROWN (Tasmania). -

The obvious intention of the Convention in assenting to this and to one or two other clauses was to provide a method by which disagreements between the two Houses could be disposed of. I would ask honorable members to consider whether it is any part of our duty in framing this Constitution, to do more than point out a way in which a settlement of these disputes can be arrived at. I would call attention first to clause 8, which says that the powers, privileges, and immunities of the Senate and of the House of Representatives and of the members and the committees of each House shall be such as are from time to time declared by the Parliament, and until declared shall be those of the Commons House of Parliament. Then, in clause 51, ample power is given to the Senate and the House of Representatives to provide, by standing orders, for the method of procedure which shall be adopted. If it was ever necessary to have a joint meeting of the two Houses, ample power is given there to the Senate and the House of Representatives as to a variety of matters. I need not read the first two sub-sections. But the third and fourth sub-sections read:-

III. The manner in which notices of proposed laws, resolutions, and other business intended to be submitted to the Senate and the House of Representatives respectively may be published for general information:

IV. The manner in which proposed laws are to be introduced, passed,
numbered and intituled:
Then we come to sub-section (6) which provides-
VI. The conduct of all business and proceedings of the Senate and the House of Representatives severally and collectively.
Now, I ask honorable members why we should attempt here to lay down rules of procedure for the Parliament we are trying to create? Surely there is ample provision made in the clause as to standing orders, to which both Houses can agree. This, I think, disposes of the difficulties which have been mentioned by honorable members.
Mr. HIGGINS. -
Do you mean joint standing orders?
Mr. BROWN. -
Certainly; in the same way as we have joint standing orders in our local Parliaments. There may be conferences between the Houses which are a matter of mutual arrangement. I take leave to say, with all respect, in this, as in other matters, that it seems to me,
that many of us are attempting to provide for contingencies which could be best regulated and provided for by leaving the matter to the Commonwealth Parliament when it is constituted.
Sir JOHN FORREST. -
The two Houses would never agree.
Mr. BROWN. -
I beg leave to differ from Sir John Forrest. It is exceedingly likely that no difficulty whatever would be found in agreeing as to a mode of procedure in regard to the meeting of the two Houses.
Sir JOHN FORREST. -
You could easily make it clear in the section.
Mr. BROWN. -
I think we might spend hours over it-
Sir JOHN FORREST. -
Not at all.
Mr. BROWN. -
I think we might spend hours over it before we could get the legal members in the Convention to come to an agreement as to the proper mode of expressing what we mean.
Sir JOHN FORREST. -
What do you intend? That is the question.
The CHAIRMAN. -
Order. I must ask honorable members not to interrupt.
Mr. BROWN. -
What we intend is to provide means of settling differences between the two Houses. Those means are provided amply; and I regret that the means are provided, because I agree with Sir John Forrest that the joint meeting of the two Houses is a wholly unnecessary provision. But we must bow to the will of the majority; and if the majority say that the provision must be engrafted on the Constitution, we must accept it. But as to the details to be observed in carrying out the intention we have in view, I think we may safely leave it to be disposed of and settled satisfactorily by the adoption of standing orders, with the concurrence of both Houses.

Mr. REID (New South Wales). -

I brought this matter up some hours ago, and pointed out that I believed the intention was that the only question should be whether the Bill should now pass or not. There was a general consensus all round the chamber that that was the meaning of the clause.

Sir JOHN FORREST. -

Not at all.

Mr. REID. -

By silence.

Sir JOHN FORREST. -

We did not hear you.

Mr. REID. -

My learned friend the leader said that, if the intention I had expressed was not sufficient, he would, if necessary, put it in clearer language in order to show the intention, and the members of the Convention, listening as they were, raised no doubt on the point.

Sir JOHN FORREST. -

We were under a misapprehension.

Mr. REID. -

Now that the question has been raised, it is a matter of very serious consequence. I entirely disagree with my friend (Mr. Brown) in the position he has taken up. I quite admit that any one who does not believe in the joint meeting ought to do all they

Mr. BROWN. -

That is not my intention.

Mr. REID. -

I do not say that it is, but if there was any one who had a strong disinclination to allow the joint meeting to come about, the simple thing would be not to agree to that mode of procedure. Some of us, however, regard this as one of the most useful points of the Bill, and one of the points that will go more to reconcile the public to the Bill than anything else. If it is taken away we are left in an unsatisfactory position. Let us
consider the history of a dispute which would lead to such a sitting. In the
first place, a Bill goes to the Senate. If it be an Appropriation Bill or a Tax
Bill, the Senate may suggest amendments and send it back. If it be an
ordinary Bill, the Senate may amend it and send it back. The House of
Representatives has then to consider whether it can do what is wanted by
the Senate. The House of Representatives may be able to agree to some of
the things, and then send the Bill back to the Senate, who then may say that
they cannot accept it. So the exchange of
communications goes on, and there may even be a conference, until at last
they reach a point at which it is impossible to agree. Under ordinary
circumstances nothing more is heard of the Bill that session, and there is a
prorogation. Then the Ministry and the House of Representatives have time
for further reflection, and they bring in the Bill next session, no doubt in
the shape nearest to that which will commend it to the Senate. That Bill
goes up to the Senate, who then either accept it or again amend it. Fresh
efforts are made to come to an agreement by various means, including,
perhaps, a conference, and still it is found that it is impossible to agree.
Then there is a dissolution on the Bill, and the whole of the electors are
appealed to as to whether the Senate was right in refusing to pass the Bill
in the shape in which it was sent to them the second time. There is a verdict
by the electors. What is the issue? The issue clearly is: Who was right?
Was the House of Representatives right, after all these conferences and
deliberations, in insisting on the proposed law being passed in the shape in
which they presented it, or was the Senate right in rejecting it? If at the
joint sitting on this simple question the requisite majority is not for the Bill,
the situation develops itself. Under the circumstances the House of
Representatives may choose to send the Bill up with the amendments
which the Senate contended for, and no further trouble could happen. Or
the House of Representatives could drop the Bill and say-"Well, if that is
the decision of the joint sitting, we would rather not have the Bill than have
it with the amendments in it." If the Senate succeeds on the Bill, the proper
course would be for the House of Representatives to decide whether it
would proceed by putting in all the Senate contended for. Let us look at the
opposite course. If the whole of the Bill is to be brought up at the joint
sitting the proceedings would be interminable.

Sir JOHN FORREST. -

Matters in dispute, and nothing more, would be dealt with.

Mr. REID. -

There might be 50 matters in dispute in the one Bill. Does my friend
really propose that if the dispute is over an Appropriation Bill, which might
contain 2,000 items, the whole of that Appropriation Bill is to be gone into
at a joint meeting? Certainly not. Supposing there are twenty points in
dispute, would we then give the Senate the power of amending Money
Bills, and sitting on them in detail? What I certainly will strongly protest
against is that by this roundabout way the Senate shall deal with Money
Bills in detail. That would practically be the case, because, if that was the
procedure, to go, into committee on all the points of disagreement, it would
be a direct encouragement to the Senate to raise as many points of
disagreement as possible in order to, deliberate upon them at the joint
sitting.

Mr. SYMON. -

Such a thing cannot arise in relation to Money Bills, because the Senate
can only suggest, and it must veto the whole Bill. Then your point would
necessarily be that the Bill do now pass.

Mr. REID. -

I suppose that would be so in the case of such Bills as the Senate can
only suggest amendments of. But if there are not words showing that the
only question is to be that the Bill do now pass, what is to prevent in that
joint sitting the members of the Senate, saying-"This is not our ordinary
procedure. We admit that when we sit in our Senate we cannot do this. But
this is a very different House; we are no longer senators, we are members
at a joint sitting in which both Houses are one." It is true that there are
provisions in the Bill that the Senate cannot amend Money Bills, but when
the senators are sitting along with the House of Representatives, how can
you debar them from voting on such proposals? So that my honorable
friend's point is not so good as it looks. I have still as a good point, that if
suggestions were made by the Senate, and if on those suggestions there were prolonged conflict
and impossibility of settlement, the whole thing by this roundabout process
would come back to a shape in which members of the Senate could
propose amendments in Money Bills and could vote for such amendments,
and could therefore sit to mould Taxation and Appropriation Bills. That
would be a direct encouragement to the Senate to bring matters to such a
pass that they would be able to exercise such a power. Then this boon,
which was to settle once and for all the battle, and decide in whom the
victory should rest, would simply re-open the strife. The object of the joint
sitting is not to re-open strife.

Mr. SYMON. -

There ought to be no new matter.

Mr. REID. -
No; but that is what would really be the case. After the conferences have been fruitless, and after a fight has taken place before the electors of both Houses, which will be dissolved simultaneously-

Sir JOHN FORREST. -
And both victorious.

Mr. REID. -
That would depend upon circumstances which could only be determined by a joint sitting.

Sir JOHN FORREST. -
No.

Mr. REID. -
Whether one side was victorious or not could not be ascertained practically until the warriors had assembled together.

Sir JOHN FORREST. -
If the Upper House found that the people were against them they would pass the Bill without any conference when they came back.

Mr. REID. -
Exactly. In that case there would be no trouble and no joint sitting. But we have to consider the position that after they return from the battle each occupy the positions they occupied before, and then the joint sitting is necessary. The only issue then is the issue on which the election was waged; that is, that the Bill should pass as the House of Representatives sent it up the second time, or the issue that the Bill should not pass, because the Senate would not pass it in that shape. I understand what Sir John Forrest said when he made his speech, and I know he would prefer that even at this joint sitting the members should be free to endeavour to arrive at a new settlement. I say that is not the place to do so. That sitting is to decide on the issue which went to the country. If the Senate is upheld, the Bill will not pass. If the House of Representatives is upheld by the requisite majority, the Bill will pass. Then, I would point out that if the Bill does not pass, the matter is not left in a hopeless state, because when the Houses separate it would be for the House of Representatives to say-"We are beaten on the issue we raised. Now we give way to the Senate, and send the Bill up again in the form the Senate wishes it." That is the way in which the House of Representatives would come round to the position of the Senate. But if you, after this dislocation of business, begin to fight the battle over again, especially when there were a number of points of difference, instead of this joint sitting being a sitting to bring about peace and a permanent settlement, it would re-open all the sores and fights which members went to the country about. Therefore, I strongly suggest that, after all the fighting and attempts at conferences and conciliation which
must take place, the simple issue that we make shall be the issue whether
the Bill is to pass or not, because that will not leave a hopeless situation.
The Bill can be sent up afterwards if the House of Representatives is
beaten. But do not let us begin the fight again.
Sir EDWARD BRADDON. -
Would not the procedure be settled by sub-section (1) of clause 71?
Mr. REID. -
This would not be so much a matter of procedure; it is a very vital point.
When you speak of procedure you speak of the ordinary history of two
Houses meeting together in conference,
and that is a procedure pretty well thought out, but this joint sitting is
entirely new business.
Mr. MCMILLAN. -
It is better to settle it now that it has been brought forward.
Mr. REID. -
Certainly. I quite agree with the honorable member, because this very
difficulty might arise at the joint sitting, and might prevent any usefulness,
but I strongly hope that the view will not be taken, especially as to Money
and Appropriation Bills, that they are to be all ripped up and discussed and
voted on by the Senate, because that is contrary to what we have done. Mr.
O'Connor mentioned to me another matter that ought to be settled—that is,
we do not want the whole thing to break down on the point as to whether
the President of the Senate or the Speaker of the Assembly should take the
chair.
Mr. SYMON. -
You want this to act almost automatically. It is too burning a question.
Mr. REID. -
Yes; I think we should settle this matter now, and not leave it to be
settled by the two Houses, when they are holding a joint sitting.
Mr. ISAACS. -
It might afterwards affect the legality of what was done.
Mr. REID. -
I suppose such points might arise too, but I do hope the matter will not be
raised in the form my right honorable friend has put it, because it will
almost deliberately unsettle all that has been done.
Sir JOHN FORREST. -
It is better than losing the clause altogether.
Mr. REID. -
That would not necessarily follow, because the option would be left with
the House of Representatives who were defeated as to their Bill in the
shape they put it in. It would be quite open to them to consent to the Bill being put in the shape the Senate wished it, and then there would be no difficulty in passing it. I would like to point out to my honorable friend that the matter was not left in the dark at all. It was really considered before, because I see in the official report of our proceedings on the 21st of September last, in Sydney, this took place:-

Mr. HIGGINS. -

The honorable member (Mr. Carruthers) says that he is going to knock out the power of amendment.

The Hon. E. BARTON. - The honorable member (Mr. Carruthers) will confine the functions of the combined assembly to the mere determination of the question shall a measure pass.

He announced that to the Convention in Sydney, and those words in the Bill are intended to carry out that determination. But a doubt has arisen as to whether the words do really carry out that intention, and it would be very unfortunate if by clashing with that we were to reverse everything that was then understood. I see that on the 20th of September I spoke on this question, and said-

It would never do for the Houses sitting together to rip up each item. The question in such a case would be that the Bill do now pass.

So that really the Drafting Committee carried out the understanding of our previous meeting, but I quite admit that the Convention is at liberty to re-open this question.

Mr. MCMILLAN. -

That is the way in which the Bill finally left the House of Representatives?

Mr. REID. -

Yes. <

Mr. KINGSTON (South Australia). -

I confess that I have not any admiration for the joint sitting of the two Houses, but at the same time that secured the approval of the Convention, and I think we should be making a mistake if we did not arm the joint body with power to divide what are really the issues between the Senate and the House of Representatives. At the same time, we should restrain them from breaking any new ground, or otherwise they will be practically usurping the functions of the Houses of Parliament in regard to a matter which has not previously Engaged their attention, and on which the two Houses are not at issue. I do not think that this is a matter of procedure. I consider that it is a question of grave constitutional enactment. I think also it is doubtful whether clause 51, relating to the making of standing orders, and giving to
the Senate and the House of Representatives certain powers, would confer on either House the right to make standing orders which would regulate the proceedings of the two Houses to sit together.

Mr. BROWN. -
That is provided for in sub-section (6) of clause 51.

Mr. KINGSTON. -
I see that, but to some extent it is qualified. Clause 51 provides that-
The Senate and the House of Representatives may each of them from time to time adopt rules and orders.

Mr. OCONNOR. -
That can easily be altered.

Mr. KINGSTON. -
Yes, but if standing orders are required to be made in a matter of that sort, I think that a proper provision would be to arm the two Houses with the necessary power.

Mr. OCONNOR. -
We could put in the words "when sitting together."

Mr. KINGSTON. -
Yes; we could provide that the two Houses might jointly or severally make certain rules. I do not think there would be much difficulty in making this clause read as I am inclined to think a majority of the Convention would desire it to read, as to forms. In rejecting the suggestion which has been made by the Premier of New South Wales, that if you conveyed to this joint sitting the power of dealing with amendments suggested by the Senate, there is a possibility of interference by the joint sitting in Money Bills giving a voice to the Senate which they should not possess, as has been pointed out before, seeing that the Senate has no power to make amendments in a Money Bill under this Constitution. If you confine the attention of the joint sitting to the consideration of the proposed law and the amendments, the Senate can have no voice whatever in the alteration of a Money Bill.

Mr. REID. -
But would it be a Senate when sitting with the House of Representatives— that is the question? If it would, I have no doubt about the matter.

Mr. KINGSTON. -
I propose that we should confine the duty of the joint sitting to two things; first, the Bill as finally agreed to by the House of Representatives; secondly, the amendments made by the Senate, and not agreed to by the House of Representatives.

Mr. REID. -
I would not object to that, because that would leave Money Bills out.
Mr. KINGSTON. -

That would, of course, include suggestions, and strictly limit the jurisdiction of the joint sitting to the matters really at issue. However, I am merely throwing out a suggestion for the consideration of the Drafting Committee. Possibly what we desire might be accomplished by making the last sentence of the clause read as follows:-

And if after such dissolution the proposed law fails to pass with or without amendment, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives, and the members present at such joint sitting may deliberate and vote together upon the proposed law, as finally agreed to by the House of Representatives, and also upon any amendments therein made by the Senate, and not agreed to by the House of Representatives, and if the proposed law is affirmed by a majority of three-fifths of the members present and voting thereon, it shall be taken to have been duly passed by the Senate and the House of Representatives with any of the said amendments summarily affirmed, and shall be presented to the Governor-General for the Queen's assent.

The result will be that this joint sitting will consider the Bill.

Mr. MCMILLAN. -

But you will not let it alter the original Bill.

Mr. KINGSTON. -

No. The joint sitting will consider simply the Bill, and the amendments on which the two Houses are at issue. There may be an occasion on which it is not a question of amendment—an occasion on which the Senate has thrown out a Bill altogether on the second reading. In that case the question of amendments will not arise; but in cases

where the character of amendments is the real point in dispute—and we can imagine many such cases—there are the two things to be dealt with—the original Bill and the amendments. If the Bill is not affirmed by a three-fifths majority, it may be cast aside but, if so, then the further question arises, shall, or shall not, the amendments made by the Senate and rejected by the House of Representatives be affirmed? That will be submitted to a similar test. If the necessary majority is obtained in their favour, they will be embodied in the Bill if not, they also will be cast aside.

Mr. MCMILLAN. -

It is not necessary to take a vote on what has already been agreed to.

Mr. KINGSTON. -

As I put it to the Convention, the only points which the joint meeting is required to decide will be in regard to matters on which the two Houses are
at issue. Those are the only points, and they being decided effect will be
given to what is the joint wish, both as regards the original Bill, and any
amendment which has given rise to the differences. I am inclined to think
that an amendment of that sort would give satisfactory effect to the wishes
of this Convention, and I trust that some such amendment may be made.

Mr. DOUGLAS. -

As I understand this matter it is merely this: That the Executive can
submit the proposed law, together with the amendments that have been
agreed to, to the joint sitting of the two Houses, which would then either
have to agree or disagree. I think the proposal of the President of this
Convention is a very great improvement, namely, that if the amendments
proposed are agreed with or disagreed with, they shall either become law
or be rejected. I think the suggestion which he has just made, although the
language of an amendment based upon it would have to be the language of
the Drafting Committee, would have a very beneficial effect. As I read it,
the "proposed law " means not only the proposed law as it came up from
the House of Representatives, but the law as amended and agreed to by the
Senate. But as regards Money Bills, the Senate has nothing whatever to do
with amending them in any shape or way. Such Bills must be either passed
by the Senate or entirely rejected.

Mr. OCONNOR (New South Wales). -

I think the solution of the difficulty is somewhat in the direction
suggested by Mr. Kingston. It was not the intention, I think, of this
committee when they passed this clause that additional powers of
amendment should be given, either to the Senate or to the joint sitting of
the two Houses. The words "or passes it with amendments to which the
House of Representatives will not agree" must be read distributively—that is
to say, in cases where the Senate can amend, the amendments can be
considered, but when the Senate cannot amend no amendments can be
considered. What we want to get at is some solution of the dispute. In cases
where the Senate cannot amend there can be no question of amendment at
all, because the dispute then is as to whether the Bill in the form which it
left the House of Representatives is to pass or not pass.

Mr. ISAACS. -

Suppose it is a Bill as to which there is a dispute as to the power of the
Senate to amend? Suppose there is a constitutional discussion as to whether
they can amend or not?

Mr. OCONNOR. -

You cannot form any set of words by which you can deal with such a
case at all. I am assuming that we can only really put the thing into two
classes—that is to say, Bills which the Senate may amend, and those they
may not amend. We cannot settle here whether a particular Bill comes under one class or the other. Now, the only dispute between the Houses will be as to whether a Bill as it leaves the House of Representatives is to pass or not to pass as it left the House of Representatives. The only cases that create any difficulties are cases in which the Senate may amend Bills. It seems to me that unless we give the joint sitting power to consider amendments we may miss the whole subject of dispute, because the whole subject of dispute very often is not the main principles of the measure, but the amendments made in the measure by the Senate or the House of Representatives. Therefore, it appears to me that in regard to those measures which the Senate may amend, our procedure must provide in some way for dealing with the amendments made. I quite agree with what has been said already, that it would never do to say that the whole Bill cannot be amended in any way. The dispute will, by the time the joint sitting takes place, be reduced to very narrow limits. Because, remember, the Bill goes up once to the Senate, and comes back to the House of Representatives with certain amendments in it which are not agreed to; then it goes up a second time in the next session, and it is agreed to or not agreed to; and then there is a dissolution. In the meantime the House of Representatives and the Senate have had abundant opportunities of knowing what the feeling is in both Houses. After the dissolution, the Bill is sent up again to the Senate, and in sending it up a third time the House of Representatives may embody all or some of the amendments made by the Senate, if they think fit. It is only then that a joint sitting of the two Houses is to be held; and it seems to me that the dispute would be at this stage reduced to very small limits. When amendments are made, the dispute will turn on those amendments. In cases where no amendments can be made by the Senate, it is simply a question whether the Bill shall pass or not. But where amendments can be made by the Senate, the amendments made should be considered.

Mr. KINGSTON. -
The House of Representatives' amendments will be embodied in the Bill.

Mr. OCONNOR. -
It may be so or it may not.

Mr. REID. -
Only when the Bill goes up twice.

Mr. OCONNOR. -
Suppose when the Bill goes back on the third occasion the Senate has made some amendments which may not be agreed to, it would then be only the amendments of the Senate which the joint sitting would have before it.
Consequently I do not think there need be any difficulty in drafting an amendment, putting the matter somewhat in that shape.

Mr. ISAACS. -

The joint sitting will have to say "Yes" or "No" to a Bill which the Senate cannot amend.

Mr. OCONNOR. -

It will have to say "Yes" or "No" in regard to a Bill which the Senate cannot amend.

Mr. ISAACS. -

And the joint sitting cannot alter an amendment which has been made in other Bills.

Mr. OCONNOR. -

An amendment cannot be altered, but there may be half-a-dozen amendments, some of which may be agreed to and some not agreed to; and I think there should be a power to deal with amendments in that way.

Mr. HIGGINS. -

The provision should be elastic in some way. It should not be fixed and rigid.

Mr. O'CONNOR. - There may be a modus vivendi by amalgamating two amendments together.

Mr. ISAACS. -

Then you may have the who

Mr. OCONNOR. -

No, because the point at issue may be a very small one at that time. It seems to me that some amendment way be made by the Drafting Committee which would put the matter clearly, and the amendment may then be submitted to the committee. Mr. Kingston, I understand, has not prepared an amendment.

Sir JOHN DOWNER (South Australia). -

I only want to say that I think we are indulging in a little hyper-refinement in this matter. I do not think it is of the slightest consequence how we put it. Any way, the joint sitting is to consider the amendments made in a Bill, and they will consider the substance of their dispute, whatever form you prescribe, without considering these refinements. It seems to me that we are indulging in lawyers' technicalities which the joint sitting will set at defiance at once; they will deal with the substance about which they are in disagreement. I do not care whether Mr. Kingston's suggestion is accepted or not. It makes no difference. But I prefer the clause exactly as it stands. I think it is open to no possible misunderstanding. I care not whether it is a Bill which the
Senate can amend, or whether it is a Bill which it cannot amend. It can reject every Bill; it can amend some Bills. And you want to have this conference and compromise and finality as well with Bills which it cannot amend, as with Bills which it can amend. The law is equally to apply to either. When the Senate has the power of absolute rejection, and in order to avoid the inconvenience caused by the exercise of this power you make the two Houses meet together, and so make a certain majority rule, what is the good of bothering, at that stage, as to the power of amendment? It will not make the smallest earthly difference. You will simply overload your Constitution with principles which will be of no substance at all, and which will have no practical effect on the mind of a single soul in creation, when they are expressed most clearly in the Act. You have a difference between the Houses, and you have not got a Bill passed. The measure is then to be sent up to the two Houses to consider, and, whether it is a Bill which the Senate can amend, or whether it is a Bill which it cannot amend, your results will be absolutely identical. To try to tie the Senate or anybody else down and say "The only points you are to consider are the points in difference"-to tell them that the only thing they are to discuss is the thing they are quarrelling about, as though they would discuss anything else, is an insult, in my opinion, to their common sense. From my point of view, I care very little whether the amendment is or is not put in. I think it will be absolutely ineffective anyhow. I think it is much better to leave the clause as it stands.

Dr. COCKBURN (South Australia). -

I would like to say a few words on the question of suggestion. Suppose that the cause of the joint meeting and of all the trouble has been a Taxation Bill, and the Senate, with a fuller light thrown on the matter, is able to convince the majority of this joint meeting that the suggestion it made was a proper one to be adopted, what is to be done?

Mr. REID. -

It will not pass the Bill.

Dr. COCKBURN. -

They will have to throw out the whole Bill.

Mr. REID. -

A new Bill will be immediately sent up with the suggestion in it and passed, so that there will be no trouble.

Dr. COCKBURN. -

This meeting must arrive at something; it must either throw out the Bill or accept it.

Mr. REID. -

The Bill will be rejected, and a new Bill containing the suggestion
brought in the next day.

Dr. COCKBURN. -
You think there will be another session?

Mr. REID. -
No; the new Bill could be introduced at once.

Mr. DEAKIN. -
And passed in a night.

Mr. HIGGINS. -
Adjourn the conference, and bring in the new Bill while the adjournment is still on.

Dr. COCKBURN. -
It seems to me that it would be far more convenient to have this meeting not only a court of arbitration but also a court of conciliation, and to give power to the joint body to adjust all differences. I do not see any reason why the suggestions made should not be considered as well as the amendments. We have been told, when we have claimed the power of amendment, that the power of suggestion comes to practically the same thing. Now, to make this difference between the power of suggestion and the power of amendment is for ever to dispose of that argument, which has been used as a sort of sop to those who wish to see the power of making amendments in detail given to the House which protects the people of the states. Once and for ever, you certainly brand a suggestion as an inferior thing to an amendment.

Mr. REID. -
So it is intended to be.

Dr. COCKBURN. -
I have always had my view on the subject, but I have been often told by those who want to secure a vote for the power of suggestion as against the power of amendment that it is precisely the same thing. If suggestions are now excluded, they are undoubtedly branded with the stamp of inferiority.

Mr. HIGGINS. -
What is your view—that it is not the same thing?

Dr. COCKBURN. -
My view is that it is a very different thing, that the House protecting the people's rights as a States House has been degraded by being refused the power of amendment in detail. Why not give this joint meeting the power to conciliate on all points of difference? Let it arrive at a decision on the suggestions as well as on the amendments. I do not see that any harm can ensue. Let us take a concrete case. Suppose a small state has an industry of
great importance to it, but of very little consequence to the rest of the Federation—say the salt industry—which ought to be protected by the Tariff, and that in the Senate the proportion of one-fifth of the members, which the small state has, has been able to convince their colleagues that this is a proper subject for a protective duty, but that, on the other hand, in the House of Representatives, where the small state has practically no voice at all, its representation has been powerless, and salt is placed on the free list; if, when the seven representatives the state has in the House of Representatives and the ten representatives it has in the Senate come into the joint meeting they are able, having right on their side, to convince the joint meeting that the point of view which the House protecting the people's right took was the correct one, why should not the question be settled there and then why should not the meeting have, power to consider suggestions as well as amendments, to act as a court of conciliation as well as a court of arbitration, and finally to resolve the whole matter?

Mr. MCMILLAN (New South Wales). -

Although I disagree with this provision altogether, I am inclined to think that this meeting of the two Houses ought to be looked upon as a final conference. While the Houses debate separately they are governed by certain rules and regulations, and in an ordinary conference between two Houses there are certain arrangements. Now we propose a final conference between the two Houses on a fixed principle, that a three-fifths majority must rule, and it seems to me that it would be a pity not to allow a full range of common sense and conciliation to prevail in that final conference. It seems to me that if it were possible, it would be almost better for that conference to make rules for itself. Of course I quite see that you cannot open up the part of the Bill which has been agreed to by both Houses, but I think every matter in dispute ought to be before that conference for final settlement, so that an adjustment can be arrived at.

Mr. BARTON (New South Wales). -

One consideration with reference to this paragraph may perhaps affect the views of some honorable members upon it. There was an amendment made yesterday which makes a very considerable alteration in the whole paragraph. As the paragraph stood, upon the Senate rejecting a Bill, or failing to pass it with amendments agreed to, the Governor-General might at once dissolve the two Houses. As the clause was amended yesterday there is a further stage imposed. After an interval of three months, or in the next session, whichever is the longer interval, if the House of Representatives again passes the proposed law, and the Senate rejects it, or fails to pass it, or passes it

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with amendment to which the House of Representatives will not agree, there is to, be the double dissolution. The Bill will then have received four separate considerations. It may be worthy of attention whether it is intended that the Bill should go once more through each House, or six times through the mill altogether. It might happen, if the proposal of the honorable and learned member (Mr. Symon) were carried into effect, that the Bill would have to go through the mill ten times. But is it intended that the Bill should have to go as often as three times through each House?

Mr. MCMILLAN. -

There might not be the same matter in dispute all through.

Mr. BARTON. -

I admit that. But we know what these disputes are in substance. The dissolution will be sought upon the substantial matter in dispute, and the Bill be brought forward again with the substantial matter in dispute still in it. When the sense of the electorates and of the states is obtained, is it intended that the Bill should have to be again dealt with by both Houses? If so, I would ask what substantial good can be obtained from such a provision? The Bill will have been considered twice by each House before the double dissolution takes place, that is, leaving altogether out of account anything that may be done under the proposal of the honorable and learned member (Mr. Symon). Do any of think, whatever the side to which we belong in this matter, that the Bill should be sent through each House again after a double dissolution? The sense of the constituencies will be taken upon the condition of the measure at the time of the double dissolution, and surely it is intended that what should be then voted upon is the then condition of the measure.

Mr. ISAACS. -

When the House of Representatives and the Senate see the result of the elections, they may agree in regard to the measure without a joint sitting.

Mr. BARTON. -

Yes. It may be seen that the temper of both Houses is such that the Bill will be passed by them both if it is submitted to them. On the other hand, it may be seen that it would be useless and idle to go through the form of again submitting the Bill to the two Houses.

Mr. REID. -

There is the further difficulty that the Bill might be altered in the House of Representatives, and then there would be a terrible dispute as to whether this was not evading the issue.

Mr. ISAACS. -

That shows the value of the whole proposal.

Mr. BARTON. -
Is it not only common sense that there should be an alternative course, so that where it can be seen by the Executive that the Bill will pass if again presented to the two Houses, it can be so, presented. But if it is seen that the Bill is not likely to be passed, why should not the joint sitting take place at once? There is a difference between the double dissolution and the ordinary dissolution of the House of Representatives. When there is a double dissolution of Parliament, you take the sense of two constituencies—the constituency of the House of Representatives, which is the whole country divided into electorates, and the constituency of the Senate, which is the whole country divided into states. The results of the dissolution may be so clear cut that any one with half an eye will be able to see that it would be of no use to submit the Bill again to both Houses.

Mr. KINGSTON. -

It would be better to submit it if there had been a dissolution about it.

Mr. BARTON. -

If it were seen that, both Houses would accept the Bill it could be at once submitted to them, but if a different verdict were obtained from the two constituencies the question arises, is it necessary to submit the B

Mr. MCMILLAN. -

HOW can you get at the opinions of the people in regard to the

measure unless you submit it again to both Houses?

Mr. BARTON. -

If the constituency of the House of Representatives gave a different verdict from that of the constituency of the Senate, it would seem to be idle to submit the Bill again to both Houses.

Mr. HOLDER. -

How can you ascertain the verdict of the constituencies in regard to a measure until you submit that measure to the two Houses?

Mr. REID. -

You could tell pretty well.

Mr. BARTON. -

I think so. However, I do not wish to make the consideration of the matter more complex. I thought I was making a suggestion which would simplify things. Now, as to the last paragraph of the clause. It has always appeared to me that it was not intended to have amendments proposed and discussed at the joint sitting of the two Houses, or that there should be the ordinary powers of legislation confided to the general body. In my opinion, the intention is that there should be a vote taken upon the Bill at its then stage, the Bill as amended by both Houses, if it has been amended at all. I think it would be advisable to make the paragraph read in this way:-
And if after such dissolution the House of Representatives passes a proposed law, the provisions of which, in the opinion of the Governor-General in Council, are substantially to the same effect as those of the former proposed law, and the Senate rejects the newly proposed law, or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint meeting of the members of the Senate and of the House of Representatives, and the members present at such joint meeting may deliberate and shall vote together upon the then proposed law, as amended, if at all, by concurrence of both Houses up to the time of such joint sitting being convened; and if the question that the then proposed law be affirmed is passed by a majority-

and so on. That would secure three things. It would secure that after the dissolution, if the Bill were brought forward again, it would be incumbent upon the House of Representatives to pass the measure in entirely the same form. It might pass it in a form which would admit of its being dealt with under the paragraph if it were substantially the same Bill. Then it might be dealt with and amended by the Senate, so far as it had power to make amendments, and it would be submitted to the joint meeting in the form in which it had been agreed to by the two Houses. The difficulty is this, that you have the proverbial three courses. If you do not deal with the Bill at the joint meeting, so far as it is amended by agreement, you are reduced either to putting the Bill before the joint meeting in the form in which the House of Representatives passes it without any interference by the Senate, or you may allow amendments to be made by the joint meeting. I take it that it is not desired that the third course should be adopted. I have had a great hankering after that third course, but it would be accompanied by inconvenience which would render this provision futile. If you abandon that idea, you have the other two courses left. It may be that what I am saying now only accentuates the difficulty of the proceeding. It is a difficult proceeding, and I would ask honorable members to consider it from these points of view-the possible injustice of submitting to, the joint meeting the proposed law as it has passed one House only, and the possible futility and inconvenience of turning the joint meeting into a legislative body with power to make amendments. Then there is only left the third of these proposals, the dealing with the Bill at the stage to which it, has been brought by the concurrence of the two Houses.

Mr. HOLDER. -

There is another possibility. The joint sitting could consider the amendments about which the two Houses had disputed.

Mr. BARTON. -
If you did that you might be, on the one hand, limiting the power of the joint meeting so that it could not go beyond those amendments, and substitute for all or any of them alternative propositions, or, on the other hand, you might get the thing into a worse form altogether, because you might be bringing the matter into a legislative sitting of the joint committee. If they discuss the questions in dispute and decide upon them they will really make amendments in the Bill, and it is not intended that the joint committee should do that. I think that the fourth course leads one into greater difficulties than the others. The only possible plan is to take the Bill so far as it has been amended. The parts of it not yet amended by agreement and the parts of it amended by agreement will still be parts of the Bill, and together they will constitute the whole Bill. Would it not be better to take a vote upon that, than to run the risk of the injustice and the inconvenience the other courses might involve?

Mr. DOUGLAS. -

What would be the use of the joint meeting?

Mr. BARTON. -

I never was in love with the plan of a joint meeting. I voted for it as a means of arriving at finality, instead of resorting to another proceeding which, as it appears to me, would be the very poison of constitutional government, that is, the referendum. I have always been alive to the difficulties that surround this question of the joint meeting, and I have pointed out a few of them. My own view was that these proceedings might have terminated at the joint dissolution, but I recognise that I cannot stop short at my own opinion in a matter of this sort, because we have to submit the measure to the ultimate vote of the people. I am satisfied that they will demand something more than a joint dissolution. We have then to choose between a joint meeting of the two Houses and the referendum, and I accept the former as the lesser of two evils. I felt bound to point out the many inconveniences which surround the whole process.

Mr. HOLDER (South Australia). -

With the first point referred to by the leader of the Convention I shall deal briefly, because it is not new to us, and we should not go back to it even if it were not as important as he suggests. That is the point as to the reference of a measure back to Parliament after a dissolution, or the reference of it right away to the joint meeting without requiring that it should go back to the Parliament. I hope we shall not adopt that alternative, because it would be impossible to say after a dissolution whether the will of the one House or the other would prevail until you presented the question to them for reconsideration.
Mr. MCMILLAN. -

You may have new men.

Mr. HOLDER. -

Yes, or old men with new opinions. We should not adopt any extraordinary methods until ordinary methods have failed. After a dissolution the right course is to refer the measure back to both Houses of Parliament, and not until they have considered it should we have recourse to this extraordinary plan of a joint meeting. I do not like the idea of a joint meeting, but at the same time I am going to be loyal to this provision, because I recognise that it is part of a compromise. We have taken these clauses, and, setting aside some little dislike we have to them, we have stood by the agreement we arrived at in Sydney. I believe that the majority of us are prepared to stand by it to the end. I now come to the question of the way in which the joint meeting is to dispose of any measure. I hope that our leader will yet see his way clear to adopt the principle suggested by our President, that the joint meeting should have power to consider the Bill and any amendments on it. That would exclude suggestions on Money Bills. We know that a Bill may be passed by one House, and sent on to the other. The other House may make amendments in the Bill, and return it, when the amendments or some of them may be agreed to, perhaps with further amendment. The real question in dispute might, after all, be the acceptance of an amendment on an amendment. Surely we should allow the joint meeting to consider such an amendment, and say that their decision should be final. The Drafting Committee have ability enough to deal with this matter, and if they would undertake to consider it after the Convention has declared its views we could at the next recommittal stage come to an agreement upon it. We certainly ought, in fairness to the Drafting Committee, to inform them what our will is. I think a large majority of honorable members desire that the power of the joint meeting of the two Houses should be large enough to include all matters that are the subject of dispute. If we accept the words which the President has suggested, or some other words which will give the necessary instruction, the committee could, by the morning, or at an early date, dispose of the whole question. If the President hesitates to submit his motion because of his official position, I should be quite prepared, on his behalf, to submit it. Not that the insertion of the words would be final, but they would simply convey to the committee an intimation of what the wish of the majority of the Convention may be.

Mr. OCONNOR (New South Wales). -

I beg to move-
That after the word "thereon" the following words be inserted:-"with or without the amendments, if any, agreed to by the House of Representatives, or made by the Senate and not agreed to by the House of Representatives.

Sir GEORGE TURNER. -
That would enable them to go into the whole question of the amendments.

Mr. OCONNOR. -
No; it would enable them to go into the amendments which had been made by the Senate or House of Representatives and not agreed to. It would bring in only those matters which are in dispute.

Mr. BARTON (New South Wales). -
We do not want to recommit any clauses, but a doubt has been raised by legal members as to whether by this vote the law would be passed.

Mr. GLYNN (South Australia). -
I understand, Sir Richard Baker, that you are putting the amendment of the right honorable member (Mr. Kingston)?

The CHAIRMAN. -
No; it is the amendment of the Hon. Mr. O'Connor, but it is the same in effect as that of the President.

Mr. GLYNN. -
I would like to test the feeling of the committee as to whether suggestions should not be sent on as well as amendments.

HONORABLE MEMBERS. -
No, no.

Mr. GLYNN. -
It is all very well for members to say "No, no." The House of Representatives is protected against blocking by the Senate, but there is no protection against the blocking of legislation initiated by the Senate.

Sir JOHN FORREST. -
Is not that all the better?

Mr. GLYNN. -
I do not think that it is.

Mr. OCONNOR. -
Would it not be better to deal with the question of suggestions at the end of the clause?

Mr. GLYNN. -
So long as the question is dealt with before the final drafting I do not mind where it is dealt with. Honorable members may talk about referring general matters to the joint meeting, but after all what would be referred
would be Money Bills. That is the reason there is no provision made for stopping a deadlock in legislation initiated by the Senate. I think there ought to be an opportunity of testing the feeling of the Convention as to whether suggestions, which might be the cause of a Bill being rejected by the Senate and result in a dead-lock, ought not to be included.

Sir GEORGE TURNER. -
You had better give the Senate power to amend Money Bills at once and end the matter.

Mr. GLYNN. -
That is a different thing altogether. As Dr. Cockburn has said, this is a sort of joint meeting for the purpose of conciliation. In order to test the feeling of the committee, I beg to move as an amendment on the

That, after the word "amendments," the words "or suggestions" be inserted.

Mr. BROWN (Tasmania). -
Before the honorable member tests the feeling of the Convention, I would like to ask legal members whether what the honorable member desires is not covered by the words "fails to pass" in the early part of the clause? Of course, a Bill "fails to pass" if it is sent back to the House of Representatives with suggestions or amendments.

Mr. BARTON. -
If the House of Representatives does not accept the suggestions, and the Senate thinks fit to shelve the Bill, that is failing to pass it.

Mr. BROWN. -
Yes, that is what I think Mr. Glynn desires, and what I think is covered by the words I have mentioned.

Sir GEORGE TURNER (Victoria). -
Like Mr. Barton, I have never been in favour of this joint sitting, and I felt very strongly that a wiser course would have been to strike out the provision altogether. But, still, as we have determined that we are to have a double dissolution, and as I believe a minority of the Convention are anxious to have something following the double dissolution, and as they would not agree either to a national or a dual referendum, I think we now are practically bound to carry the clause as we passed it in Sydney. If we are to have a joint sitting, let us endeavour, whether we like it or not, to make that joint sitting effective. With that object in view, although at first I was inclined to think that the joint sitting should either affirm or reject the Bill, I am quite willing to fall in with the proposal that has been made that the joint sitting should have power to deal with the amendments which were before discussed by the two Houses. I think, however, that when we
have gone that length, we have gone the full length we ought to go, and that those who are anxious to conserve and preserve the rights of the Senate should not attempt to force us a step further. What are we asked to do by the amendment suggested by Mr. Glynn? We have given to the Senate, not the power to amend Money Bills, but simply the power to make suggestions. Mr. Glynn now desires that when the joint sitting takes place, those suggestions shall be taken into consideration, voted upon, and decided by the joint meeting. That means that if there is a sufficient majority made up of members of the Senate combining with a small majority in the House of Representatives, the Senate will have its own way, and be practically able to make amendments in Money Bills.

An HONORABLE MEMBER. -

There must be a three-fifths majority.

Sir GEORGE TURNER. -

They would vote pretty solidly on this matter in order to gain their point, and in order to obtain an advantage. Experience shows that the House which has not the power to amend Money Bills will always try to do so. A large number of senators, combining with a comparatively small number of members of the House of Representatives, would be able to make amendments in Money Bills. We know what the feeling of the senators will be. They will say "We have been deprived of the power of amending Money Bills which we think we ought to have." They will want to have a finger in the financial pie, and their leaning will be to make amendments directly or indirectly. If it is the object of Mr. Glynn to get this power of making amendments in Money Bills in favour of the Senate, let us do it openly, and honestly say at once that we will do away with the compromise arrived at—that with regard to Money Bills the Senate shall only have power to make suggestions. Let us give them the power at once to make amendments in Money Bills. Mr. Glynn is going too far. While I am glad to be able to meet those who desire to give the fullest possible power to the two Houses sitting jointly, I am not prepared to go to the length, by the means

which the honorable member has suggested, of giving the Senate power to amend Money Bills. I hope he will not propose his amendment, because if it is carried it may result in the loss of what others are anxious to get.

Sir JOHN FORREST (Western Australia). -

Every one knows that I have always been an advocate of equal powers for the Senate, but in Adelaide and Sydney a majority of the House were adverse to my desires. It seems to me that we have accepted the position
with regard to the powers of the Senate in dealing with Money and Taxation Bills, and I do not think we are justified in attempting to get, by a side-wind, a power which this House has refused to give in the Money Bills clause. I have not consulted any one, but I think we are not justified in asking this House to confirm the principle that the joint sitting of the Houses should have power to deal with suggestions in Money Bills. I hope Mr. Glynn will not press his amendment, and, if he does, I shall have to vote against it, although I believe in both Houses having the same power with regard to all measures. But I am not going, by a side-wind, to attempt to get what was denied to us when we were dealing with the money clauses.

Mr. GLYNN (South Australia). -
I voted in Adelaide to take away the power of amending Money Bills from the Senate, although that course was very unpopular at the time in my colony. In Sydney I spoke against it, but I look upon the proposal which I now make as quite a different matter. If there are six colonies there will be 36 senators, and the Senate, sitting by itself, could, by the votes of nineteen members, carry amendments in Money Bills, but the whole 36 when sitting with 112 members of the House of Representatives could not carry them. If the Senate voted in one block they could not carry one of their suggestions at the joint sitting of the two Houses, However, I do not want to do more than test the feeling of those who have stronger prejudices than I have with regard to the Senate. My object is that the matter should be considered to-night. Of course, if such a lion in defence of the Senate as Sir John Forrest will not support the amendment, I shall not press it. Compared with Sir John Forrest, I have a leaning in favour of the House of Representatives. I ask leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. O'Connor's amendment to insert words after "thereon" was agreed to.

Sir JOHN FORREST (Western Australia). -
I would like to ask if there is anything in the fact that no time is mentioned after the dissolution? If after the dissolution a proposed law fails to pass, it may be brought up twenty years after the dissolution. I think that a time should be fixed-say, six months or one year.

The paragraph was agreed to.

Mr. SYMON (South Australia). -
We have now arrived at a conclusion with regard to this matter of the solution of dead-locks. The provision which is now about to be embodied in the Bill contains an alternative method of dealing with any anticipated dead-lock. Of course, the provision which I have struggled for, and which I believed, and still believe, to be that which would carry out the intention,
not only most effectually but most justly, with regard to the solution of
dead-locks is that known as the consecutive dissolution, embodied in the
first paragraph of the clause. That has been inserted, but with it has also
been inserted, by a larger majority of this Convention, the provision which
is known as the concurrent or simultaneous dissolution, and attached to
that there is a further provision for a joint sitting of the two Houses in the
event of the simultaneous dissolution not leading to a solution of the
difficulty between the two Houses. It appears to me that to retain these
alternative provisions in this Constitution would be a disfigurement
of this Bill. I have, as honorable members know, fought this question in
Sydney, and I fought it again here, for a consecutive dissolution. I have
resisted to the very utmost of my power the concurrent dissolution, but I
acknowledge, frankly, that with regard to the consecutive dissolution I
have been beaten. I certainly have no desire—simply in order to see it in this
Constitution—to retain a provision for which I have all along fought if, by
retaining it, we have an alternative provided which, it seems to me, would
be a blot upon the Constitution which we are engaged in creating. I do not
think this Convention desires, and I do not think it ever did desire, that
there should be an alternative embodied in the Constitution. It might, as
our leader has pointed out, lead to the Bill passing through what he has
called "the mill" ten times. Such a possibility is not likely to arise, but it is
a possibility which might arise; and while I am as tenacious as anybody of
what looks like a victory, I do not wish to retain something which, though
in form and in words, is a victory, may result in confusion, and would, on
the face of it, I think, be an instrument in the hands of adverse critics to
discount or hold up to ridicule the efforts of this Convention in solving this
question. Therefore, if the course contemplated in Sydney was that the
matter should be left as a tentative proposal in order that it might be
considered in the interval, I think the best course would be to strike out the
first paragraph, which was inserted on my own motion, and I shall be
prepared to assist the honorable member, speaking for myself personally,
to strike it out. I really think it would be a rank absurdity to leave it in the
clause. I cannot say more than that of a proposal to which I would be
firmly wedded if I could only have seen it there alone. While we are here
as a full Convention, I think probably the better plan would be that we
should not insert the whole of this clause, but eliminate the paragraph in
question

Sir JOHN FORREST (Western Australia). -

Having taken a prominent part with Mr. Symon in advocating the
simultaneous dissolution of the two Houses of the Federal Parliament, and
having been defeated, I desire that the Bill should not be disfigured by alternative methods inserted in it. Therefore, I am very glad to say that I shall be pleased to assist him as far as I can in expunging from the Bill paragraph (1) of this clause, if our leader finds a way of doing it.

Mr. BARTON (New South Wales). -

There is a way of doing it which has been adopted during the currency of the Convention here. I do not want to add to the debate, except that I think it would be a disfigurement of the Bill to have both these provisions for a consecutive and simultaneous dissolution in the clause; and, although both have been carried, it probably was the desire of the committee that, in the end, only one of them should be adopted, together with the joint vote of the two Houses of the Federal Parliament; and that that provision which had the largest majority in its favour should be the one finally decided on. I do not want to ask honorable members to recommit the Bill again for the sake of anything that we can decide as we go along, because there will have to be a recommittal, which I hope will be mainly formal, for considering drafting amendments, and we do not want to do anything beyond that. I think the most judicious thing will be to deal with the matter at once, and if honorable members agree to that course, I beg to move, Mr. Chairman, that you report progress, and ask leave to sit again when you have obtained an instruction to the committee on this subject.

The motion was agreed to.

Progress was then reported.

Mr. BARTON (New South Wales). -

I beg to move-

That the standing orders be suspended in order to enable me to move, without notice, an instruction to the committee.

The motion was agreed to.

Mr. BARTON. -

I now beg to move-

That it be an instruction to the committee that they have leave to consider clause 56B, with a view to omitting the first paragraph thereof.

The motion was agreed to.

The Convention then resolved itself into a committee of the whole for the further consideration of the Commonwealth of Australia Bill.

The CHAIRMAN. -

Instruction has been given to the committee that they have leave to reconsider clause 56B, with a view to striking out the first paragraph.

Mr. KINGSTON (South Australia). -
I had very great pleasure yesterday in following my learned friend (Mr. Symon) in supporting the inclusion of the first paragraph, and I should be pleased to see both paragraphs retained, for I think that each affords an excellent opportunity for reducing both Houses of the Federal Legislature into obedience as regards the wishes of their constituents. However, it seems to me that a majority of the Convention think that the one power would be sufficient, and it does seem rather unlikely that when the power to dissolve each of the Houses is vested in the Executive, it would be exercised by the Executive to the extent only of dissolving the House of Representatives, which h

Mr. BARTON (New South Wales). -

I beg to move-

That paragraph (1) be struck out.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 68-The command in chief of the naval and military forces of the Commonwealth is hereby vested in the Governor-General as the Queen's representative.

Dr. COCKBURN (South Australia). -

In the absence of the Hon. Mr. Deakin, I beg to move the amendment of which he has given notice:-

That the words "as the Queen's representative" be omitted, and the words "acting under the advice of the Executive Council" inserted in lieu thereof.

This is a very important amendment. I raised this question before, I think, in the Constitutional Committee in Adelaide, but I was unable to get a majority then. However, the question has now come forward with a greater degree of importance than ever, because it appears from certain correspondence which has been laid on the table of the Parliament of New South Wales that it has been claimed by the military authorities of one of the colonies that the Governor should be the actual administrative head of the permanent military forces; that the Minister of War should practically be a nonentity; and that the commanding officer should refer all matters direct to the Governor. I observe that Mr. Deakin has entered the chamber, and perhaps he will speak to his amendment.

Mr. DEAKIN (Victoria). -

I beg to thank the honorable member for submitting my amendment on clause 68 during my momentary absence from the chamber. That amendment expresses, not perhaps in the best way, but in a sufficiently clear fashion, a proviso which it seems necessary to embody in some form. As the clause stands, it refers to the Governor-General alone as Commander-in-Chief of the Naval and Military Forces of the
Commonwealth. It is in contrast with other clauses, such as clause 63, where it is provided that the Governor-General may appoint officers to administer such departments of State of the Commonwealth as "the Governor-General in Council" may from time to time establish—a clear distinction being drawn in that clause between a power vested in the Governor-General himself and the power vested in the Governor-General in Council. In the same way, in clause 66, honorable members will notice that until the Parliament otherwise provides, the appointment and removal of all officers of the Executive Government of the Commonwealth is vested in the Governor-General in Council. And again, in clause 83, it is provided that no money is to be drawn from the Treasury of the Commonwealth except under appropriation made by law; but until the expiration of one month after the first meeting of the Parliament "the Governor-General in Council" may draw upon the Treasury, and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth under this Constitution, and for the holding of the first elections for the Parliament. In clause 85B, which relates to the "Transfer of land, buildings, vessels, &c.," to the Commonwealth, the Commonwealth is to take over property "for such time only as the Governor-General in Council may declare to be necessary." So that here we have a series of clauses in which, for the most part," the Governor-General in Council" is the phrase used when it is intended that this high officer shall act with the advice of the Executive Council; and the distinction in this clause, where the words "in Council" are omitted, appears to point directly to some additional personal power to be vested in the Governor-General in regard to the control of the naval and military forces of the Commonwealth. If that be the case—and it does appear to me to be the case—it is distinctly a retrograde step. In his Parliamentary Government in the British Colonies, Mr. Todd, at the very outset of his work (page 17), says-

The prerogatives of the Crown in relation to the army and navy, and in the direction of the foreign policy of the empire, were at first, and for a time, practically excluded from Ministerial control; but these monarchical functions gradually became subject to the supervision of Ministers, and it is now obvious that any attempt on the part of the Sovereign to retain in his own hands power, in respect to military administration or diplomacy, would be as inconsistent with constitutional usage as would be the personal and direct interference by the Sovereign in domestic affairs. In all acts of government the Ministers of the Crown are required to assume, on behalf of, and with the consent of, the Sovereign the burden of personal power,
and thereby relieve the Crown of all personal responsibility.

The whole subject is considered more elaborately by Mr. Todd in the 12th chapter of the same book, headed "Imperial Dominion exercisable over Self-governing Colonies in Military and Naval Matters" (page 370), which deals with matters down to the year 1894. Without wearying honorable members with unnecessary references, inasmuch as there is likely to be some opposition to this proposal, I feel bound to point out some facts. Mr. Todd notices, in the case of Victoria, that the Governor exercises no more authority in military matters than he exercises in regard to the other departments of the State. In Canada, from the time of the initiation of the Confederation, so far as the Governor-General is concerned, a similar practice has prevailed. The Governor-General acts by the advice of his Executive Council. In New South Wales a difficulty has arisen in connexion with this question, and a compromise was arrived at during the Premiership of Sir George Dibbs, by which there was left to the Military Commandant of that country the right to primarily consult the Governor in respect to questions of discipline; and, as a matter of fact, that removed to a large extent the control of the naval and military forces from Parliament, and from the Ministry of the day.

Mr. HIGGINS. - Does the correspondence which we have had placed in our hands relate to that dispute?

Mr. DEAKIN. - That is the correspondence. Then there is the famous South African case, where the whole matter became of such importance that it led to the actual dismissal of a Government—that of Mr. Molteno—and to a full discussion of the whole subject in the Cape Parliament, when the first resolution carried was that in all matters relating to the control of the colonial forces, the Governor should act with the advice of his Executive Council—a settlement which was entirely approved by the Imperial authorities in England. So far as this colony is concerned, I could, if it were desirable, having the materials at hand, trace the history of the struggle which went on from 1862 to 1870, when, in an indirect manner, we obtained a satisfactory settlement, which is in fact the present practice. The Parliament of Victoria passed an Act dealing with the military and naval forces, which provided in one section that while the Governor was referred to as the Commander-in-Chief he should act under the advice of his Executive Council. As a matter of fact, that Act did not receive Her Majesty's assent because of another section, having no relation to this, which did not meet with the approval of the Imperial authorities. In
the despatch relating to the question which I hold in my hand, the Imperial authorities directly and specifically assented to the section in which we had made it perfectly clear that in matters relating to the control of the colonial forces, just as in every other branch of our colonial service, the Governor was to act with the advice of his Executive Council, and that the control of the military and naval forces was to be managed through the Minister of Defence.

Mr. BARTON. -

As it is now, the Governor cannot act without the advice of the Minister any more than the Queen, can, even if not specified to, be "in Council."

Mr. DEAKIN. -

Quite so, that is clearly the case in Victoria, in South Australia, and in South Africa, but I think it is not quite the case in New South Wales. But this clause casts grave doubts upon the position as to whether it would be the case under the Commonwealth. At all events, the matter is of sufficient importance to be placed beyond doubt. These forces will be raised and paid for by the Commonwealth, and should be under the control of the Commonwealth Parliament and Executive, just as much as any other department of the State.

Mr. LEWIS. -

In time of war?

Mr. DEAKIN. -

With regard to time of war there are Imperial regulations which direct the procedure to be followed; but even then the money and forces required would be raised by the Parliament and expended through the Minister of Defence. Whether in time of war or in time of peace no important step should be taken in connexion with the naval or military forces of the Commonwealth except through the Minister of Defence.

Mr. BARTON. -

As a member of the Executive Council?

Mr. DEAKIN. -

The Minister of Defence advises the Governor-General through the Executive Council, or with the knowledge of his colleagues. The Governor-General is to be in the position in which the Queen is in regard to accepting advice. What is necessary is to make it clear that the claim several Governors have advanced in these colonies, and which has been rejected in all the colonies except, perhaps, one, is not to be recognised under the Commonwealth. The claim that has been made by some Governors amounts to this: That they are endowed with some personal power and personal control of the military and naval forces independently of their Executive Council, and independently of the Parliament of the
country. I have been supplied by an ex-Minister of Defence in this colony with a great quantity of correspondence, some of it of an exasperating and exasperated character, with regard to this question in Victoria. We found the position intolerable until we settled it that the ordinary constitutional rule should apply in connexion with naval and military departments as with regard to others; and that, while the Governor is to remain as Her Majesty's representative in supreme control of all functions of government, he will be required to act in this, as in other matters, on the advice of his Executive. In no case is he to be endowed with the personal power to act over the heads of Parliament and the Ministry, by whom these forces are called into existence and by whose contributions they are maintained.

Mr. HIGGINS. -
Suppose any man refused to obey orders on parade—what then?

Mr. DEAKIN. -
If a man refused to obey orders on parade, that, as a question of discipline, might in some colonies go direct to the Governor, past the Minister of the department altogether.

Mr. HIGGINS. -
But not here in Victoria.

Mr. DEAKIN. -
Not here in Victoria. I have some correspondence in which Sir Henry Parkes points out that an offer of a battery of artillery for service in South Africa had been made over his head and without his knowledge. The Premier of New South Wales found that a portion of his military force had actually been offered for service outside the colony without so much as an intimation of the intention to make such an offer being sent to him.

Mr. BARTON. -
He laid down an indisputable principle in that minute, which has ever since been followed under a Constitution which does not require these words.

Mr. DEAKIN. -
Sir Henry Parkes laid down that principle, but the difficulty afterwards arose again, and a memorandum was made by Sir George Dibbs on the matter. There is still in New South Wales the practice of sending through the Minister of Defence sealed envelopes containing statements with regard to the management of the defence force and its discipline, which he does not open, and is not allowed to open, but which go direct to the Governor. That is an intolerable position. It is a position which we have fought against here, and successfully contested. I trust we will place it
beyond all question in the Commonwealth we propose to establish that ordinary constitutional usage shall prevail.

Mr. SYMON. -

Under an Act of Parliament, or how?

Mr. DEAKIN. -

We passed a Bill which, for another cause altogether, was laid aside, but in informing us that the proposed Bill was not assented to by Her Majesty the Imperial Government conveyed to us their entire approbation of this particular clause in which we

Dr. COCKBURN. -

Divide!

Mr. BARTON (New South Wales). -

It is rather a new feature in the proceedings of this Convention that any body should call for a division without bearing both sides of the question. After we have spent seven weeks in our deliberations such a novelty comes with the refreshment of a cool sea breeze. I am certainly not going to waste any of the time of the Convention. I have very few words to say about this matter. I wish only to speak to the point. It is perfectly competent for any Minister under responsible government, such as we have it, to secure for the people through their Executive Council every control that my learned friend wishes to obtain, that is to say, every control of the entire management and administration of the department for which the Minister is responsible. In the Imperial Constitution, much of which is unwritten, there is no necessity for a provision of this kind in order to insure that the prerogative shall be administered in trust for the people, and it is laid down by every constitutional writer whose word is worth having that every prerogative of the Crown is now administered in trust for the people,

which means, and is stated to mean, that it is administered by the advice of a responsible Minister. It is quite true that in a most exceptional way the Commandant in New South Wales once offered to the Governor a battery of troops to serve out of the colony. I believe that the Commandant would not at all have been impressed by the particularity of adding the words "in Council" to the word "Governor" in any Act dealing with the subject. The person who made that offer would have made it under any circumstances. The question is, is there sufficient power, as matters stand, to prevent such things from being done, and to insure punishment, if necessary, for their being done? In the minute to which my learned friend has referred, Sir Henry Parkes recognised that power by saying this-

The military forces have been called into existence by the Parliament, and are paid out of the revenue of the colony, and they are as much subject
to the control of the responsible Government existing in this colony as any other branch of the public service.

That is clear enough, I think.

I lay this down as an indisputable principle, and in future I must treat any violation of this principle by the Commandant as I should treat any similar violation of the principle by any other servant of the Government.

Why? Although the Governor is, under the prerogative, the Commander-in-Chief of the Forces, although he is so styled in the Governor's instructions, even under a Constitution like that of New South Wales, which does not mention the powers and functions of the Governor, who only derives his powers and functions from his commission and instructions, how can a Military Commandant be appointed except by the Governor in Council? It is by the Governor in Council that he is appointed, without any words of this kind in the Constitution to necessitate it at all. Appointments to that, as to other positions, are made by the Governor in Council, which means the Executive, and the determination of the Executive means the determination of the Cabinet, into which no Governor can intrude any more under the law of New South Wales than he could under the law of this Constitution. But the man who is appointed by the Governor in Council—that is to say, by the Executive; that is again to say, by the Cabinet—may be removed for misconduct by the authority which appointed him. It simply comes to this: On the advice of a Minister, if the matter is sufficient to lay before the Cabinet, the Cabinet decides that the official shall be removed, and it could be done in that ease. What happens then? An Executive minute is prepared, in which the Minister recommends the removal of the officer; that minute is adopted in the Executive Council, over which the Governor presides, and the Governor in Council has then removed the man. That you can do under a Constitution which does not contain the words "in Council" at all, simply because the power which appoints can remove. The officer may be under an engagement, but if he is under an engagement, who makes the engagement with him except the Executive, which is the Governor in Council? He cannot be removed so as to break an engagement, except at the risk of giving him some compensation. If you put in the words "in Council," you would not alter the legal position by so much as a hair's breadth. The matter really comes to this: There are certain prerogative rights which have been long demitted or got rid of by statute or by other practice—generally by statute—and in any statute drafted the words "in Council" are inserted. There are certain other prerogative rights which, not having been the subject of such demission, as it is sometimes called, I believe, not having been given up in any way, apparently, are not so described in a statute. There are certain prerogative
rights—this was all gone into at Adelaide, and decided by the Convention according to the contention I am advocating—which are not described in a statute as rights of the Governor in Council, simply because no statute has ever dealt with them, and because they belong to that part of the prerogative which has never been nominally given up by the Crown. Of such is the power to summon and dissolve Parliament, to which no one who understood these matters would dream of adding the words "in Council." But yet these rights can never be exercised without the advice of a responsible Minister, and if that advice is wrongly given it is the Minister who suffers. Then, again, there is the prerogative right to declare war and peace, an adjunct of which it is that the Queen herself, or her representative, where Her Majesty is not present, holds that prerogative. No one would ever dream of saying that the Queen would declare war or peace without the advice of a responsible Minister. Wherefore, we all came to the conclusion, as constitutional writers have long come to the conclusion, that the prerogative is given in trust for the people, and is, therefore, only exercised at the instance of a responsible Minister. I should like to know whether there would not be a revolution in England if the Queen chose to declare war or to make peace without the sanction or advice of a responsible Minister? That would be as absolutely gross an infraction of the Constitution as an attempt to abolish the House of Commons, as the advent of a second Protector, not only taking away the bauble, but taking all those who surrounded it. Do we not then come to this conclusion, that the Constitution is absolutely safe in this form as we understand it, that you can not have a prerogative of the Crown in these modern days which can be exercised without the advice of a responsible Minister if a responsible Minister chooses to advise? Why, then, are we to alter all the settled forms, which are those we understand and know, and which are constantly acted upon in the administrative government of England and of our own colonies, because occasionally there has been a Minister so unread as not to understand these matters, or so weak as not to enforce his powers? If Ministers were like the late Sir Henry Parkes, a stand such as he took would be sufficient, and is sufficient in New South Wales. I understand that upon occasions a power which I certainly would not like to see exercised is exercised by the Commandant of the forces in New South Wales. I am not attacking that gentleman, who is an exceedingly able and gallant officer. If any man wishes to make an inroad into the Constitution, or does not fully understand his position in a self-governing colony, he will make a mistake, whether you do or do not put into the Constitution words of this kind. If you send your Draft Bill home
with these words in it, I shall not be answerable for the opinions passed upon our drafting. We shall be told that we ought to understand that the matter is sufficiently regulated by constitutional usage already, and that the prerogative which is nominally vested in the Queen, is actually wielded by the Cabinet.

**Dr. COCKBURN.** -

It is not wielded by the Cabinet in the honorable and learned member's own colony.

**Mr. BARTON.** -

I know that there are cases in which it has not been so wielded, but if you ever find a Minister who, under the present form of Constitution, does not wield these powers, he is a man who would not be stronger in asserting them if you inserted in the Constitution the words "in Council." He would leave the Commandant greater power than he ought to leave him, even if the words were inserted. A responsible Minister only requires to see the constitutional position which usage and custom have set up throughout the empire to know, as I am sure every responsible Minister in New South Wales will know, what is an improper action upon the part of the Commandant, and an action which ought to be put a stop to. There may be a discretion in matters of mere discipline, such as the holding of a court-martial, the report of which goes to the Governor in Council, and is afterwards remitted to the Attorney-General to be recorded. But that is only an exception which deals with such matters as disobedience upon parade, assaults upon parade, and unsoldierly conduct of one kind and another. These are not matters about which any Minister would concern himself. What a Minister is concerned with are matters for which he is responsible. A court-martial is a judicial tribunal, and a Minister cannot affect its decision in any way. He could not dismiss an officer conducting a court-martial, because that man would be acting in a purely judicial capacity. Of course, neither in England nor here would an interference with the prerogative in that respect be tolerated. But the Minister is responsible for the administration of the department as the person under whose control it is, within the Executive arrangement, and he is responsible for all expenditure upon it. Having this responsibility, he is entitled to tender the advice which will enable him to exercise his responsibility fearlessly. That is the constitutional position of the matter, and it will not be strengthened by the putting in of these words, because it is as strong now as it ever can be. The result of the amendment will be that when the Bill comes before the Imperial Parliament the words will probably, if not certainly, be struck out, and we shall be told that we
have already sufficient power to deal with our own affairs. I believe entirely in the constitutional position taken by the late Sir Henry Parkes. That constitutional position arises under a statutory Constitution in which the Governor is not even mentioned by way of defining his powers and functions. They rest simply upon the letters and instructions issued to him. That is the position of affairs where the Governor is described merely in the ordinary way. It indicates the power to exercise the prerogative. The constitutional doctrine that the prerogative is exercised in trust for the people, and therefore by a responsible Minister, is now child's knowledge to all of us, and it regulates the whole case.

Mr. ISAACS. -

One unfortunate thing is that the Governor-General is mentioned in many of the clauses, and the Governor-General in Council in others.

Mr. BARTON. -

That is so. An endeavour has been made in drafting the Bill to use the words "in Council" where by statute law in pari materia the Governor-General in Council has been the authority to exercise the power. Where there has been no omission of the prerogative the ordinary words of description importing the prerogative-the Governor or Governor-General-are used with the perfect knowledge that the powers of the prerogative are really now the people's powers.

Mr. SYMON. -

It is just the same as the command of the army being vested in the Queen.

Mr. BARTON. -

Yes. The Queen is the Commander-in-Chief of the British Army. She has the sole power of making peace and war. According to constitutional assumption it is her army. But who exercises the control of the Imperial Army? Is it not the adviser of the Queen? Would there not, as I said before, be a revolution if the Queen exercised her powers without consulting her Ministers? The honorable and learned member (Mr. Symon) has handed me a passage from Anson's Law and Custom of the Constitution, at volume 2, page 392. I quoted several passages upon the subject at Adelaide, and I then understood that the Convention was perfectly satisfied as to the position. It was then proposed by the Right Hon. Mr. Reid to import the principle which the honorable and learned member (Mr. Deakin) now seeks to import, but the proposal was negatived. The passage which I wish to read is as follows:-

Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion or

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reward, or the acceptance of their resignations. This prerogative is exercised through the Commander-in-Chief, on the responsibility of the Secretary of State; and it is the more important that power of this sort should be in the hands of a non-political officer, such as the Commander-in-Chief, because our army, unlike the armies of other European countries, is not divorced from the political rights of citizenship. The soldier, if duly qualified, may exercise the franchise; the officer may sit in the House of Commons. Plainly then, the King or a Minister of the Crown might use, or be pressed to use, the powers of appointment, promotion, or dismissal, for political and party ends. The history of the last century attests the reality of this danger. The office of Commander-in-Chief, as constituted in 1793, was intended to meet it.

We find that, as time has gone on, all these powers have come to be exercised by the advice of the Minister, if not by the advice of the Executive Council. The constitutional usage in this case seems to me so clear that it would be of no use to attempt to disturb it, and, whether these words are or are not inserted, this power will be really in the hands of the people.

Sir EDWARD BRADDON (Tasmania). -

I think that the honorable and learned member who moved the amendment has overlooked the fact that the position of the Defence Minister and the Governor in all the colonies is distinctly laid down by the various Discipline Acts, Volunteer Acts, and so forth, in force in the several colonies. By the Tasmanian Act the Minister for Defence deals with all matters connected with the Defence forces. He, to great extent, fills the position of the Secretary for War in England, with the power of the Commander-in-Chief combined. The papers to which the honorable member refers show that the Colonial Secretary merely recommended that all communications relating purely to discipline should be addressed to His Excellency the Governor, and should be sent under sealed cover through the Colonial Secretary's department. That was only a recommendation addressed to New South Wales, and I do not know that it has been followed by that colony. I can say that in the administration of the Defence Act and the control of the defence force, it is not generally followed, and everything dealt with by the Governor as Commander-in-Chief first passes through the hands of the Minister of Defence. As to the constitutional aspect of the question, my honorable friend's amendment raises no issue. He admits that the representative of the Queen occupies the position in connexion with the defence force that the Queen herself occupies, and that, as her representative, he is the Commander-In-Chief. I think that he will find that no difficulty will be experienced in the wording of the clause,
even if it be not absolutely necessary constitutionally that the clause should be so worded.

Mr. BRUNKER (New South Wales). -

Whatever the constitutional aspect of the question may be, there is no doubt that considerable inconvenience and delay have arisen, in New South Wales at any rate, in dealing with military matters.

Mr. DEAKIN. -

We had a ten years' controversy about it.

Mr. BRUNKER. -

I do not know what the law in the other colonies is, but we in New South Wales are governed by the Volunteer Act passed in 1867, which, I think, appoints the Governor Commander-in-Chief of the forces. I know that a conflict of opinion has arisen in very many cases as to whether the Governor in this Act means the Governor with the advice of the Executive Council, or whether the authority is placed in the hands of the Governor alone. Honorable members have no doubt been placed in possession of the data which has been printed and laid before them in anticipation of the consideration of this question. I am very pleased to say that in New South Wales, now, we have not the trouble and inconvenience that was experienced in the past. It is certainly true that in connexion with all matters submitted to the Minister of Defence by the Commandant or the Major-General, the papers, although they come openly so that the Minister may know exactly what are the propositions made, are forwarded to His Excellency in compliance with the terms of the Act. The Act is very explicit, because although it says in the interpretation section that "Governor" shall mean the Governor with the advice of the Executive Council, it also says that in the construction and for the purposes of this Act, if not inconsistent with the context or subject-matter, certain terms shall have the respective meanings assigned to them. And then Part I. of the Act embodies the view which has been maintained, not only by our present Governor, but also by those who preceded him, that the Governor is Commander-in-Chief of the forces. Section 4 of Part I. says-"The Governor, as the Queen's representative, shall be the Commander-in-Chief of all the forces raised in the colony." We are governed by this Act in New South Wales, and, as I said at the outset, although differences have arisen, and considerable delays have occurred in dealing with matters in the past, we are now free from those inconveniences, and things run smoothly, simply in consequence of complying with the conditions of the law by which we are supposed to be governed.

Mr. DEAKIN (Victoria). -
I do not propose to detain the Convention with any reply, except to point out that the contention of Mr. Barton in no respect applies to the matter submitted to the Convention. I agree with him entirely in his constitutional construction of the prerogative, and, indeed, went so far out of my way as to quote Todd to put it beyond all doubt. But what are the facts? It took ten years' fight in Victoria to get the question settled, and we have it on the testimony of Mr. Brunker that a struggle has been waged in New South Wales. Todd furnishes an instance in which a Ministry lost its life in South Africa in this struggle, after a prolonged political conflict. Under the circumstances, it seems desirable there should be no ambiguity. We are not dealing with common law, but with a statutory power, and desire to place these powers beyond all dispute. What I would prefer is not the introduction of the words suggested, but such a definition of the term "Governor-General" as would remove the ambiguity which it appears to me exists. The leader of the Convention has told us that the words "Governor-General" or "Governor-General in Council" have been used by the Drafting Committee according as the prerogative has, or has not, been practically surrendered to Parliament. That is not to be found on the face of the measure, and it is always in these cases open to question whether in any particular instance the prerogative has or has not been abandoned. These doubts might be set at rest if there were a definition clause setting forth the sense in which the term "Governor-General" is used in the Constitution.

Mr. BARTON. -

The term "Governor-General in Council" when used means the Governor-General in Council with the advice of the Executive.

Mr. DEAKIN. -

And what does "Governor-General" mean?

Mr. BARTON. -

That means the ordinary powers intrusted to the Governor-General by the Queen.

Mr. DEAKIN. -

And these are to be exercised by him only on the advice of his Ministers?

Mr. OCONNOR. -

When you only find the term "Governor-General," that means the prerogative.

Mr. DEAKIN. -

On that prerogative Governors have made claims, which have received some recognition, to exercise more power than they claim when the term "Governor-General in Council" is used. Under clause 70, any distinction which exists between different exercises of prerogative powers by our Governors are to be preserved in the Commonwealth, and govern the
relations of the Governor-General to each particular

state according to the differing practices which may have existed. The
difficulty I have mentioned might be settled by some general provision or
definition. On account of the strong feeling which exists in some of the
colonies, I propose to press this matter. I do not at all insist on the form of
the amendment, but call the attention of the Drafting Committee to the
necessity of putting beyond all question the sense in which the term
"Governor-General" must be accepted. This prerogative power should be
exercised, as practically all other powers now are, on the advice of the
Executive, or of one of its members.

Mr. OCONNOR (New South Wales). -

It appears to me, with all respect, that Mr. Deakin has not quite
appreciated the meaning of the section. We do not wish to put the
Governor-General here in the position of being any less the Queen's
representative than the Governors of the various colonies are at the present
time. What is the position of the Governor of each of the colonies at
present? By virtue of his office the Governor of each of the colonies is
Commander-in-Chief of the Forces. The letters patent appointing the
Governor constitute him Commander-in-Chief of the Forces, and in
England it is pointed out the Queen is Commander-in-Chief of the Forces.
The only meaning of that is that the prerogative power of commanding the
army is vested in the Queen, or in the representative of the Queen.

Dr. COCKBURN. -

Has the Queen of England ever claimed the right to settle a question of
discipline as a Governor has done here?

Mr. OCONNOR. -

I will deal with that question later on. The Governor is Commander-in-
Chief of the Forces by virtue of his position. But the Governor cannot
move a step he cannot obtain possession of a rifle or a cartridge without the
consent of his Executive. It is a merely nominal appointment, and the
power which he gets nominally he cannot exercise without the means
which are supplied by his Executive-by the Governor with the advice of his
Executive. That is recognised, not only in the Governor's instructions, but
in all the Acts dealing with the regulation of the volunteer forces. For
instance, in the very Act in New South Wales which Mr. Brunker referred
to, and under which a dispute occurred, the Governor is described as
Commander-in-Chief of the Forces as the Queen's representative.

Dr. COCKBURN. -

Just as he is here.

Mr. OCONNOR. -
The dispute occurred, not because of any difficulty in recognising that position, but because, in carrying out some executive acts, a question arose in the construction of the Act as to whether the Governor meant the Governor with the advice of his Executive Council. It did not turn on this point at all. I hope I have therefore made it clear that there is a recognition from beginning to end of the fact that the Governors are nominally Commanders of the Forces. I would point out where I think Mr. Deakin has made an error. The power of the Commander-in-Chief under this Constitution cannot be exercised until an Act has been passed by the Commonwealth, because until that is done the Commonwealth cannot engage a soldier, acquire a rifle, or a cartridge, or a uniform, or anything whatever. The Governor is simply Commander-in-Chief, without an army, without weapons. How are they to be obtained? By passing an Act of Parliament, and, in passing that Act, no doubt the Parliament will take very good care that the measure makes it perfectly clear that all the executive acts which are to be carried out with regard to the forces are to be carried out by the Governor with the advice of his Executive Council. So that Parliament will have the matter in its own hands. I think Mr. Deakin has jumped before he came to the stile. It appears to me that no amendment which you can put in this Constitution which simply recognises the position of

the Governor as Commander-in-Chief, as the Queen's representative, will have any effect. If Mr. Deakin wants to move an amendment, let him make it in the Act of Parliament which will authorize the Commonwealth to raise an army, to arm it, and to give it all the material forces of the Commonwealth without which it cannot act. In that Act the Commonwealth would take care to provide that the Governor could not take a step without the advice of the Executive Council.

Mr. ISAACS. -

If it were contrary to the Constitution that provision would not be of much avail.

Mr. OCONNOR. -

I quite agree, with the honorable member, but it would not be contrary to this Constitution.

Mr. ISAACS. -

That is the whole question.

Mr. OCONNOR. -

I think it is perfectly plain that it would not be contrary to the Constitution, because in the Constitution the Governor-General is described, as all the Governors in the different colonies are described,
simply as Commander-in-Chief; and taking power to raise, clothe, and equip an army by the act of the Governor with the advice of the Executive Council, could not interfere with the position of a Governor as Commander-in-Chief. As Mr. Douglas reminds me, in all the colonies the position of Governor carries with it ex officio the position of Commander-in-Chief. Now, I am anxious that this matter should remain as it is in the Bill, because I think it would be a reflection on this Convention if the words of the amendment were inserted in this clause, because it would mean that we did not really appreciate the distinction between the position of Commander-in-Chief and the position of head of the Executive who had afterwards to deal with the material matters in regard to which the Commander-in-Chief could not take a single step.

Mr. SYMON. -
Why the Executive Council would have to ride out with the Governor-General as his staff.

Mr. OCONNOR. -
Of course, they would have to take all the risks of the position. If the Governor-General is Commander-in-Chief, and he has to go out as actual head of the army, I should hope that every member of the Executive would take the position of danger when the hour of danger arrived. I ask honorable members who support this amendment what danger they anticipate?

Dr. COCKBURN. -
The danger that the Governor might seek to decide all questions of discipline.

Mr. SYMON. -
Refer them to the men.

Mr. OCONNOR. -
You must have some one Commander-in-Chief, and, according to all notions of military discipline that we are aware of, the Commander-in-Chief must have control of questions of discipline, or remit them to properly-constituted military courts. Dr. Cockburn has referred to the trial of breaches of military discipline. Well, I should think that one of the most material parts of any Act constituting the forces of the Commonwealth would be to provide for the mode in which these court-martial would be conducted and the Parliament would have abundant power to decide how these matters were to be conducted, and what the particular form of the court was to be. It comes back to the same position as before. The Commander-in-Chief can take any actual step, whether in regard to carrying on the business of war, or deciding questions of discipline. But he has no machinery to act on until Parliament brings all this machinery into
force, and the Commonwealth Parliament can do what they like in deciding what powers are to be exercised by the Governor-General with the advice of the Executive Council, and what powers are to be exercised by the Governor-General himself. I hope that Mr. Deakin will recognise that the movements of the army must be controlled by the Executive. This is not a matter of that kind, but simply a provision that the Governor-General of the Commonwealth shall have, ex officio, the same rights, and nothing more than the rights, that the Governors of all the colonies have in this regard. I hope the clause will be allowed to remain as it is.

Mr. KINGSTON (South Australia). -
I trust the clause will be altered. It appears to me that if we retain the clause as we find it the result will be, as regards the command of the naval and military forces of the Commonwealth, that they will be vested in the Governor-General without the advice of his Executive Council; and that is not a state of things which is likely to be supported by this Convention on a further appreciation of the position. It has been put by those who are in charge of the Bill that in England it is unnecessary to mention a matter of this sort, and that it would be impossible for the Crown to exercise its authority without the advice of the Executive. I listened to the passage which was read by the leader of the Convention, and which emphasizes the position in England; but I take the liberty of reading it again a little more slowly than it was read by my honorable and learned friend, and I will ask whether that is the position that we wish to obtain here?-

Especially is the Secretary of State bound to maintain the discretionary prerogative of the Crown in the appointment and dismissal of officers, their promotion or reward, or the acceptance of resignation.

Do we intend that, as regards the forces of the Commonwealth, the Crown shall exercise in its discretion this prerogative in the "appointment and dismissal of officers, their promotion or reward, or the acceptance of their resignation"? I trust not. And the position is emphasized by a sentence which appears at the end of the preceding paragraph:-

No one would desire to see the army the servant of a majority of the House of Commons, nor is it possible to conceive that the management of any Minister, however incompetent, would be so bad as the management of an indeterminate number of irresponsible politicians.

It seems, sir, that the suggestion is, at least in England, that the Crown, in the exercise of its prerogative, can deal with these matters as it pleases. Do we wish that to be the case under the Commonwealth? It occurs to me that it is not possible to make it clearer than it has been made, in this clause 68,
that as regards the Commander-in-Chief of the Naval and Military Forces of the Commonwealth, the Executive Council has nothing to do. I will call the attention of honorable members to clause 62:-

The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

That means that where you refer to him as the "Governor-General in Council" you mean by the advice of his Executive, but where you do not refer to him as the Governor-General in Council it means the reverse.

Mr. HOWE. -

It means a military despotism.

Mr. KINGSTON. -

There is no doubt about it. It occurs to me also that the only power that the Governor has a right to exercise under a colonial Constitution, speaking broadly, is the power to dismiss Ministers. There are various clauses in this Bill in which the distinction is drawn between the Governor-General in Council and the Governor-General. I pass to clause 63, for instance. There it is used without any limitation:--

The Governor-General may from time to time appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may from time to time establish.

That means that you establish the various departments of State and the various Ministerial officers, and that the appointments may be made by the Governor-General, and properly made, without any advice or consent on the part of the Executive. So you have for the purpose of guiding you as to what clause 68 means, first the declaration in clause 62 that you use the term "Governor-General in Council" for the Governor-General acting under the advice of his Executive, and you do not use that term unless you mean the Governor-General acting without the advice of his Executive. Then you get the further illustration of the use of the words. They are used without any limitation in the appointment of Ministers, when the Governor acts on his own motion and exercises a prerogative. They are used with a limitation when it is necessary for him to consult his Council for the purpose of establishing a department of State. Again, the command of the forces is vested in him in his individual capacity without the advice or consent of the Executive and I venture to put it that that is not the intention of the Convention in framing this Constitution, and is not the practice, so far as I have the honour of knowing it, in the colony from which I come. In constituting this Commonwealth I do think we ought to take pains to make it abundantly clear that in the control of one of the chief instruments of the
State-the army and the navy-whilst the Governor may be the nominal head as the Queen's representative, he is not to exercise his functions as such Commander-in-Chief, except on the advice and subject to the control of his Executive Council.

Mr. SYMON (South Australia). -

I apologize to the committee for saying anything on this subject at this late hour, but really there seems to me to be a very great misapprehension of the position in connexion with this matter. I hope that the provision will be retained exactly as it is. I think if we alter it in the way which is proposed, we shall simply put a proclamation in the Constitution of our want of knowledge of constitutional law and the position of the Queen and her representatives in self-governing colonies in relation to any military force. Now, the passage which has just been read from Anson refers to the Secretary of State, who has a discretion which he has to exercise as a Queen's Minister in relation to the prerogative affecting the control of the army; but, as everybody knows, the Secretary of State for War is a member of the Government of the day. He holds a seat in either the House of Commons or the House of Lords—if he is in the House of Lords, there is the Under-Secretary for War in the House of Commons—and he is responsible to Parliament for everything he does that is of evil effect, or that is in excess of his duty, or that is in excess of the Royal prerogative. But to suggest that every appointment in the military force should be submitted, we will say, to the Executive Government for confirmation or otherwise would be to introduce an element which might be—would be, in my humble opinion—subversive of all discipline, and would ruin the best military force that ever existed.

Mr. DEAKIN. -

It is the practice of every colony in Australia at the present time.

Mr. SYMON. -

I hope it is not the practice.

Mr. DEAKIN. -

It is the practice.

Sir JOHN FORREST. -

Under an Act.

Mr. SYMON. -

Yes; under an Act in which all kinds of provisions are made, so that it is regulated by Parliament.

Mr. OCONNOR. -

The Commonwealth Parliament will pass an Act giving it all these powers.

Mr. SYMON. -
Of course they will. These Acts limit the officers, but there are officers and officers. Are the appointments of the non-commissioned officers, the corporals, the lance-corporals, and all the others submitted to the Executive Council?

Mr. KINGSTON. -

The non-commissioned officers and warrant officers are not appointed by the Governor at all.

Mr. SYMON. -

I never said they were; they are probably appointed by the colonel or captain of the company. I am not versed, as my right honorable friend is, in military affairs. He is an accomplished military officer.

Mr. KINGSTON. -

On the retired list.

Mr. SYMON. -

I have no experience; I look at the matter simply from the point of view of constitutional law. It seems to me utter rank absurdity to enact in a solemn Constitution that the Commander-in-Chiefship, which, of course, is supposed to be vested in somebody, call him a despot or anything you like, is put in some person with the aid of a Governor in Council. I do not know whether it would be expected that the commanding officer, when he went out on parade, would order them to right-about face by order of the authority of the Executive Council. The whole thing is ludicrous.

Mr. BARTON. -

This might happen: A court-martial might say-"Corporal John Smith, you are guilty of insubordination, by and with the advice of the Executive Council."

Mr. HOWE. -

That is a travesty.

Mr. BARTON. -

The whole thing is a travesty.

Mr. SYMON. -

To introduce these words into the clause is to make a travesty of the whole provision. The honorable member (Mr. Howe) is anxious to prevent, as we are all anxious to prevent, the establishment of a military despotism; but that is provided by constitutional usage. The Governor has the command of the forces vested in him as Her Majesty's representative.

Mr. KINGSTON. -

How will usage affect a written Constitution?

Mr. SYMON. -
A written Constitution is not exhaustive. We have implanted responsible government in this Constitution, but we have not said so in so many words. We must have some regard to the instrument we are framing, and we ought to look upon it as a Constitution with plenty of elasticity, under which all the constitutional usages will apply and be interpreted. If the Commandant was a kind of Jack-in-office, and wanted to run his army where he ought not to, you could dismiss him. If the Governor-General interfered unduly you would have to say respectfully-"You must not interfere in these matters; if you do, we shall repeal the Act, and there will be no army; you will be Commander-in-Chief merely nominally." I hope the words will not be inserted.

Sir JOHN FORREST (Western Australia). -
  I have expressed myself

Mr. BARTON. -
  I can assure my right honorable friend that extreme care has been taken in all these cases.

Sir JOHN FORREST. -
  I cannot agree with the honorable and learned member (Mr. Deakin) that it is desirable to put in the words "in Council." The command of the naval and military forces of the Commonwealth must, it seems to me, be vested in some person-the Governor-General, not in the Governor-General in Council. The object of the amendment is a good one, and I entirely sympathize with it, but this is not the place to insert such an amendment. The procedure that will be followed will, I take it, be this: The Constitution will be proclaimed, and, under it, the Governor-General will be the Commander-in-Chief of the forces. The Parliament will have full power and authority to make laws for the naval and military defence of the Commonwealth, and under these laws, the powers of the Governor-General and of his Ministers, and everything else connected with the administration of the military forces, will be defined. In Western Australia we have an Act in which the term "Governor" is defined as the Governor acting with the advice of the Executive Council; but there is also a clause which provides that the Governor, as Her Majesty's representative, shall be the Commander-in-Chief of the forces.

Mr. BARTON. -
  The Constitution is one thing, and the legislation under it is another.

Sir JOHN FORREST. -
  The Governor, as Her Majesty's representative, is Commander-in-Chief, but all the powers
the Defence Act the Commonwealth will pass.

Mr. LEWIS (Tasmania). -

I am loath to delay the committee at this late hour of the evening, but there is one point to which the attention of the committee has not been directed. That is, that under most of our Discipline Acts power is vested in the Governor as Commander-in-Chief to review the decisions of courts-martial. In our case this is a power of confirmation. Under Mr. Deakin's amendment it would be vested in the Ministry of the day, and I can imagine nothing that would be more subversive to discipline than that.

Mr. ISAACS. -

It is a strong argument in favour of the amendment.

Mr. LEWIS. -

I do not think so. The amendment would permit of the exercise of political influence in defence matters. One can imagine a case in which a mutinous sergeant or non-commissioned officer; who was a member of the Trades Hall, was justly sentenced by a court-martial for a breach of discipline. If the amendment were passed the whole Trades Hall Council would come to the Minister of Defence and insist that the sentence should be disallowed.

Mr. DEAKIN. -

Supposing that he was a member of the Melbourne Club, and the Governor refused to sanction his punishment, what would happen?

Mr. LEWIS. -

One man should be responsible, and he should be the Commander-in-Chief of the Forces, and not a Minister of the Crown.

Mr. KINGSTON. -

Does the Governor in Tasmania exercise the prerogative of mercy without advice?

Mr. LEWIS. -

He used to, but he does not now. But that has nothing to do with this question. A Governor is appointed Commander-in-Chief of the Forces, and the Forces look to him as the ultimate Court of Appeal.

Mr. DOUGLAS (Tasmania). -

I hold in my hand the Colonial Official List for 1897, and it appears from it that all the Governors of the Australian colonies have the title, by virtue of their commission, of Governor and Commander-in-Chief.

Mr. HOWE. -

That was when we had Imperial troops out here.

Mr. BARTON. -

It is so now.

Mr. DOUGLAS. -
Yes. The honorable member does not understand the question. The Governors are instructed not to interfere with Her Majesty's troops, which are under the command of a special officer. In the Colonial Official List it is stated that the officer appointed by the Crown to administer the government of a colony is usually styled Governor and Commander-in-Chief, or Captain-General. In all these colonies the Governor is Commander-in-Chief. How can you get rid of that fact, inasmuch as the office is part of his appointment under the Queen? Is it likely that the Governor-General of the Commonwealth will hold a less office than the ordinary Governor of a mere colony? The thing is absurd. The discussion only shows that some honorable members are trying to get all the power. Why do they not go at once for a republic? We are aiming at that, and the Convention in 1891 did the same.

Mr. DEAKIN. -

The George Washington of Tasmania.

Mr. DOUGLAS. -

There is no doubt that at that time we were trying as hard as we could for a republic. But if the Queen gives the title of Commander-in-Chief, how can we get rid of it? When an honorable member speaks of the Governor having the power to pardon, it should be remembered that it is only recently that instructions have been given to Governors not to take the whole power on themselves in this matter but to consult with their Council. At the present time the Queen designates these Governors as Commanders-in-Chief of the several colonies, and we cannot get rid of the fact.

Dr. COCKBURN (South Australia). -

The Bill provides that the command is vested in the "Governor-General," and not in the "Governor-General in Council." It has been said that the Federal Parliament will be able to pass a military law which will alter this, but I say there can be no alteration in defiance of the Constitution.

Mr. BARTON. -

One improvement we want in this Constitution is the establishment of a Commonwealth kindergarten.

Dr. COCKBURN. -

There is no doubt we want a lot of common sense as well as a lot of lawyers.

Mr. BRUNKER (New South Wales). -

I think Mr. Symon is wholly mistaken ill regard to the action of the Governor in New South Wales. In that colony the Governor controls no appointments, and takes no action in regard to the purchase of armour or
ammunition. Everything is done by the Executive Council.

The amendment was negatived.

Mr. DEAKIN (Victoria). -

I regard the decision on the last question as really taken on the main question, so that I do not think it is necessary to proceed any further.

Mr. ISAACS (Victoria). -

I would ask the leader of the Convention if he thinks this clause is necessary at all? I do not think it is in our ordinary colonial Constitutions. I would ask Mr. Barton to consider whether it is necessary.

Mr. BARTON (New South Wales). -

I shall certainly consider that question. The only reason why it stands here is that it is simply declaratory, and it was thought it might be necessary to make a declaration in a Constitution so different in structure from the ordinary ones?

Clause 70 was agreed to.

Sir EDWARD BRADDON (Tasmania). -

I would like to ask the leader of the Convention to adjourn now, because there are a few of us who have been sitting continuously since half-past ten with only two intermissions.

Mr. BARTON (New South Wales). -

We have not made the progress this week on the second recommittal that was expected by all of us. There are left seventeen or eighteen clauses to be dealt with under the recommittal. We have been sitting seven weeks, and I ask honorable members whether they do not think a resolute effort should be made to put this Bill through? I do not ask anybody to forfeit his rights; I only ask that prolonged speeches be not made duping the rest of the time left to us. I only accede to this request on the understanding that honorable members will assist me, if possible, to get this Bill through to-morrow night. I have what I look upon as an undertaking to keep a quorum here, because if a division is called for at any stage, and a quorum is not present, there will be a count-out, with the consequences already known. That will not do at the end of our proceedings. I assume, therefore, that I now have an undertaking by honorable members to form a quorum to-morrow so long as I ask them to sit. They can trust to my being reasonable, and I will trust to their loyalty.

Progress was then reported.

The Convention adjourned at twenty minutes past eleven o'clock p.m.
Friday, 11th March, 1898.


The PRESIDENT took the chair at half-past ten o'clock a.m.

PETITIONS.

Mr. DEAKIN (Victoria). -

I have the honour to present two further petitions in favour of retaining the right of appeal to the Privy Council. One is from the Royal Agricultural Society of Victoria, and the other from the Ballarat Agricultural Society. I beg to move -

That the petitions be received.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. OCONNOR (New South Wales). -

I beg to move -

That five days' leave of absence be granted to Mr. William John Lyne, on account of urgent private business.

The motion was agreed to.

BUSINESS OF THE CONVENTION.

Mr. REID (New South Wales). -

If the formal business is over, I desire to say that I must leave Melbourne this evening, and I take it that no matter of vital importance, of which notice has not been given, will be re-opened at this stage. We have been invited to give notice of any amendments we might desire to move, and honorable members I think have fairly acted upon that suggestion. But it will give rise to great dissatisfaction if, after any representative has been compelled to leave, matters of which notice might have been given during the past week are suddenly to be brought up. I, therefore, rely on the notice-paper as showing what remaining business will be brought on, although, of course, I recognise that matters of substance even may require re-adjustment.

Mr. BARTON. -

There is an important notice to omit clause 95A.

Mr. REID. -

No one call complain where notice has been given, because it is for us to watch the notice-paper. I am referring to what I think should not happen-
that is, that after the time which we have had in which to give notice some vital matter may be suddenly brought up. We know it can be done very easily. I merely make these observations, feeling sure that if any honorable member has something of importance to bring up of which he has not given notice, he will now give notice.

The PRESIDENT. -

Of course, as a matter of order, it will be perfectly competent for any honorable member to bring up a fresh matter without notice.

Mr. BARTON (New South Wales). -

I would like to repeat a statement I made last night immediately before the adjournment. I was speaking then in rather a thin House, and there may be some honorable members present who were not here then. I wish to say that it is of very great importance that we should endeavour to conclude our work upon this Bill in its present stage to-day. Honorable members will recollect that there is to be some adjournment for the purpose of seeing that the amendments made in the Bill read consistently, and that the Bill is brought into a proper drafting form. There will be a great deal of time necessary for that-a time co-extensive with the importance of the stage; and, inasmuch as honorable members do not expect the Drafting Committee to work next Sunday, I suppose-

Sir GEORGE TURNER. -

I do not see why they should make that day an exception.

Mr. BARTON. -

After having made every Sunday an exception, perhaps my right honorable friend thinks that Sunday labour should be the rule. Well, I do not.

Sir WILLIAM ZEAL. -

You will come under our Factories Act if you work on Sundays.

Mr. BARTON. -

Yes, some of the Premier of Victoria's watch-dogs may be set on us. We shall be working all day on Saturday, as we have done before, while other members have been free. If the Convention finish the Bill to-night, and the Drafting Committee work on Saturday and Monday and Tuesday, we may be able to bring up the Bill on Wednesday morning; but if we have to work to-morrow in Convention, I do not see how we can finish the drafting before Thursday morning. That will be an unfortunate thing. I will take the case of the Premier of Western Australia. It is important to him, as he is leaving on Wednesday, that the Bill shall be up from the Drafting Committee by Wednesday morning. So I will appeal to honorable members to co-operate with me in order to finish the Bill to-night. There is another thing which I will ask
honorable members, if they will excuse me: It is of vital importance that we should have a quorum when the Bill is brought up again on Wednesday. I say of vital importance, because the provisions of the Federal Enabling Act render that an absolute necessity; and I trust that on Wednesday, if we finish the Bill to-night, such steps will be taken by all honorable members as will secure a quorum on Wednesday. Otherwise, I do not know what will happen to this Convention.

Mr. HOLDER. -

Is it proposed to ask honorable members to sign the complete Bill?

Mr. BARTON. -

That is a matter the Convention may take into consideration for itself at its final sitting. But I would like to say that the Bill has to be printed and supplied to honorable members before it is finally dealt with, and that involves a stage that may create some difficulty. My own idea is that, if an honorable member happens to be absent, the Bill can be supplied to him by being posted to him at the same time as it is supplied to honorable members present. The enormous inconvenience of any other course must have been apparent to those who framed the Act. But it is important that there should be a quorum before the Bill is finally adopted, because otherwise I do not know how it may be adopted. It is suggested to me across the table by my honorable and learned friend (Mr. Deakin)-and this may recommend what I say to those honorable members who contemplated going away-that the Wednesday sitting will not be a mere formal sitting, became it is important to this Convention to see that the Bill is carried in its final stage in a manner of which they can approve.

Mr. GLYNN (South Australia). -

I should like to ask the leader of the Convention to say whether he can give us a day, after the final revise of the Bill has been completed, to consider the amendments before actually putting them before the Convention? I think we should have seven or eight hours to look through the amendments made. Otherwise, we should be acting in the dark.

Mr. BARTON (New South Wales). -

I do not see how the Bill can be in its final form before Wednesday morning; and does Mr. Glynn seriously mean that it should be put in the hands of honorable members then, and that on Thursday, when the Western Australian representatives have gone away, we should begin to consider it? Sir GEORGE TURNER. -

Will you issue the final amendments in a form so that they can be seen at once?

Mr. BARTON. -
If the printer can do it I will be happy to comply with the suggestion. I should also like to say that the printer has done his work with very great diligence, and that it has been finely done but if we had imposed upon him the printing of the last draft of the Bill in erased type it would have been delayed 24 hours, and so time would have been lost to the Convention. I will see what can be done, however, to oblige honorable members with regard to the final draft of the Bill.

Mr. ISAACS (Victoria). -

I am sure we all join with the leader of the Convention in desiring to finish this stage at the earliest possible moment consistently with doing our work in a proper fashion; and one expression that my honorable friend used last night I am sure commends itself to every one of us. He said that he would only ask us to sit here until a reasonable time, and that he would rely upon our loyalty. We all agree to that, I am sure.

Mr. BARTON. -

I said that you must rely upon my reasonableness.

Mr. ISAACS. -

Quite so; and I am sure we are all prepared to meet him in that spirit. But I hope that, having regard to the most important matters that are upon the notice-paper, my honorable friend will not ask us to do anything unreasonable-will not ask us at a late hour, when our minds are exhausted, to deal with matters of great importance to the various states. There should be no opportunity for saying that the closing hours of this Convention were spent in hurrying over any important points.

Mr. BARTON. -

Many armies have won their greatest victories after forced marches.

Mr. ISAACS. -

But there is a march of a larger army when we have done our work, an army from which there is no appeal; and, therefore, while I am prepared personally to render all assistance to my honorable and learned friend as long as my physical powers will allow me, I hope, in preservation of the very object we are assembled here to consummate, if possible, that we shall not allow any impression to go abroad that we have in any way unduly hurried the closing labours of this Convention.

Mr. BARTON (New South Wales). -

I think we have done enough to dispel that impression already. It will be impossible to say that we have hurried our work. But I will say, in answer to the observations of my honorable and learned friend, that if the Convention will rely upon my reasonableness I will rely upon their loyalty. It may be the most reasonable thing to finish the Bill tonight. That is a
matter to be determined by circumstances, especially in view of the fact that, if we do not finish to-night, the Bill could only be brought up in anything like a final form after our Western Australian friends had left.

Mr. HOLDER (South Australia). -

I want to ask the leader whether he could not meet the difficulty raised by Mr. Glynn by submitting to us on Tuesday morning so much of the Bill as may then be printed, with the latest amendments of the Drafting Committee?

Mr. BARTON. -

That might be possible, except that there is constant revision going on.

Mr. HOLDER. -

If we can have on Tuesday, or early during Tuesday, so much of the Bill as is complete, the latter part would not take so long to look at on Wednesday.

Mr. BARTON (New South Wales). -

What I will endeavour to do is this, and it may meet with honorable members' views: If it is possible to manage it, and if the Bill can be got into print by Wednesday morning, I will endeavour to have the Bill in the hands of honorable members on Wednesday morning, and then I will ask the Convention to sit at two o'clock on that day. That would give a few hours to read through the Bill.

Sir JOHN FORREST (Western Australia). -

I should like to say that it is

Dr. COCKBURN (South Australia). -

May I ask the leader whether it would not be possible to-morrow evening, or tomorrow afternoon, for us to have a clean print of the Bill as we leave it to-night? Then all that will be done by the Drafting Committee will be to suggest drafting amendments. We shall then have our work complete as far as it has gone, and we shall have until Wednesday to look over it. All that we shall have to consider is whether in relation to the drafting amendments the intention of the Convention has been carried out.

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Mr. BARTON (New South Wales). -

In answer to Dr. Cockburn, I would point out that it is not for me to manage these things about the printing. That is part of the work of the Clerk at the table. But I am informed by Mr. Blackmore that if we get through the Bill to-night it will be possible to place a copy of the Bill as amended up to date in the hands of honorable members.

COMMONWEALTH OF AUSTRALIA BILL.

The Convention resolved itself into committee of the whole for the
further consideration of the Commonwealth of Australia Bill.

Clause 73-The judicial power of the Commonwealth shall extend to all matters-
   I. Arising under this Constitution, or involving its interpretation;
   II. Arising under any laws made by the Parliament;
   III. Arising under any treaty;
   IV. Of admiralty and maritime jurisdiction;
   V. Affecting the consuls, or other representatives of other countries;
   VI. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
   VII. Between states;
   IX. Relating to the same subject-matter claimed under the laws of different states.

Mr. REID (New South Wales). -
I think questions are bound to arise between the Commonwealth and the states, and I observe that, whatever provision is made for cases in which differences may arise between the states, and in which differences may arise between the Commonwealth and the private individual, no provision is made in the case to which I wish to draw attention to in the amendment of which I have given notice; that is, to insert after paragraph (8) "Between the Commonwealth and a state."

Mr. OCONNOR. -
That is provided for in sub-section (6).

Mr. REID. -
Yes. I think that will cover it, and therefore I will not propose that amendment. I have another amendment, however, to move in this clause, and it is an important one. I beg to move-

That the following be added as a new sub-section:-" Arising under section 101 of this Constitution."

I shall be prepared to bow to the view of the Convention upon this matter, but I think it is right to consider it. If honorable members will turn to clause 101, they will find a general provision that when a law of a state is inconsistent with a law of the Commonwealth the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. That is absolutely necessary with reference to those subjects on which the power of legislation is left in the Bill. Of course, with the ultimate intention of the Commonwealth legislation superseding all the state legislation upon the common subjects, the clause is absolutely necessary. But the other question I wish to bring before the Convention is this: Outside of the subjects over which the Commonwealth has power to legislate, there are a vast number of subjects in respect of which the states are left sovereign and
independent, and the case I have in view is a case in which the execution of
the Commonwealth law comes into conflict with the execution of a law in
respect of which a state is sovereign. As the Bill now stands, even in that
case the state law would go down just the same as in the case of a subject
which we have handed over to the Commonwealth, and it raises an
important question.

Mr. BARTON. -

But would that arise except in a case where a state law went into the
domain in which the Commonwealth is given power?

Mr. REID. -

There might often arise a case in which the subject-matter is legitimately
under the Commonwealth for one purpose, and legitimately under the
states for another purpose. It is there that a conflict would arise.

Mr. ISAACS. -

Then the state purpose must give way to the Commonwealth.

Mr. REID. -

That is the intention of the Bill, and I am inviting the attention of the
Convention to it so that it will not be overlooked, because it is vital.

Mr. OCONNOR. -

Must not that involve the interpretation of the Constitution, which is
under sub-section (1)?

Mr. REID. -

I saw that and considered it; but it strikes me that this is a matter of so
much importance that it should be specially mentioned if it is to be
provided for at all. I admit that, technically, in the clause we have already
got words large enough. I refer to clause 73, because any question I am
referring to would arise under the Constitution. There is no doubt of that.
But when a case of that sort arises, would not a case of Executive action be
held to be equally under these general words? I think it would.

Mr. ISAACS. -

Would you explain what you mean by Executive action?

Mr. REID. -

Supposing that under the Commonwealth law something is done by an
officer of the Commonwealth, in respect of which a state might deem its
rights were injured, and the state would wish a remedy, could it be Said
that an action of that sort would be a case arising under the Constitution? I
think the matter should be made clear. It would not involve the
interpretation of the Constitution, because the act might be wrongful in
itself, although the law under which it is done might be constitutional.
Then there is the sub-section—

Arising under any laws made by the Parliament.

I think there might be cases even which would be right under the law but which would be a matter for Executive action, not opposed to the law at all, but perhaps only matters of administration.

Mr. HIGGINS. -

Could you give us a concrete instance? I find it hard to follow the argument.

Mr. REID. -

I do not like to refer to a certain burning question, although it has ceased to be so burning now. But take the case of the rivers. Irrigation is within the sovereign powers of a state. As to navigation, the same subject is within the sovereign powers of the Commonwealth. In administering the respective laws, things may be done which on one side or the other may be considered to be wrong. As the Bill at present stands, if the law of the state with reference to irrigation conflicts, and is inconsistent with the law of the Commonwealth with reference to navigation, it is simply sufficient to point out to the court that the state law is inconsistent, and down goes the state law, apart from any element of equity or fairness. And, although there might be an opportunity to so adjust the respective claims as to do justice between them without injuring either, none of these considerations would come in. It would only be necessary to point to the Commonwealth law, and to show that the state law was inconsistent with it.

Mr. HIGGINS. -

It must be a valid Commonwealth law.

Mr. REID. -

Yes, but a valid Commonwealth law may in the interests of navigation prevent irrigation. It may absolutely prevent any water conservation. I do not suppose such a thing would ever happen, but I only refer to it by way of illustration. If it did happen the aggrieved state, on which a terrible injury would be inflicted, has to appear before the High Court to complain of this. It would be told, it is true this is an abominable wrong, and we only wish we had power to redress it; but this Act deliberately states that when the federal law comes into collision with a state law, passed in the exercise of the state's sovereign powers, still that law must go down, just as if it was an interference with a subject handed over to the Commonwealth. There is no distinction between the two cases. That is a very dangerous position of supremacy in which to put the Commonwealth. It practically has this effect, in that very wide and nebulous area where the sovereign,
Commonwealth come into collision, without any sort of consideration to the rights or the wrongs, the law of the states as to its sovereign powers must go down. If we intend that, well and good. But if it is inserted in the Constitution I can conceive a very great handle being made of it by those who would say that we have to leave independence to the states in connexion with every subject not handed over to the Commonwealth, and that, while affecting to do that, we practically put the states in great danger, because their laws made within their sovereign powers may happen to come into collision with the Commonwealth law.

Mr. OCONNOR. - Would not that contention be involved in the interpretation of clause 99?

Mr. REID. - That is where it seems to me the difficulty would come in. In a clause before 101, which in my copy of the Bill appears as clause 103, it saves the Constitution of the states in respect of all matters not handed over to the Commonwealth. But when we turn over the page, and come to clause 101, we find that it practically overrides this provision, and says-"True, we leave to you all those rights which are not taken away from you in this Constitution as matters of legislation; but as to all those rights we have left to you you must hold them subject to the risks of a federal law coming into collision with them." I am speaking of a federal law on a federal subject coming into collision with a state law. In case of that collision the sovereignty of the state goes without any hearing on behalf of the state. The court would simply have to decide that the state law came into collision with the federal law, or was inconsistent with it, and then the state law is out of court without any chance of redress. Do we propose to leave the Constitution in that state? If so, section 101 overrides the previous section, and makes all those rights reserved to the state subject to collision with Commonwealth legislation on other matters, and in such case the Commonwealth law shall prevail. Let us take the addition to clause 52, which was made at my instance, about the waters. That is, a case where there are two jurisdictions over the same thing for different purposes. I am afraid that those words added at the end of section 52 would be absolutely in conflict with section 101. If the Commonwealth legislate so as to prevent, in the interests of navigation, water conservation-a thing we do not conceive of, but which may be used as an illustration-then the state would go to the High Court and complain of the action of the law of the Commonwealth. The state would contend that that Commonwealth law abridged the rights of states in regard to water conservation, as section 52 expressly provides that the rights of the state to a reasonable use of the water shall not be abridged. The state would come into court complaining
that the law of the Commonwealth had destroyed the special provision made in section 52; and the court would then have to look at the Commonwealth law, and then at the state law. There might be a state law sanctioning a work of water conservation, and there might be a Commonwealth law proposal is that at the end of the clause the words be added-"Laws made by a state concerning matters over which the Commonwealth has no power to legislate excepted." With this amendment the High Court would find that a law on water conservation, being on a subject on which the Commonwealth has no right to legislate, would not be subject to the terms of this section. There is no doubt that by this amendment the respective laws would be put in a difficult position, and the question would arise, what is to be done? As the Bill stands, no such question could arise in that respect, and it would be infinitely more convenient to leave the Bill as it is, when the whole matter could be decided on definite simple legal grounds. But I must point out that, although the present form of the Bill is far more convenient, and I would gladly leave it as it is, it involves very serious consequences-most serious consequences to the states, especially in the particular matter to which I have referred. I feel that the amendment which was put in, and which has done so much to remove strong feeling on the important question of water conservation, would be valueless. When any dispute arose, and a state law came into conflict with a Commonwealth law under the navigation provision, I feel that section 101 as it stands is really worth nothing, and could not prevail against the Commonwealth law.

Mr. SYMON. -

What do you propose to put in?

Mr. REID. -

I admit that this is a very, difficult matter, and I have thought over it a good deal. I propose to give the High Court a special jurisdiction when such difficulties as that arise, so that in point of fact the High Court shall have power to adjudicate or act as arbitrator so as to give the utmost reasonable force to both laws.

Mr DOBSON. - Would not that be achieved without the amendment?

Mr. REID. -

No.

Mr. KINGSTON. -

Do you fear a Commonwealth law beyond its jurisdiction will be given some validity by section 101?

Mr. REID. -

That is not the point. I am awfully sorry I have failed to be understood
after speaking so long. I am talking of a Commonwealth law, perfectly legal, on a subject on which the Commonwealth is competent to legislate-an absolutely good law standing by itself. I am talking of another law, passed by a state-a perfectly good state law-on a subject on which the state is sovereign by this Constitution. In reading the two it is found that effect cannot be given to the provisions of both, and that if the Commonwealth law is to prevail, the state law must go down. The language of section 101 is unmistakable. It does not define what, law, but means any law, and any good law of the Commonwealth. It means that a good state law on a sovereign subject of the state goes down without any inquiry.

Mr. SYMON. -
Do you think the law would go down?

Mr. REID. -
There is no jurisdiction to go into any question, except as to whether the laws are inconsistent. I am sorry to have to put an illustration which revives feeling, but I hope it will not be received in that spirit on this occasion. Suppose a state pass a law that a large measure of water conservation shall be carried out on the banks of the Darling, and there is a Commonwealth law that on that very part of the Darling nothing shall be done to interfere with navigation-that nothing shall be done to draw water out of the river, on the ground that such a course will make the river unnavigable. That would be a perfectly good law of the Commonwealth, passed in the exercise of its legitimate powers, to secure a result which it was authorized to secure. That being so, what becomes of the state law? It is a good state law, passed to effect a state work which is a lawful work according to the powers of the state.

Mr. BARTON. -
Would not such a Commonwealth law, if it abridged the rights of the states to a reasonable use of the water, be an infringement of the Constitution under the proviso of sub-section (8)?

Mr. REID. -
No, not unless those words are added to section 101. The laws passed under clause 52, and which come into conflict, are both legally good.

Mr. SYMON. -
They cannot be.

Mr. KINGSTON. -
Not to the extent of the conflict.

Mr. REID. -
May I ask what the honorable member means?
Mr. KINGSTON. -
A law made by the state would be bad to the extent to which it conflicted with the law of the Commonwealth.

Mr. REID. -
Would that not be so under section 101?

Mr. KINGSTON. -
I say it would be.

Mr. REID. -
That is exactly the thing I am saying, and exactly the consequence I am pointing out. The High Court would be compelled to declare the state law on irrigation works to be bad, because it was inconsistent with the Commonwealth law as to the navigation of the river at that particular place. Where, then, is the protection to the state?

Mr. KINGSTON. -
You cannot avoid that unless you give the High Court power to repeal the Commonwealth law.

Mr. REID. -
Not to repeal the Commonwealth law, but to respect one of the provisos in that very law. What a mockery it is to say that state rights as to the reasonable use of water are being preserved if, when a Bill authorizing such works comes into conflict with the Commonwealth law, the state cannot be heard! If a state law is inconsistent with the Commonwealth law, the former is ordered out of court. If I were appearing for the state, the court would say:"This fool of an Act says in section 101 that when your law comes into conflict with the Commonwealth law the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. It is very unfortunate, and we think you have a great grievance. It is very sad, but really these are the words of section 101." I say to the court:"Under section 52 there is a provision that nothing shall abridge the rights of the state." The court replies:"That is quite true, but the provisions of this statute"-which I shall not refer to any further in the way I did."deal with cases in which the laws conflict, and on this very point says that the state law must be ruled out as invalid."

Mr. BARTON. -
You are bound to read the two provisions together, and avoid a repugnance, if possible, and I think you could avoid a repugnance.

Mr. REID. -
Then I think there can be no objection to putting words in to make the provision clear. As the provision is at present, it might be made a very serious handle of.

Mr. BARTON. -
What about the words you wanted the other day?

Mr. REID. -
So long as those words are put in at the end of section 101 I shall be satisfied.

Mr. ISAACS. -
I am afraid those words will not do.

Mr. REID. -
I do not care which words effect the purpose.

Sir JOHN DOWNER. -
What do you propose?

Mr. REID. -
I intend to move-
That at the end of clause 101 the words be added-"Laws made by a state concerning matters over which the Commonwealth has no power to legislate excepted."

I tell the Convention frankly that unless Something is put into the Bill in the direction I suggest I should look on all state laws as the creatures of Commonwealth legislation, to the extent to which in future they came into conflict with Commonwealth legislation.

Mr. ISAACS. -
That is clear.

Mr. REID. -
Yes. The sovereignty of the states is preserved in one clause and is taken away in the next. The states retain their sovereignty over subjects that are left to them only so long as they do not come into conflict with the Commonwealth law. The moment they do that the state sovereignty goes down.

Mr. WISE. -
That is a necessity of any Federation.

Mr. REID. -
Then all the battles we have had to secure a settlement of the water question have been idle unless we are prepared to shut our eyes and accept what the future has in store for us. I am prepared to do that to a very large extent. But this is one of those burning points which will be used very strongly in a sense hostile to the Bill. I am very anxious to have answers ready to those who advance the sound contention-and the Hon. Mr. Isaacs admits that it is a sound contention-that where a state law on a state subject is inconsistent with the Commonwealth law on a Commonwealth subject the state law, whatever the rights or wrongs are, must go down, and the merits cannot be gone into at all. I recognise that it may be well to leave it
at that, because the provision is one that commends itself to us as offering a means of avoiding perhaps painful conflict. But I am overborne by the feeling that if the water question is left there I shall not be in as strong a position as I should like to occupy in answering the criticisms that I know will be raised. If I am right as to the legal effect of leaving things as they are there does seem to be a serious necessity for some amendment.

Mr. BARTON (New South Wales). -

Taking matters consecutively, the position is this: Under clause 101, if a law of a state is inconsistent with the law of the Commonwealth the latter is to prevail, and the former, to the extent of the inconsistency, is to be invalid. It is clear, as indicated by the Right Hon. Mr. Kingston, that a law of the Commonwealth there spoken of is a law made by the Commonwealth within its legislative powers. That is to say, it must be a good and constitutional law of the Commonwealth to have any effect in conflict with a law of a state.

Mr. REID. -

We admit that.

Mr. BARTON. -

Then I take it there would be scarcely any necessity for the addition the right honorable member desires to make to clause 101-"Laws made by a state concerning matters over which the Commonwealth has no power to legislate excepted." That would be equivalent to inserting after the word "Commonwealth," as I proposed the other day, the words "on a subject within the legislative powers of the Commonwealth." If you restrict the validity of Commonwealth laws to laws within the legislative powers of the Commonwealth, that is the same thing as excepting those laws over which it has no power to legislate, so that this amendment and the amendment my right honorable friend originally proposed, and which was to be inserted in the middle of the clause, would be identical in effect.

Mr. KINGSTON. -

He means more than that.

Mr. BARTON. -

I think he does. The amendment he proposes to add to clause 101 is really, in legal intendment, the same as the amendment to add after the word "Commonwealth" the words "on a subject within the legislative powers of the Commonwealth." Then we have, on the motion of the right honorable gentleman himself, added, at the end of sub-section (8) of clause 52, this proviso-

The powers contained in this sub-section, and those relating to trade and commerce under this Constitution, shall not abridge the rights of a state or its citizens to the reasonable use of the waters of rivers for conservation
and irrigation.

I take it that the effect of the word "reasonable" need only be considered in its application to states. The difficulty is in its application to the conservation of the rights of the states.

Mr ISAACS. - As against what?

Mr. BARTON. -

When put in correlation with the right of the Commonwealth to legislate for trade and commerce. The powers given in the sub-section are not to abridge the right of a state to the reasonable use of the waters of the rivers, and that means its right of legislation. The effect of it, then, is that nothing in these two sub-sections contained is to lessen the right of the state to make laws for the reasonable use of the rivers, that is, to conserve for its own reasonable use the waters of the rivers. We have the starting point in clause 101, and it is clear that a law made by the Commonwealth is not to cut down the state right of legislation for the reasonable use of the waters of the rivers. Then all we are confronted with is the meaning of the word "reasonable." If there is anything to justify my right honorable friend's contention it is to be found here. What is the meaning of the word? It means a reasonable use of the waters by the state under its laws. The whole application of the sub-section is to prevent the exercise of the trade and commerce and navigation powers from inflicting certain injuries. It is a simple consequence that a law made by the state, if tested in the courts, is to be considered in the light of whether the use it makes of the waters is a reasonable use in relation to the power in respect to navigation and trade and commerce.

Mr. ISAACS. -

It is attached only to navigation.

Mr. BARTON. -

The cases which most readily suggest themselves are those that relate to navigation, and it was because we all considered that navigation within that sub-section would come under the trade and commerce laws that my honorable friend's proviso mentioned them. Clause 101 being clear, if a law of the Commonwealth abridges the right of a state to make laws for the reasonable use of the waters of the rivers, then that law will not be within the Constitution. If then the High Court is of opinion that a law of a state when it is tested is a law for the reasonable use by the state of the waters of the rivers, having regard to the rights of navigation and trade and commerce, then any law of the Commonwealth by which it is sought to cut that law down would come within the meaning of the proviso to sub-section (8) of clause 52, and would be bad. If that is so, the difficulty is to a
large extent cleared away, because if you go back to clause 101 a law of
the Commonwealth which would come under that ban could not invalidate
a law of the state.
Mr. ISAACS. -
If you can draw the line.
Mr. BARTON. -
I recognise that difficulty, but it will be for the High Court to decide what
by statute is a reasonable use of the water. Then there is only one question
remaining, and that is the question of jurisdiction. All these will be either
matters arising under the Constitution or involving its interpretation, or
arising under any laws made by the Parliament. These are provided for in
subsections (1) and (2) of clause 73, and sub-section (6) of the same clause
extends the judicial power to matters in which the Commonwealth or a
person suing or being sued on behalf of the Commonwealth is a party. If
the matter arises between citizens it will come under sub-sections (1) or
(2). If an officer of the Commonwealth is the plaintiff or defendant it will
come under sub-section (6) as well as sub-sections (1) and (2).
Mr. REID. -
I am quite satisfied with that explanation, but I would like the honorable
member to deal with the other matter I mentioned. I want my honorable
and learned friend's opinion upon a case not provided for by special words
in the Constitution, but in which a good state law on a good state subject,
outside the powers of the Commonwealth, comes into conflict with a good
Commonwealth law.
Mr. BARTON. -
I will suppose that the Commonwealth is legislating for the regulation of
trade and commerce on a railway, and that the state has made by-laws
applicable to that railway. There could only be a conflict where the
regulation or law for internal trade made by the state usurped in its
operation the domain of the
Commonwealth in legislating for trade and commerce. That would be a
conflict such as is indicated by clause 101, and we are all agreed that, to
that extent, the state law should go down, and for this reason, that a conflict
could only arise by the state law applying as much to inter-state traffic as
to internal traffic.
Mr. REID (New South Wales). -
I am very glad that I have elicited this clear statement from our leader,
because I feel sure that without some such statement on our records a great
deal of mischief would have been made on the subject. The explanation
does not cover all the ground, but it covers it as nearly as is perhaps
possible. Personally, I am entirely satisfied with it, and I now see that there would be no utility in pressing my amendment. I would, therefore, ask leave to withdraw the amendment.

Mr. ISAACS (Victoria). -

Before the amendment is withdrawn, I should like to observe in this matter, that the position comes just down to what Mr. Barton has said, that the jurisdiction of the Commonwealth in regard to navigation stops short at the point, wherever that point may be, where the state would be unreasonable in its use of water for conservation or irrigation. Now, I am not quite clear in my own mind as to whether that is a matter for the High Court. I can understand why it should not be, because the question of reasonableness of the use of water as to locality, or as to extent, or as to duration, depends on questions not of law, but of such enormous political and far-reaching effect, that it is almost impossible to conceive that the decision of such questions could be remitted to the judgment of the High Court. And when you consider that we have to regard the extent of territory to the needs of the people, the condition of productivity of their land, their future requirements, and their requirements from day to day, and from year to year-what is reasonable for one day would not be reasonable for the next-it is almost impossible to imagine that the High Court can give a final binding judgment as to the validity of a state law which can bind the matter for all time. Now, it seems to me that it is putting a strain on the High Court that it ought not to bear, and I am not quite clear, certainly not as clear as Mr. Barton is, in thinking that the High Court will have to decide what is reasonable or not, because reasonableness in political matters is a question that is generally left to the Legislature. And if it is within clause 73, then I come back to the point to which I directed the attention of the Convention a few days ago in regard to the meaning of the word "matters." It is put that it is a "matter." Now, if that is a matter, I do not know what is not a matter; and if the High Court is to be asked to decide any matter between states, or between the Commonwealth and states, it is putting a construction on the word "matter" that we ought to stop short of putting on that word. I understand the word "matter" means a question of ordinary judicial interpretation in a controversy that is known as an action or a suit, and I think that we may well hesitate to put such a large construction on the word "matter," because if we do we are asking the High Court to accept a responsibility and a jurisdiction that is not found elsewhere. Of course, with regard to such questions, I think the answer given by Mr. Barton was absolutely unanswerable, that if a state passes a law which is entirely within its domain-perfectly within its jurisdiction-and is therefore valid, and the Commonwealth afterwards passes a law which is within its powers

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but the Commonwealth law is inconsistent with the provisions of the existing state law, the state law must cease to have effect to the extent of the inconsistency. I think that is inevitable. You cannot frame your Constitution with any other basis. But with regard to the word "reasonable." I feel great misgiving that we are intrusting such a question to the decision of the High Court.

Mr. Reid's amendment was withdrawn.

Clause 74. - The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences:

I. Of any other federal court, or court exercising federal jurisdiction: or of the Supreme Court of any state, or of any other court of any state from which an appeal now lies to the Queen in Council, whether any such court is a court of appeal or of original jurisdiction:

II. Of the Inter-State Commission:

and the judgment of the High Court in all such cases shall be final and conclusive.

Until the Parliament otherwise provides, the conditions and restrictions on appeals to the Queen in Council from the Supreme Courts of the several states shall be applicable to appeals from them to the High Court.

Sir GEORGE TURNER (Victoria). -

In clause 74 a provision has been inserted by the Drafting Committee which would allow an appeal to the High Court from the decision of the Inter-State Commission. Now, sir, we had a very good dispute here in regard to railway matters, as to whether the decision of those matters should be left in the hands of the Federal Parliament or should be left in the hands of the High Court. And ultimately the Convention decided that while they would not leave the matter entirely in the hands of the Parliament to decide, they certainly would not place it in the control of the Federal High Court. And we then, in one clause which has been passed, provided that an Inter-State Commission should deal with these matters. But, sir, if this clause is to stand as it is now placed before us, the result will be that in all these cases the Federal High Court will really be the tribunal which will decide the matter. It is true there is an intervening body—the Inter-State Commission—which will hear and deal with the matter, but as in all cases there will be an appeal from the decision of that commission to the High Court we might just as well have allowed the proposal in the first instance to go—that all these matters should be decided directly by the High Court.
We were clear that the High Court was not the body to properly decide all these questions; that the members of the High Court could not gain the information necessary to enable them to come to a proper decision on the subject; and, therefore, I am somewhat surprised that these words have been inserted in the clause, as I believe it is not the desire of the Convention that the High Court should deal with these matters, which to a very great extent are political matters, and that the Inter-State Commission shall have power to decide them. I think it would be be very unwise indeed to give this general power of appeal, which would apply to all subjects. I therefore beg to move-

That the words "Of the Inter-State Commission" be omitted from the clause.

The effect of that amendment will be to leave no appeal to the High Court in these matters.

Mr. DOBSON (Tasmania). -

I am not able to accept the amendment of the Right Hon. Sir George Turner, and I think that if he will consider how the Supreme Courts of the states deal with appeals which come before them in cases where the verdicts of juries are in question, he will not have any of the fears he has expressed in regard to appeals to the Supreme Court from decisions of the Inter-State Commission. When the Inter-State Commission, which will be composed of experts on railways, navigation, and trade and commerce, have come to a decision, and that decision is appealed against, does the right honorable member think that the High Court will ever dream of setting aside that decision unless it is contrary to justice or on some question of law which the commission had not been able to grasp? The right honorable gentleman has alluded to the political, industrial, and other questions which may revolve round this matter, but does he not remember that we have federalized the waters of our rivers for navigation and irrigation? That being the case, surely no question ought to be more subject to appeals to the High Court than the question of rights to the use of those waters. I quite agree with the Right Hon. Sir George Turner that in simple matte

Mr. ISAACS. -

What questions of law could the Inter-State Commission decide apart from questions of fact?

Mr. DOBSON. -

The Inter-State Commission could decide questions of law arising out of the fact that you have, in spite of our friends from New South Wales, federalized your waters for navigation and irrigation, and I do not believe
that the High Court will ever hold that the waters of a river flowing between the boundaries of two colonies belong to one state or the other. The court will say:"You have federalized your waters," and will deal with them accordingly. For these reasons I shall feel bound to oppose the amendment.

Mr. OCONNOR (New South Wales). -

I hope that the Right Hon. Sir George Turner will not press this amendment. I quite assent to the position that this Inter-State Commission should have the power of final decision on questions of fact, and that there should be no appeal to the High Court on questions of fact. Therefore what the honorable member fears could not possibly happen. The High Court ought not to have, and could not have, any power to deal with questions of policy.

Mr. ISAACS. -

Why?

Mr. OCONNOR. -

Because there ought to be no power in the court to review decisions of the commission on any question whatever except a question of law.

Mr. ISAACS. -

But what is to prevent the High Court reviewing other decisions under this clause?

Mr. OCONNOR. -

I am speaking of the clause as it ought to be. I am quite willing to accept the amendment Mr. Holder suggests that the decisions of the Inter-State Commission shall not be reviewable except as to matters of law. But I would point out to Sir George Turner that if some power is not given over the Inter-State Commission you will make that commission an absolutely irresponsible body.

Sir GEORGE TURNER. -

That power ought to be in the Parliament, and not in the High Court.

Mr. OCONNOR. -

That is going back to the old controversy. I leave aside for a moment the question whether you are to give powers to the Inter-State Commission to decide as to rights. That question will be raised by-and-by; but even taking the Inter-State Commission as now constituted under clause 96, it is necessary there should be some power in the High Court to review the decisions of the Inter-State Commission, where those decisions have gone beyond the powers which the Constitution has given to the commission.

Mr. ISAACS. -

Would not that come under sub-section (1) of clause 73?

Mr. OCONNOR. -
I think it would, because you want to deal with the decision of the commission. I ask honorable members to look at clause 96, constituting the Inter-State Commission. That clause reads as follows:-

There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament from time to time deems necessary, but so that the commission shall be charged with the execution and maintenance, within the Commonwealth, of the provisions of this Constitution, and of all laws made thereunder relating to trade and commerce.

Now, that is a very necessary limitation of the powers of the Inter-State Commission. If that limitation was not placed in this clause as it is, the Inter-State Commission would be constituted a body having powers without limitations and you do not want to do that. How will this body exercise its powers? It may exercise them by judicial acts, by decisions in regard to rights, and a number of other matters. If in those decisions it goes beyond the limits of the Constitution as assigned to it, surely there must be power in the High Court to review those decisions. It must be so, otherwise you place the Inter-State Commission in an irresponsible position; and all we claim here is, that if this Inter-State Commission does go beyond the law and decides something that is illegal, there shall be a power of the High Court to review that decision.

Mr. VENN (Western Australia). -

Prohibition will do that.

Mr. O'CONNOR. -

No, prohibition will not do it. Prohibition will do that where the Inter-State Commission goes entirely outside its jurisdiction in reference to a subject-matter, but where the commission deals with a matter which is within its jurisdiction, and may have exceeded its powers or decided contrary to the Constitution in its decision on that subject, that is a matter which cannot be reached by prohibition. I find myself at a loss to understand why honorable members who have created the Inter-State Commission, and have limited its powers, should be afraid to submit the decision of that commission, not on questions of fact and policy, but on questions of law, to the tribunal which we have set up to deal with these matters.

Mr. HIGGINS. -

It is not a court; it is a jury of experts, like our Railways Commissioners.

Mr O'CONNOR. - The honorable member says it is not a court. It may or it may not be a court in the technical sense of the word; but if it has power to give decisions, surely that is the first essential of a court; and if it gives
decisions which are not in accordance with the Constitution there should be some power of reviewing them. I do put it to the committee that, if you place the Inter-State Commission in a position which is absolutely irresponsible, there is no use whatever in placing limitations on its powers; and if you place limitations on its powers, and give it certain duties to perform, there must be some way of providing that it is kept within its powers, otherwise the rights which you give are simply illusory.

Mr. FRASER. -

It has only the rights given to it by the Federal Parliament.

Mr. OCONNOR. -

Exactly; it has the rights given to it by the Parliament, and those rights must be given to it under the Constitution.

Sir GEORGE TURNER. -

It gets rights under this Bill.

Mr. ISAACS. -

Independent rights.

Mr. OCONNOR. -

It gets rights under this Bill, but those rights can be of no value at all, unless the limitations of the rights are fixed by the Parliament.

Sir GEORGE TURNER. -

You said that it got rights under the Parliament.

Mr. OCONNOR. -

Of course it gets, as all these institutions do, its rights primarily from the Constitution, but it gets the limitations of those rights from the Parliament, by clause 96. Of course, it altogether depends on what view the committee take of the powers which they are going to place in the hands of this body. Considering the powers of adjudication which you give to the Inter-State Commission, unless you provide that the decisions which you give it the power to make are to be altogether irresponsible there must be a power of appeal from such decisions. My honorable friend (Mr. Higgins) interjected that it is not a court. You are in this difficulty: If it is not a court, if is not a body which has power to decide, you cannot have a prohibition against it.

Mr. ISAACS. -

Can't you?

Mr. HIGGINS. -

You can get an injunction against the commission for going outside its powers.

Mr. OCONNOR. -

What is the use of leaving it to a doubtful question of that kind?

Mr. HIGGINS. -

That is not doubtful.
Mr. OCONNOR. -

What is the use of leaving the matter to some learned arguments between lawyers as to whether an injunction will or will not apply, when you can simply provide for the whole thing by enacting in the Constitution that from its decisions, where the decisions go beyond its powers or it decides something which it has no right to decide, there should be an appeal?

Mr. HIGGINS. -

Would you allow an appeal from directors of a company?

Mr. OCONNOR. -

I hope the honorable member will ask something relevant and analogous. What has that to do with the matter we are now dealing with? I do not want to take up any more time about it. I submit that the matter is perfectly clear, and that under the Inter-State Commission constitution, which is provided for in clause 96, if you give the power of decision and adjudication there must be this power of review in questions of law only.

Mr. ISAACS (Victoria). -

I understand that my learned friend (Mr. O'Connor) puts it in this way practically: That under clause 96 the Inter-State Commission is to have powers of adjudication as well as powers of administration, and amongst those powers to have such powers of adjudication as the Parliament may from time to time deem necessary; but, that whatever the Parliament does or does not do the Inter-State Commission is to be charged with the execution and maintenance of the provisions of the Constitution as well as all laws made hereafter in regard to trade and commerce. Then my honorable friend says, as regards matters of fact, he does not wish to give an appeal to the High Court, but as to matters of law, so far as relates to adjudication, there is to be an appeal to the High Court. It seems to me that if we maintained clause 96 in its integrity and other clauses, then a portion of the objection to putting this in would be taken away; but I cannot see why you are to put in clause 74 the Inter-State Commission, when you have given the judicial power of the Commonwealth the extension to all cases arising under this Constitution or involving its interpretation. Why will not that include any decision of the Inter-State Commission which is contrary to this Constitution Or, if it does not come under that, it would come under the next sub-section-"Arising under any laws made by the Parliament."

Mr. OCONNOR. -

For this reason, that in clause 74 you give special powers to the High Court to entertain certain appeals; it will have no powers beyond that. You
have given power to the High Court to entertain appeals from federal courts and courts invested with federal jurisdiction, and if you want to include the Inter-State Commission, which is not a federal court, and is not invested with federal jurisdiction, you must mention it specially.

Mr. ISAACS. -

I find other clauses, for instance, clause 77, which provides that in certain cases the High Court shall have original as well as appellate jurisdiction. That goes beyond clause 74. Clause 74 is binding so far as it goes, but it is not exclusive. It does not say that that appellate jurisdiction shall not be extended if the Parliament chooses to extend it, but it is all subject to the provisions of that clause, so far as they extend. I base my objection to this provision not only on the ground which has been urged by my right honorable friend (Sir George Turner), but also on this ground, that I want to eliminate the constitutional creation of the Inter-State Commission. I think it is a great mistake that we should erect this body-a fourth branch of the Constitution-when it ought to be a matter for consideration by the people of the Commonwealth hereafter, through the Federal Parliament, to say what they will or will not have.

Mr. OCONNOR. -

Surely that was decided in clause 96. The proper place to reconsider that question is when we come to that clause.

Mr. ISAACS. -

I was going to say that, when we come to clause 95A onward, I will take the opportunity to urge the elimination of the Inter-State Commission in its present form, and to place before the committee the reasons which guide my mind in the direction of leaving this matter to the

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Mr. FRASER (Victoria). -

I see no necessity at all for the High Court to have control over a departmental matter. It is not a lawsuit. It does not infringe upon rights between parties.

Mr. REID. -

There are parties with very large interests involved.

Mr. FRASER. -

That may be said now in respect to rates charged on the various railways. There may be a sort of right which we do not quite conceive in our present condition of government; but if the Parliament will create this commission and, at the same time, prescribe its scope, beyond which it cannot go, surely it is not necessary to give special powers. You might as well say that the railway managers in the various states should be subject to the Federal
Parliament; that the commissioners in the various colonies and the stationmasters should be subject to the Federal Parliament. You might run out the thing to an absurd degree.

Mr. OCONNOR. -

It is only their adjudications where they decide between parties, not their administrations.

Mr. FRASER. -

Their decisions are not decisions such as a court gives; they simply fix rates. You can hardly look upon a decision of that sort as a decision in the ordinary meaning of the word.

Mr. ISAACS. -

They do not fix rates, but they decide as to disputes.

Mr. FRASER. -

They decide as to disputes about rates.

Mr. DOUGLAS. -

May I be permitted, sir, to suggest to Mr. O'Connor that this sub-section should be postponed until the Attorney-General of Victoria has had an opportunity to go into the other clause? If it is postponed, as I suggest, we will avoid a good deal of discussion, because if it remains there it is very evident that the High Court must have power to decide as to the legality of the decisions of this board.

Mr. OCONNOR. -

I would be very glad to accept the suggestion if I could, but I cannot do that, because we must really have this thing decided now one way or the other, and if it is decided not to have an Inter-State Commission, we can strike out the clause afterwards.

Mr. FRASER. -

If the other clause is struck out, this clause can be struck out, as one hinges on the other; but whether it is struck out or retained, I think there is a possibility of the view being taken that it is a dangerous provision.

Mr. GLYNN (South Australia). -

In America the Inter-State Commission is not a judicial body. It gives decisions which are not enforceable by itself that certain rates are good or bad under the Constitution, but it is not armed with any power to carry out its own decisions. It has to leave it to the various courts to carry them out. If it decides that a rate is bad, any person who is aggrieved by its decision may take action, and the decision of the first court appealed to is subject to review by the High Court. What we seem to do here—I do not know whether it is actually done by the wording of clause 95—is to set up an independent federal tribunal, a thing which ought not to be tolerated. We set up a tribunal armed with all powers to carry out its decisions, and which can
encroach in its original jurisdiction within a sphere which really belongs to the Judiciary. For instance, the whole of the clauses relating to trade and commerce can extend its power to give decisions to carry them out by the ordinary methods of courts of justice within the whole of the scope of subsection (1) of clause 52. Surely it was never intended to set up an auxiliary federal tribunal like that. I think the proper thing to do is to strike out this provision from clause 74, and to amend clause 95, so as to make more clear our intention, and to confine the work of the Inter-State Commission simply to administrative work, and if it declares a rate to be bad, then leave the party aggrieved, whether it be a state or an individual, to the same redress as exists in America. If a person refuses to pay the rate let the state take action. In America moneys cannot be recovered which are claimed under a rate which is held to be bad.

Mr. HOLDER. -
In America the Inter-State Commission is impotent.

Mr. GLYNN. -
The Inter-State Commission in America is not impotent except so far as in certain directions Congress has not gone far enough to arm it with sufficient powers. The power exists in the Constitution of America to give the Inter-State Commission the most complete powers of administration, to the extent which has been demanded by the commission itself; but I fail to see that the Constitution empowers Congress to set up the Inter-State Commission as a judicial tribunal, because by doing so it would have been establishing outside the Constitution another federal tribunal.

The CHAIRMAN. -
Does the honorable member think it is relevant to this clause to discuss what the United States has done?

Mr. GLYNN. -
I am pointing out that under this clause an appeal is given to the High Court from the Inter-State Commission as a judicial body, and I say that it ought not to be a judicial body. It was never intended to be a judicial body, and if it is not a judicial body, of course this clause cannot be retained, because there would be no appeal from it.

Mr. REID (New South Wales). -
I can quite understand this amendment as coming from those who subsequently proposed to emit the Inter-State Commission. But if the Inter-State Commission is to be maintained, it does seem strange that just as we are about to give the right of appeal to the Privy-Council, it appears, in all sorts of cases we propose to erect, if this amendment is carried, a tribunal which shall be above the Constitution and shall be able to make decisions
absolutely, in point of law, breaches of the Constitution, without any person having any redress. I can understand those who want to destroy the Inter-State Commission taking such a course, but those who do not, I think, will not take that course.

Mr. FRASER. -

Has not the Parliament the right to prescribe its powers?

Mr. REID. -

Yes, but, unfortunately, when you speak of prescribing powers, and set people to discharge powers, you should have some safeguard that if they do not properly discharge their powers, especially if they act illegally, there shall be some power over them to prevent them doing illegal things to either individuals or states. It really hangs upon that. If we are to have an Inter-State Commission, if the commission goes wrong in points of law, there should be some power in the Constitution to set it right. I do not for a moment suppose that they would go wrong intentionally, but it is, all the same, well to be on the safe side.

Sir EDWARD BRADDON (Tasmania). -

I think that we ought to remember that the term "Inter-State Commission" was inserted in clause 95A in lieu of the term "Federal Parliament" by a very narrow majority-I think only a majority of one-on the motion of Mr. Grant, who allowed his amendment to be altered in this particular, and against his own wish.

Mr. HOLDER. -

But as a compromise to settle a very great dispute.

Sir EDWARD BRADDON. -

He desired to see these matters referred to the Federal Parliament.

The CHAIRMAN. -

I would suggest that the proper time to discuss clause 96 is when we arrive at it. Assuming that clause 96 is retained in the Bill, the question is: Ought there to be an appeal?

Mr. HIGGINS (Victoria). -

I think the Premier of New South Wales has hardly caught the point which my honorable friend (Mr. Glynn) put just now. The Inter-State Commission is not a body that acts. It is a body that simply decides upon facts-"Is a rate good?" "Is a charge an infringement of the Constitution?"

Supposing the decision is outside the Constitution, it is pro tanto invalid, and is not to be acted upon; and if the officers of a state or of the commonwealth act upon such a decision when it is outside the Constitution they are doing an illegal act. That is all the Inter-State Commission has to decide, and I understood Mr. Symon to say that it is a court, and that there
should be an appeal.

Mr. SYMON. -

Oh no. I understood you to say that if the commission did not act; and I say that if the commission has to decide, there has to be an appeal.

Mr. HIGGINS. -

They have to decide, but not as a court.

Mr. REID. -

The commission is to be charged with the execution and maintenance within the Commonwealth of the provisions of this Constitution, and of all laws made thereunder relating to trade and commerce."

Mr. HIGGINS. -

It is clumsily expressed, but at the same time I should take that with the other clauses about adjudication, and I should take the intention to be that they are to see by their decisions about rates and the rest that the laws are executed but they will not execute the laws.

Mr. REID. -

It is an idle tribunal if it simply meets and expresses an opinion and cannot enforce its decisions.

Mr. HIGGINS. -

In America-

Mr. REID. -

I do not mind that; the American conditions are not parallel.

The CHAIRMAN. -

I would ask the honorable member to confine his remarks to the question whether there should be an appeal from the Inter-State Commission as the Inter-State Commission is now constituted.

Mr. HIGGINS. -

That is just what I was dealing with, and you will understand the drift of my observations when I say that the whole basis of my argument is that this Inter-State Commission is not a court, and it is absurd to talk of an appeal from a body that is not a court. That is the essence of my remarks. But in saying that the Inter-State Commission is not a court, I have to look at what it has to do. It is not an executive body in the sense that it has to do a thing, but it simply has to follow the analogy of the United States of America, where the commission gives decisions about rates. Its decisions are taken as final as long as they are within the limits of the Constitution, and the Commonwealth can enact laws for the purpose of giving effect to the rules of the commission. The decisions of the commission are simply the decisions of experts. I interjected, and I think relevantly, when Mr. O'Connor was speaking, that it is not usual to allow an appeal from directors of a company if they are acting within the purview of their
bylaws; but whenever they act outside the limits of their by-laws there is an appeal from them to the court.

Mr. REID. -

If Your understanding of the commission is right I quite see the force of what you say; but we differ as to what the commission is to be.

Mr. HIGGINS. -

I am not at all surprised, having regard to the form of words used in the clause, that a misapprehension has arisen, and I assure my right honorable friend I am trusting the Drafting Committee to put this language right.

Mr. HOLDER. -

It is right now; it will be wrong if it is altered.

Mr. HIGGINS. -

I do not think it is the intention of this committee to put the Inter-State Commission in Australia in a d

Mr. OCONNOR. -

It has been done already in clause 96.

Mr. HIGGINS. -

I understand that Mr. Holder is a stronger advocate of the Inter-State Commission and its powers than I am. I am not in favour of rendering the Inter-State Commission absolutely necessary, but I want to give a power to create it.

Mr. HOLDER. -

We want it permanently.

Mr. HIGGINS. -

You are giving an appeal to the High Court from all the courts of the Federation, and I am in favour of that; but, I say, do not give an appeal from a business body that merely decides on business principles what is a fair matter of business. You might as well say that we should give an appeal from the Railways Commissioner of New South Wales to the Supreme Court of New South Wales. The thing is not within the purview of the work of the courts. But if the commission should go outside the ambit of its powers, then without any express provision the decision will be treated pro tanto as void, and things will go on as before.

Mr. HOLDER (South Australia). -

I want to point out some facts that bear strongly on the question of appeal. I would direct attention to clause 96, where the statement is made that the Inter-State Commission shall be charged "with the execution and maintenance" of two things: First, "of the provisions of this Constitution." That is much more than the Parliament may give it to do. Next, besides "the provisions of this Constitution," it is to be charged with the execution
and maintenance "of all laws made thereunder relating to trade and commerce." So that the Inter-State Commission is intended both to execute and maintain the provisions of this Constitution, and, incidentally thereto, the provisions of any Act of Parliament relating to trade and commerce. I think that such large powers as these might lead to the Inter-State Commission giving decisions in respect of which there should be a right of appeal on the mere question of law involved; and I hope the committee will give that right of appeal on questions of law, while it refuses the right of appeal on questions of fact within the knowledge of the experts we appoint.

Mr. DOUGLAS (Tasmania). -

If you appoint the Inter-State Commission in the way described in the Bill, it will discharge no more than the functions of arbitrators. Now, if an arbitrator exceeds his functions, it would be possible to set aside his award. A decision of the Inter-State Commission is tantamount to an award. The provisions of clause 96 are so wide that surely, if the commission makes a mistake and goes beyond its powers, there must be a power of appeal somewhere. There ought not to be a doubt about that. I cannot understand the argument against it. I can understand the position of Mr. Isaacs, who wants to knock out the provision for the Inter-State Commission altogether; but if this body is to be established, the power of appeal, it seems to me, must be made clear and distinct.

Mr. SYMON (South Australia). -

I wish to make a suggestion. The only doubt which seems to me to exist is whether under clause 74, if some provision of this kind is not inserted, there would be jurisdiction in the High Court as an appellate court to entertain an appeal, supposing the Parliament in establishing the Inter-State Commission decided that in some matters the adjudication of the commission should be subject to appeal.

Mr. REID. -

Notice the words "with such exceptions and subject to such regulations as the Parliament may from time to time prescribe." Would not that cover it?

Mr. SYMON. -

I doubt whether that would be sufficient. It might not be. I quite agree with honorable members that it is not likely that there would be, or that we could contemplate, appeals in ordinary matters from the decision of experts to the High Court. I should be sorry to see anything of that kind. It would introduce political questions and matters of policy that would tend to derogate from the position which the High Court should occupy under this Constitution. But, at the same time, Parliament might think fit, and probably would, under the exhaustive powers of clause 96, to say that there
were certain matters on which they would allow an appeal on points of law; and I suggest that we should put in after the words "Inter-State Commission" the words: "If Parliament allows such appeal." This would give jurisdiction to the High Court to entertain an appeal, and it would leave it to the Parliament in constituting the Inter-State Commission to say whether, in any particular matter, there should be an appeal on a point of law. The danger is that whilst the Parliament would give a jurisdiction to the High Court to entertain an appeal it might not have power to give an appeal from the Inter-State Commission. That is what should be guarded against. Leave the Parliament to say, when constituting the Inter-State Commission, upon what there shall be appeals. That would save any question whether or not this might not involve an appeal at all hazards from the Inter-State Commission. It would leave the matter to Parliament.

Mr. OCONNOR (New South Wales). -

I would like to say, with reference to the suggestion of Mr. Symon, that by clause 96 we have already given Parliament power to confer powers of adjudication upon this Inter-State Commission. I call the attention of Mr. Glynn and Mr. Fraser to this matter. You have given power to the Parliament to give power to the Inter-State Commission to adjudicate for the purpose of the maintenance and execution of the provisions of the Constitution. That enables the Parliament to constitute the commission in such a way as to get rid of the difficulty that has occurred in America and it may give power, not only to decide that a rate is illegal, but to enforce that decision, and also to award damages or compensation to persons who have been injured by the rate. These questions of rates may involve immense sums of money, and immense considerations regarding damages to the states, to the persons dealing with the railways of the states, and to the Federal Commonwealth. If powers of adjudication of that kind are given, surely you will have a court with a power of adjudication which will deal with matters of infinitely larger concern than your ordinary courts will have to deal with. If you constitute a body of that kind, surely you are not going to put such a body in an absolutely irresponsible position. With reference to Mr. Symon's suggestion that it should be left in the power of the Federal Parliament to declare whether there shall be an appeal or not, if it is right to do that, it would be equally right to give Parliament power to say whether there should be an appeal from any of the federal courts, but you do not say that. I do not think you should give Parliament power to say that there shall be no appeal. They should make such exceptions and limitations as they think fit, but they should not take the power of appeal
away. Therefore, I do not think Mr. Symon's suggestion should be followed. If so, Parliament would create an Inter-State Commission with immense powers, and make them absolute and irresponsible. I am sure that was never intended. If we carry out this proposal of an Inter-State Commission, as I hope we shall, considering the powers that they will be endowed with, it certainly ought to be subject to the same review as any other federal court.

Mr. KINGSTON (South Australia). -

I am disposed to agree with Mr. Fraser that it is not desirable to provide for a general appeal from the Inter-State Commission, which, it seems to me, would be a body exercising similar jurisdiction to the Railways Commissioners.

Mr. OCONNOR. -

It is only proposed to give an appeal when they adjudicate, and then they will not be exercising the same powers as Railways Commissioners.

Mr. KINGSTON. -

I shall support the amendment of Sir George Turner.

Mr. WISE. -

Is not the safeguard provided in clause 96?

Mr. KINGSTON. -

I think the safeguard is in the first part of clause 74. I think it might be desirable to confer a right of appeal from the decision of the Inter-State Commission, but I hope, sir, that we will insert the provision suggested by Mr. Holder, that there shall be no appeal except on matters of law. I also think we are sufficiently protected by the first part of clause 74, which, it seems to me, will give full power to Parliament to declare exceptions from this right of appeal, which will prevent the Inter-State Commission from being unnecessarily harassed. Under these circumstances, I think it is hardly necessary to vote for the striking out of the clause.

The amendment to strike out the words "Inter-State Commission" was negatived.

Mr. HOLDER (South Australia). -

At the suggestion of the Chairman, I intend to alter the amendment which I am about to move for what appears to me to be a very sufficient reason. A desire has been expressed that the debate on appeals to the Privy Council should not be interfered with, and that would take place if I followed the amendment as it is in print. I therefore desire to test the feeling of the Convention by moving-

That sub-section (2) be amended by adding the following words:-"on questions of law only."
Mr. BARTON (New South Wales). -

I have no objection to accept the amendment of Mr. Holder, but he will understand that such questions as to whether there is evidence in favour of a particular contention are questions of law. I take it that the rules which generally apply now in considering questions of evidence in England, for instance, in deciding matters affecting new trial motions, on questions of fact, would apply here. In that case the weight of evidence is not to be considered if a verdict is demonstrably wrong and such as no reasonable man would give. I only point this out so that there may be no mistake. I think my honorable friend will understand that the amendment which he proposes will not allow mere questions of fact to be considered, except within the limits I have referred to.

Mr. ISAACS. -

Will the honorable member state what would be the effect of this addition upon the previous sub-section?

Mr. BARTON. -

I am very glad my honorable friend has pointed that out. The addition of these words might possibly be taken as affecting the construction of the prior part of the clause, in which case it might be inferred that while appeals from the Inter-State Commission were to be limited to questions of laws, other appeals were not to be confined to questions of law, but might be applied to questions of fact. I think a good deal of argument could be used in favour of such a construction. That will be a matter for Mr. Holder to consider. The ordinary construction of the prior part of the clause would be that these appeals were on questions of law. If my honorable friend introduces into his amendment words which restrict appeals from the Inter-State Commission to mere questions of law, then an implication may arise that in the prior part of the clause, the appeals are not so restricted, and that may raise ugly and difficult questions. Apart from the difficulty of construction, I am quite willing to accept the amendment.

Mr. HOLDER (South Australia). -

I simply propose to move the amendment in the way I suggest to enable the debate presently to proceed uninterruptedly. I can see the difficulty which has been suggested by Mr. Barton, and I am prepared to give an indication of the desire of the Convention, and leave it to the Drafting Committee to carry out our intention.

Mr. WISE (New South Wales). -

I would ask Mr. Holder not to press his amendment. If he looks at clause 96 he will see that it provides a perfectly efficient safeguard by leaving the matter in the hands of the Parliament to prescribe exactly what shall be the functions of the Inter-State Commission. They can provide that any
decision shall be final or is subject to appeal. The insertion of the words of
the amendment will, by implication, require that the appeals in the first
sub-section shall be on questions of fact, which may be very undesirable.

Mr. OCONNOR. -

The Drafting Committee will put the matter right. We only want a
direction from the Convention.

The amendment was agreed to.

Sir JOSEPH ABBOTT (New South Wales). -

I beg to move -

That at the end of the clause the following words be inserted:-"saving any
right that Her Majesty may be pleased to exercise by virtue of her Royal
prerogative."

I may say that this is not what I regard as carrying out my own views,
because if I had my own way I would undoubtedly have the Privy Council
as the final Court of Appeal in all matters. But I recognise that there is a
very strong difference of opinion on this question. I hope that honorable
members will be able to see their way to agree to this proposal, which is
only in harmony with the law of Canada. There are two questions very
pertinently put by a gentleman writing in the press, asking what the
opinions of the people are in reference to this question. He says-

Do they side with Mr. Carruthers or Mr. Symon?

The CHAIRMAN. -

The honorable member is not in order in reading any comments on the
debates in this Convention.

Sir JOSEPH ABBOTT. -

I am not doing that. I am referring to a letter which was written before
this Convention began to sit.

Mr. SYMON. -

No; it was published after the last debate on the subject.

Sir JOSEPH ABBOTT. -

Very well; I will get over the difficulty.

Mr. SYMON. -

I want to hear it.

Sir JOSEPH ABBOTT. -

I can quote from the Hansard debates. I do not speak so very often that I
should be invariably met with interruptions. The Chairman, of course, has
a perfect right to call my attention to any irregularities, and I am not above
learning, but I object to these continual interruptions by honorable
members who have occupied a very large amount of time in this
Convention, and who are always exhorting other honorable members not to waste time. The contention of Mr. Carruthers was that-

The resolutions we have passed, the Bill which we are now framing, and the union which we hope to consummate, declare that this is to be a union under the Crown.

Mr. Symon, on the other hand, understands-

We are creating a nation which is to be self-contained, self-sufficing in every possible respect.

I deny that; I believe that, whatever we are doing, we desire to remain an integral part of the British Empire. Although one may believe, as I have no doubt Mr. Symon does conscientiously believe, that this proposal will not interfere with our desire in that respect, I am one of those who believe that it will interfere greatly in regard to it. We have the opinion of a great constitutional writer, Dr. Bourinot, who is accepted as an authority on most matters relating to parliamentary law, and who is continually quoted as a constitutional authority throughout the British Empire. What does he say with regard to these proposals? He read a paper, which has been reprinted from the Transactions of the Royal Society of Canada, and is entitled-"The Canadian Dominion and proposed Australian Commonwealth"—a Study in Comparative Politics. It contains a valuable discussion on the importance of retaining the appeal to Her Majesty in Council. At page 27 he cites a passage by Sir Henry Wrixon, which crystallizes the whole controversy. That passage reads:-

At present it is one of the noblest characteristics of our empire that over the whole of its vast area every subject, whether he be black or white, has a right of appeal to his Sovereign. That is a grand right, and a grand link for the whole of the British Empire. But it is more than that. It is not, as might be considered, a mere question of sentiment, although I may say that sentiment goes far to make up the life of nations. It is not merely that, but the unity of final decision preserves a unity of law over the whole empire.

No one seems to have pointed out during these debates that Mr. Gladstone, in his first Home Rule Bill, preserved the right of appeal from the law courts to be established in Ireland to the House of Lords. Afterwards, there was an amendment of the provisions relating to appeals to the Privy Council, and in Mr. Gladstone's next Home Rule Bill the proposal was not to allow these appeals to the House of Lords, but to allow them to go to the Privy Council. In that respect I have no hesitation in saying that, revolutionary as those Bills of Mr. Gladstone's were regarded, they are not half as revolutionary as the Bill now under consideration in
regard to the abolition of appeals to the Privy Council. We were told the
other morning that this Bill did not propose to take away from the subject
the right of appeal to the Privy Council. Technically it did not, because
subjects are represented by the states. But really no individual in the
community, if we pass the Bill as it is now, will have the right of appeal to
what has been regarded with pride by the British nation as the final tribunal
for the administration of its law. What has been the experience in the past?
We have heard that appeals to the Privy Council were costly. We have
heard that they were dilatory; and we have heard that the poor man has no
opportunity of entering an appeal. During an experience of some five and
thirty years I have obtained as great and intimate a knowledge in regard to
those appeals as any man in the community. I have been concerned in at
least ten or twelve appeals to the Privy Council. One of the biggest appeals
we ever had from New South Wales was the one referred to by the Hon.
Mr. Carruthers. That appeal was the result of an action brought in our own
Supreme Court against a conditional purchaser by Mr. Edols, one of the
wealthiest squatters in the Western District. The Supreme Court, after
hearing arguments, finally delivered judgment. Before that was done,
however, the Chief Justice, Sir James Martin, died, and his judgment was
read by one of his colleagues. The other two Judges disagreed with Sir
James Martin, and in any case their judgment was the final judgment of the
court. I mention this case to show what opportunities a poor man may
have, even in this country, in regard to appeals to the Privy Council. This
man had taken up a conditional purchase on Mr. Edols' lease. The question
arose whether the land was open to conditional purchase or not, and the
Supreme Court, by a majority, held that the land was not open to
conditional purchase. Sir James Martin's judgment was the other way
about. The result of that appeal was very small, if confined to the
individual alone; but the question was as to the settlement and occupation,
not of 1,000 acres, but of close on 1,000,000 acres of land, which would be
thrown open if the judgment of the Supreme Court were wrong. An appeal
was made to the Privy Council, although the appellant was a selector
without means. Owing to the magnitude of the importance of the case,
however, the appellant was able to get others to help him, and he finally
went to the Privy Council. This was a case in which, looking at the dates,
there would appear to be great delay. No doubt there was necessary delay,
on account of the want of means of this man. But the final decision of the
Privy Council was in favour of the appellant, and the result was that
thousands and tens of thousands of acres were thrown open for occupation
in New South Wales which otherwise would have been locked up for a
period of at least ten years under lease. I mention this case to show that
even the poor man has an opportunity of going to the Privy Council as a final tribunal. If honorable members will take the trouble to read the returns of appeals to the Privy Council they will see that the delays are not so numerous. They will see that the delays are not greater, at all events, than exist in our own courts in reference to matters of very great importance. It is no uncommon thing in the Supreme Court of New South Wales to have matters referred by the Land Appeal Court, which remain undecided for a considerable time, extending, to my knowledge, over twelve or fifteen months. If honorable members will look at the returns of the Privy Council appeals, they will see that the average delay does not exceed that period, or, at any rate, is very little more. To laymen, possibly, the procedure in regard to appeals to the Privy Council is unknown. First, the judgment of the Supreme Court is delivered, and, within a certain time, any one who desires to go to the Privy Council applies for leave to appeal. That leave is given, and, until lately, it was a matter that was entirely within the power of the appellant when be would have the transcript made up by the Prothonotary of the Supreme Court, and remitted to the Privy Council in London. It was only within the last few years that compulsion was put on the appellant to make up his transcript, which is a copy of all the proceedings, a copy of the judgment, and a copy of the documents which influenced the court in coming to the decision which was about to be appealed against. Necessarily there was great delay in getting that transcript to the Privy Council, but under comparatively recent orders all that has been abolished, and the transcript must be remitted to the Privy Council within a certain time. Then, when the transcript reaches London, the solicitors there have to enter the case for hearing. There again is delay, and always in these great cases there must be delay, because both parties are unwilling to go to the Privy Council, and are trying their very best to secure a settlement of the case. Dr. Bourinot again comments on the Privy Council in the proceedings of the Canadian Royal Society for 1897, which has not yet been generally distributed in Australia. As I said before, people will acknowledge Dr. Bourinot as an authority on Constitutional Government. He says-in Canada during the Victorian Era, page 28:-

Here, also, the wisdom and learning Of the Judicial Committee of the Privy Council of England and of the Canadian Judiciary are, to a large extent, nullifying the contentions of politicians, and bringing about a solution of difficulties, which, in a country divided between distinct nationalities, might cause serious complications if not settled on sound principles of law which all can accept.
Mr. Symon, in Adelaide, styled appeals to the Privy Council as iniquitous, and in Melbourne, on the 31st of January, he quoted the London Times, of 22nd June, 1870. That date is very material, because I am quite sure Mr. Symon would not intentionally mislead the Convention with regard to a quotation of that kind. But when Mr. Symon made that quotation he ought to have known, and he ought to have told the Convention, that the quotation was not applicable to the present circumstances of the Privy Council.

Mr. SYMON. -
I did so.

Mr. BARTON. -
In Adelaide?

Mr. SYMON. -
Here.

Sir JOSEPH ABBOTT. -
Well, then, what was the necessity for quoting the Times at all if it had ceased to be an authority? Undoubtedly, the honorable member knew it had ceased to be an authority at the time when he quoted it. I am glad to hear him say that he told the Convention the quotation was not applicable. At all events, the honorable member quoted the Times of 1870 as an authority in favour of his argument, when, as a matter of fact, at that time it was not an authority in favour of his argument, because of the altered constitution of the Privy Council. The Times says-

We have no hesitation in saying the condition of the Judicial Committee of the Privy Council is simply disgraceful.

That was on the 22nd of June, 1870. Mr. Symon also quoted Lord Westbury and Lord Cairns much to the same effect. But he appears to have overlooked the fact that an Act was passed in 1871, the following year, to remedy the existing state of things, and to strengthen the tribunal. Under that Act four additional members were appointed, at a salary of £5,000 a year each. I do not think the honorable member told the Convention that.

Mr. SYMON. -
I told them the whole thing had been reformed.

Sir JOSEPH ABBOTT. -

Then what was the use of the quotation? By the joint operation of Acts 39 & 40 Vict. c. 59 (1876) and 50 & 51 Vict. c. 70 (1887) there was a reform, and there are now four Lords of Appeal, who sit in turn. I would ask honorable members to listen to this, because we heard the other day that the constitution of the House of Lords and of the Privy Council were
very different, and that, whilst the House of Lords was the final Court of Appeal in England, the Privy Council was the final Court of Appeal with regard to questions arising in the colonies. It was said that practically we had two courts which were in a position to give two different decisions—that we had a House of Lords giving a decision binding throughout the empire, and that we had the Privy Council giving a decision which would be binding also. On the Judicial Committee of the House of Lords there are four Lords of Appeal, who sit in turn, two of them in the House of Lords and two in the Privy Council. Since the amendments in 1876 and 1887, the two courts are composed of the same class of Judges. In fact, the House of Lords and the Privy Council are, as to their personnel, substantially the same tribunal sitting in two divisions, one taking English and Irish and the other colonial and Indian appeals. The only difference in the personnel of the two tribunals is that in the Privy Council there are three colonial Chief Justices. That is of very great importance to the colonies. As I said, there are three colonial Chief Justices and one retired Indian Judge who are not peers. Occasionally, also, Judges and retired Judges who are Privy Councillors and experts in the branch of the law under discussion are also summoned. Can it be suggested, however high the Federal High Court may be in regard to attainments, that under any circumstances the Judges of the court would have the experience, the training, and the knowledge of the men composing the Court of the Privy Council? Would it be possible to separate the members of the Federal High Court from local influences? Unintentionally, men are influenced by their surrounding conditions. It does not follow because a man is to-day in public life as Attorney-General, and to-morrow is sitting on the bench wearing the ermine, that he can dissociate himself or separate himself from local surroundings and be unbiased or uninfluenced by those considerations. Take a case of importance arising here. I admit that our Judges have great learning and extensive knowledge, and I admit the great power and the great strength of our Supreme Courts throughout the various colonies, but I say that they can have no experience equal to the men who occupy positions on the bench of the Privy Council. We are told, however, that the members of the Privy Council do not understand our law, that they do not know our conditions, and that they are unacquainted with local influences. Well, I have always considered that a very trifling matter in fact, I have thought it was a very desirable thing that they did not understand our local conditions, because our laws are not to be interpreted in regard to local conditions, but according to the intent contained within every word in them, apart from local conditions. I have heard men express their astonishment that the Judges of our own Supreme Court have not taken into consideration the
Hansard debates when they were giving judgment. I feel quite sure that when an appeal goes to the Privy Council all these considerations are completely wiped out. The members of the Board of the Privy Council do not consider our local conditions, but interpret our Acts in the words in which they are printed. I have already referred to the two chief objections to appeals to the Privy Council; first, the expense, and, secondly, the delay. I have endeavoured to show that the expense is not so enormous as it is represented to be. If honorable members will look at the return in relation to appeals to the Privy Council from decisions of the Supreme Court in Queensland every layman, at all events, will be struck by the fact that the expenses of one appeal were only £29 in Queensland, and £219 in the Privy Council—that means the taxed costs of the appeal. It has nothing to do with the local costs; it means the preparation of the transcript and the final cost in London. The difference between the cost of appeals to the proposed High Court and the cost of appeals to the Privy Council is well but rather under stated, by Sir Lambert Dobson, in a document which is quoted at page 969 of the report of the debates of this Convention at Adelaide; and I think that we are very much indebted to Sir Edward Braddon for quoting that information in the speech which he delivered on that occasion. In many cases counsel's fees at the present time are higher here than I have ever known them before, and I say this with a knowledge extending over 30 years of practical experience.

Mr. BARTON. -

Counsel's fees are a great deal lower with us than they were a few years ago.

Sir JOSEPH ABBOTT. -

I can remember the time when Sir James Martin accepted a brief to go to a court at the Hunter River for fifteen guineas. I would not like to be the attorney to offer a fee of fifteen guineas in such a case to my most intimate friend at the bar, because I know what would happen.

Mr. SYMON. -

What would happen?

Sir JOSEPH ABBOTT. -

He would probably kick me out of his chambers. So far as I can ascertain, counsel's fees in these colonies are relatively higher than they are in England, and I estimate that, taking into account travelling expenses and other things, the costs of an appeal to the Federal High Court would be four or five times greater than the cost of an appeal to the Judicial Committee of the Privy Council. Let me ask the Western Australian representatives what advantage it would be to the people of their colony to have appeals to the
High Court sitting in Sydney or at Wentworth, which, I am told, is to be the capital of Federated Australia? What advantage would it be to them to go there and fee counsel to appear on their behalf before the High Court? I ask those who contend that local knowledge is a great advantage, what benefit would local knowledge be if they had to retain counsel in Sydney to advocate their interests in an appeal to the High Court, if the court happened to be sitting there! What advantage would local knowledge and circumstances be if the same set of circumstances arose in this colony, and Western Australians had to come to Victoria to appeal to the High Court? Where is the saving of expense? Then I turn to Tasmania. Fortunately, Tasmania is a law-abiding country and has had Only one appeal to the Privy Council since it had responsible government. But what advantage would it be to Tasmania to abolish appeals to the Privy Council if Tasmanians had to fee counsel here or in Sydney, because I do not suppose that any of us imagine the capital of Federated Australasia is to be in Tasmania. But, wherever the capital is, what advantage is it to the people of the other states who have to go to that High Court, and take it as the final Court of Appeal, when they might go to the Privy Council, when, in the latter case, the cost would be less, or at any rate not greater? I will tell honorable members what advantage is to be gained by going to the Privy Council. I have already pointed out that the members of the Privy Council are men of great learning and great experience, and that the parties interested in appeals will have the advantage of being able to command the services of members of a bar which is unquestionably the greatest the world has ever seen. I have already mentioned that counsel's fees in these colonies are greater than counsel's fees in England, and you have to add to that additional cost the amount of travelling expenses and loss of time, which would make the cost of an appeal to the High Court of Australia still heavier. Now, take the case of South Australia place where there have been many appeals. Fortunately for the people of South Australia, they seem to have had a very good and a very strong bench, because out of the number of appeals to the Privy Council from the decisions of the Supreme Court of South Australia, only two have been allowed.

Mr. SYMON. -

And yet you deny the competence of our Judges to deal out justice.

Sir JOSEPH ABBOTT. -

I would remind honorable members that there would be larger cases under the federal form of government than have hitherto arisen. But I say, take South Australia, and place its records side by side with those of the
Victorian courts, where they have had more appeals than probably all the other courts put together within the same period of time, and where there have been more scandalous delays than in any of the courts throughout the Australian colonies. There was one case here in Victoria—and it is cases like that which perfectly scandalize a great court like the Privy Council. The public is told that there is an appeal to the Privy Council from the Supreme Court of Victoria. The public were told that a judgment was delivered here in Victoria in the case of Dougharty v. The Bank of Australasia, in 1891, and that the case was not dealt with by the Privy Council till 1896.

Mr. SYMON. -
Which side was the appellant in that case?

Sir JOSEPH ABBOTT. -
Dougharty. These bald facts go forth to the public, that a judgment was delivered in the Supreme Court of Victoria in 1891, and that the case was not heard of again until the appeal to the Privy Council, in 1896. That, without explanation, is scandalous, and I think, even with the explanation that was given, it is equally scandalous. The delay was not with the Privy Council, but the public think it was. They heard of the judgment being delivered in Victoria on the 30th September, 1891, and they did not hear of the judgment of the Privy Council until five years afterwards. Now, as a matter of fact, leave to appeal was given in that case on the 2nd September, 1892, exactly twelve months after judgment was delivered. How that length of time elapsed I do not know, but the papers were not sent to England until the 30th March, 1896.

Mr. ISAACS. -
It was by reason of the right of appeal to the Privy Council that all that delay took place.

Sir JOSEPH ABBOTT. -
My learned friend knows nothing about a case except the fees he gets in court. He is not a solicitor. The facts which I have mentioned in connexion with that case going forth to the public would make the public believe that the delay was on the part of the Privy Council. Now, the Board of the Privy Council called for an explanation of that delay, and the explanation which was given was that the delay occurred owing, first, to the illness of the lawyers; and, secondly, to changes of their managing clerks. This is one of the appeal cases to which Mr. Symon, no doubt, referred. I believe that if you could take all of these cases and go through them, you would find that the delays in all instances arose here, and not in London.

Mr. SYMON. -
But those delays are all incidental to appeals.

Sir JOSEPH ABBOTT. -
Yes; but I have seen the whole administration of the Lands department of New South Wales blocked for twelve or eighteen months for want of a decision by our own Supreme Court. I have seen things of that kind not once, but many times. We have land boards to administer our Land Acts, and there is an appeal from the decisions of that board to a specially-established court. That court, on questions of law, has to state a case for the opinion of the Supreme Court, and I have known land board cases hung up for twelve or fifteen months in the Supreme Court before there was a final decision given. The honorable member will tell me that that is the result of the system of appeals. I admit it, but I think it is partly owing to the lawyers. If those appeals were abolished, each case would have been ended by the decision of the local land board. Every appeal brings about delay. But delay is a small consideration, providing you get good law and justice ultimately. Now, of course, a decision of the High Court of Australia will bind the whole of the federated states, but it has no effect outside Australia. On the other hand, a decision of the Privy Council, on whatever matter is involved, has effect throughout the whole British Empire. I could go on enumerating these cases, to show that the delays are not with the Privy Council, but rather with the parties to the appeals themselves and with the lawyers.

Mr. HOVE. -
That is right.

Sir JOSEPH ABBOTT. -
But I am not going to say anything against lawyers. If it were not for men like Mr. Howe there would be no necessity for lawyers.

Mr. SYMON. -
He is not a very lucrative client, I can tell you.

Sir JOSEPH ABBOTT. -
I am quite sure that Mr. Symon knows, in respect of South Australia, who are and who are not lucrative clients.

Mr. SYMON. -
He is a very good fellow and therefore keeps out of the law courts.

Mr. HOWE. -
I keep the oyster to my self; the lawyers can have the shells if they like.

Sir JOSEPH ABBOTT. -
In South Australia, the costs of appeals to the Privy Council have ranged between £674, the highest, to £184, the lowest.

Mr. HIGGINS. -
Is that the taxed costs of one side only, or of both?

Mr. SYMON. -
The taxed costs of one side only.

Sir JOSEPH ABBOTT. -

The only solid objection to appeals to the Privy Council is, that there is no local distribution of the money—that the money is sent out of your own country. Now, in the case in which the highest amount of costs (£674) was incurred, the property at stake was valued at £40,000; and in the appeal in the Moonta case (Regina v. Hughes and another), which stands at the head of the list— for in that case property worth half-a-million sterling was at stake - the successful appellant's costs amounted to £434. Now, there is one case in South Australia in which if the parties concerned had been bound by the decision of the South Australian Supreme Court, able as it is, one of the parties to the suit would have been done out of their rights to the tune of half-a-million pounds' worth of property. In that case Sir Roundell Palmer, Sir Hugh Cairns, Sir John Rolt, Mr. Mellish, and other distinguished counsel were engaged, and it took three days to argue the case. As to the time taken by appeals to the Privy Council, Mr. Symon made a statement on the 31st of January, as reported in

Hansard. His figures as to South Australia, I am told, are not quite correct, as they include the whole of the time between the granting of leave to appeal and the decision of the Privy Council being given. As I said before, months and sometimes years are wasted between those times.

[The Chairman left the chair at one o'clock p.m. The committee resumed at five minutes past two o'clock p.m.]

Sir JOSEPH ABBOTT. -

When we adjourned for lunch I was about to point out that during the last summer sitting of the Judicial Committee the whole of the work of the committee was cleared off, with the exception of a few reserved judgments. It has been pointed out in the press and elsewhere that if a High Court of Appeal were established in Australia it would be found that the cases would come before it only when it was convenient for counsel to attend, and that probably counsel would prefer to attend the sittings of the state courts if there was any clashing between those sittings and the sittings of the High Court of Appeal. Under these circumstances, it is hardly likely that suitors would be able to procure the very best counsel to appear for them in the High Court of Appeal, and to give up their business in the state courts, except upon the payment of enormous fees. As honorable members know, in the North American Constitution power was reserved to the Dominion to establish a High Court. The Parliament there introduced a Bill to establish a High Court, and, in reference to this matter, Todd, at page 184, says—
Furthermore, upon the introduction into the Canadian Parliament, in 1875, of a Bill to create a Supreme Court for the Dominion, it was the expressed intention of Ministers to have prohibited any further appeals to Her Majesty's Privy Council. They were notified, however, that the Bill could not be sanctioned, unless it preserved to the Crown its right to hear the appeals of all British subjects who might desire to appeal, in the ultimate resort, to the Queen in Council. Accordingly, a saving clause to that effect was inserted in the Bill, and it received the Royal assent.

The same author, speaking with regard to this appellate jurisdiction, says—and I would ask honorable members to pay particular attention to this passage:-

The appellate jurisdiction of the Queen in Council is retained for the benefit of the colonies, not for that of the mother country. It secures to every British subject a right to claim redress of grievances from the Throne.

He continues:-

It is true that in a colony which possesses an efficient court of appeal it may be seldom necessary to have recourse to this supreme tribunal.

No doubt if a High Court of Appeal is established here, and it is what those who propose to found it anticipate that it will be, there will be very few appeals to the Privy Council. Still, I think that the right of ultimate appeal to the Privy Council should continue to exist. Todd goes on to say:-

Nevertheless, its controlling power, though dormant, and rarely invoked, is felt by every judge in the empire, because he knows his decisions are liable to be submitted to it. Under these circumstances it is not surprising that British colonists have uniformly exhibited a strong desire not to part with the right of appeal from colonial courts to the Queen in Council.

I submit, with great confidence, that it is for those who propose to take away this right to show that there is no need for it. There has not been a single petition presented to the Convention in favour of the clause as it stands. I suppose that those who so earnestly desire the retention of the clause as it stands would, if they could get petitions in favour of their proposal, inundate us with them. Since we have been sitting in Melbourne, no less than 26 petitions have been presented to us, praying that the right of appeal to the Privy Council may be retained; but not one petition has been presented in favour of doing away with this right.

Mr. HIGGINS. -

The people do not care twopence about the matter.

Mr. SYMON. -

They do not know anything about it.

Sir JOSEPH ABBOTT. -
It is very easy for my learned and disorderly friend (Mr. Higgins) to make an assertion of that kind, but I tell him that the people care a great deal more about what is going on here than he appears to think.

Dr. COCKBURN. -

They do not think that we ought to be interfered with by petitions.

Sir JOSEPH ABBOTT. -

The honorable and learned member's turn to speak will come by-and-by, and it would be more mannerly for him to allow me to proceed without interruption. Honorable members cannot suppose that, when they retire from this Convention next week, their work will be done. They must recognise that the Bill, before coming into law, must get the approval of the Imperial Government. As I have already pointed out, the Imperial Government in 1875 intimated that they would not sanction a Bill which contained provisions to the same effect as the clause now before the committee, abolishing the right of appeal to the Privy Council.

Mr. SYMON. -

What Bill was that?

Sir JOSEPH ABBOTT. -

The North American Bill. I have quoted Todd but perhaps he is not a good enough authority, and I will now quote Lord Norton, who, writing in 1879, said-

The late Canadian Government brought in a Bill creating a Supreme Court, and prohibiting appeal to the Privy Council here. They were told that the Bill could not be sanctioned unless it preserved to the Crown its rights to hear the appeals of all British subjects if they should desire to appeal in the ultimate resort to Her Majesty in Council; and the Dominion Government gave way and amended the Bill accordingly.

This was in 1875, but I need not go back to any remote date to ascertain what the feeling is. In the months of June and July of 1897, a conference was held at the Colonial-office, London, between the Right Hon. the Secretary of State for the Colonies and the Premiers of the self-governing colonies. I have in my hand a report of the proceedings of the conference. I have spoken to one or two honorable members, and they tell me that they have not seen this document. It is rather long, and I did not read it myself until I came here. I have been asked, who is Mr. Chamberlain? I say that he is a very potent influence in the British Empire today, and that he is likely to be a still more potent influence in a few years hence. At this conference Mr. Chamberlain said-

Now, gentlemen, in connexion with this subject, we have already made a small advance, upon which I congratulate myself, since it was
accomplished during my term of office, though it was prepared by my predecessors; and it may have in the future important results. The Judicial Committee of the Privy Council is the great judicial Court of Appeal of the empire. It is the nearest approach, the closest analogy, to the Supreme Court of the United States. It is a body of almost universal and world-wide reputation and authority.

I do not think that Mr. Chamberlain had at that time met the Hon. Mr. Symon, or he would not have made that statement.

Mr. SYMON. -

There are two or three other statements I think he would not have made.

Sir JOSEPH ABBOTT. -

Mr. Chamberlain said-

It is a body of almost universal and worldwide reputation and authority, and it is our desire, naturally, in pursuit of the ideas which I am venturing to put before you, to increase its authority, if that be possible, and to give it a more representative character, and with that view we have most gladly secured the appointment, as Privy Councillors, of distinguished Judges from the courts of Canada, of Australia, and of South Africa, and they now will take their seats on equal terms with the other members of the Judicial Committee.

I will read another quotation from Mr. Chamberlain's speech, and I think honorable members will see how probable it is that if this Bill goes home in its present form it will meet with the treatment that it was intimated would be given to the Canadian Bill mentioned by Lord Norton. Mr. Chamberlain said-

May I note, in passing, a matter of some importance in regard to the proposed Australian Federation Bill? It appears, in that Bill, to be suggested that if it is passed appeals should only go to the Privy Council upon constitutional questions. I venture, most respectfully, to urge the reconsideration of that suggestion. Nothing is more desirable, in the interests of the colonies, in the interests of the United Kingdom and of the British Empire, than an uniformity of law, and that uniformity can only be obtained by occasional appeals to the highest tribunal, settling once for all the law for all parts of the empire; and I confess I think it would be a great loss to the colonies if they surrendered the opportunity of getting this judicial decision upon difficult and complicated points of law which from time to time may arise in the local courts.

We have before us the experience of 1875, when Canada was told that a provision similar to that in this Bill would not be sanctioned and we have
this gentle admonition from Mr. Chamberlain. In the sitting of the Convention at Adelaide I quoted—and it cannot be too often quoted—a letter written by the late Mr. Justice Richmond to Sir Henry Parkes. We have our own experience, and we have the experience of men in other parts of the country with regard to the value of this right of appeal to the Privy Council. I should like to go further than is proposed in my amendment; but I do earnestly hope that the right of appeal to the Privy Council will be retained to the Australian colonies. The method proposed by me is one which will throw difficulties in the way of getting that ultimate appeal. I do not think that there should be even those difficulties. At the present time, any person engaged in a lawsuit in which the sum of £500 is involved can appeal to the Privy Council, on certain conditions with regard to finding security for costs. Although the Supreme Courts in these colonies have no power to grant leave to appeal, the Privy Council has power to grant leave to appeal under any circumstances, no matter what is the consideration involved. Under the proposal which I have submitted, if a subject of the Queen desires to appeal to the Privy Council, there will be no power in the High Court to grant that appeal as a matter of course. The subject will, however, have a right to go to the Privy Council, and present a petition asking leave to appeal. If an order is made it will be filed in the courts out here, and a transcript will be remitted to England. I do not think it is too much to ask that that link with the highest, and, I think, the most valuable, court in the British Empire should be retained.

Mr. SYMON (South Australia). -

I intend, at the proper time, to move an amendment on this amendment, but I ask the indulgence of the Convention whilst, as briefly as possible, I restate the ease for what I consider, and what has been considered hitherto by the Convention, an essential feature of the Constitution we are framing, and against the continuance of superfluous and unnecessary Courts of Appeal. It is due to my honorable friend (Sir Joseph Abbott), and to those estimable and well-meaning, though, as I think, mistaken, gentlemen who have been getting up quite a small agitation outside against the resolution that this Convention has agreed to—

Sir JOSEPH ABBOTT. -

The honorable member says that I got up an agitation outside. I did nothing of the kind.

Mr. SYMON. -

The honorable member is correcting a mistake I did not make. He is uncommonly touchy and sensitive. He was a little more moderate before lunch, but something at lunch must have been unpalatable to him.

Sir JOSEPH ABBOTT. -
That is a very impertinent remark.

Mr. SYMON. -

I do think the honorable member ought to keep calm. He is developing a disorderly habit, which is exceedingly inconvenient. I was not referring to my honorable friend, but to those whom I described specifically as a few well-meaning, though, as I think, misguided gentlemen outside, who have been getting up quite a small agitation on this matter. It seems to me to be a most extraordinary thing that there should be this curious struggle for an extra law court. That i

An HONORABLE MEMBER. -

No.

Mr. SYMON. -

I hope that I shall not be interrupted; and I take this opportunity of expressing my regret that Sir Joseph Abbott misapprehended an interjection of mine made at an early stage of his speech. It was not intended as an interjection, but as a correction as to a date. If it interfered with the thread of his remarks, I am exceedingly sorry for it, and I tender him my apology. Now, I say

that the whole of this struggle is for an extra law court. One more river for the unhappy litigant to cross. The object of these gentlemen, for whom I have the very highest respect, so far as I know them, is to heap upon the Appellate Court which we are going, to establish another Appellate Court 12,000 miles away. That, is the issue, and that is what the Convention is invited to support. All I say is that this is unique in the history of the civilized world. It is the first time I ever heard of an agitation in any civilized community for multiplying the courts of appeal. Of course, every additional appeal is in the hands of the wealthy and unscrupulous litigant-

Sir WILLIAM ZEAL. -

The honorable member has no right to say that.

Mr. SYMON. -

Why not!

Mr. BARTON. -

Very often a scrupulous litigant.

Mr. SYMON. -

I will say then that every additional court of appeal may be an additional instrument of oppression in the hands of a wealthy and highly scrupulous litigant.

Mr. FRASER. -

Leave everything to the first court.
Mr. SYMON. -

The honorable member must not interrupt me with irrelevancies like that. We are obliged to create one great Court of Appeal under the Constitution. That court must be here. It will be the Queen's Court. Sir Joseph Abbott does not suggest that we should do away with that court in any way. No one suggests it. All we do is to ask the Queen to say that that court is enough; that there is no need to keep up another Court of Appeal at the other end of the earth. That is the whole question, and I confess I am amazed beyond measure at the want of knowledge exhibited by those estimable but not very well-instructed gentlemen outside.

Sir JOHN FORREST. -

Oh!

Mr. SYMON. -

I am going to show that it is so. I say estimable and not very well-instructed gentlemen outside, who are responsible for this agitation.

Mr. BARTON. -

How do you know they are not well instructed?

Mr. SYMON. -

From their petition. Honorable members who have taken a different view from myself are perfectly entitled to hold that view. I do not for one moment reproach them, but I must call attention to what has been taking place with a view of exciting prejudice and feeling in relation to a matter about which prejudice and feeling ought not to exist at all. I do complain of the veiled hints that have been given and they were reiterated to-day by Sir Joseph Abbott—as to what the consequences will be to federation if these people do not get this extra, distant, and expensive appeal court. All I can say is that if the enthusiasm of these gentlemen for federation is of so Laodicean a character that it requires to be galvanized into vitality by the establishment of an additional law court, it is not of much value to the cause.

Sir WILLIAM ZEAL. -

It is not the establishment of an additional law court. That court exists.

Mr. SYMON. -

But we are establishing a High Court of Australia; he does not propose to do away with that.

Sir WILLIAM ZEAL. -

But the other court is established.

Mr. SYMON. -

It is a pity these interjections should be made, but I cannot help noticing that one. My honorable friend said a few minutes ago that the lawyers were the cause of the trouble.
Sir WILLIAM ZEAL. -
   And I honestly believe it.
Mr. SYMON. -
   I am quite sure that my honorable friend would not say it if he did not believe it, but does he not know that the High Court will exist just the same? The lawyers of Australia will have exactly the same position in relation to the High Court, and the same business, as if the appeal to the Privy Council were abolished. Therefore, you are simply superadding to everything the Australian lawyers will have, a further distribution of the litigants' funds in England. My honorable friend is not taking anything away from the lawyers by this amendment.
Sir WILLIAM ZEAL. -
   Well, we ought to get your vote then.
Mr. SYMON. -
   Oh, my honorable friend is now imputing an unworthy motive-I really will take no more notice of his objections if he imputes so dishonorable a motive to me as that.
The CHAIRMAN. -
   I must ask the honorable member not to interrupt the speaker who is addressing the Chair.
Sir WILLIAM ZEAL (Victoria). -
   The honorable member should not have made the statement he did.
The CHAIRMAN. -
   Order. The honorable member must resume his seat.
Sir WILLIAM ZEAL. -
   I am sure I may crave the indulgence of the committee, because I have not interposed very much throughout its deliberations. The honorable member spoke of the "unscrupulous position" of those who take a contrary view to himself.
Mr. SYMON. -
   I did not. Neither did I use the words " unscrupulous position."
Sir WILLIAM ZEAL. -
   The honorable member did use that expression, and I call him to order for doing so.
The CHAIRMAN. -
   Order. Will Sir William Zeal kindly take his seat? No honorable member has any right to interrupt the speaker who is addressing the Chair, except for the purposes specified in Standing Order No. 146, which is as follows:-
   No member shall interrupt another member speaking unless-
(1) To request that his words be taken down.
(2) To call attention to a point of order.
(3) To call attention to the want of a quorum.

Mr. REID. -
Has that been enforced all through?

The CHAIRMAN. -
I am very sorry to say that some honorable members have rendered it very difficult for me to enforce that standing order.

Mr. SYMON. -
Well, I hope we shall get on a little more smoothly. I wish to point out that really my honorable friend (Sir Joseph Abbott) has needed a good deal of the generosity of the Convention, considering that this subject has been already exhaustively dealt with.

Mr. FRASER. -
Oh, no.

Mr. SYMON. -
The question has been decided at two sittings of the Convention following upon the Federal Convention of 1891. As honorable members will recollect, a Convention was held in 1891, the members of which were chosen by the Parliaments of the different colonies, and the proposal to retain this appeal to the Privy Council was rejected by a majority of two. This Convention, which comes direct from the people, and is founded upon the suffrages of the people, has thoroughly considered the subject, and at Adelaide, in 1897, clause 75, which took away this right of appeal to the Privy Council was affirmed by a majority of ten. Again, only a few weeks ago, during the session upon which we are now engaged, this right of appeal to the Privy Council was taken away, and the decision at Adelaide was adhered to by a majority of eight. And, therefore, I say that it is a little too much to expect those who constituted that majority to swallow the opinions they have already expressed and given effect to, unless there is some very good ground shown. And in that respect I venture to think my honorable friend is mistaken in saying that the onus is upon those who seek to maintain what was decided at Adelaide, and again in Melbourne; and it is for them to show that something has taken place in the meantime, that there has been some strong expression, not of the wish of a few banks or other money lending institutions, but in some way, or other of the great body of the people who have sent us here. What is it my honorable friend relies on in order to justify this somersault on the part of the Convention? Twenty-six petitions! But, sir, if honorable members look at these petitions they will see that they are all tarred with the same brush.
Mr. HIGGINS. -
With the same printer's ink.
Mr. SYMON. -
They all emanate from the same source; they are all couched in the same terms; and they were all, no doubt, printed by the same printing press, sent round to these different institutions, and signed in such a fashion as to altogether negative the application of any intelligent consideration or even elementary knowledge to the real subject which is involved in them. Mr. Wise pointed out, the other day, some error of statement to which he referred in the petitions. He might have gone further and said the whole thing is a series of misstatements. All the petitions are alike. If honorable members will take any of them, they will see that they all begin with:-

3. That the right of appeal to the Sovereign, by her subjects individually, is the most practical tie, as well as the most impressive symbol of unity.

Why, what outrageous error that contains! Then again the petition says-

7. That the possibility of an appeal secures the advantages which your petitioners desire, though, in fact, it would be, as now, only occasionally resorted to, while the increasing closeness and readiness of communication with England will yearly diminish the cost and delay which, to some extent, are inseparable from any Court of Appeal, whether it be held in one of the cities of Australia or London.

The petition admits that there is cost and delay. It also states-

That the political effect of depriving Australians of this right of approach to the Sovereign, which all her other subjects possess, would be gradually, but surely, to weaken the tie that now binds them to the empire.

What ridiculous nonsense that is!

Mr. FRASER. -
The petitioners use a good many adjectives.

Mr. SYMON. -
Could any one after that go on to say, as the petitioners do in the 10th paragraph:-

That your petitioners, believing that their feelings are shared by a large number of their fellow subjects, both in Australia, in the home country, and in other parts of the empire.

What possible evidence is there of that?

Sir JOHN FORREST. -
They only say they believe it.

Mr. SYMON. -
If they believe that they will believe anything. Where is there a particle of testimony to support such a statement as that in this petition? Then, sir, we have the most singular thing of all. One petition comes from Tasmania,
signed by four managers. They are no doubt excellent and eminent bank managers, who seem to be moved at this menace to the integrity of the empire. The petition comes from a colony from which, as Sir Joseph Abbott has just pointed out, during the whole course of its political existence, there has been only one appeal. What possible knowledge can they have on the subject?

Sir EDWARD BRADDON. -

Two of these bank managers are managers of Australian banks.

Mr. SYMON. -

My honorable friend must not think that I am disparaging them in the slightest degree. I have said that they are no doubt estimable and eminent men.

Sir EDWARD BRADDON. -

They are men with wide Australian experience.

Mr. SYMON. -

I dare say they are like the hen with one chick; the hen learns to love the chick so much that she thinks it is a whole multitude of chicks. It makes no difference to me personally whether this qualified appeal which Sir Joseph Abbott wishes to secure is or is not given, because, if we were influenced by sordid motives, every other provision is retained in regard to the High Court. But I do wish the Convention to understand the material upon which they are asked to reverse their decision, and to continue this extra Court of Appeal. The first statement in this petition, as to it being an appeal to the personal Sovereign, as Sir Edward Braddon by his interjection indicates that he believes, is, I say, with the greatest possible respect, the sheerest fudge. It is no more a Court of Appeal to the personal Sovereign in any respect than the appeal to the Supreme Court of Victoria may happen to be. The Privy Council is

simply a court, neither more nor less, like any other in this country, and the statement could not have been put better than it was by Mr. Playford at the Convention of 1891, when, in the course of the speech of Mr. Wrixon in moving that the appeal to the Privy Council should be retained, he said-

Our own Court of Appeal will be a Court of Appeal to the Queen; it will be the Queen's court.

I am not complaining of honorable members taking a different view, but it shocks one to hear this matter spoken of as though you were approaching the personal Sovereign.

Mr. DOBSON. -

No, no.

Mr. SYMON. -
It does shock me, because it is disseminating error throughout this country. It is time that all this superstition should be for ever done away with.

Mr. BARTON. -
Surely our Judges are British Judges, the same as Judges in England are.

Mr. SYMON. -
Exactly so. The Queen is the fountain of all justice. The justice is not administered by the Queen, it is administered in her courts. One of these courts is the Privy Council. You are going to create another court—the High Court of the Commonwealth—and whilst formerly the unsuccessful suitor might go to the Privy Council, all we do is to ask the Queen, by this Constitution, to say that that unsuccessful suitor shall go to the High Court instead.

Mr. BARTON. -
To another of her courts.

Mr. SYMON. -
To another of her courts.

Mr. HIGGINS. -
And no one proposes to abolish it.

Mr. SYMON. -
Exactly so.

Mr. KINGSTON. -
He need not go to another hemisphere.

Mr. SYMON. -
Let right be done in the High Court of the Commonwealth instead of in the Privy Council. My right honorable friend (Sir John Forrest) knows that when a petition is presented in a matter of public concern, in which a citizen has been, or thinks he has been, wronged, and that is sent on to the Queen, it is answered under the guidance of her advisers—"Let right be done in, the Supreme Court of the colony where the wrong is alleged to have occurred." Why should not that right be done in the Privy Council, I would like to know? It is simply because the court in Western Australia, for example, is the court of Her Majesty, and is on the spot. And if the High Court of the Commonwealth is established, then right will be done as between the subjects of Her Majesty in that court upon appeal, as well and as effectually as in the Privy Council. Sir, this pretended sacredness which is sought to be associated with the Privy Council is astounding. The Legislature has taken away from the Privy Council, even now, in a great variety of matters, things which had been done under its jurisdiction previously. The Judicial Committee, as it now exists, was only established in 1833. Honorable members who advocate the retention of the appeal
seem to think that it has some particular sanctity because of age-long establishment—but it has only existed since 1833.

**Sir JOSEPH ABBOTT.** -

There were no free Parliaments then; they were all Crown Colonies.

**Mr. SYMON.** -

Will my honorable friend believe that the Imperial Parliament actually withdrew from the Privy Council all probate and matrimonial appeals in 1857, and all Admiralty appeals in 1876? To suggest, as my honorable friend does, that the Imperial Government would not sanction the withdrawal of Australian appeals on the establishment of the High Court is to assume that it will not do what it has been doing all along. The Judicial Committee of the Privy Council being simply a court like any other court, is liable to be swept away at any moment. Then we are told, with the view of retaining this appeal—"You are taking some inalienable right of the people." What right? There is not one man in 10,000 in Australia who knows or has ever heard of the existence of an appeal to the Privy Council. Of what value is the appeal to the Privy Council to the man in the Street? What is the good of the appeal to the multitude, who never go to law, or who, if they do go to law, have not the means of indulging in the expensive luxury, if they are defeated, of an appeal to the Privy Council?

**Sir JOSEPH ABBOTT.** -

What is the good of gaols to men who never go into them?

**Mr. SYMON.** -

My honorable friend says he has been concerned in twelve or fifteen appeals to the Privy Council. He knows perfectly well that before an appeal can take place a large deposit has to be made by way of Security for costs.

**Sir JOSEPH ABBOTT.** -

That is not the case.

**Mr. SYMON.** -

You have to give security.

**Sir JOSEPH ABBOTT.** -

That is a very different thing.

**Mr. SYMON.** -

How many of these banks who are anxious to retain this instrument under their control would be willing to give the security for a poor man unless they got a very excellent security put into their coffers or their vaults?

**Mr. REID.** -

They are constantly doing it!

**Mr. SYMON.** -
How many of them would assist in that process?

Mr. FRASER. -
They lose money by the poor man just as they do by the other.

Mr. REID. -
Just look at the Queensland National Bank.

The CHAIRMAN. -
Order. I must ask honorable members not to interrupt the speaker.

Mr. SYMON. -
Now, sir, my honorable friend spoke as though any of us were disposed to disparage in any way whatever this Judicial Committee of the Privy Council. I have never in this chamber, or elsewhere, disparaged the Judges of that court. I have the highest esteem for their capacity and for their integrity, and for the dignity with which their proceedings are conducted. But I do say that the Privy Council never was a Court of Appeal for the English people. The English people would not have the Privy Council as a Court of Appeal. They swept away every possible jurisdiction it had over citizens in the British Isles, and they decline to allow it to deal with any suit brought in any of the courts dealing with the highest interests of some 40,000,000 of people, as there are now. But it was considered good enough for the colonies it was so considered even at a time when its delays and abuses were a scandal; and it was for that reason I referred the other day to the proceedings of the commission which sat in this colony, when the quotations from The Times were made use of. The Privy Council was reserved for the colonies and dependencies; and that arose, as my honorable friend will find, from the old Crown colony days. It owes its origin to the old Crown colony times. And it was owing to the incongruity of that position that I used the expression in Adelaide that the appeal to the Privy Council was an anachronism, and, as to its procedure, an iniquity. The judgments of that court are not now to be characterized as not rising to the full height to which they should rise, as the judgments of every British court do; but because the Privy Council is the offspring of the Crown colony times, and no colony since the era of responsible government owes any of its allegiance to this particular court. There is another error which is being circulated broadcast throughout this community; and it is because I do not wish these errors to be so circulated that I take the liberty of alluding to them. This court is not the highest court in the empire, as stated in the petitions that have been presented to the Convention. The highest court in the empire is the House of Lords, and the citizens of the British Empire elsewhere than in England are deprived of the right of appealing to the House of Lords. The House of Lords is the only court in the empire that does not reverse its own judgments. It is the only court in the empire that
calls to its aid the Judges of the English Bench in order to advise it, to the end that final and perfect justice may be secured. But the Privy Council, on the other hand, does reverse its own judgments, and the decisions of the Privy Council are not the governing decisions throughout English-speaking countries. Therefore, when it is stated in these-I do not wish to use any hard expression at all in respect of them; but when it is said in these stereotyped petitions that this is the highest court, the highest appeal to-the Sovereign, the statement is misleading and mischievous, and that idea ought to be dissipated in the eyes of all the people of Australia. And when my honorable friend tells us that the Imperial authorities would not give their assent to this Constitution because of this portion of it-because of this withdrawal of the power of appeal in certain cases so contained in it-I say that is an assumption for which there is no warrant whatever.

Sir JOSEPH ABBOTT. -
I did not say so.

Mr. SYMON. -
My honorable friend warned this Convention that if this Bill be sent home the probability is that it will be treated as the Judicature Act in Canada was treated. Why, in that case the Constitution provided for these appeals; and therefore the Judicature Act would have been ultra vires of the Constitution if this proposal, unless by the express assent of Her Majesty, had been contained in it. All we ask under this Constitution now is that the Queen's court to determine Australian appeals shall sit here, and not in England; shall sit amongst the people to whom justice is to be administered. Surely no one will say that the air of England is more favorable to justice than the air of Australia, or that if the court sits in this country justice, in some way or other, cannot breathe our air and live. The position simply is that in the one case you will have a court sitting in Australia, and in the other a court sitting in England. Now, sir, I pass by ve

Sir JOHN FORREST. -
What is the average for the last five years?

Mr. SYMON. -
My right honorable friend can calculate that for himself. I am only taking Sir Joseph Abbott's return. During the last seventeen years the average has been four months longer than it was taking the whole period of 33 years.

Sir EDWARD BRADDON. -
Take the average for Queensland.

Mr. SYMON. -
I point out that the Queensland return is only for the last three or four
years.

Sir JOSEPH ABBOTT. -
Ten years.

Mr. SYMON. -
No, my honorable friend is mistaken. The printed return which I have here is from 1892-six years.

Sir JOHN FORREST. -
They are improving.

Mr. SYMON. -
My honorable friend must understand-

Sir JOHN FORREST. -
They are quicker now than they used to be.

Mr. SYMON. -
My honorable friend must take the figures I have got. I am not going to take time in analyzing these figures. I take those which Sir Joseph Abbott has brought before this committee, and I say that according to that return, in my own colony, the delay has been increasing during the last seventeen years and when my honorable friend says-and I am quite sure he is speaking from experience of his own-that local proceedings sometimes take as long, I must tell him that in our colony, where there is an insolvency appeal to the Supreme Court, the average time has been something like 35 to 42 days during the last ten or twelve years. But I do not say there may not be delay in colonial courts. Surely that is no justification for delays in other courts; and I do say that the delay which takes place in connexion with the transcript is just as much part of the appeal and incidental to the appeal as any other part of it. We are not talking of the delay being attributable to the Judges. We presume that they, will do their work. We are speaking of the delay occasioned by appeal to the Privy Council; and on the point of delay it is impossible to believe that there will not be a great saving, of time by leaving these appeals finally with the High Court instead of taking them to the Privy Council. But, again, I point out to my honorable friend that he is superadding the appeal to the Privy Council to the appeal to the High Court. We are to have an appeal to the High Court first of all, and if there be delay there you are to have a greater delay superadded to that by an appeal to the Privy Council. But this amendment is going to do even more than that. Honorable members cannot surely realize what they are asked to assent to. They are asked to assent to a provision which will render it necessary for every litigant to go to the Privy Council in England to ask for leave to appeal. This will have the effect of adding an additional stage of torture to the
litigant.

**Sir JOSEPH ABBOTT.** -

That is the same as in Canada.

**Mr. SYMON.** -

Then I say that the Canadian system is a monstrous oppression upon the people.

**Sir JOSEPH ABBOTT.** -

They do not think so.

**Mr. SYMON.** -

Indeed they do; and, as my honorable friend knows, the Privy Council has declined, except in cases of the highest consequence, to grant leave to appeal at all.

**Mr. REID.** -

So they will under this.

**Mr. ISAACS.** -

The other party will be in suspense the whole time.

**Mr. SYMON.** -

Not only in suspense, but he is carried to the Privy Council against his will, where he has to resist a petition for leave to appeal. Therefore this amendment, which my honorable friend actually proposes with a view to saving expense, will duplicate the expense of Privy Council appeals, and add them on to the cost of appeals to the High Court of the Commonwealth as well. That is the economy which my honorable friend is going to procure. Then my honorable friend points triumphantly to the cheapness of these appeals. He says a return, placed before us shows that the cost is under £260 or £250 a case, and one appeal cost £600. The average of our own colony has been £262.

**Sir JOSEPH ABBOTT.** -

That would be the honorable member's fee in one case.

**Mr. SYMON.** -

That, as my honorable friend knows quite well, represents only the costs of the successful party before the Privy Council. Those represent the taxed costs. The cost of an appeal to the litigants is anything you like over £1,000. What is the use of the public of this country being gulled by a return of that kind? The costs of the other side have to be paid also, and the costs of solicitor and client have to be paid in addition. So that you have an amount of anything you like from £1,000 to £2,000 as the expense of this little performance. One is astonished at their moderation! I pass by these matters of expense and delay. I do not rest my claims as to the High Court appeal on these grounds. I base them upon far higher grounds. We have altogether misconceived our mission here, if our task is not that of bringing
these colonies together in federal union, and of welding them into a great
country, self-contained and self-sufficing in every possible way. These are
the words I used before, and I emphatically adhere to them. Thirty years
ago a great statesman and orator in England said—

England is the living mother of great nations on the American and on the
Australian Continents, which promise to endow the world with all her
knowledge and all her civilization, and with even something more than the
freedom she herself enjoys.

That is an aspiration which we are trying to work out here. And yet,
although we
are to endow the world with all this knowledge and civilization, and even
with more than England's freedom, we are not fit to endow our own people
with justice. That is the confession involved in the honorable member's
amendment. We are not fit for the first duty of a nation, the duty of
dispensing final justice among our own citizens.

Sir JOHN FORREST. -

We are not a nation, we are only a part of it.

Mr. SYMON. -

We are surely trying to constitute ourselves a nation under the British
Crown.

An HONORABLE MEMBER. -

No.

Mr. SYMON. -

Then what is the good of this talk about nationhood and all this
eloquence we heard from my honorable friend himself as to establishing a
nation in Australia? Some men seem to me not to be able to rise to the full
height of the great theme, or of the task on which we are engaged—that we
are establishing, if we can, a nation within the empire.

Mr. FRASER. -

Part of the empire.

Mr. SYMON. -

A nation under the Crown of England—a federal monarchy. I would scorn
to have a seat in this Convention if that is not the goal which is supposed
to lie in front of us. We are not going to part from the empire, but we are
engaged in the task of consolidating these colonies into a nation under the
English Crown, and we are to have a National Court. But some members
wish to have it a National Court only in name, and to affix to it a badge of
inferiority. That is not the spirit of patriotism that I like to see. I call that a
sort of Little Australian policy, and my honorable friend (Sir Joseph
Abbott), is in this matter, really the leader of the Little Australians. A much larger question is involved than my honorable friend seems to grasp. I protest against the suggestions that have been uttered about this decision which is embodied in the Bill being revolutionary.

Mr. FRASER. -
They believe it to be so.

Mr. SYMON. -
Who believes it to be so?

Mr. FRASER. -
Those who signed the petitions.

Mr. SYMON. -
I can hardly credit them with that belief. I do not reproach them; but to say that this is the most practical tie as well as the most expressive symbol of unity throughout the empire is, I think, a statement which has not been weighed as it ought to have been. The tie which unites us to the mother country is the silken bond of kinship-it is the indissoluble tie of interest and affection, and the flag is the symbol and the visible link, not a court of law to which we can appeal.

Mr. FRASER. -
This is very sentimental language.

Mr. SYMON. -
So far as I am concerned, I have no wish to sever any link, however slight it may appear to be. I am not Australian born myself, but this is my country; it is my home. For all that, I do not wish for one moment to loosen any tie which connects us with the mother country. I am proud to belong to the race-the race which is first among the strong ones of the earth, the race whose footfall is heard in every clime, and I declare that I shall never willingly lift nor hand nor voice to aid in what I should consider a stupendous act of folly in attempting, in any degree, to weaken the ties which unite Australia to the mother country. I do resent the imputations which are made, in order to further this amendment of my honorable friend, that those of us who adopt the view I take are actuated by such a desire as that.

Mr. FRASER. -
We never said so.

Mr. SYMON. -
It is misrepresentation the most gross, and calumny the most wicked, to suggest that those of us who seek to bring about this reform desire to loosen the bonds that unite us with the mother country.

Mr. FRASER. -
That is an assumption which we have never hinted at.
Mr. SYMON. -

Those who talk in so foolish a way about separation and emblems and links are either deceived themselves.

or they are seeking to deceive other people. I am glad to think that Mr. Justice Holroyd, the president of the Imperial Federation League of Victoria, is reported to have said, in a letter written with regard to the suggestion that that body should join in the agitation against that portion of the Federal Constitution Bill which creates an Australian Court of Appeal and discontinues the right of appeal to the Privy Council, that in addition to the delay and expense which the Privy Council jurisdiction engenders, the existence of that power is rather a stumbling-block than otherwise to the larger cause of British unity, and that he supports the proposal, if not in detail, in regard to an Australian Appellate Court.

Sir JOSEPH ABBOTT. -

The Privy Council has been a blessing to Victorian appellants.

Mr. SYMON. -

My friend ought not to say that. At any rate, I am content to rest on the authority of so distinguished a Judge and so loyal a subject as Mr. Justice Holroyd, president of the Imperial Federation League of Victoria. But there are one or two other grounds that my honorable friend has stated which are perhaps more intelligible, although they are not firmer than those to which I have already referred. The English capitalist and investor is trotted out.

Sir JOSEPH ABBOTT. -

I rise to order. I never referred to the English investor or the English capitalist.

The CHAIRMAN. -

The honorable member (Mr. Symon) did not say that Sir Joseph Abbott did refer to the English capitalist and investor. Mr. Symon said the English capitalist and investor was "trotted out," but he did not say by whom.

Sir JOSEPH ABBOTT. -

He said by me.

Mr. SYMON. -

I said nothing of the kind. My honorable friend is getting rude as well as disorderly.

The CHAIRMAN. -

I think honorable members had better not make personal remarks.

Sir JOSEPH ABBOTT. -

I will take a ruling as to whether the honorable member (Mr. Symon) is in order. The honorable member commenced any rudeness there may be.
It would be far better if no personal allusion were made by Mr. Symon or anybody else. I will ask the honorable member (Mr. Symon) to address the Chair.

Mr. SYMON. -

I have been addressing the Chair throughout, Sir Richard. I made no reference to the honorable member (Sir Joseph Abbott), and I do complain of a point of so-called order being raised of this kind, when I made no statement in regard to the honorable member. I was referring to petitions which are before the House, and I was saying that the bogey of the English capitalist is trotted out. It is said in a petition that the abolition of the Privy Council would "injure business and discourage the investment of British capital in Australia." Another writer says-"Will the English merchant and capitalist be satisfied with a system which compels him to accept the law of an Australian court in dispute about contracts and other issues, which he may be obliged to litigate?"

Mr. HOWE (South Australia). -

I wish to call attention to the state of the House. It is not fair that a speech like this should be listened to by so small a number of members. It would seem as though some honorable members had made up their minds to ignore the speech.

The bells were rung, and a quorum having been formed,

Mr. SYMON resumed. -

Sir Richard, I am sure I, perhaps, may be pardoned for saying I am obliged to my honorable friend (Mr. Howe), but I have no desire that any honorable member should sit in the chamber if he has no wish to listen to the views I am endeavouring to put forward on behalf of the resolution which the Convention has already arrived at. I was referring to points that have been taken in support of the continuation of this appeal, and to the fact that stress is laid upon the statement that the English capitalist and investor will be discouraged, and will not invest his money in Australia or Australian securities, if this extra Appellate Court is not available. A contention of that kind simply amounts to saying that the justice which is good enough for the people of Australia is not good enough for those who dwell in another hemisphere. I can hardly believe that any one can seriously suggest that such a result would happen. I can hardly understand how such rubbish, if I may be forgiven for so describing it, can be put in solemn black and white.

Mr. FRASER. -

May there not be very serious conflicting interests?

Mr. SYMON. -
Not a bit. There is a petition here, I am exceedingly sorry to see on the records of this Convention. It is the petition of the Metropolitan Board of Works of this great city of Melbourne. It is because, I suppose, of its solemnity that the petition is committed to parchment, which bears a huge red seal of the most conspicuous kind. The petition actually contains a statement that the abolition of the Court of Appeal would seriously derogate from the existing rights of creditors and contractors with the petitioner, and would materially weaken the credit and put difficulties in the way of the petitioner when floating loans in the United Kingdom, as it may be necessary for the petitioner to do hereafter.

Mr. HIGGINS. -

How about the American States?

Mr. SYMON. -

Without referring to the American states, this petition from the metropolitan city of Victoria, with a population of half-a-million, actually puts on permanent record that the taking away of the right of appealing to a court sitting in England will weaken the credit of that immense concern, which already owes to the Government of this colony two and a half millions of money, and also owes to the bond-holders of England, I think, something like one or two millions of money. Is that, the foundation upon which the public credit of the metropolitan city of this colony rests? Is there any sane man who will really vindicate a statement of that kind? Is there a Premier in this Convention who will get up, and, on his responsibility, say that public stocks will fall if the Imperial Parliament substitutes one Queen's court for another, or because it is simply provided that the High Court of Appeal shall no longer sit in a poky room at Whitehall, but shall sit in Australia? We are in the habit of telling children when they say anything that is naughty, that they ought to rinse their mouths. The records of this Convention should be rinsed of such a petition, reflecting, as it does, on the credit of one of the greatest cities under the sun, and declaring that it is an element in the, security for its loans that some particular court should exist. English capitalists look for tangible security and high interest. What do they care whether there is a court in one country or a court in another? Is it expected that they will make it a condition of all their loans that there should be a right of appeal to the Privy Council?

Mr. FRASER. -

They are very careful of the integrity of the country.

Mr. SYMON. -

Of course they are, but what has one court of appeal more than another to do with the integrity and security of the country? What they look at is the
law, order, and good government of the country. It is a grave reflection upon the credit of these colonies that such statements should be made. In addition to our own security, it is the British flag and the British fleet that these money lenders look to, over and above the value which they have in the ordinary taxpaying power of the citizens of the country. I should like to ask any honorable member to tell me of any appeal to the Privy Council made by the holder of Australian security? I do not know of any.

Mr. REID. -
There never would be one.

Mr. SYMON. -

No. Yet this is put forward to throw dust into the eyes of the people, and to suggest that the credit of this great country is dependent upon the existence of two appellate courts instead of one. Then, it is said that the English trader will lose confidence. Could there be anything more preposterous? He will not lose confidence unless he loses his case. Every unsuccessful litigant loses confidence in the tribunal which decides against him.

Mr. REID. -

Hear, hear. I have heard some hard things said against the Privy Council.

Mr. SYMON. -

Yes, and so have I. Even that august tribunal does not escape denunciation by unsuccessful suitors. It is not justice that those who call out for every possible court of appeal want, it is victory. They are like the man in the American court who looked very timid and nervous. The Judge, thinking that he was uneasy, said:"Do not be afraid, prisoner, justice will be done.""Great heavens, Judge," said the prisoner, "that is just what I am afraid of." That is exactly the condition of things which affects those banks and other money-lending institutions which are struggling for this extra and distant Court of Appeal. They want-and no blame to them-victory in their litigation, and if they can get it upon any ground, either of law or of fact, they are willing and ready to secure it by all the means at their disposal. But what about the American, and the German, and the other foreign merchants who do business with us? How about their confidence? Are they to have a special court of appeal for their own particular disputes?

Mr. FRASER. -

They come here at their peril.

Mr. SYMON. -

They come here for exactly the same reason as every English merchant-to make money.
Mr. FRASER. -
They have not the same rights.

Mr. SYMON. -
They have the right as every British merchant to have justice done to them in the highest courts of appeal available. But, is it proposed that they shall have the right to appeal to the courts of their own country? What about our own fellow citizens who go to England? What becomes of this birthright of theirs if they bring an action in England against the English merchant with whom they have had dealings? They cannot appeal to the Privy Council. They must surrender this birthright of theirs, and if they want a court of ultimate: appeal they must go to the House of Lords. They must go to the courts of appeal available to them in England, and be content with such justice as is meted out to them there. What English capitalist knows anything about this right of appeal to the Privy Council? Which of them has presented any petitions on the subject to the Convention which of them has dared to say to us or to any one else that he cannot trust the justice of the High Court of Federated Australia? The whole thing is a grave indictment of the administration of justice in the Commonwealth we are seeking to form. It is left to some—may I say foolish?—people amongst ourselves to place this stain, and stain it is, upon the name and credit of Australia. We are not making a Constitution for the merchants and people of England; we are making a Constitution for the people of Australia, and we ought to bear that in mind. My honorable friend said that there was local influence, this colonial bias, as it has been described. If that means that there is an improper influence felt here, or something in the nature of corruption, no one has dared to say so. It would be a scandal if any one said it. But if it means a knowledge of colonial ideas, conditions, and surroundings, no lawyer in his senses would deny that that is absolutely essential. How are you to decide these questions of the rivers?

Sir JOSEPH ABBOTT. -
Unless you go up to the Darling, I suppose?

Mr. SYMON. -
You have conflicting decisions in England as to what is a navigable river; you have decisions upon the subject in America; and unless you have a court conversant with the conditions of things here you cannot get that Judicial appreciation of the real matter to be determined which is essential.

Mr. CARRUTHERS. -
Cannot you get those conditions in in evidence?
Mr SYMON. - You cannot get them in in evidence.

Mr. CARRUTHERS. -

Of course you can.

Mr. SYMON. -

If you got them in in evidence-some of them-you could not get them appreciated as they would be appreciated by those conversant with the country.

Mr. CARRUTHERS. -

Then the court would be deciding the case upon matters that were not evidence.

Mr. SYMON. -

My honorable friend knows that every contract is determined by the surrounding circumstances of the business to which it is applicable.

Mr. CARRUTHERS. -

That is in ev

Mr. SYMON. -

One of the most influential newspapers in this colony, the Age, with a view to getting over this difficulty, said that the presence of a representative in the Privy Council of the colonies is a guarantee that Australian ideas will always have an exponent there. But then I thought we did not want Australian ideas. What have we sent an Australian Judge to the Privy Council for, I should like to know, if not for the purpose of communicating to the Privy Council Australian ideas?

Mr. REID. -

The desire came from the other side that there should be an Australian Judge.

Mr. SYMON. -

I was not aware of that; but that very greatly strengthens what I have been putting.

Mr. KINGSTON. -

It was carried in the Federal Council first.

Mr. SYMON. -

The same desire is indicated or approved in the passage that was read by Sir Joseph Abbott from Mr. Chamberlain's address. It was sought to permeate the Privy Council with Australian ideas, so that it might do justice according to Australian standards.

Sir JOHN FORREST. -

Colonial standards.

Mr. SYMON. -

An Australian Judge was sent there for Australian appeals.

Sir JOHN FORREST. -
One Judge.

Mr. SYMON. -

That was the purpose for which he was sent. The Chief Justice of South Australia was chosen, not with a view of instructing the Privy Council upon the common law of England, or with regard to the cations of interpretation of statute law, but for the purpose of instructing the Privy Council in relation to Australian ideas, so that they might be better able to enter into the condition of things in reference to which the questions for decision arose. Then my honorable friend referred to what he called local influence. Now, I would ask him how does that argument apply to the thousands of cases under £500? If local influence is bad, how are you going to free the multitudes of people of the country whose cases never go beyond £500 from the baneful effect upon our Judges of that local influence?

Mr. ISAACS. -

They are British subjects.

Mr. SYMON. -

Yes, but they are only poor people, and therefore they are to be subject to the consequences of all this improper local influence, to this bias, without any hope of redress. Was there ever a proposal that was so utterly unjust as this? Then my honorable friend said that the Judges of the High Court would have less experience. Surely the Judges of the Federal High Court will have as much experience as the Judge we have sent to the Privy Council? Why should we reflect on his qualifications, or on the qualifications of any Judge who is sent to take part in the work of the Privy Council? I wish to tell honorable members this-now, when we come to speak of the question of experience-that Lord Watson, probably the strongest Judge on the Bench of the Judicial Committee, was a Scotch Judge, who passed the whole of his earlier career at the Scotch Bar, and on the Scotch Bench, and who learned and administered a system of law totally opposed to the system of English law. He was nevertheless put on the Privy Council Bench to decide appeals from the colonies affecting and depending upon a law of which he could have had no possible experience before, and yet so powerful is the education which every one undergoes with responsibility, and the necessity of exercising responsibility, that he has become a conspicuous success on that Privy Council Bench. So it will be with the Judges of our High Court. Their strength, their knowledge, their judicial experience, will grow with the opportunities that come to them. Uniformity, it is said, will not be preserved. Well, the law, of course, is always proverbially uncertain. We
are guided by the House of Lords, not by the Privy Council. We are bound by the decisions of the House of Lords as long as we are part of the empire. The High Court of Justice here—the Federal High Court will be bound to give effect to English law as expounded in the highest court available to English-speaking people, and the uniformity will be maintained just as effectually without the intervention of the Privy Council upon a discretionary appeal, such as is proposed, as if the right of appeal were retained in its full force. The whole thing really resolves itself into the last objection which my honorable friend took. Twist and turn it as we may, it all comes back to this—that we are to declare in this Constitution that we cannot constitute a competent court. Surely that is not what the Convention is going to do. We have shown superiority in minor matters. We have shown, at any rate, equality in fields of physical development—in cricket, in oarsmanship, and in various other pursuits. We shall be just as able to show intellectual equality when the necessity for it arises. So far as my knowledge goes, the history of the courts in these colonies and of the bar of these colonies has been a history of learning, of integrity, of firmness and of a love of justice. I believe that in any of the colonies, certainly in all of them combined, you will be able to obtain men as competent to administer justice in our High Court as preside or occupy seats in the Privy Council, which is at present the final Court of Appeal. I have now dealt with the chief grounds which have been taken in respect of this motion in which the Convention is asked to reverse its decision. I ask pardon of the Convention for having occupied so much time. I am deeply grateful to honorable members for the attention which has been given to me. I know that our time is precious. We are nearing the end—I hope the auspicious end—of our labours. I shall have no further opportunity of laying before honorable members the reasons which lead me to regard everything which may strengthen and lend dignity to the High Court as essential to the national life upon which we are now entering. That is the high ground that I take, and I shall always rejoice, whatever the outcome of this matter may be, that I have had this opportunity of putting my views on their true footing, and of doing something to dissipate the erroneous assumptions which have been circulated—which, I may say, have been created—and which I venture to think have been detrimental to a right understanding of this question on the part of the community. I now take leave of the subject, because I have submitted these reasons once and for all, and for the last time, but in taking leave of the subject I wish to add this, that we are engaged here with the elements, not only of nation-making, but of empire. I hope that we shall seek to mould these elements into the highest and noblest form, perfect in symmetry, perfect in majesty; but, sir, there is no majesty to my mind like
the majesty of a great tribunal. It is there that earthly power shows likest God's. Yet this Convention, composed of men, many of them distinguished for public service, for wisdom, and for public spirit, engaged in this splendid enterprise of knitting together the scattered peoples of this continent into one nation, a nation one and indivisible-with one lot, one hope, one life, one glory-is called upon to acknowledge that the nation it aspires to create cannot give justice. We can make laws; but we are to embody in this Constitution a declaration that we cannot interpret them. Is that, I ask, to be our last confession? I, for one, cannot believe it. I refuse, myself, to be held in bondage to any court of law. We shall answer ill to those who have sent us here if, whilst we pass on to them the constitutional trappings of nationhood, we deny them the right-we deny them the competency-to deal out final justice amongst themselves; and if, following the statements in these petitions which have flooded the Convention, we proclaim the reason to be that the kind of justice which we shall have may be good enough for us, but is not good enough for the dwellers on another continent. To enthrone Australia and her people in the senate hall of nations is a magnificent, a noble, achievement; but the glory of it will be dimmed if we do not consecrate beneath the same roof a temple within which the blind Goddess may hold her scales in even equipoise, and to which we may bid the poor and the rich alike to repair for justice, which shall satisfy all the needs of their individual and national life.

Mr. REID (New South Wales). -

Knowing how important the subject is, knowing the enormous length to which it has been debated in past Conventions, seeing the enormous length which the question is again assuming, I will waive my right to make any remarks. I admit that there are several honorable members who have been as identified with this matter as the honorable member who moved the amendment and my learned friend (Mr. Symon), whose name has been very unfairly used outside, I think, in connexion with this matter, and I scarcely can complain of the speeches which have been made; but I hope that, with the exception of men like my friend (Mr. Carruthers) and one or two others who have taken a prominent part in this matter, we will try to give up so far as we can our right of speaking. I have been looking over the notice-paper, and we really have work here for several sittings, and we shall find ourselves sitting all night and then unfinished in our work unless we exercise, some of us, as I am prepared to do, self-denial in this matter.

Mr. BARTON. -

There will be a lot of self-restraint after eleven o'clock.

Mr. REID. -
Yes; I admit that it would be unfair to attempt to close the debate at present, but I feel sure that some of us will give up our right of speaking and that those who do speak will consider that the time for lengthy speeches is over and it is only necessary now to make a few remarks.

**Mr. OCONNOR (New South Wales).** -

I certainly do not intend to detain the committee at any length, but I think it is necessary, after the speech we have just listened to—a very admirable speech—to bring back honorable members to the real matter they have to decide. One would suppose from Mr. Symon's arguments and his appeals that we were dealing here with the question of whether or not the appeal to the Privy Council, by way of petition to Her Majesty for leave to appeal, should be abolished altogether. The honorable member, I think, would have saved a great deal of time if he had referred to clause 75, which we have passed. In that clause he would see that in a class of cases, which I venture to say will embrace a large number, we have allowed this right of appeal to the Queen in Council. All that can be accomplished by the amendment of Sir Joseph Abbott is to extend the right which we have already given here to such other cases as the Queen in Council may be pleased to allow.

**Mr. DEAKIN.** -

Is this a proposal in addition or in substitution?

**Mr. OCONNOR.** -

It is simply an extension.

**Mr. DEAKIN.** -

It is a totally different question.

**Mr. WISE.** -

It is almost identical.

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My learned friend (Mr. Deakin) can prove that it is a totally different question if he can; it is only an extension of a principle which has been laid down in clause 75. I will call the attention of the committee to the provisions of the clause. It says—

No appeal shall be allowed to the Queen in Council from any court of any state, or from the High Court or any other federal court—

That takes away the right of appeal.

except that the Queen may, in any matter in which the public interests of the Commonwealth, or of any state, or of any other part of Her Majesty's dominions are concerned, grant leave to appeal to the Queen in Council from the High Court.
All that Sir Joseph Abbott is asking for is to extend that leave to such other cases as the Queen in Council may think fit to extend them to. Let us see for a moment what this right which is given in clause 75 means. The words "in any matter in which the public interests of the Commonwealth or of any state are concerned" clearly will include every case which involves the interpretation of the Constitution, because one cannot imagine the public interests of the Commonwealth to be affected or concerned more directly than by anything which involves the interpretation of the Constitution. For exactly the same reason, any case which affects the interests of a state by the interpretation of this Constitution, or by raising any question of conflict of law between a state and the Commonwealth, also comes under this provision. So that you have at once a very large class of cases to which you have already given this right to appeal to the Queen in Council. We have heard a great deal from a number of honorable members at various times, as to the misfortune which persons without money are under in being taken to the Privy Council. But can you guarantee that the poorest persons in the land may not be involved in these cases which are concerned with the interpretation of the Constitution, or which are concerned with the interpretation of the Constitution of a state? These cases arise under all kinds of circumstances. These cases arise between persons of every kind and of every class, and whenever any one of these cases arises, the right is given to petition to the Queen for leave to appeal to the Privy Council. Then how can you say that you are protecting the man who is so poor that he cannot afford to go to the Privy Council, when you are leaving in the Constitution a power which enables a case to be taken to the Privy Council at any time? If one looks at this matter not from the view of an appeal to passion, or by using epithets, or by the introduction of any other irrelevant matter at all, then the only question which arises is - Should we extend this power of appeal to the class of cases to which it has been decided by the Privy Council that the right applies? It has been laid down in many cases that it is not in every instance that Her Majesty in Council will allow this right of appeal. And may I remind honorable members for a moment of the way this right is exercised? The petitioner appeals to the Queen. The petition is referred to the Privy Council. If it be a proper case for appeal the Privy Council gives leave, and then the appeal has to be made to the Privy Council. This is a roundabout elaborate method, but it is the method that has to be adopted. It is not in every case that the appeal is allowed. It has been laid down in the case of Prince v. Canyon and in many other cases that this appeal will not be allowed where the case involves only disputed matters of fact in which no question of magnitude is involved, and no question of public interest.
and importance. Consequently, it in only in cases where it is either some particular question, as affecting great interests - as affecting the interests of many persons-as affecting some question of the conflict of laws or of decisions which have already been come to; it is only in those cases in regard to which the rule has been laid down as to Canada that appeals will he permitted. Now, surely the experience of Canada may he of some guide to us; and, in regard to Canada, I find that, taking the records for six years (which is the period which has been included in some of the records quoted by Mr. Symon) the number of appeals from the Supreme Court of Canada that have been allowed under an exactly similar provision has been ten. In Canada appeals are preserved to the courts of the states-that is to say, the appeal by petition to the Queen in Council. The number of appeals in the six years has been-from Ontario 5, from Quebec 11, front Nova Scotia 5, from British Columbia 1, and from Manitoba 1. So that, taking Canada itself alone, they amount to only ten in six years, and, in all, the appeals amount to 33-that is, a little over five a year. That may he a fair measure of the extent of the right that is now asked for. Now, I agree with a great deal of what my honorable friend said as to preserving the interpretation of this Constitution in our own hands, and if this proposal were to maintain in our own hands the interpretation of this Constitution in all questions relating to conflicts between the laws of the states and the laws of the Commonwealth, I should he willing to deprive absolutely every inhabitant of the Commonwealth of any right of appeal to the Queen in Council. Because I can see that the disadvantage-the only disadvantage-which may come from allowing this appeal to the Privy Council, is that which may arise from the interpretation of the Constitution being in other than Australian hands. But that is not asked for. If you allow in those very cases which Should remain in our hands an appeal to the Queen in Council, I say, on the ground of reason or justice or common sense, how can you shut out the other few cases which the Queen in Council may think of sufficient importance to allow of an appeal to the Privy Council?

Mr. KINGSTON. -

Would you support a striking out of the restriction?

Mr. OCONNOR. -

I would, undoubtedly. If the whole appeal in these cases-that is, cases involved in the interpretation of the Constitution-were proposed to he taken away from the Privy Council, I would support that proposal; but as it stands I cannot see either logic or consistency in the proposal, and I shall vote with Sir Joseph Abbott.

Mr. CARRUTHERS (New South Wales). -
I am very anxious that this debate should close and a division he arrived at, and I am quite willing, therefore, if other honorable members will waive their right to speak, to give way, so that we may divide at once. But if other honorable members desire to speak, I wish to do so.

HONORABLE MEMBERS. -

Divide! divide!

Mr. ISAACS. -

That is not the way to do the business of this Convention.

Mr. CARRUTHERS. -

If other honorable members will give way I will, but, if not, I may have to indulge in a two or three hours' speech in reply to arguments that have been adduced.

Mr. Carruthers having resumed his seat,

Mr. ISAACS (Victoria). -

This is not the way, sir, to do the business of a great Convention.

The CHAIRMAN. -

Mr. Carruthers.

Mr. CARRUTHERS (New South Wales). -

Under these circumstances I feel it my duty to address myself to the question before the Chair, especially with the view of disabusing the public mind with regard to some views which have been enunciated this afternoon by Mr. Symon. I think he has altogether mistaken the functions of a legislative body such as this. Before we create any change at all in the existing order of affairs there should be evidence of some demand for a change. Now, I have challenged Mr. Symon and others before to show one solitary resolution or petition from anybody in Australia in favour of the change which this Convention up to the present time has resolved upon. On the other hand, the petitions that have been presented to this Convention, and which it has been sought to discount by very questionable arguments, are an evidence that public opinion is strongly roused against the taking away of a right which has been cherished by the people themselves ever since the foundation of constitutional government in these colonies. Now, it is strongly urged as an argument in favour of this change-it is said, for instance, by Sir John Downer and others-that surely if we are competent to make laws we are competent to interpret them. I have always combated that notion. This Constitution does not give the people of Australia power to make laws at all. Can any honorable member deny that? This Constitution, I repeat, does not give the people of Australia power to make laws. No law is worth a snap of the fingers until the Queen has given
her assent to it.

Mr. SYMON. -

Oh, oh!

Mr. CARRUTHERS. -

It is all very well to brush aside my contention in that way, but, as a matter of fact, you have to obtain the Royal assent to a proposed law before it can become law. Having acknowledged the right of the Crown in regard to the power of making laws, the argument of the honorable member falls to the ground in regard to claiming the right of making the laws.

Mr. SYMON. -

And the Queen's court interprets them.

Mr. CARRUTHERS. -

All we ask is that the Queen's court, as we know it, should be the court under this Constitution to interpret the laws-rather the court we know than the court we don't know. My honorable and learned friend speaks of the creation of a nation independent, self-reliant, and self-contained.

Mr. SYMON. -

I never said independent.

Mr. CARRUTHERS. -

Self-reliant! Why the first time we were in trouble we called on the Queen's Navy to defend us; whereas if we were self-reliant we should be providing in this Constitution for the establishment of some means of defence, without calling on the mother country for the navy of the empire to defend us. That we are not self-reliant is shown by the fact that the public works of Australasia have to be carried on by money borrowed from other portions of the empire. We shall be self-reliant when we do without borrowing from home-when we borrow within our own borders.

Mr. HIGGINS. -

That will be a very long time.

Mr. CARRUTHERS. -

It is very easy to put aside these ideas, but they are facts and circumstances surrounding our present conditions. We all wish to be self-reliant, but we are not; we all wish to be able to run, but we cannot walk yet; we all wish to be able to provide for our public requirements, and to be able to protect our lives and our property, but we have to borrow from the mother country, and we have to rely for protection on the defence forces of the empire. And I say that the very time when we are doing these very things which show the absence of our self-reliance is not the proper time to say to the people on whose aid for protection and money we depend for the safety and development of these colonies-"We will take your money; we will accept your protection; but when it comes to a question of law relating
to the money we borrow from you, or relating to the mercantile marine who trade with us, we tell you we are going to have the law administered here; that we are going to be a law to ourselves, that we are going to make our own laws and interpret them." That is self-reliance with a vengeance, but it is self-reliance all on one side. It is a case of getting as much as you can, and, having got it, being the arbiters as to how long you are to retain it, and as to the terms on which you are to keep it. The idea is one which does no credit to the nation-building process in which we are engaged, and it is one which will do injury to Australasia in the eyes of those with whom we transact business. My honorable friend urges a very common argument against the continuance of this right of appeal to the Privy Council—an argument which only needs to be examined to be thoroughly demolished, namely, that we want to have, in the final Court of Appeal, a body of Judges who have colonial experience, who have colonial ideas, and who have colonial knowledge. Now, any man, especially an able member of the bar like—my honorable friend, ought to know that the worst tribunal you could have would be a tribunal that would decide, not on the sworn testimony submitted to the court, but on knowledge of the case, and in regard to the case and its surroundings, in the minds of the Judges—evidence of a character which cannot be shaken by cross-examination—evidence which is not known to the parties interested in the case at all. I venture to say that more mischief is done by cases being decided by some twist or turn in the minds of Judges than by any judicial interpretation of the evidence submitted to the court. Now, my great objection to establishing the final Court of Appeal in Australasia is because there is existing in the minds of the Judges that unconscious bias. I do not impute corruption; I would be very sorry to do or say anything which would tend to diminish the weight of the authority of our colonial benches; but without laying myself open to the charge of saying anything improper, I venture to repeat that that unconscious bias does exist, and will always exist, in small communities, especially where they are inhabiting large territories.

Sir JOSEPH ABBOTT. -

I beg to call your attention, Mr. Chairman, to the fact that there is not a quorum present. Mr. Howe is not in the chamber, and probably would like to hear this.

A quorum having been formed,

Mr. CARRUTHERS (continuing) said. -

I was saying that this unconscious bias does exist, and always will exist, where there are small communities inhabiting large territories, because the
circumstances of life in those communities must be totally dissimilar to the circumstances of life in populous centres such as exist in the United Kingdom; and there must grow up in connexion with such centres influences which will permeate the minds of all people in those places. I gave an instance, which has been cited over and over again, showing the value of the right of appeal to the Privy Council. The case in question was an important one decided in New South Wales, and the decision affected millions and millions of pounds worth in value. It affected the tenure of the whole of our Crown lands—the case of Burke and Allison, which was decided in one direction by the colonial Judges, largely because they knew all about colonial affairs and colonial life, and because they had had colonial experience. The Privy Council decided that case in a totally different way. They decided it on the evidence, not on their knowledge of the circumstances, and the result of their decision has been to give a better security to the class of persons affected; and the Parliament which made the law which the Judges interpreted admitted, by a subsequent enactment, that the decision of the Privy Council was the truer interpreter of its intentions. In all such cases it is a greater security to litigants to have on the bench men who are not swayed by any knowledge outside of the actual sworn testimony adduced before them. Now, my

if we were denying to them the rights which they now have. But we are not doing anything of the kind. Therefore, that argument absolutely falls to the ground. I am well aware that the opponents of this proposal object to it, to a large extent, simply because it will present another obstacle to the ultimate determination of litigation. I feel that Sir Joseph Abbott's proposal is open to that serious objection, and, therefore, I hesitate very much to vote for it, because it is creating a new Court of Appeal, or allowing a new Court of Appeal to be created, as well as keeping up the existing court of appeal. In all my addresses to this Convention I have never been in favour of that. I have always been in favour of retaining the one Court of Appeal that now exists, allowing people if they choose to exercise the option to have their cases decided locally. But I am not very strongly in favour of this grave additional obstacle to the final determination of litigation, which places in the hands of rich men means to thwart poor men in their efforts to obtain justice, because, without, dragging in the poor man unnecessarily, I must say that, where we create them additional courts of appeal, it is the litigant who lacks means who will suffer most. But Mr. Symon altogether forgets the facts of the case, when be charges Sir Joseph Abbott and the petitioners with making, to use his own words, a furious attempt to establish another Court of Appeal. The furious attempt has been on the part
of those who, in season and out of season, since 1891, against public opinion, without a mandate from any, public body or any petitions, have up to the present successfully made a furious attempt to establish this High Court of the Commonwealth as another Court of Appeal. Unfortunately, up to the present they have succeeded in doing that. I throw out this direct challenge to my honorable friend to prove that we have in Australia at the present time sufficient legally-trained minds of eminence and capacity to fill these positions in the High Court. We must have regard to the fact that 138 members have to be elected to the House of Representatives and the Senate, and the men who offer themselves for those positions will include the leading legal minds of Australia.

Mr. SYMON. -

If you ask me I say yes, certainly.

Mr. CARRUTHERS. -

I will ask the honorable member to say, on his conscience, whether he believes that when you take from the ranks of our Australian Bar the ablest men at the Bar in South Australia—I need not name there, they are self-evident of Victoria, New South Wales, and Tasmania, these men who will be candidates, and who will be elected to the Senate and the House of Representatives, there will be sufficient legal talent available for these positions in the High Court? One or two may be selected from the ranks of Parliament, but that is not very likely. When you take these men away, whom have you to choose from to fill these high positions? We are not so rich in legal talent that we can create a House of Representatives and a Senate, with Law officers for the Federal Government, and then appoint Judges to the High Court of the Commonwealth, and say that we have something more experienced and efficient than we are now brushing aside. I make bold to say that, both on the grounds of efficiency and economy, we shall be making a departure which will cause Australia to suffer. I hope Sir Joseph Abbott's proposal will be carried, if only to reverse to, some extent the decision we have arrived at. I should like to see it go further, and give the option to litigants to go direct to the Privy Council rather than be compelled to go to the Federal Court and then to this court hereafter. I quite agree with Mr. O'Connor, and, for my part, I would vote that we should take away the right of appeal where the interpretation of the Constitution is concerned. But I do object to take away from individuals a right which they have possessed for years past, whether it is good or whether it is exaggerated in its value, when they have shown no desire to give it up. We are thereby creating impediments in the way of the acceptance of the Constitution by doing more than we are asked to do. It
was said properly by Mr. Holder that this High Court of the Commonwealth is hanging like a nightmare over the Constitution. It is overshadowing it in all respects. It is the strongest body in the Commonwealth, and, as far as the British Empire is concerned, no honorable member can point to another part of it where a High Court is established with such powers. If the Bill passes as it now stands, we shall be the only part of the British Empire which has denied to itself, in regard to individual cases, the right of appeal to the Sovereign to have justice dispensed by her own especial court. We shall have the danger before us of weakening our own influence in relation to other members of the empire, and of not having a law of uniformity, a law which should be one of the safeguards of our interests here and elsewhere.

Mr. ISAACS (Victoria). -

If I thought for an instant that the proposal of Sir Joseph Abbott would strengthen the bonds of union between the Commonwealth and the great body of the empire, I would give it my unhesitating support; but I do not entertain that opinion. I believe that the bonds which unite us are far stronger and more enduring. We are bound to the empire by personal and corporate loyalty—loyalty to the traditions, loyalty to the future, of the empire of which we are proud to form a part. But I cannot bring myself to believe that the links which bind us to the empire are in any way formed of lawyers' bills of costs. What is the proposal that Sir Joseph Abbott makes? That, whereas, at the present time, a man may be subjected to vexatious litigation to obtain his rights, or to defend them within the colonies, he may yet be taken away thousands of miles to have the matter finally determined. Now, by the proposals in this Bill already adopted, there is another and a higher tribunal than the one originally existing here which has been interposed, which will necessitate very great expense, and then, on the top of that, "piling Ossa upon Pelion," we find he is still to be dragged to the Privy Council. It is almost unbearable. Mr. Carruthers says by analogy we ought to allow this appeal to the Privy Council—because why I Because the two Houses of Parliament in the coming Commonwealth cannot make a law until it has the Queen's assent. I never heard that before by way of analogy, nor can I recognise its validity now. We are making a Federation under the Crown. The Governor-General will be the representative of the Crown, and, according to all the theories of British law, it is the Crown that enacts the law, by the advice of the two Houses of Parliament. We do not need to be told to-day that the two Houses of Parliament without the assent of the Crown cannot legislate, but what analogy has that to the interpretation of the laws when once made? The Imperial Legislature will confer upon us the power of making our own laws. It is true the Governor-
General may withhold his assent, and the Imperial Legislature may pass an Act reversing our legislation here if it chooses, but that will only be in matters which concern the interests of the empire as a whole. It will only be in matters in which if our own legislation were carried out it would imperil the integrity of the empire; but once the laws are made, once we get the enactment on our statute-book, what is there that imperils the integrity of the empire in interpreting that for ourselves? The analogy altogether fails. We are asked again to say that, because we have to look to the empire for defence, and because we have to go abroad to borrow, we ought to go abroad also to get our litigation finally determined. Do we borrow without the expectation of paying back?

Mr. BARTON. -

There was no appeal to the Privy Council from the Argentine Republic when the bond-holders wasted their money there.

Mr. ISAACS. -

Certainly not. If Russia gets a loan of £14,000,000, are we to be told by analogy that there ought to be an appeal from the Russian courts to the Privy Council?

Mr. KINGSTON. -

Our bond-holders never contemplate having to sue for the money.

Mr. ISAACS. -

Certainly not. And our credit would drop to a low point indeed if it were to be measured by Privy Council decisions. My honorable friend also referred to the matter of defence. Naturally we are part of the empire, and while we are prepared to defend not only ourselves, but to assist in maintaining the integrity of the empire throughout its bounds and limits if need unfortunately were, the empire in its turn will guard itself all over the world. But are we not by this very Bill doing much to strengthen our ability to defend ourselves. Are we not uniting certain powers and forces to assist the empire to the greatest extent possible? When Mr. Carruthers adduces such arguments as those we have heard from him to justify this piece of oppression on the inhabitants of the Commonwealth, and the imposition upon them of an appeal to the Privy Council in addition to the appeal to the High Court of the Federation, I think he must be gravelled for lack of
matter. He must find his case very weak indeed before he descends to such arguments as those. It has been said that the British capitalist would have more confidence. I entirely dissent from that. The British capitalist, when he considers whether he will invest his money here, will ask, not what is likely to be the decision of a court of law in a contest, but what is our legislation. He will ask what are the laws which govern the subject-matter on which he is asked to invest his money. If he is proposing to invest in mining, he will ask what the mining laws are. If it be a matter of investing in landed property, he will ask what form the land laws take. He is never looking to the courts of law for an ultimate decision. He is not apprehending the question of litigation. He relies on the honour and integrity of those with whom he is dealing, and all he asks and likes to see is what is the legislation on the subject.

Sir EDWARD BRADDON. -
That is not the experience of financial men.

Mr. ISAACS. -
Can the honorable member point to any single investment because of the appeal to the Privy Council? If he says that what I have described is not the experience of financial men, I would be glad if he would give me an instance which would perhaps materially shake my belief.

Mr. MCMILLAN. -
Nobody maintains that.

Mr. ISAACS. -
Side by side with that argument is another that is put forward frequently, but with utter fallacy. The argument is that if we have the Privy Council to superintend the administration of the laws we shall have uniformity over the empire. What an utter fallacy. How can you have uniformity of decision unless you have uniformity of law? Litigation in Victoria in respect to a mining property on almost the same facts would end, perhaps, in a totally different fashion if a similar question were at issue in Western Australia. And why; Because the mining laws are not the same. A question arising in respect to riparian rights in one colony of Australia would be differently decided if it were in Canada or in India.

Mr. MCMILLAN. -
It can only be a question of impartiality.
possible unless you insure uniformity of legislation; and that is not attainable by the very nature of the case. We find in India decisions are given by the Privy Council on the Mitakshara, and the Laws of Menu. What have they to do with the interpretation of our land laws or the Western Australian mining laws? And yet the Privy Council is the source of all those decisions.

Sir EDWARD BRADDOON. -
An Indian Judge directs the Indian decisions.

Mr. ISAACS. -
And then there is an appeal to the Privy Council. My honorable friend (Mr. O'Connor) said we were only going a little further than clause 75, and I interposed to say it is a totally different principle. And it is a totally different principle. In clause 75, we have yielded and given an appeal to the Privy Council in certain cases; and it is most significant when we see what those cases are. They are cases in which the public interest of the Commonwealth or the public interest of the states is concerned. And why have we given that appeal? Because the Judges are appointed by the Commonwealth, and some of the Judges come from certain states. There was some floating idea, in which I certainly did not share, that there might be suspicion that Judges were swayed on the one hand because they were the Judges of the Commonwealth, or because on the other hand they had certain state proclivities. That is the main reason appeals were given in those cases. There may be another reason, namely, that the interests involved are of so gigantic and so manifestly public a nature that some further consideration might be necessary. But when we come to the region of individual controversy - when we come to a question of pounds, shillings, and pence, as between an individual and a corporation, and the individual is dragged from court to court, and then to the higher court of the state, then to the Federal Court, and then to the Privy Council - well, it is victory by exhaustion. It is the long purse that wins. A man may die, and a generation almost may pass, in a manner of speaking, between the outburst of litigation and its final determination. We heard from my right honorable friend (Sir Joseph Abbott) that there was delay not attributable to the Privy Council itself. No one accuses the Privy Council of that. I believe the average time is about one year and ten months, so far as Victoria is concerned, between the time the transcript reaches England and the time judgment is given. I am speaking only from recollection, but I believe the average time is about what I have stated. Not only is there expense, but there is delay which the unfortunate litigant cannot help, and from whatever cause it arises he has to bear it all. His business is locked up, and his affairs are rendered uncertain, except that he knows whatever
happens, he will lose a lot of money in costs. The whole matter is rendered so terrible to him that he is ready to yield his rights, as they have been declared by the colonial courts, and surrender what has been pronounced to be justice rather than run the risk of being in the grave before the matter is finally determined. I want to point out one other fact. When the matter was debated in the Victorian Legislative Assembly there was an enormous vote taken in favour of the clause as it stands, 46 voting for it, and 18 against it. That was a tremendous majority, and in my judgment it represented the feeling of the colony. No new arguments have been adduced why we should alter our determination, except that some petitions, in very similar language, have been presented to us by certain wealthy corporations. We are legislating for the bulk of the people of the colonies, and I ask that we should have confidence in ourselves and

in that High Court which we hope to establish-confidence not only in its impartiality, but also in its ability. If we have not confidence we are building, not upon a rock, but upon sand. In my opinion there is no substance for the apprehensions of certain honorable members who have argued that we should reverse our previous decisions.

Mr. KINGSTON (South Australia). -

I shall be found recording my vote against the amendment. I rise chiefly for the purpose of saying that I was particularly interested in the remarks of the honorable and learned member (Mr. O'Connor), who indicated that his chief reason for contemplating the possibility of supporting the amendment was that the right of appeal had not been taken wholly away, that it was allowed in cases in which the public interests of the Commonwealth or of a state were concerned. He argued strongly that if an appeal were allowed at all it should be allowed equally in the case of a private individual who might deem himself aggrieved by the decision of the High Court, and might desire to appeal to the Queen in Council, as in the case where public interests were involved. But be added that if the right of appeal from the High Court was sought to be abolished, he would record his vote in favour of its abolition. That is the course I intend to take, and I trust that the honorable and learned member (Mr. Symon) will, at the proper time, move to strike out clause 75, giving the right of appeal from the High Court in cases where the public interests of the Commonwealth or of a state are concerned, so that Australia may be self-contained, both as regards the powers of her Parliament to legislate, and of her courts to interpret the laws made by the Parliament. I was very sorry indeed to hear the suggestions which have been made in regard to Australian Judges. I think that our various benches have no reason to fear comparison with courts in any other
part of the empire. We might, with advantage, utilize the services of some of these Judges in connexion with the new courts that we propose to establish. In any case, I am satisfied that there will be found within the Commonwealth men amply qualified to discharge the high responsibilities falling to these positions. To my mind, the suggestion of bias ought not to have been made. It means either corruption or incapacity. Of course we resent the very suggestion of corruption at the expense of an Australian Judge, and it would be in capacity to fail to realize the responsibilities of the judicial office, to fail to cast aside the consideration of those matters which a Judge ought to disregard. It seems to me that the Judges of Australia are just as likely to bring to bear the highest judicial qualities in the discharge of their high duties as Judges elsewhere. It seems to me, too, that they will be able to bring to bear what English Judges, from the very nature of things, could not bring to bear upon Australian laws—a deep sense and lively knowledge of the circumstances under which the legislation is passed, an acquaintance with its spirit, a sympathy with its genius, and all the faculties which render it probable that due effect will be given to the laws which have to be administered; and that they will regard that which ought chiefly to be regarded—the intentions of the Parliament. I am very sanguine that in these respects Australian Judges will possess a real advantage which will more than compensate for any suggested disadvantages of the character to which reference has been made. I hold, and I have always held, that the power of interpreting our laws is only second in importance to the power of making them. You may put what you like upon the statute-book, but unless you call into existence courts which by their decisions are likely to give effect to that which was intended by the Parliament when it passed them, you fall short of accomplishing that which you ought to accomplish. I know no better means for accomplishing all that we ought to desire

Mr. DOBSON (Tasmania).—

I have taken a very great interest in this matter, and from the time when in the Judicial Committee I heard the honorable and learned member (Mr. Symon) suggest that the appeal to the Privy Council should to some extent be taken away I have opposed the proposal. As I have not spoken upon the
subject during the last two sittings of the Convention, I think I may be permitted to take up a few minutes of the time of the Convention in expressing my views at the present time. The first point I wish to put before honorable members is that we are here to enlarge the powers of the people-to give them larger powers of government.

Mr. KINGSTON. -

Larger powers of self-government.

Mr. DOBSON. -

Yes, larger powers of self-government, to enable them to advance as a nation. But I deny that we are here to take from our people the privilege which every colonist in the empire possesses. I am borne out in that statement, which is by no means a new one, because-I have heard it expressed before, by the flood of petitions which have been laid upon the table of the Convention. I do not think that the honorable and learned member (Mr. Symon) treated this matter in the calm judicial manner which is usual to him when he attempted to pour ridicule upon the way in which these petitions were got up. The honorable and learned member must know that when a sentiment is expressed in a petition signed by responsible men like the bankers, the members of Chambers of Commerce and Chambers of Mines, and men connected with financial institutions who have signed these petitions, such petitions cannot be regarded in the same light as petitions got up to further some popular wish, and left at every hotel and bank for men who hardly know anything about the Subject-matter to sign them.

Mr. SYMON. -

I do not blame them for trying to keep this power of appeal.

Mr. DOBSON. -

I am objecting to the way in which my honorable and learned friend tried to pour contempt upon these petitions. The petition which came from Tasmania was signed by two or three of the ablest men in that colony; men who would as soon think of putting their names to a petition advocating something in which they did not honestly believe, and which they did not think a matter of great importance, as they would of flying. Upon only two subjects has the Convention been addressed by the outside public-upon the recognition of the Creator, and upon this question of abolishing the appeal to the Privy Council. We have reversed our decisions upon four or five most important questions, because we have been told by the Premiers and the representatives of the colonies which they chiefly affected that the people of those colonies would not accept the Bill unless we did so. But in regard to this matter, we have no honorable members getting up to speak far the bankers and the commercial men whom the provision in the Bill
will affect. They speak to us by their petitions and say-"Do not rob us of what we have. Take away from us everything which is necessary to the framing of this Constitution, but do not take from us a privilege which we prize dearly." If my honorable and learned friend votes in opposition to the wishes expressed in these petitions, I do not say that he will shock me, but I think he will be taking a step which circumstances do not justify. I have heard my honorable and learned friend rather sneer at the suggestion that the taking away of the right of appeal to the Privy Council may, to a certain extent, influence the trend of capital in this direction. It is very hard to name cases in which it would absolutely prevent capital from coming here, but my honorable and learned friend knows how sensitive capital is, and who will dare to assert that in time to come the provision in the Bill will not influence depositors at home, and will not affect the sending of money out here? Are we not all looking forward to the time when the House of Commons will pass a law saying that trust funds may be invested in our Australian consols? You may say that if any question arose between a debenture-holder and the Commonwealth, provision is made for settling it, but does not my honorable and learned friend think that the financial companies and bankers at home will try to prevent money from coming out here?

Mr. SYMON. -

Why? They send it to the Argentine.

Mr. DOBSON. -

Many a director may say-"What, send your money out to that radical place?"

Dr. COCKBURN. -

Not while you are here.

Mr. DOBSON. -

"Send money to a place where they have taken away the right of appeal to the Privy Council!" I can understand that the men whose business it is to influence capital may in time to come advise their clients not to send money here. It has been argued in favour of the abolition of this right of appeal that appeals to the Privy Council are very costly and involve much delay. I am emphatically of opinion, however, from what I have seen of the charges of professional men in England-though it is not much-that you could brief a leading counsel in an appeal case at home for half the amount that my honorable and learned friend would charge to go from Adelaide to Wentworth, or wherever the High Court of Appeal was being held. I could get as good a man at home for half the fee that any barrister would charge to go from here to Adelaide or to Sydney. It is idle to say that an appeal to
the Privy Council would be more costly, and Sir Joseph Abbott has pointed out that a great deal of the delay that takes place occurs in the conduct of the suits in the colonies.

Mr. SYMON. -

The delay of the appeal.

Mr. DOBSON. -

The honorable member urged the delay as a distinct argument why it was unwise to go to the Judicial Committee. That argument has been well answered by Sir Joseph Abbott, who has shown that a great part of the delay takes place here, and is caused by solicitors and clients endeavouring to, compromise and settle the case. Does any honorable member suppose that if there was any unreasonable delay, additional Judges would not be appointed, not only from England, but from the colonies? Additional Judges were appointed in 1871, and if there was work to be accomplished, a representation of the mildest character would lead the Home authorities to make the Judicial Committee so strong that it would be able to dispose of all appeals in an average time of six or eight months. I think I have shown how fallacious that argument is. Mr. Symon made rather an unintentional mistake when he said that we were simply creating another court for the anxious litigant to struggle through. I have not heard a single honorable member say that he desires first the right of appeal to the High Court, and then the right of appeal from the High Court to the Privy Council.

Mr. SYMON. -

That is the amendment.

Mr. DOBSON. -

The amendment would allow the Queen to grant permission for such appeals. I hope that the Bill will be put into such a form that it will allow private litigants, in cases involving questions of great magnitude and complicated points of law, to appeal either to the Privy Council or to the High Court. I have no desire to drag litigants to the High Court, and then to give the rich man a right of appeal to the Privy Council. There is every reason for saying that we shall act wisely in reversing the decision which we have given on this subject.

Sir EDWARD BRADDON (Tasmania). -

I do not know that I have erred by talking too often, or at too great length. On this occasion I should not have thought it proper to speak at all, but for the fact that the people of Tasmania who sent me here have requested me to urge the retention of the right of appeal to the Privy Council as much as I possibly can. I take a great interest in the subject
myself, but that would not be a sufficient reason for speaking now. I speak in obedience to the wish of my own constituents. I hold in my hand copies of resolutions passed by the Hobart and Launceston Chambers of Commerce and by the banks of Tasmania. I would inform the Hon. Mr. Symon that, to the best of my belief, no representative of Tasmania has had anything whatever to do with the passing of any of these resolutions. They come from the people, and they are perfectly spontaneous.

Mr. SYMON. -

Other people have got them up. They emanated from here.

Sir EDWARD BRADDON. -

I do not for a moment believe that they emanated from here, and, if they did, the representatives of Tasmania were kept in curious ignorance of it. The resolution passed by the Chambers of Commerce of Launceston and Hobart is as follows:-

"That in the opinion of this chamber it is a matter of vital importance that in any federation of the Australian colonies there should be no relinquishment or diminution of the existing rights of all Her Majesty's colonial subjects to appeal to the highest court of the empire. That such an abridgment of these rights as is at present proposed by the Federal Convention would, if adopted, prove highly injurious and prejudicial to the interests of these colonies. That the Right Honorable the Premier and his colleagues on the Convention be respectfully urged to use their best exertions in order to prevent any such alteration as is now proposed in the relations of Her Majesty's colonies to the Throne, and to retain the existing right to appeal to the Privy Council."

The Chambers of Commerce represent the leading business men of the colony, who are more vitally and directly interested in a question of this kind than are those who are opposing this amendment. I am happy to say that, although a large part of the opposition comes from the lawyers, we have on our side also a very substantial measure of support from lawyers of eminence, lawyers of position, and lawyers whose words ought to have some influence here, and whose votes, I hope, will help us to carry this matter. But if it were a question between the commercial people, who have to pay, and the lawyers, who have to receive, to which body is it fair that we should give our best consideration? The resolutions of the banks, which include two of the banks of Australia—the Union Bank, and the Bank of Australasia—are as follow:-

1. That, in the opinion the managers of the banks in Tasmania—an opinion based on experience (acquired in the Australian colonies)—the right of appeal to the highest court in the empire should not be abolished or restricted as is proposed.
2. That, having regard to the extensive and increasing business relations between Australia and the other parts of the empire, and to the necessity for securing and retaining the confidence of investors in Australian securities, it is of the utmost importance that the final Court of Appeal should be the Privy Council, so as to obtain certainty and uniformity in the decision of all mercantile and other questions depending on principles of law common to the empire.

A copy of these resolutions was sent to the Premier and other Tasmanian delegates in the hope that the provision in the Bill objected to may be omitted. I am not competent to argue on the legal side of this question, but I think I am competent to say that the Judicial Committee of the Privy Council is a body worthy of our respect, and competent to justly adjudge our cases when they come before them on appeal. I would urge on the committee the importance of retaining, so far as we possibly can, every tie that unites us with the mother country. We are constituting a Federation under the Crown, and if, in the course of building up this fabric, we weaken one of the strongest links that connect us with the British nation, I think we shall have made a lamentable mistake. The bonds that unite us are very few, and are they irksome? Have we not almost complete liberty-liberty to deal with our own financial affairs as we please, liberty to deal with Customs Tariffs, with the effect that we put heavy duties on all Great Britain exports to us, and allow them to receive all ours free of duty? We enjoy under the Crown the greatest possible amount of liberty and support. I will not say anything about our being dependent on them, but we know very well that events may arise at any moment when our dependence on them will be thrust very prominently before us.

Mr. SYMON (South Australia). -
I have an amendment to move after the word "right," but if the words "saving any right" are put, and a division taken on that question, it will determine whether or not the clause is to stand as it is or whether there is to be a saving of any right.

Sir WILLIAM ZEAL. -
Let us go to a division on this amendment.

Mr. DEAKIN. -
Let us divide on the question we have been discussing.

Mr. SYMON. -
If we divide on the words "saving any right," it will settle the question whether the clause is to stand as it is.

The CHAIRMAN. -
I must put the amendment, unless an amendment is moved on it.

Mr. SYMON. -
I thought it might save another division or two, if the question were put as I suggest.

The CHAIRMAN. -
An amendment has been moved by Sir Joseph Abbott, and any one may move an amendment on that amendment, but it cannot be altered without the consent of the mover.

Mr. SYMON. -
The amendments I intended to move were after "right" to, insert the words "of granting special leave to appeal," and then after "each," to insert the words ",until the Parliament otherwise provides.", But I do not want to complicate the thing in any way. I want to have a direct issue. The reason why I intended to move the second amendment was this: Under the Canadian Act, you can alter the Act at any time, but if you put this right of appeal in our Constitution absolutely it remains there until you alter it. I will not move the amendments now.

Dr. COCKBURN (South Australia). -
A great deal of stress has been laid on the fact that these petitions have been laid on the table, as if that evidenced any change of the solid public opinion of Australasia, on this point. There are hundreds of thousands of our most enlightened citizens who are remaining supine in this matter, because it never entered into their minds, that there was the possibility of a chance of the Convention reversing the decision which was arrived at eight years ago, which has been canvassed and approved by public men ever since that year, and which has been re affirmed on three different occasions. There is no change in public opinion whatever. The public opinion of Australia is fixed in this matter, and the mere laying on the table of this Convention of a few petitions, signed by a handful of individuals, however wealthy and backed up by powerful financial institutions, is no indication of any change of opinion whatever. I do hope that the Convention will not lower itself in the esteem of Australia and in the esteem of the world by going back on its settled conviction.

Question - That the words proposed by Sir Joseph Abbott be added to the clause-put.

The committee divided-
Ayes .... .... 20
Noes .... .... 19
Majority for the amendment.. 1
AYES.
Braddon, Sir E.N.C. McMillan, W.
Briggs, H. O'Conor, R.E.
Brown, N.J. Quick, Dr. J.
Carruthers, J.H. Reid, G.H.
Deakin, A. Turner Sir G.
Dobson, H. Venn, H.W.
Douglas, A. Walker, J.T.
Forrest, Sir J. Zeal, Sir W.A.
Fraser, S.
Grant, C.H. Teller.
Lewis, N.E. Abbott, Sir J.P.
NOES.
Barton, E. Holder, F.W.
Berry, Sir G. Howe, J.H.
Brunker, J.N. Isaacs, I.A.
Clarke, M.J. Kingston, C.C.
Cockburn, Dr. J.A. Lyne, W.J.
Fysh, Sir P.O. Peacock, A.J.
Glynn, P.M. Solomon, V.L.
Gordon, J.H. Trenwith, W.A.
Hackett, J.W. Teller.
Higgins, H.B. Symon, J.H.
PAIRS.
Ayes. Noes.
Henry, J. Crowder, F.T.
Lee Steere, Sir J.G. Leake, G.
Question so resolved in the affirmative.
Mr. GLYNN (South Australia). -
I beg to move-
That the following words be added to clause 74:-"Provided that nothing in this section shall be construed to prevent the High Court from hearing and determining appeals allowed by the law of a state from the Supreme Court of the state."

In clause 74, as it stands, we have put it in the power of the Federal Parliament to cut down the jurisdiction of the High Court not only in relation to appeals from matters of federal legislation but also in purely state matters. Clause 74 provides that-
The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and
1. Of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any state:

and so on. The position is this: We have authorized the Federal Parliament to interfere with the right of appeal from purely state legislation. Now, I say that this is an uncalled-for interference with the autonomy of the states. I resisted this provision before, both in regard to federal legislation and state legislation, urging on the Convention that what ought to be done was to leave the jurisdiction of the High Court perfectly and fully comprehensive of everything, but to let the question of whether appeals should lie or not to rest in the one case with the Federal Parliament, and in the other case with the state Parliaments. That is the ordinary law of the land at the present time. If you wish to take away the right of appeal in a particular matter at present you do not provide that the court is not to hear it to the Privy Council, and we have put it in the power of the Federal Parliament to say that there may not be an indirect appeal to the Privy Council in state matters, because, if the Federal Parliament passes an Act to say there shall be no appeal to the High Court in regard to a purely state matter, then there may not be an appeal to the Privy Council in a state matter, so that we have placed the right of appeal in the hands of the Federal Parliament, taking away the existing right of appeal to the Privy Council, and putting it into the hands of the Federal Parliament to say, if it so pleases, that there shall be no appeal. As it is not essential to the Federation that this right of appeal to the High Court should be denied, I ask the Convention to adopt the proviso I have moved.

Mr. BARTON (New South Wales). -

In the form in which this proviso is moved I would like to ask my honorable friend, does it mean that a state may, at any time, pass a law allowing an appeal from the courts of that state to the High Court?

Mr. GLYNN. -

No, it is the other way about—that the Federal Parliament cannot cut down that right of appeal.

Mr. BARTON. -

That is the intention of the honorable member; but what I am a little troubled about is that his amendment reads as a proviso which would secure that the High Court shall not be prevented from hearing and determining any appeals the state may allow to be brought before the Supreme Court of that state. In this form it might carry out an intention which the honorable member himself has not. I do not think he wishes to
give a continuing power to the states themselves at all to determine the classes of appeals which the High Court shall entertain from the Supreme Court of that state; otherwise that would be giving the state jurisdiction over the High Court, and the High Court is intended to be subject to the jurisdiction, as far as legislation is concerned, which is given to the Commonwealth in this chapter, and not to any jurisdiction a state may attempt to exercise by passing laws on the subject. I only want my honorable friend's assurance that he does not mean that.

Mr. GLYNN. -
I do not mean that.

Mr. BARTON. -
If we are quite clear what Mr. Glynn means, then, if this proviso is carried, the Drafting Committee can look after the matter. What my honorable friend wants, I take it, is this: That the words "with such exceptions and subject to such restrictions as the Parliament prescribe," shall not extend to giving the Parliament power to cut down the appeal from the Supreme Court of the state to the Federal High Court.

Mr. GLYNN. -
That is it.

Mr. BARTON. -
Then I can follow that very well. There is perhaps yet another difficulty. If the honorable member wishes to carry out entirely the meaning of this amendment it might be wise to make it read-Nothing in this sub-section "or in any law passed thereunder" shall be construed to prevent the High Court, &c.

Mr. GLYNN. -
I have no objection to that amendment.

Mr. BARTON. -
What my honorable friend wants to prevent is the effect of any law cutting down this appeal to the High Court from the Supreme Court of the state.

Mr. GLYNN. -
That is so.

Mr. BARTON. -
Then the Drafting Committee will perfectly understand what my honorable friend means.

Mr. GLYNN (South Australia). -
I understand that Mr. Symon wishes to insert something before my amendment.

The CHAIRMAN. -
We had better proceed with one question at a time.
Mr. BARTON (New South Wales). -

My honorable friend (Mr. O'Connor) has mentioned to me this matter: Mr. Glynn has said that he does not mean to confer power upon a state to make laws to provide for appeals from its own court to the High Court, but what he does want is to put it out of the power of the Commonwealth Parliament to regulate appeals so as to prevent any existing right of appeal from a local court to the High Court. Does he mean that to include the right of appeal as conferred by the Constitution or as existing at the date of the establishment of the Commonwealth?

Mr. GLYNN. -

As existing at the date of the establishment of the Commonwealth.

Mr. BARTON. -

Then I understand that perfectly.

Mr. SYMON (South Australia). -

I have an amendment to move which will come prior to the one which Mr. Glynn has moved, and which is one that directly affects the amendment which has been carried. I propose to add, so as to define that the right is in harmony with the next clause, the words "and until the Parliament otherwise provides." As this amendment arises out of Sir Joseph Abbott's amendment I would ask Mr. Glynn to temporarily withdraw his amendment, in order that I may move mine; or, failing that, I shall have to move mine as an intermediate proviso, which would complicate the clause.

Mr. BARTON. -

We could make that a matter of drafting.

Mr. KINGSTON. -

Why not limit it to granting a right of appeal in cases prescribed by Parliament?

Mr. SYMON. -

I should be agreeable to that.

Mr. GLYNN (South Australia). -

I beg to ask leave to withdraw my amendment temporarily.

Sir JOSEPH ABBOTT (New South Wales). -

I object, and if a member objects an amendment cannot be withdrawn.

Mr. GLYNN (South Australia). -

I would like to say that the words of my amendment have been settled by reference to others concerned, and I invariably find that proposals become more cloudy when I ask others to help me.

Mr. Glynn's amendment was agreed to.

Mr. SYMON (South Australia). -
I now beg to move-
That the following proviso be added to the clause:-
"Provided also that the right saved is that of granting leave to appeal, and shall continue only until Parliament otherwise provides."

Sir JOSEPH ABBOTT (New South Wales). -
It is hardly fair to press an amendment of this kind when the usual hour for adjournment has passed, and many members have left the chamber. No notice has been given of the amendment. At the same time, I confess that I can see no objection to it.

Mr. DEAKIN. -
It only puts us in the same position as Canada.

Sir JOSEPH ABBOTT. -
Exactly in the same position as Canada.

Mr. Symon's amendment was agreed to.
The clause, as amended, was agreed to.

Clause 75. - No appeal shall be allowed to the Queen in Council from any court of any state, or from the High Court, or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth, or of any state, or of any other part of Her Majesty's dominions are concerned, grant leave to appeal to the Queen in Council from the High Court.

Sir JOSEPH ABBOTT (New South Wales). -
I have given notice of an amendment in this clause, which amendment I think is consequential upon the amendment which has just been carried. The same arguments apply to it, and I am not going to waste any time in going over them again. I beg to move-
That the following words be omitted (line 4-7):-
"in which the public interests of the Commonwealth, or of any state, or of any other part of her dominions are concerned."

Mr. SYMON (South Australia). -
I also have an amendment of which I gave contingent notice.

The CHAIRMAN. -
I will point out to Mr. Symon that if he carries the amendment of which he has given notice, and the clause is amended in the manner he wishes, I shall have to refuse to put it, because it would be a direct negative of the clause as carried.

Mr. SYMON (South Australia). -
That is not what I want. I do not wish in any way, as the committee have arrived at a conclusion, by any side-wind to override what has been done in the least degree. It is suggested to me that I should attain my object by proposing to amend the clause by striking out all the words after the word
"matter" down to the word "concerned," with a view of inserting the words "not involving the interpretation of the Constitution of the Commonwealth or of a state."

The CHAIRMAN. -
It seems to me that that also would involve a negative.

Mr. SYMON (South Australia). -
No; it is preserving absolutely what Sir Joseph Abbott has carried, and is carrying out somewhat Mr. O'Connor's contention, with which I entirely agree, that certain matters should not be the subject of appeal to the Privy Council.

The CHAIRMAN. -
Sir Joseph Abbott's amendment, which comes first, is the amendment before the Chair.
Sir Joseph Abbott's amendment was agreed to.

Mr. SYMON (South Australia). -
I beg to move-
That the following words be inserted in the place of those struck out:-
"not involving the interpretation of the Constitution of the Commonwealth or of a state."

Dr. QUICK (Victoria). -
This proposal largely cuts down the effect of the motion which has just been carried, because it excepts from the operation of the clause all cases arising under the Constitution. The honorable member said he did not want to take any action by a side-wind which would have the effect of reversing the decision just arrived at.

Mr. BARTON. -
It cuts it down, but does not reverse it.

Dr. QUICK. -
It derogates from the amendment which we have carried. Mr. Symon wants to put an exception in the clause, which will then read that the Queen's prerogative is to remain, as in Canada, except in all cases arising under the Constitution and the interpretation of the Constitution. That will very seriously cut down the amendment.

Sir JOSEPH ABBOTT (New South Wales). -
I rise to order, and submit that the motion of Mr. Symon is out of order, because it is curtailing what the committee have already decided should be in the Bill, and the

Mr. BARTON (New South Wales). -
I submit it is quite in accord with parliamentary practice to propose such
an amendment, because where a committee has carried a certain proposition, anything within that proposition which tends to make an exception to it or a proviso to it, or which is equivalent to anything of that kind, is perfectly admissible. If Mr. Symon had proposed an amendment which virtually negatived that which was carried by Sir Joseph Abbott, I would be one of the first to point that out and say that we ought not, at this late stage, to reverse a decision just come to. But what is now proposed is nothing of that kind. It is proposed simply, while leaving the right to obtain leave to appeal to the Queen in Council in all other cases, and to that extent abiding by Sir Joseph Abbott's amendment, to except from the operation of that amendment cases in which the Constitution of the Commonwealth or of a state is to be interpreted. That is to say, it confines to the High Court the interpretation and meaning of this Constitution, and those cases arising under the Constitutions of the states which come under the judicial power of the Commonwealth. That is the object of the amendment. It seems to me to be an exception to Sir Joseph Abbott's amendment that can be well considered. If it amounted to a negative of that amendment, I would be one of the first to point it out, and I am sure that you, sir, would at once rule it out of order. This is merely an exception or proviso, and if it were not allowed to be moved it would be to decide that the committee had not ordinary legislative powers.

Sir JOSEPH ABBOTT (New South Wales). -

I submit, with great confidence, that the rule is that no amendment can be proposed which is inconsistent with anything already passed by the committee.

I submit that you are called upon to decide whether this amendment would be inconsistent with the proposal carried by the committee. If you think it is not, it will be in order.

Mr. REID (New South Wales). -

I submit that the governing rule is that, if the House has expressed its opinion in the shape of a general proposition, it may proceed to qualify that proposition while it falls short of a negative.

The CHAIRMAN. -

I do not think I can rule this proposed amendment out of order. Every clause, or nearly every clause, in a Bill in some way qualifies the preceding clauses. They extend the operation of those clauses, and, in some instances they limit the operation of the clauses. This is not a distinct negative, and I think it would be unduly curtailing the power of the committee to arrive at such a conclusion as they may think fit if I ruled this out of order.

Dr. QUICK. -
I venture to point out that if this exception be engrafted on the exception of Sir Joseph Abbott, it will absolutely emasculate clause 75, the predominant feature of which is that, in all of these constitutional matters, the right of appeal to the Privy Council is to be preserved. I would ask the Drafting Committee and the members of the Judicial Committee whether this is not a complete somersault, a complete reversal of the policy which they agreed to in Adelaide, and which is incorporated in this Bill? In this Bill a full right of appeal is preserved to the Privy Council in respect of great constitutional questions. Now, Mr. Symon is absolutely reversing that policy. Instead of leaving it, within the exception of Sir Joseph Abbott's amendment, that the Queen in Council may grant the right of appeal, be now proposes to absolutely take away the right of appeal on all these great constitutional questions which may arise under the Constitution itself, and Acts passed under the Constitution. This is certainly a most serious infraction of the principle of clause 75. It springs upon the Convention a proposal of a most serious and alarming character, and it ought not to be passed. No notice has been given of this proposal. Sir Joseph Abbott did not propose to take away the right of appeal in constitutional or political questions involving probably our relations with the empire itself. Mr. Symon, in the Judiciary Committee's report, proposed to reserve that right. If I had to elect between Sir Joseph Abbott's proposal of reserving the prerogative and Mr. Symon's amendment, I confess I would sooner have the clause as it stands. So long as there is a right of appeal on all great political questions to the Privy Council there will be a bond of connexion and some guarantee for the retention of harmonious legal constitutional relations. But what will be reserved now in this proposed amendment is the right of appeal by private citizens on disputes not involving constitutional questions, whereas it is proposed to take away all constitutional questions from the determination of the highest tribunal in the empire. I object to that most strongly.

[The Chairman left the chair at half-past five o'clock p.m. The committee resumed at thirty-five minutes past seven o'clock p.m.]

Dr. QUICK (Victoria). -

I am sure no one will accuse me of any desire to exaggerate the importance of any proposal, or the dangerous nature of any proposal. I have not done so hitherto in this Convention, but I feel strongly convinced that the movement on the part of Mr. Symon is a dangerous movement, and, at the same time, a most unfair movement. I appeal to the leader of the Convention not to give sanction to any such movement, but to interpose to prevent dangerous results which may follow therefrom. I would remind the leader of the Convention that Sir Joseph Abbott's amendment was
discussed on notice. There was no notice of any amendment on that amendment. We
came here to deal with Sir Joseph Abbott's amendment, and Mr. Symon
gave no notice of any intention to move a further amendment.

Mr. BARTON. -
Unfortunately, I can scarcely act upon that, because amendments on
amendments have been moved without any notice being given.

Dr. QUICK. -
No doubt; but not at the final stage of the history of the Convention. I
need only remind the Convention of the request of Mr. Reid this morning,
that no new matter should be introduced at the present stage of which no
notice has been given. This matter has been fairly disposed of on a
division. I took no active part in that amendment. I voted for it, not with
any degree of profound anxiety on the subject. Had that amendment of Sir
Joseph Abbotts been lost I would not have quarrelled with the decision of
the Convention. I would have been prepared to take the Bill as it stood,
believing that clause 57, which provides for appeals to the Privy Council
on all great public and constitutional questions in which the interests of the
Commonwealth or of the state are concerned, would probably, under the
circumstances, meet the requirements of the case. But what do we find
now? By this proposal the right of appeal is to be allowed to private
individuals for testing and litigating in regard to private rights, probably as
to contracts or torts, or matters of that kind; but on matters of supreme
importance, affecting the interpretation of this new Constitution, there is
absolutely no appeal whatever. I have taken down the words from the
Clerk, which read-

excepting that the Queen may, in a matter not involving the interpretation
of the Constitution of the Commonwealth or of a state, grant leave to
appeal.

That means the Queen may grant leave to appeal in all cases except cases
arising as to the interpretation of the Constitution of the Commonwealth or
of a state. Mr. Symon proposes to take away not only the right, of appeal to
the Privy Council on questions arising under the Commonwealth
Constitution, but on questions arising under the existing Constitution of the
state.

Mr. MCMILLAN. -
That is not intended.

Dr. QUICK. -
But there are the words. If Mr. Symon does not intend that, I should be
happy to stop speaking further. I am assured it is only necessary to call
attention to the serious and almost revolutionary character of the proposal to induce the Convention to pause before adopting it. I would sooner have the Bill as it stood originally.

Mr. DOBSON. -

As we all would.

Dr. QUICK. -

I would sooner have the Bill as it stood, denying the right of appeal to the private person, so long as we preserve the right of appeal on constitutional questions, which are far more important. This is a new constitutional instrument of which we have had no experience before. It is to be launched on its career, and the Federal High Court is to have absolute and exclusive jurisdiction in interpreting that Constitution.

Mr. SYMON. -

What are you creating the Federal High Court for?

Dr. QUICK. -

I may point out that we have a new constitutional instrument, involving the political relation of the most important kind, and involving the rights of the state as well as the rights of the Commonwealth.

Mr. KINGSTON. -

Are you not prepared to trust the High Court?

Dr. QUICK. -

We are prepared to trust the High Court so far as it is constituted. But, as a matter of precaution, as a matter of safety, what objection can there be to giving a right of final and ultimate appeal to Her Majesty in Council?

Mr. SYMON. -

A lot of Judges who do not understand anything about our conditions.

Dr. QUICK. -

It is not suggested that the Judges of the High Court will not be worthy of trust, but this right of appeal should be given as a security that the novel provisions of the Constitution will,

especially in the early stage of the history of their interpretation, receive careful consideration. If a mistake should unfortunately be made by the High Court—and it is no reflection upon that body to say that mistakes might be made by it, because Judges differ, and we have had instances in the Supreme Courts here, and instances have occurred in the United States, where most important decisions have been arrived at upon the opinions of the majority of the Judges—if a mistake is made it can be rectified.

Mr. MCMILLAN. -

We want to be in exactly the same position as we were in before we federated.
Dr. QUICK. -

Certainly, with regard to constitutional questions. I am prepared, if necessary, to give up the subject's right of appeal; but I emphatically assert that there should be a right of appeal from the decision of the High Court in regard to this Constitution, a Constitution embodying novel provisions and giving important powers, including the power of the Federal Court to review the procedure of Parliament. The Federal High Court is empowered to declare a law passed by both Houses and assented to by the Crown *ultra vires*, not because the Legislature has exceeded its jurisdiction, but because of some fault of procedure. Appeals would be made only when there was a reasonable doubt in the minds of the responsible advisers of the Commonwealth that the decisions of the High Court were open to question. The knowledge of this right of appeal would be an incentive to the High Court to be most careful in its decisions, and especially in its early decisions. I need not enumerate the cases in which, if the amendment is carried, there will be no right of appeal. There will be no right of appeal in regard to the letter of the Constitution itself. There will be no opportunity to review a decision, for instance, in regard to legislation under clause 52, sub-section (1)-"The regulation of trade and commerce." Then, again, it is provided that all taxation is to be uniform, and all legislation under this provision will be taken out of the purview of the Privy Council. The exercise of the power under clause 55 would also be withdrawn from review. But perhaps the most important of all is the clause which was amended the other day on the motion of the Right Hon. Mr. Reid with reference to rivers. That clause would probably be fruitful of litigation, and any state beaten upon a first decision would be bound to have that decision reviewed. It would be an advantage to have it reviewed, whatever was the result. Then there are the powers for the creation of the Inter-State Commission. All disputes between states arising under these novel powers would be absolutely and irrevocably within the jurisdiction of the High Court of the Commonwealth, if Mr. Symon's amendment were carried. I would therefore strongly urge the Convention not to entertain the amendment.

Mr. MCMILLAN. -

Could not everything come under the review of the Privy Council according to Sir Joseph Abbott's amendment.

Dr. QUICK. -

That would be so if it were allowed to remain as it stands. For my part, I should be quite willing to have the whole of clause 75 struck out. The leader of the Convention admits that the effect of Mr. Symon's amendment would be to largely destroy the value of Sir Joseph Abbott's proposal, as it
would remove from the control of the Privy Council all constitutional questions, and give the Privy Council jurisdiction only in trumpery suits between subjects - suits important perhaps to the individuals themselves, but absolutely trumpery in comparison with these other great and important constitutional questions.

Mr. BARTON (New South Wales). -

I do not foresee the portentous and manifold difficulties in the government of the Commonwealth, and in its future, which, it is said, will result if something approaching to the amendment of my honorable friend (Mr. Symon) is carried. I have for some time had a doubt as to whether if it were conceded that appeals to the Privy Council should be restricted to a certain extent, whether appeals should still be permitted upon that part of our work which is most particularly within the function of a self-governed community. We are the makers of our own Constitution. We sit here as the makers of our own Constitution. We propose to frame that Constitution so as to secure the assent of the Imperial Parliament; but our first charge is to prepare such a Constitution as will receive the approval of our own people. When we have the approval of our own people to the Constitution, we hope that it will be passed into law as nearly as possible in the form in which we submit it. If the results of our labours are indorsed by the various peoples of the colonies, Australia will be the maker of its own Constitution, and I am very much inclined to coincide with the opinion of my honorable friend (Mr. Symon) that if Australia is to be the maker of its own Constitution, it is fairly competent to be the interpreter of its own Constitution. I see no reason to anticipate that the difficulties that are foreshadowed will arise from the adoption of the principle that those who are fit to make the Constitution are fit to say what the language of it means.

Sir JOHN FORREST. -

We cannot do that now.

Mr. BARTON. -

We cannot do it under our present Constitutions, but my right honorable friend forgets that we are taking a very large step in advance in making a Federal Constitution.

Mr. SYMON. -

There can be no conflict now between states and Commonwealth.

Mr. BARTON. -

No, because the Commonwealth as a federal body is nonexistent. It is proposed to unite the states in a Commonwealth, and the question is whether upon the matters that will arise as regards the interpretation of the
several Constitutions there is any need for them to appeal to any distant authority. In the first place, let me disclaim utterly that reproach which has been so consistently flung at those who do not wish to leave the whole thing unrestricted, the right of appeal to the Privy Council; a reproach that they wish to break ties with the empire; a reproach which, if it means anything, is intended to convey to people outside that we are in some illicit and covert way hankering after independence. I venture to say that there is no more loyal subject of the Queen in the Australian Dominion than I am, and yet I am strongly of opinion that it is not in every case that is to be decided under our Constitution, or in every class of case, we are to say to ourselves that, having constituted a High Court, we are to superadd to that another Court of Appeal. I do not agree with that contention. I bow loyally to the decision which has been arrived at, with this sole qualification, that I think we have a right to modify that decision by making an exception to it in matters that pertain to the essence of a Federal Constitution.

Sir JOHN FORREST. -
You always want to modify when you are defeated.

Mr. BARTON. -
I do not quite follow my right honorable friend. He does not find me, I think, peculiarly anxious to disturb the decisions of this Convention, nor have I engaged in any particular agitation in any way whatever to undo the work of the Convention. I do not think any one has been more loyal to the decisions of the Convention than I have.

Sir JOHN FORREST. -
There has been some one always ready to do it.

Mr. BARTON. -
My right honorable friend possesses a very strong bow, but he sometimes drives his shafts at the wrong enemy.

Sir JOHN FORREST. -
I do not think so; there is always somebody ready to do it.

Mr. SYMON. -
He drives them at an imaginary enemy.

As he sometimes lets drive at me, I do not consider myself an imaginary enemy—there are physical reasons why I should not. I believe if there is one thing on which we should retain the supreme power of decision by any court which we constitute it is the power of deciding finally what our own Constitution means, because as the Australian people are the makers of this Constitution it is only fit that authorities who represent the Australian
people should decide what it means if there is any doubt about what it means. I am not quarrelling, therefore, with the remainder of the decision which has taken place at the hands of the committee. I am not quarrelling with the provision that the prerogative shall be retained, and that the Queen in Council may grant leave to appeal with respect to other matters. I voted against the amendment which conveyed that decision, but I am perfectly prepared to bow to the will of the majority. I am not going to question that; but I think we may make an exception from it, based on purely federal grounds. I think it is an exception, based on federal grounds, that we should attain this measure of self-government by our own machinery; that not only by our own demand, but by the framing of our own Constitution, should we be entitled by our own authorities to say what we mean when we frame that Constitution. That is the whole extent to which I am prepared to go by way of exception to the amendment which was carried on the motion of Sir Joseph Abbott. That honorable gentleman has said that, so far as at present advised, he does not think that this amendment will do much harm. I do not know quite how far that commits him, and I do not want it to be taken as committing him until he has another opportunity to express himself. But there is a further qualification which I should like to engraft on this amendment. We have had a very long discussion on this subject, and I think we may settle the matter now speedily. The amendment is to insert words which will make the clause read as follows:-

No appeal shall be allowed to the Queen in Council from any court of any state, or from the High Court, or any other federal court, except that the Queen may, in any matter not involving the interpretation of the Constitution of the Commonwealth, or of a state, or in any matter involving the interests of any other part of Her Majesty's dominions, grant leave to appeal to the Queen in Council from the High Court.

It will be obvious that there may be matters involving the construction of the Constitution of the Commonwealth or of a state, or of Acts of Parliament passed under the Constitution, which, nevertheless, will involve also the interests of other parts of Her Majesty's dominions. We did originally intend—we put it into this clause—that there should be a right to grant leave to appeal where the interests of other parts of Her Majesty's dominions were affected. Now, I wish to retain that right, because I think it would be a strange thing if, by simply excepting from the operation of leave to appeal cases in which the Constitution of the Commonwealth or the Constitution of a state was to be interpreted, we gave that wide power which would enable our High Court to give that interpretation, notwithstanding that the interests of parts of Her Majesty's dominions
outside the Commonwealth were concerned. I do not think we can affect to claim that. I do not think we have a right to claim that our High Court can give final judgment where the interests of any other part of Her Majesty's dominions outside of the Commonwealth are concerned. Therefore, I beg to propose—

That the amendment be amended by adding to it the words "or in any matter involving the interests of any other part of Her Majesty's dominions."

The effect of that amendment will be that even in a case for appeal in which is involved the interpretation of the Commonwealth Constitution or the Constitution of a state, the High Court cannot give judgment so as to preclude any appeal to the Privy Council, if the interests of any other part of Her Majesty's dominions are concerned; it is in that respect that Mr. Symon's amendment goes too far, and if we guard in that respect the finality of the judgment of the High Court, and extend it only to those matters in which the Constitution of the Commonwealth or the Constitution of a state are exclusively concerned the amendment would be acceptable in the federal aspect. It would then be a right amendment, because it would not interfere with appeals in any other direction. With this qualification, I think that I should be prepared to support the amendment, and if it is carried in that way we might very well adopt it without discussion.

Mr. REID (New South Wales). —

I would again respectfully call the attention of the committee to the fact that four or five of the most difficult questions in this Constitution are to be re-opened, and that we propose to conclude our sittings to-night.

Sir JOHN FORREST. —

Why re-open them then? That is what I have to complain of.

Mr. GLYNN (South Australia). —

I would like to call attention to a matter of drafting. Under this provision there is to be no appeal from the High Court to the Privy Council, saving the prerogative of the Crown to grant leave to appeal in certain cases. I am not referring to an appeal from the state court. Were it not for the fact that under the previous clause the retention of the prerogative right is to last so long as Parliament wishes, it would be the same in effect as this, which fixes the continuity of the right in the Constitution, without giving Parliament power to alter it. It seems to me that there is a conflict between the two provisions. This fixes it beyond the control of Parliament.

Mr. SYMON. —

But we will add some words to this.
Mr. GLYNN. -

Well, it is a matter of substance, and I thought it desirable to call attention to it, because it is a matter which might be overlooked, and which we cannot subsequently cure.

Sir JOHN FORREST (Western Australia). -

I am sure I sympathize with Mr. Reid in desiring that we should get on with our business as quickly as possible; but I cannot help rising at this stage to say that so soon as a decision is arrived at which is distasteful to a large number, or, at any rate, to some portion of this Convention, honorable members begin again to try and undo that decision. We have had lots of evidence of that during the seven or eight weeks we have been here, and I think it is too bad, and not quite just to the Convention. Here we are just about closing our business, but the moment an important decision is arrived at honorable members rise in their places to submit new proposals which none of us have had an opportunity of fully considering, and which we are asked to vote on at a moment's notice. Surely this is new matter of which no notice has been given. I don't think we have been treated as fairly as we have a right to expect in this regard. The whole thing goes back to distrust of the Privy Council of Great Britain. Mr. Symon just now interjected a remark which shows that at the bottom of his proposal is a certain amount of distrust of the Privy Council, because he interjected, in regard to the questions referred to them, that they were matters they know nothing about. That show's that at the bottom of this proposal is distrust of the Privy Council's wisdom, knowledge, and capability to do justice to the questions submitted to them. At any rate, I shall soon begin to feel very indifferent as to the decisions we arrive at, if important matters are to be introduced at the eleventh hour, and if we are to be called on at a moment's notice, without seeing the proposals in print, to decide questions of such great importance. I again say that I do not think those who voted in favour of the motion which was carried this afternoon are being treated fairly in being again asked to re-open the question by considering an amendment which I suppose they have not even seen in print.

Mr. SYMON (South Australia). -

I venture to think that it would be, I will not say more seemly, but more in keeping with our proceedings, if my right honorable friend had paid more regard to the proceedings of the committee some time ago, before he assisted at the eleventh hour in reversing the decision of this Convention arrived at twelve months ago, and re-affirmed at our meeting this session.

Sir JOHN FORREST. -
Long notice was given.

Mr. SYMON. -

Why should he talk of the eleventh hour? He is responsible as much as any one for the re-opening of the question, and it is high time that we should be saved from these constant lectures from him as to the proceedings of this Convention. I protest against them. I also take exception to his statement that I am endeavouring, or that any one who takes the same view as I do is endeavouring, to undo the decision of the committee. His explosion is founded altogether on an unfounded hypothesis. We are not trying, nor is any one trying-

Sir JOHN FORREST. -

You are trying to restrict it.

Mr. SYMON. -

We are not trying to restrict it. My honorable friend (Sir Joseph Abbott) moved an amendment in order purposely to secure the interest of private litigants, bond-holders, investors, capitalists, and so forth. We have passed the amendment he moved with that object, and I loyally bow to the decision of this Convention; whether it was agreed to at the eleventh hour or not, I am not going to ask for the question to be revived. But we are now dealing with another clause, and with totally different subject matter.

Sir JOHN FORREST. -

We are dealing with something of which no notice has been given.

Mr. SYMON. -

My right honorable friend surely knows something of the Bill he has been digesting for the last eight weeks. It is clause 75 with which we are dealing, and it is a limitation on the finality of the decision of the High Court. My honorable friend (Sir Joseph Abbott) has attached a saving right to that. We are now dealing with the necessity or otherwise of submitting every Act of the Commonwealth, or every Act of Parliament passed by the states which is supposed to conflict with the Commonwealth law, to the Privy Council-a body not conversant with the basis of our litigation.

Sir JOHN FORREST. -

No.

Mr. SYMON. -

Well, I say so, and every constitutional writer has said so in regard to Canada. I do not wish to question their justice, or anything of the sort.

Sir JOHN FORREST. -

You have said it now, at last.

Mr. SYMON. -

If it offends my right honorable friend, I withdraw it. But I do say that all we are seeking to do by this amendment is to say that as to our Acts of
Parliament, the High Court established under the Constitution is established for the very purpose of deciding them, and is the tribunal that should decide them, and there is no necessity to go to the Privy Council at all.

Mr. Barton's amendment was agreed to.

The CHAIRMAN. -

The whole amendment now reads: "not involving the interpretation of the Constitution of the Commonwealth, or of a state, nor in any matter involving the interests of any other part of Her Majesty's dominions."

Mr. DOBSON (Tasmania). -

I rise to ask Mr. Symon to withdraw his amendment. I do not say it is unfair, and I do not think my honorable friend is capable of doing anything unfair. But, at the same time, I express my firm belief that no such amendment ought to be moved. I wish to point out to Mr. Symon the position in which he is placing me, as a member of the Judiciary Committee, and other members. It is an absolute fact that this clause giving the right of appeal to the Privy Council in matters affecting the Commonwealth and the states was adopted by the committee without a dissentient voice. It was passed after a long debate in Adelaide, and also the other day. Why should we alter this clause now, simply because it has been carried a little further?

Dr. COCKBURN. -

Has not the Convention turned somersaults in other directions?

Mr. DOBSON. -

Yes; but we know there was a difference of opinion on every other matter where we reversed our decision. In every such case we were told that it would affect the passage of the Bill when it went before the people, and there was an active and intelligent minority. In this instance there has not been the shadow of a doubt cast upon the wisdom of retaining this clause until an hour before the adjournment. Therefore, the amendment should not have been brought forward, and I should like to see Mr. Symon withdraw it. The leader of the Convention would have been quite justified in asking Mr. Symon to withdraw his amendment, and in pointing out that if any matter has been definitely settled this has been. It is all very well to urge us to go on with our work, but we cannot do so if a thing like this is sprung upon us at the last moment. We are asked to go back on a very vital question. We are told now that a private citizen shall have the right to appeal to the Queen in Council, but in any matter affecting thousands of our future citizens and taxpayers you shall not have this appeal. It is contrary to common sense not to give the right of appeal in such a case.
Mr. Symon forgets that if the High Court will be all that he thinks it will be all the great mass of appeals will go to the local courts. Let it win its spurs and gain the confidence of Australia. But do not take away from the people the privilege they now have, and do not deprive the Commonwealth and the states of the same privilege which every private citizen has.

Sir JOHN FORREST (Western Australia). -

I think there must be a mistake in the wording of the amendment as it, has been read by you, sir. Does it so read that a British colony or a foreign state should not have the right to appeal to the Privy Council?

Mr. BARTON (New South Wales). -

Certainly not. The object of my addition is this: Mr. Symon proposes to provide that the High Court shall be final where there is a question of the interpretation of the Constitution of the Commonwealth or of a state. My amendment is to, nevertheless, say that the right of appeal is preserved if leave is given, where the interests of any other part of the Queen's dominions are concerned. So that, although the Constitution of the Commonwealth or of a state may be involved in the interpretation, still, if there is a question arising at the same time about the interests of any other part of the Queen's dominions, there shall be the right to ask for leave to appeal.

Sir JOHN FORREST. -

I understand that is so, but is it so expressed?

Mr. BARTON. -

I made the amendment express that.

Mr. HOLDER. -

It is expressed the other way.

Mr. DOUGLAS (Tasmania). -

I should like to understand what the leader of the Convention means by this addition to the amendment of Mr. Symon.

Mr. BARTON. -

I took ten minutes to say why.

Mr. DOUGLAS. -

You give power to prevent the Privy Council interfering where any other portion of Her Majesty's dominions are concerned. Mr. Barton says that the provisions shall not apply to. any case where other portions of Her Majesty's dominions are concerned. That is an absurdity. It is a perfect piece of nonsense to put those words in. How can you bind the rest of Her Majesty's dominions? This Constitution only applies to Australia, and you cannot interfere with anything outside. If the amendment of the honorable member means otherwise, it is perfect nonsense. What is the real object of Mr. Symon's amendment?
Is it not to do away with the power of the Privy Council to interfere with those matters! After wasting nearly a day on this subject, when a division ought to have been taken at once, we have decided by a majority that the Privy Council shall have a right. Directly that is decided, there comes an amendment in order to do something else. What is the use of passing a vote and spending time, and then immediately afterwards deciding that what we did is not what we intended to do? I object to the amendment of the leader of the Convention, and I am sure that, on reflection, Mr. Barton will not attempt to put the words in. Mr. Symon's only object seems to be to prevent the effect of the vote we passed this afternoon.

Mr. KINGSTON (South Australia). -

I take it that the object of the amendment is-

Mr. ISAACS. -

What amendment?

Mr. KINGSTON. -

The amendment now proposed. I take it that the object of the amendment is that in a constitutional question affecting the Commonwealth or state there shall be no appeal unless the interests of some other part of Her Majesty's dominions are concerned. That is what is intended, although possibly the amendment does not say so. But whilst the amendment does not say so, we know what is intended, and we know the capacity of the Drafting Committee to put it right.

Sir JOSEPH ABBOTT (New South Wales). -

I think there is some misapprehension in regard to my views. It has been said I am in favour of the amendment. I am not in favour of the amendment.

Mr. BARTON. -

If my honorable friend is alluding to what I said, I may tell him I understood him to say at the time he took the point of order, that he did not see much harm in the amendment, and I further said my honorable friend would probably speak in the debate and tell us what he meant.

Sir JOSEPH ABBOTT. -

I was not here when the House resumed, but it appears to me that the greatest questions that are likely to arise will be in reference to the construction of the Constitution. If that be so, we ought to have the determination of the very best court which is available. For that reason I cannot support the amendment.

Mr. ISAACS (Victoria). -

As I understood, the largest and most important questions that can
possibly arise under this Constitution are not to be remitted to the Privy Council. If these questions concern the whole of the colonists in any state they are not to be remitted. But if a trifling question of £501 arises, an individual maybe dragged from court to court, and to the Privy Council, under the decision we have arrived at. I am going to be consistent, and vote against the remission of those cases to the Privy Council. I cannot see the justification for this amendment.

Question-That the words proposed to be inserted be so inserted-put.
The committee divided-
Ayes ... ... ... 21
Noes ... ... ... 17
 Majority for the amendment 4

AYES.
Barton, E. Howe, J.H.
Brunker, J.N. Isaacs, I.A.
Carruthers, J.H. Kingston, C.C.
Clarke, M.J. Leake, G.
Cockburn, Dr. J.A. Lewis, N.E.
Deakin, A. Lyne, W.J.
Fysh, Sir P.O. O'Connor, R.E.
Gordon, J. H. Peacock, A.J.
Hackett, J.W. Reid, G.H.
Higgins, H. B. Teller.
Holder, F.W. Symon, J.H.

NOES.
Berry, Sir G. McMillan, W.
Braddon, Sir E.N.C. Quick, Dr. J.
Briggs, H. Solomon, V. L.
Brown, N.J. Turner, Sir G.
Dobson, H. Venn, H. W.
Douglas, A. Walker, J. T.
Forrest, Sir J. Teller.
Fraser, S. Zeal, Sir W.A.
Glynn, P.M. Abbott, Sir J.P.

Question so resolved in the affirmative.

Mr. SYMON (South Australia). -

There are two consequential amendments which I think we should make; to insert the word "special" before the word "leave," and to add at the end of the clause "until the Parliament otherwise provides." These are the
suggestions of the honorable and learned member (Mr. Glynn).

Mr. BARTON. -
I think it would be better to leave the matter to the Drafting Committee.

Sir JOHN FORREST (Western Australia). -
I have not had an opportunity to understand exactly what the clause means. I ask the leader of the Convention whether, now that the amendment has been carried, it does not mean that a matter concerning the Constitution of a state or of the Commonwealth shall not be the subject of appeal, and that a matter concerning any other part of Her Majesty's dominions shall not be the subject of appeal. This hurried way of doing business, which is altogether contrary to the understanding we came to, and a grave breach of faith, results in our not knowing what we are doing.

Mr. BARTON (New South Wales). -
I wish the right honorable member would not so constantly repeat the refrain of the popular song "'E dunno w'ere 'e are."

Sir JOHN FORREST. -
I do not know where we are now.

Mr. BARTON. -
I have explained this matter more than once, and it is only in deference to my right honorable friend that I explain it again. We have passed a great many amendments in language which is only of a general character, and in a form which it is intended that the Drafting Committee shall recast; but I think that this is the first time that I have offended by moving such an amendment. What the two amendments mean is this: The honorable and learned member (Mr. Symon) has provided that, where the interpretation of this Constitution or of the Constitution of a state is involved, in that case, and in that case only, the High Court of the Commonwealth shall be the final arbiter.

Sir JOHN FORREST. -
I understand that.

Mr. BARTON. -
My amendment, which will have to be recast to a certain extent, provides that in any matter in which the interests of any other part of Her Majesty's dominions are involved, notwithstanding that the dispute may affect the interpretation of the Constitution of the Commonwealth or of a state, it shall be competent to grant special leave to appeal. My amendment is a modification of that of the honorable and learned member (Mr. Symon), and is intended to prevent the too wide application of it.

Sir JOHN FORREST. -
I think the honorable and learned member will admit that the words put into the clause were confusing.
Mr. BARTON. - 
Owing to the urgency of the occasion the amendment was put in the way in which other amendments have been put, with the intention that it should be redrafted.

Mr. SYMON (South Australia). - 
I have an amendment which I think will elucidate matters. I do not think any one desires that the proposed appeal shall be cumulative, and that there shall be an appeal to the High Court, and then a further appeal to the Privy Council. I therefore beg to move-

That the following words be added to the clause:-"Provided that no appeal shall be had to the Privy Council from the High Court in any matter which might have been taken direct to the Privy Council by way of appeal in the first instance."

Sir GEORGE TURNER (Victoria). - 
If the proviso is accepted, we shall be in this difficulty, that, if the plaintiff appeals against a decision and succeeds before the High Court, the defendant, who may be anxious to obtain the judgment of the highest tribunal in the empire, will be shut out from doing so; whereas, were the defendant beaten in the lower court, he would have the option of appealing either to the High Court or to the Privy Council. Surely my honorable and learned friend cannot see the effect of his amendment. I shall not feel justified in voting for such a proposal.

Mr. KINGSTON (South Australia). - 
It is not often that I disagree with the Premier of Victoria; but I do not think that the Convention seriously intended to impose another obstacle in the way of an ultimate decision. If a litigant in the Supreme Court of one of the states is dissatisfied with the decision of the court, and has the right to appeal to the Privy Council, surely it is not intended that he should temporarily abandon that right, appeal to the High Court, and, if not satisfied with the decision of the High Court, go on to the Privy Council.

Sir GEORGE TURNER. - 
That is not my objection.

Mr. KINGSTON. - 
That is what the amendment is intended to cure.

Sir GEORGE TURNER. - 
No; it goes further. It shuts out both parties. I do not object to the shutting out of the appellant, who can choose his Court of Appeal, but I object to the shutting out of the other party.

Mr. KINGSTON. - 
I say, let the right of appeal be exercised in the alternative. To permit a
litigant to be haled first to one court and then to the other, instead of accomplishing speedy justice, seems likely to have precisely the reverse effect.

Mr. ISAACS. -

The proviso means that there shall be no appeal to the Privy Council at all.

Sir JOSEPH ABBOTT. -

I should like Mr. Chairman, to take your ruling as to whether the amendment is not out of order as being inconsistent with what we have already done?

The CHAIRMAN. -

I am unable to say at present what the amendment is.

Sir JOSEPH ABBOTT. -

The whole object of the amendment appears to be to destroy the provision which we have already inserted in the Bill, and to make a farce of the two clauses relating to appeals to the Privy Council. I would like to point out to honorable members what may happen. Take a case in which I am a successful litigant in a court below. The other party appeals to the High Court, and the High Court gives a decision in his favour. I should then be absolutely excluded from appealing to any other court. The one party would have an appeal to the High Court, and the other party, who in the first instance had won the case, would not be allowed to carry the matter further. I am not one of those who have evinced any desire to encourage this sort of litigation. I have endeavoured, having regard to the feelings of honorable members, to make it somewhat difficult to go to the Privy Council at all. The whole object of this amendment is, I repeat, to destroy what has been done. I thought that perhaps the Chairman had got an inspiration, and that he would now be prepared to rule the amendment out of order.

The CHAIRMAN. -

I have not got the amendment yet. It is being recast.

Mr. FRASER. -

I think it will be well to read the whole clause.

The CHAIRMAN. -

I will read the amendment in the form in which it is now submitted. It is as follows:-

Provided that no appeals shall be had to the Privy Council from the High Court in any matter which might have been originally taken direct to the Privy Council in the first instance by way of appeal from a federal court or a court of a state.

Sir JOSEPH ABBOTT. -
I would like to take your ruling, Mr. Chairman, as to whether the amendment is in order at all? We have already declared, in clause 74, that any right Her Majesty may be pleased to exercise, by virtue of her Royal prerogative, shall not be impaired. If an amendment is submitted by which it is sought to curtail or impair Her Majesty's prerogative, is it not undoing what we have already done? For that reason I submit that the amendment is not consistent with the provisions that have been inserted in the Bill.

Mr. SYMON (South Australia). -

The object of the amendment is simply to prevent litigants from being harassed by being taken to two courts.

Mr. GLYNN. -

That is not possible under clause 74 and first part of 75.

Mr. SYMON. -

Certainly it is. The appeal there will involve both the High Court and the Privy Council. All we say is, that if there is to be an appeal from the Supreme Court of a state to the Privy Council, and the parties elect-

Sir GEORGE TURNER. -

What do you mean? It will be one party who will elect.

Mr. SYMON. -

The appellant. Let my right honorable friend move that the appellant be excluded. Anything will be better than nothing.

Mr. OCONNOR (New South Wales). -

We are all agreed that there should not be a double right of appeal, and I would suggest to the honorable member that if he will leave it to the Drafting Committee they will see that that is provided for.

Mr. SYMON. -

I shall be perfectly content with that intimation.

Sir JOSEPH ABBOTT (New South Wales). -

There can be no objection to a provision being inserted to prevent one litigant from harassing another. If a litigant is successful, and the unsuccessful litigant appeals to the High Court, the former would under the amendment be debarred from appealing to the Privy Council. What I say is that, if a party elects to appeal to the High Court, he should have no right to afterwards appeal to the Privy Council.

Mr. SYMON. -

I will accept that suggestion.

Sir JOSEPH ABBOTT. -

Then I would suggest as an amendment-and the Drafting Committee can be left to put it into legal phraseology-that the following words be inserted:-
"That the party invoking the decision of the High Court shall have no right to appeal to the decision of the Privy Council."

Mr. SYMON (South Australia). -

I am greatly indebted to the honorable member for his suggestion, and I think that these words would serve the purpose:-

"Provided that no appellant to the High Court shall afterwards appeal to the Privy Council in the matter of the same appeal."

The CHAIRMAN. -

The Hon. Mr. Symon has already proposed an amendment which has not been withdrawn.

Mr. SYMON. -

With the leave of the committee, I will withdraw the first amendment.

The amendment was withdrawn accordingly.

Mr. SYMON. -

I now beg to move formally-

That the following words be added to the clause:"Provided that no appellant to the High Court shall afterwards appeal to the Privy Council in the matter of the same appeal."

Mr. GLYNN (South Australia). -

Is this necessary? Under the first line of the clause no appeal is to be allowed to the Queen in Council from the court of any state. That will prevent any appeal being taken direct to the Privy Council. It must filter through the High Court. But then we preserve Her Majesty's prerogative to grant appeals from the High Court, and I do not see how there can be any clashing of jurisdiction.

Sir GEORGE TURNER (Victoria). -

I have been troubled as to what the position is, and the Attorney-General of Victoria is not clear on the point. I should be glad if the Drafting Committee would take this question into their earnest consideration. Would it be competent for a litigant in a court below to elect to appeal either to the High Court or to the Privy Council, or would he have to go to the High Court? If we say that he would have to go to the High Court., I think that we should be making a great mistake. I am quite willing to leave it to a litigant to elect either to go to the High Court or to the Privy Council. If he elects to go to the High Court, let him be bound by its decision. As I understand the clause, it does not carry out what we desire.

Sir JOHN FORREST (Western Australia). -

I do not pretend to possess any great legal knowledge, but so far as I have been able to follow this Constitution, I have been of opinion that all appeals from the Supreme
Court of a state would have to go to the High Court of the Commonwealth, and that then, under certain conditions, subject to Her Majesty's approval, there would be an appeal to the Privy Council. I can understand the High Court being the bond of union between the various states; but if we are going to allow an appeal from the Supreme Court of a state direct to the Privy Council without any reference to the High Court, my opinion is that the High Court will have very little to do, and it will not occupy that high position in the estimation of the people of this continent which we all desire it should occupy. If you want to destroy the High Court altogether, and its importance in the minds of the people of of the Commonwealth, let it be passed by, and let the appeal go direct to the Privy Council. We know where the people will go, at any rate for some time to come. They will go direct to the Privy Council. They will not, as a rule, go to the High Court, because they will find it just as quick and cheaper to go to the Privy Council. My own idea is that if we are to have this High Court in the Constitution, all appeals should go through it, and the only appeal to the Privy Council should be from it on certain conditions, subject to Her Majesty's approval. However, I find now that Mr. Symon has gone away from that, and he is going to allow appeals direct from the Supreme Courts of the states. Speaking for my own colony, I know where the appeals will go. They will not come over to the High Court here; they will go straight to the Privy Council, in which, at any rate in the early days, the people will have more confidence. I think we shall be destroying this court, which it has been our desire to erect, if we allow any appeals to the Privy Council except through the High Court. If we do not do that, I am quite sure that it will be many a long day in Australia before the High Court will occupy that position in the estimation of the people which Mr. Symon and all others, I believe, desire that it should occupy.

Mr. CARRUTHERS (New South Wales). -

I hope that my honorable friend (Sir Joseph Abbott) will not be misled into supporting this amendment. Either the principle of an appeal to the Privy Council is good or it is bad. If it is a good principle, why should one man be deprived of it simply because he has been forced first of all to appeal to the High Court of the Commonwealth? Why deprive him of the right of going to the Privy Council when being forced to get there he first of all has to appeal to the High Court?

Sir JOSEPH ABBOTT. -

He can appeal direct to the Privy Council.

Mr. CARRUTHERS. -

I am sure that is not proposed, and as I read it it is not part of the clause. If the honorable member is being misled into a vote with that view then it
only shows how fast the proceedings of the Convention are landing us in confusion. The honorable member (Mr. Symon) will excuse me for saying that we must take any proposal coming from him now with suspicion.

Mr. SYMON. -
Why?

Mr. CARRUTHERS. -
Because the honorable member is the most determined opponent of what Sir Joseph Abbott and myself have been contending for right throughout.

Mr. SYMON. -
Not at all.

Mr. CARRUTHERS. -
The honorable member is the most determined opponent of allowing any litigant to get to the Privy Council at all. He believes in letting the litigation commence and end in Federated Australia. His proposal, shorn of all verbiage, or all attempts to confuse the issue, amounts to this—that no man can appeal to the Privy Council until he, first of all, has appealed to the High Court, and then, because you make an

appeal to the High Court as a matter of procedure, you will not, if he is unsuccessful there, allow him to go to the Privy Council. Although you maintain that the principle is good, you are prepared to deny a man the exercise of that right principle, because there is a stumbling block placed in the way by this amendment. What does it amount to if the amendment is carried? The Judges sitting in the High Court know that if they give their decision against the appellant it cannot be reviewed, because he then cannot appeal to the Privy Council, and that, if they give their decision for the appellant, it may be reviewed. There is a temptation to put in the way of the Judges or the court, which would always be glad to escape review. If the decision goes one way it is final, if it goes another way it is not final. Where is the soundness of that principle? There is nothing consistent in the proposal. I would strongly urge, considering the state into which the matter has got, that the simplest way out of the difficulty will be to negative the clause, and let us then stand on the simple proposal, which will add to the symmetry of this Bill, carried at the instance of Sir Joseph Abbott, saving the exercise of Her Majesty's prerogative, by which the right of appeal can be granted in any proper case on petition to the Crown. We will get exactly to that position if we negative the clause, no matter how it may be amended. I shall therefore vote to negative the clause. I quite agree with Sir George Turner. He takes up the position I have taken up from the onset, that this should not be a cumulative right of appeal, but he would never vote with me when I made that proposal. He never voted with me once
when I moved the amendment suggested from New South Wales, which would have had that effect. It is too late now to get it. We had better take the best we can get, and the best we can get is to have this general right of appeal, rather than be landed in a position where we shall have ridicule heaped on our efforts, and have everything left in a state of confusion.

**Mr. DEAKIN.** -

We have all agreed to the alternative appeal.

**Mr. CARRUTHERS.** -

We have not got the alternative proposal.

**Sir GEORGE TURNER.** -

I went further than the honorable member; I said that there should be no appeal except with the consent of the High Court or the Privy Council.

**Mr. CARRUTHERS.** -

We are past the stage when we can have the alternative proposal, and, either good or bad, now we must vote either to have an appeal to the Privy Council or to have none at all, and resist all these attempts to fritter away the decision which has been arrived at.

**Sir EDWARD BRADDON (Tasmania).** -

I understood, when the honorable member (Mr. Symon) moved this amendment, that the purport he intended it to bear was that, after a case had been appealed to the Supreme Court of a state, it was optional that that appeal should be carried from there to the Privy Council, and in that event there should be no further appeal to the High Court. That is certainly what I understand, and what seemed to me to recommend the amendment so much to us. But what I find here, and I have read it with some considerable difficulty and a good deal of study, is that no appellant to the High Court shall afterwards appeal to the Privy Council in the same matter. That does not in the least hear out the words as I understand them of Mr. Symon. I hope we shall vote against the amendment.

**Mr. HOLDER (South Australia).** -

I think the clear intention of the Convention was to provide that the appellant from the Supreme Court of any colony should have a free choice whether he would appeal to the High Court or to the Privy Council, but that when once a free choice had been exercised, then the litigant who made the choice should be bound to abide by the decision of the court he elected to go to. But I am afraid we have departed altogether from that—that we have provided that the person appealing from the Supreme Court of a state must, whether he likes it or not, go to the High Court, and that then, without having any freedom of choice when he has gone to the High Court, which is the only court open to him, be is to be
penalized by not being able to go any further, while the other party to the suit can go, if he pleases, to the Privy Council. I am quite sure that is not what the Convention desires, and I hope that Mr. Symon will withdraw his amendment, (which has got his into a somewhat unexpected difficulty), so that the Drafting Committee may be able to place us on a firmer footing.

Mr. BARTON (New South Wales). -
An appeal is absolutely forbidden to the Privy Council in certain classes of cases, and in those cases only. That is enough. The amendment means no more than the clause already provides.

Mr. SYMON (South Australia). -
After the discussion, I think the best thing I can do is to withdraw my amendment.

The amendment was, by leave, withdrawn.

The CHAIRMAN. -
Are there any other amendments?

Mr. PEACOCK. -
For Heaven's sake, no.
Question-That clause 75 as amended stand part of the Bill-put.
The committee divided-
Ayes .... ... 21
Noes .... ... 17
Majority for the clause 4
AYES.
Brunker, J.N. Leake, G.
Cockburn, Dr. J.A. Lewis, N.E.
Deakin, A. O'Connor, R.E.
Fysh, Sir P.O. Peacock, A.J.
Gordon, J.H. Reid, G.H.
Hackett, J.W. Solomon, V.L.
Higgins, H.B. Symon, J.H.
Holder, F.W. Trenwith, W.A
Howe, J.H. Walker, J.T.
Isaacs, I.A. Teller.
Kingston, C.C. Barton, E.
NOES.
Abbott, Sir J.P. Forrest, Sir J.
Berry, Sir G. Fraser, S.
Braddon, Sir E.N.C. Glynn, P.M.
Briggs,
Brown, N.J. Turner, Sir G.
Carruthers, J.H. Venn, H. W.
Mr. REID (New South Wales). -
No, after what we have gone through I certainly do not.

Clause 80. - No person holding any judicial office shall be appointed to or hold the office of Governor-General, Lieutenant-Governor, Chief Executive Officer, or Administrator of the Government, or any other executive office of the Commonwealth.

Mr. HIGGINS (Victoria). -
I shall be very brief in moving my amendment, because this subject is very familiar to honorable members, and I recognise that at this stage of our proceedings it is not necessary to make long speeches.

Mr. PEACOCK. -
All honorable members say that, but they do not always follow it out.

Mr. HIGGINS. -
I have followed it out, and I will follow it out in this case. The idea of this clause is that no person holding any judicial office is to be Acting Governor.

Mr. HOLDER. -
Strike the clause out altogether.

Mr. HIGGINS. -
I should prefer to strike it out altogether, but as I know there are some honorable members who have a strong feeling against striking out the clause, what I propose to do is to amend it, first, by making it provide that no person holding any judicial or political office is to be appointed as Governor-General-

Mr. KINGSTON. -
What is "political office"?

Mr. BARTON. -
Where do you propose to get your man, then?
Mr. HIGGINS. -
What I want to do is to provide that no person holding any political office is to act as governor, and, if I am beaten on that, I shall ask the committee to strike the clause out altogether, because I think that the restriction it provides is not a proper restriction. This clause is put under the head of the Federal Judicature, but it has got nothing whatever to do with judicature.

Mr. REID. -
That is why it is put there.

Mr. HIGGINS. -
It ought to come under the head of Executive. Here is an attempt to interfere with Her Majesty's discretion in appointing her own agent. For my part, the more I have thought of it the more I can concur with the opinion of Sir Samuel Griffith, that we have no right to dictate to Her Majesty who shall be her agents.

Mr. REID. -
Hear, hear. That is the right view to take.

Mr. HIGGINS. -
I, therefore, say that, if we have this clause at all that we are to restrict Her Majesty's hand in appointing her own agent, we ought to limit it in the direction of her appointing any person holding a political office. Because, supposing a person holding a political office is appointed, and supposing that person is asked to grant a dissolution or to act as a sort of arbiter between the two Houses of Parliament, he cannot but bring into his functions as arbiter his predilections as a political officer. Supposing he happened to be a Minister of the Crown, he is not a fit person to be an impartial arbiter between political parties. If he happens to be the President of the Senate, he is not a fit person to be an arbiter between the Senate and the House of Representatives. If he happen to be the Speaker of the House of Representatives, is he a fit person to be an arbiter either. Therefore, what I say, is simply this: I there is any restriction to be imposed upon Her Majesty's discretion, it should be a restriction upon the appointment of a political officer.

Mr. OCONNOR. -
So the President of the Senate would be a political officer?

Mr. HIGGINS. -
If the honorable member doubts whether the word "political" would include the President of the Senate, it should be made clearer; but I cannot conceive of any officer who comes more distinctly within the definition than the President. However, if there is the least doubt about it, I should be willing to alter the wording of my amendment. I hope that honorable members understand that my idea is, at all events, that I am against any
restriction upon Her Majesty's choice of her agent; but if you do put in any restriction on Her Majesty's right it should be a restriction upon her appointment of a political officer as acting Governor-General or as Governor-General, inasmuch as that officer has to act as umpire between the two Houses. Under these circumstances, I beg to move-

That, after the word "judicial," the words "or parliamentary" be inserted.

The word "parliamentary" suits the purpose better than the word "political."

Mr. BARTON. -

Would you mind putting in the words "or private person"?

Mr. HIGGINS. -

If I were disposed to turn the clause into as absolute nonsense as the last clause was put into, I should certainly move to insert something of that sort; but the honorable member will. I think, recognise that there is some reason in the demand that has been made that if any restriction is to be made upon Her Majesty's choice in the appointment of her agent, it should be such a restriction as I have proposed. I should infinitely prefer to drop the whole clause out, and, if my amendment is negatived, when the question comes to be put that the clause stand part of the Bill, I shall vote against the whole clause.

Mr. Higgins' amendment was negatived without a division.

Question-That the clause stand part of the Bill-put.

The committee divided-

Ayes ... ... ... ... 11
Noes ... ... ... ... 26

Majority against the clause 15

AYES.
Brunker, J.N. McMillan, W.
Cockburn, Dr. J.A. O'Connor, R.E.
Downer, Sir J.W. Symon, J.H.
Forrest, Sir J. Zeal, Sir W.A.
Fysh, Sir P.O. Teller.
Hackett, J.W. Barton, E.

NOES.
Abbott, Sir J.P. Isaacs, I.A.
Braddon, Sir E.N.C. Kingston, C.C.
Briggs, H. Leake, G.
Brown, N.J. Lewis, N.E.
Carruthers, J.H. Peacock, A.J.
Mr. BARTON (New South Wales). -

I beg to move-

That the consideration of sub-section (2) of clause 52 be postponed till after the consideration of Chapter IV. (Finance and Trade).

The motion was agreed to.

Clause 86B. - After uniform duties of customs have been imposed, the Parliament shall have exclusive power, subject to the provisions of this Constitution, to impose duties of customs and of excise, and to grant bounties upon the production or export of goods.

Upon the imposition of uniform duties of customs all laws of the several states imposing duties of customs or of excise, or offering bounties upon the production or export of goods, shall cease to have effect, and any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any state shall be taken to be good if made before the 30th day of January, 1898, but not otherwise.

Neither this nor the preceding section shall apply to bounties or aids to mining for gold, silver, or other metals.

Sir GEORGE TURNER (Victoria). -

I beg to move-

That after the second paragraph there be inserted the words-"This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth."

I pointed out when this clause was being discussed before, that its operation is very limited indeed. It only allows some three months in which bargains can be made in regard to bounties, and we all know that it is impossible to conduct the necessary negotiations with regard to any important matter of the kind within that time. I feel, sir, that if there is one state right that ought to be conserved to the state it is the right of the development of their own territory, and to develop their own territory by producing things for the purpose of being exported. That has been done in
this colony and in other colonies very successfully by the granting of bonuses in connexion with various matters. If we are to allow this clause to pass as at present that right hereafter will cease, and no matter how undeveloped a portion of our territory may be we will lose the right to do what we otherwise would undoubtedly do. In our small colony we have large areas and many natural products which could be well developed if this power were reserved to us without in any way interfering with the union or with freedom of trade between the colonies. Take other colonies, such as South Australia, and more especially Western Australia, with its very large undeveloped territory. If you take away from the state the right of granting these bounties, you will prevent, to a very great extent, the opening up and development of these large colonies. It is a very serious step, which we ought not to take without very strong justification. The only objection I have heard to the granting of bounties is simply that by so doing you would prevent the operation of what we all desire—intercolonial free-trade. I have no desire to prevent that, but I have a very strong desire, without interfering with intercolonial free-trade, to have the right, where we think proper in our colony, to develop our resources. I cannot

Mr. SYMON. -
You must leave out the Governor-General.

Sir GEORGE TURNER. -
Then I would prefer to leave out the amendment altogether.

An HONORABLE MEMBER. -
That is how you lost it before.

Sir GEORGE TURNER. -
We lost it owing to an unfortunate combination of circumstances, as it was called.

An HONORABLE MEMBER. -
Do you not fear that will occur again?

Mr. BARTON. -
Did not this, as proposed before, contain some provision that it should apply to bounties which Parliament declared to be consistent with free-trade between the states?

Sir GEORGE TURNER. -
No. I have taken this exactly as we had it before. I ask that a state may be at liberty to grant these bounties after having obtained the consent of the governing body or of the Parliament. If we are limited to the Parliament,
we know very well that it will be simply a farce. It will be a farce to tell our people that they will have to wait month after month, and probably year after year, until some private member has an opportunity of passing through the Federal Parliament a measure to enable a state to give these bonuses. That would be misleading our producers and making them believe that they had got something, whereas, as a matter of fact, they would have got; nothing at all. On the other hand, if we leave it in the hands of the Federal Executive, they can always decide within a few weeks or months. If we have to wait for the consent of the Federal Parliament, it means that the people who are prepared to spend their money on the strength of getting a bonus to help them, will get tired and will enter into some other speculation or means of investing their money. If we have it in the form I have suggested, the Federal Executive will be always able to deal with it expeditiously. Surely we can be confident that the Federal Executive will not take the responsibility of giving their consent to a state granting a bonus unless they are very well satisfied that it will be beneficial to that state and not injurious to the Commonwealth.

Mr. HOLDER. -

And that the Federal Parliament will approve.

Sir GEORGE TURNER. -

They will know very well that it is one of their executive acts, and that all executive acts are under the control of the Federal Parliament. If we have to wait for the consent of the Federal Parliament the provision will be worthless. My amendment simply says that a bounty can be given by the Government of a state after they have obtained the consent of the Federal Executive, and they will have to prove to the satisfaction of the Executive—which will know the risk it will have to run—and they will take very good care that good reason shall be shown before they give their consent. I think if we do

that, we shall be placing sufficient safeguards in this Constitution to prevent any infringement of the fundamental principle upon which we base it. Under these circumstances, I hope the Convention will grant this right. It is a matter of serious importance to a very large number of the producers of this colony. It cannot possibly do any injury to any of the other states, because their interests will be fully guarded by the consent that is required. This will be beneficial to our colony, and it will facilitate the federation movement amongst us. As it cannot, in my judgment, do any possible harm, and, on the other hand, as I believe it will confer a great benefit now and in the future, I hope the Convention will allow the amendment to pass as I have proposed it.
Mr. MCMILLAN (New South Wales). -
I think this is a proposal which ought not to be entertained at this stage of our proceedings.

Mr. ISAACS. -
Then at what stage should it be proposed?

Mr. MCMILLAN. -
I think this matter has been fully discussed and settled. Now, take the question with regard to the Executive Government. Would any Executive Government attempt to do a thing of this kind without, at any rate, a resolution of the House?

Mr. HOLDER. -
Not unless it was clearly the proper thing to do.

Mr. MCMILLAN. -
The only argument is this: That the Executive Government may do a thing which it is perfectly certain that the Parliament will approve. Under what conditions does the Executive Government do a thing which Parliament will approve? It is in a case of unforeseen exigency, and the Executive Government takes upon itself the onus of doing something which Parliament will approve afterwards. This is not a matter of exigency; it is a matter of policy. Will anybody tell me that a matter of policy of such far-reaching importance will be entertained by any Government without going to Parliament for its sanction? This matter has been debated over and over again, and we have asserted that any such matter of this kind is an absolute contravention of the principles of intercolonial free-trade.

Mr. HIGGINS. -
Will you take a proviso that it shall not derogate from freedom of trade between the colonies?

Mr. MCMILLAN. -
There are many matters in this Constitution which involve some sacrifice. And in matters in which New South Wales is concerned she has had to sacrifice a great many things, and she will probably sacrifice more than any other colony of the group. But this is one of these matters which essentially enters into the principles of intercolonial free-trade. I say most distinctly that if you place this principle of bounties, or any other matter of that character, in the hands of the local Governments, you give them an opportunity of absolutely emasculating the principles of intercolonial free-trade.

Mr. HOLDER. -
In that case the Federal Government would not agree to it.

Mr. MCMILLAN. -
I am quite willing to acknowledge the fact that a certain policy has been
set up by the different colonies of Australia, but that is part and parcel of their protective system. In going into this Federation they must give up the protective system as far as intercolonial free-trade is concerned. There is no bounty which you can place upon any article or product that will not have the effect of being equal to an import duty, and in which, as a matter of fairness to the other colonies, you must not give an advantage to the people of that colony over the people of the other colonies. There is one grand principle involved in the whole of our federation, and that is the principle of equality of trade. A system of bounties left to the different states, no matter upon what principle you base it, must interfere with that great principle of equality of trade. Unless you are to render it a nullity, and you are to enter into a system of competition between the different colonies in this matter of bounties which would absolutely neutralize intercolonial free-trade, you must give up the system of bounties. I quite feel the difficulty of the different colonies which have made this one of the great planks in their policy. At the same time, it is one of those matters which must be abandoned if we are to have intercolonial free-trade and I trust the committee will not so stultify itself as to reverse the decision which they have adopted.

Mr. HOLDER (South Australia). -

Every word Mr. McMillan has said would apply with immense force if the suggestion now made were to allow the states to give bounties without reference to the federal authority. But when there is the express provision that bounties shall only be given with the consent, first obtained, of either the Federal Executive, which represents the Federal Parliament, or the Federal Parliament itself, then the suggestions just offered in opposition to the motion seem to me to lose all their weight.

Mr. MCMILLAN. -

My argument has been against leaving this to the Federal Executive. If you like to leave it to the Federal Parliament I shall not object.

Mr. HOLDER. -

I shall argue that the Federal Executive and the Federal Parliament are practically one and the same thing.

HONORABLE MEMBERS. -

No, no.

Mr. HOLDER. -

I am prepared to argue that, whether honorable members agree or not. Mr. McMillan says that if the matter were left to the Parliament alone, he would raise no further opposition. That is a large concession, and in itself
takes back most of the speech we have heard. I have only to argue now that
the consent of the Federal Executive is practically the consent of the
Federal Parliament. The advantage of taking the Executive consent, instead
of that of Parliament, is that in the latter case we would have to wait until
Parliament was in session, and, being in session, until it had time to
consider this particular matter. If it were left to the Executive alone the
consent could be given rapidly, and the state, desiring to do so, might
proceed under that consent. I ask honorable members who have any
experience of political life whether it is conceivable a Federal Executive
would consent to the granting of a certain bonus by a certain state unless
the Federal Executive knew its action would presently be indorsed by
Parliament?
Sir PHILIP FYSH. -
But that has been done.
Mr. HOLDER. -
I have known a similar thing to be done, and have seen what followed. I
have seen an Executive give a promise not likely to be indorsed by
Parliament, and as soon as Parliament met that Executive was sent about its
business.
Sir PHILIP FYSH. -
But it has been done.
Mr. HOLDER. -
The honorable member is too old a parliamentarian not to know that,
with this probability staring them in the face, an Executive would not do a
thing which presently Parliament would disavow, and which would
necessitate the Executive walking out of office.
Mr. MCMILLAN. -
An Executive has no right to frame a policy.
Mr. HOLDER. -
My answer to Mr. McMillan's interjection is that I can quite conceive a
request coming from a state for permission to grant a certain bounty, and if
that request tends at all in the direction of derogating from the freedom of
trade, the Executive would think so long before permitting it that the matter
would be remitted to Parliament, and consent would not be given until
Parliament had had its pulse felt. But if the request was of such a simple
nature, and so clearly apart from any derogation of the principles of
freedom of trade that the Federal Parliament would be sure to consent if
asked, then, and only then, would the Executive grant a request without
waiting for Parliament. This is a very important matter. We have

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been meeting each other on various questions, and there has been give and
take all round for two or three weeks past; and I think we may give and
take on this question. I am anxious to see the principles of free-trade
maintained in their entirety in the Constitution. But this matter, which is
subject to consent, is one in which I think we may fairly meet each other.
The colony of Victoria represents that this is an important proposal which,
while it could do no harm to anybody, would largely assist that colony to
get the majority to pass the measure which we are now framing. I do hope
we shall be a little yielding in our concessions to Victoria in this matter,
when it is so fully safeguarded as, by the amendment, it is. I regret that Sir
Mr. BARTON. -
It is no notice of mine; that is a misprint.
Mr. HOLDER. -
I cannot help the misprint.
Mr. BARTON. -
I think my honorable friend must know from my expressions of opinion
that I should be qualified for another place before I gave such a notice.
Mr. HOLDER. -
I could not understand the notice, but as it has been on the notice-paper
for about a week past, and has not been altered or disavowed, I thought I
was justified in saying what I did. I will alter what I was saying, and say
that I wish the amendment, instead of being moved in its present form, had
been moved in the form of the amendment standing next to it. It would
then provide there should be no derogation from the freedom of trade and
commerce.
Mr. BARTON. -
The notice is now in the name of Mr. Higgins, in whose name it was
always intended to be.
Mr. HIGGINS. -
It was my notice. moved it a fortnight ago, but it has been wrongly
printed. I am responsible for it.
Mr. HOLDER. -
I do not want to make anybody responsible who does not want to accept
the responsibility.
Mr. HIGGINS. -
I do.
Mr. HOLDER. -
I am willing to give Mr. Higgins the responsibility if he likes, and not put
it on the leader's shoulders. I wish the motion had been in the form I have
suggested, because it would then have been clear that it was in no sense
derogating from the freedom of trade and commerce, and we would be
doing what we might fairly do without incurring the risks and
disadvantages which Mr. McMillan has called attention to.

Mr. HIGGINS (Victoria). -

As there has been a reference just made to an amendment standing in my name, and attributed unfairly to the honorable leader, I must claim that amendment, rightly or wrongly, as my own. I have been informed by some members who are not prepared to vote for Sir George Turner's amendment in the exact terms in which it stands that they are prepared to vote for the amendment if there is the proviso to which Mr. Holder has just alluded put on to it. Unfortunately, Sir George Turner is not here; but, so far as I know, it is not the desire of any of the Victorian delegates in the slightest degree to interfere with the freedom of trade and intercourse between the colonies. I am willing to have any words put in which will make that clear beyond doubt. Without saying any more, I shall move an addition to Sir George Turner's amendment. I am sorry Sir George Turner is not here, or I should have asked for his concurrence in the proviso before I move that.

Mr. MCMILLAN. -

You cannot move it as an addition, can you?

Mr. HIGGINS. -

I think I am in order in moving an amendment on the amendment before it is put from the Chair The words are the same as I previously moved, and which appear on page 987 of Hansard, and they read-

Provided that the bounty or aid has not the effect of derogating from the freedom of trade or commerce between the different parts of the Commonwealth.

Mr. BARTON. -

Do you wish that to be determined by the High Court or by Parliament?

Mr. HIGGINS. -

That all depends. If there is an Inter-State Commission, that commission, having to carry out the provisions for freedom of trade and intercourse, would have to decide. I want it to be clearly illegal that there shall be any derogation from the freedom of trade or intercourse between the colonies.

Mr. MCMILLAN. -

Do you add that to Sir George Turner's amendment?

Mr. HIGGINS. -

Yes, I now move-

That the words-"Provided that the bounty or aid has not the effect of derogating from the freedom of trade or commerce between the different parts of the Commonwealth" be added to the amendment.

Mr. BROWN. -

What about the Governor-General in Council?
Mr. HIGGINS. -

So far as I am personally concerned, I think it is proper to give it to the Governor-General in Council, because the machinery necessary to get the whole Parliament to agree is too immense to move. Under our system of responsible government the Governor-General in Council means the Ministry, and the Ministry are responsible to the Parliament. If they dare to give a bounty or aid, or allow a bounty or aid to be given by a state which in any way savours of an interference with freedom of trade and commerce, they will be hauled over the coals in the Parliament, and quite right, too. I take it, therefore, that we have the practical benefit of parliamentary control when we leave it to the Governor-General in Council and add a proviso that there shall not be any interference with freedom of trade and commerce between the colonies, though that to some honorable members may hardly seem necessary. Of course it will be asked-"To what particular bounties do you refer?" Well, there are industries in Victoria which may be aided by bounties. For instance, it might be considered expedient to try to develop industries connected with oil and scent plants in Victoria or Tasmania, and no other colony might wish to try to develop those industries. All I want to do is to leave each state free to give a bounty from its own revenue to any industry, provided that in the giving of that bounty there is no interference with the cardinal principle of the Constitution, absolute freedom of trade between the colonies. The amendment of the Right Hon. Sir George Turner reads as follows:-

This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth.

To that I propose to add this proviso-

Provided that the bounty or aid has not the effect of derogating from freedom of trade or commerce between the several states.

I think that the Inter-State Commission, whose function it will be to see to the carrying into effect of the provisions relating to trade and commerce, would be the proper tribunal to determine questions arising under this provision. They would be better able than any court to decide whether there was any interference by a state bounty with freedom of trade and commerce.

Mr. MCMILLAN (New South Wales). -

I have a previous amendment. I beg to move-

That, after the word "consent," the words "of the Governor-General in Council or" be omitted.

That will leave the matter entirely to the Parliament of the Commonwealth. I hold that this is a matter which should come under the
consideration of the Parliament, and that Do Executive should be allowed to carry into effect a policy in regard to bounties without the consent of the Parliament.

Mr. BARTON (New South Wales). -
Perhaps it might suit the view of both the honorable member (Mr. McMillan) and the honorable and learned member (Mr. Higgins) if the amendment of the Right Hon. Sir George Turner were made to read in this way:

This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council.

Then omit the word "or." What would be requisite then would be that there should be an antecedent declaration by the Parliament, and then the bounty might be granted upon an Executive minute.

Mr. REID (New South Wales). -
I think that the right honorable member (Sir George Turner) is entitled to take the sense of the Convention upon this matter again, even at this late stage, in view of the circumstances to which he referred. I cannot sufficiently admire the brief and condensed way in which he put a matter upon which he has such strong opinions, and I hope to be equally brief. I believe that even if this provision were put into the Constitution no Cabinet would exercise it without taking the opinion of the Parliament. Therefore the right honorable member would get nothing by the words he lays so much stress upon.

Sir GEORGE TURNER. -
Then there is no harm in putting them in.

Mr. REID. -
My right honorable friend must recollect that we in New South Wales, who may have to give up our policy, only intend to run that risk if every other colony agrees to do the same. There is no long argument requisite to show that these bounties can be made a substitute for duties. The right honorable member unconsciously let the object out when he spoke of the anxiety felt in Victoria to develop the production of things for which the country is suited. Is not that exactly what all these protective duties are for? On this very important question of bounties, a very influential paper here, which has very strong views upon the wrong side, spoke so warmly that it alleged that the people of Victoria were determined to maintain the policy of developing their resources in Spite of 50 free-trade Premiers rolled into one. That would be rather a serious matter if the present free-trade Premier is referred to. However, it shows how Strong the feeling in regard to the matter is here. I think that we should not deceive our friends from Victoria
in any sense. They must understand that all this encouragement to trade and enterprise, if the Parliament of the Commonwealth adopts a protective policy, must be given by that Parliament.

Sir GEORGE TURNER. -

You can give a bounty upon iron, but we cannot give a bounty upon coal.

Mr. REID. -

Well, that is our luck. I am prepared to accept my right honorable friend's proposition if it is made subject to the approval of Parliament. It would not be necessary to pass an Act of Parliament. If I were in a position to put the matter into definite shape, the first thing that would be done would be to submit a resolution to both Houses, or certainly to one. I think that any Federal Executive, if the word "Executive" were put in, would do the same. There is nothing in the Bill inconsistent with a course of that sort. There is nothing in the structure of the Bill inconsistent with the Federal Parliament granting an application made by any state, but what we do stipulate is that the policy shall be under the control of the Federal Parliament.

Mr. ISAACS. -

We are willing to take it, subject to the disapproval of the Federal Parliament.

Mr. REID. -

What is the use of that? That must mean that before the thing is done Parliament is to have an opportunity of expressing its opinion. It would be a very Hibernian proceeding to do the thing and then submit it for the approval of Parliament. Such practices are not unknown in parliamentary history, but they often give rise to a lively dissatisfaction. We had better be straightforward. We will all agree to my right honorable friend having his way, not by an Act, but by a simple resolution, because then we preserve the main principles of the Bill consistently, whilst we give a certain degree of elasticity. There might be in one part of a colony an industry which cannot be pursued throughout the Commonwealth generally, and in that case the bounty would come perhaps more legitimately within the range of the local Government than of the Federal Government. But at the same time, in order to insure that it is not an industry which ought to be the subject of a federal bounty, we want the safeguard that the matter shall be submitted in some simple form to the Federal Parliament. I shall offer no objection whatever to the proposal if it is put in that form.

Mr. BROWN (Tasmania). -

If we go to a division on this question I shall vote with the Hon. Mr. McMillan. I wish to point out that if these words are omitted the clause will
be utterly useless, because we have already in clause 86B provided that, after uniform duties of customs have been imposed, the Parliament shall have exclusive power to grant bounties for the production or export of goods.

Mr. WALKER. -
That is the Federal Parliament this is the state Parliament.

Mr. BROWN. -
That, of course, makes a difference. But what I desire to point out is this: Supposing that in Victoria there is an industry, the development of which can be promoted by a bounty? Does the Right Hon. Sir George Turner say, for a moment, that with the enormous power Victoria would have in the House of Representatives, and with the assistance which it would obtain in any reasonable proposition, there would be any difficulty whatever in getting the bounty agreed to?

Sir GEORGE TURNER. -
The Federal Parliament will only sit for about three months in the year, and it will have other and more important work to do.

Mr. BROWN. -
In this, as in other matters, there is too great a disposition to distrust the Federal Parliament, as though it was to be a foreign body that would tyrannize over the colonies, instead of a body charged with the duty of acting reasonably and honorably to the whole of the colonies. It seems to me that the fear with regard to the injury that may be done to incipient industries from the want of assistance is a mere bogey hope, therefore, that Sir George Turner will not persist in the attitude that he has taken up. Certainly I shall not be a party to any bounty being granted merely, on the assent of the Governor-General in Council. That would be a dangerous provision, and it might be a cause of mischief in the direction of undermining one of the fundamental principles of the Constitution.

Mr. WALKER (New South Wales). -
It is my intention to support the Right Hon. Sir George Turner's proposal if he can see his way to adopt the addition suggested by Mr. Higgins. It seems to me that as these bonuses are to be paid out of state funds, if they are only granted with the assent of the Governor-General in Council, or of the Parliament, subject to the condition that they do not derogate from the freedom of trade and commerce, they can do no harm. I have considerable sympathy with the right honorable member. I understand that there is a large number of producers in Victoria whose feeling of animosity to the acceptance of this Constitution will probably be negatived if we agree to the right honorable gentleman's proposal.

Dr. COCKBURN (South Australia). -
There is a general feeling amongst honorable members that we should concede the principle of the Right Hon. Sir George Turner's proposal. The only question is as to the manner of doing it. If we are going to do a gracious thing let us do it in an effective way. The Federal Parliament will have an abundance of work, and will not be in session all the year round. In the local Parliaments that sit for a longer period, questions are often asked as to why certain matters are not being dealt with, and the reply from the Treasury benches is that the state of the business paper does not permit of it.

Mr. REID. -
Victoria will have 24 members to look after her interests.

Dr. COCKBURN. -
This applies not only to Victoria, but to all the colonies. The concession is, however, asked for chiefly by Victoria, and she is entitled to it, because she has shown the magnificent use that can be made of such a power as this.

Mr. REID. -
Yes, she has taxed us splendidly for a long time.

Dr. COCKBURN. -
In connexion with these matters Victoria has not taxed New South Wales.

Mr. REID. -
That is the way we look at it.

Dr. COCKBURN. -
This is the free-trade mode of encouraging production, and this proposal should have the support of the free-traders. The Convention has conceded the point, and let it be carried out in a way in which it will be effectual. It is only in the clearest possible case that the Executive Council will undertake the responsibility of assenting to any bonus, but still this will enable them to do what the Federal Parliament may not be in a position to do. The Government of the day might intend to bring the matter before the Federal Parliament, but they might not have the opportunity of getting either a resolution or a Bill passed. It is not such a very light thing to get a resolution through two Houses.

Mr. ISAACS. -
If you can get a resolution you can get an Act of Parliament.

Dr. COCKBURN. -
Very often you can, because you can get the standing orders suspended, and the Bill put through all its stages in one day. I do hope that the matter will not be further delayed, but that justice will be done in such a way as to
give free scope to the development of the industries of Australia generally, especially in those directions of production which our country constituencies are looking forward to with so much hope.

Sir JOHN DOWNER (South Australia). -

I would suggest that if all the words after the word "consent" are struck out, we might insert the following words:-

"of both Houses of the Parliament, expressed by resolution, declare the bounty or aid not to derogate from free-trade amongst the several states?"

That prevents the necessity of getting an Act of Parliament. A resolution is, I think, much more easily obtained than an Act of Parliament.

Mr. MCMILLAN. -

I am quite willing to accept your suggestion.

Mr. REID. -

I think it would be much better, if it is left to a resolution, not to raise any points as to what would or would not derogate from freedom of trade, because the sense of the House will be expressed on the resolution.

Sir JOHN DOWNER. -

With the consent of the committee, I will move that amendment.

Mr. REID. -

Stop at the word "Parliament." The two Houses will decide whether the bounty does or does not derogate from free-trade.

Sir JOHN DOWNER. -

I do not understand how.

Mr. REID. -

If that amendment is put in I do not know whether it may not be subject to review by some person professing to be aggrieved, and he might take the point before the High Court that it did derogate from freedom of commerce. We do not want any points raised on a resolution of the two Houses.

Mr. MCMILLAN. -

You want to leave it absolutely to the Parliament?

Mr. REID. -

Yes.

Sir JOHN DOWNER. -

I care very little about that. I thought it would be well if the Parliament had thrown on it the obligation of recognising that even it was not to do it unless it was prepared to take the responsibility of saying that the bounty did not derogate from free-trade. I think it would be better in the form I propose.

Mr. REID. -

We will take the risk.
Sir JOHN DOWNER. -

I will move it in that form now, and my right honorable friend can move to strike out the words to which he objects.

The CHAIRMAN. -

The honorable member cannot move an amendment until the other amendment is withdrawn.

Mr. MCMILLAN (New South Wales). -

I am quite willing to take what Sir John Downer proposes in substitution of my amendment as a better process, but I think he should leave out the latter part, because it is better to leave the whole thing to the Parliament, not for us to dictate. We are getting on very dangerous ground in making these conditions.

Sir JOHN DOWNER. -

All right, I will not move that.

Mr. McMillan's amendment was withdrawn.

Sir JOHN DOWNER. -

I beg to move-

That all the words after the word "consent" be omitted, with the view to the insertion in their place of the words "of both Houses of Parliament, expressed by resolution."

Mr. ISAACS (Victoria). -

This is only, to put it in very polite language, an Act of Parliament.

Mr. MCMILLAN. -

No.

Mr. ISAACS. -

Does any honorable member mean to tell me that there is any substantial difference between separate resolutions of both Houses and an Act of Parliament?

Sir JOHN DOWNER. -

A lot of difference.

Mr. HOWE. -

They would get it through both Houses in one day.

Mr. ISAACS. -

My honorable friends who question that statement know perfectly well that if the Houses are willing to pass a resolution to that effect, they are willing to read a Bill three times at once.

Mr. MCMILLAN. -

There is no practical difference.
There is no practical difference, so that I hope no honorable member will be misled by what appears to be a concession, but which is really none. It really means that whether the Parliament is or is not sitting the state cannot proceed by the mere consent of the Governor in Council, that is, the Executive authority of the Commonwealth, but that it must wait not only until Parliament does assemble, but until it has time to deal with the question. When it was under discussion before we had it very plainly put to us by some honorable members, that the Parliament for some years would probably not have time to deal with such a question. When we declared that we were willing to take this provision, subject to the Parliament annulling any bounty granted by the state, we were told-I think also by Mr. Reid-that that would be of no use, because the Parliament would be so engaged with Tariff questions and other questions necessarily to be dealt with at the initiation of the Federation that it could not pay any attention to such a question, and now, when we ask for this proposal to be carried as we put it, we are told-"Wait until you get the Federal Parliament to attend to it." That is simply illusory, and it means nothing more than that we cannot do it without the prior consent of the Federal Parliament. That means that we must give up the bounties for years, just at a particular time when, if they are required at all, we shall need them most.

Mr. MCMILLAN. -
Would the local Executive grant a bounty without appealing to the Parliament on it?

Mr. ISAACS. -
If the clause were worded as we desire to frame it, it would get the consent of the Governor-General in Council.

Mr. MCMILLAN. -

Mr. ISAACS. -
We could not, and that just emphasizes the difficulty I am speaking of. In granting this bounty as it is proposed by my honorable friends, we are to have all the trouble of first asking the state Parliament to do it, and then asking the Federal Parliament to consent to it, or, to reverse the process, getting the Federal Parliament to consent first, and asking the state Parliament to pass it.

Mr. MCMILLAN. -
The principle is, is this a matter for Parliament, not for the Executive?

Mr. ISAACS. -
Yes; but I only want the trouble of going to one Parliament to start with, and if the Federal Parliament thinks it is wrong, or any derogation from
freedom of trade and commerce, it is to have, of course, paramount power and jurisdiction to over ride it. It is perfectly idle to tell us that there is anything satisfactory to be done without leaving in the words "consent of the Governor-General in Council." I am not dealing with the provision to be submitted, by Mr. Higgins, because we have not reached that yet. I confine my observations to the proposal of Sir John Downer. It is no different from simply striking out the words "of the Governor-General in Council or," and we understand that if this amendment is carried it is absolutely worthless to us, because it means that we have to get two distinct Parliaments to consent to the bounty, and to wait for a very considerable time, as we have been told before, for years in all probability, before the Federal Parliament can deal with the question.

Mr. HOWE (South Australia). -
I think the delegation from Victoria should be very much obliged to the Premier of New South Wales for the offer of this concession. Coming from a smaller state, I look upon it with much fear, because we know what Executives are, and what Parliaments are. Victoria will be represented in the Federal Parliament by 24 members.

Mr. ISAACS. -
New South Wales by 26.

Mr. HOWE. -
And South Australia will have only seven representatives. Now 24 members can bring such pressure to bear on any Executive authority, or even a Parliament, as to obtain a concession which they would not listen to if asked for by seven men from South Australia. What we are giving now is a wonderful power to the large states as against the small states, but still, in the interests of peace and federation, if the Premier chooses to accept the offer of Mr. Reid I will submit.

Sir EDWARD BRADDON (Tasmania). -
I understand that the Premier of New South Wales has offered to accept this clause provided that the reference to the Governor-General in Council be struck out.

Mr. ISAACS. -
That is the whole clause really.

Sir EDWARD BRADDON. -
I hope that my right honorable friend (Sir George Turner) will remember that it was upon this rock we split, and split very terribly, when this matter was before the Convention on a previous occasion. If we had then taken a straight-out vote on the elimination of these words, I am confident that the Convention would have carried the proposal, but, unfortunately, when this objectionable phrase came to be put to the vote, some four or five members
in a moment of incaution, led away by their juvenile spirit and inexperience, assisted by their votes to keep in this particular portion of the clause, by which subsequently the clause came to be rejected. So that we had no straight vote upon the real issue, and I can only hope, now that the Premier of New South Wales has agreed to make this compromise, that Sir George Turner will accept it, and that we shall put an end to this matter.

Dr. QUICK (Victoria). -

I had not an opportunity of speaking on this clause when it was before the Convention at an earlier stage; but I now desire to express a hope that the Convention will favorably consider the proposals submitted by my right honorable friend and leader (Sir George Turner). I think that his demands on behalf of the colony of Victoria have been remarkably moderate.

Mr. KINGSTON. -

Hear, hear.

Dr. QUICK. -

And if honorable members would reflect on the attitude which he has assumed throughout the history of this Convention, I am sure they will agree with me that they ought to give special weight and attention to the request he has now made on behalf of this colony. Probably no colony in the Australasian group will suffer more through the surrender of the control of its fiscal policy to the Federal Parliament; and that is saying a great deal. And this small residuum of power to grant aids and bounties to small local industries which probably would not in any way come in conflict with the principle of freedom of trade among the states is all the concession he asks. There is hardly any necessity for inserting in this clause the amendment suggested by Mr. Higgins, that it should be subject to the condition that there shall be no derogation from freedom of trade and commerce, because the Governor-General in Council would not grant the power to allow bounties if it would have the effect of derogating from freedom of trade and commerce. That would be the guiding principle.

Mr. MCMILLAN. -

The matter in dispute is the question whether we should put into this Constitution that the Executive Government ought to have the right to decide on a policy.

Dr. QUICK. -

Just so. Well, I do not believe, in the first place, that the Executive Government would grant this concession unless it was absolutely certain that it would meet with the approval of the Federal Parliament. Unless it
was sure of parliamentary approval of the scheme the Executive would not interfere. Consequently, I see no harm in putting in that power. At the same time, I will express the hope that Sir George Turner will not jeopardize this clause by any false movement—that he will be prepared to accept any reasonable proposal which the majority of the Convention see fit to accede to, because I believe this: That in the end the sanction of the Governor-General in Council would depend upon the question as to whether its action would be approved by a majority in the Federal Parliament. I think Sir George Turner is entitled to go to a division on the question as to whether the consent of the Governor-General in Council should not be sufficient; but if he is beaten on that fairly in a division—a fair division; not a tactical division such as took place on a former occasion, when there was a collusion of opponents both of the Governor-General’s and the Parliament’s sanction—I hope he will consider whether it would not be advisable to accept the suggestion of Mr. Reid, namely, to insert "with the consent of the two Houses."

Mr. TRENWITH (Victoria). -

I would urge on my right honorable friend (Sir George Turner) to accept the suggestion of Mr. Reid. I do so for two reasons. One is that it appears to be offered in a spirit of compromise, which we ought to be glad to see at this late stage of the Convention, and another is, that I think it is the better proposal. I believe it will lead to the more rapid treatment of the question. My view is that it will be easier to get a resolution of the two Houses of Parliament than to get the sanction of the Governor-General in Council, because it will be no part of the work of the Commonwealth. The Government will be under no obligation to give this sanction, and consequently few Governments will take the responsibility of doing so, seeing that it may perhaps involve them in an adverse vote in Parliament. Therefore, after thinking the matter carefully out, I should prefer the resolution of the two Houses to the power of getting it from the Governor-General in Council. I think we may and will get it if there is no reasonable objection to it, and get it quickly, from both Houses of Parliament. But I think we will scarcely ever get it from the Governor-General in Council, because there is no spur to the Governor-General in Council to take this obligation upon themselves. It is no part of their Executive function, and the probability is that timid Governments will say—"Yes; possibly you make out a very strong case,

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but there is probably another side to the question; and if we grant you this permission there will be a discussion in Parliament where the other side will be heard, and we may find we are wrong." Therefore, I think, it is
highly improbable that any Governor General in Council will undertake the responsibility of sanctioning bonuses, while it is exceeding probable that both Houses-of Parliament would grant bonuses to which there is no reasonable objection with the utmost possible expedition.

Mr. BRUNKER (New South Wales). -

I have not risen to make a speech on this subject, but simply to my that I have continuously laboured under the impression that federation was to mean free-trade between the whole of the colonies. That being in accordance with my principles, I intend to adhere strictly to them, and it is not my intention to vote for bounties in any shape or form whatever.

Mr. BARTON (New South Wales). -

I should not like this matter to be voted on without reiterating my objection to any bounty being offered by a state. I take it that it is very hard for any bounty on production to be classed as a bounty which is not a derogation from freedom of trade. The effect of a bounty is practically the same as the effect of a moderate duty for protective purposes. I think that is demonstrable, and that it has been demonstrated. Those two things being equivalent, I object to any bounty being offered by a state on the production or export of goods under any circumstances whatsoever. Protectionist as I am, as regards the external importations of the Commonwealth, I believe that when you establish free-trade within the Commonwealth you should make that free-trade actual and real. I do not hold with the man who says-"Intercolonial free-trade, sir? Yes, if I can nullify the power of regulating trade and commerce by navigation. Intercolonial free-trade, sir? Yes, if I can nullify it by bounties. Intercolonial free-trade, sir? Yes, if I can nullify it by preferential railway rates." Now, if we are to have intercolonial free-trade in this Commonwealth, we should not attempt to open the door to its being interfered with by any manipulation of any sort whatever. That, I believe, is a strong objection. I shall adhere to it, and I am against this proposal in any shape or form whatever. I am against it for another reason. I do not think that it is a wise or a reasonable thing as between the states. Let us suppose that, upon a certain class of products, a particular state obtains the consent of the Parliament of the Commonwealth to the granting of a bounty. The Parliament may or may not agree. According to the form which this amendment takes, it is clearly in derogation of freedom of trade and commerce. But we can easily understand the Parliament giving the same favour (it may be with regard to that same class of products, or another) to another colony. And so the game goes on-the old game of better terms-and the door is at once ajar to corruption. The states that can afford the money may attain their object, and their production may be
stimulated by a regulation assented to by the Governor-General in Council and by the Parliament of the Commonwealth. So long as a state can go on giving bounties, it can play the game. But others which cannot afford the game will have to do without this stimulation, which is an inequality revolting to the principle of intercolonial free-trade.

Mr. REID (New South Wales). -

There is strength in the argument as put by my honorable friend (Mr. Barton), but the reason why I have deflected from my strong opinion in regard to this matter (which our friends from Victoria lay so much stress upon) is that, in the first place, if the resolution is carried as I suggest, the power of regulating a state bounty will rest in the Parliament; and, therefore, the power resting in the Parliament, and this Constitution delegating to the Parliament the power of offering bounties, there is nothing inconsistent with the main principle of the measure that the Federal Parliament, instead of finding the money itself, should in particular cases allow the state to offer a bounty. Now, sir, I do not at all suppose that the Federal Parliament will enter into such arrangements in any case which is a proper subject for federal application. That is to say, I do not at all apprehend that in any case the Parliament would consent to a bounty to encourage an industry which was being carried on in another state, or an industry which could be carried on in other states. In such a case, the Parliament would demand that the bounty should be uniform and co-extensive throughout the whole Commonwealth. But a care may arise—and it is on this ground that I assent—where the object is a local one, and in which there is no prospect of a similar development in any other part of the Commonwealth; and therefore a case in which the Commonwealth might refuse or neglect to act. Now, in such a case, why should not the state, if it is willing to bear the burden itself, come to the Federal Parliament and say—"We admit that this is not a federal matter, because the industry is an entirely local one, but we ask you to apply your power of

Mr. ISAACS. -

A Bill of this class.

Mr. REID. -

That is scarcely a logical remark, because this is a difficult matter. It will be more difficult to get a Bill passed through eight or ten stages in the two Houses than a simple resolution. If there is an active minority in a busy Parliament they can block the whole procedure when a Bill is put before them, because the opportunities are so numerous for obstruction; but in regard to a simple resolution the Government can compel it to be settled at one sitting or at two, and when it is passed on that one vote it is finally
dealt with. Surely we all know that that is an easier process than getting a Bill through its first, second, and third readings. The thing has only to be stated to commend itself. We are not offering our friends an unsubstantial concession. It is one that will have the benefit of certainty.

Mr. DOUGLAS (Tasmania). -

I should like to ask the leader of this Convention what would be the effect of carrying the amendment of Sir George Turner? If these words:-

This section shall not apply to any bounty or aid granted by any state with the consent of the Governor-General in Council or of the Parliament of the Commonwealth-

are inserted, it appears to me that they would form part and parcel of the Constitution of the Commonwealth. If that is the case, you could not alter them in any shape or way, except by altering the Constitution.

Mr. BARTON. -

Quite right.

Mr. DOUGLAS. -

But if Mr. Higgins' addendum is placed in the clause also, it would take away the difficulty with regard to that point, because it would be a proviso that the provision should not derogate from freedom of trade and commerce. If you do not add those words of Mr. Higgins', you nullify altogether clause 86A. You have now passed that clause, and given the Executive power to impose duties of customs and so on. But now it is proposed to dissolve all that and do away with it by Sir George Turner's amendment. Consequently you interfere altogether with the customs laws and with freedom of trade throughout the Commonwealth. I think I am right in the interpretation I put on the matter. I should like to know whether the leader is of the same opinion as myself upon the subject, because if so I shall vote against Sir George Turner's amendment? If it does not have that effect I am inclined to vote for it. If, however, it is to become part and parcel of the Constitution how are you to alter it I Parliament will have no control over it, and you cannot tell the effect of a bounty until it is put into operation. We will we take the case of Tasmania, where are interested in the sugar-beet industry. If you give a bounty for the production of sugar beet it may be good for one colony, but at the same time bad for another. And, therefore, it should require, in my opinion, the consent of the Parliament. It appears tome that these words "or of the Parliament of the Commonwealth" are only a draw.

Mr. REID. -

It will have to be by a resolution of the Houses.

Mr. DOUGLAS. -
There can be no objection if it is to come before Parliament for its sanction, but if the sanction is to be simply given by the Executive without the consent of the Parliament, I would strongly object to it. I hope the committee will not agree to such a thing, but I am quite in accord with what I understand the leader of Convention to say that this is an interference with commerce and trade.

Mr. BARTON (New South Wales). -

I understand the honorable gentleman wishes to know this: The power to deal with bounties after uniform duties are imposed being exclusive on the part of the Commonwealth Parliament, and this being a proviso upon that power, he wishes to know if this being carried will remain a part of the Constitution, so that it cannot be altered except by a referendum? That is a very clear question, and the answer is clear, that it cannot be altered without a referendum, as far as I can see. Then the position would be this: If this amendment is carried, a bounty can be granted with the consent of the Governor-General in Council, or with the consent of the Commonwealth. I do not see any power at all for the termination of that state of things that would arise under the bounty, so that, so far as the consent extends, the bounty will extend, and I do not see any power of determination.

HONORABLE MEMBERS. -

Oh, oh!

Mr. BARTON. -

Let me say, in further extension of the answer I gave, that there matters may be subject to conditions between the state and the Executive Government of the Commonwealth or the Parliament of the Commonwealth. If they are to be made the subject of conditions it is better to clear up doubts, instead of asking us to pass an amendment in these bald terms.

Mr. DEAKIN (Victoria). -

The fact that there was such a spontaneous outburst of disapprobation from all the honorable members on this bench is sufficient proof that every member felt that the statement made by Mr. Barton was not made in a judicial capacity or as leader of the House. If the words had been added which have since fallen from him there would have been no such outburst. It is surely enough to remind this House, which has been so often asked to trust the Federal Parliament, how preposterous is the suggestion that any state would ask the Parliament or Executive to consent to any proposal for the granting of an interminable bounty. That would be
too preposterous. Every bounty, however proposed, must be on terms, and for a certain time. Its granting will be subject to the wisdom and discretion of the Commonwealth Legislature or Executive.

Mr. BARTON. -

That is no answer to what I said.

Mr. DEAKIN. -

The complementary sentences the honorable member felt it necessary to add were sufficient justification for the expression of disapprobation. Without any intentional hostility that evidently conveyed to him that what was necessary was a complete statement, not an incomplete one. The honorable member had, unfortunately, preceded that by making a speech which displayed strong hostility to this proposal, and if this had been a party debate it would have demanded an equally strong reply. The honorable member spoke of corruption in Parliament as if this was the only proposal involving such a possibility, although the bookkeeping system affords far greater and far more frequent bargainings.

Mr. BARTON. -

I did not mean that it was the only one. I said it was unnecessary to multiply opportunities for corruption.

Mr. DEAKIN. -

If that was his intention it was perfectly right.

Mr. BARTON. -

That was the plain effect of my statement.

Mr. DEAKIN. -

It did not so appear to me. The proposal now submitted bears no antagonism to the principles of federation. It may be unpalatable to the honorable member, and he may be right in opposing it with warmth, but, at least, it is not anti-federal. As he is aware, it is one of those provisions which would recommend federation to many of the people of this colony, and of other colonies, and we are entitled to claim that the same courteous consideration which has been shown in every other matter should be shown in this. With reference to our expressions of dissent, there was no intentional discourtesy.

Mr. BARTON. -

I thought there was.

Mr. DEAKIN. -

It was not discourteous, although it might be taken as a reflection upon the attitude of the honorable member. We are indebted to him for so much, and he is obliged to submit to so much in this committee, that great consideration is due to him. I intend to pass away from that subject, trusting the Convention will regard this proposal, not in any heated fashion,
but as one of those concessions in the nature of a state right which may be
granted, and which the Parliament of the Commonwealth may be trusted to
see granted, without derogation from the principles on which the
Constitution is founded. It could only be employed to a very moderate
extent by any state. It ought not to be urged that this concession should not
be granted to those states which can afford to take advantage of it, because
there may be some other states which cannot afford to do so. No stronger
argument could be levelled against the entrance of wealthy states into this
Federation than to say that the more fortunate members of the group shall
be crippled in the development of their industries because some states
cannot keep pace with them. Such statements only raise unnecessary
obstacles to federation. I have pleasure in acknowledging the

spirit with which the Premier of New South Wales has dealt with this
question, more especially as it means on his part a real and significant
concession to views with which he does, not personally agree. The
suggestion which he has made might possibly be unanimously accepted by
this Chamber. We all feel strongly on this subject, and those who think
with me may desire to register our votes in favour of the proposal of Sir
George Turner. But having done that, if we be not successful, we should
recognise the spirit in which the Right Hon. Mr. Reid has made the
suggestion, and be pleased to adopt it.

Mr. DOUGLAS (Tasmania). -

If Mr. Deakin is of that opinion, why not at once accept the proposal of
Mr. Reid instead of saying if so-and-so is done so-and-so shall be done? If
it is the true principle, why not acknowledge it at once and put it before the
House? I would suggest to Mr. Reid that he should put his amendment in
writing, so that we may at once see the meaning of it and what is intended
by it. Mr. Deakin has surrounded the question with a lot of matter, but
there is nothing whatever in it. It simply means that you are to interfere
with what you have already done with regard to trade and commerce, and
to set it aside because a bounty has been, given by a state for carrying on
some particular trade or commerce which may be injurious, and which can
only be known to be injurious after it has been brought into operation for
some time. Let us have the amendment of Mr. Reid, and then we shall
know what we are about. If it is determined that Sir George Turner will not
alter his amendment, we shall have an opportunity of falling back upon Mr.
Reid's amendment.

Mr. REID (New South Wales). -

I think my honorable friends are quite entitled to test the feeling of the
Convention on this proposition in the form to which they attach so much
importance. It might well be that many thousands of their electors would consider they were neglecting their duty if they did not test the feeling of the Convention on this matter. So far as I am concerned, it will not make the slightest difference to my vote. If my friends are defeated, I will cordially support the proposition in the form which it will then take.

Question-That the words "of the Governor-General in Council or of the Parliament of the Commonwealth" proposed to be omitted, stand part of the amendment-put.

The committee divided-

Ayes ... ... ... ... 22
Noes ... ... ... ... 19

Majority against Sir John Downer's

AYES.
Cockburn, Dr. J.A. Moore, W.
Deakin, A. Peacock, A.J.
Dobson, H. Quick, Dr. J.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Gordon, J.H. Venn, H.W.
Grant, C.H. Walker, J.T.
Hackett, J.W. Wise, B.R.
Higgins, H.B. Zeal, Sir W.A.
Holder, F.W.
Kingston, C.C. Teller.
Lyne, W.J. Isaacs, I.A.

NOES.
Abbott, Sir J.P. Howe, J.H.
Barton, E. Leake, G.
Braddon, Sir E.N.C. Lewis, N.E.
Briggs, H. McMillan, W.
Brown, N.J. O'Connor, R.E.
Brunker, J.N. Reid, G.H.
Carruthers, J.H. Solomon, V.L.
Douglas, A. Symon, J.H.
Fysh, Sir P.O. Teller.
Glynn, P.M. Downer, Sir J.W.

Question so resolved in the affirmative. Sir George Turner's amendment again, submitted, viz.:-

That after the second paragraph the following words be inserted:-"This section shall not apply to any bounty or aid granted by any state with the
consent of the Governor-General in Council or of the Parliament of the Commonwealth."

The CHAIRMAN. -

Does Mr. Higgins now wish to move his amendment?

Mr. HIGGINS (Victoria). -

May I explain that I understood the Hon. Mr. Walker only voted for the last proposition on the condition that I moved my amendment, and I should feel it a breach of faith to him if I did not move it. At the same time, if my honorable friend can release me from that condition, I shall be very glad. I must say I think the words as they stand now will leave the matter absolutely with Parliament, and Parliament is perfectly certain not to allow a bounty which would interfere with trade. I think, Mr. Chairman, you Will understand the position I am in. I, in fact, thought the effect of the last vote would be against us. So far as I am concerned, I feel bound in honour to move my amendment, unless Mr. Walker sees fit to release me.

Mr. WALKER. -

I must ask you to keep your promise, sir.

Mr. HIGGINS. -

Then, sir, I move-

That the following proviso be added to the amendment:-"Provided that the bounty or aid has not the effect of derogating from the freedom of trade or commerce among the several states.

Sir GEORGE TURNER (Victoria). -

I should like to point out that if we add the words proposed the clause will be rendered nugatory. When people, who are going to enter into some new industry, and are getting assistance from a bonus, feel that after they have spent their money, by the time the bonus is payable, any individual may apply to the High Court, and have it declared that, although the Government of the day, or even the Parliament of the Commonwealth, gave consent, yet that the bonus was in derogation of freedom of trade and commerce, no man will be idiotic enough to spend his money in endeavouring to develop any industry. If these words are added, I say unhesitatingly the benefit the Convention has just given us will be absolutely worthless.

Mr. REID (New South Wales). -

I must say I feel bitterly disappointed that the matter has assumed its present complexion, I would have been glad if the question had gone in the form I suggested. At the same time, my friends were perfectly right in taking the vote they did. I only express my profound disappointment that
we are now brought face to face with a matter which we must treat as vital. I must treat as a vital matter a proposal that, after we have all gone into this Commonwealth on equal terms, risking our fiscal policies, a power should be centered in the Federal Executive which the Commonwealth itself has not got. The Commonwealth Parliament is bound down not to pass any law that derogates from freedom of trade and equality of production. If Parliament is bound down to that principle, how can we with our eyes open give the Executive Council power to violate the vital principles of the Constitution? That is asking us to go too far. I deeply regret, in the interests of my right honorable friend's own views, that the matter has assumed a complexion under which it cannot be allowed to pass without notice. The right honorable member very frankly and straightforwardly, as is his custom, tells us "This is no good to us unless it violates the equality of Australian production and Australian free-trade. It is no good to us unless it puts our people at an advantage compared with the position of the producers of the other parts of Australia."

Sir GEORGE TURNER. -

I did not say anything of the kind.

Mr. REID. -

Then why not put in the words?

Sir GEORGE TURNER. -

Because no one will spend his money if he has a fear of this sort.

Mr. REID. -

It is an extraordinary thing that the Constitution should be able to bear the strain of these rules, but that the Executive Government and the honorable gentlemen who support the amendment cannot do so. This will not do. It is not our fault that the matter has got into this position. I was anxious to abstain from any antagonism to my right honorable friend, because I see cases in which the provision would operate harmlessly; but I want the protection of Parliament behind it to guarantee that what is done shall be done in the light of day, and with the approval of the representatives of Australia. But if what is to be done is to be done in the Minister's room, without the knowledge of the representatives of the people, and this condition—that the bounty is to be fair and equal to all Australia—is not to be added, the proposal is too dangerous. The right honorable member asked—What is the use of my 24 votes, and the influence they have, over a Government if your 26 votes can block them? "That is to say, our 26 votes are to be kept in the dark while the right honorable member's 24 votes are to get their way with the Executive Government. That sort of thing will not do in this Constitution. I shall have
to vote against the proposal in any case. I utterly repudiate the suggestion that the Executive authority should be allowed to do these things behind the back of Parliament as an unwholesome suggestion, and one that is contrary to the spirit of the Constitution. But if the proposed safeguard is not put in, the proposal will be deeply objectionable. Honorable members opposite are honestly and frankly endeavouring to secure a concession from us which they feel will be of service in recommending the Bill to the people of Victoria. For that reason I do not complain of their action. But I must point out that the susceptibilities of the other colonies must be considered when the position is so unequal.

Mr GORDON (South Australia). - Although I voted with the right honorable member (Sir George Turner) and the honorable and learned member (Mr. Isaacs) just now, it was with a view to supporting the amendment of the honorable and learned member (Mr. Higgins). That amendment leaves it open, as I think it ought to be left open, for bounties for export to be allowed, but it prohibits bounties which would interfere with the freedom of trade between the colonies. Such bounties would be anomalous, and under a Constitution of this kind could only be described as monstrosities.

Mr. LYNE (New South Wales). -

I do not think there is anything at all in the statements of honorable members that the Executive Government is likely to do anything that will not be approved by the Parliament. In my opinion, it is just as safe to leave an important matter of this kind in the hands of the Executive Government as in the hands of the Parliament, because every one who knows anything about parliamentary government must know that if a Ministry does anything against the wishes of Parliament it will be sent out of office.

Mr. GORDON. -

Suppose you had a dying Government, or the Parliament was just about to expire.

Mr. LYNE. -

If the Ministry did something which the Parliament did not approve, Parliament would reverse it.

Mr. GORDON. -

Not after the money had been expended.

Mr. BARTON. -

If the Governor-General in Council granted a bounty for any industry and made it binding, it would not matter whether the Parliament tried to reverse their action or not, the money would have to be paid.

Mr. LYNE. -

It is possible to insert a provision enabling the action of the Ministry to
be reversed. I am not a very strong advocate of bounties; I prefer to foster industries by a system of protection. But I should like to put this case to the leader of the Convention. As honorable members know, there are in New South Wales large deposits of iron ore. There are also large deposits of iron ore in Tasmania, but I do not know that there is any iron ore in Victoria. The other day it was proposed by the Government of New South Wales to give a bonus for the development of the iron industry of the colony. Now, suppose that, under the Commonwealth, the states of New South Wales and Tasmania both desired to give a bonus for the development of the iron industry, and some one took exception to their proposal upon the ground that it would interfere with freedom of trade—could it not be held by the High Court that it would in some way derogate from freedom of trade? The effect of a bonus of this kind might be that, in Victoria, a large quantity of the iron imported, instead of coming from outside the Commonwealth and having to pay duty, might come across the border from New South Wales, or might come from Tasmania. Would it not therefore be held that the New South Wales and Tasmanian bounties were infringing the clause relating to freedom of trade?

Mr. BARTON. - If granted by the Commonwealth?

Mr. LYNE. - No, if granted by the states I have named, with the consent of the Commonwealth.

Mr. BARTON. - With the consent of the Governor-General in Council?

Mr. LYNE. - That means the consent of the Parliament.

Mr. BARTON. - The honorable member's question is a bit of a conundrum. He must give me three guesses.

Mr. LYNE. - I do not think the honorable and learned member should answer me in that way.

Mr. BARTON. - Well, I tell you honestly that it is a difficult question to answer.

Mr. LYNE. - I want to know if, under these circumstances, an appeal to the High Court would be likely to be sustained? A case such as I refer to is bound to crop up if bounties are given.
Mr. HIGGINS. -

There is already in the Bill power to give bounties for iron.

< Mr. LYNE. - I know that-Commonwealth bounties.

Mr. HIGGINS. -

No, state bounties. Any state may give a bounty for the production of iron.

Mr. LYNE. -

I am putting a case in which the Commonwealth does not give a bounty, but where the state asks the Executive Government and the Parliament to allow it, to give a bounty. In that case, if these words be added could not the granting of the bonus be prevented by some one applying to the High Court, and saying that it was in derogation of the freedom of trade on the ground that it would interfere with the importations and with the revenues of those colonies which had no iron ore. I am not very anxious about the granting of bonuses, because I would rather see protection given in another way, but I like to look at a question in its practical aspects.

Mr. ISAACS (Victoria). -

I would like to point out what I think would be the effect of this proposal. If I thought that any injustice would be done to New South Wales, I would not press so strongly the absolutely just claims of Victoria.

Mr. HOWE. -

You do not consider the other colonies.

Mr. ISAACS. -

I leave the delegates from the other colonies to speak for themselves. This, is one of the first instances in which Victoria has had justice meted out to it. I hope that the words proposed by Mr. Higgins will not be inserted. As I understand the question, if the clause stands, a state may grant a bounty, provided it gets the consent of either the Governor-General in Council or of the Parliament, and that means that clause 86B, which gives exclusive power to the Commonwealth, after the imposition of uniform duties of customs, to grant bounties, shall not apply in this particular case. We do not even by the insertion of the clause too which we have agreed take away the paramount authority of the Federal Parliament under clause 52 to pass a law overriding the state bounties. It is the exclusive jurisdiction that has been limited, and I cannot understand how the Right Hon. Mr. Reid can see any danger whatever in granting this power to any colony to develop its resources, when he knows, or ought to know, that the Federal Parliament, if it is shown that any injustice is done by the act of the Governor-General in Council, can, as Mr. Lyne has said, reverse the whole proceeding. The
state that takes a bounty on the assent of the Governor-General in Council takes it with the full knowledge of the risk that attaches to that operation. I cannot understand how the thousands of people in this colony could be induced to overlook the absence of such a provision as we have just inserted in the Bill. I do think that the time has not only come, but has far advanced, when we should make a strong stand in support of the industries of the colony. If this provision stood irrevocably in the way of the freedom of trade between the colonies if it stood in the way of the Federal Parliament doing what it thought to be just-then I should feel bound to yield in the interests of the larger cause of federation. But that is not the case. In the interests of federation we should not alienate thousands of votes in this colony. Not only Victoria, but every colony that desires to grant a bounty, is protected by this provision. If the Federal Parliament can be induced to give its assent to such a proposal as we are asked to accept as a full solution of this difficulty, then the Federal Parliament can equally be asked, where it sees that there is no injustice in the proposal, to reverse it. I submit, therefore, that we should adhere to the amendment. The words suggested by Mr. Higgins would completely annul all we have done. They say, in effect, that if a bounty assented to by the Federal Parliament or the Governor General in Council derogates from the freedom of trade, it is to be null and void. That means that any bounty given to the coal industry or to the sugar-beet industry, however assented to, would, in that case, be null and void. I hope, therefore, that Mr. Walker will consent to the amendment being withdrawn. If not, I shall feel compelled to vote against it. I would ask those honorable members who voted with us to support us in preventing the insertion of these words, which would be disastrous to the whole clause.

Mr. WALKER (New South Wales). -

All that I desire to say is that if we had not had the proviso referred to we should have been on the other side, and the motion would have been defeated.

Question-That the words of Mr. Higgins' proviso, viz.:-'Provided that the bounty or aid has not the effect of derogating from freedom of trade or commerce between the several states," proposed to be added be so added-
put.

The committee divided-

Ayes ... ... ... 29
Noes ... ... ... 12
Majority for Mr. Higgins' amendment. ... ... 17

AYES.
Sir GEORGE TURNER (Victoria). -

I desire to place the somewhat difficult position in which I find myself before the committee for further consideration. The clause as it stands is one, as I pointed out a few minutes ago, which I think worse that useless. The difficulty I pointed out before was that no person would invest his money in any industry where he was to get a bonus and would rely on the bonus, if at any time any individual could go to the High Court, and have a declaration that, in the opinion of that court, no matter what the Parliament might think, it was in derogation from freedom of trade and commerce.

Mr. WISE. -

It will allow you to give bounties for exports, which is what you want.

Sir GEORGE TURNER. -

Bounties on exports, we are always told, are bounties on production.

Mr. WISE. -

They do not derogate from freedom of trade.
Sir GEORGE TURNER. -

My right honorable friend (Mr. Reid) made an offer that, instead of having the consent of the Governor in Council or the Parliament of the Commonwealth, the latter requiring an Act to be passed, it would be sufficient to have a resolution of the two Houses. I quite agree with him that a resolution is much more easily obtained than an Act. Experience must teach all of us that that is so, no matter how simple the Act may be. Under all these circumstances, I have to choose the less of two evils. I believe that a bonus, with a resolution of two Houses, is not of very much use. But I believe it is of some use, and far more use than anything which the colony of Victoria can get under the clause as it stands.

Mr. REID. -

There is no doubt about that.

Mr. LYNE. -

Could not some one take exception before the High Court to a resolution in the same way as he could to an Act of Parliament?

Mr. WISE. -

Not if it is within the Constitution.

Sir GEORGE TURNER. -

In the one instance we have the matter staring us in the face as a direct instruction, in the other it may not be free from doubt. However, so far as I am concerned, if the committee will assist me out of the difficulty I feel I have got into, by doing what has been done in other cases—by allowing this matter to be reconsidered—I shall be glad, as I wish to accept the less of what I regard now as practically two evils, the offer which has been so freely made by the Premier of New South Wales. I felt somewhat inclined myself to have accepted, it but there were differences of opinion, and I think it will be admitted that, in our own interest, we were bound to show the people of Victoria the feeling of the Convention. The feeling of the Convention has been shown, and I do not think there is any desire now to give us less than it was prepared to give us a few minutes ago. If the Convention will be good enough to retrace the step it has taken, and to allow the suggestion made by Sir John Downer to be inserted, I shall be very glad to accept it, and consider that the Convention has treated us as fairly as it was possible to do under the circumstances.

Mr. OCONNOR (New South Wales). -

With the view of accepting the suggestion of the honorable members which I think will commend itself to the feeling of the Convention, I beg to move—

That the Chairman report progress, and ask leave to sit again when he has obtained an instruction to the committee on this subject.
The motion was agreed to.

Progress was then reported.

Mr. OCONNOR. -

I beg to move-

That the standing orders be suspended in order that an instruction may be given to the committee.

The motion was agreed to.

Mr. OCONNOR. -

I beg to move-

That it be an instruction to the committee that they have leave to reconsider immediately clause 86B.

The motion was agreed to.

The Convention then resolved itself into committee of the whole for the further consideration of the Bill.

The CHAIRMAN. -

I have to report that an instruction has been given to the committee granting it leave to reconsider the question as to the insertion of new sub-section (2) in clause 86B.

Sir JOHN DOWNER. -

I beg to move-

That the clause, as amended, be amended by the omission of all the words after the word "consent," with the view to the insertion in their place of the words "of both Houses of the Parliament, expressed by resolutions."

Mr. HIGGINS (Victoria). -

As I was the author of the proviso, I will give every help to the settlement of the difficulty which Sir George Turner has referred to. I felt that he could not have carried his original proposal without the assistance of five honorable members who were in favour of the proviso, but inasmuch as he thinks-and he knows better than I do-that he will get more help in what he wants by accepting the suggestion of Mr. Reid, I will give him every help I can.

The amendment was agreed to.

Sir George Turner's amendment, as amended, was then agreed to, as follows:-

This section shall not apply to any bounty or aid granted by any state with the consent of both Houses of the Parliament, expressed by resolutions.

Clause 89. - So soon as uniform duties of customs have been imposed, trade and intercourse among the states, whether by means of internal
carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any state, or into any colony or province which, whilst the goods remain therein, becomes a state, shall, on thence entering another state within two years after the imposition of such duties be liable to the duty (if any) chargeable on the importation of such goods into the Commonwealth less the duty (if any) which was paid in respect of the goods on their importation.

Mr. ISAACS (Victoria). -

I move-

That the clause be amended by the addition, after "free" (line 5), of the words "from taxation or restriction."

This is a matter of the greatest importance; it is one of the most important clauses in the Bill, because it materially affects the trade and commerce clauses. Honorable members will recollect that as it stood originally, it ran-

So soon as uniform duties of customs have been imposed, trade and intercourse throughout the Commonwealth, whether by means of internal carriage or ocean navigation, shall be absolutely free.

That has been altered now to "among the states," instead of "throughout the Commonwealth." But, at present, it is open to the very serious objection that, while it says "absolutely free," it does not say free of what. Now, this is a clause respecting which Sir Samuel Griffith made some very important suggestions and observations. I had occasion to refer to them before, and I will now refer to them again, with the consent of the committee. At page 354 of the Victorian Blue-book, Sir Samuel Griffith writes-

I venture before passing from this subject to suggest a doubt whether the words of section 89, which are the same as in the Draft Bill of 1891, are in their modern sense quite apt to express the meaning intended to be conveyed. It is clearly not proposed to interfere with the internal regulation of trade by means of licences, nor to prevent the imposition of reasonable rates on state railways. I apprehend that the real meaning is that free course of trade and commerce between different parts of the Commonwealth is not to be restricted or interfered with by any taxes, charges, or imposts. Would it not be better to use these or similar words?

Now, I feel we ought to adopt Sir Samuel Griffith's suggestion, and I think that such an amendment as I have circulated, namely, "from taxation or restriction," ought to be added to the clause. I do not suppose there will be any objection to the principle I am advocating, but it is certainly dangerous to leave the clause as it now stands, because it is not only free from taxation or restriction, which it is our intention to confine it to, I take
leave to say, but it operates in various ways-free from licences of all sorts, and free from various considerations. I do not think I need enlarge on the matter. I apprehend there will be no objection to putting in these words, unless other and better words can be found.

Mr. SYMON. -

Will not "restrictions" cover your amendment?

Mr. ISAACS. -

I meant, to say licences for carriers, and so on, undoubtedly should be included, but I think that there ought to be no restrictions whatever, intercolonially.

Mr. OCONNOR. -

What do you mean by restrictions"?

Mr. ISAACS. -

Any restrictions on entry into a colony of persons or goods.

Mr. LYNE. -

Would not that include preferential rates?

Mr. OCONNOR. -

Would that interfere with the power of the police to prevent diseased goods and diseased animals entering a state?

Mr. ISAACS. -

No, because clause 106, which gives the power the honorable member speaks of, provides-

After uniform duties of customs have been imposed, a state may levy such charges on imports or exports, whether between states or otherwise, as may be necessary for executing the inspection laws of the state, and so on. So there is sufficient power there to meet the case the honorable member refers to, and I think my amendment is absolutely necessary to prevent any misunderstanding hereafter. I spent some considerable time in Adelaide in placing these views before the Convention, and I am very glad to find my views supported by so eminent an authority as Sir Samuel Griffith. I am very pleased to adopt his suggestion by proposing the insertion of words which, I think, carry out his ideas.

Mr. LYNE (New South Wales). -

Would not Mr. Isaacs' amendment cover charges on the railways-that is, railway rates?

Mr. ISAACS. -

No, they are charges for services.

Mr. LYNE. -

Well, if you impose a rate which may be a restriction rate in any way it
seems to me that it would come under this provision.

Mr. ISAACS. -

Oh, yes, a restriction rate.

Mr. LYNE. -

Sir Samuel Griffith said that it was intended to include taxes, charges, or imposts.

Mr. ISAACS. -

In that sense I should say "Yes," to the honorable member's question.

Mr. LYNE. -

Would not that interfere with the whole question which we discussed at such length regarding what we termed our long-distance rates? I certainly think it would. I think that the legal minds of the Convention should look into this matter, because I am very much afraid it is another way of getting over what was fought, and successfully fought, before on this question of differential rates. I should like the leader of the Convention to give his attention to this matter. It seems to me that the proposal made by Mr. Isaacs in this clause would interfere with the railway rates, which we discussed for such a considerable time. I thought so from hearing what Sir Samuel Griffith wrote in reference to it. Now, if it is only to include a duty that might have to be paid, or a licence or anything of that kind, I do not object to the words being inserted; but if it is to interfere at all in any way with, or give a direction as to, rates to be charged on railways, in order to overcome what has already been decided, we have no right to pass the amendment. I ask the leader of the Convention to see that it will not have that far-reaching effect. If a competent lawyer tells me it will not, I must rely on his opinion.

Mr. ISAACS. -

If you put on a rate which is higher for New South Wales produce than the rate for Victorian produce it would interfere with that.

Mr. LYNE. -

Supposing a differential rate is charged oil to Albury or Hay, and the same rate is not charged from Melbourne right through, but may be charged from Albury, the question to my mind is whether this proposal does not cover that differential rate, it being a low rate where you get a great distance from the metropolis. I should like the matter to be examined, and some opinion given.

Mr. REID (New South Wales). -

Before Mr. Barton answers the question that has been put to him-I am not going to address myself to that-I wish to point out how dangerous are such words as Mr.
Isaacs proposes to insert. This clause touches the vital point for which we are federating, and although the words of the clause are certainly not the words that you meet with in Acts of Parliaments as a general rule, they have this recommendation, that they strike exactly the notes which we want to strike in this Constitution. And they have also the further recommendation that no legal technicalities can be built up upon them in order to restrict their operation. It is a little bit of laymen's language which comes in here very well.

Mr. BARTON. -

It is the language of three lawyers.

Mr. ISAACS. -

And one of the lawyers who helped to frame the clause now finds fault with it.

Mr. REID. -

The learned gentlemen who drafted this Bill have put in this clause words which we do not often read in Acts of Parliament, but they are absolutely the best words which could be used here. And the moment we begin to define we have to define what the definition means, and then we involve everything in the necessary amount of confusion. The thing in view in this clause is not so much the goods that will pass one way or the other, but that the relationship between those who deal in commodities, and send them from port to port within the Commonwealth, shall not be hampered by laws or officers of the Commonwealth in the sense of interfering with absolute equality of intercourse. Words of this type exactly hit this requirement, and I do not think any one can mistake their meaning.

Mr. ISAACS. -

They are very plain, I should say.

Mr. REID. -

I prefer this keynote to the attempt to establish what I think is a wrong keynote in its place.

[The Chairman left the chair at twenty five minutes past eleven o'clock p.m. The committee resumed at ten minutes to midnight.]

Question-That the words "from taxation or restriction" be added at the end of the first sub-section-put.

The committee divided.

Ayes ... ... ... ... 10

Noes ... ... ... ... 20

Majority against amendment.. 10

AYES.

Braddon, Sir E.N.C. Lewis, N.E.

Cockburn, Dr. J.A. Quick, Dr. J.
Deakin, A. Turner, Sir G.
Fysh, Sir P.O.
Grant, C.H. Teller.
Holder, F.W. Isaacs, I.A.
NOES.
Abbott, Sir J.P. Lee Steere, Sir J.G.
Brunker, J.N. O'Connor, R.E.
Carruthers, J.H. Reid, G.H.
Douglas, A. Solomon, V.L.
Fraser, S. Venn, H.W.
Glynn, P.M. Walker, J.T.
Gordon, J.H. Wise, B.R.
Hackett, J.W. Zeal, Sir W.A.
Hassell, A.Y.
Kingston, C.C. Teller.
Leake, G. Barton, E.

Question so resolved in the negative.

The CHAIRMAN. -

The question is-That the clause stand part of the Bill.

Mr. ISAACS (Victoria). -

I take the opportunity of explaining how very important this matter is. I mentioned before that I was here when there were only six members in the House, and a division came on very suddenly. I should like to point out the effect of the clause as it now stands. Sir Samuel Griffith has argued that there ought to be inserted words to make the matter distinct.

Mr. DOUGLAS (Tasmania). -

I rise to order. The clause has been settled.

The CHAIRMAN. -

No; the question is that the clause stand part of the Bill, the amendment having been negatived.

Mr. ISAACS. -

I was proceeding to show what the effect would be if the clause were adopted as it now stands. There is no similar clause in the American Constitution. Congress has power if it chooses to put on duties as between states. Congress would, of course, never do that, but Congress may grant bounties or anything of the kind, because there is nothing in the Constitution to prevent it. But this clause, as it now stands, has been shown by Sir Samuel Griffith to be faulty.

Mr. WISE. -

That was before the amendment.
Mr. ISAACS. -

But the effort to amend it was unsuccessful. Probably, and possibly, the result is that it may be held the Victorian railway rates, being less for Riverina produce than for Victorian produce, do not leave trade among the states free. It may be held that these rates attract the trade from the Riverina, while the New South Wales rates do not interfere with the freedom of trade and intercourse between the states, because they are confined to their own colony. That puts Victoria in a grossly unfair position. Instead of leaving the operation of the railway rates to the Inter-State Commission or the Federal Parliament, before any step is taken by the commission-if a step is ever taken-the Victorian railway rates would be held to be in conflict with the trade and commerce clause, while the New South Wales railway rates would not. Clause 89 provides that trade and intercourse between the states, whether by means of internal carriage or ocean navigation, shall be absolutely free. Now, the carriage of goods by a state might be such, if the rates for New South Wales produce were higher than for Victorian produce, that there would be a derogation of freedom of trade. If the Victorian Government put on higher rates for New South Wales produce than for Victorian produce, those rates would instantly be put down as being in derogation of freedom of trade, on the ground that New South Wales trade was restricted.

Mr. BARTON. -

Mr. Grant's clause seems to meet all this.

Mr. ISAACS. -

No.

Mr. BARTON. -

It makes the rates apply equally to the goods of the other states.

Mr. ISAACS. -

But my honorable friend will see that clause 95A provides "That nothing in this Constitution shall prevent the imposition of such railway rates by any state as may, in the opinion of the Inter-State Commission, be necessary for the development of its territory, if such rates apply equally to goods from other states." It is plain the Victorian rates do not apply equally to goods from other states, because a lower charge is made for New South Wales produce than for Victorian produce. Before anything is done by the Inter-State Commission the 89th clause steps in and favours New South Wales at the expense of Victoria by prohibiting Victorian rates. Immediately the uniform customs are imposed New South Wales is left with a free hand. In fact, Sir John Downer urged that in effect some time ago. He urged that we could not carry on the contest between New South Wales and Victoria, because of the language of clause 89, which imposes
this disability against Victoria and leaves New South Wales free. That is a one-sided position, and I therefore think the clause is utterly wrong.

Mr. REID. -

I do not think the clause would have that effect.

Mr. ISAACS. -

I feel little doubt but that it would so be held. In fact, Sir John Downer urged that, and I believe he was right. It might be held, and probably would, that the Victorian rates, inasmuch as they attracted trade from Riverina, as a magnet attracts iron, do not leave trade from Riverina free. Sir John Downer is now present, and he will remember urging clause 89 as having that effect. I am glad to see he now assents to my view. The clause is, therefore, a prohibition on Victoria from continuing the contest, while it leaves New South Wales absolutely free. That is not a position we should be placed in.

Mr. WISE. -

Is it not taking the line of the least resistance?

Mr. ISAACS. -

That might be if the line were the natural line of least resistance. But we can be prohibited by the clause from doing it. I do not care what words are inserted so long as we are fairly treated and free from restriction.

Mr. REID. -

Suppose you decided to carry produce free, would you not be carrying out in the noblest possible way the provision that trade should be absolutely free?

Mr. ISAACS. -

If that is so, I would like some one to point out any reason why we should not have these words in. The leader of the Convention appears to think that the words which I read before the supper adjournment tell against my argument, but I do not think that is so.

Mr. WISE. -

How can you restrict trade by offering advantages for trade?

Mr. ISAACS. -

When we were debating the railway question we were told time after time that trade would not be left free if we persisted in our preferential rates.

Mr. BARTON. -

Are not preferential rates fairly described, not as a derogation from freedom of trade, but as a derogation from equality of trade?
I urged that for a considerable time, but the honorable member (Sir John Downer) pointed out very distinctly that, in his opinion, clause 89 would have the effect of preventing Victoria from charging preferential rates. The danger which I see is a real one, and I have not heard a single good reason given for the latest vote which Victoria has had to suffer.

Mr. GRANT (Tasmania). -

I think that this discussion is taking place at an inconvenient stage. It would be more convenient if we discussed the question of railway rates on clause 95A. There can be no doubt that the intention of the Bill as framed is to do away with preferential rates. The only difficulty that appears to trouble the Attorney-General of Victoria is that there may be an interregnum before the powers of the Inter-State Commission can be called into question. There is a difficulty upon that point. It was a difficulty I foresaw, and I was opposed to the appointment of an Inter-State Commission. Directly the Constitution comes into force all its powers should apply. From the provisions of clause 95A, it would appear that the Inter-State Commission may have to be invoked to prevent the imposition of preferential rates, though there can be no doubt that the intention of the Bill is that preferential rates should be entirely done away. The Attorney-General of Victoria seems to advocate preferential rates.

Mr. ISAACS. - No. What I want is to put both colonies upon the same footing.

Mr. GRANT. -

Well, it seems to me that a technical question like this would be better argued upon the clause to which I have referred. Victoria must take the risk of having her preferential rates disallowed. We must all take the consequences of the Bill, because ultimately we shall gain great advantages from it.

Mr. ISAACS. -

We are willing to take the same risks as are taken by the other colonies.

Mr. BARTON (New South Wales). -

I cannot see any particular difficulty about this matter, except so far as intercolonial free-trade may be an irritating thing. I cannot apprehend the difficulty that my honorable and learned friend seems to be suffering under. The clause provides that-

So soon as uniform duties of customs have been imposed, trade and intercourse among the states, whether by means of internal carriage or ocean navigation, shall be absolutely free.

Do we mean that, or do we not? Do we mean that trade and intercourse is to be absolutely free, or is it to be free only sub modo? Each state is left to deal with the internal regulation of its own traffic. A state is not interfered
with except when it usurps the Commonwealth power of regulating trade and commerce between the states. What advantage does any state seek to gain beyond this? I cannot understand why, at every stage, we should be told that intercolonial free-trade is a good thing so long as you let us do this, or that, or the other. Is intercolonial free-trade a good, or is it a bad thing? Is it a bad thing unless you have as many obstacles in its way as you have toes and fingers? I have said before in this Convention that I am a protectionist, but I admit that unless you have free-trade throughout the Commonwealth the Federation will not be worth a snap of the fingers.

Mr. ISAACS. -

No one objects to that.

Mr. BARTON. -

No one objects to my statement of that principle, but when it is laid down in so many words in the Constitution, it seems to cause a shrinking of the sensitive plant within honorable members. I do not know why intercolonial free-trade, if it is essential to federation, should be objected to when it is provided for in the Constitution in so many words. Why should we have all these qualifications?

Mr. ISAACS. -

I only ask for the words from taxation or restriction."

Mr. BARTON. -

No one imagines that intercolonial free-trade means such a thing as a freeing of traffic from payment for services rendered for the conveyance of goods and passengers. Yet it is out of this difficulty that all these arguments seem to arise. There is nothing in this clause to prevent anything done by way of service from being paid for, whether it is by a state or by a common carrier. What then is the trouble? I do not find any way out of the difficulty in the words of Sir Samuel Griffith. He says that the real meaning is that the course of commerce shall not be restricted by taxation charges or imposts, and that it would be a good thing to use these or similar words. Then he points out that the intention is to prevent interference with preferential or differential rates, and he suggests that certain words might be added. We have chosen our own words, and I hope the Convention will not consent to re-open the discussion at this stage. We have made it clear that the power of the Parliament extends to the making of laws with regard to trade and commerce. We have made it clear that the Commonwealth may prohibit any discrimination or preference such as would be unfair or unreasonable to any state. We have added that fair consideration shall be given to any financial outlay, and at the instance of the Hon. Mr. Grant we
have provided that where the traffic rates apply equally to goods from one colony and another, the fact that they are imposed for the purposes of internal development shall not make them bad. All these things apply equally to Victoria and New South Wales. It may be a cause of difficulty to Victoria that she has only to travel a distance by land or sea, shall be free. If these provisions have been inserted in the Constitution for the benefit of certain gentlemen, or, at any rate, at their instance, and if they say that they want otherwise to derogate from free-trade, are we not entitled to press the argument that this would not be a Federal Constitution if we acceded to their request? I am unable to see why principles of this kind, which have been inserted in the Constitution, should be waived or whittled away, or why they should be made subject to any qualification or restriction. The words which it is proposed to insert would be no good unless they qualified the doctrine that intercolonial free-trade shall be free, and that is why I cannot understand the honorable member who proposes them.

Mr. Reid (New South Wales). -

These particular words have nothing whatever to do with the question my honorable friend is concerned about. Let us suppose that immediately this law is passed, Victoria, having put up all these obstacles, removes them and facilitates the means of transit across the border, with the result of making trade flow from New South Wales into Victoria more readily, could New South Wales then complain that Victoria was infringing this doctrine? Then, again, ocean navigation is to be free. Let us suppose that there is a line of Melbourne owned steamers trading between Melbourne and Sydney, and that there is a line of Sydney-owned steamers trading between Sydney and Melbourne. They are competing with one another, and they gradually reduce their charges until at last the Victorian company carry goods free, while the Sydney company carry them at a ruinously low rate of, say, 1s. a ton. Could the complaint of the Sydney company that the Melbourne company was violating the spirit of free-trade by carrying these goods free be heard in the courts? The thing is ridiculous. Those words cannot cover limitations of that sort. The ordinary energies of human competition are left free, and the object of that is to make competition still freer than it has been. Anything that tended to make it freer would be within the spirit of the clause. If my honorable friend wants to interfere with the spirit of the clause so far as it relates to railways, he must do it under the provisions having reference to the railways. Now, I will suppose that the Victorian Railway department, after the Commonwealth is established, intimate that they will carry wool, and especially New South
Wales wool, from Wodonga, free. If there was no clause specially dealing with the subject, and giving the Commonwealth power to look into the matter, how could New South Wales go into court, and complain that her trade and intercourse was being conducted for nothing down to Melbourne? Why, sir, the answer is obvious. It may be very hard on you, but certainly we cannot call it foreign to the spirit of a clause which was designed to make trade and intercourse as easy, as expeditious, and as cheap as possible. When the ordinary rules of human competition are being interfered with, they cannot be interfered with under a clause which is designed to make them as free and as untrammelled as possible.

Mr. ISAACS (Victoria). -

I do not think I said a single word which justified the assertion that I quarrelled with the doctrine of intercolonial free-trade. Anything I said on that subject I think must have assured the Convention, at least those who listened to me, that my opinion was directly the opposite. If it was not for the belief that we should get intercolonial free-trade we should not be here to-day trying to form a Constitution. I do not think there is any one more loyal to that principle than I am. You were clearly warned by Sir John Downer-I think on the construction of the words, and by a good many observations that fell from my honorable friends, including, I think, the leader and Mr. Reid,

when we were talking on the question of preferential rates—that it was an interference with the true freedom of trade by having preferential rates. It was said just now that Victoria felt the pressure of it. Victoria does not. She will gain more by intercolonial free-trade than she will gain by anything else under this Constitution, and she desires to have it, and to preserve it to its fullest extent.

Mr. BARTON. -

Why don't you take it without qualification, then?

Mr. ISAACS. -

I am willing to accept intercolonial free-trade without qualification, but what I desire to say—and the leader has not in the smallest degree addressed one observation to the point I made before—is that the smaller rates charged by Victoria for produce, and having the effect of attracting that produce to the Victorian railways under a Victorian state law, would have the effect of interfering with the freedom of that trade amongst the states.

Mr. REID. -

Not in the sense of that clause at all.

Mr. ISAACS. -

Because it draws it from New South Wales to Victoria, whereas New
South Wales, in giving any rates she chooses for the Riverina produce, only draws it from Riverina to Sydney, and therefore not from one state to another.

Mr. BARTON. -
How can you be accused of derogating from freedom of trade by giving lower rates on your railways than somebody else does?

Mr. ISAACS. -
My honorable friend is now taking a slightly different view of this matter from that which be pressed on the Convention when the question of preferential rates was under consideration.

Mr. BARTON. -
No; I have spoken of these preferential rates as offending against the provisions against preferences. If you had not those provisions against preferences it would be debatable whether they interfered with intercolonial free-trade.

Mr. ISAACS. -
That surely gives the whole case away. We have provisions as to preferences, but that does not alter the provisions of this section. If you once admit that the absence of any statement as to preferences would make it possible to say that this was an interference with freedom of trade under this clause, this clause is not altered in the slightest degree by a reference to preferences in a clause somewhere else.

Mr. BARTON. -
I beg my honorable friend's pardon, that is not what I said. I dealt with these matters of prohibition against preferences in my speeches, and I said it was quite debatable whether a lower rate was an infringement of intercolonial free-trade.

Mr. ISAACS. -
I accept the honorable member's position, and taking his own view of that matter just expressed, and taking the decided view of Sir John Downer, and coupling with it in the last degree my own distinct view about it, I say we are doing wrong in not making it clear that Victoria is to be placed in no worse position than any other colony. If my learned friend wishes to put in any words in any part of that section, or in any part of the Constitution, which shall assure us on this point and make clear the doubt he has just expressed, I shall be amply satisfied.

Mr. BARTON. -
I only entertained this to the extent that I respected your opinion. I should not have entertained any doubt on the subject but for that.

Mr. ISAACS. -
I am much obliged to my learned friend for that remark, but his words
led me to think that be entertained that doubt; and certainly it appears to me we maybe told in future, when this comes into operation, you do not leave that trade free to go to Sydney, because you, by giving lower rates to Victoria, practically put a business pressure upon the persons in Riverina, who would otherwise send their trade to Sydney, to send that trade to Melbourne.

Mr. MCMILLAN. -
Let us get to the vote.

Mr. ISAACS. -
It is a most serious question. We have heard the Premier of New South Wales get up and talk about vital questions, and we have found the Convention in every instance yielding to him. If the Convention has not done so at once it has turned its back on its vote to do it immediately after. This is a question which concerns us so very closely that we ought in a clause where it is admitted there is a doubt to make it clear. It is the smallest thing we can claim when there is no difference between us as to the principle. We should have some words which, while conserving intercolonial free-trade to the full, will preserve equality of rights as between Victoria and New South Wales. We have given way to New South Wales with regard to not abridging her right as to the rivers, and surely we are entitled to some consideration in regard to our railways, and to leave the Federal Parliament or such other tribunal as we choose to appoint to say that there is no unjust intercourse between two states.

Mr. DEAKIN (Victoria). -
The considerations which my honorable friend (Mr. Isaacs) has offered resolve themselves into two, and these I venture, with all deference, to press on the leader of the Convention. In the first place, I take it that if this clause had been the product of the present Drafting Committee we should never have seen the words "absolutely free." From the Bill of 1891 we adopted a number of phrases which we have since seen the necessity of considerably qualifying in order to express more directly and distinctly the exact meaning we desire to convey. Our purpose is to convey our meaning, and not to accomplish more than is necessary to fulfil the purpose we have in view. These words are not known to the American Constitution, and, so far as I am aware, are unknown in any other Constitution. Consequently, their operation is largely a matter for legal speculation and inquiry. So far as they imply the removal of everything in the nature of an obstruction placed in the way of intercolonial trade by any state they have our hearty approval. The only question is whether the words in their present
connexion and novel combination do not go further than the removal of obstructions, and imply the power to interfere in regard to matters which may be considered to affect absolute freedom of trade and intercourse.

Mr. BARTON. -

No; because they are specifically restricted to trade and intercourse between states or among states.

Mr. DEAKIN. -

That is a very important limitation. Without that the danger I have just expressed would be unmitigated; with that it raises the question of state right. I do not wish to allude now to the railway clauses, but understand that the sum and substance of these clauses-the bulk of which were not adopted on the request of Victoria, but which were adopted against the votes of Victorian representatives-was settled on the basis of the preservation of the statu quo, or its modification equally all round. No colony was to be exceptionally injured, none was to be specially benefited. Trade and commercial intercourse were to be absolutely free; but so far as these colonies were at present competitors, they were to be left free to compete one with another by any commercial means they chose to employ which did not interfere with trade and commerce. The Right Hon. the Premier of New South Wales has put a series of illustrations within the last few minutes, which clearly illustrate and elucidate that principle. But the question I want to suggest to the leader of the Convention is whether, when limited by the words "among the states," the application of the clause would not go further than Mr. Reid has assumed; whether they do not forbid only one kind of state competition? If those words be taken to require absolute freedom of trade between the states, and only between them, they may, by implication, injure us for the benefit of New South Wales. I have no hesitation in asking the consideration of the leader of the Convention and of the members of the Drafting Committee to that particular issue before they meet us again on Wednesday next. We labour under this difficulty, that Victoria is the only colony interested in this question.

Mr. BARTON.

My difficulty is that I can't really understand what difficulty exists.

Mr. DEAKIN. -

The general intent of the railway clauses is to establish the statu quo as between states competing for traffic, or to modify it equally to all concerned. If that be so-if the railway clauses leave the states free to compete for traffic, which is open to more than one state-then when we come to this clause, we ask whether it does not limit its operation to trade
and commerce passing between the states; whether it does not operate so as
to prevent Victoria from competing by offering concession rates for goods
obtained beyond its own boundaries; while it leaves the rival colony of
New South Wales free to make any reductions she pleases, because those
goods are produced in its own territory?

Mr. BARTON. -
That does not arise under this clause; it may arise under the preference
clause. I really cannot understand your difficulty.

Mr. ISAACS. -
If Victoria charged a higher rate for New South Wales produce than she
charged for Victorian produce, would it not be a violation of this clause?

Mr. BARTON. -
I very much doubt whether it would. I do not see very easily how that can
be. It might be a preference; it is simply a charge for services rendered.

Mr. REID. -
Trade is perfectly free all the same.

Mr. BARTON. -
I think somebody has got hold of a bogey here to-night.

Mr. REID. -
Does not Mr. Deakin think that on some other clause he can get what he
wants? He will not do it on this clause, because the amendment has been
defeated.

Mr. DEAKIN. -
I rose for the purpose of emphasizing the appeal which the Attorney-
General of Victoria has made, and which I repeat. I shall be satisfied,
although not fortunate enough to make myself understood by the leader, if
he reconsidered the effect of this clause upon the clauses relating to railway
rates. I do not say that I share the alarm to the same extent as the Attorney-
General of Victoria, but it appears to me to be a matter which is not as
clear as the leader of the Convention thinks it is.

Mr. BARTON. -
If I find it is not clear I shall be the first to confess it.

Mr. DEAKIN. -
That is why I make this appeal with perfect confidence, and shall be
satisfied with the result.

Mr. BARTON. -
Do you wish me to carefully read the Hansard report of to-night's debate?

Mr. DEAKIN. -
Yes; if the honorable member has not been able to catch the point now as
to the general effect of this clause on the particular provisions of the
railway clauses. I ventured to rise because Victoria is the only colony
interested. Victoria is not represented on the Drafting Committee, whose members, with the best will in the world and every possible effort to do justice to the circumstances of the case, cannot be as familiar with the circumstances of Victoria as we are, and cannot see the difficulty from our point of view, unless they look through our spectacles. If they do that, they will possibly see the ground of this alarm, which, of course, may be quite insufficient but it was because I felt that otherwise this peculiar position would not be readily realized by the Drafting Committee that I rose to make this statement.

Mr. BARTON (New South Wales). -

I think my friends will agree with me that any further discussion of this subject to-night will be futile. Mr. Isaacs and Mr. Deakin have put their position fully. I have not been able to follow them, but I will read the Hansard report of to-night's debate, and I will do everything I can to master the position which they have set out; and although I cannot promise to look at the matter through their spectacles, I will look at it with my own eyes, in the light that their speeches furnish me. If I then become not merely convinced that they are right, but even if I feel a very serious doubt whether this clause will not do some injustice, I will do what I can to get the Drafting Committee to make the matter acceptable to honorable members, always reserving to myself, if I think the clause is clear, the right to make no alteration whatever.

Mr. GRANT (Tasmania). -

It seems to me that the arguments of the Hon. the Attorney-General of Victoria and of the Hon. Mr. Deakin are founded on the fallacy that, under this Bill as we are likely to pass it, Victoria will be allowed to maintain her preferential rates to the border; but under these clauses they will be entirely done away with. The preferential rates will be merged in a rate which is uniform. Therefore, we may just as well proceed to pass this clause as it is.

The clause was agreed to.

Clause 90. - Until the imposition of uniform duties of customs-

I. The Commonwealth shall credit to each state the revenues collected therein from the duties of customs and of excise, and in the performance of services and the exercise of powers transferred from the state to the Commonwealth under this Constitution.

II. The Commonwealth shall debit to each state-

(a) the expenditure therein of the Commonwealth in the collection of duties of customs and of excise, and in the performance of the services and the exercise of the powers transferred from the state to the Commonwealth
under this Constitution.

(b) the proportion of the state, according to the number of its people, in the expenditure of the Commonwealth incurred by reason of the original powers given to it by this Constitution.

But any expenditure of the Commonwealth originated by the requirements of the Commonwealth in respect of services or powers transferred, and not incurred solely for the maintenance or continuance in any state of the services existing at the time of the transfer, shall be taken to be incurred by reason of the original powers given to the Commonwealth by this Constitution.

III. The Commonwealth shall pay to each state month by month the balance (if any) in favour of the state.

Sir PHILIP FYSH (Tasmania). -

I beg to move-

That the following new sub-section be added to the clause, to follow sub-section (1):

The Commonwealth shall credit each state with the full amount of the uniform duty chargeable on the importation of goods imported into a colony, province, or state, but which, under conditions of section 89, have passed for home consumption into another state.

Provision has been made by the Finance Committee, as embodied in clause 92 as it now stands, in sub-section (1), that during the first five years after the imposition of uniform duties of customs the duties which arise from the home consumption of goods in the various states shall be credited to the states wherein that consumption takes place; and, although the duties may have been collected elsewhere, yet when the goods have entered another state for consumption the duties "shall be taken to have been collected, not in the former, but in the latter state." Now, subsequently, an addition has been made to a former clause (clause 89) which reads thus:-

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any state, or into any colony or province which, whilst the goods remain therein, becomes a state, shall, on thence entering another state within two years after the imposition of such duties be liable to the duty (if any) chargeable on the importation of such goods into the Commonwealth, less the duty (if any) which was paid in respect of the goods on their importation.

That was inserted for the purpose of protecting the consuming states with respect to their duties in connexion with goods which had been imported prior to the imposition of uniform duties into such a state as Victoria or.
New South Wales. It would follow from this subsection that, when the goods are consumed in a state into which they were not originally imported, the duty arising therefrom would attach to the state wherein they were consumed. Goods may have been imported into Victoria under a 10 per cent. Tariff, and might ultimately pass for consumption into Tasmania under the uniform Tariff, which might be 20 per cent. But Tasmania would only be able to collect 10 per cent., although she should be entitled to the full 20 per cent. thereon. This is a more important matter than some honorable members may think. I have taken, for example, figures concerning importations from Victoria to Tasmania in the year 1896. They amounted to £427,000; £283,000 worth of these were British or foreign products which paid duty in Victoria, but were not consumed in Victoria. Again, exports from Victoria to Western Australia in the same year amounted to £2,000,000, but £450,000 worth of those were not intercolonial goods at all, but British and foreign products. Again, in the same year, goods to the value of £846,000 were imported from Victoria to South Australia, of which £283,000 worth were British and foreign products. Victoria, therefore, was the larger exporter to these other three states, and judging from my experience will continue to be so. In regard to Tasmania, it will be seen £283,000 worth of British and foreign goods were, first of all, imported into Victoria and paid duty there—for example, 10 per cent—but were consumed in Tasmania, where, say, they would pay 10 per cent. more, making the 20 per cent. which we may assume would be the Federal Tariff. Thus Tasmania will only collect 10 per cent., whilst Victoria has collected 10 per cent.; whereas Tasmania should have collected the full 20 per cent. of the uniform Tariff. Consequently, when we were considering the paragraph I have quoted from clause 89, I called attention to this matter, and Mr. Holder suggested that it would be better for an amendment to be made in clause 90. I therefore postponed the proposal which I then made to the Convention to add another paragraph to clause 89, with a view of meeting what I think was a very proper suggestion of Mr. Holder, with which the Treasurer of Victoria (Sir George Turner) agreed. My intention is that every state should receive the full benefit of the duty on the goods consumed in that state.

Mr. MCMILLAN. -
You are only repeating what is already in the clause.

Sir PHILIP FYSH. -
If the honorable member can show me that, it is in the clause already, I shall be content to withdraw my amendment.

Sir JOHN FORREST. -
It seems to me you want the duty on goods not consumed in your state.
Sir PHILIP FYSH. -

No, I only propose to take the full amount of duty on goods consumed in a state.

Mr. GLYNN. -

But you are crediting it to the wrong state—not the one that consumes, but the one that despatches goods.

Sir PHILIP FYSH. -

The goods, in the instance I mentioned, are consumed in Tasmania. The Commonwealth duty is 20 per cent., but Tasmania can only collect 10 per cent., inasmuch as the goods have already paid 10 per cent. in Victoria.

Mr. GLYNN. -

That is right as far as it goes, but the clause does not say that the 10 per cent. is to be taken by Victoria.

Sir PHILIP FYSH. -

If the honorable member will look at the amendment which I have framed, he will understand my position. I am sorry that I have not had the advantage of consulting the Drafting Committee with regard to it, but I hope that they will take care that the purpose I have in view is carried out. If the principle be adopted by the Convention the phraseology may be left to the Drafting Committee.

Sir JOHN FORREST. -

This would not be for long, but only at the beginning.

Sir PHILIP FYSH. -

Only for two years prior to the imposition of the uniform Tariff, in which two years a large quantity of goods may be stocked up in Victoria, at a low rate of duty, say 5, 10, or 15 per cent. ad valorem, which in a certain year after the uniform Tariff is imposed shall be re-exported to Tasmania, Western Australia, or South Australia. I have pointed out that the amount, so far as Tasmania is concerned, is £283,000, with regard to South Australia £283,000, and Western Australia £450,000 a year. That is the amount of the import. I am asked by Mr. McMillan what amount I estimate as the loss to each of these three states. That is impossible to say.

Mr. REID. -

It is too small at this hour of the morning.

Sir PHILIP FYSH. -

It may be, so far as the right honorable member is concerned, but I am sorry he does not consider the needs of the smaller states. It is my duty to see that, if it is only £10,000, it would be a considerable percentage on £283,000; or, if it is only £5,000, I do not see why the smaller states should not enjoy the benefit of even £5,000. It is not so much a question of
amount as a question of accuracy. The purpose of the Finance Committee was, as shown in clause 92, to give to each state the full amount of the duty upon goods consumed in that state. When the subsection of clause 89 was proposed it became obvious to those who had thought over the matter that an omission had taken place. Therefore, I called attention to the consequential amendment necessary, and I ask the Convention to consider the matter in order that the Drafting Committee may include it in the Bill. I want the principle to be affirmed by the Convention that the Commonwealth shall credit each state with the full amount of the uniform duty chargeable on goods imported into the state. Clause 89 points out the conditions which are to be observed. If goods are imported into Victoria or New South Wales prior to the imposition of a uniform Tariff, and if those goods were exported at a higher rate under the uniform Tariff to Tasmania, South Australia, or Western Australia, those three states which consumed the goods should have the full amount credited to them of the duty paid upon the goods.

Mr. MCMILLAN. - Will it make much difference?

Sir PHILIP FYSH. - I am referring to the Victorian Tariff. So far as New South Wales is concerned, being almost a free-trade colony, goods coming to that state when re-exported to Tasmania would make very little difference. But when I found that goods of the value of £1,000,000, are exported from Victoria to the three smaller states, and that under the Victorian Tariff these goods pay a duty of 10 per cent., I saw that the item was worth consideration, and I would not be discharging my duty to Tasmania, at any rate, if I did not call attention to this matter. Whether it be a matter of £5,000 or £10,000-

Mr. MCMILLAN. - It may be only £1,000 year.

Sir PHILIP FYSH. - The honorable member cannot say that, because I have investigated the Tariff, and whatever the amount is, it is to be credited under one clause of the Bill, and it should be under another.

Mr. WALKER (New South Wales). - The honorable member in one sense is perfectly right, but his proposal would not be fair to a free-trade colony like New South Wales. If goods are sent from New South Wales to Tasmania on which duty has to be calculated under the Federal Tariff,
although that colony would not be credited with the duties on the goods. That would be absolutely unfair to New South Wales, and I think the honorable member had better leave things as they are.

Sir Philip Fysh's amendment was negatived without a division.

Mr. GLYNN (South Australia). -
I hope some members of the Drafting Committee will consider this matter. Sir Philip Fysh has made out a very good case, which, I think, is absolutely unanswerable. Unfortunately, the subsection, as drafted, does just the opposite to what is intended.

The clause was agreed to.

Sir EDWARD BRADDON (Tasmania). -
I beg to move-
That the following new clause be inserted, to follow clause 90: -

The net revenue from Customs and Excise shall be applied as follows: -
(a) Not more than one-twentieth of such net revenue shall be applied towards the expenditure of the Commonwealth in the exercise of its original powers.
(b) Not more than four-twentieths of such net revenue shall be applied towards the expenditure of the Commonwealth in making good the net loss on the services taken over.
(c) The balance of such net revenue remaining after the application of the sums actually applied, pursuant to the last preceding paragraphs (a) and (b), shall be distributed amongst the states.

At this hour of the morning, and in the condition of sleepiness I am at the present moment, I am afraid I shall not do justice to the motion. I do not think it requires many words to explain what this clause is, and, I hope, to induce honorable members to support me. Still I could have wished to propose it at an earlier hour of the sitting, and so have done more justice to it. What I am asking for in the first place is to provide for the expenditure of the Federal Government; in the second place, that the Federal Government shall raise sufficient money to carry on the affairs of the Commonwealth and the affairs of the states; and in the third place, that there be granted a certain fixed portion of the revenue collected to the contributing states.

Mr. MCMILLAN. -
That cannot be done.

Sir EDWARD BRADDON. -
I would remind my honorable friend that he does not express the opinion of everybody. I think it can be done very simply. The expenditure under the first head of the proposed new clause has been estimated at something like £300,000, and under the second head at £1,200,000, making a total of
£1,500,000, or a million and a half to be supplied for the purposes of the
Commonwealth. Taking the total net revenue from Customs and Excise at
£6,000,000, that will leave four and a half millions to be distributed among
the various states. We have heard many appeals made in this Convention
that if the Bill is framed in a certain way delegates cannot go back and
recommend it to their people. I do not know how it is with other states, but
I may say, with the most perfect truthfulness, that unless this provision be
made I see no hope whatever of recommending the Bill to the people of
Tasmania. What the people will ask their representatives on their return to
the colony will be-"What guarantee can you give us of the position we
shall occupy financially when we enter this Federation?" Without this
clause we should be absolutely hopeless and helpless, and should be able to
give no answer whatever as to the position in which the people will stand
when we are united. All this absence of ability to give a satisfactory reply,
accompanied by a series of leaflets from Mr. Coghlan, telling Tasmania-
because I suppose the people will see those leaflets-that their entrance into
federation means for them a hopeless state of their financial affairs-
Mr. BARTON. -
Tasmania does not seem to believe Mr. Coghlan.

Sir EDWARD BRADDON. -

But there is the fact confronting us that these matters have been made
public through the press, and will necessarily reach the people. The first
question put by the people to their representatives on their return will, as I
said before, be-"Well, how shall we stand as to revenue? How much
revenue shall we have secured to us out of Customs and Excise, to which
we look at the present moment for the payment of interest on our debt, and
to which we always look as the main part of our revenue?" The Tasmanian
representatives have to return to their colony and say that they can with
confidence ask the people to vote for the Bill, because the representatives
know the country will be left in a sound financial position.

Mr. DOUGLAS (Tasmania). -

Although I do not agree altogether with the statement of Sir Edward
Braddon in regard to the position of Tasmania, I quite agree with the
motion. Tasmania is not only able to meet her engagements, but also to
have a large surplus at the end. At the present time Victoria is paying all
our debts, and is contributing daily to the release of our capital. With the
assistance of Victoria there is no doubt we shall meet all our engagements,
whether at the present or any other time. But the motion is a good one. It
states that the Federal Parliament shall only be able to take out of our
revenue a certain sum. We know the amount we can raise, and we know
that the amount taken should only be a certain quota of the amount so
raised. There can, therefore, be no danger to Tasmania from coming into
the arrangement under existing circumstances. I take a more hopeful view
than Sir Edward Braddon of our position and of the way from day to day
that position is being improved. We have already gone through a time of
difficulty, and we had no doubt to go into taxation to a considerable extent.
Those days have gone by, and we are now reaping the benefit of our
curtailment of expenditure. We have already decided to increase payment
to our civil servants in all directions, and we are going on prosperously. At
the same time, I agree with Sir Edward Braddon that it is desirable to come
to some decision as to the mode of dividing our revenue, and I think the
proposal is a good means of carrying such a decision into effect. I therefore
hope the committee will decide to give to the colony from which I come
the benefits sought by the proposal of the Right Hon. Sir Edward Braddon.

Question-That the clause proposed to be inserted be so inserted-put.
The committee divided-
Ayes ... ... ... ... 21
Noes ... ... ... ... 18
Majority for the proposed clause 3
AYES.
Brown, N.J. Lewis, N.E.
Cockburn, Dr. J.A. Lyne, W.J.
Deakin, A. Moore, W.
Douglas, A. Peacock, A.J.
Forrest, Sir J. Quick, Dr. J.
Fraser, S. Solomon, V.L.
Gordon, J.H. Trenwith, W.A.
Grant, C.H. Turner, Sir G.
Holder, F.W. Zeal, Sir W. A.
Isaacs, I.A. Teller.
Kingston, C.C. Braddon, Sir E.N.C.
NOES.
Abbott, Sir J.P. Lee Steers, Sir J.G.
Briggs, H. McMillan, W.
Brunker, J.N. O'Connor, R.E.
Carruthers, J.H. Reid, G.H.
Downer, Sir J.W. Symon, J.H.
Glynn, P.M. Venn, H.W.
Hackett, J.W. Walker, J.T.
Hassell, A.Y.
Howe, J.H. Teller.
Leake, G. Barton, E.

Question so resolved in the affirmative.
Clause 92 (Payment to each state for five years after uniform Tariff),

The CHAIRMAN. -

I presume that, after the division just taken, the honorable and learned member (Mr. Deakin) does not wish to have clause 92 reconsidered.

Mr. DEAKIN (Victoria). -

When the Drafting Committee come to look at the clause that has just been inserted, I would suggest that they may see in the amendment of which I have given notice the principle underlying this proposal. This principle may not appear upon the face of the clause itself, but I think that my amendment would give the members of the committee an indication of it.

The clause was agreed to.

Clause 93-After five years from the imposition of uniform duties of customs, the Parliament may provide for the monthly distribution among the several states, on such basis as it deems fair, of all surplus revenue over the expenditure of the Commonwealth.

Mr. GLYNN (South Australia). -

Honorable members will see that I have given notice of an amendment to provide for a *per capita* distribution of the surplus after the expiration of ten years. Therefore, I beg to move-

That after the word "customs" the following words be added, "and thereafter for a further period of five years."

The reason why I make this proposal again is that upon the last occasion it was not considered at any great length, and when the general financial clauses were under discussion several honorable members expressed themselves as being opposed to allowing the method of distribution to be left to the determination, front time to time, of the Parliament. Following the example of the politicians of Laputa, however, they voted in direct opposition to their declarations. After the expiration of ten years we may expect to find that the contributions from the various states through the Customs and Excise will be practically equal. There may, of course, be differences. From year to year there are differences of contribution within the states themselves. In a consolidation of 30,000,000 or 40,000,000 people, there are differences in the contributions from one part and another, but that does not make a difference in the way in which the various parts of the consolidation are treated. No subsidies are granted to the particular part of the consolidation from which the contribution in any one year is greater
than the contribution from another part. It will be the same in this Federation.

Sir JOHN FORREST. -
Are you not prepared to trust the Federal Parliament?

Mr. GLYNN. -
No; and for this reason. The honorable and learned member (Mr. Isaacs) pointed out to-day what would be the position of the various states in the scramble for a portion of the surplus. Every year you will have the question of the adjustment of the surplus turning up. The states will be continually begging for more, and there will be continual quarrels about the distribution. We have a very good object-lesson in regard to this matter in Canada in relation to subsidies. Although there may be differences of contribution, if you take the average of ten years you will find that the contributions will be approximately the same. If that is so, on what ground should we allow the Federal Parliament to distribute the surplus from time to time as they think fit? Some honorable members may say on the ground that the needs of the states will differ. But we are not federating on the principle of giving subsidies to states to cover local deficits. Surely we are not to say that if a state has made a bungle of the local finances, and there is a deficit, that deficit is to be covered out of the federal surplus. The Federal Parliament will have no control over the policy of the states, and they cannot be asked to grant votes in aid to cover deficits in the local revenue. We may fairly expect that after ten years the per capita contribution from Customs will be the same, and we ought to put some limit to the time within which the Parliament can apportion the surplus otherwise than on a per capita basis. I would ask the members of the Convention to follow the policy that has been adopted in almost every Federation. There is not a Federation in the world in which this principle of allowing the Parliament to periodically change the apportionment of the surplus has been adopted. It has not been adopted in Germany, America, or Switzerland, and what is there to justify the application of this principle in the Australian Federation? I would ask honorable members to reconsider the hasty vote they gave on a former occasion, and to agree to this amendment.

Mr. MCMILLAN (New South Wales). -

We must be careful at this late hour not to stultify by our vote what we have done hitherto. We have laid it down as a principle that there shall be five years' breathing time in this Commonwealth, in which those who have to deal with public affairs shall have an opportunity afforded to them of
considering what is best to be done. It is arrogating too much to ourselves to say that, at the end of ten years, we shall adopt any particular basis for the distribution of the surplus. We have here a country of a very peculiar character. States may be subdivided and again subdivided within the next twenty or thirty years, and we have no knowledge of the conditions which may exist then. It would be far better for us to leave it to those who will know the conditions of the future to deal with the question. We must ultimately come to a *per capita* distribution. That is the only fair and scientific mode of distributing the surplus, but we should leave to the Federal Parliament a free hand to deal with the matter as circumstances arise. No man can possibly foresee the circumstances of the future. If we are going to trust the whole of our interests to the Federal Parliament, we can surely trust them with the distribution of this surplus. It would be a calamity to put into the Constitution any provision of a drastic character which might not be applicable when the time has arrived. What is the good of talking about ten years hence? How do we know what will be the conditions ten years hence? I think, therefore, that at this late hour of our deliberations we ought not to disturb the principles which we have laid down as the basis of this Constitution. My honorable friend would act wisely if he withdrew the amendment.

Mr. BARTON (New South Wales). -

This matter was discussed before, and the opinion of the leading financial authorities in the Convention was expressed upon it. There were then fifteen votes in favour of the amendment and 31 against. Unless there is some sound reason for supposing that out of a majority of fifteen seven or eight gentlemen have changed their opinions, we should come to a vote upon the subject at once.

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

The committee divided-

Ayes ... ... ... ... 4
Noes ... ... ... ... 23

Majority against the amendment 9

AYES.

Braddon, Sir E.N.C Lyne, W.J.
Brown, N.J. Peacock, A.J.
Cockburn, Dr J.A. Quick, Dr. J.
Douglas, A. Trenwith, W.A.
Grant, C.H. Turner, Sir G.
Howe, J.H.
Isaacs, I.A. Teller.
Kingston, C.C. Glynn, P.M.
The CHAIRMAN. -
Does the honorable member wish to move the other amendments standing in his name on the paper?

Mr. GLYNN. -
I do not wish to move the others.
The clause was agreed to.

The CHAIRMAN. -
The next clause will be a new clause to be proposed by Mr. Higgins, to follow clause 93.

Mr. GLYNN. -
I do not think the honorable member wishes to go on with that clause. Before he went away, he asked me to look after another clause standing in his name, but he did not mention this clause.

The CHAIRMAN. -
Then I will go on to the next amendment, which is a new clause-93B-to be proposed by Mr. Glynn.

Mr. GLYNN. -
I do not propose to move that.

Mr. HOLDER (South Australia). -
I have a short amendment which I propose to move in place of that one, not to accomplish the same purpose, but for quite a different object. It has been pointed out in the public press, and also by some merchants trading with Western Australia, that it is just possible that the clause we adopted the other day may work in a very unfair manner. It may be possible that, under that clause, duties will be charged at a certain rate on goods arriving...
in Western Australia which are the produce or manufacture of the federated colonies, while similar goods arriving from places outside the Commonwealth will be introduced to Western Australia at a lower or possibly no rate of duty at all. That is clearly not intended by the Convention, and so I have framed some words, with the assistance of Mr. Barton, which will prevent such a possibility, and which, at the same time, will do no injury to Western Australia, and will in no sense destroy the effect to her of the clause we adopted. I beg to move-

That clause 93c be amended by the addition of the following words:-

"And at no time shall a lower duty be charged on goods originally imported from beyond the limits of the Commonwealth than is charged on similar goods not originally so imported."

Sir JOHN FORREST (Western Australia).-

So far as the colony I represent is concerned, I see no objection to the amendment unless my learned friend (Mr. Barton) does. When the Federal Tariff is being constructed, the Parliament will have before them the Tariff existing in Western Australia, and therefore probably they will recollect it so as to avoid what my friend (Mr. Holder) desires to avoid. I am afraid that Mr. Barton will not think that this is a very scientific way of dealing with this matter. It looks a little bit clumsy to me, but if he has no objection to it, I have none. The only difference so far as Western Australia is concerned would be that perhaps a little more revenue will be received. I do not desire the insertion of the amendment. I have no objection to it, but I fear it will not improve our work so as to make it read better. It is a little bit clumsy to me, and I think the Federal Parliament will take care of the matter that is referred to in the clause. Western Australia can have no objection to it.

Mr. BARTON (New South Wales).-

It might be better-what I am suggesting has really arisen from the remarks of Sir John Forrest-if this amendment were altered to read in this way:-

And at no time shall a higher duty be charged on goods not originally imported from beyond the limits of the Commonwealth than is charged on similar goods originally so imported.

I am not financier or arithmetician enough to notice what the particular difference is. But the difficulty I see is that this amendment would compel the Commonwealth to make a Tariff up to a certain height, and that height would be dictated by the Tariff of Western Australia on intercolonial goods.

Sir JOHN FORREST. -

No.
Mr. BARTON. -

Now, the clause says, saving anything in the Constitution, that the Parliament of Western Australia may, during these five years, impose duties of customs on goods entering that state and not originally imported from beyond the limits of the Commonwealth.

Sir JOHN FORREST. -

I think it is the Tariff existing at the time.

Mr. BARTON. -

The Parliament of Western Australia may, during these five years, impose duties of customs on goods not originally imported from beyond the limits of the Commonwealth. That is to say, it may impose duties on intercolonial products, to use the short term, and those duties are to be collected by the Commonwealth.

Sir JOHN FORREST. -

We cannot impose them during five years, any way.

Mr. BARTON. -

Yes, that is what the clause is for.

Sir JOHN FORREST. -

I think, speaking from memory, it is not.

Mr. BARTON. -

My right honorable friend's memory is not so good as the cold type of the clause. Lest he thinks that I have misquoted the clause, I will read the very words.

Sir JOHN FORREST. -

I am right, I am sure. The Tariff must exist at the time the uniform Tariff is imposed.

Mr. BARTON. -

That is a second part of the clause. The clause reads:

Notwithstanding anything in this Constitution, the Parliament of the state of Western Australia may, during the first five years after the imposition of uniform duties, impose duties of customs on goods entering that state and not originally imported from beyond the limits of the Commonwealth; and such duties (if any) shall be collected by the Commonwealth.

Mr. BARTON. -

That is the first part of the clause, which empowers the Parliament of Western Australia to impose duties on intercolonial products during that term; but there is this qualification:--

But any duty so imposed on any article shall not exceed during the first of such years the duty chargeable on the article under the law of Western Australia in force at the imposition of uniform duties and shall not exceed
during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth respectively of such latter duty, and all such duties shall cease at the expiration of the fifth year after the imposition of uniform duties.

Sir JOHN FORREST. -

I am right, and you are right, too.

Mr. BARTON. -

As "The Mikado" says, I am right, and you are right, and everybody else is right. Now we are asked to insert this proviso:-

And at no time shall a lower duty be charged on goods originally imported from beyond the limits of the Commonwealth than is charged on similar goods not originally so imported.

The point I request attention to, and it is not one to be treated lightly, I think, is that, inasmuch as the power of the Parliament of Western Australia during those five years is confined to the imposition of intercolonial duties, and the power as to external duties is in the Parliament of the Commonwealth, then it follows, if you provide that at no time shall a lower duty be charged on goods from abroad than is charged on intercolonial goods, the Commonwealth Tariff is affected to this extent, that the Commonwealth is not entitled to charge a lower duty than Western Australia charges intercolonially if the goods are the same. Now, the difficulty about that is this: That as the power of legislation for five years after the imposition of the uniform Tariff rests with Western Australia, the action of Western Australia during those five years, although applied to intercolonial goods, regulates the power of the Commonwealth to levy duties on similar goods from abroad. That is an effect of the amendment which I did not see at first. I can quite understand the perfectly just object of the proposal, but the trouble that arises under it as it stands-and when Mr. Holder consulted me I altered its phraseology, but simply to carry out his own view-is that if you prohibit the Commonwealth from charging a lower duty during those five years than Western Australia charges on her imports, you allow the legislative power of Western Australia to regulate the Tariff imposed by the Commonwealth on external goods. I do not think I can make it more clear than that. I am quite sure my right honorable friend does not mean it to have that effect, and I do not think Mr. Holder meant it to have that effect; but I must point out that that may be its effect if the amendment is carried in its present form. I am quite sure that the object of the amendment is a perfectly just one, but if it is agreed to without alteration it would limit the power of the Commonwealth in a certain degree by preventing the
Commonwealth from charging any lower duty on foreign goods imported into Australia than Western Australia charges on intercolonial goods of the same kind imported into that colony.

Mr. HOLDER (South Australia). -

I will take a concrete object in discussing the point at issue. I will use for the sake of illustration, the article of chaff. At the present time, and we may assume at the establishment of the Commonwealth, the duty on imported chaff is 30s per ton. Assuming that the uniform Tariff places no duty at all on chaff during the first of the five years, if any chaff comes to Western Australia from the other colonies that chaff has to pay 30s per ton, while the same article going from New Zealand or any place outside of the Commonwealth will enter Western Australia duty free, so that there is a distinct advantage given to produce imported from outside the Commonwealth. Now, I am sure that nobody intended that. What we desired was that Western Australia should have the right to keep on her present duties, but not so as to make it against the interests of Western Australia to trade with the rest of the states of the Commonwealth. The leader of the Convention suggested just now that I should deal with the matter by proposing that the duty charged on colonial goods should not be higher than the duty charged on foreign goods. If I were to take that course, however, this would be the result. For instance, take chaff. The duty on imported foreign chaff is nothing. Therefore on intercolonial chaff we do away with all the effect that this clause was intended to achieve, and prevent Western Australia charging the duty which that colony charges on chaff to-day.

Mr. BARTON. -

It looks as if that would be the result.

Sir GEORGE TURNER. -

That would be the case.

Mr. HOLDER. -

I think we shall have to adopt the policy which is well expressed in these words. I think it cannot be put in better words than the leader of the Convention has suggested, even though it may put on the intercolonial manufactures which Western Australia imports, the first year of the uniform Tariff, the duty Western Australia now charges, and 20 per cent. lower duties in the second year, 40 per cent. less the third year, and so on down to the sum which the Federal Treasurer determines shall be the permanent uniform Tariff for any class of goods. That is a far less hardship, a much less difficulty, to impose than the difficulty of thus handicapping intercolonial goods, which would be the case if the clause were passed as it stands in the Bill. Therefore, I still adhere to the clause as
I have improved it, which will do no harm to Western Australia, while it will be very good for the colonies which trade with her.

**Sir GEORGE TURNER (Victoria).** -

I quite agree with Mr. Holder, that a clause similar to what he has proposed ought to be adopted. If we reverse it, as suggested by the leader of the Convention, no doubt we shall inflict an injury on Western Australia by adopting these words. Although it might appear that we are fixing the Tariff, we are really doing no more than if these words were left out. Those who fix the Tariff will be representatives of the colonies then engaged in this trade; and it is not likely that they would allow foreign goods to be imported into Western Australia at a lower rate than colonial goods. And as Western Australia fixes the particular rate for the first year, I think it is almost certain that the Federal Parliament will be compelled to frame a Tariff at least equal to the Tariff of Western Australia. That is all this clause is intended to do. Whether we put the clause in or leave it out, it seems to me that the result will be the same.

**Mr. BARTON.** -

There is the difficulty I mentioned—you regulate the Tariff of the Commonwealth by the Tariff of Western Australia.

**Sir GEORGE TURNER.** -

I think you do that whether this clause is passed or not, because representatives of other colonies having transactions with Western Australia will not frame a Federal Tariff which will allow foreign goods to be imported into Western Australia at a cheaper rate than our own goods can be imported into that colony; and they must necessarily fix a uniform Tariff at a rate at least equal to that of the Tariff of Western Australia.

**Sir JOHN FORREST (Western Australia).** -

It seems to me that these words will have no effect whatever unless the Federal Parliament frame their Tariff so as to conform to the Tariff of Western Australia. My honorable friend, I think, was in error. He seemed to assume by the clause we passed that the Government of Western Australia would have power to alter the Tariff during the five years. As I understand it, the Tariff of Western Australia in existence at the time the uniform Tariff comes into force must remain for the first year, and be reduced 20 per cent. every year, so that we have no power reserved to us to alter our Tariff.

**Mr. BARTON.** -

Oh, yes; you can reduce it from time to time.

**Sir JOHN FORREST.** -
I know we can reduce it; but we cannot increase it.

Mr. BARTON. -

No; you are quite right there. The duties in the first of the five years cannot exceed the duties of your own Tariff, and your Tariff cannot exceed 80 per cent. of that the second year, 60 per cent. the third year, and so on.

Sir JOHN FORREST. -

Of course, we thoroughly understand that we can reduce our duties and abolish them altogether, but I see no objection in these words, because unless the Federal Parliament frames a Tariff in accord with the Tariff of Western Australia, this clause will have no effect.

Mr. TRENWITH (Victoria). -

I think there is a difficulty in having these words in. Not that I think the legislation will be any different if they are not in, but there are a large number of persons who hope to continue their trade with Western Australia, and if these words are not in, these people will assume that it is possible that the uniform Tariff will be made in some particulars much lower than the Tariff of Western Australia, and that the Tariff of Western Australia, for the first year, at any rate, will remain as high as it is now. I took the liberty to point out, when this question was before the Convention previously, that this would be protection of the most extraordinary character—protection of foreign goods as against goods produced in the Commonwealth. I do not think that is at all possible. The representatives of the respective colonies would not consent to a Tariff that would place them at a disadvantage as compared with people outside the Commonwealth. But what we want is to give people an assurance, and these words proposed by Mr. Holder will give that assurance, whilst they will not affect the legislation that is sure to follow in the Commonwealth Parliament.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 95A. - Nothing in this Constitution shall prevent the imposition of such railway rates by any state as may, in the opinion of the Inter-State Commission, be necessary for the development of its territory, if such rates apply equally to goods from other states.

Mr. BARTON (New South Wales). -

I have given notice of motion with regard to these clauses dealing with "Equality of Trade." I think honorable memb
the sense of the committee, gathering that sense from the entire debate. All I would like to do with reference to this is to make the necessary blank by striking out clause 95A as it stands in the Bill, so that the new clause may be proposed, and then I would also move to omit the clause numbered 95c in the Bill, which is the one aimed at by the committee in the new amendment. Virtually the Drafting Committee have reversed the order in which the clauses were carried. I wish to create a blank by omitting clauses 95A, 95B, and 95c, with a view of the new provision being inserted, and then we can take the amendments of Sir George Turner and Mr. Isaacs. I think this will be the most convenient way of proceeding. I beg to move—

That the clause be struck out.

Sir GEORGE TURNER (Victoria). -

I think my honorable friend has, in the new clauses, put into better form what was the desire of the Convention when we last discussed this matter. There is only one point that I really desire to raise, and that is the question as to whether it is to be the Inter-State Commission or the Parliament that is to decide whether rates are "undue, unreasonable, or unjust to any state," or whether the rates are "for the development of the territory of the state." If my honorable friend raises no objection, I will test the matter at the proper stage, by moving to strike but the words "Inter-State Commission" in clause 95B, with a view of substituting the word "Parliament." It was well understood until the completion of the debate that it was the desire of the Convention that Parliament should settle these questions. There is a desire on the part of some honorable members that the whole question should be under the purview of the High Court, and my honorable friend (Mr. Grant) moved an amendment with regard to the development of the territory, and inserted the words "Inter-State Commission." If I recollect aright, his explanation of that was that he did not intend that the Inter State Commission should have the decision of these matters. His view was the same as ours, that the whole of these questions, being strictly political, should be decided by the Parliament. Now, the sole difference between us at the present time is, whether the decision should rest with the Parliament or the Inter-State Commission. I do not think we need discuss it at any greater length, but I feel strongly that the Parliament should retain these powers in its hands.

Clause 95A was struck out.

Mr. BARTON (New South Wales). -

I beg to move—

That the following clause be inserted in place of clause 95A:—

The power of the Parliament to make laws with respect to the regulation of trade and commerce shall be taken to extend to railways the property of
any state.

**Sir GEORGE TURNER (Victoria).** -

This provision states that the power of the Parliament to make laws with respect to the regulation of trade and commerce shall be taken to extend to railways. That is to take the place of the clause which provided that the Parliament should make laws to provide for the execution and maintenance upon railways of the provisions relating to trade and commerce. I suppose my honorable friend is satisfied that the language of the new clause will fairly carry out the intention of the clause inserted at my instance?

**Mr. BARTON (New South Wales).** -

I have simply proposed this as being equivalent to my right honorable friend's clause, which, in an enabling form, enabled laws to be made. The only difference is that, inasmuch as these laws may have been made under the trade and commerce clause, we have proposed this new clause in a declaratory form, instead of in an enabling form. That prevents the trade and commerce clause being weakened in other respects.

**Mr. ISAACS (Victoria).** -

I should like to thoroughly understand this new clause. I understand that clause 96 is to be left in the Bill?

**Mr. BARTON.** -

I am not proposing to touch it.

**Mr. ISAACS.** -

In clause 95B, passed at the instance of Sir George Turner, it is provided that-

The Parliament may make laws to provide for the execution and maintenance upon railways within the Commonwealth of the provisions of this Constitution relating to trade and commerce.

It uses distinctly the words "the execution and maintenance." That is to say, it may make what provision it likes; it could commit the execution and maintenance to any body it likes, to create in any way. These words are left out, and then clause 96 will be left, which will commit under the Constitution itself, independently of the Parliament., the execution and maintenance of these provisions to the Inter-State Commission. Therefore, to that extent, it is a departure under clause 95A, from 95B, in the Bill. It seems you would have to read 95A as limited by clause 96.

**Mr. BARTON.** -

95A is really larger than 95B was. That is the new clause 95A.

**Mr. ISAACS.** -

It may be larger in one respect, but it is more limited in this respect, that
if Parliament were to attempt to pass a law providing that the maintenance and execution upon railways of the provisions of the Constitution relating to trade and commerce should be maintained by a board—for example, a Board of Trade—that would be unlawful, because clause 96 says that the Inter-State Commission shall be charged, under the Constitution, with the execution and maintenance of these very same provisions. Would not those clash?

Mr. BARTON. -

It is a drafting amendment open to revision here.

Mr. ISAACS. -

But if these two clauses stand would not they be in conflict?

Mr. BARTON. -

I should not like to answer the member off-hand, but my reasons for inserting these drafting amendments were that the drafting amendments were only passed pro forma.

Mr. ISAACS. -

This is a material question. The clause of Sir George Turner distinctly commits to Parliament the right to make all the laws it pleases with regard to the execution and maintenance of the trade and commerce provisions, but its power to make laws with regard to trade and commerce may merely mean that it may make substantive laws—may make a code, only to create rights and forbid wrongs, for instance. But the maintenance and execution of the provisions of the Constitution with regard to trade and commerce have been handed over, if we adhere to clause 56, to the Inter-State Commission, which will carry this out. Therefore there may be a very great difference. I should like to say that in this respect the Drafting Committee have followed exactly the provisions of the other clauses. I think it is worth while considering whether the expression in 95A that it will extend to railways the property of a state should not go further. Supposing a state allowed a company to construct a railway?

Mr. BARTON. -

I think it will be perfectly clear that that extends to railways unless the railways are the property of the state.

Mr. ISAACS. -

Do you think these words would not limit them?

Mr. BARTON. -

That is how it appears to me. It has the same power with regard to traffic internally.

Mr. ISAACS. -

I submit that it should be considered whether it would be limited in regard to railways.
Mr. BARTON (New South Wales). -

Instead of being put in the enabling form, as Sir George Turner put it, this clause has been put into a declaratory form. It was thought that to put the clause into the enabling form might by the ordinary rule of construction cut down the power to regulate trade and commerce by implying that an enablement to make laws to execute those provisions with regard to railways, denied the enablement to make them in certain other matters. That would create a difficulty, and we did not want to cut down the trade and commerce clause. Therefore we put this in a declaratory form. With regard to the last part of Mr. Isaacs' objection, that they should be taken to extend to railways the property of any state, I think there can be no doubt whatever that the trade and commerce clause enables the Commonwealth to deal with all classes of trade and commerce, trade and commerce by rail as well as by river, or trade and commerce with foreign states by sea. So there can be no doubt on the question of railways, except a doubt that might be raised by reason of railways belonging to a state that they would not be subject to the trade and commerce clause. We therefore thought it better to put it in this form. We entertained no doubt that trade and commerce on a railway which is the property of private persons or a company is within the clause, and we put this so as to remove any doubt that might exist as to railways the property of any state. By adopting this clause we make no inroad upon the trade and commerce clause. As to the other point mentioned by Mr. Isaacs, I think he will see that the regulation of trade and commerce, using the wide words in the first sub-section and this clause, include the execution and maintenance of the provisions as to trade and commerce. If we had cut this down saying the execution and maintenance of the provisions relating to trade and commerce, we might have raised another implication which would have been inconvenient. But I do not think we have done that. The idea of doing so was the very furthest from my thoughts. I do not think we are doing anything to weaken the 96th clause, or this clause, by using the words "trade and commerce" here, because it is plain that the powers given to the Commonwealth to regulate trade and commerce include any law for the execution and maintenance of the provisions of the trade and commerce clause. It may mean a little more than it means here. The honorable member seems to think there is not a parity of words there.

Mr. ISAACS. -

No; is there not a distinct instrument mentioned in clause 96, which could not be changed by Parliament, an instrument for the maintenance and execution of these provisions?
Mr. Barton. -

Yes; there is a great deal to be said for that contention, except that we must read the powers together. It may be that a little more drafting is necessary in that respect. We must read the powers conferred by the first sub-section of clause 52, by which Parliament has the right to make regulations for trade and commerce generally. By this we provide that the power shall be construed to extend to railways. Then we have the 96th clause, which says the Parliament may regulate the powers, adjudication, and administration of the Inter-State Commission so that they shall be charged with the execution of these laws. You must read these two things together, and we must not forget that at the suggestion of Sir George Turner, we inserted the words "of all laws made thereunder." I think that by the insertion of those words Sir George Turner has succeeded in removing what might have been a source of doubt there. If you look at the beginning of the clause you will see that the Commonwealth Parliament can give such powers for adjudication and administration as it deems necessary, subject to the proviso, but the proviso relates to laws made under the Constitution, as well as the law of the Constitution. The powers of adjudication and administration which the Parliament may limit as it pleases, subject to the proviso, are simply co-extensive with the grant of the power. They can be cut down and increased, so that the commission may be charged with the trade and commerce clause. So long as they make a law within the Constitution in which the Inter-State Commission is subject to this charge the powers of adjudication and administration within the law may be limited as the Commonwealth deems necessary. That seems to get rid of the difficulty, because in clause 95A the interpretation of the regulation of trade and commerce is inclusive.

Mr. Glynn (South Australia). -

We want to be a little careful not to limit the power of Parliament to railways the property of any state. In the original Bill the

Mr. Barton. -

This is not the clause by which we did that in the former Bill. That was clause 96.

The Chairman. - We have not got to clause 96.

Mr. Glynn. -

I quite understand that, Sir Richard Baker, but in not one of the other clauses, so far as I can tell from a hurried look, does the word "rivers" occur.

The Chairman. -
I must ask the honorable member to deal with one clause at a time.

Mr. BARTON. -

May I explain the reason why railways and rivers were struck out? The word occurred in clause 96, which relates to the constitution of the Inter-State Commission; and the reason rivers and railways were struck out was because it was intended to make the powers of the Inter-State Commission general.

Mr. GLYNN. -

I understand that; but if you do not specify railways at all under the trade and commerce clause the powers of Parliament will, if we may judge by what has occurred in America, extend to commerce on rivers. But the moment you begin to specify what is included in the trade and commerce clause, you, by implication, cut down its operation in other directions. The effect of specifying that it extends to railways may be to imply that it does not extend to rivers. It might very well be argued that if the framers of the Constitution intended it should extend to rivers, they would have so specified. That is a perfectly fair interpretation of the clause. I ask those who are interested in seeing that the trade and commerce clause shall extend to rivers, to see that rivers are mentioned as well as railways. With a view of testing the question, I move-

That the words and rivers" be added to clause 95.

Mr. BARTON (New South Wales). -

I cannot consent to this amendment. I have already explained what the object of this additional provision is. The regulation of trade and commerce obviously, without any doubt, extends to rivers and navigation. In fact, there is a question whether the eighth subsection, dealing with navigation, was ever necessary; I do not think it was. The object of my present proposal is to remove a doubt as to whether the Commonwealth would have power to regulate trade and commerce on state owned railways. Rivers have nothing to do with the matter in this connexion. Rivers are entirely under the trade and commerce clause, and so are private railways. There is no such thing as a state-owned railway in the legal sense, because the navigation of a river is simply as a highway, and the proprietary rights, apart from the navigation of the river, depend on the ownership of the land itself. There does not seem to be any reason why we should include rivers here. I am not talking about this in any sense as a politician, but simply as a draftsman, and, as a matter of drafting, there is no reason to include the words proposed by Mr. Glynn.

Mr. GLYNN. -

I would ask the leader of the Convention whether he would have
any objection to words providing that this section is not to be held to limit the effect of the trade and commerce clause?

Mr. BARTON. -

I do object, because those words would spoil the whole drafting of the clause.

Mr. GLYNN. -

My objection remains, because you are, by implication, providing that the clause does not apply to something which is not specified.

Mr. BARTON. -

This clause is simply for the purpose of removing a doubt as to whether the powers of the Parliament extend to state-owned railways. It is no use saying that in other respects this clause cuts down the operation of the trade and commerce clause, because it cannot do that.

The CHAIRMAN. -

Does the honorable member (Mr. Glynn) press his amendment?

Mr. GLYNN (South Australia). -

According to the feeling of the committee it would be of no use to press the amendment, and I beg leave to withdraw it under the circumstances.

The amendment was, by leave, withdrawn.

The new clause was agreed to.

Clause 95B was struck out.

Mr. BARTON (New South Wales). -

I beg to move that the following new clause be inserted:-

Clause 95F. - The Parliament may by any such law forbid, in respect of railways, any preference or discrimination by any state, or by any authority constituted under a state, which the Inter-State Commission may deem undue and unreasonable, or unjust to any state.

But due consideration shall be given to the financial responsibilities incurred by any state in connexion with the construction and maintenance of its railways.

Sir GEORGE TURNER (Victoria). -

I now propose to test the feeling of the Convention as to whether we are to allow these great powers to be in the hands of this Inter-State Commission, or whether we will reserve them for Parliament.

Mr. GLYNN (South Australia). -

Will the right honorable gentleman allow me for one moment? There is an amendment, given notice of by Mr Higgins, which must come before that to which Sir George Turner is about to direct attention. Mr. Higgins, who is not well, and has gone home, asked me to move on his behalf-

That after the word "discrimination" the words "or differential rates" be added.
Mr. Higgins contends that "discrimination" refers to persons or things, and that under the power to prevent unjust discriminations you could not put an end to differential rates which operate unjustly to another state. A differential rate, such as the long-distance rates in New South Wales, does operate detrimentally to Victoria, but it is not a discrimination against a person or thing. It would be quite possible for people outside the colony to take advantage of such a rate as for the, people inside the colony. It is not a personal discrimination, nor is it a discrimination against things. Therefore, a differential rate not coming under the category either of a personal discrimination or of a discrimination against things, would not be within the scope of the clause. This being so, the honorable and learned member considered that the position of Victoria would be an unfair one. While the Victorian preferential rates would be abolished, if the Inter-State Commission thought them unreasonable, the New South Wales differential rates would not be abolished. As a matter of policy, I do not think there can be any objection to the amendment. Unless the differential rate is, in the opinion of the Inter-State Commission, undue or unreasonable, or unjust to a state, it will hold good, and before the Inter-State Commission can decide in regard to it they must take into account under the concluding words of the clause the financial responsibilities incurred by the state in the construction and maintenance of its railways. Therefore, although a differential rate may be unjust, if it is necessary to give a fair return to the railways, it can be kept on. Clause 95c puts an additional limitation upon the discretion of the Inter-State Commission, and enables the commission to declare a rate unjust, because it is there stated that, notwithstanding anything in the Constitution, a rate imposed upon any railway the property of a state shall be taken to be lawful if it applies equally to the goods of other states, and the Inter-State Commission deem it to be necessary for the development of the territory of the state.

Mr. OCONNOR (New South Wales). -

You want to guard against preference being shown in connexion with the fixing of rates in such a way as to attract traffic from another colony. Discrimination is the proper word to apply to differences in locality, in persons, and in goods. Surely that covers everything.

The amendment was negatived.

Sir GEORGE TURNER (Victoria). -

The clause before us originally provided that the Parliament should determine whether a rate, or a preference, or a discrimination was undue, unreasonable, or unjust to any state, but now Parliament cannot act until the Inter-State Commission has certified that a rate is unreasonable. I fail to
see why we cannot intrust to the Parliament the power to deal with these matters, which appear to me to be purely political.

Mr. Reid. -
I should call them judicial.

Sir George Turner. -
Then they ought to go before the High Court. That is practically the decision which my right honorable friend has brought about. He wanted these questions to go to the High Court straight away, while we wanted them to go to the Parliament.

Mr. Reid. -
We met you half-way by establishing the Inter-State Commission.

Sir George Turner. -
No, because full power of appeal from the Inter-State Commission to the High Court has been given. So that the High Court will decide everything.

Mr. Reid. -
No; only questions of law.

Sir George Turner. -
However, I do not intend to argue the question at greater length at this hour of the morning. If we intrust this power to the proper body we shall intrust it to the Parliament, and not to an Inter-State Commission. Therefore I move-
That the words "Inter-State Commission" be struck out, with a view to the insertion of the word "Parliament."

Mr. O'Connor (New South Wales). -
I do not think anything more need be said about this matter than that we have already objected to Parliament being made the tribunal to decide whether a rate is or is not objectionable, on the ground that Parliament, through its representatives, would be an interested body. We agreed that the only fair way of dealing with the question was to hand it over to the Inter-State Commission? Surely there cannot be any objection to an arrangement of that kind if you want to have a decision by an independent body.

Mr. Isaacs (Victoria). -
There are a little over a dozen members present to decide a matter of the utmost importance-the creation of a new organ, the fourth organ-in this Constitution.

Mr. O'Connor. -
The question has been pretty well thrashed out already.

Mr. Isaacs. -
We have the Parliament, the Executive, and the High Court and now a fourth organ is created independent of all the rest-the Inter-State
Commission.
Mr. REID. -
One you cannot get at-one that is thoroughly independent.

Mr. ISAACS. -
According to the right honorable member, we can get at the High Court, at the Parliament, and at the Executive, but he says that the Inter-State Commission is the only thing we cannot get at. Because we cannot get at it, he is going to give the right of appeal to the High Court, which he says we cannot get at. This is in accordance with the principle of trusting the Federal Parliament. The Federal Parliament may by law forbid any preference or discrimination which the Inter-State Commission chooses to say is wrong. What a provision to put into a Constitution! The Inter-State Commission is to decide that a preference or discrimination is unjust, and that will enable the Parliament to pass a law forbidding this discrimination or preference. What a position to which to reduce an august legislative tribunal. I think that it is degrading the Parliament, as

Mr. GRANT (Tasmania). -
I confess I do not quite understand the meaning of this clause. It is not by any means clear. If it read-"The Parliament shall deem unjust or unreasonable" I could understand it, but if the Parliament is to do as they please on the advice of the Inter-State Commission, that would not be enough, and I think it would be better to state that the Parliament "shall" deal with the matter. No doubt the Parliament would then be guided by the advice of the Inter-State Commission.

Mr. REID (New South Wales). -
I am astounded at the remarks just made by Mr. Grant. I faithfully and loyally followed him like a pet lamb all through the discussion of this matter, and now at the first seductive whisper from the two honorable members whose names appear in connexion with the amendment, Mr. Grant, who was singularly clear before, has become particularly mixed.

Mr. GRANT. -
The clause has been altered.

Mr. REID. -
The word "may" is the word that is always used in connexion with Parliament and the making of laws. You cannot compel Parliament to pass a Bill. It has the power to throw any Bill out, and that is why the word "shall" is not used. But "may" means "shall" in the sense that Parliament having this duty imposed upon it will carry it out.

Question-That the words "Inter-State Commission" proposed to be omitted stand part of the clause-put.
The committee divided-
Ayes ... ... ... 22
Noes ... ... ... 15
Majority against the amendment 7

AYES.
Abbott, Sir J.P. Howe, J.H.
Barton, E. Leake, G.
Briggs, H. Lewis, N.E.
Brown, N.J. McMillan, W.
Brunker, J.N. Reid, G.H.
Carruthers, J.H. Solomon, V.L.
Cockburn, Dr. J.A. Symon, J.H.
Downer, Sir J.W. Venn, H.W.
Forrest, Sir J. Walker, J.T.
Gordon, J.H.
Hassell, A.Y. Teller.
Holder, F.W. O'Connor, R.E.

NOES.
Braddon, Sir E.N.C. Lyne, W.J.
Deakin, A. Peacock, A.
Douglas, A. Quick, Dr. J.
Fraser, S. Trenwith, W.A.
Glynn, P.M. Turner, Sir G.
Grant, C.H. Zeal, Sir W.A.
Hackett, J.W. Teller.
Kingston, C.C. Isaacs, I.A.

Question so resolved in the affirmative. The new clause was agreed to.
Clause 95c was struck out.

Mr. BARTON (New South Wales). -
I beg to move the following new clause:-

Clause 95G. - Notwithstanding anything in this Constitution, a rate imposed upon any railway the property of a state shall be taken to be lawful if the rate applies equally to goods from other states, and if the Inter-State Commission deem it to be necessary for the development of the territory of the state.

Mr. DEAKIN (Victoria). -
The condition imposed here that a rate shall be taken to be lawful if it applies equally to goods from other states is, of course, meaningless.

Mr. BARTON. -
That is one of the suggestions Sir Samuel Griffith made.

Mr. DEAKIN. -
Yes. The only provision that would be effective would be to require that any differential rates charged on any line of railway should apply measured from either terminus of the railway. In that case, it would be obvious that the differential rates were used for the development of the colony, and not for the injury of any other colony. As it stands, this particular provision appears to be meaningless, and we are left entirely to the opinion of the Inter-State Commission as to what is necessary for the development of a state. The words could not be wider and more indefinite, and what decision will be given under them no one can predict.

Mr. ISAACS (Victoria). -

By the clause we have just passed, it is provided that no preference or discrimination can be forbidden by Parliament unless the Inter-State Commission deems it undue, or unreasonable, or unjust to any State. Well, we understand that, but then it goes on in clause 95c to say that, notwithstanding that, the rate shall be lawful if it applies to goods from other states, and is, in the opinion of the Inter-State Commission, deemed necessary for the development of its territory.

Mr. DEAKIN. -

That overrides everything.

Mr. ISAACS. -

Although it is undue, unreasonable, and unjust to any state, still it is to be lawful if it applies equally to goods from other states, and is, in the opinion of the Inter-State Commission, necessary for the development of its territory. I want it to be clearly understood, because it is important in connexion with clause 89, that Victoria can be prohibited from having her rates preferential into Riverina, but if the Inter-State Commission thinks that, however unjust, however undue, however unreasonable the New South Wales rates are to Victoria, those rates are necessary for the development of New South Wales, and that they apply equally to goods from other states, New South Wales can never be prevented from altering her rates, but Victoria has to alter her rates. I want to emphasize that question once more.

Question-That clause 95G be inserted in the Bill-put.

The committee divided-

Ayes ... ... ... ... 24
Noes ... ... ... ... 13
Majority for the amendment.. 11
AYES.
Abbott, Sir J.P. Leake, G.
Mr. DOUGLAS. -

New South Wales never gets anything! Clause 96—There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament from time to time deems necessary, but so that the commission shall be charged with the execution and maintenance, within the Commonwealth, of the provisions of this Constitution, and of all laws made thereunder relating to trade and commerce.

Sir GEORGE TURNER (Victoria). -

This clause embodies in the Constitution an Inter-State Commission, to which I strongly object. I am perfectly willing that the Parliament may constitute an Inter-State Commission, with such powers of adjudication and administration as it from time to time deems necessary. Therefore I propose to omit the words "There shall be," which embody the Inter-State Commission in the Constitution, with the view to give power to the Parliament to constitute that body. I wish to draw distinct attention to the latter part of the clause, so that honorable members hereafter, when difficulties arise, may know that they acted with their eyes open. I feel perfectly certain that they did not know the meaning or the extent of the latter words of the
clause, or they would never have passed it. It goes on to provide—

That the commission shall be charged with the execution and maintenance, within the Commonwealth, of the provisions of this Constitution, and of all laws made thereunder relating to trade and commerce.

Now we are told that these words "relating to trade and commerce" are so wide in their operation that not one of us, when we came here, ever dreamt that they would cover the number of subjects they do cover. They cover navigation—they cover almost everything.

Mr. MCMILLAN. -

They are the creatures of Parliament.

Sir GEORGE TURNER. -

They are not the creatures of Parliament. I would not object if the Inter-State Commission were to be appointed by the Parliament, and the Parliament from time to time were to delegate to that body such of the powers as it could itself exercise under the Constitution. I go with the honorable member the full length there; but this is a very different position.

Mr. MCMILLAN. -

We create an Inter-State Commission absolutely by the Constitution, but we give the Parliament fall power to declare what the duties of the commission are, and all the rules and regulations connected with it. What else is there you want?

Mr. BARTON. -

Will you be satisfied—I do not say that I agree to it—to leave out the words "but so that the commission shall be charged with," and to use the simple word "for"?

Sir GEORGE TURNER. -

That, I think, is a distinction without, a difference. . - No; it will then read—

Such powers of adjudication and administration as the Parliament, from time to time, deems necessary for the execution and maintenance of the provisions of the Constitution, and of all laws made thereunder relating to trade and commerce.

It leaves it to the Parliament to say what it will give. I think I can meet my right honorable friend half-way about that, but I could not go any further.

Sir GEORGE TURNER. -

I think this clause should be so constructed that Parliament can constitute an Inter-State Commission, and from time to time give to that Inter-State Commission such powers as it deems fit for various purposes—dealing with railways and similar matters.
Mr. MCMILLAN. -
The clause provides for that.

Sir GEORGE TURNER. -
No. The leader of the Convention will admit that it goes very much further, because the clause says this body is to be constituted by the Bill itself. There is no option in the Parliament to constitute it, and it is to be charged with the execution and maintenance within the Commonwealth, (as wide words as you can use of the provisions of this Constitution), and of all laws made thereunder relating to trade and commerce. If the Convention is prepared to adopt those words, it is useless for me to attempt to argue and convince honorable members that they should not adopt them. I will test this matter on a division. I beg to move-

That the words "There shall be" be omitted, with the view to the insertion of the words "Parliament may constitute."

Mr. BARTON. -
I would suggest that you should make it "Parliament shall make laws constituting."

Sir GEORGE TURNER. -
Parliament will have to constitute the Inter-State Commission by some law.

Mr. LYNE (New South Wales). -
Will the honorable members amendment meet the case that he desires? I do not think that it will.

Sir GEORGE TURNER. -
Of course, I shall have to move the second amendment later on. I can only move one at a time.

I desire to enable Parliament to constitute the body, and to delegate to it such powers as Parliament thinks fit from time to time.

Mr. BARTON. -
Two or three clauses will be rendered inoperative if Sir George Turner's amendment is carried. The result of adopting the amendment will be to make the Inter-State Commission totally inoperative until the Parliament legislates.

Mr. KINGSTON. -
And to make the clauses worthless until the Parliament has legislated.

Mr. LYNE. -
I agree with Sir George Turner that Parliament should constitute the commission, and give that commission its powers. I do not know whether the proposed amendment will effect that, but I shall be prepared to vote for any amendment which will effect that result, because I am altogether
opposed to placing the Inter-State Commission above the Parliament. If we were going to have a Federal Parliament it should have great power, and not the Inter-State Commission. I think it is child's play to create an Inter-State Commission, and delegate powers to that commission which should be exercised by the Parliament. I am altogether opposed in principle to the Inter-State Commission, and I think it would work a great deal of harm in many respects; but to work that commission in the way proposed, and to give it the power this clause seems to give it, is absurd. We might as well do away with the Parliament altogether.

Mr. KINGSTON (South Australia). -
I voted with Sir George Turner on this question on a former occasion, for the purpose of enabling the Federal Parliament to deal with various matters connected with the Inter-State Commission, but we were beaten. This clause relative to railway rates will be utterly inoperative if the present amendment is carried; therefore, I have no other option than to vote for the principle affirmed in the clause itself, putting within the four corners of the Constitution the express determination that there shall be an Inter-State Commission.

Question-That the words proposed to be struck out stand part of the clause-put.

The committee divided-

Ayes ... ... ... 23
Noes ... ... ... 13
Majority against Sir George Turner's amendment ... 10

AYES.
Abbott, Sir J.P. Kingston, C.C.
Briggs, H. Leake, G.
Brown, N.J. Lewis, N.E.
Brunker, J.N. McMillan, W.
Cockburn, Dr. J.A. O'Connor, R.E.
Downer, Sir J.W. Reid, G.H.
Forrest, Sir J. Solomon, V.L.
Gordon, J.H. Symon, J.H.
Grant, C.H. Venn, H.W.
Hassell, A.Y. Walker, J.T.
Holder, F.W. Teller.
Howe, J.H. Barton, E.

NOES.
Braddon, Sir E.N.C. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Douglas, A. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Glynn, P.M. Zeal, Sir W.A.
Hackett, J.W. Teller.
Lyne, W.J. Isaacs, I. A.

Question so resolved in the affirmative.

Mr. BARTON (New South Wales). -

There is one small matter which I feel bound to call attention to as an act of fairness. It was the subject of an interjection I made when Sir George Turner was speaking. We have provided in this Constitution in clause 95B that the Inter-State Commission is to have the power of deciding what are such preferences or discriminations as it may deem to be undue and unreasonable, or unjust to any state; and also, in clause 95c, that the Inter-State Commission shall have power to decide what is necessary for the development of the territory of a state by way of a railway rate, so long as it is an equal rate. Now, I take it that, having said at the beginning of this clause that there shall be an Inter-State Commission, we have made it compulsory that there shall be an Inter-State Commission, which shall have at least the power included in those two clauses. It will be necessary for the commission to have more powers, but whether they should traverse the whole field of trade and commerce may be a question for honorable members to consider. Perhaps the words inserted as a matter of drafting in the third line of clause 96 are too strong - "but so that the commission shall be charged;" and having secured as an integral part of the Constitution that there shall be an Inter-State Commission, and that those questions which are involved in clause 95B and clause 95c must be considered by the commission, I think it might be quite fair enough to say with regard to the rest of the matter that Parliament shall decide what further is necessary for the purposes of adjudication and administration for that commission in the way of power over the trade and commerce provisions. Therefore, I feel impelled to move-

That the words "but so that the commission shall be charged with" be omitted, and that the word "for" be substituted.

The clause would then read as follows:-

There shall be an Inter-State Commission with such powers of adjudication and administration as the Parliament from time to time deems necessary, but for the execution and maintenance within the Commonwealth of the provisions of this Constitution, and of all laws made thereunder relating to trade and commerce.
Then Parliament would prescribe what it deemed necessary for the execution of these powers. While it would be a matter of certainty that having so provided there shall be an Inter-State Commission, they would be authorized to deal with these questions in clauses 95B and 95c. It seems to me that that is a fair proposal. I think I am moving what is a concession, but I think it mitigates what otherwise might be an undue requirement in this clause.

Mr. ISAACS (Victoria). -

There is a difference between the clause as it stands and as it would be if the proposal of Mr. Barton were adopted. The clause as it stands provides that the commission shall be "charged with the execution and maintenance" of the provisions of the Constitution, and of all laws relating to trade and commerce. That charges the commission with a duty which must be carried out by some means. The clause as it stands says that Parliament may give the commission "such powers of adjudication and administration" as it may deem necessary, but still the duty is there. As it is proposed to alter the clause, the Inter-State Commission would only have such powers as the Parliament may from time to time deem necessary "for the execution and maintenance." So that until the Parliament gave them the power they could not move in that direction.

Mr. BARTON. -

Yes. Parliament is under a constitutional obligation to create the commission.

Mr. ISAACS. -

But it is also under this negative obligation: Until it gives the necessary powers for the Inter-State Commission these provisions of the Constitution cannot be maintained and executed.

Mr. BARTON. -

But the commission could do nothing until Parliament legislated if you left the clause in its present form.

Mr. ISAACS. -

I am not so sure of that, because the Executive could create the commission, and then it would stand charged with these duties.

Mr. BARTON. -

Oh, no; the words "but so that" are a charge upon the Parliament.

Mr. ISAACS. -

It may be so; but then there is no difference between what the clause says and what the leader of the Convention proposes to make it say.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 98 (Taking over public debts of states),
Sir GEORGE TURNER (Victoria). -

I have given notice of an amendment in this clause, in order to again test the feeling of the Convention as to whether we should hand over the debts at once to the Federal Parliament. But seeing the results of other votes, I think it would be useless to detain the Convention in moving such an amendment.

The clause was agreed to.

The CHAIRMAN. -

We now have to go back to clause 52 (Legislative powers of the Parliament).

Clause 52, sub-section (2). - Taxation; but so that all taxation shall be uniform throughout the Commonwealth, and that no tax or duty shall be imposed on any goods passing from one state to another.

Mr. BARTON (New South Wales). -

I have prepared an amendment with regard to this sub-section, which puts the matter into a form which would express the intention of the Convention, whilst avoiding a difficulty. Honorable members will recollect the difficulty that arose over the construction of words equivalent to "uniform throughout the Commonwealth" in the United States of America. Although no actual decision has been given, a doubt has been raised as to the meaning of the word "uniform." The celebrated income tax case went off as to the direct apportionment of taxation amongst the people according to numbers, and this point was not decided, but a great deal of doubt has been thrown on the meaning of the word in the judgment of Mr. Justice Field. I think that although the word "uniform" has the meaning it was intended to have-"one in form" throughout the Commonwealth-still there might be a difficulty, and litigation might arise about it, and prolonged trouble might be occasioned with regard to the provision in case, for instance, an income tax or a land tax was imposed. What is really wanted is to prevent a discrimination between citizens of the Commonwealth in the same circumstances. I beg to move-

That all the words after the word "taxation" where it is first used be struck out, and that the following words be substituted:-"but not so as to discriminate between states or parts of states, or between goods passing from one state to another."

I conceive it to be quite unnecessary to retain these words in view of clause 89, prescribing free-trade among the several states, under which any duty or tax on goods passing from one state to another would be clearly invalid, and could not possibly be allowed by the operation of the
preference clauses. I propose not to say anything about goods in this connexion passing from one state to another, as that is sufficiently provided for, and I put in this provision, which prevents discrimination or any form of tax which would make a difference between the citizen of one state and the citizen of another state, and to prevent anything which would place a tax upon a person going from one state to another. I beg to move—

That all the words after the first word "taxation" in the second sub-section be omitted, with a view to inserting the following words—"but not so as to discriminate between states or parts of states, or between persons or things passing from one state to another."

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 110B. - No subject of the Queen, resident in any state, shall be subject in any other state to any disability or discrimination not equally applicable to the subjects of the Queen in such other state.

Mr. DEAKIN (Victoria). -

This is a matter in which Sir John Forrest will probably take some interest. We have been told that Chinese cannot hold leases in Western Australia; but I take it that in this clause, if a Chinese was a subject of the Queen resident in another colony, and went to Western Australia, it would be absolutely compulsory to allow him to have a lease or any other right he might have possessed in the colony he left.

Sir JOHN FORREST. -

Is that what you want?

Mr. DEAKIN. -

No; and I do not think it is intended. The clause is intended to preserve to states the power to deal with...
Committee I will undertake to put the meaning of the Convention in plain terms.

The amendment was agreed to.
The clause, as amended, was agreed to.

Mr. WALKER (New South Wales). -

I wish to propose a new clause, to follow clause 117. I am sorry that I should have to move this at so late an hour, but I postponed the motion on a former occasion. I beg to move-

That the following be a clause of the Bill, to follow clause 117:-

If the colony of Queensland adopts this Constitution, or is admitted as a state of the Commonwealth, nothing in this Constitution shall be taken to impair any right which the Queen may be graciously pleased to exercise by virtue of Her Majesty's Royal prerogative or under any statute in respect of the division of Queensland into two or more colonies; but so that the Commonwealth shall retain the powers conferred on it by this Constitution to impose terms and conditions in respect of the establishment of any such colony as a state.

It is in the knowledge of honorable members that the Premier of Queensland telegraphed to our respected leader to the effect that he feared this clause, if passed, would rather injure the cause of federation in Queensland than otherwise. As an old Queenslander, I can say that the clause at present in the Constitution suits South Queensland very well, but it certainly does not suit the whole colony. The desire I have is to have a clause that will leave Queensland, so far as federation and possible separation are concerned, in the same position as she is now. I do not at all sympathize with the extraordinary request we have heard from members of Central Queensland, asking that Queensland may be admitted into the Federation as separate states. I want Queensland to come in as one colony, but reserving to Her Majesty the prerogative which many believe she now has to allow separation on petition. I have previously referred to this matter, and shall not repeat myself. I may take this opportunity to read a telegram from the president of the Central Queensland Separation League. The telegram is very brief, and I should have liked to amplify it, but at this hour I will simply read the words of the message. The message is as follows:-

Both Lord Knutsford and Lord Ripon intimated Bill would be introduced divide colony into three; unlikely Central and North ever consent incorporate Queensland one state unless fully protected.

I telegraphed a few days ago to Townsville to see whether the people there were in touch with my proposal, and here is the reply of the president of the Separation League in that city:-
If Townsville were polled to-morrow, I feel confident that every vote would be in favour of the inclusion of that clause, for the desire for separation is as strong now as ever, and the movement is quiescent only bemuse there is no prospect of success by appeals to local Parliaments. All here warmly wish you may succeed in having clause inserted.

There was recently a division, in the Queensland Parliament in regard to the Federal Enabling Bill. The analysis of the votes was as follows:- Federation was supported by 27, including pairs, and 29 opposed. Of those who supported, 21 were representative of Southern Queensland, 5 of Northern Queensland, and 1 of Central Queensland. Of those who opposed, 13 represented Southern Queensland; 8 Northern Queensland; and 8 Central. That accounts altogether for 56 out of 72 members. Of the remaining 16 members 5 Southern members are anti-federationists, and 6 are federationists, while 3 northern and 2 Central members are federationists. I want to show the feeling in favour of federation is really pretty strong in Queensland, but that, owing to a combination of circumstances, the motion was negatived. Taking a broad view of the question of federation in Queensland, the House might be classified thus: There are 27 of the Southern members, 16 of the Northern members, and 11 of the Central members who are federationists, so that we have 54 federationists and only 18 anti-federationists, and all the latter reside in Southern Queensland. Yet we are told that the cause of federation will be injured if we bring in a clause by which Queensland will be in exactly the same position in regard to separation as she is at the present day. At a later stage, if any one has any remark to make on the other side, I may reply, but in the meantime I will show, from quotations from the Hon. George Thorn, an ex-Premier, the spirit in which the Southern members view federation. Mr. Thorn says-

Another reason is that, in my opinion, the Central and Northern division will accept federation at any price, and they will be consummate asses if they do not agree to it. I am opposed to federation altogether. The colony is not ripe for federation, and I have not heard anybody out of-doors clamouring or asking for federation with the exception of two newspapers, one in Mackay and one in Brisbane.

Mr. BARTON. -

Mr. George Thorn is the most bitter opponent of federation in Queensland. I read his speech on the subject, and he does not know anything about it. He is as ignorant on the subject as any man could possibly be.

Mr. WALKER. -
I want to show that the anti-federationist party are really the Southern Queensland party.

Mr. DOUGLAS (Tasmania). -

I rise to a point of order. The honorable member (Mr. Walker) is introducing a subject on which we have no power to legislate.

The CHAIRMAN. -

The honorable member (Mr. Walker) is introducing a clause it is quite competent for us to pass, and I do not think he is out of order.

Mr. WALKER. -

I am sorry to trouble my honorable friend (Mr. Douglas) at this time in the morning, but I have waited patiently for a long time, and I cannot help it. Here is what the Hon. George Thorn says about federation:-

Under intercolonial free-trade we (Queensland) shall lose between £120,000 and £130,000 in Customs revenue, and our share of the cost of the Federal Government will be £70,000, making a total of £200,000 per annum. Then look at the loss there will be on our railways, and so on. I will not go on with that. Mr. Thorn goes on to say-

It is only within about the last eight years that they have started growing maize in Victoria, and yet Coghlan-

The wonderful Coghlan turns up even there. Mr Thorn continues- and yet Coghlan tells us that the crop of maize in Victoria is double the crop in Queensland.

The CHAIRMAN. -

Does the honorable member think that is relevant to the question of Her Majesty's prerogative?

Mr. REID. -

It is calculated to provoke a riot.

Mr. WALKER. -

Here is what Mr. Thorn says about Mr. Barton's Bill-

We must have the whole or nearly the whole of Mr. Barton's Bill, and it is a waste of time and money for us to go to this Convention on the lines suggested by Mr. Barton and Sir Samuel Griffith, for I see very little difference between their schemes. They are both lawyers, and so long as lawyers swim they do not care who sinks.

I want to show the absolute nonsense of those who oppose federation.

Mr. BARTON. -

What has that to do with the division of Queensland?

Mr. WALKER. -

I want to show that it is Southern and not Northern Queensland which is
opposing federation. It would be very unwise, from my point of view, if we did not admit Queensland as a whole colony, and let the people of that colony have the right, as they believe they have, to separation on petition to Her Majesty. The Queensland people are afraid that, if they come in as they are, that right of separation will be removed from them, and hence they are keeping.

Mr. BARTON (New South Wales). -

I think the discussion which took place before raises a doubt whether there is any such right as my honorable friend wishes to preserve by this clause. The Acts on the subject are not very explicit, when one considers them in their chronological order, and in connexion with the action of the prerogative which has since taken place. It is a question whether any power to subdivide Queensland under Orders in Council or by letters patent has not been exhausted, so that it is not quite certain if it could have any effect. In addition, honorable members have heard the individual opinions which have been read by the honorable member (Mr. Walker), and the opinion of the Premier of Queensland, delivered apparently after a consultation with his colleagues. We must take it that the opinion of the Ministry has been expressed by Sir Hugh Nelson, and, so far as the Convention is concerned-Queensland not being represented here-we can have no knowledge of the public opinion of the colony unless we derive it from their parliamentary proceedings, or from the statements of their Executive Government. Their parliamentary proceedings, I must say, are absolutely bewildering; but the statement of their Executive Government is explicit. They say that a clause of this kind would not help the cause of federation in Queensland. When we know that the majority of the electors of Queensland live in the Southern part of that colony, it seems to me that we should beware of passing a clause which, while it might conciliate the Central and Northern parts of the colony, will alienate those living in the Southern parts of the colony. The question is whether it is not better to leave the Bill to its ordinary operation, and Queensland to its own devices, inasmuch as we know that if that colony remains in its senses it will hereafter join the Federation.

Mr. WALKER (New South Wales). -

There is one point which I have reserved for the end. These are the terms of a motion which was carried in the Queensland Parliament on the 4th of November last:-

That, in the opinion of this House, the time has now arrived when the Central and Northern divisions of this colony should be constituted separate colonies in compliance with the petitions of the inhabitants thereof.
Twenty honorable members voted upon each side, and the Speaker gave his casting vote in favour of separation. It is just as well to let honorable members know that the separation party have friends in the Queensland Parliament. I do not believe, after what has been said by the leader of the Convention, that I can carry this clause, but I have tried to do my duty in bringing it forward. I have presented a petition from the league of Central Queensland upon a former occasion, and I now abide by the decision of the committee.

The clause was negatived.

Clause 121 (Mode of amending the Constitution),
Mr. ISAACS (Victoria). -

No one is more fully persuaded of the importance of this clause than I am. At the same time, no one can have a greater belief in the utter futility of asking the Convention to deal with it or to reverse its vote at this hour of the morning. Therefore, in view of all that has been done to-night, I shall not take up the time of the Convention by moving, any amendment.

The clause was agreed to.

Mr. GLYNN (South Australia). -

I should like to ask the leader of the Convention whether, in view of the importance of clause 75, he will allow us an opportunity to reconsider it? I think that all the words after the word "state" in the second line should be struck out.

The CHAIRMAN. -

I do not think the honorable member can discuss the clause, although he is at liberty to ask a question.

Mr. GLYNN. -

I hope that the leader of the Convention will give us this opportunity, so that we may provide for appeals going only through the High Court to the Privy Council. That can be done, as I have pointed out, by striking out the words "after state." At the same time, by doing that, you will abolish the direct appeal from the state courts. Clause 75 provides-

The CHAIRMAN. -

The honorable member is not in order in debating the clause.

Mr. BARTON. -

What point do you want considered?

Mr. GLYNN. -

Clause 75 allows an appeal under the reservation of the prerogative from the High Court to the Crown. Provision is also made that Parliament may abolish the right of appeal from the High Court. Clause 75 states the same
thing again as regards appeals to the Privy Council from the state courts, but it does not preserve the right of Parliament to abolish them. I pointed that out during the discussion upon the clause, and I would again ask for its reconsideration.

Mr. BARTON (New South Wales). -

This clause practically prevents two classes of appeals from going to the Privy Council—appeals as to the interpretation of the Constitution of the Commonwealth, and appeals as to the interpretation of the Constitution of a state. It also states that there is to be no appeal from any federal court save in certain cases where Her Majesty may retain the Royal prerogative. That is a repetition of clause 74, but in clause 74 there is power—

The CHAIRMAN. -

I think this discussion ought to take place upon the question of the adoption of the report.

Mr. BARTON. -

I have already stated that I propose to reconsider the clause, and have redrafted it to read something like this:—

Notwithstanding anything in the last section, in any case in which the interpretation of the Constitution of the Commonwealth or of a state is involved, an appeal shall not be allowed to the Queen in Council from any court of any state, or from the High Court, or from any other federal court, unless in any such case the public interests of any part of Her Majesty's dominions other than the Commonwealth or a state are involved.

That confines the matter to the two classes of cases in which it is proposed to retain the final appeal in the High Court, with the reservation of the cases which deal with public interests of other parts of the dominion.

The Bill was reported with amendments.

The PRESIDENT. -

The question is that the consideration of the report be an order of the day for the next day of sitting.

Mr. BARTON (New South Wales). -

I understand from the Premier of New South Wales that he would like me to fulfil a promise which I made to him with reference to clause 55. Honorable members will recollect that a vote was taken upon that clause yesterday, which was to some extent complicated by the fact that some honorable members could not see that the amendment which he wanted to make could reasonably be fitted into clause 55. I told him that I would prepare a draft which would, perhaps, carry out his intention, at any rate as to part of the clause, and that if be then wished to recommit the clause I would consent to the recommittal. It was necessary, under the circumstances, to do that, inasmuch as some honorable members voted
against the amendment, because they could not see any reasonable method of applying it to the structure of the clause. There is a method in which it can be applied to the structure of the first subsection and not to the second sub-section. I understand that the right honorable member is willing to move it as applying to the first sub-section only.

Sir JOHN FORREST. -

He ought to give notice.

Mr. BARTON. -

Notice was given yesterday by me. I said I would prepare for my right honorable friend a draft showing what could be done, and that I would not oppose a recommittal under the circumstances. It is a very simple matter, and I do not think it should take up any time at all.

The PRESIDENT. -

I would like to point out to the leader of the Convention that it would be impossible to put the motion for the recommittal of the clause now. The question before the Chair is simply that the report be taken into consideration on a certain day.

Mr. BARTON. -

There are two matters on which I have a duty to perform. I have to redeem the promise that I made to the Right Hon. Mr. Reid, and I shall feel it incumbent, inasmuch as some honorable members did not appreciate the question when they voted for it, to ask for the recommittal of the clause carried on the motion of the Right Hon. Sir Edward Braddon.

Sir GEORGE TURNER. -

I shall feel it incumbent upon me to object to that, because some honorable members may have gone away.

Mr. BARTON. -

I shall have to ask the President to protect me from the undue haste of some honorable members sitting opposite. I was going to say that I did not intend to ask for the recommittal to night. Are we going to finish to-night this morning? I am equally prepared for either. If the right honorable member had allowed me to conclude the sentence there would have been no necessity for his interruption. I propose, if the Convention does not wish to conclude now, to hold a short sitting in the morning to deal with these matters.

Dr. COCKBURN. -

What was the use of keeping us here at all?

Mr. BARTON. -

I do not know what the honorable member means, but the honorable member understands that when I make a promise I ought to fulfil it, and I
ought also to give notice of anything else that I intend to do. I propose to
do these two things. If it suits the convenience of the Convention, I shall
ask honorable members to meet at half-past ten or eleven o'clock to-day.

Mr. DOUGLAS. -

What is to be proposed?

Mr. BARTON. -

I have already stated what the two proposals are, but I will do so again.
One of the proposals is to recommit the first sub-section of clause 55, to
enable the Right Hon. Mr. Reid to submit a motion to prevent a law being
declared bad as dealing with other matters besides the imposition of
taxation where the matter not dealing with the imposition of taxation is
separately under the law, and so that the law may be held good so far as it
deals with taxation. That is all. The other is to deal with the clause inserted
on the motion of the Right Hon. Sir Edward Braddon, which I would not
seek to disturb if I had not had an intimation that there are a considerable
number of honorable members who desire that the clause should be
reconsidered.

Sir EDWARD BRADDON. -

Honorable members who voted against it.

Mr. BARTON. -

I shall finish as soon as I am allowed. That is all I propose to do in regard
to the Bill, unless any honorable member can convince me that we should
retrace our steps in any particular. I shall be very willing even then to do
so.

Sir GEORGE TURNER (Victoria). -

The leader of the Convention proposes that we should meet again at
eleven o'clock a.m. There is this difficulty that those honorable members
who have not been here during the night will have no intimation whatever
that this step is to be taken. If we are to reverse the vote we gave tonight
we ought to reverse it in as full a

Convention as we can get. Some intimation should be given to the
honorable members who are not present of the proposed meeting, so that
they may have an opportunity of attending.

Mr. GLYNN (South Australia). -

I beg to give notice that at the first opportunity I shall propose the
recommittal of clauses 74 and 75.

Mr. BARTON (New South Wales). -

As fas as I call see, I shall have to oppose that proposal.

DAY AND HOUR OF MEETING.

Mr. BARTON (New South Wales). -
I beg to move-
That the standing orders be suspended to enable me to submit a motion, without notice, with reference to the day and hour of meeting.
The motion was agreed to.

Mr. BARTON. -
I beg to move-
That the House, at its rising, adjourn until this morning, at eleven o'clock a.m.
The motion was agreed to.
The Convention adjourned at three minutes to four o'clock a.m. (Saturday).
Saturday, 12th March, 1898.

Days of Sitting - Commonwealth of Australia Bill: Consideration of Bill as reported a Third Time.

The PRESIDENT took the chair at two minutes past eleven o'clock a.m.

DAYS OF SITTING.

Mr. BARTON (New South Wales). -

In order to facilitate our future movements, I beg to move-
That the Convention, at its rising at the close of each sitting do adjourn to such time as shall then be ordered.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

On the order of the day for the consideration of the Commonwealth of Australia Bill as reported a third time,

Mr. BARTON (New South Wales) said -

I beg to move-
That the Bill be recommitted for the consideration of clause 55, sub-section (1), and clause 91A.

These are the two clauses that I mentioned last night. One of them I promised Mr. Reid, at the time the vote was taken, that I would have recommitted, and the recommittal of the other I propose because I was informed that a good many honorable members did not quite appreciate the question at the time they gave their votes. I have no desire to re-open anything on my own account.

Sir GEORGE TURNER. -

Perhaps it might expedite business if you give us some idea what the object of the recommittal of these two clauses is.

Mr. BARTON. -

The object of proposing the recommittal of clause 55, sub-section (1), is to enable Mr. Reid to move an amendment in that sub-section which would enable a law imposing taxation to be good to the extent it imposes it, although there might be provisions in the Bill which deal with matters other than taxation, and that such latter matters only should be bad-that the Bill should be bad only in that respect. The object of moving the recommittal of clause 91A is to omit or modify-in fact, to reconsider-the clause proposed by Sir Edward Braddon.

Mr. DEAKIN. -

Would it not be necessary to recommit clause 90 as well as clause 91A, because there might be some alteration to be made in the clause to make
the two clauses agree the one with the other?

Mr. BARTON. -

I think not, as far as I can see.

Mr. DEAKIN. -

It would be a consequential amendment, of course, if any amendment was required.

Mr. BARTON. -

It will depend on the discussion.

Sir GEORGE TURNER (Victoria). -

There was one matter which we dealt with before adjourning this morning, namely, clauses 95F and 95G, with regard to the Inter-State Commission. I have been again earnestly considering our position with regard to these clauses, and I feel so over-weighted with the result of the divisions last night that I am bound to ask, if I possibly can, to get a vote in the full Convention in respect to this matter, which I regard as of vital interest to the colony of Victoria. Under these circumstances, I ask the leader of the Convention to allow clauses 95F and 95G to be recommitted. As far as I am personally concerned, I can assure him that any remarks I have to make in connexion with these clauses will be curtailed as much as possible. I will only speak a minute or two in regard to the matter.

The PRESIDENT. -

Am I to understand that Sir George Turner moves for the recommittal of clauses 95F and 96G?

Mr. BARTON (New South Wales). -

I think my right honorable friend asks me to consent to the recommittal.

Sir GEORGE TURNER. -

If you would kindly consent.

Mr. BARTON. -

My right honorable friend places me in rather a difficulty about this, because the action of last night upon these clauses, 95F and 95G, was taken after printed notice of intention to deal with those provisions was duly given. Previously these clauses were the subject of long debate, and the Convention came to a certain decision. Afterwards my right honorable friend sought to re-open these clauses, and gave printed notice of his intention to do so, and therefore the Convention understood all about the matter. When I asked the Convention to sit last night for the purpose of getting as far through the Bill as possible, the printed notices were in the hands of honorable members, who generously promised to help me in getting the Bill through. These matters were then considered and definitely
decided, and I see no reason for recommitting these clauses.

Sir GEORGE TURNER. -

There is the same reason for recommitting this clause as for recommitting the clause in which Sir Edward Braddon desires to move an amendment.

Mr. BARTON. -

Oh, no. A very different reason exists in regard to that clause. Sir Edward Braddon's amendment in that clause seems to me to be inconsistent with another clause already passed—clause 90 in the Bill as now reported.

Mr. HOLDER. -

No, it is not inconsistent.

Mr. BARTON. -

It seems to me to be so. Of course it is a matter of opinion, and my honorable friend may convince me to another effect. I have twice explained the reason for my opinion, but I have been informed that a number of honorable members voted on the question without properly understanding what was the question. I am told so, and of course I cannot disbelieve the information I get. Therefore I thought it better to let this clause be re-opened to the consideration of the Convention. However, this matter is entirely in the hands of the Convention. If the Convention vote that the matter should be re-opened I shall not feel any chagrin.

Sir EDWARD BRADDON (Tasmania). -

I hope that these motions for recommital will be put separately, because I shall feel it my duty to oppose the recommital of the clause mentioned by Sir George Turner.

Mr. BARTON. -

I have no objection to them being put separately.

Mr. GLYNN (South Australia). -

I beg to move—

That clauses 74 and 75 be recommitted.

I do not know whether the leader of the Convention objects to this proposal. If so, I will have to state my reasons for submitting it.

Mr. BARTON. -

I have stated the reasons for the recommittal of the clauses I asked to be recommitted.

Mr. GLYNN. -

Well, my reason for desiring the recommittal of clauses 74 and 75 is that they are to a great extent inconsistent with each other, for clause 74 provides that the appeal to the Queen in Council still holds good. The
judgment of the High Court is not final until Parliament abolishes the
prerogative rights retained by the, saving provisions of this clause. Clause
75 states that no appeal shall be allowed to the Queen in Council from the
court of any state, or from the High Court, or any other federal court; but it
also provides that Her Majesty may grant leave to appeal to the Queen in
Council from the High Court except in certain specified cases involving the
interpretation of the Constitution. Practically that is the only exception,
cases involving matters of constitutional rights. Now, the position in clause
75 is that whilst in clause 74 the right of appeal from the High Court to the
Privy Council may be abolished by Act of Parliament, clause 75 states that
the direct appeal cannot. Therefore the two clauses are inconsistent.

Mr. SYMON. -

Mr. Barton said yesterday that this was purely a drafting amendment.

Mr. GLYNN. -

So far, good. Besides that, as stated by Dr. Quick, the right of appeal,
until Parliament decides to the contrary, has been retained in small matters
of private interest, but in the large matters-constitutional matters-the
prerogative right has been abolished. At any rate, it is only preserved as
regards matters involving the interests of other parts of Her Majesty's
dominions. But all questions as to the determination of the Constitution
itself are to be finally decided by the High Court. What I propose to do on
the recommittal of the clause, is to ask the committee to strike out of clause
75 all the words after the word "state." The clause will then read:-

No appeal shall be allowed to the Queen in Council from any court of
any state.

The effect of that amendment will be that the right of appeal direct from
the state court to the Privy Council will be abolished. There is no saving of
the prerogative right in respect to that matter, but in all other matters,
whether of private interest or constitutional interpretation, the right of
appeal will be retained until Parliament prescribes to the contrary. Now, I
think that that is a very fair position to take-that the right of appeal in all
matters, except direct from the state courts to the Privy Council, will be
declared, but the Parliament may at any time abolish that right of appeal.
That is consistent, and if any matter requires the determination of the
Judiciary in the earlier stages of the Federation-and I lay particular
emphasis on the earlier stages-it is a matter as to the interpretation of the
Constitution itself. We ought to continue in this, if in any, the safeguard of
the Privy Council, which for the first ten or fifteen years after the
federation will be free from all local influences or state influences or
prejudices acquired during the adoption of the Federal Act itself. You will
have a judicial tribunal there which cannot possibly have any local
colouring, be affected by any local influences, or have acquired any
preconceptions.

Mr. GORDON. -

On the same reasoning you might move for the recommittal of every
clause in the Bill. The Convention deliberately came to this decision.

Mr. GLYNN. -

I do not think that the Convention came to this decision so deliberately as
it did in regard to other matters. Owing to attempts to change the
provisions of clause 75, the Convention seemed to be in a regular muddle
as to what it was doing.

Mr. REID. -

No, it was not.

Mr. GLYNN. -

Honorable members know that amendments were moved in clause 75
which were inconsistent with the provisions of clause 74 as already agreed
to, and those amendments had, consequently, to be withdrawn.

Mr. BARTON. -

They were withdrawn, so that they did no harm.

But how can the Convention say that it had its eyes perfectly open in
adopting the clause as it now stands? I ask that this matter be reconsidered,
and I hope that the policy I have suggested will be adopted.

Dr. QUICK (Victoria). -

I rise for the purpose of supporting the proposal of my honorable friend
(Mr. Glynn) for the recommittal of clauses 74 and 75. I cannot avoid the
impression that the Convention yesterday was surprised into the adoption
of the proposal of Mr. Symon—a proposal submitted without notice, and one
involving an absolute reversal of the policy of appeal recommended by the
Judiciary Committee of this Convention. I cannot really reconcile myself to
this amendment which has been incorporated in the Bill at the instance of
Mr. Symon. I cannot understand his position in the matter at all. It is
absolutely contradictory. Throughout the whole of the previous sessions of
this Convention Mr. Symon, as chairman of the Judiciary Committee, has
supported the right of appeal to the Privy Council in all public and
constitutional matters.

Mr. SYMON. -

I was under a grave mistake.

Dr. QUICK. -

Under a grave mistake? Well, it shows the value of the honorable and
learned member's leadership! We should distrust his leadership when during two sessions he has supported the right of appeal in public and constitutional matters, and now, at the last moment, because the right of appeal has been granted to subjects in private cases, he proposes an absolute reversal of an important principle of the report of the Judiciary Committee, and the recommendations of it. I really feel that this clause, if it is to stand, apart from its ambiguity (which I seriously recommend to the Drafting Committee), would be a blot on this Constitution—an absolute blot on this Constitution. I should like to know what will be thought of this Bill in Europe when it goes there, if it is found that whilst the right of appeal to the Privy Council is granted in private matters—in disputes between individuals—this Constitution shows a distrust of submitting the question of the interpretation of its terms to the highest tribunal of judicial appeal in the empire!

Mr. REID. -
On Australian questions; such questions are only Australian.

Dr. QUICK. -
True; but I was not aware that there was any reason why we should be afraid of submitting the interpretation of this instrument to the final Court of Appeal in this empire.

Mr. REID. -
We are not afraid, but we say that the Privy Council is an improper tribunal with regard to such points.

Dr. QUICK. -
Surely we cannot be afraid that this instrument will not receive a liberal and judicious interpretation in the highest court of the empire. What reason have we for believing that it will not be interpreted in the spirit usually shown by British jurists-men educated in the same school and upon the same principles of common law as we are here? Why should we be afraid of submitting the interpretation of this instrument to them?

Dr. COCKBURN. -
Because they do not live under the same conditions, and do not understand them.

Dr. QUICK. -
Surely we do not expect that the men who are going to interpret this Constitution are going to exercise legislative functions? Will they not have to interpret the Constitution according to the English language, in which it is expressed?

Mr. BARTON. -
Will it not be a more convenient time to argue upon the main question when the clauses are recommitted?
Dr. QUICK. -

I must apologize if I have trespassed beyond the bounds of moderation. But this is a question on which I entertain a strong opinion. I have not taken many opportunities of trespassing upon the time of the Convention. There are many questions which I am willing to sink, but I have thought of this carefully, and the more I think of it the more I am convinced that it will be a serious blot on the work of this Convention, and will show a distrust of that great and august tribunal to which the right of appeal has hitherto been, if we allow such a provision to remain. I see no reason for thinking that if the right of interpretation is allowed to the Privy Council in the final resort, Australia will have any reason whatever to fear that we shall have anything but a liberal and true interpretation at the hands of the Privy Council.

Sir RICHARD BAKER (South Australia). -

During the proceedings of this Convention, I have presided in committee with a great feeling of satisfaction to myself, because although from time to time provisions were being inserted in this Bill of which I could not approve—in fact, which I strongly objected to—still I could see that the Bill was being made into a coherent whole. But, sir, I must say that this morning, or last night—I am not quite sure which—I was grievously disappointed at the conclusion at which the committee arrived in reference to clauses 74 and 75. Because it seems me that, whatever view we take of this question, it is impossible to argue in favour of the conclusion at which we have arrived. We either ought to have an appeal to the Privy Council or we ought not to have it. I am aware that an argument was used which seemed to have great weight, that surely the persons who made the Constitution were the proper persons to interpret the Constitution—perhaps not the same persons individually, but the same people. I do not pretend for one moment to deny that we can constitute in Australia a perfectly competent and capable court; but if that court is perfectly competent and capable, and fit to interpret finally questions involving the meaning of this Commonwealth Bill, surely that court is equally fit and competent to inquire into matters of personal dispute between citizens. What I wish to impress upon the Convention is this: We should either arrive at one conclusion or the other, and not at two conclusions, which, as it seems to me, are inconsistent. What an absurdity it is to say that there shall be an appeal in a case in which two private citizens have a dispute concerning, we will say, a bill of exchange for £550, but that there shall be no appeal in a matter of enormous importance, involving hundreds of thousands of pounds, and affecting the future of tens of thousands of people, arising out
of the interpretation of the Constitution! Surely that is not the condition in which we are content to leave this matter. I am not one of those who feel strongly as to whether there should be an appeal to the Privy Council or not. I have, since 1891, spoken both ways and voted both ways, because the arguments which have been advanced from time to time have seemed to me so forcible, either from the one side or the other, that I felt compelled to arrive at different conclusions at different times. Therefore, I cannot be taken to be one who is strongly biased in this matter. But I cannot help arriving at the conclusion during the last few months that there are a large number of people in this country of Australia who will strongly support this Commonwealth Bill if the right of appeal to the Privy Council be retained. It is all very well to say that this is a mere sentimental consideration. It may be. I think it is a little more. but it maybe a sentimental consideration. But are not nearly all the bonds which bind us to the mother country sentimental considerations?

Mr. SYMON. -

That is not a bond. Sir RICHARD BAKER. - I say it is a bond. It is one of the strongest bonds that bind us to the mother country that we recognise that we are part of the same empire, by having a final Court of Appeal to the same court for all the colonies of the British dominions. The argument was advanced yesterday that this jurisdiction of the Privy Council was a new matter, and the date 1833 was mentioned. Now, this is an utter and entire misconception of the position. The Privy Council has had jurisdiction-

Mr. SYMON. -

The Judicial Committee of it.

Sir RICHARD BAKER. -

I do not say the Judicial Committee. If the honorable member will not interrupt me I shall be able to proceed with my argument. The Privy Council has been the final Court of Appeal for all Her Majesty's dominions except England, and latterly Great Britain and Ireland, for nearly as long as the House of Lords has been the final Court of Appeal. It is perfectly true that in 1833 the mode in which the appeal should be exercised was altered, and it was then that the Judicial Committee was appointed. But it is also true that in 1876 the mode in which the House of Lords could hear appeals was also altered. And it is just as true to say that the House of Lords exercises a new jurisdiction in appeal cases because the present jurisdiction was regulated and altered in 1876 as it is to say that the Privy Council exercises a new power of appeal because in 1833 the mode was regulated and made subject to certain conditions. Now, sir, the time has arrived when
very short speeches should be made. I do not wish to say more than this; but I do ask the Convention to allow these two clauses to be recommitted so as to arrive at some conclusion which those who wish to advocate the Bill on the hustings will be able to maintain against the attacks of enemies of federation. For choice I would like to see the appeal to the Privy Council retained. But if the committee is of the contrary opinion, let them do away with it under all circumstances. That is all I have to say, and I hope that in this matter, being the only matter upon which I have addressed the Convention—a matter in which, as it seems to me, the Convention has come to an inconsistent and unworkable conclusion—they will retrace their steps.

Mr. BARTON (New South Wales). -

I should like to say that after the appeal which has been made by Sir Richard Baker, taking into consideration that he has not been able to participate in our deliberations, I feel that I can no longer resist the application to recommit these clauses.

An HONORABLE MEMBER. -

A generous statement.

Mr. REID (New South Wales). -

I really feel that his is not the time for generosity.

Sir WILLIAM ZEAL. -

It cannot be expected of you.

Mr. REID. -

May I ask you Mr. President to protect me from the violence of the honorable member?

Sir WILLIAM ZEAL. -

We don not want any buffoonery here.

The PRESIDENT. -

I would ask honorable members, considering the stage at which we have arrived, to keep order.

Sir WILLIAM ZEAL. -

If I were in the chair I would make the right honorable member keep order.

Mr. REID. -

I believe I am in possession of the Chair.

Sir WILLIAM ZEAL. -

If I were in the chair I would stop you.

Mr. REID. -

May I be allowed to proceed?

Sir WILLIAM ZEAL. -

The right honorable member made a personal reference to me yesterday
which was extremely offensive, and if I had heard it at the time I should
certainly have stopped him.

The PRESIDENT. -

If Sir William Zeal complains of any offensive remark having been made
by Mr. Reid in the course of this debate, no doubt the right honorable
member will withdraw it.

Sir WILLIAM ZEAL. -

The right honorable member addressed me as reverend.

Mr. REID. -

That is days ago. I have changed my opinion since then.

Sir WILLIAM ZEAL. -

He has been extremely offensive.

The PRESIDENT. -

If my attention had been called to the remark at the time I should have
asked the honorable member to withdraw it, but it is too late now for any
notice to be taken of it.

Mr. REID. -

In common with other members, I have the most unfeigned respect for
Sir William Zeal.

Sir WILLIAM ZEAL. -

After you have insulted me?

Mr. REID. -

I did not intend to do that. . - Yes, you did. There is a second matter I
could refer to. I will not stand it from you.

Mr. REID. -

Surely I should be listened to. One would think that the last thing in the
world that would be regarded as an insult would be the application of the
word "reverend" to any one.

The PRESIDENT. -

I would ask the right honorable member to address the Chair.

Mr. REID. -

That is what I wish to do. I said nothing on this question yesterday,
whilst other honorable members talked for hours. It is most unendurable
that when I rise to express my opinion there should be this clamour against
me. I will not stand it even from this illustrious President of a Legislative
Council.

Sir WILLIAM ZEAL. -

You will not insult me again.

Mr. REID. -
You are beneath insult.

**Sir WILLIAM ZEAL.** -
And so are you; you are a contemptible fellow.

**The PRESIDENT.** -
I must ask the honorable member to withdraw that expression.

**Sir WILLIAM ZEAL.** -
I do, most unreservedly, but I think I am entitled to say-

**The PRESIDENT.** -
I am sure that the honorable member's acquaintance with the rules of debate will satisfy him that we cannot now enter into matters that occurred some days ago. I would ask the honorable member to allow the debate to proceed?

**Sir WILLIAM ZEAL.** -
The honorable member must not insult me, and then renew the insult again.

**The PRESIDENT.** -
Certainly not, and any effort in that direction will be checked.

**Mr. ISAACS.** -
I would ask you, Mr. President, whether the Right Hon. Mr. Reid should not also be called on to withdraw the last statement he made?

**Mr. REID.** -
I quite admit that. I was going to withdraw the statement without being called upon.

**Sir WILLIAM ZEAL.** -
After you have insulted people.

**Mr. BARTON.** -
Why cannot we get on with business?

**Mr. REID.** -
I am sorry that my effort to express some regret should have been met with resentment, and not with consideration.

**Sir WILLIAM ZEAL.** -
After you have insulted people.

**The PRESIDENT.** -
I should like to say, in justice to myself, that I heard the observation of Sir William Zeal, but I did not hear the observation of the Right Hon. Mr. Reid. I am pleased that he is willing to withdraw it.

**Mr. REID.** -
Certainly. No doubt it was an unjustifiable expression. Some allowance should be made after our long sitting.

**The PRESIDENT.** -
Will the honorable member kindly address himself to the question?
Mr. REID. -

I will, Mr. President, and I hope that you will see that I am allowed to do so. I want to say that I did not address myself to this subject yesterday. I felt just as our worthy Chairman of Committees has felt, that this was a matter of very great difficulty, and I have come to the conclusion that the settlement which was arrived at yesterday, although it does not seem to us to be a very logical settlement, is, after all, the best we can obtain under the circumstances.

In the first place, Sir Joseph Abbott may be taken as representing-and fairly and properly representing-the large body of opinion outside the Convention which is in favour of some form of appeal to the Privy Council. That honorable member submitted to us the proposition that those whose opinions we wish to see represented in the Constitution should be satisfied with the Bill if we allowed the prerogative of Her Majesty to be retained. That is to say, if we allowed leave to appeal to the Queen to enable any case to be transferred to the Privy Council. I have always had this difficulty. If we are to have an Australian High Court of Appeal it seems to be an elementary proposition that it must be a court of final judgment, that otherwise instead of reforming the law we should be absolutely increasing the trouble and expense to suitors of obtaining a decision. That view appears to have been acted upon both by those who chew the Bill and by those who have agreed to this settlement. As the case stands now, if any decision in a suit between two private persons seems to be contrary to the law as laid down by that high tribunal in England, a petition for leave to appeal would probably, if the case were one which would affect a large number of individuals, be granted, not because of the importance of the case as between A. and B., but because of the importance of seeing that the law of the Commonwealth in matters affecting private rights was in harmony with the laws laid down by the Privy Council. In the enormous number of cases in which no such question arises, and in which there is no appearance of an infraction of the law of the empire, why should there be an appeal to the Privy Council? I look upon this settlement as quite consistent, because, although Sir Richard Baker puts it as a case between two private persons, the point involved may be one of such far reaching consequences, that it may affect elementary rules of law in adjusting the rights of all private individuals. I therefore come broadly to this conclusion, that it was well we adopted Sir Joseph Abbott's proposition, so that the right to invoke the judgment of the Judicial Committee should not be absolutely destroyed. This settlement
preserves in every case of any importance a connexion with the Privy Council. Why should the other cases excite any anxiety in this Convention? We may feel perfectly satisfied that in the ordinary run of cases the judgment of the High Court will be satisfactory, or, at any rate, as satisfactory as any human judgment call be. I am sorry that the Bill is to be reconsidered on these clauses, because I fear that we may waste another day over them. I come now to the question raised by the Right Hon. Sir George Turner. I am sure he has taken the sense of the Convention often enough upon these matters. If I attempted to do as much in connexion with any question in which I was vitally interested, I do not know what would be said about me. I have looked at the division lists, and I find that on the subject the honorable member asks us to reconsider the voting was in one case 15 to 22, and in the other 13 to 22. These are substantial majorities. Where there was a majority of only one or two votes, I could not blame any one for endeavouring to get a reversal or review of the decision. But here there were majorities of seven and nine, and are we, at the eleventh hour, to be precipitated again into a discussion upon these burning questions? It is just as important to New South Wales that the present clause should stand as it is to Victoria that it should be disturbed, and, as the majority was a substantial one, I do not think that any good purpose would be served by re-opening the question. At the same time, rather than at our last meeting there should be any appearance of treating any particular colony with a want of consideration, I will not press my opposition to the proposal. But I would suggest that if we are to reconsider the matter at all, the whole of the three clauses should be recommitted. I am satisfied with the form in which Sir George Turner has put his proposition. With regard to Sir Edward Braddon's proposition, I got up to speak to it yesterday, but some honorable member—not Sir Edward Braddon—said to me—"What is the use of taking up time; it will be rejected?" I therefore sat down and said nothing. I was greatly surprised to find, although I had no right to be sure, that the majority was the other way. I had no opportunity of expressing my views on the matter, but I do not say that that is a reason for recommitting the clause. While we are in the humour to recommit these particular matters, we had better recommit them all.

Mr. BARTON (New South Wales). -

I have a suggestion to make to honorable members. It is proposed now to recommit subsection (1) of clause 55, clauses 74 and and 75, and the two clauses the Right Hon. Sir George Turner has mentioned.

Sir GEORGE TURNER. -
Clause 96 hangs on those two.

Mr. BARTON. -

We can consider that afterwards. Then there is also clause 91A. At this late stage of our deliberations, I think we should agree not to speak on any subject for more than five or ten minutes. On that understanding I should not have the least objection to the whole of these clauses being recommitted.

Mr. SYMON (South Australia). -

I must strongly and emphatically protest against the proposed recommittal of clauses 74 and 75. I think that is a most monstrous proposition.

Mr. FRASER. -

Don't use such a strong adjective.

Mr. SYMON. -

I used it advisedly, and I repeat it.

Mr. FRASER. -

It is not warranted.

Mr. SYMON. -

I am not applying it to the honorable member but to the proposition, and I must say that the reasons given are of the very flimsiest possible description. My honorable friend (Dr. Quick) talks about my leadership, and suggests that it should not be followed, The honorable member has not followed my leadership-

Dr. QUICK. -

I have in many cases.

Mr. SYMON. -

If he had done so he, would not have been in the mess that seems to oppress him, although it is no mess in my estimation. This is a very proper provision. I have always been opposed to giving any appeal whatever from the High Court of the Commonwealth to the Privy Council upon matters affecting the Constitution, but I gave way as to that because of the opinion that was entertained by those whose views I wished to meet, that a provision of the kind should remain in the Constitution, and for no other earthly reason. I was willing, and it was a compromise, that the appeal should be taken away in all that multitude of cases which might be as effectually and efficiently dealt with by the High Court as by the Privy Council, and that it should be retained in other cases in regard to the Constitution. When my honorable friend (Mr. O'Connor) suggested yesterday in the course of his speech that he was against this provision, and that a modification of it might well be made, I at once fell in with that view before any decision was arrived at on Sir Joseph Abbott's
amendment. Now we are asked by my honorable friend, the highly esteemed Chairman of Committees, to have this matter reconsidered, because he would like this power of appeal in regard to the Parliament of the Commonwealth or of the state to the High Court to be preserved. My honorable friend is quite mistaken, both as to what I said and as to the history of the Judicial Committee, with regard to the duration of the power of this court. My honorable friend is not well informed, on this point.

Sir RICHARD BAKER. -
I said nothing about the Judicial Committee; I said the Privy Council.

Mr. SYMON. -
I spoke of the Judicial Committee, and my friend must not make statements of that kind based on statements which I never made. I utterly repudiate having suggested anything as to the early history of the Privy Council, which has no relation whatever to the court we were being called upon to deal with. My objection to the retention of this matter is that which has been put by Mr. Reid. After three deliberations and three decisions we arrived at the conclusion that we should abolish altogether the appeal to the Privy Council, except in constitutional cases. At the last moment, after a considerable debate, which I do not wish to see re-opened for a moment, I am willing loyally to submit to the decision of the committee. In a subsequent clause we made an alteration after debate that it should not be possible to refer to a t

Mr. FRASER (Victoria). -
This is becoming intolerable to a number of us. We came here this morning to make a quorum and do some very important work. Much as we would like to have this clause reconsidered, we have no time to do it. The clause has been voted upon three times, and yet the honorable member (Mr. Symon), who has had possession of the Chair for an undue time, persists in wasting more time. I would rather take the clause, imperfect as it is to some extent, than re-open the discussion, and waste a lot of time over a matter that, after all, is not very important. I hope, Mr. President, you will use your influence to bring this matter to a speedy conclusion, as many of us will have to leave, and the Convention will be left without a quorum.

Sir JOSEPH ABBOTT (New South Wales). -
There is some misapprehension in the statement made yesterday, and now repeated, that I favour the amendment made in clause 75. I do not favour the limitation of the right of appeal at all, but I am quite prepared to accept what was decided yesterday. Much as I disagree with both clauses as they appear now, it would be unwise to recommit them and vote again on what we
decided yesterday. Mr. Symon has, of course, threatened what he will do if the clauses be recommitted. There is no necessity for any threatening at all. No sooner was my amendment carried than Mr. Symon became so excited he could hardly write out the amendment be proposed to submit to the Convention with the idea of whittling away everything that had been conceded in the proposal carried. I am very glad to hear the explanation made by Mr. Symon this morning. It appears to me rather inconsistent with what he said yesterday, having regard to the words which were excised in section 75 at my instance in regard to matters not involving the interpretation of the Commonwealth or of the state law. Mr. Symon has today, for the first time, told the Convention even that should not be allowed to be the subject of appeal. In 1891, Mr. Symon held very strong views in favour of the Privy Council, and in favour of obtaining the right of appeal.

Mr. SYMON. -
I did.

Sir JOSEPH ABBOTT. -
The honorable member held very strong views in favour of retaining the right of appeal to the Privy Council.

Sir EDWARD BRADDO. -
Not in 1891?

Sir JOSEPH ABBOTT. -
We have heard a great deal of the author of the Bill of 1891. Sir Samuel Griffith, when writing about that Bill, said-"I think the Canadian system as to appeals the most satisfactory." That is the most recent opinion of the author of the Bill. I do not think we should recommmit the Bill. There are, no doubt, deformities in it, but these the Drafting Committee can to some extent excise.

Mr. GLYNN (South Australia). -
I would be perfectly satisfied if clause 75 were recommitted. The only reason I ask for the recommittal of clause 74 is that possibly some drafting changes may be necessary in that clause. In that matter, perhaps, the leader of the Convention can do all that is necessary, and, with your permission, sir, I will ask that my motion be confined to the recommittal of clause 75.

Mr. SYMON (South Australia). -
Then, Mr. President, I am very sorry-

The PRESIDENT. -
Mr. Glynn will have to ask for leave to withdraw his motion for the recommittal of section 74, and it will be competent for any member to object.

Mr. GLYNN (South Australia). -
I ask for leave to withdraw my motion for the recommittal of clause 74.
Motion, by leave, withdrawn.

Sir EDWARD BRADDOCK (Tasmania). -

I beg to withdraw my request that these motions for recommittal be made separately.

The PRESIDENT. -

Then I propose to put all the motions which have been made and not withdrawn collectively.

Mr. BARTON. -

In the order of the clauses in the Bill?

The PRESIDENT. -

I will put them in the order of the clauses or, if I put them as moved, they will come under the notice of the Chairman in the order of the clauses. The motion is, that clauses 55, sub-section (1), 75, 91A, 95F, 95G, and 96 be recommitted.

Mr. LYNE (New South Wales). -

I do not expect that any remarks I can make against the course of action which is proposed now will prevent the committee from recommitting these clauses. But I appeal to the leader of the Convention, and also to the Convention, as to whether they think it is wise to recommit those clauses after deciding upon them so deliberately. These clauses have been repeatedly discussed, and it is now proposed to recommit them, when a number of members who are not here were led to believe there would be nothing but formal business this morning. It is only by the greatest accident that I find myself here, because I did not think there was anything really requiring my presence. thought that the business was formal, and that there was to be an adjournment until Wednesday next.

Mr. BARTON. -

I caused a telegram to be sent to each member, with a special request for his attendance.

Mr. LYNE. -

I can assure Mr. Barton that I never received any telegram.

Mr. BARTON. -

I signed the telegrams last night, before I left the House.

Mr. LYNE. -

This is the first I have heard of it. After six weeks' discussion we wait until the last day to re-open questions of this kind, and lay ourselves open to be called on at a moment's notice to probably upset everything that has been done. What must the public think of a body which has been deliberating so long and was supposed to know its own mind two or three
years ago, starting at the last moment to recommit clauses and upset in a small Convention what has been done in a full Convention! Such a proceeding would be the height of absurdity, and very injurious to the prestige of the Convention. There are many things in the Bill I do not agree with, but I should hesitate before accepting the catch vote of a minority to upset decisions made against my own opinion. If we are to deal with these matters again it would be very much better to adjourn until next week, and deal with them in a deliberative way in a full Convention. To recommit the clauses in the haphazard manner proposed would weaken the position of the Convention and of the Bill. I should not have risen, but I feel very strongly we are going to do something this morning which will injure us in the eyes of all the people of the colonies.

Mr. BARTON (New South Wales). -

In reply, I should like to state that I consented to a recommittal of the clauses asked for, on the understanding that there were to be short speeches. I thought we should save more time by a few short speeches than by long and elaborate addresses such as that to which we had listened on the question whether there should be a recommittal or not. The Votes and Proceedings are in the hands of honorable members, having been sent round in the ordinary course. We did not meet until eleven o'clock, and, as far as possible, every member was notified by telegram. If some honorable members are away that is no reason why the Convention should not do its work, and if any harm result, that is the fault of the absent members. There is no reason why the members here should not be permitted to do the work, and I shall offer the most vigorous and strenuous opposition to any adjournment beyond to-day.

Mr. SYMON (South Australia). -

I will ask, Mr. President, that the clauses be put separately.

Sir WILLIAM ZEAL (Victoria). -

I rise to a point of order. Is the Hon. Mr. Symon in order in speaking six or seven times?

Mr. SYMON. -

I was not speaking. Surely I can ask a question of the President. Upon my word, we shall have to ask the honorable member's permission to eat our breakfast directly. I ask that the clauses and sub-sections it is proposed to recommit be put separately.

Mr. GLYNN. -

I submit, sir, that as you have already put the motion in which they are all mentioned together, it is not competent now to put them separately.
do so.

The motion "That clause 5.5, paragraph (1), be recommitted" was agreed to.

The motion "That clause 75 be recommitted" was agreed to.

The motion "That clause 91A be recommitted" was agreed to.

The PRESIDENT. -

I will put the remaining clauses collectively.

Dr. COCKBURN. -

As we have decided to recommit clause 75, I ask that clause 74 be recommitted.

HONORABLE MEMBERS. -

Too late.

The PRESIDENT. -

I do not think that it is too late. I will put the motion after we have disposed of the motion now before the Chair.

The motion "That clauses 95F, 95G, and 96 be recommitted" was agreed to.

Dr. COCKBURN (South Australia). -

I beg to move-

That clause 74 be recommitted.

The motion was agreed to.

The Convention then resolved itself into committee of the whole for the reconsideration of the Commonwealth of Australia Bill.

Clause 55. - (1) Laws imposing taxation shall deal only with the imposition of taxation.

Mr. REID (New South Wales). -

I beg to move-

That the following words be added to the sub-section:-"and any provisions therein which do not deal with the imposition of taxation shall be of no effect."

There may be some words in a Taxation Bill which go beyond the dealing with the subject of taxation. I do not propose to touch sub-section (2), under the provisions of which a Taxation Bill can be ruled out of order because it contains more than one subject of taxation. The amendment is to meet the case in which there may be mere surplusage clauses which a court would decide went beyond dealing with the imposition of taxation. As it would be shown that these clauses went beyond the imposition of taxation, it would be easy to rule them out of the Bill. I reopen this matter because
the Drafting Committee has come to the conclusion that the amendment should be accepted. If there were anything in the nature of a "tack" to a Taxation Bill, it would be the easiest thing in the world to have the "tack" ruled out, while the rest of the Bill would hold good. At the same time, I think that any attempt to make such a "tack" would be opposed by the Senate.

The amendment was agreed to.

Mr. ISAACS (Victoria). -
I should like to ask the leader of the Convention if he is clear, after the full consideration he has given to this clause, that the third subsection will have the effect that it is intended to have, and that a law which did not meet the requirements of that sub-section would still be valid should the combined Legislatures agree to pass it?

Mr. BARTON (New South Wales). -
I see no reason why it should not be valid.

The clause, as amended, was agreed to.

Clause 74 (The appellate jurisdiction of the High Court),

Mr. BARTON (New South Wales). -
I have put clause 75 into a form which, I think, will carry out the intention of honorable members, and will make it unnecessary to amend clause 74. I ask that the consideration of clause 74 be postponed until we have dealt with clause 75.

Clause 74 was postponed.

Clause 75. - No appeal shall be allowed to the Queen in Council from any court of any state, or from the High Court, or any other federal court, except that the Queen may, in any matter in which the public interests of the Commonwealth, or any state, or of any other part of her dominions, are concerned, grant leave to appeal to the Queen in Council from the High Court.

Mr. BARTON (New South Wales). -
I beg to move-

That clause 75 be struck out, with the view of substituting the following:-

Notwithstanding anything in the last section, an appeal to the Queen in Council, from a court of a state, or from the High Court, or from any other federal court, shall not be allowed in any matter in which the interpretation of this Constitution or of the Constitution of a state is involved, unless in any such matter the public interests of any part of Her Majesty's dominions other than the Common. wealth or a state are involved.

I think those provisions faithfully interpret the intention of the committee.

Clause 75 was struck out.
Mr. GLYNN (South Australia). -

Before the new clause is put, I would suggest that I should have an opportunity to bring forward my proposed amendment, because it was upon my suggestion that this clause was recommitted. If the amendment of the leader of the Convention is carried, it will render any attempt upon my part to change the wording of clause 75 nugatory.

Mr. BARTON. -

If the honorable member moved his amendment, I should have a difficulty in afterwards moving mine.

The CHAIRMAN. -

The best way would be for the honorable member to amend the provision which the leader of the Convention wishes to substitute for the clause.

Mr. GLYNN. -

I do not think I can accomplish what I desire by doing that. I desire that the right of appeal to the Privy Council direct from a state court or a federal court shall be abolished.

Mr. BARTON. -

You wish to abolish the appeal from a state court to the Privy Council?

Mr. GLYNN. -

Yes. I want appeals to go through the High Court.

Mr. OCONNOR. -

In all cases?

Mr. GLYNN. -

Yes. That is in accordance with the provisions of clause 74. There will be an appeal, but it must be through the High Court. I wish also to retain the prerogative right of appeal in cases involving any other part of Her Majesty's dominions.

Mr. BARTON. -

I have done that.

Mr. GLYNN. -

Yes. I wish to retain this right of appeal in such a way that Parliament will not be able to abolish it.

Mr. BARTON. -

That is done.

Mr. GLYNN. -

I wish also to amend the clause so as to preserve, as the Committee have decided to keep up the right at all, the right of appeal in all matters-constitutional or other matters-from the High Court to the Privy Council.

Mr. BARTON. -
I do not think the honorable member will have any difficulty in moving his amendment upon the provision which I have moved to substitute for the clause.

Mr. GLYNN. -

Could not the leader of the Convention, if my amendments upon the clause as it stands were carried, afterwards recast the clause in any shape he wished?

Mr. BARTON. -

If the Chairman says so.

Mr. GLYNN. -

This is how I wish the clause to read:-

No appeal shall be allowed to the Queen in Council from any court of any state, or from any federal court other than the High Court, except that the Queen may, in any matter involving the interest of any other part of Her Majesty's dominions, grant leave to appeal to the Queen in Council from the High Court.

These words are very simple.

Mr. BARTON. -

It is very easy to make that amendment if you wish to move it. If my proposed clause is submitted the honorable member may select any words on which to move his amendment. Then if he will give me a copy of his amendment I will see that it is given effect to by the Drafting Committee.

Mr. GLYNN. -

Well, in order to bring the matter to a test I beg to move-

That the word "not," in the fourth line of the proposed clause, be struck out.

What I wish to be carried out, and what Mr. Barton will carry out if the word "not" is struck out, is this: There will then be retained the right of appeal to the Privy Council in all matters involving the interests of any other part of Her Majesty's dominions, so that it cannot be touched by Parliament. The appeal from a federal court other than the High Court or from a state court direct to the Privy Council will be abolished, and that cannot be interfered with by Parliament. But the right of appeal in all matters, whether of a private character or involving interpretation of the Constitution, through the High Court to the Privy Council will be retained until the Parliament abolishes it. That is the effect of the words I wish to put in, and we have a statement of Mr. Barton that he will mould the clause so as to carry out these intentions.

An HONORABLE MEMBER. -

Will that allow Parliament to take away the appeal when they think fit?
Mr. GLYNN. -

Yes, excepting in matters involving any other part of Her Majesty's dominions, and that will be fixed in the Constitution. The direct appeal from all federal courts, except the High Court, or from state courts, will be abolished, but the appeal will be retained to the Privy Council in all matters, whether of a private character or involving interpretations of the Constitution, unless Parliament sees fit to abolish it.

Dr. QUICK (Victoria). -

I think the Convention now has the issue plainly stated on one side, and the proposition clearly drawn by the leader of the Convention. On the other side, we have the proposed amendment by Mr. Glynn. I will loyally accept the decision of the Convention whatever it is, but we may as well face this question seriously. Mr. Symon wants to take away the right of appeal to the Privy Council, not only on Commonwealth questions, but on state questions. That is an important matter. I ask honorable members are they prepared to go that length on all questions arising under the state Constitutions? For instance, take the case of Ah Toy. No appeal to the Privy Council on such an important question arising under the state Constitution would be allowed. Surely Mr. Symon must have hurriedly and rashly proposed that amendment yesterday. He could not have thought it out. His matured decision is to be found in the clause as it originally stood, preserving the right of appeal to the Privy Council on all great popular questions. The right of appeal on private questions in disputes between private citizens is not half so important as the right of appeal on public questions arising under the states Constitutions and the Commonwealth. I repeat that I would sooner see the right of appeal taken away from private citizens than see the right of appeal taken away on great and important public questions, which are of far greater importance. This will be a fearful blot on the Constitution if you take away the right of appeal on public constitutional questions, while you reserve the right of appeal on comparatively small insignificant issues between individuals. I hope the Convention will rise to the gravity and seriousness of this issue. If we are to have any alteration at all, I would sooner go back to the clause in the Bill as it originally stood, reserving the right of appeal on Commonwealth questions. I hope Mr. Glynn will persevere in his amendment with regard to the right of appeal on questions affecting the interests of persons outside the Commonwealth, so that that shall be embedded in the Constitution without the possibility of amendment. But, as a compromise, I think that my honorable friends (Mr. Symon and the leader of the Convention) might
fairly agree to a provision placing this as a tentative matter in the Constitution, leaving the Federal Parliament hereafter to modify this right of appeal, trusting to the Federal Parliament. In that form I think a reasonable compromise may be arrived at, as long as we leave the matter in the hands of the Federal Parliament to regulate the rights of appeal hereafter. I feel that if the Bill went home in the shape in which it at present stands it would be the laughing stock of England, and a serious reflection upon the intelligence, patriotism, and loyalty of this Convention. Therefore I hope that, whatever happens, the right of appeal on public and constitutional questions will be reserved in this Constitution, and that we shall show no distrust in giving that right of appeal.

Mr. TRENWITH (Victoria). -

I am anxious in this matter to vote, as far as I can, so that the Federal High Court shall have the interpretation of the federal laws. I feel that it is important above all considerations that our High Court should be a strong and much respected court. In order to make it such you must make it a court competent to deal with the most important issues that can be presented, thus securing in the minds of the people a determination to see that it is strong in numbers and personnel. I am perplexed as to which of these amendments I am to vote for. In this matter I seek the guidance of Mr. Barton. If Mr. Glynn's amendment will give the right of appeal to the Privy Council in questions as to the interpretation of the Commonwealth laws, I desire to vote against that.

Mr. BARTON. -

I think that is what he desires.

Mr. GLYNN. -

Hear, hear; but the Parliament can abolish it.

Mr. TRENWITH. -

I am opposed to there being any appeal from our own High Court. It should be as strong a court as possible, and should have as great responsibility as it is possible to throw on it, in order that it may be strong.

Mr. SYMON (South Australia). -

I agree entirely with Dr. Quick that if there was any justification for bringing this clause back into the committee that is a justification at least for saying something about it; so that we shall not hereafter be placed in the awkward position of perhaps having to get another recommittal.

Mr. FRASER. -

We do not want long speeches.

Mr. SYMON. -
I think the honorable member would be all the better for a long speech to
instruct him in these matters, on which he does not seem to be very well
informed. Mr. Glynn moves an amendment which will have the effect for
all time, not until Parliament otherwise provides, of enacting a provision
under which every law of the Commonwealth or law of a state which
happened to be in conflict with a law of the Commonwealth, and about
which a dead-lock may arise, or a difficult constitutional dispute may take
place, is to be subject to the decision of the High Court, and then to the
decision of the Privy Council. The result will be that that dispute will be
hung up for one or two more years, which time it takes to have a decision
of the Privy Council. That is a state of things that I personally do not
contemplate with equanimity. I do not wish anybody else to entertain the
same view, because it is largely a question of constitutional opinion. The
reasons that Mr. Trenwith has just given are conclusive, to my mind, to
show that the decisions of the High Court of Australia ought to be final on
the interpretation of our own local laws. It will be more expeditious, and it
will bring about a result with much greater promptness. But I agree with
Dr. Quick. Although I have all along disapproved of reserving these
constitutional appeals, I would rather see both these clauses restored to
their original position. That was a compromise to which some of us who
gave considerable attention to the matter had reached, and, for myself, I
was willing to give way on one point, and other members, yielding to the
majority, gave way upon others. But the true solution of it would have been
to retrace our steps. If Mr. Glynn presses this to a division it seems to me
that we shall be disrating the High Court. We shall be placing a serious
difficulty in the way of the continuance of the Queen's government if
disputes arise as to the construction of an Act of Parliament, and we shall
be placing obstacles in the way of the easy working of this Constitution
which I think none of us would like to bring about.

Question-That the word "not" stand part of the proposed clause-put.
The committee divided-
Ayes ... ... ... 21
Noes ... ... ... 18
Majority against Mr. Glynn's
amendment... ... ... 3
AYES.
Barton, E. Kingston, C.C.
Brunker, J.N. Leake, G.
Cockburn, Dr. Lewis, N.E.
Deakin, A. Lyne, W.J.
Fysh, Sir P.O. O'Connor, R.E.
Mr. ISAACS (Victoria). -

I should like to ask the leader of the Convention the meaning of the word "involved" in the clause? I know that the meaning itself must be involved; but would it extend to a case between individuals where the question of the validity of a state law was raised, and that depended upon the construction of the Constitution?

Mr. BARTON (New South Wales). -

I should rather think that it would include any such case. I take the word "involved" to be somewhat a strong one, and to mean what we understand in dealing with parliamentary Bills in which a question of expenditure is involved. The meaning of the term there is, I think, in which expenditure must necessarily be gone to. So here I think the term "involved" means in which it becomes a necessity for the determination of the case that the Constitution should be interpreted. I should think that whatever the main issue was which necessitated the interpretation of the Constitution it would come within the meaning of the word.

The new clause was agreed to.

Clause 74-The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament may from time to time prescribe, to hear and determine appeals from all judgments, decrees, orders, and sentences:
I. Of any other federal court, or court exercising federal jurisdiction, or of the Supreme Court of any state, or of any other court of any state from which an appeal now lies to the Queen in Council, whether any such court is a court of appeal or of original jurisdiction:

II. Of the Inter-State Commission on questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive, saving any right which Her Majesty may be pleased to exercise by virtue of her Royal prerogative. Until the Parliament otherwise provides, the conditions and restrictions on appeals to the Queen in Council from the Supreme Courts of the several states shall be applicable to appeals from them to the High Court. Provided that nothing in this section shall be construed to prevent the High Court from hearing and determining appeals allowed by the law of a state from the Supreme Court of the state. Provided also that the right saved is that of granting special leave to appeal, and shall continue only until Parliament otherwise provides.

Mr. SYMON (South Australia). -

I do not wish to make any more speeches about this subject; but I beg to move-

That the words "saving any right which Her Majesty may be pleased to exercise in virtue of Her Royal prerogative" he struck out.

Sir JOSEPH ABBOTT (New South Wales). -

I hope that these words will not be omitted, and I am very much surprised that the learned member (Mr. Symon), having occupied the position which he did in the, Judiciary Committee, should take an advantage of the recommittal of this clause for other purposes to move an amendment of this kind. I do not think it is fair that an amendment of this kind, which was arrived at after a great deal of consideration, should be proposed to be eliminated, if I may say so, without notice to anybody. I think it is absolutely unfair. The author of this Bill in 1891, Sir Samuel Griffith, was one of those who, unlike my learned friend, favoured the clause as it stood in the Bill of 1891, abolishing these appeals. Both these gentlemen since then have changed their opinions, until Sir Samuel Griffith now is of opinion that the best method of dealing with the Bill would be by retaining it in a shape similar to the Canadian appeal. Mr. Symon has changed his opinion since 1891, having believed very strongly then, as strongly as any man could, in retaining the right of appeal to the Privy Council.

Mr. SYMON. -

Where did you get that?

Sir JOSEPH ABBOTT. -
The honorable member has not denied it, and when he does I will tell him where I got it.

Mr. SYMON. -
Where did you get that?

Sir JOSEPH ABBOTT. -
The honorable member has not denied it.

Mr. LYNE. -
He was not in the Convention then.

Sir JOSEPH ABBOTT. -
I know that he was not in the Convention, but I know what I am talking about. My learned friend does not want to know where I got it.

Mr. SYMON. -
I do, indeed.

Sir JOSEPH ABBOTT. -
The honorable member in 1891 was one of those who strongly believed in the right of appeal to the Privy Council. I have said that before, and the honorable member has not denied it. In 1891, Sir Samuel Griffith desired to abolish this right of appeal, but within the last few days he has written a letter in which he has expressed his entire approval of the Canadian principle. I am not going to reiterate all the arguments which were used yesterday. I did think yesterday, that having come to a conclusion on the matter, it would be allowed to rest at that. Although the clause was recommitted at, I think, the suggestion of the Chairman of Committees, because, no doubt, his words commended themselves to the Convention, it was never thought for one moment that an amendment of this kind would be sprung upon the Convention.

Mr. SYMON. -
I gave notice.

Sir JOSEPH ABBOTT. -
Yes, the honorable member gave notice this morning.

Mr. SYMON. -
Before it was recommitted.

Sir JOSEPH ABBOTT. -
The honorable member gave notice this morning, and be allowed Mr. Glynn to withdraw a proposal to recommit clause 74. If I had known what was going to happen, I should have objected to Mr. Glynn having leave to withdraw it.
He put somebody else up to withdraw it.

Sir JOSEPH ABBOTT. -
I will not say that the honorable member acted directly or indirectly, but somebody did exactly move what he desired himself to move.

Mr. SYMON. -
Because I had spoken.

Sir JOSEPH ABBOTT. -
I wish the honorable member would not interrupt me. This morning he was very rough on my honorable friend (Sir William Zeal), who offered a gentle word of advice in most conciliatory language. If we are going to undo what we did yesterday, after a great deal of trouble, when and where is this method to end? I will say no more about it. I regret very much that the same

Mr. BARTON (New South Wales). -
I will ask my learned friend (Mr. Symon) not to allow the twitting which he has just received from my honorable friend (Sir Joseph Abbott) to affect him so far as to cause him to call for a division. This matter has been amply discussed many times, and we had a straight-out vote on it, and if he calls for a division now and succeeds, the result will be to render probably nugatory and useless the clauses which we have just passed. Considering the time which has been given to it, and that the decision was come to after a great many discussions, I would like to influence my learned friend to let matters rest where they are, and not to call for another division.

Mr. KINGSTON (South Australia). -
I trust that this matter will be discussed without the slightest bitterness. I have invariably supported the abolition of the right of appeal to the Privy Council. In 1891 it was affirmed by a Federal Convention; in 1897, at Adelaide, it was similarly affirmed in 1897, at Sydney, it was similarly affirmed. in this very chamber the propriety of abolishing the right of appeal has been similarly affirmed.

Sir JOHN FORREST. -
Did we in Sydney?

Mr. KINGSTON. -
Yes.

Sir JOHN FORREST. -
I did not think that we got that far.

Mr. KINGSTON. -
And it was not until yesterday that there was ever carried a proposition in favour of negativing the propriety of Australia retaining to itself the interpretation of the laws it makes. Now, sir, I put it to my friend, Sir Joseph Abbott, that there have been four decisions against him.
Sir JOHN FORREST. -
Oh, no; I do not think there was one in Sydney.

Mr. KINGSTON. -
Very well; there have been three decisions against him, and only one in his favour. I therefore ask—is he not pushing his advantage a little bit too much when he says it is unfair to ask for a further division on the subject?

Mr. FRASER. -
We always look to the final decision as the real one.

Mr. KINGSTON. -
Yes; and we will have a final one to day, I hope.

Mr. SYMON. -
Yesterday's division gave a snatch majority of one.

Mr. KINGSTON. -
There seems to have been some misunderstanding when the vote was taken yesterday. I was not connected with that division in the slightest degree; but I do put it that it is rather hard on the part of those who have a temporary advantage to point to only the last division, and to take no notice whatever of the variety of resolutions to the contrary effect which have been at different times affirmed by this federal gathering.

Mr. OCONNOR. -
It will be a great reflection on the work of the Convention if we upset yesterday's decision.

Mr. KINGSTON. -
There are a variety of matters on which the Convention has altered its opinion, and I hope we will go back to the position adopted about three weeks ago. Does Sir Joseph Abbott think that be ought to persist in objecting to our taking a division when the recommittal of the clause—a departure from the arrangement of yesterday; a fresh trial of strength in the matter—was carried in the interests of men and of a party against the opposition of Mr. Symon and his friends?

Mr. CARRUTHERS (New South Wales). -
I think in this matter we have done enough now, without carrying the honorable member's proposal, to cover ourselves with complete contempt, because the Bill, as it has now left us, with or without the honorable member's amendment—more especially with his amendment—will be of such a character that I venture to say not only will its passage here in Australia be jeopardized, but its passage through the Imperial Legislature will also be jeopardized. What have we done? We have decided, in point of fact, that whilst we ask that we shall have the right to interpret our own laws, to
decree by this Draft Bill that the Imperial Court is not to have the power of interpreting an Imperial statute. And then the honorable member wishes to go further than that. He proposes to take away that which was part of the compact or bargain on which this stupid arrangement was made. Well, I do not think the honorable member wishes to provide that there shall be no appeal to the Privy Council in regard to individual suits, and then to super add to that what was practically an insult to the British Legislature, by a clause providing that there shall not be any appeal in matters involving the interpretation of the Constitution, which, mark you, is an Imperial statute. You are going to ask the Imperial Legislature to legislate that its own courts shall not interpret its own Act. We have gone too far already, and we shall simply cover ourselves with ridicule and contempt for what we have done, and add to it very materially, if, breaking away from the compact that these foolish provisions contain, we, by a breach of faith, take away the right already conferred by clause 74. I hope that the committee will negative the honorable member's proposal.

Mr. HASSELL (Western Australia). -

I purposely refrained from voting on this matter yesterday because I had not made up my mind on the question, but I have now made up my mind, and I shall vote for the retention of the words of the clause.

Mr. DOBSON (Tasmania). -

I hope that Mr. Symon will not only follow the advice of the leader of the Convention, and abstain from calling for a division on this point, but also that he will at once withdraw the amendment. If he will, I shall be most happy to resume my seat. If we cannot carry out the suggestion which has been made many times before that the wise thing for us to adopt is the Canadian system, I am quite sure Sir Joseph Abbott would give up the amendment passed yesterday if we simply add to the original clause, which we have already approved, words providing that the Queen in Council, in cases of great magnitude and public interest, may grant leave to appeal in private cases. Nobody desires that cases involving amounts of £2,000 or £3,000 shall go to the Privy Council, but where enormous sum, are involved between English contractors and colonial merchants, for example, we are told by such persons that to withhold leave to appeal to the Privy Council will not assist the acceptance of this Bill, but will cause great uneasiness. Therefore, why not give way to that sentiment? If the honorable member will not withdraw the amendment, I will try to point out to him how he is unintentionally misleading some members of the committee. I myself have been, to some extent, misled by the honorable member.
Mr. OCONNOR. -

Leave him to himself; do not press him to withdraw his amendment now.

Mr. SYMON (South Australia). -

I wish to be permitted to say that it is very amusing to me to find honorable members who are jealously wedded to their own particular alteration, and who have insisted on the recommittal of the clause to secure it, should, immediately another honorable member seeks to have effect given to his view, raise a great disturbance, and make all sorts of personal accusations and reflections because he ventures to do the same thing.

Sir WILLIAM ZEAL. -

You made plenty of accusations and reflections yesterday.

Mr. SYMON. -

I venture to say that such a course of procedure is not what I will call "playing fair." But I must say I yield to the very courteous and polite appeal made by Sir Joseph Abbott, and I beg to withdraw my amendment.

The amendment was, by leave, withdrawn.

The clause was agreed to.

Clause 91A. - The net revenue from Customs and Excise shall be applied as follows:

(a) Not more than one-twentieth of such net revenue shall be applied towards the expenditure of the Commonwealth in the exercise of its original powers.

(b) Not more than four-twentieths of such net revenue shall be applied towards the expenditure of the Commonwealth in making good the net loss on the services taken over.

(c) The balance of such net revenue remaining after the application of the sums actually applied pursuant to, the last preceding paragraphs (a) and (b) shall be distributed amongst the states.

Mr. BARTON (New South Wales). -

I have already stated the reasons why I asked for the recommittal of this clause, and I need not repeat them.

Sir EDWARD BRADDON. -

I was not in the chamber at the time, and I should be glad to hear them.

Mr. BARTON. -

Well, I was given to understand that some honorable members voted on the question one way or the other without perfectly appreciating what the question was. I am not one to unduly interfere with past decisions of the Convention, and I have not been in the habit of attempting to rip them up. And I think, subject to any explanation we may hear from Mr. Holder, there is some inconsistency in the working of this clause as compared with clause 90-clause 90 applying to the particular apportionment to each state.
on certain principles; while this one deals with the methods in which the aggregate shall be collected and retained by the Commonwealth. It seems to me there would be very great difficulty to avoid a clashing between the operations of the two things. But there is more than that in it. This clause amounts to a guarantee, and I have all along been, and I am still, opposed to implanting in this Constitution any financial guarantee to the states, for the plain reason that there could not be a stronger argument afforded to the enemies of federation than to ask for guarantees. Any one who leads to the implication that federation is going to bring about the financial ruin of any state unless it receives some dole or other to hold it up is playing into the hands of the enemies of federation.

Sir EDWARD BRADDON. -
Not a dole, but a return of its own.

Mr. BARTON. -
Any one who leads to the implication that federation is going to cause financial ruin to any state unless it receives some grant, whether it calls it its own or not, is, however unintentionally, doing a great deal of harm to the federal cause, because he supplies the enemies of federation with this argument: That federation will bring about financial ruin to the states.

Mr. HOLDER. -
The states cannot hold themselves up and pay £6,000,000 away.

Mr. BARTON. -
But when we say that, we are falling into a mistake which I thought we had all corrected long ago. It is all very well to frame a uniform Tariff producing a revenue of £6,000,000 a year; but a large amount of the intercolonial revenue is to be abolished, and the bulk of the uniform Tariff which is to supersede the half-dozen intercolonial Tariffs is to replace the intercolonial Customs revenue, which goes by the board. So that actually the increase of taxation on the people will only be a few hundred thousand pounds a year in a population of from three to three and a half millions. That is not an intolerable strain on the population of Australia. If it were, it would be a most significant commentary on what the world would be entitled to call the infamous and extravagant financing of Australia. If there is not a taxable margin which will cover the difference of revenue from the necessary new Tariff, which will suffice to replace the loss of the intercolonial duties, then, in the past, the population of Australia must have been screwed down pretty close to their taxable capacity. Now, I do not think that any of us hold that belief. Certainly I do not. I think the resources of our colonies and our fellow citizens are far beyond what is attributed to them by writers who have not sufficiently considered the enormous
capacity for recuperation and the enormous elasticity of these colonies. Now, I have always objected, and I always shall object, to anything which

Sir EDWARD BRADDON. -

There is no defamation.

Mr. BARTON. -

What I am talking of is the effect of this sort of thing. Nobody respects the honorable member more and nobody believes more completely than I do that he is thoroughly favorable to federation, but the statements I allude to carry-to the outsider an implication that federation is such a bad, such a wasteful, such a crushing, such an extravagant thing, that unless means of this kind are taken to stop its effects, some colony or other will be made bankrupt. We do not believe it, but why should we allow others to use such an argument, apart from that, as an argument why this clause should be struck out, inasmuch as the Federal Parliament is to be free to deal with the finances and the distribution of the surplus as it pleases, after five years have elapsed from the imposition of the uniform Tariff? If there is to be any guarantee at all, it should not extend beyond that limit, and for this reason.

Sir GEORGE TURNER. -

If you stop there it might be reasonable.

Mr. BARTON. -

I beg to move-

That the words "Until the imposition of uniform duties of customs and for five years thereafter" be inserted before the first word of the clause.

Mr. REID (New South Wales). -

I have spoken so often on numbers of attempts to put what is called a guarantee in this Bill that I do not intend to repeat what I have said.
Honorable members are very familiar with my views on this point, and I confess my disappointment that some honorable members still think it a vital matter that there should be a state guarantee. If they persist in it, I hope they will put it in the amendment Mr. Barton has proposed. Personally, I frankly admit that this is the least objectionable form of a guarantee, from my point of view, that I have seen. I have not quite so strong an objection to this as I have to some of the other proposals.

Sir GEORGE TURNER. -
Will you accept that?

Mr. REID. -
I cannot possibly, I am so much opposed to it. But I frankly admit that it is the most reasonable way in which the position has been put, and I do not oppose this so strongly as I do the other proposals. But I point out that this will make a peculiarity in the position of the Treasurer of the Commonwealth which needs only to be stated to be seen at once. The Treasurer of the Commonwealth, when he is constructing his fabric of ways and means, will have the strongest possible temptation to look on Customs and Excise as an unsatisfactory method of raising revenue, because he only gets 5s. out of every £1 raised in that way, whereas from other forms of taxation he gets the full pound raised. Now, I must say, it is scarcely a scientific piece of legislation to put that temptation in the way of the Treasurer to make him discriminate as to methods of taxation.

Mr. BARTON. -
You may make him impose direct taxation.

Mr. REID. -
We may. If, for example, I had anything to do with the Commonwealth finances, and I found myself in a difficulty, should I go to a source of revenue which would only return to me 25 per cent. of the produce? No; I should go to a source which gave me the whole pound. I only put this view as one objection to this proposal, because it makes the position of the Commonwealth in a peculiar state, inasmuch as one form of taxation will give the Treasurer 100 per cent. of the taxes raised, and the other only 25 per cent. We know what may be the consequences of anything of that sort.

[The Chairman left the chair at five minutes past one o'clock p.m. The committee resumed at a quarter to two o'clock p.m.]

Mr. HOLDER (South Australia). -
I shall try and put the few remarks I have to make into the smallest possible space of time. I have said a good many times, in discussing the financial question, that I think the best security of the smaller states, or of the states as a whole, was that their needs require a
certain return, and that therefore they would be able to secure at the hands of their representatives in the Federal Parliament that return. At the same time it is impossible to overlook the serious difficulties which present themselves in persuading the electors with whom we have to deal of the force of that argument. It is difficult to induce them to believe that if the Federal Treasurer has a surplus annually of £4,500,000, he would not be tempted to waste it. If he has not the statutory obligation upon him to make a certain return to the states, he may not make it. He may establish large defence organizations, or spend it in other ways; and then, it is said- "Where will the states be?" I do not agree with what the leader of the Convention has said as to the reflections upon the financial stability of the states sought to be cast by including this clause in the Bill. The states are well able to pay their way-not only to pay their way under present circumstances, but to meet any additional cost which the support of the Commonwealth establishment on a fair and reasonable basis will require. But they are not able to do that and at the same time sacrifice £6,000,000 of revenue. That is what makes the difficulty. If the states were not giving up £6,000,000 of revenue there would be no trouble. But as they are surrendering that amount it is not an unreasonable request they make to have some assurance as to what the return shall be. There is no reason why the Federal Treasurer should be endowed with £6,000,000 a year if he only wants £1,500,000; and to endow him with £6,000,000, of which he would have to pay back £4,500,000 to the states, seems to me to be a plan which requires the strength of some statute, or we shall find that the returns will get smaller and smaller as the years go by. I quite agree with what Mr. Reid has said, that of all the plans that have been suggested as to the guarantee this is the simplest, and involves the least difficulty to those states which have to accept it. There is no conflict between clause 90 and clause 91A, because clause 91 deals with the whole mass of the revenue, and chiefly limits the expenditure of that revenue under two heads. With a £2,000,000 Tariff the first thing clause 91A does is to determine the cost of the original powers of the Commonwealth shall not exceed £300,000 a year, and the effect of subsection (b) of clause 91A is to require that the net loss on works and services shall not exceed £1,300,000 a year. Both those amounts the Finance Committee arrived at in Adelaide as being the full cost of these two branches of expenditure. We have therefore provided in Clause 91A—which, in fact, has the same effect as the proposal of the Finance Committee in Adelaide—the limitation of these two forms of expenditure. That is the main purpose of clause 91A. As there is no reference to any limitation of expenditure in clause 90 there can be no conflict between the two. Clause 90 says that the balance, if any, shall be
paid to the states, and provides that the returns shall be in proportion to contribution. Clause 91A determines what the sum total to be so subdivided between the states shall be. It does not touch the question of the principle on which the division shall take place, but simply says that there shall be an amount available for division. Therefore I do not think there can be the slightest conflict between clause 90 and clause 91A. I have only one other point to answer, and that is as to clause 91A, making it chiefly to the interests of the Federal Treasurer that he should levy direct instead of indirect taxation. My answer to that is that the needs of the states to have a certain definite return will require that that return shall be made. In the second place, the Federal Treasurer is not shut up with the single expedient of a customs duty only, from which he gets one-fourth of the proceeds only instead of the whole;

because he will have a return of £1,750,000 per annum from works and services, and, by an addition of tonnage rates and so on, he can adapt himself to his requirements. I think there is a great deal to be said for the inclusion of the clause without the limitation suggested by the Drafting Committee.

Mr. LYNE (New South Wales). -

At this stage of the proceedings I do not intend to occupy many minutes, but I wish to emphasize this: That ever since we met in Adelaide, and since the time when the Finance Committee practically suggested this way of deciding the matter, I have on every occasion when I have referred to it advocated that there should be some definite return to the states provided for. I hailed with very great pleasure Sir Edward Braddon's amendment when he brought it in. It is simple and effective, and will coincide entirely with what I have advocated upon this question. I also think that as regards the small states, as well as possibly the larger ones also, this is one of those clauses which will help very materially to recommend the Bill. If we give up this £6,000,000 of revenue, and the states have no power of raising revenue through the Customs, and no guarantee from the Federal Treasurer that they will get a return, there is only one alternative, and that is imposing excessive direct taxation to fill up the gap and that would prevent a great many persons from voting for the Bill. I have very great pleasure in supporting this amendment. The Right Hon. Mr. Reid said that this was a provision which would induce the Commonwealth Treasurer to resort to some other modes of taxation, inasmuch as he would get only 5s. in the £1. I would ask him what position the states would be in if they got only 5s in the £1? Under this provision they would get 15s. The cost of the Federal Government will practically be limited to £300,000, and the cost of the
services taken over will be £1,200,000, making a total of £1,500,000. This will leave £4,500,000 to be returned to the states, and the states will have a much better chance of getting the Money if this provision is retained.

Mr. VENN (Western Australia). -

If a limitation of five years is imposed we might add the words "or until Parliament otherwise determines." I do not like the idea of a guarantee, because it seems to cast a doubt on the solvency of the Federal Government. I voted against Sir Edward Braddon's clause last night, but with the proviso I have suggested I should be inclined now to support it.

Sir JOHN FORREST (Western Australia). -

I am very glad that some provision of this sort is to be inserted in the Bill. It has been stated by honorable members representing New South Wales and Victoria that without such a provision they would be unable to recommend the Constitution to the people, and in asking for it we are not making any unreasonable demand. All we desire to say is that three-fourths of the Customs revenue shall be returned to the states. Unless the states have some security of this kind, the people cannot be expected to accept the Bill. They all have large liabilities, and there is no power in the Bill to enable the Federal Parliament to assist any state that is in difficulties. It is like beating the air to tell us that we are to give up our great revenue producer—the Customs—and that we are to have no guarantee whatever that any part of that money will be returned to us, although we shall each have to provide for the payment of interest on our public debts. It has been stated by Mr. Reid and others that this might be an encouragement to the Federal Parliament to impose direct taxation. The Federal Parliament would have difficulty in passing any Taxation Bill, but there is very little to choose between the probability of the Commonwealth having to resort to other means of taxation and the almost certainty of the states having to raise money in that way. The states will have their public debts to provide for, and, unless they get this money back, they will have to adopt other modes of taxation in order to replenish their empty Treasuries.

Sir EDWARD BRADDON. -

Some of us are full up already.

Sir JOHN FORREST. -

Yes, in some of the colonies almost every avenue of taxation has been, or is being, exploited. I would appeal to our leader to try to meet us in this matter. He perhaps takes a greater interest in this question of federation than anybody else, and if he wishes to make the Bill acceptable to all the colonies he must help us to get a provision of this sort inserted.
Mr. BARTON (New South Wales). -

In view of what has been said I shall refrain from voting against the clause but I should like to limit it to the term up to which the Federal Parliament will have to agree to a plan of distribution. That would be a fair compromise. If Sir Edward Braddon would accept this amendment I will undertake not to vote against the clause. It will give a guarantee for the time being, and I think the Federal Parliament may be trusted to deal with the question. What I want to do is to prevent this from being an absolute tie upon the whole Federation, by limiting it that it shall not continue beyond the five years unless the Federal Parliament chooses to continue it for a further period. That would be a fair compromise.

Mr. KINGSTON (South Australia). -

I trust that the clause will be re-affirmed in the condition in which we have it before us. I agree with what has been said by the Right Hon. Sir John Forrest, and I think we are indebted to the Right Hon. Sir Edward Braddon for having, even at this late stage of our proceedings, made a successful effort to carry a provision of this sort. I am inclined to think that some provision to prevent the absorption of the surplus revenue by the Commonwealth will not be so much needed in the early stages of the Federation as subsequently. The states in the Federal Parliament will be more closely in touch in the first few years of the Federation than they will be afterwards, and unless you lay down this hard-and-fast line I think you will find that there will be gradual invasions by the Commonwealth on the surplus which should be payable to the states. I trust that no alteration of the character suggested will be made. I have not troubled the Convention much during the course of its sittings, but, as regards this question of finance, I fell very strongly. We might possibly, in a wave of sentimental feeling, obtain the consent of the constituencies to the Bill, even without a clause of this description, but I would remind honorable members that in a great majority of the colonies the Bill will afterwards have to be submitted to both Houses of Parliament. I have no doubt that in the local Parliaments the financial clauses will be closely scrutinized. I should not like to have to undertake the task of recommending Parliament to assent to a Constitution under which we give £6,000,000 of the states' revenue to the Federal Parliament, knowing as we do that it will require, at the most, only £1,500,000.

Mr. ISAACS. -

£6,000,000 to begin with.

Mr. KINGSTON. -

Yes, and the amount would gradually increase. The financial experts in the Convention have addressed themselves to this subject with the greatest
care and intelligence, and I understand that this amendment was considered in the early stages. I am pleased that there is now a possibility of getting it embodied in the Constitution. I cannot believe that the local Parliaments would assent to the Bill without it. It is our duty, while endowing the Federation with funds sufficient for its purposes, not to trench unnecessarily on the financial resources of the states. Without this amendment we leave the states at the mercy of the Federation, and if we took the Bill to the local Parliaments we should be told-"Surely it was possible to devise some scheme by which we could meet the reasonable requirements of the Federation without depriving us of our chief source of revenue, and giving us no guarantee that the money will be returned to us." I am sorry we have not adopted the basis of a per capita distribution to come into force immediately, or at some future time, and if you omit this clause, I say unhesitatingly that the local Parliaments will not accept the Bill. It has been said that the Federation will be careful of the sovereignty of the states. Possibly it will. We might probably even trust the Federal Parliament not to allow the states to be involved in any great commercial disaster. But if you give them £4,000,000 or £5,000,000 more than they want, the states will be compelled to surrender extra powers in connexion with the expenditure of that money which could be more conveniently exercised by the states themselves. Under all these circumstances, I trust we will have the clause in the shape in which it was carried last night.

The CHAIRMAN. -

I do not wish to interrupt honorable members, but I am informed a large number of members leave by the afternoon train. It is quite possible that there will be no quorum unless honorable members curtail their speeches.

Sir EDWARD BRADDON (Tasmania). -

I will curtail my speech, but I ought to make a few remarks in regard to my amendment, which has been scrutinized and criticised. I admit to the fullest extent that Mr. Barton has federation at heart, and that we are indebted to him in the highest possible manner for what he has done in the cause. I claim also that I am as earnest, although, perhaps, I am not so efficient, in the cause. I desire federation, but I see no hope of it unless we pass this clause. I cannot help saying through you, Mr. Chairman, to my honorable friend (Mr. Barton) that it seems to me he made one objection to this clause yesterday which he has entirely dropped to-day. That objection was that the clause is inconsistent with other portions of the Bill.

Mr. BARTON. -

I mentioned that this morning.
Sir EDWARD BRADDON. -
Yes, but the honorable member has withdrawn that objection, inasmuch as he now says that if the amendment be accepted then the clause will be accepted.

Mr. BARTON. -
That is so, because I offered to take what seemed to me the lesser of two evils.

Sir EDWARD BRADDON. -
Then as to this question of the conflict between this and other clauses, I cannot help saying that if this amendment had been one more acceptable to him he would have found a very ready means of putting the matters straight through the Drafting Committee.

Mr. BARTON. -
Nothing of the kind has suggested itself to me.

Sir EDWARD BRADDON. -
What kind?

Mr. BARTON. -
Of the possibility of putting the matter straight through the Drafting Committee. Anything the committee would have to do with the clause would be a matter of substance, and with that they have nothing to do.

Sir EDWARD BRADDON. -
The matter for adjustment is one that could readily be effected by the committee by the trifling alteration of two or three clauses.

Mr. BARTON. -
Will my honorable friend permit me to say what will perhaps prevent my speaking at length I Has the honorable member considered the relation of this to clause 98A, and whether the Parliament could operate fairly in taking over the debts if they had this clause as an eternal provision in the Bill?

Mr. OCONNOR. -
It would operate whether they take over the debts or not.

Sir EDWARD BRADDON. -
I have thought of that.

Mr. BARTON. -
It might prevent their taking over the debts.

Sir EDWARD BRADDON. -
I have thought of that, and I have spoken of it privately, but up to the present moment I have not heard anything about it publicly in the Convention. I see the difficulty.
If you provide "Until the Parliament otherwise provides," that might meet the case.

Mr. BARTON. -

If you made those fixed proportions returnable by the Commonwealth and repayable to the state, then if a large proportion of the debts were taken over, it would, with the increased expenditure of the Commonwealth, make the Commonwealth unable to get on, inasmuch as so much would have to go in the payment of the debts.

Sir GEORGE TURNER. -

That could be charged against the state on whose behalf it was paid. That would get rid of the difficulty.

Mr. BARTON. - This clause would not, on the face of it. If you provide "Until the Parliament otherwise provides" I would be satisfied.

Sir EDWARD BRADDON. -

The objection to this proviso is that it is of a permanent character. The clause is so elastic, as I am sure my honorable friend will admit, that saving the possibility of some difficulty as to the question of debts—a difficulty which I think has been greatly disposed of by the interjection made just this minute—there is no reason why it should not be absolutely permanent. It will be seen there is no obligation on the Federal Parliament or the Federal Executive to increase the expenditure to an abnormal amount under this clause, inasmuch as in sub-sections (a) and (b) it is provided that no more than a certain proportion of the net Customs and Excise revenue shall be applied to the purposes of the Commonwealth, while the balance, which might be greater than three-fourths of the Customs revenue, would be available for distribution amongst the states in proportion to their contribution. The clause is one which would recommend itself certainly to four out of the five states, and which would, I think, induce four out of the five states to enter this Federation, where otherwise they might be disposed to stand out. I do trust we shall not find the decision of last night reversed without any reason that I have heard justifying such a reversal. I trust we shall pass the clause which my right honorable friend (Mr. Reid) has admitted is the least objectionable form of guarantee to the states that he has yet heard of.

Mr. BARTON. -

Before my friend sits down, may I say I am willing to modify my amendment to one of the two forms which will be the less objectionable to him? I am willing to leave it in its present form, or to insert the words "Until Parliament otherwise provides." I will take the form which is the less objectionable to my honorable friend.

Sir GEORGE TURNER. -
Will the honorable member provide "Until a period of five years, and thereafter until Parliament otherwise provides"?

Mr. KINGSTON. -
Take the clause as it stands.

Mr. BARTON. -
I am rather exercised about this debt matter, and if my right honorable friend (Sir Edward Braddon) will tell which of the two amendments are the less objectionable to him, I will propose the clause in that form.

Sir EDWARD BRADDON. -
Both clauses are objectionable.

Mr. BARTON. -
I do not ask the right honorable gentleman to accept either, but to say which is the less objectionable?

Sir EDWARD BRADDON. -
The less objectionable is that which the honorable member at first proposed.

Mr. BARTON. -
Very well, then, I will leave it in that form.

Mr. VENN (Western Australia). -
It is a fortunate thing that by the standing orders of the Convention we have been able from the first not only to consider a subject once, but to consider it as often and as exhaustively as the Convention desires. We may not only come to a decision to-day after mature consideration, but after reconsideration may reverse that decision. It is a happy incident that we are able to do that,

and at the conclusion of our labours feel that every question has been exhaustively dealt with in a way acceptable to the Convention as a whole. I feel gratified that this opportunity is afforded me of making a few remarks on this question. Last night, after full and due consideration of the subject, I was found in opposition. Having considered the subject since very maturely, I am led to the conclusion that I find myself on the wrong side of the House. I hope now that I shall have an opportunity, if a division occurs, of putting my vote in agreement with the resolution as it now stands before the House. I shall have much pleasure in giving my full support to the proposal as it originally stood. I do not think there will be any particular advantage in limiting the term to five years, or any particular time. Last night, one of the great factors in leading me to vote as I did was the fact that I reposed the greatest possible confidence in the Commonwealth Parliament. It struck me it would be an unwise thing for us to attempt to limit expenditure, but that we ought to trust to the policy of such men as
ourselves who will be elected to that Legislature to do the best in the interests of the Commonwealth generally. But it has occurred to me since that if the Commonwealth were reduced to the necessity of having to levy a tax to recoup their Treasury for money they would not have otherwise, the state would have to do the same, if it is left to the states. Of the two bodies, I prefer to be taxed directly by the state rather than by the Commonwealth. Under the circumstances, I feel I was on the wrong side last night, and if an opportunity is afforded me to-day of-voting with those in favour of the clause I will be found supporting them.

Mr. DEAKIN (Victoria). -

The suggestion of the leader of the Convention to accept the clause with a limitation to five years appears to come close to something approaching a settlement. Would it not be possible, as I have suggested to a few members, to read the clause in connexion with clause 98, and to provide that the system of redistribution shall obtain until clause 98 has been taken advantage of, and until the Commonwealth have on just terms taken over the state debts?

Mr. BARTON. -

It may not be taken full advantage of.

Mr. DEAKIN. -

I mean when taking full advantage as at the date of the establishment of the Commonwealth. That may imply so great a financial change in the relative position of the stater, and the Commonwealth that a reconsideration of the financial position of the Commonwealth and the states would have to be entered on, and there would be time to review the question. The amendment would be that the system is to last five years, and thereafter until the Commonwealth has arranged to take over the debts. This would probably mean that the debts would not be taken over until the federalization of the railways. When that gigantic and desirable financial operation had taken place would be the proper time for this financial arrangement to terminate.

Mr. BROWN (Tasmania). -

It is so desirable to get a unanimous vote, that I think it only right to offer a suggestion which I hope will meet the views of both the Right Hon. Sir Edward Braddon and those who, like myself, have an objection to putting in a permanent document a provision of a temporary character, unless that state of affairs is indicated in the words of the clause. The views of both parties would probably be met if after the word "states" were added the words "or applied in payment of the interest on state debts taken over by the Commonwealth."

Sir GEORGE TURNER. -
That is very vague.

Mr. BARTON. -

If it were made to provide, as applied in accordance with the Constitution, that would mean under section 98.

Sir GEORGE TURNER. -

That would be right, but the other would be very vague.

Mr. BROWN. -

That would carry out what Mr. Deakin suggested just now, and also the intention of Sir Edward Braddon and those who have supported him.

Mr. FRASER (Victoria). -

I heartily support the clause as passed last evening. But I would like to draw attention to what I conceive to be a danger in it. The clause contains a cast-iron provision, and it may lead to the Commonwealth being in dire necessity for money at some future time. Suppose an invasion took place, or the Commonwealth requires to enter upon a very large expenditure for some public purpose—an expenditure which the whole nation would unanimously say "Yea" to it will be hampered by the provisions of this clause, because the clause says that the Commonwealth shall only take a certain proportion of the Customs revenue.

Mr. REID. -

If they want £500,000 they must raise £2,000,000 through the customs.

Sir EDWARD BRADDON. -

Upon an occasion like that the Commonwealth could raise a loan.

Mr. FRASER. -

I conceive that the clause will create a great difficulty. The Commonwealth would have to resort to other taxation than is provided for in the clause, and I think some safety-valve should be provided. For that reason I should like to have it enacted, that after five years this arrangement might be subject to the alteration of the Federal Parliament.

Mr. SYMON. -

The honorable member does not object to revenue being raised by direct taxation.

Mr. FRASER. -

I do not object to the revenue being made up in any way the Parliament chooses.

Mr. BARTON (New South Wales). -

If my amendment is carried, clause 93 will will give ample power to the Parliament to distribute the revenue upon whatever basis it thinks fair after five years.
Mr. FRASER. -
I will support that.

Sir GEORGE TURNER (Victoria). -
It seems to me that the question of direct taxation is again being drawn across the trail to catch votes. Under ordinary circumstances, a million or two million pounds could not be taken from the Customs revenue; but, suppose that an expenditure were undertaken, the Commonwealth would have to raise the money by direct-taxation. If the money were taken out of Customs revenue, and the clause were not in the Bill, there would be so much less surplus to return to the states, and the states would have to make up the deficiency themselves by direct taxation. These little words, "direct taxation," were used in the Finance Committee, and have been used since to try and frighten honorable members. If money cannot be raised by customs duties, it must be raised by direct taxation.

The amendment was negatived.

Mr. BROWN (Tasmania). -
I beg to move-

That the following words be added to sub-section (c):-"or applied in accordance with this Constitution in the payment of the interest on state debts taken over by the Commonwealth."

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 95F. - The Parliament may by any such laws forbid, in respect of railways, any preference or discrimination by any state, or by any authority constituted under a state, which the Inter-State Commission may deem undue and unreasonable, or unjust to any state.

But due consideration shall be given to the financial responsibilities incurred by any state in connexion with the construction and maintenance of its railways.

Sir GEORGE TURNER (Victoria). -
Clause 95E empowers the Federal Parliament to make laws with regard to the railways relating to trade and commerce. I should be perfectly inclined to stop there and leave the whole matter to be dealt with by the Federal Parliament as it thought fit. However, we have determined to put limitations upon this provision. The first limitation we put upon it is that, although the Federal Parliament may make laws prohibiting any reference or discrimination, it may only prohibit such preferences and discriminations as the Inter State Commission deems undue or unreasonable. Without that provision the Federal Parliament would have power to prohibit all
preferences and discriminations which they thought were improper. Another limitation which is provided is that if the rates are deemed to have been imposed for the development of the territory of the state, even although they are undue, unreasonable, and unjust, the Inter-State Commission will have no power to interfere with them, and, consequently, the Parliament will have no power to prohibit them, provided that they apply equally to the goods of all states. Victoria, in respect to these rates, is in a very peculiar position. Our area of territory is very small, while in New South Wales they have a very large territory. Therefore, across the border they may be able to impose rates applying equally to the goods of all colonies, and say that they are intended for the development of their territory, whereas, as a matter of fact, they are aimed at the ruin of the trade of Victoria.

Mr. REID. -

What rate does the right honorable member wish to prevent? Does he want Victoria to be allowed to charge a lower rate to the people of New South Wales than to the people of Victoria?

Sir GEORGE TURNER. -

Well, my right honorable friend would be able to charge less to the people of Riverina than to the people of Bourke.

Mr. LYNE. -

At the present time the rates are the same.

I Sir GEORGE TURNER. - Well, they are not the same to all places within New South Wales. New South Wales, under the provisions of this clause, would be able to make rates to entirely suit the local conditions. Then we proceed to clause 96, which is intimately connected with the two clauses to which I have referred. Although the leader of the Convention has made an alteration in the verbiage of this clause that has made no alteration in its meaning. The clause means that no matter what the Parliament may desire to do, all matters relating to the execution and management of the provisions affecting trade and commerce, including that of free-trade between the states, and questions of navigation, must be left to the decision of the Inter-State Commission. The Parliament cannot make alterations or variations or appoint any other body to carry those provisions into effect. The only power that the Parliament will have will be to make machinery clauses to provide for their adjudication and administration. What I say is that all these questions should be left for the determination of the Federal Parliament. We ought to have perfect confidence that the Parliament would deal with them in an honest and just way. With a view to testing the feeling of the Convention, I move-

That the words "Inter-State Commission" be omitted, with a view to the
insertion of the words "the Parliament."

If the amendment is carried, alterations will have to be made to provide for the carrying out of the provision relating to trade and commerce under the direct control of the Federal Parliament. This will allow the Federal Parliament to make what alterations are found to be necessary as time goes on. Otherwise, we shall have a hard-and-fast rule in the Constitution which, in years to come, the colonies will deeply regret.

Mr. BARTON (New South Wales). -

This matter has been the subject of consideration upon two occasions, and has twice been decided in the same way. Five of the New South Wales delegates have to leave the colony almost immediately, and, therefore, as a matter of fair play, I suggest that we should go to a division almost at once. I will give way if Mr. Reid wishes to speak, because I shall be here, but I do not want to speak at all. What I ask is that if one speech has been made on the other side, as one has been made on Sir George Turner's side, it will then be only reasonable to divide.

Mr. ISAACS. -

We waive our rights on this side.

Mr. REID. -

I will not take advantage of the position. I will simply speak for two or three minutes. I wish to express my profound concern at the course which has been taken after this matter has been thoroughly thrashed out in the whole Convention - the course taken at the last moment of this sitting, at a time when a number of members are away. However, we are here now to deal with it, and we will have to take the risk. We had to take the risk on a previous division, which I hope will have no bearing on this matter. I hope that the two matters have not got mixed up in any way in the minds of honorable members, and that the division which took place a short time ago will have no sort of bearing on the division which will take place now. I feel sure it will not be so. I feel sure that no honorable member has mixed up the two matters, but that every one will give his vote in an independent way, that they will deal with the two matters absolutely on their merits, because I know it is impossible here that there could be any sort of arrangement which would lead to support being given to one proposition, with a view to support being given of this kind. I feel sure that such things are impossible in this Convention, and that the division list will show that to be the case; but I wish to point out this plain proposition, which is the only one I will put. Sir George Turner says surely we can trust the Federal Parliament. No doubt, we can, but who can conceive of the wisest and best Federal Parliament in the world sitting as an Inter-State Commission to
consider railway rates, and perpetually engaged in considering the different rates as they come out? Who can conceive of a parliamentary tribunal sitting to do that sort of business?

Sir GEORGE TURNER. -

It will have absolute power to create that tribunal, and act upon the report of that tribunal as it thinks fit.

Mr. REID. -

Exactly. I quite agree with that. But then my honorable friends have just got a guarantee into the Constitution successfully, in spite of the repeated refusals of this Convention to put such a guarantee in—it was accepted at Adelaide, but it was absolutely refused here, reversing the decision at Adelaide, and acting upon the report of a committee specially appointed to deal with the question. Now, after that deliberate refusal, that has been reversed at the last moment of the Convention, when it is an imperfect body. Is that going to be the history of this matter? If that is to be so, it will be a very extraordinary conclusion to our deliberations. I have not, upon any of the matters which oppress my mind very much in this Bill, taken any such course, because I have felt that this is not the time to do so. But since we are on the question of guarantees, and the smaller states have joined with Victoria, and insisted on the guarantee of their revenue, I now ask, on behalf, not only of New South Wales, but of all the colonies, that this guarantee shall remain in the Constitution—that all these matters, whenever they arise, shall be dealt with by a competent independent body, and that Parliament shall be left free to create that competent independent body.

Mr. ISAACS. -

That is not so here.

Mr. REID. -

If this Constitution is to be left in such a way that Parliament need not create this body, and that these matters may be dealt with by Parliament, even-

Mr. DEAKIN. -

That is not the proposal.

Mr. REID. -

It is really rather amusing to me, after all we have said about this thing, that my honorable friend should say that. I say the proposal of Sir George Turner certainly takes this guarantee out of the Constitution that there should be an Inter-State Commission; and that this Inter-State Commission shall have the power of deciding these matters, and it makes the whole thing subject to Parliament. As we are
about unsettling all these things, it will be a thoroughly characteristic conclusion to our labours if we now end-after having put that guarantee in to please some elements of this Convention, after it had been refused by the whole Convention—it will be a perfectly consistent conclusion if we now, at the eleventh hour, take out that guarantee as the next act after putting another guarantee in. We refused before to do so, and I do hope, as a last appeal to this Convention, that what was put in deliberately after a most thorough debate-

Mr. BARTON. -

There were two decisions.

Mr. REID. -

There were practically two decisions, and now, in this imperfect body, at the last moment, the decision is to be upset.

Mr. BARTON. -

Sir George Turner accepted the proposal.

Mr. REID. -

I understood that Sir George Turner had practically accepted the proposal as it is in the Bill.

Mr. ISAACS. -

No.

Mr. BARTON. -

He accepted it on the first debate.

Mr. REID. -

I think so. Out of proper consideration—I will not say proper, I will say a weak consideration—we have allowed this matter to be re-opened after its settlement and after it was accepted.

Sir GEORGE TURNER. -

I was asked the spur of the moment by Mr. Holder whether, as a compromise, I would accept the Inter-State Commission. I then said yes, but on further consideration I found that it would not do justice to Victoria.

Mr. WISE. -

The honorable member refused my proposal to leave things as they are.

Sir GEORGE TURNER. -

Yes, but-

Mr. REID. -

The honorable members will not leave things as they are between the states, as we are willing to do. They are not willing to do that, they will insist upon the question being re-opened in this way, and I am prepared to see what is the result.

Mr. LYNE (New South Wales). -

As I am going away, I wish to say a few words on this question. I have
always been against an Inter-State Commission with the powers with which, it seemed to me, it was endowed. If the commission is under the direction of the Parliament, then I do not object to it, and I am informed that under clause 96 the commission is under the direction of the Parliament.

Sir GEORGE TURNER. -
Oh, no.

Mr. BARTON. -
It is.

Mr. LYNE. -
If so, I am prepared to vote for the Inter-State Commission, but I will never vote for the Inter-State Commission having powers practically superior to Parliament.

Question. - That the words "Inter-State Commission" proposed to be struck out stand part of the clause-put.

The committee divided-
Ayes ... ... ... ... 21
Noes ... ... ... ... 14
Majority against the amendment 7

AYES.
Briggs, H. Lewis, N.E.
Brown, N.J. Lyne, W.J.
Cockburn, Dr. J.A. Moore, W.
Dobson, H. O'Connor, R.E.
Forrest, Sir J. Reid, G.H.
Fraser, S. Symon, J.H.
Gordon, J.H. Venn, H.W.
Hassell, A.Y. Walker, J.T.
Henning, A.H. Wise, B.R.
Holder, F.W. Teller.
Howe, J.H. Barton, E.

NOES.
Berry, Sir G. Peacock, A.J.
Braddon, Sir E.N.C. Quick, Dr. J.
Deakin, A. Trenwith, W. A.
Douglas, A. Turner, Sir G.
Fysh, Sir P.O. Zeal, Sir W. A.
Glynn, P.M.
Grant, C.H. Teller.
Kingston, C.C. Isaacs, I. A.

Question so resolved in the affirmative.
The clause was agreed to.

Clauses 95G and 96 were agreed to.

Mr. BARTON. -
I beg to move-
That the Chairman report the Bill, with amendments, to the Convention.
The motion was agreed to.
The Bill was reported with amendments.

Mr. BARTON (New South Wales). -
I propose to move-
That the consideration of the report be an order of the day for the next sitting of the Convention.
Perhaps it would be better to fix a later date than Wednesday, because the drafting amendments have to be considered now, and it may be that the Convention will like to have a formal sitting in case of any formal business coming before it on Monday, in which case I will ask that the consideration of the report be an order of the day for Wednesday.

Sir RICHARD BAKER (South Australia). -
Before that question is put, I would point out to the leader of the Convention one possible danger; it is that there might not be a quorum. If honorable members go away while the Drafting Committee is doing its work it will be awkward.

Mr. BARTON (New South Wales). -
So far as the Drafting Committee are concerned, we can be here at half-past ten each morning. We shall be working in an adjoining room.

Sir RICHARD BAKER. -
I mean that there may not be a quorum of the Convention when it meets on Monday morning.

Mr. BARTON. -
Then it will stand adjourned until the next day.

Sir RICHARD BAKER. -
That would be all right if we had not passed a resolution-just now that the Convention meet from day to day, as ordered.

Mr. BARTON. -
We can, before the rising of the Convention, fix a day for its next meeting. There being a sessional order unrescinded in existence, I take it that if we had no quorum on Monday that would operate to the extent of the Convention meeting on the next ordinary day, there being no counter order.

Dr. COCKBURN. -
Sit on Monday, and let the Convention stand adjourned until next day.

Mr. BARTON. -

I do not think it helps us in any way at all. If I may explain the position, subject, of course, sir, to your opinion, we have in existence a sessional order which we have not repealed, that is: That the Convention do meet on Monday, Tuesday, Wednesday, Thursday, and Friday. We made an exception to that to enable us to order other times, but I take it that if we do not order those times the ordinary

Sir JOHN FORREST. -

Do you want us here on Monday?

Mr. FRASER. -

Yes.

Mr. BARTON. -

To remove all doubts— and if it is necessary I will ask the Convention to suspend the standing orders, although I do not think we need do that—I beg to move—

That the Convention do meet at half-past ten o'clock on Monday, Tuesday, and Wednesday next.

That will remove the difficulty, and after that motion is carried I will move the other motion.

Sir GEORGE TURNER. -

Who is going to challenge us if we do not?

Mr. SYMON. -

On which of the three days, may I ask the leader, is the business to be transacted?

Mr. BARTON. -

So soon as we can complete our work we wish to meet the Convention and have the Bill distributed.

Sir GEORGE TURNER. -

You may want to consult the Convention before it is completed.

Mr. BARTON. -

I do not think that will be likely on Monday; I do not think it is very likely on Tuesday; but I do not wish any step to be taken which might preclude us, if we are fortunate enough to get our work done in time, from bringing up the Bill to the Convention. I think the probability is that it will be Wednesday, and I indicated a little while ago, yesterday I think, that it would be a convenient thing if we could place the Bill in the hands of honorable members at half past ten o'clock on Wednesday, and then have a sitting, which will be more or less formal, at two o'clock on Wednesday afternoon, so that honorable
members who are going away will be in at the death.

Mr. SYMON. -
   You mean at the life?

The PRESIDENT. -
   I would call the attention of the leader of the Convention to the fact that we have not yet fixed a time for the consideration of the report of the committee.

   The motion was agreed to.

Mr. BARTON. -
   I beg to move-
   That the consideration of the report be made an order of the day for Wednesday next.

   The motion was agreed to.

Mr. BARTON. -
   I propose to move-
   That the Convention, at its rising, do adjourn until Monday next, at half-past ten o'clock.

Mr. ISAACS (Victoria). -
   In view of the observations of my honorable friend (Sir Richard Baker), I would like to ask the President what the real effect of that will be? Under the standing order, will it mean that if there is no meeting of the Convention, it stands adjourned as of course until Tuesday; and then, if there is no meeting of the Convention on Tuesday, it stands adjourned as of course until Wednesday?

Mr. BARTON (New South Wales). -
   I think so; I do not think there is anything in the Federal Enabling Act to prevent that state of things. There are provisions in the Act as to sittings, but I have no recollection of any provision to prevent that from being done, unless some one can remind me of one. I think it is all right and the Clerk at the table seems to be of the same opinion.

The PRESIDENT. -
   I am disposed to think that the resolution we carried to-day would necessitate the fixing of a time for the Convention to meet on each day.

Mr. GORDON. -
   Is a quorum necessary?

The PRESIDENT. -
   I think so.

Dr. COCKBURN. -
   Why cannot we say that, at its rising or Monday, the Convention shall then stand adjourned until Tuesday?

Mr. BARTON. -
I will add that. I beg, sir, to move the motion in this form—
That the Convention, at its rising, do adjourn until Monday next at half-
past ten o'clock, and at its rising on Monday it stand adjourned until next
sitting day.

Sir GEORGE TURNER. -
You may not meet on Tuesday, and that will be very awkward.

Mr. BARTON (New South Wales). -
I may say, and honorable members may take this for granted, that the
Drafting Committee will make no amendments which are substantial,
unless, to this extent, that where it is the obvious intention that—a
consequential amendment shall be made which appears to be one of
substance, that amendment will be made as one of consequence.

Mr. HOLDER (South Australia). -
I understand that we have already passed a motion to consider the report
on Wednesday next, and we, therefore, I should think, may go away to-day
assured that nothing can be done until Wednesday. I hope it is clearly
understood that, as the consideration of the report is set down for
Wednesday, we cannot do anything until that day. It is very awkward to
have to wait about on Monday and Tuesday with the almost certainty that
nothing will be done until Wednesday, whereas, if we know that it is not
coming on until Wednesday, we are quite assured that there will be a
quorum.

The PRESIDENT. -
Unless some other resolution is agreed to it will be impossible for the
report to be taken into consideration before Wednesday.

Mr. BARTON (New South Wales). -
May I make another statement in order to facilitate our work? On the day
on which the reconsideration of the report is to be taken it will be
necessary to have a quorum, because there is work to be done on that day,
and the Bill must be in such a position that copies of it can be supplied to
honorable members, and until they are supplied with two copies apiece the
proceedings cannot be declared closed so that it will be a necessity for
honorable members to be present. In the case of those who, unfortunately,
have had to leave for distant colonies, the only way in which we can fulfil
our duty in that respect will be to post copies to them, and take that as
supplying them with copies, but I ask all other honorable members to
attend on Wednesday.

Sir EDWARD BRADDOX (Tasmania). -
I hope that copies of the Bill will be available for distribution some time
or other on Tuesday.

Mr. BARTON. -

As soon as they are ready they will be distributed.

Sir EDWARD BRADDON. -

I am not urging that it should be done as a matter of course, but that it should be done if it be practicable to do it.

Mr. BARTON (New South Wales). -

I will do everything I possibly can to get the Bill into the hands of honorable members at the earliest moment. On that condition, they must allow me to say that it will be impossible to get the Bill showing the amendments in relief type if they are to have the measure in their hands as soon as possible. However, they will have the existing print of the Bill on the left-hand page, and the Bill with the drafting amendments on the right-hand page. I think they might take that as sufficient. If so, they will get the Bill all the earlier.

The motion was agreed to.

The Convention adjourned at seven minutes past three o'clock p.m., until Monday, 14th March, at half-past ten o'clock a.m.
Monday, 14th March, 1898.

Commonwealth of Australia Bill: Drafting Committee's Amendments-Adjournment.

The PRESIDENT took the chair at thirty-five minutes past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

Sir EDWARD BRADDON (Tasmania). -

I should like to ask my honorable friend (Mr. O'Connor), who, I suppose, represents the leader of the Convention, whether there is any prospect of our having a rough draft of the Bill, containing the Drafting Committee's amendments, laid before us to-morrow?

Mr. OCONNOR (New South Wales). -

I do not think there is any prospect of having a rough draft of the Bill in the hands of honorable members by to-morrow morning, but probably later on in the day it will be ready.

Mr. DEAKIN. -

Some arrangement might be made for having it delivered to honorable members.

Mr. OCONNOR. -

Yes, arrangements shall be made for having it delivered to honorable members as soon as it is ready, whatever time of the day it is.

Mr. DEAKIN. -

It may be to-morrow night?

Mr. OCONNOR. -

Yes.

Sir JOHN FORREST (Western Australia). -

If I may be permitted, I should like to call the attention of the Drafting Committee to the words that were inserted at the last sitting at the end of clause 93c. The words in question were inserted on the motion of my honorable friend (Mr. Holder), and although they are of no importance to me, as representing Western Australia, still it appears to me that a difficulty will arise in carrying them out, and therefore I should like to call the attention of my honorable friend (Mr. O'Connor) to them. The words I refer to are to the effect that foreign goods imported into Western Australia during the first five years after the imposition of uniform duties should not have lower duties imposed on them than are imposed on the same classes of goods from the other states of the Commonwealth. Now, that, I think,
will lead us into trouble. At any rate, it will form a difficulty for the Federal Parliament in framing a Tariff, because they will be bound to make the Federal Tariff equal, at any rate, to the Western Australian Tariff in regard to those articles.

Mr. TRENWITH. -

As far as Western Australia is concerned.

Sir JOHN FORREST. -

I do not think the Federal Parliament will have any power to make any variation in the Federal Tariff. It must be uniform throughout Australia. Therefore it will come to this. Supposing we take an instance. Take the case of flour. If there is a duty of £1 per ton levied on flour imported into Western Australia from the other colonies, there will have to be in the Federal Tariff a duty of £1 per ton against foreign flour.

Sir JOHN DOWNER (South Australia). -

I rise to a point of order. I ask you, Mr. President, if the right honorable member is in order in discussing the question?

The PRESIDENT. -

The objection is taken that the right honorable member is not in order in discussing the question, and that objection is well founded. I must, therefore, ask the right honorable member, under these c

Sir JOHN FORREST. -

I was merely trying to point out a difficulty that has arisen.

The PRESIDENT. -

I will point out to the right honorable member that possibly all he desires might be served by calling the attention of the Drafting Committee to the matter privately and, if not, that he will have an opportunity of raising the question on Wednesday next.

Sir JOHN FORREST. -

It will be too late to do anything then.

The PRESIDENT. -

I do not think so. The full Convention will then meet for the purpose of dealing with question and, of course, it is desirable that any discussion of this matter should be taken when there is a fuller attendance of honorable members.

ADJOURNMENT.

Mr. OCONNOR (New South Wales). -

I beg to move-

That this Convention do now adjourn.

I would like to state to my right honorable friend (Sir John Forrest) that the Drafting Committee will be only too happy to receive any intimation he likes to make, or to have their attention called to any difficulty he wishes to
put before them now. Of course it is very undesirable that there should be any debate at the present sitting.

**Sir JOHN FORREST. -**

I was only making a suggestion.

**Mr. OCONNOR. -**

I could see that.

The motion was agreed to.

The Convention adjourned at twenty minutes to eleven o'clock.
Tuesday, 15th March, 1898.

Commonwealth of Australia Bill: Drafting Committee's Amendments.

The PRESIDENT took the chair at twenty minutes to eleven o'clock a.m.
COMMONWEALTH OF AUSTRALIA BILL.
Mr. GLYNN (South Australia). - I should like to ask a question with regard to clause 75, as to whether it is intended to leave the right of appeal from a state or the Federal High Court itself direct to the Privy Council, as it stands in the Bill, or whether the matter can be subsequently opened by the Parliament?
Mr. BARTON (New South Wales). - I am afraid that if I were to answer questions as to what is intended to be done, I should expose the Drafting Committee to a flood of interrogations. I can only say that what we intend to do is to carry out the decisions of the committee. Of course there are one or two cases in which the decisions which have been arrived at require a certain amount of interpretation in the light of the debates, and in those cases we shall take what was said, as well as what was put in the Bill, for the purpose of ascertaining what the movers of provisions desire. In the case of the proposal my honorable friend carried, and which was put as a proviso to clause 74, it is evident that the words as they appear are only in the nature of instructions to the committee, and they will have to be interpreted in the light of statements made by my honorable friend in answer to inquiries by me. That is the course that will be pursued. When an amendment, as carried, is intended only as a suggestion to the committee, it will be interpreted in that way.
Mr. HIGGINS (Victoria). - I understand that several of the representatives are going to Bendigo this evening, and the return train will only arrive in Melbourne at ten o'clock to-morrow. Perhaps, therefore, it will be better that the meeting of the Convention to-morrow should take place at eleven o'clock, otherwise there may not be a quorum present.
Mr. BARTON (New South Wales). - I am very glad that my honorable friend told me that. I beg to move-
That the Convention, at its rising, do adjourn till to-morrow at eleven o'clock.
The motion was agreed to.
The Convention adjourned at sixteen minutes to eleven o'clock a.m.
Wednesday, 16th March, 1898.

Commonwealth of Australia Bill: Drafting Committee's Amendments.

The PRESIDENT took the chair at fourteen minutes past eleven o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

Mr. BARTON (New South Wales). -

I desire to lay upon the table a copy of the Commonwealth of Australia Bill, as revised by the Drafting Committee, and to move that it be printed. I may say, Mr. President, that the print of the Bill, if this motion is carried, will be in a similar form to the print that was given on a former occasion, namely, it will contain on the left hand side the Bill as last reported, and on the right-hand side the Bill as proposed to be further amended by the Drafting Committee. I propose to take, in the usual formal way, the motion that this Bill, as revised by the Drafting Committee, be printed. After obtaining an instruction to the committee on the Bill that they may deal with a free hand with the Drafting Committee's amendments, I propose then to move that the Convention adjourn until two o'clock. My reason for this is to effect a saving of time. Honorable members will see that the Drafting Committee have bestowed a very great deal of labour upon the Bill in the limited time in which it has been permitted them to make such alterations in mere form as seemed to them to be advisable in this final stage. Honorable members will recollect that in Sydney the Drafting Committee had little or no time for any of the work of revision. From the beginning of our consideration of the Bill in Adelaide, until last Friday, there has been a very large number of suggestions as to drafting amendments, for which the committee have to express their utmost thanks to the honorable members who have assisted them. It has thus become necessary for the Drafting Committee to bestow an extraordinary amount of attention, in the few days that have elapsed since Saturday, to the form which it is considered the Bill should finally assume, so far as the technical work of the measure is concerned. Honorable members will know, when they have gone through this long schedule of amendments, that the sense of the Bill has been preserved,-upon which I cannot ask them to proceed at once-and when they compare these amendments with the Bill as printed last Friday. I think I am right in stating, exercising my memory at short notice, that there has been only one amendment in substance

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made to which I desire, when the time comes, to call the attention of the committee, and that is an amendment with reference to one of the disqualification clauses. I need not dilate upon that amendment now, but it is the substitution of "one year" for "three years" in respect of that disqualification, which only lasts whilst the person is under sentence for some offence. That amendment is in clause 44. In everything else, while honorable members may sometimes think the Drafting Committee have freely interpreted the instructions given to them, they will nevertheless find that either the meaning of the amendment is plain upon a comparison of it with the Bill as it stood before, or they will find when there is any apparent difference that the questions asked and answered and the explanations given in debate have accounted for the difference, and that the Drafting Committee has, in all instances, endeavoured to faithfully interpret the wishes of honorable members. I now beg to move-

That the Bill, as revised by the Drafting Committee, be printed.

I shall follow that motion up in a minute or two by asking that the Convention do adjourn until two o'clock, so that honorable members may have time to look over this schedule of 15 pages of drafting amendments. As I previously said, I cannot expect honorable members to go through the Bill as amended by the Drafting Committee at once, without a great deal of discussion which otherwise would be avoided. If we undertake this labour at once, I think I can promise honorable members that before we have gone through this schedule of amendments, a great deal of debate will take place which would be saved if honorable members took two or three hours to compare the amendments with the Bill.

The motion was agreed to.

Mr. BARTON (New South Wales). -

I now beg to move-

That the standing orders be suspended for the purpose of enabling instructions to the committee to be moved and dealt with.

If that is agreed to, I will then propose a motion to the effect that the committee of the whole have leave to adopt the Drafting Committee's amendments either in one resolution or in so many resolutions as it thinks fit. That will give the committee a perfectly free hand to deal with the Drafting Committee's amendments.

The motion was agreed to.

Mr. BARTON (New South Wales). -

I beg to move-

That it be an instruction to the committee of the whole that they have leave to deal with the amendments proposed by the Drafting Committee either by one resolution or by such resolutions as the committee see fit.
The motion was agreed to.

Mr. BARTON (New South Wales). -
Without any formal motion, sir, I would suggest that you should now suspend the sitting of the Convention until two o'clock this afternoon.

[The President left the chair at twenty minutes past eleven o'clock a.m. The Convention resumed at two o'clock p.m.]

Mr. BARTON (New South Wales). -
I beg to move—
That the President do now leave the chair, and the Convention resolve itself into committee of the whole to consider the Bill as proposed to be amended by the Drafting Committee, together with a new clause, 101A.

The new clause is in print, and, I think, has been distributed. An important clause was carried at the instance of Sir Edward Braddon, which, I think, finds itself numbered in the present print as 87, on the right-hand page; it was 91A, I think, on the left-hand page. Sir Edward Braddon empowers me to say that he wishes a slight amendment to be made in the clause, and I would like to ask you, sir, whether, under the motion I am moving, it will be competent for the committee to deal with that clause, otherwise I might move an instruction to the committee to have power to deal with it?

The PRESIDENT. -
Is it proposed by the Drafting Committee to amend clause 91A?

Mr. BARTON. -
I should be very glad, sir, if the other members of the Drafting Committee do not object, to accept the amendment, but then I am afraid that it involves in some degree a question of policy. I do not think any honorable member wished to re-open any matter which has been decided. If it be the understanding of the Convention that there is no desire to re-open any other matter, I might move that they be empowered to reconsider this question at the same time.

The PRESIDENT. -
The motion will be that the Bill be recommitted for the purpose of considering the schedule of amendments of the Drafting Committee, and also new clause 101A and clause 91A.

Mr. GLYNN. -
Would that stop members from suggesting amendments to clauses as they are now redrafted!

Mr. BARTON. -
Oh, no. Perhaps I have not made myself clear. I intend to propose that the
amendments in the schedule laid on the table be accepted, and then to suggest, if any honorable member wishes to take exception to any of the amendments, he might move to amend the resolutions seriatim, with the exception of so-and-so.

Mr. ISAACS. -

We will have to take a good deal on trust.

Mr. BARTON. -

I felt that the great difficulty was that there was a large number of drafting amendments. On the other hand, we are all very anxious not to delay the proceedings so as to impede the departure of Sir John Forrest and the other representatives of Western Australia. That is why, on the one hand, I ask the Convention not to go on at once, in order that honorable members may have time to consider the amendments. I am glad to see Sir Richard Baker rise, because I should like to have an expression of opinion from him as to whether the course I have suggested is not the more convenient one.

Sir RICHARD BAKER (South Australia). -

I would point out that, inasmuch as the motion which has been moved might involve very serious responsibility on the Chairman of Committees, the motion ought to be put in a more definite form. I would suggest that Mr. Barton alter his motion to the effect that the Bill be recommitted for the purpose of considering the amendments which are in print, and consequent amendments thereon. If a wider scope be given-

Mr. HOWE. -

We would never get away.

Sir RICHARD BAKER. -

We would never get away. If amendments can be moved on amendments which are not consequent thereon, we might re-open many questions we have already decided. I respectfully suggest that it would relieve the Chairman of Committees of much responsibility if the motion were altered in the manner I suggest. As to the two specific clauses mentioned, we might have a wider scope and could discuss questions of policy, but as to the drafting amendments we ought to be limited to these and to consequent amendments thereon.

Mr. HOWE (South Australia). -

I have great pleasure in supporting the position taken by the leader (Mr. Barton), and to expedite business I shall give every support I possibly can. There are some members of the Convention who, if they stayed till the Day of Judgment would still have amendments to propose. The proposition of the leader is one that should be supported by this Convention.

Mr. BARTON (New South Wales). -
If Sir Richard Baker's suggestion meets with approval it would be wise for me to modify my motion in the way he suggests, and move that the Bill be recommitted for the purpose of reconsidering the amendments in the printed schedule, together with amendments consequent thereon.

Mr. SYMON. -
Or incidental thereto.

Mr. BARTON. -
"Consequent thereon would be the same. Remembering that we have also to consider the new clause to take the place of 91A and the new clause 101A. The proposal of the latter is in fulfilment of a promise made on behalf of the Drafting Committee-a promise which was overlooked by the committee at the last moment.

Mr. SYMON (South Australia). -
I think it would be better to insert the words "or incidental thereto." "Consequent thereon" means something naturally following upon the amendment; but so long as I understand that "consequent thereon" includes "or incidental thereto" I am satisfied. Suppose an amendment has been adopted, and the Convention thought some other word might be added with a view of giving further expression to the meaning, that would not be "consequent thereon" but an amendment incidental thereto.

Mr. BARTON. -
I feel sure the Chairman would interpret it as an amendment consequent thereon.

The PRESIDENT. -
I take it that the words "consequent thereon" have a strict parliamentary meaning. The words mean an amendment necessitated by the previous amendment, and do not mean the introduction of an alternative amendment. If it is desired that the Convention should have

Mr. BARTON (New South Wales). -
do not think Mr. Symon wishes to go so far. Mr. Symon wishes to be able to move an amendment not only consequent in the strictest sense, but also an amendment which might be regarded as something incidental, and not in the strictest sense consequent. I take it that Mr. Symon might wish to move the omission of a word in a drafting amendment.

Mr. SYMON. -
Yes.

Mr. BARTON. -
I have no objection if that be the sense of the Convention. It is a question of time, and the question of time is important. I do not feel disposed myself
to ask the Convention to open the door any wider. I know very well that under the statute we shall probably have to hold a meeting to-morrow, and for that sitting we shall require a quorum. It is almost certain that if we are kept here another day or two we shall lose the opportunity of having a quorum at all. I would, therefore, not like to extend the matter any further than meets the obvious necessities of the case.

Sir JOHN DOWNER (South Australia). -

I understood that the Convention had come to the conclusion simply to make the amendments necessary to put in more precise form the intentions of the committee, and that there was no intention on the part of anybody to re-open questions already carefully discussed. So far as the suggestions of the Drafting Committee are concerned, all that that committee has endeavoured to do is to put the wishes of the Convention in more concise and complete form; and if we are to have these amended and old questions reopened—if the discussions are not simply to be on matters of form, but if alternative propositions are to be made, then I shall have to oppose that idea. I hope that the Convention will support us in taking the course that will enable us to arrive at finality.

Sir JOHN FORREST (Western Australia). -

I think it was generally understood that the time for making important amendments in this Constitution had passed by. Of course, I am aware that under our ordinary parliamentary procedure the Bill can be amended at any stage, but we have had so many opportunities given to us for amendment that it was understood that all the amendments honorable members desired to make had been placed before the Convention. On this understanding many honorable members have already left the Convention, and I take it that in good faith all that we should now attempt to do is criticise the wording of the clause. I do not feel that it is competent, and, certainly, I myself should not feel that I was at liberty to propose amendments for altering this Bill in any way. For that reason I do not view with favour the proposal of my honorable friend, acting, as I understand, for the Premier of Tasmania, that opportunity should be given for altering the Bill, unless in a way that will not alter the sense at the same time. Indeed, I think that is all my right honorable friend-desires.

Sir EDWARD BRADDOCK. -

Hear, hear.

Sir JOHN FORREST. -

To make it a little more condensed and more simple.

Sir EDWARD BRADDOCK. -

And more elastic.
Sir JOHN FORREST. -

If that can be arranged no one can object, but I do appeal to honorable members to agree that we should not be acting properly if we tried to amend the Bill in any important respect. Our duty now lies in the direction of criticising the amendments of the Drafting Committee if there be room for criticism; and the opportunities I have had suggest to me that there is very little room for criticism of the work of the Drafting Committee in endeavouring to carry out the wishes of the Convention.

The PRESIDENT. -

I shall put the motion in the following form:-

That the Bill be recommitted for the purpose of considering the schedule of amendments prepared by the Drafting Committee and any consequent amendments thereon; also for the purpose of considering clause 91A and the new clause to be proposed-101A.

Mr. SYMON (South Australia). -

Suppose an amendment by the Drafting Committee is rejected, will it be competent for us to substitute anything for it?

Mr. BARTON (New South Wales). -

I should say that that will be so. Having had a conference with the Chairman of Committees, I take it that all difficulties will disappear, and that we need not trouble ourselves about this stage, because we shall have every proper opportunity of considering the matter. I take it that if any honorable member desires to challenge an amendment he can do so, and that the Chairman can put the remaining amendments.

The PRESIDENT. -

I am inclined to think that on the rejection of an amendment suggested by the Drafting Committee, the proposal of some new provision would not be a consequential amendment.

The motion was agreed to.

The Convention then resolved itself into committee of the whole for the purpose of considering the schedule of amendments suggested by the Drafting Committee, and clause 91A, and new clause 101A.

The CHAIRMAN. -

I have to report to the committee that we have an instruction for leave to consider the Drafting Committee's suggested amendments, which are in print, and to adopt them either in globo or seriatim; to consider any consequential amendment made thereon; and also to reconsider clause 91A, and to insert a new clause, 101A. What I propose to do, if the leader of the Convention will move to that effect, is to put the question that the whole of the amendments in print be adopted, and then, if any honorable member wishes to debate any particular amendment, I shall put it that all
the amendments of the Drafting Committee, down to the one which an honorable member wishes to discuss, be agreed to. We can then consider that particular amendment, and can continue the same course of procedure until we have finished the whole of the Drafting Committee's suggestions.

Mr. BARTON (New South Wales). -

Acting on your suggestion, sir, I now beg to move, pro forma-

That the amendments suggested by the Drafting Committee, and contained in the printed schedule, be now adopted.

Mr. SYMON (South Australia). -

I think that this course will turn out to be very inconvenient. We have a very extensive schedule of amendments, and since this Convention adjourned this morning at half-past eleven, the South Australian representatives have been sitting to consider them, but have only been able to reach as far as clause 55 or 60. Each one of us may wish to raise some particular point, and I think it will be better to go through the amendments as quickly as you please. It may be that every honorable member may wish to ask a question about some one amendment.

Sir JOHN FORREST. -

We can ask.

Mr. SYMON. -

When we get the opportunity, but it will be impossible if the clauses are taken in globo.

Mr. BARTON. -

That is subject to what I have explained—that is to say, if any honorable member challenges a particular amendment, the Chairman will only put the amendments down to that point.

Mr. SYMON. -

Quite so—but an honorable member may wish not to challenge an amendment, but to get some information regarding it.

Mr. BARTON. -

Then I shall suggest challenging the amendment until the information is given.

Mr. SYMON. -

It would be better to take the amendments seriatim.

Mr. BARTON. -

It will take us three weeks to do that.

Mr. SYMON. -

I am sure it will not. It will take much longer if we have to ask questions as to the meaning of each particular amendment, as we may have to do
simply to be sure that nothing has been allowed to escape. Honorable members must realize that we have now reached a very serious stage in our proceedings. We are all anxious to get through our work as quickly as possible, but the Bill is now to pass from our hands for the last time. I think it would be more convenient to honorable members if the amendment were put seriatim.

Mr. BARTON. -

There are 400 amendments, and we do not want a separate motion about every "the" and every "but."

Dr. COCKBURN (South Australia). -

I admit that if we had to consider the 400 amendments seriatim, that would be almost equal to recommencing our labours. We might meet the wishes of the Hon. Mr. Symon by taking, not the amendments, but the clauses, separately. In some instances there are as many as ten or twelve amendments in a clause. A heavy responsibility rests, not only on the Drafting Committee, but on every member of the Convention; and if any mistake is made now, it must remain for all time. The way in which the amendments have been made reflects great credit on the Drafting Committee, but some of them come very near to alterations in substance, and every opportunity should be afforded to honorable members of calling attention to them.

Sir JOHN FORREST (Western Australia). -

I understand that every honorable member will have the opportunity of calling attention to a particular amendment, and no injury can therefore be done by putting them in globo. If an honorable member says that be desires to speak to an amendment; in clause 3 or 4, the Chairman will put the amendments in the preceding clauses.

Mr. ISAACS (Victoria). -

I can understand that there would be a difficulty in putting the amendments seriatim. At the same time, we must recognise that honorable members have not had the opportunity that they would desire of satisfying themselves as to the various amendments. If the Hon. Mr. Barton assures us that they are merely drafting amendments we may rely on what he says. If there are any that are not drafting amendments, and he would call our attention to them, we could consider them. That might meet the case.

Mr. BARTON (New South Wales). -

I think I shall have the support of my colleagues on the Drafting Committee in saying that we are not conscious of having altered the sense or the intention of the committee-always taking into account that we had to gather the intention from the debate-excepting with
reference to a disqualification in clause 45, where we altered three years to one year, subject, of course, to the subsequent approval of the committee. We did so, because if some alteration of the kind were not made a person in gaol might be eligible to be elected to the Federal Parliament, and we thought that if the matter had been pointed out to the committee they would have made the alteration themselves. I feel very like the man who kept the ale-house in Belgium, and who put over his door the words-"Good beer sold here, but do not take my word for it." I do not want the committee to take my word for it, but, as I have said, my definite opinion is, and it is shared by other members of the Drafting Committee, that there are very serious alterations in drafting, as, for instance, in the Judiciary clauses. The whole scheme of those clauses is altered but the result is the same. Perhaps it would be better for me to move-

That the Drafting Committee's amendments from 1 to 50 be agreed to.

That will place before the committee one part of the Bill, and will give honorable members an opportunity of challenging any amendment in clauses 1

Mr. SYMON (South Australia). -

I desire to call attention to clause 9.

The CHAIRMAN. -

Then I will put the question that the Drafting Committee's amendments in clauses 1 to 8 be agreed to.

The amendments of the Drafting Committee in clauses 1 to 8 were agreed to.

Mr. SYMON (South Australia). -

I wish to refer particularly to clause 10. Under that clause as it originally stood the Parliament of the Commonwealth would make laws prescribing the times, places, and uniform manner for electing senators. In the interval, unless these laws are made by the Parliament of the Commonwealth, the Parliament of the state determines these matters. Under the proposed amendment the Parliament of the Commonwealth may make laws prescribing the method of choosing the senators. This is only the alteration of a word, but the point I wish to direct attention to is, that the proposed amendment then withdraws from the Parliament of the Commonwealth the power, given by the existing clause 10, of making laws for determining the times and places of elections of senators by the state, and it gives that power exclusively to the state. That is an alteration of substance, and the question is, whether the Convention desires that. All I wish to observe upon it is that it will practically have the effect of giving additional legislation as to the method of choosing senators. The Parliament of the Commonwealth will prescribe the manner and everything incidental to the
manner, whilst the Parliament of the state, in relation to the same work, will prescribe the times and places of elections. That is a matter of substance. This drafting amendment involves a very serious matter of substance, whether we agree with it or not. Of course I prefer the thing as it stood, that everything relating to the conduct of the elections for the Senate should be determinable exclusively, if they exercise the power, by the Federal Parliament.

Mr. BARTON. -

It was never so determinable.

Mr. SYMON. -

I think so, under clause 10.

Mr. BARTON. -

Not as it stood. It only said times, places, and manner, with the whole body of existing electoral laws untouched.

Mr. SYMON. -

No doubt. Perhaps my honorable friend will tell me whether the effect of the amendment is not to divide this power of prescribing with regard to the election of senators between the Parliament of the Commonwealth and the Parliament of the states, the Parliament of the Commonwealth having power to deal with the "method"-which I think is a great improvement on the word "manner"-and the Parliament of the state having power absolutely to determine the times and places of election?

Mr. BARTON (New South Wales). -

I think my honorable friend's interpretation is about correct. What occurred with the Drafting Committee was this-they altered "manner" into "method," in order that not only what might ordinarily be described as the manner might be included, but that the Parliament of the Commonwealth might prescribe something which more nearly approached to a system. There is a difference between manner and method, because method more reasonably describes a system. It came, therefore, more nearly to the expressed wish of the committee that there should be no prevention of the Parliament of the Commonwealth legislating, if they so please, for some system of representation which might suit the progressive tendency of the Commonwealth.

Mr. HIGGINS. -

Hare's system, for instance.

Mr. BARTON. -

It might be Hare's system or some other of the many systems which have been suggested. It was thought that, whatever the opinion of one or other
member of the committee might be, the power, at any rate, should be in the hands of the Commonwealth. So, as to substance, we have somewhat extended the power by using "method" instead of manner," but to what degree would be a matter of opinion among honorable members.

Mr. DEAKIN. -

That was in response to a request by the committee.

Mr. BARTON. -

Yes. There was a general expression of opinion. Then, as to time and place, we say that, having amended clause 10, we have widened the area of the laws in force in each state, and that was done at a previous stage, making all the electoral laws apply with the exception of the time and place. With regard to the alteration from "manner" to "method," we thought that was a matter of detail, which might safely be left to the states, who will really know the most convenient way to arrange the times and places of elections. This will alter the times and places. This alteration crept in since 1891. In 1891 the power of the Parliament of the Commonwealth was simply to deal with a uniform manner of election. Since then there has been an alteration as to time and place; but that was at a time when the operations of the electoral law which were to apply in the election of the Senate were strictly defined and enumerated. We thought it wiser at the previous stage to open up new ground by making all the electoral laws applicable. As time and place were ordinary incidents of the election laws, and would not be within the knowledge of the Parliament of the Commonwealth, we thought it better that that power should be left to the states. I forgot to mention that the great difference between the Bill of 1891 and this Bill is that in the Bill of 1891 the election was to be by the Parliaments of the states. Even in the Bill of 1891 it was prescribed that the Commonwealth should fix the time and place as well as the manner, and there would be practically no inconvenience, but there would be inconvenience here, inasmuch as the whole thing is to be by popular election under the state electoral laws, unless it was practically under the management of those who have the local knowledge.

Mr. ISAACS (Victoria). -

I should like to point out one matter which I think is deserving of attention. I agree with my honorable friend that the word "method" goes further than the word "manner," but I am not sure that the word "manner" is not the right one, if the word would have the extended application it might have. If it includes the power to prescribe that the Senate may be elected by the Parliament of the state, I think it is a mistake.

Mr. BARTON. -

Until the Commonwealth legislates.
Mr. ISAACS. -

Under new clause 9, would it not be competent for the Parliament of the Commonwealth to provide

that the Senate might be elected by the Parliaments of the states?

Mr. BARTON. -

No. That would be in conflict with old clause 9.

Mr. ISAACS. -

I was going to call attention to the fact that if "method" goes beyond "manner," and provides something more than that, should not some such words be put in as were put in before to the effect "subject to the provisions of the Constitution."

Mr. BARTON. -

I quite see the point that my honorable friend wishes to urge, but a court would have to read these words so that there would be no repugnancy.

Mr. ISAACS. -

If my honorable friend is satisfied about that, it is all right. I was going to call attention to the fact that the previous clause provides for election by the people.

Mr. BARTON. -

The two will have to be read together, and I do not think any court would say there was any repugnancy, because the court would be bound to go the other way.

The amendments of the Drafting Committee in clauses 9 and 10 were agreed to.

Dr. COCKBURN (South Australia). -

I would ask the leader of the Convention whether the words "all persons of any race," which occur in new clause 25, do not go further than the words "people of any race"? The difficulty which presents itself to my mind is this: Suppose a state desires to make a law prohibiting the people of any race from exercising the franchise, and that at the present time there happens to be a member of that race naturalized, and in full possession of the franchise and voting, it would, of course, be impossible to disqualify that individual, and the question arises whether the words "all persons of any race" would not make the clause inoperative, for it would he impossible for the state to pass such a law as I speak of, because of the unfairness of disqualifying an individual. I ask the honorable and learned gentleman if the amendment is not a little more than a mere drafting amendment? I would also point out that clause 27 speaks of "the last preceding section." That was correct as the Bill previously stood, but since these further amendments have been made, it would be better to use the
words "in section 24."

Mr. BARTON (New South Wales). -

I am not able to appreciate any real difference between the meaning of the phrase "the people of any race" and "all persons of any race." As a matter of drafting we have tried to use the word people where the people of the Commonwealth or the people of a state are referred to—the law-making people. Where other people are referred to we have used the phrase "the people of any race." The other matter to which my honorable and learned friend has called attention requires alteration. A slip has occurred, and the words "in section 24" should be used in place of the words "in the last preceding section."

The CHAIRMAN. -

That is a correction that can be made by the Chairman.

Mr. BARTON. -

Then I will ask you to make it, sir.

The amendments of the Drafting Committee in clauses 24 to 40 were agreed to.

Mr. HOLDER (South Australia). -

I want to ask the leader of the Convention whether, under the wording of clause 44, which I think is an improvement, as redrafted, upon the former clause, any one who had the right of the franchise, and who could vote at elections for either House of the Parliament of the Commonwealth, could also maintain his right to vote upon a referendum for the alteration of the Constitution? Instead of the words—

Be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth,

I would like to see the clause read—

Be prevented by any law of the Commonwealth from voting under this Constitution.

Mr. BARTON (New South Wales). -

The phrase "voting under this Constitution" might be a little too wide, because under the Constitution other laws might be made under which a person would come, but from which he would be excepted for these special purposes. I propose to add the words "or in respect of a proposed law for the alteration of the Constitution."

Mr. HIGGINS. -

The case is covered by the last clause of the Bill.

Mr. BARTON. -

Yes. That clause provides that any proposed law for the alteration of the
Constitution-
Shall be submitted in each state to the electors qualified to vote for the election of members of the House of Representatives.

The clause originally read:-
No elector who has at the establishment of the Commonwealth, or who afterwards, being an adult, acquires the right to vote.

The Drafting Committee have made that to read-
No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a state

and so on. Honorable members will find a similar alteration in other parts of the Bill.

The amendments of the Drafting Committee in clauses 44A and 45 were agreed to.

Dr. COCKBURN (South Australia). -
Under clause 46 the seat of a member of either House of the Parliament of the Commonwealth becomes vacant if any work is done or services rendered by him in Parliament for or on behalf of any person or corporation. The Drafting Committee's amendment, however, will make the clause read-

Services rendered in the Parliament to any person or state.

I want to know whether the singular word "person" includes the plural, and if the word would apply to corporations? If it does not apply to corporations, the omission of that word is an alteration in substance which cannot have been intended.

Mr. HOLDER (South Australia). -
I should like to ask another question. There is nothing in the Bill empowering the Speaker or President to receive a salary for his work in either office. Yet, it is to be presumed, as the offices are created under the Constitution, such salary will be paid under the Constitution. Neither is there a reference to the position of the Chairman of Committees. I should like to know whether sub-section (3) will prevent the Chairman of Committees from receiving a salary?

Mr. BARTON (New South Wales). -
No, there would be no prohibition in that respect. The offices of Speaker and Chairman of Committees are not offices of profit under the Crown. They are parliamentary offices, and Parliament has always retained a power over its own Estimates to the extent that really the Speaker and President of the local Chambers have always exercised a right to submit their own Estimates, and those Estimates, as a rule, as far as I know in practice in my own colony, are altogether untouched by the Government of the day. Now, these are political offices, but not offices of profit under the
Crown. I think that that is the principle that Parliament has always asserted in England and elsewhere. As to the word "person," the British Interpretation Act of 1889, which will be largely applied to the construction of this statute by the Imperial authorities, provides that where the word "person" is used, unless the Act otherwise provides, the word "corporation" shall be included.

Mr. HIGGINS (Victoria). -

If a man agrees to get paid for services done in Parliament, or for the Commonwealth, and if he does the work, and, having done the work, he resigns, is there no penalty? Is there no punishment in such a case for a man who guarantees that he will use his position in Parliament in order to make money, and, having made it, resigns!

Mr. BARTON (New South Wales). -

No; and there is a reason for that. If I recollect correctly there was some provision in the Bill in Adelaide in that respect, but that provision was omitted in the sitting of the Convention at Sydney as a matter

Mr. O'Connor suggests that it is quite probable that in such a case an action would lie at common law. However that may be, the policy of inserting such a provision was reversed in Sydney, and therefore the Drafting Committee could not frame any proposal to that effect.

The amendments of the Drafting Committee in clauses 46 to 51 inclusive were agreed to.

Mr. GLYNN (South Australia). -

I desire to ask the leader of the Convention whether he thinks it advisable to strike out of clause 52 the provision in regard to navigation and shipping?

Mr. BARTON. -

We have provided for it elsewhere.

Mr. GLYNN. -

Yes; I see that it is provided for in clause 97, which now reads as follows:-

The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any state.

The only point I have some doubt about is that I think navigation and shipping in the Canadian Act refers to something very different from trade and commerce. In the Canadian Act they use the words "trade and commerce," but there is a separate section dealing with navigation and shipping.

Mr. BARTON. -
That is quite correct.

Mr. GLYNN. -

And if I am not mistaken it refers to the relations that would crop up under the Merchant Shipping Act as to the load-line, the character of the ships in the trade and commerce as carried on, and so forth, and not to the mere matter of trade and commerce, which is the intention of the trade and commerce clause in this Bill.

Mr. BARTON. -

No, not mere trade and commerce, but legislation with regard to trade and commerce of all sorts.

Mr. GLYNN. -

Yes; general laws as to the class of vessels that usually carry goods and passengers between different places. For instance, as to whether they should be on the principle that the Plimsoll Act determines, namely, that there should be only a certain number of tons taken by certain vessels, and that there should be an indication of the load-line of all vessels, and as to questions of that sort. All these matters, it seems to me, come under "navigation and shipping," and it would be competent for the Parliament to deal with them in the same way as it now deals with merchant shipping. However, I may be mistaken on that point; but I think that that is the reason why there is a separate section in the Canadian Act about navigation and shipping. As the clause now stands, that power arises incidentally out of the power to regulate trade and commerce generally.

Mr. BARTON (New South Wales). -

What the Drafting Committee have done here is this: Legislation as to navigation and shipping may in ordinary be regarded as mere legislation in regard to trade and commerce. There may be some doubt about that. In the British North American Act a separate power of navigation and shipping is taken. Whether the matter would relate to the Plimsoll load-line or otherwise does not create a very serious doubt, but if it did the declaration as to the extent of the power given by the trade and commerce provisions effectually removes the doubt. So in clause 97, about the power of the Parliament in respect to trade and commerce, it was stated originally that this extends to railways the property of any state, but we now provide that the power of the Parliament to make laws with respect to trade and commerce "extends to navigation and shipping, and to railways the property of any state." Therefore, any doubt as to the trade and commerce clause regarding the navigation and shipping is removed by that declaration as well as any doubt as to whether the state railways were like other railways, in regard to the trade and commerce clause. So that that declaration relieves us of the necessity of inserting this proviso, and really
leaves the trade and commerce clause in a far stronger
and less limited position than it otherwise would be, because the mere
declaration we have put in clause 97 instead of limiting makes clear the full
extent of this power. There is no limit on the trade and commerce clause
whatever, but anything said with reference to it makes not less clear its
original extent. It makes it also clear that the provision goes to a certain
extent at least.

The amendments of the Drafting Committee in clause 52 were agreed to.
The amendments of the Drafting Committee in clause 53 were agreed to.
Mr. ISAACS (Victoria). -
There are some words in clause 54 to which I desire to draw the attention
of the leader. In sub-section (4) it is provided, in the last sentence, with
regard to the Senate's power of suggestion, that-
The House of Representatives may, if it thinks fit, make such omissions
or amendments or any of them with or without modifications.
The words "if it thinks fit" are eliminated by the Drafting Committee. I
do not know that it makes any legal difference in the meaning of the
provision, but still I think that the words were put in there with the object
of showing more clearly the difference between the power of suggestion
and the power of amendment. And I think it will be well to retain the
words. I do not think that there would be any legal difference, so far as I
can see at the moment, if they were omitted, but they were put in with a
very distinct object, and I am sure the presence of the words had weight
with some honorable members, as showing that to grant the power of
suggestion was not as great as to grant the power of amendment. I think it
will be better to leave in the words.
Mr. BARTON (New South Wales). -
On this clause I should like to point out two things. First, instead of
saying at the beginning-
Proposed laws appropriating any part of the public revenue or moneys, or
imposing taxation shall originate in the House of Representatives, we have
said-
Proposed laws appropriating revenue or moneys or imposing taxation
shall not originate in the Senate.
The object of that amendment is to make it clear that the first three
paragraphs in clause 53 are intended as limitations on the power of the
Senate, while the fourth paragraph is the power of suggestion, which has
been, to some extent, a compensatory power granted under the
Constitution. As to my honorable friend's suggestion, there is no real
difference in the meaning of the Bill whether the words "if it thinks fit" are
or are not inserted. Both the old form and the new form make it clear that the House of Representatives may do what it likes with suggested omissions or suggested amendments—that it can take them or reject them, or modify them and take them. I have no objection to the insertion of the words I if it thinks fit " if my honorable friend thinks it really is an advisable thing to do.

Mr. ISAACS. -
I think it is.

Mr. BARTON. -
If my honorable friend thinks it is a politic thing to do, and he moves an amendment, I will accept it.

Mr. ISAACS. -
I beg to move—
That the words "if it thinks fit" be inserted after the word "may" last occurring in subsection (4) of clause 53.

The amendment was agreed to.

The amendments of the Drafting Committee in clause 54, as amended, were agreed to.

Mr. ISAACS (Victoria). -
I would like to ask my honorable friend (Mr. Barton) if he has considered whether the word Cc matter," in the first paragraph of clause 55, refers to taxation or to the imposition of taxation? The paragraph. reads:-

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

If it refers to taxation, it leaves a sort of hiatus. If the word "matter" means the imposition of taxation, it is perfect; but, if it means other than taxation, it would leave untouched the question of taxation.

Mr. BARTON (New South Wales). -
I quite appreciate what my honorable friend has suggested, but I think, on consideration, he will see that the words "any other matter" must refer to any other matter than the imposition of taxation. I have no doubt about it. I do not know whether my honorable friend retains any doubt about it, but I should think it is quite clear.

Mr. ISAACS. -
If my honorable friend is clear about it, I am satisfied.

The amendments of the Drafting Committee in clause 55 were agreed to.

Clause 56. - A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the
appropriation has in the same session been recommended by message of
the Governor-Gener
Mr. KINGSTON (South Australia). -
I would like to ask the leader of the Convention whether he thinks it
would not be better, instead of using the words "to the House in which the
proposal originated," to make the clause run-
Recommended by message of the Governor-General to the House of
Representatives?
Mr. BARTON. -
No, that is what the committee refused to accept.
Mr. ISAACS. -
We moved that, and it was not accepted.
The CHAIRMAN. -
That is not a drafting amendment.
Mr. KINGSTON. -
Is not there any possibility of moving it now?
The CHAIRMAN. -
No.
Mr. KINGSTON. -
It raises a doubt as to what we mean.
Mr. BARTON. -
I voted to confine it to the House of Representatives, but the committee
of the whole thought otherwise, and we followed their decision.
Mr. KINGSTON. -
In its present shape it raises a very considerable doubt as to the intention
of the Bill. We provide in clause 53, in the clearest possible terms—in fact, it
is almost a consequential amendment—that proposed laws appropriating
revenue or moneys "shall not originate in the Senate," whereas we had
previously declared that they "shall originate in the House of
Representatives." This clause, if continued in its present shape, would
suggest that, as the Senate cannot originate laws for the appropriation of
revenue or moneys, it may do something in that direction by votes or
resolutions. Otherwise the form in which we find the provision is incapable
of its fullest literal meaning, and I should be very glad to see an alteration
made of the character which the leader desired.
The CHAIRMAN. -
I do not think any such amendment can be put. We have a mandate from
the Convention to consider drafting amendments suggested by the Drafting
Committee, and amendments consequent thereon of a drafting nature only,
with the exception of two clauses; and the amendment which has been
suggested by the committee seems to me to be identical in meaning with
that arrived at by the Convention.

**Mr. KINGSTON.** -

I bow most cheerfully to your ruling, sir. I was only venturing to point out the position.

**Mr. BARTON.** -

I should have been glad if it had been the other way, but of course it has been decided.

The amendments of the Drafting Committee in clause 56 were agreed to.

**Mr. BARTON (New South Wales).** -

I would like to ask you, sir, to omit three words from the amendment suggested by the Drafting Committee in the third paragraph of clause 57. It will not interfere with any one else's amendment, because it is a clerical one. In the last line but three of the clause it says-

If the proposed law with the amendments, if any, so carried, is affirmed by a majority of three-fifths of the members present and voting thereon.

I think the words "a majority of" were struck out in the committee. At any rate, they are unnecessary, and we have not used them in the prior part of the clause; and I would ask you, sir, to leave them out, so that it may read "If the proposed law is affirmed by three-fifths," which is quite sufficient, I think, for the purpose. It is just a clerical alteration, and we perhaps had no right to put it in.

**Mr. ISAACS (Victoria).** -

There is just one case I would like to put before Mr. Barton, and to ask him whether he has considered it. This clause is a little bit complicated altogether.

**Mr. BARTON.** -

We have tried to make the clause less complicated, but the complication is inherent in the nature of the clause.

**Mr. ISAACS.** -

The case I would like to put before Mr. Barton is this: Suppose a Bill, not a Money Bill, is passed by the House of Representatives, and amendments are proposed by the Senate and agreed to by the House of Representatives with amendments which are not agreed to by the Senate, are such circumstances met by this clause?

**Mr. BARTON.** -

What part of the clause are you referring to?

**Mr. ISAACS.** -

The last part, which reads-

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of
Representatives and upon the amendments, if any, which have been made therein by the Senate and not agreed to by the House of Representatives, and any such amendments, &c. That contemplates amendments by the Senate being rejected, but I am speaking of the other case, of amendments made by the Senate being accepted with amendments. This is an important matter, because it seems to narrow down the point of difficulty.

Mr. Barton (New South Wales). -

According to the order of Parliament in New South Wales, though I do not know whether the same order is observed in the other colonies, the Legislative Assembly can amend amendments by the Legislative Council, but cannot go outside and travel into other parts of the Bill. We take the words quoted by Mr. Isaacs to mean that if the House of Representatives amend amendments made by the Senate, the House of Representatives do not agree to the amendments made by the Senate.

Mr. Isaacs. -

The case I take is where the House of Representatives agree to amendments with amendments.

Mr. Barton. -

You can agree to a Council's amendments with amendments, but that is only the technical form. Under the circumstances it cannot be said that the House of Representatives, in the broad sense of the term, agree to the Council's amendment. The joint sitting could consider the whole of the amendments proposed by both Houses when amendments have not reached the state of being absolutely agreed to.

Mr. Isaacs. -

In that case the House of Representatives would not have power to deliberate on the amendments requested by the Senate.

Mr. Barton. -

Possibly that might be so. Where the Senate made an amendment, and the House of Representatives amended that amendment, the difficulty to that extent would be narrowed down, but I do not think that is a matter which need occasion serious difficulty. I have no objection to an amendment which makes the matter clearer, but I do not think it would be any practical importance under the clause. The case might be met by inserting after the words "with the amendments, if any," the words "and not agreed to by the other House."

Mr. Deakin (Victoria). -

If I might suggest, the difficulty would be met by simply altering the words "and not agreed to" to "so far as they have not been agreed to by the House of Representatives." That leaves before the joint sitting, first, the proposed Bill, and then the amendments of the Senate which have not been
agreed to.

Sir EDWARD BRADDON. -

I take it that what Mr. Deakin suggests is practically what Mr. Barton means.

Mr. DEAKIN. -

The suggestion of Mr. Barton is quite good so far as it goes. It provides for amendments, but not for amendments on amendments, which are a frequent occurrence.

Mr. BARTON (New South Wales). -

On the suggestion made by Mr. Isaacs, I feel no difficulty in agreeing to the omission of the word "the" before "amendment," and the words "therein by the Senate."

Mr. GLYNN (South Australia). -

I would like to ask the leader of the Convention whether if amendments are sent from the Senate to the House of Representatives, and amendments are made by the House of Representatives in a way the Senate will not agree to, will the original amendment, as it comes down, be put in the joint sitting as a substantive proposition, and the amendment on the amendment also put as a substantive proposition? If they are not put disjointly in that way it will be within the power of the House of Representatives, by amending an amendment sent by the Senate, to prevent the original amendment of the Senate ever being put in the state it originally stood to the joint committee.

The amendment of the Drafting Committee's amendment omitting the words "a majority of" was agreed to.

Mr. KINGSTON (South Australia). -

I would ask the leader of the Convention to consider whether it is sufficiently clear that what is provided for is: (1) The proposed law, (2) the amendments agreed to, and (3) the amendments decided upon by the joint sitting? It seems to me, looking at the clause hurriedly, that it only provides for (1) and (3)-the proposed law, with the amendments proposed at the conference; and not for the intermediate stage, the amendments which have been agreed to between the two Houses.

Sir JOHN FORREST. -

Would they not be in the Bill?

Mr. BARTON. -

They are included in the words "as last proposed by the House of Representatives."
Mr. SYMON (South Australia). - Would it not be better to avoid any ambiguity by saying "as last agreed to by the House of Representatives"? That would cover it absolutely.

Mr. BARTON. - The House of Representatives may have disagreed with some of the amendments and adopted others, and thus the Bill is not the Bill "as last agreed to by the House of Representatives."

The amendments of the Drafting Committee in clause 57, as amended, were agreed to.

The amendments of the Drafting Committee in clauses 58 to 61 were agreed to.

Mr. BARTON (New South Wales). - I wish to make a verbal amendment in clause 62. The words "from time to time," which I have been industriously facing in this Bill, have escaped me, and I wish to omit them from clause 62. I beg to move-

That the words "from time to time" be struck out.

The amendment was agreed to.

The Drafting Committee's amendments in clauses 63 to 73 were agreed to.

Mr. GLYNN (South Australia). - Upon clause 74 I should like to ask what is the position as regards appeals? Is it not that the High Court shall have jurisdiction to hear all appeals from state courts and courts of subordinate jurisdiction, but that the powers of courts with appellate jurisdiction, such as the High Court, may be cut down by the Parliament? There is a concurrent right of appeal from state courts directly to the Privy Council.

Mr. BARTON. - Yes, that is dealt with in the proviso to clause 73.

But the appeal from the High Court may be abrogated by the Parliament?

Mr. BARTON. - There may be exceptions. That is what the committee deliberately passed.

Mr. GLYNN. - But the appeal from a state court direct to the Privy Council cannot be abrogated by the Parliament.
But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a state in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

I think that makes the meaning quite clear.

Mr. GLYNN. -

I do not think it does. What the leader has quoted was simply a proviso to prevent the abrogation of the appeal from a state court to the High Court.

Mr. BARTON. -

It leaves the state Parliament with jurisdiction, but would prevent the Commonwealth Parliament from taking away the right.

Mr. GLYNN. -

I want to point out that what appears to me to be the reading of the clause is that the Parliament has power to abolish appeals from the High Court to the Privy Council. Clause 74 provides that-

This Constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of Her Royal prerogative, to grant special leave of appeal from the High Court to Her Majesty in Council. But the Parliament may make laws limiting the matters in which such leave may be asked.

That means that they may make laws limiting the cases in which appeals will be from the High Court to the Privy Council. Parliament has no power to make laws limiting the cases in which an appeal may be asked from a state court direct to the Privy Council. I do not know whether that is intended.

Mr. BARTON. -

Yes; we have no power to interfere with that.

Mr. GLYNN. -

That is the point. A great many honorable members understood that the right of appeal from a state court or from the High Court direct to the Privy Council could be abrogated by Parliament, whereas under the clause as it now stands, it would be beyond the competence of Parliament to abolish appeals from a state court direct to the Privy Council.

Mr. BARTON (New South Wales). -

The Drafting Committee could not interpret the intentions of the Convention, excepting in so far as they found them expressed in the Bill, in the amendments, or in the debates. We have endeavoured to give effect simply to what the Convention have said and done. This is the position—that the High Court has jurisdiction, but not exclusive jurisdiction, in cases in which the Judges exercise the original jurisdiction of the High Court, over
appeals from any other federal court, or court exercising federal jurisdiction, from state courts, as laid down in sub-section (2), and from the Inter-State Commission, on matters of law. In these respects, excepting as qualified by the right of appeal to the Privy Council, the judgment of the High Court is to be final and conclusive. Parliament can take away from that power of the High Court, from time to time, by imposing exceptions and limitations. Then, in furtherance of an amendment moved by the Hon. Mr. Glynn, we exclude the Parliament from making any exceptions or regulations such as would prevent the Supreme Court of a state from appealing to the High Court where before the establishment of the Commonwealth it had the right of appealing to the Privy Council. Then we limit that by saying-and these are all interpretations of the Drafting Committee—that the conditions as to appeals to the Queen in Council shall apply to appeals from the several courts to the High Court. We further provide that in matters which involve the interpretation of this Constitution, or the Constitution of a state, and which do not involve the interests of some other part of Her Majesty's dominions, the decision of the High Court shall not be appealed against. We have incorporated with the Hon. Mr. Symon's amendment Sir Joseph Abbott's amendment. We prevent the Queen's prerogative from being impaired excepting in so far as these express provisions may interfere with them, and that was the intention. The prerogative which we preserve is the Queen's right to grant special leave to appeal to the Privy Council, and that is really the right of the Privy Council itself. We cannot give the Parliament direct power to interfere with the prerogative—at least we do not think it would be right to do so, but we give the Parliament power to limit the matters in which a subject may petition for leave to appeal. In that respect we carry out Mr. Symon's amendment. The right to grant special leave to appeal is only to continue until Parliament otherwise provides. There is one matter of practice that I would refer to, and that I think may modify to some extent the views that Mr. Glynn has expressed. The Privy Council have always refused to grant leave to appeal in any instance where a case might have gone through a local court, but had not done so. In New South Wales, on the equity side, an appeal lies direct from the Supreme Court, even where the Judge is a Judge of first instance, but it is the practice of the Privy Council not to grant special leave to appeal where a case might have gone through a local Supreme Court. There is, therefore, that protection. At any rate, Mr. Glynn, in his speech, referred to matters of policy, in which the Drafting Committee could not interfere.

Mr. SYMON (South Australia). -
It appears to me that the point to which the Hon. Mr. Glynn has directed attention will not, in practice, arise at all. The intention certainly was, not to multiply appeals, or to give an alternative option to an appellant in a state court to appeal either direct to the Privy Council or to the High Court. We have dealt simply with appeals from the High Court to the Privy Council. Under clause 73, a general jurisdiction in regard to appeals is given to the High Court. The natural anxiety of the honorable member is that there should be a power in the Parliament to put an end to appeals direct from the Supreme Court of a state to the Privy Council without going, of course, through the High Court. It appears to me that under clause 73 the appeal direct to the Privy Council is practically abolished.

Mr. BARTON. -

Under the new clause 73.

Mr. SYMON. -

Yes, and for this reason, that the unvarying practice of the Privy Council is to refuse to grant leave of appeal from a court when there is already in existence a court in that state to which the appeal may be made.

Mr. BARTON. -

The only exception I know of is the equity jurisdiction exercised by a single Judge in New South Wales.

Mr. SYMON. -

Yes, that is the only exception. The point was raised in a case that went home from Victoria regarding the Garden Gully mine and something else.

Mr. HIGGINS. -

It was a case as to gold on private property.

Mr. SYMON. -

The invariable practice of the Privy Council would be followed, and they would refuse to grant leave to appeal until the appellate jurisdiction of the colony was exhausted. In practice, therefore, clause 73 would have exactly the effect that my honorable friend anticipates, and it is unnecessary to use any express words for the purpose of providing for the abolition of the appeal now existing from the court-of a state direct to the Privy Council, or to say that Parliament may abolish it. If it was intended to do that the proper course would be to insert after the word "conclusive," in clause 73, the words "and no appeal shall be direct to the Privy Council from any of the courts enumerated in paragraphs (1), (2), and (3)." The clause as it stands will probably give effect to what has been the intention of the committee throughout. I would suggest, however, to Mr. Barton that he should insert some words in clause 74 after the word "matters." If I may say so, I think this a more dexterous, and, to use an expression which we have already heard, more mannerly way of,
putting the power of the Federal Parliament into the clause than before. I would suggest that after the word "matters" the following words be inserted: "if any," so as to make it clear that the amendment I moved gives this power to the Commonwealth Parliament if they choose to exercise it. They might so limit it as to limit it away altogether. A reader of the clause, who has interest in seeing that the Federal Parliament has this power, might not so readily understand it as it is.

Mr. BARTON (New South Wales). -

The honorable member means that if Parliament goes on limiting such matters until the end, and there is only one left, it might leave out that one.

Mr. SYMON. -

I do not say that a lawyer would say that.

Mr. BARTON. -

I think that would only occur to a lawyer. I think that there is a reasonable construction which a court will have to put upon these words, and that there will be no difficulty.

Mr. KINGSTON. -

This will have to be considered by lawyers.

Mr. BARTON. -

Of course. I think we had better leave it as it is. I have no doubt as to the construction.

The amendments in clause 74 were agreed to.

Mr. SYMON (South Australia). -

I wish to direct attention to sub-section (4) in clause 75.

Mr. BARTON. -

That is merely a misprint.

Mr. HIGGINS (Victoria). -

Is it clear that "affecting consuls" means only affecting consuls as consuls. I do not suppose there would be one law as to consuls in a civil proceeding and another law for other persons?

Mr. BARTON. -

If my honorable friend reads on he will see that it is clear that this only refers to consuls in their representative capacity.

The amendments of the Drafting Committee in clauses 75 to 80 were agreed to.

Clause 91 A. - Of the net revenue of the Commonwealth from duties of customs and of excise not more than four-twentieths shall be applied towards the maintenance and continuance of departments transferred to the Commonwealth, and not more than one-twentieth shall be applied towards the other expenditure of the Commonwealth.
Sir EDWARD BRADDON (Tasmania). -
I beg to move—
That Clause 91A be amended by omitting from "four-twentieths" inclusive to end of paragraph, and inserting "one-fourth shall be applied annually by the Commonwealth towards its expenditure."

There is one trifling matter of substance in the amendment I proposed, and one which I am sure will commend itself to all honorable members. In clause 91A, as it was passed, it was provided that five-twentieths of the net revenue from Customs and Excise should be applied to the expenses of the Commonwealth; but I think, unfortunately, the five-twentieths were divided into two amounts of one-twentieth and four-twentieths, and inasmuch as we have passed this clause in perpetuity, or until the Constitution comes to be amended, I think there is in this an absence of elasticity that we ought to apply to the clause. It might happen as the clause now stands that if it were passed into law the purposes for which one-twentieth of the revenue is to be set aside would not be provided for by the one-twentieth, while the four-twentieths provided for the other expenses of the Commonwealth would be greatly in excess of the requirements of the Commonwealth. It would be preferable that, for the Commonwealth expenditure, there should be set aside a sum not exceeding one-fourth of the Customs net revenue, leaving the balance, whatever it might be-a balance certainly of three-fourths, and possibly at first of more than three-fourths-to be distributed amongst the Stat

Mr. BARTON (New South Wales). -
I was sincerely gratified when I heard that Sir Edward Braddon said he was prepared to move this amendment. It is the inelasticity of the clause as it stood which has provoked the most hostile criticism. There are, of course, a very large number of critics who agree that it would be wise to afford some sort of guarantee to the states. While I have been against the principle of a guarantee, I now accept that principle as carried by the Convention; but those who agree with the guarantee are not disposed to agree with the clause, for the reason that Sir Edward Braddon has clearly pointed out: That while you restrict one-twentieth to the original powers and four-twentieths to the maintenance and extension of departments, the four-twentieths may leave a large surplus, while, at the same time, the one-twentieth would be exceeded, and there would be no means to apply the surplus on the one hand to the deficiency on the other. That will create a serious embarrassment in the Commonwealth finances. It is simply to avoid that embarrassment, while preserving what is due to the states, that this amendment has been proposed. So far as the states are
concerned, under the amendment they, will receive precisely what they would have received had the clause stood in its original form.

Mr. HOLDER (South Australia). -

I do not object to the alteration. With a Tariff producing £6,000,000 it practically means that instead of the Commonwealth being able to spend £300,000 as a maximum upon new expenditure, and £1,200,000 upon works and services taken over, they will be able to spend on the whole £1,500,000. So that there will be the same amount returnable to the states in any case. There is, however, another matter in the next paragraph which is of importance, and to which I should like to refer. The clause as it stands provides that the balance unexpended by the Commonwealth shall be paid over to the states. That may fairly be taken to mean the balance after the one-fourth has been appropriated by the Commonwealth—that three-fourths shall be paid over to the states.

Mr. HIGGINS. -

No more.

Mr. HOLDER. -

Yes. What I want to provide is that the whole of the unexpended balance shall be paid over to the states. For that reason I should like the Drafting Committee to adhere to the original wording of the clause.

Mr. BARTON. -

What we intend the amendment to mean is that the whole of the unexpended balance of the Commonwealth shall be paid over to the states.

Mr. HOLDER. -

I understand it to mean the balance of the revenue collected, less one-fourth.

Mr. BARTON. -

If my honorable friend will refer back he will see that not more than one-fourth shall be appropriated by the Commonwealth. If less than one-fourth is appropriated, the unexpended balance, which may be more than three-fourths, will go back to the states.

The amendment of Sir Edward Braddon was agreed to.

The amendments of the Drafting Committee in clauses 92 to 96 were agreed to.

Mr. BARTON (New South Wales). -

In pursuance of a promise which I made to the committee when the Inter-State Commission was being discussed, I have a new clause to propose. It was then pointed out by the right honorable member (Mr. Kingston) that, inasmuch as such important powers had been given to the Inter-State Commission, we might well go back to some of the clauses providing for their tenure of office, which had been suggested by the Constitutional
Committee in Adelaide, and rejected, because at the time the Inter-State Commission had not been given as much power as has since been given to it. It seemed to be thought that there should be some formal definition of the appointment, the tenure of office, the terms of removal, and the remuneration of the commission. I have, therefore, drafted a clause which is not so wide as that brought forward in Adelaide, which limits the term of appointment to, two years, makes the members of the commission removable within that time by the Governor-General in Council, upon an address from both Houses of the Parliament in the same session praying for their removal, upon the ground of misbehaviour or incapacity, and providing that they shall receive such remuneration as the Parliament may fix, which remuneration is not to be altered during their continuance in office.

Sir JOHN FORREST. -
Can they be reappointed?

Mr. BARTON. -
Yes. There is no necessity to give power for re-appointment.

Sir JOHN FORREST. -
What does that word "proved" mean?

Mr. BARTON. -
Parliament shall deem the charge proved before it presents an address. The right honorable member will remember that when we were discussing the tenure of office of the Judges, we amended the clause then before the committee to make it read similarly to this clause, in order to carry out the view of the honorable and learned member (Mr. Isaacs), that it ought not to be competent for a Judge to appeal to the Bench against his being dealt with by the Parliament; but that, on the other hand, there should be some security that the Parliament should take means to have the charge proved before it presented an address. I therefore beg to move-

That the following stand a clause of the Bill:-
The members of the Inter-State Commission-
I. Shall be appointed by the Governor-General in Council:
II. Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal, on the ground of proved misbehaviour or incapacity:
III. Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Mr. GRANT (Tasmania). -
It appears to me that it would be better to leave the clause as it stands.
The Inter-State Commission which we are creating is an entirely new body. I think it advisable to give the Parliament absolute discretion in regard to it. Besides, the amendment will fix in the Constitution for all time what it may not be either necessary or desirable to enact in this way. The words of the clause as they stand would be more judicious than the inelastic provisions of this extra clause as proposed by the leader of the Convention.

Mr. BARTON. -

I am proposing this amendment in performance of a promise.

Mr. KINGSTON (South Australia). -

I am pleased that the leader of the Convention has again brought forward this proposal. I do not see how it is possible to avoid making some permanent provision on the subject, which we have already embedded in the Constitution, that the Inter-State Commission shall have control of these matters.

Mr. BARTON. -

And that they shall have judicial powers.

Mr. KINGSTON. -

Yes, judicial powers in connexion with these matters. If the necessity for the creation of that commission is not embodied in the Constitution itself, this clause, to which we attach very great importance, and which we have debated at considerable length, will have no practical effect whatever. Another matter is, we are conferring on the Inter-State Commission judicial powers of the highest order. For instance, the declaration that certain railway rates which may be challenged in Parliament, but which are necessary for the development of the states, and which should not be interfered with, are to be left in their discretion. It is absolutely necessary that we should leave this commission free from all political control and interference, otherwise, in the execution of its important duties, it will be subject to influences which interfere most materially with the satisfactory discharge of its responsibility. All that is proposed here is to give the commission for a limited time, practical independence, and, unless you do that, I would infinitely sooner see all reference to the Inter-State Commission expunged from the Bill. You cannot expect a body such as the Inter-State Commission to, exercise the powers which are proposed to be conferred upon it in a satisfactory way unless you place the members of that commission beyond the influences both of the Executive and of Parliament; and you cannot do that without the adoption of provisions somewhat of the character now under consideration, which, within the limits of their jurisdiction, will give them all the independence of competent Judges.
Sir EDWARD BRADDON (Tasmania). -

I think it would be a mistake to insert a provision of this sort in the Constitution which must necessarily involve a very considerable expenditure on this Inter-State Commission.

Mr. ISAACS. -

More than we can see at present.

Sir EDWARD BRADDON. -

Yes, but we know that it must be a very considerable expenditure. I say this, not because I am averse to the Inter State Commission altogether; not because, on that point, those of us who objected to the Inter-State Commission have been beaten; but for the reason that I think this is a thing that might very well be left to the Federal Parliament to decide from time to time as circumstances require, instead of fettering the Parliament with the conditions which might, as I said before, involve a very much larger expenditure than we anticipate, a very much larger expenditure than we could approve, and certainly a much larger expenditure than the people of the states would approve.

Mr. HOLDER (South Australia). -

I do not understand that we propose to appoint an Inter-State Commission, the members of which shall give the whole of their time to this work, and for whom, therefore, very large salaries will be required. I contemplate a body composed something like this—of perhaps the three Railways Commissioners—

Mr. PEACOCK. -

Oh, no.

Mr. BARTON. -

They would be judges in their own cause.

Sir EDWARD BRADDON. -

That is suggested by Mr. Reid.

Mr. HOLDER. -

I am suggesting what has occurred to my own mind. I am suggesting that the commission would be appointed of probably the three Railways Commissioners, and two men of commercial experience, well acquainted with the circumstances of business throughout one or more of the colonies, and that the members of such a body should be paid large fees, considering the time they would devote to their duties under the provisions of the Act which declared their authorities and powers—a body who would be summoned from time to time to deal with the questions coming before them; and it seems to me that such a body would meet all the needs of the case, and would not involve an enormous expense, and yet would supply all the expert experience and the particular class of knowledge required
under the circumstances. They would be almost assessors, with the knowledge and experience necessary to perform the technical work required of them under the Constitution. As to the objection that we should not create this body in the Constitution, that has been done already in two or three clauses, and all that is necessary is to trust this body with actual independence, without which they could not do their work properly. Therefore, I am very pleased that the proposed amendment has been brought forward, because it, or something like it, was necessary to give the authority required to those responsible officers.

Mr. SYMON (South Australia). -

If I had thought the Inter-State Commission was to be such a body as that which Mr. Holder has outlined, I should have been found very gravely objecting to the appointment of the commission, because I think it would be very undesirable. It would be a very serious thing to contemplate taking a number of men from their own business to carry on the work of the Inter-State Commission, because it might necessitate their being brought into conflict with the railway authorities. It will be the duty of the members of the commission to settle differences as to railway carriage and railway rates; and if you appoint on this commission men who are in private business this difficulty would be created, that they would be in a very difficult position, a position where they would be liable to imputations on their honesty and fairness, if it should so happen that some of their own affairs might be directly or indirectly affected by the conclusions at which the Inter-State Commission arrive. I believe in that commission, but on the footing that it shall be a body to which these provision sought to be introduced shall be applicable - a body whose members shall exclusively devote their attention to these particular matters, and to be, precisely within their own sphere, in the same position as Judges of the High Court. Unless that is done we shall do a most grievous thing in creating this Inter-State Commission; and whilst I am sure every one will commend Mr. Holder, as I do, for his desire to be economical, I venture to say that the constitution of the Inter-State Commission, as he would wish it, would be securing economy at the sacrifice of the importance and dignity of the commission. I hope this amendment will be introduced, but only on the footing that the Inter-State Commission is to be a body which is to exercise its functions unaffected by private influence or political intrigue. I think it should be free from the possibility of imputation on the ground that the members of the commission are carrying on their own business at the same time as they are members of a tribunal which has to settle differences between business men and the Railway department.
Mr. MCMILLAN (New South Wales). -

There is a great deal of difficulty in this matter, and it is very hard to decide. No doubt the expenditure is a valid reason in the matter; at the same time, the whole of this question of railways has been so altered during the debates in Adelaide, and the whole position of the colony of New South Wales is so serious, that I think we must have, as members of the Inter-State Commission, trained persons who will be absolutely independent both of political forces, and of any possible corruption.

Mr. ISAACS. -

Why is the position in New South Wales serious?

Mr. MCMILLAN. -

The position in New South Wales is a very serious one in regard to the question of differential and preferential railway rates. Now this commission will have to decide with regard to the most momentous matters in our railway system, and there will be, probably, under any circumstances, a great deal of friction. I believe that the friction will be so great that it will bring about some different system of dealing with the railways-

Mr. DEAKIN. -

Hear, hear; federalization.

Mr. MCMILLAN. -

Because I am perfectly certain that no system short of vesting the railways will prevent friction and trouble. Although the commission may be expensive, it ought to be in the first place a body of experts, and you cannot get the services of highly-trained experts unless you pay them well, no matter whether their work is long or short. Therefore, if you are to get competent men, you must pay them well; and the members of this commission must be high class men, men of commercial knowledge and ability, and men who are not open to corruption; because, although there may be very little to do for some time to come, and although the employment of such a body looks like a waste of money, I fear that, after our previous action in dealing with this question, it is absolutely necessary to adopt the proposal of the leader of the Convention.

Mr. ISAACS (Victoria). -

If we are to have the Inter-State Commission which has been necessitated by the provisions we have passed, we must have one that is absolutely independent. To have a tribunal such as my honorable friend (Mr. Holder) suggests would indeed be to have a tainted tribunal. To have Railways Commissioners from the various colonies sitting to adjudicate as to
whether the rates they themselves had made were unfair or unjust would scarcely be what is contemplated by the provisions which the majority have imposed upon the minority.

Mr. HOLDER. -

They would be made by one and sat upon by three.

Mr. ISAACS. -

I must say that I think there are insuperable objections to the course proposed. There is another provision in the Bill, which I remember Mr. Holder supported strongly, and that was to give to the High Court the right of appeal on matters arising from the Inter-State Commission. Now, it is to be a body to decide upon decisions by the Railways Commissioners. Some of the provisions of the Bill, indeed, seem to require that the members of the Inter-State Commission should be lawyers; another part of the Bill requires them to be commercial men; and another part requires that they should be railway experts. If we are to have these Admirable Crichtons, I do not know where they are to come from. I understand that in South Australia men with these qualifications are to be found, but not elsewhere, I think. I see that under clause 100 they are to have the execution and maintenance of the provisions relating to trade and commerce. I am beginning to ask myself—What is to become of the Supreme Court? The commission are to have the machinery relating to this control placed in their hands. If they are also to have the execution and maintenance of these powers, it seems to me that they must have an army of officers, and will have their ramifications all throughout the Commonwealth. Their powers do not relate only to railways or rivers, but also to the provisions relating to trade and commerce within the Commonwealth. What all this is going to eventuate in I cannot say for a moment. It looks to me like an enormous branch being set up which may seriously affect other portions of the Constitution. But whatever it may be, it seems to me that the commissioners should be persons not susceptible of political influence. This should be, if for no other reason, certainly for this: That the power of the Parliament is in one matter entirely subordinated to them. The power of the Parliament to declare any preference or discrimination invalid is limited to such preferences or discriminations as the Inter-State Commission in its discretion thinks undue or unreasonable, or unjust to any state. So that the Parliament is shorn of its ordinary powers. The Parliament is prevented from exercising any discretion whatever on any of these preferences and discriminations on which the Inter-State Commission has judgment—which judgment may or may not come to the High Court; and when the Inter-State Commission has pronounced judgment, and the Supreme Court has adjudicated upon it, then, and then only, if the decision
be unjust to a state, or undue or unreasonable, does the power of the Parliament come in at all. Thus we can see at once what an enormous pressure may be brought to bear on the Inter-State Commission by a Parliament or Ministers acting with the confidence of Parliament, and it is, therefore, necessary that we should have these provisions with regard to the status of the commissioners. I do not agree with the provisions of the Bill as they stand, but to make it consistent and effective we must have some strong provision. Therefore, it seems to me that the provisions now suggested are absolutely necessary to make the Bill consistent.

Mr. HOWE (South Australia). -
I quite agree as to what has been said by Mr. Isaacs, and I wish to strengthen the hands of the Inter-State Commission. Therefore I beg to move-

That after the word "for," in the first line of sub-section (2), the words "not less than" be inserted.

Mr. BARTON. -
That would give power to appoint them for ten or twelve years.

Mr. HOWE. -
In my opinion, if they do their duty, they should remain in office for life, so long as they remain in a position to serve their country.

Mr. BARTON. -
Under the Interpretation Act the power to appoint for seven years involves the power to re-appoint.

Mr. HOWE. -
The leader of the Convention will see that this seven years terminates their appointment.

Mr. BARTON. -
They can be re-appointed.

Mr. HOWE. -
If we make it "not less than seven years" they may serve their country for the natural course of their lives.

Mr ISAACS. - The words you suggest would not do that.

Mr. BARTON. -
They imply a term of years.

Mr. HOWE. -
Of course they do. I have consulted several honorable members, and they quite agree with the amendment I have suggested. It implies a longer term. They may be re-appointed at the end of seven years so far as the clause is concerned, whereas there may be no re-appointment or readjustment of position or salaries or anything else, and they may go on as long as they
serve the country faithfully and well.

Mr. BARTON (New South Wales). -

They may be removed at any time while they are in office. I suggest to Mr. Howe that it will be scarcely necessary to move this amendment. The power to appoint involves the power to re-appoint. I am strongly with Mr. Howe in giving a fairly secure tenure of office to these gentlemen, who, I hope, will be gentlemen of proved ability and knowledge. It is right to frame a clause of this kind in order that persons of that ability and knowledge may have some security in accepting the office. But a reasonable security is enough. If I may allude to my own colony, I will take, for instance, the case of the Railways Commissioners who were appointed under an Act which removes them largely from political control. I do not think there is any difficulty about the renewal of office of any of these gentlemen providing they are found competent. The term there is seven years. It has been found that that term is sufficient to secure the services of able men, while it is a term in which, if there was any cause for dissatisfaction not coining within the realm of proved incapacity or misbehaviour, there still would be power to the Governor in Council or the Executive responsible to Parliament to reconsider its decision. It is advisable in cases of this kind, where gentlemen, either by increasing age, illness, or any other circumstances are not so available for the services of the State as they were when originally appointed, there should be some opportunity for the Executive to appoint some other person if it be found the interests of the State would be better served thereby. That is a fair principle, and the appointment for seven years is a reasonably long one. The Premier of New South Wales (Mr. Reid) and myself are not perfectly agreed on this point. He wished the limit of tenure to be five years, and I ventured to propose it should be the same as that applying in another colony. Remembering the importance of the office, and the necessity of securing men who could be trusted to discharge their very delicate and onerous duties, I still think a fair limit will be found in the terms suggested by the clause.

Mr. HOWE. -

Under the circumstances I will not press my amendment. Mr. Howe's amendment was withdrawn. The amendments of the Drafting Committee in clause 101 were agreed to. The new clause proposed by Mr. Barton was agreed to. Clause 97 was omitted.
Mr. BARTON (New South Wales). -

I move-

That clause 98 be omitted, and the following inserted in lieu thereof:-

The Parliament may take over from the states their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the states shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several states, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several states.

The difference between clause 98 and this clause is that the language has been shortened without in any way losing the meaning. The words in respect of the rateable proportion which formerly found a place at the end of the clause have been got into a smaller compass in the early part of the clause.

The amendments of the Drafting Committee in clauses 103 to 120 inclusive were agreed to.

Mr. BARTON (New South Wales). -

I move-

That in the heading of clause 121 the word "amendment" be omitted, and the word "alteration" inserted in lieu thereof.

Mr. GLYNN (South Australia). -

The substitution of the word "alteration" for "amendment" seems to be a consequential amendment.

Mr. BARTON. -

The amendment is made simply because the word "alteration" is used right throughout instead of "amendment." I think the public understand the word "alteration" perhaps better than "amendment."

Mr. GLYNN. -

There was a feeling amongst some members that it was a pity the word "amendment" has not been stuck to.

Mr. BARTON. -

I don't care which word is used, so long as the same word is stuck to throughout.

The amendment was agreed to.

Mr. BARTON (New South Wales). -

I desire, with the consent of the committee, to revert to clause 121. By
some inadvertence, an amendment suggested in that clause has not been given effect to. It is a mere matter of wording, and perhaps you, Mr. Chairman, could take authority to make the amendment. The words "the provisions of" are totally unnecessary, and have been omitted all through, and it is these words that we desire to have struck out. The clause will then read:"This Constitution shall not be altered except in the following manner."

The CHAIRMAN. -

If no honorable member objects, I will make that alteration.

The amendments suggested by the Drafting Committee in the preamble were agreed to.

The Bill was then reported to the House with further amendments.

Mr. BARTON moved -

That the standing orders be suspended to, enable a motion for the adoption of the report, and a motion consequent thereon, to be put.

The motion was agreed to.

Mr. BARTON. -

I beg now to move-

That the report of the committee be adopted.

The motion was agreed to.

Mr. BARTON. -

I should like now to make a short explanation to the Convention. The Federal Enabling Act says that on the reassembling of the Convention and it re-assembled in Melbourne after the session in Sydney-the Constitution framed prior to the adjournment shall be reconsidered, together with any suggested amendments forwarded by the Legislatures of the several colonies, and that the

Constitution so framed shall be finally adopted with any amendments agreed to. Then there is another important section which sets out that as soon as the Convention has finally adopted a Constitution, as required by the preceding section, and has disposed of all incidental business-which term has a wide application-copies certified to by the President shall be supplied in duplicate to the members of the Convention, and the President shall declare the proceedings of the Convention closed. What I propose to do is this: It will be necessary to print the Bill as now amended and as finally adopted, and we shall, therefore, have to hold another sitting to-morrow. That is unfortunate, perhaps, as it will detain some honorable members, but there will have to be another sitting, because the Bill will have to be distributed. Copies certified to by the President will have to be supplied in duplicate to the members of the Convention. This provision is
in one or more of the Enabling Acts. Copies are also to be supplied to others, as, for instance, to the Governors of the colonies. This will necessitate first the printing of the Bill, next the distribution of it to the members present, and then the posting of it to the members absent, and to the other persons who are entitled to receive it. Until this is done the President cannot declare the Convention closed, and that is why we must sit tomorrow, and why we must have a quorum. I hope honorable members will understand that the provisions of the Enabling Act cannot be complied with unless we have a quorum to-morrow. I do not wish to detain the Convention now, but I think it will be right for me to move that the Bill be finally adopted. I shall also take the opportunity to-morrow of submitting a motion that I am sure you, Mr. President, will not rule out of order, to the effect that the Governments of the various colonies be invited to supply copies of the Bill to the whole of their electors. On some motion of that sort I shall have a few words to say in recommendation of the Bill, and I shall invite other honorable members to follow my example so that there may be a separate copy of the report of the proceedings of to-morrow, not occupying too great a space, which may be read and studied, as I hope it will be, by many of the electors of the colony. As we must hold a sitting to-morrow, it will be just as convenient to take that course then and will be more convenient as regards the publication of Hansard-as to take it now. I beg now to move-

That this Convention, having reconsidered the Constitution as framed prior to the adjournment from Adelaide to Sydney, together with the suggested amendments forwarded by the several Legislatures, now finally adopts the said Constitution, with the amendments agreed to as shown by the report which has been this day finally adopted.

I am sure that the motion commends itself to honorable members. I will take the opportunity, to-morrow, of saying something in recommendation of the Bill. I am going to ask now that we adjourn until ten o'clock tomorrow, as I think that will best suit the convenience of honorable members.

Mr. HIGGINS. -

According to your reading of the Commonwealth Bill ought not the President to sit and declare the Bill adopted after each member has received his Bills?

Mr. BARTON. -

After the Convention has finally adopted the Bill, and has disposed of all incidental business, copies certified by the President shall be supplied in duplicate. I take it to be the clear reading of a statute, that where a thing is provided to be done by statute, the fact of its being done early is no bar to
its efficacy.

Mr. HIGGINS. -

If the copies are sent by post, each member may not receive them.

Mr. BARTON. -

I think the clear meaning of the statute is that posting the Bills will be supplying them; otherwise, the Convention might have to be kept in session a week or a fortnight until there was a certainty that everybody, including the Governors, had received copies. I am sure that is not the intention of the Act.

Sir JOHN FORREST. -

There is to be a declaration at a meeting of the Convention.

Mr. BARTON. -

Yes. The President has no administrative or executive power under the Act, and therefore he cannot comply with the law by making a publication in the Gazette. Therefore, we must have a meeting of the Convention tomorrow, and a declaration then.

The PRESIDENT. -

I undoubtedly hold that the posting of the notices will be sufficient, all other incidental matters having been disposed of; and I will then declare the meeting closed.

Mr. ISAACS (Victoria). -

I quite agree with the view Mr. Barton has presented. It seems to me, following that view, that now we have gone through the Bill and dealt with the amendments, the Enabling Act provides what is really a statutory adoption of the Constitution. It does not seem to me more than a formal motion, because it distinctly provides that when the Constitution, as framed prior to the adjournment, has been reconsidered, together with any suggested amendments by the Legislatures, then the Constitution, so framed, shall be finally adopted with any amendments agreed to. In fact, the whole trend of the Federal Enabling Act is that we must frame a Constitution. It is not a matter of option with us whether we shall adopt the Constitution or not, but having gone through the Bill as now presented, and the various clauses having been agreed to by majorities, it seems to me, following the view brought forward by the leader, that it is now our statutory duty to finally adopt this Constitution.

The motion was agreed to.

The Convention adjourned at two minutes to five o'clock p.m.
Thursday, 17th March, 1898.

Western Australian Representatives: Letter from Sir John Forrest
- Suspension of Standing orders - Commonwealth of Australia Bill
- Votes of Thanks to the Officers of the Convention - Close of the Proceedings.

The PRESIDENT took the chair at ten minutes past ten o'clock a.m.

WESTERN AUSTRALIAN REPRESENTATIVES.

The PRESIDENT. -
I deem it my duty to acquaint the Convention with the fact that I have received a letter from the Right Hon. the Premier of Western Australia (Sir John Forrest), which I will ask the Clerk to read.

The letter was read by the CLERK, as follows:-
Menzies' Hotel, 16th March, 1898.

Dear Mr. President. - I regret I shall not be with you to-morrow, to join with the other delegates in my expression of thanks to you for the kindness and consideration you have shown me and the other delegates from Western Australia during the sittings of the Convention at Adelaide, Sydney, and Melbourne.

It is very gratifying that so much harmony and good-will on all sides have marked the proceedings of the Convention, and I feel sure this satisfactory state of things has been aided by the courtesy and assistance we have all received from you, and from Sir Richard Baker, whose untiring efforts deserve, and I am sure will receive, the fullest acknowledgment from every member of the Convention.

The conclusion of our labours makes me feel grateful to all who have assisted in our work. The hospitality of the Governments, the good work of the reporters, the willing services of the attendants, all deserve my best thanks, and I must not forget the good fellowship of all, which has given a charm to our gathering, which I shall always look back upon with pleasure.

Believe me, Dear Mr. President,

Yours most sincerely,

JOHN FORREST.


Mr. BARTON (New South Wales). -
I beg to move-

That the letter be printed and entered upon the minutes.

The motion was agreed to.
SUSPENSION OF STANDING ORDERS.

Mr. BARTON (New South Wales). -

I beg to move-

That the standing orders be suspended to enable the motions of this morning to be taken without notice.

The motion was agreed to.

COMMONWEALTH OF AUSTRALIA BILL.

Mr. BARTON (New South Wales). -

I beg to move-

That this Convention cordially invites the Prime Minister of each colony here represented to provide for the supply of copies of the Draft of the Commonwealth of Australia Constitution Bill, as now finally adopted by this Convention, to the electors of his colony.

This motion will, I hope, give the members of the Convention an opportunity to state from their places in this chamber to the electors who sent them here their opinion of the Draft Bill and its provisions. I think that on this, the last day of our meeting, it is only fit that some opportunity should be given to honorable members so to express their opinions that the statement of them in an authoritative form, as printed in the official report of the debates, may reach those whose verdict upon the Bill is so soon to be sought. It has been many times asserted that the Bill contains that which we know it does not contain, and many of its critics have carefully omitted to mention the manifestly advantageous provisions which it embodies. It is, therefore, well that an authoritative statement of the main provisions which it incorporates should go forth to the public, with the correction of the erroneous views circulated concerning it. This is the 41st day of the Melbourne session, and, as one who has been an eye-witness of the proceedings at almost every moment of their currency, I should like to hear my testimony to the zeal in a great cause, to the patriotic desire that no harm to that cause should be done by too great demands, to the sagacity in expression of opinion, and to the eminent talent in debate, which have characterized our proceedings since the Convention began its sittings in Adelaide last year. I suppose there is no one more anxious to see a plan of federation adopted than I am-so that it be just. I have conceived a very great admiration for the spirit of justice which has at all times animated the members of the Convention, and for the manner in which they have realized the gravity of the situation, whenever it has appeared that the claims made upon behalf of a colony, however patriotically they may have been urged, were likely to endanger the final success of our cause. We
have been accused of a tendency to reverse our decisions; but I think very little of the man who, having once been convinced that his first opinion was a hasty one, is too obstinate which means too weak, to retrace his steps. The very readiness of the Convention to realize that its proceedings may at times have led it to overstep the mark in one direction or another, is to me the surest guarantee of the anxiety of its members that the Constitution shall be just. To be just, it cannot be marked by evidence of over-zeal or over-demand upon the part of any section of the community. The motion that I am moving is one that is calculated, if it is received by the Prime Ministers of the colonies in the sense in which I move it, to insure that the provisions of the Bill are understood by the electors, who will have to deal with the question of its adoption. One must recollect that many statements are circulated about measures of this kind, which nothing but a cool perusal of a clearly drawn Bill such as this is will enable the readers or the hearers of them to confute. If I may say it in all modesty, I believe that, so far as the expression in the language of an Act of Parliament or of a Bill in Parliament of the opinions of this Convention is concerned, the measure which will be put into the hands of the electors is so clearly drawn that every man of ordinary intelligence who receives it will be able to readily grasp its meaning. Next to such certainty in expression as will prevent the risk of too much conflict hereafter—a risk which is as far as possible to be prevented—is the great object that we should all have in view, when once our opinions are formulated and made known, that the electors, after they have perused the measure, may be able to discuss it with other electors in a spirit which will show that they have understood how far it conforms, first, to their views of perfect federation—perfect constitutionally—and, next, to their views of a reasonable settlement of the conflicting claims of the various colonies. Now, before I enter upon a fuller advocacy of the Bill, I should like to point out in what main respects this measure differs from the last Federal Constitution perfected by a Convention. The last one was the Bill of 1891. We have been told from one quarter that the Bill has been rapidly losing its national character. We have been told from another quarter that there is a great conservative preponderance in the Convention, and that the decisions on crucial points have invariably leaned in an anti-liberal direction. It does not take much examination, by way of comparison of the Bill of 1891 with the Bill of 1898, to enable one to confute both of these statements.

Sir EDWARD BRADDON. -

The Bill speaks for itself.
Mr. BARTON. -

The Bill speaks for itself, sir, but it is as well to mention in what respects the differences arise; and I am about to mention differences not merely in the direction of a liberalizing tendency in the present Bill, but in the direction of improvements in other respects as compared with the Bill of 1891. The following are some instances:-Under the Bill of 1891 the senators were to be elected by the Legislatures, of the states. Under the Bill of 1898 they are to be elected by the people, on the same suffrage as the members of the House of Representatives. Equal representation, of which so much complaint has been made, and about which I think complaint has been carried altogether too far, was, under the Bill of 1891, absolute. But under the Bill of 1898 it is only the original states that are necessarily to be equally represented in the Senate, and the quantum of representation of states admitted after the adoption of the Constitution is to be determined by the Federal Parliament. In the Bill of 1891 the suffrage for the House of Representatives—which suffrage was not then the same as for the Senate—was left absolutely to the Parliaments of the several states. In the Bill of 1898 the suffrage for that House which has been called, perhaps with a good deal of reason, the National House, is, while it is to be the suffrage of the state for the time being, nevertheless, subject to be controlled by any uniform law made by the Parliament; and we who know how that Parliament will be based need not have the slightest fear that that suffrage will be framed in an illiberal way. The qualification of senators or candidates for the Senate was, under the Bill of 1891, the attainment of the age of 30 years, and a five years' residence in the Commonwealth. Under the Bill of 1898 the qualification of members is to be the same for both Houses of the Commonwealth, namely, the attainment of the age of 21 years, and a three years' residence. Under the Bill of 1891 the division of electorates for the House of Representatives was to be made by the state itself. Under the Bill of 1898 that power is subject to revision by the Parliament of the Federation, so that if any abuse should occur in its exercise, there will always be a controlling power in the direction of equality and justice. This Bill also contains a provision in favour of electors, which is altogether absent from the Bill of 1891; that is, a provision for the protection of the voting right, when the right has been granted, so that no adult person who, at the establishment of this Constitution, or at any time afterwards, acquires the right to vote for the Legislative Assembly in his own colony or state can be deprived of that right by any law passed by the Federal Parliament. This is a provision which was
introduced at the instance of the Hon. Mr. Holder; and although the matter has been the subject of complaint from time to time, the instance I have cited may be appealed to as one evidence of the want of foundation of accusations against this Bill on account of its alleged illiberal character. Again, to the powers of the Federal Legislature, as they were defined in the Bill of 1891, there have been added some very important further powers. Amongst them is the power to legislate with reference to invalid and old-age pensions; another is the right to legislate for the appointment of courts of conciliation and arbitration in industrial disputes which extend beyond the limits of one state; and I may add to those the power to legislate in regard to insurance, saving the rights of the states in regard to state insurance—a power which I am quite sure will be strongly appreciated by business men all over the colonies. Coming to one of the most important provisions in the whole of this measure, there is incorporated in this Bill, as there was not in the Bill of 1891, a provision for the termination of those disputes which, in common parlance, are called dead-locks. The 57th clause of this Bill provides that when it has been ascertained by two passages of a Bill through the House of Representatives that it is not to be passed by the Senate, there shall be a power in the Governor-General to dissolve the two Houses simultaneously, and confront them both with the public opinion of the electors and should the Bill, after that proceeding, not be the subject of agreement between the two Houses, then there is power to convene a joint Sitting of the House of Representatives and the Senate together, so that amendments made in the Bill may be considered by the two Houses sitting and voting together; and by a three-fifths majority the Bill may be adopted. Those who have accused the representatives of the smaller colonies of an unfair attitude towards the other colonies which are more populous, have, in my judgment, made a serious mistake in this respect. Whatever one's opinion is on the question whether the Second Chamber—the Senate—of the Federation should be elected in proportion to the numbers of people or otherwise, the strongest advocate of proportionate representation in that body cannot but admit that there is a great deal to be urged in favour of the claim for equal representation in the Senate; and he cannot also but admit that if he were a citizen of one of the less populous states, anxious to preserve its individuality, fearful lest that individuality might be at the mercy of the larger populations of the other states—not seeking to grasp anything, but only to defend—he might be unyielding in his desire to preserve that equal representation in the Senate. Is it not, then, a strong addition to the power of the majority of the electors, resident though they may be in states which have raised some demur about the granting of equal representation in the Senate— is it not, I say, a strong
addition to the power which is embodied in the House of Representatives, that there should be this provision for the dissolution of both Houses? The entire dissolution of the Upper House is a thing which has not been practised, to our knowledge, in any English-speaking country. And is it not a strong additional power that, when the final vote for affirming the Bill comes to be taken, the majority which will suffice for carrying it is smaller than would be indicated by the relative proportion of the two Houses? I regard that as a considerable concession to the views of the larger states. Being myself a believer in the principle of equal state representation in one of the Chambers of the Legislature under a Federal Constitution, for reasons which it is not convenient, because time does not allow it, to discuss now, but which I conceive to be purely federal, I do think that those who hold that opinion, and who live in less populous states than that in which I live, have made a very large concession in agreeing to these provisions for dealing with dead-locks. It is a concession that must be regarded as all the greater when we consider the extreme care with which in this Bill, as drawn, and also in the Bill of 1891, the ordinary causes of dead-locks the causes which are generally to be anticipated-have been one and all provided for. Finding that the process ordinarily known as tacking, and other measures which have in times past been adopted, perhaps with a view of ending, but generally with the result of provoking, differences between the two Chambers, are provided against so carefully by the 53rd, 54th, and 55th clauses of the present Bill, we may, I think, regard it as a very considerable thing that in addition to this protection there should have been added the enactment which deals with the double dissolution and the joint vote. I am reminded that just now, in referring to the joint sitting of the two Houses, I spoke of the making of amendments. Of course, I meant that to be understood in the sense in which it is so clearly expressed in the Bill, that is to say, that the joint sitting will consider amendments which have been previously made, so far as one House can make them, by either branch of the Federal Parliament. Now, with regard to the double dissolution of the Senate, it is to be remembered that that provision was, until we commenced our sittings in Melbourne, tacked to another provision, which, to my mind, unduly enforced the idea of a penal dissolution of the House of Representatives. The Convention, having struck out that provision and left in the dead-lock clause merely the double dissolution and the joint sitting, has, I think it is fair to say, made again a large step in the direction of liberalism. Without discussing the amendment which was carried at the instance of the honorable member (Mr. Symon)—and I admit that in some instances it
might have placed a very large power in the hands of the Executive-I may say that I am one of those who take the view that it is not wise to give the Executive power to penalize one of two Houses, when both spring from the same suffrage, and are elected by the same people. I think, therefore, that we may confidently appeal to the electors who sent us here whether this again is not an indication of the march of liberal opinion which has characterized the Convention. In the discussions which we sometimes hear and sometimes read of out-of-doors, very great care is often taken to prevent the electors from knowing that this Constitution is to be worked under a system of responsible government, a system which can only be applied where the power of the purse is in the Parliament, and where, therefore, a Ministry, which ceases to retain the confidence of Parliament can be deprived of Supplies unless it either resigns or appeals to the country. That is the cardinal provision on the constitutional side of this Bill. It needs no expression in writing. It is the inevitable outcome of the provisions of the Bill, and it assimilates the Constitution which we have framed to the Constitutions of the colonies in which we live and the Constitution of the great mother country from which we spring. If there could be alleged for a moment to be any truth in some of the criticisms levelled at the Bill that it may lead to corruption-and I must say that I cannot find any evidence of any such tendency in a line of it-these criticisms might, at any rate, be accompanied by, a statement of the fact that, if corruption is manifested, there is the ordinary British cure for it in the dismissal of the Minister or Ministry that is guilty. But there is more than this in the Bill to insure government by responsible Ministers. There is this in it, that, inasmuch as a responsible Ministry cannot exist without

the power of the purse, so that power of the purse, given to the Parliament, is the guarantee of the retention by the people themselves of their sovereign right. It is the people who make these Houses; it is the people whose money is dealt with; it is the people who speak when a Ministry is turned out of office or compelled to appeal to the electors-it is their voice which brings about these things, and it is their voice also which says-"Unless you conform to the demands of the people, and either leave the office which you have disgraced, or give us an opportunity of pronouncing on your conduct at the polls, you shall not have any more of our money to spend on reckless government." We have had a great many suggestions from various quarters that the Constitution should be framed in a different way in this respect-that we should have an irresponsible Ministry, at any rate for a time, that is, a Ministry to be kept in office in some such manner as in the United States or Switzerland. Much as I value the argument that
responsible government is, to a certain extent, incompatible with federation, and although I recognise that that argument can be supported by what look like very good reasons, still I am convinced that there are stronger reasons against that argument than for it, and that responsible government may well be made to co-exist with a reasonably federal Constitution. If we had adopted some of the arguments which have been urged in favour of an irresponsible governing body—and I mean irresponsible merely for a term—or a body of modified responsibility, we might have made our Constitution different in other respects. We might perhaps have made the two Houses of the Federal Legislature entirely co-ordinate, and that we could not do with responsible government. On the other hand, we might have made some provision for what is called the referendum. I admit that you could not work a Constitution like that of Switzerland or of America sufficiently in the interests of the people without some such remedy, for certain contingencies, as the referendum, but I have always considered that the Convention has acted rightly in rejecting the referendum as applied to a Constitution in which the principle of responsible government is recognised. Much more truly than it can be said that federation might kill responsible government, or that responsible government might kill federation, it can be said that the referendum might kill responsible government. There certainly would not have been much chance of responsible government killing the referendum. It could not do that anymore than a man who had swallowed poison could eliminate it by any contortion of his body. I am not going into this much-vexed question, but I think I may congratulate the Convention on having rejected the referendum. As applied to the principle of responsible government, the referendum would be an entirely experimental provision although it might have been tried, and tried with success, in other forms of government. I venture to say that by rejecting it, as applied to responsible government, we have not shown any anti-liberal tendency. We have simply said that the guarantee of the liberalism of this Constitution is responsible government, and that we decline to impair or to infect in any way that guarantee. That is the principle on which the referendum has been rejected, and I take this opportunity, as I did not take part in the discussion on the subject, of expressing my hearty concurrence in the decision of the Convention. It is a necessary consequence of the adoption of responsible government that Ministers, should be obliged to sit in Parliament. There is an express provision for that in this Bill. Without it responsible government would have-compelled Ministers to sit in Parliament; but lest there should be any danger of an assertion to the contrary, it has been thought wise to make this provision, which was not in the Bill of 1891.
Another guarantee of the preservation of the Constitution
until the electors themselves choose to change it, is contained in the
provision that the interpretation of the Constitution by the High Court is to
be final. Of course it will be argued that this Constitution will have been
made by the Parliament of the United Kingdom. That will be true in one
sense, but not true in effect, because the provisions of this Constitution, the
principles which it embodies, and the details of enactment by which those
principles are enforced, will all have been the work of Australians. I think
it is right and fit that the highest court in Australia should be left as the
guardian of the expressions of the people, and the sole body to determine
finally what the people meant when they used those expressions. That is a
provision which was only adopted after some divisions. I believe it to be a
right one, and I am not going to quarrel in the slightest degree with the
decision by which the Convention determined that, apart from the
consideration of those questions of interpretation of the Constitution of the
Commonwealth or of a state, there should be retained a power in Her
Majesty to grant special leave to appeal, in all such cases as might be held
under proper regulation to justify an appeal, to the Privy Council. We have
certainly had a great deal of controversy upon this subject, and it is very
hard to say—it is a matter very much of individual judgment—whether the
provisions with respect to appeals to the Privy Council are more liberal or
less liberal than those in the Bill of 1891. They have been adopted, at any
rate, by the Convention on the showing that the right of the subject to
appeal to the Queen in Council should not be taken away by the
Constitution. If that argument has been conceded, it certainly does not lie
as a charge at the door of the Convention that it has acted without regard to
liberal principles. I might enumerate a great many other points of
difference between these two Bills, but I shall confine myself to a few.
With regard to the rights of citizens to avail themselves of the judicial
proceedings which will be introduced by the establishment of the High
Court, there is one important difference between the Bill of 1891 and that
which we have now finally adopted. It is that jurisdiction has been
conferred upon the High Court with regard to disputes which lie between
residents of different states. That is a right which was not sought to be
conferred by the Bill of 1891, and it has been adopted as a reasonable
corollary to that union of the states which we believe will do so much to
promote interchange and community of interests between the citizens of
the whole Commonwealth. I might mention that the rights of civil servants
who may be transferred to the Commonwealth are much more carefully
preserved under this Bill than under the Bill of 1891. The compensation to
the states concerned for any property transferred to or vested in the Commonwealth for the purposes of the Commonwealth are also more fully secured under this Bill than under the Bill of 1891. I will pass on to a much more important provision very lately introduced into the Bill. That is a provision that a fourth only of the net revenue of the Commonwealth will be allowed to be expended by the Commonwealth. That is to say, three-fourths, or more, of the revenue must annually come back to the states whose citizens are taxed. That is the Customs and Excise. I am aware the provision would be different in regard to direct taxation, as to which Mr. Reid reminded us that the Treasurer of the Commonwealth would make it his business to secure £1 in order to provide the 5s. as required for federal expenses and the 15s. which has to be refunded to the states. We need have no fear on this head, because, inasmuch as the control of Customs and Excise is by the Constitution transferred to the Federation, there can be no doubt that the first means of revenue availed of by the Federation would be Customs and Excise. That is an important provision, and I congratulate my right honorable friend (Sir Edward Braddon) on the sagacity which dictated his moving the amendment yesterday. The provision is now much more elastic, but it affords the same guarantee to the various states, while it conserves to the Commonwealth the same share in the revenue from Customs and Excise. That share, as the population and the capacity of the inhabitants of the Commonwealth increase, will not be increasing in proportion, but always increasing in amount. That seems to me to afford a reasonable guarantee. I should have preferred some power, if this provision were found to work too stringently, to enable it to be modified. But it is a fair corollary to the provision for dealing with the revenue for the first five years after the imposition of uniform duties of customs, and further reflection has led me to the conclusion that, on the whole, it will be a useful and beneficial provision. There is an important provision, not embodied in the 1891 Bill, which deserves to be mentioned. This is, not a final denial of state bounties, as I saw it expressed in print somewhere, but a provision that a state may give bounties for production and export with the consent of the two Houses of the Federal Parliament expressed by resolution. That might be regarded as tending to derogate from the freedom of trade and commerce; and it may be that in its operation the provision might occasionally be found to do so. On the other hand, the power of the Commonwealth to impose duties of customs and of excise such as it may determine, which insures that these duties of customs and excise would represent something like the average opinion of the Commonwealth—that power, and the provision that bounties are to be
uniform throughout the Commonwealth, might, I am willing to concede, be found to work with some hardship upon the states for some years, unless their own rights to give bounties were to some extent preserved. The restriction is a just one, that if the Parliament of the Commonwealth does consider that an industry is unworthy of treatment in that way by the state—that it does not promise reasonable results, that the industry is such that the grant might be regarded as derogating in either case from freedom of trade—Parliament may be relied on to refuse the bounty. And if it could not be relied on to refuse the bounty, it may be relied on not to sanction its continuance unduly or for an indefinite period. Under these conditions, it is conceivable that the state bounties granted in that way will do beneficial work for a certain time, while after that time, the provision that the Commonwealth should have the control of bounties, and that they shall be uniform, may be expected to work, where bounties are required at all, with beneficial results. On the whole, this being a compromise, it is impossible to understand the criticism that it is a final denial of state bounties, and I hope that those who read this Constitution will think that some of the condemnations which reached their eyes before the Constitution reached them, are much more surprising to them than even they have been accustomed to find such criticisms. We are told that utter confusion has been wrought in the state finances. There has been great difference certainly in the method in which the distribution of the federal surplus has been provided for; but that this should lead to the dislocation or the confusion of the finances is what I am unable to understand. There are two principles in the method of distribution adopted under this Bill which ought to commend themselves to the sense of the electors of the Commonwealth. The one is that until the time has come when experience will dictate the proper method of distribution, the just principle has been adopted that a state shall get back all that it contributes, less the fair and necessary proportion expended in collecting the revenue due, and

in maintaining the Commonwealth. It seems to me, moreover, to be a provision that has on the face of it the essence of justice. We are told that it will be difficult to trace goods across the border. I don't agree with that criticism, because it will be as easy to trace goods across the border when duties are not to be paid as it has been when there are temptations to make a false declaration for the purpose of avoiding the payment of taxes. Sir, on the face of it, it must be clear that the difficulty after the abolition of intercolonial customs will be much less than ever it was while taxes existed. The other principle to which I adverted as supporting the system of finance adopted by this Bill, is that while every one trusts the
Commonwealth Parliament to do its duty, steps are taken to see that it shall have before it the necessary data and evidence before it makes, I will not say final, but definite provision for distribution. The provision in this Bill that five years shall elapse during which the system which the Bill lays down shall operate is one on which the determination of the Federal Parliament can only be come to on the evidence which experience affords. How well must that compare with any attempt that we might ourselves have made to prophesy the working of a Federal Tariff of which none of us have any experience! I have said that these provisions are marked by the essence of justice. I repeat that phrase, because I believe that what I have said about them demonstrates that they are so characterized. How they can work utter confusion to the finances of the various states—how it can be asserted that with the guarantee which Sir Edward Braddon's amendment affords they can work confusion and dislocation to the finances of the states, is what I am unable to understand. And really, sir, I do believe that I am either so dense or so right on this subject that a conclave of all the statisticians in the colonies would be unable to convince me. Then, in order that the trade and commerce provisions, including the intercolonial free-trade provision, may be fairly carried out, we have provided for an impartial judicial body, with powers of administration as well as of adjudication, to maintain and execute the clauses. It is not the chance vote of a Legislature, but the deliberate determination of the court—from which there may be an appeal on matters of law. It is the determination of that tribunal which will regulate decisions as to whether any colony is doing an injustice to another by professedly internal regulation. I cannot help saying I approve strongly of the provision, because of the nature of the clauses which are to be committed to the Inter-State Commission. If I am not tiring the Convention, I should like to point out that, according to clause 99—"The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a state or of the residents therein to the reasonable use of the water of rivers for conservation or irrigation." Then, again, in clause 98 it is set forth that—"The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one state or any part thereof over another state or any part thereof." Again, in clause 101 it is provided—"The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any state, or by any authority constituted under a state, if such preference or discrimination is undue and unreasonable, or unjust to any state." But that provision is coupled with a proviso that due regard is to be had to the financial responsibilities of a state in connexion with the construction of and maintenance of its railways. How that could work ruin to the Victorian
railways, or, as has been said, turn the New South Wales railways into old iron, is more than I can understand. With the proviso, I am satisfied with the clause, the proviso showing clearly what the intention of the clause is. The proviso reads-"But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any state, unless so adjudged by the Inter-State Commission." So that it appears on the face of the clause that where a preference or discrimination is not found to be undue or unreasonable, having regard to all the circumstances, then that preference or discrimination may be maintained, provided it is not unjust to any state. A tribunal is created for the purpose of determining this question of the dueness or reasonableness or justice, and really I think we ought to be satisfied with the creation of such a tribunal to interpret those clauses. I believe those provisions will work well on the whole. They are well adapted for the maintenance of that condition of things marked by the state ownership of railways, while we have in clause 51 provided that, with the consent of the state concerned, the Commonwealth may take over the whole or any part of the railways of a state, after which it will provide for railway construction and extension. I have always voted against handing over the railways by this Constitution to the Federation. But I am satisfied that if it be found a necessary accompaniment to federation-if it be found to be a wise thing, for the adjustment of the finances and in the interests of commerce, that the railways should be taken over by the Commonwealth, we should have sufficient confidence, in the Commonwealth to know that if that is done it will be the result of public opinion, spreading not only throughout the Commonwealth but throughout the states, for here, as elsewhere, the same party principles would operate in the Commonwealth as in the states. If it becomes a necessity for the Commonwealth to take over the railways, giving good value or compensation, we may rely on the permissive provision of the Constitution to work out that result, and then I admit there may not be so much necessity for an Inter-State Commission as at the present time exists. There, again, is a most important difference between this Bill and the Bill of 1891. Let me now draw attention to two very important points in the Bill. A large agitation was got up in all the colonies in favour of the recognition of the Supreme Being in the Constitution. As the result of that agitation, a phrase has been inserted in the preamble. I will not use the words themselves, but say that the preamble states, that the people, who have agreed on the Constitution, humbly rely on the blessing of the Supreme Being. It was feared that some interpretation such as has been taken up in one or two cases in America
might lead to this phrase being regarded as an action taken against religious liberty. This Convention has agreed to a clause which prevents any possibility of that kind as regards the Commonwealth, and which does not interfere with the states in questions of their internal regulation, with which, of course, this Commonwealth will not have anything to do. Clause 115 says-

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious. test shall be required as a qualification for any office or public trust under the Commonwealth.

While, therefore, a concession has been made to the popular opinion that some reverential expression should be embodied in the preamble, due care has been taken by the Convention that no reliance upon that provision, and no far-fetched arguments based upon it, shall lead to any infraction of religious liberty under the laws of the Commonwealth which we hope to create. As regards these differences, I would like to point out one other matter. It has been a constant subject of complaint against this Constitution that the powers which the people possess of amending it are not sufficiently great. The distinction between this Constitution and that of 1891 is in this respect most marked. That of 1891 provided that amendments of the Constitution, after an absolute majority had been secured in the two Houses, of Parliament, should be made by Conventions of the people. The present provision is a marked advance upon the provision of 1891, for after the requisite majority has been secured in the two Houses, this Bill provides that the alteration of the Constitution shall be carried by the people themselves. That, again, we may be told, is a taking away of the national character of the Bill, for our critics are not scrupulous; but how it can be said to be an evidence of anti-liberalism or a conservative feeling seems to me in the nature of a conundrum. This Convention has made a very great advance in these particulars on the work of 1891, and perhaps one of the greatest advances has been this, that the free people which is to be constituted shall under this provision be free to alter the Constitution themselves, care only being taken that it is done deliberately and faithfully; that work of that character, which may affect the destinies of unborn generations, shall be done only under circumstances which insure that thought and reason shall prevail, and that, in making amendments, we should take that much security for the protection of our children and their children after them. That, again, may be described by some as a "conservative" tendency. I, too, should consider it a conservative tendency if I were prepared to say that every step taken in
the direction of safety and moderation was mere conservatism. But not holding that opinion, but holding that steps taken in this way are not only compatible with liberalism, but are the very conditions of a just liberalism, I must venture to differ from the opinion which has been expressed. It has been said again about this provision that one state can, by holding out against the proposed amendment, defeat the intentions of all the other states. That utterly incorrect. It is certainly provided that where an amendment of the Constitution aims at destroying the proportion the House of Representatives which the representatives of one state hear to the numbers of those of another state, such a drastic thing shall not be done without the consent of that state. But that is just. It is also insured that equal representation of any state in the Senate shall not be taken away without its consent. Is it not also just to provide that? If the Federal Parliament attempts to do one or other of these things, to single out one state for different treatment with regard to number of its people and their representatives in the House of Representatives, or to deprive it of the equality which other states possess in reference to their representation in the Senate; if, under any pressure, the Federal Parliament were to attempt to do a thing so utterly unjust and subversive of the entire Constitution and of right principles, is it not just that the consent of the state affected should be obtained? That is the only case in which one state can, by holding out, defeat the intention of the rest of the Commonwealth. It is just that such power should exist in that state, for provisions of the kind would absolutely mean the demolition at once or speedily of that state as an individual part of the Commonwealth. That could never be intended. This is a necessary corollary of the provision that the limits of a state or the territory of a state cannot be altered without its own consent. It would be the same thing to deprive that state of its proper share of representation in the Commonwealth as to take away part of its territory or alter its boundaries, and it would lead to its being unable, effectually, to resist action taken for such a purpose. In every other respect it is untrue that this provision for the amendment of the Constitution enables one state to triumph over the others, because it is an absolute necessity of the Constitution that if five states have federated, the Constitution can be altered at the polls if the amendment is carried by absolute majorities in Parliament, and by a majority of the people in three states out of five. I have now set forth some of the differences between the two Constitutions, and in that way I have answered some of the criticisms which have been made upon this Bill. It has taken me a longer time than I expected it would, but I thought I would have the indulgence of the Convention in defending this Bill, and in that

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way I think I have done useful work, because it is not by any resort to high-flown oratory or by any endeavour to rouse the sentiments of the people from within this council hall that we shall do our work, but rather by a calm statement of the nature of our labours, and by an appeal to the reason and not the passions of the body outside. I should have mentioned in dealing with the railway provisions that there is an important qualification conveyed by the 103rd clause, which reads-

Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway the property of a state, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the state, and if the rate applies equally to goods within the state and to goods passing into the state from other states.

We have been told that will work an injustice to some of the colonies. I cannot see that it will. I cannot see any state whether it be Victoria in developing its coal mines, or New South Wales in developing its wheat-fields - can do any harm by a developmental rate for any of these purposes, so long as that rate is consistent with intercolonial free-trade. Because it seems to me that the development of a state is a corollary to the act of this Constitution in leaving that territory in the hands of states. Therefore, I cannot see that either one of these colonies should be considered to be doing work which the Federation ought to prohibit, if, in regard to its internal traffic only, it makes such concessions as will develop the produce of the land, whether that produce be from a coal mine or a wheat-field, I believe that is an entirely just provision. It is one of the provisos I intended to mention as taking off, to some extent, what might be considered to be the rigour of Sir George Turner's clause 101. I believe it is an additional safeguard, which tends to preserve that power of internal regulation on the part of the state which ought to be allowed to it, so long as it does not conflict with the provisions of the Constitution in giving the federal authority the sole control of inter-state traffic. Now, where inter-state traffic is concerned, this clause cannot operate, because, unless the rate which is concerned applies equally to goods coming from other states, and to goods passing entirely within the territory of the state itself, the rate cannot apply, and the Inter-State Commission will have power to interdict it. That being so, where the rate interferes with inter-state free-trade it will be interdicted by the Inter-State Commission; and where it does not interfere with the other provisions of the Constitution in this respect the rate will be allowed to continue. That is a just solution of what might otherwise be a very grave difficulty. I do not intend to detain the Convention at much greater length. I have not spoken to-day for the purpose of making what is called a speech. My object has been to lay
clearly before the country, through this Convention, what I believe are the wise and just provisions of this Constitution, and the respects in which it is an improvement upon, as being a more liberal Constitution than the work of 1891. Providing, as this Constitution does, for a free people to elect a free Parliament-giving that people through their Parliament the power of the purse-laying at their mercy from day to day the existence of any Ministry which dares by corruption, or drifts through ignorance into, the commission of any act which is unfavorable to the people having this security, it must in its very essence be a free Constitution. Whatever any one may say to the contrary that is secured in the very way in which the freedom of the British Constitution is secured. It is secured by vesting in the people, through their representatives, the power of the purse, and I venture to say there is no other way of securing absolute freedom to a people than that, unless you make a different kind of Executive than that which we contemplate, and then overload your Constitution with legislative provisions to protect the citizen from interference. Under this Constitution he is saved from every kind of interference. Under this Constitution he has his voice not only in the, daily government of the country, but in the daily determination of the question of whom is the Government to consist. There is the guarantee of freedom in this Constitution. There is the guarantee which none of us have sought to remove, but every one has sought to strengthen. How we or our work can be accused of not providing for the popular liberty is something which I hope the critics will now venture to explain, and I think I have made their work difficult for them. Having provided in that way for a free Constitution, we have provided for an Executive which is charged with the duty of maintaining the provisions of that Constitution; and, therefore, it can only act as the agents of the people. We have provided for a Judiciary, which will determine questions arising under this Constitution, and with all other questions which should be dealt with by a Federal Judiciary and it will also be a High Court of Appeal for all courts in the states that choose to resort to it. In doing these things, have we not provided, first, that our Constitution shall be free: next, that its government shall be by the will of the people, which is the just result of their freedom: thirdly, that the Constitution shall not, nor shall any of its provisions, be twisted or perverted, inasmuch as a court appointed by their own Executive, but acting independently, is to decide what is a perversion of its provisions? We can have every faith in the constitution of that tribunal. It is appointed as the arbiter of the Constitution. It is appointed not to be above the Constitution, for no citizen is above it, but under it; but it is
appointed for the purpose of saying that those who are the instruments of
the Constitution—the Government and the Parliament of the day—shall not
become the masters of those whom, as to the Constitution, they are bound
to serve. What I mean is this: That if you, after making a Constitution of
this kind, enable any Government or any Parliament to twist or infringe its
provisions, then by slow degrees you may have that Constitution—if not
altered in terms—so whittled away in operation that the guarantees of
freedom which it gives your people will not be maintained; and so, in the
highest sense, the court you are creating here, which is to be the final
interpreter of that Constitution, will be such a tribunal as will preserve the
popular liberty in all these regards, and will prevent, under any pretext of
constitutional action, the Commonwealth from dominating the states, or the
states from usurping the sphere of the Commonwealth. Having provided
for all these things, I think this Convention has done well. The question for
us is this—the question for the electors is this: Is this a Constitution which
will enable a free people to come together, and in community together to
work out their own destiny? Who can deny it? Is it a Constitution which
gives all reasonable and liberal guarantees of freedom? That can only be
answered in one way. Is it a Constitution the action of which, until
amended by the people, is preserved and safeguarded? There is only one
answer to that. Is it a Constitution which the people themselves, by their
will expressed by their Parliament and themselves, are able to alter to suit
their needs under conditions of reasonable thought, without unreasonable
difficulty? There can be no answer but one to that question. Then, if the
Convention has done those four things, I take it that, it has done its work.
There is no voter of the electoral body, coming to the consideration of this
Bill, and having an, average share of intelligence, who will

say that because there is one provision or another in the Bill which he
objects to, he, therefore, will not vote for the Bill. Because the elector will
say this to himself—Do I believe in every syllable of the Constitution under
which I live? There is not an elector who can say that. Should I like the
Constitution of this country (whether it be Victoria, or New South Wales,
or any other country) to be amended in certain particulars? Certainly I
should. But do I need to go away and live in another country, because I
cannot get the very alteration I want in my Constitution? No; I do not. Is
not that a series of questions which the elector will put to himself and
answer as I have answered them? Will he not say—While I may not agree
with the Convention in every detail of its work, no Constitution probably
can be framed against which nearly every elector in every country would
not have some word to say. There are very few belonging to either of the
great political parties in Great Britain who would not wish to alter the Constitution in one direction or the other. There are very few in these colonies, and I suppose there are very few in Canada and in the United States, who do not desire amendments in their Constitution. But the question they ask themselves is: Is this the right sort of country to live in under such a Constitution as this? If it is I am content, provided you give me freedom to participate in its alteration under every condition. That, sir, is what this Bill secures! I believe that in this great colony, in which we have been meeting for 41 sitting days, the work of the Convention will be reasonably appreciated, and that their labours will be rewarded with the only reward they ask, and that is the unity of their country. I also believe that similar reason and wisdom will prevail in the country in which I live, for notwithstanding the huge burden laid on the people of that colony by a breach of faith and I still stigmatize it as a breach of faith-I do believe in my inmost heart that, when this Constitution is explained in its truth and justice to the electors of that country, they will demand that union, that friendship, that connexion in all business matters between themselves and the other colonies, which it is manifest every citizen of this country was intended to have and maintain. I believe that such results will ensue that this Constitution will be adopted, even under the huge burdens laid on the electors of New South Wales as a condition of its adoption. I believe that in other countries—in yours, Mr. President, for example, where I am quite sure the electoral body is permeated by a very, very strong demand for and insistence on liberal principles—this Constitution will not be distasteful, but will instead be regarded as highly satisfactory. I sincerely believe that that will be the result in every one of these colonies. It is there that all of us seek our reward. Other reward we cannot expect—and I, for one, can say from my very heart, that other reward I do not desire. I am quite sure that is the feeling we all of us share, and I am quite sure, too, that the approval of our honest labour which we shall receive if this Constitution is, as it will be, adopted by the voice of the people, will be such a reward to us as will satisfy any ambition we may have entertained in the whole course of our lives.

Sir EDWARD BRADDON (Tasmania).—

I have to express my sincere thanks to Sir Richard Baker and the Attorney-General of Victoria for allowing me this opportunity of speaking to this motion, an opportunity which I could not get unless I spoke at this moment, inasmuch as I have to leave this chamber to catch the steamer in some twenty minutes or so. Mr. President, I entirely and heartily indorse the motion of the honorable the leader of the Convention. That motion calls upon the Premiers of the colonies represented here to engage to see that the
principles of this Bill are made fully known to the constituents in their colonies, and already I have taken steps to secure that that shall be efficiently done. I do not think it would be possible by issuing copies of the Bill itself to every elector of every colony to make the principles of the Bill intelligible to him, and I have ordered a synopsis of the Bill to be prepared. That synopsis which will be intelligible to all, and which probably will be read by all who can read, where the Bill might not be read, will, I hope, effect the purpose that we have in view. I desire to adopt no Fabian policy whatever in regard to the Bill we have just completed. I wish to speak with no uncertain sound, and I declare for myself, and I believe that I am declaring it for the great majority of the representatives of Tasmania, that we are heartily in sympathy with this Bill, and will do everything in our power to get it accepted by our colony. I have heard from two visitors who have recently come here from Tasmania, that there is a feeling in the colony against this Bill. It is believed there that the Bill will not be approved by the people. Well, I believe that possibly when we come to explain matters to our people, especially when we show the effect of that clause which I was happy enough to pass the other day—when we show them that we have secured by that clause a guarantee of a certain minimum return of revenue from Customs and Excise, and a certain amount of economy in the administration of the Commonwealth's affairs; when we show them that, and explain the Bill in other respects to our constituents, I believe we shall be able to win their votes in spite of any feeling that may prevail there now. Of course, none of us can say that, according to our lights, according to our individual wishes, the Bill is perfection. It would be necessarily impossible that that should be so, when we, who are collected here together, however honest our views may be, are necessarily influenced in this Convention by the interests of our own particular states. That is as natural as it is excusable. We are here to see, as far as we can, that the Constitution Bill should be moulded so as to suit our particular interests; but at this stage, having adopted that Bill, we, supposing we become members of the Commonwealth, should entirely drop that parochial feeling; we should cease to feel that we belong to this state or to that, and only acknowledge that we belonged to the Commonwealth, and work together honestly and with strenuous energy to carry out the Bill to the greatest possible success. It was a disappointment to some of us representatives of the smaller states that the power of amending Money Bills was not given to the Senate, as we urged that it should be. Upon that point we were defeated and we have accepted our defeat with gracefulness, I hope, and with perfect satisfaction to ourselves, because if we met with
some little failure there, well, it has been said somewhere that "Failure is God's road to success." And I hope now, when I have thoroughly accepted the Bill as it stands, even as to that clause, we shall find the Senate so powerful that it will realize very much by its strength what we sought to realize for it by Act of Parliament. Sir Samuel Griffith has said, and very well said, that if the Senate be a powerful body its suggestions will be accepted, but that if it be a weak body its amendments will be refused. I think we may therefore be perfectly satisfied in having retained for the smaller states the most liberal representation in the Senate, and indeed the most liberal representation in the whole Parliament for the smaller states. Having done that, I hope that not only we who are here in this Convention, but those whom we represent in every one of the smaller colonies, will be perfectly satisfied with what they have got. And without attempting to do that which time will not permit me to do, that is, to criticise or to analyze the Bill in any way, I should like to say that to my mind it is a Bill which appeals thoroughly to the people, the great masses of the people, for whom we have prepared it. Throughout all the stages, therefore, which we have had to pass in dealing with this Commonwealth Bill, from its initiation, and the election by the people of their representatives in this Convention, to the end, the people will dominate-dominate as they should do, reasonably and in a wholesome way—and nothing will be possible to be done except with the assent of the people. Before I sit down, Mr. President, I think I should fail in my duty if I did not, on behalf of us departing Tasmanians, say some of those valedictory words without which meetings of this sort never close. We, I am sure, unanimously, like other members of the Convention, have recognised the dignity, ability, and self-sacrifice with which you have adorned the President's chair. We must all have admired Mr. DOUGLAS. -

Do not forget the Parliamentary Committee.

Sir EDWARD BRADDOCK. -

I am not going to forget them. We have all seen with admiration the splendid way in which our leader, the honorable and learned member (Mr. Barton), has conducted the proceedings of the Convention. We must all have admired the devotion to the work before us which has been shown by him and by the members of the Drafting Committee. Many honorable members are possibly unaware that they have given hours to the consideration of the Bill when we have been enjoying ourselves in bed. They have spent the midnight oil—perhaps I should say electric light—upon the measure without stint, and it is due to their efforts that we were able to
pass the Bill as early as yesterday. As I shall have no other opportunity, I will now express, on behalf of my colleagues and myself, our gratitude for the great and unsparing hospitality shown to us by the Government and people, not of Melbourne only, but of all Victoria. We have been hospitably received in various parts of Victoria, and would no doubt have been equally well received in all parts of the colony if the people could have rendered it possible for us to be in two or three places at once. I should have liked to have said more, but steamers, like time, wait for no man, and it is necessary for me to get away.

Sir RICHARD BAKER (South Australia). -

I should, perhaps, not have felt called upon to take up some of the few remaining moments of the time of the Convention had it not been that, owing to my duties as Chairman of Committees, I have been the only member of the Convention who has not been able to express his opinions, and to explain through the press to his constituents who sent him here the position which he takes up. Before I proceed, let me express my meed of praise for the admirable and able speech of our esteemed leader, a speech which was a fitting climax to the able and courteous manner in which he has performed the arduous duties of his position. Not only the members of the Convention, but the people of Australia are under a debt of gratitude to the honorable and learned member—a debt which I hope they will repay in the manner which he himself has suggested, by crowning his efforts and those of all of us by the formation of the Australian nation I have heard many remarks concerning the time which our deliberations have taken up, and I have been told, and I have seen it stated in print, that the public are losing the thread of our deliberations, and are ceasing to take an interest in the federal movement. I do not believe the public of Australia are less interested in the great question of federation now than they have been at any time during the last six years. It is quite excusable for them not to have been able to follow our deliberations, because to those unacquainted with parliamentary procedure they have, no doubt, appeared of a complex nature, and it has been difficult, with the limited information conveyed to the outside public through the press, to follow our proceedings. But although they may not have taken such a great interest in our proceedings during the last few weeks, I do not believe it is true that they have lost interest in federation. I firmly believe that not a moment has been wasted during the whole of the time that we have been here. When we consider how vast the importance is that every word of the Constitution should be correct, that every clause should fit into every other clause; when we consider the great amount of time, trouble, and expense it
would take to make any alteration, and that, if we have not made our intentions clear, we shall undoubtedly have laid the foundation of lawsuits of a most extensive nature, which will harass the people of United Australia and create dissatisfaction with our work, it must be evident that too much care has not been exercised. I place it before the public in most unmistakable words that it is my opinion, as Chairman of Committees, that in all our deliberations, and notwithstanding all the reversals of conclusions previously arrived at which have taken place, no time has been wasted. The result of our labours is a Bill which, for drafting, for clearness and conciseness of expression, it would be difficult to equal in any written document. My honorable and learned friend (Mr. Barton) has approached the subject of the Bill from the position of a speaker and an actor; I have been a listener and a thinker. I hope to be permitted, before I come to any of the details of the Bill, to analyze the principles upon which it is founded. There have been three types of government struggling for mastery all through our deliberations. There has been, first, the type of what I call true federation; there has been the type of a federation imagined by some of my honorable friends from Victoria; and there has been the British type of government. Those three types are to a very considerable extent inconsistent with each other. But in the work which we have completed traces will be found of every one of them. The remark has frequently been made that we want a federation of the British responsible government type. That has always seemed to me a contradiction in terms. You might just as well say-"I want a stamp battery of the roller-mill type." Both the stamp battery and the roller mill are machines designed for the crushing of matrix, but they are founded upon absolutely different principles. Both the federal type of government and the British type of government are framed for the same purpose-the government of the people-but they are founded upon absolutely inconsistent theories and principles. I do not want to reiterate arguments and statements that have been made over and over again in the Convention, but I may, perhaps, be permitted to refer very shortly to the principles upon which these different types are founded. We have in the British Constitution, and in all the copies of it which exist in these colonies, a centralized form of government, in which there is one predominant power-in which one of the branches of the Legislature has usurped the powers of the other by the aid of a committee of its members called the Executive. This we sometimes refer to as the responsible Ministry system. Is not such a type of government absolutely inconsistent with the fundamental principles of a Federation in which free people wish to unite for certain purposes, and in which, according to all sound theory, the two branches of the Legislature-that which represents the states, and
that which represents the people, ought to be, if not co-equal in power, to a
great extent co-equal? The third type, the type in which it is
suggested that all states boundaries shall be completely swept away, and
that, so far as the legislative powers transferred to the Federal Government
are concerned, the people shall act as one people, and there shall be an
Upper House and a Lower House only, is founded upon a want of
consideration of the effect of any such form of government. If the people
of the colonies are willing to act as one nation—to sweep away the
boundaries of the different colonies in reference to the 38 powers given by
clause 52 of the Bill to the Federal Government—surely they will submit to
give to the Federal Government powers of legislation concerning all
matters. This suggested half-way house between unification and Federation
is no permanent abiding place. I invite the honorable and learned member
(Mr. Higgins) to consider this point: If the people of the smaller states are
willing to adopt the type of government suggested by our Victorian friends,
we can save the expense of ten Houses of Legislature and five Governors,
and we can become a truly united people. But we have been sent here to
frame a scheme of federation, not of amalgamation. Now, what have we
done? We have framed a scheme of government such as hitherto has been
absolutely unknown. It does not follow that it is nor a good scheme, that it
is not workable, or that it will not perform the objects at which we all aim.
I believe, sincerely and truly, that the Bill which we have framed is a
machine which will work most smoothly. We have adopted, so far as we
can, the forms of government to which we have been accustomed. That of
itself is a great thing, and we have imported into it such an amount of
federal principle as will make this form of government a federal form. I
believe that when this system comes into existence, its smooth working
will be immensely aided by the fact that those who take part in it will take
part in a form of government to which they have been used, and that the
people themselves will be reconciled, in even the smaller states, to some
departure from the federal form, because they will see that all they have
looked up to and cherished for a considerable time as a free government
will still remain to them intact, so far as it is possible that it can remain
intact under a federal form of government. In the first speech which I made
in the Sydney Convention in 1891, I admitted that we were not assembled
to make any theoretical or ideal type, but that, in the words of Solon, we
must give to the people of Australia "not the best form of government, but
the best that they can bear." Now, this system is, I think, the best the people
of Australia can bear. It must be always recollected that, in building a
house, the architect ought not to build to suit himself, but he ought to build
the house to be convenient and commodious for those who will live in it. That is the principle which has influenced the minds of members of this Convention, and they have given effect to the idea in the Constitution which we have framed. There are many people in these colonies who look upon this Constitution from a conservative point of view. They think that it is far too democratic. They point out that in no Constitution which has yet existed in the world have there been two Houses of Legislature in which property has no representation at all. They point out that this is a Constitution in which one set of people-those who have little or no property because they are the majority, will have the power of dictating how the taxes shall be raised, and how the taxes shall be spent; and that another set of people-those who have property, and are the minority will pay the taxes; that representation and taxation will not go hand in hand, because taxation will be imposed by one class and paid by another. Now, that criticism undoubtedly has a great deal of force. But the answer seems to me to be that, at all events for a considerable time-perhaps for ever-the Federal Government will rely on taxes raised through the Customs; and you cannot impose customs duties so that they will fall on any particular class. I doubt very much whether you can impose any taxation which will fall on any particular class, because all taxation has a tendency to spread itself over the whole of the community. But that is specially true of taxation raised through the Custom house; and that is the answer to such criticism. There is one point in which I have taken a great interest—one point on which I have taken up what some have thought to be an extreme stand and that is as to the powers of the Senate under the Constitution. I look upon the Senate as the sheet-anchor of the smaller states, as the pivot on which the whole Federal Constitution revolves; and I have been compelled to analyze this Bill carefully before arriving at any conclusion as to what effect the various alterations made in clauses 53 to 56 will have on the powers and position of the Senate. Now, the following alterations have been made which will have the effect of decreasing those powers. The power, the dignity, and the importance of the Senate, so far as those Money Bills which must originate in the House of Representatives are concerned, has been very greatly decreased. In the Bill of 1891 the words used were "Bills for imposing taxation." Those words were altered in Adelaide, on my motion in the Constitutional Committee, to 11 Bills the main object of which is for imposing taxation." But that form of words has now been altered again, so that we find in the Bill, as drawn, that no Bills incidentally imposing taxation, except of the most trivial nature, can originate in the
That is one stamp of inferiority placed on the Senate since 1891. And, also since 1891, a proviso has been added to one of the clauses relating to the Executive, which makes it absolutely necessary that the members of the Executive shall be Members of Parliament. That provision also diminishes the power of the Senate. Sir Samuel Griffith purposely left the matter vague. He explained to us, in 1891, and has since explained in some of his pamphlets, that he is not at all sure that under a federal form of government we should continue to have responsible government, and that free institutions might work out under representative government without the Cabinet system of responsibility; and he left the matter open for that change which time and evolution might bring. But in this Bill we have insisted that members of the Executive must be Members of Parliament. In a former speech, which I do not intend to repeat, I have explained that this inherent power of the House which controls the purse, and of that committee of such House called the responsible Ministry, which will inevitably work with the House to which it owes its existence, and to which it is responsible, will have a powerful and constant tendency to reduce the Senate to a position of impotency; and these two alterations since 1891 will also work in that direction. On the other hand, however, there are provisions in this Bill which will act in a contrary direction. The question of the quota—the fixed proportion between the two Houses—which is rendered absolutely necessary by the fact that they will sometimes sit together, is a gain from my point of view. The franchise—the fact that the Senate is to be elected on universal suffrage, no matter how you may look at it from a conservative point of view, undoubtedly gives added power to the Senate. The fact that there is a power of dissolution will also tend to increase the power of the Senate, for elected bodies, like Antaeus when he touched mother earth, arise with renewed strength after an appeal to their constituents. And so it will be with the Federal Senate. What will be the effect of the two Houses sitting together in a joint session after dissolution has taken place, I am not prepared to say; but I think it is quite possible that that will not weaken the power of the Senate. There can be no doubt that, at all events for some time to come, we shall have party government, and that in the last resort, when the two Houses sit together, the Senate may have some slight say and some slight action on which had loomed so large to my mind during the time they were under discussion. And here let me appeal to some of those honorable members of this Convention who, as at present advised, are not prepared to adopt and to recommend the Bill. Let me appeal to them not to come to any final conclusion just now. Let me ask them to pause, to wait, to allow
the disappointment which arises from defeat and the heat engendered by conflict to subside, so that they can look on all the questions which have been debated in this Convention in proportion to their relative importance, and view the scheme calmly and deliberately as a whole. I feel sure that if they will do that many of those mole-hills which now seem to them to be mountains will sink into the comparative insignificance which they really have. In this connexion I do not wish to follow Mr. Barton, but I want to mention one point which he omitted in his speech in reference to the Senate—and indeed to both Houses. He omitted to mention that under this Bill no plural voting is allowed.

Mr. BARTON. -

Hear, hear.

Sir RICHARD BAKER. -

Whereas plural voting was allowed under the Bill of 1891. That, from a liberal point of view, is a great concession. The provision was strongly objected to by the people of South Australia in 1891, and I only want to supplement the speech of my honorable friend in this particular now, so that it may be known to the people of South Australia at all events that that bugbear to them has disappeared. Now, I have seen it stated, and I think it is a matter that ought to be contradicted, that there is some kind of tacit understanding in this Convention as to where the seat of government under the Commonwealth is to be. For my own part, I give that statement a most absolute denial.

HONORABLE MEMBERS. -

Hear, hear.

Sir RICHARD BAKER. -

I do not believe there is the slightest understanding of any sort. I know that, so far as I am concerned, I have not made up my mind at all; but I do think—and I say this advisedly—that it will be a good thing that the federal capital should be located in some place where there is at present no population at all, where all the land is in possession of the Government of some one colony or another, and that if some such place is chosen—probably somewhere near to the borders of New South Wales and Victoria—money can be raised from the sale or leasing of that land which would go a very long way to pay the expenses in connexion with the federal site and the erection of public buildings and offices. There is one matter which I think I am bound to explain to my constituents, and that is with regard to the river question. I had to give a casting vote on that point, and I gave that casting vote in a manner which has seemed to some people in South Australia to be against the
interests of that colony. Now, sir, I deliberately departed from the ordinary rule, which, if it does not oblige, at all events intimates to the chairman the manner in which he should vote, namely, to uphold the former decision of the committee. But I felt that the position was one of great difficulty. I felt that if I gave that vote the other way, something would be put in the Bill which was most obnoxious to the delegates from one of the colonies. I also felt that the solution that was then advocated was not the best solution of the difficulty. I am very glad now that I voted in that manner, because we have solved the difficulty concerning this river question in the very best possible way. If we sat here for another month we could not arrive at a more equitable and fair conclusion. What is the solution? It is that the Commonwealth is not to prohibit any state from a reasonable use of the waters of the rivers of that state during the time it flows through their territory. Now, is not that a compromise which the representatives of the colonies can accept with honour and with satisfaction? For my part, I do not think that the representatives of the colony from which I come ever wished to get any more. They never wanted to be unreasonable, and they did not want other colonies to be unreasonable. The provision which has been inserted in the Bill will be found to work in a manner fair and equitable to all parties, and I am glad indeed that further time was given for the consideration of this subject, and that so just and so fair a solution was arrived at. There is one matter which my honorable friend (Mr. Barton) did not touch upon, and it is of great importance in the minds of the people who will have the final say concerning this Constitution. They want to know what it is going to cost them. I wish to refer more particularly to the people of South Australia. Under the financial clauses of this Bill the Federal Parliament will have to return to each state all the money raised from that state either from customs or other duties, or from the Post-office or the other services, the management of which is taken over by the Commonwealth, less a proper proportion of the added expenses of the Commonwealth, which I understand will, in South Australia, amount to some £30,000 per annum, the population of South Australia being one-tenth of that of the Commonwealth. But South Australia is not going to lose that £30,000. I followed with very great interest the figures given by the Hon. Mr. Holder in reference to the consolidation of the public debts, and I gathered from those figures, and I believe they will be found to come out pretty right, that South Australia will gain £35,000 per annum if the scheme of federalizing the public debts is adopted; so that instead of federation costing South Australia; anything, they will be the gainers. of £5,000, that is, if the powers given in the Constitution to the Federal
Government to take over the public debts of the various colonies are exercised wisely, carefully, and with discretion. And not only is that so, but surely it must be admitted by all the colonies that when the Federal Government comes into existence, and takes over so many departments, we can in each state make a large number of consequent economies. We shall not require so many Ministers of the Crown; we shall not, perhaps, require so many Members of Parliament; and we shall not, owing to the decrease of our various establishments, require to spend money in many other directions. I hope, therefore, that I shall not only be able to state, but to prove, to the people who sent me here that this federation will not only cost them nothing, but that they will actually make a pecuniary gain by entering into the Union which we so strongly advocate. I might say a great deal more, but it would be unfair for me to unduly take up the time when there are so many other honorable members who would like to offer a few remarks in the limited time at our disposal before

we part. Before I sit down I have to thank the Right Hon. Sir Edward Braddon, and those who cheered him, for the very flattering remarks which he made concerning myself as Chairman of Committees. It would be unbecoming of any one who addresses this meeting to-day to refrain from expressing our grateful thanks to the Government and people of Victoria for the splendid and lavish hospitality with which they have treated us. I have had perhaps more peculiarly than any other member of the Convention been brought into contact with the clerks who have so ably and efficiently done our work. To those who are outside, the work which is done after the Convention adjourns is unknown, but it is very real and very arduous for all that. It is only fair that we should give our acknowledgment to those who have sat up night after night, doing work for the Convention, so that it might commence its deliberations next day. In that I would include the Drafting Committee, who have so arduously and so ably fulfilled their duties. Before I conclude, I would suggest a mode of procedure which, if adopted, would, it appears to me, recommend this Bill more forcibly to the people of the various colonies than any other. It is this, that each group of delegates, or as many of them as are willing to join together, should issue one manifesto to the people who sent them here. That is a course which has been followed when other constitutional conventions have finished their labours. I dare say all of you have read the address of George Washington, in which he recommended the Bill as framed by the Philadelphia Convention to the people of America. I find that the same plan was adopted in Switzerland in 1874, when some amendments were made in the Constitution. A joint address, couched in
most elegant language, was then issued by the members of the convention to the people of Switzerland. It was pointed out to them that the scheme, like every other scheme, was subject to human defects—that although some might think the federal action too circumscribed, others might take the view that it went quite far enough—but that a federal edifice had been constructed in which it was hoped that the people of the various cantons might live in amity together. It was also pointed out that the Constitution contained the germs of new developments of progress and liberty, and that if the people did not adopt it they might have to wait long for the chance of obtaining anything equal to it. And I say to the people of Australia that if they do not go to the poll and vote for the Constitution which we now recommend for their acceptance a fatal blow will be struck at the cause of federation. I do not say that we must have federation now or never, but its rejection now will mean the postponement of all chances of any federal union during the life-time of most of us here present. This is the second attempt that has been made. If this Convention has not been able to frame a Constitution which the people of Australia can accept, I should like to know how such a Constitution is to be framed? It is idle for persons to say "I will have this," and "I will have that." It is only by frank conciliation, by a spirit of compromise, by the sacrifice of our personal ideas and inclinations on the altar of our country, that we can hope to become a United Australia.

Mr. ISAACS (Victoria).-

Mr. President, in rising to speak to the motion which has been so ably proposed by the honorable the leader of the Convention, I have first to express my regret that the Right Hon. the Premier of Victoria is not here to respond in person. I am sure that the Convention sympathizes with him in his present position, and will remember, with a considerable amount of gratitude and good feeling, the fair, kindly, and reasonable, as well as able and assiduous, part he has taken in its deliberations. Before I sit down I shall have the pleasure of communicating to the Convention what he

[P.2487] starts here

has commissioned me to say. I desire at the outset to join with those honorable members who have preceded me in offering a tribute of praise—and a well-earned tribute—to those who have been charged with the conduct of the business of the Convention. In you, sir, we have had a President of ability and impartiality, who has lent dignity to the position which was conferred upon him. To our honorable friend (Sir Richard Baker) a large measure of praise is most assuredly due. On his shoulders, even more than on your own, has fallen a laborious task, and one which he has discharged with a success that could only be commanded by not only impartiality, but
ability and attention in every direction. Of the Drafting Committee, I desire to say, in the most unqualified manner, that they have discharged the onerous duty which has fallen to them with conspicuous ability and enormous labour. Only those who have been intrusted with official positions, and more particularly those who have filled positions of a legal nature, know the extreme difficulty and hazard there is in performing such work as has been so remarkably well performed by the Drafting Committee. Whatever may be thought of the measure which we are about to place before the people of Australia, little fault can be found with the way in which the intentions and resolutions of the Convention have been expressed in actual words. Before passing to the motion itself, I should say that I entirely indorse what has been said by Sir Richard Baker with regard to the splendid and self-sacrificing work by the clerks of the House. And I must not forget to add to that the consideration we should extend in the direction of gratitude, not only to those gentlemen, but also to the various other gentlemen connected with the House who have given their attention. I allude to the Librarian and attendants, and all concerned in the administration of the affairs of the House. Now, sir, on the motion itself I desire to say that I entirely and absolutely concur in it. I think it is not only a reasonable and advisable course to adopt, but it is an absolutely necessary one. I may say for the Government of Victoria that it is a step which would be taken by us under any circumstances; but it is indicative, and properly indicative, of the feeling of the Convention that such a resolution should be passed in order to evince our desire that the people of the country, before arriving at a conclusion which must so greatly affect their future welfare and interest, should have before them, as far as can possibly be done, the proper material upon which to exercise their judgment. It is plain, from the whole tone of my honorable friend (Mr. Barton's) speech, and also from the speeches of my honorable friends (Sir Edward Braddon and Sir Richard Baker), there is a general concurrence in the view that this matter must be approached, in the manner in which it was dealt with by the Convention—that is to say, by argument, reason, and careful consideration—and that it must be so approached not only by the Convention but also by the people whose interests are more nearly and directly involved. And we shall, by furnishing them with the measure which has now reached its completion, and, as Sir Edward Braddon properly pointed out, with such other means of gathering the intention and, so far as possible, the purport of the measure, we shall enable the people to judge of the whole question without any fear that they are misunderstanding its provisions or its probable effect, and without any fear that they are not at lib
statute itself. In doing so, it was quite right to indicate how marvellously the provisions of this Bill in many respects transcend the corresponding provisions in the Bill of 1891. I do not wonder that in 1891 the Bill as then framed was not accepted, or considered acceptable by the people of the various states. In the particulars pointed out by the Hon. Mr. Barton, or, at all events, in most of these particulars, there has been considerable advance; and therefore the attention of the people is very rightly directed to the particulars in which that advance has been made. On the other hand, there are certain other particulars to which attention ought, I think, with equal propriety, to be drawn for the consideration of the people. When my honorable friend (Sir Richard Baker) said that the Senate was the pivot on which the whole Federal Constitution revolves, that was an observation deserving of the most careful attention, and one he was, in view of the provisions of the Bill, thoroughly justified in making. When he pointed out clearly some of the particulars in which the Senate is strengthened as against the House of Representatives he was doing his simple duty in calling attention to the fact. Before I sit down, I desire to add one or two particulars in which the Bill of 1898 differs from the Bill of 1891. In many respects liberalism has been granted its share of recognition. In regard to the franchise, the powers of Parliament, the mode of election to the Senate, and other matters, tremendous, though necessary, advance has been made. But there are other matters which are engaging the attention of the delegates as well as of individuals and which have been indicated in the press. These are matters which must receive consideration in order to determine how, upon the whole matter, the ultimate decision shall be cast. Now, in respect to the relative positions of the Senate and the House of Representatives in the Bill of 1891, the number of members in the House of Representatives was uncontrolled by any consideration of the number of members in the Senate.

Mr. HIGGINS. -

Mr. ISAACS. -

Mr. ISAACS. -

Or by the number of states. The number of members in the House of Representatives was decided by one consideration alone, namely, the necessity of population with regard to representation. When we are forming a representative Government the question of the representation of the people is undoubtedly the central question for consideration. There is, therefore, this important departure, that the representation of the people in the National House is limited in the Bill of 1898, as contrasted with the Bill of 1891, by the number of senators—that is, by the number of states. Then, with regard to the House of Representatives itself, in which the
proportionate representation of the people was concerned, there is another
distinct departure, to the disadvantage of what I consider the liberal
principle of the representation of people according to the needs of
population. In the Bill of 1891 there was to be one member for every
30,000 of the population, and there was a minimum of four representatives.
In 1891, if the Constitution then framed had gone into operation, Victoria
would have had 40 members, roughly speaking, and Tasmania four
members. That is to say, according to the population, granting a minimum
to Tasmania, her representation would have been one-tenth of that of
Victoria. In the Bill of 1898, the representation of Victoria is 24, the
representation of Tasmania being raised to a minimum of five, or more
than one-fifth. In that respect also, it will be seen, a large concession has
been made to the smaller states. It is also a very important consideration, as
Sir Richard Baker has reminded us this morning, that responsible
government may be most materially affected, if not altered, by the fact that
the final determination of these matters will be left to the operation of a
joint sitting. As Sir Richard Baker said, the Senate will receive in all

probability a much larger share of the control over the Executive than has
hitherto been afforded in any bi-cameral system. So we have to look at
these considerations as well as the other considerations which have been
presented to us. In another way we have to recollect that the Bill of 1891
seemed to recognise in a larger manner than the present Bill the effect of
the British Constitution by allowing the ordinary provision for the
dissolution of one House. The question might arise whether, as in England,
where there is an immovable Upper Chamber and a Lower Chamber
amenable to the will of the people by dissolution, that would not have had
the effect, not only of keeping responsible government more in the British
track, but also of compelling to a larger extent than is contemplated under
this Bill the recognition in the last resort of the will of the majority. These
are only some of the matters in which distinction is made. My honorable
friend (Mr. Barton) has referred to railways and to bounties. In regard to
bounties, my honorable friend (Mr. Barton) will forgive me if I say that I
do not agree with him that the criticism that has appeared—I cannot say
where—was unjust. I think my honorable friend will admit that by reason of
the amendment made only yesterday the position in regard to bounties may
be very materially altered.

Mr. BARTON. -

It makes clear what was the real meaning of the Bill before.

Mr. ISAACS. -

Well, I may be wrong, but, to my mind, the change of verbiage may
make a most material difference in effect. I have not had time properly to consider it, but it may make all the difference.

Mr. HIGGINS. -

What is the change?

Mr. ISAACS. -

The change is, instead of saying that nothing in the section shall have a certain effect, it is provided that, "notwithstanding anything in this Constitution" a certain effect may follow in regard to bounties. These words have such an enormously-increased importance that they may take away very much of the objection, or, at all events, mitigate much of the objection, that I, in common with other delegates in Victoria, felt on the question. For myself, I think that the criticism referred to might be perfectly justified upon the words that previously stood, but that may now have been to a large extent met if not cured. I refer to this now, but reserve for future consideration, if need be, the full effect of the words inserted yesterday. In regard to the railways, I feel considerable hesitation. I should have preferred not to advert to the matter at all, but, as my honorable friend (Mr. Barton) has dealt with the subject, I will say that I consider the clause last mentioned by him, namely, clause 103, has, in my judgment, a much wider and more serious import than my honorable friend appears to consider. The 101st clause has been referred to as Sir George Turner's clause. Only the first portion of it, less than half, is Sir George Turner's. That portion gives to the Parliament the power, if it were not otherwise limited, of holding a fair and even though paramount hand over any cutting rates, over any preferences or discriminations, that might be made on the railways of one state as against another state. It provides, subject to the qualifications which follow, and which are not Sir George Turner's, that the Parliament in its wisdom may exercise this beneficial control by forbidding any preference or discrimination which is undue and unreasonable, or unjust to any state. That was the extent to which we desired to go. That was the extent to which we believed the Convention ought to go, while leaving the control of the railways and their management to each individual state. I should have infinitely preferred a provision to federalize the railways. It would leave the power in the Federal Parliament to say to any state that was doing anything undue and unreasonable, or unjust to any other state-

You shall not continue that course of conduct." Then, however, there are limitations inserted which cut down the power of Parliament, and the last sentence provides, in effect, that Parliament shall have no such power of interference, whatever it may think of the injustice or the unreasonableness of a rate, unless the Inter-State
Commission shall first adjudge such rate to be undue, or unreasonable, or unjust to any state. That is a somewhat cumbersome form in which to deal with the question, but ultimate justice could be reached and probably would be reached by that method.

Mr. BARTON. -

As the matter stood, before the Drafting Committee gave expression to this clause, it was open to an interpretation which would have been, I think, very much more against the views the honorable member holds.

Mr. ISAACS. -

I am not complaining of the drafting.

Mr. BARTON. -

I am not setting up the drafting, but I thought it was open to a dangerous interpretation.

Mr. ISAACS. -

I am going to speak of the effect of clause 103, which, I think, places the matter in a very serious condition. I do not wish to say one word stronger than I am obliged to say, because it will be a matter for further consideration. This clause has been referred to as well as others, and I have tried to express my opinion as lightly as I could. Clause 103 again cuts down the power of the Parliament, and, what is more, the power of the Inter-State Commission. It provides, in effect, that certain rates, no matter how unjust to any other state, no matter how undue or unreasonable it may be, shall be out of the power of the Inter-State Commission, out of the power of the Parliament, out of the power of the High Court, to prohibit it. But, unfortunately, these rates that are so protected cannot be rates that can be created in Victoria, and they can be rates that can be created in New South Wales. That is where I feel such difficulty—that is where I feel the injustice—because these two conditions are, that if the trade is deemed by the Inter-State Commission to be necessary for the development of the territory of the state—that is, the state which makes the rate—and if the rate applies equally to goods within the state, and passing into the state from other states, then nothing in this Constitution shall render the rate unlawful. In other words, if two rates exist, one adopted by New South Wales from Riverina to Sydney, and one adopted by Victoria from, say, Wodonga to Melbourne, each undue and unreasonable, and unjust to the other state, the Victorian rate can be prohibited, because it cannot be said to be for the development of the territory of Victoria. It may be for the development of Riverina, but certainly it does not extend to Victoria, because the goods pass into Victoria from the other state. But, on the other hand, the corresponding cutting rate in New South Wales might comply with the conditions in the Bill, because they may say it is necessary for the
development of their territory-Riverina-and applies to all goods wherever they come from, whether Victoria or New South Wales.

Mr. BARTON. -

The goods which come from other colonies would still be assisted in the direction of intercolonial free-trade by being charged under the larger rate.

Mr. ISAACS. -

No, it is not the larger rate, it is the smaller rate.

Mr. BARTON. -

I do not suppose the rate can be either larger or smaller.

Mr. ISAACS. -

I quite agree that if we charge the larger rate, or if New South Wales charges the larger rate, the trade and commerce clause would prevent that.

Mr. BARTON. -

We do charge a larger rate on goods coming from Victoria.

Mr. ISAACS. -

I think the larger rate could be prevented under the trade and commerce clause. I am speaking of the operation of these clauses, and that is where I feel the injustice. I would not have referred to any of these matters, but they have been referred to by other honorable members, and there might be a misunderstanding.

Mr. FRASER. -

The higher rate now charged from Junee, or the stations in that direction, to Wodonga can be prevented under these clauses.

Mr. ISAACS. -

Not under these clauses.

Mr. FRASER. -

Yes.

Mr. ISAACS. -

That is not correct.

Mr. FRASER. -

Yes, with regard to an unduly high rate.

Mr. ISAACS. -

I am sure Mr. Barton would not agree with that view.

Mr. BARTON. -

It would apply to any inequality on goods destined for Victoria and goods destined for New South Wales.

Mr. ISAACS. -

Yes, but it does not touch the particular point I am dealing with. I wish to say, in connexion with the railways, because they trouble me very much,
that we shall get the very best and most impartial information we can. We will deal with this matter, as we intend to deal with every other matter which troubles us, in the fairest and most impartial manner, and I think it is due to the people whom we represent that that course should be adopted. Now that I have dealt with these subjects as lightly as I possibly could, I want to say a word in regard to other matters, such as the absence of certain provisions which we sought to insert, in regard, for instance, to the referendum. Believe me, sir, that no feeling whatever, no personal feeling, can ever prompt us to refuse assent or to colour advice because any proposal that we had suggested has not been adopted. This is too high and majestic a matter for any such feeling to enter into the question. It is beyond all personal feelings. It is even beyond local feelings so long as a fair measure of justice is preserved. Therefore, I am sure we shall be believed when we say, and I speak for more than myself, that no element, however slight, of personal consideration could for an instant be permitted to enter into the determination of this question. But with regard to the referendum, undoubtedly we regret extremely that some such provision has not been inserted. I regret that it should have been referred to to-day as a poison. I am not going to repeat arguments previously addressed to the Convention. I feel this is not a time to do so, but may I be permitted to read half-a-dozen lines which, I think, are worthy of attention, since my honorable friend not unfairly has given his opinion with regard to this great question? It is a matter which I hope, when we come to consider the whole Constitution, will be open for the consideration of the people of the future Commonwealth. The quotation I refer to is in the book to which my honorable friend (Sir Richard Baker) alluded. I do not think he named the book, but he gave a reference from it. It is by Charles Borgeaud, and is called Adoption and Amendment of Constitutions. It is a remarkably fine work. In dealing with the whole question of the referendum he says-

The Swiss peasant, journeying to the next village in his Sunday garb to deposit his "Yes" or "No" in the urn at the school-house, would shake his head incredulously if told that his act may have an interest for men outside of his own country, living far away beyond the mountains. Yet such is the case. The old historic nations are marching, one after the other, or are preparing to march, toward democracy, like the columns of an army, slowly advancing into an unknown country. This peasant is a scout of the advance guard of this army.

I believe those words are eloquently and absolutely true, but still, although I have fought to the best of my humble ability to secure the insertion of some provision that would be a step in that march, it has not met with the approval of the Convention. It is true, as was pointed out in
the columns of a leading journal, that there is no cause for despair, because three colonies showed by the presence in the minority of their Premiers and two Ministers, besides other gentlemen of known ability, ex-Ministers amongst them, that they approved of the principle; and we must also recollect that amongst the majority on the other side there were ten of our honorable friends who have not been elected directly by the people to this Convention. But, however it may be, I do not desire for an instant to enter into the merits of the controversy. The time is past for that, but I think the observations of my honorable friend might not be unfairly added to by the words I have just uttered. The Bill is before us. I said I had a message from Sir George Turner, and, as the lawyers say, for greater certainty I will read a portion of his note to me of a few days ago, which embodies the words I desire to communicate. And I wish to say that they entirely accord with the views that I hold and have sought elsewhere to express. Sir George Turner writes-

I am not altogether satisfied with the Bill; but I intend, after the lapse of a fortnight, to carefully consider the whole question, and if I can possibly do so with justice to Victoria, I will recommend the people to accept the Constitution.

Now, sir, that is the attitude which, I think, is the right attitude-

Sir JOHN DOWNER. -

For everybody.

Mr. ISAACS. -

Yes; I think that is the right attitude for everybody to assume. We have now done our best, according to our respective lights, to obtain the insertion, or to prevent the insertion, in this Constitution of certain provisions. I am sure that the whole Convention have striven with the utmost friendliness, I am glad to say, right through the Convention, with the utmost harmony-for I disregard altogether some insignificant little passages which have no permanency in the minds of honorable members or in any other way-I say that with the utmost harmony and good feeling on the part of the representatives of every state to the representatives of every other state, we have sought, to the best of our ability, and without sparing ourselves in any shape or form, to frame a Constitution in accordance with the mandate that sent us here. Now, sir, it behoves us, therefore, in the manner plainly indicated by the motion to which I have the honour to address myself, and which I cordially support, that we shall take every means of enabling the people of our respective countries to familiarize themselves with the contents of this Bill and with its effect. And also, we should do this: We should endeavour, calmly and quietly ourselves, to
obtain in our own minds as correct a picture of what the future of the Commonwealth will be under this Bill as we possibly can.

Mr. Barton. -

Hear, hear.

Mr. Isaacs. -

I am glad to hear that approving cheer of my honorable friend. I am sure we are as one on the subject, because no man-I venture to say it for myself, and I believe I may say it for others-no man, however he has laboured in this Convention, however he has given his mind to the great questions that have presented themselves from time to time, can be sure that he appreciates, in their relative importance, the effect of the various provisions of the measure that we have framed. There is no doubt that it is a serious responsibility each one of us has to take, and we must recollect that the responsibility is not for ourselves alone, nor even for those who surround us at the present moment. We are speaking, when we do speak here, not to this Chamber, not to the people who are outside merely, but we are also speaking for and to future generations, and, therefore, we should approach the matter, as it seems to me, with calmness, with consideration, with sobriety, and with solemnity, and we should make sure, as far as it is possible to make sure, that the resolve we ultimately form, and the advice we ultimately give, will be unattended, in any event, and under any consequences, with any degree of reproach. This Bill, if accepted, will lead us, to a large extent, upon an unknown track. Is it too much to ask that we shall endeavour to throw all possible light upon the yet untrodden path we are about to traverse? Is it too much to ask that the light that we seek to get in this great enterprise shall not be a mere momentary flashlight, gaudily coloured, it may be, but shall, so far as we can secure it, be the purer and clearer search-light of our intelligence and calmer judgment. We may do all this without any undue consumption of time. We may do it, and we shall do it with the highest satisfaction to our consciences, and to those whom we ultimately have to address; and I therefore think that, remembering the enormous burden that there is upon our shoulders, remembering the magnitude of the task that lies before us, no less great, no less important, than the task which we have just accomplished, we are compelled to move soberly and calmly if we are to do our duty as we are expected to do it. That is the least that can be expected from every member of the Convention, more particularly, it seems to me, from those members who happen to occupy positions of responsibility in their respective colonies; and feeling that, and being in absolute accord, I am proud to say,
with the right honorable gentleman at the head of the Government of which I have the honour to be a member, it is our intention to carry out the spirit of this resolution now proposed by affording the people every means, so far as we can - every fair and legitimate and reasonable means - of coming to a just conclusion upon the merits of this great matter. I believe, sir, there is not a member of this Convention who is not urgently desirous of achieving federation. For myself, I say there is no dearer hope of my heart than to see a Federated Australia; and, in the ultimate result, while approaching this matter with an unshakable determination to do my duty to the people who sent me here, as well as to myself, I do earnestly trust we may find, after all the investigation and care we shall have given to the matter, that our duty is so irrevocably linked with our desire, that we may be able to offer our strongest advice to the people of Victoria to accept this Constitution.

[The President left the chair at fifty-one minutes after twelve o'clock p.m. The House resumed at five minutes past two o'clock p.m.]

Mr. HOLDER (South Australia). -

As while you, sir, are in the chair I am the senior representative of South Australia upon the floor of this chamber, it is to be expected that I should say a few words upon the present occasion. I do not want what I have to say to be taken as purely formal and official, because the words that I shall utter will express the earnest convictions to which I have come; and especially in regard to the matters about which I shall speak first, I desire that there shall be an utter absence of anything merely formal and official. I want, first of all, to express, on behalf of the South Australian representation, to the colony of Victoria, and to the Ministry of this great colony, our very sincere thanks for the boundless hospitality and kindness which has been shown to us ever since we came to Melbourne. We were most hospitably treated in Sydney; we have been equally welcomed here. In each city there appears to have been the desire to outdo the other in this respect. But that has been impossible.

Mr. ISAACS. -

We have only tried to reciprocate your kindness to us while we were in Adelaide.

Mr. HOLDER. -

I hope that the time which was spent in Adelaide was as pleasant to the visiting representatives as the time which we have spent under the care and hospitality of the Government of Victoria has been to us. I think that a word is due to those who have laboured, not merely to make our stay pleasant, but to assist us in accomplishing that which we have had in view. Speaking for myself, I consider that the reporting of our debates has been
remarkably good. There has hardly been the need of even trifling verbal alterations, and the way in which the speeches have been reported, transcribed, and committed to print has left nothing to be desired. I am quite sure that in the permanent record of our proceedings we have a document entirely worthy of the purpose we have in view. By the other officers of the House—the attendants and others—nothing has been shown us but kindness, courtesy, and attention at every turn, and I am doing no less than ought to be done in bearing this testimony to the value of their services. From them I pass to the officers of the House who have been directly concerned with the business of the Convention. Both the Clerk and the Assistant Clerk unceasingly, both in the chamber and outside in their spare time, have devoted no small amount of attention, care, and skill to the performance of their work. Then I come to those who have guided our deliberations to a very large extent—the members of the Drafting Committee. To our leader, the honorable and learned member (Mr. Barton), we owe a debt that we can never repay. I am sure that it is hopeless to talk about any recompense to that gentleman short of that which he has set his heart upon—the recompense of seeing his work crowned by the ultimate acceptance of the Constitution by the people of Australia. I hope for his sake, as for the sake of all of us, that this result will accrue, and that he will be rewarded in this way for the time he has given to the Bill both during the sittings and upon other occasions. To him and to the other members of the Drafting Committee we owe a large debt of gratitude. Of the work of the Chairman of Committees I also wish to say a word or two. Though that gentleman is one of my colleagues in the representation of South Australia, I may perhaps be allowed to say that his work has been of the utmost assistance to us. In the chair he has never for a moment lost the thread of orderly debate. He has kept us to our work, has seen us through very many difficulties, has helped us over several stiles where we might otherwise have come to grief, and has earned the approval of every member of the Convention as being a most capable Chairman. I thoroughly agree with the view expressed by the honorable and learned member (Mr. Isaacs) and others as to the dignity and ability with which you, Mr. President, have discharged your duties. Now, a word or two upon the Bill itself. I want to make a remark upon a point which was overlooked by our leader in the able speech delivered by him this morning, and that is as to the more frequent insertion than ever of words in many of the clauses providing that the enactments therein contained shall be "until the Parliament otherwise provides." That is a very important matter. Had those words not appeared so often as they do, the Constitution would have been
somewhat of a cast-iron, or, to use another expression which we have heard, of a hide-bound character. How frequently these words appear only those who have gone carefully through the Bill will understand; but where they appear it means that freedom has been left and scope allowed for the growth and development of the public feeling and sentiment of the people of these colonies. These words mean that our Constitution is not a hide-bound one, and is not incapable of expansion to meet the increasing demands likely to be made by the people from time to time. Alterations of the Constitution will, doubtless, become necessary as time goes on; but I think that the measure, as framed, is of such a character as to postpone to the furthest date the necessity for any considerable alteration. That is largely because of the frequent insertion of the words to which I have referred, giving power to the Federal Parliament to alter conditions from time to time, and to expand provisions which might otherwise have been found somewhat irksome. I do not propose to enter at very great length upon a discussion of the details of the Bill, but there are two or three matters to which I wish to refer very shortly. First, so far as its financial provisions are concerned, I do not think it would have been possible for us, without the gift of prophecy, which we do not pretend to possess, to have laid down much more definitely than we have the exact method in which a surplus, the dimensions of which we cannot measure, should be distributed between the various states. We have adopted a plan which I never liked very well, and from which I should at the present moment like to escape if I saw any escape, but a plan which is eminently just and fair. We provide for the ascertainment as regularly and definitely as possible of the contributions from each state, and then for the due return—under the amendment carried by the right honorable member (Sir Edward Braddon)—of a fixed proportion to the states concerned. I think that that is a provision against which no serious argument can be brought. During the five years through which this provision must prevail the Parliament of the Federation will gain experience, and in the light of that experience will be able to deal further with the matter as time goes on. We have also provided for elasticity in dealing with the finances. One of the most important questions which will have to be faced is that connected with the debts, and I associate with it a matter which must be associated with it—the control of the railways. These are subjects which have so much in common that one can hardly be considered without the other. I am very glad that a provision which would have had the effect of placing the federal guarantee behind the separate state loans without any adequate compensation has been left out of the Constitution. That that federal guarantee will be given in the
early future I fully believe, but it ought not to be given in this Constitution. We have provided that the debts of the colonies may be taken over by the federal authorities at, I take it, the earliest possible moment, which means, so soon as agreements can be arrived at between the central authority and the states, and so soon as a fitting business arrangement can be come to with those who hold the bonds and stocks of the colonies today. To take over the debts of the colonies before would be mischievous, but when these arrangements have been come to, the principal and interest of the state debts will be made a federal charge, proper debits, of course, being made to the various, states concerned. I have been looking since I was speaking a few days since at the rates at which Canada has been able to borrow money, and I find that the Dominion is able to obtain money in the London market on much more favorable terms than any colony of this group. I see no reason why that should be, except that the Dominion of Canada is a Federation, which is able to offer the security not of one state, but of all the states jointly and severally; and when we are in a similar position, standing before the financial world as a Federated Australia, and able to give such security, I have not the slightest doubt that we shall be able to obtain terms as favorable as those which are now obtained by the Canadian Dominion. Then again, there will be the possibility of inducing the investment of British trust funds in Australian stock; and I can conceive of no argument so strong for inducing the British Government to allow the holders of trust funds to invest them in Australian stock, as the argument which would be available to the Federal Treasurer having all the Federation securities at his back. I confidently believe that federation will be speedily followed by the adoption of the provision to which I refer. The railways we have provided for under the Constitution, and provided for, again, in the wisest possible manner. Had it been set out that the railways were to be taken over by virtue of the coming into being of the Commonwealth, we should have aroused fresh antagonism. There are enough antagonisms against this Bill already, and it would have been a misfortune to have aroused others.

Certainly others would have been added had we provided for the compulsory taking over of the railways by the Federation. We have, however, provided simply that the railways may be taken over by agreement between the Commonwealth and the states on terms to be agreed upon, and this provision will enable the complete federalization of the railways to be brought about. I have listened with attention and interest to the remarks of the Attorney-General of Victoria (Mr. Isaacs) upon the railway question, and my remark upon his observations is this: If the
difficulty prove as serious as he imagines, it will be the strongest possible argument to commend the Bill to the Victorian people, seeing that the provisions of the Constitution relating to the railways provide for the possibility of their complete federalization. I think the answer to the objection raised is this—that we have provided in regard to railways that they may be dealt with in the best possible way and at the earliest possible moment, so as to prevent antagonisms and not create them, and so as to help on and not stand in the way of the realization of the federal idea. With regard to constitutional issues, there are a few remarks which I should like to make. Of course, the Bill is not perfect. No human work is perfect. But the question is not whether the measure is perfect. We could have answered that question in the beginning, because we knew in advance that we could never make a perfect Bill. We know that it could never have been perfect by any possible contingency. But we may claim that it is sufficiently perfect for a free and self-reliant people to live under its rule with their freedom undiminished; and my answer to those who ask whether the Bill is acceptable in this light is this: When we met in this Convention we entered upon a task in which we realized we should be untrue to the trust reposed in us if we had not dealt with the matters which came before us with the sense of responsibility resting upon every one of us that we were dealing with matters on behalf of independent and self-reliant states. And we have dealt with those matters on which the interests of the states clashed, we have harmonized the interests of the several states where they differed, and we have provided a Constitution sufficient to provide for the fullest and the most self-reliant government of a free people. We have created an instrument of partnership between us which, I believe, while it secures the independence of the several states, will provide for the joint control of certain matters, at the same time as it also leaves free and complete self-government on all matters not committed to the central authority. And this, it seems to me, is what we should have done—to provide that national questions should be federalized, and that local questions should be left to local self-government. And it is this, it seems to me, that we have done; and thus we have done what we ought to have done and what our constituents expected of us. We have framed a Constitution of such a character that I have no hesitation in asserting that under it class privileges have no place, and sectional representation disappears. The Senate, as we have provided for it, is not a Senate elected as the Upper Houses of our various states are elected now, but as "broad based upon the people's will" as is the House of Representatives itself. The suffrage, to begin with, will not be quite uniform. We shall, in South Australia, have the lead to some extent at the beginning, but I believe that the other
colonies will speedily come into line with us. But at least this is sure, that manhood suffrage will be the basis of the franchise of the Constitution, and, with that as the foundation principle of the Commonwealth, I do not see how the Constitution can be described as being other than a popular Constitution. Then we have provided a method for dealing with any disputes that may arise between the two Houses. We provide that both Houses shall, in case they cannot agree, go back to their constituents and get fresh instructions. So that here also we still keep the same fundamental idea in view, that the people are those whose determination shall settle any question, great or small, that may come up for settlement. We have further provided for the referendum, concerning which my honorable and learned friend (the Attorney-General of Victoria) feels so strongly. We have engrafted the principle of the referendum upon this Constitution, by providing that no alteration of the Constitution—no expansion or limitation of its provisions—can be made unless the people are consulted and given the decision of the question. This being so, it seems to me that any description of this Constitution as being anything less than the most liberal, the most popular, of Constitutions would be a misdescription, and not a true description of its characteristics. I do not believe, either, that our efforts at reform will cease by the adoption for the Federation of an equal franchise for both Houses, as laid down in this Bill. It seems to me to be impossible to believe that, if we enact such provisions with regard to the Senate of the Commonwealth, the restrictive franchises for the Upper Houses in our various states can much longer continue. It seems to me that the influence of the federal franchise for both Houses must be in the direction of bringing about a reform in the constitution of the Upper Houses as we have hitherto known them in Australia; and thus, in the early future, I believe we shall possess, not only for federal purposes but for state purposes, Constitutions which, while abolishing all class privileges, will confer upon the citizens as a whole those equal rights in respect to the government of their country which we desire the people to enjoy, and which they demand at our hands. I do not propose to detain the Convention by pointing out at any length the advantages that will arise from the adoption of this Constitution. I believe that there will be advantages to the traders, advantages to the producers, advantages to the consumers of all classes of the community, advantages to those who work with their hands and to those who work with their brains; and without occupying time in detailing all the advantages that will arise, I will say that I can conceive of no class which will not benefit from the incoming of this federation which we are striving to bring about. I can conceive only that the mere partisan, the
person who is more governed by his prejudices than by arguments and by calm judgment—these, and these only, can bring forward what they may conceive to be arguments against the adoption of this federation scheme. I know that there has been in reference to our proceedings today some sense of parting; there has been a feeling of having come to the end of our labours. But, sir, I shall express the hope that we are not viewing the setting of the sun and the end of day when we contemplate the conclusion of the laborers we have all participated in; but that we are looking at the oncoming dawn, in which these colonies shall witness the termination of their period of isolation, so that this great Australia may stand before the world as one whole, taking her true position amongst the nations of the world; and that after that dawn shall come the rising of the sun in all its brightness, upon that day of federation towards whose oncoming our labours have been devoted.

Mr. DEAKIN (Victoria). -

May I be permitted, without repetition, to echo and indorse the acknowledgments that have been made to you, sir, for the distinction with which you have presided over this Convention; to Sir Richard Baker for the masterly manner in which he has controlled the very prolonged proceedings in committee, and for the marvellous skill with which he has been able to simplify our work; to the Drafting Committee for having produced a work which will be their best monument; especially to our leader, for the labours by which he has placed us all under a heavy debt of obligation to him, which labours have ended in his extremely concise and lucid exposition of this Bill; and, also, to the Clerk of this Convention and his assistants in all the colonies, to whom we owe so much that is not apparent upon the face of the printed reports of our debates. Then, sir, if I rise, it is not for the purpose of adding to the detailed criticism of this measure, but, so far as I can, to view it in its most practical aspect, especially in the light of recent criticism. Speaking today, one is taking advantage of the arrangements which have been made for the reporting of our proceedings in Hansard; and this is probably a suitable place, especially for one who imposes so great a task upon reporters, to speak in the warmest terms of the work, admirably performed under all difficulties, of those who have accomplished the transformation of our utterances into the Hansard reports.

HONORABLE MEMBERS. -

Hear, hear.

Mr. DEAKIN. -
The first criticism to which I desire to offer a word of reply is that which minimizes the issue about to be placed before the several colonies by the assertion that in any case its negation simply means postponing an achievement of whose ultimate accomplishment there can be no doubt, and that such a postponement need be but for a very short period. That is certainly an extremely optimistic view of the situation. The federal movement is almost as old as the colonies, and this particular form of it, which has now reached its climax, is five years old. It had its inception in the Corowa Conference of 1893, and was not officially adopted by the Premiers in January, 1895. It was considered at the Bathurst Conference in November, 1896, and its ultimate result was the creation of this Convention, which commenced its sittings in March of last year. These sittings had to be terminated at an incomplete stage, and quite unexpectedly, because of the demands made by other duties upon many of the representatives. We adjourned to Sydney, where we believed that our task would be finished; but again local demands made their urgency manifest, and a second unexpected adjournment took place. There have been proposals that even this last and most prolonged session of all should be adjourned for a still further period, in order to afford time for the accomplishment of our task. If we recall the five years which have been spent in getting the Convention together, and the difficulty that has been felt in keeping it together, even when it has been elected by the people solely for this purpose, we shall be better able to realize the task that will lie before us if, most unhappily, this effort after federation should fail. All this work will practically have to be done again, and although we may fairly claim that public opinion has been ripened and public judgment matured by the discipline and education through which we have passed during the last five years, it is certain that in the future local emergencies and political urgencies will be no less keen than they have been in the past. They kept us waiting for years before the Convention could assemble, they twice disturbed its onward progress, and they may easily be of such a nature as to postpone the success of any future effort for an even longer period. Consequently, those who would have us set aside our work at its present stage, as if it could be resumed at any time, are presuming beyond and in the face of our experience. Then it is perfectly true that, even if this effort should fail, the federal spirit is not likely to die. It never can pass away until it has accomplished the object we have in view. To judge by official statements, it may well be that if this great effort fails we shall have the work removed to a lower plane, and the solution sought in a weaker, a poorer, and a confessedly transient form of federation. We shall
be asked, instead of achieving a true federal union, to be pacified for some years with a partial federation, which must break down sooner or later, to the great prejudice of all concerned, as did the preliminary and utterly unsatisfactory union of the American colonies before they entered on their full federal career. We hear, and have a right to hear and to attend to, the warnings with which we are favoured as to the dangers of union, but are entitled to reply by asking that the account should be balanced by some estimate of the dangers of disunion. Disunited we are, and, should this effort fail, for many years disunited we must remain. The perils which are thus involved, not only from without, but from the growth of warring forces within, should be taken into consideration at the same time as the risks of union are carefully measured. To the demand for the fullest and most careful criticism of this Bill, no honorable member can have an objection to urge, and I, for one, welcome the calm and studious examination of it from both sides by my honorable colleague the Attorney-General of Victoria this morning. Not one comment of his should be put aside until it has been answered by calm reason and a recollection of proved facts. The task of criticism has been rendered more easy to those outside the Convention by the necessities of the procedure to which we have recently been submitted. It has been our duty on the floor of this chamber to ignore the glowing colours in which we might have painted the merits of the scheme we are debating and the advantages that are to flow from it. These have been tacitly assumed, while voice has been given to every possible criticism and every possible forecast of danger which the keenest and most sensitive imagination could conjure up. The consequence is that the record of our proceedings is a record of the search for all possible faults which could be found, or, under any set of circumstances, thought likely to occur. For the purpose of perfecting the drafting, language has had to be strained to the breaking point, and beyond it, in order that every possible application of every phrase under the most exceptional and remarkable conditions might be made clear before it was finally adopted. We have been examining therefore the abnormal and not the normal developments of the Constitution. We have been seeking for and exposing its defects, and not its merits. The task that begins for all of us to-day is to exactly reverse our procedure. Now that the Bill has been finally adopted we must remit its defects to their true place, so that they may be seen in their true perspective, while bringing before public attention once more the overwhelming merits of the Constitution that we have at last succeeded in shaping. While we have been, and rightly, keeping before us at all times the ideal Constitution which we hoped to create, we have had to remember that even ideals differ, and are often in absolute conflict. Our task has not
been to realize an ideal common to us all, but to realize ideals which
embody, as Sir Richard Baker has shown, at all events, three distinct lines
of thought, seeking to express themselves in three largely differing forms.
We have had conflicting ideals, and not a little of our difficulty has been in
grafting one upon another so as to produce a whole which, without being
too complex, should sufficiently embrace the general ideal of the whole
Convention and its differing sections. We recognise at the outset, and it
cannot be too often repeated, trite as the phrase is, that perfection of any
kind is impossible to us. We do well to aim at it, but we surely act
unwisely if we demand absolute faultlessness in our Constitution, and
refuse to accept anything that comes short of it.

It has been said that we may marry in haste and repent at leisure, but we
may also refuse in haste and repent at leisure, none the less bitterly. If
either sex insisted upon absolute perfection, there would be no marriages
either in haste or leisure. Moreover, it is not the acceptance of a new
obligation that alone involves risk. There is the risk of accepting a low
ideal. The minor and the smaller success that belongs to a shrunken and
narrow federation can never be contrasted with the effort after a greater and
nobler union, even if that be attended by some measure of failure.
Perfection is unattainable in any sphere. Even our national emblem—the
Southern Cross—is not perfect, nor perfectly proportioned, nor equal in all
its members, and yet it shines supreme in queenly brilliancy above all its
sister constellations of the southern skies. Though we remember the ideal,
we shall surely not ignore the possible nor forget the actual. It is from the
stand-point of the actual that we must regard the Constitution which is
placed before Australia to-day, and I think we need not fear the result. Is
the actual condition of Australia's politics and policies ideal? Do we run no
risks as separate communities? Are we faced by no dangers, financial or
otherwise? Why are we here, if not in obedience to a demand, widespread
and born of a universal recognition of the fact that the condition of the
colonies to-day is not one with which the people of the colonies are or
ought to be satisfied? When our critics urge that we should show the merits
and advantages of this Constitution, we must begin by deducting the
demerits and the disadvantages under which we now labour, and from
which this Constitution offers us an escape. If our present Constitutions
were ideally satisfactory we should not be seeking a Federation. Of
necessity in framing a Constitution, we must, taking the largest view of the
situation, allow for what we are avoiding as well as reckon what we are
hoping to gain. I do not propose to say much in regard to what may be
termed the purely political aspects of this measure, except to question the applicability of Sir Richard Baker's metaphor that the Federal Senate is to be the pivot of the Constitution. It appears to me that the responsible government which we are inaugurating will be the pivot of the Constitution, and the support of that pivot will necessarily lie in the National House. This is not urged in depreciation of the force of the argument, which Sir Richard Baker employed. The great growth in dignity, importance, and power of the Federal Senate as compared with our own Upper Chambers is indisputable. In that respect, I heartily indorse his reading of the Constitution. It is the fact that the Federal Senate is to be brought into closer touch with the manhood, in some colonies with the manhood and womanhood, that is, with the citizens of the whole of Australia, that will give it power, strength, and prestige. The provisions which some of us supported, though they appeared to the advocates of Senate control to be fatal to their aspirations, were not inserted in the Bill with the object of rendering one Federal Chamber subservient to the other. They were made with the simple and direct object of bringing both Chambers into touch with their constituents and allowing their constituents to determine their differences, instead of involving them in party and internecine warfare, prejudicial to the transaction of public business, and injurious to the common weal. Sir Richard Baker's view, indorsed though it has been by the Hon. Mr. Isaacs, appears to me to need great qualification. It needs the qualification that in this Constitution more than in any other Federal Constitution in the world, and as much as if not more than in any unitary Constitution in the world, both Chambers are brought into direct relation with their constituents and their constituencies, especially on matters of difference. It is from this close and intimate relation that those who think with me foresee the best prospects for harmony-foresee the best prospects for the working of the legislative machinery-foresee the best prospect of general agreement, both Chambers devoting themselves sincerely to the interpretation and execution of the mature and deliberate will of the public. It has been said that one respect in which we have relaxed from the Bill of 1891 is in the limitation upon the number of members of the representative Chamber. And so far I agree with that position. At the same time, it cannot be ignored, and might have been mentioned, that some limitation of the numbers is essential if the provision for the joint sitting is to have any meaning whatever. That sitting has considerable value. If the joint sitting is ever to allow fair consideration to those representatives of the people of the several states who sit in the Senate chamber, there must be some fixed
proportion between them. If the old proviso of one member to 30,000 had remained, in the course of a few years we should have seen the Senate asked to unite in a joint sitting with a House three or four times its strength. Under these circumstances, what meaning would a joint sitting have had? What significance would have attached to it? What solution would it have afforded of any difficulty in which the states were concerned?

Mr. BARTON. -

The three-fifths condition would have been useless.

Mr. DEAKIN. -

Any fractional condition would have been useless under the circumstances.

Mr. SYMON. -

The Senate would have been a perfect delusion.

Mr. DEAKIN. -

The result would be government by a single Chamber, and that, speaking for myself, is what appears to be an entirely unsuitable and inappropriate federal ideal. If we recognise that there must be some limit (although this limit is put in a hard-and-fast manner, which appears to me unnecessary) we must admit that by this three-fifths provision we have come as close to the acceptance of the referendum as is possible to go without altogether departing from the principles on which responsible government has been worked in the past, and on which responsible government is being worked in the present. The double dissolution means an appeal to the whole people in the same way as the referendum, except that instead of being governed by a count of the states and the people as a whole, the states return their senators and the people of the Commonwealth their representatives. The two acting together will, in nineteen cases out of twenty, decide as the referendum would have decided. The only difference is that there must be a majority of voters in its favour sufficient to obtain a three-fifths majority in the two Houses. That means not much more than the simple majority of voters which, under the ordinary referendum, would have attained the same end. Consequently, we may say that in nineteen cases out of twenty the joint sitting with the three-fifths principle would provide for the settlement of questions just as the referendum would have settled them, while preserving the representative character of our institutions. It appears to me that, as every Executive which challenges this double dissolution must take its life in its hands, and imperil the seats of all its followers, you may rarely see the provision brought into actual operation. From my experience of colonial Governments and their supporters, a burning ardour for dissolution scarcely arises once in three years. When the election does come it is welcomed by no one with satisfaction except those who think
they see a chance of turning their minority into a majority. That being the case, those in a majority-the Executive, which has the choice—would take care they do not give the minority an opportunity if they can prevent it. It is a very gratifying thing to be able to dissolve an obstructive Senate, but to have to stake your seats on your success is very awkward. That is the security of the double dissolution. Under these circumstances it

appears to be little more than the referendum, with a penalty attached to its misuse. One danger which even those who advocated the referendum for local affairs have recognised is that the referendum might be too readily, too frequently, and unnecessarily resorted to, and that, consequently, responsible government, with the authority and sense of duty of the representatives, might be impaired. Even if we think this danger is overbalanced by other considerations, we must all recognise that, at all events, there is such a risk. Under this Bill we have practically a referendum to the whole people, with the important qualification that before the Executive resort to it by means of the double dissolution they have to prove their belief in the importance of their cause, and their confidence that the country indorses their view, by staking all they politically possess on the hazard. That, I think, is a very important preliminary. Speaking of the political provisions of the Bill, it appears to me that they may be fairly said, not only to mark a great advance on the Constitution of 1891, but to be vastly more liberal than any of the Constitutions under which we at present live. Not one of the Constitutions under which we live provides a more liberal franchise, or applies it to both Chambers under the restriction of one man one vote. No Federal Constitution in the world provides the safeguard of a double dissolution and a joint sitting. Although the Norwegian Constitution approaches the Constitution we have framed in character, there is no Federal Constitution in the world so liberal. We must remember that this Federal Constitution is to be built up out of two quarries. The first quarry is the existing powers of the local Parliaments, which are called upon to make certain surrenders. By these surrenders, liberal electors will observe that we are taking powers in every case from a less liberal Constitution, and referring them to a more liberal Constitution. Every existing Constitution in Australia is less liberal from a political point of view in its framework and machinery than the Federal Constitution. Liberal electors will note, therefore, that whatever powers they sacrifice they are transferring to a more liberal Government, over which they have a readier control. As to the new powers with which the Federal Government is endowed—and that is the other quarry—liberal electors will note that not only in the future will they be endowed with
powers which they have not at present, but that those powers will be exercised under a more liberal Government than they now enjoy. For my own part I have no hesitation and no fear in recommending the acceptance of this Constitution to the people of Victoria. I do not ignore, though proposing to deal very briefly with the question of material losses and gains, which remains to be reviewed apart from political principles. Here it may not be out of place, in view of the criticisms which we are at present receiving, to recall, to the critics themselves, the forecasts which they made of the material advantages to be obtained from federation before this Constitution was promulgated at every time when discussion arose. We are all agreed that the adoption of this Constitution must mean, first, the establishment of complete intercolonial free-trade, and we have heard much of its commercial and monetary advantages and of the increased production which it will secure. We have heard that magnified for many years. Now, it appears to be totally forgotten. We have not only that prospect, but, looking at the policy pursued in four out of the five colonies represented, we have it, according to the admission of so fair-minded and clear sighted a representative as Mr. McMillan, of New South Wales, that there will be no mere revenue Tariff. We are certain that it will not only be a protective Tariff in general principle, but, as it must raise considerable sums of money, and express the will of four colonies which practise protection, it follows that the protection afforded to our industries established under the policy will not be nominal or inconsiderable, but considerable and extensive, from the first Federal Tariff. Even the free-trade party, judging at all events from the utterances of some of their leaders, will not seek at the outset of the Commonwealth career to force their principles, when they know that their success, if it were possible, would imperil the position of four of those colonies, and that there are tens, and even hundreds, of thousands of citizens of the Commonwealth who would be prejudicially affected by such a policy. I believe, personally, that the enormous advantages that must follow from the sweeping away of the boundaries between the colonies will be obtained under a high Tariff, distinctly protectionist in all its details, and yielding a large revenue, without the sacrifice of a single industry in Australia. These large general incalculable gains require to be continually borne in mind at the time when individual losses of individual colonies are taken into account. It appears to be forgotten that all these losses have to be deducted from the great general gain which each individual colony will receive under the provisions of the Constitution. We enter on the calculation of individual losses with this
knowledge, and are perfectly well prepared to meet a great many of them, and yet have a balance to our credit from our general gains. Subject to this, let us take a few concrete instances of anticipated losses. My reading of the six clauses dealing with the Inter-State Commission and the control of the railways, is not that of my friend the Attorney-General for Victoria, though I quite admit the cogency of his interpretation. These clauses, if put into plain and simple language, seem to say:"You shall create a body composed of responsible and able men in whom you will be able to place as much confidence as you place in the Judges of your Supreme Court. Having created that body, you are to lay before it a variety of guiding principles, some of which must necessarily come into conflict. You say that trade shall be perfectly free, and that each state when the border barriers are thrown down shall be forbidden to make any charges or reductions on its railways which will have the effect of diverting the trade from its natural geographical routes-from ports offering the greatest advantage not to the state receiving the traffic, but to the people sending it." The first consideration of this Inter-State Commission would be to enable people to send their traffic to the cheapest and nearest ports, and without loss of time, to get their produce to the place where it could be most profitably exported or sold. That is subject to certain other conditions. A state is to be allowed to develop its own territory, and make special reductions or special charges where the construction of railways has been costly, but no state is to act unjustly or in an unfair manner to its neighbours in framing its rates. Now, it is quite possible that these considerations will, in some respects and to some extent, come into conflict. But my reliance is that the Inter-State Commission will exercise the free mind which our own courts have exercised at times, and which notably the great Federal Court of the United States of America under Chief Justice Marshall boldly and consistently exercised throughout. They will feel that they are, by appointment and function, a truly Federal Court. They will give a federal interpretation to all these provisions, unless the context clearly forbids them so doing. Their guiding principle and object will be not to fetter trade, not to encourage differential rates, not to permit preferential rates, or any interference with freedom of commerce. Reading those clauses as a whole, they appear to apply in such a manner that, though none of us can precisely forecast their exact consequence in a particular case, the result which we are entitled to expect, if the members of that commission are worthy of their position, as no doubt they will be, must be fair to all. If they rise to the occasion, and feel their federal responsibility, they will deal with this vexed question in such a manner as to do injury to none. Victoria has undoubtedly something
to apprehend in regard to the operation of the 103rd section taken by itself. But, reading the whole of the clauses together, looking at the question from a practical point of view—recognising that these clauses sweep away preferential rates at present existing in New South Wales as well as in Victoria; realizing that, after all, no Inter-State Commission can ignore geographical facts, that it cannot make 200 miles as long as 400 miles, and that they must recognise the well-being of the settlers of the interior as first to be considered—I am inclined to believe that in the ultimate result Victoria will receive no injury from the operations of these provisions. The sweeping away of the barriers which at present shut out some of the Riverina trade will lead to a greater business being done between that part of New South Wales and Victoria. The mere abolition of the stock tax, which is one of the necessities of the operation of a uniform Tariff, will bring tens of thousands of pounds of yearly income to the railways of Victoria, a great part of which we have lost for many years. So in a variety of ways these clauses will operate, not to the detriment, but to the advantage of Victoria. In striking a balance I am strongly inclined to believe no colony has anything to fear. Now, a few words as to the bounties. The Federal Parliament, representing the federal people, will be as sensitive to the appeals of the people for assistance as any local Parliament has been. The great federal industries of Australia—fruit-growing, dairying, agriculture, and horticulture—will be no less an object of concern to representatives in the Federal Parliament than they have been to representatives in the various local Parliaments indeed, the improved circumstances and more independent position of the Federal Government will allow them to deal with the development of these industries with a more liberal hand than the local Governments can deal with them. If our neighbours across the borders share in these bounties we cannot regret it and remain Australians; we cannot desire to escape that if we are federated. We must realize that where one great industry runs through several colonies, the interests of that industry are federal, and its encouragement must be undertaken by the Federal Government. While we lose in one direction we probably gain more in another. I see no reason why the future federal bounties should not be larger than those given by special states in the past. In addition to that, if there be an industry peculiar to one state, or of so small a character that the Federal Parliament does not feel disposed to take action in its favour, we have the means of assisting it from state funds on obtaining a resolution from both Houses of the Federal Parliament. We shall have 24 members in one House and six in the other, making 30 in all, to urge the claims of Victoria. New South Wales will have slightly more representation, and the other states will be as strong in the Senate, although
not so strong in the House of Representatives. The claims of all the colonies must meet with ready consideration from the Federal Parliament. The gain of one is not the loss of another. The development of an industry in any one state will be welcomed by representatives of other colonies in the Federal Parliament, because appeals will come for similar consideration from all. Looking at the practice of the past in the local Legislatures, and their sensitiveness to popular appeals of this kind, I have little apprehension in remitting to the Federal Parliament the granting of federal bounties, and retaining to the states, subject to its approval, the fostering of those peculiar to each colony. The complement of my argument with regard to the railways and bounties is that we must recall the actual position. It is said that under this measure we may have great losses on the Victorian railways, because we may lose traffic that now comes from New South Wales. Well, if we do not federate, the traffic which comes from New South Wales remains under the control of New South Wales. If New South Wales is prepared to cut rates far enough, and to impose dues high enough, she can inflict all the losses feared from the Commonwealth Bill. We have no power to prevent them. We have no means of urging a plea for equitable treatment. If we insist upon remaining independent we must take the consequences, and face the possibility of equal railway losses. We are not relieved from the possibility or prospect of railway losses by remaining outside the Federation. By remaining outside the Federation we leave the whole and sole control of such a question, not in the hands of an independent body of Federal Inter-State Commissioners, to whom we can appeal, before whom we have statutory rights, and from whom we can well claim consideration, but we leave the matter solely in the hands of the Government of New South Wales. If that Government is prepared to make the necessary financial sacrifices, and to take the necessary legislative steps, they are in a position to deprive us more effectually of the railway traffic than any Inter-State Commission can. Although one hesitates, even by way of illustration or argument, to represent as possible so hostile and unfriendly an act as that of the part of a neighbour, yet when we are looking at the Federal Commonwealth Bill in the light of the worst that can possibly happen under union, we are justified in looking at what is the worst possible that can happen under disunion. There is no greater railway danger under union than under disunion—there is infinitely less. On the one hand, we have a federal claim, a Federal Court, a federal appeal; in the other case, we must remain helpless and silent, unable to retaliate, and bound to submit. The same argument applies in regard to bounties. The present position is not one whit more to our
advantage as promising benefits for the future than it would be under
union. At present the finances of the various colonies are heavily drawn
upon. It is with difficulty that Ministries can be persuaded to vote bounties.
We require a Government in a better financial position than the
Governments of the states now are if we wish the system extended and
generally employed. I now come to the important question of the finances.
A fear has been expressed that the Federal Tariff may be so framed, and
the federal finances so managed, that the Treasurers of the several colonies
may find themselves left with large deficits. Well, unfortunately, deficits
are well known to all the states already; they have been frequent before
federation, and hence afford no novel terror peculiar to union. Still, with
four colonies out of the five joining this Federation, it is an absolute
financial necessity that at least £6,000,000 should be raised through the
Customs in order that they may receive back a sufficient sum to fill up the
deficiency left in their accounts by the transfer of their great revenue-
producing department. Under these circumstances, although the
representation in Parliament outside the Senate will not be quite four-fifths,
those colonies will have an overwhelming majority. An overwhelming
majority of the future Federal Parliament will be returned by constituencies
which will be compelled by the inevitable necessities of their situation to
insist upon at least £6,000,000 being obtained from the Tariff, so as to
place their Treasurers beyond embarrassment. There is no possibility of
loss to the taxpayers of the several colonies. It is a question of loss to the
states Treasuries, in consequence of the remission of a great body of
taxation at present levied upon people in the form of intercolonial duties.
The effect of clause 87 is to put the states Treasurers in such a position that
they will not need to come upon their constituents

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to make up this deficiency in their Treasuries, although the money has
remained in the pockets of those constituents. The federal financial
position need not be prejudiced by the fifth colony (New South Wales), for
after this Federation has been established there are certain concessions very
dear to the heart and nearest the mind of our neighbours. When the time
comes in the Federal Parliament for federal representatives to undertake the
government of their common country, there will be mutual adjustments and
concessions on every hand. The representatives of New South Wales will
be penetrated with the federal spirit. As I have more than hinted, there are
ambitions of New South Wales which are not satisfied in this Constitution,
and which require to be determined. The site of the federal capital is one,
and by no means the least important. It is perfectly possible, therefore, to
foresee that it will not be the rto the mother country, never so critical or so
serious to her, or to us, for 100 years as they are to-day. With the burden of a far vaster empire than she bore at Waterloo, we find Great Britain, as an empire, threatened in every part. of the globe, and at the same time, by great powers and great influences, often apparently leagued in their hostility. At a time like this, when the question of the control of alien races and the influx of alien populations has become, and threatens to become, a still more burning question in all these colonies, it is surely not idle to remind our critics that without union we must remain exposed to that and many similar dangers. Dangers without, and difficulties within, track the steps of disunion, and threaten far graver losses to every corner of the Commonwealth than the worst interpretation of union can possibly threaten. The federal future intrusted to a Federal Parliament of this type will mean the natural development of this great country in security and without disruptions. Mr. Holder has pointed to the permissive powers of this Constitution. It allows a drawing closer of the bonds and an increase of benefits; federalization of the railways; federalization of the debts in truth, it provides for the realization of the promise one people one prosperity, as well as one people one destiny. That will be the inevitable result. In this Constitution, although much is written much remains unwritten, and has to be supplied out of our experience of our own people, and our working methods in political affairs. Can we have any doubt as to how and whence the forces of union will be supplied? Is there any doubt but that when we enter the Commonwealth Parliament, federal spirit will increase federal spirit, until in the whole of our dealings, in our material losses and gains, and in the whole of our political aims and aspirations, there will be that hearty union which will enable us to confront and solve many of the problems which this Convention most unwillingly has been compelled to pass by. After all, and much as it accomplishes, this Constitution is but the

framework and ground plan of the nation that is to be. It is perhaps, by a wise discretion, that we have insufficiently and inadequately dealt with the difficulties with which we are at present perplexed. It is enough that we have provided the means of enabling those to deal with them who will be far better qualified for that task than we are. One word more. It appears to me that in each state the citizens of that state must submit to themselves this question-What will be our position if the other four states unite without us? We in Victoria have to face the possibility of the federation of four states, with a common Federal Tariff, federated railways, federated debts, and federated policy, and Victoria standing outside the hedge. New South Wales has to face the same prospect. So has South Australia, Tasmania, and Western Australia. Is there any colony of the group, no matter how
wealthy or powerful, that can afford to face that calamity—the prospect of a United Australia existing at its doors of which it is not a member? This is a grave and serious consideration which must be submitted to the electors of each colony. After that comes encouragement in the reflection upon the giant stride towards prosperity, power, and prestige which this union will enable us to accomplish. What a charter of liberty is embraced within this Bill—of political liberty and religious liberty—the liberty and the means to achieve all to which men in these days can reasonably aspire. A charter of liberty is enshrined in this Constitution, which is also a charter of peace—of peace, order, and good government for the whole of the peoples whom it will embrace and unite.

Mr. SYMON (South Australia). —

I wish to say one word or two before we part. I do not intend to enter into any detailed examination of, or any elaborate apology for, the Constitution which we have been engaged in framing. But, sir, no man can remain unmoved upon this momentous occasion. We who are assembled in this Convention are about to commit to the people of Australia a new charter of union and liberty; we are about to commit this new Magna Charta for their acceptance and confirmation, and I can conceive of nothing of greater magnitude in the whole history of the peoples of the world than this question upon which we are about to invite the peoples of Australia to vote. The Great Charter was wrung by the barons of England from a reluctant king. This new charter is to be given by the people of Australia to themselves. Upon the consideration of this question at the stage to which it has come, I think we may all join in the felicitations which were addressed to us by my honorable friend (Mr. Barton) this morning, that there should have been so much harmony, and so much dignity, and so much earnestness in the proceedings of this great Convention, owing its existence and owing its authority to the manhood and—in our colony—to the womanhood also, of the peoples of this country. Sir, the differences to which my honorable friend (Mr. Isaacs) referred were as mere ripples on the surface of the water. They are the natural incidents of that earnestness in debate which is attributable and becoming to serious men. Even I myself have been told that my natural sweetness of temper has shown slight signs of wear. But I hope, sir, if any word of mine or any departure from my natural equanimity has even seemed to wound any honorable member of this Convention it will be forgiven me, and that it will be understood that there was no sting in anything that I said that was intended to hurt anybody in the slightest degree. I may be permitted further to say this, that, however slight and inefficient my own contributions to the great work of this Convention may have been, there is one part which brings to me the very
greatest satisfaction, and that is that it was upon my own proposal, with the unanimous assent of this Convention at its first sitting in Adelaide, that my honorable and learned friend (Mr. Barton) was chosen to lead our deliberations and the proceedings of this assembly. I am proud of that, at any rate. We owe much to my honorable friend. It is very hard to say how much, but this I will say, that although I myself, in common with every honorable member, knew him to be a man of unusual capacity, unusual in any deliberative assembly, a patriot imbued with the glowing spirit of union, I do declare here that he has outstripped his reputation, and, through his efforts in this cause, he has become a cause of pride not only to every member of this Convention, but, I honestly believe, to every man in Australia-aye, every man, woman, and child in Australia who loves his or her country, and appreciates the advantages of union. I feel I must say that before leaving this chamber this afternoon. As to the Convention itself, I consider that it has fulfilled its mission. It has done its duty, nobly it has done its duty, and I believe that, before the people of this country, when the work comes to be weighed in the balance it will not be found or pronounced wanting. I feel I may say this; in fact, I should not have risen at all but for the fact that my position here is somewhat different from that of most honorable members. I am not a Minister of State. I am not even a member of any Parliament in Australia. I am not even in the usual sense a public man. I am simply a private citizen, a remark which is also applicable, I think, to three other members of this Convention, sent here to represent a colony which holds the respect, and in some regards, is entitled to the gratitude of her sister colonies-sent here to represent that colony, with others, on this occasion, and for the purpose of this work. And, sir, when we disperse after you make your declaration that this Convention is closed, and when I pass beyond the portals of this palace of legislation, I shall return again into the ranks of the private citizens of this country, and it is amongst them, and in the position of a private citizen, that I shall have to express my views, and give effect to my own wishes for the good of this country in the near future that lies before us. And, sir, I feel, looking at the position which I hold, I may be pardoned for taking one moment longer to declare that whilst this Constitution is not perfect-to say that it is the work of human minds and human hands is to say that it is imperfect-while it has blemishes, which I should like to have seen removed, and contains provisions which I confess I struggled against, and should like to have seen changed, still, with all its faults, with all its defects, whatever they may be, I am now going to accept this Constitution without reservations and without misgivings. I entertain none. I believe in the governing capacity of
the race to which I belong. I believe in the elasticity of this Constitution. Its details have been pointed out by other honorable members who have spoken; but, sir, it is an elastic Constitution; it is a Constitution which, besides the letter of it, will be found to be saturated with those principles of free government which are inherent in the British race, and it is upon that I place my trust. It is that which affords me a solution of any difficulties and any doubts which I had previously entertained. I say, further, that you will get no Convention in this world which will frame a better Constitution. I believe that this Constitution is the finest instrument of government that ever was framed. I know of none to compare with it. Nothing has struck me more in this Convention than the way in which, as the debates have gone on, light has broken in upon questions which were admitted by everyone to be dark—which separatists and adverse critics declared to be insoluble—and just as that light has broken in upon these questions during the progress of our deliberations, so I believe in the time to come, when it has been, as I firmly believe it will be, accepted by the people of Australia, the same principles will come into play upon its interpretation and upon its working. And even in those provisions as to dead-locks—those hobgoblins that have been made so much of—we shall find little or no occasion to call them into play. They will simply remain in the Constitution as a standing memorial of the anxiety of those of us who have been here to see that every possible safeguard against injustice was provided. One word more, and it is this. We have still much to do. We must not, when we part this afternoon, ungird—if I may use the expression—our loins, and consider that we may take our ease. That is not the course, it seems to me, that lies before us. We have a great task still to perform, and that is not only to do what I commend my honorable friend (Mr. Isaacs) for seeking to do—not only to take care that those who have got the vote—the people who have to make this Constitution, to give it its vitality—shall thoroughly appreciate the work which they will have to do; but we shall also have to see that not only do they understand the Constitution, but that they are prepared to go to the poll and record their votes. I do not fear the anti-federal vote. It is the stay-at-home vote that I dread—those who do not vote. The greatest task which lies before us, who are earnest for union, is to see that there shall be an understanding of the Bill by our constituents and the people at large, and that they shall be prepared to zealously and earnestly give effect to it by their votes at the ballot-box, and thus secure freedom to themselves, and justice to all, under the Constitution we have provided. I fear no failure. The honorable and learned member (Mr. Deakin) said that if there was failure it would mean failure for a generation
or more to come. That I believe. If we do not have federal union now we shall, probably, not have federal union within the life-time of many of us who have met in this Convention. But I fear no failure. I seem to feel round me, and about me, and everywhere a desire for union. know the criticisms to which our scheme is subject. I know the doubts expressed about it, but upon the great central fact of union I feel that there need be no doubt. I appeal to those who are anxious in criticism, and to those who are distrustful, to lend a ready ear to the injunction of the honorable and learned member, not to magnify their doubts and not to see too many of their difficulties; but to consider the work as a whole, and to declare for union, even though they may have apprehensions upon one or two details of major consequence, believing that the sun is none the less the sun because there may be considerable spots upon it. I remember reading, in the history of the early years of the American Union, that Count Aranda, who was the Spanish plenipotentiary in the negotiations with regard to the Mississippi Valley, wrote to his king something to this effect:-

This federal state is born a pygmy, but it will soon become a giant, even a Colossus, great and powerful in these countries.

May not that be said of the union which we are seeking to create? No man can say that, even burdened with disunion, Australia will not have great prosperity. No man can say that every state upon the continent will not share it. But, in my opinion, all that prosperity will be as nothing to the prosperity which will come from union. It will be a union with strong foundations set deep in justice, a union which will endure from age to age, a bulwark against aggression and a perpetual security for the peace, freedom, and progress of the people of Australia, giving to them and to their children and to their children's children through all generations the priceless heritage of a happy and united land.

Mr. MCMILLAN (New South Wales). -

I do not intend to make a speech. Time is going on, and I think that any attempt to any further analyze the Bill would be, at the very least, injudicious. But I have been connected with the federal movement ever since its inception in the Conference of 1890. I have watched the
propagandists of this great movement, and by explanation, by exhortation and organization, it must be brought to its final consummation. We have enemies to oppose, and there have been matters connected with our proceedings which will be used, especially in my own colony, by the anti-federalists. One of the chief objections they have to union now is that the debates in this assembly will be an object-lesson for the future. But we all came into this controversy with the natural pugnacity of British people. We have each fought for what we thought were the rights of our own colonies, and like British people we have accepted reasonable compromises. I deny that the Federal Parliament will be in any way analogous to the Convention. Its members will not be in any antagonistic position. They will not meet for the purpose for which we met. We met to frame a Constitution—they will meet to legislate under it. A great many people have said that the Constitution is too liberal, and some honorable members have tried to-day, by argument and by rhetoric, to show that it is, if anything, ultra-liberal. I do not hold that it is ultra-liberal in any bad sense. I hold that a Constitution must have two things; it must have a conservative foundation and liberal possibilities of legislation. I believe that this Constitution is sufficiently well founded and sufficiently conservative to last practically for all time. But there is a difficulty which we shall have to face when we go back to our own colonies. It is often said that what is everybody's business is nobody's business. We shall want the organization of general elections, the magnetic influence created by local people canvassing for themselves in a personal character—and I think that, instead of the hesitation about which we have heard in the last few days, every Government and every representation should organize itself and pledge itself to the consummation of this great work. I believe that what has seemed an anti-federal spirit in New South Wales—I am only speaking of what has been alleged—will pass away when the Constitution is understood. I cannot believe that, after the popular vote which elected in each colony presumably ten of the foremost public men, the people will not be true to the Constitution which has been framed. Circumstances are now combining, both in our relations to the British Empire and to ourselves, to bring about this consummation. I believe, myself, that the national spirit is rising throughout Australia. I believe that the necessity is upon us to become a nation, and I am not at all sure that it will not be this national spirit which, rising above every material consideration, will not ultimately win the battle for us. The population of these colonies by the end of the century will be almost entirely native-born, and these native-born men, as we see in this colony particularly, will not be satisfied with the parochial life. They will feel that Australia must be home to them. The bulk of them
can never expect a career outside this island continent. They will feel that if they have to take a part in the responsibilities of the British Empire, and to share its dangers, they must have a proud identity of their own. I believe that the more you encourage the Australian nationality the better factor you create for the British Empire. It will be by the element of Australian nationality rising in our midst, and by its being pressed upon the people by the representatives that have met here-using not too much the material argument, as the argument of a national life—that our work will be ultimately consummated. We shall have a tremendous fight in New South Wales. As the leader of the Convention has pointed out, there have been traitors to the cause. We had a stab made at us by an alteration of the fundamental Act connected with the movement. But, in spite of that, if the ten representatives of New South Wales are determined to become propagandists of a movement in their own colony, portioning it into sections, and if the Government gives the movement hearty and generous support, New South Wales will come into the Federation. Without meaning to be egotistical or presumptuous, I say that there is no doubt that the formation of the Commonwealth lies with New South Wales. I have no fear for Victoria. The advantages given to Victoria are so great—she gets back to a large extent her natural geographical area—that she would be utterly mad if she did not accept the Constitution or even a far worse one. Therefore, I believe that with New South Wales thoroughly in earnest—and I pledge myself between this and the taking of the vote to use every personal effort to secure this end—if at an early period of the canvass she shows herself in earnest and throws away the unreasonable prejudices we have heard of in the last month, her example will have such a moral effect upon the people of Australia that we need not fear their verdict upon the Bill.

Mr. TRENWITH (Victoria). -

I have not made any preparation for a speech upon this important occasion, but I feel that, owing to the peculiar position which I occupy, the responsibility is entailed upon me of saying something, and of expressing in general terms my conclusions as to the merits of the Bill, and as to the desirability or otherwise of its acceptance by the people. I set out, as I believe most of us did, with the opinion that, starting at the end of the nineteenth century with all the history of the past at our disposal, with the Constitutions of the world before our eyes, we should make in Australia a governmental machine superior to any of those of which the world previously had knowledge. This, I am prepared to admit, was a very large expectation; but after carefully considering the result of our labours I think
that we have accomplished it. I do not mean by that statement that I am satisfied with every detail of the Bill, or that I do not think that there are not a number of its provisions which I should like to see altered if possible. But when we remember that this Constitution is not for the government of one individual or one country, but for a number of countries that for many years have been existing as separate independent communities, and have during that period been developing, through their want of unity, conflicting interests, not to say strong prejudices and jealousies, which would have been impossible if we had had a Constitution such as this from the start, it would have been surprising if we had arrived at a Constitution which was satisfactory in all its details to all the representatives. But while I did, as I think most of us did, point out as vigorously as I could the objections which I saw to some of the propositions that were presented to us, with a view, if possible, of preventing their adoption, I feel now that many of the objections were undoubtedly magnified by some of us. I have felt, I think, as strongly as any one here that a government, to be completely government of the people by the people, must let the people more frequently into its counsels than it has done in the past, and that that could only be completely and effectively done by means of what is known as the referendum. Therefore, a Constitution to meet my wishes ought to have within it the opportunity of readily applying that principle. I have felt, as most people in these colonies have felt, that our bi-cameral system, while containing the elements of safety and of security from ill-considered rushes of legislation, also contains within it an element of sometimes vexatious delay, and not infrequently absolute legislative stag-nation. And I have felt that where the two branches of the legislative machine have failed to perform the work for which they were designed, there ought to be a reference from the agents to the principals. But I recognise that there is great force in the argument that has been urged against this proposal, that it is subversive of the principle of government that we as British people are accustomed to-the principle of government known as responsible government. While I recognise that there is great force in these arguments, and, therefore, those who urge them may be fairly and properly excused for voting against the referendum in consequence of their weight, still I do not think that the arguments are conclusive. It may perhaps be considered by some honorable members to be useless at this stage to discuss the referendum, and I, for one, should not do it, even in the slightest degree, were it not for the fact that our respected leader, in that most admirable speech which he delivered this morning, gave some attention to this
particular aspect of this question that the referendum is subversive of responsible government; and Mr. Wise, in discussing the question the other day, also gave a great deal of attention to that aspect of it. As I hope that the referendum for the settlement of disputes between the two branches of the Federal Legislature will ultimately be embodied in this Constitution after it is adopted in its present form, and that it will also be adopted in connexion with our state Legislatures independently of this Constitution, I feel it desirable to give some attention to it. It is pointed out that a Minister or a Ministry responsible to Parliament, and only holding office because it has the sanction of the people's representatives, might find itself in a minority, and might submit to the people for their arbitrament a question which the people, in exercising that power, might decide against the Ministry, and therefore we should have the anomaly of a Government holding office out of accord with the policy of the representatives of the people. But I would respectfully submit in answer to that objection that the anomaly is only apparent, not real, because the Ministry will be out of accord with the people whom they represent, not upon a question that they had to deal with, but upon a question that was settled, and consequently was not a matter for legislation at all. However, I feel with my honorable friend (Mr. Deakin) that, although we have not the referendum in this Constitution, we have the principle of the referendum in it. As I at a previous sitting of this Convention pointed out, there is the principle of the referendum in the British Constitution. But we have it in this Constitution in a more complete and definite form than it is to be found in any other Constitution in the world, so far as I know, except that of Switzerland. Because we have here not merely the referendum to the people by means of a general election involving one branch of the Legislature, but we have a reference to the people, not by the method ordinarily described as a general election, but by means of a special election to settle a distinct issue about which the two branches of the Legislature have come into conflict. Thus, although we have the slight disadvantage that persons and some side-issues will undoubtedly be involved, still, as the electors will only have one distinct issue presented to their minds, the point at issue will be virtually settled upon the principle of the referendum, because it will be referred to the people in order that they may elect representatives who hold their views not on general questions only, but more particularly on that single issue. But it seems to me we have something more in the referendum, or one form of it which has been suggested; that is, the referendum of the states and the referendum of the people. We may have a complete solution by that means. Because I can conceive of a large majority of the
people holding a view that was not held by the people of the majority of the states; and if such a contingency as that arises, and the dual referendum were applied, the great majority of the people would necessarily and certainly be subjected, as far as that single issue was concerned, to the minority in the majority of the states. But by means of the double dissolution, and the subsequent sitting of the two Houses, it may, and I think sometimes will, be possible for a majority of the people—the taxpayers—to obtain a solution of the question favorable to the majority, even though in that special connexion there were not a majority of the states.

Mr. DEAKIN. -

Would not a double dissolution tend to bring a greater number of people to the poll than an ordinary general election?

Mr. TRENWITH. -

I think that is obviously so. The double dissolution must create a degree of interest and enthusiasm that would not centre round a simple issue which is unassociated with persons. However, there is another extremely important aspect that, it seems to me, has been dealt with at very great length and adversely criticised, and that is the question of whether, when we adopt this Federal Constitution, we should be able to develop our local industries as we can and do now. It seems to me that we have to consider whether our present condition is satisfactory—whether our ability to develop our own resources now is sufficiently great. It seems to me that it must be self-evident that it is not, or we should not be seeking to change that condition. And if we are expecting—as I think we are rightly expecting—immense advantages from the breaking down of barriers that are at present put up between the colonies, we must be prepared to forego some of the advantages that isolation gives to us. I feel confident that the Federal Parliament, elected as it will be from the colonies that have the necessities of local development pressing closely upon their representatives, will be the more inclined to create conditions that permit of development than the state Parliaments possibly can be. Therefore, I think we shall have Commonwealth bounties which will offer almost all the possibilities of development that can occur. But if there should, and I believe there possibly may, occur some special necessities for bounties to assist a small portion of the Commonwealth, all experience in these colonies teaches us that we shall have no difficulty in getting from the Federal Parliament its consent to pay those bounties. We find, within the area of our state Legislatures, that we have local interests continually presented to Parliament from various parts of the respective states. In Victoria we have a most complete system of local government, under which particular
localities legislate for their local requirements, and manage very largely their local concerns in regard to roads and bridges, and so forth. They are continually coming to Parliament asking for some special concessions. Very often these special concessions involve the expenditure of large sums from the general revenue, but yet we find that whenever these requests are made they are almost invariably passed with the greatest possible rapidity. Parliament is always inclined to act generously to sections of the community over which it has to govern, and we have a right to assume that when we have created a Federal Par

question, after considering with regret necessarily many objectionable features in this Bill, I recognise that there are many advantages in it. On the merits, the advantages more than outweigh the disadvantages. But, then, going outside of the Bill to the larger and greater question of the advantage of unity to these colonies, it seems to me to make the consideration overwhelmingly in favour of adopting the Bill. I shall regard it as my duty, as I hope the delegates of all the other colonies will, to take every possible opportunity of making clear to the people who must vote upon this Bill its provisions, not attempting to conceal some of the manifest objections, but endeavouring to prevent their having undue weight in the public mind, and presenting as fully and clearly as I can the obvious advantages of the Bill. I would like to suggest, because I take it that what is said here to-day will probably be more carefully considered than what has been said on any single day's or perhaps month's sitting of this Convention, that there ought to be an effort made, not merely on the part of the delegates, but of all persons in responsible positions, to do whatever is possible to make the people acquainted with the measure. I hope that the mayors of the municipal councils, the presidents of the shire councils, and the persons in charge of public buildings in the various parts of Australia, will feel it to be their duty to place any suitable buildings at the disposal of persons who are competent and willing to give instruction in connexion with this important question. If the people are to be educated-and when I say educated I mean made acquainted with the intricate provisions of this Bill-it will be necessary for the delegates and other persons competent to go from point to point of the respective colonies, and to take the people directly into their counsel, submitting to them the details of the measure, and being prepared to afford any information that the people may desire in connexion with it. That can only be done by all persons capable of rendering assistance uniting to give the greatest possible facilities to educational efforts in connexion with the Bill.

Mr. GLYNN (South Australia). -
At this late stage of the proceedings I do not think I should be justified in entering into any details, but I desire to say a few words in explanation of my intention to recommend the Bill heartily to the people of South Australia. During a connexion of about ten years, and a connexion of which I was exceedingly proud, with the press of South Australia, and a direct connexion of several years also with the political life of that colony, I have held it to be an ideal to seek after the full realization of the principle of popular government-popular not in the sense of the dominance of one particular class, but in the reconciliation of the interests of all classes, of the community. I think I can honestly say that the measure we have now before us is the nearest approach to the perfection of representative as distinguished from pure democracy that you will find in any federal or unitary Constitution. Again, and although this is a small matter, as it has been overlooked, I may be justified in mentioning it, we have started with the recognition of the principle which is the great equalizer of the opportunities of the rich and the poor-the principle of the payment of members. Then, following out the idea that this Constitution takes its origin from the people, when we are seeking the element's of its renovation and repair we throw it back upon its source, and appeal to the popular voice for a justification of any improvement or alteration which time may necessitate. May I also say this, that though it is an objection, and a necessary one, to all federal, in comparison with unitary, Constitutions that they are rigid, we have, to a very large extent, in connexion with our Constitution, that principle of elasticity which is a peculiarity, if not one of the glories of the British Constitution. As this, by happy augury, happens to be the festival day of my native land, a land which, I may say, is bound to me by ties of affection no more close than those living links which attach me to the country of my adoption, whose Constitution I have been privileged in helping to frame, and whose destinies I am proud to share, I may be permitted, in the words of a fellow countryman, to express what that principle of growth is:-

Our political system is based upon a just correspondence and symmetry with the order of nature, and with the mode of existence decreed to a permanent body composed of transitory parts, wherein the dispensation of a stupendous wisdom, moulding together the great mysterious incorporation of the human race, the whole at one time is never old, nor middle-aged, nor young, but in a condition of unchangeable constancy moves on through the varied tenor of decay, fall, renovation, and progression."

I say that the rigidity of this Constitution is only in the recognition of
those fundamental interests which are the prime conditions of our partnership. But in Executive relations and otherwise its capacity of automatic adjustment to the growing needs of society as time goes on is as great as that of the British Constitution itself. We have had objections taken to the Constitution from the point of view of some of its imperfections. I will only say that the man who seeks perfection in the sphere of politics—a science which deals, not with the known quantities of mathematics, but with those uncertain elements, the passions, prejudices, and interests of man—will have to wait for the recognition of his ideal until the crack of doom. It is beyond the power of any man to embody in any Constitution a seeming recognition of all national rights, or to give such a clear and adequate expression to ideas that they will be beyond the possibility of verbal criticism. Now, as to the necessity of federation, I will only say this, that we cannot shut our eyes to the fact that the theatre of the world's struggle is being shifted from the West to the East; that a young power—Japan—has within the last ten years sprung into a vigorous and militant life; and that China, after a sleep of 2,000 years, is now awakening up to industrial activity. Surely these colonies, with their small piping individual voices, cannot expect to have the slightest influence in the counsels or upon the destinies of the East, unless they unite. I desire now to say a few words of gratitude to those who have been so largely instrumental in the framing of this Constitution. I would not like to sit down without recognising the loyal devotion to the task imposed upon them of the Drafting Committee. The duty of giving clear and concise expression to the recommendations of the various committees and the decisions of the Convention called for the exercise of a capacity, zeal, and sacrifice of personal leisure of which, throughout the course of our proceedings, the Drafting Committee have given ample evidence. Time after time our difficulties of exposition were settled by referring them to the Drafting Committee, with the confidence that in their hands the obscure would become clear, and with a perfect faith in their ability to find ample time when practically none existed. On a few occasions, the Hon. Mr. Barton and his associates were relied on to find out for some of us what we intended, and if they now and then failed in divining what position we did, it was only to demonstrate beyond question the position we ought, to assume. They preserved under all troubles of policy and language a composure worthy of you, Mr. President, in the chair, and of Sir Richard Baker when under that cross fire of amendments of which he was expected and found to be the reconciling genius. Of our worthy leader I will only say this, that I think he has proved himself to be one of those rare men, found, as if by a providential dispensation, to fit the hour. It was said, I think by
Adams, of the leaders of the movement in which the American Constitution originated, that-

There seems to arise in great emergencies a force unfelt at other times, which may be
called the attraction of public necessity, which brings to the surface a race of men who would otherwise have remained unseen, children of the gods, who, in human affairs, work so rarely and so well.

As to Mr. Barton himself, I hope that the reward of his labours will be in their fruition, and that in the fiat of the Australian people to the Constitution which he has helped so much to shape will be found the lasting expression of their gratitude.

Mr. BARTON (New South Wales). -

I do not rise to reply on the extremely able and interesting debate which we have heard to-day, the participants in which have fully expressed the federal feeling which animates those who sent them here. I wish merely to make a quotation from a letter from one of our members. It is a very interesting communication, written apparently in the train last night. That honorable member desires me to make some reference to his opinion on the Federal Constitution. I refer to Mr. Venn, of Western Australia, in whose letter occurs the following passage:-

In regard to the Federal Constitution, I have no hesitation in saying that it is such as I can in my individual capacity as a member of the Convention, and a member of the Western Australian Legislature, heartily and strongly recommend to the people of Western Australia. No stone will be left unturned by me among those to whom I am known, in placing the Bill before them with all the force of character I may possess. I can only hope that Western Australia, as a whole, will accept the Bill heartily and with confidence. I would ask you to express these views for me when you meet to-morrow, as I would assuredly have done had I been present.

I thought that, as this motion could only be brought forward after our friends of Western Australia had left the Convention, it was only just I should afford Mr. Venn the opportunity of having his voice heard here, although he was unable to express himself in person.

The PRESIDENT. -

Before I put this motion, I should like to say a word or two. I congratulate this Convention on the conclusion of their honorable task. It seems to me that this is not the time when one should stand trembling on the brink of a distinct declaration as to future policy in connexion with this great movement. I can but speak for myself alone; but in regard to this Constitution, I say unhesitatingly that I accept it gladly. More, I welcome it
as the most magnificent Constitution into which the chosen representatives of a free and enlightened people have ever breathed the life of popular sentiment and national hope. Mine will be no Laodicean advocacy; but with such ability as I may possess, and with the fullest enthusiasm and warmth of which my nature may be capable—with my whole heart and strength—I pledge myself to recommend the adoption of this Constitution, daring any danger and delighting in any sacrifice which may be necessitated by unswerving devotion to the interests of the Commonwealth of Australia.

The motion was agreed to.

Mr. BARTON (New South Wales). -

It is now my duty to move—

That the thanks of this Convention be given to the Right Hon. Charles Cameron Kingston, P.C., President; and to the Hon. Sir Richard Chaffey Baker, K.C.M.G., Chairman of Committees, for the services rendered by them to this Convention.

I have not made these separate motions, sir. I have simply adopted the precedent which the proceedings of the Convention of 1891 afforded. I thought it was, perhaps, right in a motion of this kind that services rendered so much in a like capacity should be dealt with by honorable members in the same motion. We, sir, all of us admire your conduct of business from the chair. We have been perfectly confident in your knowledge of parliamentary procedure and in your sense of justice. We know that, as to your opinion and feelings in respect to federation, we have had in the chair of this Convention one who is devoted to the cause, and who will be no niggard in advocating it in his own country. I am happy to think, sir, that the cause of federation will have as its chief advocate in your country a man so able to express his views with power and enthusiasm, and a man who has given so strong a pledge that nothing will be wanting on his part to see Australia accomplish the end to which she was destined. I should like to add my own meed of praise of the conduct of business in committee by our very able Chairman. Sir Richard Baker had no ordinary task. He had to deal with a very large number of amendments suggested by the Parliaments of the various colonies. In many cases, indeed generally, these amendments were not made with the concurrence of both Chambers, and the list had to be arranged in a way that no tabulated statement, such as that which was prepared, would have arranged them. On the part of Sir Richard Baker was required not merely a knowledge of the place these amendments occupied in the Bill, but a knowledge of parliamentary procedure such as few men
possess. He had to decide when and how these amendments should be put, so that each of them could be brought before the Convention in its relative value and importance, and none of them, except where their principle had already been submitted for decision, should fail to come before honorable members. That work Sir Richard Baker has accomplished with marked ability. In addition to all that ability, Sir Richard Baker has shown a very strong and ardent attachment to the federal cause, which I hope will be joined with your labours, sir, and those of your colleagues for the accomplishment of Australian union so far as South Australia is concerned. The tact and judgment which have been exhibited by the Chairman often saved the committee from entanglements amongst those numerous amendments which any one, however skilled, but with less skill and judgment than Sir Richard Baker, might have allowed the

Mr. ISAACS (Victoria). -

Mr. President, I have the very greatest pleasure possible in seconding this motion. I have already expressed myself this morning in terms which I find it difficult to add to regarding yourself and Sir Richard Baker. There is no doubt, Mr. President, that the eminent services of yourself and the Chairman of Committees have been of the very utmost value to us in arriving at the conclusion that has now been reached. I am sure that everything my honorable friend (Mr. Barton) has said regarding the great abilities and the impartiality, tact, judgment, unfailing industry, and courtesy of both yourself and Sir Richard Baker to every member of the Convention is perfectly correct and well warranted. I have very great pleasure in supporting the motion.

The motion was agreed to.

The PRESIDENT. -

I should like to say, in acknowledgment of the vote just passed, that I am well pleased to be associated in that vote with the Hon. the Chairman of Committees. I would also like to add that I indorse most heartily every word that has been said in connexion with the mode in which the Chairman of Committees has discharged his duties. It has been an undoubted pleasure to co-operate with Sir Richard Baker in the discharge of the business of this Convention. As for myself, I think the observations which have been made are all too generous. I am deeply indebted to the Convention for the support they have given me in the discharge of my duty. It has been my constant effort

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to facilitate business as far as was consistent with parliamentary usage, to maintain the dignity of the Chair, and to discharge its responsibilities without fear or favour. At the same time, I am conscious of many short-
comings, and under these circumstances I am all the more deeply sensible of the kindness of the remarks made by the leader of the Convention, and of the vote which has just been passed.

Sir RICHARD BAKER (South Australia). -

May I say a word? I should like to express my deep gratification at the fact that my labours, as Chairman of Committees, have met with such appreciative remarks from members of this Convention. It is not always, in fact it is very seldom, that a person filling the position of Chairman of Committees has any other reward than a sense of having done his duty. It must be remembered that it is impossible for a president or a chairman to satisfactorily perform the duties pertaining to his office unless he has the cordial co-operation and assistance of the members over whom he presides. You, sir, have had that co-operation and assistance, and so have I; and I beg to tender to the members of this Convention my sincere thanks for the honour which they have done me in passing a vote of thanks, and for the courtesy and kind assistance which they gave me in the performance of what was sometimes a some-what difficult duty. Before I sit down I may say I believe-and I think I may say this without egotism-I have succeeded in the task imposed on me of seeing that every amendment suggested by every legislative body was put to the vote; so that it does not lie in the mouth of any member of any House of Parliament to say that a solemn vote passed in any Parliament did not receive the consideration of the Convention. It is true that on some occasions amendments were not debated, but that was because the principle which they involved had been debated on previous occasions. Although perhaps the identical point had not been actually decided, still the main principle had already been agreed to or disagreed to by the committee, and therefore there was no necessity for debate. Words fail me in attempting to convey the sense of gratification which I feel. I can only say that I have laboured arduously and strenuously in the cause of federation from 1891 to the present moment, and that it will be one of the proudest moments of my life if I see the great work on which we have been engaged become an actual and realized fact.

Mr. ISAACS (Victoria). -

By the permission of my honorable friend (Mr. Barton), the leader of the Convention, I desire to interpose with a motion which, I think, ought not to take a lower place than that which I desire to give it. The motion is-

That the thanks of the Convention be given to the Hon. Edmund Barton, the Hon. Sir John Downer, and the Hon. R.E. O'Connor, the members of the Drafting Committee, for the services rendered by them to the Convention.

It affords me extreme pleasure to submit this motion to the Convention,
because I think it will be universally admitted that those honorable gentlemen have performed with unswerving industry, with the utmost fidelity, with extreme ability, and with eminent success, the responsible and arduous duties which have devolved on them as members of the Drafting Committee. In a smaller sphere, sir, I personally know the difficulties surrounding the discharge of such a task. When I look back, even with some degree of expert knowledge, and recollect the various phases which this Bill has assumed, the many amendments, the divergent views intended to express the ideas of those who moved and those who supported various propositions, it seems to me that the work of the Drafting Committee is worthy of the very highest praise. I do not suppose these honorable gentlemen would claim that the measure is absolutely free from defects, but, so far as can be discovered, it is one that can be regarded as practically free from them. I do not personally know at the present moment of anything whatever that can be changed for the better. I think that the contemplation of the weight and magnitude of the task that they so willingly accepted, and so generously performed, must lead us to offer them our sincere gratitude and unstinted acknowledgment of the work, and we may hope, in the result, for the permanence of the labours which they have just concluded. I think further observations from me are unnecessary. No length of expression could increase the admiration that we all must feel for the labours of the Drafting Committee, and I, therefore, have the very utmost pleasure in moving the motion I have just submitted.

Mr. DEAKIN (Victoria). -

I have much pleasure in seconding the motion.

The motion was agreed to.

Mr. BARTON (New South Wales). -

It is very gratifying to Mr. O'Connor and myself, as I know it would be to Sir John Downer if he were here, to know the kindly as well as complimentary terms in which the Attorney-General of Victoria has proposed this motion. It is not for us, who constitute the committee, to dilate upon the nature and performance of our work; all we can tell the Convention is, as I think they will believe, that it was very hard work. The Bill, as presented to us for final drafting, contained the result of a great many amendments and motions which were clear enough in themselves, but which required to be converted into other terms for the purpose of insertion in the Constitution, and there were other motions and amendments which were inserted in the Bill up to that time which, although one could clearly gather the intentions of the movers from the
debate, were not in their words such as we could have left without such alterations as in some cases we feared might almost have provoked the resentment of the honorable members who had moved them. But it is a happy thing for us to say, and I say it with gratitude, that a long schedule of amendments of a drafting character, numbering something like 400, were yesterday passed by this Chamber, not with a rush, not inconsiderately, but after fair consideration, and that in no case did we find that any honorable member had treated our dealing with his work, as expressed in the amendments, with any want of appreciation. There seemed to be a confidence on the part of honorable members that we were dealing fairly with them, for which we cannot express too grateful thanks. It is to me and my colleagues a matter of pride that we should have so gained the confidence of those we have been working with. I should like to speak in high terms of the officers who have given us such great help in our labours, and in respect of whom I shall presently move a motion and in regard to the Government Printer, whose expeditious, accurate, and neat work betokens the ability of himself and the staff working under him. Now, I wish to mention a gentleman who has not been prominent, apparently, among members of the Convention, but to whom we are under a serious debt of gratitude. I refer to my friend—he is so much taller than myself that I can scarcely call him my young friend—Mr. Garran, who is a member of the bar, and who came here as secretary to the New South Wales Premier, and in an understood, though not in an official way, to the New South Wales representatives. The Drafting Committee had the benefit of that gentleman's assistance, and I think I should be very unfair indeed if I took all the gratitude to the Drafting Committee which is implied in the kind motion passed without acknowledging that a great deal of that credit is due to the assistance of Mr. Garran, whose technical knowledge, strong and varied research on this subject, and literary taste and judgment in the expression of his views, when the work was urgent, and the drafts had to be prepared and revised in a very short space of time, were of the very highest assistance to myself and my colleagues.

Mr. DEAKIN. -

As they were in his handbook to all of us.

Mr. BARTON. -

Yes. I believe his handbook was of great assistance to all of us. I am pleased to be able to take this opportunity of expressing my own feeling of thankfulness to that gentleman, who has been untiring in his labour, and who has worked in so unobtrusive a way that he might have escaped attention, notwithstanding his great services, if I had not mentioned them. I
am very grateful to honorable members for passing this Motion.

VOTE OF THANKS TO THE OFFICERS OF THE CONVENTION.

Mr. BARTON (New South Wales). -

I beg to move-

That the thanks of this Convention be given to the Clerk of the Convention, Edwin Gordon Blackmore, Esq., and to his assistants at the sittings of this Convention held in Adelaide, Sydney, and Melbourne; and also to the reporting staffs at those several sittings.

Mr. Blackmore's rich knowledge of parliamentary law and practice needs no description from me, because he is a standard authority among all Australian parliamentarians. His work is always given ungrudgingly. He is always working for the Convention early and late; and he has devoted to his duties in connexion with our labours, more hours and more hard work than perhaps any of us are aware who are not thrown into immediate contact with him. He was ably assisted at Adelaide by Mr. Halcombe, and in Sydney by Mr. Webb, and here by Mr. Duffy. The ability, discrimination, industry, and generous services of all those officers ought to command the great thankfulness of the Convention. In addition, I should like to say that the reports which have been furnished by the official staffs have been most accurate and painstaking. We all know how very exacting and wearing is the labour which shorthand reporters often have to undergo at times when other people are resting. They have shown a very great deal of intelligence and discrimination in their reports, and I think we may include the reporters at every one of the capitals at which this Convention has been held in this need of praise. Having spoken of these matters, it rests with me to mention, on behalf of the whole of this Convention, our feeling of appreciation of the kind and considerate treatment which we have received from the Ministers of this colony, and from the Reception Committee who were told off to see that we were made comfortable.

Mr. ISAACS. -

We only hope that you were comfortable.

Mr. BARTON. -

We were indeed made free of care as regards many minor troubles, and we were received with hospitality, which, although generous, had this great recommendation besides, that it was considerate and thoughtful. I am sure I speak for a great many members of the Convention, who would have been present to-day if they had not been forced to go away, when I say that this visit will live in our memories, not only because of the great occasion and the very fine and interesting struggles which have accompanied it, but also because those who had the care of the Convention as their hosts, performed their duties with so much tact and with so little interference with the
necessary labours of the Convention. I think it would never have done to have finished the labours of the Convention without expressing the feeling we all entertain towards the Ministry of Victoria and the committee whom they appointed.

Dr. COCKBURN (South Australia). -

I beg to second the motion. Although Mr. Blackmore is a South Australian, I, as a South Australian, feel that I can speak to the motion, because his reputation is not only South Australian and intercolonial, but as a parliamentary authority it extends wherever English representative institutions exist. With regard to the Government of Victoria and the Rec

The motion was agreed to.

CLOSE OF THE PROCEEDINGS.

The PRESIDENT. -

The statutory requirements having now been complied with, it will be my duty in a moment to declare the proceedings of this Convention closed. However, before doing so I think it would be becoming that cheers should be given for the Queen, and afterwards cheers should be given for Australia. All present will be permitted to join.

Cheers were given for the Queen and Australia.

The PRESIDENT. -

I now declare the proceedings of this Convention closed.

The Convention terminated at a quarter to five o'clock p.m.

Copy of Federal Constitution under the Crown, as finally adopted by the Australasian Federal Convention, at Melbourne, in the Colony of Victoria, on the 16th March, 1898.

E.G. BLACKMORE, C.C. KINGSTON,
Clerk. President.
Draft of a Bill To Constitute the Commonwealth of Australia.

ANNO SEXAGESIMO ET SEXAGESIMO PRIMO VICTORIAE REGINAE
A.D. 1898.

DRAFT OF A BILL
To Constitute the Commonwealth of Australia.

[ ]

Preamble
WHEREAS the people of [here name the Colonies which have adopted the Constitution], humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:-

Short title.
I. This Act may be cited as The Commonwealth of Australia Constitution Act.

Act to bind Crown, and extend to the Queen's Successors.
II. This Act shall bind the Crown, and its provisions referring to the Queen shall extend to Her Majesty's Heirs and successors in the Sovereignty of the United Kingdom.

Proclamation of Commonwealth.
III. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of [here name the Colonies which have adopted the Constitution] shall be united in a Federal Commonwealth under the name of "The Commonwealth of Australia." But the Queen may, at any time after the Proclamation, appoint a Governor-General for the Commonwealth.

IV. The Commonwealth of Australia Constitution.

Commencement of Act
IV. The Commonwealth shall be established, and the Constitution of the
Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several Colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation of the Constitution and laws.

V. This Act, and all laws made by The Parliament of the Commonwealth under the Constitution, shall be binding on the Courts, Judges, and people of every State, and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definition.

VI. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"Colony" shall mean any colony or province.

"The States" shall mean such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such Colonies or Territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called a "State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.


VII. The Federal Council of Australasia Act 1885 is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by The Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application of Colonial Boundaries Act.

VIII. After the passing of this Act the Colonial Boundaries Act 1895 shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

Constitution and its Divisions.

IX. The Constitution of the Commonwealth shall be as follows:-

THE CONSTITUTION.
This Constitution is divided as follows:-

CHAPTER I. - THE PARLIAMENT:
PART I. - General:
PART II. - The Senate:
PART III. - The House of Representatives:
PART IV. - Both Houses of The Parliament:
PART V. - Powers of The Parliament:

CHAPTER II. - THE EXECUTIVE GOVERNMENT:

CHAPTER III. - THE JUDICATURE:

CHAPTER IV. - FINANCE AND TRADE:

CHAPTER V. - THE STATES:

CHAPTER VI. - NEW STATES:

CHAPTER VII. - MISCELLANEOUS:

CHAPTER VIII. - ALTERATION OF THE CONSTITUTION.

THE SCHEDULE.

CHAPTER I.

CHAPTER I. THE PARLIAMENT. PART I. GENERAL.

CHAPTER I. THE PARLIAMENT.
Part I. - General
Legislative Power.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

Governor-General.

2. A Governor General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Salary of Governor-General.

3. There shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until The Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.

Provisions relating to Governor-General.

4. The provisions of this Constitution relating to the Governor-General
extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.


5. The Governor-General may appoint such times for holding the sessions of The Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue The Parliament, and may in like manner dissolve the House of Representatives.

After any general election The Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly Session of Parliament.

6. There shall be a session of The Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of The Parliament in one session and its first sitting in the next session.

Part II. - The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until The Parliament otherwise provides, as one electorate.

Until The Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by The Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

The Parliament of a State may make laws for determining the times and
places of elections of senators for the State.

10. Until The Parliament otherwise provides, but subject to this Constitution, the laws i

Failure to choose senators.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Issue of writs.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of senators.

13. As soon as may be after the Senate first meets and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable: and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

Further provision for rotation.

14. Whenever the number of senators for a State is increased or diminished, The Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

Casual vacancies.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive
Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

Qualifications of senator.
16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of President.
17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President.
18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.
19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.
20. The place of a senator shall become vacant if for two consecutive months of any session of The Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to be notified.
21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Common-wealth, the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.
22. Until The Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a
meeting of the Senate for the exercise of its powers.

Voting by Senate.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III. - The House Of Representatives.

Constitution of House of Representatives.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until The Parliament otherwise provides, be determined, whenever necessary, in the following manner:-

I. A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators.

II. The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

[For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Representatives in first Parliament.

25. Notwithstanding anything in section twenty-four the number of members to be chosen in each State at the first election shall be as follows: [To be determined according to latest statistical returns at the date of the passing of the Act, and in relation to the quota referred to in previous sections.]

Alteration of number of members.

26. Subject to this Constitution, The Parliament may make laws for
increasing or diminishing the number of the members of the House of Representatives.

Duration of House of Representatives.
28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Electoral divisions.
29. Until The Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

Qualifications of electors.
30. Until The Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of the Parliament of the State; but in the choosing of members each elector shall vote only once.

Application of State laws.
31. Until The Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

Writs for general election.
32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives, or from the proclamation of a dissolution thereof.

Writs for vacancies.
33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker, or if he is absent from the Commonwealth, the Governor-General in Council may issue the writ.

Qualifications of members.
34. Until The Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:-

I. He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives,
or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:

II. He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

Election of Speaker.
35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he cease to be a subject of the Queen.

Absence of Speaker.
36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Resignation of member.
37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.
38. The place of a member shall become vacant if for two consecutive months of any session of The Parliament be, without the permission of the House, fails to attend the House.

Quorum.
39. Until The Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.
40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV. - Both Houses Of The Parliament.
Rights of electors of States.
41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State, shall, while the right continues, be prevented by any law of the Commonwealth from...
voting at elections for either House of The Parliament of the Commonwealth.

Oath or affirmation of allegiance. Schedule.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorized by him, an oath or affirmation of allegiance in the form set forth in the Schedule.

Member of one House ineligible for other.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Disqualification.

44. Any person who-

I. Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

II. Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

III. Is an undischarged bankrupt or insolvent: or

IV. Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

V. Has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth, otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or as a member of the House of Representatives.

But sub-section IV. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Vacancy on happening of disqualification.

45. If a senator or member of the House of Representatives-

I. Becomes subject to any of the disabilities mentioned in the last preceding section: or
II. Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

III. Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in The Parliament to any person or State:

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until The Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Disputed elections.

47. Until The Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of The Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Allowance to members.

48. Until The Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges &c. of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by The Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and orders.

50. Each House of The Parliament may make rules and orders with respect to-

I. The mode in which its powers, privileges, and immunities may be exercised and upheld:

II. The order and conduct of its business and proceedings either separately or jointly with the other House.
Part V. - Powers Of The Parliament.

Legislative powers of The Parliament.

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

I. Trade and commerce with other countries, and among the States:
II. Taxation; but so as not to discriminate between States or parts of States:
III. Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:
IV. Borrowing money on the public credit of the Commonwealth:
V. Postal, telegraphic, telephonic, and other like services:
VI. The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:
VII. Light-houses, light-ships, beacons and buoys:
VIII. Astronomical and meteorological observations:
IX. Quarantine:
X. Fisheries in Australian waters beyond territorial limits:
XI. Census and statistics:
XII. Currency, coinage, and legal tender:
XIII. Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
XIV. Insurance, other than State Insurance; also State Insurance extending beyond the limits of the State concerned:
XV. Weights and measures:
XVI. Bills of exchange and promissory notes:
XVII. Bankruptcy and insolvency:
XVIII. Copyrights, patents of inventions and designs, and trade marks:
XIX. Naturalization and aliens:
XX. Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
XXI. Marriage:
XXII. Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:
XXIII. Invalid and old-age pensions:
XXIV. The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
XXV. The recognition throughout the Commonwealth of the laws, the public acts and records, and the judicial proceedings of the States:
XXVI. The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:

XXVII. Immigration and emigration:

XXVIII. The influx of criminals:

XXIX. External affairs:

XXX. The relations of the Commonwealth with the islands of the Pacific:

XXXI. The acquisition of property on just terms from any State or person for any purpose in respect of which The Parliament has power to make laws:

XXXII. The control of railways with respect to transport for the naval and military purposes of the Commonwealth:

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XXXIII. The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:

XXXIV. Railway construction and extension in any State with the consent of that State:

XXXV. Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:

XXXVI. Matters in respect of which this Constitution makes provision until The Parliament otherwise provides.

XXXVII. Matters referred to The Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

XXXVIII. The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

XXXIX. Matters incidental to the execution of any power vested by this Constitution in The Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Exclusive powers of The Parliament.

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

I. The seat of Government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

II. Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of
the Commonwealth:

III. Other matters declared by this Constitution to be within the exclusive power of The Parliament.

Powers of the House in respect of legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may if it thinks fit make any of such omissions or amendments, with or without modifications.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.
Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by three-fifths of the members present and voting thereon shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by three-fifths of the members present and voting thereon, it shall be taken to have been daily passed by both Houses of The Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills. Recommendations by Governor-General.

58. When a proposed law passed by both Houses of The Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Disallowance by the Queen.

59. The Queen may disallow any law within one year from the Governor-
General's assent, and such disallowance on being made known by the Governor-General, by speech or message to each of the Houses of The Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Signification of Queen's pleasure on Bill reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of The Parliament, or by Proclamation, that it has received the Queen's assent.

CHAPTER II.

The Executive Government.

Executive power.

61. The executive power of the Commonwealth is vested in the Queen, and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Federal Executive Council.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Provisions referring to Governor-General.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Ministers of State. Ministers to sit in Parliament.

64. The Governor-General may appoint officers to administer such Departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of Ministers.

65. Until The Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as The Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Salaries of Ministers.
66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until The Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment of civil servants.

67. Until The Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Command of naval and military forces.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth, the following departments of the public service in each State shall become transferred to the Commonwealth:

- Posts, telegraphs, and telephones:
- Naval and military defence:
- Light-houses, light-ships, beacons, and buoys:
- Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers of Governors to vest in Governor-General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a colony, or in the Governor of a colony with the advice of his Executive Council, or in any authority of a colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

CHAPTER III.
The Judicature.

Judicial power and Courts.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as The Parliament creates, and in such other courts as it
invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other justices, not less than two, as The Parliament prescribes.

Judges appointment, tenure, and remuneration.

72. The Justices of the High Court and of the other courts created by The Parliament:

I. Shall be appointed by the Governor-General in Council:

II. Shall not be removed except by the Governor-General in Council, on an address from both Houses of The Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

III. Shall receive such remuneration as The Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Appellate jurisdiction of High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as The Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences:

I. Of any Justice or Justices exercising the original jurisdiction of the High Court:

II. Of any other federal court, or court exercising federal jurisdiction: or of the Supreme Court of any State, or of another court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:

III. Of the Inter-State Commission, but as to questions of law only: and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by The Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until The Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

Appeals to Queen in Council.

74. No appeal shall be permitted to the Queen in Council in any matter involving the interpretation of this Constitution or of the Constitution of a State, unless the public interests of some part of Her Majesty's Dominions, other than the Commonwealth or a State, are involved.
Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of Her Royal Prerogative, to grant special leave of appeal from the High Court to Her Majesty in Council. But The Parliament may make laws limiting the matters in which such leave may be asked.

Original jurisdiction of High Court.

75. In all matters-
I. Arising under any treaty:
II. Affecting consuls, or other representatives of other countries:
III. In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:
IV. Between States, or between residents of different States, or between a State and a resident of another State:
V. In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth the High Court shall have original jurisdiction.

Additional original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter-
I. Arising under this Constitution, or involving its interpretation:
II. Arising under any laws made by The Parliament:
III. Of admiralty and maritime jurisdiction:
IV. Relating to the same subject-matter claimed under the laws of different States.

Power to define jurisdiction.

77. With respect to any of the matters mentioned in the last two sections, The Parliament may make laws-
I. Defining the jurisdiction of any federal court other than the High Court:
II. Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is vested in the courts of the States:
III. Investing any court of a State with federal jurisdiction.

Proceedings against Commonwealth or State.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Number of Judges.

79. The federal jurisdiction of any court may be exercised by such number of judges as The Parliament prescribes.

Trial by jury.
80. The trial or indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as The Parliament prescribes.

CHAPTER IV.

Finance And Trade.

Consolidated Revenue Fund.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this constitution.

Expenditure charged thereon.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of The Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for The Parliament.

Transfer of officers.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance,
which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Transfer of property of State.

85. When any department of the public service of a State is transferred to the Commonwealth-

I. All property of the State, of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary.

II. The Commonwealth may acquire any property of the State, of any kind, used, but not exclusively used, in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained Under the law of the State in force at the establishment of the Commonwealth.

III. The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by The Parliament.

IV. The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. Of the net revenue of the Commonwealth from duties of customs and of excise, not more than one-fourth shall be applied annually by the
Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to States before uniform duties.

89. Until the imposition of uniform duties of customs-

I. The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

II. The Commonwealth shall debit to each State-

(a) the expenditure therein of the Commonwealth

(b) the proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

III. The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive power over customs, excise, and bounties.

90. On the imposition of uniform duties of customs the power of The Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect; but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, One thousand eight hundred and ninety-eight, and not otherwise.

Exceptions as to bounties.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from

granting, with the consent of both Houses of The Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade within the Commonwealth to be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any
colony which, whilst the goods remain therein, becomes a State, shall, on
thence passing into another State within two years after the imposition of
such duties, be liable to any duty chargeable on the importation of such
goods into the Commonwealth, less any duty paid in respect of the goods
on their importation.

Payment to States for five years after uniform Tariffs.

93. During the first five years after the imposition of uniform duties of
customs, and thereafter until The Parliament otherwise provides:-

I. The duties of customs chargeable on goods imported into a State and
afterwards passing into another State for consumption, and the duties of
excise paid on goods produced or manufactured in a State and afterwards
passing into another State for consumption, shall be taken to have been
collected not in the former but in the latter State:

II. Subject to the last sub-section, the Commonwealth shall credit
revenue, debit expenditure, and pay balances to the several States as
prescribed for the period preceding the imposition of uniform duties of
customs.

Distribution of surplus.

94. After five years from the imposition of uniform duties of customs,
The Parliament may provide, on such basis as it deems fair, for the
monthly payment to the several States of all surplus revenue of the
Commonwealth.

Customs duties of Western Australia.

95. Notwithstanding anything in this Constitution, The Parliament of the
State of Western Australia may, during the first five years after the
imposition of uniform duties of customs, impose duties of customs on
goods passing into that State and not originally imported from beyond the
limits of the Commonwealth; and such duties shall be collected by the
Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of
such years the duty chargeable on the goods under the law of Western
Australia in force at the imposition of uniform duties, and shall not exceed
during the second, third, fourth, and fifth of such years respectively, four-
fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all
duties imposed under this section shall cease at the expiration of the fifth
year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this
section is higher than the duty imposed by the Commonwealth on the
importation of the like goods, then such higher duty shall be collected on
the goods when imported into Western Australia from beyond the limits of
the Commonwealth.
Audit.

96. Until The Parliament otherwise provides, the laws in force in any colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the colony, or the Government or an officer of the colony, is mentioned.

Trade and commerce includes navigation and State railways.

97. The power of The Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth not to give preference.

98. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge right to use water.

99. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

100. There shall be an Inter-State Commission, with such powers of adjudication and administration as The Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by States.

101. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State: due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners appointment, tenure, and remuneration.

102. The members of the Inter-State Commission-
I. Shall be appointed by the Governor-General in Council:
II. Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of The Parliament in the same Session praying for such removal on the ground of proved misbehaviour or incapacity:
III. Shall receive such remuneration as The Parliament may fix but such remuneration shall not be diminished during their continuance in office.

Saving of certain rates.
103. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Taking over public debts of States.
104. The Parliament make take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

CHAPTER V.
The States.

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

Saving Powers of State Parliaments.
106. Every power of the Parliament of a colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in The Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of State laws.
107. Every law in force in a colony which has become or becomes a
State, and relating to any matter within the powers of The Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by The Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the colony had until the colony became a State.

Inconsistency of laws.

108. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Provisions referring to Governor.

109. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

States may surrender territory.

110. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may levy charges for inspection laws.

111. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by The Parliament of the Commonwealth.

Intoxicating liquids.

112. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage shall be subject to the laws of the State as if such liquids had been produced in the State.

States may levy charges for inspection laws.

113. A State shall not, without the consent of The Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth; nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to coin money.

114. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.
Commonwealth not to legislate in respect of religion.

115. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of residents in States.

116. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition of laws, &c., of States.

117. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public acts and records, and the judicial proceedings, of every State.

Protection of States from invasion and violence.

118. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

Custody of offenders against laws of the Commonwealth.

119. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and The Parliament of the Commonwealth may make laws to give effect to this provision.

CHAPTER VI.

New States.

New States may be admitted or established.

120. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of The Parliament, as it thinks fit.

Government of territories.

121. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of The Parliament to the extent and on the terms which it thinks fit.

Alteration of limits of States.

122. The Parliament of the Commonwealth may, with the consent of the
Parliament of a State, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Formation of new States.

123. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

CHAPTER VII.

Miscellaneous.

Seat of Government.

124. The seat of Government of the Commonwealth shall be determined by The Parliament and shall be within territory vested in the Commonwealth.

Until such determination The Parliament shall be summoned to meet at such place within the Commonwealth as a majority of the Governors of the States, or, in the event of an equal division of opinion among the Governors, as the Governor-General shall direct.

Power to Her Majesty to authorize Governor-General to appoint deputies.

125. The Queen may authorize the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General, himself of any power or function.

Aborigines not to be counted in reckoning population.

126. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

CHAPTER VIII.

Alteration Of The Constitution.

Mode of altering the Constitution.

127. This Constitution shall not be altered except in the following manner:-

The proposed law for the alteration thereof must be passed by an absolute majority of each House of The Parliament, and not less than two nor more
than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

The vote shall be taken in such manner as The Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

An alteration diminishing the proportionate representation of any State in either House of The Parliament, or the minimum number of representatives of a State in the House of Representatives, shall not become law unless the majority of the electors voting in that State approve the proposed law.

THE SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So HELP ME GOD!

AFFIRMATION.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE. - The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.)